

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No. ICC-01/11-01/25
Date: 08 October 2026

TRIAL CHAMBER VII

Before: Judge Althea Violet Alexis-Windsor, Presiding
Judge Miatta Maria Samba
Judge Beti Hohler

SITUATION IN LIBYA

IN THE CASE OF *THE PROSECUTOR v. KHALED MOHAMED ALI EL HISHRI*

PUBLIC

Defence request for authorisation for Lead Counsel to use Arabic at trial

Source: Defence for Mr Khaled Mohamed Ali El Hishri

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I. INTRODUCTION

1. Pursuant to Trial Chamber VII's Order setting the agenda for the First Status Conference, and in line with Article 50(3) of the Rome Statute, the Defence for Mr Khaled Mohamed Ali El Hishri ("Defence") respectfully requests that the Chamber authorise Lead Counsel's use of Arabic in the examination of Arabic-speaking witnesses and in certain oral pleadings during the trial ("Oral Advocacy").

2. This request is based on the following reasons: a) the present request falls under Article 50(3) of the Rome Statute and not Rule 41 of the Rules of Procedure and Evidence;¹ b) Lead Counsel's use of Arabic would allow Mr El Hishri to more fully engage with and more perfectly understand the proceedings against him; c) Oral Advocacy in Arabic would allow the impacted communities in Libya to more fully engage with and understand the proceedings that directly affect them; d) Oral Advocacy in Arabic would occasion no additional financial costs for the Court; and e) Oral Advocacy in Arabic would occasion no prejudice to the Chamber's ability to control proceedings.

II. PROCEDURAL HISTORY

1. On 3 April 2025, the Prosecution, under seal and *ex parte*, applied for a warrant of arrest for Mr El Hishri for crimes against humanity and war crimes allegedly committed in Libya from around February 2015 to, at least, early 2020.²

2. On 10 July 2025, Pre-Trial Chamber I ("PTC I") issued the warrant of arrest against Mr El Hishri.³

¹ All references to Article(s) and Rule(s) hereafter are to Article(s) of the Rome Statute and Rules of the Rules of Procedure and Evidence respectively.

² Prosecution's application under Article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri, 3 April 2025, ICC-01/11-172-US-Exp.

³ Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri, ICC-01/11-188-US-Exp, 10 July 2025; ICC-01/11188-US-Exp-tARB, 15 July 2025; reclassified as public on 31 July 2025.

3. On 16 July 2025, Mr El Hishri was arrested in the Federal Republic of Germany pursuant to the warrant of arrest.
4. On 1 December 2025, Mr El Hishri was surrendered to the Court. He arrived at the Court's Detention Centre the same day.
5. On 15 January 2026, in the joint Prosecution and Defence submissions on the disclosure process and the agenda of the first status conference, the Defence requested PTC I for "leave to address it orally in Arabic during status conferences and the confirmation of charges hearing."⁴
6. The request was granted via email order on 19 January 2026.⁵
7. Between 19 and 21 May 2026, the confirmation of charges hearing was held, with Lead Counsel Yasser Hassan pleading entirely in Arabic.
8. On 16 July 2026, the Decision on confirmation of the charges against Mr El Hishri was issued.⁶
9. On 27 July 2026, Trial Chamber VII ("Trial Chamber") issued its Order Scheduling the First Status Conference, in which it requested the parties to make submissions on, *inter alia*, "languages to be used by the parties" at trial.⁷
10. On 19 August 2026, the Defence requested via email that the Trial Chamber grant "leave for Lead Counsel, Mr Hassan to address [the Trial Chamber] in Arabic during the first status conference".⁸

⁴ Joint Prosecution and Defence submissions on the disclosure process and the agenda of the first status conference, ICC-01/11-01/25-53, 15 January 2026, para. 15.

⁵ ICC-01/11-01/25-122-Anx1

⁶ Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri, 16 July 2026, ICC-01/11-01/25-143.

⁷ ICC-01/11-01/25-157, para. 1(d).

⁸ Email from Defence to Trial Chamber VII, "Request for leave to use Arabic during forthcoming status conference", 19 August 2026 at 16:15.

11. On 25 August 2026, the Prosecution and Defence submitted the Joint Prosecution and Defence Submissions pursuant to the “Order scheduling the first status conference”, in which it was submitted that:

Lead Counsel for the Defence has sought leave from the Chamber to use Arabic during the first status conference. The Prosecution does not oppose this request. Defence will submit a request for authorisation to use Arabic during the trial in due course.

12. On that same day, the Trial Chamber informed the Defence via email order that it rejected the request for leave to plead in Arabic during the first status conference but stated that, “going forward, the Chamber considers that specific circumstances may exceptionally justify the use of a non-working language by counsel during discrete portions of trial.”⁹

13. On 31 August 2026, the Trial Chamber issued its Order setting the agenda for the First Status Conference, in which it ordered that “[a]ny request regarding the use of a language other than the working languages of the Court by parties and participants, shall be made via formal filing”.¹⁰

III. APPLICABLE LAW

14. Article 50(2) generally provides that “the working languages of the Court shall be English and French.” However, article 50(3) provides that:

At the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified.

15. As distinct from the authorisation to use an official language as a working language¹¹ under Rule 41, authorisation under Article 50(3) “evidently falls to the relevant

⁹ Email order from Trial Chamber VII, “[ICC-01/11-01/25 - Public] Re: Request for leave to use Arabic during forthcoming status conference”, 25 August 2026 at 17:23.

¹⁰ ICC-01/11-01/25-176, para. 3(d).

¹¹ The official languages of the Court are Arabic, Chinese, English, French, Russian, and Spanish: Article 50(1)

Chamber, which has control over the proceedings and is best placed to assess the impact of any such authorization” and is not to be given by the Presidency.¹²

V. SUBMISSIONS

A. The present request falls under Article 50(3) and not Rule 41

16. The use of an official language as a non-working language is governed by Article 50(3) and Rule 41 in different contexts.¹³ In *Al Hassan*, the Presidency ruled that a request for “the use of Arabic for the making of oral submissions only”¹⁴ fell under Article 50(3) and that authorization of such a request “evidently falls to the relevant Chamber”.¹⁵ In the instant case, the relevant Chamber is the Trial Chamber. This request is of the same nature and seeks authorisation for Lead Counsel only to use Arabic in Oral Advocacy. The Defence does not seek authorisation for Arabic to be used exclusively in all its Oral Advocacy or for its use in written submissions.

17. This distinction is relevant as a request under Rule 41 would be decided by the Presidency and would require that the “language is understood and spoken by the majority of those involved in a case before the Court” or that “[t]he Prosecutor and the defence so request”.¹⁶ Additionally, it would be granted if “it would facilitate the efficiency of the proceedings.”¹⁷

18. Requests under Article 50(3), in contrast, are decided by the relevant Chamber¹⁸ and need only be “adequately justified” to be granted.¹⁹

¹² *Al Hassan*, Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-302, 4 April 2019, para. 18.

¹³ *Ibid.*, para. 16.

¹⁴ *Ibid.*, para. 17.

¹⁵ *Ibid.*, para. 18.

¹⁶ Rule 41(1).

¹⁷ *Ibid.*, Rule 41(2).

¹⁸ Article 50(3) (“the Court shall authorize”). See also *Al Hassan*, Decision on the admissibility of the ‘Defence request to authorise the use of Arabic as a working language’, ICC-01/12-01/18-302, 4 April 2019, para. 18.

¹⁹ Rome Statute, art. 50(3).

19. This request is also of a similar nature to the practice uncontroversially approved by the Trial Chamber in the *Al Mahdi* case where Defence Lead Counsel was able to plead orally in Arabic for some portions of his submissions, including parts of the Defence's closing statement.²⁰ Although there was no formal decision made on this issue in the *Al Mahdi* case, this practice demonstrates the usefulness and practicality of Defence Counsel pleading in an official but non-working language of the Court.

B. Oral Advocacy in Arabic would allow Mr El Hishri to more fully engage with and more perfectly understand the proceedings against him

20. The Defence acknowledges that "interpretation into Arabic is already being provided to the accused".²¹ However, notwithstanding the skill, experience and professionalism of the Court's interpreters, it is a very different experience for Mr El Hishri to follow witness examination and argument in the original Arabic as compared to through interpretation. However skilful the Court interpretation, it will inevitably fail to fully capture the nuances, subtleties of vocabulary, and turns of phrase of a lawyers' words in the original Arabic. Court interpretation will always be second-best when compared with Lead Counsel's own words in Arabic. Given the investment of Mr El Hishri in his own case, it is far preferable that he be able to follow Oral Advocacy in the original Arabic wherever possible. This will allow him, and his legal team, to be certain that he correctly understands as much of what is said in Court as possible.

21. In this case, that possibility exists. Mr El Hishri is able to follow the Oral Advocacy of his Lead Counsel in the original Arabic thanks to the fact Mr Hassan is a native Arabic speaker. And as elaborated at D, below, Mr Hassan being allowed to plead in Arabic would occasion no additional resource costs to the Court and would only serve to

²⁰ See ICC-01/12-01/15-T-006-ENG, p. 35, l. 4; ICC-01/12-01/15-T-006-FRA, p. 35, l. 22 (indicating that Defence Counsel Mr Aouini's presentation was heard through interpretation in both English and French). See also [YouTube Video](#), "Al Mahdi case: Defence Counsel, Mohamed Aouini, 24 August 2016" (showing Mr Aouini pleading in Arabic).

²¹ Email order from Trial Chamber VII, "[ICC-01/11-01/25 - Public] Re: Request for leave to use Arabic during forthcoming status conference", 25 August 2026 at 17:23.

maximise Mr El Hishri's understanding of and engagement with the case he faces.

C. Oral Advocacy in Arabic would allow affected communities to fully engage with and understand proceedings that directly affect them

22. As noted by the Common Legal Representatives of the Victims ("CLRv") in this case, Oral Advocacy in Arabic can be "in the interests of the [alleged] victims" and affected communities.²² The CLRv has stated that the use of Arabic "would significantly enhance the [alleged] victims' ability to follow and engage in the proceedings, support their effective participation, safeguard their right to be heard, and promote the fairness and accessibility of the trial within the affected communities."²³

23. The Defence fully endorses the CLRv's submissions. The majority of the affected communities in this case are Arabic-speakers from Libya and other parts of North Africa.²⁴ As indicated by the CLRv, although some members of these communities may have some knowledge of English, all of them are more comfortable communicating in Arabic and many do not speak any other language.²⁵

24. Whilst acknowledging that "livestreaming in Arabic will also be available to the public",²⁶ the Defence notes that such livestreaming would often be of the Court interpreters' words, and not of words spoken directly in Arabic by Lead Counsel. Reiterating the point made above, notwithstanding the skill, experience and professionalism of the Court's interpreters, it is a very different experience for the affected communities to follow witness examination and argument in the original

²² *El Hishri*, Submissions on behalf of Victims on the matters identified in the "Order Scheduling the First Status Conference", 25 August 2026, ICC-01/11-01/25-170, para. 17.

²³ *Ibid.*

²⁴ Arabic is the official language of Libya whose use was mandated in Libyan schools during the Gaddafi regime. It is therefore spoken by the vast majority of people in Libya. See Edwin Lane, "[After Gaddafi, Libya's Amazigh demand recognition](#)", BBC News, 23 December 2011; UK Permanent Committee on Geographic Names, "[Toponymic Factfile: Libya](#)", 2025.

²⁵ *El Hishri*, Submissions on behalf of Victims on the matters identified in the "Order Scheduling the First Status Conference", 25 August 2026, ICC-01/11-01/25-170, para. 13.

²⁶ Email order from Trial Chamber VII, "[ICC-01/11-01/25 - Public] Re: Request for leave to use Arabic during forthcoming status conference", 25 August 2026 at 17:23.

Arabic compared to through interpretation.

25. Additionally, it is submitted that Oral Advocacy in Arabic is more likely to be more widely publicised in the region most directly concerned with this trial through Arabic-speaking media, and especially social media. In Libya, social media is an increasingly common way for the population to learn about current events: Facebook is by far the most dominant social media platform, with YouTube as the second most commonly used.²⁷ Broadcasting and livestreaming of the proceedings in the original Arabic will likely be received more directly and more immediately than proceedings channelled through the Court's interpretation. This in turn will only have a positive impact on the Court's credibility, legitimacy and relevance in the region.

D. Oral Advocacy in Arabic would occasion no additional financial costs on the Court

26. Arabic interpreters from and to both French and English are already required for the proceedings in the *El Hishri* case. The use of Arabic by the Defence in Oral Advocacy would, therefore, not require the contracting, payment, or training of any additional interpreters, or for existing interpreters to have to work longer hours. It would also not require any additional facilities for the Court's current interpreters.

27. The presence of Arabic interpreters already at the Court also ensures that Oral Advocacy in Arabic does not occasion any additional costs in relation to transcription. As they do when a pleading is in French and the transcript is in English (and *vice versa*), the transcribers will rely on the audio from the relevant interpreter to provide the transcription. The Defence is not requesting transcripts to be available in Arabic.

28. Oral pleading in Arabic by Defence Counsel in the *Al Mahdi* case demonstrates the capacity of the Registry to accommodate pleadings in a non-working language. Oral pleading in Arabic of Lead Counsel during the confirmation of charges hearing showed

²⁷ Rami Musa, "[Libya](#)", Media Landscapes: Expert Analyses of the State of Media.

that such pleading in this case does not demand additional costs or concerns for the Registry's efficient management of the proceedings.

E. Oral Advocacy in Arabic would occasion no prejudice to the ability of the Trial Chamber to control proceedings

29. Finally, permitting the use of Arabic by Lead Counsel during his cross-examination of Prosecution or CLRV witnesses, or examination-in-chief of Defence witnesses, will have no unduly adverse impact on the ability of the Prosecution to make timely objections, or of the Chamber to control the questioning of witnesses more generally. The Defence is mindful that the Chamber may consider that it will have less time to assess and, if necessary, intervene in reaction to a given question from Lead Counsel, and therefore have (marginally) less control over proceedings than if questioning were conducted wholly in English. However, it is respectfully submitted that such a concern would be misplaced. The proceedings will in any event be conducted with the benefit of simultaneous interpretation between, at least, English and Arabic, and English and French. The short delay in the words spoken being simultaneously interpreted and reaching the Chamber will still allow the Trial Chamber to react promptly where necessary. In reality, the situation would be no different to one with which, for example, an exclusively francophone Bench would be faced when an anglophone lawyer is speaking, or an exclusively anglophone Bench when a francophone lawyer is speaking.

30. Moving away from issues relating to the use of Arabic by Lead Counsel in the questioning of witnesses, and focusing on the use of Arabic in legal submissions, the Defence contends that the same concerns over the ability of the Chamber to control oral advocacy are of lesser importance. There is not the same imperative in terms of the Chamber's immediate need to manage legal argument that could be said to exist in the context of questioning. It could not be reasonable ground for refusing this request.

VI. RELIEF SOUGHT

31. For the foregoing reasons, the Defence respectfully requests that the Trial Chamber authorise the use of Arabic by Lead Counsel's in Oral Advocacy during trial.

Respectfully submitted,

A handwritten signature in black ink, reading "Yasser Hassan", is centered on the page. The signature is fluid and cursive.

Yasser Hassan
Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 08 October 2026

at The Hague, The Netherlands