

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

*No. ICC-01/11-01/25*

**Date: 22 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 consolidated request for leave to reply to (1) Prosecution Response to “Defence request for authorisation for Lead Counsel to use Arabic at trial” (ICC-01/11-01/25-208) and (2) Registry observations pursuant to the Chamber’s email order of 9 October 2026, “Instructions Regarding Defence Request 203” (ICC-01/11-01/25-209)**

**Source:** Defence for Mr Khaled Mohamed Ali El Hishri

Document to be notified in accordance with Regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the  
Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants  
(Participation/Reparation)

☒ The Office of Public Counsel for  
Victims

☐ The Office of Public Counsel for the  
Defence

☐ States' Representatives

☐ Amicus Curiae

## REGISTRY

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**Registrar**

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and  
Reparations Section**

☒ **Other**

Division of Judicial Services

## I. INTRODUCTION

1. Pursuant to Regulations 24 and 34 of the Regulations of the Court ("RoC"), the Defence for Mr El Hishri ("Defence" and "Mr El Hishri", respectively) files this consolidated request for leave to reply to the *Prosecution Response to "Defence request for authorisation for Lead Counsel to use Arabic at trial"*<sup>1</sup> and the *Registry observations pursuant to the Chamber's email order of 9 October 2026, "Instructions Regarding Defence Request 203"*.<sup>2</sup>

## II. PROCEDURAL HISTORY

2. 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 that PTC I grant "leave to address it orally in Arabic during status conferences and the confirmation of charges hearing."<sup>3</sup>

3. The request was granted via email order on 19 January 2026.<sup>4</sup>

4. Between 19 and 21 May 2026, the Confirmation of Charges hearing was held, with Defence Lead Counsel Yasser Hassan pleading entirely in Arabic.

5. On 16 July 2026, the Decision on confirmation of the charges against Mr El Hishri was issued.<sup>5</sup>

6. 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.<sup>6</sup>

7. On 19 August 2026, the Defence requested that the Trial Chamber grant "leave for

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<sup>1</sup> ICC-01/11-01/25-208, 19 October 2026 ("Prosecution Response").

<sup>2</sup> ICC-01/11-01/25-209, 19 October 2026 ("Registry Observations").

<sup>3</sup> ICC-01/11-01/25-53, 15 January 2026, para. 15.

<sup>4</sup> ICC-01/11-01/25-122-Anx1.

<sup>5</sup> ICC-01/11-01/25-143.

<sup>6</sup> ICC-01/11-01/25-157, para. 1(d).

Lead Counsel, Mr Hassan to address [the Trial Chamber] in Arabic during the first status conference”.<sup>7</sup>

8. On 25 August 2026, the Parties filed their *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.<sup>8</sup>

9. On the 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.”<sup>9</sup>

10. 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”.<sup>10</sup>

11. On 8 October 2026, the Defence filed its *Defence request for authorisation for Lead Counsel to use Arabic at trial* (“Defence Request”).<sup>11</sup>

12. On 9 October 2026, the Single Judge instructed the Registry to provide observations on the Request by 19 October 2026.<sup>12</sup>

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<sup>7</sup> Email from Defence to Trial Chamber VII, “Request for leave to use Arabic during forthcoming status conference”, 19 August 2026 at 16:15.

<sup>8</sup> ICC-01/11-01/25-169, para. 18.

<sup>9</sup> 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 (“Order of 25 August 2026”).

<sup>10</sup> ICC-01/11-01/25-176, para. 3(d).

<sup>11</sup> ICC-01/11-01/25-203

<sup>12</sup> Email order from Single Judge of Trial Chamber VII, “[ICC-01/11-01/25 Public] Instructions regarding

13. On 19 October 2026, the Prosecution filed the Prosecution Response and the Registry filed the Registry Observations.

### III. APPLICABLE LAW

14. Pursuant to Regulation 24(5) of the RoC, “[p]articipants may only reply to a response with the leave of the Chamber.” Such a reply must, “[u]nless otherwise permitted by the Chamber, [...] be limited to new issues raised in the response which the replying participant could not reasonably have anticipated.”<sup>13</sup>

15. Regulation 34(c) of the RoC additionally specifies that “[a] request for leave to reply shall be filed within three days of notification” of the response that is to be replied to.

### IV. SUBMISSIONS

16. *Firstly*, in paragraphs 8-11 of its Response, the Prosecution erroneously conflates the issue of a Party’s use of a non-working language in proceedings, to be authorised by a Chamber, under Article 50(3) of the Rome Statute with the quite different issue of the use of an official language of the Court as a working language, to be authorised by the Presidency, under Rule 41 of the Rules of Procedure and Evidence. Despite acknowledging that the Defence Request is made under Article 50(3), the Prosecution nonetheless argues that the requirements of Rule 41 “provide[] relevant and useful criteria for assessing” a request under Article 50(3). The Defence could not have reasonably anticipated that the Prosecution would conflate these two provisions. If granted leave to reply, the Defence will expand on the nature and effect of this conflation, and advance argument about the irrelevance of the conditions under Rule 41.

17. *Secondly*, in paragraph 3 of the Prosecution Response, and in paragraphs 6 and 8 of the Registry Observations, reference is made to the confidential transcript of the fourth

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Defence request 203”, 9 October 2026 at 15:55.

<sup>13</sup> Regulations of the Court, regulation 24(5).

status conference in the *Duterte* case from 13 October 2026. That status conference postdates the Defence Request by five days. Quite apart from the fact the transcript itself is confidential and therefore not (yet) available to the Defence, the *obiter* and *ex tempore* comment of the Presiding Judge of Trial Chamber III in the *Duterte* case by which she creates an “exceptional circumstance” test is one that the Defence could not have reasonably anticipated. If granted leave to reply, the Defence will make submissions about the incompatibility of the binding, statutory “adequately justified” test in Article 50(3), and the new, non-binding, judge-made test of exceptionality.

18. *Thirdly*, in paragraphs 3-4 of the Prosecution Response, and in paragraph 9 of the Registry Observations, reference is made to the scope of the Defence Request, with both the Prosecution and Registry inaccurately arguing that the use of Arabic by Lead Counsel could not be described as “discrete portions of the Trial.” If granted leave to reply, the Defence will advance argument on the definition of the word “discrete”, how “discrete” is not a synonym of “limited” or “narrow” or “lesser part”, and how the Defence Request is thus wholly compatible with the language employed by the Trial Chamber in its Order of 25 August 2026.

19. *Fourthly*, in paragraph 10 of its Observations, the Registry states, without providing detail, that “the implementation of the Request would require all available in-house Arabic-language professionals to be allocated exclusively to live interpretation during the hearings.” It is unclear from this statement why the use of Arabic by Lead Counsel would occasion an increase in the need for Arabic-language professionals at trial to interpret his submissions and questions into English given that: (i) the answers of Arabic-speaking witnesses to all questions will be interpreted into English (and French) in any event; and (ii) submissions and questions in English or French will be interpreted into Arabic for the benefit of the Accused and Arabic-speaking witnesses in any event. The Defence could not reasonably have anticipated that the Registry would advance submissions of this nature in its Observations. If granted leave to reply, the Defence will advance argument on why such unsubstantiated and unfounded concerns should not

be taken into account by the Trial Chamber.

20. *Fifthly*, in paragraphs 14-19 of its Observations, the Registry make a novel argument that allowing the use of Arabic in the discrete and case-specific circumstances of the Defence Request would open the floodgates to requests for, or the expectation of, the use of non-working languages in other cases. Given the case-specific nature of both Article 50(3) and the Defence Request, the Defence could not have reasonably anticipated such an argument. If granted leave to reply, the Defence will explain why there is no realistic basis to apprehend a floodgates situation.

## V. CONCLUSION

21. For the foregoing reasons, the Defence submits that it could not reasonably have anticipated the referenced arguments raised in the Prosecution Response and the Registry Observations and respectfully requests leave to file its reply.

Respectfully submitted,



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Yasser Hassan

Counsel for Mr Khaled Mohamed Ali El Hishri

Dated this 22 October 2026

at The Hague, The Netherlands