

Annex

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**Cour
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**International
Criminal
Court**

No. ICC-01/11-01/25

Date: 26 May 2026

PRE-TRIAL CHAMBER I

Before: Judge Iulia Antoanella Motoc, Presiding
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera

SITUATION IN LIBYA

THE PROSECUTOR V. KHALED MOHAMED ALI EL HISHRI

PUBLIC

**Legal Representatives of Victims Request for Leave to File Observations
on the Defence Challenge to Jurisdiction of
the International Criminal Court Pursuant to Article 19 of the Rome Statute**

(ICC-01/11-01/25-108-Corr-Red)

A. INTRODUCTION

1. Pursuant to articles 19(3) and 68(3) of the Rome Statute (the "*Statute*"), rules 59 and 89 of the Rules of Procedure and Evidence (the "*Rules*"), and regulations 80, 81 and 86 of the Regulations of the Court (the "*Regulations*"), the undersigned Legal Representatives for Victims (the "LRVs") respectfully request Pre-Trial Chamber I to grant them leave to file written observations on the Article 19 Jurisdictional Challenge as filed by the Defence.¹
2. LRVs currently act on behalf of seven (7) and ten (10) victims, respectively² that have already been admitted by the Chamber to participate in the current case, and are in contact with a broader group of victims with a view to facilitating their participation and legal representation in the case against Mr. El Hishri in the due course of the proceedings.
3. LRVs seek leave to file written observations on the Defence Jurisdictional Challenge on behalf of the victims who have entrusted them with their mandates. Should the leave be granted, the LRVs are ready to file their observations by 12 June, in line with the time limit set by the Chamber in the 6 May 2026 Decision for observations to be filed by the Prosecution and Office of Public Counsel for Victims (OPCV), or a different time limit as the Chamber may set.

B. PROCEDURAL BACKGROUND

4. On 10 July 2025, Pre-Trial Chamber I issued a warrant of arrest against Mr. El Hishri for his alleged responsibility for the commission of war crimes and crimes against humanity in the context of the Libya Situation, under investigation since 2011. Initially issued under seal, this warrant of arrest was reclassified as "Public" on 31 July 2025.³
5. On 16 July 2025, Mr. El Hishri was arrested in Germany, and, on 1 December 2025, he was surrendered to the Court and transferred to the Court's detention centre in The Hague. His initial appearance hearing took place on 3 December 2025.

¹ Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute, 30 April 2026, ICC-01/11-01/25-108-Conf; Corrected Public Redacted Version, 6 May 2026, ICC-01/11-01/25-108-Corr-Red (the "*Defence Jurisdictional Challenge*").

² The undersigned LRVs have been indicated to represent them by the following victims, respectively a/50009/25, a/00013/26, a/00014/26, a/00016/26, a/00017/26, a/00022/26, a/00035/26 as well as a/05010/25, a/00034/26, a/05011/25, a/05012/25, a/00031/26, a/00030/26, a/00033/26, a/00043/26, a/00045/26, a/00044/26, admitted to participate in the proceedings.

³ Warrant of Arrest for Mr. Khaled Mohamed Ali El Hishri, 10 July 2025, ICC-01/11-01/25-7.

6. On 26 March 2026, the Prosecution filed the Document Containing the Charges.⁴
7. On 30 April 2026, the Defence filed a challenge to the jurisdiction of the International Criminal Court pursuant to article 19 of the Rome Statute, reclassified and corrected as a public redacted version on 6 May 2026⁵ (the "*Defence Jurisdictional Challenge*").
8. On 6 May 2026, the Chamber issued the Order setting time limits for observations in relation to the Defence's challenge to the jurisdiction of the Court pursuant to article 19 of the Statute (the "*6 May Order*").⁶ The Chamber requested the Prosecution and the OPCV, or any any legal representatives appointed by the Chamber, to file any observations to the Defence Jurisdictional Challenge by 12 June 2026.
9. On 11 May 2026, the Chamber issued a Decision on the modalities of participation of victims in the proceedings (the "*11 May Decision*")⁷ which:
 - (i) Recognises as admissible the victims who have indicated the wish to be represented by the undersigned LRVs belonging to category A;
 - (ii) Addresses the modalities of victims' participation *for the purposes of the confirmation of charges hearing*;
 - (iii) Recognises that there is not sufficient time for the Registry to formulate a comprehensive recommendation concerning the legal representation of victims for the purposes of the confirmation hearing and therefore 'finds it appropriate to maintain the OPCV's appointment for the purposes of the confirmation of charges hearing' (para 16); and
 - (iv) Instructs the Registry to continue consulting with applicants and to transmit updated report(s) when appropriate.
10. On 19-21 May 2026, the Confirmation of Charges hearing in the case against El Hishri was celebrated in front of the Chamber; pursuant to the 11 May Decision, only OPCV was appointed to represent the victims during the hearing.

⁴ OTP, Document Containing the Charges, 26 March 2026, ICC-01/11-01/25-92.

⁵ Public Redacted Version of "Corrected Version of 'Defence Challenge to Jurisdiction of the International Criminal Court Pursuant to Article 19 of the Rome Statute'" (ICC-01/11-01/25-108-Conf-Corr), ICC-01/11-01/25-108-Corr-Red, 6 May 2026.

⁶ Order setting time limits for observations in relation to the Defence's challenge to the jurisdiction of the Court pursuant to article 19 of the Statute, 6 May 2026, ICC-01/11-01/25-116 (the "*6 May Order*").

⁷ Decision on the modalities of victims' participation and legal representation, 11 May 2026, ICC-01/11-01/25-117 (the "*11 May Participation Decision*").

11. On 21 May 2026, the Chamber issued a Decision on an application for reconsideration or leave to appeal the Chamber's decision on the legal representation of victim a/05013/25.⁸

C. PRELIMINARY REMARKS ON THE 11 MAY 2026 DECISION

12. The undersigned LRVs have taken note of the 21 May Decision; they wish to clarify - at the outset - that the present request for leave is to be read within the strict parameters of the Defence challenge to jurisdiction under article 19, a distinct matter that falls outside of the scope of the confirmation hearing. The LRVs thus respectfully submit that the present Request needs to be treated as a separate procedural issue, with implications that go beyond the confirmation of charges.
13. The victims who have indicated the wish to be represented by the undersigned LRVs come from a context in which the very identity of those who hold their information is a security concern. They have been in contact and exchange for months with the LRVs directly and indirectly through several civil society organizations with whom the LRVs have been working for years. These organizations consulted with victims and affected communities over the past eight months to determine the criteria and qualifications they wished for their legal representatives to meet. On the basis of those criteria, victims were presented with options for legal representation, following which they decided to appoint the undersigned LRVs.
14. Victims have thus made an *informed choice* to entrust the LRVs whom they know directly or through the abovementioned organizations, who meet the criteria they wish their lawyers to meet, and whose communication channels they have tested, and whose security protocols they have approved.
15. The limited scope of the 11 May Participation Decision is, by its own express terms, confined to representation "for the purposes of the confirmation of charges hearing" and related matters.⁹ It does not regulate legal representation of victims in matters other than the confirmation of charges of hearing. This is also confirmed by the Chamber's

⁸ Decision on an application for reconsideration or leave to appeal the Chamber's decision on the legal representation of victim a/05013/25, ICC-01/11-01/25-121, 21 May 2026 ('21 May Decision')

⁹ 11 May Participation Decision, paras. 30–38 (instructing the OPCV under regulation 81(4)(c) for the purposes of the confirmation of charges hearing and related matters); dispositif (no Common Legal Representative appointed under rule 90; representation at later stages reserved).

instruction directing the Registry to “continue consulting with applicants and to transmit updated report(s) when appropriate.”

16. To read such Decision as excluding LRVs to submit their observations on behalf of the victims who have indicated the wish to be represented by the undersigned LRVs on the Defence Jurisdictional Challenge would contradict rule 90(1) and the Statute's spirit, denying victims who chose to be represented by a specific counsel the exercise of their statutory rights.
17. The 11 May Decision must therefore be read as a procedural and time limited arrangement strictly confined to the confirmation of charges hearing, and the undersigned LRVs retain their right to intervene on issues that go beyond the scope of said hearing.

D. LEGAL STANDING OF THE VICTIMS WITH REGARD TO THE ARTICLE 19 CHALLENGE

18. Article 19(3) provides that, on a question of jurisdiction or admissibility, “victims may also submit observations to the Court”. Rule 59(1)(b) and (3) require the Registry to inform victims who have already *communicated with the Court* of any such question and provide that those victims “*may submit ... observations in writing*” within the time limit set by the Chamber.
19. Article 68(3) entitles victims to present their views and concerns where their personal interests are affected, “*through their legal representatives*”. Read together with regulations 80–83, that legal representative is the lawyer *chosen by the victims*; the OPCV acting under regulation 81(4)(b) *in default of* — not in displacement of — such counsel.
20. Indeed, as shown in other situations before this Court, victims and victims’ legal representatives can be not only admitted but also actively invited to submit observations on issues such as jurisdiction.¹⁰ In the situation in the State of Palestine, the Chamber accepted observations from a wide range of victims’ counsels without conditioning standing to any prior appointment as Legal Representatives by the Court.

¹⁰ Situation in the State of Palestine, Pre-Trial Chamber I, *Decision on the ‘Prosecution request pursuant to article 19(3) for a ruling on the Court’s territorial jurisdiction in Palestine’*, 5 February 2021, ICC-01/18-143, paras.37-48 (Chamber inviting and considering observations from victims and victims’ representatives, transmitted through the Registry on the basis of communications received under rule 59.)

21. In the same vein, Pre-Trial Chamber I, ruling under article 19(3) on the question of jurisdiction in the Myanmar/Bangladesh situation, acknowledging a right to be heard under article 68(3), admitted and relied upon written observations submitted on behalf of hundreds of thousands of victims through their counsels.¹¹ Once again, no prior designation by the Chamber was requested.
22. Moreover, in the case of *Katanga and Ngudjolo Chui*, several individually mandated counsels acted in parallel and filed observations on the Defence's admissibility challenge at the pre-trial stage and before any Common Legal Representative had been formally appointed under rule 90, while the OPCV was active for unrepresented applicants.¹²
23. Similarly, in the case of *Bemba*, the victims' legal representatives filed observations on the Defence's article 19 challenge before Trial Chamber III, and the Chamber subsequently consolidated the role of CLR through its 10 November 2010 decision, while the OPCV was already operating in the case.¹³
24. No such consolidation has yet occurred here given that no Common Legal Representative has yet been appointed. The 11 May Decision instructs the OPCV under regulation 81(4)(c) *for the confirmation hearing only* and does not, and could not lawfully, operate as a rule 90 consolidation against Counsel acting on the basis of valid Powers of Attorney (*Actes de Constitution*).

E. PERSONAL INTERESTS OF VICTIMS

25. The personal interests of victims who have indicated the wish to be represented by the undersigned LRVs are fundamentally affected by the specific legal questions arising from

¹¹ Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Pre-Trial Chamber I, *Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute'*, 6 September 2018, ICC-RoC46(3)-01/18-37, paras. 20-21 (admitting and relying on observations submitted on behalf of hundreds of thousands of victims who had communicated with the Court).

¹² Observations of the Legal Representatives of Victims a/0330/07 and a/0331/07 on the Appeal of the Defence for G. Katanga under Article 19(3) of the Rome Statute and Rule 59(3) of the Rules of Procedure and Evidence, 17 July 2009, ICC-01/04-01/07-1318-tENG; Observations of the Legal Representatives of victims a/0333/07 and a/0110/08 on the Appeal submitted by the Defence for G. Katanga pursuant to article 19(3) of the Rome Statute and rule 59(3) of the Rules of Procedure and Evidence on the Motion, 29 July 2009, ICC-01/04-01/07-1342-tENG; see also Appeals Chamber, *Judgment on the Appeal of Mr Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case*, 25 September 2009, ICC-01/04-01/07-1497

¹³ *Prosecutor v. Bemba*, Observations of the Legal Representatives of Victims on the Defence Application Challenging the Admissibility of the Case Pursuant to Articles 17 and 19(2) of the Statute, ICC-01/05-01/08-740-tENG, 29 March 2010; Appeals Chamber, 23 October 2010, ICC-01/05-01/08-962.

the jurisdictional challenge, making it appropriate for the Chamber to hear them, under its discretionary power laid down by rule 93 of the Rules.

26. The Defence Jurisdictional Challenge directly engages the personal interests of victims.¹⁴ Should it succeed, in whole or in part, the proceedings against Mr. El Hishri will not advance to trial; victims will be deprived of any judicial acknowledgement of the harm suffered in detention facilities in Libya and any avenue to reparations under article 75 will be foreclosed. Their right to be heard under articles 19(3) and 68(3) of the Statute cannot be reduced to a procedural formality.

F. OUTLINE OF THE OBSERVATIONS THE UNDERSIGNED LRVs SEEK TO SUBMIT

27. If granted leave, the LRVs will submit the victims' observations on the following points, arising from the Defence Jurisdictional Challenge:
28. First, regarding the validity of Libya's article 12(3) Declaration (Defence Jurisdictional Challenge, paras. 12–36), the LRVs would submit and advance arguments that, contrary to the Defence's submission, Article 46 VCLT is not applicable in the present case as Libya's Article 12 (3) Declaration was a unilateral act that does not require domestic ratification and that Mr. al-Dbeibeh as the head of Libya's internationally recognised government, had authority under international law to issue the Article 12 (3) declaration. Even if considered a treaty for VCLT purposes, LRVs would submit and substantiate that the conditions of Article 46 VCLT are not met.
29. Second, regarding UN Security Council Resolution 1970 (2011) and the temporal scope of the Court's jurisdiction (Defence Jurisdictional Challenge, paras. 37–52), the LRVs submission would demonstrate how Resolution 1970 provides a clear jurisdictional basis for the case against Mr. El Hishri, irrespective of the government's Article 12(3) ad hoc declaration. LRVs will advance arguments that the application of Resolution 1970 to the case against Mr. El Hishri does not violate Libya's sovereignty, nor the principle of legality. LRVs will also demonstrate that a sufficient link exists between the 2011 referral and Mr. El Hishri's alleged crimes. This will be substantiated including by reference to relevant UN Security Council and other UN resolutions and findings; briefings of the Office of the Prosecutor; expert reports as well as domestic authorities confirming the ICC's jurisdiction based on Resolution 1970.

¹⁴ Defence Jurisdictional Challenge, paras. 12–36.

30. Third, LRVs would submit how the UN Security Council Referral in 2011 and the Article 12 (3) Declaration of 6 May engages the rights and interests of victims who have indicated the wish to be represented by the undersigned LRVs under Articles 68 and 75 of the Rome Statute, requiring that any determination on jurisdiction considers victims' distinct observations.

G. RELIEF SOUGHT

31. For the foregoing reasons, the undersigned LRVs respectfully request the Chamber to:

- GRANT leave to submit written observations on the Defence Jurisdictional Challenge (ICC-01/11-01/25-108-Corr-Red) on behalf of the victims who have indicated the wish to be represented by the undersigned LRVs.

Respectfully submitted,

Paris, Berlin, 26 May 2026



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