



Original: **English**

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

Date: **16 July 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**

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

**Public**

Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri

**Decision 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/Reparations)**

☒ **The Office of Public Counsel for Victims**

☐ **The Office of Public Counsel for the  
Defence**

☐ **States' Representatives**

☐ **Amicus Curiae**

## **REGISTRY**

---

**Registrar**

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Section**

☐ **Detention Section**

☐ **Victims Participation and Reparations  
Section**

☐ **Other**

|                                                                                                                                                                                                                                                  |           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|
| <b>I. PROCEDURAL HISTORY .....</b>                                                                                                                                                                                                               | <b>5</b>  |
| <b>II. THE CHAMBER'S APPROACH .....</b>                                                                                                                                                                                                          | <b>7</b>  |
| A. Scope of the charges .....                                                                                                                                                                                                                    | 7         |
| B. Nature, purpose and content of the present decision .....                                                                                                                                                                                     | 11        |
| C. Defence's observations on the discharge of the Prosecution's investigative duties ....                                                                                                                                                        | 18        |
| <b>III. THE CHAMBER'S ASSESSMENT OF THE EVIDENCE .....</b>                                                                                                                                                                                       | <b>19</b> |
| A. Contextual elements.....                                                                                                                                                                                                                      | 20        |
| 1. Contextual elements of crimes against humanity .....                                                                                                                                                                                          | 20        |
| 2. Contextual elements of war crimes.....                                                                                                                                                                                                        | 26        |
| B. Specific crimes.....                                                                                                                                                                                                                          | 32        |
| 1. Torture, cruel treatment, imprisonment or other severe deprivation of physical liberty, outrages upon personal dignity and other inhumane acts under articles 7(1)(e), (f), and (k) and 8(2)(c)(i) and (ii) of the Statute (counts 1-6) ..... | 32        |
| 2. Rape and other forms of sexual violence under articles 7(1)(g) and 8(2)(e)(vi) of the Statute (counts 7-10) .....                                                                                                                             | 37        |
| 3. Murder and attempted murder under articles 7(1)(a) and 8(2)(c)(i) of the Statute (counts 11-12) .....                                                                                                                                         | 39        |
| 4. Enslavement under article 7(1)(c) of the Statute (count 13).....                                                                                                                                                                              | 40        |
| 5. Persecution under article 7(1)(h) of the Statute (counts 14-17).....                                                                                                                                                                          | 44        |
| C. Individual criminal responsibility .....                                                                                                                                                                                                      | 46        |
| 1. Direct perpetration under article 25(3)(a) of the Statute.....                                                                                                                                                                                | 47        |
| 2. Co-perpetration under article 25(3)(a) of the Statute.....                                                                                                                                                                                    | 50        |
| 3. Indirect perpetration under article 25(3)(a) of the Statute .....                                                                                                                                                                             | 56        |
| 4. Other modes of liability under article 25(3)(b), (c) and (d) of the Statute.....                                                                                                                                                              | 58        |
| <b>IV. THE CONFIRMED CHARGES .....</b>                                                                                                                                                                                                           | <b>59</b> |

**PRE-TRIAL CHAMBER I** (the ‘Chamber’) of the International Criminal Court (the ‘Court’), acting pursuant to article 61(7) of the Rome Statute (the ‘Statute’), issues this ‘Decision on confirmation of the charges against Mr Khaled Mohamed Ali El Hishri’ (‘Mr El Hishri’), a Libyan national born on 23 June 1978 in Tripoli, Libya,<sup>1</sup> currently detained at the seat of the Court.

1. The full text of the charges on which the Prosecution seeks that Mr El Hishri be committed for trial is publicly available in the ‘Document Containing the Charges’ (the ‘DCC’), filed on 26 March 2026,<sup>2</sup> to be read in conjunction with the ‘Prosecution’s Pre-Confirmation Brief’ (the ‘PCB’), filed on the same day.<sup>3</sup>

2. The case brought by the Prosecution against Mr El Hishri relates to war crimes and crimes against humanity alleged to have taken place between 1 May 2014 and 30 June 2020 (the ‘Charged Period’), in and around Tripoli, Libya. The Prosecution framed 17 counts in the DCC comprising the crimes of: torture, cruel treatment, imprisonment, outrages upon personal dignity and other inhumane acts (counts 1-6); rape and other forms of sexual violence (counts 7-10); murder and attempted murder (counts 11-12); enslavement (count 13); and persecution (counts 14-17). The Prosecution alleges that the crimes were committed against thousands of individuals who were detained in Mitiga Prison and/or within the Mitiga Compound during the Charged Period, when the Special Deterrence Force or RADA (the ‘SDF/RADA’) operated the Mitiga Prison. Mr El Hishri is charged as a direct, indirect and/or co-perpetrator for crimes alleged to have been committed alongside and together with other members of the SDF/RADA. The Chamber has examined the evidence with respect to Mr El Hishri’s conduct and has made relevant findings which are reflected in this decision, rendered in accordance with article 61(7) of the Statute. From the onset, the Chamber acknowledges the importance of the contribution of the 63 individuals who provided their accounts in the form of witness statements. 47 of these witnesses are themselves former detainees. Many of these survivors expressed how difficult it was to find the right words to describe the pain and suffering they endured at the hands of the perpetrators. Their recorded testimony constitutes the core of the evidence presented by the Prosecution in support of the

---

<sup>1</sup> See LBY-OTP-0080-0669-R01.

<sup>2</sup> [ICC-01/11-01/25-92](#).

<sup>3</sup> ICC-01/11-01/25-94-Conf-Corr (confidential corrected version notified on 24 April 2026 and public redacted version thereof notified on 1 May 2026, [ICC-01/11-01/25-94-Corr-Red](#)).

charges, and therefore forms the basis for the present decision which confirms the charges and commits Mr El Hishri to trial.

## I. PROCEDURAL HISTORY

3. On 26 February 2011, the United Nations Security Council (the ‘UNSC’), acting under Chapter VII of the Charter of the United Nations, referred the situation in the Libyan Arab Jamahiriya (‘Libya’) since 15 February 2011 to the Prosecutor of the Court, in accordance with article 13(b) of the Statute.<sup>4</sup>

4. On 12 May 2025, Libya conveyed its acceptance of the Court’s jurisdiction over its territory from 2011 to the end of 2027 to the Registrar of the Court.<sup>5</sup>

5. On 16 July 2025, pursuant to a warrant of arrest issued by the Chamber on 10 July 2025,<sup>6</sup> Mr El Hishri was arrested in Germany.

6. On 1 December 2025, Mr El Hishri was surrendered to the Court. He made his initial appearance before the Court on 3 December 2025.<sup>7</sup> During the initial appearance hearing, the Chamber set the commencement date of the hearing on confirmation of the charges (the ‘Confirmation Hearing’) for 19 May 2026.<sup>8</sup>

7. On 15 January 2026, the Prosecution and Defence filed their first joint submissions<sup>9</sup> on, *inter alia*, the disclosure timeline, format and process and on the proposed agenda items for the first status conference, which was held, as scheduled by the Chamber, on 28 January 2026.<sup>10</sup>

8. On 16 February 2026, the Chamber issued the ‘Order on further matters related to the conduct of confirmation proceedings’,<sup>11</sup> containing directions on, *inter alia*, the submission of

<sup>4</sup> United Nations, Security Council, Resolution 1970, 26 February 2011, S/RES/1970 (2011).

<sup>5</sup> [Transmission of Article 12\(3\) Declaration by the State of Libya](#), 20 May 2025, ICC-01/11-1/25-6-Conf-Exp-Corr (public redacted version notified on 8 August 2025, ICC-01/11-01/25-6-Corr-Red) with two confidential, *ex parte*, Annexes (confidential version of Annex I notified on 14 April 2026, ICC-01/11-01/25-6-Conf-AnxI and public redacted version of Annex II notified on 2 December 2025, [ICC-01/11-01/25-6-AnxII-Red](#)).

<sup>6</sup> [Warrant of Arrest for Khaled Mohamed Ali El Hishri](#), ICC-01/11-01/25-7-US-Exp (reclassified as public on 31 July 2025, ICC-01/11-01/25-7).

<sup>7</sup> [Scheduling order for the first appearance of Mr Khaled Mohamed Ali El Hishri](#), ICC-01/11-01/25-26.

<sup>8</sup> [Transcript of hearing](#), ICC-01/11-01/25-T-001-ENG, p. 7.

<sup>9</sup> [Joint Prosecution and Defence submissions on the disclosure process and the agenda of the first status conference](#), ICC-01/11-01/25-53.

<sup>10</sup> [Scheduling order for the first status conference](#), 12 January 2026, ICC-01/11-01/25-51; [Transcript of hearing](#), ICC-01/11-01/25-T-002-Red-ENG.

<sup>11</sup> [ICC-01/11-01/25-66](#).

the DCC and the PCB, and various time limits in relation to matters arising from the proceedings preceding the Confirmation Hearing.

9. On 23 February 2026, the Prosecution and Defence filed their second set of joint submissions,<sup>12</sup> providing, *inter alia*, an update on the disclosure process carried out by the Prosecution as well as the proposed agenda items for the second status conference, which was held, as scheduled by the Chamber, on 4 March 2026.<sup>13</sup>

10. On 26 March 2026, the Prosecution submitted the DCC,<sup>14</sup> its list of evidence,<sup>15</sup> and the PCB.<sup>16</sup>

11. On 13 April 2026, the Prosecution and Defence filed their third set of joint submissions,<sup>17</sup> providing, *inter alia*, proposals on the format and duration of the Confirmation Hearing and informing the Chamber that the Defence intended to present a challenge to jurisdiction, admissibility, or both, by the end of April.

12. On 28 April 2026, the Defence filed submissions on the factual and legal elements of the Prosecution's case (the 'Defence's Written Submissions').<sup>18</sup>

13. On 5 May 2026, the Prosecution filed its response to the Defence's Written Submissions.<sup>19</sup>

14. On 11 May 2026, in line with its previous decision,<sup>20</sup> the Chamber issued a decision on victims' participation and legal representation, which, *inter alia*, authorised the participation in the confirmation proceedings of 64 victims and maintained the appointment of the Office of

---

<sup>12</sup> [Joint Prosecution and Defence submissions on the disclosure process and the agenda of the second status conference](#), ICC-01/11-01/25-71.

<sup>13</sup> [Transcript of hearing](#), ICC-01/11-01/25-T-003-Red-ENG.

<sup>14</sup> [DCC](#).

<sup>15</sup> [Prosecution's submission of the List of Evidence](#), ICC-01/11-01/25-93, with confidential Annex 1.

<sup>16</sup> 24 April 2026, ICC-01/11-01/25-94-Conf-Corr (public redacted version thereof notified on 1 May 2026, [ICC-01/11-01/25-94-Corr-Red](#)), with Annexes [1](#), [2](#), [3](#), [4](#), [5](#), [6](#), [7](#), [8](#), [9](#), [10](#), [11](#), [12](#), [13](#) and [14](#).

<sup>17</sup> [Joint Prosecution and Defence submissions on the disclosure process, preparation for the Confirmation Hearing and the agenda of the third status conference](#), ICC-01/11-01/25-102. *See also* email from the OPCV on 16 April 2026 at 10:07.

<sup>18</sup> [Defence written notes and observations relating to factual and legal elements of the Prosecution's case against Mr Khaled Mohamed Ali El Hishri](#), ICC-01/11-01/25-107.

<sup>19</sup> [Prosecution response to "Defence written notes and observations relating to factual and legal elements of the Prosecution's case"](#), ICC-01/11-01/25-115 (the 'Prosecution Response').

<sup>20</sup> [Decision on the legal representation of victims](#), 12 March 2026, ICC-01/11-01/25-84.

Public Counsel for Victims (the ‘OPCV’) as the common legal representative for the purposes of the confirmation proceedings.<sup>21</sup>

15. Between 19 and 21 May 2026, pursuant to the schedule set by the Chamber,<sup>22</sup> the Confirmation Hearing took place.<sup>23</sup>

16. On 15 July 2026, having received relevant submissions, the Chamber issued its decision rejecting the jurisdictional challenge presented by the Defence on 6 May 2026.<sup>24</sup>

## II. THE CHAMBER’S APPROACH

### A. Scope of the charges

17. With a view to addressing the Defence’s challenges, as discussed below, the Chamber recalls the Appeals Chamber’s holding that the question of sufficient notice under article 67(1)(a) of the Statute is distinct from that of the level of detail required in the formulation of the charges to allow for meaningful application of article 74(2) of the Statute.<sup>25</sup> It follows that for the purpose of the present decision the Chamber must, in compliance with article 74(2) of the Statute and regulation 52 of the Regulations of the Court (the ‘RoC’), ensure that the charges are not only legally and factually sound but also properly formulated and delineated so as to set the parameters of the case for trial.<sup>26</sup>

<sup>21</sup> [Decision on victims’ participation and legal representation](#), ICC-01/11-01/25-117.

<sup>22</sup> [Order setting the schedule and directions for the confirmation of charges hearing](#), 28 April 2026, ICC-01/11-01/25-106.

<sup>23</sup> [Transcript of hearing](#), 19 May 2026, ICC-01/11-01/25-T-004-ENG; [Transcript of hearing](#), 20 May 2026, ICC-01/11-01/25-T-005-ENG; [Transcript of hearing](#), 21 May 2026, ICC-01/11-01/25-T-006-ENG; [Registration into the Record of the Case of Materials Presented during the Confirmation of Charges Hearing](#) (ICC-01/11-01/25-HNE-1 to ICC-01/11-01/25-HNE-6), 29 May 2026, ICC-01/11-01/25-125, with confidential Annexes I-VI (public redacted version of Annexes I, III, and IV, and V filed the same day).

<sup>24</sup> [Decision on the Defence’s challenge to the jurisdiction of the Court pursuant to article 19 of the Statute](#), ICC-01/11-01/25-142 with [Concurring separate opinion of Judge María del Socorro Flores Liera](#), ICC-01/11-01/25-142-OPI. [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), ICC-01/11-01/25-108-Conf-Corr (public redacted version notified on the same day, ICC-01/11-01/25-108-Corr-Red).

<sup>25</sup> Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled ‘Judgment’](#), 30 March 2021, ICC-01/04-02/06-2666-Red (the ‘Ntaganda Appeal Judgment’), para. 322.

<sup>26</sup> See Pre-Trial Chamber III, *The Prosecutor v. Joseph Kony*, [Decision on the confirmation of charges in absentia against Joseph Kony pursuant to articles 61\(2\)\(b\) and 61\(7\) of the Rome Statute](#), 6 November 2025, ICC-02/04-01/05-633 (the ‘Kony Confirmation Decision’), para. 39; Pre-Trial Chamber II, *The Prosecutor v. Mahamat Said Abdel Kani*, [Decision on the confirmation of charges against Mahamat Said Abdel Kani](#), 9 December 2021, ICC-01/14-01/21-218-Red (the ‘Said Confirmation Decision’), paras 36-37; Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, [Decision on the confirmation](#)

18. With regard to the requirement that the charges must be specific, the Appeals Chamber in the case of *The Prosecutor v. Bosco Ntaganda* clarified that

[f]or the purposes of article 74(2) of the Statute, the charges must be described in such a way that the trial chamber as well as the parties and participants are able ‘to determine with certainty which sets of historical events, in the course of which crimes under the jurisdiction of the Court are alleged to have been committed form part of the charges, and which do not’. It is not necessarily the case that such determination is possible only where the charging documents list all criminal acts underlying each charge exhaustively. Depending on the circumstances of the case, the charges may be described in a less specific manner, for instance, by specifying a period of time during which and an area where criminal acts were allegedly committed by an identifiable group of perpetrators against an identifiable group of victims. While in such a case the document containing the charges may also list or make reference to specific criminal acts, the scope of the case is not necessarily limited to them – ‘other criminal acts not mentioned in the document containing the charges may still fall within the – broadly described – facts and circumstances of the charges’. Whether such description of the charges is sufficient for purposes of article 74(2) of the Statute will depend, *inter alia*, on the scale of criminality and the mode of individual criminal responsibility alleged.<sup>27</sup>

19. Having recalled the above passage, Trial Chamber VI identified the scale of criminality and the alleged mode of individual criminal responsibility as ‘the guiding criteria’ in determining whether it is permissible for the charges to be described with regard to confirmed temporal and geographical parameters, and for individual criminal acts and victims to be listed in a non-exhaustive manner. Accordingly, ‘a broader description of the charges may be acceptable for the purpose of article 74(2) of the Statute in cases where the extent of the criminality is of a larger scale and the accused is further removed from the scene of crimes’.<sup>28</sup>

20. In light of the above, a broader description of the charges defined through examples of relevant incidents is not necessarily incompatible with article 74(2) of the Statute. Depending, among other factors, on the scale of the criminality and the alleged modes of liability, charges may cover a significant time period and territory, as long as it is possible for the Trial Chamber as well as the parties and participants to identify which historical events are covered by the charges and which are not. Indeed, given the type of criminality over which this Court has

---

of charges against Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’), 9 July 2021, ICC-02/05-01/20-433 (the ‘Abd-Al-Rahman Confirmation Decision’), paras 35-36. See also Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (‘Ali Kushayb’)*, [Decision on the ‘Prosecution’s application to amend the charges’](#), 14 March 2022, ICC-02/05-01/20-626 (the ‘Abd-Al-Rahman Article 61(9) Decision’), para. 16; Pre-Trial Chamber II, *The Prosecutor v. Mahamat Said Abdel Kani*, [Decision on the ‘Prosecution’s application to amend the charges’](#), 8 July 2022, ICC-01/14-01/21-396 (the ‘Said Article 61(9) Decision’), para. 13.

<sup>27</sup> *Ntaganda Appeal Judgment*, para. 326 (footnotes omitted).

<sup>28</sup> Trial Chamber VI, *The Prosecution v Mahamat Said Abdel Kani*, [Decision on Prosecution Notification regarding the Charges \(ICC-01/14-01/21-262-Red\)](#), 20 April 2022, ICC-01/14-01/21-282, para. 15.



jurisdiction – which typically affects large numbers of victims – it may be necessary to allow for a broader description of the charges in circumstances in which it would otherwise be impossible or difficult to adequately capture the extent of the victimisation as well as the suspect’s alleged responsibility therefor.<sup>29</sup>

21. In this regard, the Chamber notes the Defence’s submission that the DCC is impermissibly vague. The Defence’s view – clarified at the Confirmation Hearing – is that this is in violation of regulation 52(b) of the RoC and does not allow for a meaningful application of article 74(2) of the Statute.<sup>30</sup> In support, the Defence refers to two broad categories of vagueness in the DCC,<sup>31</sup> which would unduly provide the Prosecution with the opportunity to continue reshaping its case against Mr El Hishri as the evidence unfolds at trial.<sup>32</sup> The Defence submits that the vagueness of the DCC prevents it from carrying out investigations and from raising an alibi and/or grounds for the exclusion of criminal responsibility.<sup>33</sup>

22. The Prosecution submits that the Defence’s submissions confuse distinct matters under articles 67 and 74 of the Statute<sup>34</sup> and that the right to notice has been respected in this case.<sup>35</sup> It contends that the Defence’s criticisms of 56 passages of the DCC are based on incorrect assumptions about the law given that not every perpetrator, co-perpetrator or victim needs to be identified individually, that the temporal and geographical parameters in question are to be assessed on a case by case basis, and that there is no requirement to plead either the evidence or the law.<sup>36</sup> The Prosecution further submits that the Defence fails to read the charges correctly and in context.<sup>37</sup>

23. As pointed out by the Prosecution,<sup>38</sup> the Chamber notes that the examples of alleged imprecision in the DCC identified by the Defence – despite the Defence’s statement to the contrary<sup>39</sup> – conflate the issue of prompt and sufficient notice of the charges to the suspect

<sup>29</sup> See [Kony Confirmation Decision](#), para. 193.

<sup>30</sup> [Defence’s Written Submissions](#), paras 17-27; Defence’s Oral Submissions: [T-005](#), pp. 48-52 *referring to Appeals Chamber, The Prosecutor v. Jean-Pierre Bemba Gombo, Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III’s “Judgment pursuant to Article 74 of the Statute”*, 8 June 2018, ICC-01/05-01/08-3636-Red (the ‘Bemba Appeal Judgment’), para. 110.

<sup>31</sup> [Defence’s Written Submissions](#), paras 21-23; Defence’s Oral Submissions: [T-005](#), pp. 48-52.

<sup>32</sup> Defence’s Oral Submissions: [T-005](#), p. 48.

<sup>33</sup> [Defence’s Written Submissions](#), paras 43-45; Defence’s Oral Submissions: [T-005](#), pp. 52-54.

<sup>34</sup> [Prosecution Response](#), paras 14-16.

<sup>35</sup> [Prosecution Response](#), paras 16, 19, 22, 26.

<sup>36</sup> [Prosecution Response](#), paras 17-32.

<sup>37</sup> [Prosecution Response](#), para. 33.

<sup>38</sup> [Prosecution Response](#), para. 13.

<sup>39</sup> Defence’s Oral Submissions: [T-005](#), p. 50.

under article 67 of the Statute with the issue of proper delineation of the scope of the charges for the purposes of article 74(2) of the Statute. The Chamber will therefore consider the examples provided, in respect of both categories of vagueness alleged by the Defence, through the lens of articles 67 and 74(2) of the Statute. In order not to conflate these two distinct matters, the Chamber sets out its assessment of the former in the section on the ‘nature, purpose and content of the present decision’, and, assesses the latter immediately below.

24. The Chamber notes that the facts of this case concern crimes allegedly committed on a large scale (*i.e.* they concern a broad range of war crimes and crimes against humanity affecting many victims), over a lengthy period (between 1 May 2014 and 30 June 2020), and in the context of an institutionalised system of mistreatment and abuse in and around Tripoli, principally at Mitiga Prison. Similarly, the charges against Mr El Hishri involve cumulative and alternative modes of liability under article 25(3)(a), (b), (c) and (d) of the Statute, since the Prosecution’s arguments rely on his role and functions, as well as a pattern of acts and conduct, throughout a prolonged period and involving a large number of victims, principally within the Mitiga Prison. Further, a vast number of the underlying crimes are charged under modes of liability other than direct perpetration, implying a lesser degree of proximity to the scene of the crimes. Accordingly, in light of the way in which the Prosecution has pleaded the charges, a broader description of the charges is possible in this case, by specifying a period during which, and an area in which, criminal acts were allegedly committed by an *identifiable* group of perpetrators against an *identifiable* group of victims – and is therefore permissible.<sup>40</sup>

25. Having regard to the above, the Chamber concludes that the examples identified by the Defence in respect of the two purported categories of vagueness in the DCC referring to time and location,<sup>41</sup> number and identity of victims<sup>42</sup> and (co-)perpetrators,<sup>43</sup> other circumstances such as manner and means of execution of and/or contribution to the alleged crimes,<sup>44</sup> and other descriptors,<sup>45</sup> when considered in the context of the specific circumstances of this case as set out above – are not impermissibly broad. This is particularly apparent when those examples

<sup>40</sup> See [Bemba Appeal Judgment](#), para. 115.

<sup>41</sup> [Defence’s Written Submissions](#), paras 22(c), 22(i), 22(j), 23(d), 23(g), 23(i), 23(j), 23(n)-(r), 23(v), 23(w), 23(z), 23(aa), 23(bb), 23(cc), 23(dd), 23(ee), 23(gg), 23(hh), 23(ii), 23(jj) and 23(kk).

<sup>42</sup> [Defence’s Written Submissions](#), paras 23(g), 23(i), 23(j), 23(n)-(r), 23(v), 23(z), 23 (aa) and 23(bb).

<sup>43</sup> [Defence’s Written Submissions](#), paras 22(b), 22(e), 22(f), 22(g), 22(k), 23(a), 23(b), 23(c), 23(g), 23(i), 23(j), 23(n), 23(o), 23(p), 23(q), 23(r), 23(s), 23(t), 23(u), 23(cc), 23(ee), 23(ff), 23(hh), 23(ii), 23(jj), 23(kk) and 23(ll).

<sup>44</sup> [Defence’s Written Submissions](#), paras 22(m), 23(w)-(y), 23(gg) and 23(ll).

<sup>45</sup> [Defence’s Written Submissions](#), paras 22(a), 22(d), 22(h), 22(l)-(r) and 23(g).

are considered together with the totality of the allegations in the DCC. In respect of the remainder of examples outlined by the Defence,<sup>46</sup> the Chamber accepts the Prosecution's submission that there is no requirement to plead either the law or the evidence in the DCC. It is clear from the DCC which set of historical events are covered by the charges and which are not.

26. For these reasons, the Chamber finds that the Defence has failed to show any vagueness in the DCC such as to make it fall short of the requirements of regulation 52(b) of the RoC.

## **B. Nature, purpose and content of the present decision**

27. In the present decision, the Chamber must determine under article 61(7) of the Statute whether there is sufficient evidence to establish substantial grounds to believe that Mr El Hishri committed the crimes with which he is charged.

28. The primary purpose of the confirmation proceedings is to decide whether the case as presented by the Prosecution is sufficiently established to warrant a trial. The Statute mandates that this be decided by answering the question whether there are substantial grounds to believe that the person committed the crimes charged. The confirmation of charges procedure thus protects the suspect from wrongful and unfounded accusations, by ensuring that only those persons who face sufficiently compelling charges, going beyond mere theory or suspicion, are committed for trial. Accordingly, the Chamber will only confirm those charges which are adequately supported by the available evidence to the relevant standard.<sup>47</sup>

29. The evidentiary standard applicable at this stage of proceedings is lower than that required at trial and is met if the Prosecution offers concrete and tangible proof demonstrating a clear line of reasoning underpinning the charges.<sup>48</sup> The Appeals Chamber has held that:

[i]n determining whether to confirm charges under article 61 of the Statute, the Pre-Trial Chamber may evaluate ambiguities, inconsistencies and contradictions in the evidence or doubts as to the credibility of witnesses. Any other interpretation would carry the risk of cases proceeding to trial although the evidence is so riddled with ambiguities,

<sup>46</sup> [Defence's Written Submissions](#), paras 23(e), 23(f), 23(h), 23(k)-(m) and 23(o)-(r).

<sup>47</sup> See Pre-Trial Chamber I, *The Prosecutor v. Rodrigo Roa Duterte*, [Decision on the confirmation of charges against Mr Rodrigo Roa Duterte](#), 23 April 2026, ICC-01/21-01/25-417-Red (the 'Duterte Confirmation Decision'), para. 26; [Kony Confirmation Decision](#), para. 36; [Said Confirmation Decision](#), para. 35; [Abd-Al-Rahman Confirmation Decision](#), para. 34.

<sup>48</sup> See [Abd-Al-Rahman Confirmation Decision](#), para. 37.

inconsistencies, contradictions or doubts as to credibility that it is insufficient to establish substantial grounds to believe the person committed the crimes charged.<sup>49</sup>

30. At the same time, by the very design of the pre-trial proceedings, the Pre-Trial Chamber is not in a position to conclusively determine issues relating to the probative value of evidence, including with respect to the credibility of witnesses, whose statements are, as a rule, brought before it only in written form. Indeed, as also pointed out by the Appeals Chamber, ‘the Pre-Trial Chamber’s determinations will necessarily be presumptive’, and the Pre-Trial Chamber ‘should take great care in finding that a witness is or is not credible’,<sup>50</sup> as the credibility of witnesses can only be properly addressed at trial.<sup>51</sup>

31. In that regard, the Chamber notes the Defence’s submission that the ‘vast’ volume of anonymous evidence has rendered the present confirmation proceedings ‘indistinguishable from secret proceedings’.<sup>52</sup> The Defence contends that because it was unable to carry out investigations into the vast majority of the Prosecution’s witnesses, it was prevented from demonstrating weaknesses in their evidence or in the Prosecution’s case.<sup>53</sup> The Defence specifically argues that, had it been provided with their identities, and thus able to investigate the details of their alleged detention at Mitiga Prison, it may have been able to raise an alibi or challenge the Prosecution’s allegation that there is a nexus between the individuals’ detention and an armed conflict.<sup>54</sup> More generally, the Defence submits that the fact that the Court’s legal framework ‘permits the withholding of identifying information from the Defence does not, cannot, make that inherent prejudice, that inherent unfairness, magically disappear’.<sup>55</sup>

32. The Prosecution submits that the evidence it relies upon to support the charges against Mr El Hishri has been disclosed properly, occasioning no prejudice. More specifically, the Prosecution contends that the Defence shows no error in the protective measures ordered by the Chamber and that the Defence confuses preparation for confirmation proceedings with preparation for trial.<sup>56</sup>

---

<sup>49</sup> Appeals Chamber, *The Prosecutor v. Callixte Mbarushimana*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I of 16 December 2011 entitled “Decision on the confirmation of charges”](#), 30 May 2012, ICC-01/04-01/10-514 (the ‘*Mbarushimana* Appeal Judgment’), para. 46.

<sup>50</sup> [Mbarushimana Appeal Judgment](#), para. 48.

<sup>51</sup> [Duterte Confirmation Decision](#), para. 28.

<sup>52</sup> [Defence’s Written Submissions](#), paras 8-16; Defence’s Oral Submissions: [T-005](#), pp. 42-48.

<sup>53</sup> [Defence’s Written Submissions](#), paras 14-15.

<sup>54</sup> [Defence’s Written Submissions](#), paras 14-15, 43-45; Defence’s Oral Submissions: [T-005](#), p. 45-47, 52-54.

<sup>55</sup> Defence’s Oral Submissions: [T-005](#), p. 45.

<sup>56</sup> [Prosecution Response](#), paras 5-11.

33. The Chamber observes that the statutory framework seeks to achieve a balance between on the one hand, securing the protection of victims, witnesses, their families, and other persons who might be at risk on account of activities of the Court, and, on the other, ensuring respect for the rights of the suspect and a fair and impartial trial.<sup>57</sup> The use of summary evidence and the non-disclosure of the identities of witnesses prior to the commencement of the trial, provided for by article 68(5) of the Statute and rule 81(4) of the Rules of Procedure and Evidence, respectively, are primarily measures of protection.<sup>58</sup> Importantly, as stated by the Appeals Chamber,

the use of such summaries, even where the identities of witnesses are unknown to the defence and their underlying statements are not fully disclosed, is not necessarily prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. However, in such circumstances, the Pre-Trial Chamber will need to consider on a case-by-case basis, bearing in mind the character of the confirmation of charges hearing, whether and what steps may need to be taken to ensure that the use of such statements is consistent with the rights of the accused and a fair and impartial trial.<sup>59</sup>

34. In the instant case, the Chamber recalls that, following several requests from the Prosecution for non-disclosure of identifying information of witnesses, their families and other persons who might be at risk on account of activities of the Court, it authorised the use of anonymous redacted versions of witness statements (or summaries thereof), and of other relevant material, as well as the withholding of certain associated material.<sup>60</sup> In granting these requests, the Chamber carefully considered all relevant facts and circumstances and balanced the competing interests at stake, giving due regard to the Defence's concerns – already raised

---

<sup>57</sup> See Appeals Chamber, *The Prosecutor v. Germain Katanga*, [Judgment on the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Request for Authorisation to Redact Witness Statements"](#), 13 May 2008, ICC-01/04-01/07-475 (the '*Katanga* Interlocutory Appeal'), paras 54-73.

<sup>58</sup> Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, [Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81"](#), 14 December 2006, ICC-01/04-01/06-773 OA5, para. 44; *Katanga* Interlocutory Appeal, para. 56.

<sup>59</sup> *Mbarushimana Appeal Judgment*, para. 47 (footnotes omitted).

<sup>60</sup> [Decision on the Prosecution's requests to authorise the non-disclosure of the identity and identifying information of 17 witnesses](#), 20 February 2026, ICC-01/11-01/25-69-Red (public redacted version notified on 25 March 2026) (the 'First Decision on Non-Disclosure'); [Decision on the Prosecution's request for authorisation of the non-disclosure of certain materials related to five witnesses](#), 1 April 2026, ICC-01/11-01/25-97-Red (public redacted version notified on 30 June 2026) (the 'Second Decision on Non-Disclosure'); [Decision on the Prosecution's request for authorisation to submit anonymous summaries of ten witnesses](#), 10 April 2026, ICC-01/11-01/25-99-Red (the 'Third Decision on Non-Disclosure'); [Decision on the Prosecution's request for authorisation to submit anonymous summaries of parts of P-0361, P-1570, P-1666, P-1692 and P-1737's evidence](#), 10 April 2026, ICC-01/11-01/25-100-Red (the 'Fourth Decision on Non-Disclosure'); [Decision on the Prosecution's requests to authorise the non-disclosure of the identity as well as certain information and materials related to 12 witnesses](#), 10 April 2026, ICC-01/11-01/25-101-Red (the 'Fifth Decision on Non-Disclosure').

at the time – regarding the prejudice allegedly caused by anonymous evidence. In particular, the Chamber notes that, in its decisions, it assessed in respect of each individual: (i) the existence of an ‘objectively justifiable risk’ and/or a grave endangerment to the security of the person concerned; (ii) the necessity of non-disclosure; and (iii) the proportionality of the measures sought. On this last point, the Chamber, in its last decision on the matter, having assessed the cumulative effect of the totality of the Prosecution’s requests, found that while the ‘impact [of its non-disclosure orders] on Defence’s preparation for the confirmation hearing is not insignificant, they do not, on their own [or] cumulatively, *unduly* prejudice the Defence’.<sup>61</sup>

35. Mindful of the temporary nature and impact of these measures, the Chamber: (i) instructed the Prosecution to monitor the continued necessity of the Chamber’s authorisation and liaise with the Victims and Witnesses Unit to determine whether alternative, less restrictive, protective measures might become available which would allow further disclosure to the Defence; (ii) authorised the Prosecution, where appropriate, to (re)disclose (less redacted versions of) the relevant material without seeking prior approval from the Chamber; and (iii) directed the Prosecution to liaise with the relevant witnesses with a view to preparing them for and, where necessary, obtaining their consent for an eventual rescission and/or variation of the protective measures ordered.<sup>62</sup> Where feasible, the Prosecution has re-disclosed the relevant material in less redacted form.<sup>63</sup>

36. Throughout the confirmation proceedings, the Chamber received relevant updates and monitored the disclosure process, including by holding status conferences. The Prosecution disclosed the items relied upon in the Arrest Warrant, the evidentiary items to be relied upon at the Confirmation Hearing and other items material to the preparation of the Defence.<sup>64</sup>

---

<sup>61</sup> [Fifth Decision on Non-Disclosure](#), paras 31-32.

<sup>62</sup> [First Decision on Non-Disclosure](#), paras 63-64; [Second Decision on Non-Disclosure](#), para. 16; [Third Decision on Non-Disclosure](#), para. 31; [Fourth Decision on Non-Disclosure](#), para. 23; [Fifth Decision on Non-Disclosure](#), paras 34-35.

<sup>63</sup> See e.g., [Prosecution’s Seventh Communication of the Disclosure of Evidence](#), 11 March 2026 (notified on 12 March 2026), ICC-01/11-01/25-83, para. 4; [Prosecution’s Eighth Communication of the Disclosure of Evidence](#), 24 March 2026, ICC-01/11-01/25-91, para. 8.

<sup>64</sup> [Joint Prosecution and Defence submissions on the disclosure process, preparation for the Confirmation Hearing and the agenda of the third status conference](#), 13 April 2026, ICC-01/11-01/25-102, paras 3-4; [Prosecution’s Seventh Communication of the Disclosure of Evidence](#), 11 March 2026 (notified on 12 March 2026), ICC-01/11-01/25-83, para. 4; [Prosecution’s Eighth Communication of the Disclosure of Evidence](#), 24 March 2026, ICC-01/11-01/25-91, para. 8; [Joint Prosecution and Defence submissions on the disclosure process and the agenda of the second status conference](#), 23 February 2026, ICC-01/11-01/25-71, paras 3-4.



37. As a result, the Defence had a fair and full opportunity to object to the charges and challenge the Prosecution's case and/or supporting evidence. That this was so is apparent from the fact that the Defence used the opportunity to: (i) submit written observations relating to factual and legal elements of the Prosecution's case;<sup>65</sup> (ii) reply, at the Confirmation Hearing, to the Prosecution's response to these observations, and further develop its submissions;<sup>66</sup> and (iii) present evidence of its own. In light of these considerations, the Chamber rejects the Defence's reiterated submission that the current proceedings 'have become indistinguishable from secret proceedings.'<sup>67</sup>

38. Considering the above, the Chamber finds that while the non-disclosure orders had an impact on the Defence's preparation for the confirmation of charges hearing, the steps taken by the Chamber were such that Mr El Hishri was able to understand and object to the charges against him, to challenge the evidence presented by the Prosecution and to present evidence and arguments in support of his position. Importantly, the Chamber emphasises that none of its conclusions below relating to the existence of substantial grounds to believe that Mr El Hishri committed the crimes charged hinges solely on anonymous evidence. The Chamber's conclusions are instead based on a holistic assessment of the testimonial evidence, which includes many of the Prosecution witnesses whose identities were not withheld and whose accounts the Defence has been able to investigate and challenge, without hindrance. Accordingly, the Chamber finds that reliance on anonymous redacted versions of witness statements (or summaries thereof) to establish the allegations contained in the DCC to the required standard is consistent with the rights of Mr El Hishri and a fair and impartial trial.

39. In relation to the Defence's arguments concerning alleged violations of the right to prompt and sufficient notice of the charges under article 67(1)(a) of the Statute, and noting the suspect's right under that provision to be informed in detail of the nature, cause and content of any charge brought against him, the Chamber reiterates its prior determination that it is critical that the charges do not contain unnecessary details that could prove too specific and limiting at trial, such as the number and identities of persons victimised or the number of incidents.<sup>68</sup> The rationale for this position is that, even when the evidence presented at the confirmation

---

<sup>65</sup> See [Defence's Written Submissions](#).

<sup>66</sup> Defence's Oral Submissions: [T-005](#), pp. 41-66; [T-006](#), pp. 2-23, 33-35.

<sup>67</sup> [Defence's Written Submissions](#), paras 8-16; Defence's Oral Submissions: [T-005](#), pp. 42-48. See also [Fifth Decision on Non-Disclosure](#), para. 31.

<sup>68</sup> See [Duterte Confirmation Decision](#), para. 33.

stage adequately supports the details in question, such matters can only be properly determined on the basis of the full evidentiary record as established at trial, once the parties have presented their cases and have had the opportunity to challenge the evidence. Because of the limitations inherent in its statutory role, and the Prosecution's prerogative to expand and vary the evidentiary basis relied upon following confirmation and until the deadline to be set by the Trial Chamber, the Pre-Trial Chamber is not in a position to conclusively determine all such details.

40. Additionally, in situations where the charges have been formulated broadly, as in the present case, further specification of, for example, the number of victims or incidents neither impacts the temporal or geographical scope of the confirmed charges nor alters any material facts. Indeed, in such cases, the number of victims mentioned in the charges, while providing an indication of the scope of the charged crime, sets neither the upper nor the lower limit. The Trial Chamber hearing the case may subsequently find that a larger or smaller number of persons fell victim to the relevant crime than the figure arrived at by the Pre-Trial Chamber at the confirmation stage.<sup>69</sup> As long as the temporal, geographical and other material factual parameters, and the charged contribution of the suspect, remain the same, further specification of the charges will remain within the boundary of the charge as originally confirmed. Any developments in this regard must not, however, come as a surprise: as soon as information allowing further specification of the charges becomes available, the Defence must be adequately put on notice by appropriate means, such as a trial brief.<sup>70</sup>

41. Therefore, the Chamber considers it appropriate to adopt a flexible approach in respect of figures (such as numbers of victims) in any charges that are confirmed. Such figures will reflect the Chamber's assessment of the relevant supporting evidence before it. Accordingly, they will not be definitive, nor will they preclude the Trial Chamber from arriving at different figures, based upon its comprehensive assessment of the totality of the evidence. Nor will such variations in figures amount to an amendment of the charges.<sup>71</sup>

42. On the issue of prompt and sufficient notice of the charges, the Chamber takes note of the Defence's concerns regarding the inclusion of non-exhaustive lists in the DCC and, more generally, the lack of details in relation to some of the factual allegations contained in the DCC,

---

<sup>69</sup> [Abd-Al-Rahman Article 61\(9\) Decision](#), para. 24; [Said Article 61\(9\) Decision](#), para. 24.

<sup>70</sup> [Abd-Al-Rahman Article 61\(9\) Decision](#), para. 25; [Said Article 61\(9\) Decision](#), para. 25.

<sup>71</sup> See paras 17-25 above.



such as the number and identities of victims<sup>72</sup> and (co-)perpetrators<sup>73</sup> and the time and location of incidents.<sup>74</sup> The Chamber notes that, as observed by the Prosecution,<sup>75</sup> the Defence has already received ample notice of the relevant details, not only in the DCC itself, but also through the provision of the PCB and disclosure of the underlying evidence. A striking example is the Defence's contention that the Prosecution did not specifically identify the places where the alleged crimes were committed. The Chamber observes that the Defence *was* provided with such detail in a clear and precise manner. Annotated maps of Mitiga Prison were adduced,<sup>76</sup> and the witnesses' detailed accounts of the commission of crimes often included information on the buildings, Sections and specific rooms where criminal acts allegedly occurred. Further, the factual scope of the case includes acts committed against detainees who were allegedly removed from Mitiga Prison, taken to some 'other locations in and around Tripoli' (for instance, for purposes of forced labour or participation in armed hostilities), and then brought back to Mitiga Prison. In light of the foregoing, and considering in particular the specific and limited nature of pre-trial proceedings, the Chamber is of the view that the Defence has been provided with ample information relevant to the suspect's right under article 67(1)(a) of the Statute.

43. Similarly, the Chamber finds that the Defence's suggestion that the Prosecution did not specifically identify the acts performed, the perpetrators, the detainees victimised or the relevant time frame, is misleading. The Chamber notes that the Prosecution's consolidated lists of incidents for each individual count provide specific references to the evidence which, considered together, put the Defence on notice, in more than enough detail, of the core allegations underlying each incident.<sup>77</sup> In any event, the Appeals Chamber has held that further details can be provided to the Defence as they become available ahead of the commencement of trial, including by way of disclosure and provision of auxiliary documents (such as the trial brief).<sup>78</sup>

<sup>72</sup> [Defence's Written Submissions](#), paras 23(g), 23(i), 23(j), 23(n)-(r), 23(v), 23(z), 23(aa) and 23(bb).

<sup>73</sup> [Defence's Written Submissions](#), paras 22(b), 22(e), 22(f), 22(g), 22(k), 23(a), 23(b), 23(c), 23(g), 23(i), 23(j), 23(n), 23(o), 23(p), 23(q), 23(r), 23(s), 23(t), 23(u), 23(cc), 23(ee), 23(ff), 23(hh), 23(ii), 23(jj), 23(kk) and 23(ll).

<sup>74</sup> [Defence's Written Submissions](#), paras 22(c), 22(i), 22(j), 23(d), 23(g), 23(i), 23(j), 23(n)-(r), 23(v), 23(w), 23(z), 23(aa), 23(bb), 23(cc), 23(dd), 23(ee), 23(gg), 23(hh), 23(ii), 23(jj), 23(kk).

<sup>75</sup> [Prosecution Response](#), paras 19, 22, 26.

<sup>76</sup> Annexes 6 and 7 to the PCB.

<sup>77</sup> Annexes 8, 9, 10, 11, 12 and 13 to the PCB.

<sup>78</sup> For example, as further discussed below, the identity of certain victims who are witnesses was withheld from the Defence during the confirmation proceedings because of existing security risks.

44. By its very nature, the mode of liability of direct perpetration under article 25(3)(a) of the Statute entails a higher degree of proximity of the suspect to the charged criminal conduct. Accordingly, the Chamber has carried out a more stringent assessment of the level of detail required to comply with the suspect's right to be informed in detail of the nature, cause and content of the charges. Having considered the examples highlighted by the Defence in this respect,<sup>79</sup> the Chamber finds that an appropriate level of detail has been provided at this stage. Specifically, the Chamber observes that further details in relation to persons directly victimised by Mr El Hishri are included in the PCB and its Annex 14 thereto,<sup>80</sup> which together provide the names and other identifying details of a number of victims,<sup>81</sup> alongside information relating to the underlying evidence and the relevant count(s). The allegations are explained in the DCC generally in relation to all the crimes, and specifically, in relation to several counts. The Chamber further observes that this information, along with the temporal and geographical scope of the charges (and more broadly, the context described at paragraph 24 above), provides ample detail regarding the nature, content and cause of the charges.

45. Accordingly, the Chamber finds no violation of Mr El Hishri's right to notice under article 67(1)(a) of the Statute.

### **C. Defence's observations on the discharge of the Prosecution's investigative duties**

46. The Defence submits that the Prosecution has failed to comply with its obligations under article 54(a) and (c) of the Statute to investigate incriminating and exonerating circumstances equally.<sup>82</sup> In particular, the Defence points to the Prosecution's failure to investigate some aspects of RADA's internal workings and structure; its failure to approach the Libyan attorney general or the Ministry of Justice to investigate whether criminal charges were pursued against any of the Prosecution's witnesses and whether verdicts were issued in relation to them; and its failure to request the Libyan prison regulations. The Defence submits that had the Prosecution collected the evidence with 'neutrality', it would have been established that RADA was a legal 'apparatus' established pursuant to government orders, with a specific structure,

<sup>79</sup> [Defence's Written Submissions](#), paras 23(v), 23(z), 23(aa), and 23(bb).

<sup>80</sup> See PCB, paras 188-195; [Annex 14](#) to the PCB.

<sup>81</sup> While some names have been redacted, the Chamber understands that this is in application of non-disclosure orders granted by the Chamber. Further, the use of nicknames and the fact that the first name and/or last name have been marked as 'unknown', as observed by the Prosecution, 'merely reflects the evidence as presently understood by the Prosecution' ([Prosecution Response](#), para. 22).

<sup>82</sup> Defence's Oral Submissions: [T-006](#), pp. 13-15.

and that Mr El Hishri was never a leader in RADA.<sup>83</sup> To illustrate the point, the Defence refers to contradictions in two documents in the evidentiary record concerning Mr Njeem's membership of the SDF/RADA and Mr El Hishri's employment at the Libyan embassy in the Kingdom of Morocco, which in its view undermine the credibility of the evidence adduced by the Prosecution. The Defence contends that the errors in the Prosecution's investigation led to the issuance of an arrest warrant against Mr El Hishri.

47. The Chamber notes that, contrary to the Defence's submission, the Prosecution's investigation covered the topics identified by the Defence. This is supported by the allegations and evidence presented by the Prosecution in its PCB.<sup>84</sup> While the Defence may disagree with the outcome of the Prosecution's investigations, such disagreement in itself is insufficient to establish a failure by the Prosecution to investigate incriminating and exonerating circumstances equally. Moreover, in respect of the two examples identified by the Defence and which in its view undermine the Prosecution's case, the Chamber notes the overwhelming volume of credible and consistent evidence in support of the Prosecution's allegations on these points. For these reasons, the Chamber is unpersuaded by the Defence's argument that the Prosecution has failed to discharge its duties under article 54 of the Statute.

### III. THE CHAMBER'S ASSESSMENT OF THE EVIDENCE

48. The Chamber has analysed the evidentiary material relied upon by the Prosecution and referenced in the PCB, following the structure of the DCC, and considered all evidence cited and arguments formulated both orally and in writing by the parties and participants. In light of the specific scope and purpose of this stage of the proceedings, and particularly the principle that the confirmation hearing is not, and should not be seen as, or become, a 'mini-trial' or 'a trial before the trial',<sup>85</sup> this decision addresses only what the Chamber considers necessary and sufficient for its determination of whether there is sufficient evidence to establish substantial grounds to believe that Mr El Hishri committed the crimes charged and therefore whether the case brought by the Prosecution warrants a trial.

---

<sup>83</sup> Defence's Oral Submissions: [T-006](#), pp. 15-16.

<sup>84</sup> See e.g., [PCB](#), paras 15-19, 47-51, 110, 131.

<sup>85</sup> Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, [Decision on the confirmation of charges](#), 30 September 2008, ICC-01/04-01/07-717 (the 'Katanga and Ngudjolo Confirmation Decision'), para. 64; Pre-Trial Chamber I, *The Prosecutor v. Bahar Idriss Abu Garda*, [Decision on the Confirmation of Charges](#), 8 February 2010, ICC-02/05-02/09-243-Red, para. 39. See also [Kony Confirmation Decision](#), para. 54; [Said Confirmation Decision](#), para. 42; [Abd-Al-Rahman Confirmation Decision](#), para. 40.

49. More specifically, the Chamber will refer only to those items of evidence which it considers necessary to show the line of reasoning underpinning its conclusions, and to the relevant factual and legal elements where necessary. While the Chamber has engaged in an overall assessment of the entire evidentiary basis relied upon by the parties, including with a view to detecting inconsistencies, ambiguities, contradictions or other weaknesses which would result in the allegations not being supported to the relevant standard,<sup>86</sup> a discussion of each and every item of evidence is not warranted for purposes of the present decision. Similarly, the Chamber has considered all arguments raised by the parties and participants and referred to them in its assessment below only to the extent needed to provide sufficient reasons for its determination.

50. Finally, the Chamber emphasises that the fundamental determination that it must make in its decision whether to confirm the charges pursuant to article 61(7) of the Statute concerns, and is limited to, the existence of substantial grounds to believe that the person committed the crimes charged. Accordingly, there is no reason for the Chamber to enter separate findings of fact or conclusions of law in the confirmation decision, and in the present case the Chamber has therefore refrained from doing so in the present case.<sup>87</sup>

## **A. Contextual elements**

### **1. Contextual elements of crimes against humanity**

51. The Prosecution submits that from at least 1 May 2014 to 30 June 2020 (the ‘Charged Period’), the SDF/RADA carried out a widespread and systematic attack directed against the civilian population in and around Tripoli, including persons in the custody or control of the Mitiga Perpetrators, principally at Mitiga Prison.<sup>88</sup> The Prosecution alleges that the attack consisted of a course of conduct involving the multiple commission of article 7(1) crimes, including those forming the basis of the charges, namely: (i) institutionalised and sustained mistreatment and violent abuse of all persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison; and (ii) rape and other forms of sexual violence, murder, enslavement, and persecution of certain persons in the custody and/or control of the

<sup>86</sup> Pre-Trial Chamber I, *The Prosecutor v. Callixte Mbarushimana*, [Decision on the confirmation of charges](#), 16 December 2011, ICC-01/04-01/10-465-Red, paras 45-47; [Mbarushimana Appeal Judgment](#), paras 1, 37-49.

<sup>87</sup> [Duterte Confirmation Decision](#), paras 36-37.

<sup>88</sup> [DCC](#), para. 8; [PCB](#), paras 6-7; Prosecution’s Oral Submissions: [T-004](#), pp. 62-65.

Mitiga Perpetrators, principally at Mitiga Prison.<sup>89</sup> The Prosecution also submits that the attack was carried out pursuant to or in the furtherance of an organisational policy to commit the attack.<sup>90</sup>

52. In support, the Prosecution relies upon the following evidence: (i) the statements (or summaries thereof) of all of its 63 witnesses; (ii) contemporaneous reports by the UN and non-governmental organisations; (iii) decrees, laws and other relevant documents; (iv) photographs, videos and drawings of the Mitiga Compound; (v) press statements; and (vi) open-source material.

53. The Defence challenges the existence of the contextual elements of crimes against humanity on several grounds,<sup>91</sup> which are addressed below.

54. The evidence demonstrates, as discussed below in relation to the specific crimes, that a course of conduct involving the multiple commission of article 7(1) crimes, including imprisonment and other severe deprivations of physical liberty, torture, other inhumane acts, rape including attempted rape, sexual violence, murder including attempted murder, enslavement and persecution was directed against a civilian population in and around Tripoli, particularly persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison (which was controlled by the SDF/RADA).

55. That same evidence establishes that the attack was widespread. The Mitiga Perpetrators detained a very large number of persons in Mitiga Prison and subjected them to article 7(1) crimes over a lengthy period, *i.e.* more than six years. Additionally, outside Mitiga Prison, persons in the custody and/or control of the Mitiga Perpetrators were victimised at other locations in and around Tripoli, including in the Mitiga Compound (as discussed below in relation to counts 13-17) and at other locations during the course of their arrest (as discussed below in relation to counts 1, 4 and 6).<sup>92</sup> The article 7(1) crimes were thus committed on a large scale.

56. This evidence, as discussed below, establishes that the attack was systematic. The alleged crimes were carried out within the framework of an organised, controlled system and in an organised, coordinated and consistent way. This is supported by a pattern of conduct regarding

<sup>89</sup> [DCC](#), para. 9; [PCB](#), paras 8-9; Prosecution's Oral Submissions: [T-004](#), p. 63. The Chamber has amended this part of the DCC given its conclusion below that the crime of enslavement in the instant case was systematic and institutionalised.

<sup>90</sup> [DCC](#), paras 12-14; [PCB](#), paras 14-19; Prosecution's Oral Submissions: [T-004](#), pp. 60-62, 66.

<sup>91</sup> [Defence's Written Submissions](#), paras 28, 40-42; Defence's Oral Submissions: [T-006](#), pp. 20-23.

<sup>92</sup> The Chamber refers to these two categories of persons collectively as the Mitiga Prison detainees.

the arrest, detention and subsequent mistreatment of detainees: (i) , as found below in relation to counts 1, 4 and 6, during their arrest, they were typically apprehended by masked men, handcuffed, blindfolded, and subjected to beatings; (ii) as found below in relation to counts 1, 4 and 6, they would subsequently be transferred to the *Naqliah*, where the Mitiga Perpetrators subjected them to an initial interrogation and further mistreatment; (iii) as found below in relation to counts 7 and 9, upon arrival at the main prison, detainees would undergo invasive cavity searches which often resulted in sexual violence and rape; (iv) as found below in relation to count 1, during their detention, the majority of detainees were not informed of the reasons for their detention and were held for months, and in some cases years, without being brought before a prosecutor or a judge, and they were frequently denied contact with their families; and (v) as found below in relation to counts 1, 4 and 6, detainees were confined in inadequate and inhumane conditions.

57. The evidence demonstrates that the attack was carried out pursuant to and in furtherance of an organisational policy to commit such an attack. The Mitiga Perpetrators comprised members of the Mitiga Prison Leadership as well as persons who carried out the charged crimes at Mitiga Prison and persons who carried out the charged crimes at other locations in and around Tripoli, acting under the direction or control, or with the agreement of, the Mitiga Prison Leadership.<sup>93</sup> The Mitiga Prison Leadership comprised persons holding leadership roles in Mitiga Prison, which included, as discussed below in its assessment on the common plan for the purpose of article 25(3)(a) of the Statute, Abdalraouf Kara ('Kara'), Dhawi N'zam ('N'zam'), Osama Njeem ('Njeem') and Mr El Hishri. The SDF/RADA had sufficiently efficient structures or mechanisms to carry out an attack for the purposes of article 7. Decrees, laws and other official documents issued by the General National Congress/Government of National Accord (respectively, 'GNC' and 'GNA'), as submitted by both the Prosecution and the Defence,<sup>94</sup> reveal that the GNC/GNA nominally integrated the SDF/RADA into State structures and assigned it law enforcement tasks. Numerous witnesses, among them P-0054, P-0342, P-0439, P-0486, P-0497, P-0650, P-0872 and P-1059, state that the SDF/RADA had a clear leadership structure under Kara and commanded significant resources, including fighters,

<sup>93</sup> For instance, persons such as guards at Mitiga Prison, other persons participating in the running or interaction with detainees, and detainees who were compelled or instructed to carry out crimes. Some, but not all the Mitiga Perpetrators, were SDF/RADA members.

<sup>94</sup> The Chamber refers in particular to the documentary material relied upon by the Defence at the Confirmation of Charges hearing ([T-006](#), pp. 5-8).

weaponry and the Mitiga Compound (which was the SDF/RADA's headquarters). The Mitiga Compound included an international airport and Mitiga Prison. This prison included a main building and associated facilities such as the *Naqliah*, a Mosque, and a Training and Rehabilitation Centre. As set out below in the section on Mr El Hishri's individual criminal responsibility, the SDF/RADA exercised control over Mitiga Prison through the Mitiga Prison Leadership. Witnesses such as P-0347, P-0724, P-1720, as well as contemporaneous documentary material (including UN reports and documents issued by Libyan authorities), establish that the SDF/RADA functioned independently and without restraint.

58. The article 7(1) acts constituting the attack were not random but clearly related to one another, thereby demonstrating the existence of an organisational policy to commit such an attack. As discussed below in relation to counts 1, 4, 6-7, 9, 11 and 13-17, the crimes were committed against detainees or persons otherwise in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison. These crimes took place in a largely similar way, as supported by the facts and underlying evidence establishing the systematicity of the attack. In addition, as set out below in the Chamber's assessment of Mr El Hishri's individual criminal responsibility, the SDF/RADA condoned and encouraged the commission of the article 7 acts, including through members of the Mitiga Prison Leadership who personally mistreated and tortured detainees, ordered their mistreatment, and ensured that the Mitiga Perpetrators obeyed their orders.

59. The Defence submits that there was no attack against a civilian population and that the civilian population was never a direct or primary target of the SDF/RADA. The Defence argues that all actions described in the charges fall within the scope of law enforcement operations carried out by the SDF/RADA in respect of a limited number of individuals suspected of committing crimes.<sup>95</sup> In its view, considering such operations to be an attack against a civilian population would risk categorising activities of law enforcement around the world as international crimes.<sup>96</sup> The Defence further argues that the term 'any group of a civilian population' has been defined as 'groups that could be distinguished by common characteristics such as their nationality, ethnicity, or other distinguishing characteristics, that is, the group must be relatively stable and identifiable as a self-contained or a self-independent group.'<sup>97</sup> The Defence submits that, the fact that a person is suspected of a crime is not 'fixed or a fixed

---

<sup>95</sup> Defence's Oral Submissions: [T-006](#), pp. 20-22.

<sup>96</sup> Defence's Oral Submissions: [T-006](#), pp. 20-21.

<sup>97</sup> Defence's Oral Submissions: [T-006](#), p. 22.



character or an element of his or her own identity but a temporary and transient legal status’.<sup>98</sup> It contends that the Prosecution’s definition of the civilian population in this case is unclear.<sup>99</sup> Finally, it submits that the Prosecution did not address the policy element, or did so marginally, given that the policy never existed, and that ‘if there [was] a policy – it was a policy aimed at law enforcement and combating crime in the most dangerous areas of the Libyan state, as is the case in any country.’<sup>100</sup>

60. For the reasons that follow, the Chamber is unpersuaded by the Defence’s submissions. First, as indicated above, the evidence establishes that the SDF/RADA engaged in a course of conduct comprising the multiple commission of article 7(1) acts. As found below at paragraph 148, the fact that the SDF/RAFDA may have also carried out legitimate law enforcement actions does not detract from the Chamber’s conclusion regarding the existence of such an attack.<sup>101</sup> Second, the Chamber recalls that, as the Court has consistently held, the term ‘civilian population’ in the phrase ‘directed against any civilian population’ denotes a collectivity as opposed to individual civilians. Whereas a civilian population under article 7(1) cannot constitute a limited and randomly selected group of individuals, the use of ‘any’ indicates that the provision should not be understood as being limited to populations defined by a common nationality, ethnicity, or other similar distinguishing features.<sup>102</sup> Third, the Chamber recalls that there is no legal requirement that the main aim or object of the relevant acts be to attack civilians, since an attack directed against a civilian population may also serve other objectives or motives.<sup>103</sup> Fourth, the Chamber finds that the civilian population targeted in the attack is clearly and sufficiently defined in the DCC by reference to a geographical location (*i.e.* in or around Tripoli) and by reference to the system of institutionalised and sustained mistreatment and violent abuse of all persons in the custody and/or control of the Mitiga Perpetrators.<sup>104</sup> Fifth, as discussed above, the evidence establishes that the article 7(1)

<sup>98</sup> Defence’s Oral Submissions: [T-006](#), p. 23.

<sup>99</sup> Defence’s Oral Submissions: [T-006](#), p. 22.

<sup>100</sup> See Defence’s Oral Submissions: [T-006](#), pp. 21-22.

<sup>101</sup> See Trial Chamber X, *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, Trial Judgment, 26 June 2024, ICC-01/12-01/18-2594-Conf (public redacted version registered on the same day, [ICC-01/12-01/18-2594-Red](#)), fn. 4100.

<sup>102</sup> [Duterte Confirmation Decision](#), para. 64 referring to Trial Chamber I, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman* (‘Ali Kushayb’), [Trial Judgment](#), 6 October 2025, ICC-02/05-01/20-1240 (the ‘Abd-Al-Rahman Trial Judgment’), para. 694; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, [Trial Judgment](#), 8 July 2019, ICC-01/04-02/06-2359 (the ‘Ntaganda Trial Judgment’), para. 667.

<sup>103</sup> [Abd-Al-Rahman Trial Judgment](#), para. 694.

<sup>104</sup> [DCC](#), para. 8; [PCB](#), paras 6-7.

crimes were not random, but clearly related to one another, thereby demonstrating that these were committed pursuant to and in furtherance of the SDF/RADA's policy to commit such attack.<sup>105</sup>

61. The Chamber now turns to the remaining contextual elements under article 7 of the Statute. Considering the relevant context described above, particularly that all acts under article 7(1) were directed against persons under the control and/or custody of the Mitiga Perpetrators, it is established that the relevant conduct of the Mitiga Perpetrators, in respect of all charged crimes, was engaged in as a part of the attack, thereby satisfying the nexus requirement.<sup>106</sup>

62. The evidence establishes that the Mitiga Perpetrators, including Mr El Hishri, knew that their conduct was part of a widespread or systematic attack against a civilian population, or intended this to be so. Mr El Hishri was a member of the Mitiga Prison Leadership, and the Mitiga Perpetrators included persons with affiliations to the SDF/RADA. As discussed below in relation to counts 1, 4, 6-7, 9, 11 and 13-17, the Mitiga Prison operated in the same way for a lengthy period, and crimes committed against persons in the custody and/or control of the Mitiga Perpetrators, in particular in the context and circumstances of the detention of persons at Mitiga Prison, were flagrant. According to P-0719, P-1685 and P-1710, Mr El Hishri was frequently present at Mitiga Prison and regularly monitored cameras in the CCTV room. As discussed below in the section on direct perpetration, Mr El Hishri personally tortured and mistreated detainees.

63. For all the above reasons, the Chamber is satisfied that the contextual elements of the crimes against humanity with which Mr El Hishri is charged are established to the relevant standard.<sup>107</sup>

---

<sup>105</sup> The Chamber recalls that, as this Court has consistently held, 'the existence of a 'policy' may be inferred from a variety of factors, such as: (i) a recurrent pattern of violence; (ii) the existence of preparations or collective mobilisation orchestrated and coordinated by that State or organisation; (iii) the use of public or private resources to further the policy; (iv) the involvement of organisational forces in the commission of crimes; (v) statements, instructions or documentation attributable to the organisation condoning or encouraging the commission of crimes *or*; (vi) an underlying motive' (*Abd-Al-Rahman Trial Judgment*, para. 698).

<sup>106</sup> The Chamber follows the approach consistently taken by the Court whereby the requisite nexus between the underlying act and the 'widespread or systematic attack' is established by taking into account the characteristics, aims, nature and consequences of the acts concerned. The nexus assessment must also be conducted in respect of the various components of the attack, including the policy, the patterns of crimes, *or* the type of victims (*Abd-Al-Rahman Trial Judgment*, paras 702-703). *Contra* *Defence's Written Submissions*, paras 40-42.

<sup>107</sup> *Contra* *Defence's Written Submissions*, para. 28.

## 2. Contextual elements of war crimes

64. The Prosecution submits that the conduct forming the basis of the charges was committed in the context of, and was associated with, a non-international armed conflict ('NIAC') ongoing in Libya during the Charged Period between different non-State organised armed groups and/or between one or more such groups and State armed forces in Libya. The Prosecution submits that the Mitiga Perpetrators, including Mr El Hishri, were aware of the factual circumstances that established the existence of the armed conflict.<sup>108</sup> In support, the Prosecution relies upon the following evidence, which is to be read together with the evidence underpinning the alleged crimes and Mr El Hishri's individual criminal responsibility: (i) witness statements (or summaries thereof); (ii) reports (such as UN reports); (iii) audio-visual material; and (iv) other documentary material.

65. As discussed below at paragraph 71, the Defence contests the existence of a nexus between the conduct underlying the alleged war crimes and a NIAC.<sup>109</sup>

66. The Chamber recalls that in February 2011, an uprising against the regime of Muammar Mohammed Abu Minya Gaddafi ('Gaddafi') led to attacks perpetrated against the civilian population by the Libyan government. The situation attracted the attention of the UNSC, which remained seized of the situation in Libya and implemented stabilising measures.

67. Turning to the present case, the evidence, primarily statements of P-0337, P-0706, P-0713, P-0764, P-0767, P-1041, P-1044, P-1059, P-1722, and P-1750, along with reports and documentary material, demonstrates that, throughout the Charged Period, *i.e.* between 1 May 2014 and 30 June 2020, there was protracted armed violence between different non-State organised armed groups, and/or between one or more such groups and State armed forces in Libya. While several parallel hostilities occurred between some or all of these groups, two main parties can be identified, namely the bloc known as the Libyan National Army (the 'LNA') and the bloc known as the GNC (later, the GNA). The LNA was under the command of former Libyan army General Khalifa Haftar ('Haftar') and was based in the east. The GNC/GNA was based in the west. The SDF/RADA was affiliated to the GNC/GNA. Hostilities between the LNA and the GNC/GNA<sup>110</sup> were sufficiently intense, as evidenced by armed operations such

<sup>108</sup> [DCC](#), paras 17-24; [PCB](#), paras 24-44; [Prosecution Response](#), paras 34-42; Prosecution's Oral Submissions: [T-004](#), pp. 67-73.

<sup>109</sup> [Defence's Written Submissions](#), paras 29-34; Defence's Oral Submissions: [T-005](#), pp. 55-62.

<sup>110</sup> Given that the hostilities during the Charged Period occurred principally between the GNC/GNA and the LNA, the Chamber's use of the terms 'GNC/GNA' and 'LNA' includes armed forces affiliated with each of these blocs.

as Operation Dignity, Operation Libya Dawn, Operation Flood of Dignity, and Operation Peace Storm. In addition, and during certain period with reduced active hostilities, the LNA controlled at least part of the territory throughout the charged period.<sup>111</sup> The evidence further demonstrates a failure to form a unified government, the UNSC's continuous engagement in the situation in Libya, and the UN reports of the supply of arms to various armed groups during the Charged Period.

68. The evidence, principally statements of P-0764, P-0767, P-0961, and P-1673, along with reports and other documentary material, further establishes that the parties to a NIAC maintained some degree of organisation throughout the Charged Period.<sup>112</sup> The factors that lead to this conclusion include, first, their capacity to conduct military operations, as illustrated by the launch of the operations enumerated above. Second, both the GNC/GNA, headquartered in Tripoli, and the LNA, based in eastern Libya, generally maintained control over distinct areas of Libyan territory. Third, both of them had the ability to negotiate and conclude ceasefire agreements.

69. Turning to the nexus requirement, the Chamber notes that pursuant to the Elements of Crimes, in line with international humanitarian law ('IHL'), there must be a sufficient link between each criminal act and the armed conflict. In line with the Court's jurisprudence, since 'war crimes are serious violations of international humanitarian law, this body of law must have been applicable for it to be violated,'<sup>113</sup> and "[w]hat the Chamber effectively must assess for the nexus requirement to be established is whether the alleged conduct was governed by the relevant rules of international humanitarian law."<sup>114</sup> The existence of an armed conflict and the general applicability of IHL to the relevant parties is not in itself sufficient to conclude that all acts committed during an armed conflict will amount to a war crime. It is for this reason that the Elements of Crimes requires that the relevant criminal conduct 'took place in the context

---

<sup>111</sup> [Ntaganda Trial Judgment](#), paras 717, 721.

<sup>112</sup> The Chamber notes that State governmental authorities are presumed and must be considered as sufficiently organised ([Abd-Al-Rahman Trial Judgment](#), fn. 2536). The Chamber further notes the Prosecution's allegation that the SDF/RADA was affiliated with the GNC/GNA. However, given the Prosecution's formulation of the charges and the complexity of the facts, particularly in respect of the incumbent government in Libya, the Chamber has assessed the evidence concerning the SDF/RADA's degree of organisation for the purposes of article 8(2)(f) of the Statute.

<sup>113</sup> [Al Hassan Trial Judgment](#), para. 1252.

<sup>114</sup> [Al Hassan Trial Judgment](#), para. 1254. See also Pre-Trial Chamber I, *Situation in Libya*, [Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem](#), 18 January 2025 (Corrected version), ICC-01/11-152-Anx, para. 17.

of and was associated with an international armed conflict’. In this context, the Chamber recalls that according to the Appeals Chamber:

In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account, *inter alia*, the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator’s official duties.<sup>115</sup>

70. The Chamber notes that the assessment on the existence of a nexus between the underlying conduct and the armed conflict is case-specific and depends upon several factors. The factors identified by the Appeals Chamber, as indicated above, are non-exhaustive and have been followed consistently by the Trial Chambers.<sup>116</sup> In the current case, given that Mitiga Prison is a State detention facility where persons are deprived of their liberty for different reasons, the existence of a nexus between the criminal act and the armed conflict is key. Finally, the Chamber notes that this assessment, which is aimed at appropriately delineating war crimes from ordinary crimes, is applicable to crimes under both articles 8(2)(e) and 8(2)(c) of the Statute.<sup>117</sup> As noted by the Appeals Chamber, ‘[i]t has been observed that the function of the nexus requirement is to differentiate ‘war crimes, e.g. the killing or rape of a prisoner of war, from “ordinary” or “common” crimes under domestic law, such as the common crime of murder and rape’’.<sup>118</sup>

71. The Defence challenges the existence of a nexus between the conduct forming the basis of the charges and a NIAC on the basis that: (i) the Prosecution does not demonstrate that the arrest and detention of persons could not have been carried out in precisely the same manner in the absence of a NIAC;<sup>119</sup> (ii) the existence of an armed conflict as an enabler of perpetrators

---

<sup>115</sup> Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, [Judgment on the appeal of Mr Ntaganda against the “Second decision on the Defence’s challenge to the jurisdiction of the Court in respect of Counts 6 and 9”](#), 15 June 2017, ICC-01/04-02/06-1962 OA5 (the ‘Ntaganda OA5 Appeal Judgment’), para. 68; Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, [Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#), 5 March 2020, ICC-02/17-138 OA4, para. 69 referring to ICTY, Appeals Chamber, *The Prosecutor v. Dragoljub Kunarac et al.*, [Judgement](#), 12 June 2002, IT-96-23 & IT-96-23/1-A, paras 58-60.

<sup>116</sup> See e.g., Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, [Trial Judgment](#), 4 February 2021, ICC-02/04-01/15-1762-Red (the ‘Ongwen Trial Judgment’), paras 2813-2816; [Al Hassan Trial Judgment](#), paras 1274-1279; [Abd-Al-Rahman Trial Judgment](#), paras 811-812.

<sup>117</sup> See [Ntaganda OA5 Appeal Judgment](#), para. 68 (see also paras 57-67).

<sup>118</sup> Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, [Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan](#), 5 March 2020, ICC-02/17-138 OA4, para. 69.

<sup>119</sup> [Defence’s Written Submissions](#), para. 31.

to carry out their criminal conduct does not, in and of itself, reliably create a war crime nexus;<sup>120</sup> (iii) persons were detained for reasons unrelated to the NIAC, including for reasons related to law enforcement;<sup>121</sup> (iv) Mr El Hishri was not a combatant and any association of the SDF/RADA with the GNC/GNA is, without more, too remote to tie the SDF/RADA as an ‘organisation’ to the armed conflict;<sup>122</sup> (v) the vast majority of detainees were non-combatants;<sup>123</sup> (vi) the Prosecution has not produced any evidence that the arrests served the ultimate goal of a military campaign;<sup>124</sup> and (vii) the Prosecution has not produced any evidence that Mr El Hishri had any official duties associated with military or combatant matters.<sup>125</sup>

72. The Chamber recalls that this case concerns the alleged commission of multiple article 7 and article 8 crimes in the context of an institutionalised system of mistreatment and abuse in and around Tripoli, principally at Mitiga Prison. As discussed below at paragraph 148, the evidence shows that Mitiga Prison may have served legitimate custodial functions during the material time. While there was at all times during the Charged Period a NIAC ongoing in Libya, the Chamber emphasises that even in situations of armed conflict, States retain their law enforcement powers, including to arrest, detain and try individuals who may have committed common criminal offences, in accordance with domestic and international law (especially international human rights law). Taking this context into consideration, the Chamber finds of particular significance in this case to emphasise and reiterate that not all criminal conduct occurring in the midst of an armed conflict will automatically qualify as a war crime. Importantly, the Chamber stresses that in any event, criminal conduct not satisfying the nexus requirement of war crimes, may still satisfy the homologous requirement of crimes against humanity. In this regard, the Chamber highlights that the protections afforded by international human rights law do not cease in case of armed conflict.<sup>126</sup> The Chamber further clarifies that,

---

<sup>120</sup> Defence’s Oral Submissions: [T-005](#), pp. 61-62 relying on *Rutaganda* (ICTR, Appeals Chamber, *The Prosecutor v. Georges Anderson Nderubumwe Rutaganda*, [Judgement](#), 26 May 2003, ICTR-96-3-A, para. 570).

<sup>121</sup> [Defence’s Written Submissions](#), paras 31-34; Defence’s Oral Submissions: [T-005](#), pp. 59-61.

<sup>122</sup> Defence’s Oral Submissions: [T-005](#), pp. 59-61.

<sup>123</sup> Defence’s Oral Submissions: [T-005](#), p. 59.

<sup>124</sup> Defence’s Oral Submissions: [T-005](#), p. 60.

<sup>125</sup> Defence’s Oral Submissions: [T-005](#), p. 60.

<sup>126</sup> On this point, the Chamber notes that the International Court of Justice has held that ‘[a]s regards the relationship between international humanitarian law and human rights law, there are thus three possible situations: some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law’ (International Court of Justice, [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory](#), Advisory Opinion of 9 July 2004, para. 106).

as it explained in the Arrest Warrant, persons who were detained for reasons related to the armed conflict are protected under IHL and in case of prohibited conduct committed against them the contextual elements are thus automatically fulfilled. In addition, the prohibited conduct may qualify as a war crime because the contextual elements may be fulfilled, using the nexus requirement as set out above. However, to determine whether the alleged conduct qualified as a war crime, it makes no difference whether persons were protected under IHL from the commencement of their detention or whether they became protected under IHL as a result of (changed) circumstances that arose during their detention.

73. Given the particular circumstances of this case, as described immediately above, the Chamber considers first the reasons for which victims were detained and abused. Several witnesses such as P-0551, P-0635, P-0942, P-0992, P-1026 and P-1710 state that some individuals were detained and abused due to suspected affiliation with the LNA, which, according to the evidence discussed above, was amongst the opponents of the SDF/RADA. On this basis, the Chamber considers that the evidence demonstrates that at least *some* individuals were detained and abused for reasons related to the conflict.

74. Moreover, *some* of the alleged crimes were committed specifically to advance the war efforts of the SDF/RADA and the GNC/GNA in the armed conflict. As outlined below in relation to counts 2-3 and 5, detainees were mistreated for purposes such as extracting information on the SDF/RADA's and the GNC/GNA's enemies. In this context, the Chamber notes that, as found below at paragraph 123, the evidence supports that individuals thought to be affiliated with the Mitiga perpetrators' political opponents or enemies were targeted. Other detainees were also forcibly involved in war efforts, such as by transporting heavy ammunition or weapons.

75. Additionally, the evidence indicates that the armed conflict facilitated the means, structures, or authority through which the crimes were perpetrated by the SDF/RADA, and by extension, Mr El Hishri. P-0342, P-0650, P-0720, P-1044, and P-1721 say that the Souk Al Jumaa Revolutionaries Battalion (the SDF/RADA's precursor), along with other revolutionary battalions, seized the Mitiga Compound from the Gaddafi forces around August 2011. P-0650 and P-1721 state that the SDF/RADA later secured exclusive control over the Mitiga Compound and, as supported by the evidence underpinning the alleged crimes, maintained it during the Charged Period. As discussed above in the section on the contextual elements of



crimes against humanity, the SDF/RADA's association with the State enabled the SDF/RADA to further consolidate its control over Mitiga and, more broadly, over the security architecture of Tripoli. The SDF/RADA had access to significant resources such as fighters and weaponry owing to the circumstances created by the armed conflict. This is supported by the evidence of P-0439, P-0486, P-0489, P-0872, and P-1059. All of the above factors enabled the Mitiga Perpetrators to commit the alleged crimes systematically and with impunity.

76. Furthermore, as discussed below in relation to counts 2-3, 5, 8, 10 and 12, with the exception of detainees acting under their direction and control, the Mitiga Perpetrators, including Mr El Hishri, committed the alleged crimes in the context of their official functions as members of the SDF/RADA or acting upon the instructions of the Mitiga Prison Leadership, as was the case for guards who were not SDF/RADA members.

77. In light of the foregoing, the Chamber finds that Mitiga Prison detainees who were arrested for reasons related to the armed conflict were necessarily protected under IHL and that IHL extended to those who were arrested for other reasons as a result of the circumstances discussed above in relation to the nexus. The evidence further supports that Mitiga Prison detainees were, upon their arrest, either civilian taking no active part in the hostilities or persons *hors de combat*, as they found themselves in the custody or control of the Mitiga Perpetrators. Accordingly, having considered the above factors cumulatively, considering the circumstances and the evidence presented, and while acknowledging that the factors discussed above at paragraphs 73-74 relate only to some of the incidents, the Chamber finds substantial grounds to believe that the conduct underlying the crimes as confirmed in this decision took place in the context of, and was associated with, a NIAC.

78. Turning to the subjective elements, the evidence demonstrates that the Mitiga Perpetrators, including Mr El Hishri, were aware of the factual circumstances that established the existence of a NIAC. The evidence, principally the statements of P-0342, P-0551, P-0595, P-0635, P-0644, P-1026, P-1041, P-1059, P-1745, and P-1750, along with UN reports, establishes that the Mitiga Compound was itself the target of LNA attacks, and that armed operations were launched from the Mitiga Compound. Armaments for the ongoing armed conflict were delivered to the Mitiga Compound by plane and supplied to fighting forces. Members of the SDF/RADA, as part of the GNC/GNA bloc, participated in hostilities against the LNA and used Mitiga Prison detainees to this end. Persons suspected of affiliation to the

LNA were detained at Mitiga Prison. In addition, considering their respective role, functions, and daily exposure, the Mitiga Perpetrators, including Mr El Hishri, who occupied a leadership position in Mitiga Prison, were necessarily aware of the factual circumstances that established the victims' protected status.

79. For all of the above reasons, the Chamber is satisfied that the contextual elements of the war crimes with which Mr El Hishri is charged are established to the relevant standard.

## **B. Specific crimes**

### **1. Torture, cruel treatment, imprisonment or other severe deprivation of physical liberty, outrages upon personal dignity and other inhumane acts under articles 7(1)(e), (f), and (k) and 8(2)(c)(i) and (ii) of the Statute (counts 1-6)**

80. Relying primarily on the statements of former detainees, the Prosecution alleges that, during the Charged Period, the Mitiga Perpetrators violently arrested, detained, and systematically mistreated at least 5,140 persons, including women, men, and children, principally at Mitiga Prison.<sup>127</sup> In support, the Prosecution provides a non-exhaustive list of 945 persons who were subjected to these acts.<sup>128</sup>

*a) Torture as a crime against humanity and war crime (counts 4 and 5), cruel treatment as a war crime (count 3), Other inhumane acts as a crime against humanity (count 6)*

81. As regards the Prosecution's allegations concerning **torture** (counts 4 and 5), the Chamber notes that the evidence describes the physical, sexual, and psychological abuse male and female detainees suffered at the hands of the Mitiga Perpetrators.

82. The evidence describes various forms of physical abuse suffered and directly observed by the detainees, including, *inter alia*, shootings, beatings, amputations, positional torture, electrocution, asphyxiation, and deliberate placing of detainees among co-detainees with infectious diseases or known for having a violent disposition. P-1720 recalls having his hand tied behind his back with a rope and being suspended from the ceiling along with other detainees. While being hung, he was also beaten in his head, legs, buttocks, and genitals, including by Mr El Hishri himself. As found below in relation to counts 7-10, the evidence

<sup>127</sup> [DCC](#), para. 26-33; [PCB](#), paras 12, 45-67. Prosecution's Oral Submissions: [T-004](#), pp. 11-20; pp. 73-97. See Victims' Oral Submissions: [T-004](#), p. 21, stating that the 'number of victims participating in these proceedings [...] is by no means indicative of the scale of victimisation in this case,' as safety concerns, fear, trauma, or death prevented some victims from participating in the proceedings.

<sup>128</sup> [Annex 8](#) to the PCB.

further demonstrates that the Mitiga Perpetrators sexually abused detainees by, *inter alia*, forced strip and cavity searches beyond what could be considered necessary for legitimate reasons, physical violence targeting the genitals, and rape.

83. The evidence provided by the Prosecution shows that the detainees experienced extreme mental suffering<sup>129</sup> caused by rampant abuse and constant threats thereof, the lack of clarity concerning the period of detention, being kept incommunicado or not being allowed visits from family members for an extended period of time, and the humiliation and degradation they experienced at the hands of the Mitiga Perpetrators. P-0595, P-1736 and P-0943 relate how, as a result, there were multiple suicide and suicide attempts, mostly in the Women's Section. Shortly after being arrested, P-0486 was told that he would 'spend the rest of [his] life in prison'. P-0498 states that the guards purposefully placed detainees in a cell together with co-detainees, who had become mentally unstable due to torture and rape, in order to intimidate and humiliate the detainees.

84. Furthermore, the Chamber also notes the systematically unlawful nature of arrests, detention, and interrogation. The detainees' statements are mutually corroborative in material respects in that the detainees were violently arrested by masked individuals at places such as their homes, workplaces, and roadblocks in or around Tripoli; they were not informed of their rights upon arrest nor of the reasons for their arrest; they were subjected to strip searches, interrogation, and torture during the first days of their detention; and thereafter they were placed in Mitiga Prison without any due process. P-0872 recalls that 40 masked men violently entered his home, stole money and jewellery, shot him, and arrested him. P-0568 recounts that he was interrogated and told to confess, while being suspended from the ceiling. The Mitiga Perpetrators also failed to comply with judicial orders concerning the release of detainees. P-0568 states that his uncle was released from Mitiga Prison more than a year after a court ordered his release.

85. The evidentiary items mentioned above demonstrate that the arrests, detention, and interrogations were, in many cases, baseless, and any alleged 'sanction' was in fact unlawful; even in cases with at least a *prima facie* lawful basis for arrest, the Mitiga Perpetrators gravely violated the detainees' due process rights to such an extent that the violation of due process

---

<sup>129</sup> On the extremely harsh detention conditions and their impact on victims, see Victim's Oral Submissions: [T-004](#), pp. 23-25.

undermined the lawfulness of their arrest and detention.<sup>130</sup> Moreover, the extreme pain or suffering caused by the physical, sexual, and psychological abuse, as well as the wholly inadequate detention conditions, plainly violated the detainees' internationally recognised fundamental human rights and cannot be considered to be inherent in or incidental to lawful sanctions.

86. The Prosecution provides evidence demonstrating that the interrogations that followed the detainees' arrests were accompanied by extreme physical, sexual, reproductive, and psychological violence, which the Chamber considers to be sufficient evidence of the perpetrators' intent to intimidate and punish the detainees and to force them to confess or provide information about others. Moreover, during at least some interrogations, the Mitiga Perpetrators asked about detainees' alleged sexual orientation or conduct, political affiliation, and religious affiliation or the lack thereof, occasionally using discriminatory language, which demonstrates the discriminatory purpose of the interrogation. P-0054 states that he was asked questions about being gay and, after being subjected to sleep deprivation and the pain from repeated beatings, he was ultimately forced to say what the interrogators wanted to hear. Another detainee recalls being whipped during an interrogation and forced to confess that he was Christian and to speak about his friends and community. A Mitiga Perpetrator made derogatory statements, such as asking him whether he had ever had sexual intercourse with his mother. Upon reading messages about freedom and human rights on this detainee's Facebook account, an interrogator questioned his ideology. P-0486 states that he was accused of being a member of Daesh during his interrogation. When he denied the accusation, he was hit on the soles of his feet with a plastic pipe known as PPR, causing him to sustain serious injuries.

87. On the basis of the above, the Chamber finds that the Mitiga Perpetrators meant to inflict pain and suffering on the detainees, with knowledge of the relevant circumstances, and did so for the purposes specified in the above paragraph. The Chamber is also satisfied that the requirements that the victims of torture as a crime against humanity were either 'in the custody or under the control of' the perpetrators and that the perpetrators had awareness of such status were also met.

---

<sup>130</sup> Elements of Crimes, art. 7(1)(f), element 1. *See* Defence's Oral Submissions: [T-005](#), pp. 60-61, in which it is argued that the evidence suggests that the detainees were arrested for reasons related to 'their criminal membership or association with a terrorist organisation as proscribed under Libyan municipal law'. On this point, *see* para. 95 below.

88. As regards the Prosecution's allegations concerning **cruel treatment as a war crime** (count 3), the Chamber notes that this crime is subsumed in the war crime of torture.<sup>131</sup> Therefore, since it has been found that the evidence submitted by the Prosecution satisfies all the elements of the crime of torture, it necessarily follows that the same evidence supports the allegations concerning the crime of cruel treatment as a war crime.

89. As regards the Prosecution's allegations concerning **other inhumane acts as a crime against humanity** (count 6), the Chamber considers that, among other items, the evidence discussed in relation to counts 2, 4 and 5 establishes that the Mitiga Perpetrators, by their acts of violence and the extremely harsh detention conditions they imposed, caused great suffering and serious injury to the bodies or to the mental or physical health of detainees and their families. These acts had long-term physical, psychological, sexual, and reproductive consequences that lasted long after the detainees' release. P-1736 states that she lost her fertility due to being tortured and raped in Mitiga Prison, and the diagnosis has left her in distress because, according to her culture, this means that she can no longer marry. She describes her life as 'hell', with many lasting medical issues caused by the Mitiga Perpetrators' crimes.

90. On the basis of the evidence presented, the Chamber is satisfied that the Mitiga Perpetrators meant to cause the great suffering and serious injury they inflicted. Further, and considering the manner of commission and nature of the crimes, the Mitiga Perpetrators were aware of the factual circumstances that established the character of the act.

*b) Outrages upon personal dignity as a war crime (count 2)*

91. The Prosecution's evidence concerning **outrages upon personal dignity** as a war crime describes the widespread mistreatment and violent abuse of detainees, including forced nudity, violence specifically targeting the genitals, and the use of derogatory terms with sexualised connotations, which exacerbated the humiliation of the detainees in the Libyan societal context.<sup>132</sup> P-0595 and P-1733 each witnessed the Mitiga Perpetrators calling detainees 'sabiya', which refers to a kidnapped Christian woman with whom men can have sex. P-1733 states that the Mitiga Perpetrators removed her clothes by force and repeatedly searched her by touching her stomach, thighs, arms, and breasts. She also saw the Mitiga Perpetrators insert a fishing hook onto a naked man's penis.

<sup>131</sup> See [Abd-Al-Rahman Trial Judgment](#), paras 759-764.

<sup>132</sup> See Victims' Oral Submissions: [T-004](#), pp. 26-28, concerning the female detainees who suffered physical and sexual violence, psychological abuse, and harsh conditions in Mitiga Prison.

92. The evidence provided by the Prosecution reveals the prevalence of inadequate detention conditions and other serious abuse in Mitiga Prison. It shows that detainees were, *inter alia*, arbitrarily deprived of food and water; denied menstrual products, denied medical assistance to women during childbirth, kept in extremely overcrowded cells, deprived of sleep, kept in unsanitary conditions, exposed to infectious diseases, and denied, or provided with insufficient, medical care. P-0498 states that detainees developed illnesses associated with these inadequate conditions such as scabies, rashes, itching, red eyes, tuberculosis, digestive problems, and haemorrhoids. P-0943 recalls that she was only given two sanitary pads for the entire duration of her imprisonment, which extended for months, and other women experienced this too. P-1733 states that women sometimes resorted to using plastic bags instead of feminine hygiene products.

93. Assessing the above evidence in light of the Libyan cultural background,<sup>133</sup> the Chamber is satisfied that the aforementioned conduct resulted in the humiliation, degradation, and violation of the dignity of the detainees, and that the severity of the violation of the detainees' dignity was of such a degree as to be generally recognised as an outrage upon personal dignity.<sup>134</sup>

94. On the basis of the above, the Chamber finds that the Mitiga Perpetrators meant to humiliate, degrade or violate the of dignity of detainees.

*c) Imprisonment or other severe deprivation of physical liberty as a crime against humanity (count 1)*

95. The Prosecution provides extensive evidence of **imprisonment or other severe deprivations of physical liberty** as a crime against humanity involving the arrests, detention, and interrogations of the detainees which in most cases, as discussed above in relation to counts 2-6, took place without any legal basis. The evidence shows that even in cases for which there was at least a *prima facie* basis to arrest and detain, such as drug trafficking, embezzlement, or terrorism, the conduct of the Mitiga Perpetrators was marred by procedural irregularities and

<sup>133</sup> Elements of Crimes, art. 8(2)(c)(ii), element 1 (fn. 57).

<sup>134</sup> The Chamber notes that the allegations described in the DCC and the PCB are comparable to the facts found to constitute outrages upon personal dignity before the Court and before the ICTY (see [Katanga and Ngudjolo Confirmation Decision](#), paras 375-376; ICTY, Trial Chamber, *The Prosecutor v. Miroslav Kvočka*, [Judgement](#), 2 November 2001, IT-98/301-T, paras 173-174; ICTY, Trial Chamber, *The Prosecutor v. Zlatko Aleksovski*, [Judgement](#), 25 June 1999, IT-95-14/1-T, paras 184-229; ICTY, Trial Chamber, *The Prosecutor v. Dragoljub Kunarac et al*, [Trial Judgment](#), paras 746-782; ICTY, Trial Chamber, *The Prosecutor v. Anto Furundžija*, [Judgement](#), 10 December 1998, IT-95-17/1-T, para. 272).

severe violations of numerous fundamental rights. Accordingly, such conduct rendered the arrests and detention unlawful and, as found above at paragraph 85, the Defence's argument on that point does not stand.<sup>135</sup>

96. In light of the information provided, the Chamber is satisfied that the detainees were unlawfully kept in captivity in an enclosed environment or in a non-enclosed environment without means of escape,<sup>136</sup> be it in Mitiga Prison or in other areas under the control of the SDF/RADA, during the Charged Period. Furthermore, the arbitrary nature and the conditions of imprisonment, and the rampant human rights violations in the prison and other places where the detainees were taken, including during their transportation satisfy the gravity requirement under article 7(1)(e) of the Statute.<sup>137</sup>

97. On the basis of the evidence presented, the Chamber is satisfied that the Mitiga Perpetrators meant to deprive the detainees of their physical liberty and were aware of the factual circumstances establishing the gravity of the relevant conduct.

#### *d) Conclusions*

98. Accordingly, the Chamber finds substantial grounds to believe that, during the Charged Period, the Mitiga Perpetrators committed the crimes against humanity and war crimes of torture, cruel treatment, imprisonment or other severe deprivation of physical liberty, outrages upon personal dignity and other inhumane acts against Mitiga Prison detainees as set out in counts 1-6.

### **2. Rape and other forms of sexual violence under articles 7(1)(g) and 8(2)(e)(vi) of the Statute (counts 7-10)**

99. Relying primarily on the statements of former detainees, the Prosecution alleges that, during the Charged Period, the Mitiga Perpetrators raped at least 10 detainees in Mitiga Prison, and subjected at least 49 detainees to other forms of sexual violence.<sup>138</sup> The Prosecution also

<sup>135</sup> *Contra* Defence's Oral Submissions: [T-005](#), pp. 60-61.

<sup>136</sup> See Pre-Trial Chamber III, *Situation in the Republic of Burundi*, [Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi](#), 25 October 2017, ICC-01/17-9-Red (public redacted version notified on 9 November 2017) (the 'Burundi PTC III Decision'), para. 68; Trial Chamber V, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Judgment](#), 24 July 2015, ICC-01/14-01/18-2784-Red (the 'Yekatom and Ngaïssona Trial Judgment'), paras 4086-4090.

<sup>137</sup> See, [Yekatom and Ngaïssona Trial Judgment](#), para. 3834, which considered two factors in determining whether there was a violation of fundamental rules of international law: a legal basis to apprehend the persons and keep them in captivity and a guarantee of procedural safeguards required under international law. See also [Burundi PTC III Decision](#), para. 68.

<sup>138</sup> [DCC](#), para. 34; [PCB](#) paras 12, 45, 68-73; Prosecution's Oral Submissions: [T-004](#), pp. 13-14, 78-80, 82, 86-89, 97. See also Annexes [10](#) and [11](#) to the PCB, which contain non-exhaustive lists of victims of rape and sexual violence.



alleges that the Mitiga Perpetrators deliberately exposed detainees to the risk of rape and sexual violence by other detainees known to commit sexual abuse.<sup>139</sup>

100. The evidence presented by the Prosecution demonstrates that the Mitiga Perpetrators, often guards, but in some cases co-detainees, relied on force and coercion to rape men, women, and children during their detention in Mitiga Prison.<sup>140</sup> For instance, P-0872 and P-0650 explain how the Mitiga Perpetrators conducted a cavity search of their anuses. P-0439, P-0551, P-0595 and P-0635 also describe the Mitiga Perpetrators forcibly inserting their penises or other objects into detainees' anuses. P-1736 relates that Mr El Hishri himself forcibly inserted his penis into the anus of a female detainee. During a particularly violent incident, multiple detainees raped P-0439, who was held in a cell housing individuals known for sexually assaulting co-detainees. P-1750 recalls that a male detainee, who he describes as effeminate, was forced by a guard to engage in sexual intercourse in exchange for medication he needed for a heart problem. The Mitiga Perpetrators also sexually exploited minor detainees. P-0595 recounts that a young male detainee was treated for a bleeding anus after being raped. A young female detainee who had been in detention for more than two years told P-1736 that she became pregnant after Mr El Hishri, among others, raped her, and that Mr El Hishri brought her to a clinic and forced her to have an abortion.

101. Regarding other acts of sexual violence, former detainees described in detail the forced nudity and invasive searches they had to endure upon arrival at Mitiga Prison. The evidence demonstrates that the Mitiga Prison Leadership, including Mr El Hishri, instructed the guards and some detainees to carry out cavity searches, most of the time in front of other detainees. Detainees were forced to fully undress, bend down, or squat, while the Mitiga Prison Leadership insulted, threatened, or beat them. In particular, Mr El Hishri was present during the searches of P-0665, P-0943, P-1733 and P-1736 and threatened or beat them when they did not comply with his orders. Furthermore, the extreme overcrowding of cells and the lack of mechanisms to prevent inter-detainee harassment also resulted in inter-detainee sexual assaults as related by P-0571.

<sup>139</sup> [DCC](#), para. 35; [PCB](#), para. 74; Prosecution's Oral Submissions: [T-004](#), pp. 13-14, 78-80, 82, 86-89, 97.

<sup>140</sup> See Victim's Oral Submissions: [T-004](#), pp. 25-29, elaborating on the experience of female detainees in Mitiga and the prevalence of sexual violence in Mitiga Prison. See also p. 31, for the Victim's submission on the sexual violence against migrant detainees.

102. P-1673, P-1710, P-1750, P-0667, P-0942, P-0990, and P-0993 recounted how, during interrogation and torture sessions, the Mitiga Perpetrators specifically targeted sexual and reproductive organs. P-0943 and P-1736 explain how the Mitiga Perpetrators, including Mr El Hishri, touched the detainees' sexual and reproductive organs and targeted these organs during beatings. P-1026 and P-1685 further relate how interrogators inserted a metal wire through the skin below the tip of a detainee's penis and electrocuted another detainee's genitals. The Mitiga Perpetrators would also regularly threaten to rape detainees or their family members.

103. On the basis of the above, it is established that the Mitiga Perpetrators intentionally engaged in acts of a sexual nature with detainees, or meant for such penetration and other acts of comparable gravity to occur, and that they did so using force and coercion and by taking advantage of the coercive environment. The evidence also substantiates that they were aware of the factual circumstances that established the gravity of the relevant conduct.

104. Accordingly, the Chamber finds substantial grounds to believe that, during the Charged Period, the Mitiga Perpetrators committed the crimes against humanity and war crimes of rape and sexual violence against Mitiga Prison detainees as set out in counts 7-10.

### **3. Murder and attempted murder under articles 7(1)(a) and 8(2)(c)(i) of the Statute (counts 11-12)**

105. Relying primarily on the statements of former detainees, the Prosecution alleges that, during the Charged Period, the Mitiga Perpetrators engaged in executions and in torture, neglect of serious medical conditions and the infliction of lethally inadequate conditions of detention which caused the death of at least 89 detainees in Mitiga Prison.<sup>141</sup>

106. The evidence relied upon by the Prosecution, including the statements of P-0497, P-0719, P-0720, P-0872, P-0990 and P-1673, describes in detail the dangerous and life-threatening interrogation and torture techniques used by the Mitiga Perpetrators. In particular, P-0719 provides details of a detainee who was tortured by having his genitalia cut off and sustained injuries from which he died. P-0497, P-0720 and P-0872 describe several torture sessions during which detainees were hung, beaten, and thereafter died. P-0595 saw the bodies of dead detainees which bore injuries consistent with repeated beatings. Former detainees provided evidence of Mr El Hishri firing his pistol in the cell blocks, including one incident described

---

<sup>141</sup> [DCC](#), para. 39; [PCB](#), paras 12, 45, 78-83; Prosecution's Oral Submissions: [T-004](#), pp. 83-86, 93-95, 97. See also [Annex 9](#) to the PCB, which contains a non-exhaustive list of victims of murder and attempted murder.

by P-0720 when Mr El Hishri's shooting caused the death of a detainee in the 'Islamic neighbourhood'.

107. Regarding the allegation of killings committed by imposing lethal conditions of detention and neglect, the evidence provided by P-0644, P-0692, P-0872, P-0990, P-1026, P-1031, and P-1720 establishes that many detainees who had sustained serious injuries or harm to their health as a result of the detention conditions were denied adequate medical care. For example, P-0990 and P-1031 state that they saw the Mitiga Perpetrators deny medical care to detainees with gunshot injuries, who subsequently died.

108. Concerning the failure to provide care to detainees in cases of acute medical need, the evidence provided by P-0439, P-0569, P-0644, P-0872, P-0925, P-1026 and P-1736 establishes that a number of detainees died as a result of not having been given the appropriate medical attention when they complained of serious ailments. The Mitiga Perpetrators regularly reprimanded or threatened to punish those who sought to help or raise the alarm about detainees who were seriously ill.

109. On the basis of the above, and particularly considering their inherently dangerous and life-threatening conduct and deliberate and repeated failure to provide care to persons in their custody and/or control, the Chamber finds that the only reasonable conclusion which can be drawn is that the Mitiga Perpetrators meant to cause the death of the relevant detainees or, at the very least, were aware that their death would occur in the ordinary course of events.

110. Regarding the allegation of attempted murder, the Chamber finds that, against this backdrop, P-0925's evidence that Mr El Hishri shot at a detainee in the upper body from a pistol at close range establishes that he deliberately acted in a manner that was meant to kill the detainee and that the said detainee survived due to circumstances independent of Mr El Hishri's conduct.

111. Accordingly, the Chamber finds substantial grounds to believe that, during the Charged Period, the Mitiga Perpetrators committed the crimes against humanity and war crimes of murder and attempted murder against Mitiga Prison detainees as set out in counts 11 and 12.

#### **4. Enslavement under article 7(1)(c) of the Statute (count 13)**

112. Relying primarily on the statements of former detainees, the Prosecution alleges that, during the Charged Period, the Mitiga Perpetrators enslaved at least 176 detainees by

exercising powers attaching to the right of ownership over them.<sup>142</sup> The Prosecution submits that the Mitiga Perpetrators enslaved Libyan and non-Libyan detainees of all ages and gender, including, *inter alia*, people from East, West, Central, and Southern Africa (a group of detainees the Prosecution refers to as the ‘Black Migrants’).<sup>143</sup> The Prosecution alleges that the Mitiga Perpetrators controlled essentially every aspect of the lives of the Mitiga Prison detainees and that their enslavement was sexualised, gendered, racialised, or a combination thereof.<sup>144</sup> The Prosecution submits that, in a context of institutionalised and systematic enslavement, the Mitiga Perpetrators exercised powers attaching to the right of ownership over detainees, as evidenced by: (i) the exertion of control over their personal liberty, movement, and physical environment; (ii) the exertion of control over their physical and psychological autonomy; (iii) the exertion of control over their sexuality and sexual and reproductive autonomy, in different ways and to varying degrees; and (iv) the subjugation of all detainees by means of psychological control, pressure and coercion, and by exploiting their vulnerabilities, to further subjugate them.<sup>145</sup> The Prosecution submits that additional factors exist in relation to certain detainees, including evidence of forced labour and heightened vulnerability.<sup>146</sup>

113. The evidence demonstrates that **control and subjugation were systematic and institutionalised** at Mitiga Prison. First, the Mitiga Prison Leadership, including Mr El Hishri, exercised powers attaching to the right of ownership over many detainees and forced its subordinates to support and sustain this system. Mr El Hishri and the other Mitiga Perpetrators subjugated detainees by creating and maintaining a highly coercive environment. P-1736, P-1733 and P-0943 described how Mr El Hishri would beat, threaten, and abuse detainees, including those detained in the Women’s Section. Second, the aforementioned control and subjugation was committed against all types of detainees. Detainees were Libyans and non-Libyans, including Black Migrants, of all genders and ages (including boys and girls). Within this system, the Mitiga Perpetrators used the forms of control discussed below in different ways

<sup>142</sup> [DCC](#), para. 42; [PCB](#), paras 12, 45, 86-88; Prosecution’s Oral Submissions: [T-005](#), pp. 42; [PCB](#), paras 12, 45, 86-88; Prosecution’s Oral Submissions: [T-005](#), pp. 2-13. *See also* [Annex 12](#) to the PCB, which contains a non-exhaustive list of victims of enslavement.

<sup>143</sup> [DCC](#), para. 43; [PCB](#), para. 89; Prosecution’s Oral Submissions: [T-005](#), p. 4. *See* Victim’s Oral Submissions: [T-004](#), pp. 29-32, elaborating on the conditions to which the migrants were subjected.

<sup>144</sup> [DCC](#), paras 43, 46; [PCB](#), paras 89, 122-133; Prosecution’s Oral Submissions: [T-005](#), pp. 3-5.

<sup>145</sup> [DCC](#), paras 43; [PCB](#), paras 90-109; Prosecution’s Oral Submissions: [T-005](#), pp. 6-8.

<sup>146</sup> [DCC](#), paras 44-45; [PCB](#), paras 110-121; Prosecution’s Oral Submissions: [T-005](#), p. 6.

depending on the detainees' gender, age, race, nationality, ethnicity and migration status, with compounding effect.

114. The evidence further demonstrates that the Mitiga Perpetrators exercised **control over the personal liberty, movement and physical environment** of detainees. As discussed in detail above in relation to count 1, and more generally counts 2-6, they unlawfully imprisoned detainees and deprived them of physical exercise and, more generally, of their freedom of movement to an extent that exceeds reasonable restrictions within a prison setting. Amongst many other witnesses, P-0730, P-1026, and P-1025 recounted that detainees were confined in overly crowded or small cells.

115. The evidence shows that the Mitiga Perpetrators exerted **control over the physical and psychological autonomy** of detainees by subjecting them to torture, cruel treatment, and abuse/coercion. As discussed above in relation to counts 1-6, detainees were subjected to systemic torture and mistreatment. Further, according to P-0990 and P-0720, detainees' blood was drawn by force so that the SDF/RADA soldiers wounded in combat could be treated through transfusion.

116. The evidence establishes that the Mitiga Perpetrators also exercised **control over the sexuality and sexual and reproductive autonomy** of detainees. As found above in relation to counts 7-10, the Mitiga Perpetrators controlled detainees through acts of rape and other forms of sexual violence. In this regard, P-1736 states that, every Thursday night, Mr El Hishri used to take young female detainees, including those who were underage, from the Women's Section to the so-called 'leisure areas' for Mr El Hishri and the other Mitiga Perpetrators to sexually abuse them. According to the witness, the victims were also forced to drink alcohol and take drugs. The Mitiga Perpetrators deprived a female detainee of her reproductive autonomy by bringing her to a clinic where she was forced to abort and had her uterus removed. Furthermore, controls over the detainees' autonomy, in particular regarding their gender identity and expression, varied according to their gender. By way of example, while male detainees were forced to shave their heads and grow beards, female detainees were forced to wear traditional Islamic robes, veils and gloves that covered them entirely, as described by P-0990 and P-0943 and corroborated by many other witnesses.

117. The evidence also demonstrates that the Mitiga Perpetrators subjugated detainees by exerting **psychological control, pressure and coercion**, and by **exploiting their**

**vulnerabilities.** As discussed above in relation to counts 1-6, detainees were held in a coercive environment. The Mitiga Perpetrators used dehumanising and derogatory language against them, such as ‘faggots’, ‘mules’, ‘dog’, ‘slut’, and ‘bitch’, as experienced by P-0943, P-0990, and P-1673, among many other witnesses. The Mitiga Perpetrators also often threatened detainees with rape, permanent detention or harm to their family members.

118. In addition, the evidence demonstrates that the Mitiga Perpetrators ordered detainees to perform **forced or compulsory labour** and reduced them to servile status. P-0872, P-1046, P-1026, P-0054, P-0720, P-1736, and P-0569 recount that male detainees were forced to conduct body searches of newly arrived detainees, remove dead bodies, and participate in torturing co-detainees by transporting them from their cells to the torture site, blindfolding them, handcuffing them, and assisting in inflicting torture or other forms of mistreatment. The evidence provided by P-1041 demonstrates that detainees were also forced to participate or be involved in hostilities, such as by transporting heavy ammunition or weapons. Furthermore, P-0719 and P-0990 relate that Mr El Hishri used to take some of the detainees outside Mitiga Prison to work at his residence or on his farm. The evidence presented by P-0720, P-1685 and P-1736 also establishes that the Mitiga Perpetrators forced some detainees to act as ‘*capos*’, supervising and guarding other detainees, and reporting on them. P-0720 states that detainees did not have agency to decide whether to become ‘*capos*’ and, even when assigned this role, they remained subject to threats, punishment, and abuse. P-0635, P-0595, P-1041 and P-1736 explained that the Mitiga Perpetrators treated Black Migrants, whom they regarded and explicitly referred to as ‘slaves’, particularly harshly.

119. On the basis of the above, and considering the cumulative effect of all the relevant factors, particularly in the specific context of a systematic and institutionalised practice, the Chamber is satisfied that the Mitiga Perpetrators exercised powers attaching to the right of ownership over detainees,<sup>147</sup> and that they did so with the required intent and knowledge.

120. Accordingly, the Chamber finds substantial grounds to believe that, during the Charged Period, the Mitiga Perpetrators committed the crimes against humanity of enslavement against Mitiga Prison detainees, as set out in count 13.

---

<sup>147</sup> *Contra* [Defence’s Written Submissions](#), paras 40-41; Defence’s Oral Submissions: [T-005](#), p. 65.

## 5. Persecution under article 7(1)(h) of the Statute (counts 14-17)

121. Relying primarily on the statements of former detainees, on reports (including UN reports) and on the evidence underlying the allegations under counts 1-13 above, the Prosecution alleges that, during the Charged Period, the Mitiga Perpetrators persecuted at least 173 detainees by depriving them of fundamental rights contrary to international law.<sup>148</sup> The Prosecution submits that the conduct amounting to persecution was committed in connection with the aforementioned crimes on multiple intersecting grounds, namely political (count 14); religious (count 15); national, race, and/or ethnicity (count 16); and gender grounds (count 17).<sup>149</sup>

122. The evidence, principally that supporting the underlying crimes listed under counts 1-13, demonstrates that the Mitiga Perpetrators severely deprived, contrary to international law, Mitiga Prison detainees of their fundamental rights including the right not to be subjected to torture and/or cruel, inhuman or degrading treatment or punishment; the right not to be subjected to rape and/or other forms of sexual violence; the right to life; the right not to be subjected to slavery and/or slave trade; the right to freedom of thought, conscience and religion; the right to freedom of expression; the right to liberty and security of person; the right to physical integrity; the right not to be subjected to arbitrary detention; the right to freedom of movement; the right to equality before the law; and the right to private and family life. The acts through which these crimes were committed either amount to article 5 crimes, or were committed in connection with such crimes.

123. As regards the alleged persecution based on **political grounds**, the evidence demonstrates that the Mitiga Perpetrators targeted victims as perceived obstacles to, or for their perceived opposition to, the political views and agenda of the Mitiga Perpetrators. The Mitiga Perpetrators targeted certain Libyan individuals, such as P-0486, P-0635, P-0650 and P-1745, who opposed or did not comply with the perpetrators' political views or agenda or were thought to be affiliated with the perpetrators' political opponents or enemies. The Mitiga Perpetrators also targeted Black Migrants, such as P-1041, because they were perceived as inferior to Libyans and because of their perceived irregular immigration status in the country, which was inconsistent with the perpetrators' views on migration.

<sup>148</sup> [DCC](#), paras 47-52; [PCB](#), paras 12, 45, 134-135. See also [Annex 13](#) to the PCB, which contains a non-exhaustive list of victims of persecution.

<sup>149</sup> [DCC](#), paras 47-52; [PCB](#), paras 134-153; Prosecution's Oral Submissions: [T-005](#), pp. 13-21.



124. As regards the alleged persecution based on **religious grounds**, the evidence demonstrates that the perpetrators targeted victims for their perceived non-compliance with the Mitiga Perpetrators' ideological views and/or practices. Individuals professing other faiths or no faith at all and those involved in 'religious healings' or 'sorcery' were amongst those targeted for arrest and detention. As discussed above in relation to count 13, the Mitiga Perpetrators enforced a dress code and rules related to appearance on men and women in accordance with their ideological views, and punished them or threatened to punish them if they did not comply. P-0595, an atheist who publicly criticised the Mitiga Perpetrators' ideological views, was tortured and told 'you either believe in God or we will lift you to God'.

125. As regards the alleged persecution based on **national, racial, and ethnic grounds**, the evidence establishes that the Mitiga Perpetrators targeted Black Migrants for arrest, detention and mistreatment by reason of a combination of their nationality (from countries in East, West, Central, and Southern Africa) and their racialised ethnicity (as Black Africans not from Northern Africa). Witnesses state that Black Migrants were called, perceived and treated like 'slaves' and were assigned more onerous or potentially hazardous types of forced labour, such as carrying heavy ammunitions, weapons, or supplies, including in circumstances such as not wearing any protective equipment. This targeting on national, race, and ethnicity grounds is further supported by the above demonstration regarding persecution based on political grounds.

126. As regards the alleged persecution based on **gender grounds**, the evidence demonstrates that the perpetrators targeted women and girls for arrest and detention because they considered their behaviour inappropriate for their gender, such as having an 'inappropriate' profession (*e.g.* singers), being with their boyfriends or boys or men, appearing on social media, alleged prostitution, and/or adultery. They were subjected to particular means and methods of mistreatment, such as ripping a female detainee's veil off or being called 'sabiya' (a derogatory term meaning 'sexual slave' according to P-1733). P-1736 stated that Mr El Hishri refused to provide life-saving treatment to a detainee's newborn when he learned the newborn was a girl.

127. Men and boys were subjected to sexual and reproductive violence as a means to emasculate and/or feminise them. Detainees were beaten on their genitalia, called 'sabiya' or asked if they could 'scream like a whore'. P-1710 states '[t]he beating I endured on my buttocks and genitals made me feel I was no longer a man'.

128. The evidence further establishes that actual and perceived LGBTQI+ persons were targeted for arrest and detention because they did not conform to the Mitiga Perpetrators' views and expectations on gender. This includes P-0054, a man who was detained for wearing jewellery. They were also subjected to sexualised torture and reproductive violence and were verbally abused and threatened. During one particularly violent incident, the Mitiga Perpetrators beat on the buttocks a gay detainee who had been arrested on suspicion of supporting the perpetrator's enemies, called him a 'mule', asked him 'how many times were you penetrated?', forced him to touch a perpetrator's penis, and orally and anally raped him.

129. On the basis of the above, the Chamber concludes that the detainees were targeted on political (count 14), religious (count 15), national, racial, or ethnic (count 16), and gender grounds (count 17), which, as evidenced by multiple incidents, often intersected<sup>150</sup> and compounded the discrimination suffered.

130. Having regard to the totality of the evidence adduced in support of the Prosecution's allegations, the Chamber is satisfied that the Mitiga Perpetrators deliberately deprived the detainees of their fundamental rights with the intent to discriminate against the targeted persons on one or more of the aforementioned grounds.<sup>151</sup>

131. Accordingly, the Chamber finds substantial grounds to believe that, during the Charged Period, the Mitiga Perpetrators committed the crimes against humanity of persecution based on political, religious, national, racial, ethnic and gender grounds against Mitiga Prison detainees, as set out in counts 14-17.

### **C. Individual criminal responsibility**

132. The Prosecution requests that the Chamber confirm cumulative and/or alternative modes of liability pursuant to article 25(3)(a), (b), (c) and (d) of the Statute.

133. In this respect, the Chamber recalls that, when the Prosecution presents cumulative and/or alternative modes of liability for the same conduct and 'the evidence is sufficient to sustain each of th[os]e alternative forms of responsibility', it is appropriate, and in fact contributes to

---

<sup>150</sup> On this matter Judge Iulia Antoanella Motoc appends a Separate concurring opinion.

<sup>151</sup> *Contra* [Defence's Written Submissions](#), paras 40, 42; Defence's Oral Submissions: [T-005](#), p. 65.

judicial economy, to confirm charges with the various alternatives set out.<sup>152</sup> In conducting the relevant assessment, the Chamber will bear in mind the Appeals Chamber's holding that, for the requirement of sufficient notice to be met, it suffices that the charges 'set out the exact sub-provision applicable in article 25 of the Statute and the specific form of participation within that sub-provision', and 'give notice to the accused of the material facts associated with his or her particular form of participation'.<sup>153</sup>

134. The Chamber will thus address each alleged mode of liability in turn: first, Mr El Hishri's responsibility under article 25(3)(a) of the Statute as a direct perpetrator of acts amounting to the commission of the crimes; second, his responsibility under the same statutory provision for the indirect perpetration of crimes against women, girls and young children held within the Women's Section; third, his responsibility under article 25(3)(a) for joint perpetration of crimes committed against all Mitiga Prison detainees; and finally, in relation to crimes committed against all Mitiga Prison detainees, his responsibility under article 25(3)(b) of the Statute for ordering and/or inducing, under article 25(3)(c) of the Statute for aiding, abetting or otherwise assisting, and under article 25(3)(d) of the Statute for contributing to these crimes committed by a group acting with a common purpose.

### 1. Direct perpetration under article 25(3)(a) of the Statute

135. Relying primarily on the statements of former detainees, the Prosecution alleges that Mr El Hishri directly perpetrated some of the crimes charged against Mitiga Prison detainees, as set out under counts 1-17.<sup>154</sup>

136. Concerning Mr El Hishri's relevant **acts and conduct**, the evidence adduced, in particular the accounts related to the 159 victims listed in Annex 14, demonstrates that Mr El Hishri personally killed, tortured, raped, sexually abused, imprisoned, enslaved, persecuted and otherwise mistreated the Mitiga Prison detainees. Former detainees gave first-hand accounts of

<sup>152</sup> Pre-Trial Chamber II, *The Prosecutor v. Dominic Ongwen*, [Decision on the confirmation of charges against Dominic Ongwen](#), 23 March 2016, ICC-02/04-01/15-422-Red (the 'Ongwen Confirmation Decision'), para. 35. See also [Kony Confirmation Decision](#), paras 50-51; Pre-Trial Chamber I, *The Prosecutor v. Laurent Gbagbo*, [Decision on the confirmation of charges against Laurent Gbagbo](#), 12 June 2014, ICC-02/11-01/11-656-Red, para. 227; [Abd-Al-Rahman Confirmation Decision](#), para. 17; [Said Confirmation Decision](#), para. 14. Concerning the Defence's submission on 'judicial economy' and the issue of 'notice' (see [T-005](#), pp. 65-66), the Chamber refers to its assessment and conclusions above regarding the scope of the charges.

<sup>153</sup> [Duterte Confirmation Decision](#), para. 40, referring to Appeals Chamber, *The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona*, [Judgment on the appeal of Mr Alfred Yekatom against the decision of Trial Chamber V of 29 October 2020 entitled 'Decision on motions on the Scope of the Charges and the Scope of Evidence at Trial'](#), 5 February 2021, ICC-01/14-01/18-874, paras 1, 43.

<sup>154</sup> [DCC](#), paras 61, 63-65; [PCB](#), paras 188-189, 191-195; Prosecution's Oral Submissions: [T-005](#), pp. 22, 29-31.

Mr El Hishri personally beating and mistreating detainees, clearly subjecting his victims, male and female, to severe physical and mental pain and suffering and thereby depriving them of their fundamental rights. Witnesses also recounted how Mr El Hishri verbally abused detainees and used degrading language, calling them ‘whores’, ‘mules’ or ‘dogs’, while subjecting them to other forms of abuse. Many witnesses stated that they either saw, or heard from co-detainees about, Mr El Hishri taking aim and firing directly at detainees with a pistol. As discussed above in relation to counts 11-12, this caused, or constitutes substantial steps toward, the death of Mitiga Prison detainees.

137. The record also shows that Mr El Hishri personally raped detainees and personally subjected both female and male detainees to other forms of sexual abuse. A 17-year-old detainee was also seen returning to her cell and heard explaining that, after she resisted and refused Mr El Hishri’s attempt to rape her, he became enraged and savagely beat her.<sup>155</sup> As found above in the Chamber’s assessment under count 13, Mr El Hishri exerted control over the detainees, including by perpetrating the aforesaid acts and, as described by P-0719 and P-0990, by relying on the forced labour of Black Migrants at his properties. Having considered the relevant evidence, the Chamber is satisfied that the Prosecution has demonstrated to the required standard that Mr El Hishri personally carried out the material elements of the crimes as set out under counts 1-17.

138. Turning to Mr El Hishri’s **knowledge and intent**, the Chamber first considers the nature of the charged conduct. That conduct primarily consists of repeated and particularly violent acts aimed directly at detainees, including heavy beatings often targeting their head, feet and genitals, shoots fired from a pistol at close range, and acts of sexual violence. Mr El Hishri used tools (such as a shovel) and torture methods (such as suspension) which could only have been intended to inflict as much pain as possible. P-1736’s evidence establishes that Mr El Hishri personally brought one of the female detainees he raped to a clinic where she was forced to have an abortion and her uterus was removed.

139. Second, turning to Mr El Hishri’s own utterances, the Chamber notes that he clearly and specifically articulated the intended consequences of his actions and those of others, which the

---

<sup>155</sup> The Chamber has relied on this evidence in support of counts 9 and 10 (sexual violence), as well as counts 7 and 8 (rape), since it establishes that substantial steps that commenced the crime of rape were executed, but that the crime did not occur because of circumstances independent of Mr El Hishri’s intention. *See* article 25(3)(f) of the Statute.

evidence shows he was determined to bring about. After Mr El Hishri was seen shooting a detainee in the leg, he was heard by P-0571 saying ‘dump him away in [S]ection 10 and let it become infected’, and ordering guards not to provide medical treatment to a wounded detainee. More generally, there is consistent evidence that Mr El Hishri opposed efforts to alleviate detention conditions and threatened to kill detainees.

140. Lastly, the Chamber notes that by virtue of his role and position, Mr El Hishri was confronted daily, and over a prolonged period of time, with the severe and visible harm caused by the systematic mistreatment, on a large scale, of detainees. On the basis of the above, the Chamber is satisfied that Mr El Hishri meant to engage in the conduct underlying the crimes, that he meant to cause the consequences or, at the very least, was aware that these consequences would occur in the ordinary course of events, and that he was aware that the relevant circumstances existed.

141. With respect to the **requisite discriminatory intent**, *i.e.* the question why Mr El Hishri targeted certain individuals and/or groups, the Chamber has regard to the particularly cruel nature of his relevant acts and conduct, the manner in which he exercised control over the Women’s Section – as discussed below in the assessment of his liability for indirect perpetration –, and to his own statements. In particular, the Chamber notes an instance in which Mr El Hishri was seen by P-1736 pulling down a male detainee’s underwear, holding his penis with pliers, and proceeding to drag him around while saying ‘[w]e brought the whore’. He also mocked a woman who played football by calling her ‘manly’. P-1722 recalls seeing Mr El Hishri punishing a female detainee by twisting her arm, rubbing his erect penis against her buttocks, and telling her that she ‘never learns’. After being told she was accused of illegal migration, Mr El Hishri placed P-1736 in an overcrowded cell, telling her ‘I will do you a favour and put you with your African migrant friends’. The witness explained that this was meant as a punishment, since female Black Migrants were specifically mistreated in the Women’s Section, where they were detained together, given less food, and effectively regarded as slaves. After refusing to provide assistance to another female Black Migrant who fell ill, Mr El Hishri was heard saying ‘let her die. When the devil dies, it’s better for the angels’. The women subsequently died, and her body was placed in a bin and taken out.

142. The Chamber further agrees with the Prosecution that the evidence shows that the rules imposed upon detainees and enforced with strict punishments, including by Mr El Hishri himself,

illustrate the Mitiga Prison Leadership and Mr El Hishri's intent to discriminate on religious grounds. As discussed at paragraph 124 above in relation to count 15, these rules covered many aspects of the Mitiga Prison detainees' life, including their dressing and appearances, as well as other aspects of their behaviour and social relations. In particular, guards were seen escorting female detainees using ropes, essentially dragging them around 'like cattle'. This practice, which mirrors Mr El Hishri's own action, was described by P-1046 as 'shameful'; something which the witness perceived was put in place as a result of Mr El Hishri's 'religious extremis[m]', *i.e.* because males are not supposed to touch women.

143. On the basis of the above, the Chamber is thus satisfied that the Prosecution has demonstrated to the required standard that the only reasonable conclusion which can be drawn from the evidence presented is that Mr El Hishri meant to punish and humiliate detainees and that he had the specific intent to discriminate against detainees on (a combination of) political, religious, national, ethnic, racial and/or gender grounds.

144. Accordingly, on the basis of the evidence submitted by the Prosecution and as demonstrated at paragraphs 188 to 189 and 191 to 195 of the PCB, the Chamber finds substantial grounds to believe that Mr El Hishri is criminally responsible as a direct perpetrator under article 25(3)(a) of the Statute for the crimes set out under counts 1-17, committed during the Charged Period, against Mitiga Prison detainees.

## **2. Co-perpetration under article 25(3)(a) of the Statute**

145. Relying primarily on the statements of former detainees, the Prosecution charges Mr El Hishri with indirect and/or direct co-perpetration under article 25(3)(a) of the Statute.<sup>156</sup> The Prosecution alleges that Mr El Hishri and his co-perpetrators 'shared a common plan or agreement to exercise control—through means such as punishment, coercion, and other forms of exploitation—of persons in the Mitiga Perpetrators' custody or control, principally at Mitiga Prison, in pursuit of SDF/RADA's interests or views and/or those of its members' (the 'Common Plan').<sup>157</sup> The Prosecution also alleges that the Common Plan resulted in the commission of the crimes set out under counts 1-17 and that Mr El Hishri made an essential contribution to those crimes by exercising general authority and influence throughout Mitiga

---

<sup>156</sup> [DCC](#), paras 70-75; [PCB](#), paras 206-236; Prosecution's Oral Submissions: [T-005](#), pp. 31-38.

<sup>157</sup> [DCC](#), para. 72.

Prison, by directly controlling the Women's Section, and by directly committing acts that amounted to the charged crimes.<sup>158</sup>

146. The evidence demonstrates the existence, during the Charged Period, of a **common plan** between Mr El Hishri and other members of the Mitiga Prison Leadership, including at least Kara, N'zam and Njeem,<sup>159</sup> to exercise control over all Mitiga Prison detainees through the commission of the crimes set out under counts 1-17. The evidence provided by the witnesses overwhelmingly shows that the Mitiga Prison Leadership committed each of the charged crimes, jointly with others and/or through others, – namely prison guards and some detainees – against detainees, and that they did so in pursuance of the Common Plan or at least with mutual awareness that, in the ordinary course of events, their conduct would result in the commission of those crimes. In addition, and as discussed above in relation to counts 5 and 14 to 17, the evidence shows that the Mitiga Prison Leadership, including Mr El Hishri, committed some of these crimes on discriminatory political, religious, national, ethnic, racial, and gender grounds, or a combination thereof.

147. First, as stated by P-0872, '[the SDF/RADA]'s main aim is to make money and to have power' and the evidence shows that Mr El Hishri and his co-perpetrators used Mitiga Prison as a tool to serve both the SDF/RADA's interests and their own through the commission of the charged crimes. For instance, and as discussed above in relation to count 1 and 14, they unlawfully detained political opponents and other individuals whom they perceived as opposing their views. As found above in relation to count 13, they subjected some detainees to forced labour within Mitiga Prison and/or the Mitiga Compound as well as on their private properties and compelled certain detainees to participate in the torture of fellow detainees. The evidence also demonstrates that the Mitiga Prison Leadership appropriated the assets and belongings of certain detainees for their own benefit or that of the SDF/RADA. For instance, P-0692 relates that Mr El Hishri kept a detainee's expensive new car and the detainee's animals for himself. The evidence provided by P-1026, P-1031, P-0719 and P-0872 – and corroborated

---

<sup>158</sup> [DCC](#), para. 74; Prosecution's Oral Submissions: [T-005](#), pp. 21-31, 38-40.

<sup>159</sup> The Chamber underscores that these proceedings concern Mr El Hishri's individual criminal responsibility for the crimes charged. The evidence relating to other alleged co-perpetrators has been analysed solely for the purpose of assessing the Prosecution's allegation that Mr El Hishri committed the crimes set out under counts 1-17 jointly and/or through others. Similarly, the references to co-perpetrators in this decision are limited to the extent strictly necessary to determine Mr El Hishri's individual criminal responsibility. The Chamber's assessment of other individuals' roles in relation to the charged conduct is not to be interpreted as a determination of their criminal responsibility.



by many other witnesses – further demonstrates that the Mitiga Perpetrators seized valuables, money and vehicles during arrests and did not return them to detainees upon their release.

148. Although, as submitted by the Defence,<sup>160</sup> Mitiga Prison may have fulfilled certain legitimate custodial functions, insofar as some detainees may have been held on behalf of the Libyan authorities and within the framework of the Libyan criminal justice system, this is not incompatible with the existence of the Common Plan. In this regard, there is overwhelming evidence that the Mitiga Prison Leadership set up and used Mitiga Prison as a system to abuse and mistreat detainees. Furthermore, the Chamber notes that even those detainees who may have been arrested and detained on legitimate grounds were nonetheless victimised, as they were held in inadequate and inhumane conditions and were regularly subjected to mistreatment and abuse. Accordingly, the Chamber finds that the criminal character of the Common Plan has been established, regardless of the above.

149. Second, the Mitiga Perpetrators, including members of the Mitiga Prison Leadership, committed the charged crimes in a systematic and institutionalised manner. The arrests, detention and subsequent mistreatment of detainees followed a *modus operandi*, as described above in the Chamber’s assessment of the contextual elements of crimes against humanity. The Mitiga Perpetrators also singled out detainees and treated them differently on political, religious, national, ethnic, racial, and gender grounds, or a combination thereof. Ultimately, and as found above in relation to count 13, the Mitiga Prison Leadership created a system of complete control and subjugation which enabled its members to exercise powers attaching to the right of ownership over detainees.

150. Third, the evidence shows that members of the Mitiga Prison Leadership including, as found immediately above, Mr El Hishri directly perpetrated the charged crimes. P-0872 relates having witnessed the death of three prisoners in the ‘Islamic Neighbourhood’ after they were beaten by Mr El Hishri, Njeem and N’zam. P-0943 describes how Njeem suspended an entirely naked female detainee from the ceiling and did ‘whatever he pleased with her’. As pointed out above in relation to counts 7-10, many witnesses relate that members of the Mitiga Prison Leadership sexually abused and raped detainees during torture sessions. As found above in relation to count 13, the Mitiga Prison Leadership also relied on detainees to provide forced labour; as related by P-1026, the Mitiga Prison Leadership forced some detainees to work

---

<sup>160</sup> Defence’s Oral Submissions: [T-006](#), pp. 11, 17-18.

within Mitiga Prison or the Mitiga Compound (painting warehouses or doing construction work, for example) and even at members' private properties. The Mitiga Prison Leadership also used prison guards and some coerced detainees to carry out the charged crimes. This was the case in the Women's Section, as set out below in the section on indirect perpetration, and throughout Mitiga Prison. For example, P-1720 states that Mr El Hishri ordered a prison guard to handcuff his arms and suspend him. Other relevant details and examples, in particular in relation to the Women's Section, are provided below in the section on indirect perpetration.

151. Lastly, there is evidence that the Mitiga Prison Leadership sought to conceal the commission of crimes at Mitiga Prison. For instance, as described by several witnesses including P-0650, P-0054, P-0719, and P-1736, the Mitiga Perpetrators often used masks when torturing or detaining detainees, or blindfolded them; they used threats or extortion to ensure their silence upon release; visits to detainees were limited and actively monitored; the Mitiga Perpetrators refused to provide detainees with proof of their detention, and inspectors' access to Mitiga Prison was limited and tightly controlled. This shows that members of the Mitiga Prison Leadership were aware of their criminal conduct, and further establishes the Mitiga Prison Leadership's aim of committing crimes with impunity.

152. In light of the above, the Chamber is satisfied that the Prosecution has demonstrated that the Common Plan was criminal in nature and that it encompassed the commission of all the crimes set out under counts 1-17. Indeed, the only reasonable conclusion which can be drawn is that Mr El Hishri and members of the Mitiga Prison Leadership acted in a deliberate and coordinated manner and were aware that the implementation of their plan would, in the ordinary course of events, result in the commission of each of the crimes charged. The same evidence establishes that members of the Mitiga Prison Leadership and/or the Mitiga Perpetrators committed the crimes as a group acting with a common purpose.

153. Regarding Mr El Hishri's **essential contribution** to the Common Plan, the evidence adduced establishes that Mr El Hishri exercised general authority and influence throughout Mitiga Prison and that his authority and influence were not limited to the Women's Section. The evidence demonstrates that Mr El Hishri had significant **influence**: witnesses consistently identified him as one of the most powerful officials after the leader of the SDF/RADA, Kara. Many witnesses, including P-1673 and P-0486, also recall hearing the guards calling Mr El Hishri 'Sheikh', out of deference and respect. Several witnesses described Mr El Hishri as

occupying a position as at least equal in rank to that of Njeem, the Mitiga Prison director, if not higher. Indeed, witnesses recounts having witnessed Njeem treating Mr El Hishri with deference and that Mr El Hishri *de facto* influence was not limited to the Women's Section. His influential position prompted the Mitiga Prison Leadership's members to commit crimes. The evidence further demonstrates that, by virtue of his presence, Mr El Hishri encouraged the Mitiga Prison Leadership's members to commit criminal acts. For instance, P-0720 recalls having seen Njeem, who was supervising some detainees, begin to beat them upon Mr El Hishri's arrival, in an apparent effort to impress him. In another instance, while personally beating P-1750, Mr El Hishri called on Njeem and the other Mitiga Perpetrators to join in the beating. The evidence also shows that Mr El Hishri's family ties enhanced his influence. Notably, N'zam, a senior and top-level SDF/RADA member, is Mr El Hishri's uncle, and two of Mr El Hishri's brothers were also employed in Mitiga Prison.

154. Mr El Hishri's **general authority** is evidenced by the testimony of numerous witnesses who were detained for years and whose consistent accounts state that the Mitiga Perpetrators, including Njeem, feared and obeyed Mr El Hishri, and were unable to challenge his decisions. P-1673 describes Mr El Hishri as having 'absolute power, he was the one managing daily matters of detainees, transferring detainees, and overseeing torture'. P-1673 specifies that '[h]is name alone instilled fear among both prisoners and guards' and, P-0569, that 'people feared [Mr El Hishri] more than God himself'. Witnesses further describe Mr El Hishri as violent: P-1046 states that he 'ruled by fear' and P-1685 that he was 'well known to be quick tempered and could always grab his gun and kill or shoot anyone he wanted'. The evidence establishes that Mr El Hishri also took measures to punish guards who disobeyed his orders or those of the Mitiga Prison Leadership's members. For instance, P-1710 relates that Mr El Hishri punished a shift commander and his guards for giving a phone to a detainee, and P-1046 recounts that Mr El Hishri, in the presence of N'zam, shot guards who they believed were responsible for a prisoner's escape. The evidence further establishes that Mr El Hishri was responsible for imposing inadequate and inhumane detention conditions on all detainees, and that such conditions were not limited to the female detainees held in the Women's Section. For instance, P-0595, P-1046 and P-0990 explain that on several occasions Mr El Hishri deliberately broke the ventilation fans in the cells to punish detainees which resulted in poor air circulation. More generally, Mr El Hishri used his position of authority to give express instructions to the Mitiga

Perpetrators to commit the charged crimes. Examples include instances where, as found above at paragraph 101, he ordered prison guards or detainees to carry out invasive searches.

155. The evidence further shows that Mr El Hishri's authority was such that he could also reprimand other members of the SDF/RADA and that other Sheikhs were afraid of him. In fact, P-0720 relates that when a Sheikh from RADA took some detainees outside of their cell to take some sun, Mr El Hishri reprimanded him saying 'what are you doing, you are trying to help them [...] we want them to die so we can get rid of them'. P-1745 states that, while he was hanging, a Sheikh came to check on him but 'could not intervene because it was [Mr El Hishri] who had ordered it' and 'he would have stepped in to stop the torture if the decision had come from anyone else [but] if he tried to help, he risked being hung himself by [Mr El Hishri]'.

156. On the basis of the above, read together with the Chamber's findings on Mr El Hishri's control over the Women's Section and acts amounting to direct perpetration of the charged crimes, the Chamber is satisfied that Mr El Hishri made essential contributions to the commission of each of the crimes set out in counts 1-17, in the sense that, without his contributions, the crimes would have been committed in a significantly different way. Indeed, considering the organised and hierarchical structure relied upon by the Mitiga Prison Leadership in the Mitiga Prison, the evidence establishes that Mr El Hishri, together with other members of the Mitiga Prison Leadership, exercised joint control over the relevant crimes committed by the Mitiga Perpetrators.

157. With respect to Mr El Hishri's **knowledge of and intention**, the Chamber refers to its discussion above concerning Mr El Hishri personally committing crimes under counts 1-17 with the required knowledge and intent. These crimes set out cruel and abusive examples which, as discussed above, Mr El Hishri, together with other members of the Mitiga Prison Leadership, ensured others would follow. Accordingly, on that basis and considering the above, the Chamber is satisfied to the required standard that Mr El Hishri: (i) was aware of the factual circumstances that allowed him to exercise joint control – together with other members of the Mitiga Prison Leadership – over the actions of the Mitiga Perpetrators and, as a result, of the charged crimes; and (ii) had intent and knowledge under article 30 of the Statute, insofar as he meant to engage in the relevant conduct and intended, or was aware, that the crimes as set out under counts 1-17 would be committed in the ordinary course of events as a result of his actions, which he undertook with the purpose of facilitating the commission of such crimes. Further, and as

demonstrated above at paragraphs 141 to 143, the Chamber finds that Mr El Hishri had the required discriminatory intent.

158. Accordingly, on the basis of the evidence submitted by the Prosecution and as demonstrated at paragraphs 158 to 180 and 206 to 236 of the PCB, the Chamber finds substantial grounds to believe that Mr El Hishri is criminally responsible as a direct and/or indirect co-perpetrator under article 25(3)(a) of the Statute for the crimes set out under counts 1-17, committed during the Charged Period, against Mitiga Prison detainees.

### **3. Indirect perpetration under article 25(3)(a) of the Statute**

159. The Prosecution alleges that Mr El Hishri is responsible for the indirect perpetration of crimes against women, girls, and young children held within the Women's Section at Mitiga Prison, as set out under counts 1-17.<sup>161</sup> The Prosecution submits that Mr El Hishri, specifically through his direct control and authority over the Women's Section, controlled the crimes committed by the Mitiga Perpetrators, by subjugating their will to his own.

160. To support its case, the Prosecution relies primarily on the testimonial evidence of female detainees who describe various aspects of the functioning of the Women's Section, including Mr El Hishri's relevant role and authority. The testimony of a number of male detainees is also relied upon, since some of them had gained relevant knowledge, for example when they found themselves in the vicinity of detained women and/or children, or of the Women's Section more generally.

161. Concerning **Mr El Hishri's direct control and authority over the Women's Section**, the evidence establishes that Mr El Hishri exercised daily administrative control over the women, girls and young children held in the Women's Section. This control covered all aspects of their lives as detainees, including food, clothing, medical care and menstrual pads, yard time, calls or visits, and cell allocation. He personally escorted women and girls in and out of the Section and, as discussed above in relation to counts 7-10, oversaw and carried out invasive searches of female detainees. The evidence of P-0665, P-0943, P-1736 and P-1733 establishes that female detainees had no choice but to comply with Mr El Hishri's orders to conduct a strip search of other female detainees while he watched. In fact, the evidence establishes that detainees could not be admitted to the Women's Section while Mr El Hishri was away. The evidence further establishes that he strictly controlled access to the Women's Section, even

---

<sup>161</sup> [DCC](#), paras 66-69; [PCB](#), paras 181-187, 196-205; Prosecution's Oral Submissions: [T-005](#), pp. 27-29, 39-40.

when he was not physically present. By way of example, P-0720 saw a female detainee held with her children in a visitors' room because Mr El Hishri was absent. Guards were banned from entering the Section in his absence. P-1720 and P-1750 explain that Mr El Hishri was present to unlock the door of the Women's Section for the delivery of two or three meals a day. Even in the case of a medical emergency, as witnessed by P-0054, the Section could be accessed only if Mr El Hishri was present.

162. The evidence shows that Mr El Hishri closely monitored women, girls, and young children held in the Women's Section and that he punished them for defying his authority or for perceived misconduct. As described above in relation to the specific crimes, beatings and various forms of mistreatment, including threats and insults, were the norm throughout Mitiga Prison, including in the Women's Section. As found above in the section on direct perpetration, Mr El Hishri also personally beat and mistreated detainees from the Women's Section. P-0943 saw two women faint after being beaten by Mr El Hishri for singing in their cell. P-1722 described how, after receiving reports of breaches of the curfew he imposed, Mr El Hishri would order those named to step forward and stand aside and would proceed to whip the women on their backs and buttocks. P-1750 recounted that he used to beat the women at dinner time so that they would not make noise at night.

163. Concerning his exercise of **control over the crimes**, the evidence shows that Mr El Hishri used his position in the SDF/RADA hierarchy and/or the hierarchy of the Mitiga Prison Leadership to dominate the will of the Mitiga Perpetrators, in particular those with access to the Women's Section. As discussed above in relation to Mr El Hishri's general authority and influence, Mr El Hishri's orders and instructions were not to be questioned, and the Mitiga Perpetrators with access to the Women's Section executed them, even in his absence. Furthermore, as demonstrated above and discussed in the sections on direct perpetration and co-perpetration, Mr El Hishri had a violent reputation and 'ruled by fear': even other Sheikhs followed his orders and instructions.

164. On the basis of the above, the Chamber is satisfied that Mr El Hishri had control over the crimes committed by the Mitiga Perpetrators in the Women's Section as set out under counts 1-17.

165. Turning to Mr El Hishri's **knowledge and intent**, the Chamber recalls its prior findings on his intent and knowledge in relation to direct perpetration and co-perpetration and, on that

basis and in light of the above, is satisfied that Mr El Hishri: (i) meant to engage in the charged conduct; (ii) could not have been unaware of the factual circumstances enabling him to control the will of the relevant Mitiga Perpetrators; (iii) had intent and knowledge under article 30 of the Statute, insofar as he meant for the Mitiga Perpetrators with access to the Women's Section to commit the crimes set out under counts 1-17, or was aware that such crimes would be committed in the ordinary course of events as a result of his actions; and (iv) had the required discriminatory intent.

166. Accordingly, on the basis of the evidence submitted by the Prosecution and as demonstrated at paragraphs 181 to 187 and 196 to 205 of the PCB, the Chamber finds substantial grounds to believe that Mr El Hishri is criminally responsible under article 25(3)(a) of the Statute as an indirect perpetrator for crimes committed, during the Charged Period, against women, girls and young children held in the Women's Section of Mitiga Prison, as set out under counts 1-17.

#### **4. Other modes of liability under article 25(3)(b), (c) and (d) of the Statute**

167. Relying primarily on the statements of former detainees, the Prosecution also charges Mr El Hishri, additionally and/or in the alternative, with other modes of liability under article 25(3)(b), (c) and (d) of the Statute.<sup>162</sup> With respect to article 25(3)(b) of the Statute, the Prosecution alleges that, during the Charged Period, Mr El Hishri 'instructed Mitiga Perpetrators to commit the crimes charged in counts 1-17' or, alternatively, 'prompted members of the Mitiga Prison Leadership and/or Mitiga Perpetrators to commit the charged crimes'.<sup>163</sup> With respect to article 25(3)(c) of the Statute, the Prosecution alleges that Mr El Hishri 'aided, abetted or otherwise assisted the Mitiga Prison Leadership and/or Mitiga Perpetrators to commit the crimes in counts 1-17' and 'facilitated and/or provided moral encouragement for the relevant crimes'.<sup>164</sup> Finally, with respect to article 25(3)(d) of the Statute, the Prosecution alleges that Mr El Hishri 'is responsible as an accessory to the crimes charged in counts 1-17 which were carried out by a group acting with a common purpose'.<sup>165</sup>

168. As found above, the evidence shows that Mr El Hishri took advantage of his position of authority and influence to give orders and/or instructions to the other Mitiga Perpetrators,

---

<sup>162</sup> [DCC](#), paras 76-83; [PCB](#), paras 237-255; Prosecution's Oral Submissions: [T-005](#), pp. 21-23.

<sup>163</sup> [DCC](#), paras 76-77.

<sup>164</sup> [DCC](#), para. 79.

<sup>165</sup> [DCC](#), para. 81.

including some members of the Mitiga Prison Leadership, and prompted them to commit some of the charged crimes, including specific acts of sexual violence and torture. Mr El Hishri was present when crimes were committed and that his own presence encouraged the Mitiga Perpetrators to commit such crimes. Mr El Hishri also facilitated the commission of the crimes in counts 1-17 by, *inter alia*, bringing or handing detainees over to the Mitiga Perpetrators who then subjected them to various forms of mistreatment and torture. Furthermore, considering the Chamber's analysis above at paragraphs 146-151, the Chamber is satisfied that the Mitiga Prison Leadership and/or the Mitiga Perpetrators constituted a group acting with a common purpose which encompassed the commission of the charged crimes. The Chamber is furthermore of the view that the evidence supporting its prior findings as to Mr El Hishri's intent and knowledge with respect to the charged conduct under article 25(3)(a) of the Statute substantiates that he had the intent and knowledge required under article 25(3)(b), (c) and (d) of the Statute.

169. Accordingly, on the basis of the evidence submitted by the Prosecution and as demonstrated at paragraphs 237 to 255 of the PCB, the Chamber finds substantial grounds to believe that Mr El Hishri is, additionally and/or in the alternative, criminally responsible under article 25(3)(b), (c) and/or (d) of the Statute, respectively, for ordering and/or inducing the charged crimes; for aiding, abetting and otherwise assisting the commission of the charged crimes; and/or for contributing to the charged crimes as set out under counts 1-17.

#### **IV. THE CONFIRMED CHARGES**

170. The Chamber finds it appropriate to include here a copy of the charges as confirmed. The charges are based upon the Prosecution's DCC, from which the Chamber has made minimal adjustments in line with its stated approach regarding the number of victims as discussed at paragraphs 40-41 above, as well as for greater accuracy and clarity of the charges.



1. **Khaled Mohamed Ali EL HISHRI** (“**EL HISHRI**”) is charged with the crimes against humanity and war crimes set out below, committed between 1 May 2014 and 30 June 2020 (“the charged period”):

## II. THE SUSPECT: KHALED MOHAMED ALI EL HISHRI

2. **EL HISHRI**, also known as “Khaled AL BOOTI” or “Sheikh Khaled”, was born on 23 June 1978 in Tripoli, Libya. He is a Libyan national. At all material times, **EL HISHRI** was a senior member of or was otherwise closely associated with a group which became commonly known as the “Special Deterrence Force” or “RADA” (“SDF/RADA”).

3. The SDF/RADA was led by Abdalraouf KARA. While some senior SDF/RADA members or close associates may also have obtained official ranks in Libyan state institutions (such as the Ministry of Justice or the Ministry of Interior)—and the SDF/RADA as a whole was later granted an official mandate as the “Deterrence Apparatus for Combating Organised Crime and Terrorism” (“DACOT”)—these events did not preclude continued membership of and/or association with SDF/RADA, or SDF/RADA’s independent functioning under KARA’s authority, including for the pursuit of its own interests and objectives as well as those of its senior members and close associates. Rather, the integration of some senior members and close associates of SDF/RADA within Libyan state institutions reflected and consolidated its own power and influence in Tripoli.

4. At all material times, KARA and SDF/RADA controlled a strategically important area of Tripoli known as the “Mitiga Compound”, which (in addition to various other strategic assets including an airport) included a prison known as “Mitiga Prison”. This prison included a main building plus associated facilities such as the “*Naqliah*”, a Mosque, and a “Training and Rehabilitation Centre”, and other relevant areas or buildings as established by the evidence. Notwithstanding the formal adoption of Mitiga Prison by the Libyan Ministry of Justice in 2017, KARA and SDF/RADA maintained control of Mitiga Prison and all persons detained there. A senior SDF/RADA member or close associate known as Osama NJEEM was known as the director of Mitiga Prison, and was formally in charge of its day-to-day operations. NJEEM remained subordinate at least to KARA and/or cooperated in the control of Mitiga Prison by KARA and SDF/RADA.

5. During the charged period, and notwithstanding NJEEM’s role, **EL HISHRI** exercised general authority and influence throughout Mitiga Prison as well as direct control of the

“Women’s Section” of Mitiga Prison and the persons detained therein. **EL HISHRI** was in a position to commit violent crimes with impunity against detainees, and to instruct guards and detainees to do the same. **EL HISHRI** was at least a peer of NJEEM within the SDF/RADA hierarchy. **EL HISHRI** was subordinate to KARA.

### III. THE CHARGES

6. For the purpose of these charges—and as convenient factual labels in the interest of clarity and concision, rather than as legal characterisations—this DCC uses the following terms:

- a. The term “Mitiga Prison Leadership” is used to describe persons holding leadership roles in Mitiga Prison. In this sense, “leadership role” does not necessarily imply *de jure* office, but rather reflects the functional reality of Mitiga Prison during the charged period. While the Mitiga Prison Leadership included persons with affiliations to SDF/RADA and/or Libyan state institutions, such affiliations or titles were not necessarily dispositive.
- b. The term “Mitiga Perpetrators” is used to describe: (i) persons who carried out the charged crimes at Mitiga Prison; and (ii) persons who carried out the charged crimes at other locations in and around Tripoli, acting under the direction or control, or with the agreement of, the Mitiga Prison Leadership. Consequently, where appropriate in light of the evidence, the term “Mitiga Perpetrators” may include persons who were also members of the Mitiga Prison Leadership, if they carried out any of the charged crimes. The term includes guards at Mitiga Prison, and other persons participating in the running of Mitiga Prison or interacting with the detainees in Mitiga Prison. It also includes detainees who were compelled or instructed to carry out crimes, either by members of the Mitiga Prison Leadership or (other) Mitiga Perpetrators with the ability to coerce detainees. While the Mitiga Perpetrators included persons with affiliations to SDF/RADA and/or Libyan state institutions, they were not limited to such persons.
- c. Consistent with the functional nature of SDF/RADA as an organisation, as established in the evidence, references to the conduct of SDF/RADA “members” also include the conduct of persons closely associated or affiliated with SDF/RADA.

7. Consequently, references in this DCC to the “Mitiga Prison Leadership” and “Mitiga Perpetrators” may both potentially include **EL HISHRI**, depending on the context of the

allegation and/or evidence in question.

## **A. CONTEXTUAL ELEMENTS**

### ***1) Contextual elements of crimes against humanity (article 7)***

8. During the charged period (but not limited to it), SDF/RADA carried out a widespread and systematic attack directed against the civilian population in and around Tripoli, including persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison (which was controlled by SDF/RADA). Even if some of these persons were fighters rendered *hors de combat* by their detention, the proportion of any such persons was sufficiently limited that it did not deprive the population of its overall civilian character.

9. The attack was constituted by a course of conduct involving the multiple commission of acts amounting to crimes under article 7, including the acts forming the basis of the charges. These acts encompassed: (i) the institutionalised and sustained mistreatment and violent abuse of all persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison, as charged in counts 1, 4, 6 and 13, and; (ii) rape and other forms of sexual violence, murder, and persecution of certain persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison, as charged in counts 7, 9, 11 and 14-17.

10. The attack was widespread in that it involved the commission of article 7 crimes on a large scale. While beyond the scope of the present charges, the wider attack not only began before May 2014 but also continued after June 2020, until at least 2025. During the charged period, a very large number of persons were detained at Mitiga Prison, and subjected to various forms of mistreatment and abuse. Such acts occurred constantly over a period of more than six years. The prohibited acts thus affected a very large number of persons, and took place over a prolonged period of time. Additionally, outside Mitiga Prison, persons in the custody and/or control of the Mitiga Perpetrators were subjected to various forms of mistreatment and violent abuse at other locations in and around Tripoli, including in Mitiga Compound, and at other locations in the course of their arrest or when taken from Mitiga Prison for purposes including acts of forced labour and participation in armed hostilities.

11. The attack on the civilian population was also systematic. Mitiga Prison functioned as an organised system under the control of SDF/RADA through the Mitiga Prison Leadership. Within this context, the sustained mistreatment and violent abuse of detainees was institutionalised, such that a number of the charged article 7 crimes affected each and every

detainee. While other charged article 7 crimes affected some detainees, they likewise occurred only with the knowledge, assent and tolerance of the Mitiga Prison Leadership.

12. The article 7 acts constituting the attack were carried out by the Mitiga Perpetrators, which included SDF/RADA members, close associates, and other persons acting under the direction, control or tolerance of SDF/RADA members within the Mitiga Prison Leadership. The attack was carried out pursuant to and in furtherance of an organisational policy to commit such an attack.

13. SDF/RADA was vested with sufficiently efficient structures or mechanisms to carry out an attack for the purpose of article 7. At all material times, SDF/RADA had a clear leadership under KARA, and commanded significant resources. While independent, it played a critical role in the security architecture of Tripoli, maintaining its affiliation with Libyan state institutions and other authorities based there. In particular, through the Mitiga Prison Leadership, SDF/RADA maintained control over Mitiga Prison such that the Mitiga Perpetrators could constantly commit article 7 acts against detainees therein with impunity. More broadly, the Mitiga Compound constituted SDF/RADA's principal seat of power in Libya, with the strategic assets in the compound enabling its military and economic influence in Tripoli.

14. The article 7 acts constituting the attack were not random but rather clearly related to one another, demonstrating the existence of the organisational policy. In particular, these acts were all committed against Mitiga Prison detainees or persons otherwise in the Mitiga Perpetrators' control and/or custody, principally at Mitiga Prison, and took place in a largely similar way.

15. The conduct forming the basis of the charges was committed as part of the widespread and systematic attack against a civilian population. This conduct was related to and sufficiently connected with the attack, given the context and circumstances in which the charged crimes were committed. In particular, all victimised persons were Mitiga Prison detainees or persons otherwise in the Mitiga Perpetrators' control and/or custody, principally at Mitiga Prison.

16. The Mitiga Perpetrators, including **EL HISHRI**, knew that their conduct was part of a widespread or systematic attack against a civilian population, or intended that this would be so.

## ***2) Contextual elements of war crimes (article 8)***

17. The conduct forming the basis of the charges was likewise committed in the context of, and was associated with, a non-international armed conflict (“NIAC”) ongoing in Libya during at least the charged period.

18. In February 2011, an uprising against the regime of Muammar Mohammed Abu Minyar GADDAFI (“GADDAFI”) led to attacks perpetrated against the civilian population by the Libyan government. The situation attracted the attention of the United Nations Security Council (‘UNSC’), which remained seized of the situation in Libya and implemented stabilising measures.

19. Certainly, throughout the charged period, there was protracted armed violence between different non-State organised armed groups, and/or between one or more such groups and State armed forces of Libya. Notably, this violence coalesced primarily around hostilities between the bloc known as the Libyan National Army (“LNA”), under the command of former Libyan army General Khalifa HAFTAR based in the east, and the bloc known as the General National Congress (“GNC”, and later the Government of National Accord, or “GNA”) based in the west.

20. Hostilities between the LNA and GNC/GNA (and, in some instances, groups associated with them) were sufficiently intense. Clashes such as Operation Dignity, Operation Libya Dawn, Operation Flood of Dignity, and Operation Peace Storm illustrated the parties’ abilities to engage in heavy combat for sustained periods, and to undertake military manoeuvres across large areas of Libyan territory, affecting large numbers of people. At all material times, the LNA and GNC/GNA generally maintained control over distinct areas of Libyan territory, to the exclusion of the other. There was no peaceful settlement at any time in the charged period, or any lasting absence of armed confrontations between the parties without real risk of resumption.

21. At all material times, the parties to the NIAC were organised. They each maintained the capacity to conduct complex military operations and to control territory.

22. The conduct forming the basis for the charges took place in the context of, and was associated with, a NIAC. Throughout the charged period, SDF/RADA was affiliated to the GNC/GNA, which was one party to the conflict, and contributed to its military and security capabilities including by (but not limited to) maintaining Mitiga Prison as a detention facility, including for (but not limited to) persons detained in connection to the conflict. The victims of the charged crimes were civilians or fighters *hors de combat*, and in some cases were perceived

as opposing the military and security interests of the GNC/GNA. The Mitiga Perpetrators committed the alleged crimes in the context of their functions in Mitiga Prison, which SDF/RADA controlled.

23. Furthermore, irrespective of the reason why persons were detained at Mitiga Prison, the NIAC played a substantial part in the ability of the Mitiga Perpetrators to carry out the alleged crimes and the manner in which they did so. In particular, the conflict ensured the critical importance of SDF/RADA's control over strategic assets such as the Mitiga Compound, and its consequent role in ensuring the security of Tripoli. This assured its independence from Libyan State institutions, including in its control over Mitiga Prison, so that the crimes therein could be committed systematically and with impunity.

24. The Mitiga Perpetrators, including **EL HISHRI**, were aware of the factual circumstances that established the existence of the armed conflict.

## **B. ALLEGED CRIMES**

25. During the charged period, the Mitiga Perpetrators committed the following crimes against Mitiga Prison detainees or persons otherwise in their custody or control, principally at Mitiga Prison.

### ***1) Torture and cruel treatment, imprisonment or other severe deprivation of physical liberty, outrages upon personal dignity and other inhumane acts (counts 1-6)***

26. During the charged period, the Mitiga Perpetrators violently arrested, detained and systematically mistreated a very large number of persons, principally at Mitiga Prison. The victims included women and men, girls and boys, Libyans and non-Libyans. The victims were civilians taking no active part in the hostilities or fighters *hors de combat*, and as a consequence of their arrest and/or detention were in the custody or under the control of the Mitiga Perpetrators at all material times.

27. The Mitiga Perpetrators detained persons at Mitiga Prison arbitrarily. Most detainees were not held on any lawful basis, and all were deprived of fundamental rights contrary to international humanitarian and human rights law, including, but not limited to: the right to be informed promptly of the reasons for arrest and of any charges; the right not to be coerced or compelled to incriminate oneself; the right to be free from torture or cruel, inhuman or degrading treatment or punishment and the right to be free from slavery and the slave trade. Even if some detainees were convicted and serving sentences according to Libyan law, or were

otherwise detained on a *prima facie* lawful basis under Libyan law, their detentions were still arbitrary on the basis of the systematic violation of other relevant fundamental rights.

28. The Mitiga Perpetrators systematically tortured all detainees at Mitiga Prison. On arrival, detainees were brought to the Naqliah for interrogation, and often subsequently returned there for further interrogation. Interrogations were accompanied by extreme physical, sexual, reproductive and psychological violence. Torture was frequently sexualised, either by threat or conduct, as also addressed further below. Following their initial interrogation and torture at the Naqliah, detainees were transferred to the Main Prison building where the mistreatment continued. Detainees (both male and female) were first subjected to degrading and humiliating strip and/or invasive cavity searches after which they were placed in a cell. At all times while detained at Mitiga Prison, extreme physical, sexual, reproductive and psychological violence was the norm.

29. The Mitiga Perpetrators' systematic mistreatment of detainees manifested not only in specific acts of brutality, but also in the consistent imposition of an atmosphere of terror and oppression for all detainees. This resulted from the inhumane detention conditions as well as verbal abuse, death threats, and conspicuous acts of violence by the Mitiga Perpetrators against other detainees, as well as their encouragement or facilitation of detainees committing crimes against one another.

30. Detainees at Mitiga Prison were held in solitary or collective cells, yards, and corridors, under armed guard and constant surveillance. Detention conditions were inhumane: detainees were confined in overcrowded or extremely small cells, or in unsheltered open areas; basic hygiene was lacking, exposing detainees to widespread disease and causing serious harm to their physical and mental health. Detainees received insufficient and inadequate food and water, and little to no medical care.

31. The institutionalised and sustained scheme of mistreatment and violent abuse at Mitiga Prison inflicted both great and severe physical and mental pain and suffering on all detainees, and caused serious injuries to body or to mental and physical health. This applied both to the treatment of each detainee considered overall, as well as specific acts of criminal violence against them. None of this conduct was inherent in or incidental to lawful sanctions. Rather, in its character, the conduct was similar in nature and gravity to other crimes against humanity.

32. Likewise, this scheme of mistreatment and violent abuse humiliated, degraded or

otherwise violated the dignity of all detainees at Mitiga Prison. The severity of this humiliation, degradation or other violation was of such degree as to be generally recognised as an outrage upon personal dignity, also taking into account the cultural background of the victims.

33. The Mitiga Perpetrators, including **EL HISHRI**, were aware of the factual circumstances establishing the gravity of their conduct, such that it violated fundamental rules of international law, and the character of their acts. They knew that the persons detained at Mitiga Prison were civilians taking no active part in hostilities or fighters *hors de combat*. The Mitiga Perpetrators inflicted pain and suffering on the victims for the purposes of obtaining information or a confession, intimidation, coercion, and punishment, as well as for reasons based on discrimination.

***2) Rape, attempted rape, and other forms of sexual violence (counts 7-10)***

34. During the charged period, the Mitiga Perpetrators raped detainees in Mitiga Prison, and subjected detainees to other forms of sexual violence. In particular, forced nudity and sometimes invasive cavity searches—carried out in inappropriate and degrading conditions and beyond what may be necessary for legitimate security reasons, including by or in front of other detainees (sometimes including relatives, members of the opposite sex, and children)—were part of the systematic process for inducting each detainee. In the context of societal gender norms that applied to the detainees, these crimes were experienced as especially humiliating, and left a lasting impact on the victims. Torture was frequently sexualised and the threat of sexual violence, including rape, was also pervasive in Mitiga Prison.

35. The Mitiga Perpetrators not only carried out acts of rape and other forms of sexual violence themselves, but also deliberately exposed detainees to the risk of rape and sexual violence by other detainees known to commit sexual abuse.

36. In relation to the crime of rape, the Mitiga Perpetrators invaded the bodies of the victims by conduct resulting in penetration of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body. The Mitiga Perpetrators also attempted to rape at least one detainee at Mitiga Prison, where the penetration did not occur because of circumstances independent of the perpetrator's intentions.

37. In relation to the crime of sexual violence, the Mitiga Perpetrators committed acts of a sexual nature against the victims or caused them to engage in acts of a sexual nature. This



conduct was of a gravity similar to other crimes against humanity and other serious violations of common article 3 of the Geneva Conventions. The Mitiga Perpetrators, including **EL HISHRI**, were aware of the factual circumstances that established the gravity of the conduct.

38. The Mitiga Perpetrators carried out these acts of rape and sexual violence by force, or by threat of force or coercion. In any event, they took place within the context of the institutionalised and sustained scheme of mistreatment and violent abuse at Mitiga Prison, where the perpetrators took advantage of the coercive environment. Additionally, victims who were children were incapable of giving genuine consent. The Mitiga Perpetrators, including **EL HISHRI**, knew that the persons detained at Mitiga Prison were civilians taking no active part in hostilities or fighters *hors de combat*.

### **3) Murder and attempted murder (counts 11-12)**

39. During the charged period, the Mitiga Perpetrators murdered detainees at Mitiga Prison. Some victims were executed or otherwise killed immediately. Others died in the ordinary course of events resulting from acts of torture committed against them by the Mitiga Perpetrators, or due to deliberate neglect and/or the infliction of lethally inadequate conditions of detention by the Mitiga Perpetrators, having regard to the victims' wounds, injuries, or other vulnerabilities resulting from their torture and mistreatment.

40. The Mitiga Perpetrators also attempted to murder at least one detainee at Mitiga Prison, where the victim did not die because of circumstances independent of the perpetrator's intentions.

41. In all cases, the Mitiga Perpetrators, including **EL HISHRI**, meant to cause the victims' deaths or were aware that their deaths would occur in the ordinary course of events. They knew that the persons detained at Mitiga Prison were civilians taking no active part in hostilities or fighters *hors de combat*.

### **4) Enslavement (count 13)**

42. During the charged period, the Mitiga Perpetrators enslaved detainees by exercising powers attaching to the rights of ownership over them.

43. For the enslaved detainees—who included East, West, Central or Southern Africans ("Black Migrants"), and other non-Libyans of different nationalities and ethnicities, as well as some Libyans, and who varied in age and gender—the Mitiga Perpetrators, within the context

of systematic and institutionalised enslavement, controlled essentially every aspect of their lives, depriving them of physical, psychological, sexual and/or reproductive autonomy exceeding normal constraints within a prison system. Their enslavement was sexualised, resulting in control of all aspects of their sexual and reproductive autonomy. Their enslavement was also gendered and racialised in nature. Relevant indicia of the exercise of powers of ownership over these victims included, as follows:

- a. Control or restrictions over the personal liberty, movement and physical environment of detainees—shown in the Mitiga Perpetrators’ conduct against relevant detainees including their unlawful imprisonment, measures to prevent or deter escape, the harsh and unlawful conditions of confinement in Mitiga Prison;
- b. Control over sexuality, sexual and reproductive autonomy of detainees—shown in the Mitiga Perpetrators’ conduct against relevant detainees in their overall sexualised and gendered enslavement. This included subjecting them to forced nudity and invasive body searches, acts of rape, gendered and racial insults, threats and humiliation, sexualised torture and threats, sexual and reproductive violence (including attacks on genitals, attacks on pregnant women, etc.). This also included imposing punishment for perceived non-conformity with the Mitiga Perpetrators’ views of gender norms and related behaviour including as relating to a person’s actual or perceived sexual orientation/gender identity or expression (such as men or boys as “homosexual” or “effeminate”, women or girls as “masculine”), persons perceived as being immoral or having inappropriate sexual relations or relations with the opposite gender. This also included imposing gendered dress and appearance rules (with or without punishment for non-compliance), and other gender-based ill-treatment;
- c. Control over the physical and psychological autonomy of detainees—shown in the Mitiga Perpetrators’ conduct against relevant detainees including: frequently sexualised torture and cruel treatment; other severe mistreatment and violent abuse; depriving them of sufficient or adequate food and water, depriving them of access to necessary medical care, and exploiting their bodies by forcing them to have blood extracted for purposes of transfusion;
- d. Psychological control, pressure and coercion, and by exploiting the vulnerabilities of detainees—shown in the Mitiga Perpetrators’ conduct against relevant detainees such as: psychological control, pressure, and coercion, including violence or threat of

violence; violent retribution or threat of violent retribution for the detainees' vulnerabilities such as race, gender, and age; using derogatory and dehumanising language; applying intense psychological pressure by means of inflicting harm on family members, or threatening harm to family members; forcing detainees, including by threat of force or coercion, to adopt the perpetrators' ideology and practices, irrespective of the detainees' own ideological beliefs, preferences or heritage.

- e. Forced labour and subjecting detainees to servile status—shown in the Mitiga Perpetrators' conduct against relevant detainees including forcing or compelling them to engage in hard labour which was arduous, physically and/or mentally harmful, demeaning, or itself unlawful in nature. The division of the forced labour was gendered and racialised.

44. In particular, the Mitiga Perpetrators forced relevant detainees to carry out arduous, physically or mentally harmful, demeaning, or unlawful labour of several kinds, principally in Mitiga Prison, including:

- a. Carrying out, participating in, or facilitating the commission of crimes against other detainees, such as torture, conducting strip searches and invasive body searches;
- b. Supervising, guarding and reporting on other detainees, whether as a designated "*capo*" for a particular cell or area in Mitiga Prison, or *ad hoc*;
- c. Carrying out unsanitary or hazardous labour within Mitiga Prison, such as removing bodies, providing rudimentary sanitation, providing healthcare including without proper equipment;
- d. Undertaking construction and other arduous or dangerous work at facilities inside or outside Mitiga Prison but under the control or for the benefit of the Mitiga Prison Leadership (including **EL HISHRI**) or Mitiga Perpetrators or their associates;
- e. Undertaking menial and other tasks within Mitiga Prison exposing detainees more frequently to danger or trauma associated with violence by or against other detainees (such as tasks requiring entry to or passage through areas where criminal acts were occurring);
- f. Undertaking tasks inside or outside Mitiga Compound which involved detainees in, and exposed them to the dangers of, armed hostilities.

45. Even if some of the detainees may have received apparent 'rewards' for their subservience, their labour was, in any event, compelled by force, or by threat of force or

coercion, within the context of the endemic system of enslavement and sustained scheme of mistreatment and violent abuse at Mitiga Prison.

46. Within this system, various groups were enslaved through different indicia in different ways, targeted also on an intersectional basis of gender, age, race, nationality, ethnicity and migration status, with compounding effect. For example, women and children (girls and boys) in the Women's Section were isolated, and subjected to gendered forms of enslavement. Further, older boys and young men, within special Sections or within the main Prison, were enslaved due to their isolation, age and/or gender, including by imposed "re-education" or "rehabilitation" activities. Likewise, Black Migrants were enslaved because of their race, nationality, ethnicity and migration status. Their continued enslavement involved forcibly conducting degrading and hard labour, for the same reasons. Further, detainees viewed as not complying with Mitiga Perpetrators' ideological/religious views were enslaved because of their perceived religious/ideological status and/or non-compliance.

#### ***5) Persecution (counts 14-17)***

47. During the charged period, the Mitiga Perpetrators persecuted detainees, targeting them by reason of the identity of a group or collectivity, or targeting the group or collectivity as such. They were severely deprived of fundamental rights, contrary to international law. The conduct was committed in connection with article 5 crimes including as described at paragraphs 26 to 46 above, on political, religious, gender, national, racial and/or ethnic grounds.

48. The detainees persecuted by the Mitiga Perpetrators were not homogenous, and fell into several groups distinguished by their individual characteristics as well as the (sometimes intersecting) grounds on which they were persecuted. Nor did all of the Mitiga Prison Leadership or the Mitiga Perpetrators necessarily share the same discriminatory intent. Accordingly, the evidence discloses four distinct counts of persecution, with targeting on an intersectional basis, namely:

- Count 14: persons, especially Black Migrants and Libyans, persecuted on political grounds;
- Count 15: persons who were perceived as non-compliant with the perpetrators' ideological views and practices, persecuted on religious grounds;
- Count 16: persons, primarily Black Migrants, persecuted on nationality, race and/or ethnicity grounds;

- Count 17: women, girls, actual and perceived LGBTQI+ persons, and men and boys subjected to sexual and/or reproductive violence as a way to emasculate and subjugate them, persecuted on gender grounds.

49. For the purpose of count 14, on political grounds, detainees were severely deprived of fundamental rights including: right to life; right to liberty and security of person; right to be free from torture, cruel, inhuman or degrading treatment or punishment; right to be free from slavery and the slave trade; right to freedom of thought and conscience. Victims were targeted as perceived obstacles to, or for their perceived opposition to, the political agenda of the Perpetrators, including because the victims were perceived not to have acted according to the Perpetrators' views on the proper organisation of Libyan society. This manifested in different ways depending on particular circumstances and/or characteristics of the victims in question. In particular:

- a. Black Migrants were targeted because they were perceived as inferior to Libyans and because their perceived irregular situation in Libya was seen as inconsistent with the Perpetrators' political agenda and views on migration. In particular, they were targeted for enslavement, including by compelling them to undertake more onerous or potentially hazardous types of forced labour, to participate or be involved in armed hostilities, and/or subjected to other forms of physical and/or psychological abuse or mistreatment, including being forced to commit or participate in crimes against other detainees, including torture.
- b. Libyans—including women, men and children—were targeted for their perceived opposition to or non-compliance with the perpetrators' political views and/or agenda, or for their perceived affiliation with the Perpetrators' opponents or enemies, and thus included victims such as: persons believed to have attended protests; persons believed to have criticised the Mitiga Perpetrators and/or SDF/RADA; persons perceived to support enemies/opponents of the Mitiga Perpetrators, SDF/RADA, and/or the GNC/GNA such as persons from or otherwise linked to the east of Libya.

50. For the purpose of count 15, on religious grounds, detainees were severely deprived of fundamental rights including: right to freedom of thought, conscience, and religion; right to freedom of expression; right to be free from torture, cruel, inhuman or degrading treatment or punishment; right to be free from slavery and the slave trade. Victims were targeted due to their

perceived non-compliance with the Perpetrators' ideological views and/or practices, including because they were perceived to profess other faiths, and/or not to conform with certain practices including with regard to prayer, dress, and/or appearance. Perpetrators sought to force victims to convert to the perpetrators' own ideological views, and/or to adopt the Perpetrators' religious practices, and/or punished victims or threatened them with punishment for perceived non-compliance.

51. For the purpose of count 16, on grounds of nationality, race and/or ethnicity, Black Migrants were severely deprived of fundamental rights including: right to life; right to liberty and security of person; right to be free from torture, cruel, inhuman or degrading treatment or punishment; right to be free from slavery and the slave trade. Black Migrants were targeted for arrest, detention and mistreatment, by reason of a combination of their nationality (from countries in East, West, Central and Southern Africa) and their racialised ethnicity (as Black Africans not from Northern Africa). They were seen and treated as inferior to the Perpetrators and other detainee population. Their perceived status as irregular migrants in the country led them to be targeted according to the Perpetrators' purported objective to suppress "illegal immigration". They were compelled to undertake more onerous or potentially hazardous types of forced labour, and subjected to other forms of physical and/or psychological abuse or mistreatment, including being forced to commit or participate in crimes against other detainees, including torture.

52. For the purpose of count 17, on gender grounds, detainees were severely deprived of fundamental rights including: right to life, right to be free from torture, cruel, inhuman or degrading treatment or punishment; right to be free from slavery and the slave trade; right to liberty; right to physical integrity and security of person; right to private and family life. These included: (i) women and girls targeted for arrest, detention, mistreatment, including acts and threats of sexual and reproductive violence at the Women's Section of Mitiga Prison, and killed, because of their gender; (ii) actual or perceived LGBTQI+ persons targeted for arrest, detention and mistreatment, including acts of sexual and reproductive violence at Mitiga Prison, because they did not comply or were perceived not to comply with the Perpetrators' views and expectations on sex and/or gender, and; (iii) men and boys who were subjected to sexual and/or reproductive violence as a means to emasculate and/or feminise them. The perpetrators targeted these victims based on the perpetrators' expectations and/or views of gender roles, gender hierarchies, and behaviour associated with the actual or perceived sexual

orientation and/or gender identity and expression, within the context of society. In particular:

- a. Women and girls were targeted for arrest and detention because of perceived behaviour considered inappropriate for their gender, including with regard to their social and personal relations. Irrespective of the reasons for their initial arrest, women and girls were isolated in the Women's Section where, because of their gender, they were not only arbitrarily detained and mistreated but also subjected to acts and threats of sexual and reproductive violence, and/or killed. They were subjected to sexual violence as a means to punish and/or retaliate or because they were seen as inferior in the Perpetrators' gender hierarchy. They were enslaved and treated as disposable, their bodies targeted for sexual and reproductive violence, and gendered acts of forced labour.
- b. Actual and perceived LGBTQI+ persons were targeted for arrest and detention because they did not comply or were perceived not to comply with the Perpetrators' views and expectations on gender. Irrespective of the initial reason for their arrest, LGBTQI+ persons were targeted for sexualised torture and reproductive violence, including attacks on reproductive organs. These attacks were accompanied by discriminatory verbal abuse and threats.
- c. Men and boys were subjected to sexual and/or reproductive violence as a means to emasculate and/or feminise them. During acts of punishment and torture, the acts of sexual violence, accompanied often by violent and/or gendered verbal abuse, were specifically used to diminish and subjugate them.

### **C. INDIVIDUAL CRIMINAL RESPONSIBILITY**

53. **EL HISHRI** is responsible for the charged crimes under articles 25(3)(a), 25(3)(b), 25(3)(c) and 25(3)(d) of the Statute. Central allegations concerning **EL HISHRI**'s personal conduct are relevant to all the charged modes of responsibility, and these are first set out below. They are followed by pleadings specific to each charged mode.

#### ***1) Central allegations concerning EL HISHRI's personal conduct***

54. **EL HISHRI** contributed to the commission of the charged crimes during the charged period, including as part of the Mitiga Prison Leadership. In particular:

- a. **EL HISHRI** exercised general authority and influence throughout Mitiga Prison, where charged crimes were committed against detainees;

- b. **EL HISHRI** exercised direct control of the Women's Section of Mitiga Prison, where charged crimes were committed against detainees; and
- c. **EL HISHRI** directly perpetrated acts, principally in Mitiga Prison, which amounted to the commission of charged crimes against Mitiga Prison detainees or persons otherwise in the custody or control of the Mitiga Perpetrators.

*i. EL HISHRI exercised general authority and influence throughout Mitiga Prison*

55. At all material times, and notwithstanding NJEEM's role as director of Mitiga Prison, **EL HISHRI** exercised general authority and influence throughout Mitiga Prison. As a senior member of SDF/RADA, **EL HISHRI** was directly subordinate to KARA. **EL HISHRI** was at least NJEEM's peer within the SDF/RADA hierarchy. In any event, **EL HISHRI** was part of the Mitiga Prison Leadership, together with persons such as KARA, N'ZAM, and NJEEM.

56. In particular, **EL HISHRI**'s authority and influence manifested in: his hierarchical superiority over relevant Mitiga Perpetrators; his working relationship with KARA and other members of the Mitiga Prison Leadership, and; his absolute power over Mitiga Prison detainees or persons otherwise in the custody or control of the Mitiga Perpetrators. Thus:

- a. **EL HISHRI**'s senior position in the SDF/RADA hierarchy and/or Mitiga Prison Leadership enabled him to issue orders to relevant Mitiga Perpetrators, which were obeyed. **EL HISHRI**'s personal violent reputation meant that he was feared and respected. **EL HISHRI** could take personal measures to punish Mitiga Perpetrators (other than those in the Mitiga Prison Leadership) who acted against his wishes.
- b. **EL HISHRI**'s senior position in the SDF/RADA hierarchy and/or Mitiga Prison Leadership enabled him to coordinate with other senior SDF/RADA and/or Mitiga Prison Leadership members, including KARA, N'ZAM, and NJEEM regarding the detention and mistreatment of Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators.
- c. **EL HISHRI**'s senior position in the SDF/RADA hierarchy and/or Mitiga Prison Leadership, and his personal reputation and propensity for violence, ensured that his power was absolute over Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators. He consistently monitored for and punished non-compliance with prison rules. He vetted detainees and exercised his power to detain or release them or to transfer them to different cells.



57. **EL HISHRI** used his general authority and influence in Mitiga Prison to:

- a. order Mitiga Perpetrators to commit crimes against Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators;
- b. prompt or encourage members of the Mitiga Prison Leadership and Mitiga Perpetrators to commit crimes against Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators;
- c. personally commit crimes against Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators;
- d. impose and/or enforce inhumane conditions of detention in Mitiga Prison and systematically oppose any attempt at improvement;
- e. contribute to the creation of a coercive atmosphere in Mitiga Prison conducive to the commission of the charged crimes, in which torture and mistreatment of Mitiga Prison detainees was institutionalised and sustained;
- f. create or maintain or contribute to the creation and/or maintenance of a culture of impunity among the Mitiga Perpetrators for crimes against Mitiga Prison detainees or persons otherwise in their custody or control; and
- g. contribute to the continued independent functioning of SDF/RADA, and its control over Mitiga Prison and the detainees therein, enabling the continued commission of crimes against Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators.

*ii. EL HISHRI exercised direct control over the Women's Section of Mitiga Prison*

58. At all material times, **EL HISHRI** exercised direct control over the Women's Section of Mitiga Prison. He was regularly present at and strictly controlled access to the Section, including personally overseeing such access by Mitiga Perpetrators and personally handcuffing, blindfolding, and escorting girls and women out of the Section. He exercised daily administrative control over the girls and women held in the Women's Section, as well as the young children held there with their mothers. **EL HISHRI** assisted in processing girls and women in the Mitiga Perpetrators' custody when they were brought to Mitiga Prison, including by carrying out and/or overseeing their searches and assigning them to a cell in the Women's Section. He also controlled the circumstances of their release.

59. **EL HISHRI** closely monitored the women, girls and young children held in the

Women's Section and punished them for defying his authority, or for perceived breaches of prison rules, or non-compliance with his wishes. He supervised the inspection of the cells and presented the detainees to other members of the Mitiga Prison Leadership. He controlled the detention conditions in the Women's Section, including by overseeing the distribution of food, clothing, hygiene supplies, and limited medical care. He facilitated and strictly monitored yard time, telephone calls, and visits with family members.

60. **EL HISHRI** personally beat and mistreated the women, girls and young children held in the Women's Section. He also took them out of the Section to notorious sites in Mitiga Prison such as the "Islamic Neighbourhood" and the *Naqliah*, and participated in their interrogation and torture. In managing the Section, **EL HISHRI** enforced conditions according to his own views and expectations of gender and punished conduct perceived to deviate from them. In particular, he severely mistreated women, including by pulling them around Mitiga Prison, blindfolded and tied to a rope, while beating them along the way.

*iii. EL HISHRI directly perpetrated acts amounting to the commission of crimes*

61. During the charged period, **EL HISHRI** was widely known and feared as a notorious torturer by Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators. He personally committed crimes victimising detainees, principally in Mitiga Prison. This not only directly contributed to the institutionalised and sustained scheme of mistreatment and violent abuse at Mitiga Prison, but also set a negative example for other Mitiga Perpetrators, creating a culture of impunity for the alleged crimes. **EL HISHRI's** responsibility for directly perpetrating some of the charged crimes is set out at paragraphs 63 to 64 below.

**2) Charged forms of criminal responsibility**

62. **EL HISHRI** is individually responsible for the charged crimes pursuant to article 25(3)(a) (direct perpetration, indirect perpetration, joint perpetration), article 25(3)(b) (ordering, inducing), article 25(3)(c) (aiding, abetting or otherwise assisting), and article 25(3)(d) (contributing to crimes committed by one or more groups acting with a common purpose).

*i. Direct perpetration of charged crimes: article 25(3)(a)*

63. During the charged period, **EL HISHRI** directly perpetrated the crimes charged in counts 1-17 against Mitiga Prison detainees and persons otherwise in the custody or control of

the Mitiga Perpetrators. These incidents occurred principally at Mitiga Prison, but also at other locations in and around Tripoli.

64. **EL HISHRI** meant to engage in the charged conduct. He meant to cause the consequences of this conduct or was aware that these consequences would occur in the ordinary course of events. He had the necessary intent to discriminate on political, religious, national, ethnic, racial, and gender grounds. He had the required contextual knowledge, as described in paragraphs 16, 24, 33, 37-38 and 41 above.

*ii. Indirect perpetration of charged crimes: article 25(3)(a)*

65. During the charged period, **EL HISHRI** used Mitiga Perpetrators with access to the Women's Section to ensure that the crimes charged in counts 1-17 would be committed against the women, girls and young children detained therein.

66. **EL HISHRI** controlled the crimes committed by the Mitiga Perpetrators with access to the Women's Section by subjugating their will to his own. The SDF/RADA hierarchy and/or the hierarchy by which the Mitiga Prison Leadership controlled the Mitiga Perpetrators constituted an organised apparatus of power. **EL HISHRI** used this apparatus to ensure the occurrence in the Women's Section of the crimes charged in counts 1-17, irrespective of the will of individual perpetrators. Further, or alternatively, **EL HISHRI**'s own status within the SDF/RADA and/or Mitiga Prison Leadership, including his personal violent reputation, enabled him to dominate the will of the Mitiga Perpetrators with access to the Women's Section, causing them to commit these crimes, irrespective of their will.

67. **EL HISHRI** ensured that the Mitiga Perpetrators with access to the Women's Section would commit the relevant crimes, as set out further in paragraphs 54-61 above, by means including: his exercise of general authority and influence throughout Mitiga Prison; his direct control of the Women's Section of Mitiga Prison; and his direct perpetration of acts amounting to the commission of charged crimes.

68. **EL HISHRI** meant to engage in the charged conduct and was aware of the relevant circumstances (including relevant features of the SDF/RADA and Mitiga Prison). He meant to cause the crimes committed by the Mitiga Perpetrators with access to the Women's Section or was aware that they would occur in the ordinary course of events. He had the necessary intent to discriminate on political, religious, national, ethnic, racial, and gender grounds. He had the required contextual knowledge, as described in paragraphs 16, 24, 33, 37-38 and 41 above.

*iii. Joint perpetration of charged crimes, directly and/or indirectly: article 25(3)(a)*

69. During the charged period, **EL HISHRI** worked with others to jointly carry out the crimes charged in counts 1-17 against Mitiga Prison detainees and persons otherwise in the custody or control of the Mitiga Perpetrators, principally at Mitiga Prison.

70. Other co-perpetrators and members of the Mitiga Prison Leadership included at least some or all of the following:

- a. Abdalraouf KARA, the leader of SDF/RADA;
- b. Dhawi N’ZAM, a close associate of KARA and senior member or close associate of SDF/RADA;
- c. Osama NJEEM, a close associate of KARA and senior member or close associate of SDF/RADA, also known as director of the Mitiga Prison.

71. The co-perpetrators, including **EL HISHRI**, shared a common plan or agreement to exercise control—through means such as punishment, coercion, and other forms of exploitation—of persons in the Mitiga Perpetrators’ custody or control, principally at Mitiga Prison, in pursuit of SDF/RADA’s interests or views and/or those of its members (“Common Plan”). The Common Plan resulted in the commission of the crimes charged in counts 1-17 (“Common Plan Crimes”). Irrespective of the co-perpetrators’ individual motives for participating in the Common Plan, they agreed not only on the crimes but that they would be committed on discriminatory political, religious, national, ethnic, racial, and gender grounds targeting certain victims, consistent with their use of Mitiga Prison to exercise control over a variety of different persons and groups.

72. The co-perpetrators, including **EL HISHRI**, jointly controlled the commission of the Common Plan Crimes, which were either carried out directly by one or more of the co-perpetrators or by persons whom they controlled and used as tools such as the Mitiga Perpetrators.

73. **EL HISHRI** made an essential contribution to the commission of the Common Plan Crimes, as set out further in paragraphs 54-61 above, including by: his exercise of general authority and influence throughout Mitiga Prison; his direct control of the “Women’s Section” of Mitiga Prison; and his direct perpetration of acts amounting to the commission of charged crimes. Without **EL HISHRI**’s contribution, the charged crimes would not have occurred, or would have occurred in a significantly different way.

74. **EL HISHRI** meant to engage in the charged conduct, and was aware of the relevant circumstances (including relevant features of the SDF/RADA and Mitiga Prison). He meant to cause the Common Plan Crimes, or was aware that they would occur in the ordinary course of events. He had the necessary intent to discriminate on political, religious, national, ethnic, racial, and gender grounds. He had the required contextual knowledge, as described in paragraphs 16, 24, 33, 37-38 and 41 above.

*iv. Ordering and/or inducing the commission of the charged crimes: article 25(3)(b)*

75. During the charged period, **EL HISHRI** instructed Mitiga Perpetrators to commit the crimes charged in counts 1-17. He held authority over these persons based on his senior role in SDF/RADA and/or in the Mitiga Prison Leadership.

76. Further, or alternatively, during the charged period, **EL HISHRI** prompted members of the Mitiga Prison Leadership and/or Mitiga Perpetrators to commit the charged crimes. **EL HISHRI** prompted the commission of crimes both expressly and implicitly through his personal conduct, including by his own conspicuous participation in violent crimes against detainees and his failure to address or punish similar violent crimes committed by the Mitiga Perpetrators.

77. **EL HISHRI** meant to engage in this conduct and, to the extent relevant, was aware of his position of authority over the perpetrators of the crimes. He intended the charged crimes or was aware that the crimes would be committed in the ordinary course of events as a result of the implementation of his orders or otherwise as a result of his acts or omissions.

*v. Aiding, abetting, or otherwise assisting the commission of the charged crimes: article 25(3)(c)*

78. **EL HISHRI** aided, abetted or otherwise assisted the Mitiga Prison Leadership and/or Mitiga Perpetrators to commit the crimes in counts 1-17. Through the conduct described in paragraphs 54 to 61 above, **EL HISHRI** facilitated and/or provided moral encouragement for the relevant crimes.

79. **EL HISHRI** meant to engage in the relevant conduct and did so with the purpose of facilitating the commission of such crimes. **EL HISHRI** was aware that the Mitiga Prison Leadership and/or Mitiga Perpetrators would, in the ordinary course of events, commit the type of crimes charged, and was aware that his conduct would contribute to their commission.

*vi. Contributing to the charged crimes committed by a group acting with a common purpose:*  
article 25(3)(d)

80. **EL HISHRI** is responsible as an accessory to the crimes charged in counts 1-17 which were carried out by a group acting with a common purpose.

81. The charged crimes were carried out by the Mitiga Prison Leadership (including KARA, N'ZAM, and NJEEM) and/or Mitiga Perpetrators, as a group acting with a common purpose. The purpose was to exercise control—through means such as punishment, coercion, and other forms of exploitation—of persons in the Mitiga Perpetrators' custody or control, principally at Mitiga Prison, in pursuit of SDF/RADA's interests or views and/or those of its members ("Common Purpose"). The Common Purpose resulted in the commission of the crimes charged in counts 1-17 ("Common Purpose Crimes"). Members of the Common Purpose agreed not only on the crimes but that they would be committed on discriminatory political, religious, national, ethnic, racial, and gender grounds targeting certain victims, consistent with their use of Mitiga Prison to exercise control over a variety of different persons and groups.

82. During the charged period, **EL HISHRI** contributed to the commission of the charged crimes through the conduct described at paragraphs 54 to 61 above.

83. **EL HISHRI** made these contributions intentionally with the aim of furthering the criminal activity or criminal purpose of the group, and/or in the knowledge of the intention of the group to commit the crimes charged.

#### **D. SUMMARY OF COUNTS**

84. Based on the above, **EL HISHRI** is responsible for the following crimes, committed against detainees at Mitiga Prison and persons otherwise in the custody or control of the Mitiga Perpetrators, principally in Mitiga Prison, during the charged period:

**COUNT 1: imprisonment or other severe deprivation of physical liberty as a crime against humanity**, pursuant to article 7(1)(e) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 2: outrages upon personal dignity as a war crime**, pursuant to article 8(2)(c)(ii) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 3: cruel treatment as a war crime**, pursuant to article 8(2)(c)(i) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 4: torture as a crime against humanity**, pursuant to article 7(1)(f) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 5: torture as a war crime**, pursuant to article 8(2)(c)(i) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 6: other inhumane acts as a crime against humanity**, pursuant to article 7(1)(k) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 7: rape and attempted rape as a crime against humanity**, pursuant to article 7(1)(g) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 8: rape and attempted rape as a war crime**, pursuant to article 8(2)(e)(vi) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 9: sexual violence as a crime against humanity**, pursuant to article 7(1)(g) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 10: sexual violence as a war crime**, pursuant to article 8(2)(e)(vi) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 11: murder and attempted murder as a crime against humanity**, pursuant to article 7(1)(a) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 12: murder and attempted murder as a war crime**, pursuant to article 8(2)(c)(i) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 13: enslavement as a crime against humanity**, pursuant to article 7(1)(c) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute.

**COUNT 14: persecution as a crime against humanity**, pursuant to article 7(1)(h) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute for persecution on political grounds.

**COUNT 15: persecution as a crime against humanity**, pursuant to article 7(1)(h) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute for persecution on religious grounds.

**COUNT 16: persecution as a crime against humanity**, pursuant to article 7(1)(h) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), 25(3)(c), and/or 25(3)(d) of the Rome Statute for persecution on national, ethnic, and/or racial grounds.

**COUNT 17: persecution as a crime against humanity**, pursuant to article 7(1)(h) and article 25(3)(a), and additionally and/or alternatively article 25(3)(b), article 25(3)(c) and article 25(3)(d) of the Rome Statute, for persecution on gender grounds.



**FOR THESE REASONS, THE CHAMBER HEREBY**

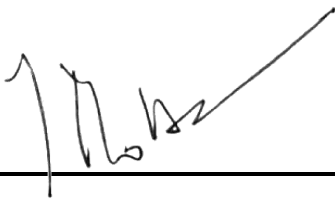
**REJECTS** the Defence's submissions regarding the use of anonymous evidence in these proceedings, the alleged vagueness of the DCC and the Prosecution's purported failure to discharge its duties under article 54 of the Statute;

**CONFIRMS** the charges against Mr El Hishri, as set out above at paragraph 170, pursuant to article 61(7) of the Statute;

**COMMITTS** Mr El Hishri to a Trial Chamber for trial on the charges as confirmed; and

**ORDERS** the Registrar to transmit this decision and the record of these proceedings to the Presidency.

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Iulia Antoanella Motoc, Presiding**



**Judge Reine Adélaïde Sophie Alapini-  
Gansou**



**Judge María del Socorro Flores Liera**

Dated this Thursday, 16 July 2026

At The Hague, The Netherlands