

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: **English**

No.: **ICC-01/11**
Date: **10 July 2025**

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Under seal, *ex parte*, only available to the Prosecution and Registry

Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri

Warrant of Arrest to be notified in accordance with regulation 31 of the Regulations of the Court to:☒ **The Office of the Prosecutor**☐ **Counsel for the Defence**☐ **Legal Representatives of the Victims**☐ **Legal Representatives of the Applicants**☐ **Unrepresented Victims**☐ **Unrepresented Applicants
(Participation/Reparation)**☐ **The Office of Public Counsel for Victims**☐ **The Office of Public Counsel for the
Defence**☐ **States' Representatives**☐ **Amicus Curiae****REGISTRY**

Registrar

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**☐ **Victims and Witnesses Unit**☐ **Detention Section**☐ **Victims Participation and Reparations
Section**☐ **Other**

PRE-TRIAL CHAMBER I (the 'Chamber') of the International Criminal Court (the 'Court') has before it an application for a warrant of arrest pursuant to article 58(1) of the Rome Statute (the 'Statute') for

Khaled Mohamed Ali El Hishri

also known as **Khaled 'Al Booti'** or **'Sheikh Khaled' (Al Hishri)**, a national of Libya, born on 23 June 1978 in Tripoli, Libya.¹

I. Procedural history

1. On 26 February 2011, the United Nations Security Council, 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 Court, in accordance with article 13(b) of the Statute.²
2. On 3 April 2025, the Prosecution, under seal and *ex parte*, applied for a warrant of arrest (the 'Application')³ for Khaled Mohamed Ali El Hishri ('Mr El Hishri') for the following crimes against humanity and war crimes within the Court's jurisdiction, committed in Libya from around February 2015 to, at least, early 2020:

- (i) imprisonment as a crime against humanity (article 7(1)(e) of the Statute);
- (ii) outrages upon personal dignity as a war crime (article 8(2)(c)(ii) of the Statute);
- (iii) cruel treatment as a war crime (article 8(2)(c)(i) of the Statute);
- (iv) torture as a war crime and as a crime against humanity (article 8(2)(c)(i) and 7(1)(f) of the Statute);
- (v) sexual violence as a war crime and as a crime against humanity (articles 8(2)(e)(vi) and 7(1)(g) of the Statute);
- (vi) rape as a war crime and as a crime against humanity (articles 8(2)(e)(vi) and 7(1)(g) of the Statute);
- (vii) murder and attempted murder as a war crime and as a crime against humanity (articles 8(2)(c)(i) and 7(1)(a) of the Statute);

¹ Prosecution's application under article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri ("Khaled AL HISHRI"), 3 April 2025, ICC-01/11-172-US-Exp, para. 3.

² United Nations, Security Council, Resolution 1970, 26 February 2011, S/RES/1970 (2011). The Security Council decided, inter alia, that 'Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution', and urging 'all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor'.

³ Prosecution's application under article 58 for a warrant of arrest against Khaled Mohamed Ali El Hishri ("Khaled AL HISHRI"), 3 April 2025, ICC-01/11-172-US-Exp (with under seal, *ex parte*, annexes 1-11).

- (viii) passing of sentences without previous judgment pronounced by a regularly constituted court as a war crime (article 8(2)(c)(iv) of the Statute);
- (ix) enslavement as a crime against humanity (article 7(1)(c) of the Statute);
- (x) sexual slavery as a war crime and a crime against humanity (articles 8(2)(e)(vi) and 7(1)(g) of the Statute); and
- (xi) persecution as a crime against humanity (article 7(1)(h) of the Statute).⁴

3. On 12 May 2025, Libya conveyed to the Registrar of the Court its acceptance of the Court's jurisdiction over its territory from 2011 to the end of 2027.⁵

II. Jurisdiction and admissibility

4. At the time the Prosecution filed the Application, the Court's jurisdiction in the Libya Situation was based on article 13(b) of the Statute, but since then Libya accepted the Court's jurisdiction by stating as follows: 'Pursuant to article 12(3) of the Rome Statute of the International Criminal Court, the State of Libya declares its recognition of the jurisdiction of the International Criminal Court to prosecute those responsible for international crimes under the Rome Statute, committed in Libya from 2011 to the end of 2027.'⁶

5. Since the conduct addressed in the Application is allegedly committed in Libya from around February 2015 to, at least, early 2020, it falls within the temporal and territorial jurisdiction, as accepted by Libya.

6. As there is no ostensible cause or self-evident factor which impels the Chamber to exercise its discretion pursuant to article 19(1) of the Statute, it need not, at this stage, use its discretionary *proprio motu* power to determine the admissibility of the case against Mr El Hishri.⁷

⁴ Application, paras 1, 8.

⁵ Transmission of Article 12(3) Declaration by the State of Libya, 20 May 2025, ICC-01/11-180-Conf-Exp, with the declaration pursuant to article 12(3) of the Statute annexed as Annex I and an English translation thereof as Annex II.

⁶ English translation of the declaration by Libya: ICC-01/11-180-AnxII.

⁷ See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled 'Decision on the Prosecutor's Application for Warrants of Arrest, Article 58', 13 July 2006, ICC-01/04-169 (OA), paras 1-2, 52; Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05-01/09-1, p. 4; *Mbarushimana* Art. 58 Decision, para. 9; Pre-Trial Chamber I, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Mandat d'arrêt à l'encontre d'Ahmad Al Faqi Al Mahdi, 18 September 2015, ICC-01/12-01/15-1-Red, para. 12; and Pre-Trial Chamber I, *Situation in Georgia*, Arrest warrant for Gamlet Guchmazov, 30 June 2022 (confidential version issued on 24 June 2022), ICC-01/15-41-Red, para. 3.

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7. The above findings are without prejudice to the determination of any future challenge to the jurisdiction of the Court or the admissibility of a case under article 19 of the Statute.

III. Standard of proof

8. The findings of facts, as set out below, are made based on the relevant evidentiary standard, namely 'reasonable grounds to believe', as required by article 58(1)(a) of the Statute. The material submitted by the Prosecution must only establish that it is a reasonable conclusion that the person committed a crime within the jurisdiction of the Court. This need not be the only reasonable conclusion that can be drawn from the said material.⁸

IV. Requirements of article 58(1) of the Statute

9. Article 58(1) of the Statute provides that the Pre-Trial Chamber shall, on the application of the Prosecutor, issue a warrant of arrest for a person if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court, and if the arrest of the person appears necessary.

A. Whether there are reasonable grounds to believe Mr El Hishri has committed a crime within the jurisdiction of the Court (Article 58(1)(a) of the Statute)

1. Contextual elements of war crimes

10. War crimes pursuant to article 8(2)(c) and (e), which are alleged by the Prosecution in the Application, can only be committed if international humanitarian law ('IHL') applicable to non-international armed conflicts applied to the conduct in question at the relevant time. Additionally, the contextual elements of article 8(2)(c) and (e) require that: (i) the conduct took place in the context of and was associated with an armed conflict not of an international character; and (ii) the perpetrator was aware of factual circumstances that established the

⁸ Appeals Chamber, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir', 3 February 2010, ICC-02/05-01/09-73 (OA), paras 33, 39. See also Pre-Trial Chamber I, *Situation in Georgia*, Arrest warrant for Gamlet Guchmazov, 30 June 2022 (confidential version issued on 24 June 2022), ICC-01/15-41-Red, para. 4; Pre-Trial Chamber II, *The Prosecutor v. Sylvestre Mudacumura*, Decision on the Prosecutor's Application under Article 58, 13 July 2012, ICC-01/04-01/12-1-Red (confidential version issued on the same day), para. 19.

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existence of the armed conflict.⁹ As the second element relates to Mr El Hishri specifically, it will be addressed below when considering Mr El Hishri's *mens rea*.

11. According to the material provided by the Prosecution, fighting between different armed groups took place in multiple parts of Libya since at least May 2014, when the country experienced the most serious emergence of hostilities since 2011.¹⁰ For this fighting to qualify as a non-international armed conflict, it must have been between two or more armed actors possessing a certain level of organisation and have been of a certain intensity. Since the initial fighting in 2011 between the Ghaddafi regime and opposition thereto, armed confrontations have been shaped by fragmentation and emergence of new armed actors and the recurring shift in alliances among them. For the purpose of this warrant, the Chamber identifies the two main blocs opposing each other since in particular 2014 to be the Government National Accord (the 'GNA') and the Libyan National Army (the 'LNA').

12. The material before the Chamber shows that, during the period relevant to this warrant, the Special Deterrence Forces, also known as RADA¹¹ (the 'SDF/RADA'), were associated with the GNA.¹² Since the SDF/RADA participated on the side of the entity considered to be the government, the Chamber need not analyse whether the SDF/RADA itself fulfilled the organisation requirement.¹³ The LNA appears to have been sufficiently organised to qualify as an organised armed group.¹⁴ The Chamber therefore finds reasonable grounds to believe that during all or significant parts of the temporal scope of the alleged conduct, the GNA and the SDF/RADA were involved in, at a minimum, one non-international armed conflict with another party and considers that fighting between them took place regularly throughout the period relevant to this Application. Accordingly, the Chamber finds that the intensity requirement was met during the majority of the period of the alleged conduct for the purposes of the present assessment. A more stringent consideration will take place a later stage, when it must be shown that the circumstances of the arrest of specific alleged victims and the existence

⁹ See article 8(2)(c) and (e) of the Elements of Crimes.

¹⁰ LBY-OTP-0053-0990, paras 34-39; LBY-OTP-0053-1204, para. 2.

¹¹ See Application, para. 5.

¹² See LBY-OTP-00001538 (trans: LBY-OTP-00020191), paras 237-239.

¹³ See Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359 (the 'Ntaganda Trial Judgment'), para. 711, referring to ICTY, *Haradinaj et al.* Trial Judgment, para. 60; and ICRC, *Commentary on Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (Cambridge University Press 2016), para. 429.

¹⁴ The Chamber notes that the LNA was able to launch large-scale operations, including attacking Tripoli, had a command structure, and was able to negotiate ceasefires. See LBY-OTP-00000429, LBY-OTP-00000427, LBY-OTP-00000424, and LBY-OTP-0053-1204.

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of an armed conflict at the time of arrest, established their protected status under IHL and the application IHL to any conduct against them.

13. Since the IHL protection of a person who is arrested for reasons related to an armed conflict continues for the duration of the detention and does not cease if the conflict (in relation to which the detention started) ends, the Chamber need not address, at the present stage, the impact of any lulls in the fighting and whether or not the intensity requirement was met during the entire alleged period; and thus whether a non-international armed conflict existed for the duration of that entire period.

14. The Chamber recalls that for the purposes of the type of war crimes alleged, which all concern violations of IHL committed against persons deprived of their liberty, the key question is whether they were protected by IHL at the relevant time, and, in case of alleged violations of Common Article 3 of the 1949 Convention, that the alleged victims fell within the scope of this provision. Whilst all the war crimes alleged in the Application require that the victims were in the power or the hands of the opponent at the time of the relevant conduct, and being detained would qualify as such, the key question is why these persons were detained. Even if an armed conflict is ongoing, not every detained person falls within the scope of IHL, especially when it concerns a government prison (or prison run by an organisation affiliated with the government). A common criminal, who is detained for having committed a regular crime, is not, without more, protected under Common Article 3 or IHL as such.

15. It must therefore be shown that a (non-international) armed conflict existed at the time the persons were arrested or otherwise detained, and that the liberty of these persons was restricted for reasons related to the conflict, as a result of which they were protected under IHL during their detention.

16. It is neither relevant for the present assessment whether that conflict continued throughout such a restriction of liberty nor does it matter whether the protection of IHL of the various alleged victims resulted from one and the same non-international armed conflict or whether the victims were detained for reasons related to different conflicts that took place at different points in time. In addition, so long as IHL applied to the conduct in question, the perpetrator's conduct need not have taken place as part of hostilities. Indeed, the alleged acts

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may have been temporally or geographically removed from the actual fighting, so long as the victims were protected under IHL at the relevant time.¹⁵

17. As explained more in detail below for the alleged war crimes, the Prosecution has not made any submissions on the status of individual detainees alleged to have been victims of a war crime, i.e. a serious violation of IHL. On the basis of the material provided, the Chamber finds reasonable grounds to believe that at least some of the detainees were captured for reasons related to an armed conflict, *inter alia*, because they were suspected of being members of ISIS or belonging to General Haftar's forces.¹⁶ For the persons for whom the Chamber has made such findings below, the Prosecution would have to show that IHL was indeed applicable by providing evidence that, at the time of the arrest, an armed conflict existed.

18. Based on the foregoing, the Chamber considers that, for the purposes of the present application, there are reasonable grounds to believe that IHL was applicable to at least part of the conduct underlying the alleged crimes, and that these crimes thus, at least in part, took place in the context of, and were associated with, a non-international armed conflict.

2. Contextual elements of crimes against humanity

19. SDF/RADA was vested with sufficiently efficient structures or mechanisms to carry out an 'attack' within the meaning of article 7(1) of the Statute, as demonstrated *inter alia* by the group's ability to command significant resources.¹⁷ All crimes alleged by the Prosecution relate in particular to a prison facility in Tripoli most commonly known as Mitiga Prison.¹⁸ At the time of the alleged conduct, this facility was reported to be the largest detention facility in western Libya.¹⁹

¹⁵ Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 4 February 2021, ICC-02/04-01/15-1762-Red ('*Ongwen* Trial Judgment'), para. 2689; *Ntaganda* Trial Judgment, para. 731.

¹⁶ E.g., LBY-OTP-00018787, para. 21; LBY-OTP-0070-7295, paras 85-86; LBY-OTP-0072-0387, paras 28-29; LBY-OTP-0070-6952, para. 51; LBY-OTP-00016896, paras 27, 32.

¹⁷ See, e.g., LBY-OTP-0070-4009, p. 10.

¹⁸ See Application, paras 4-5, 13, 32, 55.

¹⁹ E.g., LBY-OTP-0069-0584, para. 32; LBY-OTP-0080-0032, paras 36-37. The complex encompassed the main prison building, divided into 12 sections with multiple cells and solitary confinement, as well as an administrative building, known as 'Naqliah', with further offices and rooms (see Annexes 7-9 of the Application).

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20. During the relevant time period, i.e. between February 2015 and early 2020,²⁰ there were several thousand detained persons held at this facility.²¹ The conduct discussed below thus affected a very large number of persons.

21. The Prosecution submits that the civilian population against which an attack within the meaning of article 7(1) of the Statute was directed, was comprised of 'segments of the population in Libya perceived to be opposing SDF/RADA or its ideology'.²²

22. To the extent that those arrested were deprived of their liberty for reasons related to an armed conflict, the persons detained either qualified as civilians under IHL or as civilians directly participating in hostilities at the time of their arrest or capture. Even if there were some fighters among the detainees, this does not affect the civilian character of the population that was being attached in terms of article 7(1) of the Statute.²³ Therefore, the civilian population for the alleged crimes against humanity is formed by those detained for reasons related to an armed conflict and the persons who were detained for reasons unrelated to an armed conflict.

23. As discussed in more detail below, these crimes were further committed in a systematic manner, and frequently followed a specific pattern or *modus operandi*.²⁴

24. In light of the above, the Chamber finds reasonable grounds to believe that between at least February 2015 and at least the start of 2020, the conduct directed against the persons detained in the Mitiga Prison, who were – at least in part – perceived to be opposed to the GNA or SDF/RADA,²⁵ constituted a widespread and/or systematic attack against a civilian population. This attack consisted of multiple acts under article 7(1) of the Statute,²⁶ and took place over a period over several years. For these reasons, the Chamber finds reasonable grounds to believe that it was carried out pursuant to or in furtherance of an organisational policy of the SDF/RADA.

²⁰ See LBY-OTP-00019195, paras 130, 158.

²¹ LBY-OTP-0073-0025, para. 26; LBY-OTP-0069-0584, para. 119; LBY-OTP-0080-0608, paras 38, 79; LBY-OTP-0070-7295, para. 164; LBY-OTP-00019195, paras 62-63. See also LBY-OTP-00018738, p. 18; LBY-OTP-0070-4037, para. 35.

²² Application, para. 53.

²³ See, e.g., ICTY, *Prosecutor v. Kordic et al.*, Case No. IT-95-14/2-A, Appeal Judgment, para. 50; and ICTY, *Prosecutor v. Galic*, Case No. IT-98-29-A, Appeal Judgment, 30 November 2006, paras 136-137.

²⁴ See the findings below in relation to torture and sexual violence in sections 3.ii and 3.vi, respectively.

²⁵ See Application, Annex 5.

²⁶ See the section below discussing, e.g., the crimes against humanity of imprisonment, torture and persecution.

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3. The crimes alleged

25. According to the Prosecution, the precise number of detainees held in Mitiga Prison at the relevant time cannot be specified; it estimates that the SDF/RADA imprisoned 'at least 5140 persons' during the temporal scope of the Application.²⁷ Although the Chamber's findings in this warrant may be examples of potentially larger pattern of criminal conduct, the findings as regards the crimes are based solely on the concrete information referred to in the Application, and not on the '[n]on-exhaustive list of victims at Mitiga Prison', presented by the Prosecution.²⁸

26. The Prosecution presents 16 counts in the Application. In the interest of clarity, the Chamber will analyse the crimes alleged by the Prosecution in a different order.

i. Imprisonment as a crime against humanity (article 7(1)(e) of the Statute)

27. The Prosecution alleges that all SDF/RADA detainees at Mitiga Prison were imprisoned or otherwise severely deprived of their physical liberty in violation of fundamental rules of international law, in all cases due to circumstances and conditions of detention, and in many cases also due to the absence of any lawful authority to detain them.²⁹

28. In addition to the contextual elements addressed above, the remaining elements of the crime against humanity of imprisonment are as follows: (i) the perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty; (ii) the gravity of the conduct was such that it was in violation of fundamental rules of international law; and (iii) the perpetrator was aware of the factual circumstances that established the gravity of the conduct.³⁰ For the conduct to be in violation of fundamental rules of international law, the person must have been illegally detained or deprived of his or her physical liberty without due process of law (e.g. without legal basis or in violation of procedural rights).³¹

²⁷ Application para. 6, referring to 'from around February 2015 to at least early 2020'.

²⁸ See Application, footnote 215, as well as footnotes 313-314, 347, 376, 387, 394, 307, 404, 409, 437, 443 referring to LYB-OTP-00020680.

²⁹ Application, paras 58-59.

³⁰ Article 7(1)(6) of the Elements of the Crimes.

³¹ Pre-Trial Chamber III, *Situation in the Republic of Burundi*, Public Redacted Version of "Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Burundi", ICC-01/17-X-9-US-Exp, 25 October 2017, 9 November 2017, ICC-01/17-9-Red, para. 68.

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29. The material before the Chamber shows that many prisoners were not imprisoned on a lawful basis. For instance, the SDF/RADA imprisoned people for religious reasons such as being Christian³² or atheist;³³ for their perceived contraventions to SDF/RADA's religious ideology, such as due to suspects of 'immoral behaviour'³⁴ or homosexuality;³⁵ for their alleged support or affiliation to the LNA³⁶ or ISIS;³⁷ or for the purpose of coercing others, such as family members, including for them to pay to have the detained persons released.³⁸

30. In addition, the manner in which the persons who were imprisoned at the Mitiga Prison were arrested, suggests that there was no legal basis for their arrest or detention. The SDF/RADA: (i) arrested certain individuals without warrants or showing or indicating any other legal basis, did not inform these individuals of the reason of their arrest and the arrests took place in a violent and intimidating way;³⁹ (ii) conducted arrests whilst wearing masks and/or without identifying themselves;⁴⁰ (iii) coerced detainees to set up appointments with

³² LBY-OTP-0080-0169, paras 122-125, 183. See also LBY-OTP-0074-0889, paras 67, 89, 257; LBY-OTP-0080-0608, paras 85, 105.

³³ LBY-OTP-00001491, paras 29, 32, 34, 37, 49. See also LBY-OTP-0074-0889, paras 24, 60-61, 75, 231, 257, 289; LBY-OTP-0080-0169, paras 66, 190, 208.

³⁴ LBY-OTP-0073-0025, paras 86, 112; LBY-OTP-0070-7295, para. 160. See also LBY-OTP-00018134, para. 68; LBY-OTP-0083-0663, para. 155; LBY-OTP-0074-0889, para. 194; LBY-OTP-0080-0608, para. 170; LBY-OTP-0070-7295, para. 160.

³⁵ LBY-OTP-0073-0025, paras 105, 109-110. See also LBY-OTP-00001366, p. 8, ln. 11-23, p. 36, ln. 14 to p. 37, ln. 11, p. 40, ln. 2 – 20; LBY-OTP-00001367, p. 3, ln. 13 to p. 6, ln. 6.

³⁶ LBY-OTP-0072-0387, paras 28-29; LBY-OTP-0070-6952, para. 51; LBY-OTP-00016896, paras 27, 31-32, 42, 63; LBY-OTP-0069-0584, para. 106; LBY-OTP-0070-7295, paras 85-86. See also LBY-OTP-00001366, p. 20, ln. 6-24; p. 36, ln. 14-23.

³⁷ LBY-OTP-00007275, paras 28-30, 41, 69, 76; LBY-OTP-0069-0584, paras 97, 101; LBY-OTP-00018787, paras 21-22. See also LBY-OTP-0070-6952, para. 51.

³⁸ LBY-OTP-00018075, para. 38; LBY-OTP-00015405, para. 82; LBY-OTP-0080-0032, paras 52-54. See also LBY-OTP-0074-0889, para. 91; LBY-OTP-0083-0663, para. 143; LBY-OTP-00015420, paras 15, 29-30; LBY-OTP-00016916, para. 50; LBY-OTP-0070-3642; LBY-OTP-0080-0608, paras 15-19.

³⁹ LBY-OTP-0073-0025, paras 74-76; LBY-OTP-0068-0003, paras 13-16; LBY-OTP-00018134, paras 20-27, 51; LBY-OTP-0072-0387, paras 22, 29, 34, 42; LBY-OTP-0080-0032, paras 43-50; LBY-OTP-0080-0169, paras 119-122; LBY-OTP-0074-0889, paras 40-51; LBY-OTP-0070-6952, paras 43-45, 48, 50-51, 55; LBY-OTP-00001491, paras 22-30; LBY-OTP-0085-0063, paras 48-51; LBY-OTP-00015125, paras 18-24; LBY-OTP-00015125, paras 18-24; LBY-OTP-00018075, paras 21-32, 79-81, 91-95; LBY-OTP-00001366, p. 16, l. 9 to p. 21, l. 20, p. 29, l. 9-15; LBY-OTP-00018787, paras 14-20, 26; LBY-OTP-0069-0584, paras 34-39; LBY-OTP-00007250, paras 14-17; LBY-OTP-0080-0468, paras 84-86; LBY-OTP-0083-0189, paras 114-128, 145; LBY-OTP-0070-7295, paras 59-67, 70; LBY-OTP-0083-0052, paras 19, 21-23; ; LBY-OTP-00007275, paras 18-24; LBY-OTP-00018772, paras 17-19; LBY-OTP-00015360, paras 14-19; LBY-OTP-00015405, para. 34; LBY-OTP-00015420, para. 16; LBY-OTP-00016916, paras 15-17, 22, 24; LBY-OTP-00016896, paras 23-25, 27, 32; LBY-OTP-00018119, paras 20-27; LBY-OTP-0069-0584, paras 39, 55; LBY-OTP-00019195, paras 25-33; LBY-OTP-00020358, paras 24-26; LBY-OTP-0069-0506, paras 12-15, 29, 32, 47; LBY-OTP-0066-0951, paras 14-23, 30; LBY-OTP-00020267, paras 29-30.

⁴⁰ LBY-OTP-0073-0025, paras 75-76. See also LBY-OTP-0068-0003, para. 16; LBY-OTP-00018134, paras 20-27; LBY-OTP-0072-0387, paras 22, 29, 34, 42; LBY-OTP-0080-0032, paras 43-50 ; LBY-OTP-0080-0169, paras 119-122; LBY-OTP-0074-0889, paras 40-42, 48; LBY-OTP-0070-6952, para. 44; LBY-OTP-00001491, paras 22-26; LBY-OTP-0085-0063, para. 48; LBY-OTP-00018787, paras 14-17; LBY-OTP-0066-0951, paras 15, 19; LBY-OTP-0068-0003, para. 13; LBY-OTP-0069-0584, paras 34-39, 45; LBY-OTP-00007250, paras 14-15;

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their contacts so that SDF/RADA could also arrest these contacts.⁴¹ Following their arrest, detainees were denied procedural rights, such as the right to counsel,⁴² or the right to have the lawfulness of their detention promptly determined before a competent judge or authority.⁴³

31. Based on the findings above, the Chamber considers that there are reasonable grounds to believe that the specific elements of the crime against humanity of imprisonment pursuant to article 7(1)(e) of the Statute are met.

ii. Torture as a war crime and as a crime against humanity (articles 8(2)(c)(i) and 7(1)(f) of the Statute)

32. The Prosecution alleges that all SDF/RADA detainees at Mitiga Prison⁴⁴ were subjected to great and severe physical or mental pain or suffering.⁴⁵ The Prosecution further alleges that detainees held in Mitiga Prison were regularly tortured on arrival at the administration building and later at the prison building, and that they were subjected to a consistent atmosphere of terror and oppression, including inadequate conditions of detention, verbal abuse, threats and violence.⁴⁶

33. In addition to the contextual elements referred to above, the remaining elements of the war crime of torture pursuant to article 8(2)(c)(i) of the Statute and the crime against humanity of torture pursuant to article 7(1)(f) of the Statute have one element in common, namely: the

LBY-OTP-0069-0506, para. 13; LBY-OTP-0080-0468, para. 84; LBY-OTP-0083-0189, paras 114-118; LBY-OTP-0083-0052, para. 19; LBY-OTP-00007275, paras 18-19; LBY-OTP-00018772, paras 17-19; LBY-OTP-00015360, paras 14-18; LBY-OTP-00015405, para. 34; LBY-OTP-00015420, para. 16; LBY-OTP-00016916, paras 15-17; LBY-OTP-00018119, paras 20-27; LBY-OTP-0069-0584, paras 39, 55; LBY-OTP-0066-0951, paras 14-19; LBY-OTP-00020267, paras 29-30.

⁴¹ LBY-OTP-0073-0025, para. 82. See also LBY-OTP-00001491, para. 64.

⁴² LBY-OTP-00007275, para. 77; LBY-OTP-0070-6952, para. 125. See also LBY-OTP-0073-0025, para. 86; LBY-OTP-00018134, para. 95; LBY-OTP-00015125, paras 55, 58-59; LBY-OTP-00018075, para. 95; LBY-OTP-00001366, p. 29, l. 19-22; LBY-OTP-0069-0584, paras 118, 210; LBY-OTP-00007250, para. 63; LBY-OTP-0080-0608, paras 73-74; LBY-OTP-00018134, para. 95; LBY-OTP-0080-0468, para. 105.

⁴³ LBY-OTP-00018134, para. 95; LBY-OTP-0080-0169, para. 251; LBY-OTP-00001491, para. 39; LBY-OTP-0073-0025, para. 142; LBY-OTP-0080-0032, paras 45, 90-92; LBY-OTP-0074-0889, para. 173; LBY-OTP-0085-0063, para. 88; LBY-OTP-00015125, para. 59; LBY-OTP-00018075, paras 91-95; LBY-OTP-00018787, para. 35; LBY-OTP-00007250, para. 63; LBY-OTP-0083-0052, para. 191; LBY-OTP-00015360, paras 168-175, 180, 185; LBY-OTP-00015405, paras 14, 91; LBY-OTP-0069-0506, paras 66, 146; LBY-OTP-0073-0025, para. 86; LBY-OTP-00018134, para. 95; LBY-OTP-0065-0649, para. 37; LBY-OTP-00018134, para. 95; LBY-OTP-0080-0169, para. 251; LBY-OTP-00001491, para. 119. See also LBY-OTP-0069-0584, paras 118, 210; LBY-OTP-0070-7295, para. 142; LBY-OTP-00019195, para. 92; LBY-OTP-0080-0468, para. 105; LBY-OTP-00018787, para. 58; LBY-OTP-0080-0468, para. 105.

⁴⁴ According to the Prosecution at least 5140 from February 2015 to at least early 2020 (see above at para. XX).

⁴⁵ Application, paras 58-59.

⁴⁶ Application, paras 68-69.

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perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.⁴⁷ The other elements differ between the war crime and the crime against humanity. For article 8(2)(c)(i) these elements are (i) the perpetrator inflicted the pain or suffering for such purposes as: obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind; (ii) such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities; and (iii) the perpetrator was aware of the factual circumstances that established this status.⁴⁸

34. As to the crime against humanity of torture pursuant to article 7(1)(f) of the Statute, the remaining elements are as follows: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) such person or persons were in the custody or under the control of the perpetrator; and (iii) such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.⁴⁹

35. By virtue of being detained in Mitiga Prison, all alleged victims of the crime of torture were in the custody and/or under the control of the SDF/RADA. During their imprisonment, the SDF/RADA inflicted severe physical and psychological pain or suffering upon male and female detainees in their custody. This was regularly conducted on arrival and during interrogation at the administrative building,⁵⁰ also known as *Naqliah*,⁵¹ as well as in the main prison building (e.g. at the so called 'Islamic Neighbourhood').⁵² The physical, sexual and

⁴⁷ The first element of Article 8(2)(c)(i)-4 and the first element of Article 7(1)(f) as listed in the Elements of the Crimes.

⁴⁸ Article 8(2)(c)(i)-4, elements 2, 3, and 4 as listed in the Elements of the Crimes.

⁴⁹ Article 7(1)(f), elements 2 and 3, as listed in the Elements of the Crimes.

⁵⁰ LBY-OTP-0073-0025, paras 84-90; LBY-OTP-00007250, paras 18-22. See also LBY-OTP-00018134, paras 29-31; LBY-OTP-0080-0032, paras 52-54; LBY-OTP-0074-0889, paras 52-55; LBY-OTP-0080-0468, paras 88-90; LBY-OTP-00001491, paras 39, 46; LBY-OTP-0070-7295, paras 71-74; LBY-OTP-0085-0063, paras 51-55; LBY-OTP-00015125, paras 24-26; LBY-OTP-00007275, para. 24; LBY-OTP-00015360, paras 20-21, 23-25; LBY-OTP-00015420, para. 17; LBY-OTP-00016896, paras 24-28; LBY-OTP-00018119, paras 29, 32-38; LBY-OTP-00020358, paras 27-38.

⁵¹ LBY-OTP-0080-0032, paras 52, 72-76; LBY-OTP-0074-0889, paras 52-55; LBY-OTP-0070-7295, para. 82; LBY-OTP-0085-0063, paras 79-81; LBY-OTP-00007275, paras 71-73.

⁵² LBY-OTP-0069-0584, paras 90-94.

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psychological violence was exercised by means of beating using various objects,⁵³ shooting,⁵⁴ the use of stress positions (such as 'balanco'⁵⁵ and 'falqa'⁵⁶) and close confinement in a metal box.⁵⁷ The Chamber further notes that the foregoing treatment took place within the general context of the inadequate detention conditions in Mitiga Prison, as set out below.⁵⁸ Based on the material assessed, there is no indication that any of the suffering arose from the imposition of a lawful sanction.

36. Based on the foregoing, the Chamber considers that there are reasonable grounds to believe that specific elements of the crime against humanity of torture pursuant to article 7(1)(f) of the Statute is met.

37. As regards the element for the war crime of torture, which – different from the crime against humanity of torture – requires the conduct to have taken place with a certain purpose, the Chamber notes the following. Detainees were severely abused, including extensive beating,

⁵³ Objects used included a plastic pipe known as 'PPR', fists, baton, electrical cables. See LBY-OTP-0074-0889, para. 57; LBY-OTP-0069-0584, paras 101-103; LBY-OTP-00001491, paras 40-44; LBY-OTP-00018787, paras 19-22. See also LBY-OTP-0073-0025, paras 53, 101-113; LBY-OTP-0069-0584, paras 59, 95-97, 100-102; LBY-OTP-00007250, paras 18-23, 39, 42-43, 65; LBY-OTP-0069-0506, paras 89, 114-117, 119-120; LBY-OTP-00001366, p. 34, ln. 19 to p. 35, ln. 5; p. 37, lns. 1 to 8; p. 38, ln. 7 to p. 39, ln. 19; p. 40, lns. 1 to 11; p. 41, ln. 15 to 22; p. 42, ln. 25 to p. 44, ln. 14; p. 45, ln. 9 to p. 48, ln. 8; at p. 55, ln. 14 to p. 56, ln. 17; LBY-OTP-00018134, paras 30-31, 52, 76; LBY-OTP-0080-0032, paras 72-78; LBY-OTP-0074-0889, paras 52-61, 111; LBY-OTP-0070-6952, paras 47-55, 92-94; LBY-OTP-00001491, paras 39-46, 60-72, 76-87, 95; LBY-OTP-0080-0608, paras 67-69; LBY-OTP-0070-7295, paras 71-87; LBY-OTP-0083-0052, paras 105-106, 110-111, 124-128, 130, 141, 178; LBY-OTP-0085-0063, paras 51-59, 67-69, 76-78, 81-83; LBY-OTP-00015125, paras 46-48; LBY-OTP-00007275, paras 28-31, 40-41, 56, 71-72; LBY-OTP-00018772, paras 21-23, 27; LBY-OTP-00015360, paras 26-43, 53, 64-66, 99-104; LBY-OTP-00018075, paras 72-75, 79-85, 87, 89, 97, 111-112; LBY-OTP-00015405, paras 42-43, 74-75, 78, 80-81, 83; LBY-OTP-00018787, paras 19-22, 33; LBY-OTP-00015420, para. 17; LBY-OTP-00016896, paras 26-30, 34, 67-68; LBY-OTP-00018119, para. 57; LBY-OTP-00020267, para. 33.

⁵⁴ LBY-OTP-0073-0025, para. 97; LBY-OTP-0066-0951, para. 41; LBY-OTP-0069-0506, para. 92; LBY-OTP-0080-0169, paras 214-218; LBY-OTP-0074-0889, paras 117-126; LBY-OTP-0070-6952, paras 95-97; LBY-OTP-00001491, paras 89-91; LBY-OTP-00015360, paras 68-71; LBY-OTP-00019195, para. 98; LBY-OTP-00020358, paras 92-94, 118.

⁵⁵ LBY-OTP-0073-0025, para. 53; LBY-OTP-00007250, paras 18-22; LBY-OTP-00018134, paras 29-31; LBY-OTP-0080-0032, paras 31, 72-76; LBY-OTP-0070-7295, para. 96. See also LBY-OTP-00015360, para. 29; LBY-OTP-0069-0506, para. 89; LBY-OTP-0074-0889, paras 56-57, 111; LBY-OTP-0070-6952, para. 94; LBY-OTP-00001491, paras 47, 67, 81; LBY-OTP-0080-0608, para. 46; LBY-OTP-0083-0052, para. 144; LBY-OTP-0085-0063, paras 56-57; LBY-OTP-00007275, paras 25, 28-31, 41, 56, 72, 104; LBY-OTP-00015360, paras 28-29, 200; LBY-OTP-00018075, paras 83, 85; LBY-OTP-00015405, para. 43; LBY-OTP-00015420, para. 17; LBY-OTP-00016896, paras 29, 67; LBY-OTP-00020358, para. 32.

⁵⁶ LBY-OTP-00018787, para. 46; LBY-OTP-00015405, para. 83; LBY-OTP-0073-0025, paras 105-108; LBY-OTP-0074-0889, paras 110, 215. See also LBY-OTP-0080-0169, para. 57; LBY-OTP-0070-6952, para. 135; LBY-OTP-00015360, paras 121-125; LBY-OTP-00018787, para. 46.

⁵⁷ LBY-OTP-0083-0052, para. 142; LBY-OTP-00007275, para. 104; LBY-OTP-00018075, paras 25, 72-76; LBY-OTP-00015360, paras 26, 200. See also LBY-OTP-0073-0025, para. 102; LBY-OTP-0069-0506, paras 89, 115; LBY-OTP-00015420, para. 17.

⁵⁸ See Section iii. Cruel treatment as a war crime (article 8(2)(c)(i) of the Statute).

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during interrogations.⁵⁹ The various victims indicate that the violence was inflicted for the purpose of obtaining: a confession;⁶⁰ coerced to act or provide information, such as to unlock their mobile phones in order for the ones arresting them or their interrogators to access their contacts, messages, and social media accounts during arrests or interrogations,⁶¹ or provide information about other potential targets;⁶² punishment;⁶³ or sometimes for the entertainment and amusement of guards.⁶⁴ Whilst the latter does not fall under the second material element of the war crime, the rest does.

38. As regards the two elements of the war crime that concern the status of the alleged victims, namely that the victims were *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities, and that the perpetrator was aware of the circumstances establishing this status, the Chamber recalls that protected status under Common Article 3 of the 1949 Geneva Conventions can be established by showing that the alleged victims were detained for reasons related to the armed conflict. Accordingly, for the war crime of torture, it needs to be established that (1) the victims who were tortured had protected status, and (2) that they were tortured for a specific purpose. The Chamber has established the second element in relation to some of the detainees; in relation to a subset of this group, it has also been established that the victims had the required protected status because

⁵⁹ LBY-OTP-0073-0025, paras 105-109; LBY-OTP-0072-0387, paras 52-54, 57-58, 63, 71, 73, 88. See also LBY-OTP-00018134, paras 23-24, 30-31, 52; LBY-OTP-00001491, paras 34-38, 42-43; LBY-OTP-0085-0063, paras 51-59, 67-69, 76-78, 81, 83; LBY-OTP-00015125, paras 41, 46-54; LBY-OTP-00018075, paras 79-85; LBY-OTP-00018787, paras 32-33; LBY-OTP-0069-0584, paras 95-97, 100-106; LBY-OTP-00007250, paras 18-23, 32-36; LBY-OTP-0070-7295, paras 71-78, 81-87; LBY-OTP-0083-0052, paras 124-130; LBY-OTP-00007275, paras 25, 28-31, 40-41, 54, 56, 71-72; LBY-OTP-00015360, paras 26-43, 99-104; LBY-OTP-00015405, paras 42-43, 74-92; LBY-OTP-0066-0951, para 23, 33; LBY-OTP-0069-0506, paras 114-120; LBY-OTP-00018134, paras 29-31, 51-53; LBY-OTP-0080-0032, paras 70-79; LBY-OTP-0080-0169, paras 160-175; LBY-OTP-0070-6952, paras 48-55, 92-97; LBY-OTP-0080-0608, paras 67-69; LBY-OTP-00016896, paras 26-30, 40-44, 67-68; LBY-OTP-00020236, para. 16; LBY-OTP-00020267, paras 32-33.

⁶⁰ LBY-OTP-00018134, paras 29-31; LBY-OTP-00015125, paras 46-54; LBY-OTP-00007250, para. 39.

⁶¹ LBY-OTP-0073-0025, para. 78; LBY-OTP-0072-0387, paras 25-28, 33, 51, 53, 60, 111; LBY-OTP-0080-0169, paras 127, 129, 171-172; LBY-OTP-0070-6952, paras 52-53; LBY-OTP-00001491, paras 28, 31-33, 64-66, 133-134; LBY-OTP-0085-0063, paras 52-53; LBY-OTP-00015125, para. 82; LBY-OTP-00018075, para. 81; LBY-OTP-0068-0003, para. 17; LBY-OTP-00018134, para. 29; LBY-OTP-0080-0032, paras 48, 53-54; LBY-OTP-00018787, para. 18. See also LBY-OTP-0074-0889, paras 55, 59; LBY-OTP-0070-6952, paras 52-53; LBY-OTP-00001366, p. 19, l. 7 to p. 21 l. 5, p. 36, l. 17 to p. 37 l. 1-6; LBY-OTP-0070-7295, para. 76.

⁶² LBY-OTP-0073-0025, paras 110-113; LBY-OTP-00001491, paras 60-72.

⁶³ LBY-OTP-00016896, paras 31-33, 63-66; LBY-OTP-00016916, paras 36, 46; LBY-OTP-00018787, para. 47. See also LBY-OTP-0073-0025, paras 115, 121-126; LBY-OTP-0069-0506, paras 75, 95, 102, 121; LBY-OTP-00018134, paras 55-56; LBY-OTP-0080-0169, paras 160-163; LBY-OTP-0083-0052, para. 179; LBY-OTP-00015360, paras 46, 119, 129-136; LBY-OTP-00018075, para. 45; LBY-OTP-00018787, para. 47; ; LBY-OTP-00019195, paras 65-68.

⁶⁴ LBY-OTP-00019195, paras 65-68; LBY-OTP-0070-7295, para. 153. See also LBY-OTP-0070-6952, paras 138, 158; LBY-OTP-00020267, paras 51, 58.

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they were detained on suspicion of being associated with Haftar or a member of ISIS and posing a threat.⁶⁵

39. Given that these persons were arrested and subsequently held in Mitiga Prison for reasons related to the armed conflict, and that during interrogations reference was made to their suspected association with Haftar or ISIS,⁶⁶ the perpetrators necessarily were aware of the factual circumstances that established the victims' protected status under IHL.

40. Therefore, the Chamber considers that – on the basis of the material presently provided by the Prosecution and its submissions based thereon – there are reasonable grounds to believe that the specific elements of the war crime of torture pursuant to articles 8(2)(c)(i) are met in relation to some persons.

iii. Cruel treatment as a war crime (article 8(2)(c)(i) of the Statute)

41. The Prosecution submits that SDA/RADA severely mistreated detainees at Mitiga Prison and subjected them to degrading conditions of detention.⁶⁷

42. In addition to the contextual elements referred to above, the remaining elements of the war crime of cruel treatment pursuant to article 8(2)(c)(i) of the Statute are as follows: (i) the perpetrator inflicted severe physical or mental pain or suffering upon one or more persons; (ii) such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities; and (iii) the perpetrator was aware of the factual circumstances that established this status.⁶⁸

43. The material presented before the Chamber indicates that detainees, once transferred to the prison, were frequently abused and mistreated. Some detainees were subjected to strip and cavity searches upon arrival at the prison. These were conducted in a humiliating manner.⁶⁹ The Chamber further notes that the conditions of detention in Mitiga Prison were dire:

⁶⁵ See LBY-OTP-00018787, para. 21. See paras 21-22 and 32-33 for the acts for which reasonable grounds to believe exist that it amounts to torture as a war crime.

⁶⁶ See, e.g., LBY-OTP-00018787, para. 21; and LBY-OTP-0070-7295, paras 77-87.

⁶⁷ Application, paras 65-66.

⁶⁸ Article 8(2)(c)(i)-3 of the Elements of Crimes.

⁶⁹ LBY-OTP-00016896, para. 34; LBY-OTP-0073-0025, para. 92; LBY-OTP-0068-0003, paras 18-19; LBY-OTP-0069-0584, paras 20, 63; LBY-OTP-00007250, para. 26; LBY-OTP-0069-0506, paras 32-33; LBY-OTP-0080-0032, para. 57. See also LBY-OTP-0080-0169, paras 29-30, 140, 142; LBY-OTP-0080-0468, paras 72, 93; LBY-OTP-00015125, para. 30; LBY-OTP-00007275, para. 28; LBY-OTP-00015360, paras 45, 199; LBY-OTP-00018075, paras 37, 39-43; LBY-OTP-00015405, paras 44, 118; LBY-OTP-00016916, paras 25, 77; LBY-OTP-00018119, paras 40-41; LBY-OTP-00020267, para. 77; LBY-OTP-00020358, para. 45.

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detainees were held in overcrowded cells,⁷⁰ in small cells in solitary confinement,⁷¹ or in open yards exposed to the weather.⁷² The cells were dirty and lacked sufficient ventilation.⁷³ This situation created tensions among detainees and, sometimes, led to fights.⁷⁴ Overall, hygiene conditions were deplorable.⁷⁵ Detainees were malnourished and dehydrated.⁷⁶ The detainees

⁷⁰ LBY-OTP-0068-0003, paras 20-21; LBY-OTP-0069-0584, paras 66, 74; LBY-OTP-00007250, para. 27; LBY-OTP-0069-0506, paras 38-39, 42, 67-68; LBY-OTP-00018134, paras 40, 61, 66. See also LBY-OTP-0073-0025, paras 95, 99-100; LBY-OTP-0066-0951, para. 34; LBY-OTP-0080-0032, paras 80, 86; LBY-OTP-0080-0169, para. 144; LBY-OTP-0070-6952, para. 117; LBY-OTP-0080-0468, paras 94-95; LBY-OTP-0083-0663, paras 127-128; LBY-OTP-00001491, paras 55, 57-58, 97; LBY-OTP-0080-0608, paras 23-24, 27, 62; LBY-OTP-0070-7295, paras 79, 120; LBY-OTP-00015125, para. 31; LBY-OTP-00007275, para. 33; LBY-OTP-00018772, paras 40, 44; LBY-OTP-00015360, paras 49-50, 88-89; LBY-OTP-00015420, para. 19; LBY-OTP-00016916, para. 29; LBY-OTP-00016896, para. 52; LBY-OTP-00018119, paras 43, 54; LBY-OTP-00019195, paras 41, 44-45; LBY-OTP-00020236, paras 30, 51; LBY-OTP-00020267, paras 44, 56; LBY-OTP-00020358, paras 48, 50-51, 105.

⁷¹ LBY-OTP-0066-0951, para. 31; LBY-OTP-00016896, paras 35-36. See also LBY-OTP-0070-6952, para. 68; LBY-OTP-00020236, para. 15.

⁷² LBY-OTP-00016896, para. 52.

⁷³ LBY-OTP-0069-0584, para. 65; LBY-OTP-0080-0468, para. 98. See also LBY-OTP-0073-0025, para. 99; LBY-OTP-0066-0951, paras 31, 37, 94; LBY-OTP-0068-0003, para. 20; LBY-OTP-0069-0506, para. 42; LBY-OTP-0080-0032, paras 80-81; LBY-OTP-0083-0663, paras 162; LBY-OTP-00001491, para. 94; LBY-OTP-0070-7295, para. 124; LBY-OTP-00015125, para. 31; LBY-OTP-00015360, paras 49-50, 88; LBY-OTP-00018075, para. 57; LBY-OTP-00015405, para. 56; LBY-OTP-00019195, paras 52-53; LBY-OTP-00020267, para. 46; LBY-OTP-00020358, para. 105.

⁷⁴ LBY-OTP-00007275, para. 37; LBY-OTP-00018119, para. 49; LBY-OTP-0080-0032, para. 59; LBY-OTP-0083-0663, para. 159.

⁷⁵ LBY-OTP-0066-0951, para. 31; LBY-OTP-0069-0584, paras 65, 77, 120; LBY-OTP-0069-0506, para. 41; LBY-OTP-0080-0032, paras 60, 80; LBY-OTP-0070-6952, para. 88; LBY-OTP-0080-0608, paras 24, 34; LBY-OTP-0070-7295, paras 120, 128; LBY-OTP-00015405, paras 52, 60; LBY-OTP-00019195, para. 52. See also LBY-OTP-0073-0025, paras 93, 95; LBY-OTP-0066-0951, para. 35; LBY-OTP-0068-0003, para. 20; LBY-OTP-0069-0584, paras 65-66, 77; LBY-OTP-00007250, para. 28; LBY-OTP-0069-0506, paras 39, n74; LBY-OTP-00018134, paras 40, 46; LBY-OTP-0080-0169, para. 147; LBY-OTP-0070-6952, para. 117; LBY-OTP-0070-7295, para. 120; LBY-OTP-0083-0052, para. 101; LBY-OTP-0085-0063, para. 70; LBY-OTP-00015125, paras 34; LBY-OTP-00007275, para. 38; LBY-OTP-00018772, para. 36; LBY-OTP-00016916, paras 30, 52; LBY-OTP-00019195, para. 135.

⁷⁶ LBY-OTP-0069-0584, paras 119-124; LBY-OTP-00018772, para. 43. See also LBY-OTP-00001491, para. 94; LBY-OTP-00007250, para. 30; LBY-OTP-00007275, para. 39; LBY-OTP-00015125, para. 61; LBY-OTP-00015360, paras 55, 89, 152; LBY-OTP-00015405, paras 56, 60, 96-98; LBY-OTP-00016896, paras 39, 46, 50, 96; LBY-OTP-00016916, paras 40, 55; LBY-OTP-00018075, paras 54-55, 129; LBY-OTP-00018119, paras 49-51, 66-67; LBY-OTP-00018134, paras 41, 68, 97; LBY-OTP-00018787, paras 28, 35; LBY-OTP-00019195, paras 49, 84; LBY-OTP-0066-0951, para. 35; LBY-OTP-0068-0003, para. 23; LBY-OTP-0069-0506, paras 40-41, 42, 122, 143; LBY-OTP-0070-6952, paras 77-79, 81; LBY-OTP-0070-7295, para. 121; LBY-OTP-0073-0025, paras 93-94, 114, 163; LBY-OTP-0080-0032, paras 62, 80; LBY-OTP-0080-0169, para. 256; LBY-OTP-0080-0608, paras 25, 74, 83; LBY-OTP-0083-0052, paras 115, 190; LBY-OTP-0083-0663, para. 158; LBY-OTP-0085-0063, paras 72, 89; LBY-OTP-00020236, para. 36; LBY-OTP-00020358, para. 53.

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did not receive sufficient food or medication, as a result of which many became sick⁷⁷ and some died.⁷⁸

44. The Prosecution alleges that all SDF/RADA detainees at Mitiga Prison were humiliated and degraded.⁷⁹ For a war crime, IHL must have applied to the alleged conduct for it to be able to constitute a serious violation of IHL. It must thus be shown that the alleged victims of the abuse were protected by IHL at the time the alleged cruel treatment took place. The Chamber already found that a significant part of the detainees who provided statements to the Prosecution do not appear to have been detained for reasons related to the armed conflict. Nevertheless, based on its analysis of the material before it, and given that virtually all detainees were subjected to the same treatment, as well as the above finding that at least some detainees were detained for reasons related to the conflict, the Chamber is satisfied that there is a reasonable basis to believe that some of the detainees who were subjected to cruel treatment were protected under Common Article 3 at the time of the relevant conduct.⁸⁰ Given that the mistreatment took place during detention and the interrogations concerned the victims' suspected affiliation with general Haftar (i.e. the LNA), the perpetrators were aware of the factual circumstances establishing their protected status under IHL.

45. Taking into account the findings above, the Chamber considers that there are reasonable grounds to believe that specific elements of the war crime of cruel treatment pursuant to article 8(2)(c)(i) of the Statute are met.

iv. Outrages upon personal dignity as a war crime (article 8(2)(c)(ii) of the Statute)

46. In addition to the contextual elements referred to above, the remaining elements of the war crime of outrages upon personal dignity pursuant to article 8(2)(c)(ii) of the Statute, which

⁷⁷ LBY-OTP-0069-0506, paras 40, 42, 49; LBY-OTP-00001491, para. 94. See also LBY-OTP-0073-0025, paras 32, 162; LBY-OTP-0066-0951, paras 31, 37, 39; LBY-OTP-0069-0584, para. 126; LBY-OTP-00007250, para. 27; LBY-OTP-0080-0032, paras 62, 82, 86; LBY-OTP-0074-0889, para. 180; LBY-OTP-0070-6952, para. 160; LBY-OTP-0080-0608, paras 32, 34-35, 83, 227; LBY-OTP-0070-7295, paras 128, 141; LBY-OTP-0083-0052, paras 72, 115; LBY-OTP-00020099, paras 54-56; LBY-OTP-00015125, para. 84; LBY-OTP-00007275, paras 49, 60; LBY-OTP-00018772, para. 56; LBY-OTP-00015360, para. 199; LBY-OTP-00015405, para. 56; LBY-OTP-00016916, paras 36-37, 48, 54; LBY-OTP-00016896, para. 62; LBY-OTP-00018119, paras 40, 42, 85-86; LBY-OTP-00020267, paras 46, 48, 67; LBY-OTP-00020236, para. 36. LBY-OTP-00020358, para. 63.

⁷⁸ LBY-OTP-0066-0951, paras 37-38; LBY-OTP-0069-0584, paras 69-70; LBY-OTP-0069-0506, para. 65. See also LBY-OTP-0074-0889, paras 140-141, 155-180, 205-209; LBY-OTP-0080-0608, para. 32; LBY-OTP-0070-7295, para. 141; LBY-OTP-00007275, paras 51-52, 68; LBY-OTP-00015405, paras 56-57; LBY-OTP-00016896, paras 50, 89-93; LBY-OTP-00020236, para. 36; LBY-OTP-00020267, paras 49, 54-55, 65-66, 72.

⁷⁹ Application, paras 58-59.

⁸⁰ At a minimum, the persons addressed in LBY-OTP-0070-6952, LBY-OTP-00018787, and LBY-OTP-00016896.

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the Prosecution must show, are as follows: (i) the person humiliated, degraded or otherwise violated the dignity of one or more persons; (ii) the severity of the humiliation, degradation or other violation was of such degree as to be generally recognized an outrage upon personal dignity; (iii) such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities; and (iv) the perpetrator was aware of the factual circumstances that established this status.⁸¹

47. The Prosecution alleges that detainees at Mitiga Prison were subjected to outrages upon personal dignity as count 2, but in its allegations on the facts related to the counts 1 to 6, it generally refers to detainees being mistreated and being held in inadequate conditions.⁸² It does not in any way explain how, in its view, the elements of this war crime are met.

48. Nevertheless, based on its analysis, the Chamber finds that the conditions of detention, set out above,⁸³ imposed by SDF/RADA at Mitiga Prison constituted humiliation, degradation or were otherwise a violation of the dignity of the detained persons. It considers that these conditions were of a sufficient degree of severity to be generally recognised as an outrage upon personal dignity.

49. The Chamber recalls its finding above that at least some of the individuals detained fell within the protective scope of Common Article 3.⁸⁴ Given the generally problematic conditions and treatment of detainees in Mitiga Prison, the Chamber considers that, for those detainees, there are reasonable grounds to believe that the third element of the crime is satisfied, as they were subjected to conduct that constitutes an outrage upon personal dignity.

v. *Rape as a war crime and a crime against humanity (articles 8(2)(e)(vi) and 7(1)(g) of the Statute)*

50. The Prosecution submits that at least eight persons, including a 15-year-old boy, were raped.⁸⁵

51. In addition to the contextual elements referred to above, the remaining elements of the war crime of rape pursuant to article 8(2)(e)(vi) of the Statute are as follows: (i) the perpetrator

⁸¹ Article 8(2)(c)(ii) of the Elements of Crimes.

⁸² Application, paras 58, 65-67.

⁸³ See para. 44 (Section iii. Cruel treatment as a war crime (article 8(2)(c)(i) of the Statute)).

⁸⁴ See above under iii. Cruel treatment as a war crime (article 8(2)(c)(i) of the Statute).

⁸⁵ Application, para. 75.

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invaded the body of a person by conduct resulting in penetration, however slight, 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; and (ii) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁸⁶

52. As to the crime against humanity of rape pursuant to article 7(1)(g) of the Statute, the remaining elements are as follows: (i) the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, 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; and (ii) the invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.⁸⁷

53. The material presented before the Chamber shows that at least five detainees, including a 15-years-old boy,⁸⁸ were raped by guards⁸⁹ or other detainees⁹⁰ in Mitiga Prison. As regards to the victims' lack of consent, the Chamber notes the coercive environment in which the alleged conduct took place, the aggravated state of vulnerability of the victims, who were at the relevant time deprived of their liberty, and the fact that one of the identified victims was reportedly a minor at the time of the alleged conduct.

54. As regards the alleged war crime of rape, the Chamber notes that at least two of the victims of rape appear to have been detained for their alleged affiliation with ISIS or for being suspected to be affiliated with Haftar's armed forces.⁹¹ For these two alleged victims, the Chamber is satisfied, on the basis of the material provided at this stage, that IHL applied to the

⁸⁶ Article 8(2)(e)(vi)-1 of the Elements of Crimes.

⁸⁷ Article 7(1)(g)-1 of the Elements of Crimes.

⁸⁸ LBY-OTP-0074-0889, paras 181-190.

⁸⁹ LBY-OTP-00001367, p. 11, ln. 18 to p. 17, ln. 17; LBY-OTP-0070-6952, para. 170; LBY-OTP-00007275, paras 26-27, 32. See also LBY-OTP-0066-0951, para. 28.

⁹⁰ LBY-OTP-0066-0951, paras 44-48.

⁹¹ See LBY-OTP-00007275 and LBY-OTP-0070-6952.

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alleged conduct at the relevant time. For the other alleged victims of rape, the Chamber cannot at the present stage make such a determination.

55. Taking into account the findings above, the Chamber considers that there are reasonable grounds to believe that the specific elements of the crime against humanity of rape pursuant to articles 7(1)(g) of the Statute are met for the persons referred to above;⁹² and that for at least two of these persons, the specific elements of the war crime of rape pursuant to article 8(2)(e)(vi) of the Statute are met.

*vi. Sexual violence as a war crime and a crime against humanity
(articles 8(2)(e)(vi) and 7(1)(g) of the Statute)*

56. The Prosecution submits that at least 28 persons, including a 15-year-old boy, were subjected to sexual violence by Mitiga Prison guards.⁹³ The allegations appear to include those also made for the war crime and crime against humanity of rape. The Chamber here considers only the conduct that it has not already addressed under the rape allegations in the previous section.

57. As to the crime against humanity of sexual violence pursuant to article 7(1)(g) of the Statute, the remaining elements are as follows: (i) the perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent; (ii) such conduct was of a gravity comparable to the other offences in article 7, paragraph 1 (g), of the Statute; and (iii) the perpetrator was aware of the factual circumstances that established the gravity of the conduct.⁹⁴

58. In addition to the contextual elements referred to above, the remaining elements of the war crime of sexual violence pursuant to article 8(2)(e)(vi) of the Statute are as follows: (i) the perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression

⁹² See para. 53.

⁹³ Application, para. 75.

⁹⁴ Article 7(1)(g)-6 of the Elements of Crimes.

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or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent; (ii) the conduct was of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions; and (iii) the perpetrator was aware of the factual circumstances that established the gravity of the conduct.⁹⁵

59. The material presented before the Chamber shows that the following acts of a sexual nature were committed against detainees at Mitiga Prison: (i) mistreatment during questioning was sometimes sexualised, including by guards targeting sexual and reproductive organs of the detainees;⁹⁶ (ii) abuse of a sexual nature of at least one minor and of several young men by some the prison's authorities;⁹⁷ (iii) abuse of a sexual nature of female detainees held in the Women's Section.⁹⁸ Furthermore, SDF/RADA forced detainees to fully undress and have their anal cavity visually and/or physically searched by guards or other detainees.⁹⁹ Even though legitimate security reasons may exist for such searches and they can be conducted lawfully, there are reasonable grounds to believe that some of the searches took place in the presence of other detainees,¹⁰⁰ many detainees were insulted, threatened or beaten when they did not

⁹⁵ Article 8(2)(e)(vi)-6 of the Elements of Crimes.

⁹⁶ LBY-OTP-00015125, paras 39-43; LBY-OTP-00018075, para. 100; LBY-OTP-00016896, paras 67-68; LBY-OTP-00001491, paras 68-70; LBY-OTP-00015360, para. 38; LBY-OTP-00015420, paras 28, 41; LBY-OTP-00015360, para. 103; LBY-OTP-00015405, para. 80; LBY-OTP-0070-6952, para. 153; LBY-OTP-00001367, p. 3, ln. 7 to p. 6, ln. 6; LBY-OTP-00018075, para. 100; LBY-OTP-0069-0506, para. 126.

⁹⁷ LBY-OTP-0073-0025, paras 28-29, 34, 197; LBY-OTP-0069-0584, para. 192; LBY-OTP-0069-0506, para. 102; LBY-OTP-0080-0169, paras 81-83, 102-103; LBY-OTP-0074-0889, paras 33, 88, 181-191; LBY-OTP-0070-6952, para. 168; LBY-OTP-0080-0608, paras 102-104; LBY-OTP-00020099, paras 71-76; LBY-OTP-00018772, para. 48; LBY-OTP-00015405, paras 64-65; LBY-OTP-00020358, para. 85. See also LBY-OTP-00007275, paras 93-95; LBY-OTP-00015360, paras 91-95; LBY-OTP-00020267, paras 43, 94; LBY-OTP-00020236, para. 61.

⁹⁸ LBY-OTP-00018762, para. 63; LBY-OTP-00018763, para. 68; LBY-OTP-0083-0052, paras 174-177; LBY-OTP-0070-7295, para. 164; LBY-OTP-00018075, para. 100. See also LBY-OTP-0083-0663, para. 156; LBY-OTP-00015152, para. 122. See, however, LBY-OTP-00018134, para. 72; and LBY-OTP-00015405, para. 95 for statements to the contrary.

⁹⁹ LBY-OTP-0080-0169, paras 140-142; LBY-OTP-0068-0003, para. 18; LBY-OTP-0069-0584, paras 62-63; LBY-OTP-00007250, para. 26; LBY-OTP-0069-0506, para. 32; LBY-OTP-0080-0032, para. 57; LBY-OTP-0083-0663, paras 84-88; LBY-OTP-00015360, para. 45; LBY-OTP-00015125, paras 30. See also LBY-OTP-0073-0025, para. 92; LBY-OTP-0080-0032, para. 57; LBY-OTP-0080-0169, paras 140-142; LBY-OTP-0074-0889, para. 64; LBY-OTP-0080-0468, para. 93; LBY-OTP-00001491, para. 51; LBY-OTP-0080-0608, para. 23; LBY-OTP-0083-0052, para. 82; LBY-OTP-00020099, paras 67-68; LBY-OTP-00007275, paras 26-27, 32; LBY-OTP-00015405, para. 44; LBY-OTP-00018787, paras 23-24; LBY-OTP-00015420, para. 18; LBY-OTP-00016896, para. 34; LBY-OTP-00018119, para. 41; LBY-OTP-0080-0468, para. 93; LBY-OTP-00007275, paras 26-27, 32.

¹⁰⁰ LBY-OTP-0068-0003, para. 18; LBY-OTP-00007250, para. 26; LBY-OTP-00007275, paras 26-27, 32; LBY-OTP-00015360, para. 45. See also LBY-OTP-0073-0025, para. 92; LBY-OTP-0069-0584, paras 62-63; LBY-OTP-0069-0506, para. 32; LBY-OTP-0080-0032, para. 57; LBY-OTP-0080-0169, paras 140-142; LBY-OTP-0074-0889, para. 64; LBY-OTP-0080-0468, para. 93; LBY-OTP-0083-0663, paras 84-88; LBY-OTP-00001491, para. 51; LBY-OTP-0080-0608, para. 23; LBY-OTP-0083-0052, para. 82; LBY-OTP-00020099, paras 67-68; LBY-OTP-00015125, para. 30; LBY-OTP-00015405, para. 44; LBY-OTP-00018787, paras 23-24; LBY-OTP-00015420, para. 18; LBY-OTP-00016896, para. 34; LBY-OTP-00018119, para. 41.

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immediately comply,¹⁰¹ and the detainees who made statements about it felt humiliated and degraded as a result of these searches.¹⁰² In these circumstances, the Chamber considers that the searches amounted to sexual violence.

60. The Chamber underscores the state of vulnerability of the alleged victims, who were deprived of their liberty and, in those circumstances, victimised by their prison guards. The Chamber further determines that the abovementioned acts were of a gravity comparable to that of a serious violation of article 3 common to the four Geneva Conventions.

61. As to the protection of the alleged victims by IHL at the relevant time, the Chamber notes that at least two of the alleged victims of sexual violence were detained for reasons related to the armed conflict.¹⁰³ There are reasonable grounds to believe that these persons were protected under Common Article 3 at the relevant time, thereby fulfilling the second element of the alleged war crime. The Chamber further notes that, given that these persons were detained in Mitiga Prison, thereby in the hands of the alleged perpetrators, these perpetrators necessarily were aware of the factual circumstances that established their protected status under IHL.

62. Taking into account the findings above, the Chamber considers that there are reasonable grounds to believe that the specific elements of the war crime and crime against humanity of sexual violence pursuant to articles 8(2)(e)(vi) and 7(1)(g) of the Statute are met.

vii. Murder and attempted murder as a war crime and a crime against humanity (articles 8(2)(c)(i), 7(1)(a), and 25(3)(f) of the Statute)

63. The Prosecution submits that 'at least 56 SDF/RADA detainees at Mitiga Prison were murdered, or subjected to specific acts of attempted murder'.¹⁰⁴

64. As to the crime against humanity of murder pursuant to article 7(1)(a) of the Statute, the remaining elements are as follows: (i) the perpetrator killed one or more persons; (ii) the

¹⁰¹ LBY-OTP-0080-0468, para. 93; LBY-OTP-0080-0169, paras 140-142; LBY-OTP-00015360, para. 45; LBY-OTP-00015405, para. 44.

¹⁰² LBY-OTP-0080-0169, paras 140-142; LBY-OTP-0068-0003, para. 18; LBY-OTP-0069-0584, para. 63; LBY-OTP-00007250, para. 26; LBY-OTP-0069-0506, para. 32; LBY-OTP-0080-0032, para. 57; LBY-OTP-0083-0663, paras 84-88; LBY-OTP-00015360, para. 45; LBY-OTP-00015125, para. 30. See also LBY-OTP-00007275, paras 26-27, 32; LBY-OTP-00018075, paras 39-43.

¹⁰³ LBY-OTP-00016896; and LBY-OTP-0070-6952, in which the one making the statement describes how a detained ISIS fighter had a tube and the barrel of a rifle inserted into his anus by a guard during questioning (para. 167).

¹⁰⁴ Application, para. 81.

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conduct was committed as part of a widespread or systematic attack directed against a civilian population; and, (iii) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.¹⁰⁵

65. In addition to the contextual elements referred to above, the remaining elements of the war crime of murder pursuant to article 8(2)(c)(i) of the Statute are as follows: (i) the perpetrator killed one or more persons; (ii) such person or persons were either *hors de combat*, or were civilians, medical personnel, or religious personnel taking no active part in the hostilities; and (iii) the perpetrator was aware of the factual circumstances that established this status.¹⁰⁶

66. On the basis of the material presented, the Chamber finds reasonable grounds to believe that Mr El Hishri himself killed one detainee.¹⁰⁷ In addition, the persons who provided statements saw many fellow detainees dying as a result of the torture they endured¹⁰⁸ or due to untreated injuries.¹⁰⁹ Additionally, some detainees died from the lack of medical care¹¹⁰ whilst others died from being left outside in the winter¹¹¹ or from starvation.¹¹² On the basis of the material provided, the Chamber finds that there are reasonable grounds to believe that a significant number of persons was killed in Mitiga Prison during the relevant time period.

67. The material presented regarding the incident put forward by the Prosecution as attempted murder does not clearly establish whether Mr El Hishri intended to only to harm or intimidate the victim, or whether he instead intended to kill him.¹¹³ Given that the alleged victim was bound and in the full control of Mr El Hishri at the relevant time, the suspect could

¹⁰⁵ Article 7(1)(a) of the Elements of the Crimes.

¹⁰⁶ Article 8(2)(c)(i)-1 of the Elements of Crimes.

¹⁰⁷ LBY-OTP-0074-0889, paras 127-139.

¹⁰⁸ LBY-OTP-00015405, para. 106; LBY-OTP-00007275, para. 43; LBY-OTP-0083-0052, para. 133; LBY-OTP-00007250, paras 32-36; LBY-OTP-00016896, paras 91, 93; LBY-OTP-0080-0608, para. 40; LBY-OTP-00015405, para. 55; LBY-OTP-0080-0468, paras 124-126; LBY-OTP-00015360, paras 158-159. See also LBY-OTP-00019195, paras 115-116; LBY-OTP-0074-0889, paras 165, 205-209; LBY-OTP-00007275, paras 43, 60, 68; LBY-OTP-0070-6952, paras 162-163.

¹⁰⁹ LBY-OTP-0080-0169, paras 214-218; LBY-OTP-00007275, para. 66; LBY-OTP-00018119, paras 59-61; LBY-OTP-00015405, para. 55.

¹¹⁰ LBY-OTP-0074-0889, para. 165; LBY-OTP-00018787, para. 42; LBY-OTP-00016896, para. 92; LBY-OTP-00007275, para. 66; LBY-OTP-00016896, para. 92; LBY-OTP-00007275, para. 66; LBY-OTP-00015405, para. 55; LBY-OTP-0066-0951, para. 37; LBY-OTP-0074-0889, paras 161-164, 174-177, 178-179; LBY-OTP-00016896, paras 90, 92; LBY-OTP-00007275, para. 52; LBY-OTP-0070-7295, para. 141. LBY-OTP-0074-0889, paras 167-173. See also LBY-OTP-00007275, para. 51; LBY-OTP-00016896, para. 89; LBY-OTP-00018772, para. 55; LBY-OTP-0069-0584, paras 69-70; LBY-OTP-0080-0032, para. 82.

¹¹¹ LBY-OTP-0069-0584, para. 70. See also LBY-OTP-0083-0052, para. 133.

¹¹² LBY-OTP-00016896, para. 50.

¹¹³ See LBY-OTP-00018772, paras 34-35.

have easily killed the alleged victim, if he had intended to do so. The circumstances thus appear to point towards a shot fired recklessly but without the required intent to kill. In light of the Court's standards concerning intent and knowledge, the Chamber will not further consider this allegation.

68. In light of the foregoing, the Chamber considers that there are reasonable grounds to believe that the specific elements of the crime against humanity of murder pursuant to article 7(1)(a) of the Statute are met.

69. As regards the alleged war crime of murder, the Chamber recalls that the Prosecution does not make any submissions or provide material to support the allegations that the victims of the alleged war crime of murder were protected under Common Article 3 of the 1949 Geneva Convention at the time of they were killed. Contrary to the alleged crimes discussed above, for which the Chamber could consider the statements provided by the victims concerned and assess the circumstances of their arrest and detention and a possible link with an armed conflict, such information is – naturally – not available for the victims of the alleged murders. However, in relation to the second element of the crime, and given that there are reasonable grounds to believe that a significant number of persons were killed during their detention in Mitiga Prison, and the overall context in which this detention took place, the Chamber considers that it is reasonable to infer that at least some of those killed were protected under Common Article 3 at the relevant time. In relation to the third element, as it considered above for the other alleged war crimes, the Chamber further finds that, since all the alleged victims were detained, and as such in the hands of the alleged perpetrators, these perpetrators were necessarily aware of the circumstances that established their protected status for the purposes of the second element.

70. Taking into account the findings above, the Chamber considers that there are reasonable grounds to believe that the specific elements of the war crime of murder pursuant to article 8(2)(c)(i) of the Statute are met.

viii. Passing of sentences without previous judgment pronounced by a regularly constituted court or 'summary punishment' as a war crime (article 8(2)(c)(iv) of the Statute)

71. The Prosecution submits that 'SDF/RADA summarily punished at least 16 detainees, by imprisoning, mistreating and/or murdering them'.¹¹⁴

¹¹⁴ Application, para. 86

72. In addition to the contextual elements referred to above, the remaining elements of the war crime of sentencing or execution without due process pursuant to article 8(2)(c)(iv) of the Statute are as follows: (i) the perpetrator passed sentence or executed one or more persons; (ii) such person or persons were either *hors de combat*, or were civilians, medical personnel or religious personnel taking no active part in the hostilities; and (iii) the perpetrator was aware of the factual circumstances that established this status; (iv) there was no previous judgement pronounced by a court, or the court that rendered judgement was not 'regularly constituted', that is, it did not afford the essential guarantees of independence and impartiality, or the court that rendered judgement did not afford all other judicial guarantees generally recognized as indispensable under international law; (v) the perpetrator was aware of the absence of a previous judgement or of the denial of relevant guarantees and the fact that they are essential or indispensable to a fair trial.¹¹⁵

73. At the outset, the Chamber observes that this allegation is addressed in only two paragraphs of the Application¹¹⁶ and that the Prosecution has not indicated what conduct in relation to the alleged victims would constitute 'summary punishment'.¹¹⁷ For the 11 alleged victims who provided statements to the Prosecution, the Chamber has been able to assess whether they could fall under the protection of Common Article 3, and there are reasonable grounds to believe that two of them were detained for reasons related to an armed conflict.¹¹⁸ However, for the five alleged 'other victims'¹¹⁹ no information is available about four of them other than that it concerned men or women of a certain age and for one it is clear that this person was detained as a common criminal.¹²⁰

74. As noted by Trial Chamber X, 'what sets this war crime apart from cruel treatment, and torture of or the commission of outrages upon personal dignity [...] is that the perpetrator's conduct serves as a form of punishment'. In order '[f]or a punishment to fall under the prohibited conduct, the perpetrator passing the sentence [or] someone else (i.e. usually a

¹¹⁵ Article 8(2)(c)(iv) of the Elements of Crimes.

¹¹⁶ Application, paras 86-87.

¹¹⁷ Footnote 376 of the application only lists the pseudonyms of the alleged victims, but does not contain any reference to specific conduct.

¹¹⁸ The persons whose statements are recorded as LBY-OTP-00018787 and LBY-OTP-00016896.

¹¹⁹ See footnote 376 of the Application.

¹²⁰ Namely, the person discussed in LBY-OTP-00020358, paras 92-93.

commander, another superior, or a person in charge) must have decided that the victim ought to be subjected to punishment for an alleged wrongdoing'.¹²¹

75. On the basis of the submissions made, and material presented, the Chamber is not in a position to consider whether the aforementioned elements are fulfilled. For the two persons for whom reasonable grounds to believe exist that they were protected by Common Article 3 at the relevant time, the Prosecution does not substantiate why the treatment, in addition to fulfilling the elements of crimes already considered above, also qualifies as the passing of a sentence. It is not explained, for example, how the detention itself, which – as the Prosecution argues elsewhere in the Application – was unlawful imprisonment, arbitrary or without any judicial grounds, can at the same time be a 'sentence'.

76. In these circumstances, the Chamber is unable to make findings on the alleged war crime of the passing of sentences without previous judgment pronounced by a regularly constituted court or 'summary punishment'.

ix. *Enslavement as a crime against humanity (article 7(1)(c) of the Statute)*

77. The Prosecution submits that 'SDF/RADA subjected at least 43 detainees to enslavement by exercising powers attaching to the right of ownership over them',¹²² 'including a nine-year old boy'.¹²³

78. In addition to the contextual elements referred to above, the remaining element of the crime against humanity of enslavement pursuant to article 7(1)(c) of the Statute is the following: (i) the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.¹²⁴

79. The material provided shows the general deprivation of liberty that all the detainees in the Mitiga Prison suffered from. On the basis of this material, it appears that some detainees were treated differently in Mitiga Prison, in particular sub-Saharan African detainees, who according to witnesses were detained due to their irregular situation in the country,¹²⁵ at the

¹²¹ Trial Chamber X, *The Prosecutor v. Al Hassan*, Trial Judgment, ICC-01/12-01/18-2594-Red, para. 1168.

¹²² Application, para. 88. See also Application, para. 90.

¹²³ Application, para. 90.

¹²⁴ Article 7(1)(c) of the Elements of Crimes.

¹²⁵ LBY-OTP-0069-0506, paras 136-137; LBY-OTP-0083-0052, paras 20, 76-77, 170.

airport,¹²⁶ or if they had problems with their employers.¹²⁷ The witnesses explain that these detainees were treated worse than Libyan detainees and forced to conduct hard labour in the prison such as cleaning, construction, painting and transporting weapons and ammunitions.¹²⁸ Furthermore, these detainees were forced to search the bodies of newly arrested individuals,¹²⁹ and to prepare other detainees for torture by transporting them from their cells to the torture site, blindfolding them, or handcuffing them.¹³⁰ The material presented indicates that these detainees have participated in the mistreatment of other detainees.¹³¹ The material also shows that sub-Saharan African detainees were frequently referred to as 'slaves'.¹³²

80. From the material presented by the Prosecution, it appears that some other detainees of Mitiga Prison were forced to fight,¹³³ and some were forced to give their blood.¹³⁴ Furthermore, although this is not uncommon in a prison setting, the material indicates that some detainees were assigned specific responsibilities within the prison such as working in the infirmary¹³⁵ or kitchen,¹³⁶ which afforded them certain privileges. Over time, some detainees who earned the trust of the guards were appointed as section or cell 'capos' who served as informants to collect information.¹³⁷ Finally, it appears that children were also present in the prison. Witnesses

¹²⁶ LBY-OTP-0080-0608, para. 39.

¹²⁷ LBY-OTP-0070-7295, para. 134.

¹²⁸ LBY-OTP-0074-0889, paras 52, 166, 225-226; LBY-OTP-0069-0506, para. 67; LBY-OTP-0069-0584, paras 194-195; LBY-OTP-00018134, para. 76; LBY-OTP-00016896, paras 54, 60; LBY-OTP-00020267, para. 61. See also LBY-OTP-00020173, paras 73, 77, 110-121.

¹²⁹ Including performing anal cavity searches. See LBY-OTP-00007275, paras 26-28, 32; LBY-OTP-0083-0663, paras 85-87. See also LBY-OTP-00020358, para. 45; LBY-OTP-00019195, para. 132.

¹³⁰ LBY-OTP-00018134, para. 76; LBY-OTP-0070-6952, para. 100; LBY-OTP-00018772, paras 30-31; LBY-OTP-0069-0506, para. 115; LBY-OTP-00015125, para. 41. See also LBY-OTP-0074-0889, para. 52; LBY-OTP-00016896, para. 67; LBY-OTP-00016896, paras 29-30.

¹³¹ Such as by hanging detainees from the balanco or beating them with PPR. See LBY-OTP-0069-0584, paras 101-102; LBY-OTP-00018134, para. 30; LBY-OTP-00016896, para. 67; LBY-OTP-00016896, paras 29-30, 67. See also LBY-OTP-00015125, para. 41; LBY-OTP-00018772, paras 30-31; LBY-OTP-0069-0506, para. 115; LBY-OTP-0073-0025, paras 53, 84, 88, 91, 102, 105-108; LBY-OTP-0080-0032, paras 52-54, 56, 58; LBY-OTP-00018787, p. 20, para. 93.

¹³² LBY-OTP-00020173, paras 83-121. See also LBY-OTP-0070-6952, para. 100.

¹³³ See also LBY-OTP-0083-0052, paras 42, 187-189.

¹³⁴ LBY-OTP-00015405, para. 51; LBY-OTP-00020099, paras 41-42.

¹³⁵ LBY-OTP-0074-0889, paras 83, 86-87, 90-192; LBY-OTP-0070-7295, para. 141; LBY-OTP-00018772, paras 40-41; LBY-OTP-0080-0608, paras 36, 56-57, 61; LBY-OTP-0070-6952, para. 98; LBY-OTP-0074-0889, paras 91-92; 97-102, 105, 118, 122-123, 129, 130, 141, 144, 163, 173, 181, 190, 213, 240, 269; LBY-OTP-00018134, para. 54; LBY-OTP-00020267, para. 73. See also LBY-OTP-00007275, paras 41-42.

¹³⁶ LBY-OTP-0083-0052, paras 160, 167. See also LBY-OTP-0070-7295, para. 149; LBY-OTP-00020236, paras 20-21.

¹³⁷ LBY-OTP-00020099, paras 34, 79-80; LBY-OTP-0070-7295, paras 133-138; LBY-OTP-0083-0052, para. 140. See also LBY-OTP-0066-0951, paras 28, 44-48.

reported that one child was used by the guards to collect and deliver food to the women detainees and the other children.¹³⁸

81. Regarding the Sub-Saharan African detainees, the Chamber considers that there are *indicia* that show that powers attaching to the right of ownership over the sub-Saharan African and foreign detainees were exercised by the guards of Mitiga Prison. However, the Chamber also notes that the Prosecution defines the civilian population targeted by this crime as 'segments of the population in Libya perceived to be opposing SDF/RADA or its ideology'.¹³⁹ The material provided indicates that the Sub-Saharan detainees were detained for reasons unrelated to opposing SDF/RADA or its ideology, and therefore cannot be considered part of the same civilian population that was being attacked. Regarding the other detainees, the Chamber considers that the Prosecution has failed to show that the alleged perpetrators exercised powers attaching to the right of ownership over them. Based on these considerations, the Chamber will not further examine the alleged crime against humanity with respect to both Sub-Saharan African and Libyan detainees.

*x. Sexual slavery as a war crime and a crime against humanity
(articles 8(2)(e)(vi) and 7(1)(g) of the Statute)*

82. The Prosecution submits that '[s]ome detainees subjected to rights of ownership were also caused to engage in acts of a sexual nature' and it alleges that five witnesses were victims of this crime.¹⁴⁰

83. In addition to the contextual elements referred to above, the remaining elements of the war crime of sexual slavery pursuant to article 8(2)(e)(vi) of the Statute are as follows: (i) the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and (ii) the perpetrator caused such person or persons to engage in one or more acts of a sexual nature.¹⁴¹

84. In addition to the contextual elements referred to above, the remaining elements of the crime against humanity of sexual slavery pursuant to article 7(1)(g) of the Statute are as follows: (i) the perpetrator exercised any or all of the powers attaching to the right of ownership over

¹³⁸ LBY-OTP-00020099, paras 69, 70; LBY-OTP-00019195, para. 121. See also LBY-OTP-0083-0052, para. 173.

¹³⁹ Application, para. 53.

¹⁴⁰ Application, para. 90.

¹⁴¹ Article 8 (2) (e) (vi)-2 of the Elements of Crimes.

one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty; and (ii) the perpetrator caused such person or persons to engage in one or more acts of a sexual nature.¹⁴²

85. From the material provided, it appears that at least two detainees have been raped by guards of Mitiga Prison.¹⁴³ However, on the basis of the material provided, it appears the rapes were isolated incidents and the Prosecution has failed to show that the conduct in relation to specific victims occurred in a manner that could be characterised as sexual slavery, including by not providing information that shows that the alleged perpetrators exercised powers attaching to the right of ownership over these detainees.

86. Based on the material provided and in view of the insufficient substantiation of this crime, the Chamber is, at this stage, unable to find reasonable grounds to believe that the elements of the war crime and crime against humanity of sexual slavery have been met.

xi. Persecution as a crime against humanity (article 7(1)(h) of the Statute)

87. The Prosecution submits that at least 39 persons were persecuted at Mitiga Prison.¹⁴⁴ More specifically, the Prosecution alleges that: (i) 'at least 21 detainees were targeted for criminality on grounds of nationality, race and/or ethnicity'; and (ii) '[s]ome detainees—and potentially a significant proportion of the detainee population at Mitiga—were targeted for criminality on grounds of religion, politics, and/or gender'.¹⁴⁵

88. In addition to the contextual elements referred to above, the remaining elements of the crime against humanity of persecution pursuant to article 7(1)(h) of the Statute are as follows: (i) the perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights; (ii) the perpetrator targeted such person or persons by reason of the identity of a group or collectively or targeted the group or collectively as such; (iii) such targeting was based on political, racial, national, ethnic, cultural, religious, gender as defined in article 7, paragraph 3, of the Statute, or other grounds that are universally recognized as impermissible

¹⁴² Article 7(1)(g)-2 of the Elements of Crimes.

¹⁴³ LBY-OTP-0066-0951, paras 28, 44-48; LBY-OTP-00001367, p. 11, ln. 18 to p. 17, ln. 17.

¹⁴⁴ Application, para. 91.

¹⁴⁵ Application, paras 94-95.

under international law; and (iv) the conduct was committed in connection with any act referred to in article 7, paragraph 1, of the Statute or any crime within the jurisdiction of the Court.¹⁴⁶

89. The Chamber found above that an attack for the purposes of article 7(1) of the Statute existed against segments of the civilian population in Libya perceived to be opposing SDF/RADA or its ideology. The material provided by the Prosecution shows that part of the detainees were arrested because of their opposition to SDF/RADA¹⁴⁷ or for their perceived opposition to SDF/RADA's political ideology,¹⁴⁸ whilst others were detained for not complying with SDF/RADA's expectations for their roles in society associated with their sex or gender.¹⁴⁹

90. On the basis of the presented material, the Chamber further finds reasonable grounds to believe that the detainees who did not comply with the religious expectations of the SDF/RADA, such as detainees professing minority faiths¹⁵⁰ or no faith at all,¹⁵¹ were, *inter alia*, mistreated and forced to attend religious classes.¹⁵² Although the persecution went beyond mere political views and concerned a broader perception by the SDF/RADA about how the Libyan society ought to be organised, the Chamber will bring the alleged persecution only under the heading of political grounds for the purposes of the present warrant.

91. Taking into account the findings above, the Chamber considers that there are reasonable grounds to believe that the specific elements of the crime against of persecution for political grounds pursuant to article 7(1)(h) of the Statute are met.

¹⁴⁶ Article 7(1)(h) of the Elements of Crimes.

¹⁴⁷ LBY-OTP-0069-0584, paras 95-97, 104-106; LBY-OTP-0083-0189, paras 30-35, 37-42, 61, 66, 77-84, 89-91, 100, 119-132, 210, 219, 224, 233-236, 258; LBY-OTP-0083-0052, paras 18, 84; LBY-OTP-00020099, paras 13-20, 26-27; LBY-OTP-00016896, paras 27, 32

¹⁴⁸ LBY-OTP-0069-0584, paras 95-97, 100-101, 104-106; LBY-OTP-0070-6952, paras 48-55; LBY-OTP-00015360, paras 18, 40; LBY-OTP-00016896, paras 22-23, 27; LBY-OTP-0083-0052, para. 84. See also LBY-OTP-00018075, para. 80.

¹⁴⁹ LBY-OTP-0073-0025, paras 79, 97, 105-106, 109-110; LBY-OTP-00001366, p. 37, ln. 14 to p. 38, ln. 6; p. 41, lns. 1-10; LBY-OTP-0080-0608, para. 106; LBY-OTP-0070-7295, para. 160; LBY-OTP-0083-0663, para. 155; LBY-OTP-0072-0387, paras 52-54, 65, 93.

¹⁵⁰ LBY-OTP-0069-0584, paras 166, 189; LBY-OTP-0080-0032, para. 172; LBY-OTP-0080-0169, paras 119-122, 124-134, 137, 154-156, 163, 167, 173, 178, 190, 198; LBY-OTP-0074-0889, paras 67, 89, 97; LBY-OTP-00001491, para. 103; LBY-OTP-0080-0608, paras 85-86, 105; LBY-OTP-0070-7295, para. 141; LBY-OTP-00020358, paras 20-21, 31-38, 57-61, 66, 75-76, 88, 103. See also LBY-OTP-0080-0169, paras 122, 124-126, 155.

¹⁵¹ LBY-OTP-0073-0025, para. 131; LBY-OTP-0080-0169, paras 190, 208; LBY-OTP-0074-0889, paras 60-61, 66-68, 73-75, 77-82, 230; LBY-OTP-00001491, paras 29, 32, 37-38, 92, 103, 125.

¹⁵² LBY-OTP-00007250, paras 55-57; ; LBY-OTP-00001491, paras 99-101, 104-106, 121. See also LBY-OTP-0069-0506, para. 106.

4. Mr El Hishri's individual criminal responsibility

92. The Prosecution alleges that Mr El Hishri intentionally and/or knowingly contributed as a co-perpetrator, under article 25(3)(a) of the Statute, to the crimes committed in the implementation of the common plan.¹⁵³ It further submits that Mr El Hishri is 'additionally and/or alternatively' responsible for ordering or inducing some of these crimes;¹⁵⁴ that he is 'additionally and/or alternatively' responsible as an accessory, under article 25(3)(d) of the Statute, to the same crimes to which he contributed as a co-perpetrator;¹⁵⁵ and that he is 'additionally and/or alternatively' for these crimes under article 25(3)(c) of the Statute.¹⁵⁶ Furthermore, the Prosecution submits that Mr El Hishri is additionally responsible, under article 25(3)(a) and (c), for the crimes of persecution committed for national, racial, political or gender reasons.¹⁵⁷

93. Regarding the Prosecution's request for the Chamber to make a finding for each such modes of liability,¹⁵⁸ the Chamber notes that some modes of liability charged by the Prosecution in relation to the same crimes are mutually exclusive. The Prosecution submits, for example, that Mr El Hishri is responsible under all modes of liability, by averring that he was 'additionally' liable under each of them. Yet, it would be contradictory for the Chamber to find that a suspect made an essential contribution to a common plan and, at the same time, find that he made a less significant contribution to crimes falling within that same plan. For this reason, the Chamber will assess the Prosecution's allegations in the order they are presented. Only when the initial mode of liability is rejected the Chamber will address the remaining submissions regarding other modes of liability that refer to the same crimes but require a less significant contribution.

(a) Article 25(3)(a) of the Statute

94. The information provided by the Prosecution indicates that, at the time relevant for the Application, Mr El Hishri served for the Ministry of Interior as an officer and first lieutenant,¹⁵⁹

¹⁵³ Application, paras 106-141.

¹⁵⁴ Application, para. 142.

¹⁵⁵ Application, paras 143-144.

¹⁵⁶ Application, para. 152.

¹⁵⁷ Application, para. 146.

¹⁵⁸ Application, para. 105.

¹⁵⁹ LBY-OTP-0066-0951, paras 73. LBY-OTP-0069-0584, para. 159; LBY-OTP-0069-0506, para. 81.

and was a Sheikh, founding member and senior official in SDF/RADA.¹⁶⁰ The SDF/RADA was in charge of the Mitiga Prison and pursuant to a common plan with political and economic ambitions, including fighting terrorism, targeting whomever its members perceived as terrorists or opponents, with a view to detaining, torturing and, in some cases, subjecting them to rape and sexual violence, and killing them, as well as extorting money from them and their relatives.¹⁶¹ Besides Mr El Hishri, the senior members in the organisation were Kara, its leader, N'Zam and Njeem, the latter being subordinate to Mr El Hishri.¹⁶²

95. For the reasons that follow, the Chamber finds reasonable grounds to believe that, during the time period relevant to the charges, Mr El Hishri not only was a direct perpetrator in the incidents in which he was present, amounting to torture, cruel treatment, outrages upon personal dignity, imprisonment, murder, but also, being a member of SDF/RADA, he knowingly made an essential contribution to the common plan of the organisation that resulted in other incidents of the abovementioned crimes of imprisonment, torture, cruel treatment, outrages upon personal dignity, rape, sexual violence, murder, and persecution on political grounds.

(i) Mr El Hishri's conduct

96. As for the question of whether the suspect 'had control over the crime, by virtue of his or her essential contribution to it and the resulting power to frustrate its commission, even if that essential contribution was not made at the execution stage of the crime',¹⁶³ the Chamber finds reasonable grounds to believe that during the time period relevant to the charges, Mr El Hishri made an essential contribution to the common plan by (i) personally torturing, mistreating, sexually abusing and killing detainees; (ii) controlling the crimes taking place in Women's Section; and (iii) exercising his authority over all Mitiga Prison staff and detainees.

¹⁶⁰ LBY-OTP-0080-0608, paras 43, 132, 142-143; LBY-OTP-00015360, para. 36; LBY-OTP-00018699, para. 95; LBY-OTP-00020267, paras 115, 123; LBY-OTP-0083-0052, para. 30; LBY-OTP-00020099, para. 34.

¹⁶¹ LBY-OTP-00020191, paras 231, 237-239; LBY-OTP-00015405, para. 36; LBY-OTP-0070-7295, para. 182; LBY-OTP-00007275, para. 80; LBY-OTP-0069-0506, para. 37; LBY-OTP-00015405, para. 109; LBY-OTP-0083-0052, paras 84-85.

¹⁶² LBY-OTP-00020099, para. 34; LBY-OTP-0085-0063, para. 37; LBY-OTP-0083-0052, paras 30, 134; LBY-OTP-0069-0506, paras 81-82, 87, 90-93; LBY-OTP-0080-0608, paras 43, 142, 151; LBY-OTP-0070-6952, paras 128-129, 137; LBY-OTP-00007275, para. 80; LBY-OTP-00018119, paras 96-98; LBY-OTP-00016896, paras 104-105; LBY-OTP-00015405, para. 53; LBY-OTP-0070-7295, paras 181, 183-187; LBY-OTP-00016916, para. 65; LBY-OTP-0074-0889, para. 253; LBY-OTP-00018134, paras 78-81, 85; LBY-OTP-0080-0032, paras 99, 120-122, 125; LBY-OTP-00007250, paras 60-61; LBY-OTP-0080-0169, paras 87-88; LBY-OTP-00015420, para. 40; LBY-OTP-00015405, paras 50, 53.

¹⁶³ Appeals Chamber, *The Prosecutor v. Thomas Lubanga Dyilo*, Judgment on the appeal of Mr Thomas Lubanga Dyilo against his conviction, 1 December 2014, ICC-01/04-01/06-3121-Red, para. 473.

97. First, the information provided by the Prosecution shows that Mr El Hishri personally tortured, mistreated, sexually abused and, in some cases, killed detainees. The information presented by the Prosecution identifies some of the detainees who were subjected to some or all of these crimes identifies by name,¹⁶⁴ whilst other detainees are unidentified.¹⁶⁵ Mr El Hishri interrogated detainees and attempted to extract confessions from them, including under torture;¹⁶⁶ he also monitored and issued orders to others who interrogated prisoners.¹⁶⁷

98. Second, Mr El Hishri exercised authority of the Women's Section of the Mitiga Prison.¹⁶⁸ He had the keys of this section,¹⁶⁹ strictly controlled access,¹⁷⁰ closely watching any guard or working prisoner whom he instructed to go there.¹⁷¹ In his absence, no one could enter or exit the section.¹⁷² He exercised daily administrative control over the detainees in the

¹⁶⁴ LBY-OTP-0070-6952, paras 84-88; 92-93, 95-98; LBY-OTP-0083-0663, paras 80, 85, 90, 99, 103, 162; LBY-OTP-00001491, para. 112; LBY-OTP-0070-7295, para. 106; LBY-OTP-00007275, paras 30-31; LBY-OTP-00018772, paras 32-34; LBY-OTP-00018075, paras 37, 39-43, 45, 68-70, 72-75, 106-108; LBY-OTP-00007275, paras 27-30; LBY-OTP-00001491, paras 108-111; LBY-OTP-0073-0025, para. 97; LBY-OTP-00007275, para. 43; LBY-OTP-0083-0052, para. 113; LBY-OTP-00020099, para. 49; LBY-OTP-0070-7295, paras 56, 211; LBY-OTP-0083-0663, paras 100; LBY-OTP-0083-0663, paras 101, 141; LBY-OTP-00007275, para. 91; LBY-OTP-00020358, para. 128; LBY-OTP-00016896, para. 87; LBY-OTP-0083-0052, paras 116-117; LBY-OTP-00020099, paras 59-64; LBY-OTP-0074-0889, paras 142-151; LBY-OTP-00018787, para. 50; LBY-OTP-0069-0506, para. 50; LBY-OTP-0083-0052, para. 36; LBY-OTP-00020099, paras 43-45; LBY-OTP-00020358, paras 92-93; LBY-OTP-00020358, para. 94.

¹⁶⁵ LBY-OTP-0069-0506, para. 92; LBY-OTP-0080-0169, paras 31, 88; 94, 95, 214-216; LBY-OTP-0074-0889, paras 117-123, 200-204, 210-213, 246; LBY-OTP-0070-6952, para. 138; LBY-OTP-0080-0468, para. 119; LBY-OTP-0080-0608, paras 41-42, 92; LBY-OTP-0070-7295, para. 164; LBY-OTP-0083-0052, paras 132-133, 178; LBY-OTP-00007275, para. 92; LBY-OTP-00015360, para. 119; LBY-OTP-00018075, paras 103, 105, 108; LBY-OTP-00019195, para. 87, 98, 106-107, 108-109; LBY-OTP-00020267, paras 77, 79-80; LBY-OTP-00020358, para. 126.

¹⁶⁶ See e.g. LBY-OTP-0074-0889, paras 142-151; LBY-OTP-0070-6952, paras 92-93, 95-96; LBY-OTP-00007275, para. 30; LBY-OTP-00018772, paras 32-34; LBY-OTP-00019195, para. 108.

¹⁶⁷ LBY-OTP-0069-0506, para. 88; LBY-OTP-00015360, paras 37-38; LBY-OTP-00016896, para. 30.

¹⁶⁸ LBY-OTP-00007275, para. 80; LBY-OTP-00018119, para. 98; LBY-OTP-00016916, para. 61; LBY-OTP-0073-0025, paras 31, 33; LBY-OTP-0069-0584, para. 130; LBY-OTP-00007250, para. 53; LBY-OTP-0069-0506, para. 94; LBY-OTP-0080-0032, paras 35, 120-121; LBY-OTP-0080-0169, para. 90; LBY-OTP-0074-0889, paras 193, 245; LBY-OTP-0070-6952, paras 137, 145; LBY-OTP-0083-0663, paras 94, 120; LBY-OTP-00001491, para. 112; LBY-OTP-00015152, para. 115; LBY-OTP-0080-0608, paras 43, 135; LBY-OTP-0070-7295, para. 162; LBY-OTP-0083-0052, paras 35, 173; LBY-OTP-00015125, paras 93, 101; LBY-OTP-00007275, paras 80, 84; LBY-OTP-00018772, para. 78; LBY-OTP-00015360, para. 113; LBY-OTP-00018075, paras 137; LBY-OTP-00018787, para. 56; LBY-OTP-00016916, para. 61; LBY-OTP-00016896, para. 105; LBY-OTP-00018119, para. 98; LBY-OTP-00019195, para. 122; LBY-OTP-00020236, para. 72; LBY-OTP-00020267, para. 76; LBY-OTP-00020358, para. 125.

¹⁶⁹ LBY-OTP-0069-0506, paras 94, 129; LBY-OTP-0080-0169, paras 90-91; LBY-OTP-0083-0052, para. 186; LBY-OTP-00015360, para. 113; LBY-OTP-00020358, para. 125.

¹⁷⁰ LBY-OTP-0069-0506, paras 94, LBY-OTP-0073-0025, para. 31; LBY-OTP-0069-0584, para. 88; LBY-OTP-00018134, paras 70-71; LBY-OTP-0080-0169, paras 90-91; LBY-OTP-0074-0889, para. 193; LBY-OTP-0080-0608, para. 135; LBY-OTP-00007275, para. 84; LBY-OTP-00015360, paras 113-114. See also LBY-OTP-0074-0889, para. 199; LBY-OTP-00018772, paras 81, 134; LBY-OTP-00018119, para. 100.

¹⁷¹ LBY-OTP-0069-0506, para. 129; LBY-OTP-0080-0032, paras 35, 121; LBY-OTP-00015360, para. 113; LBY-OTP-00018075, paras 65, 137.

¹⁷² LBY-OTP-0069-0506, para. 94; LBY-OTP-0080-0032, para. 121; LBY-OTP-0074-0889, para. 193; LBY-OTP-0080-0608, para. 43; LBY-OTP-0083-0052, paras 18, 179; LBY-OTP-00018075, para. 65; LBY-OTP-00015360, paras 113-114.

Women's Section, including the conditions of their detention,¹⁷³ and the circumstances of their release.¹⁷⁴ This allowed him to have control over the crimes committed therein.

99. Third, besides himself torturing or monitoring the torture of detainees in the Mitiga Prison, and having control over the crimes in the Women's Section, Mr El Hishri reportedly controlled everything within the prison.¹⁷⁵ This is shown by the fact that the prison staff feared and obeyed him, and was not able to challenge his decisions.¹⁷⁶ Mr El Hishri personally took measures to punish guards who acted against SDF/RADA's line of command.¹⁷⁷ Furthermore, Mr El Hishri imposed prison conditions aimed at increasing the detainees' suffering and systematically opposed any attempt at improvement.¹⁷⁸ He also had the authority to detain and release detainees without asking the prison's director,¹⁷⁹ thereby having the ability to frustrate crimes taking place therein. Thus, his position and authority allowed him to exercise joint control over the alleged crimes with the other co-perpetrators.

(ii) Mr El Hishri's *mens rea*

100. Regarding the requisite intention that the crimes in the common plan occur, or knowledge that they would occur in the ordinary course of events while implementing the common plan,¹⁸⁰ the information submitted by the Prosecution shows that Mr El Hishri had the required *mens rea* regarding the crimes that were committed while he was present as well as those that were committed in the implementation of the common plan without him being present.

101. First, said information shows that Mr El Hishri had direct knowledge of the acts of imprisonment, torture, cruel treatment, outrages upon personal dignity, sexual violence, murder

¹⁷³ See e.g. LBY-OTP-0083-0663, paras 157-159, 162-165; LBY-OTP-00018075, paras 52-58.

¹⁷⁴ LBY-OTP-0083-0663, paras 80, 105.

¹⁷⁵ LBY-OTP-0080-0032, paras 120-121. See also LBY-OTP-0069-0584, para. 160; LBY-OTP-0069-0506, para. 93; LBY-OTP-0080-0032, para. 122; LBY-OTP-00019195, para. 95; LBY-OTP-00018772, para. 49.

¹⁷⁶ LBY-OTP-0080-0169, para. 44. See also LBY-OTP-0080-0169, paras 88, 214; LBY-OTP-0074-0889, paras 129-130, 205-206, 208; LBY-OTP-0069-0584, para. 160; LBY-OTP-00001491, paras 108-111; LBY-OTP-00007250, para. 60.

¹⁷⁷ LBY-OTP-00015405, para. 69.

¹⁷⁸ LBY-OTP-0069-0506, para. 72; LBY-OTP-0074-0889, para. 247; LBY-OTP-00007275, para. 37; LBY-OTP-00015405, paras 102, 106; LBY-OTP-00019195, para. 53.

¹⁷⁹ LBY-OTP-0080-0032, para. 121; LBY-OTP-0083-0663, paras 76, 80, 105; LBY-OTP-0080-0608, paras 142, 151; LBY-OTP-00019195, para. 95; LBY-OTP-00018075, para. 122, 124-126; LBY-OTP-00020358, para. 70.

¹⁸⁰ See Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Judgment, 8 July 2019, ICC-01/04-02/06-2359, para. 811.

that he perpetrated himself,¹⁸¹ as well as those perpetrated by others in his presence.¹⁸² Furthermore, according to this information, Mr El Hishri took measures and organised detention conditions, which continued to be very problematic.¹⁸³ It therefore does not appear that he intended for the conditions to be adequate.

102. For these reasons, the Chamber finds reasonable grounds to believe that Mr El Hishri's contributions to the common plan were intentional, and that he meant for the alleged crimes to occur, or knew that they would occur in the ordinary course of the implementation of the common plan.

(b) Article 25(3)(b) of the Statute

103. The Prosecution further argues that Mr El Hishri additionally ordered the commission of the crimes of outrages upon personal dignity, cruel treatment, torture, rape, sexual violence, murder and attempted murder, passing of sentences without conviction and enslavement.¹⁸⁴ To sustain this allegation, the Prosecution solely refers to information regarding torture and sexual violence. For the reasons that follow, the Chamber finds that Mr El Hishri is responsible for these two crimes under article 25(3)(b) of the Statute.

¹⁸¹ LBY-OTP-0070-6952, paras 92-93, 95-98, 160; LBY-OTP-0083-0663, paras 80, 85, 90, 99, 103, 162, 84-88; LBY-OTP-00001491, para. 112; LBY-OTP-0070-7295, para. 106; LBY-OTP-00018075, paras 68-70, 72-75, 45, 106-108; LBY-OTP-00007275, paras 27-30; LBY-OTP-00001491, paras 108-111; LBY-OTP-0073-0025, para. 97; LBY-OTP-00007275, para. 43; LBY-OTP-0083-0052, para. 113; LBY-OTP-00020099, para. 49; LBY-OTP-0070-7295, paras 56, 211; LBY-OTP-0083-0663, paras 100; LBY-OTP-0083-0663, paras 101, 141; LBY-OTP-00007275, para. 91; LBY-OTP-00020358, para. 128; LBY-OTP-00016896, para. 87; LBY-OTP-0083-0052, paras 116-117; LBY-OTP-00020099, paras 59-64; LBY-OTP-0074-0889, paras 142-151; LBY-OTP-00018787, para. 50; LBY-OTP-0069-0506, para. 50; LBY-OTP-0083-0052, para. 36; LBY-OTP-00020099, paras 43-45; LBY-OTP-00020358, paras 92-93; LBY-OTP-00020358, para. 94; LBY-OTP-0069-0506, para. 92; LBY-OTP-0080-0169, paras 31, 94, 95, 214-216; LBY-OTP-0074-0889, paras 117-123, 200-204, 210-213, 246; LBY-OTP-0070-6952, para. 138; LBY-OTP-0080-0468, para. 119; LBY-OTP-0080-0608, paras 41-42, 92; LBY-OTP-0070-7295, para. 164; LBY-OTP-0083-0052, paras 132-133, 178; LBY-OTP-00007275, para. 92; LBY-OTP-00015360, para. 119; LBY-OTP-00018075, paras 103, 104, 105, 108; LBY-OTP-00019195, para. 98, 106-107, 108, 108-109; LBY-OTP-00020267, paras 77, 79-80; LBY-OTP-00020358, para. 126; LBY-OTP-0073-0025, para. 97; LBY-OTP-0080-0169, paras 94-95, 213-216; LBY-OTP-0074-0889, paras 117-123, 129-130; LBY-OTP-0080-0468, para. 121; LBY-OTP-00001491, paras 108-111; LBY-OTP-00020099, paras 43-45, 59-64; LBY-OTP-0083-0052, paras 36, 116-117; LBY-OTP-00018772, paras 32-34; LBY-OTP-00019195, para. 98; LBY-OTP-00020358, paras 92-94.

¹⁸² LBY-OTP-00018772, paras 32-34; LBY-OTP-0070-7295, paras 56, 211; LBY-OTP-00007275, para. 91; LBY-OTP-00016896, para. 87; LBY-OTP-0069-0506, para. 88; LBY-OTP-00019195, para. 87; LBY-OTP-0069-0506, para. 88; LBY-OTP-00015360, paras 37-38; LBY-OTP-00016896, para. 30; LBY-OTP-00007275, para. 43.

¹⁸³ LBY-OTP-0069-0506, para. 72; LBY-OTP-0074-0889, para. 247; LBY-OTP-0083-0052, para. 131; LBY-OTP-00007275, para. 37; LBY-OTP-00018075, para. 58; LBY-OTP-00015405, paras 102, 106; LBY-OTP-00019195, para. 53. See LBY-OTP-0083-0663, paras 89, 157; LBY-OTP-00018075, paras 52, 65, 68; LBY-OTP-00020236, para. 72. See LBY-OTP-0073-0025, para. 31; LBY-OTP-0080-0169, paras 94, 213-216; LBY-OTP-0083-0052, para. 131. See also e.g. LBY-OTP-00001491, paras 108-111; LBY-OTP-0070-6952, para. 98.

¹⁸⁴ Application, para. 142.

(i) Mr El Hishri's conduct

104. On the basis of the information submitted by the Prosecution, the Chamber finds reasonable grounds to believe that during the time period relevant to the charges, Mr El Hishri ordered the commission of specific crimes. This information shows, in particular that Mr El Hishri ordered the commission of acts of torture.¹⁸⁵ It further shows that Mr El Hishri instructed others to perform body searches that amount to sexual violence.¹⁸⁶

(ii) Mr El Hishri's *mens rea*

105. The information submitted by the Prosecution further shows that Mr El Hishri ordered the commission of torture and sexual violence with the intention that the crimes take place or with the knowledge that they would take place in the ordinary course of events. Mr El Hishri was present to see part of the crimes for which the Chamber above found reasonable grounds to believe that they were perpetrated.¹⁸⁷

(c) *Conclusion*

106. In light of the foregoing, the Chamber is satisfied that (i) Mr El Hishri knew that the crimes were or intended the crimes to be part of a widespread and systematic attack against the civilian population, and (ii), as a senior official in SDF/RADA, an armed paramilitary organisation supporting the GNA, he was aware of the factual circumstances that established the existence of the non-international armed conflict. Therefore, the Chamber finds Mr El Hishri to be liable under article 25(3)(a) of the Statute, for the crimes of imprisonment, torture, cruel treatment, outrages upon personal dignity, rape, sexual violence, murder, and persecution on political grounds. Furthermore, the Chamber finds reasonable grounds to believe that Mr El Hishri was further liable under article 25(3)(b) of the Statute for ordering others to commit the crimes of torture and sexual violence.

B. Whether the arrest of Mr El Hishri appears necessary (article 58(1)(b) of the Statute)

107. The arrest must appear necessary to: a) ensure the person's appearance at trial, b) ensure that the person does not obstruct or endanger the investigation or the court proceedings, or c)

¹⁸⁵ LBY-OTP-00018772, paras 32-34; LBY-OTP-00018075, paras 72-76; LBY-OTP-00015360, paras 37-38; LBY-OTP-00016896, para. 30; LBY-OTP-00019195, para. 87; LBY-OTP-0080-0169, paras 88; LBY-OTP-0069-0506, paras 84-88.

¹⁸⁶ LBY-OTP-0083-0663, paras 84-88; LBY-OTP-00018075, paras 39-43.

¹⁸⁷ LBY-OTP-00018772, paras 32-34; LBY-OTP-00018075, paras 39-43, 72-76; LBY-OTP-00019195, para. 87. See also LBY-OTP-0080-0169, paras 88; LBY-OTP-0083-0663, paras 84-88.

to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances.¹⁸⁸ These conditions are alternative in nature, and at least one of the requirements must be fulfilled to demonstrate the need for detention.¹⁸⁹

108. In this regard, the Prosecution submits that the arrest of Mr El Hishri is necessary to ensure his appearance before the Court.¹⁹⁰ The Chamber accepts that it is 'highly unlikely that [Mr El Hishri] would surrender voluntarily, given his alleged conduct [...] and lack of domestic proceedings related to the serious allegations contained in this application'.¹⁹¹ Based on the information submitted by the Prosecution,¹⁹² the Chamber is satisfied that the arrest of Mr El Hishri is necessary within the meaning of article 58(1)(b)(i) of the Statute to ensure his appearance before the Court.

¹⁸⁸ Article 58(1)(b) of the Statute.

¹⁸⁹ See e.g. Pre-Trial Chamber II, *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman ('Ali Kushayb')*, Decision on the review of detention, 12 April 2021, ICC-02/05-01/20-338, para. 20, and references therein.

¹⁹⁰ Application, para. 151.

¹⁹¹ Application, para. 151.

¹⁹² LBY-OTP-00018876, pp 17-19.

FOR THESE REASONS, THE CHAMBER HEREBY**1) ISSUES a WARRANT OF ARREST for****Khaled Mohamed Ali El Hishri**

also known as **Khaled 'Al Booti'** or **'Sheikh Khaled' (Al Hishri)**, a national of Libya,
born on 23 June 1978 in Tripoli, Libya.

for his alleged criminal responsibility pursuant to articles 25(3)(a) and 25(3)(b) of the Statute, for the crimes within the jurisdiction of the Court, as specified below and for the conduct as detailed above in the present warrant, committed in Libya, in or near Mitiga Prison, from around February 2015 to, at least, early 2020:

(i) for the following war crimes, committed in the context of an armed conflict not of an international character taking place in Libya:

- cruel treatment, by inflicting severe physical or mental pain or suffering upon, at least, a few persons protected by Common Article 3 to the 1949 Geneva Convention, detained in Mitiga Prison at the relevant time (article 8(2)(c)(i) and 25(3)(a) of the Statute);
- torture, by inflicting severe physical or mental pain or suffering upon, at least, a few persons protected by Common Article 3 to the 1949 Geneva Convention, detained in Mitiga Prison at the relevant time, for the purpose of obtaining information or a confession, punishment, intimidation or coercion (article 8(2)(c)(i) and 25(3)(a) and (b) of the Statute);
- outrages upon personal dignity, by humiliation, degradation or otherwise violation of the dignity, upon at least a few persons protected by Common Article 3 to the 1949 Geneva Convention, detained in Mitiga Prison at the relevant time (article 8(2)(c)(ii) and 25(3)(a) of the Statute);
- rape, by forced penetration of an anal or genital opening of at two persons detained in Mitiga Prison, who were protected under international humanitarian law at the time (article 8(2)(e)(vi) and 25(3)(a) of the Statute);
- sexual violence, committed by acts of a sexual nature carried out without their consent against, at least, two persons detained in Mitiga Prison, who were protected

under international humanitarian law at the time (articles 8(2)(e)(vi) and 25(3)(a) and (b) of the Statute);

- murder, by killing, at least, a number of persons protected by Common Article 3 to the 1949 Geneva Convention, detained in Mitiga Prison at the relevant time (article 8(2)(c)(i) and 25(3)(a) of the Statute);

and

(ii) for the following crimes against humanity, committed as part of a widespread or systematic attack against segments of the civilian population in Libya perceived to be opposing SDF/RADA or its ideology, pursuant to a State or organisational policy:

- imprisonment, committed by imprisoning detainees in Mitiga Prison without a legal basis to do so (article 7(1)(e) and 25(3)(a) of the Statute);
- torture, by inflicting severe physical or mental pain or suffering upon a significant number of persons during their detention in Mitiga Prison (article 7(1)(f) and 25(3)(a) and (b) of the Statute);
- rape, by the forced penetration of an anal or genital opening of at least five persons, during their detention in Mitiga Prison (article 7(1)(g) and 25(3)(a) of the Statute);
- sexual violence, committed by acts of a sexual nature carried out without their consent against several detainees of Mitiga Prison (article 7(1)(g) and 25(3)(a) and (b) of the Statute);
- murder, by intentionally killing one detainee himself and being responsible for the killing a significant number of other detainees of Mitiga Prison (article 7(1)(a) and 25(3)(a) of the Statute);
- persecution, by targeting detainees of Mitiga on the basis of, inter alia, their views (article 7(1)(h) and 25(3)(a) of the Statute);

2) DECIDES that the warrant of arrest, currently classified under seal, *ex parte* Prosecution only, may be communicated, or its existence be revealed, and that the existence of the Prosecution's application for the present warrant may be mentioned, to any State or international organisation for the purposes of the execution of the warrant of arrest;

DECIDES that the Registrar shall, if at the indication of the Prosecution, or on the basis of information otherwise made available to the Registry, a situation arises warranting to do so:

- (i) prepare a request for cooperation seeking the arrest and surrender of Mr El Hishri, and containing the information and documents required by articles 89(1) and 91 of the Statute and rule 187 of the Rules of Procedure and Evidence;
- (ii) transmit, in consultation and coordination with the Prosecution, the request to the competent authorities of any relevant State, or to any international organisation, in accordance with article 87 of the Statute, as well as Resolution 1970 (2011) of the United Nations Security Council, to cooperate with the Court for the purpose of executing the request for arrest and surrender of Mr El Hishri; and
- (iii) submit a progress report on the status of the execution of the request for cooperation no later than 15 days after the request is made;

DIRECTS the Registrar to prepare and transmit to any relevant State, in consultation and coordination with the Prosecution, any request for transit pursuant to article 89(3) of the Statute or any request for provisional arrest pursuant to article 92 of the Statute which may be necessary for the surrender of Mr El Hishri to the Court; and

ORDERS the Prosecution to transmit to the Registry all information available to it that may be of assistance in the execution of the request for arrest and surrender as well as any information of relevance to assessing any risks to victims and witnesses associated with the transmission of the request for arrest and surrender.

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

A handwritten signature in black ink, consisting of stylized, overlapping loops and a long diagonal stroke extending upwards and to the right.

Judge Iulia Antoanella Motoc, Presiding

A handwritten signature in black ink, featuring a large, flowing 'A' followed by a horizontal line and a small 'G' at the end.

**Judge Reine Adélaïde Sophie Alapini-
Gansou**

A handwritten signature in black ink, showing a series of vertical strokes and loops, ending with a horizontal line.

Judge María del Socorro Flores Liera

Dated this Thursday, 10 July 2025

At The Hague, The Netherlands