

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: **ICC-01/11**
Date: **15 July 2025**

THE APPEALS CHAMBER

Before: Judge Tomoko Akane
Judge Luz del Carmen Ibáñez Carranza
Judge Solomy Balungi Bossa
Judge Gocha Lordkipanidze
Judge Erdenebalsuren Damdin

SITUATION IN LIBYA

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

**Prosecution Notice of Appeal of the
“Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri”
(ICC-01/11-188-US-Exp)**

Source: Office of the Prosecutor

Pursuant to the Appeals Chamber's Order ICC-01/11-2000, dated 1-08-2025, this document is reclassified as "Public"

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INTRODUCTION

1. The Prosecution gives notice of its appeal in part against the “Warrant of arrest for Mr Khaled Mohamed Ali El Hishri”, issued by Pre-Trial Chamber I in the *Situation in Libya* (ICC-01/11-188-US-Exp), which was rendered on 10 July 2025 (“Warrant”). This appeal is brought under article 82(1)(a) of the Statute, and rule 154(1) and regulation 64(1), on the basis set out below. This appeal is without prejudice to the remainder of the Warrant.

CONFIDENTIALITY

2. This notice is filed under seal, and *ex parte* (Prosecution and Registry only), in accordance with regulation 23*bis*(2), since the Warrant was issued with that classification.

NOTICE OF APPEAL

3. This appeal concerns two aspects of the Pre-Trial Chamber’s findings in the Warrant. These are: (i) the question whether alleged crimes against certain persons fall under the Court’s article 8 jurisdiction, and; (ii) the question whether alleged crimes against certain persons fall under the Court’s article 7 jurisdiction.

- In the first respect, concerning article 8, the Pre-Trial Chamber’s understanding of the applicable law is set out at paragraphs 14-18 of the Warrant. It is then applied to the facts of the case at paragraphs 38-40 (torture), 44-45 (cruel treatment), 49 (outrages upon personal dignity), 54-55 (rape), 61-62 (other sexual violence), 69-70 (murder), 75-76 (summary punishment), and 85-86 (sexual slavery) of the Warrant.
- In the second respect, concerning article 7, the Pre-Trial Chamber’s understanding of the relevant context is set out at paragraphs 21-22 and 24 of the Warrant. It is then applied to the facts of the case at paragraph 81 (enslavement) of the Warrant.

4. This appeal is admissible under article 82(1)(a) of the Statute because the Warrant is a decision with respect to jurisdiction. In the relevant parts of its analysis under article 8 and article 7, the Pre-Trial Chamber erred in law, as set out below. These errors materially affected the scope of victimisation found to be within the jurisdiction *ratione materiae* of the Court.

A. The Warrant is a “decision with respect to jurisdiction”

5. A “decision with respect to jurisdiction” may be appealed directly to the Appeals Chamber, without leave of the Pre-Trial Chamber.¹ As the Appeals Chamber has affirmed, this means that “the operative part of the decision itself must pertain directly to a question on the jurisdiction of the Court”, and that “an indirect or tangential link” between the underlying decision and a question of jurisdiction is insufficient.²

6. In the Warrant, the Pre-Trial Chamber adopted two interpretations of the Statute which had the effect of eliminating the legal basis of crimes against alleged victims, under articles 8 and 7 of the Statute, respectively. Such determinations are jurisdictional in nature.³ In short, the Pre-Trial Chamber considered that certain persons were not protected by international humanitarian law (“IHL”) if not detained for reasons related to the armed conflict,⁴ and that certain persons were not protected by the prohibition of crimes against humanity if not members of the “civilian population” under widespread or systematic attack.⁵

7. Solely because of these determinations, conduct affecting a significant number of victims was excluded from the operative part of the Warrant, limiting its scope. As such, this appeal is admissible under article 82(1)(a) of the Statute since a jurisdictional appeal “can indeed be directed against part of a decision [...] provided that the challenged part impacts [...], in particular, its operative part”.⁶

B. The Warrant incorrectly excluded conduct from the scope of articles 8 and 7

8. Regulation 64(1) does not require the Prosecution to identify proposed grounds in its notice of appeal under article 82(1)(a) and rule 154, or their impact on the impugned decision. However, the Prosecution does so to illustrate further the jurisdictional rulings in the Warrant. The Prosecution will set out these arguments more fully in its forthcoming appeal brief.

¹ See [Statute](#), art. 82(1)(d); [ICC RPE](#), rule 154.

² See e.g. [ICC-01/18-422 OA2](#) (“*Palestine* Jurisdiction Appeal Judgment”), para. 34; [ICC-01/11-01/11-74 OA](#) (“*Gaddafi* Rule 103 Appeal Judgment”), para. 10; [ICC-01/09-78 OA](#) (“*Kenya* Article 93 Appeal Judgment”), para. 15.

³ See e.g. [ICC-01/04-02/06-1225 OA2](#) (“*Ntaganda* First Jurisdiction Appeal Judgment”), para. 39 (a “particular legal interpretation” which would “eliminate the legal basis for a charge on the facts alleged by the Prosecutor” is “jurisdictional”).

⁴ See below paras. 10-11.

⁵ See below paras. 12-13.

⁶ See [ICC-02/17-218 OA5](#) (“*Afghanistan* Article 18(2) Appeal Judgment”), para. 53.

9. The Pre-Trial Chamber erred in law in interpreting the Court's jurisdiction *ratione materiae* both with respect to article 8 (war crimes) and article 7 (crimes against humanity).

B.1. Concerning article 8 (war crimes)

10. The Prosecution will argue that:

- The Pre-Trial Chamber erred in law in interpreting the requirement common to articles 8(2)(c) and 8(2)(e)(vi) for war crimes to be committed in the context of and to be associated with a non-international armed conflict (the article 8 “nexus” requirement) by reducing this to a requirement that persons were detained “for reasons related to the armed conflict”.
- Alternatively, the Pre-Trial Chamber erred in law by imposing a threshold condition for who is “protected by IHL”—namely, requiring persons to have been detained “for reasons related to the armed conflict”. This was *in addition* to the established “nexus” requirement, for the purposes both of: (i) article 8(2)(c) (under article 3 common to the Geneva Conventions), and; (ii) article 8(2)(e)(vi) (under the “established framework of international law”).

11. These errors materially affected the Warrant because they led the Pre-Trial Chamber to conclude that detainees whom it accepted to have been subjected to relevant prohibited conduct (including torture, cruel treatment, outrages upon personal dignity, rape, other sexual violence, and murder) could not be victims of war crimes because they were not “protected by IHL” (or similar language).⁷ Likewise, the Pre-Trial Chamber declined to assess whether certain detainees were subject to the war crimes of summary punishment and sexual slavery because it considered that they were not “protected by IHL” (or similar language).⁸ In each case, the

⁷ See e.g. Warrant, Disposition (finding only that “at least, a few persons” were victims of torture, cruel treatment and/or outrages upon personal dignity as war crimes, while “a significant number” were victims of torture as a crime against humanity, that “two” and “at least, two” persons were victims of rape and other sexual violence as war crimes while “at least five” and “several” persons were victims of rape and other sexual violence as crimes against humanity, and that “a number of” persons were victims of murder as a war crime while “a significant number” of persons were victims of murder as a crime against humanity). See further paras. 38-40, 44-45, 49, 54-55, 61-62, 69-70. With regard to torture as a war crime, the Pre-Trial Chamber only considered those detainees where it was satisfied on the evidence that the requisite prohibited purpose was established: see para. 38.

⁸ See Warrant, paras. 75-76 (considering only the “two persons” it considered to be “protected by Common Article 3”, and not any of the other 14 persons alleged to be subject to this conduct), 85-86 (considering only the “two detainees” found to have been subject to rape as a war crime, and not the other three persons alleged to be subject to this conduct). For the four persons who *were* considered by the Pre-Trial Chamber, it proceeded to exclude these victims for reasons unrelated to the present appeal.

Pre-Trial Chamber reached this view because it did not consider that the relevant persons were detained “for reasons related to the armed conflict”.⁹

B.2. Concerning article 7 (crimes against humanity)

12. The Prosecution will further argue that:

- The Pre-Trial Chamber erred in law by requiring that the individual victims of an alleged crime against humanity must be members of the same “civilian population” alleged to be the object of a widespread or systematic attack under article 7(1), rather than assessing whether the alleged *conduct* was committed as “part” of that attack (the article 7 “nexus” requirement).

13. This error materially affected the Warrant because it led to the Pre-Trial Chamber’s conclusion that a group of detainees (known as the “Sub-Saharan African detainees”) were not victims of the crime against humanity of enslavement—even though there were reasonable grounds to believe that the perpetrators exercised powers attaching to the right of ownership over them. They were excluded by the Pre-Trial Chamber solely because they were not “part of the same civilian population that was being attacked.”¹⁰

CONCLUSION

14. The Prosecution respectfully requests the Appeals Chamber to accept this appeal pursuant to article 82(1)(a) of the Statute.

15. For reasons that it will further set out in its brief in support of this appeal, the Prosecution requests that the Appeals Chamber correct and reverse the Pre-Trial Chamber’s erroneous findings in the Warrant in: (i) paragraphs 14-18, 38-40, 44-45, 49, 54-55, 61-62, 69-70, 75-76, and 85-86 (concerning article 8), and; (ii) paragraphs 21-22, 24, and 81 (concerning article 7). On this basis, the Appeals Chamber should remand the matter back to the Pre-Trial Chamber for a new decision on these findings, following the Appeals Chamber’s instructions.

16. The Prosecution will file its appeal brief by 1 August 2025.

⁹ Warrant, paras. 14-18, 38-40, 44-45, 49, 54-55, 61-62, 69-70, 75-76, 85-86.

¹⁰ Warrant, para. 81. *See also* paras. 21-22, 24.

Pursuant to the Appeals Chamber's Order ICC-01/11-2000, dated 1-08-2025, this document is reclassified as "Public"



Nazhat Shameem Khan, Deputy Prosecutor

Dated this 15th day of July 2025

At The Hague, the Netherlands