

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11

Date: 3 July 2026

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Public Document

**Response on behalf of Victims to the jurisdictional and admissibility challenge
brought by Mr Njeem pursuant to articles 17 and 19 of the Statute
(ICC-01/11-228-AnxI)**

Source: Office of Public Counsel for Victims

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

☒ The Office of the Prosecutor

☒ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☒ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the Defence

☒ States' Representatives
State of Libya

☐ Amicus Curiae

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations Section

☐ Other

Table of contents

I. INTRODUCTION	4
II. PROCEDURAL BACKGROUND	6
III. THE DEFENCE'S CHALLENGE TO THE COURT'S JURISDICTION	7
1. The jurisdictional challenge should be dismissed <i>in limine</i>	7
2. There exists a sufficient nexus between the proceedings against Mr NJEEM and the situation in Libya referred to the Court	9
a) The Defence adopts an unduly restrictive interpretation of the concept of a 'situation'	9
b) The crimes alleged against Mr NJEEM are sufficiently linked to the Situation in Libya	12
IV. THE DEFENCE'S CHALLENGE TO THE ADMISSIBILITY OF THE CASE..	17
1. Applicable law	17
2. The term 'case' within the meaning of article 17(1)(a) of the Statute.....	19
3. The Defence did not establish the existence of domestic proceedings concerning the same case	21
4. In the alternative, the Defence has not demonstrated that Libya is willing and able genuinely to carry out proceedings against Mr NJEEM	25
V. VICTIMS VIEWS AND CONCERNS.....	30
VI. CONCLUSION	33

I. INTRODUCTION

1. Pursuant to Pre-Trial Chamber I's (the "Chamber") instructions¹ and regulation 81(4)(c) of the Regulations of the Court (the "Regulations"), the Principal Counsel of the Office of Public Counsel for Victims (the "OPCV" or the "Office") submit observations on behalf of Victims to the "Admissibility challenge by Mr. Osama Elmasry/Almasri Njeem Pursuant to Article 17(1)(a) and Article 19 of the Statute" ("Mr NJEEM" and the "Defence Challenge").²

2. Counsel submits that the Defence Challenge should be dismissed in its entirety. Notwithstanding its title, the submission raises both jurisdictional and admissibility objections, neither of which is well founded in fact or law.

3. First, the jurisdictional challenge should be dismissed *in limine*. The Defence proceeds on the erroneous premise that the Court's jurisdiction over the present proceedings depends exclusively on the UN Security Council Resolution 1970 (2011). In doing so, it fails to engage with Libya's declaration under article 12(3) of the Rome Statute (the "Statute"), which provides an independent basis for the Court's jurisdiction. In any event, even if the Chamber were to consider the challenge on its merits, the Defence's restrictive interpretation of the Situation in Libya is inconsistent with the Court's jurisprudence and the factual record - both of which establish a sufficient nexus between the crimes alleged against Mr NJEEM and the continuing situation of crisis in Libya.

4. Second, the Defence has failed to establish that the case is inadmissible under article 17 of the Statute. The material submitted does not demonstrate, with the required specificity and probative value, the existence of domestic proceedings

¹ See the "Order setting time limits for observations following Osama Elmasry/Almasri Njeem's jurisdictional and admissibility challenge pursuant to articles 17 and 19 of the Statute (ICC-01/11-228-AnxI) (Pre-Trial Chamber I), [No. ICC-01/11-229](#), 13 May 2026.

² See the "Admissibility challenge by Mr. Osama Elmasry/Almasri Njeem Pursuant to Article 17(1)(a) and Article 19 of the Statute with Public Annexes I A, B, C, D, E, & F and Annex G, *Ex parte* only available only to the Defence, [No. ICC-01/11-228-AnxI](#), 30 April 2026.

concerning substantially the same conduct as the case before the Court. Further, even assuming *arguendo* that the first limb of article 17 is satisfied, the Defence has not established that Libya is presently willing and able genuinely to investigate or prosecute that conduct. Nor does the recent reported conviction - even if confirmed by the relevant authorities - materially alter this assessment, given the limited information presently available regarding its scope, evidentiary basis, and effective enforcement. Libya's observations remain pending and may provide material factual or procedural clarifications in this regard.

5. Finally, Victims' views and concerns strongly support the continuation of these proceedings before the Court. For Victims of the system of detention and abuse underlying the case against Mr NJEEM, and for their families, these proceedings may constitute the only genuinely independent forum capable of delivering truth, accountability, and meaningful redress. Victims have expressed concerns regarding the uncertainty surrounding Mr NJEEM's present custodial status and the overall opacity of the domestic proceedings. These fears are heightened by the fact that Mr NJEEM has already once been removed from the reach of the Court under unclear circumstances following his arrest in Italy - reinforcing Victims' concerns that political interference or other forms of influence may again frustrate meaningful accountability.

6. Victims note the absence of accountability measures for many years despite the prolonged commission of the crimes, followed by sparse and belated domestic measures only after the ICC's issuance of the warrant of arrest. The sudden emergence of domestic proceedings - including the recent reported conviction - raises serious questions as to whether these developments reflect genuine accountability or a reactive response to mounting international scrutiny. Victims fear that domestic proceedings may be affected by institutional loyalties and lack of impartiality, particularly where the alleged crimes implicate actors connected to powerful security structures. They have further emphasised persistent fears of intimidation, reprisals, and other barriers to safe participation in accountability processes. The present

challenges therefore concern not merely procedural issues, but Victims' concrete access to justice and the broader fight against impunity.

II. PROCEDURAL BACKGROUND

1. On 26 February 2011, the UN Security Council, acting under Chapter VII of the UN Charter, 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 ("Resolution 1970").³

2. On 2 October 2024, the Prosecution filed under seal a request for a warrant of arrest for Mr NJEEM.⁴

3. On 18 January 2025, the Chamber issued a warrant of arrest for Mr NJEEM (the "Arrest Warrant").⁵

4. On 19 January 2025, the Italian police arrested Mr NJEEM in Turin.⁶

5. On 21 January 2025, the Italian authorities released Mr NJEEM and returned him to Tripoli, Libya, on a State-owned flight.⁷

6. On 12 May 2025, the Libyan government lodged a declaration under article 12(3) of the Statute on Libya's acceptance of the ICC's jurisdiction with respect

³ See the Resolution 1970 (2011) adopted by the Security Council at its 6491st meeting, on 26 February 2011, UN Doc. [S/RES/1970 \(2011\)](#) (the "Resolution 1970").

⁴ See the "Prosecution's application under article 58 for a warrant of arrest against Osama Elmasry / Almasri NJEEM ("Osama NJEEM")", 2 October 2024, ICC-01/11-140-US-Exp (with under seal, *ex parte*, annexes 1-9).

⁵ See the Corrected version of the "Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem" dated 18 January 2025 (ICC-01/11-149-US-Exp), including Dissenting Opinion of Judge Socorro Flores Liera" (Pre-Trial Chamber I), [No. ICC-01/11-152-Anx](#), 24 January 2025 (the "Arrest Warrant").

⁶ See the "Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest" (Pre-Trial Chamber I), [No. ICC-01/11-162](#), 17 February 2025, para. 6.

⁷ *Ibid.*, para. 7.

to crimes allegedly committed on its territory from 2011 until the end of 2027 (the “Libya’s article 12(3) Declaration”).⁸

7. On 28 April 2026, Mr NIJEM filed the Challenge.⁹

8. On 13 May 2026, the Chamber issued the Order setting time limits for observations on the Defence Challenge.¹⁰

III. THE DEFENCE’S CHALLENGE TO THE COURT’S JURISDICTION

1. The jurisdictional challenge should be dismissed *in limine*

9. First, the Defence argues that the alleged absence of a sufficient nexus between the proceedings against Mr NJEEM and the Situation in Libya - referred to the Court pursuant to Resolution 1970 - places the present proceedings outside the scope of the referral and, consequently, of the Court’s jurisdiction.¹¹

10. The challenge should be dismissed *in limine*. It rests on a premise that no longer reflects the jurisdictional framework applicable to Libya. The Defence’s submissions are predicated on the assumption that the Court’s jurisdiction over the present proceedings depends exclusively on Resolution 1970. However, following the lodging by Libya of a declaration pursuant to article 12(3) of the Statute accepting the jurisdiction of the Court over crimes committed on its territory between 2011 and 2027,¹² said jurisdiction is no longer solely dependent upon the Security Council referral.

⁸ See the “Public Redacted version of “Corrected Version of Transmission of Article 12(3) Declaration by the State of Libya, 20 May 2025, ICC-01/11-180-Conf-Exp”, 8 August 2025, No. ICC-01/11-180-Conf-Exp-Corr and its annexes. A public redacted version was filed on 11 August 2025, [No. ICC-01/11-180-Corr-Red](#) (the “Libya’s article 12(3) Declaration”). See the ICC Press Release, “Libya accepts ICC jurisdiction over alleged crimes from 2011 to the end of 2027”, 15 May 2025.

⁹ See the Defence Challenge, *supra* note 2.

¹⁰ See the “Order setting time limits for observations following Osama Elmasry/Almasri Njeem’s jurisdictional and admissibility challenge pursuant to articles 17 and 19 of the Statute (ICC-01/11-228-AnxI)”, *supra* note 1.

¹¹ See the Defence Challenge, *supra* note 2, paras. 16; 34-68.

¹² See the Libya’s article 12(3) Declaration, *supra* note 8.

11. Libya's article 12(3) Declaration constitutes a sovereign and legally binding acceptance of the Court's jurisdiction under the Statute, thereby providing an independent jurisdictional basis for the present proceedings.¹³ Accordingly, even assuming *arguendo* that the Defence's interpretation of the scope of Resolution 1970 were correct, such a conclusion would not establish that the Court lacks jurisdiction over the conduct at issue. Significantly, in issuing the warrant of arrest for Mr El Hishri - after Libya's article 12(3) Declaration - Pre-Trial Chamber I, in the same composition as in this proceeding, did not consider it necessary to examine separately whether the alleged conduct fell within the scope of Resolution 1970, but proceeded on the basis of Libya's acceptance of jurisdiction.¹⁴ The same approach is warranted in the proceedings against Mr NJEEM.

12. Although the Defence refers to Libya's article 12(3) Declaration in the factual background of its challenge,¹⁵ and expressly relies on the Court's acceptance of that declaration to support its submissions concerning the legitimacy of the Government of National Unity (the "GNU") and the existence of competent Libyan authorities,¹⁶ it advances no arguments regarding the legal consequences of that declaration. Instead, it proceeds as the Court's jurisdiction depended exclusively on the Security Council referral.

13. This position is internally inconsistent. The Defence cannot rely on the Court's acceptance of the article 12(3) declaration as evidence of the legitimacy and authority of Libyan institutions for the purposes of its admissibility challenge, while simultaneously disregarding the legal effect of that same declaration as an autonomous basis of jurisdiction under the Statute. The Defence, therefore, fails to engage with the jurisdictional framework presently applicable to Libya. In these circumstances, even if the alleged conduct were to fall outside the scope of

¹³ *Ibid.* See also the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (Pre-Trial Chamber I), [No. ICC-01/11-01/25-7](#), 10 July 2025, paras. 4-5.

¹⁴ See the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (Pre-Trial Chamber I), [No. ICC-01/11-01/25-7](#), 10 July 2025.

¹⁵ See the Defence Challenge, *supra* note 2, para. 27.

¹⁶ *Ibid.*, paras. 72 and 128(a)-(b).

Resolution 1970 - which Counsel firmly contests - the challenge would still fail to demonstrate that the Court lacks jurisdiction over the present proceeding.

14. Should the Chamber nonetheless consider it necessary to examine the Defence's submissions on their merits, Counsel posits that the proceedings against Mr NJEEM are in any case sufficiently linked to the Situation in Libya referred to the Court pursuant to Resolution 1970, for the reasons set out *infra*.

2. There exists a sufficient nexus between the proceedings against Mr NJEEM and the situation in Libya referred to the Court

a) The Defence adopts an unduly restrictive interpretation of the concept of a 'situation'

15. The Defence argues that the proceedings against Mr NJEEM fall outside the scope of the Situation in Libya referred to the Court by Resolution 1970 because the alleged crimes occurred between 2015 and 2024, and supposedly lack a sufficient nexus with the events that prompted the Security Council referral.¹⁷ This argument rests on an erroneous interpretation of the concept of a 'situation' under the Statute.

16. It is undisputed that a sufficient nexus must exist between a case and the situation referred to the Court. Chambers have expressly recognised that crimes committed after a referral may only fall within the Court's jurisdiction where they are sufficiently linked to the situation of crisis that triggered said jurisdiction.¹⁸ The issue before the Chamber is therefore not whether such a nexus is required, but whether the Defence correctly applies that test in the present instance.

17. The Defence proceeds from the premise that the jurisdictional scope of the Situation in Libya is confined to the specific events, perpetrators, motives or patterns of criminality that existed in February 2011 - limiting the Court's jurisdiction to the specific events surrounding the repression of demonstrations and to the conduct of the

¹⁷ See the Defence Challenge, *supra* note 2, paras. 16; 34-68.

¹⁸ See the "Decision on the 'Defence Challenge to the Jurisdiction of the Court'" (Pre-Trial Chamber I), [No. ICC-01/04-01/10-451](#), 26 October 2011, para. 16 (the "*Mbarushimana* Decision on Jurisdiction").

Gaddafi regime.¹⁹ On that basis, it asserts that conduct allegedly committed between 2015 and 2024 necessarily falls outside the referred situation. Neither Resolution 1970, nor the Statute, nor the Court's jurisprudence supports such a restrictive interpretation.

18. Resolution 1970 referred to the Prosecutor "*the situation in the Libyan Arab Jamahiriya since 15 February 2011*".²⁰ The Security Council deliberately avoided referring to specific incidents, particular armed groups, defined set of perpetrators or closed categories of criminal conduct. The referral established a temporal starting point for the Court's jurisdiction but did not confine the Situation in Libya to the precise factual circumstances that existed at the time of the referral.

19. Chambers have consistently recognised that a 'situation' is distinct from a 'case'. Whereas a case concerns specific incidents and identified suspects, a situation constitutes the broader jurisdictional framework within which individual cases may subsequently arise. Later crimes may fall within a referred situation where they are sufficiently linked to the crisis that triggered the Court's jurisdiction. The Defence therefore conflates two legally distinct concepts.

20. In the *Mbarushimana* case, Pre-Trial Chamber I explained that the existence of a link between the jurisdictional scope of a situation and a subsequent case is required by the principles governing the relationship between the Court and national jurisdictions.²¹ At the same time, said chamber rejected an interpretation that would define a situation by reference to a closed set of incidents, actors or criminal episodes. It recognised, instead, that subsequent investigations and prosecutions may concern crimes committed after the original triggering event, provided that they remain sufficiently linked to the broader situation that activated the Court's jurisdiction.²²

¹⁹ See the Defence Challenge, *supra* note 2, paras. 38-48, 57-65.

²⁰ See the Resolution 1970, *supra* note 3, para. 4.

²¹ See the "Decision on the 'Defence Challenge to the Jurisdiction of the Court'" (Pre-Trial Chamber I), [No. ICC-01/04-01/10-451](#), 26 October 2011, para. 21.

²² *Ibid.*, para. 16.

21. Importantly, while a situation cannot be interpreted as a wholesale referral of all criminality occurring within a State,²³ neither can it be reduced to the specific incidents initially known at the time of the referral. The relevant inquiry is whether the alleged conduct forms part of the broader situation before the Court. This understanding has been consistently reflected in the practice: situations have frequently encompassed different and multiple phases of violence, changing actors, evolving political and military structures and varying patterns of criminality. Chambers have never required identity of perpetrators, motives, organisational structures or methods of commission between the initial event(s) triggering jurisdiction and the crimes subsequently prosecuted.

22. This approach has already been applied in the Situation in Libya. In the *Al-Werfalli* case, the Pre-Trial Chamber I found that incidents occurring in Benghazi between 2016 and 2017 were sufficiently linked to the referred situation because they were associated with the ongoing armed conflict underlying the referral, and because of the continuity between the relevant armed actor and the conflict that emerged from the 2011 revolution.²⁴

23. Similarly, in the Afghanistan Situation - when defining the scope of the authorised investigation - the Appeals Chamber confirmed that the Court's jurisdiction extends not only to the conduct originally identified during the preliminary examination but also to "*other alleged crimes*" that have the requisite nexus and are "*sufficiently linked to the situation*".²⁵ The Appeals Chamber further held that no new authorisations is required when later crimes emerge, provided they remain sufficiently connected to the authorised situation.²⁶ The Prosecutor's investigative mandate extends to the situation as a whole and cannot be artificially restricted to the

²³ *Ibid.*

²⁴ See the "Warrant of Arrest" (Pre-Trial Chamber I), [No. ICC-01/11-01/17-2](#), 15 August 2017, para. 23.

²⁵ See the "Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber II entitled 'Decision pursuant to article 18(2) of the Statute authorising the Prosecution to resume investigation'", (Appeals Chamber), [No. ICC-02/17 OA5](#), p. 3 and para. 62.

²⁶ *Ibid.*, paras. 57-62.

incidents, perpetrators or facts specifically identified at the preliminary examination stage.

24. These authorities demonstrate that the concept of a 'situation' is inherently broader than any individual case. It is not confined to the incidents initially known to the referring authority, nor to particular perpetrators, motives, organisational structures or patterns of criminality. Rather, it constitutes the broader jurisdictional framework within which individual cases may subsequently arise. Academic commentary analysing the Court's jurisprudence confirms this interpretation: the defining feature of a situation is the existence of sufficient objective links connecting the alleged crimes to the broader crisis or sequence of events underlying the referral.²⁷ Continuity of actors may be relevant in some circumstances but is not a legal requirement, particularly where armed groups fragment, merge, reorganise or develop over time.

25. The Defence's interpretation would effectively transform a referral of a situation into a referral of specific incidents - requiring a new jurisdictional trigger every time a conflict evolves, institutions change, new actors emerge or later crimes occur. Such an approach is incompatible with articles 13 and 14 of the Statute and with the Court's settled jurisprudence. It would also substantially undermine the effectiveness of Security Council referrals, which are specifically designed to address situations of evolving criminality threatening international peace and security.

b) The crimes alleged against Mr NJEEM are sufficiently linked to the Situation in Libya

26. Applying the above principles, Counsel submits that the alleged crimes against Mr NJEEM are sufficiently linked to the Situation in Libya referred to the Court by Resolution 1970.

²⁷ See RASTAN (R.), THE JURISDICTIONAL SCOPE OF SITUATIONS BEFORE THE INTERNATIONAL CRIMINAL COURT, in *Criminal Law Forum* (2012) 23:1–34, Springer 2012.

27. The Defence incorrectly treats the events of February 2011 as a discrete and completed episode, disconnected from the subsequent evolution of the Libya crisis. It argues that the alleged conduct occurred within institutions that did not exist at the time of the referral and involved actors who allegedly played no role in the events of 2011.²⁸ The framing ignores the reality that the collapse of State institutions, the fragmentation of authority, the proliferation of armed groups, the multiplication of detention facilities and the widespread commission of crimes against civilians were successive manifestations of the same broader crisis that prompted the Security Council referral.

28. The crimes alleged against Mr NJEEM occurred within this continuing instability and fragmentation. They arose in a political and security environment directly shaped by the events that followed the 2011 uprising and the collapse of the previous regime. The fact that the crimes occurred after 2011 does not sever their connection with the referred situation. Nor is it necessary to demonstrate that the alleged crimes were committed by the same perpetrators, for the same motives, or according to the same criminal patterns as those existing in February 2011. The Court's jurisprudence imposes no such requirement. The sufficient-link test articulated in *Mbarushimana* concerns the relationship between the charged conduct and the underlying situation of crisis,²⁹ not the identity of individual perpetrators or institutions. The relevant question is thus whether the alleged conduct forms part of the broader situation referred to the Court. In the present case, it plainly does.

29. The Defence further submits that the alleged conduct attributed to Mr NJEEM occurred "*several years after*" the events that triggered Resolution 1970, in a materially distinct context, and without connection to the Gaddafi regime, the repression of demonstrations, or the actors and institutions existing in 2011.³⁰ It emphasises that Mr NJEEM did not hold a position of authority in 2011, that the institutional

²⁸ See the Defence Challenge, *supra* note 2, paras. 50, 65-66.

²⁹ See *supra* para. 20.

³⁰ *Ibid.*, paras. 49-66.

framework within which the alleged conduct occurred did not exist at the time of the referral, and that the alleged crimes therefore cannot form part of the same situation.³¹ This analysis is incomplete and should be rejected.

30. The majority of the Chamber has already addressed the factual premise that the Defence now seeks to minimise. In issuing the Arrest Warrant, it found that there has been an ongoing situation of crisis in Libya since 2011. It recalled that violence erupted in February 2011 during the uprising against the Gaddafi regime, and that, after the regime's fall, fighting and civil unrest continued.³² The Chamber further found that later violence between the LNA and the GNA *"amplified the existing proxy conflict that took shape after 2011"*.³³ This conclusion was grounded in reports of the United Nations Support Mission in Libya and the Independent Fact-Finding Mission on Libya, which the Chamber considered sufficient to show that *"a situation of turmoil has been ongoing since the 2011 Resolution"*, and that the crisis extended at least until 2 October 2024, the date of the Prosecution's Application.³⁴ The Defence's analysis of the alleged absence of nexus does not meaningfully engage with those materials or with the Chamber's reliance upon them.

31. The Arrest Warrant also identifies a direct institutional and historical link between the alleged crimes and the post-2011 crisis. The Chamber found reasonable grounds to believe that the Special Deterrence Forces (the "SDF"), also known as RADA, *"emerged as a result of the 2011 crisis that triggered the 2011 Resolution, and the aftermath of this crisis"*.³⁵ It noted that the group originated as a revolutionary military group from Souk al Juma fighting Gaddafi forces, participated in taking control of Mitiga airbase in 2011, and started constructing a prison or detention facility in 2012.³⁶

³¹ *Ibid.*, paras. 49-50.

³² See the Arrest Warrant, *supra* note 5, para. 5.

³³ *Ibid.*

³⁴ *Ibid.*, para. 6.

³⁵ *Ibid.*, para. 7.

³⁶ *Ibid.*

32. This is precisely the factual connection missing from the Defence's submissions. The Defence asserts that the institution where the alleged crimes occurred did not exist in 2011 and therefore cannot be part of the referred situation.³⁷ But the relevant question is not whether Mitiga Prison existed on 26 February 2011. It is whether the institution and armed actor through which the alleged crimes were committed emerged from, and remained connected to, the crisis that triggered the Security Council referral. The Chamber's findings answer that question in the affirmative.

33. The subsequent institutionalisation of SDF/RADA reinforces, rather than weakens, the nexus. The Chamber found that during the relevant period SDF/RADA was affiliated to the GNA; that in 2016 the GNA recognised SDF/RADA; that in 2017 Mitiga Prison was recognised as the Tripoli Main Correction and Rehabilitation Institution; and that in 2018 SDF/RADA was formally renamed the Deterrence Apparatus for Combatting Organised Crime and Terrorism under the Ministry of Interior.³⁸ These facts show a continuous evolution from a revolutionary armed formation born of the 2011 crisis into a post-2011 security and detention apparatus. The Chamber also identified a substantive connection between the alleged crimes and the ongoing conflict dynamics in Libya. It found that at least some persons held at Mitiga Prison were detained for reasons related to the fighting or tensions between different groups involved in the ongoing situation of crisis, which further illustrated the link between the alleged crimes and the situation that triggered the Court's jurisdiction.³⁹ This directly contradicts the Defence's assertion that the only connection is geographic or national.⁴⁰

34. The Defence's reliance on the preambular language of Resolution 1970 is also selective. Resolution 1970 referred to "*the situation in the Libyan Arab Jamahiriya since 15 February 2011*". It did not limit the referral only to the Gaddafi regime, only to the departure of the President, or only to the repression of demonstrations in February

³⁷ See the Defence Challenge, *supra* note 2, para. 66.

³⁸ See the Arrest Warrant, *supra* note 5, para. 8.

³⁹ *Ibid.*, para. 9.

⁴⁰ See the Defence Challenge, *supra* note 2, para. 51.

2011. The Resolution expressed grave concern at the situation in Libya, condemned violence and use of force against civilians, deplored gross and systematic violations of human rights, welcomed the Human Rights Council's decision to investigate all alleged violations of international human rights law in Libya, and then referred the situation to the Prosecutor.⁴¹

35. The Defence seeks to define the referred situation by reference to the specific manifestations of violence that initially prompted the Security Council's intervention.⁴² But the factual record relied upon by the Chamber demonstrates that the crisis did not end with those initial events. It evolved into a prolonged situation of armed fragmentation, competing authorities, militia governance, and detention-related criminality. SDF/RADA and Mitiga Prison are not external to that history; they are products of it. Accordingly, the Defence's factual submission that there is "*no linkage*" between the referral and the case against Mr NJEEM is not sustainable.⁴³ The relevant nexus is established by: (i) the continuation of the Libyan crisis after 2011; (ii) the emergence of SDF/RADA from the 2011 crisis and its aftermath; (iii) the group's control over Mitiga, a facility taken over in the immediate aftermath of the uprising; (iv) SDF/RADA's later affiliation with post-2011 Libyan authorities; and (v) the detention of at least some victims for reasons related to ongoing fighting or tensions between actors involved in the Libyan crisis. These facts sufficiently link the crimes alleged against Mr NJEEM to the Situation in Libya referred by Resolution 1970.

36. In sum, the Defence's approach would require the Court to treat every new phase of violence, every new armed actor and every evolution of the Libyan conflict as a separate situation requiring a new jurisdictional trigger. As discussed, such a result finds no support in the Statute, in Resolution 1970, or in the Court's jurisprudence. Accordingly, the Defence has failed to establish that the proceedings against Mr NJEEM fall outside the scope of the Situation in Libya referred to the Court.

⁴¹ See the Resolution 1970, *supra* note 3, preamble and para. 4.

⁴² See the Defence Challenge, *supra* note 2, paras. 38-48, 57-64.

⁴³ *Ibid.*, paras. 64-68.

IV. THE DEFENCE'S CHALLENGE TO THE ADMISSIBILITY OF THE CASE

1. Applicable law

37. Article 17(1) of the Statute provides that:

The Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution.

38. Article 19(2) of the Statute further clarifies that:

Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by: [...] b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted.

39. The precondition for the application of articles 17(1) and 19(2) of the Statute is the existence of “ongoing investigations or prosecutions” at the national level.⁴⁴ The terms “under investigation” have been interpreted as meaning “the taking of steps directed at ascertaining whether [an] individual is responsible for [a specific] conduct, for instance by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses”.⁴⁵ The Appeals Chamber clarified that the investigations conducted at

⁴⁴ See the “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case” (Appeals Chamber), [No. ICC-01/04-01/07-1497 OA 8](#), 25 September 2009 (the “Katanga Admissibility Judgment”).

⁴⁵ See the “Judgment on the appeal of the Republic of the Philippines against Pre-Trial Chamber I’s ‘Authorization pursuant to article 18(2) of the Statute to resume the investigation’” (Appeals Chamber), [No. ICC-01/21-77 OA](#), 18 July 2023, para. 102 (the “Philippines Admissibility Judgment”), referring to the “Judgment on the appeal of the Bolivarian Republic of Venezuela against Pre-Trial Chamber I’s ‘Decision authorising the resumption of the investigation pursuant to article 18(2) of the Statute’” (Appeals Chamber), [No. ICC-02/18-89 OA](#), 1 March 2024, para. 364 (the “Venezuela I Admissibility Judgment”). See also, the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya challenging the Admissibility of the Case Pursuant to Article 19(2)(b) of the Statute’” (Appeals Chamber), [No. ICC-01/09-01/11-307 OA](#), 30 August 2011, para. 1 (the “Ruto et al. Admissibility Judgment”); and the “Judgment on the appeal of the Republic of Kenya against the decision of Pre-Trial Chamber II of 30 May 2011 entitled ‘Decision on the Application by the Government of Kenya Challenging the Admissibility of the Case pursuant to Article 19(2)(b) of the Statute’” (Appeals Chamber), [No. ICC-01/09-02/11-274 OA](#), 30 August 2011, para. 1 (the “Muthaura Admissibility Judgment”).

national level must cover the ‘same case’, in particular the same person and essentially the same conduct that is the subject of the proceedings before the Court.⁴⁶ Accordingly, for a challenge to the admissibility of a case to succeed, “*evidence with a sufficient degree of specificity and probative value that demonstrates that [the State] is indeed investigating the case*” in respect of which proceedings have been brought before the Court must be submitted.⁴⁷

40. In this context, the Appeals Chamber has ruled on several occasions that, “*in considering whether a case is admissible under article 17 (1) (a) and (b) of the Statute, the initial questions to ask are (1) whether there are ongoing investigations or prosecutions, or (2) whether there have been investigations in the past, and the State having jurisdiction has decided not to prosecute the person concerned. It is only when the answers to these questions are in the affirmative that one has to look to the second halves of sub-paragraphs (a) and (b) and to examine the question of unwillingness and inability*”.⁴⁸

41. The admissibility test is therefore twofold: first, the existence of proceedings at national level relating to the ‘same case’ as that pending before the Court must be demonstrated. Second, there must be an assessment of the willingness and ability of the State claiming jurisdiction over the case to genuinely investigate or prosecute the person concerned. The burden lies on the party challenging admissibility to demonstrate that the case is inadmissible before the Court,⁴⁹ proving that the relevant State is conducting a genuine investigation or prosecution in respect of the same case.⁵⁰

42. These observations will first address the initial component of the admissibility test, namely the legal *criteria* for assessing the existence of domestic proceedings covering the ‘same case’ before the Court and their application to the evidence

⁴⁶ See the *Ruto et al.* Admissibility Judgment, *supra* note 45, para. 37 *et seq.*

⁴⁷ *Ibid.*, para. 2.

⁴⁸ See the *Katanga* Admissibility Judgment, *supra* note 44, para. 80.

⁴⁹ See the “Judgment on the appeal of Côte d’Ivoire against the decision of Pre-Trial Chamber I of 11 December 2014 entitled ‘Decision on Côte d’Ivoire’s challenge to the admissibility of the case against Simone Gbagbo’” (Appeals Chamber), [No. ICC-02/11-01/12-75-Red OA](#), 27 March 2015, para. 29 (the “*Simone Gbagbo* Admissibility Judgment”).

⁵⁰ *Ibid.*

submitted by the Defence. The second component of the admissibility test - the ability and willingness of Libya to genuinely carry out investigations or prosecutions against Mr NJEEM - will then be examined through a combined legal and factual analysis. Lastly, the views and concerns of the Victims on the issue will be presented.

2. The term ‘case’ within the meaning of article 17(1)(a) of the Statute

43. When the Court issues a warrant of arrest or a summons to appear, a case may be found inadmissible only if the investigation or prosecution conducted at the national level concern the same case.⁵¹ It is therefore necessary to determine the meaning of ‘case’ under article 17(1)(a) of the Statute and to assess, in light of the criteria established in the Court’s jurisprudence, whether the degree of overlap between the domestic proceedings and the case before the Court is sufficient to render the latter inadmissible.

44. The Court first articulated these criteria in the *Lubanga* case. Pre-Trial Chamber I stated that “*it is a sine qua non condition for a case arising from an investigation into a situation to be inadmissible that the national proceedings encompass both the person and the conduct that are the subject of the case before the Court*”.⁵² Since *Lubanga*, Chambers have repeatedly examined the meaning of ‘case’ in different procedural contexts, including beyond admissibility challenges. They have consistently held that a ‘case’ refers to specific allegations and underlying factual circumstances. The jurisprudence thus reflects a consistent and uniform interpretation of this notion, irrespective of the procedural context or the status of the participants involved.

45. Pre-Trial Chambers have repeatedly clarified that a case comprises “*specific incidents during which one or more crimes within the jurisdiction of the Court seem to have*

⁵¹ See the “*Katanga* Admissibility Judgment”, *supra* note 44, para. 78.

⁵² See the “Decision on the Prosecutor’s Application for a warrant of arrest, Article 58” (Pre-Trial Chamber I), [No. ICC-01/04-01/06-1-Corr, 10 February 2006](#), 17 March 2006, para. 31. See also, the “Decision on the admissibility of the case against Saif Al-Islam Gaddafi” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-344-Red](#), 31 May 2013, para. 74 (the “*Saif Al-Islam Gaddafi* Admissibility Decision”).

*been committed by one or more identified suspects”.*⁵³ In other words, the parameters of a case consist of specific factual allegations capable of supporting the legal elements of the alleged crimes. The Appeals Chamber reaffirmed this approach, noting that *“‘article 19 of the Statute relates to the admissibility of concrete cases’ and that ‘the defining elements of a concrete case before the Court are the individual and the alleged conduct’ test”*.⁵⁴ It accordingly confirmed the validity of the ‘same person/same conduct’ test, holding that *“for such a case to be inadmissible under article 17 (1) (a) of the Statute, the national investigation must cover the same individual and substantially the same conduct as alleged in the proceedings before the Court”*.⁵⁵

46. The Appeals Chamber further clarified that a “concrete case” is defined “by a warrant of arrest or a summons to appear issued under article 58, or the charges presented by the Prosecutor and confirmed by the Pre-Trial Chamber under article 61. [...] Similarly, in under regulation 52 of the Regulations of the Court, the document setting out the charges must identify the person against whom confirmation of the charges is sought and the allegations against him or her”.⁵⁶ It follows that the contours of any domestic proceedings must be sufficiently clear to permit a meaningful comparison, regardless of the stage of the national investigation or prosecution.⁵⁷

47. This interpretation of the term ‘same conduct’ is supported by the parameters set out in article 20 of the Statute. Because article 17 operates as a corollary to the

⁵³ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 52, para. 75. See also, the “Decision on the Prosecutor’s Application Pursuant to Article 58 for a warrant of arrest against Laurent Koudou Gbagbo” (Pre-Trial Chamber III), [No. ICC-02/11-01/11-9-Red](#), 20 December 2012, para. 10; the “Decision on the Prosecutor’s Application for a warrant of arrest, Article 58” (Pre-Trial Chamber I), [No. ICC-01/04-01/06-1-Corr](#), 10 February 2006, para. 3; and the “Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6” (Pre-Trial Chamber I), [No. 01/04-101-tENG-Corr](#), 17 January 2006, para. 65.

⁵⁴ See the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 52, para. 76. See also, the *Ruto et al.* Admissibility Judgment, *supra* note 45, para. 40; and the *Muthaura* Admissibility Judgment, *supra* note 45, para. 39.

⁵⁵ See the *Ruto et al.* Admissibility Judgment, *supra* note 45, para. 40; and the *Muthaura* Admissibility Judgment, *supra* note 45, para. 39.

⁵⁶ *Ibid.*

⁵⁷ See the *Simone Gbagbo* Admissibility Judgment, *supra* note 49, para. 88.

principle of *ne bis in idem*,⁵⁸ the relevant comparison must focus on conduct rather than merely on the identity of the suspect. Accordingly, national proceedings concerning an individual's conduct in relation to certain events do not preclude the Court from investigating or prosecuting the same individual for substantially different conduct arising from other factual circumstances.

3. The Defence did not establish the existence of domestic proceedings concerning the same case

48. The Defence argues that the case against Mr NJEEM is inadmissible because Libya is allegedly investigating and prosecuting him for substantially the same conduct as that underlying the proceedings before the Court.⁵⁹ Counsel submits that the Defence has failed to discharge its burden under the first limb of article 17 of the Statute.

49. As noted *supra*, the first stage of the admissibility assessment requires the Chamber to determine whether there are ongoing domestic proceedings concerning the same person and substantially the same conduct as the case before the Court. The burden lies on the party challenging admissibility to provide evidence of sufficient specificity and probative value demonstrating that such proceedings exist.

50. There is no real dispute that the domestic proceedings identified by the Defence concern the same person, namely Mr NJEEM. The central question is whether the Defence has demonstrated that those proceedings concern substantially the same conduct as that charged before the Court. The material presently before the Chamber does not permit such a finding. The evidence relied upon by the Defence consists primarily of summary statements and letters from Libyan prosecutorial authorities,

⁵⁸ See HOLMES (J. T.), "The Principle of Complementarity" in Lee (R. L.) (Ed.), *The International Criminal Court: The Making of the Rome Statute*, Kluwer, 1999, p. 57. See also RASTAN (R.), "Situation and case: defining the parameters", in STAHN (C.) & EL ZEIDY (M.M.) (Eds.), *The International Criminal Court and Complementarity: From Theory to Practice*, Cambridge University Press, 2011, p. 441.

⁵⁹ See the Defence Challenge, *supra* note 2, paras. 94–116.

rather than primary judicial or procedural documents capable of establishing the precise scope of the alleged domestic proceedings.

51. In particular, Annex V contains a communication from the Libyan Attorney General's Office indicating that criminal proceedings have been initiated against Mr NJEEM and that preliminary investigations examined "*the elements of the crimes mentioned in the Arrest Warrant*".⁶⁰ However, the document does not identify the charges formally brought, the underlying incidents, the relevant victims, the dates of the alleged conduct, or the specific acts attributed to Mr NJEEM.

52. Annex VI provides slightly more detail, indicating that the domestic proceedings concern alleged "*systematic violations*" committed against inmates at the Tripoli Main Reform and Rehabilitation Institution, including violations affecting ten inmates and the death of one detainee resulting from torture.⁶¹ Yet, this description remains highly general and does not permit the Chamber to determine whether the domestic proceedings cover substantially the same conduct as the case before the Court.

53. Counsel further notes that publicly available reporting indicates that Mr NJEEM was convicted by a Tripoli court on 21 June 2026. However, neither the underlying judgment nor the precise charges, factual findings, or reasoning of the domestic court appear to be available.

54. Even assuming, *arguendo*, that genuine domestic proceedings against Mr NJEEM are ongoing, the Defence has not demonstrated that those proceedings concern the same case within the meaning of article 17(1)(a) of the Statute. The limited information provided by the Defence is particularly striking when compared with the breadth of the present case before the Court as defined in the Arrest Warrant. The ICC proceedings concern twelve distinct counts of war crimes and crimes against humanity, namely imprisonment, outrages upon personal dignity, cruel treatment,

⁶⁰ See Annex V, [No. ICC-01/11-228-AnxV](#) to the Defence Challenge, *supra* note 2.

⁶¹ See Annex VI, [No. ICC-01/11-228-AnxVI](#) to the Defence Challenge, *supra* note 2.

torture, sexual violence, rape, murder and attempted murder, unlawful sentencing, enslavement, sexual slavery, and persecution.⁶²

55. The Arrest Warrant further establishes that the alleged conduct spans nearly a decade, from around February 2015 to at least 2 October 2024.⁶³ It concerns a large-scale pattern of criminality at Mitiga Prison affecting a significant number of detainees. The Prosecution estimates that at least 5,140 persons were imprisoned during the relevant period.⁶⁴ The allegations involve multiple categories of victims, including men, women and children, and include allegations of sexual violence committed against at least 22 persons, including a 5-year-old child.⁶⁵

56. Against this background, the Defence has not demonstrated that the domestic proceedings encompass the same temporal scope, the same victims, the same incidents, or the same categories of criminal conduct. The material submitted does not permit verification of whether the Libyan proceedings address allegations of sexual violence, rape, sexual slavery, enslavement, persecution, murder, unlawful sentencing, or other core components of the case before the Court. On the basis of the material presently before the Chamber, including recent public reporting - which, if confirmed, suggests the existence of a domestic conviction - the alleged domestic proceedings appear to concern, at most, a limited subset of the conduct underlying the case before the Court, principally allegations relating to torture or mistreatment of a limited number of detainees. Such overlap in general subject matter or detention location is insufficient to satisfy the 'same conduct' test under article 17.

57. The Defence's reliance on the Chamber's decision in the *Al-Senussi* case is also misplaced.⁶⁶ The evidentiary record in that case was materially different. The chamber did not accept Libya's admissibility challenge on the basis of general assertions by domestic authorities that proceedings were ongoing. Rather, its determination was

⁶² See the Arrest Warrant, *supra* note 5, p. 34.

⁶³ *Ibid.*, para. 2.

⁶⁴ *Ibid.*, para. 30.

⁶⁵ *Ibid.*, para. 56 *et seq.*

⁶⁶ See the Defence Challenge, *supra* note 2, para. 95.

based on an extensive evidentiary record enabling an independent assessment of the precise factual and legal scope of the domestic proceedings. As the chamber noted, Libya had submitted “*a wealth of evidence*” concerning the domestic proceedings, including detailed material regarding the investigative steps undertaken and the conduct under investigation.⁶⁷

58. That evidentiary record included, *inter alia*, witness interviews, investigation memoranda, documentary evidence, and detailed submissions regarding the specific conduct attributed to Mr Al-Senussi. The chamber was therefore in a position to conduct the assessment required under article 17 of the Statute, namely whether the domestic proceedings concerned the same person and substantially the same conduct as the case before the Court.

59. The present case stands in sharp contrast. Here, the Defence relies primarily on statements and communications from Libyan prosecutorial authorities asserting that proceedings against Mr NJEEM are ongoing. Even following the reported domestic conviction, the Defence has not submitted primary procedural or judicial documentation capable of demonstrating the actual factual scope of those proceedings. Crucially, the Defence has not submitted any arrest warrant, indictment, charging instrument, referral order, witness record, evidentiary inventory, or judicial decision setting out the precise factual allegations or legal charges brought against Mr NJEEM at the domestic level. In the absence of such primary procedural documents, the factual and legal scope of the domestic proceedings cannot be meaningfully assessed. It therefore remains unclear whether the domestic proceedings - including the reported conviction, if confirmed - addressed substantially the same conduct as the case before this Court, with the full temporal scope, contextual elements, and gravity of the crimes alleged in the Arrest Warrant.

⁶⁷ See the Public redacted version of the “Decision on the admissibility of the case against Abdullah Al-Senussi” (Pre-Trial Chamber I), [No. ICC-01/11-01/11-466-Red](#), 11 October 2013, para. 161.

60. Nor is it sufficient for the Defence merely to assert that the domestic proceedings concern “*substantially the same conduct*”. The complementarity assessment requires the Chamber to examine the actual conduct being investigated or prosecuted domestically. General descriptions, conclusory statements, or characterisations by national authorities cannot substitute for concrete evidentiary material permitting such an assessment.⁶⁸ This is particularly important in the present case, given the breadth and complexity of the proceedings before the Court, which concern alleged criminal conduct spanning almost ten years, involving numerous victims, multiple detention episodes, and a wide range of crimes under articles 7 and 8 of the Statute.

61. Counsel notes that Libya is expected to file observations on 3 July 2026 and may provide further information on the procedural status, factual scope, and evidentiary basis and legal implications of the reported domestic conviction and the alleged domestic proceedings more broadly. At present, however, the Defence’s submissions and supporting documentation do not establish that the first limb of the admissibility test has been satisfied.

62. Accordingly, the Defence has failed, to demonstrate that there are ongoing domestic proceedings concerning substantially the same conduct as the case before the Court.

4. In the alternative, the Defence has not demonstrated that Libya is willing and able genuinely to carry out proceedings against Mr NJEEM

63. For the reasons set out *supra*, the Defence’s admissibility challenge fails at the first stage of the article 17 analysis, since it has not established the existence of domestic proceedings concerning the same case. Accordingly, it is unnecessary for the Chamber to determine whether Libya is willing and able genuinely to investigate or prosecute Mr NJEEM.⁶⁹ Nevertheless, should the Chamber consider that the first limb of

⁶⁸ See the *Muthaura* Admissibility Judgment, *supra* note 45, para. 62. See also, the *Simone Gbagbo* Admissibility Judgment, *supra* note 49, para. 29.

⁶⁹ See the *Katanga* Admissibility Judgment, *supra* note 44, para. 80.

article 17 has been satisfied – Counsel submits that the Defence has also failed to demonstrate that Libya is willing and able genuinely to carry out proceedings against Mr NJEEM.⁷⁰

64. The Defence relies on Libya’s recent procedural actions - including the alleged initiation of domestic proceedings following the lifting of Mr NJEEM’s immunity - as evidence of willingness and ability.⁷¹ However, the material presently before the Chamber does not support such a conclusion.

65. First, the timing of the domestic measures relied upon by the Defence warrants careful scrutiny. The conduct underlying the present case allegedly spans from around February 2015 until at least October 2024. Yet, the Defence has not demonstrated meaningful domestic investigative or prosecutorial action against Mr NJEEM during the substantial majority of that period. On the material presently before the Chamber, procedural steps appear to have been taken only after Mr NJEEM was arrested in Italy and subsequently returned to Libya.

66. While the timing of domestic proceedings is not, in itself, determinative of unwillingness, it may be relevant to the assessment of genuineness under article 17. As already noted, publicly available information indicates that, on 21 June 2026, a Tripoli criminal court reportedly convicted Mr NJEEM and sentenced him to seven years and four months’ imprisonment “*for violations of detainees’ rights*”.⁷² However, this development does not by itself resolve the complementarity analysis. At present, information concerning the domestic judgment - in particular the precise charges, the evidentiary basis for conviction, or the reasoning adopted by the domestic court - remains unavailable. Where substantial domestic action appears only after ICC proceedings have materially advanced, the Chamber may properly scrutinise whether

⁷⁰ See the Defence Challenge, *supra* note 2, paras. 117–130.

⁷¹ *Ibid.*, paras. 121–128.

⁷² See, *inter alia*, Libya Crime Watch, “[Njeem’s conviction does not extinguish the obligation to execute the ICC arrest warrant](#)”, 22 June 2026.

such proceedings reflect a genuine intention to prosecute or, instead, a reactive effort to preclude the Court's exercise of jurisdiction.⁷³

67. Second, the Defence places considerable weight on the fact that Mr NJEEM's immunity or official protections were removed, presenting this as evidence of Libya's willingness to prosecute him.⁷⁴ The Defence's reliance on the removal of Mr NJEEM's immunity - and even the recently reported conviction - cannot be treated as dispositive of genuineness. They do not by themselves demonstrate that such proceedings are independent, or capable of addressing the full scope of the alleged criminality and victimisation. Nor do they exclude the possibility that domestic proceedings may operate to shield a suspect from international prosecution within the meaning of article 17(2) of the Statute.

68. This consideration is particularly relevant in the present case. Unlike the Court – which does not recognise official capacity or State immunity as a bar to criminal responsibility under article 27 of the Statute – domestic proceedings may be influenced by political, institutional, or security considerations affecting their independence and the scope of accountability. In such circumstances, retaining control of proceedings at the domestic level may, in practice, limit the exposure of the defendant to full accountability before the Court, particularly where the domestic case appears narrower in scope than the ICC case and where the alleged conduct implicates broader institutional structures or powerful security actors.

69. Third, the Defence has not adequately demonstrated whether Libya currently possesses the legal framework and the practical ability to conduct proceedings of the scale and complexity required in this case. The present proceedings concern alleged war crimes and crimes against humanity over nearly a decade, involving thousands of detainees, numerous victims, allegations of torture, murder, sexual violence, rape, sexual slavery, enslavement, and persecution. Genuine domestic prosecution of such

⁷³ See, *inter alia*, Public redacted version of the "Decision on the admissibility of the case against Abdullah Al-Senussi", *supra* note 67, para. 223.

⁷⁴ See the Defence Challenge, *supra* note 2, paras. 121–128.

allegations would require the capacity to secure and preserve evidence,⁷⁵ ensure judicial independence, compel testimony from current or former security personnel, and provide effective protection to victims and witnesses, including victims of sexual violence and former detainees potentially exposed to intimidation or reprisals.⁷⁶

70. Concerns regarding the independence of domestic proceedings are reinforced by the circumstances surrounding Mr NJEEM's return to Libya following his arrest in Italy. Rather than being surrendered to the Court pursuant to the Arrest Warrant, Mr NJEEM was returned to Libya on a State-operated flight under circumstances that remain materially opaque. While Counsel does not speculate as to the precise mechanisms that led to that outcome, the sequence of events strongly suggests that powerful political, institutional, or security actors possessed both the capacity and the willingness to intervene to secure Mr NJEEM's return to Libya.

71. These concerns are heightened by publicly available information indicating that RADA and actors associated with Mitiga have continued to exercise substantial influence over security structures in Tripoli. Control over Mitiga airport and prison remaining contested well into 2025, despite efforts by the GNU to assert authority. Recent reporting indicates that RADA retained a strong operational presence at Mitiga and nearby detention facilities, notwithstanding attempts by the GNU to restructure control over strategic security infrastructure.⁷⁷ Public information further suggests that agreements reached in late 2025 concerning the redistribution of control over Mitiga were only partially implemented, with continuing tensions and mobilisations among competing security actors.⁷⁸ Human Rights Watch likewise observed, in its 2026 World

⁷⁵ See, *inter alia*, the *Saif Al-Islam Gaddafi* Admissibility Decision, *supra* note 52, paras. 205 and 209. See also, the Public redacted version of the "Decision on the admissibility of the case against Abdullah Al-Senussi", *supra* note 67, paras. 261 and 297.

⁷⁶ See the Public redacted version of the "Decision on the admissibility of the case against Abdullah Al-Senussi", *supra* note 67, paras. 283 and 287.

⁷⁷ See Libya Security Brief, [Rada in 2026: Armed Autonomy and the Limits of State Authority](#), 18 March 2026 - specifically finding that RADA remains entrenched at Mitiga and GNU lacks full coercive control.

⁷⁸ See The Arab Weekly, [Cautious calm in Tripoli after agreement between Dbeibah government, Rada force](#), 15 September 2025 - reports Turkish-mediated agreement over Mitiga control, but fragile implementation; Libya Security Monitor, [GNU-Rada deal remains only partially implemented amid continued mobilisations and insecurity concern](#), 22 September 2025; International Crisis Group, [Libya's Capital](#)

Report, that, while the Justice Ministry exercised *nominal* control over prisons, armed groups and security agencies continued to operate detention facilities across Libya.⁷⁹ These circumstances raise legitimate questions as to whether the Libyan authorities possess effective and exclusive operational control over the institutional environment in which the alleged crimes were committed. In turn, this calls into question whether domestic proceedings involving a senior figure associated with those structures can be conducted with the degree of independence and insulation from political or security influence required under article 17 of the Statute.

72. The material submitted by the Defence does not address these concerns. Nor does it demonstrate that victims and witnesses connected to Mitiga detention facilities would be able to participate safely and meaningfully in domestic proceedings free from pressure, intimidation, or retaliation. The recent reported conviction - even if confirmed by the relevant authorities - does not materially alter this assessment in the absence of sufficient information regarding the scope, evidentiary basis, and effective enforcement of that judgment. To Counsel's knowledge, none of the Victims presently represented before the Court - including victims directly affected by the alleged conduct underlying this case - were informed of, consulted in relation to, or invited to participate in the reported domestic proceedings. While victim participation is not determinative under article 17, the apparent absence of any meaningful engagement with affected victims in proceedings concerning a large-scale system of detention and abuse further reinforces concerns regarding the transparency, inclusiveness, and genuineness of the domestic process. Moreover, given the scale and complexity of the alleged criminality, the apparent speed with which the domestic proceedings purportedly culminated in a conviction may itself raise legitimate questions as to whether the proceedings were capable of addressing the full scope of the alleged conduct with the degree of thoroughness, independence, and procedural rigor required for genuine accountability.

[Engulfed by Fresh Fighting](#), 14 May 2025 - identifies RADA as controlling Mitiga airport and adjacent prison.

⁷⁹ See Human Rights Watch, [World Report 2026 – Libya](#), 2026.

73. Accordingly, even if the Chamber were to conclude that the first limb of article 17 is satisfied - which Counsel contests - the Defence has not established that Libya is willing and able to genuinely investigate and prosecute Mr NJEEM.

V. VICTIMS VIEWS AND CONCERNS

74. The Office has been engaged in the Situation in Libya for several years. Counsel maintains contact with various lawyers and organisations representing victims, as well as with victims directly affected by the Defence Challenge.

75. The present jurisdictional and admissibility challenges must be considered in light of the concrete impact that these proceedings have on victims of the crimes committed at Mitiga Prison. In the course of consultations conducted by Counsel, Victims consistently expressed that the proceedings before the Court represent the only credible avenue through which accountability for the crimes committed within this system of detention and abuse may be achieved. Those consulted include former detainees who have been subjected to arbitrary detention, torture, inhuman treatment, sexual and gender-based violence, and other grave abuses, as well as relatives of persons who suffered or died in detention. Victims explained that the consequences of these crimes remain ongoing and multifaceted, affecting their physical and psychological health, family life, social relationships, and economic stability. For many, the harm suffered did not end upon release from detention but continues to shape their daily lives.

76. Victims repeatedly emphasised that, despite the persistence of these crimes over many years, meaningful accountability has remained absent. In their experience, abuses committed at Mitiga have long occurred in an environment characterised by fear, silence, and entrenched impunity. This history significantly informs Victims' concerns regarding whether justice can realistically be achieved outside proceedings before this Court. For many, the present proceedings are significant not only because they may result in criminal accountability, but also because they offer the possibility of establishing an independent and authoritative judicial record of what occurred.

Victims attach particular importance to the formal recognition of crimes and harms that, in their view, have too often been denied, minimised, or obscured. A recurring concern expressed relates to the influence of local power dynamics over any domestic accountability process. Victims indicated that they fear that proceedings conducted at the national level may be affected by political pressures, security considerations, or the continued influence of actors linked - directly or indirectly - to the structures within which the alleged crimes were committed.

77. Victims further expressed profound concern regarding the uncertainty surrounding Mr NJEEM's present custodial status and, more broadly, the opacity surrounding the domestic proceedings. While the Defence asserts that he is under arrest or in detention in Libya, publicly available information remains conflicting. Some recent reporting indicates that Mr NJEEM was convicted by a Tripoli court and sentenced to a term of imprisonment. Other contradictory information circulating publicly, including on social media, raises questions as to whether he remains effectively deprived of liberty or may have resumed activities within security structures associated with Mitiga.⁸⁰ While it is presently impossible to verify such reports, the coexistence of these conflicting narratives - and the absence of clear, reliable information concerning Mr NJEEM's actual custodial status, the scope of the domestic proceedings, or the effective enforcement of the reported judgment - has deepened Victims' anxiety and sense of insecurity.

78. These concerns are heightened by the fact that Mr NJEEM has already once been removed from the reach of this Court under circumstances that remain unclear. Following his arrest in Italy pursuant to the Arrest Warrant, he was returned to Libya on a State-operated flight rather than surrendered to the Court, notwithstanding Italy's obligations of cooperation. For many Victims, this sequence of events created the perception that political or institutional intervention may already have enabled Mr NJEEM to evade international judicial scrutiny. Against that background, Victims

⁸⁰ See, *inter alia*, Libya Crime Watch, "[Njeem's conviction does not extinguish the obligation to execute the ICC arrest warrant](#)", 22 June 2026.

fear that insufficient transparency surrounding his current status and the domestic proceedings create a real risk that accountability may again be frustrated. This reinforces Victims' concerns regarding impunity, political interference, and the possibility that those allegedly responsible for grave crimes may continue to wield influence or intimidate victims and witnesses.

79. In this regard, several Victims expressed the view that proceedings before the Court may constitute the only realistic forum in which senior figures associated with Mitiga and related security structures can be investigated and prosecuted independently of local power dynamics. In their perception, the Court's institutional independence and international character provide safeguards that are essential for ensuring impartiality - particularly where the alleged crimes implicate actors connected to powerful security structures or institutions that continue to exercise influence in Libya.

80. Victims are equally concerned that - absent such independent scrutiny - domestic proceedings may fail to address the full scale of the alleged criminality or may focus only on limited aspects of the conduct while leaving broader patterns of abuse and victimisation unexamined. For them, justice requires accountability that reflects the full gravity and scope of the crimes they suffered. Against this background, Victims attach particular importance to the Court's ability to exercise the jurisdiction conferred upon it by the Statute where the requirements of complementarity are not met. They emphasised that justice must not only be formally available, but must also be capable of being delivered in a manner that is independent, effective, and credible.

81. The issues raised by the present challenges concern more than jurisdiction and admissibility in the abstract; they bear directly on whether Victims will have a genuine opportunity to see accountability pursued for the crimes they suffered.⁸¹ Victims of the

⁸¹ See the "Separate opinion of Judge Sang-Hyun Song" appended to the "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007" (Appeals Chamber), [No. ICC-01/04-01/06-925 OA8](#), 13 June 2007, para. 16: "*victims of serious crimes have a special interest that perpetrators*

system of detention and abuse underlying the case against Mr NJEEM, along with their families, have the right to obtain justice, to know the truth, and to be redressed.

VI. CONCLUSION

82. For the foregoing reasons, the Principal Counsel respectfully requests the Chamber to dismiss the Defence Challenge in its entirety.



Paolina Massidda
Principal Counsel

Dated this 3rd day of July 2026
At The Hague, The Netherlands

responsible for their suffering be brought to justice, and this interest is protected by human rights norms". See also, the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-01/11-460](#), 3 October 2012, para. 10; the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-02/11-498](#), 3 October 2012, para. 9; the "Decision on common legal representation of victims for the purpose of trial" (Trial Chamber III), No. [ICC-01/05-01/08-1005](#), 10 November 2010, para. 9(a); the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), No. [ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97; and the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victims at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), No. [ICC-01/04-01/07-474 13-05-2008](#), paras. 31 and 34.