

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/11
Date: 13 July 2026

PRE-TRIAL CHAMBER I

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

SITUATION IN LIBYA

Public

**with Public annexes A and B
and Confidential *ex parte* annexes C, D, E, F**

Public Redacted Version of “Prosecution response to the ‘Admissibility Challenge by Mr. Osama Elmasry/Almasri Njeem Pursuant to Article 17(1)(a) and Article 19 of the Rome Statute’ ”, 3 July 2026, ICC-01/11-233-Conf

Source: Office of the Prosecutor

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I. INTRODUCTION

1. The Prosecution respectfully submits that the Defence's challenge to the jurisdiction of the Court and admissibility of the case (the "Challenge")¹ lacks merit and should be dismissed.

2. First, the Defence's arguments pertaining to the Court's jurisdiction are based on an impermissibly narrow interpretation of the scope of the United Nations Security Council ("UNSC") Resolution 1970 (the "Resolution"). ICC Chambers have consistently affirmed for almost ten years that the Resolution² provides a legal basis for the Court's exercise of jurisdiction not only in relation to alleged crimes committed in 2011 but also for subsequent crimes that are "associated with" the conflict which began in 2011—including alleged crimes until at least 2024.³

3. The case against Mr Njeem is no exception. It falls within the parameters of the situation as defined by the Resolution, or is in any event sufficiently linked to them, such that the Court is properly exercising its jurisdiction. The Challenge shows nothing to the contrary. In any event, and as recognised by the Defence,⁴ Libya also filed a valid declaration pursuant to article 12(3) of the Statute significantly overlapping with the scope of the Resolution. While the Declaration is not required for the Court's exercise of jurisdiction in this case, it underlines Libya's further acceptance of the Court's jurisdiction.⁵

4. Second, the Defence's arguments pertaining to the admissibility of the Prosecution case against Mr Njeem are unsubstantiated. The one-page letters from the Office of the Attorney General of Libya are insufficient for the Chamber to assess the parameters and/or genuineness

¹ The Prosecution notes that while the title of the Challenge only refers to admissibility, arguments pertaining to the Court's jurisdiction are raised. The Prosecution addresses both issues in the present response. [ICC-01/11-228-AnxI](#) ("Challenge").

² [UNSC Resolution 1970](#), S/Res/1970 ("Resolution").

³ See e.g. [ICC-01/11-01/17-2](#) ("Werfalli First Arrest Warrant"), para. 23 (affirming the exercise of jurisdiction over events in 2016-2017); [ICC-01/11-01/17-13](#) ("Werfalli Second Arrest Warrant"), para. 20 (jurisdiction over events in 2018); [ICC-01/11-01/20-26-Anx-Red](#) ("Sneidel Arrest Warrant"), para. 4 (jurisdiction over events in 2016-2017); [ICC-01/11-141-Anx1](#) ("Al Kani Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-141-Anx2](#) ("Doumah Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-141-Anx3](#) ("Al Lahsa Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-141-Anx4](#) ("Salheen Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-141-Anx5](#) ("Al Shaqqaqi Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-141-Anx6](#) ("Al Zinkal Arrest Warrant"), para. 13 (jurisdiction over events until at least 2020); [ICC-01/11-152-Anx](#) ("Njeem Arrest Warrant"), para. 11 (jurisdiction over events until at least 2024). The Prosecution underlines its submission that it is the *factual* connection to the armed violence originating in 2011 which may be relevant for the purpose of jurisdiction, irrespective whether as a matter of law the ongoing hostilities in Libya are best characterised as one or multiple armed conflicts. See further below para. 245.

⁴ [Challenge](#), para. 27.

⁵ See also [ICC-01/11-01/25-7](#) ("El Hishri Arrest Warrant"), paras 4-5.

of the purported “criminal proceedings” against Mr Njeem. In any event, it appears that Libya is not investigating substantially the same conduct as the Court. The case against Mr Njeem remains admissible before the Court.

II. CLASSIFICATION

5. This response is filed confidentially consistent with regulation 23bis(1) and (2) of the Regulations of the Court because it refers to documents of the same classification and contains confidential information. The annexes to the response are filed as either confidential⁶ or confidential *ex parte*⁷ because they contain sensitive information pertaining to prosecution witnesses and sources. A public redacted version of the response will be provided in due course.

III. PROCEDURAL HISTORY

6. On 2 October 2024, the Prosecution submitted its Application for a Warrant of Arrest against Mr Njeem (“Arrest Warrant Application”).⁸

7. On 18 January 2025, Pre-Trial Chamber I (“the Chamber”) issued the Warrant of Arrest (“Arrest Warrant”).⁹

8. On 19 January 2025, Mr Njeem was arrested in Italy by State authorities on the basis of the Arrest Warrant.¹⁰

9. On 21 January 2025, Italy released Mr Njeem and flew him back to Libya “as a free man”¹¹ despite the Court’s attempts to engage with Italian authorities¹² and in contravention of Italy’s obligations under the Rome Statute.¹³

10. On 15 April 2026, Professor Githu Muigai submitted by email to the Registry an “Application on behalf of Mr Osama Elmasry/Almasri Njeem pursuant to article 17 of the Rome Statute”.¹⁴ Pursuant to the Chamber’s instructions, the Registry requested the resubmission of the document in a required format, together with a power of attorney.¹⁵ On 28 April 2026, Mr

⁶ Annex A and B.

⁷ Annex C, D, E, F.

⁸ [Njeem Arrest Warrant](#), para. 2.

⁹ [Njeem Arrest Warrant](#).

¹⁰ [ICC-01/11-209](#), (“Decision on Italy’s non-compliance”), para. 5.

¹¹ [Decision on Italy’s non-compliance](#), paras 8, 28-29, 42.

¹² [Decision on Italy’s non-compliance](#), paras 28-33.

¹³ [Decision on Italy’s non-compliance](#), paras 54, 62.

¹⁴ [ICC-01/11-228](#) (“Registry Transmission”), para. 2.

¹⁵ [Registry Transmission](#), paras 4, 5.

Njeem submitted the Challenge to the Registry. The Registry subsequently transmitted the Challenge to the Chamber on 30 April 2026.¹⁶

IV. SUBMISSIONS

11. The Challenge lacks merit and shows no defect in the Court’s lawful exercise of jurisdiction or in the admissibility of the case. The Prosecution will address the Defence’s challenges in turn.

IV.A The Court’s jurisdiction over Mr Njeem is correctly based on the Resolution

12. The case against Mr Njeem falls within the parameters of the UNSC’s referral or is sufficiently linked to them. Narrowing the Court’s exercise of jurisdiction to impose additional artificial limitations is incorrect and would defeat the object of the referral in the first place. A correct interpretation of the Resolution, the factual parameters of the situation, and the UNSC’s consistent practice since 2011 establishes that the Court properly exercises jurisdiction over the case against Mr Njeem.

IV.A.1 Jurisdiction pursuant to the referral is sufficiently circumscribed by the objective parameters of the situation

13. The Defence acknowledges that the Resolution confers jurisdiction on the Court over events in Libya, thereby tacitly recognising the validity of the referral. It solely disputes its scope,¹⁷ arguing that the Court should be bound by certain “situational limits” defined by the specific facts triggering the referral.¹⁸ The Defence argues that this is required as a “matter of both principle and necessity”.¹⁹ A contrary interpretation, according to the Defence, would confer jurisdiction on the Court in perpetuity.²⁰

14. This is incorrect. The Court’s jurisdiction is not limited to the specific events that triggered the referral. The Defence’s undue emphasis on those events is misplaced and unsupported in law and practice.

15. Instead, the Court’s jurisprudence and consistent practice sufficiently guide the exercise of the Court’s jurisdiction, thereby preventing any excess while preserving the Prosecution’s

¹⁶ [Registry Transmission](#), para. 6.

¹⁷ [Challenge](#), para. 35.

¹⁸ [Challenge](#), para. 35.

¹⁹ [Challenge](#), para. 36.

²⁰ [Challenge](#), para. 35.

obligations. The correct approach to establish whether the Court has jurisdiction over a case within the scope of a situation triggered by a referral is two-fold.

16. First, situations are defined and understood with reference to objective parameters, rather than to a particular historical event. The Appeals Chamber has consistently affirmed that the scope of a situation is delineated by objective parameters which are discerned from the referral in the context of the underlying facts.²¹ These parameters may typically be geographic, temporal, material, and/or personal,²² but none is a *sine qua non*—rather, the parameters “may vary depending on the circumstances of each specific situation”.²³

17. Second, even if a particular case falls beyond those parameters, the Court may nonetheless properly exercise its jurisdiction if a case is “sufficiently linked” to those parameters.²⁴ This is a case-sensitive assessment which depends on the circumstances of the situation.²⁵

18. The Court may exercise jurisdiction over all cases falling within those parameters, or otherwise sufficiently linked to them.²⁶ Applying this principle, the Appeals Chamber has, for example, rejected the notion that situations are limited to specific incidents identified exhaustively in advance or to crimes that were already being committed at the time of the referral.²⁷ The Prosecutor can and must be able to investigate “the situation as a whole.”²⁸

²¹ See e.g. [ICC-01/18-481 OA3](#) (“Palestine Article 18(1) Appeal Judgment”), para. 127; [ICC-02/18-89 OA](#) (“Venezuela Article 18(2) Appeal Judgment”), paras 114, 218, 227-228; [ICC-01/21-77 OA](#) (“Philippines Article 18(2) Appeal Judgment”), paras 107-108; [ICC-02/05-01/20-503 OA8](#) (“Abd-Al-Rahman Jurisdiction Appeal Judgment”), paras 25-27; [ICC-02/17-138 OA4](#) (“Afghanistan Article 15(4) Appeal Judgment”), paras 59-62; [ICC-01/15-12](#) (“Georgia Article 15(4) Decision”), paras 62-64. In the practice of the Court, the term “situation of crisis” is sometimes used in the context of describing such parameters.

²² See e.g. [Abd-Al-Rahman Jurisdiction Appeal Judgment](#), paras 25-26; [ICC-01/04-01/12-1-Red](#) (“Mudacumura Article 58 Decision”), para. 14. See also [Palestine Article 18\(1\) Appeal Judgment](#), para. 58.

²³ [Philippines Article 18\(2\) Appeal Judgment](#), para. 106; [Palestine Article 18\(1\) Appeal Judgment](#), para. 127.

²⁴ See e.g. [Palestine Article 18\(1\) Appeal Judgment](#), para. 135; [Georgia Article 15\(4\) Decision](#), paras 62-64; [Mudacumura Article 58 Decision](#), para. 14; [ICC-01/04-01/10-451](#) (“Mbarushimana Jurisdiction Decision”), para. 21; [ICC-01/04-01/10-1](#) (“Mbarushimana Article 58 Decision”), para. 6. See also [Afghanistan Article 15\(4\) Appeal Judgment](#), paras 57-64 (rejecting a “closely linked” test).

²⁵ See e.g. [Mbarushimana Article 58 Decision](#), paras 4-7, [Mudacumura Article 58 Decision](#), paras 14-17.

²⁶ See e.g. [Palestine Article 18\(1\) Appeal Judgment](#), para. 135; [Georgia Article 15\(4\) Decision](#), paras 62-64; [Mudacumura Article 58 Decision](#), para. 14; [Mbarushimana Jurisdiction Decision](#), para. 21. See also [Afghanistan Article 15\(4\) Appeal Judgment](#), paras 57-64.

²⁷ See [Palestine Article 18\(1\) Appeal Judgment](#), paras 74, 76, 82, 134-135; [Venezuela Article 18\(2\) Appeal Judgment](#), paras 227-230; [ICC-02/17-218 OA5](#) (“Afghanistan Article 18(2) Appeal Judgment”), paras 57-60; [Afghanistan Article 15\(4\) Appeal Judgment](#), paras 61, 63-64; [Mudacumura Article 58 Decision](#), para. 14; [Mbarushimana Jurisdiction Decision](#), para. 21; [Mbarushimana Article 58 Decision](#), para. 6. See also [ICC-02/05-01/20-391](#) (“Decision on the Defence ‘Exception d’incompétence’”), para. 25.

²⁸ [Afghanistan Article 15\(4\) Appeal Judgment](#), para. 60.

19. Paradoxically, the Defence references the need for sufficient linkage between the charges and the referred situation, thereby seemingly accepting this established jurisprudential principle.²⁹ Yet it also attempts to confine the referred situation to the immediate events which triggered the referral. The Defence relies for this argument on the reference in *Mbarushimana* to “the situation of crisis that triggered the jurisdiction of the Court”.³⁰ However, the Appeals Chamber has implicitly cautioned against misreading the significance of this term in the *Mbarushimana* decision, emphasising the need to extend flexibility to the Prosecution rather than limiting its jurisdiction “to crimes or cases described in the referral” and stating that this term should be used “loosely”.³¹

20. While the scope of a referral must be defined, it must not and cannot be overly prescriptive. A referral cannot unduly fetter the ability of the Prosecution to fulfil its obligation to investigate impartially and objectively, or constrain its discretion to determine which case(s) to prosecute.³² Nor should UNSC resolutions be interpreted rigidly and without care.³³ Given the nature of the events that trigger referrals to the Court, it would be self-defeating to frame such referrals too narrowly.³⁴

21. This established approach does not create an “unconstrained” or “open-ended” jurisdiction. Rather, it strikes the correct balance between the twin needs for certainty and effectiveness in delivering the mandate of the Court—which is the reason why situations are referred to the Court in the first place.³⁵ A correct interpretation of this established approach indicates that the Court has jurisdiction over the case against Mr Njeem.

IV.A.2 The case against Mr Njeem falls within the parameters of the situation, or is otherwise sufficiently linked to them

²⁹ [Challenge](#), paras 36, 53.

³⁰ [Challenge](#), para. 54, citing [Mbarushimana Jurisdiction Decision](#), para. 27.

³¹ See e.g. [Palestine Article 18\(1\) Appeal Judgment](#), para. 83; [Abd-Al-Rahman Jurisdiction Appeal Judgment](#), para. 25 finding “that the word “situation” is not defined in the Statute, and a review of the language in articles 13 and 14 of the Statute reveals that the word is used loosely, specifically with a view to extending enough flexibility to the Prosecutor to investigate independently and impartially.”

³² [Afghanistan Article 15\(4\) Appeal Judgment](#), paras 59-62, 64; [Georgia Article 15\(4\) Decision](#), paras 62-64.

³³ [ICJ, Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion of 22 July 2010](#), ICJ Reports 2010, p. 403, para. 94. See also e.g. [ICTY, Prosecutor v. Tadić, IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995](#), para. 75. See further e.g. M. Wood “[The interpretation of Security Council resolutions, revisited](#)”, 20 *Max Planck Yearbook of United Nations Law* 3, 2016, pp. 20-27, 34-35.

³⁴ See e.g. [Afghanistan Article 15\(4\) Appeal Judgment](#), para. 63.

³⁵ *Contra* [Challenge](#), paras 36, 41.

22. The case against Mr Njeem falls within the parameters of the *Situation in Libya*, or is otherwise sufficiently linked to them. On the face of the Resolution, the parameters of the situation are geographic (Libyan territory), temporal (15 February 2011 onwards), and personal (Libyan nationals, and others).³⁶

23. The Resolution is silent about any material parameter in addition to those expressly set out. However, even if such parameter were considered to be implicit, a contextual reading makes clear that such a parameter would not be limited only to alleged crimes committed by the Gaddafi regime against peaceful protestors but would also encompass other alleged crimes under the Statute committed by any party to the relevant conflict(s).³⁷ Indeed, it remains to be seen whether a referral purporting to confine the jurisdiction of the Court to a particular crime or type of crime would even be compatible with the Statute as a matter of law.³⁸

24. In a line of cases beginning with *Al Werfalli*,³⁹ the Pre-Trial Chamber has affirmed that cases will fall within the parameters of the situation, or at least be sufficiently linked to those parameters, if “associated with” the “conflict” which began in 2011.⁴⁰ Importantly, the Prosecution submits that it is the *factual* connection to the conflict which may be relevant in this sense, irrespective whether as a matter of law the ongoing hostilities in Libya are best characterised as one or multiple armed conflicts.⁴¹ As one means of establishing this connection—but not necessarily the only means—the *Al Werfalli* Pre-Trial Chamber took into account that relevant actors were also “involved” in the conflict “ever since the days of the revolution against the Gaddafi regime”.⁴²

25. The Challenge fails to show that the case against Mr Njeem exceeds the parameters of the situation, or is otherwise not sufficiently linked to them. To the contrary, as the factual allegations make clear, the charges in the case are factually “associated with” the Libyan conflict(s) originating in the 2011 revolution. Furthermore, the continuing proceedings before the UNSC pursuant to the Resolution, and the clear statements of participants in those

³⁶ [El Hishri Arrest Warrant Application](#), para. 9. Note that Mr Njeem is one of Mr El Hishri’s named co-perpetrator.

³⁷ *Contra* [Challenge](#), para. 40. See above paras 14-20 and in particular [Afghanistan Article 18\(2\) Appeal Judgment](#), paras 57-60.

³⁸ See above paras 18, 20.

³⁹ See further e.g. [Werfalli First Arrest Warrant](#), para. 23; [Werfalli Second Arrest Warrant](#), para. 20; [Sneidel Arrest Warrant](#), para. 4; [Al Kani Arrest Warrant](#), para. 13; [Doumah Arrest Warrant](#), para. 13; [Al Lahsa Arrest Warrant](#), para. 13; [Salheen Arrest Warrant](#), para. 13; [Al Shagaqi Arrest Warrant](#), para. 13; [Al Zinkal Arrest Warrant](#), para. 13; [Njeem Arrest Warrant](#), para. 11.

⁴⁰ [Werfalli First Arrest Warrant](#), para. 23.

⁴¹ See also [El Hishri Arrest Warrant Application](#), para. 12.

⁴² [Werfalli First Arrest Warrant](#), para. 23.

proceedings, illustrate the close connections between the 2011 events and more recent events, as well as the common understanding and expectation that cases such as that against Mr Njeem would fall within the scope of the Court’s jurisdiction.⁴³

- (i) *The charged crimes in this case are “associated with” the Libyan conflict(s) originating in the 2011 revolution*

26. In issuing warrants of arrest in this situation, this Chamber has previously determined that the ongoing situation of crisis in Libya since 2011 is a fact of common knowledge;⁴⁴ that the fighting that started during the 2011 revolution continued after the fall of the Gaddafi regime and was amplified by proxy conflicts;⁴⁵ that it extends until at least 2 October 2024;⁴⁶ and that there are reasonable grounds to believe that SDF/RADA emerged as a result of the 2011 crisis that triggered the resolution, and in the aftermath of the crisis.⁴⁷ It specifically found that SDF/RADA started as a revolutionary group against the Gaddafi regime, was affiliated to one of the parties to the ongoing conflict, and detained at least some of the individuals at Mitiga for conflict related reasons, including tensions between groups involved in the situation of crisis.⁴⁸ Therefore, the links between the referral and the charged crimes extend far beyond mere “geographic and national” connections.⁴⁹

27. The Challenge fails to show any sufficient basis to doubt this evidence. Alleging that Mr Njeem did not hold any role in the Gaddafi regime or in the Libyan State at the time of the event is inapposite.⁵⁰

28. The accused himself need not have had a position of authority or “played any instrumental role” in the violence which triggered the referral.⁵¹ Nor does the UNSC need to have specifically intended for a specific accused to be charged by the ICC.⁵² What matters is that there is at least a sufficient link between the case against Mr Njeem and the parameters of the situation. Whether this link is made out is to be assessed on the basis of the case as a whole,

⁴³ [Njeem Arrest Warrant](#), paras 10-11. See also [El Hishri Arrest Warrant Application](#), para. 41. Note that Mr Njeem’s is one of Mr El Hishri’s named co-perpetrators.

⁴⁴ [Njeem Arrest Warrant](#), para. 5.

⁴⁵ [Njeem Arrest Warrant](#), para. 5.

⁴⁶ [Njeem Arrest Warrant](#), para. 6.

⁴⁷ [Njeem Arrest Warrant](#), para. 7-8.

⁴⁸ [Njeem Arrest Warrant](#), para. 9.

⁴⁹ *Contra* [Challenge](#), paras 51.

⁵⁰ *Contra* [Challenge](#), para. 50, 65.

⁵¹ *Contra* [Challenge](#), paras 50, 65.

⁵² *Contra* [Challenge](#), para. 50.

and not individual elements of the charged crimes considered in isolation.⁵³ For all the reasons set out above and in the Prosecution’s Arrest Warrant Application, the charged conduct in the case (including that by SDF/RADA) amply meets this requirement.

29. The Defence’s attempt to ascribe “temporal specificity” to the referral based on the wording of the warrants of arrest against three high level figures of the Gaddafi regime issued in 2011 is equally flawed.⁵⁴ It wrongly conflates the specific cases against these individuals with the referred situation itself.⁵⁵ Multiple cases can arise from a given situation.⁵⁶ These cases need not be against individuals of the same groups, nor do they need to cover the same temporal scope.⁵⁷ What matters is the sufficiency of the link between the case against Mr Njeem and the parameters of the situation, not the scope of *other* cases within this situation. In this case, the link is more than sufficient.

(ii) *UNSC proceedings further illustrate the common understanding that crimes such as those charged against Mr Njeem form part of the referral to the Court*

30. While jurisdictional matters are for the Court to decide, it may be relevant to take account of the views of the entity which referred a situation to the Court when considering the parameters of a situation.⁵⁸ This may include subsequent practice of relevant UN organs and affected or interested States.⁵⁹

31. The Defence’s argument that the scope of the Resolution is delineated by a single passage of its preamble is meritless and fails to consider the Resolution in its entirety.⁶⁰ The Resolution expressed the UNSC’s “grave concern at the situation in the Libyan Arab Jamahiriya” and condemned the “violence and use of force against civilians”,⁶¹ stating that it may constitute “crimes against humanity”,⁶² before deciding “to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal

⁵³ See above, paras 14-20.

⁵⁴ *Contra* [Challenge](#), paras 56-60.

⁵⁵ See e.g. [Abd-Al-Rahman Jurisdiction Appeal Judgment](#), paras 25-27.

⁵⁶ [Palestine Article 18\(1\) Appeal Judgment](#), para. 82.

⁵⁷ See above paras 14-20.

⁵⁸ See e.g. [Mbarushimana Jurisdiction Decision](#), paras 30, 37-39; [Njeem Arrest Warrant](#), para. 10.

⁵⁹ See e.g. [Mbarushimana Jurisdiction Decision](#), paras 30, 37-39; [Njeem Arrest Warrant](#), para. 10.

⁶⁰ [Challenge](#), para. 39.

⁶¹ [Resolution](#), Preamble.

⁶² [Resolution](#), Preamble.

Court”⁶³ and inviting the Prosecution to address the UNSC “every six months thereafter on actions taken pursuant to this resolution”.⁶⁴

32. The UNSC seeking an initial briefing two months after the adoption of the Resolution does not override its demonstrated intent to refer the situation as described above. Nor does it suggest that the referral only concerns “events, operations, or engagements that were ongoing in Libya contemporaneously”.⁶⁵ To the contrary, the UNSC expectation to receive bi-annual briefings from the Prosecution thereafter, and without a specific time limit, displays its understanding that the situation referred may continue for a significant amount of time and that the Court’s jurisdiction should be understood accordingly.

33. As underscored earlier, the test is not whether the UNSC intended for specific cases to be investigated by the Court nor whether the UNSC foresaw how the situation would evolve after the referral.⁶⁶ To the contrary, the drafters of the Statute specifically refrained from creating a mechanism for a particular *case* to be referred to the Court. UNSC members cannot and need not be expected to foresee with precision how a conflict will evolve, especially when referring a situation at the outset of the violence. Nor do they need to turn their minds to who, specifically, should be prosecuted by this Court. Such determination would unduly fetter the Prosecution’s independence. The Defence’s argument that the UNSC could not have foreseen that Mr Njeem would face charges is thus flawed and irrelevant.⁶⁷ The material element is that the charged events fall within the scope of the situation referred or are sufficiently linked to it.⁶⁸ The subsequent practice of the UNSC can help infer its intent.⁶⁹

34. Since 2011, the relevant practice of the UNSC has been unequivocal in confirming the understanding that the scope of this situation extends well beyond 2011.⁷⁰ At no point has the UNSC expressed the view that the Court is exceeding its jurisdiction. Rather, it has continued to receive information about the conduct of various investigations and prosecutions concerning conduct significantly after 2011. In particular, the UNSC continues to convene a bi-annual briefing from the Office of the Prosecutor so that it can present an update on its activities. In

⁶³ [Resolution](#), para. 4.

⁶⁴ [Resolution](#), para. 7.

⁶⁵ *Contra* [Challenge](#), para. 48. See also [Venezuela Article 18\(2\) Appeal Judgment](#), para 230.

⁶⁶ *Contra* [Challenge](#), paras 49-50, 65-66.

⁶⁷ *Contra* [Challenge](#), para. 50.

⁶⁸ *See above*, paras 14-20.

⁶⁹ *See above* fn 33. *See also* [Njeem Arrest Warrant](#), para. 10.

⁷⁰ *See e.g.* [El Hishri Arrest Warrant Application](#), paras 39-43; [Njeem Arrest Warrant](#), para. 10. Note that Mr Njeem’s is one of Mr El Hishri’s named co-perpetrator.

this context, among other lines of inquiry, the Prosecution has expressly referred to the line of inquiry concerning crimes allegedly committed at Mitiga Prison, which form the basis for the present charges.⁷¹ Representatives of States participating in these UNSC proceedings have consistently acknowledged (and frequently expressed approval of) the inclusion of such lines of inquiry within the scope of the Court's investigation.⁷² Indeed, several UNSC Member States welcomed the unsealing of the Arrest Warrant against Mr Njeem and urged States to fulfil their cooperation obligations, including their duty to arrest and transfer individuals charged by the Court.⁷³

35. Lastly, the Defence appears to conflate the role of international commissions of inquiry with that of the Prosecutor and conceives a scenario where the discretion of the latter is fettered by the former. This is incorrect, and incompatible with articles 42(1), 54, and 58 of the Statute. It misrepresents the legal regime of the Court by stating that the UNSC envisaged that an independent international commission would be responsible to proceed to the "identification of circumstances resulting in any violations of international human rights law and, where possible, identifying the perpetrators, the Prosecutor would then be seized of the matter to ensure that such violations were punished as per the Rome Statute".⁷⁴ As underscored earlier, the Prosecutor's independence cannot be unduly restricted and the UNSC has respected the Prosecutor's discretion since the adoption of the Resolution. The inclusion of these two parallel processes in the text of the Referral does not entail that the UNSC intended to subject one to the findings of the other.

36. In any event, international commissions of inquiry formed on the basis of the Resolution remain active and have opined that the Court has jurisdiction over the relevant events in addition to denouncing crimes committed by SDF/RADA at Mitiga prison.⁷⁵

37. Accordingly, the Challenge, insofar as it relates to the jurisdiction, lacks merit and should be dismissed. The case against Mr Njeem falls within the parameters of the situation as

⁷¹ See [El Hishri Arrest Warrant Application](#), para. 41. Note that Mr Njeem's is one of Mr El Hishri's named co-perpetrator. See also [Office of the Prosecutor, Twenty-Second Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 \(2011\), 23/11/2021](#), para. 20.

⁷² [El Hishri Arrest Warrant Application](#), paras 14, 41. Note that Mr Njeem's is one of Mr El Hishri's named co-perpetrator.

⁷³ [UNSC Report, S/PV.9916, 15 May 2025](#), p. 10 (United-Kingdom), p.11 (Guyana), p. 12 (Sierra Leone), p. 14 (Denmark), p. 17 (Slovenia), p. 19 (Republic of Korea), p. 20 (France), p. 21 (Greece).

⁷⁴ [Challenge](#), paras 42-44.

⁷⁵ See e.g. [El Hishri Arrest Warrant Application](#), paras 41-43. See also, [UNSMIL, S/2012/62, 19 January 2021](#), para. 63; [UNSMIL, S/2018/780, 24 August 2018](#), para. 32; [UNSMIL, S/2018/429, 7 May 2018](#), paras 39-40; [UNSMIL, S/2016/1011, 1 December 2016](#), para. 40; [UNSMIL, S/2016/452, 16 May 2016](#), para. 40.

they have consistently been defined, or is otherwise sufficiently linked to them, such that the Court lawfully exercises its jurisdiction. In addition to being clear from the text of the Resolution and the subsequent practice of the UNSC, this is evident from the ongoing armed conflict(s) in Libya originating from the 2011 events and the multiplicity of facts which link SDF/RADA to these events.

IV.B The ICC case is admissible

38. The Defence’s challenge to the admissibility of the case against Mr Njeem should likewise be dismissed. First, Mr Njeem has failed to substantiate that a case is “being investigated or prosecuted by a State which has jurisdiction over it” pursuant to article 17(1)(a) of the Statute.⁷⁶ Indeed, the meagre material brought before the Chamber does not include evidence of a “sufficient degree of specificity and probative value” so as to allow the Chamber to meaningfully assess whether there are ongoing criminal proceeding in Libya against Mr Njeem.⁷⁷

39. Second, even if, *arguendo*, there is a case under investigation or prosecution in Libya against Mr Njeem, it does not substantially mirror the Prosecution’s case, which concerns broader conduct. The Defence’s general statements—based on equally general statements by the Deputy Prosecutor and Director of the Attorney General Office—that the facts allegedly investigated or prosecuted in Libya correspond to those before the Court do not establish the required factual overlap. Accordingly, since the first prong of the admissibility assessment is not met, it is not necessary at this juncture to assess the second prong—that is, whether Libya is genuinely investigating or prosecuting Mr Njeem⁷⁸—and therefore the Prosecution respectfully reserves its position on that issue at the present time. Doing otherwise would be “to put the cart before the horse”.⁷⁹

40. The Prosecution is aware of recent open-source reports that the Tripoli Criminal Court has purportedly sentenced Mr Njeem to 7 years and 4 months’ imprisonment for “violating the rights of prisoners” with no additional details.⁸⁰ The Prosecution has officially requested information from the relevant Libyan authorities about purported domestic proceedings against

⁷⁶ [ICC-02/11-01/12 OA](#), (“*Simone Gbagbo* Admissibility Appeal Judgment”) para. 27-28.

⁷⁷ [ICC-01/09-02/11 OA](#) (“*Kenyatta et al.* Admissibility Appeal Judgment”), paras 2, 61; [Simone Gbagbo Admissibility Appeal Judgment](#), para. 128.

⁷⁸ [ICC-01/04-01/07 OA 8](#) (“*Katanga* Admissibility Appeal Judgment”), para. 75; [Simone Gbagbo Admissibility Appeal Judgment](#) para. 27; see also [ICC-02/18-45](#) (“*Venezuela* Article 18 Decision”), para. 132.

⁷⁹ [Katanga Admissibility Appeal Judgment](#), para. 78; [Simone Gbagbo Admissibility Appeal Judgment](#), para. 27.

⁸⁰ See Annex A, B.

Mr Njeem since 2025, with a new request sent this week, but to date has received no response. The Prosecution respectfully submits that the Chamber should resolve the Challenge on the basis of the material provided. In any event, based on the information publicly available, the Prosecution's position in regard to the admissibility of the case remains unchanged. The Prosecution may seek leave to make additional submissions once and if more information is made available by Libya or the Defence.

41. Finally, the Prosecution notes that the alleged Libyan proceedings against Mr Njeem appear to have evolved at an unprecedented (and potentially evidentially significant) speed,⁸¹ and in reaction to developments at the Court.⁸² Even Mr Njeem does not appear to be aware of such developments since the Defence makes no mention of any imminent prospect of trial and conviction.

IV.B.1 Mr Njeem has failed to substantiate that the ICC case is inadmissible

42. The party challenging admissibility bears the “evidential burden” to substantiate its request with relevant arguments and evidence — and also the “burden of proof”⁸³ — in the sense that it is for that party to satisfy the Chamber of the existence of a national investigation which meets the requirements of article 17.

43. Chambers have required evidence with a “sufficient degree of specificity and probative value”⁸⁴ that establishes “tangible, concrete and progressive investigative steps” seeking to

⁸¹ See “[The Case of Abu Salim Prison: Libya’s Judiciary and Ministry face a Test of Accountability](#)”, *Human Rights Solidarity*, 29 June 2025. See also Mohammed, “[Tripoli Appeals Court adjourns Abu Salim Massacre trial to July 19](#)”, *The Libya Observer*, 15 June 2026; S. Zaptia, “[Court of Appeal acquits former Qaddafi intelligence chief Senussi, and others, of all charges related to suppression of protesters during 2011 revolution](#)”, *Libya Herald*, 18 May 2026; A. Assad, “[Al-Senussi’s trial delayed to February 05 after he attended court for first time](#)”, *The Libya Observer*, 31 January 2024; “[Libya’s Long-Running Abu Salim Massacre Trial Delayed Against](#)”, *Libya Review*, 8 March 2026; 31 January 2024; S. Alharathy, “[Tripoli Appeals Court drops charges against defendants in “Abu Salim Massacre” case due to statute of limitations](#)”, *The Libya Observer*, 16 December 2019.

⁸² See also [Challenge](#), para. 115.

⁸³ See K. Ambos, *Treatise on International Criminal Law*, Vol. I: Foundations and General Part, (Oxford, 2021), pp. 414-415; [ICC-01/09-01/11-1334-Anx-Corr](#) (“*Ruto and Sang Conduct Decision*, Judge Eboe-Osuji’s Separate Opinion”), paras 79-80 (distinguishing between persuasive burden and evidential burden); J. Pauwelyn, *Defences and the Burden of Proof in International Law* in L. Bartels and F. Paddeu (eds.), *Exceptions in International Law*, 1st Ed. (Oxford University Press, 2020), p. 89 (distinguishing between the burden of raising a claim, burden of production of arguments and evidence to substantiate or oppose a claim, and the burden of persuasion or “the real burden of proof” to prove or disprove a claim). The person/entity bearing the “evidential” burden may not coincide with the person/entity bearing the “burden of proof”: [ICC-01/11-01/11-565 OA6](#) (“*Al-Senussi Admissibility Appeal Judgment*”), para. 167.

⁸⁴ [ICC-01/09-01/11-307 OA](#) (“*Ruto et al. Admissibility Appeal Judgment*”), paras 2, 62-63; [Kenyatta et al. Admissibility Appeal Judgment](#), paras 2, 61-62; [Simone Gbagbo Admissibility Appeal Judgment](#), para. 29; [ICC-01/11-01/11-662](#) (“*Saif Gaddafi Second Admissibility Decision*”), para. 32; [ICC-01/15-12-Anx-Corr](#) para. 48 (unsigned documents should have been found lacking probative value).

ascertain a person's criminal responsibility,⁸⁵ such as "by interviewing witnesses or suspects, collecting documentary evidence, or carrying out forensic analyses".⁸⁶ Relevant evidence is not confined to "evidence on the merits of the national case that may have been collected as part of the purported investigation to prove the alleged crimes".⁸⁷ It also extends to "all material capable of proving that an investigation or prosecution is ongoing".⁸⁸ This includes "directions, orders and decisions issued by authorities in charge [...] as well as internal reports, updates, notifications or submissions contained in the file [related to the domestic proceedings]".⁸⁹

44. By contrast, mere evidence of a State's *preparedness or willingness* to investigate or prosecute is not sufficient in and of itself to establish that it is actually carrying out a relevant investigation or prosecution.⁹⁰ Nor is it enough for a State to *merely assert* that investigations are ongoing.⁹¹

45. The three one-page letters annexed to the Challenge are insufficient to discharge Mr Njeem's burden. There is no concrete and reliable evidence that an investigation or prosecution "is in progress at this moment".⁹²

46. Critically, annexes D and F to the Challenge contain mere assertions by the Deputy Prosecutor of the Attorney General Office that investigations were ongoing in June and July of 2025 but provide no support thereof.⁹³ Similarly, the letter from the Director of the Office of the Attorney General (annex E) makes a broad statement that the Public Prosecution has officially referred Mr Njeem to the trial court but does not substantiate this claim with relevant

⁸⁵ [Simone Gbagbo Admissibility Appeal Judgment](#), paras 122, 128; [ICC-01/17-9-Red](#) ("Burundi Article 15 Decision"), paras 148, 162. See also [ICC-02/17-33](#) ("Afghanistan Article 15 Decision"), para. 72; [ICC-01/11-01/11-344-Red](#) ("Saif Gaddafi First Admissibility Decision"), para. 73; [ICC-01/11-01/11-239](#) ("Saif Gaddafi Further Submissions Decision"), para. 11.

⁸⁶ [Ruto et al. Admissibility Appeal Judgment](#), paras 41, 69; [Kenyatta et al. Admissibility Appeal Judgment](#), paras 1, 40; [Burundi Article 15 Decision](#), para. 148.

⁸⁷ [ICC-02/11-01/12-47-Red](#) ("Simone Gbagbo Admissibility Decision"), para. 29; [Saif Gaddafi Further Submissions Decision](#), paras 10-11.

⁸⁸ [Simone Gbagbo Admissibility Decision](#), para. 29; [Saif Gaddafi Further Submissions Decision](#), paras 10-11.

⁸⁹ [Simone Gbagbo Admissibility Decision](#), para. 29; [Saif Gaddafi Further Submissions Decision](#), para. 10-11. However, mere instructions to investigate were not considered enough: [ICC-01/09-01/11-101](#) ("Ruto et al. Admissibility Decision"), para. 68.

⁹⁰ [Ruto et al. Admissibility Appeal Judgment](#), para. 41; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 40. Nor can admissibility be assessed with respect to non-existing proceedings: [ICC-02/04-01/15-156](#) ("Kony et al. Admissibility Decision"), paras 51-52. Nor can a State expect to be allowed to amend or provide additional information just because it requested the deferral prematurely: [Ruto et al. Admissibility Appeal Judgment](#), para. 100; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 98.

⁹¹ [Ruto et al. Admissibility Appeal Judgment](#), paras 2, 62-63; [Kenyatta et al. Admissibility Appeal Judgment](#), paras 2, 61-62; [Simone Gbagbo Admissibility Appeal Judgment](#), paras 29, 128.

⁹² [Simone Gbagbo Admissibility Appeal Judgment](#), para. 51.

⁹³ See [ICC-01/11-228-Anx V](#); [ICC-01/11-228-Anx VII](#).

documentation and does not specify which trial court or the actual conduct underpinning the alleged proceeding.⁹⁴ The bald assertions that Mr Njeem puts forward in support of the Challenge are not determinative and have no probative value.⁹⁵

47. Mr Njeem has not provided any evidence of the taking by the State “of steps directed at ascertaining whether the person is responsible” for the conduct alleged by the Prosecution,⁹⁶ such as documentary evidence, police reports, victim complaints, forensic analyses, pre-trial detention records, a warrant or summons of arrest, or any court records.⁹⁷ Mr Njeem also does not reference a charging document, case number and record, the decision to ostensibly commit the case to trial, a pre-trial schedule or trial date. Such basic and concrete documentation can be reasonably expected when an individual has been under investigation and awaits trial, as Mr Njeem asserts is the case.

48. Instead, the Challenge is built on the wrong premise that the Chamber should declare the case inadmissible on the basis of limited assertions by two individuals within the Attorney General Office, as well as Mr Njeem’s own statements.⁹⁸ This is in stark conflict with the “essential tenet of the rule of law that judicial decisions must be based on facts established by evidence”,⁹⁹ as held in a similar situation by the Appeals Chamber in *Ruto et al.*, where it was sought to rely upon the words of a State Party in an admissibility challenge.¹⁰⁰

49. Accordingly, the Challenge should be dismissed because it is unsubstantiated. In any event and as described below, the limited material provided does not show that Libya is investigating or prosecuting substantially the same conduct as the Court.

IV.B.2 The material provided does not show that the Libyan case and the ICC case cover substantially the same conduct

50. According to the Court’s jurisprudence, it is not enough simply to establish that there is a case under investigation or prosecution domestically against an ICC suspect.¹⁰¹ Article 19

⁹⁴ [ICC-01/11-228-Anx VI](#).

⁹⁵ See [Ruto et al. Admissibility Appeal Judgment](#), para. 63.

⁹⁶ [Ruto et al. Admissibility Appeal Judgment](#), para. 41; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 40; [Simone Gbagbo Admissibility Appeal Judgment](#), para. 28.

⁹⁷ See [Ruto et al. Admissibility Appeal Judgment](#), para. 41; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 40; [Simone Gbagbo Admissibility Appeal Judgment](#), para. 28.

⁹⁸ Contra, [Challenge](#), *inter alia*, paras 96-97, 106-110.

⁹⁹ [Ruto et al. Admissibility Appeal Judgment](#), para. 62.

¹⁰⁰ [Ruto et al. Admissibility Appeal Judgment](#), para. 63. See also [Kenyatta et al. Admissibility Appeal Judgment](#), paras 67, 68.

¹⁰¹ [Simone Gbagbo Admissibility Appeal Judgment](#), para. 31.

challenges relate to the admissibility of *concrete cases*,¹⁰² and the conduct investigated or prosecuted in Libya must substantially overlap with the conduct forming part of the Prosecution's case.¹⁰³ Assuming, *arguendo*, that there is a case against Mr Njeem under investigation or prosecution in Libya, such a case does not appear to substantially mirror the case against Mr Njeem at the Court.¹⁰⁴

51. The Prosecution case against Mr Njeem is presently defined by the Arrest Warrant issued against him pursuant to article 58 of the Statute.¹⁰⁵ As set out therein, Mr Njeem is allegedly responsible for: the crime against humanity of imprisonment; the war crime of outrages upon personal dignity; the war crime of cruel treatment; the war crime and crime against humanity of torture; the war crime and crime against humanity of sexual violence; and the war crime and crimes against humanity of murder.¹⁰⁶ Mr Njeem is also charged with the crimes of persecution and rape.¹⁰⁷ The charged crimes are believed to have been committed in Mitiga Prison in Tripoli, Libya, from 15 February 2015 onwards.¹⁰⁸ These crimes allegedly affected at least thousands of victims over a period of many years.¹⁰⁹

52. In contrast, while annex F to the Challenge makes a broad, unsubstantiated statement that the Attorney General Office is undertaking investigations into "alleged acts committed by [Mr Njeem], as detailed in the arrest warrant issued against him by the International Criminal Court",¹¹⁰ annex E reveals that the acts allegedly under prosecution by the Libyan authorities concern only "the violation of rights of ten inmates and the death of one inmate resulting from torture" at the "Tripoli Main Reform and Rehabilitation Institution".¹¹¹

53. The Challenge provides only the faint contours of a Libyan case against Mr Njeem. At most, the only conclusion that can be drawn from the limited material placed before the

¹⁰² [Ruto et al. Admissibility Appeal Judgment](#), paras 40, 45.

¹⁰² [Ruto et al. Admissibility Appeal Judgment](#), para. 40; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 39.

¹⁰³ [Ruto et al. Admissibility Appeal Judgment](#), para. 40; [Kenyatta et al. Admissibility Appeal Judgment](#), para. 39; [Senussi Admissibility Appeal Judgment](#), para. 100; [ICC-01/11-01/11 OA 4](#) ("Gaddafi and Al-Senussi Admissibility Appeal Judgment"), para. 74.

¹⁰⁴ [Gaddafi and Al-Senussi Admissibility Appeal Judgment](#), paras 2, 73, 85; [Burundi Article 15 Decision](#), para. 147.

¹⁰⁵ [Ruto et al. Admissibility Appeal Judgment](#), paras 40, 45.

¹⁰⁶ [Njeem Arrest Warrant](#), para. 99.

¹⁰⁷ [Njeem Arrest Warrant](#), paras 100-101.

¹⁰⁸ [Njeem Arrest Warrant](#), paras 99-101.

¹⁰⁹ [Njeem Arrest Warrant](#), para. 28.

¹¹⁰ [ICC-01/11-228-Anx VII](#).

¹¹¹ [ICC-01/11-228-Anx VI](#).

Chamber is that the alleged Libyan case against Mr Njeem is considerably narrower than the case before this Court.

54. Based on the above and as set out below, Libya is not investigating substantially the same conduct as the Prosecution. This is because the Prosecution case relates to broader conduct including (i) conduct underlying additional crimes such as rape, sexual violence, persecution and imprisonment, (ii) the scale and systematicity of the conduct underlying the crime of torture and (iii) their contextual elements.

(i) *The Libyan case does not cover substantially the same type of conduct as the ICC case*

55. The Prosecution case relates to murder, persecution, rape, sexual violence, imprisonment, cruel treatment, torture and outrages upon dignity while the Libyan case is “based on reports received by the Public Prosecution alleging torture, and cruel/degrading treatment”,¹¹² and concern “the violation of rights of ten inmates and the death of one inmate resulting from torture”.¹¹³ While a State is not required to apply the same legal characterisations as the Court, for an admissibility challenge to succeed, substantially the same conduct should be covered. From the limited information available, however, it is apparent that the alleged Libyan case does not cover conduct underlying the crimes of rape, sexual violence, persecution and imprisonment, which have distinct constitutive elements from acts of torture as allegedly charged in Libya.

56. Rape and any other form of sexual violence concern the protection of discrete legal interests, including the right to sexual autonomy and bodily integrity. But there is no tangible evidence that these interests or the distinguishable harms suffered by victims of gender-based crimes are being or have been investigated or prosecuted in the case against Mr Njeem in Libya. Neither are the elements of these gender-based crimes encompassed in other crimes investigated or prosecuted in the Libyan case, which is seemingly limited to torture and cruel or degrading treatment. In the *Situation in the Bolivarian Republic of Venezuela*, the Appeals Chamber underlined the clear difference between torture, rape and other acts of a sexual nature,¹¹⁴ when it considered that the Pre-Trial Chamber did not err in determining that “the legal pre-qualification and conviction do not include any crimes with a sexual or gender component”¹¹⁵

¹¹² [ICC-01/11-228-Anx VI](#).

¹¹³ [ICC-01/11-228-Anx VI](#).

¹¹⁴ [Venezuela Article 18\(2\) Appeal Judgment](#), paras 326-329.

¹¹⁵ [Venezuela Article 18\(2\) Appeal Judgment](#), para. 329.

and concluding that the domestic proceedings did not sufficiently mirror the Prosecution's intended investigation.¹¹⁶

57. Similarly, the Challenge does not prove that the State is investigating or prosecuting the distinct legal interest protected by the crime of persecution. There is no evidence that Mr Njeem's discriminatory intent is or has been considered in any way or at any stage of the prosecution or investigation of the Libyan case. Neither as an aggravating factor for sentencing purposes nor as an element of any conduct charged, as was the case in *Senussi*.¹¹⁷ The crime of persecution is an integral part of the Prosecution's case against Mr Njeem that draws out the intersectional harms suffered by detainees in Mitiga Prison. A domestic case that disregards the conduct underlying persecution does not sufficiently mirror the ICC case.

58. Accordingly, the ICC case relates to broader conduct than the purported Libyan case.

(ii) The Libyan case does not reflect the scale and systematicity of the conduct charged in the ICC case

59. While the conduct charged in the Arrest Warrant relates to thousands of Mitiga detainees and took place over the course of many years,¹¹⁸ the alleged Libyan case against Mr Njeem assesses only his culpability in respect of eleven victims and in regard to an unknown time period.¹¹⁹ It is not possible to confirm on the basis of the limited information submitted by Mr Njeem that the conduct concerning the eleven inmates of the Libyan case is even included in the Prosecution's case. Even if this was the case, such an overlap would be insignificant and not substantial.

60. The Libyan case also clearly departs from the Prosecution case in its framing of torture and cruel or degrading treatment. As set out in the Arrest Warrant, the Prosecution case addresses systematic torture and cruel or degrading treatment in the context of unlawful imprisonment and covers the conditions of detention. The Chamber noted "that the conditions of detention at Mitiga Prison were dire [...] SDF/RADA systematically subjected detainees to an initial period of brutal interrogation and torture, designed to extract information, to compel physical and mental submission, and to punish them".¹²⁰ The excessively narrow lens adopted

¹¹⁶ [Venezuela Article 18\(2\) Appeal Judgment](#), para. 365.

¹¹⁷ [Senussi Admissibility Appeal Judgment](#), paras 120-122.

¹¹⁸ See [Njeem Arrest Warrant](#), para. 28 and dispositive.

¹¹⁹ [ICC-01/11-228-Anx VI](#).

¹²⁰ [Njeem Arrest Warrant](#), para. 36.

in the alleged investigation and prosecution of Mr Njeem in Libya and the lack of reference to the context in which the torture and cruel or degrading treatment occurred, fail to reflect such systematicity: there is no evidence that the investigation has questioned the basis for or the conditions of the victims' detention.

(iii) *The Libyan case does not encompass the factual allegations concerning the contextual elements for war crimes and crimes against humanity*

61. Regarding the contextual elements of war crimes and crimes against humanity, as reiterated in *Ongwen*, “war crimes give protection in criminal law to persons in times of armed conflict” and crimes against humanity “protect persons where there is a widespread and systematic attack on a civilian population”.¹²¹ Again, however, the sparse information provided in the Challenge does not provide any evidence that the Libyan case considers, let alone captures, the widespread or systematic attack against a civilian population alleged by the Prosecution or a nexus to the armed conflict. To the contrary, the focus of the Libyan case on eleven detainees suggests that the Libyan investigation or prosecution entirely neglects the systematicity and scale of the acts that Mr Njeem is alleged to have inflicted on detainees at Mitiga Prison.¹²²

62. As the alleged case in Libya does not investigate or prosecute the factual allegations underlying the contextual elements of war crimes and crimes against humanity, and does not address the protected distinct legal interests of gender-based crimes and persecution, the Court could not be satisfied that the domestic case adequately addresses the same victimisation as the present case.

63. In conclusion, because of the foregoing, the Defence has failed to show that the case against Mr Njeem is inadmissible before the Court. The Challenge should be dismissed.

IV.C Libya is under an obligation to surrender Mr Njeem to the Court

64. The Prosecution emphasises that there is no probative and concrete evidence that Mr Njeem has been held to account for his conduct and deprived of his freedom of movement since Italy flew him back to Libya “as a free man”.¹²³ To the contrary, the Prosecution has received

¹²¹ [ICC-02/04-01/15-2022-Red](#) (“*Ongwen* Appeal Judgment”); [Venezuela Article 18\(2\) Appeal Judgment](#), para. 280.

¹²² See [Njeem Arrest Warrant](#), paras 36-47.

¹²³ [Decision on Italy’s non-compliance](#), para. 42.

information that Mr Njeem was not arrested after his return to Libya, placed in pre-trial detention, or imprisoned after his supposed conviction.¹²⁴ [REDACTED],¹²⁵ [REDACTED],¹²⁶ [REDACTED, [REDACTED]].¹²⁷

65. Libya has not requested to postpone the execution of the Arrest Warrant under article 95 of the Statute. It remains incumbent on the State of Libya to surrender Mr Njeem to the Court should he be detained in Libya, pursuant to the Arrest Warrant issued against him.

V. CONCLUSION

66. For all the foregoing reasons, the Prosecution respectfully requests the Chamber to reject Mr Njeem's Challenge.



Nazhat Shameem Khan
Deputy Prosecutor

Dated this 13th day of July 2026
At The Hague, The Netherlands

¹²⁴ See Annex C, D, E, and F.

¹²⁵ Annex F.

¹²⁶ Annex C, D, and E.

¹²⁷ Annex C.