

1 International Criminal Court

2 Pre-Trial Chamber I

3 Situation: Libya

4 In the case of the Prosecutor v. Khaled Mohamed Ali El Hishri - ICC-01/11-01/25

5 Presiding Judge Iulia Antoanella Motoc, Judge Reine Adélaïde Sophie

6 Alapini-Gansou and Judge María del Socorro Flores Liera

7 Confirmation of Charges Hearing - Courtroom 1

8 Thursday, 21 May 2026

9 (The hearing starts in open session at 10.02 a.m.)

10 THE COURT USHER: [10:02:24] All rise. The International Criminal Court is now  
11 in session. Please be seated.

12 PRESIDING JUDGE MOTOC: [10:02:36](Interpretation) Court officer, please call the  
13 case.

14 THE COURT OFFICER: [10:02:40] Good morning, Madam President, good morning,  
15 Your Honours.

16 This is the situation in Libya, in the case of the Prosecutor v. Khaled Mohamed Ali El  
17 Hishri, case reference ICC-01/11-01/25.

18 And, for the record, we are in open session.

19 PRESIDING JUDGE MOTOC: [10:03:01](Interpretation) Thank you very much.  
20 Good morning, and welcome for this third and last day of hearings going to the  
21 confirmation hearing against Mr El Hishri.

22 So, before we look to the merits, I just want to check that the parties and  
23 participants -- whether they have any changes in their teams, and perhaps we can  
24 start this time with the legal representatives of the victims. Madam Pellet.

25 MS PELLET: [10:03:30](Interpretation) Thank you, your Honour, good morning.

1 There are no changes for the team of the Legal Representatives of the Victims.

2 PRESIDING JUDGE MOTOC: [10:03:39](Interpretation) Thank you very much, Ms  
3 Pellet.

4 For the Prosecution, Deputy Prosecutor.

5 MS KHAN: [10:03:45] Good morning, Madam President, your Honours. The  
6 appearances are as before, and Ms Lacey is back with us this morning.

7 PRESIDING JUDGE MOTOC: [10:03:55](Interpretation) My thanks, Deputy  
8 Prosecutor.

9 The Defence?

10 MR HASSAN: [10:04:05](Interpretation) Thank you very much, Madam President,  
11 we have the same team as previous days. Thank you very much.

12 PRESIDING JUDGE MOTOC: [10:04:15](Interpretation) Thank you very much,  
13 Counsel Hassan. I note that Mr El Hishri is with us in the courtroom this morning.  
14 So we resume this morning with the oral submissions from the Defence.  
15 Counsel, over to you.

16 MR HASSAN: [10:04:31](Interpretation) Thank you, Madam President. Thank you  
17 very much, your Honourable Judges. At the beginning of this day - and it is the last  
18 day of our oral submissions in this confirmation of charges hearing - and before I go  
19 into the merits of the case, I would like to confirm two points. The first point is that  
20 the agreement that was signed by the Libyan authorities regarding accepting the  
21 jurisdiction of the ICC and that was already signed by the previous prime minister of  
22 Libya, I would like to say that the version that was given to us was not signed by  
23 anybody and it was not stamped by the official Libyan stamp. Also, it was not  
24 published in the official newspaper of the Libyan government, as stated in the  
25 constitution, which means that this document is not existent and cannot be used.

1 Today, we are going to talk about the context where Khaled El Hishri was placed and  
2 where the charges came from.

3 So we are going to talk, first, about the group that the OTP describes as -- I mean here,  
4 what the OTP calls as the RADA group.

5 I will start here from where the Prosecutor's office began. This means that I will start  
6 about the -- I will start from the Prosecutor's office's application for an arrest warrant.

7 In the application for the issuance of an arrest warrant, the OTP presented the RADA  
8 group as an armed group and that it is an outlaw armed group that was controlling  
9 a detention compound where crimes are committed. They were trying to create  
10 a mental image that will facilitate fabricating all the crimes and all allegations the OTP  
11 are trying to convince you with.

12 That's why I would say that the OTP, who were supposed to obtain all the documents  
13 from the beginning before submitting an application for an arrest warrant, they used  
14 different linguistic terms through the procedures. At the beginning, they used  
15 certain terms but then they corrected and changed this terminology later in the DCC.  
16 These three different groups of terms that the OTP used, well, first, they used the  
17 term an "armed group", the second was "legal entity", and then the third term that  
18 they used was a "legal entity that acts as an armed group".

19 In the arrest warrant dated 31 July 2025, the OTP used the term "armed group", and  
20 that was used by 60 per cent or in 60 per cent of the document. And in the same  
21 document, they used the term "legal entity" by 30 per cent and the term "legal entity  
22 operating as an armed group" by 10 per cent, which means that it is, in general, that  
23 they are trying to convince the Chamber - the Court, by 60 per cent of their  
24 document - that the RADA group is an armed group and not a legal entity.

25 In the DCC, the document containing the charges, the OTP changed the terms that

1 they were using. In 66 per cent of the document, they describe the RADA group as a  
2 "legal entity" and they used the term "armed group" in 33 per cent of the document.  
3 And in their pre-trial brief, they used it only by 30 per cent, but then they corrected  
4 that and they called it a "legal entity" by 66 per cent of the document.

5 So, you can see, Madam President, Honourable Judges, that the Office of the  
6 Prosecutor was trying to convince you that we are dealing here with an outlaw armed  
7 group and not a legal governmental entity.

8 They were trying to establish a fact here. They wanted to say that all the detainees  
9 were illegally imprisoned. The result of this is that the position of the OTP was not  
10 determined, was not fixed from the beginning of these procedures. They didn't  
11 know is the RADA group an armed group, is it an outlaw armed group or is it a legal  
12 entity.

13 Then they moved to talk about the prison of Mitiga. They said or described it as  
14 "Mitiga Prison", but they didn't say to what entity exactly it was affiliated and that's  
15 why we have brought enough documents today to show to you what is the RADA  
16 group and what are their competencies, how they were funded and how they  
17 operated.

18 And I would like to inform the distinguished Chamber that the RADA group is called,  
19 or the real name of it is, the Deterrence Apparatus for Combating Organised Crime  
20 and Terrorism, DACOT, and it was a legitimate apparatus established by decree  
21 issued by the competent authority in Libya.

22 And this name, in its final form, or this entity in its final form, cannot be considered  
23 the same entity that was established the year before that, whether at the time that it  
24 was established or the time of its -- of developing it and progressing its role. This  
25 entity has changed in its competencies, in its activities, in its composition and also in

1 its affiliation to the Libyan authorities.

2 Also, we will speak today to you about the Mitiga Prison and its legal description,  
3 and this is in slide number 3.

4 Madam President, this is Decision No. 36 of 2015 on the Establishment of a Security  
5 Unit on 10 February 2015 with the name of the Special Deterrence Force/RADA, and  
6 this decision is issued by the Tripoli Security Directorate of the Libyan Ministry of  
7 Interior.

8 Some of the competencies described in this decree, and we're talking here about the  
9 Libyan Ministry of Interior -- containing labour relations and its executive  
10 regulations; carrying out interventions, raid and riot control operations in accordance  
11 with security requirements; providing support and assistance to the police stations  
12 and department of the directorate; deploying patrols within the directorate's  
13 jurisdiction to maintain security and public order.

14 These are some of the competencies of the apparatus.

15 Here, slide number 4, it's Decree No. 37 of 2015 issued by the Tripoli Security  
16 Directorate on 10 February 2015. And in Article (1) it says that:

17 "First Lieutenant Abdalraouf Ahmed Salem Kara is hereby assigned as  
18 a Commander ..."

19 "First lieutenant" is a rank inside the ministry of ...

20 Lieutenant - here, we are talking about a civil servant inside the government of Libya  
21 and not just a layperson. Not just a person who is working in an outlaw armed  
22 group. No, we are talking here about a civil servant in the Ministry of Interior.

23 And here, it says:

24 "This decision [...] enter [its] force from the date of its issuance ..."

25 And it's signed by the Director of Tripoli Security, Abdulrahman Al-Arifi Bashiya.

1 We move now to slide number 5.

2 We have here a letter from the head of the Office of Administrative Affairs at the  
3 Ministry of Interior addressed to heads of offices and sections notifying them of  
4 Article 36. And it's also signed by the Office of the Director of the -- of Security in  
5 the Ministry of Interior in the Libyan authorities.

6 Now we move to slide number 6, Decree No. 555 of 2018 issued by the Libyan  
7 Presidential Council.

8 This is a very important turning point. Here, we have to stop here for a moment  
9 because, by this decree, the Special Deterrence Force/RADA was dissolved and a new  
10 entity was established, DACOT, Deterrence Apparatus to Combat Organised Crime  
11 and Terrorism. And in Article 1 of this decision:

12 "An agency shall hereby be established under the name: 'Organised Crime and  
13 Terrorism Deterrence Agency'. It shall have an independent legal personality and  
14 financial autonomy and shall be affiliated to the Interior Ministry."

15 And on Article 8 of the same decision: the members should be affiliated to the Interior  
16 Ministry and should perform their own competencies, and it should be funded as part  
17 of the general budget of the state.

18 So here, Madam President, we reach the end of this decree that is issued by the  
19 highest authority in Libya, which is the Libyan Presidential Council.

20 After that, Decision No. 587 was issued, slide number 7. It was on the organisation  
21 of DACOT, and it was dated 1 September 2020. And it was issued also by the  
22 Libyan Presidential Council. Let's read Article number 1:

23 "The Deterrence Agency for Combating Organised Crime and Terrorism shall be  
24 reorganised as follows: it shall be renamed [...] [and] shall have an independent legal  
25 personality and an independent budget and shall be subordinate to the Presidential

1 Council."

2 While Article 4 reads as:

3 "The Agency shall have an a head, who shall be appointed by a decision from the  
4 chair of the Presidential Council."

5 And in Article 5:

6 "The Agency shall have a deputy head, who shall be appointed by a decision issued  
7 by the chair of the Presidential Council, on the basis of a proposal from the head of  
8 the Agency, and who shall assume all the powers assigned to the head of the Agency  
9 in the event of his absence ..."

10 And the most important article here is Article number 11:

11 "Members of the Agency shall be subject to the provisions of Law No. 7 of 2012 [...] on  
12 [the] establishment of the General Intelligence Service [in Libya] with respect to  
13 promotions, payroll, financial benefits, rewards and bonuses, as appropriate to the  
14 nature of their work."

15 Here, Madam President, we reach the real description of RADA group, based on the  
16 official decisions and decrees by Libya. All of this was not presented to you in their  
17 application, the Prosecutor's application for an arrest warrant.

18 Let me move now to the decision of the Minister of Justice. And this is slide number  
19 9 and it is Decree No. 699 of 2017. It is a decree on the establishment of the Mitiga  
20 Prison. The legal name of this prison was Tripoli Correction and Rehabilitation  
21 Institution. And in Article number 1 it says:

22 "Establishing a main Reform and Rehabilitation Institution under the name 'Tripoli',  
23 located at the Mitiga Air Base, with a total area of (20,980 square metres)."

24 There are two other letters also issued after this letter. One of them was issued by  
25 the Minister of Justice and addressed to the head of the judicial police and the director

1 of the attorney general's office.

2 And if we move to slide number 11, this is a letter issued by the attorney general of  
3 Libya, Mr al-Sur to the Special Deterrence Force chief. And in the decision it says  
4 you have to take the appropriate -- appropriate measures in detaining the criminals  
5 with the highest level of security. As I said, it is signed by Ahmad al-Sur, head of the  
6 Office's Investigations Division.

7 And here, Madam President, we can see the real description of the Mitiga Prison,  
8 which was presented to you by the OTP as a place for massacring people, and RADA  
9 group that was presented to you by the OTP as an outlaw armed group. In fact,  
10 RADA is a legal entity, that it was established by the -- by the Libyan authorities,  
11 whether judicial or police authorities. It had its own composition and it was  
12 working with all the different executive organs of the Libyan authorities. All of the  
13 officials working in RADA were civil servants receiving their salaries from the Libyan  
14 state.

15 What is called RADA group was never just one single entity during the charged  
16 period. It was actually more than one entity together. But what is certain is that all  
17 the different forms of this entity, all the different stages of this entity or the formation  
18 of this entity were inside the legal legitimate Libyan state.

19 So, from an analytical reading of the previous decisions and decrees, we can see the  
20 extent of correlation between all of these forms and the Libyan police and judicial  
21 apparatus. And including the, actually, the Presidential Council. All of these facts  
22 were not presented to you by the OTP.

23 RADA is not an outlaw armed group and it does not control an illegal detention  
24 centre where crimes are committed.

25 What was presented in the arrest warrant, Mr Khaled El Hishri's arrest warrant was

1 not as precise as it should be. Such information should have been presented to your  
2 esteemed Chamber. All of these documents were ignored, were put aside, so that a  
3 mental image is drawn, is portrayed about RADA as an illegal armed group which is  
4 outlaw.

5 RADA in all its establishment documents, and in reality, actually, was only working  
6 towards law enforcement and the enforcement of security based on instructions  
7 coming from the attorney general and the other Libyan authorities of the Libyan state.  
8 To present the RADA group in that way, we are here mixing the legal status. It is  
9 very different when we look from a legal perspective to an armed group from looking  
10 at a legitimate legal entity. In the criminal law we cannot mix such status.

11 Elements of crime are determined based on facts and not just on allegations,  
12 Madam President. To describe a legal security entity as an outlaw -- as an outlaw  
13 armed group in our assessment and the assessment of many Libyans is an insult, an  
14 insult to the Libyan people and the Libyan state.

15 (Counsel confers)

16 MR HASSAN: [10:28:55](Interpretation) Thank you, Madam President.

17 From an objective point of view, also, and only to test the validity of what the OTP are  
18 saying, if we can build -- even as just an argument, if we can build on the allegations  
19 of the OTP and count the possible number of the so-called RADA members, all the  
20 names that were mentioned in all the documents presented by the OTP so far can be  
21 counted on one single hand. They mentioned only four main names and some other  
22 names that are not as important.

23 How many people do you imagine should be working in this place in order to  
24 actually control such a big place as the Mitiga Prison? The day before yesterday, the  
25 OTP said that the members of the RADA might reach 1,500, but I didn't see the names

1 of 1,500 members in any of the documents. I didn't read really any kind of  
2 document that would -- that listed the names of the members of the RADA group.  
3 Where did the OTP come with this figure? And who are these 1,500 people?  
4 If the OTP is keen on conducting investigations clearly and strongly to submit it  
5 before this Court, then they have to identify who are the RADA members exactly,  
6 what are their functions, what is their structure, functionality and hierarchy as well so  
7 that we can know whether Khaled El Hishri was a member in RADA/SDF or not.  
8 What is proven before this Chamber, Madam President, was that Khaled El Hishri  
9 worked as a security officer in the Libyan embassy in Morocco, so this is the only  
10 proven document issued by the Libyan state about Mr El Hishri.  
11 The OTP never mentioned the salary of Khaled El Hishri in the SDF. They did not  
12 tell us who was the supervisor of Khaled El Hishri based on the paperwork and not  
13 based on the sayings of some people. So some people were saying that Osama  
14 Njeem was the supervisor of Khaled El Hishri, but Khaled El Hishri had superiority  
15 over him. So this is not very logical.  
16 So we will show you documents of the Libyan state, but this document that we will  
17 show you later is confidential.  
18 Can we imagine the amounts of money that were spent on the Mitiga complex? So  
19 what is the exact number or amount for the salaries allocated and the -- or the  
20 expenses for the Mitiga complex. So can we imagine who is funding this complex  
21 and this group and giving them their salaries?  
22 Based on the decisions that we have presented, Madam President, all Libyan  
23 governments since the establishment of these apparatuses are those that were  
24 spending on this group, regardless of its name. Abdul Dbeibeh's government was  
25 also funding this group, and, according to the decision, the Minister of Finance issues

1 the decision and the orders to pay the salaries of the members of this group, because,  
2 and briefly, the functions of all the RADA members are governmental functions.  
3 Slide 13, to confirm what I had said, Madam President, this is a paper from the OTP  
4 documents. So this is Mr Abdul Hamid Dbeibeh; and Mr Saddiq Al Sour, attorney  
5 general; and Madam Halima Ibrahim, the Minister of Justice; in addition to  
6 Mr Abdalraouf Kara, in a meeting inside the government office of Libya. And I will  
7 read the news as submitted by the Prosecution.

8 So the meeting was in the attorney general's office of Libya -- pardon:

9 "So, this morning, in the Attorney General's office, a meeting to follow up on the legal  
10 and the living situation of the prisoners in the presence of the Prime Minister Abdul  
11 Hamid Dbeibeh; the Attorney General, Saddiq Al Sour; the Minister of Justice,  
12 Halima Ibrahim; and Bashir Al-Amin, who is from the Ministry of Justice; and  
13 Abdalraouf Kara, the leader of RADA, in addition to Adel Jomaa from the cabinet,  
14 along with the presence of the competent Attorney General."

15 So, at the beginning the attorney general praised the governmental support, and then  
16 the leader of the RADA gave a detailed report about the DACOT work. He also  
17 talked about the measures they are following in order to continue the investigations  
18 and to submit them to the attorney general. He also talked about the living situation  
19 in the prison. And then the Minister of Justice indicated that all detainees in the  
20 Mitiga Prison -- I'm quoting here, the Minister of Justice -- "all the prisoners are  
21 coming before the court based on the legal procedures and there are no detainees  
22 without any legal measures".

23 So, this is what the Minister of Justice said.

24 So can the Defence question that Mr Dbeibeh in this meeting was coordinating with  
25 Abdalraouf Kara about anything here? Or can we say that he is a member of the

1 RADA group? So if there is somebody else who would like to take this picture  
2 without the news -- so you can put any news to the picture.  
3 However, this picture submitted by the OTP proves that there is a relationship  
4 between the RADA apparatus with the government and with the Prime Minister,  
5 Abdul Hamid Dbeibeh himself. So I'm saying that this relationship is protected by  
6 law and is not illegal. But saying that the RADA apparatus is unlawful or illegal or  
7 that it was committing crimes, then this is a dangerous error here, and this picture  
8 here speaks for itself. I can imagine what any person in this picture would say about  
9 it. So if one of these people who are in the picture is accused, then this person would  
10 find it easy to say that all those in the picture with them are partners.  
11 However, the actual truth is different from what the Prosecution submitted. The  
12 actual truth is that the SDF/RADA is a legal and lawful institution working within the  
13 Libyan state. This apparatus follows the executive power in Libya and it follows the  
14 Presidential Council of Libya, and it is the council that gave it all its functions.  
15 So what is the relationship of Khaled El Hishri with leaders of such level in Libya?  
16 Yesterday, and the day before, OTP said that Khaled El Hishri was a leader in RADA  
17 apparatus, and he is an fisherman, so I cannot see how he is a fisherman or -- and  
18 a leader in the RADA. It is either this or that.  
19 But the truth is something else. The truth is what is proven in the papers submitted  
20 to this Chamber, and this is that Khaled El Hishri is a security officer working in the  
21 Libyan embassy in the Moroccan kingdom -- or in the Kingdom of Morocco. Slide 14.  
22 This is a very important picture as well, Madam President. So this is Mr Mohamed  
23 al-Menfi who is the head of the Libyan Presidential Council, the first executive power  
24 in Libya that is recognised by law, and he is the spokesperson of Libya before the UN  
25 General Assembly, and this is based on the Security Council resolutions or -- and also

1 based on all the letters by the Presidential Council.

2 So what do we see in this picture? Who is in this picture? We have the military  
3 leadership of the Libyan army. So we have the two main figures in the Libyan army,  
4 the head of the intelligence service and others. So we have with them as well  
5 Mr Abdalraouf Kara, the leader of the RADA. So, the highest executive power in the  
6 country, would it meet with armed groups without having any link with them? So  
7 this is not real, so how can we read this image well? So, this says that Mr al-Menfi  
8 met with security figures from the intelligence and the army, and Abdalraouf Kara is  
9 the representative of one of the security apparatuses.

10 Madam President, esteemed Chamber, the Office of the Prosecutor is bound by  
11 respecting the Rome Statute and all standards of proof, all of them without any  
12 selection or discrimination, and not just any -- providing any proof or any evidence.  
13 The OTP has also -- find any proof of innocence. However, unfortunately, the OTP  
14 did not abide by Article 54(a) and (c). So I will read the text of this Article. The  
15 Office of the Prosecutor does the following:

16 "(1) [...]"

17 To prove the truth --

18 "In order to establish the facts, extend the [...]" scope of the investigation to include  
19 "all facts and evidence relevant to [the] assessment of whether there is criminal  
20 responsibility under [the present] Statute, and, in doing so, investigate [...]" both the  
21 circumstances of incrimination and acquittal.

22 So, "[...] Fully respects the rights of persons arising under this Statute."

23 I can say with full confidence that the Office of the Prosecutor did not respect this text,  
24 at least up until now or up until what was submitted to the Court.

25 So the Office of the Prosecutor did not request any data related to the number of the

1 members of the RADA, what is the budget and its headquarters. It did not request  
2 the hierarchal structure of the RADA of -- from the government to see what is the  
3 hierarchy and the chain of command in order to identify criminal responsibilities,  
4 despite that the OTP said that it conducted -- concluded an agreement with the prime  
5 minister, who pledged to cooperate with the Court and provide help.

6 The OTP did not request a proof of salaries from the Ministry of Interior in order to  
7 identify the function of each of its members and what they were doing. It did not  
8 address the Libyan attorney general or the Ministry of Justice in order to inquire  
9 about the 65 witnesses, whether they had any formal accusations against them or not  
10 or whether there was a -- if there are criminal charges against them or not.

11 So what they -- was submitted is that they were detainees. Why? We don't know.

12 The office did not request the regulations of Libyan prisons to see whether they were  
13 applied or not. And what was -- what was said about the searches that happened at  
14 the entrance of the Mitiga Prison, I know for sure that there are European countries  
15 that conduct searches in the most private areas on prisoners every day, and all the  
16 searches are conducted completely and in a worse manner than the manner described  
17 by the OTP earlier.

18 So, if the OTP had requested the regulations of Libyan prisons, we would have  
19 known whether these measures are -- violate the law or not.

20 So the Libyan Ministry of Justice was not asked for a disclosure of whether there were  
21 any verdicts issued against any of the witnesses in this case to know whether these  
22 witnesses are testifying rightfully or not.

23 The Prosecutor has a high number -- a very high number of investigators with great  
24 capabilities and they have a full building, and the Defence only has one room. The  
25 question is: Couldn't all these capabilities be used in order to also find the proof of

1 acquittal against -- for Mr El Hishri? We are asking for the implementation of Article  
2 54(a) and (c).

3 So, if they had investigated this way, then they wouldn't -- the OTP wouldn't have  
4 requested any warrant of arrest against Mr El Hishri. And if all the evidence was  
5 collected with neutrality, then it would have been proven without any doubt that the  
6 RADA is a legal and lawful apparatus established based on government orders, it has  
7 a specific structure and that Khaled El Hishri was never a leader in the SDF/RADA.  
8 I will also present to you a sample evidence of the Prosecution's error when it comes  
9 to the investigation.

10 So please show slide 15 to be shown secretly -- with confidentiality.

11 So this is a letter issued by the same entity that gave the Court its jurisdiction. So I  
12 would like to review paragraph 6 of this letter, that says that Mr Osama Elmasry  
13 Njeem, organisationally and functionally is not a member of the SDF/RADA in the  
14 first place. So how can he be a leader in it anyway?

15 However, if the -- so the OTP is the one that submitted this letter. So the OTP also  
16 recognised the agreement of 14/5/2025, so both -- if they recognised both these  
17 documents, then the OTP has to answer which document is correct. So, which is  
18 correct? Is it the documentation that says that Osama Njeem is a leader in the  
19 SDF/RADA or this document that was submitted by the same entity? So -- so, is he  
20 a member of SDF/RADA or not? Which document is correct? Both these  
21 documents were submitted by the OTP.

22 So this undermines the credibility of the evidence submitted by the OTP. And  
23 everything that was said in the testimonies is general, ambiguous, and they were  
24 never tested before the Court. So all these testimonies are from one side and we  
25 cannot know for sure whether they are correct or not or whether they had other

1 motivations.

2 Madam President, esteemed Chamber, Khaled El Hishri was never present in a  
3 structure of any security apparatus in Libya. He is not a leading member in any  
4 group, and there are no evidence that prove otherwise. So we cannot deal with the  
5 witness testimonies as a holy book as long as they are not challenged or tested,  
6 because some of them, for example, some of the witnesses might have had like  
7 promises that -- for enrichment, and this happened before international courts before  
8 and you will see later on that some of the -- the witnesses against Khaled El Hishri are  
9 ISIS members and this is -- this is very possible.

10 Madam President, esteemed Chamber, the negligence when it comes to Article 54(a)  
11 and (c) and the serious violation of the rights of Mr Khaled El Hishri are the things  
12 that led to the issuance of an arrest warrant against him, and we are wondering how  
13 a person who does not have any specific functions can be a member of  
14 a governmental apparatus and appointed by the attorney general and is supervised  
15 by the Ministry of Justice, how can he be part of a common plan here?

16 So, without the Prosecutor telling us, according to their documents, from -- this is  
17 what he's doing, so this person has a specific job and belongs to the agency in  
18 question or on a specific date on this job, this grade. So is it logical that a person  
19 who was transferred to work as a security officer in the Libyan embassy in the  
20 Kingdom of Morocco would have been working or -- in parallel with the leadership of  
21 the state with the leadership of security apparatuses? So is this logical in one of the  
22 wealthiest and most important countries in Africa?

23 So, if the OTP wants to enforce only a part of the rule, then their works are incomplete  
24 and do not meet the conditions of admission before this Court and the legal works are  
25 incomplete in terms of the conditions of full and impartial investigation and deserve

1 to be rejected.

2 Slide 16: Madam President, this is the penultimate slide and the picture was also  
3 submitted by the OTP. This is the Mitiga Prison and we see the Ministry of Justice  
4 and the office of the attorney general, the representatives are visiting the prison. So  
5 the image is clear. Khaled El Hishri is not in any of these pictures.

6 Slide 17: Madam President, this image shows clearly the establishment or the  
7 succession of decisions and decrees that established the so-called SDF/RADA or the  
8 different agencies said by the OTP that they are one entity. So all these were  
9 established based on the governmental decisions and they were all -- all these  
10 decisions were issued by the Libyan state. However, Madam President, what is the  
11 difference between this apparatus being established by the Libyan government or an  
12 armed group? So -- because in our team, we conducted a lengthy dialogue on what  
13 difference would it make whether it was a governmental entity or an armed group?  
14 So here, the criminal context will differ and the elements of crimes will differ, that is,  
15 if the crime was there within the common plan or not or whether the arrests  
16 happened based on lawful decisions or not.

17 So all this affects the presence of the crime or not. And -- but if the -- this apparatus  
18 was an armed group, then things would be completely different.

19 The final point in this section is that what the OTP calls as "SDF/RADA", is a Libyan  
20 government apparatus established by the Libyan government - and, the Libyan  
21 government spends on it - and all its affiliates and members are government  
22 employees and it was under the control of the Libyan state at its highest levels.

23 And when the Prosecutor calls the Mitiga Prison as a detention centre, then this is not  
24 correct because it is an official prison of the Libyan state, and it's called the Tripoli  
25 main reform and rehabilitation centre, established by the Libyan Ministry of Justice

1 and it follows the Libyan attorney general. And the OTP has not submitted whether  
2 the witnesses were being held for legal reasons or not.

3 Thank you, Madam President. I am done with this part of my presentation.

4 PRESIDING JUDGE MOTOC: [10:55:50] (Overlapping speakers)

5 MR HASSAN: [10:55:55] (Interpretation) I will move now to the second part of my  
6 presentation and I will talk about crimes against humanity.

7 PRESIDING JUDGE MOTOC: [10:56:15](Interpretation) Thank you, Counsel Hassan,  
8 please continue on this point.

9 MR HASSAN: [10:56:40](Interpretation) Thank you, Madam President. I was just  
10 checking the time.

11 My colleague, Iain Edwards, yesterday, talked about what is called crimes -- war  
12 crimes and he detailed -- provided a detailed presentation about it. And now we  
13 will talk about the charges related to crimes against humanity.

14 I will be brief and will not take long.

15 So the term "crimes against humanity" is often used inaccurately to talk about various  
16 forms of violence. However, the Rome Statute as well as the jurisprudence of  
17 international criminal justice sets out specific definitions of crimes against humanity.

18 The Rome Statute says that crimes against humanity are acts prohibited, committed in  
19 the context of a widespread or systematic attack, which is an implementation or  
20 furtherance of the policy of a state or an organisation and directed against any group  
21 of a civilian population.

22 We understand here that crimes against humanity are based on specific legal  
23 elements that must be met. And at this stage of the proceedings, the burden of proof  
24 falls on the Prosecution in order to convince the Court that there are substantial  
25 grounds to believe that these elements have been fulfilled and that Mr Khaled

1 El Hishri was personally involved in them.

2 And in the contextual elements of crimes against humanity -- or the contextual  
3 elements of crimes against humanity are what give this Court jurisdiction to hear this  
4 case. Otherwise, we would be dealing with ordinary criminal offences that fall  
5 under the scope of the Libyan national jurisdiction. Therefore, the contextual  
6 elements of the existence of an attack, the existence of a standing policy, and the  
7 directing of such an attack against a civilian population, and the characterisation of  
8 this attack as being widespread or systematic with a link to the perpetrator must be  
9 first established before looking into any individual acts. And the absence of any of  
10 these elements completely excludes the possibility of proving that crimes against  
11 humanity have happened, and the absence of only one element makes it legally  
12 unnecessary to examine the rest.

13 This approach was settled in the decision to confirm the charges in the Mbarushimana  
14 case, along with other case.

15 And a realistic tracking of the situation in Libya, as well as the nature and activities of  
16 the so-called SDF/RADA is an essential element for understanding the legal and  
17 factual shortcomings in the Prosecution's theory of crimes against humanity. The  
18 role played of this -- by this apparatus in implementing some of the security and legal  
19 measures approved by the Libyan state, especially when it comes to combating drug  
20 crimes, theft, and organised crime, it was -- so this was primary, the execution of  
21 judicial orders.

22 Madam President, in front of you is a slide here showing that RADA group did not  
23 conduct any attacks against the civilian population and that all that they did was just  
24 law enforcement operations that were legitimate and under the supervision of the  
25 attorney general and the Ministry of Justice. We are trying to prove here to your

1 esteemed Chamber that there was no attack conducted by this group against the  
2 civilians.

3 Your esteemed panel has listened to the story of the Prosecution that portrays  
4 members of the RADA group as a group acting according to its own interests without  
5 regard to the society to which it belongs. However, this narrative differs strongly if  
6 we understand the political, social and anthropological state of the Libyan reality or  
7 the ...

8 So the so-called SDF/RADA, as we have explained, is part of the Libyan legal  
9 authorities and its members are Libyans from the same social fabric of the city of  
10 Tripoli.

11 So, we are trying to focus on three main axis:

12 There was no attack falling within the meaning of the international criminal law that  
13 happened against the civilian population.

14 Second slide. It is understood in international law that the conduct must be criminal  
15 and systematic and continuous; it can't be individual incidents. And the purpose of  
16 this requirement is to exclude acts that are isolated from the scope of international  
17 criminal law. As Judge Guénaél Mettraux has made it clear, the crime against, or  
18 crimes against humanity are not just an accumulation of sporadic criminal acts but  
19 a collective criminal project directed against the civilians with a common goal. And  
20 this is not existent in the behaviour of RADA group or the behaviour of  
21 Khaled El Hishri.

22 The events that took place between 2014 and 2020 do not reveal by any way the  
23 existence of a general behaviour directed against a civilian population in or around  
24 Tripoli. But rather, all -- all that is described are actions taken against persons  
25 suspected of committing crimes, whether in cases of flagrant violation of the law or in

1 order to implement orders issued by the competent Libyan judicial authorities.

2 The civilian population was never a direct target of SDF/RADA or any other  
3 perpetrators or, as the Prosecution called them, perpetrators of Mitiga. Rather, the  
4 agency's operations were aimed at carrying out actions against a limited number of  
5 individuals suspected of committing crimes in accordance with judicial orders or  
6 orders issued by the Libyan public prosecution. So, what the OTP is calling attacks  
7 were nothing but legal procedures taken against suspected criminals by the RADA  
8 group.

9 The law also requires that the civilian population must be the primary target of the  
10 attack, not merely accidental victims. This Court has affirmed this principle more  
11 than once, such as in the cases of Katanga and Hassan. However, the evidence  
12 presented by the Prosecution does not in any way amount to meet this standard.  
13 Therefore, the Prosecution is wrongful. They erred when they portrayed  
14 a legitimate law enforcement agency and operations as an attack against a civilian  
15 population. Adopting such interpretation would open the door to categorise the  
16 activities of law enforcement agencies around the world as international crimes, and  
17 this is a threat to legal legitimacy.

18 The Special Court for Sierra Leone in the Fofana and Kondewa case recognised the  
19 genuine and effective efforts to protect civilians weakened the allegation of an attack  
20 directed against them. In this sense, the RADA group operated under the  
21 order -- orders of judicial institutions in Tripoli; whereas Article 7 of the Rome Statute  
22 stipulates the attack must have been carried out in implementation or in furtherance  
23 of the policy of a state or organisation.  
24 But that is not the case in Tripoli. Not surprisingly, the OTP has not addressed this  
25 element, or rather addressed it only marginally, because it simply doesn't exist.

1 RADA/SDF, or what is -- the so-called Mitiga Perpetrators have never had a policy  
2 aimed at attacking or intimidating the residents of Tripoli. If there is a policy, it was  
3 a policy aimed at law enforcement and combating crime in the most dangerous areas  
4 of the Libyan state, as is the case in any country.

5 Second, the stipulation of the civilian population.

6 In their application for the issuance of an initial arrest warrant, and also in the  
7 decision of this Chamber, the Prosecution and the Pre-Trial Chamber considered that  
8 the civilian population were the people or the persons detained in the Mitiga Prison  
9 who were perceived, at least in part, as opponents of the Government of the National  
10 Accord or SDF/RADA. But this allegation, and without any explanation, was  
11 reiterated in the Document Containing the Charges and extended the scope of the  
12 civilian population to the entire population of Tripoli and its -- all its regions,  
13 including those detained in Mitiga Prison. The Prosecution here is legally obliged to  
14 establish elements of crime against humanity for this expanded civilian population,  
15 according to the substantial grounds for belief criterion, and this is not existent.

16 They expanded the number of civilians to conclude the large population and then  
17 they limited the acts to the Mitiga Prison. Well, they need to make their mind. Is it  
18 the whole of Tripoli or just Mitiga Prison?

19 And also, the second Pre-Trial Chamber in the Kenyatta case held that the term "any  
20 group of civilian population" means groups that could be distinguished by common  
21 characteristics such as their nationality, ethnicity, or other distinguishing  
22 characteristics, that is, the group must be relatively stable and identifiable as  
23 a self-contained or a self-independent group.

24 Going back to the origin of this legal text, we find that it -- it originated in relation to  
25 a specific religious group in Germany during World War II. The persons arrested by

1 SDF/RADA, in accordance with its competencies stipulated in official resolutions,  
2 were people who were committed or suspected of committing crimes, such as  
3 kidnapping, terrorism, drug trafficking, murder, and theft. The fact that a person is  
4 suspected of a crime is not fixed or a fixed character or an element of his or her own  
5 identity but is a temporary and transient legal status.

6 I will stop here, Madam President, with the crimes against humanity because, as we  
7 said, if this element does not exist, then there is no point in discussing the rest of the  
8 elements.

9 And, by that, I conclude my submissions today. There will be concluding remarks at  
10 the end of today's session, but we will obviously be in -- under your orders.

11 Thank you.

12 PRESIDING JUDGE MOTOC: [11:10:40](Interpretation) Thank you very much,  
13 Counsel. Thank you very much, Counsel Hassan.

14 Perhaps I can ask my colleagues whether they have any questions. I see none. So I  
15 would like to thank you, Counsel.

16 The Chamber stated in its 28 April last order that it would only welcome final  
17 submissions from the parties if that proved absolutely necessary. For example, to  
18 grant a right to response on matters arising only for the first time during this hearing.  
19 Any request of that nature from the Legal Representative of Victims?

20 MS MASSIDDA: [11:11:28](Interpretation) Yes, we do indeed wish to enter such  
21 a request. We've heard the Defence. As you know, we decided not to put  
22 submissions to the merits, but we do have three or four questions arising out of the  
23 Defence's submissions, including some legal matters that it would be important for  
24 the victims that we put that before your Chamber. So we're -- we're requesting  
25 a maximum of 25 minutes, perhaps shorter, to address ourselves to those final

1 submissions. Thanks very much, your Honour.

2 PRESIDING JUDGE MOTOC: [11:12:03](Interpretation) Thank you very much,  
3 Counsel Massidda. The floor is yours.

4 MS MASSIDDA: [11:12:26] Madam President, Your Honours, the Defence's opening  
5 statement resembled less a confirmation hearing submission and more a guided tour  
6 through 15 years of Libyan history, with Mitiga surfacing only occasionally as  
7 a distant landmark, amid discussions of NATO air campaigns, UN Security Council  
8 resolutions, constitutional amendments, and Mr Dbeibeh's political fate.

9 The underlying strategy, however, was fairly clear: To shift the focus away from the  
10 crimes allegedly committed in Mitiga and the victims' suffering toward a broader  
11 argument about jurisdiction, political selectivity and the Prosecution's evolving Libya  
12 strategy.

13 What made the submissions somewhat unusual at the present procedural stage was  
14 that most of these jurisdictional arguments had already been extensively addressed in  
15 writing and are currently pending before the Chamber.

16 While the Defence sought to portray the Court's engagement in Libya as politically  
17 selective, their submissions largely remained detached from the specific factual and  
18 evidentiary allegations currently before this Chamber, allegations, the victims recall,  
19 concerning torture, enslavement, inhumane treatments, persecution, outrages upon  
20 personal dignity, murder, rape, and other forms of sexual violence.

21 Turning to the merits of the Defence's submissions. Much of the presentation  
22 focused on procedural unfairness, institutional critique, analogies and abstract  
23 jurisdictional arguments, while the detailed factual allegations concerning the crimes  
24 allegedly committed in Mitiga received comparatively little attention.

25 The Defence's repeated complaints about anonymous witnesses were framed in

1 highly dramatic terms, owing to comparisons to a boxer fighting with one arm behind  
2 his back or a gambler forced to bet only on certain roulette numbers. While these  
3 analogies were vivid, they were perhaps less persuasive than intended.

4 Most of these arguments simply relitigate issues already extensively addressed in  
5 written submissions and resolved by the Chamber through the existing protective  
6 measures framework.

7 As recognised by the Defence itself, confirmation proceedings are not trials on the  
8 merits, nor do they require final credibility determinations beyond reasonable doubt,  
9 or the immediate disclosures of every witness identity - particularly, where security  
10 concerns remain important, as in the case of Libya and Mitiga. At this stage, the  
11 Chamber's task is simply to determine whether there are substantial grounds to  
12 believe that the crimes charged were committed.

13 Moreover, the Defence's suggestion that it is almost incapable of responding because  
14 witness identities remain protected sits somewhat uneasily alongside the extensive  
15 factual submissions it nevertheless advanced concerning detention motives, domestic  
16 law enforcement, counter-terrorism operations, migration, ISIS affiliation, and the  
17 institutional role and competencies of RADA.

18 The Defence cannot simultaneously claim to know too little to respond meaningfully  
19 while confidently advancing alternative factual narratives about the rationale for  
20 detention practices over a six-year period.

21 The alibi argument is similarly unconvincing. The Defence suggested that the  
22 charged period was too broad to permit meaningful alibi notice because Mr El Hishri  
23 travelled during the relevant years.

24 Yet, the Prosecution does not allege that he committed a single isolated act on an  
25 unknown afternoon in a remote location. Rather, the allegation is that he occupied

1 a position of authority within an abusive detention system operating over years.

2 The inability to pinpoint his location "to the minute", as counsel suggested, clearly  
3 overlooks the fundamental nature of the charges.

4 Turning to the legal arguments, we address two discrete issues. First, the alleged  
5 insufficiency of evidence on the armed conflict in Libya at the material time and the  
6 charged crimes; and two, the exclusion of the crimes of enslavement and persecution  
7 in relation to Black Migrants.

8 In relation to the nexus requirement for war crimes, as recalled by the Prosecution on  
9 Monday and in their response to the Defence's notes filed before the hearing,  
10 document 115 in the case record, the Court's consistent jurisprudence establishes that  
11 assessing whether the suspect's conduct is sufficiently connected to the armed conflict  
12 must be based on multiple factors, such as, and I quote:

13 "the fact that the perpetrator is a combatant; the fact that the victim is a noncombatant;  
14 the fact that the victim is a member of the opposing party; the fact that the act may be  
15 said to serve the ultimate goal of a military campaign; and the fact that the crime is  
16 committed as part of or in the context of the perpetrator's official duties." End of  
17 quote.

18 The reference, your Honour, is the appeals judgment in the Ntaganda case, 15  
19 June 2017, document 1962, paragraph 68.

20 A full and comprehensive assessment of the facts of this case, consistent with the  
21 Appeals Chamber's judgment, leads to the following conclusion:

22 "(1) Mr El Hishri was a founding member of and a senior official in an armed group,  
23 the SDF, also known as RADA, which was associated with the GNA.

24 (2) The GNA and the SDF/RADA were engaged in a conflict of not an international  
25 character against the Libyan National Army.

1 (3) At the time of the commission of the alleged crimes, the SDF/RADA had taken  
2 control of the Mitiga Prison.

3 (4) Mr El Hishri's ability to commit the alleged crimes stemmed directly from the fact  
4 that he was in charge of the detention facility which, in and of itself, was  
5 a consequence of the armed conflict.

6 In this regard, in the Said case, which likewise concerns the treatment of detainees in  
7 a detention facility, the OCRB, operated by an armed group in power at the time of  
8 the charged crimes, in the context of a conflict not of an international character,  
9 Pre-Trial Chamber II in the Decision Containing the Charges correctly took into  
10 account various relevant factors, including the suspect's position of authority, his  
11 perception of the detainees, and the broader general context, namely, the  
12 circumstances leading to Mr Said being allegedly in charge of a prison and in  
13 a position to commit the crimes. On this basis, Pre-Trial Chamber II concluded that  
14 a number of war crimes had allegedly been committed.

15 Importantly - and it goes, your Honours, to some of the remarks made by learned  
16 colleague this morning - Pre-Trial Chamber II reached this conclusion despite the  
17 submissions of Mr Said's Defence that he was merely maintaining public order and  
18 simply discharging police duties.

19 Even more strikingly, Pre-Trial Chamber II considered the evidence brought forward  
20 by the Prosecution to be illustrative of the occurrence of crimes, and on that basis  
21 concluded that the alleged war crimes were committed against all detainees present at  
22 the relevant time, including those for whom no specific evidence was adduced.

23 Accordingly, the reasons why individuals ended up in Mitiga Prison are both  
24 factually and legally wholly irrelevant to determine whether the suspect's conduct  
25 was sufficiently connected to the armed conflict.

1 Turning to the submissions regarding Black Migrants, these were perhaps the most  
2 strikingly detached from the evidentiary record corroborated by the victims' accounts.  
3 The Defence argues first that Black Migrant detainees did not belong to the same  
4 civilian population against whom the alleged attack was directed; and second, that  
5 the allegation of enslavement had effectively been rejected at arrest warrant stage.  
6 Neither submission withstands closer scrutiny.  
7 The victims' accounts depict a far more structured and systematic pattern of abuse  
8 extending far beyond incidental mistreatment of migrants in detention.  
9 Victims consistently describe Black Migrants as occupying a distinct subordinated  
10 position within Mitiga Prison, referred to as "slaves", deprived of their identity and  
11 autonomy, forced into exhausting labour, compelled to participate in abusive  
12 practices and subjected to coercion, sexual violence, humiliation, and the conditions  
13 of complete dependency and subjection.  
14 The evidence, taken as a whole, points to an organised system of domination and  
15 exploitation rather than isolated or opportunistic misconduct.  
16 Importantly, the Defence's submission rests on a legal premise that finds no clear  
17 support in Article 7 of the Statute. The Defence appears to suggest that, for the  
18 contextual elements of crimes against humanity to be met, every victim of an  
19 underlying crime must belong to the same civilian population against whom the  
20 attack is principally directed. Yet, Article 7 imposes no such requirement.  
21 The chapeau of Article 7 requires that prohibited conduct be committed, I quote, "as  
22 part of a widespread or systematic attack directed against any civilian population",  
23 end of quote, and that the perpetrator possesses knowledge of that attack. The focus  
24 of the inquiry is therefore whether the criminal conduct formed part of the attack and  
25 bore a sufficient nexus to it. Nothing in the text of the provision requires that every

1 victim of each underlying crime belong to the principal civilian population against  
2 whom the attack is directed.

3 Accordingly, the relevant question in the present case is not whether Black Migrants  
4 belonged to the precise civilian subgroup allegedly targeted by RADA, but whether  
5 the crimes committed against them formed part of the same widespread and/or  
6 systematic attack. The evidence strongly supports such a conclusion.

7 The crimes against Black Migrants occurred within the same detention infrastructure,  
8 at the same facility, under the authority of the same organisational apparatus and  
9 through the same machinery of coercion and violence that characterised the treatment  
10 of other detainees at Mitiga. Victims describe overlapping perpetrators, methods of  
11 abuse, patterns of detention, and systems of control. These factors strongly indicate  
12 that the alleged crimes against Black Migrants were not detached or incidental acts,  
13 but formed part of the same broader attack and were committed with knowledge  
14 thereof.

15 This understanding is consistent with the Court's jurisprudence. For instance, in the  
16 Said case again, as with war crimes, Pre-Trial Chamber II found that the crimes  
17 against humanity of imprisonment or other severe deprivation of physical liberty,  
18 torture and other inhumane acts were committed against all the detainees of the  
19 OCRB detention facility without engaging in any way with the evaluation of whether  
20 the victims belonged to the group targeted by the attack. While the Chamber did not  
21 expressly treat membership in a particular targeted subgroup as an independent legal  
22 criterion, its reasoning focused on whether the alleged conduct formed part of the  
23 attack and treated detainees subjected to the relevant conduct as potential victims of  
24 crimes against humanity.

25 Nothing in that reasoning suggests that each victim was required to independently

1 establish membership in the principal civilian population against whom the attack  
2 was directed.

3 Consistent with its finding on war crimes, Pre-Trial Chamber II considered the  
4 Prosecution's evidence to be, again, illustrative of the occurrence of crimes and  
5 concluded that these alleged crimes against humanity were committed against all  
6 detainees present at the relevant time, including those for whom no specific evidence  
7 was adduced.

8 The same reasoning, your Honours, applies here. Even assuming, *arguendo*, that  
9 Black Migrants constituted a distinct and particularly vulnerable group within Mitiga,  
10 this would not place them outside the protective scope of Article 7, where the crimes  
11 alleged against them -- including enslavement, imprisonment, torture, sexual violence,  
12 persecution, and other inhumane acts -- formed part of the same widespread or  
13 systematic attack.

14 This conclusion is reinforced by Article 7(1)(c) of the Statute, which defines the crime  
15 of enslavement through the exercise of powers attaching to the right of ownership  
16 over a person. The provision contains no language limiting its application to victims  
17 belonging to the same civilian population that was being attacked.

18 The absence of such language strongly suggests that no such restriction was intended.

19 A plain reading of Article 7 of the Statute, interpreted in accordance with its ordinary  
20 meaning, context, and its object and purpose is unambiguous: Any civilian  
21 population may be the target of an attack under said provision and there exists no  
22 requirement that a victim must be part of that population. Should any doubt remain,  
23 recourse to supplementary means of interpretation, such as the preparatory works,  
24 confirms that the drafters of the Statute intended to adopt a broad and inclusive  
25 approach regarding the scope of victims of crimes against humanity, and deliberately

1 chose to not impose limitations based on group membership or status.

2 The Defence further argues that Black Migrants were detained for reasons unrelated

3 to opposition to RADA or its ideology. But this formulation, your Honours,

4 oversimplifies the Prosecution's theory. The allegation is not merely that migrants

5 held anti-RADA political views. Rather, the evidence shows that Black Migrants

6 were targeted precisely because of their vulnerability, race, nationality, precarious

7 legal status, and exploited as a source of forced labour for the benefit of RADA.

8 Systems of domination and exploitation do not require victims to be political

9 opponents in the conventional sense in order to fall within the ambit of crimes against

10 humanity.

11 Moreover, the evidence also reflects particularly severe and cruel treatment of Black

12 Migrants by the suspect, consistent with a specific persecutorial intent directed

13 towards this especially vulnerable segment of persons subjected to the attack.

14 The Defence presentation ultimately left a conspicuous void: Meaningful engagement

15 with the lived reality described by victims and substantiated through the evidentiary

16 record. Accounts of overcrowding, starvation, disappearances, torture, sexual

17 violence, forced labour, coercion, humiliation, ideological indoctrination and

18 a pervasive climate of fear - allegedly sustained at Mitiga for years - received only

19 cursory attention. Instead, the Defence devoted substantial time to contesting labels,

20 jurisdictional theories and procedural frameworks.

21 Far less effort was given to the central factual question of this case: Why dozens of

22 victims from diverse backgrounds recount strikingly similar patterns of abuse within

23 the same detention system, during the same period of time, under the authority of the

24 same armed group.

25 That disproportion, the emphasis on abstractions over allegations, is itself revealing.

1 Madam President, your Honours, the victims submit that the evidence presented by  
2 the Prosecution meets the evidentiary standard of substantial grounds to believe that  
3 the suspect committed each of the crimes charged and that Mr El Hishri bears  
4 individual criminal responsibility under Article 25 of the Statute.

5 The confirmation of all charges is not only legally warranted, it is essential to the  
6 integrity of international criminal justice.

7 On behalf of the victims, we respectfully ask this Chamber to affirm that their  
8 suffering matters, that their rights matter, and that the rule of law extends even to the  
9 most powerful, by confirming all the charges against Mr El Hishri and committing  
10 him to trial.

11 Thank you, your Honour.

12 PRESIDING JUDGE MOTOC: [11:34:26](Interpretation) Thank you very much,  
13 Counsel Massidda. Now we need to know how to move forward because we should  
14 finish this session at mid-day.

15 So let me call upon the Deputy Prosecutor, do you have any comments, observations  
16 at this juncture or any final submissions that you may wish to put under Article 122(8)  
17 and then how long would you wish to do that for, please?

18 MS KHAN: [11:34:57] Thank you, Madam President, your Honours. I will be just  
19 a few minutes.

20 The Prosecution does not consider that there is anything specific that we wish to  
21 respond to the Defence in relation to these proceedings. We do wish to say, however,  
22 that we are very aware that your Honours set a timeline for response in relation to the  
23 status and relevance of the Article 12(3) declaration and we will be making  
24 submissions in relation to that.

25 But for the moment, we rely on the DCC, the pre-confirmation brief, our written

1 submissions to the Defence observations, and I refer to the Prosecution's filing 155,  
2 and our submissions during this hearing to support our case.  
3 And we do note that your Honours held in the confirmation hearing in the case of  
4 Duterte, specifically decision 417, paragraph 26, that the purpose and scope of the  
5 confirmation hearing is limited to ensuring that the charges go beyond mere theory or  
6 suspicion. And the Prosecution submits that the evidence on which we rely more  
7 than adequately satisfies this test. Indeed, our submission is that the evidence is  
8 overwhelmingly in support of that threshold. And we have nothing further to say.  
9 Thank you.

10 PRESIDING JUDGE MOTOC: [11:36:24](Interpretation) Thank you, Deputy  
11 Prosecutor, Ms Khan. So those are your final submissions, have I got that right?  
12 Yes. I thank you.

13 Now I turn to the Defence. The time up to midday, is that enough for you for  
14 putting your final submissions?

15 MR HASSAN: [11:36:51](Interpretation) Yes, Madam President. I will only need  
16 five minutes -- five minutes for myself and five minutes for my colleague, Iain.

17 PRESIDING JUDGE MOTOC: [11:37:08](Interpretation) Very well, thank you. So I  
18 understand that Mr Edwards will begin first. So, Mr Edwards, you have the floor.

19 MR EDWARDS: [11:37:20] Thank you very much, your Honours. I really only  
20 need about 30 seconds. I listened carefully to the submissions of counsel for the  
21 OPCV, waiting to hear if anything of relevance was said, anything of real pertinence  
22 that demands a response was said, and there was nothing.

23 The submissions were a predictable regurgitation of the Prosecution's case, peppered  
24 with some emotional language about the conditions in Mitiga, but they don't require  
25 a response from the Defence at all.

1 The only thing I would say, however, relates to the submissions made about  
2 enslavement in particular, and those charges of crimes against humanity insofar as  
3 they concern that category of complainants that the Prosecution called the Black  
4 Migrants. All I would do is respectfully invite my learned friends to carefully read  
5 your Honours' well-structured and well-formulated decision on the arrest warrant  
6 because your Honours' reasoning in that decision is very clear, and a careful reading  
7 of it will inform my learned friend of why you said what you did in respect of  
8 enslavement. That's all. Thank you.

9 PRESIDING JUDGE MOTOC: [11:39:06](Interpretation) Thank you. Thank you,  
10 Mr Edwards. Mr Hassan, you now have the floor. This is your last submission, as I  
11 understand.

12 MR HASSAN: [11:39:14](Interpretation) Thank you, Madam President, the  
13 Honourable Chamber.  
14 Excuse me.

15 The Defence would like to ask the Chamber not to adopt or confirm any of the  
16 charges directed towards Mr Khaled El Hishri. We would like you to take into  
17 consideration all our written submissions, especially the brief of 34, 2026. It is true  
18 that we submitted about the lack of jurisdiction of the Court, that there is no  
19 competence for the Court. However, we would like to say that international justice  
20 institutions cannot be a means to take some political measures against others or  
21 change regimes. Justice is far more noble than being a tool in the hands of a corrupt  
22 dictator to discipline national leaders, or a tool or a means for these leaders to stay in  
23 power.

24 We fought for the establishment of the International Criminal Court and we  
25 supported it, and we still support it in the face of the intimidation and dwarfing

1 campaigns and making it a tool that can be unlawful. Madam President, esteemed  
2 Chambers, this Court should not be reserved for Khaled El Hishri and whoever is in  
3 his place. These seats here are dedicated for the killers of children and people  
4 who -- children who are being killed by planes and drones and their cities and homes  
5 are being destroyed.

6 The Defence team of Mr El Hishri, as you can see, is composed of men and women  
7 from different nationalities, different religions that were chosen by him based on his  
8 free will, and there is no bigger proof of his respect to diversity and tolerance because  
9 he knows -- he is the one who chose these eight members of this team. So this is  
10 proof of the errors present in the Prosecution's submissions. So it will not be fair for  
11 Khaled El Hishri to wait for years for an acquittal decision, and now the decisions  
12 might be based on unchallenged or untested evidence.

13 Honourable Judges, in our Arab culture we say that the judges are the hand of God  
14 on earth, and I salute you for this.

15 And, at the end, I would like to extend my respect to this Chamber and I would like  
16 to thank also all the officers, the court officers and the interpreters and all the  
17 members of the Court, and this is the end of my submissions.

18 PRESIDING JUDGE MOTOC: [11:42:46](Interpretation) Thank you very much,  
19 Counsel Hassan.

20 We have reached the end of our hearing and the legal provisions that I mentioned at  
21 the outset of this hearing. The Chamber will now withdraw to deliberate and, of  
22 course, has to rule on the jurisdictional challenge raised by the Defence, and upon  
23 which filings will be received, in the next few weeks.

24 Subsequent to that, depending on that decision on the Court's jurisdiction in  
25 a prescribed time, namely 60 days, the Chamber shall hand down its decision on the

- 1 charges entered against Mr El Hishri.
- 2 I would like to also thank the parties and participants particularly for efforts made to
- 3 ensure that these hearings are made in open session. I would also like to particularly
- 4 draw attention to the rigor of our interpreters, court reporters and all staff members
- 5 who have helped us over these three days.
- 6 The Court is adjourned.
- 7 THE COURT USHER: [11:43:52] All rise.
- 8 (The hearing ends in open session at 11.43 a.m.)