

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 Tuesday, 19 May 2026

9 (The hearing starts in open session at 10:00 a.m.)

10 THE COURT USHER: [10:00:44] All rise.

11 The International Criminal Court is now in session.

12 Please be seated.

13 PRESIDING JUDGE MOTOC: [10:01:21](Microphone not activated)

14 THE COURT OFFICER: [10:01:33] Good morning, Madam President. Good

15 morning, your Honours. This is the situation in Libya, in the case of the Prosecutor v.

16 Khaled Mohamed Ali El Hishri, case reference ICC-01/11-01/25.

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

18 PRESIDING JUDGE MOTOC: [10:01:45](Interpretation) Thank you.

19 Good morning, everyone. I would like to welcome all those who are here present

20 both inside and outside of the courtroom.

21 I will now ask the parties and participants to introduce themselves, beginning with

22 you, Madam Deputy Prosecutor.

23 MS KHAN: [10:02:09](Microphone not activated)

24 THE INTERPRETER: [10:02:13] Microphone.

25 MS KHAN: [10:02:14] Today the Office of the Prosecutor is represented by myself,

1 Nazhat Shameem Khan, Deputy Prosecutor; and Nicole Samson, senior trial lawyer;  
2 trial lawyers Hesham Mourad, Dianne Luping, and Rens van der Werf; Jessica Lacey,  
3 case manager. And that is the team for the Prosecution.

4 PRESIDING JUDGE MOTOC: [10:02:36](Interpretation) Thank you very much.

5 I shall now turn towards counsel for the Defence, you have the floor.

6 Counsel for the Defence.

7 MR HASSAN: [10:02:57](Interpretation) Thank you, Madam President. The

8 Defence team for Khaled El Hishri is composed of myself, Yasser Hassan, the lead

9 counsel; Iain Edwards, Emma Brandon, Ahmad Alammam, Islam El-Hadidy, Myriam

10 Whaibe and Aya Mrad. Thank you, Madam President.

11 Apologies. And we have also our intern, Julia, who is the first -- her -- whose first

12 time to attend in the ICC courtroom.

13 PRESIDING JUDGE MOTOC: [10:03:42](Interpretation) Thank you very much, Counsel. I

14 now call on the Legal Representatives of the Victims to introduce themselves.

15 \* MS PELLET: [10:03:50](Interpretation) Thank you, Madam President. The victims are

16 represented by Paolina Massidda, Principal Counsel; Tars Van Litsenborgh; Ahmad Issa; Ana

17 Peña; and myself, Sarah Pellet, Counsel at the Office of the Public Counsel for Victims.

18 PRESIDING JUDGE MOTOC: [10:04:13](Interpretation) Thank you very much, Madam Pellet.

19 As for the Chamber, you have Judge Reine Adélaïde Sophie Alapini-Gansou; to my

20 left, Judge María del Socorro Flores Liera. My name is Iulia Antoanella Motoc and I

21 am the presiding judge of Pre-Trial Chamber I.

22 Today marks the commencement of the hearing relating to the confirmation of

23 charges brought by the Prosecution against Mr El Hishri. In accordance with the

24 programme outlined in our scheduling order of the last 28 April, document number

25 106, this hearing shall take place over a period of three days, in the course of which

1 we shall entertain the oral submissions of the Prosecutor, the Common Legal  
2 Representatives of Victims, as well as those of the Defence team of Mr El Hishri.

3 At this stage of the proceedings, the role of the judges is to determine whether there is  
4 sufficient evidence to establish substantial grounds to believe that Mr El Hishri  
5 committed each of the crimes charged against him. In the event that one or several  
6 of the charges are confirmed, the Pre-Trial Chamber shall refer the case for trial  
7 according to the procedure.

8 In such an eventuality, the general principles applicable to the hearing of this week  
9 shall be as follows:

10 First of all, and this is important, Mr El Hishri is presumed to be innocent insofar as  
11 his guilt has not been proven before the Court.

12 Furthermore, the burden of proof shall rest with the Prosecution, which is required to  
13 produce sufficient evidence to prove the charges against Mr El Hishri consistent with  
14 the standards set out in Article 61(7) of the Rome Statute.

15 Lastly, for the purposes of his defence, the suspect shall benefit from the rights set out  
16 in Article 61(6) and Article 67 of the Rome Statute.

17 I will now ask the court officer to read out the charges. Let me recall here that the  
18 entirety of the Document Containing the Charges is accessible to the public on the  
19 internet site of the Court and that our court officer shall read out only an abridged  
20 version of that DCC.

21 You have the floor, Mr Court Officer.

22 THE COURT OFFICER: [10:07:05] The Prosecution charges Mr Khaled Mohamed  
23 Ali El Hishri, also known as "Khaled Al Booti" or "Sheikh Khaled", with 17 counts of  
24 war crimes and crimes against humanity committed between 1 May 2014 and 30  
25 June 2020 in Tripoli, Libya, against Mitiga Prison detainees or persons otherwise in

1 the custody or control of the perpetrators of the crimes at Mitiga Prison, now  
2 described simply as the "Mitiga Perpetrators".

3 Mr El Hishri was a senior member or associate of a group commonly known as the  
4 "Special Deterrence Force", "or RADA", led by Abdalraouf Kara. This group came to  
5 assume significant power and influence in Tripoli, including by later receiving an  
6 official mandate as the "Deterrence Apparatus for Combating Organised Crime and  
7 Terrorism" or "DACOT".

8 At all the times relevant to the charges, Kara and SDF/RADA controlled  
9 a strategically important area of Tripoli known as the "Mitiga Compound," which  
10 included a prison facility ("Mitiga Prison") holding thousands of prisoners. The  
11 prison was under the *de facto* control of Kara and other senior SDF/RADA members or  
12 associates. While some of these persons may also have held ranks or affiliations  
13 with Libyan state institutions, this did not change the *de facto* control exercised by  
14 Kara and those close to him.

15 Under Kara's authority, Mr El Hishri was in a position to exercise general authority  
16 and influence throughout Mitiga Prison from 2014 to 2020, and had direct control  
17 over the "Women's Section" and the persons detained therein. In that position, he  
18 personally committed numerous violent crimes, as well as participating in crimes  
19 committed by others.

20 Specifically, Mr El Hishri is charged with the following crimes under the Rome  
21 Statute:

22 Counts 1-6: crimes related to the violent and arbitrary arrests, detention and  
23 systematic mistreatment of civilians and/or fighters *hors de combat*, including women  
24 and men, girls and boys, Libyans and non-Libyans, mainly at Mitiga Prison, as  
25 follows:

Count 1: imprisonment or other severe deprivation of physical liberty as a crime against humanity, concerning at least 945 detainees, pursuant to Article 7(1)(e) of the Rome Statute. Count 2: outrages upon personal dignity as a war crime, concerning at least 945 detainees, pursuant to Article 8(2)(c)(ii).

Count 3: cruel treatment as a war crime, concerning at least 945 detainees, pursuant to Article 8(2)(c)(i) of the Rome Statute.

Counts 4-5: torture as a crime against humanity and as a war crime, concerning at least 945 detainees, pursuant to Articles 7(1)(f) and 8(2)(c)(i) of the Rome Statute.

And count 6: other inhumane acts as a crime against humanity, concerning at least 945 detainees, pursuant to Article 7(1)(k).

Counts 7-8: rape concerning at least 10 detainees, as a crime against humanity and as a war crime, pursuant to Articles 7(1)(g) and 8(2)(e)(vi).

Counts 9-10: sexual violence, concerning at least 49 detainees, as a crime against humanity and as a war crime, pursuant to Articles 7(1)(g) and 8(2)(e)(vi). The charges -- the charged acts included forced nudity (counts 2-3, 6 and 9-10), sexualised torture and invasive cavity searches (counts 2-10), carried out in inappropriate and degrading conditions and beyond what may be necessary for legitimate security reasons, including by or in front of other detainees (sometimes including relatives, members of the opposite sex, and children).

Counts 11-12: murder and attempted murder of at least 89 detainees as a war crime and crime against humanity, pursuant to Articles 7(1)(a) and 8(2)(c)(i) of the Rome Statute. The victims were either executed or otherwise killed immediately, or died in the ordinary course of events resulting from acts of torture committed against them, or due to deliberate neglect and/or the infliction of lethally inadequate conditions of detention.

Count 13: enslavement as a crime against humanity, concerning at least 133 detainees, pursuant to Article 7(1)(c) of the Rome Statute. These detainees, including Libyans, black migrants mostly originating from east, west, central or southern Africa, and other non-Libyans were "enslaved" by Mitiga Perpetrators who exercised ownership over them, severely deprived them of their liberty and their autonomy by controlling essentially every aspect of their lives. The enslaved detainees were deprived for instance of physical, psychological, sexual and/or reproductive autonomy exceeding normal constraints within a prison system, including:

- Control or restrictions over their movement and physical environment, and unlawfully imprisoned;
- Control over their sexuality, sexual and reproductive autonomy, sexual and gender identity;
- Subjection to torture, cruel treatment and abuse or coercion;
- Psychological control and pressure or coercion, including controls over their religious and other beliefs, and by threats and harm to family members;
- Forced labour and subjecting detainees to servile status.

Counts 14-17: persecution as a crime against humanity, pursuant to Article 7(1)(h) on various grounds, with targeting on an intersectional basis, concerning at least 138 detainees, namely:

Count 14: persecution on political grounds of at least 17 detainees, especially Libyans (perceived to oppose the Mitiga Perpetrators or their associated groups) and black migrants (targeted according to the perpetrators' purported objective to suppress so-called illegal immigration or illegal migrant trafficking);

Count 15: persecution on religious grounds of at least 14 detainees who were perceived as non-compliant with the perpetrator's ideological views and practices,

1 including because they were perceived to profess other beliefs, and/or not to conform  
2 with certain practices including with regard to prayer, dress, and/or appearance, or  
3 otherwise by imposing Mitiga Perpetrators' own ideological views and practices on  
4 their victims;

5 Count 16: persecution on nationality, race and/or ethnicity grounds of at least 47  
6 detainees, primarily black migrants;

7 And count 17: persecution on gender grounds of at least 60 detainees, comprising  
8 women and girls; actual and perceived LGBTQI+ persons; and men and boys  
9 subjected to sexual and/or reproductive violence as a way to emasculate and  
10 subjugate them.

11 The Prosecution alleges that Mr El Hishri is individually criminally responsible for all  
12 of the above 17 counts pursuant to Articles 25(3)(a), and additionally and/or  
13 alternatively, 25(3)(b), 25(3)(c) and 25(3)(d) of the Statute, and seeks the confirmation  
14 of charges under all charged modes of liability.

15 As such, Mr El Hishri is charged as follows:

16 First, as a direct perpetrator, pursuant to Article 25(3)(a) of the Rome Statute:

17 During the charged period, Mr El Hishri directly perpetrated all the crimes charged in  
18 counts 1-17 against Mitiga Prison detainees and persons otherwise in the custody or  
19 control of the Mitiga Perpetrators. This includes allegations that he personally raped  
20 and committed acts of sexual violence against Libyan women and that he personally  
21 tortured, murdered, illegally imprisoned, persecuted, enslaved and committed acts of  
22 cruel treatment and other inhumane acts against the detained men, women and  
23 children principally at Mitiga Prison, but also at other locations in and around Tripoli.

24 Second, as a direct and/or indirect co-perpetrator, pursuant to Article 25(3)(a) of the  
25 Rome Statute: During the charged period, Mr El Hishri worked with others,

1 including Abdalraouf Kara, Dhawi N'zam and Osama Njeem, to jointly carry out the  
2 crimes charged in counts 1-17 against Mitiga Prison detainees and persons otherwise  
3 in the custody or control of the Mitiga Perpetrators, principally at Mitiga Prison. The  
4 co-perpetrators shared a common plan or agreement to exercise control - through  
5 means such as punishment, coercion, and other forms of exploitation - of persons in  
6 the Mitiga Perpetrators' custody or control, principally at Mitiga Prison, in pursuit of  
7 Mitiga Perpetrators' interests or views and/or those of its members. Mr El Hishri  
8 made an essential contribution to the commission of the common plan crimes by:  
9 Exercising general authority and influence throughout Mitiga Prison; (b) directly  
10 controlling the women's section of Mitiga Prison; and (c) directly committing the  
11 charged crimes.

12 Third, as an indirect perpetrator, pursuant to Article 25(3)(a) of the Rome Statute:  
13 During the charged period, Mr El Hishri used Mitiga Perpetrators with access to the  
14 women's section to ensure that the crimes charged in counts 1-17 would be committed  
15 against the women, girls and young children detained therein.

16 Fourth, additionally or alternatively, Mr El Hishri is charged with ordering and/or  
17 inducing commission of the charged crimes, pursuant to Article 25(3)(b) of the Rome  
18 Statute and/or aiding and abetting or otherwise assisting the commission of the  
19 charged crimes, pursuant to Article 25(3)(c) of the Rome Statute and/or contributing  
20 to the charged crimes committed by a group acting with a common purpose,  
21 pursuant to Article 25(3)(d) of the Rome Statute.

22 Mr El Hishri committed the charged conduct with the required intent and knowledge  
23 for each mode of liability.

24 Thank you, your Honours.

25 PRESIDING JUDGE MOTOC: [10:21:07](Interpretation) A very big thank you to you,

1 Mr Court Officer.

2 I also note that the suspect, Mr El Hishri, is present.

3 Pursuant to paragraph 3 of the Rule 122 of the Rules of Procedure and Evidence, and  
4 before we come to the merits of the case, I would like to ask the parties if they wish to  
5 make any oral observations relating to the proper conduct of the proceedings prior to  
6 this hearing.

7 I wish to recall that we received your filings, notably filings numbers 107 and 115,  
8 which we shall of course take into consideration. Accordingly, there is no need to  
9 rehash here those of your observations which are already in the case file. The same  
10 applies to the challenge to the jurisdiction of the Court lodged by the Defence under  
11 Article 19 of the Statute, public filing number 108. In conformity with our  
12 scheduling order, the Chamber shall welcome the observations and responses  
13 concerning the challenge to jurisdiction in writing. It follows that any matters  
14 related thereto shall not form part of the agenda of the hearing scheduled for the days  
15 ahead.

16 I will begin with the Prosecution. Do you have any observations to make within the  
17 meaning of Rule 122(3)?

18 MS KHAN: [10:22:52] None from the Prosecution, Madam President.

19 PRESIDING JUDGE MOTOC: [10:22:56](Interpretation) Thank you very much,  
20 Madam Deputy Prosecutor.

21 And now to the Defence. Counsel, do you have any additional or complementary  
22 oral observations to make under Rule 122(3)?

23 MR HASSAN: [10:23:18](No interpretation)

24 PRESIDING JUDGE MOTOC: [10:23:24](Interpretation) Thank you very much.

25 MR HASSAN: [10:23:39](Interpretation) Thank you. Thank you, Madam President,

1 we will stick to the assigned agenda.

2 PRESIDING JUDGE MOTOC: [10:23:50](Interpretation) Thank you very much. We  
3 can now move to the opening statements.

4 We will listen to the Prosecutor; the representatives of the victims and the Defence  
5 after the break. I will give the floor to the Prosecution. You have the floor.

6 MS KHAN: [10:24:17] Madam President, honourable members of the Bench,  
7 members of the Libyan and affected communities, and to those following these  
8 proceedings, today presents an important milestone in our collective pursuit of justice.  
9 The commencement of the confirmation of charges hearing against Mr Khaled  
10 Mohamed Ali El Hishri, known also as Khaled Al Booti, is a testament to the tenacity  
11 of those most impacted by his crimes, to the courage and foresight of the international  
12 community in referring this situation to my office, and to the steadfast dedication of  
13 this Court to investigate and prosecute those bearing responsibility for crimes  
14 committed in Libya regardless of their power and influence.

15 For 15 years, my office has had jurisdiction over the events in Libya and has diligently  
16 pursued its mandate as conferred on it by the United Nations Security Council.

17 Despite a high number of active ICC warrants of arrest in the Libya situation, the  
18 arrest of Khaled El Hishri and the commencement of these proceedings marks the  
19 first time that an individual will face justice before this Court for crimes committed in  
20 Libya.

21 This case conveys a clear message: No one is above the law, not even the most  
22 powerful. This confirmation of charges hearing is significant in bringing justice and  
23 accountability to thousands of his victims, including Libyan and non-Libyans, women  
24 and children. Khaled El Hishri was able to act with impunity until his arrest in 2025.  
25 He and other leaders of the Special Deterrence Force, or SDF/RADA, who controlled

1 the Mitiga Prison facilities, committed crimes without fear of punishment,  
2 consequences or restrictions because of the security vacuum following the collapse of  
3 the Gaddafi regime and because of the ongoing non-international armed conflict  
4 through which they amassed significant power and formidable resources.

5 My office assesses that there have been no genuine criminal prosecutions in Libya for  
6 these crimes, despite reports by the United Nations of alleged abuses at Mitiga Prison,  
7 and despite direct reporting by victims to Libyan law enforcement and prosecutorial  
8 authorities.

9 Madam President, Your Honours, there are substantial grounds to believe that  
10 Khaled El Hishri is criminally responsible for the charged war crimes and crimes  
11 against humanity.

12 He and other senior leaders of the SDF/RADA controlled the Mitiga Prison  
13 compound where the complete disregard for the rights and dignity of detainees was  
14 institutionalised to create a climate of terror.

15 Khaled El Hishri was widely known as a notorious torturer at the helm of Mitiga  
16 Prison, one of the largest detention centres in western Libya. Witness P-1046  
17 described him as amongst the worst instigators of violence at Mitiga Prison.

18 Witness P-1031 referred to him as the "angel of death."

19 One of his preferred torture methods, as described by witnesses, was to shoot people,  
20 especially in the leg and knee. He would also hang people with their hands bound  
21 behind their backs and beat people with a shovel.

22 His authority at Mitiga Prison is amply demonstrated through the evidence.

23 Witness P-0644 describes the authority that Khaled El Hishri held and the fear he  
24 inspired, stating that when he was at Mitiga Prison, I quote:

25 "You could hear the flies. This means that everyone was quiet and fearful and the

1 guards respectful".

2 Witness P-0692 confirmed that people in the prison were afraid of Khaled El Hishri  
3 because he always wore his gun and he was ready to execute people.

4 Your Honours, this case is about enforcing the most fundamental limits on power:

5 That those who detain others must do so lawfully and must protect them and their  
6 extreme vulnerability, and that when they do not, they are accountable under  
7 international law.

8 As set out in the evidence, thousands of civilians in and around Tripoli were arrested  
9 and detained without lawful reason -- men, women and children, Libyan nationals,  
10 non-Libyans, and black African migrants. Anyone could be arrested by SDF/RADA  
11 and end up in Mitiga Prison under their control, either because they were perceived  
12 as political opponents, enemies of the group or its allies; as migrants; or because their  
13 views or behaviour conflicted with the group's beliefs; or merely because they had  
14 something that RADA wanted, be it money, properties, land or information.

15 Many were never told why they were arrested at all.

16 Madam President, your Honours, each and every one of the detained persons under  
17 the SDF/RADA control at Mitiga Prison and compound are victims of the charged  
18 crimes.

19 The abuse started upon arrest without proper charges. It worsened during detention.

20 All those detained were subjected to unimaginable conditions of detention, including  
21 severe physical and mental suffering. Some cells were so overcrowded that  
22 detainees had to sleep on the ground in turns. Witnesses describe that they were so  
23 crammed together that they had to lie on their sides, packed so tightly that it felt like  
24 they were sleeping in a knife position. Other cells were so small that they contained  
25 only one detainee who could barely move, leading to muscle atrophy. Food was

1 scarce, water had to be rationed. Facilities did not allow detainees to maintain basic  
2 hygiene.

3 Illnesses festered in these unsanitary conditions. Khaled El Hishri, and other  
4 SDF/RADA leaders and members weaponised these illnesses, which included  
5 tuberculosis, HIV, and various skin diseases, by placing the detainees whom they  
6 wanted to punish in cells where they were likely to be infected.

7 Detainees were exposed to continuous severe physical and psychological suffering.

8 As set out in the evidence, witnesses describe hearing, day and night, the screams of  
9 those being tortured. They witnessed other detainees being beaten and shot. They  
10 tended to dying cell mates who had been denied medical care.

11 Continuous insults, taunting and humiliation deepened the psychological suffering of  
12 the detainees.

13 P-1673 stated, and I quote: "I felt helpless and devastated. The psychological  
14 torment was worse than the physical pain. The humiliation left deep scars on my  
15 psyche." End of quote.

16 P-1026 reflected, and I quote: "I have never seen such horrible things. It is as if they  
17 were coming from another planet, they are not humans treating people that way. I  
18 think if in the future they were to catch me again, I would rather die than go back  
19 there." End of quote.

20 Witness P-0486 likened being detained at Mitiga to falling into a well with smooth  
21 walls, a well that you cannot get out of. Detainees were repeatedly and severely  
22 beaten during their incarceration, including sexualised acts of torture. Some  
23 detainees were left in such a bad state that they were transported back to their cell in  
24 a wheelbarrow. Others died as a direct result of the torture they endured.

25 The women's section of Mitiga Prison was under Khaled El Hishri's direct control

1 during the period of the charges. Witnesses describe the abuses that  
2 Khaled El Hishri and other Mitiga perpetrators inflicted on these women. They  
3 were shot, whipped, suspended from the ceiling, dragged by their hair, raped,  
4 touched and beaten until they bled. Their own children often witnessed the violence  
5 against them. The evidence also shows that minors were themselves beaten,  
6 tortured, shot and raped.

7 P-0943, a woman detained at the prison, described one of her interrogations and I  
8 quote: "The interrogators cursed at me [...]. They ripped my veil off during the  
9 interrogations and ordered me by saying, 'talk you dog'. [...] In my culture it is the  
10 end of a woman's life if a man takes her veil off against her will. It is very insulting  
11 for a man to do this. It [...] showed that they could do anything they wanted with  
12 a female prisoner. I felt completely powerless and vulnerable, [...] I felt like everything  
13 was over. I became completely depressed by these actions." End of quote.

14 The evidence demonstrates widespread sexual violence against Libyans and  
15 non-Libyans alike -- men, women and children. Rape, the threat of rape, forced  
16 nudity, and beatings on reproductive organs, to name only a few such abuses,  
17 occurred regularly to detainees irrespective of their age or gender and, sometimes,  
18 because of it.

19 As set out in our brief and in the evidence, and as you will hear further today,  
20 detained victims were enslaved and persecuted on multiple, intersecting grounds.  
21 The detainees were also each the victim of not just one crime, but multiple crimes  
22 committed against them repeatedly throughout their detention.

23 Witnesses recounted that Khaled El Hishri committed some of these crimes himself.  
24 At other times, they were committed by his co-perpetrators and by associates over  
25 whom he exercised authority.

1 These were not isolated acts of rogue Mitiga Prison guards. These crimes were  
2 deliberate, widespread and systematic. The evidence shows that Khaled El Hishri  
3 embodied and induced the behaviour that he expected from all SDF/RADA members  
4 and associates by killing, shooting, torturing, beating, insulting, and sexual assaulting  
5 detainees himself. He reprimanded the guards whom he deemed were too lenient.  
6 Witness P-0720 recounted that when a prison leader wanted to take detainees for a bit  
7 of exercise and sun, Khaled El Hishri refused, stating, "what are you doing, you are  
8 trying to help them, we are trying to make them die".

9 Witness P-1736 was detained in the women's section of Mitiga Prison and recalls that  
10 one day Khaled El Hishri brought in two young male detainees who appeared to  
11 have been severely beaten. He ordered the women not to give them any water or  
12 food, warning that if they did, the women would take their place and be punished.  
13 He told the two male detainees, and I quote: "You are not worth killing. You will  
14 die here." They did not survive.

15 Witnesses describe that this sense of powerlessness endured long after their release.

16 Witness P-0872 explained, and I quote: "Because of what happened to me, I never feel  
17 safe and relaxed. I am always worried that they will come back and arrest me. I  
18 lost everything." End of quote.

19 The impact extended far beyond the detainees themselves. Families suffered from  
20 years of separation. Witness 1046 stated, and I quote: "Talking about visits from  
21 my family makes me [feel] very emotional. I hardly saw them [when] I was in  
22 prison. My young children grew up [when] I was detained and my adolescent boys  
23 who had been adolescents when I was arrested had beards when I was released."  
24 End of quote.

25 Other witnesses recounted that their children no longer recognised them when they

1 were released.

2 Some of those who survived their detention at Mitiga Prison accepted to become  
3 witnesses in these proceedings, often at personal expense. Throughout the  
4 investigation, my office heard numerous witnesses recount their ordeal and describe  
5 its long-lasting impact.

6 Their lives were shattered by their unlawful imprisonment and abuse at Mitiga Prison.  
7 The abuse inflicted in detention permeated every aspect of the victims' lives and it  
8 continues to haunt them long after their release. For them, the nightmare continues.  
9 Many are still suffering from permanent physical disabilities. Others are trying to  
10 recover from the psychological trauma resulting from years of detention and  
11 sustained abuse.

12 Witness P-1682 poignantly described the devastating impact of detention at Mitiga  
13 Prison on his life. And let me quote his words:

14 "The arrest and torture were not just a fleeting incident that came and went, they were  
15 an earthquake that shattered everything I had believed to be stable in my life. Since  
16 that day, I have carried the weight of anxiety in my chest, as if even my own breath  
17 no longer belonged to me, as if safety had become a distant unreachable idea.

18 My relationships crumbled, my image was distorted in the eyes of others, and my  
19 career was destroyed without reason, simply because I was a victim [at] a time that  
20 does not recognise victims.

21 The voices of the oppressed, the screams of the tortured, and the darkness of the cold  
22 cells still inhabit my mind and soul. I have not truly left the prison, my body left,  
23 but my spirit remained imprisoned within it.

24 I carry those memories like a wound that will never heal, searching through this pain  
25 for justice, for a sense of fairness, for a light that could dispel the darkness they

1 planted in my depths.

2 The arrest did not only take my freedom temporarily, it stole years from my life and  
3 left scars that continue to bleed silently to this day." End of quote.

4 Abuse continues to define the lives of those still detained at Mitiga Prison.

5 Accountability and the right to truth are mutually reinforcing pillars of international  
6 justice. In cases of unlawful detention and abuse, accountability serves not only  
7 punitive purposes but also vindicates the victims' right to know the fate of detainees,  
8 the circumstances that enabled the crimes, and the identity of those responsible.

9 The need for accountability in this case is exemplified by the words of Witness P-1736.

10 Khaled El Hishri tortured and raped her while she was detained at Mitiga Prison.

11 During her detention, she told him that one day she would face him and seek justice  
12 for the wrongs he committed against her. During an interview with my office, she  
13 declared, and I quote, "I will be reborn when justice is achieved." End of quote.

14 Madam President, your Honours, the independent and impartial justice that this  
15 Court can deliver is a beacon of hope for victims. These crimes must end and must  
16 not recur.

17 I would like to express my gratitude to the victims, the witnesses and the civil society  
18 organisations who displayed patience, resilience and a resolute belief in justice  
19 despite the passage of time and the apparent obstacles in bringing this case to court.

20 Madam President, I respectfully submit that this case should be committed to trial.

21 To conclude the Prosecution's opening remarks, my colleague Mr Hesham Mourad  
22 will now address the Court in Arabic.

23 PRESIDING JUDGE MOTOC: [10:45:10](Interpretation) Thank you very much. We  
24 now move to the Legal Representatives of Victims' submissions.

25 Would you like to continue? Over to you, sir.

1 MR MOURAD: [10:45:29](Interpretation) Thank you very much, your Honour.

2 Your Honours, as the confirmation of charges hearing begin today, the hopes of the  
3 victims lie in the proximity we are at now to achieve justice.

4 This case covers 17 counts of war crimes and crimes against humanity, including  
5 murder, torture, rape, physical violence, sexual violence, enslavement, persecution.

6 These serious crimes occurred over the course of more than six years and targeted  
7 victims who were detainees in Mitiga or who were under the control of the RADA  
8 force in Tripoli and its surroundings.

9 As we shall show during the remarks on the merits during today's hearing and  
10 tomorrow, Khaled El Hishri, along with others, such as Abdalraouf Kara, Osama  
11 Njeem and others, established an institutionalised and systematic system of torture,  
12 enslavement, persecution, and control, in addition to other serious violations, that are  
13 not only breaches of the law but also violate the most basic and fundamental human  
14 values recognised by all mankind and which cannot be justified by any religion,  
15 reason or conscience.

16 What makes these crimes worse, possibly, is the fact that the perpetrators claimed  
17 commission of such crimes in the name of religion, when religion is innocent of such  
18 claims.

19 These crimes have affected thousands of victims, including men, women, and the  
20 elderly. Even children were not spared from the gravity of these crimes.

21 Some were direct victims of these crimes, others were forced to see the commission of  
22 such crimes committed against the people who were closest to them; their very own  
23 fathers, mothers, in complete powerlessness and defencelessness, leaving long-lasting  
24 scars for the remainder of their lives.

25 These victims were multiple in nationality, but the majority of these victims were the

1 children of the very same people that Mr Khaled El Hishri comes from and those who  
2 were his associates in crime. The children of the Libyan, the dignified Libyan people  
3 for whom we have utmost appreciation and respect, a people of rich history, proud  
4 and decent. It is very painful to see heinous crimes such as those crimes committed  
5 against the dignified children of these people.

6 In this regard, I am reminded by something a witness said in an interview with  
7 representatives of the OTP. This person was describing the crime inflicting on them  
8 that shall not be erased by time. I quote:

9 "Not a day passes in my life and in the life of my family without seeing the impact of  
10 my detention and the torture that happened to me while detained. The physical  
11 scars left by torture remain visible on parts of my body, reminding me every day of  
12 the pain, fear, and humiliation I was subjected to. As to the psychological impact, it  
13 is deep. I remember the beating and the torture constantly. I still see them beating  
14 me. I still smell the odour of the place where I was detained. These flashbacks  
15 come back to me constantly. The weight of those moments still accompanies me."

16 Unquote.

17 Your Honours, having shared this short quote from the witness with you, I would like  
18 to seize this opportunity to express the OTP's appreciation for this witness and for all  
19 witnesses who shouldered significant burdens and exposed themselves and their own  
20 families to great dangers in order to present statements to the Court and to provide  
21 the needed evidence, thanks to which this case has reached this important stage of the  
22 proceedings.

23 On behalf of the OTP, I would like to say to those witnesses and to all victims that  
24 justice is closer today than before. Today, your voices are heard before this esteemed  
25 panel of judges of this Court as it seeks to administer justice long sought for.

1 Your Honours, with this -- with these brief remarks I conclude the opening statements  
2 of the Prosecution. Thank you very much.

3 PRESIDING JUDGE MOTOC: [10:51:47](Interpretation) Thank you very much,  
4 Mr Mourad.

5 And now we can now move to the opening statements of the Legal Representatives of  
6 Victims. And we have until half past 11.

7 So, Ms Pellet, over to you, Madam.

8 MS PELLET: [10:52:07](Interpretation) Thank you very much, your Honour. We  
9 might have to slip over from 11.30, \* but we shall stick to the 45 minutes we have been  
10 allocated, in any case.

11 Your Honour, honourable members of the Bench, we appear before you today on  
12 behalf of the 64 victims authorised to participate in these proceedings, and that's since  
13 11 May last. These victims, civilians held in Mitiga Prison - men and women of  
14 Libyan nationality, African migrants and other foreign nationals - experienced  
15 a hellish prison in which the law had no place and which was replaced by violence,  
16 coercion and fear.

17 \* We also appear, your Honours, on behalf of their respective families, whose lives  
18 have been forever affected by the unlawful detention of their loved ones and/or death  
19 of the latter. For the victims, this day has been 10 years in the coming. This hearing,  
20 far from being a straightforward formality, constitutes a crucial stage in  
21 understanding, or at least to attempt to understand, the unspeakable, thereby  
22 enabling their suffering to be at last recognised, and for justice to be done on their  
23 behalf. For the majority of these victims, understanding is key in trying to surmount  
24 these tragic events.

25 It means finally, making sense of their horrific experience by judicial recognition of

1 the apparatus of violence and abuse involved, of individual responsibility as well as  
2 clarifying the overall context. Without this level of understanding, the prejudice  
3 incurred will persist under a different guise, impinging on the victims' sense of  
4 dignity and a feeling of safety and closure.

5 \* For many, like for victim a/00003/26, it is only through legal recognition and judicial  
6 truth that victims can begin to come to terms with what they have endured and,  
7 however difficult it may be, start to move towards recovery. I quote:

8 "I make this application both in the conviction that the International Criminal Court is  
9 the resort, or last resort for victims when the national justice system is inoperative,  
10 and in the certainty that justice knows no temporal limit and that human dignity  
11 deserves protection and recognition." End of quote.

12 The number of victims participating in these proceedings, your Honours, is by no  
13 means indicative of the scale of victimisation in this case. The participating victims  
14 make up a tiny proportion of all the victims affected by the crimes for which

15 Mr El Hishri is a suspect. Indeed, a much larger number of victims was subjected to  
16 the same system of abuse, but not all have applied to participate before this Court.

17 Some reside in Libya or elsewhere, where conditions of safety and fear prevent them  
18 from coming forward. Others are unable to do so because of the trauma they  
19 endured, or because, sadly, they didn't survive the atrocious prison conditions and  
20 torture inflicted on them in Mitiga between 1 May 2014 and 30 June 2020.

21 Their absence in no way undermines the reality of the facts, your Honours, nor does it  
22 weaken the case before your Honours. On the contrary, Madam President,  
23 honourable members of the Bench, their absence casts light on the scale of the crimes  
24 committed in Mitiga and the large number of voices that have gone unheard.

25 The victims' experience vary considerably. They do, however, converge upon an

1 essential common reality; namely, Mitiga was a place where human beings were  
2 stripped of their dignity, exposed to systematic violence and abuse, and yielded up to  
3 the absolute power of those who controlled it -- namely, RADA.

4 Four distinct groups of victims emerge: Libyan nationals, non-Libyan detainees,  
5 women and their children, as well as the families of the detainees. Each group  
6 highlights a specific facet of the same system of detention and violence, which shaped  
7 the reality of life at Mitiga and which attaches to the responsibility of this suspect as  
8 one of the main perpetrators.

9 For every victim, their ordeal began upon their arrest. The circumstances of the  
10 arrests themselves reveal a pattern of persecution. Victims were apprehended  
11 suddenly at checkpoints, in their home, in their place of work or in the street.

12 Armed men appeared without warning. There was no judicial due process, no  
13 warrant, no legally grounded reasons. Instead, your Honours, spurious accusations.

14 In fact, numerous victims were singled out for their supposed political opinions, their  
15 presumed affiliations or simply because of their geographical origins; their wealth or  
16 their nationality; or their sexual orientation, genuine or supposed; or, again, in order  
17 to apply pressure on their husband, their family or their nearest and dearest. \* They  
18 were subsequently branded as traitors, terrorists, supporters of opposing groups to  
19 RADA or of Daesh, apostates or any other bogus label designed to justify their  
20 detention. Violence went systematically hand in hand with these arrests; they were  
21 part of a coercion apparatus designed to exercise immediate control, to shatter any  
22 resistance and instil fear, even before the victims arrived at Mitiga.

23 \* Accordingly, in many cases, victims were beaten upon capture, they were insulted,  
24 they were humiliated, and restrained even before their transfer to the prison. And,  
25 Madam President, your Honours, this initial violence was in no way peripheral.

1 The victims were then taken to Mitiga where they were held without any legal basis --  
2 I've said this -- without any judicial process and, therefore, with no genuine means to  
3 challenge their detention. They were totally subjected to the will of those who  
4 controlled the facility; namely, the members of RADA -- among whom, Mr El Hishri.  
5 Numerous families didn't even know where their loved ones were held, or whether  
6 they were still alive, but we shall return to this point, your Honours.

7 The instant they arrived at Mitiga, the victims were confronted with conditions which  
8 beggared belief, marked by systematic violence and abuse, extreme hardship, and  
9 a relentless atmosphere of fear and humiliation. Some were even placed in solitary  
10 confinement in cells so small that any movement was nigh on impossible. These  
11 were not spaces designed to house human beings and, yet, people were held there for  
12 long periods. Other victims were held in larger cells, but which were nonetheless  
13 areas of extreme suffering. These areas were overcrowded, housing dozens of  
14 detainees; sometimes more than 80 men would occupy a single cell. There wasn't  
15 enough room to lie down. Prisoners had to sleep in what they themselves described  
16 as the "knife" position; namely, lying on one's side, tightly packed against each other,  
17 their bodies in rows. The slightest movement required everybody to move as one.  
18 When a prisoner turned over, everyone had to turn over at exactly the same time.  
19 Even sleep was a rare privilege. Some detainees could only rest for a few hours at  
20 a time, while others had to stay standing for long periods, for want of enough space  
21 for everyone to lie down at the same time.

22 Inside these cells, an internal pecking order appeared. Prisoners who'd been  
23 incarcerated the longest would appropriate what little space was available along the  
24 walls. New arrivals would be relegated to the middle of the cell or next to the  
25 so-called toilets used by dozens of detainees without a shred of privacy or suitable

1 sanitation. Here again, access had to be organised. And these conditions were  
2 described by victim a/00023/26 in these terms. I quote:  
3 "You had to queue to go to the toilet and you could only actually get there after 40 or  
4 so other detainees had been there before you, making it very difficult to manage your  
5 most basic bodily needs. So we developed health conditions like constipation,  
6 haemorrhoids and urinary infections, unable to relieve ourselves when we had to.  
7 We had to sleep standing up, swapping over every six hours to get a place to lie down  
8 in. The allotted space for each prisoner was never greater than the span of a single  
9 stride or one-and-a-half strides which brought on varicose veins due to a standing  
10 position for long periods." End of quote.

11 There was no ventilation. Lighting was minimal, even totally absent. It was stifling.  
12 Food was inadequate, both in quantity and in quality. Hunger was a constant.  
13 Access to water was severely restricted. As stated by victim a/00004/26, and I quote:  
14 "In the prison, conditions were extremely bad. I lost more than 45 kilos for lack of  
15 food, malnutrition and overcrowding in the cells. There was more than 42 of us  
16 crammed into a cramped cell. \* I suffered from scabies or constant itchiness  
17 throughout the entire time I was imprisoned and, despite my repeated requests, I  
18 never received treatment or medicine." End of quote.

19 Madam President, your Honours, for the victims, time lost all meaning, day melted  
20 into night and night into day. Some had been held for months, others for years.  
21 None knew when or if they would ever regain their freedom or whether their  
22 imprisonment would one day come to an end.

23 But the conditions of detention were only a part of the system set up by RADA.  
24 Violence at Mitiga was a daily occurrence. Prisoners were regularly removed from  
25 their cells for interrogation where questions weren't to establish the truth, but to break

1 people's will.

2 As my learned friend from the Prosecution, the Deputy Prosecutor, stated, victims  
3 reported blows, being hanged on hooks, electrocution, forced into contorted body  
4 positions, and repeated acts of humiliation. They heard the cries of other detainees.  
5 They saw some return injured or mentally wrecked, and they witnessed people  
6 leaving but never to return.

7 These methods of torture were used routinely as part of an apparatus of abuse, both  
8 systematic and deliberate.

9 In addition to physical violence, unrelenting psychological cruelty was used at Mitiga.  
10 Detainees were insulted, derided, often in terms directed against their families.  
11 Their suffering was mocked, their calls for help ignored, their humanity constantly  
12 negated. Some prisoners died from the after-effects of torture. Others succumbed  
13 to the cumulative effects of custody, injuries, illness, and neglect, Madam President,  
14 your Honours.

15 Victim a/00014/26, described the situation as follows, and let me quote:

16 "Sometimes torture involved stubbing out cigarettes on our bodies. We were also  
17 hang up by our wrists above our heads. The process was extremely hard. Food  
18 was systematically limited, reduced to the daily ration of a small piece of bread and  
19 a litre of water. In winter, we were left with no clothes or heating, and in the  
20 summer no airconditioning. Skin disease spread, leaving lasting marks on my back.  
21 Tuberculosis also spread, affecting 10 people, who all died." End of quote.

22 Beyond the physical violence meted out daily and during interrogations, victims  
23 describe omnipresent sexual violence at Mitiga. Detainees were subjected to rape  
24 and other forms of sexual violence as part of the same system of coercion, punishment  
25 and control. Victims describe how these forms of violence were used to humiliate,

1 dehumanise and break the will of detainees. These acts came with threats, insults  
2 and in an environment in which any scope for resistance was systematically crushed.  
3 Madam President, your Honours, for women prisoners there was a constant risk of  
4 sexual violence and their detention made them acutely more vulnerable. Held in  
5 a separate area of the prison, they were at the mercy of those controlling access to  
6 their cells. Detainees held in neighbouring sections could hear the women's cries.  
7 These cries went through walls and contributed to establishing a climate of fear and  
8 powerlessness throughout all of Mitiga Prison.

9 Sexual violence was therefore neither kept secret nor isolated. It was known. It  
10 was an integral part of the prison environment. And as with other forms of violence  
11 and abuse, it was part of a system where power was exercised without limit, but with  
12 total impunity.

13 Indeed, Madam President, Your Honours, the experience of women detainees in  
14 Mitiga reveals an additional layer of cruelty within this system of abuse. It was  
15 a place where women's bodies, their dignity and their identity were as such  
16 deliberately targeted.

17 The women's section came entirely under the suspect's control. Victims constantly  
18 describe him as having sole authority over that section. Only he had the keys.  
19 Only he opened the doors. Nobody went in without his knowledge and his  
20 approval. Nothing happened in the women's section without his consent, without  
21 the consent of Mr El Hishri.

22 And this absolute control placed each female detainee in a position of total  
23 dependency on the suspect. Even their most basic needs - sanitary towels, medical  
24 care, access to the outside air, religious materials or simply being able to leave their  
25 cell - was left up to him.

1 \* Pregnant women and women giving birth were refused urgent medical care.

2 Newborn infants died for lack of medical assistance. Other women were in custody  
3 with their young children, children who witnessed the violence inflicted on their  
4 mother.

5 But it was the bodily violence and the outrages upon women's dignity which both left  
6 the profoundest mark on these women's experience, your Honours. And in addition  
7 to the physical violence, they suffered humiliation, deliberately directed against them  
8 as women. \* For numerous victims, this humiliation was just as devastating as the  
9 blows themselves.

10 Their breasts, their buttocks, and their genitals were deliberately touched under the  
11 pretext of a body search or movement to another location. Other victims report  
12 having been totally undressed under a hail of abusive language, such as whore,  
13 animal, bitch or bitch seed. Their headscarfs were torn off during interrogations, a  
14 deeply humiliating and symbolically violent act, particularly connotated in the  
15 cultural and religious context in Libya, as the Deputy Prosecutor reminded us of  
16 a moment ago.

17 The women report that these experiences left them with a feeling that their lives were  
18 broken and that they had lost their honour, their family status, and in some cases  
19 their future. This is important in Libyan society where imprisoning a woman is  
20 enough in and of itself to produce deep and long-lasting stigma. The mere suspicion  
21 of rape can lead to being rejected by one's family and put an end to any prospect of  
22 marriage or social integration.

23 Several women stated having lived in a permanent state of fear of falling victim to  
24 sexual violence, a fear which, for some sadly, materialised. Indeed, some victims  
25 describe rape, sexual assault, and repeated sexual harassment inside Mitiga's walls.

1 Some offer accounts of being assaulted directly by Mr El Hishri, including the threat  
2 of a firearm, they described forced nudity, anal penetration and sexual contact  
3 accompanied by degrading insults and death threats. Other women of varying  
4 nationalities were repeatedly raped, some becoming pregnant and compelled to  
5 undergo abortions.

6 Madam President, your Honours, this atmosphere of fear was a constant. At Mitiga,  
7 the mere sound of keys in the corridor was enough to trigger panic. That sound,  
8 however innocuous, signaled for these women that Khaled El Hishri was  
9 approaching. Victims describe him not only as a guard or an administrator, they  
10 describe him as the very embodiment of the terror that reigned in the women's section.  
11 A man whose voice, whose footfalls and whose jangling keys were enough to reduce  
12 an entire cell to silence.

13 For many women, their trauma wasn't over when they released -- when they were  
14 released. Their traumas' consequences lives on in their body, in their mental health,  
15 in their ability to conceive children and in the way they are seen in their families and  
16 their communities. Some women have reported lasting infertility, chronic pain,  
17 panic attacks, persistent shame associated with the stigma of prison and sexual  
18 violence. For these women, Mitiga hasn't been left behind in the prison. Mitiga  
19 continues, day in, day out.

20 But, Madam President, Your Honours, it's essential at this stage to emphasise that the  
21 suspect wasn't a remote commander. He was there. He was visible. He was  
22 known. \* And he was perfectly identified by the victim. He's described as one of  
23 the most feared torturers in the entire prison. A man who had power of life or death  
24 over every single Mitiga detainee, and not only women.

25 Madam President, I would now like to hand over to Counsel Massidda for the

1 continuance of our opening statements. Thank you.

2 PRESIDING JUDGE MOTOC: [11:18:10](Interpretation) Thank you very much, Ms  
3 Pellet.

4 Ms Massidda, you have the floor.

5 MS MASSIDDA: [11:18:17](Interpretation) Thank you very much. My submissions  
6 will take 20 minutes or so, so I call upon your indulgence to complete in this block.

7 PRESIDING JUDGE MOTOC: [11:18:25](Interpretation) You can have the time that  
8 you require.

9 MS MASSIDDA: [11:18:28] Madam President, your Honours, alongside Libyan  
10 detainees, migrants were also held within Mitiga.

11 The accounts of the victims demonstrate that the suffering of migrants is not  
12 accidental. It is the result of structures of abuse, militia control and international  
13 complicity that allowed Mitiga and other detention facilities in Libya to operate with  
14 impunity for years.

15 Many migrants had already endured violent interception at sea by the so-called  
16 Libyan coast guard, only to be returned to Libya against their will and immediately  
17 detained.

18 They believed they had already survived the worst. They had not.

19 The experience of migrant victims cannot be understood as mere detention. It was  
20 a system of enslavement, a system in which those in control exercised power akin to  
21 ownership.

22 In the words of a/00043/26, I quote:

23 "I didn't just feel like a slave, they called us slaves. That's all they called us. They  
24 didn't use our names, just referred to us as slaves [...]. It was used to insult and  
25 humiliate us as much as possible." End of quote.

1 Migrants were placed at the very bottom of the hierarchy at Mitiga. They were  
2 treated as disposable.

3 A/00033/26 explains, I quote:

4 "They limited our sleep because they needed us to work. They referred to us as  
5 slaves. If you told them your name, it didn't matter. They just said, 'Hey you,  
6 slave,' and gave us orders." End of quote.

7 Like other detainees, migrants were held in overcrowded, unsanitary and degrading  
8 conditions, deprived of food and basic needs. But their treatment often went further.  
9 They were subjected to stricter control, harsher punishment and constant surveillance.  
10 Violence and threats enforced their detention. Escape was impossible. Resistance  
11 brought immediate and severe consequences.

12 What most clearly distinguishes the experience of migrants victims is the systematic  
13 exploitation of their labour. Migrants were forced to work, never voluntarily,  
14 always under coercion and fear. They were compelled to perform exhausting,  
15 degrading tasks.

16 As a/00030/26 recalls, I quote:

17 "Feeling like a slave every day, being beaten, and being forced against my will to do  
18 hard labour was degrading and I felt helpless." End of quote.

19 They cleaned cells and facilities in unsanitary conditions, transported heavy goods,  
20 carried out construction work, and performed duties that placed them in direct  
21 proximity to the violence perpetrated at Mitiga.

22 A/00043/26 described the relentless nature of this exploitation in these words, I quote:

23 "They made us work continuously. We worked from around 6 a.m. until the early  
24 evening, like around 6 p.m., then we would rest for one or two hours, and then they  
25 came and made us work again until the early hours of the morning, then we would

1 rest again for one or two hours. They only gave us these short breaks to keep us  
2 alive, so they could keep us working more." End of quote.

3 Migrants were also compelled to assist in the abuse of other detainees. Forced to  
4 facilitate strip searches, to restrain detainees during interrogations or to escort them to  
5 torture site. Some were made to supervise, guard or discipline other detainees,  
6 placed in positions of authority under coercion, transforming victims into instruments  
7 of the system.

8 Your Honour, this was not incidental.

9 It was integral to the how the system functioned: using one group of victims to  
10 control and harm another.

11 Migrants, like other detainees, were subjected to forms of control that were deeply  
12 sexualised, gendered, and degrading.

13 They were forced to undergo invasive body searches.

14 They were stripped, exposed, humiliated.

15 They were subjected to sexual violence, sexualised torture, and threats of rape -  
16 including violence targeting intimate parts of the body, their reproductive autonomy,  
17 and pregnant women. Sexual violence was not separate from the system of  
18 enslavement, it was part of it. It reinforced domination, submission, and the  
19 complete denial of autonomy, protection, and rights.

20 Psychological control was equally pervasive.

21 Migrants faced constant threats - against themselves and their families.

22 They were insulted, dehumanised, and reduced to derogatory stereotypes.

23 Fear shaped every aspect of daily life, reinforced by violence, humiliation, and the  
24 suffering they witnessed around them.

25 The system also operated through coercion disguised as "choice".

1 Some migrants were offered apparent "privileges" - slightly better conditions, reduced  
2 violence, minor advantages - in exchange for compliance.

3 But these were not real choices. They existed within a context where refusal meant  
4 punishment and survival depended on submission.

5 What emerged from the accounts of migrant victims is not a collection of isolated acts.  
6 It is a system.

7 A system in which migrants were targeted because of who they were - because of  
8 their nationality, their skin colour, their perceived status.

9 A system in which they were assigned the most dangerous, degrading, and violent  
10 roles.

11 A system in which their vulnerabilities was exploited at every level.

12 For these victims, Mitiga was not only a place of suffering.

13 It was a place where their labour was exploited, their bodies controlled, and their  
14 dignity denied - where they're made to exist for the benefit, the power, and the  
15 violence of others.

16 Madam President, Your Honours, the suffering caused by what happened in Mitiga  
17 did not end at the prison gates.

18 It extended into families, into homes, and into the daily lives of those who were left  
19 behind.

20 Families of detainees lived in a state of constant uncertainty.

21 When their relatives were arrested, they were not told where they had been taken.

22 For day, weeks, sometimes months, families searched desperately for answers about  
23 the fate of their loved ones.

24 A/00027/26 describes this ordeal with these words, I quote:

25 "After their kidnapping by the Rada militiamen, we did not know where they were

1 and we looked for them everywhere for a long time until we finally learnt they were  
2 in Mitiga. Not knowing where they were was unbearable." End of quote.

3 Even when detainees were eventually located, contact remained severely restricted.

4 Visits - when permitted at all - were often conducted by video, delayed without  
5 explanation, or suspended entirely for long periods.

6 During these silences, families lived with a single, overwhelming fear: that their loved  
7 one had died.

8 A/00019/26 explains, I quote:

9 "We were consumed by fear, believing he had died in detention. Even when contact  
10 was allowed, it was not in person; it was conducted via a camera and a screen. He  
11 appeared in a terrible condition, severely emaciated in a frightening way". End of  
12 quote.

13 This uncertainty became a form of suffering in itself.

14 Children grew up not knowing whether their fathers were alive.

15 Mothers waited without answers.

16 Families lived suspended between hope and despair.

17 The economic consequences were devastating.

18 In many households, the detained person was the primary provider. Their sudden  
19 disappearance plunged families into financial hardship. Families were forced to sell  
20 property, businesses, and personal belongings simply to survive.

21 Children were forced to stop attending school because their families could no longer  
22 afford the costs of education.

23 As a result, opportunities were lost. Futures were permanently altered.

24 The social consequences were equally severe.

25 A/00050/26, recounts, I quote:

1 "We were unable to find him or to know his whereabouts for a long time which was  
2 extremely difficult [...] for the entire family. I was very worried about him because I  
3 could not visit him and I had no news about him which [...] caused so much stress. ...  
4 They took our money, our happiness, why? Why would they bring us such injustice?  
5 They left us with nothing, except for constant pain and fear." End of quote.

6 Children of detainees like a/00037/26 were bullied and stigmatised.

7 Families faced pressure, intimidation, and a pervasive sense of insecurity. They felt  
8 watched, vulnerable, and exposed.

9 Some families learned - often indirectly - that a loved one had died in detention.

10 They were denied the opportunity to say goodbye. Denied even the dignity of  
11 seeing them one last time.

12 And even when detainees were eventually released, the suffering did not end. They  
13 returned weakened, often seriously ill or with permanent disabilities, bearing the  
14 visible and invisible scars of months, often of years of detention, torture, and neglect.

15 Their families then carried a new burden: the cost of medical treatment, weight of  
16 trauma, and the realisation that life would not simply return to what it had been.

17 A/00009/26 describes, I quote:

18 "In the first period after my release, I was overwhelmed by fear and [...] unable to  
19 return to my normal life. I stayed at home and did not dare [to] go out alone. I was  
20 always accompanied by my mother because I was afraid of being abducted again".

21 End of quote.

22 For many families, the damage is lasting.

23 A/00053/26 was excluded from her family because of her husband's detention. She  
24 explains, I quote:

25 "I lost my life, I lost my job, [I lost] my friends, my family and I am in constant fear

1 because of what happened to my husband. I also lost the possibility of being  
2 a mother because he became completely infertile as a result of the events he  
3 underwent in Mitiga." End of quote.

4 These families continue to live with fear, particularly in a context where some  
5 responsible for the detention remain present and influential. They continue to  
6 experience anxiety, insecurity, and the lingering effects of years of uncertainty,  
7 hardship, and stigmatisation.

8 These families are also victims.

9 They suffered not only because of what was done to their loved ones, but because of  
10 what that loss, that absence, and that uncertainty did to their lives.

11 These victims seek recognition of that suffering. Recognition that the crimes  
12 committed in Mitiga extended beyond the walls of the prison. And they, too, seek  
13 justice.

14 Madam President, your Honours, the harm suffered by all victims is profound and  
15 enduring.

16 Many continue to live with physical injuries: damaged limbs, chronic pain, untreated  
17 wounds, permanent disabilities.

18 Others carry psychological trauma: nightmares, anxiety, and a fear that persists long  
19 after their release.

20 Their lives have been fundamentally altered.

21 Families have been broken.

22 Livelihoods lost.

23 Futures disrupted.

24 For victims, the experience of Mitiga did not end with their release.

25 It continues - every day - in memory, in fear, and in the struggle to rebuild their lives.

1 And yet, despite all they have endured, they have chosen to come before this Court.

2 All the victims participate in these proceedings because they want the truth to be

3 known. Because they want what happened inside Mitiga to be recognised for what

4 it was: a system of crimes.

5 They seek accountability - for those who ordered, enabled, and carried out these acts.

6 They seek acknowledgment - that their suffering mattered.

7 And they seek justice - not only for themselves, but for those who did not survive, for

8 those whose voices can no longer be heard, and those who still wait for freedom.

9 Madam President, your Honours, today's hearing marks a historic moment. One

10 year ago, victims felt utterly abandoned - forced to watch Mr Osama Njeem evade

11 surrender to the Court and then be repatriated, a sequence of events that struck them

12 as a profound betrayal of their pursuit of justice.

13 Today, they see a long-closed door cracking again, and with it, the first real sign that

14 justice may finally begin to move toward them rather than away.

15 This case marks a moment of profound consequence - not only for the suspect, not

16 only for the victims, but for the enduring principle that law must triumph over

17 violence, and that human dignity must prevail over fear.

18 For years, the walls of Mitiga concealed suffering. They concealed torture,

19 humiliation, exploitation, and the destruction of human lives.

20 But today, in this courtroom, those walls no longer shield the truth. The victims

21 have brought the truth before you. They have carried it with courage, with dignity,

22 and with a determination that no system of abuse could silence or destroy.

23 This case matters because it affirms that even where the rule of law has collapsed, the

24 reach of justice does not end.

25 It matters because it tells every victim - Libyan, non-Libyan, migrant, man, woman,

1 child - that their suffering is not invisible and their pain is not forgotten.

2 It matters because it affirms what was done to them was not fate, not misfortune, and  
3 not an inevitable consequence of conflict, but crime.

4 And it matters because it sends a message far beyond this courtroom: that those who  
5 wield power to destroy lives will, one day, be called to account; that those who  
6 believe themselves beyond the reach of justice will one day stand where the suspect  
7 stands now; and that the voices of victims - silenced in cells and drowned out by  
8 violence - will ultimately be heard, loud and clear, in a court of law.

9 Madam President, your Honours, this is why victims are here, enduring the pain of  
10 remembrance. Not for vengeance. But for recognition. For accountability. For  
11 justice. And today, they place their trust in this Court, and in the promise that  
12 justice will be done.

13 Your Honours, this concludes our submission and opening statement for the victims  
14 that we represent. We thank you very much.

15 PRESIDING JUDGE MOTOC: [11:39:31](Interpretation) Thank you very much,  
16 Ms Massidda.

17 As previously stated, we must now rise and we shall resume at half past one this  
18 afternoon. Thanks to all.

19 THE COURT USHER: [11:39:48] All rise.

20 (Recess taken at 11.39 a.m.)

21 (Upon resuming in open session at 1.33 p.m.)

22 THE COURT USHER: [13:33:29] All rise.

23 Please be seated.

24 PRESIDING JUDGE MOTOC: [13:34:02](Interpretation) Good afternoon, everyone.

25 I now turn to counsel for the Defence. So, counsel, Mr Hassan, you have 45 minutes

1 for your opening statements.

2 THE INTERPRETER: [13:34:36] Microphone, please.

3 MR HASSAN: [13:34:38](Interpretation) Thank you, Madam President. Thank you  
4 to the esteemed judges.

5 I am aware that this time is not consecrated for the objective arguing about the case.

6 However, I would like to say that we will reply to the Office of the Prosecutor and the  
7 LRV in the coming days.

8 However, unfortunately, I have to say that the charges against Mr El Hishri were  
9 adapted and changed according to reality, and this is what we will prove to the Court,  
10 because the Mitiga Prison is affiliated to the Libyan prosecution and not to the SDF,  
11 and it's affiliated also to the Libyan Ministry of Justice, and the RADA is a  
12 governmental entity and not an armed group. It was established based on  
13 governmental sovereign decisions issued by the highest authorities of the state.

14 However, in this session, we will talk about what we are supposed to talk about.

15 Your Honours, since this case is the first case in the Libya situation before the ICC  
16 where the suspect is present, and in which the jurisdiction, admissibility and the  
17 merits are being discussed, so the Defence has to present to the honourable judges the  
18 full picture of the situation in Libya following the issuance of the Security Council  
19 Resolution 1970 of 2011. This resolution was issued on 26 February 2011 by the UN  
20 Security Council, referring the situation in Libya to the ICC. And here we are today,  
21 15 years later, before the ICC, discussing this resolution.

22 The mandate of the Office of the Prosecutor started in 2011 based on this resolution.

23 This happened because of serious and systematic violations committed by the former  
24 Libyan regime, the regime of President Gaddafi, against human rights directed  
25 against civilians in Libya, including the use of violence and force against them, in

1 addition to the violations of the rights of Libyan civilians as stated in the text of the  
2 resolution \* and the subsequent resolution No.1973 of 2011.

3 And up until today, none of those who were responsible for these crimes from 2011  
4 until 2013 and 2014 have appeared before the Court. The Defence submits that

5 Resolution 1970 has passed through three phases before the OTP since 2011. The  
6 first phase, the first attempt at prosecution by the OTP was through the issuance of  
7 four warrants of arrest against Muammar Gaddafi and his inner circle on charges of  
8 committing crimes against humanity. However, these decisions were not

9 implemented and they were not executed at all. The OTP did not request any  
10 other -- the issuance of any other arrest warrants for this phase. Since 2014 at least,

11 the situation in Libya on the political and military level drastically changed, and

12 Libya descended into a complex -- Libya descended into a complex conflict involving  
13 multiple means and objectives, and Libya was divided into east and west, and there  
14 was wide-scale violence where Libya also witnessed the spread of armed militias and  
15 jihadist groups. And there were also internal struggles for power and change in  
16 political allegiances and external international influences.

17 However, the OTP continued its investigations and this time it focused on alleged war  
18 crimes perpetrated by several armed groups. As a result, a series of warrants of arrest

19 were issued, and these were nine orders for incidents that happened between 2014 and

20 2023. This phase did not lead to any prosecution for any of the suspects. However, in 2022,

21 10 years later, the OTP moved to another strategy, focusing on crimes that happened in a  
22 specific geographical scope and the investigations were constricted here. And here I

23 would like to quote as was said in Tripoli and its surroundings. So they forgot about the  
24 entirety of Libya and they say that -- or \* the procedures against Mr El Hishri represents

25 the third phase of the Office of the Prosecutor's efforts to implement Resolution 1970.

1 And now, a decade and a half later, the OTP is trying to implement its jurisdiction  
2 that was given to them 15 years later. However, the Defence see that this attempt  
3 does not go in line with the meaning of Resolution 1970, and it cannot be accepted  
4 that the Resolution 1970 applies to the case of Khaled El Hishri.

5 So, I will go back now to phase 1.

6 In February 2011, protests broke out in Libya as part of the so-called Arab Spring,  
7 which covered a large part of the Arab region and, according to Human Rights Watch,  
8 on 18 February the official Libyan regime back then responded to those protests with  
9 severe force, and its security forces, the security forces affiliated to the Gaddafi regime,  
10 killed 84 persons in three days. And, according to the same organisation, this  
11 number rose significantly in the following days. However, these protests quickly  
12 turned into armed confrontations between the regime forces and the opposition  
13 fighters who became a party with supporters and institutions both inside and outside  
14 the country. And Amnesty International issued a report saying the following, and I  
15 will quote this report:

16 "After most of eastern Libya and parts of the west, including Libya's third largest city  
17 Misratah, fell to the opposition, al-Gaddafi forces unleashed a brutal military  
18 campaign in an attempt to regain control. They fired indiscriminate rockets, mortars  
19 and artillery shells, [and that is] as well as cluster bombs, into residential  
20 neighbourhoods in opposition-[controlled] areas. Such attacks were particularly  
21 widespread in Misratah, but also took place in and around Ajdabiya and the Nafusa  
22 Mountain. As projectiles rained down, civilians had nowhere [...] to go. Victims  
23 included children and the elderly, Libyans and migrant workers. Many [of them]  
24 died in their homes or while trying to flee."

25 Six days after this report, or on 26 February 2011, this decision, or resolution, was

1 issued.

2 Slide number 5:

3 "*The Security Council,*

4 *Expressing* grave concern at the situation in the Libyan Arab Jamahiriya and

5 condemning the violence and use of force against civilians".

6 I'm talking about the text of the resolution here:

7 "*Deploing* the gross and systematic violations of human rights, including the

8 repression of peaceful demonstrators, expressing deep concern at the death of

9 civilians, and rejecting unequivocally the incitement to hostility and violence against

10 the civilian population made from the highest level of the Libyan government,

11 *Considering* that the widespread and systematic attacks currently taking place in the

12 Libyan Arab Jamahiriya against the civilian population may amount to crimes against

13 humanity,

14 *Recalling* the Libyan authorities' responsibility to protect its population,

15 *Stressing* the need to hold to account those responsible for attacks, including by forces

16 under their control, on civilians,

17 *Acting* under chapter VII of the Charter of the United Nations, and taking measures

18 under its Article 41."

19 So, this is the text, or this these are the reasons that pushed the Security Council to

20 refer the Libya situation to the Court through its resolution. So, these are set out

21 clearly and accurately. So the resolution took place because of these reasons.

22 The Security Council decided to refer the situation to the ICC. So, the Security

23 Council:

24 "*Decides* to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to

25 the Prosecutor of the International Criminal Court;

1 *Decides* that the Libyan authorities shall cooperate fully [...] and provide any necessary  
2 assistance to the Court and the Prosecutor pursuant to this resolution and, while  
3 recognizing that States not party to the Rome Statute have no obligation under the  
4 Statute, and urges all States and concerned regional and other international  
5 organisations to cooperate fully with the Court and the Prosecutor."

6 Madam President, esteemed judges, this is the text of the resolution.

7 And then the Prosecutor of the Court received the case and started the investigation.

8 And on 16 May 2011, or less than three months later -- so it's the same month that we

9 are in now -- the OTP requested issuance of arrest warrants against Muammar

10 Gaddafi; his son Saif al-Islam Gaddafi; and the head of the Libyan intelligence,

11 Abdullah Al-Senussi, on two counts of crimes against humanity -- and these are

12 murder and persecution allegedly committed during the period from 15 February to

13 28 February 2011. And the Court issued the arrest warrants on 27 June 2011.

14 Slide 6. During the course of the investigation conducted by the OTP, the Security

15 Council issued a second resolution on Libya, and that's Resolution 1973 of 2011,

16 authorising member states to take all necessary measures, notwithstanding paragraph

17 9 of resolution 1970, to protect civilians and civilian populated areas, and civilians

18 under threat of attack in the Libyan Arab Jamahiriya, and establishing a no-fly zone

19 above Libya. This was followed by military operations over Libyan territory, carried

20 out by the NATO.

21 Eighteen states participated in the military operations in Libya. Fourteen of them are

22 in the NATO and 4 partner countries. Fifteen countries participated in the air

23 operations and 8 NATO countries dropped munitions.

24 In a report of Human Rights Watch about these military operations, these reports say

25 that at least 72 Libyan civilians, one-third of whom are children, have died. So this

1 report was issued and entitled "Unacknowledged Deaths", and I quote this report, "at  
2 least 72 civilians," as you can see on the screen, "one-third of them children", were  
3 killed as a result of air raids conducted by the NATO. One-third of them are  
4 children in -- so, one-third of them are children. This number is much lower than the  
5 reality, but I will stick to the text.

6 Human Rights Watch also provided details on the victims in eight sites and shed light  
7 that most countries that contributed

8 However, when the Prosecutor asked the NATO Secretary General, Anders  
9 Rasmussen, the latter said "we have no confirmed civilian casualties caused by [the]  
10 NATO [campaign]." However, a while later, the spokesperson of NATO stated that,  
11 "It appears that innocent civilians may have been killed or injured, despite all care  
12 and [caution]" that was taken. So this is quoted from Human Rights Watch.

13 However, Madam President, there is a very important testimony of a Libyan national  
14 on slide 9. So this person called Mustafa Naji al-Morabit, said the following:

15 "My family has been destroyed; I lost my two little boys and my wife, Ibtisam, who  
16 was also my best friend. It is really difficult to go on now in this life, to get up every  
17 day and face life; I tell myself that I must find the strength for my only child that I  
18 have left in this world. He cannot forget the horror that happened to him on that  
19 day, when his -- the bodies of his mother and little brothers were blown to bits. How  
20 can I help him to overcome this trauma? I myself can't cope with this new situation,  
21 and I cannot find anyone to turn to. Nobody from the NATO contacted me, neither  
22 from the authorities has gotten in touch to ask what happened or to offer an  
23 explanation of what happened or to even say one word of apology. We are living a  
24 miserable life; we have nothing left, our home and everything in it were destroyed."  
25 End of quotation.

1 Now I will talk about the stance of the OTP when it comes to the NATO aggression  
2 against civilians, and this was mentioned only in four reports.

3 In the first report, the OTP did not acknowledge directly in its report to the UN  
4 Security Council that the air raids of the NATO has led to the killing of any civilians.

5 However, in the second report submitted to the Security Council as well, the OTP said  
6 the following, I quote: "We have visited the NATO office and the NATO -- we will  
7 wait for the NATO's reply based on the investigation". So we are talking about  
8 paragraph 57 of the report.

9 So here we can clearly conclude that the Prosecutor of the ICC had an assessment that  
10 attacks against Libyan civilians by certain NATO forces were a matter requiring  
11 investigation.

12 Slide 10. In the third report, the Office of the Prosecutor confirmed that its mandate  
13 included alleged crimes committed by all parties. It also stated in the third report  
14 that it was assessing the existence of genuine national proceedings and that the states  
15 participating in the military operation bore the responsibility of the investigation,  
16 whether their forces were involved through negligence or otherwise, in any criminal  
17 activity. The Office of the Prosecutor also stated that it will monitor these  
18 proceedings in order to determine whether it should conduct its own investigations.

19 So, there are those who acknowledged that the crimes were perpetrated and they  
20 need to be investigated, but they will wait for the national procedures to see whether  
21 to investigate or not.

22 So this acknowledgement and the national proceedings about incidents that  
23 happened in Libya were only given by the OTP to first world countries. However,  
24 in the fifth report issued in May 2013, the OTP stated once again that it remains in  
25 contact with the NATO and the Libyan authorities, and this time it added that it was

1 in contact with the Libyan authorities concerning investigations related to possibility  
2 of incidental loss of life. It also confirmed that it had no information allowing it to  
3 conclude that the air raids of the NATO have led to loss of lives, and that they also  
4 targeted civilians and had an excessive -- or exceeded their military targets only.

5 So, in the fifth report, we move to page 3. Here, the Office of the Prosecutor  
6 acknowledges the national proceedings that happened in the first world country and  
7 now move jurisdiction to first world countries about the incidents that happened  
8 outside of these countries' territories. However, this time it added Libya,  
9 considering that Libya is able to do the same and make its own national proceedings.

10 So this is the text of the report submitted by the Prosecutor.

11 However, after this fifth report, the case disappeared completely from all the reports  
12 of the Prosecutor and they were never mentioned anymore. So we are talking here  
13 about the incidents of 2013. So, there was no clear -- or 2011. And then there was  
14 no clear report whether Libya or any country -- or NATO country has conducted any  
15 real investigation about Libyan casualties. So we cannot find any realistic  
16 explanation for this and we cannot find any explanation why the OTP did not take  
17 any measures.

18 And then the result, your Honours, is a clear gap in accountability by the Office of the  
19 Prosecutor for the crimes and the victims that fell as a result of the events of 2011.

20 However, the Office of the Prosecutor said that it will monitor local proceedings in all  
21 countries, whether first world countries or Libya, did not explain at all afterwards  
22 how this monitoring happened or why civilian casualties from NATO campaign did  
23 not lead to any further investigations by the OTP.

24 The question here, are there Libyan victims who are a first category -- considered as  
25 first category by the OTP that are given more importance, and then other civilian

1 victims that are in a second class that are ignored? The Libyans are wondering, your  
2 Honours, is this Court only working for the population of the south of the  
3 mediterranean or was there a shortcoming somewhere in the investigation?

4 So there are some explanations that say that the Security Council resolution is being  
5 dealt with in a way to apply it only to the civilians of the Middle East only.

6 Slide 11. The conclusion from the investigation of the OTP on the Resolution 1970  
7 was that among the warrants of arrest that were issued following the events of 2011,  
8 none of these led to any prosecution, and the case against Muammar Gaddafi was  
9 terminated on 22 November 2011 following his death, and then the case against  
10 Abdullah Al-Senussi was declared inadmissible, referring to domestic proceedings,  
11 and then investigation started in the incidents that happened in 2011 and 2013 and  
12 certainly nothing changed.

13 And here, Madam President, I have an important remark, and that is the judges in  
14 this Court, in the case of Mr Al-Senussi, ICC-01/11-01/11-OA5, considered the Libyan  
15 judiciary to have the competence and capacity to try crimes that the Office of the  
16 Prosecutor had classified as international crimes. Despite that, the Office of the  
17 Prosecutor only clearly stated in 2022 that its investigations into the crimes of 2011  
18 had been completed, indicating that it does not intend to pursue new cases related to  
19 that period.

20 Report number 23, paragraph 77, the investigation -- or the OTP closed the  
21 investigations of the incidents of 2011 and, in general, the investigation of the OTP  
22 based on Resolution 1970 had limited results, with non-execution of any arrest  
23 warrants, whether through the death of the suspects or admissibility obstacles and  
24 selective accountability, yet the result remains the same, saying that the events of 2011  
25 did not result in any trial and left major alleged crimes, including incidents of civilian

1 casualties caused by NATO also without any clear outcome of public accountability,  
2 neither on the international or domestic level, neither in Libya nor in other states.

3 Can we say that there is -- an interpretation that there is an ignorance of the meaning  
4 of Resolution 1970 of 2011?

5 This phase can be described as -- the second phase can be investigated -- described as  
6 the post-former regime phase, in which the Libyan regime became politically divided  
7 between competing administrations, violence escalated and the country became  
8 geographically divided between centres of power, each supported by armed groups  
9 of foreign backers. In the east, power was concentrated in the House of  
10 Representatives and the forces of field marshal Khalifa Haftar, whose Libyan  
11 National Army became the dominant military actor in the eastern and southern Libya.  
12 In the west, power was concentrated in the hands of the United Nations' backed  
13 Government of National Accord, based in Tripoli.

14 Armed groups proliferated far beyond the division that had prevailed under the  
15 former regime between revolutionary and antirevolutionary forces. Many groups  
16 arose from local, tribal ideological and sectarian conflict. Their loyalties often  
17 changed with new alliances and groups forming around local interests, political  
18 opportunities, or opposition to particular adversity.

19 Here, based on these new developments, the Prosecutor, the Office of the Prosecutor,  
20 changed -- completely changed course since 2011 to a new course, a new field of  
21 investigation.

22 Slide 13. I will briefly address the competing political administrations and  
23 proliferation of armed groups present in Libya at that time.

24 According to media reports and reports of non-governmental organisations and  
25 human rights organisations, non-governmental, and sometimes governmental, and

1 also the United Nations mission to Libya about the violence, the serious violence that  
2 was arbitrated by military actors that carried out serious attacks that may fall within  
3 the jurisdiction of the Court. For example, in 2013, an attack near Al-Jalah hospital  
4 in Benghazi resulted in the killing of at least 12 people. In 2015, groups affiliated  
5 with the Islamic State in Iraq and the Levant, ISIS, Daesh, were responsible for the  
6 beheading of 21 Coptic Christians, and for the killing of 30 Ethiopian Christians. In  
7 2016, ISIS, which controlled Sirte at that time, killed more than 70 people in response  
8 to an attempted rebellion by forces opposed to it. In 2017, a military force attacked  
9 the Brak Al-Shati airbase controlled by the Libyan National Army, resulting in the  
10 killing of approximately 140 people. In 2018, armed groups led attacks against oil  
11 infrastructure in Libya. In 2019, an air strike on the Tajoura migrant detention centre  
12 resulted in the killing of 53 people and the injury of more than 130 others. All armed  
13 conflict incidents that remain uninvestigated.

14 Now, slide 14.

15 Prior to that, in an incident years before that, Ms Fatou Bensouda, the former  
16 Prosecutor of the ICC, on November 5, 2015, in her statement before the Security  
17 Council, she said that all parties of the conflict commit crime, including crimes that  
18 fall within the jurisdiction of the ICC. That was from the statement of Ms Fatou  
19 Bensouda, paragraphs 39 and 40.

20 At this phase, the Office of the Prosecutor continued to investigate the potential  
21 crimes which it believed fell within the jurisdiction of the ICC in relation to the  
22 post-Gaddafi regime period. But it focused on specific groups, and nine arrest  
23 warrants were issued. They are publicly available in the website of the ICC. None  
24 of these arrest warrants has been executed and no trial has taken place to date in  
25 respect to this phase.

1 So, here we see the first phase that goes without trial and the second phase as well.

2 Here, the Prosecutor resorted to entering into the new phase, the third phase.

3 The third phase of the investigations of the OTP is wholly unrelated to Resolution

4 1970 of 2011 concerning -- which was the foundation of the jurisdiction of the ICC.

5 They started investigating entities, internal entities and activities that were newly

6 created and that did not exist at the time of the United Nations resolution and when it

7 was issued, nor that served the objectives or the reasons of its issuance. Here, I can

8 say that there is an overreach in the Office of the Prosecutor in its understanding of its

9 limits and requirements of Resolution 1970 of 2011, and in burdening it with what it

10 cannot bear in concerning the situation in Libya against any party. We are talking

11 about the third phase.

12 Therefore, Madam President, I would like to quote what the OTP stated in its report

13 number 28, on November 30, 2024. I quote -- the OTP says verbatim, "At a minimum,

14 the Office also seeks to commence at least one trial" -- one trial -- "before the Court in

15 relation to this situation" -- the situation in Libya -- "before the end of 2025, followed

16 by several trials during the judicial phase. This depends on the arrest and surrender

17 of suspects which is an obligation under council's Resolution 1970, and which the

18 office has intensified its efforts in various situations during the reporting period.

19 The office also confirms that after 2025, it will continue to support the Libyan

20 authorities and other national authorities in achieving accountability."

21 So, they are transferring the jurisdiction to the national jurisdiction in accordance to

22 the two-track approach set out in its policy on complementarity and cooperation --

23 page 4, paragraph 2 of the report. So, here, the OTP is admitting that the Libyan

24 jurisdiction has jurisdiction.

25 Justice, Madam President, your Honours, is a human necessity driven by moral

1 motives and objectives -- objective justifications for the stability of societies. It  
2 cannot be a schedule of achievement that disregards the objective circumstances of  
3 societies. Justice is deeper and more profound, especially international justice.  
4 The crimes attributed to Mr El Hishri are not connected at all to the Libyan crisis  
5 situation that triggered the Court's jurisdiction under Resolution 1970. The  
6 resolution is limited to events of armed violence and serious violations of human  
7 rights connected temporally to the former regime in Libya and the armed violence  
8 between the Gaddafi regime and its opponents, as well as the external forces to which  
9 the subsequent United Nations Resolution 1973 drew attention. Even if we accept  
10 the allegations of the Office of the Prosecutor concerning Mr El Hishri and the group  
11 to which he is alleged to belong, we find that the crimes attributed to Mr El Hishri,  
12 which he denies in the first appearance, relate to the governmental entity established  
13 after the fall of the former Libyan regime. Its objectives had no connection with the  
14 former regime or with reaching power in any form. The specific objectives pursued  
15 by that entity were to fight terrorism, drugs and other crimes. These objectives and  
16 crimes -- and the crimes alleged to have been committed were not related to the  
17 former regime, \* to Resolution 1970, which founded the base for the jurisdiction of the  
18 ICC, for this reason. Your Honours, the Office of the Prosecutor resorted to  
19 obtaining a new or supplementary basis to support its position, because the  
20 Prosecutor was in a difficulty in light of Resolution 1970, because it was no longer  
21 sufficient to establish the jurisdiction of the International Criminal Court in respect of  
22 the Situation in Libya. It, therefore, resorted to that agreement dated 14 May 2025  
23 with Mr Abdul Hamid Dbeibeh in order to escape its predicament and find new bases  
24 for the Court's jurisdiction. It accepted that agreement from a prime minister whose  
25 legal mandate has expired, who does not control all of Libya. The whole of the east,

1 it's outside of his control, and its south is outside of his control. He is not even able  
2 to visit the entire territory of the Libyan state. And, accepting this document in  
3 violation of the Libyan Constitution, the effects of this document are supposed to  
4 apply to all Libyan territory, all the Libyan citizens, in an attempt to create a legal  
5 position that would serve as basis for jurisdiction. I will say this more clearly,  
6 Madam President. Had the Office of the Prosecutor been confident of the Court's  
7 jurisdiction over this case, it would not have resorted to relying to the agreement of  
8 14 May 2025.

9 And briefly, I will also stick to the time allocated.

10 We have confirmed, affirmed, on April 30 in our brief, that this -- we challenge the  
11 jurisdiction of this Court. And, yesterday, we also filed a letter. After the request  
12 for assistance that we filed, we filed this submission to your Honours yesterday.  
13 Nevertheless, slide 12 -- to be private only, your Honours -- when such mandate is  
14 issued, we notice it's undated with no filing number, just a personal letter. It's  
15 supposed to be by a head of state that issues or sends its documents through due  
16 process. We cannot identify the writer or the author or this person until we  
17 requested to reveal the document, or the author of this document. And since it's a  
18 private document, I will stick to this confidentiality. According to this letter, an  
19 agreement, which is also confidential, was reached. As we refer to it in our  
20 submission, I will not repeat. But even this is unsigned. According to the  
21 document that was presented to Defence, we have not seen the person -- the  
22 signatories. We requested it officially but we only received an unsigned document,  
23 an undated one, in response to all of this.

24 Slide 17, please.

25 Madam President, I think things are clear now. Mr Abdul Hamid Muhammad

1 Dbeibeh, the Prime Minister, who was voted out of confidence, according to the  
2 parliamentary -- the House of Representatives of Libya. As we see the first article, it  
3 says, "Confidence is withdrawn from the Government of National Unity headed by  
4 Abdul Hamid Muhammad Dbeibeh, and it shall be considered a caretaker  
5 government."

6 The job of this government is to facilitate the situation and not to enter into  
7 agreements. This decision is effective immediately and is published in the official  
8 newspapers. However, this agreement, Madam President, flies in the face of the  
9 Libyan Constitution which took two phases. The first one is a declaration, and then  
10 amendments.

11 The first one, the Libyan Constitution was issued during the -- in Article 17:

12 "The Transitional National Council is the highest authority in the Libyan state and  
13 exercises the supreme sovereignty functions, including legislation and setting the  
14 state's general policy. It is the sole legitimate representative of the Libyan people,  
15 deriving its legitimacy from the 17th of February revolution. It is entrusted with  
16 ensuring national unity, and territorial integrity, embodying and spreading values  
17 and morals, the safety of citizens and residents, ratifying international treaties, and  
18 establishing the foundations of a constitutional democratic civil state."

19 Therefore, any agreement not ratified by this council is null.

20 Slide 19. This constitutional declaration, dated February 23, 2023, and it presented a  
21 new rule in which it limited the mandate of the president. And when we say the  
22 "president", it's the president, Mr al-Menfi, the president of the Libyan Presidential  
23 Council.

24 The president of the state has the following mandate:

25 "1. Appointing and dismissing the Prime Minister.

1 [...] Approving the formation of the Government.

2 [...] Conducting ministerial reshuffles."

3 In article 15:

4 "The President of the State is the Supreme Commander of the Armed Forces. He  
5 shall declare war and conclude peace in accordance to the provisions of this  
6 instrument."

7 But what matters here, what's relevant, is article 16 of this amendment:

8 "The President of the State is the representative of the State in its external relations  
9 and has the power to conclude treaties and agreements in accordance with this  
10 amendment."

11 Therefore, entering into any international agreement is the mandate of the president.

12 And in the letter we filed yesterday, the situation was presented clearly and  
13 unequivocally about this agreement entered with the ICC.

14 In this amendment, the constitution stated clearly who has the right to enter into any  
15 agreements. Therefore, the president is the only -- the sole -- the president of the  
16 state alone is the representative of the Libyan state in all its foreign relations, and the  
17 person who has the power to sign treaties is the president of the state alone without  
18 the Prime Minister. Accordingly, the authorisation issued by Mr Abdul Hamid  
19 Dbeibeh to the ambassador of the Libyan state to the Kingdom of the Netherlands, is  
20 void. And the signature of the ambassador of the Libyan state to the Kingdom of  
21 The Netherlands on the declaration accepting the jurisdiction of the ICC is also void.

22 Therefore, I would like to attract your attention, your Honours, to the following  
23 amendments, which was in the documents of the United Nations. It was quoted  
24 twice. The latest amendment of the Libyan Constitution was quoted twice and was  
25 accepted. Mr al-Menfi was received in the international or general meeting of the

1 United Nations as the sole representative of the Libyan state. We have submitted  
2 both articles and letters in our filings.

3 Madam President, your Honours, there is also another letter by the council -- the  
4 Presidential Council that clarifies some items, some of which might be confidential.

5 \* But what I would like to say, that every act starts immediately the following day  
6 after the amendment takes effect. This agreement and this authorization have not  
7 been published in any Libyan document. And the number on top of the letter  
8 designates -- is for the local entity and not relevant to the House of Representatives.

9 PRESIDING JUDGE MOTOC: [14:21:51](Interpretation) I'm sorry to tell you that  
10 have exhausted your 45 minutes. Did you get a translation?

11 MR HASSAN: [14:22:13](Interpretation) Yes, your Honour. Yes, your Honour.

12 PRESIDING JUDGE MOTOC: [14:22:17](Interpretation) So you have to conclude  
13 very soon and be very brief, please.

14 MR HASSAN: [14:22:26](Interpretation) Your Honour, may I request an indulgence  
15 of 10 minutes? I request 10 minutes, your Honour.

16 PRESIDING JUDGE MOTOC: [14:22:43](Interpretation) After having consulted with  
17 colleagues, you have 10 additional minutes, counsel.

18 MR HASSAN: [14:22:54](Interpretation) I thank your Honour for this accommodation.

19 I will be very brief. I refer most of my submissions to the file submitted on April 30,  
20 2026, and its continuum filed yesterday.

21 I would like to focus on the behaviour of Mr Dbeibeh, the Prime Minister.

22 Slide 21.

23 He is always hiding behind others instead of facing -- instead of coming here in  
24 person, signing this agreement. He issued an authorisation and this is precisely  
25 what he did before with Ms Najla Mangoush, the Minister of Foreign Affairs. He

1 asked her to negotiate, and enter negotiations with the State of Israel, which is strictly  
2 rejected by the State of Libya. And when this became known and protested, and  
3 people took to the street, he stated, "I don't know anything about this authorisation  
4 and I cancel it." and Ms Najla Mangoush disappeared and never appeared after this  
5 till this day.

6 Madam President, finally, yesterday, the supreme administrative entity has made a  
7 clear and final decision regarding the letter of the Prime Minister and the file has been  
8 filed to your Honours, to the Chambers.

9 I conclude my submissions here. I would like to say that the Libyan Constitution is  
10 strict about the mandate of representation and the right to enter into agreements and  
11 treaties, and it is not the Prime Minister at any case. This is unequivocal. And there  
12 is no doubt about the amendment of the constitution in 2023. According to this  
13 amendment, entering into and signing agreements and treaties is the sole right to the  
14 president of the Presidential Council, whose stance is very clear and has been  
15 declared. This unpublished agreement, which is not ratified by the House of  
16 Representatives is void. The legal power of this document and the acts of  
17 Mr Dbeibeh do not reflect the stance of the Libyan state and doesn't compel the  
18 Libyan state to anything. It is a document without any legal implication to the State  
19 of Libya or the citizens or residents, and it is not a sound foundation for any  
20 consequences before the ICC.

21 Finally, your Honours, can the ICC, which is the highest International Criminal Court,  
22 can it rely on violation of the law if it will have also infringed the individual collective  
23 rights of persons and groups and will have violated the United Nations, and those  
24 that were issued by the General Assembly or Security Council. I am confident that  
25 the Court would respect the national -- the Libyan people and its institutions and I

1 salute the historic heritage of Libya.

2 I conclude my submissions, thank you, your Honours.

3 PRESIDING JUDGE MOTOC: [14:26:56](Interpretation) Thank you very much,  
4 Counsel Hassan.

5 We can now move on to the arguments on the merits. We will, over the next two  
6 days, listen to the oral submissions of the Prosecution, the legal representatives of  
7 victims and, lastly, the Defence for Mr El Hishri in that order.

8 Madam Deputy Prosecutor, or her representative, you and your team have the floor.

9 As organised, the hearing will be one and a half hours. Please do not hesitate to  
10 signal us whenever you feel it is time to take a break of 30 minutes, when it is  
11 convenient to you.

12 MS SAMSON: [14:27:58] Thank you, Madam President. My submissions today  
13 will be approximately 45 minutes. And, with your Honour's indulgence, I request to  
14 be able to continue until the end of the session, which would make it 3.15.

15 Madam President, your Honours, the Prosecution's presentation will be divided into  
16 four parts. I will begin with a brief overview of the charges, the evidence, the  
17 suspect and his role, and the evolution of the Special Deterrence Force.

18 Then I will address proof of the contextual elements of crimes against humanity and  
19 war crimes. My colleague, Mr van der Werf, will thereafter present the evidence of  
20 counts 1 to 12, on the crimes of torture, cruel treatment, imprisonment, outrages upon  
21 personal dignity, other inhumane acts, rape, sexual violence, murder, and attempted  
22 murder.

23 Next, Ms Luping will present the evidence of counts 13 to 17 on the crimes of  
24 enslavement and persecution.

25 To close the Prosecution's presentation, Mr Mourad will present evidence of Khaled

1 El Hishri's criminal responsibility for the charged crimes.

2 Your Honours, we distributed a list, a table, with quotes and citations, including  
3 registration numbers in sequential order to avoid having to refer to the registration  
4 numbers during our presentation.

5 We will highlight key facts in evidence during our presentations, keeping references  
6 to witness evidence limited in order to maintain public session. We refer your

7 Honours to the evidence set out in the pre-confirmation brief and our list of evidence.

8 Our presentation will be accompanied by visual aids and we will signal when a visual  
9 aid needs to be displayed confidentially.

10 Turning now, your Honours, to the charges and the evidence.

11 Khaled El Hishri is charged with a total of 17 counts -- six counts of war crimes and 11  
12 counts of crimes against humanity, for the imprisonment of thousands of civilians  
13 and protected persons without legal basis and without due process between  
14 1 May 2014 and 30 June 2020. The charged crimes include the violent abuse that he  
15 and others inflicted on civilians: Torture, rape, enslavement, persecution, sexual  
16 violence, cruel treatment, other inhumane acts, outrages upon personal dignity,  
17 murder and attempted murder.

18 As you will hear throughout our presentation, the conditions of detention and the  
19 serious and repeated abuses inflicted on all prisoners over many years fall outside the  
20 scope of any lawful prison system.

21 For the purpose of the confirmation hearing, your Honours, the Prosecution is relying  
22 on the statements of 63 witnesses.

23 These witnesses include 47 former Mitiga Prison detainees, two relatives of former  
24 detainees, and 14 witnesses who are primarily relevant to the issue of jurisdiction and  
25 contextual elements of war crimes.

1 The Prosecution also relies on other materials, including decrees, laws and other  
2 official documents; photographs, videos and drawings of Mitiga Prison Compound  
3 and SDF/RADA; contemporaneous reports by the United Nations and  
4 non-governmental organisations; press statements; and open-source material  
5 including social media and official websites.

6 I will now turn to the suspect, your Honours, and his role in the case.

7 As my colleagues will set out in greater detail in the course of their presentations, the  
8 evidence shows that Khaled El Hishri was a senior leader in SDF/RADA based at the  
9 Mitiga Prison; was in charge of the women's section of the prison where women and  
10 children were detained in inhumane conditions and abused, and where he raped,  
11 tortured and enslaved Libyan and non-Libyan women; that he exercised general,  
12 although not exclusive, authority in Mitiga Prison, derived from his leadership  
13 position, his family connections in SDF/RADA, and his reputation and propensity for  
14 violence. He had authority over cell allocation for prisoners; the timing, duration  
15 and methods by which prisoners were tortured; the release or continued detention of  
16 prisoners, including the authority to defy release orders by the Attorney General.

17 Witnesses consistently describe Khaled El Hishri as a powerful member of  
18 SDF/RADA who, with others, quote, "controlled everything within the prison".

19 Finally, and notably, Khaled El Hishri personally and directly committed the crimes  
20 in each of the 17 counts.

21 I will spend a moment, your Honours, to describe where the crimes took place.

22 Nearly 90 per cent of Libya's roughly 7 million inhabitants are concentrated along the  
23 coast, in the main cities of Tripoli, Misrata and Benghazi. Southern Libya's vast  
24 desert region is inhabited by roughly 10 per cent of the population. The charged  
25 crimes in this case occurred in Libya's capital and largest city, Tripoli, in the

1 north-west of the country.

2 Approximately 1 million people live in Tripoli. The officially recognised  
3 Government of National Unity, or GNU, is based there. The crimes allegedly took  
4 place principally at the Mitiga Compound located in the north-east of Tripoli near the  
5 coast.

6 The Mitiga Compound, outlined in green on your screens, covers a sizeable area and  
7 includes the Mitiga Prison complex and the Mitiga International Airport.  
8 SDF/RADA has its headquarters in the western part of the compound since 2011,  
9 outlined in your screens in blue.

10 According to witnesses, Mitiga Prison was established in 2012 and was gradually  
11 expanded by SDF/RADA during the period of the charges. The Mitiga Prison  
12 includes a main prison building with outer and inner yards and an area known as the  
13 Naqliah, where detainees were regularly brought for torture and interrogation.

14 Mr van der Werf will further describe these and other locations of relevance when  
15 detailing the evidence of the commission of the charged crimes.

16 Turning now, your Honours, to the main prison. The main Mitiga Prison building is  
17 divided into sections. The guards and prison leadership had offices just metres  
18 away from the detention sections. Mitiga Prison also contained a full surveillance  
19 system. Victims were watched at all times. First, by the hierarchies within the  
20 prison, starting with the capos, who were prisoners assigned as the heads of prison  
21 cells and sections; second, by the guards and the shift commanders conducting  
22 regular patrols along the corridors or along the gridded roofs which directly  
23 overlooked detention areas; and, of course, by the Mitiga Prison leadership, including  
24 Khaled El Hishri himself.

25 CCTV cameras were installed throughout the prison, in corridors, hallways, inner

1 yards and even in specific cells. Khaled El Hishri and the other perpetrators at  
2 Mitiga Prison monitored the surveillance footage from a CCTV room inside the  
3 prison building, also shown on your screens.

4 As your Honours will hear, Khaled El Hishri's regular physical presence at the Mitiga  
5 Prison, his orders and authority, his personal commission of the charged crimes, and  
6 the surveillance systems at Mitiga Prison all establish that he was aware of and  
7 intended to commit the crimes for which he is charged.

8 The Mitiga Prison leadership used the prison as an instrument of coercion,  
9 intelligence extraction, punishment, intimidation, extortion and domination of the  
10 civilian population in and around Tripoli. Within the prison, institutional violence  
11 against detainees was normalised, organised and repeated between at least May 2014  
12 and June 2020.

13 I will now turn to the creation and evolution of SDF/RADA since its inception  
14 through the period of the charges.

15 I note by way of background that contemporaneous reporting on Libya's security  
16 sector has highlighted the emergence of "hybrid" security institutions after 2011 that  
17 blended existing formal state apparatus and informal non-state actors, such as militias.  
18 Groups that controlled security sector institutions were able to exert political  
19 influence and gain control of economic assets, such as salaries and equipment. The  
20 SDF/RADA was one such group.

21 According to witnesses and contemporaneous reports, in 2011, the SDF/RADA  
22 originated as a group of local anti-Gaddafi forces from the Souq Al Juma  
23 neighbourhood in east Tripoli, next to the Mitiga Compound. Abdalraouf Kara was  
24 at the head of this group, as he remains today. According to witnesses, Khaled El  
25 Hishri and Osama Njeem were part of Kara's force since the time of the liberation of

1 Tripoli in 2011. Both men assumed important positions within the SDF/RADA based  
2 at Mitiga Prison and compound. Osama Njeem became the director of Mitiga Prison,  
3 while witnesses describe Khaled El Hishri as the second in command under Kara.  
4 Witnesses state that prior to the revolution, Kara had been a blacksmith. Khaled El  
5 Hishri had been a fisherman and he made and sold alcohol. Osama Njeem had been  
6 a collective taxi driver. We have no information that any of these three men had  
7 prior law enforcement training.

8 By 2012, Abdalraouf Kara and his men, including Khaled El Hishri and Osama Njeem,  
9 were integrated into the newly established Supreme Security Committee as a support  
10 brigade. Kara named his brigade the Special Deterrence Force. The group became  
11 commonly known simply as RADA, which is the Arabic word for deterrence. On  
12 its official website, SDF/RADA confirms that it was formally established in 2012 as  
13 part of the support brigade in Tripoli. From 2012, SDF/RADA's operational  
14 influence grew. Notably, in July 2014, the Tripoli International Airport was attacked  
15 and destroyed. One month later, in August 2014, the Mitiga airport became the sole  
16 airport for Libya's capital city of Tripoli. Control over such a strategic facility  
17 reinforced Kara and SDF/RADA's political, economic and security influence.

18 SDF/RADA's power grew further in 2015 through its support of and affiliation with  
19 the Government of National Accord, or GNA, and of the Presidential Council,  
20 comprising the officially recognised government in Libya.

21 In 2017, the evidence shows that SDF/RADA had over 1500 members. The United  
22 Nations' Office of the High Commissioner for Human Rights, OHCHR, reported in  
23 2018 that SDF/RADA was aligned to the Presidency Council, received salaries,  
24 uniforms and equipment from the state, but maintained its own command structure  
25 and operated within a significant level of autonomy.

1 In May 2018, the Presidential Council attempted to rebrand SDF/RADA as the  
2 Organised Crime and Terrorism Deterrence Agency, also known by the acronym  
3 DACOT. It was given wider remit, independent budget and greater powers.  
4 Nothing, however, changed in terms of its leadership or membership. It continued  
5 to function as it always had, but with more power. Witnesses continued to refer to it  
6 as SDF/RADA.

7 Your Honours, in sum, the SDF/RADA emerged from the revolution and rose to  
8 prominence through the resulting armed conflict and proxy wars. While SDF/RADA  
9 was later given an official mandate with a new name and an independent budget, it  
10 retained the same leadership, membership, property and significant assets. It was  
11 organised, structured, and had the means and resources to carry out its objectives.  
12 As such, at all material times, it remained able to operate independently in  
13 accordance with the wishes of its leadership.

14 Madam President, your Honours, I will now turn to the contextual elements. The  
15 contextual elements of crimes against humanity are established in this case because,  
16 first, there was an attack against the civilian population in and around Tripoli,  
17 including against persons in the custody or control of the Mitiga Prison perpetrators.  
18 Second, the attack was widespread and systematic. Third, the attack was carried out  
19 pursuant to or in furtherance of an organisational policy; and, fourth, Khaled El  
20 Hishri knew of the attack and his conduct was linked to it. The evidence  
21 establishing the contextual elements of crimes against humanity are set out in our  
22 brief at paragraphs 6 to 23.

23 I will now address each of these points in turn.

24 In relation to proof of an attack, our case is that the SDF/RADA, Mitiga Prison  
25 leadership and Mitiga Perpetrators carried out a campaign of violence in and around

1 Tripoli and against detained persons, principally at Mitiga Prison, between the dates  
2 of May 2014 and June 2020.

3 They targeted civilians who were perceived as undesirable, disloyal, oppositional, or  
4 who could be used to build and sustain the power and finances of the SDF/RADA  
5 and its associates. Over a period of at least six years, thousands of civilians were  
6 arrested without lawful basis, transferred to Mitiga Prison Compound, imprisoned  
7 without due process or in unlawful conditions, subjected to repeated and severe acts  
8 of physical and psychological violence amounting to crimes under the Rome Statute.  
9 These civilians were imprisoned within a system designed to control, enslave,  
10 persecute, torture, degrade and, ultimately, to break them.

11 The campaign of violence is established through these repeated patterns and repeated  
12 criminality, committed within a detention regime that was organised and coordinated  
13 on a large scale. It was sustained and it was brutal. Imprisonment was the  
14 foundation upon which multiple further crimes were carried out. Crimes that  
15 included regular and, in some cases, continuous, institutionalised forms of violence,  
16 as you will hear in detail during our upcoming presentation. Together, the  
17 commission of these crimes constitutes the attack.

18 Your Honours, the attack must be made against a civilian population. The victims in  
19 this case were overwhelmingly civilian, in and around Tripoli. They included  
20 women, children and elderly persons. They were students, business persons, civil  
21 servants, engineers, technicians, medical professionals, journalists. They were  
22 Libyans and non-Libyans, including black African migrants. They included people  
23 who were perceived to hold opposing beliefs, views, identities, affiliations to those of  
24 the SDF/RADA.

25 Irrespective of the reasons for which they were imprisoned, they were all subjected to

1 the same criminal system of mistreatment. Established case law at the ICC, building  
2 upon case law from the ICTY, including in the trial judgments in Abd-Al-Rahman,  
3 Ntaganda and Al Hassan, confirm that victims of crimes against humanity need not  
4 share the same nationality, ethnicity, religion or similar distinguishing features.

5 Crimes against humanity protect any civilian population as a collective. The  
6 population is defined functionally by the scale and systematicity of the attack, not by  
7 group homogeneity. Rather, the specific crime of persecution addresses the  
8 targeting of a particular group.

9 The defining characteristics of the civilian population in this case are that they were  
10 located in and around Tripoli and were all subjected to the criminal system of abuse  
11 during their imprisonment, principally at Mitiga Prison.

12 Madam President, your Honours, the attack was both widespread and systematic.

13 The requirement that the attack be widespread speaks to scale in terms of numbers of  
14 victims, duration of conduct and geographic scope.

15 The Prosecution has identified at least 945 victims in an annex to the pre-confirmation  
16 brief. However, this is a representative sample of a much larger number of persons  
17 who were targeted, arrested and detained, principally at Mitiga Prison. During the  
18 period of the charges, the true number of victims runs into the thousands.

19 Witnesses and the United Nations report a steady increase in detainees at Mitiga each  
20 year. By 2021, a witness estimated there to be up to 5,140 people imprisoned at  
21 Mitiga. This figure alone establishes that the attack was widespread.

22 The widespread nature of the attack is also established through the repeated arrest  
23 operations and sustained imprisonment over a long temporal period and throughout  
24 a large geographic area.

25 Your Honours, the attack was also systematic. The requirement that the attack be

1 systematic speaks to organisation, pattern and method.

2 As Mr van der Werf will detail, the arrests, detention and abuse followed regular  
3 identifiable patterns. No fewer than 47 detained victims in this case, many who  
4 never met each other and were detained at different times, describe strikingly similar  
5 experiences that amount to patterns of conduct, including in relation to their arrest  
6 procedures, the transportation they took to Mitiga Prison, the intake routines they  
7 faced, the interrogation processes and where they took place, recurring methods of  
8 abuse, including torture and torture methods, forms of humiliation and other  
9 degrading treatment, and the similarity of insults used by Khaled El Hishri and the  
10 Mitiga Perpetrators. They also consistently identify the Mitiga Prison perpetrators.  
11 This level of consistency is the hallmark of a system. It demonstrates coordination,  
12 structure and means. It demonstrates that these crimes were neither random nor  
13 coincidental.

14 Contemporaneous reporting of the United Nations Support Mission in Libya, also  
15 known as UNSMIL, corroborates the evidence of these witnesses.

16 In 2016, UNSMIL described, and I quote, "a pattern of severe torture and  
17 ill-treatment", closed quote, at Mitiga Prison.

18 In 2018, UNSMIL reported on the systematic denial of due process rights, notably in  
19 the Mitiga detention facility, controlled by the Special Deterrence Force armed group.

20 Your Honours, the attack was also carried out further to an organisational policy.

21 Proof of an organisation rests on its features such as its hierarchy and its ways of  
22 functioning that would allow it to conceive, adopt and implement a policy to carry  
23 out a widespread or systematic attack against a civilian population, along with the  
24 resources, means and capacity to actually carry it out.

25 SDF/RADA was structured and organised, as I briefly described earlier in my

1 presentation, and as set out in our brief. It operated Mitiga Prison since at least 2012.

2 It had an established and effective hierarchy, and it was well-resourced with weapons,  
3 ammunition, uniforms, vehicles, means of communication and surveillance.

4 SDF/RADA controlled territory in Tripoli, in particular, though not only, the Mitiga  
5 Compound, with influence across the city.

6 SDF/RADA had the resources to sustain a full system of arrest, detention, and abuse  
7 during the six-year temporal scope of the charges.

8 Your Honours, this evidence shows that SDF/RADA was an organisation.

9 I turn next to the policy element. The policy element is satisfied if the attack against  
10 a civilian population is coordinated rather than being spontaneous. It does not need  
11 to be written. A policy to attack a civilian population can be proven through  
12 consistent patterns of conduct with the means to continue. In this case, the number  
13 and frequency of attacks against civilians and the scale of the crimes committed,  
14 establish that the attack was neither random nor isolated. It was carried out  
15 repeatedly for many years.

16 The evidence demonstrates SDF/RADA's coordinated actions in arresting,  
17 imprisoning and abusing civilians.

18 For the last element, your Honours, the evidence establishes substantial grounds to  
19 believe that Khaled El Hishri acted with knowledge of, and his conduct was related to,  
20 the widespread and systematic attack.

21 As a member of the Mitiga Prison leadership, Khaled El Hishri operated within a  
22 detention system that functioned in the same way for years. He directed and  
23 observed the recurring patterns of arrest, arbitrary detention and abuse.

24 He exercised authority within the prison. He contributed daily to its functioning.

25 Not only was he physically present during intake sessions and interrogations, he

1 personally committed the charged crimes against the civilian population. The scale  
2 of the attack and flagrant abuse was clearly visible to him.

3 Your Honours, I will now turn to the evidence in support of the elements of war  
4 crimes under Article 8 of the Rome Statute, as set out in paragraphs 24 to 44 of our  
5 brief.

6 The evidence establishes substantial grounds to believe, first, that there was at least  
7 one non-international armed conflict in Libya throughout the charged period; second,  
8 that the charged crimes, including torture, cruel treatment, outrages upon personal  
9 dignity, rape, sexual violence and murder, were sufficiently linked to the armed  
10 conflict; and, third, that Khaled El Hishri was aware of the factual circumstances that  
11 established the existence of the armed conflict.

12 Firstly, your Honours, on the existence of a non-international armed conflict.

13 At all times relevant to the charges, the crimes were committed in the context of and  
14 were associated with a non-international armed conflict in Libya. While its intensity  
15 fluctuated over time, there is no doubt that the hostilities encompassed complex and  
16 sustained military operations far exceeding mere temporary unrest.

17 ICC jurisprudence in the Ongwen case establishes that the armed conflict need not be  
18 continuous or uninterrupted. The Chamber need only find that the armed hostilities  
19 went beyond isolated or sporadic acts.

20 During the charged period there was also no peaceful settlement -- that is, there was  
21 no lasting cessation of armed confrontations between the parties without the real risk  
22 of resumption of hostilities.

23 Witnesses describe the armed conflict before and during the charged period, and the  
24 sufficient organisation of the groups that sustained it. They describe military  
25 campaigns that were coordinated through identifiable command structures. I refer

1 your Honours to the evidence of Prosecution witnesses P-370, P-706, P-337, P-764,  
2 P-767 and P-1059, detailed at paragraphs 24 to 35 of our brief.

3 The armed groups participating in the conflict included the Libyan National Army, or  
4 LNA, under General Haftar, forces affiliated with the GNA, and armed groups in  
5 Tripoli, Zintan, Tarhunah, Misrata and other areas across Libya.

6 I will briefly set out some of the evidence showing that, since 2011, Libya has  
7 experienced recurring and overlapping phases of armed conflict involving organised  
8 armed groups, militias, security forces and rival governing authorities.

9 Starting in 2011, the UN Security Council expressed concern at the proliferation of  
10 arms in Libya and its potential impact on international peace and security. Acting  
11 under Chapter VII of the Charter of the United Nations, the Security Council passed  
12 numerous resolutions, including to establish UNSMIL and UN fact-finding  
13 mechanisms, and it renewed their mandates over the years.

14 Thereafter, the UN Security Council remained consistently seized of the situation in  
15 Libya until today.

16 The existence of a non-international armed conflict in Libya during the charged  
17 period, or the facts through which the Chamber can conclude that such armed conflict  
18 existed, has been recognised repeatedly by the United Nations Security Council, by  
19 UNSMIL, by international investigative bodies such as the Panel of Experts and the  
20 Fact-Finding Mission in Libya, and by NGOs, researchers and academics. These  
21 reports are in evidence.

22 The non-international armed conflict in Libya that began in 2011, was between state  
23 and non-state actors. The subsequent developments that I will briefly rehearse  
24 demonstrate the continuity of armed hostilities and the consolidation of armed  
25 groups that later operated during the charged period.

1 In March 2012, UNSMIL reported that intermittent clashes posed a challenge to  
2 authorities because of the continued proliferation of weapons on the streets and a  
3 large number of armed brigades. Researchers reported that, I quote, "Across the  
4 country the number of armed groups exploded in the chaos that ensued after the  
5 Gaddafi regime's demise". End of quote.

6 In 2013, the UN Panel of Experts reported that fighting continued between  
7 government forces and former Gaddafi-aligned regions.

8 With the launch of Operation Dignity in May 2014 by the LNA, OHCHR reported that,  
9 quote, "2014 saw the most serious emergence of hostilities since 2011". End quote.

10 This was followed by a retaliation in July 2014 by the Libya Dawn alliance, composed  
11 of armed groups from Misrata and Tripoli. Together, the Libya Dawn alliance  
12 conducted coordinated military operations, including air strikes and shelling of urban  
13 areas, clear indicators of the required intensity.

14 OHCHR reported that these clashes continued into 2015. They were not isolated  
15 incidents, but formed part of the sustained, high intensity armed confrontations.

16 UNSMIL further reported about repeated attacks on Mitiga international airport  
17 between September 2014 and February 2015, demonstrating the strategic nature of the  
18 hostilities.

19 In August 2015, the SRSG reported to the UN Security Council on the protracted  
20 nature of the violence, describing the situation 15 months later as, quote, "a war of  
21 trenches with no imminent end foreseen". End quote.

22 UNSMIL reported clashes and fatalities in Tripoli in December 2016 and into 2017  
23 with a number of additional deaths and the takeover of a number of ministerial  
24 facilities, including the ministry of defence.

25 In early 2018, UNSMIL reported an escalation in clashes between SDF/RADA and the

1 Al-Bugra militia - I will spell it for the record, A-L, space, B-U-G-R-A - that had  
2 launched a major assault on Mitiga airport resulting in at least 23 deaths and 60  
3 injured persons.

4 Fighting in Tripoli between Tripoli-based armed groups and armed groups from  
5 Tarhunah and Misrata was reported by UNSMIL in August 2018, resulting in the  
6 death of at least 120 civilians and the closure of the Mitiga International Airport for  
7 several weeks. On 4 April 2019, the LNA launched an offensive to seize control of  
8 Tripoli. The UN panel of experts described it as the onset of nationwide conflict  
9 between the LNA and the GNA, each backed by other armed forces.

10 Witnesses state that SDF/RADA fought in this war against General Haftar's LNA  
11 forces. In 2019 alone, UNSMIL reported nearly 650 civilian casualties and over  
12 300,000 internally displaced persons. UNSMIL reported that since the onset of the  
13 conflict in 2019, ground fighting continued in and around Tripoli. The LNA had  
14 conducted some 850 precision air strikes by drones and 170 strikes by fighter bombers,  
15 and the GNA and affiliated forces conducted some 250 air strikes.

16 According to UNSMIL, the Mitiga International Airport was repeatedly targeted in  
17 the second half of 2019, including by LNA air and ground forces.

18 UNSMIL reported that by April 2020, there had been 850 breaches of a truce that had  
19 been temporarily accepted by the GNA and the LNA three months earlier. This  
20 demonstrates the lack of a peaceful settlement. The risk of resumption of hostilities  
21 was ever-present.

22 Your Honours, I will now turn to the evidence showing the nexus between the crimes  
23 and the armed conflict. As the ICC Appeals Chamber in Ntaganda has emphasised,  
24 the existence of the nexus between the crimes and the conflict is fact-sensitive and  
25 draws on multiple factors. The conflict does not need to be the sole motive or even

1 the predominant motive to prove a nexus to the commission of war crimes. The  
2 relevant question is whether the armed conflict substantially enabled, shaped,  
3 influenced or facilitated the commission of the crimes. Some crimes may possess  
4 mixed or opportunistic motives and nonetheless remain sufficiently connected to the  
5 armed conflict.

6 In the assessment of nexus, the Kunarac Appeals Chamber at the ICTY held that the  
7 existence of the armed conflict must have played a substantial part in the  
8 perpetrator's ability to commit the crime, his decision to commit it, the manner in  
9 which it was committed or the purpose for which it was committed.

10 In the appeals judgment in Tadic, the Chamber held that offences committed in  
11 detention facilities controlled by armed actors may satisfy the nexus requirement  
12 even where personal motives co-exist with conflict-related objectives. Accordingly,  
13 detainees who are arrested for reasons other than formal affiliation with opposing  
14 forces may still be victims of war crimes.

15 Persons arrested and detained at Mitiga Prison and Compound were targeted for a  
16 range of purported reasons. The fact that some detainees were targeted for extortion,  
17 perceived moral transgressions, religious non-conformity or personal vulnerability  
18 does not sever the nexus to the armed conflict. Article 8 of the Rome Statute contains  
19 no express limitation that only persons detained for reasons related to the conflict can  
20 be victims of war crimes. To the contrary, Appeals Chambers in the Kunarac and  
21 Afghanistan cases establish that the armed conflict need not be the reason for the  
22 detention, and that it is sufficient that the conflict provided the perpetrator with the  
23 opportunity, position or means to commit the crimes. Without the armed conflict,  
24 Khaled El Hishri and his associates could not have possessed the means, structures or  
25 authority through which these crimes were perpetrated.

1 The armed conflict in Libya substantially enabled every stage of the criminal  
2 conduct -- the arrests, the operation of the Mitiga Prison complex, the authority of the  
3 perpetrators, the climate of impunity, and the sustained abuse afflicted upon  
4 detainees. Not only did the conflict enable the crimes by facilitating SDF/RADA's  
5 control of Mitiga Prison, but also some victims were in fact detained for reasons  
6 associated with the conflict.

7 Some of the perpetrators were associated with one party to the conflict. Some  
8 victims were associated with a party to the conflict as well. Some crimes were  
9 carried out to further the conflict, by generating funds, extracting information and  
10 using enslaved persons.

11 There are, we submit, substantial grounds to believe that the nexus requirement  
12 under Article 8 is satisfied. The crimes were not isolated acts of ordinary criminality  
13 detached from the hostilities.

14 Your Honours, turning briefly to Khaled El Hishri's awareness of the factual  
15 circumstances of the armed conflict.

16 The armed conflict was not distant or abstract. It surrounded the Mitiga Compound  
17 and Prison on a daily basis through visible armed checkpoints, clashes, military  
18 deployments and shifting front lines throughout the city.

19 Witness P-1041 described SDF/RADA's depot of heavy weaponry and ammunition on  
20 Mitiga Compound. He described the detainees, including black African migrants,  
21 were forced to take part in hostilities. Other witnesses state that Khaled El Hishri  
22 participated in battles at the prison in 2015, when Mitiga was attacked by another  
23 armed force, and that RADA participated in fighting at other times, including in 2019  
24 and 2020. Khaled El Hishri himself, and other Mitiga leaders and perpetrators under  
25 his authority, routinely and openly referenced the ongoing conflict during

1 interrogations and abuse, as described by witnesses P-1073 and P-1673. The  
2 evidence, your Honours, establishes that Khaled El Hishri was aware of the factual  
3 circumstances of the armed conflict.

4 Madam President, your Honours, this concludes my presentation. After the break,  
5 Mr van der Werf will present the evidence establishing the crimes listed in counts 1 to  
6 12. Thank you.

7 PRESIDING JUDGE MOTOC: [15:11:15](Interpretation) Thank you very much for  
8 your presentation. We will now break and resume at 1515 -- 1545, rather.

9 (Recess taken at 3.11 p.m.)

10 (Upon resuming in open session at 3.52 p.m.)

11 THE COURT USHER: [15:52:33] All rise.

12 Please be seated.

13 PRESIDING JUDGE MOTOC: [15:53:04](Interpretation) Hello again. I shall give  
14 the floor to the OTP.

15 Madam Samson, you have the rest of the session, but I think that we shall interrupt  
16 you about 10 to 5 and you shall be speaking in the order that you gave us earlier on.  
17 So Office of the Prosecutor, over to you.

18 MR VAN DER WERF: [15:53:35] Thank you, Madam President.

19 Madam President, your Honours, I will now present the Prosecution's evidence  
20 proving the crimes charged under counts 1 to 12 of the Prosecution's Document  
21 Containing the Charges, that is, imprisonment, torture, cruel treatment, outrages  
22 upon personal dignity, other inhumane acts, rape, sexual violence, murder and  
23 attempted murder.

24 In my presentation, I will describe the pattern and systematicity of perpetration of  
25 these crimes by the Mitiga Perpetrators, and will summarise the key evidence proving

1 the legal elements of these crimes.

2 To prove these crimes for the purpose of the confirmation of the charges,  
3 the Prosecution relies on the accounts of 47 Mitiga -- former Mitiga Prison detainees.  
4 For years, each of these survivors of Mitiga Prison suffered unspeakable crimes at the  
5 hands of the suspect and members of his group.

6 The accounts of these 47 witnesses paint a consistent and compelling picture, which  
7 places Khaled El Hishri at the centre of a machine designed to inflict extreme pain,  
8 deep humiliation, endless exploitation, and, ultimately to destroy the lives of those  
9 detained at Mitiga.

10 Your Honours, the following slides are confidential, and while we can remain in  
11 public session, I request that the visuals on the next slides be -- not be broadcast to  
12 the public.

13 These 47 detainees are men, women, and, at the time of the charged crimes, children,  
14 who observed Khaled El Hishri and the other Mitiga Perpetrators commit crimes first  
15 hand and, in fact, are some of the direct victims of Khaled El Hishri's crimes.

16 Forty-five of these witnesses were held at various times during the charged period,  
17 and many remained imprisoned after the charged period. The Prosecution also  
18 relies on the -- on two former detainees who were detained just after the temporal  
19 scope of the charges.

20 The 45 victims were held at the prison for periods from several days to up to almost  
21 the entire charged period of six years running from May 2014 to June 2020. On  
22 average, they were detained for two and a half years during the charged period alone.  
23 But again, as I just mentioned, many of them remained in imprisoned at Mitiga for  
24 years after the charged period.

25 The next slide and the remaining slides in my presentation can be broadcast to

1 the public.

2 Your Honours, while each of these 45 former detainees witnessed the crimes  
3 committed day in and day out by Khaled El Hishri and the Mitiga Perpetrators from  
4 their own vantage point, their accounts are corroborative of a consistent pattern of  
5 extreme mistreatment from arrest to release.

6 The Mitiga Perpetrators targeted victims predominantly in and around Tripoli,  
7 although their reach extended to well beyond: some victims were arrested well over  
8 100 kilometres away.

9 They arrested the victims at their homes in front of their families, including children,  
10 at their workplaces, in cafés and restaurants, or on the streets of Tripoli. They  
11 caught them at the airport, or at roadblocks in and around the city. They used social  
12 media to lure them and abduct them or caught them at demonstrations.

13 When the perpetrators could not find the target, they would detain their relatives -  
14 including women, children and elderly persons - to pressure them to surrender.

15 Wherever they caught them, the Mitiga Perpetrators forced the victims into vehicles  
16 or otherwise took them away with violence, often at gunpoint, handcuffing,  
17 blindfolding, threatening, insulting and beating them in the process.

18 P-872 was shot, forced into a vehicle, and anally raped with a weapon before being  
19 taken to Mitiga.

20 Masked men beat P-486 with the butts of their guns, insulted and threatened to shoot  
21 him, before taking him away. This happened in front of his wife and child.

22 The last thing he heard before being dragged away was his daughter calling for him  
23 and crying.

24 The last thing she saw was her father covered in blood. They would not see each  
25 other until several years later.

1 Your Honours, these are not the actions of a legitimate law enforcement agency.

2 These are criminal abductions.

3 There is no doubt that the victims in this case were imprisoned or otherwise severely  
4 deprived of their physical liberty. This crime is proven when perpetrators confine  
5 one or more persons in violation of fundamental rules of international law, for  
6 example when they do so without legal basis or without providing due process  
7 guarantees. This is also the case, independently of any procedural violation, when  
8 they do so in conditions that are inhumane or inflict treatment that is incompatible  
9 with basic human rights protections.

10 Whether or not some of the victims in this case may have legitimately been suspected  
11 of a crime does not matter. Because as your Honours will hear throughout my  
12 presentation, from the moment they were arrested to the moment they were released,  
13 Khaled El Hishri and the Mitiga Perpetrators subjected them to extreme violence, held  
14 them in dehumanising detention conditions, and deprived them of the most  
15 fundamental rights that must be afforded to any detained person.

16 Following their arrest, most victims were taken straight to the Mitiga Compound, in  
17 the Souq Al Juma area of Tripoli, along the coastline around 8 kilometres east of  
18 the city centre.

19 Specifically, the perpetrators took the victims to the western part of the Mitiga  
20 Compound.

21 The victims were not told why they were being arrested or where they were being  
22 taken, and often only realised where they were when they heard the sound of planes  
23 landing and taking off from the nearby runway. Others learned that they were at  
24 Mitiga from co-detainees.

25 Again, the manner in which detainees were treated on arrival at Mitiga makes it clear

1 that their detention was arbitrary.

2 The Mitiga Perpetrators first took their victims to one of several support buildings,  
3 predominantly in the area presently highlighted in blue, which are collectively  
4 referred to in the Prosecution's DCC as the Naqliah.

5 These buildings had rooms equipped for the specific purpose of interrogating and  
6 torturing detainees.

7 At the Naqliah, on arrival and subsequently throughout their detention,  
8 the perpetrators interrogated detainees with extreme violence. They questioned  
9 them about their affiliation with militias or parties to the armed conflict, their political  
10 views, their moral and religious beliefs, their sexual orientation, as well as about  
11 relatives and acquaintances. Often, they were thrown accusations or were  
12 questioned in a way that made no sense, that seemed random, or changed over time.  
13 They were not given access to a lawyer. Due process was non-existent.

14 The perpetrators demanded ransoms for the detainees' release; they forced them to  
15 sign documents without knowing their contents. They extracted false confessions  
16 under torture. Some of these forced confessions were video recorded and later  
17 published online. Detainees were given scripts to read and were beaten if they  
18 weren't convincing enough.

19 When P-1070 requested a lawyer and to be brought before a prosecutor, he was  
20 beaten with a hard plastic pipe called PPR and kicked in the stomach by a Mitiga  
21 Perpetrator who told him, quote, "How dare you talk about a lawyer and question  
22 our procedures? We don't care about the prosecution; we are the rulers of Tripoli".  
23 End quote.

24 Interrogators at the Naqliah often seemed to know nothing about the persons they  
25 were interrogating. Many victims - still shaken and confused by their violent

1 abduction - were asked to explain why they were detained or who had taken them to  
2 Mitiga Prison. Yet, as P-498 states, quote, "none of the detainees had a clear  
3 understanding of the charges against them". End quote. They were simply never  
4 told.

5 At the Naqliah, both on arrival and subsequently, the perpetrators, including  
6 Khaled El Hishri, subjected the victims - men, women, boys, and girls alike - to  
7 extreme physical, psychological, sexual, and reproductive violence to extract  
8 information, obtain confessions, punish, and coerce them into physical and mental  
9 submission, or to persecute them.

10 This mistreatment at the Naqliah amounted to torture, cruel treatment, outrages upon  
11 personal dignity, other inhumane acts, sexual violence, and rape.

12 To inflict pain, Khaled El Hishri and the Mitiga Perpetrators used a broad variety of  
13 torture methods, techniques and tools, following clear patterns, often combining them  
14 to maximise the suffering of their victims.

15 Beatings and suspension torture were a common feature at the Naqliah.

16 After his violent arrest, P-872 was immediately taken to the Naqliah, where he and  
17 a female detainee were subjected to a form of suspension torture called *farrouj*, which  
18 means grilled chicken.

19 A visualisation of this torture technique is currently being displayed on your screens.

20 One after the other, they were forced to sit with their knees to their chests and their  
21 arms wrapped around their shins, their wrists handcuffed together.

22 The perpetrators then lifted them with an iron bar inserted under their knees using  
23 a type of electrical crane called *balanco*.

24 While suspended in this way, Khaled El Hishri and others beat the two victims with  
25 hard plastic pipes for an hour. And your Honours, all of this was done in front of

1 the woman's young child.

2 Suspension torture and beatings were often sexualised. To increase the victims'  
3 suffering and their sense of absolute vulnerability, the Mitiga Perpetrators often  
4 undressed, blindfolded, and suspended them, before targeting their sexual and  
5 reproductive organs.

6 One victim was being tortured in this manner when a Mitiga Perpetrator inserted a  
7 metal wire through the skin of his penis, bent the wire in the shape of a hook, and  
8 ripped it out.

9 An interrogator tortured P-1685 with electrical shocks to his testicles while he was  
10 suspended in this way. He then pulled the witness's penis and punched him in  
11 the genitals, before another man took his turn to beat the witness, including on  
12 the genitals. An hour later, they were done with him. P-1685 was still hanging by  
13 his hands. When he looked down beneath his blindfold, he saw blood running  
14 down his pants.

15 Physical violence targeting genitals was a frequent feature of the detainees' ordeal at  
16 the Naqliah. P-667 and P-942 were both violently kicked in the genitals. P-942  
17 describes feeling an electric shock throughout his body and his vision going hazy; he  
18 almost fainted and kept vomiting from the pain. Another time at the Naqliah, an  
19 interrogator violently grabbed him by the genitals and twisted them, causing him so  
20 much pain that he fainted. P-993 was tortured in this way by an interrogator who  
21 told him, quote, "I don't want you to have children". End quote.

22 Torture at the Naqliah also included rape.

23 During one torture session, an interrogator pulled down P-635's pants, leaving him in  
24 his underwear, and pushed a hard plastic pipe into his anus.

25 Another detainee was twice taken to the Naqliah, where three men tied him up, bent

1 him over and tied him to a table, undressed him, and anally raped him, one after  
2 the other. They then started calling him, quote-unquote, "sex slave" or "*sabiya*".

3 Following their initial interrogation and torture at the Naqliah, the victims were  
4 transferred less than a kilometre away to the Main Prison building.

5 Sometimes they were tortured so severely at the Naqliah that they had to be carried  
6 or transported in a wheelbarrow.

7 The Main Prison building covers an area of roughly 80 by 100 metres and is  
8 surrounded by a high perimeter wall made of reinforced concrete blocks as well as by  
9 multiple watchtowers.

10 At the prison, the Mitiga Perpetrators initially took the victims to what was called  
11 the scanner room.

12 There, they searched them to -- subjected them to humiliating and degrading body  
13 and cavity searches that frequently amounted to sexual violence, and sometimes rape.  
14 Even if in some cases there may have been legitimate reasons to conduct searches,  
15 the manner in which they were conducted went far beyond what was necessary and  
16 was designed to be deeply humiliating, leaving a lasting impact on the victims.

17 The Mitiga Perpetrators forced many detainees to undress, and made them bend over  
18 or squat. Some victims then had their anus and genital areas visually and/or  
19 physically searched. Failure to comply immediately with instructions resulted in  
20 insults, threats, and beatings. Sometimes, the perpetrators used detainees to conduct  
21 the searches or conducted them in full view of other detainees, including relatives.

22 The detainees who were forced to witness or carry out these searches are also  
23 themselves victims of sexual violence.

24 Khaled El Hishri was often present during the searches of female detainees in  
25 the Women's Section. He beat P-665 with a hard plastic pipe before ordering her to

1 take off all her clothes in front of him. When she hesitated to remove her underpants,  
2 Khaled El Hishri warned -- he warned her to cooperate or he would search her  
3 himself. He then ordered another detainee to search her, including by touching her  
4 breasts and genital area while he was watching. The victim describes this experience  
5 as, quote, "a humiliation [that] can never go away". End quote.

6 Khaled El Hishri subjected another witness, P-943, to the same degrading treatment.  
7 He ordered her to take off all her clothes, threatening to beat her, calling her a "filthy  
8 animal" and a "street whore". When she was fully naked, he instructed another  
9 detainee, a detained woman, to search her by touching her genital area, telling her,  
10 quote, "down there, enter your hand". End quote. Again, Khaled El Hishri was  
11 watching. P-943 was terrified and thought that Khaled El Hishri was going to rape  
12 her.

13 Prisoners were then assigned to one of the prison's detention sections, each containing  
14 multiple collective or solitary confinement cells, situated just metres away from  
15 the prison administration.

16 The evidence shows that, at all material times, the prison held between at least 1,700  
17 and as many as 5,140 detainees, including men, women, boys and girls, Libyans and  
18 non-Libyans.

19 Here, throughout the charged period, the victims lived and died in dangerous,  
20 inhumane and degrading detention conditions, in an atmosphere of terror, and under  
21 the constant threat of barbaric acts of violence.

22 Mistreatment happened everywhere: in the cells, in the corridors, and particularly in  
23 the inner yards separating some of the detention sections, and the outer yard  
24 immediately north of the prison.

25 These yards were commonly referred to as "*l'area*" and, like the Naqliah, they were

1 equipped for the specific purpose of enabling the perpetrators systematic use of  
2 torture.

3 Violence started as soon as the detainees arrived at Mitiga. Khaled El Hishri,  
4 quote-unquote, "welcomed" P-1673 to the prison by shooting him in the foot and  
5 ordering guards to beat him. Violence was routinely used as the detainees were  
6 moved around, to punish them for resistance, or simply for the entertainment of  
7 the Mitiga Perpetrators.

8 The Mitiga Perpetrators inflicted beatings on all body parts, including the genitals,  
9 using their hands and feet, but also objects such as hard plastic pipes known as PPR,  
10 iron bars, or electrical cables.

11 The suspect himself was well known for beating detainees with a shovel. P-1673  
12 once witnessed Khaled El Hishri chasing a prisoner with a shovel, holding it like an  
13 axe and swinging it forcefully. The suspect keep beating the victim until he could no  
14 longer move, and left the floor covered in blood.

15 A beating technique frequently used at Mitiga Prison was called "*falqa*". Guards tied  
16 up or otherwise constrained and lifted the detainees' legs before flogging them on  
17 the soles of their feet, their toes, legs, and buttocks, leaving them with blisters,  
18 lacerations, and bruises. To increase their pain, victims would sometimes be forced  
19 to run on their injured feet.

20 Several times, P-993 was left in a corridor for hours with his feet passed through and  
21 tied to a metal fence. Any guard passing by beat him on the feet. When he was  
22 finally untied, he had to crawl back to his cell, unable to walk for weeks.

23 Khaled El Hishri, Osama Njeem and the other perpetrators often punished entire cells  
24 or sections. While beating them, they sometimes forced them to the ground,  
25 kneeling or on their stomachs; or made them hold stress positions such as squat,

1 plank or push-up; or they made them roll over in the mud or over each other. P-719  
2 describes how, on what was called, quote-unquote, "Torture Friday", a Mitiga Prison  
3 shift commander would take 25 to 30 detainees to a yard before telling his guards that  
4 he wanted, quote, "to see the [yard] covered in blood". Unquote.

5 Another shift commander would call out around 80 to 90 prisoners to the yard and  
6 have his guards savagely beat them all over their bodies while they were standing in  
7 the rain. The beatings lasted for hours. P-719 states, quote, "[t]his was living hell.  
8 Torture was continuous in every shift and performed at their whim. 'The torturers'  
9 considered this entertaining". End quote.

10 Women held in the Women's Section were not spared from the beatings. \* P-1733  
11 states that Khaled El Hishri, quote, "did not stop beating the female detainees until he  
12 saw blood". End quote.

13 P-1722 saw him inflict collective punishments on groups of five to 15 women at the  
14 same time. He lined these women up facing a wall and then whipped them on  
15 the back and buttocks, using the longest plastic pipe available so that he could hit  
16 multiple women at once.

17 Once, he whipped Witness P-943 all over her body with a wooden rod while she was  
18 suspended from the ceiling, calling her a "bastard", "an animal" and a "bitch". He  
19 especially targeted her breasts and buttocks while she was crying and begging for  
20 him to take her down.

21 Khaled El Hishri and the Mitiga Perpetrators sometimes inflicted lethal beatings.

22 P-1722 and P-1750 both witnessed Khaled El Hishri beating detainees on the head,  
23 one of them with a shovel. Both of these detainees died.

24 Another witness, P-1720, witnessed Khaled El Hishri and others torture a detainee  
25 over the course of several days. On the third day, the witness saw the detainee lying

1 on the floor in an open area, severely wounded. He states, quote, "he had lacerations,  
2 blood, and faeces on him [...] he was slumped to his side, unable to sit, and clearly  
3 required hospital care". End quote. This detainee died the next day.

4 The Mitiga Perpetrators, including Khaled El Hishri himself, regularly took  
5 the detainees out of their cells to mistreat them, individually or collectively in the  
6 prison's yards.

7 One of these yards was known as the "Islamic Neighbourhood". This was  
8 a reference to the area of Tripoli known for its slaughterhouses and for the way  
9 butchers hang meat and the carcasses of slaughtered animals there.

10 In this yard, Khaled El Hishri and the other Mitiga Perpetrators routinely suspended  
11 detainees on hooks from the gridded ceiling, often with their hands behind their back,  
12 and subjected them to severe beatings and other forms of torture.

13 Suspension torture caused extreme joint pain, shoulder dislocation, cuts and  
14 lacerations in the wrists, and often lasting injuries, disfigurement and physical  
15 impairment.

16 P-1722, who was suspended in this way by Khaled El Hishri stated, quote, "the pain  
17 was unbearable, I felt as though my body was split into two". End quote. While in  
18 this position, Khaled El Hishri beat the witness on his back and shoulders with  
19 a metal bar.

20 P-942 was likewise subjected to this torture method, describes screaming before  
21 passing out. He said, quote, "I could feel my bones and my chest cracking, I could  
22 feel my muscles in my shoulders tearing apart". End quote.

23 While suspended, the perpetrators beat the detainees with plastic pipes or pulled  
24 their legs to increase their pain.

25 Khaled El Hishri personally ensured that the torture inflicted on the detainees was as

1 painful as it could be. Once, when he found several detainees suspended with their  
2 hands to the front, he personally proceeded to suspend them with their hands behind  
3 their back, before pulling their bodies down until their shoulders dislocated.

4 P-1750 stated, quote: "I cannot describe the pain and passed out. When I woke up  
5 my arms were above my head, but the wrong way round. Khaled El Hishri had  
6 pulled my body down and my arms and shoulder had been wrenched and dislocated  
7 the wrong way. I was unable to use my shoulder for 6 months or more after this and  
8 lost the use of my hands for some time."

9 Some victims were partially undressed while they were tortured in this way,  
10 increasing their sense of extreme vulnerability and pain.

11 Khaled El Hishri and the Mitiga Perpetrators sometimes left detainees suspended,  
12 tied to a pole, or chained to a wall, until they died.

13 P-1736 once saw Khaled El Hishri tie two young detainees who had visible marks of  
14 beatings to a pole, instructing other detainees not to help them. After two days,  
15 when one of the men asked to be killed, Khaled El Hishri replied, quote, "you are not  
16 worth killing. You will die here". End quote. And on the third day, both  
17 detainees died, one after the other.

18 This was not an isolated incident, your Honours. P-720 and P-1720 both witnessed  
19 the murder of detainees similarly left hanging by Khaled El Hishri.

20 Yet another torture method used by the Mitiga Perpetrators was to shoot detainees,  
21 particularly in the lower limbs. Khaled El Hishri himself shot at least 27 detainees.

22 He ordered one detainee to sit on the ground, cover his face, and stop moving.

23 The victim then heard a loud bang and felt his body move backward; when he  
24 uncovered his face, in shock, he saw a big hole in his leg. He could see his bone and  
25 it was bleeding. He states, quote, "I was in shock [...], I could not believe what had

1 just happened, I was hysterical, I kept touching the blood with my hands and rubbing  
2 my eyes. I tried to stand on my leg but I could not [...] El Hishri kept looking at me  
3 and insulting me calling me [a] dog". Unquote.

4 Khaled El Hishri also shot to kill.

5 P-595, P-720 and P-1745 all witnessed Khaled El Hishri shooting and killing several  
6 detainees. One time, he fired a machine gun at an entire cellblock, killing at least one  
7 and injuring others.

8 He also shot P-925 to kill him, but the witness survived due to circumstances  
9 independent of his intentions.

10 Other detainees died as a result of the combination of being shot, beaten and deprived  
11 of adequate medical care.

12 Khaled El Hishri once shot a detainee twice in the legs, below the knee, and left him  
13 in his cell, returning there later that night to beat him. The next time El Hishri came  
14 to his cell, it was to collect the detainee's dead body. It was later found in the streets  
15 of Tripoli.

16 Sexual violence and reproductive violence was integral to the Mitiga Perpetrator's  
17 detention system.

18 Khaled El Hishri himself inflicted sexualised torture on both men and women at  
19 Mitiga. He once pulled a man's pants down in front of a woman at the Naqliah,  
20 grabbed the man's penis with pliers and dragged him around, calling him a whore.

21 Another time, he beat P-1710 with a hard plastic pipe all over his head, chest, as well  
22 as in the genitals and on the buttocks.

23 Many women and girls held under Khaled El Hishri's control in the Women's Section  
24 were subjected to sexual abuse and were raped.

25 Shortly after P-1736's arrival at Mitiga Prison, Khaled El Hishri violently undressed

1 her, pushed her face against the wall while grabbing her breasts from behind, and  
2 then anally raped her.

3 P-943 was suspended by her feet by Khaled El Hishri, who then beat her and touched  
4 her on the breasts, the buttocks, and in the genital area.

5 He also punished a woman by twisting her arms, forcing her to lean forward, before  
6 pressing himself and rubbing his penis against her saying, quote, "you never learn,  
7 you never listen, what [is] wrong with you". End quote.

8 Men held near the Women's Section could often hear women screaming and crying.

9 Khaled El Hishri, Osama Njeem and the other Mitiga Perpetrators raped dozens of  
10 women at Mitiga. Khaled El Hishri took women and girls from the Women's Section  
11 at night to a so-called leisure area in the Mitiga Compound that was reserved for  
12 the use of the perpetrators. When these women returned to the prison, they told  
13 P-1736 that Khaled El Hishri had raped them.

14 Khaled El Hishri raped these women and children by force, threats, and coercion  
15 rooted in fear, violence, detention, and the abuse of his position of power within an  
16 inherently coercive and oppressive environment.

17 One of these women, a minor, returned to the prison severely beaten all over her  
18 body. She had resisted Khaled El Hishri's rape attempts and he had savagely beaten  
19 her.

20 The Mitiga Perpetrators raped men too. Male detainees were often taken away,  
21 isolated from the other detainees, and raped.

22 One witness was left on his own in his cell when he first arrived at Mitiga Prison.

23 The guard -- there, a guard came several nights in a row to rape him. The guard tied  
24 his hands, called him a dog and an animal when he tried to resist, and then anally  
25 raped him, one time with a water bottle.

1 After being tortured, another detainee, P-551, was left on his own in a cell when  
2 a Mitiga Perpetrator came to orally and anally rape him at gunpoint, telling him,  
3 quote, "I order and you're not in a position to refuse". End quote.

4 Minors were sexually exploited by the perpetrators in exchange for food or a phone  
5 call to a relative. P-595 once saw a boy who was crying hysterically while bleeding  
6 from the anus. The boy then told him that a senior Mitiga Perpetrator had done this  
7 to him.

8 In addition to raping and subjecting detainees to sexual violence, Khaled El Hishri  
9 and the Mitiga Perpetrators also deliberately exposed detainees to the risk of rape and  
10 sexual violence by other detainees.

11 First, they knew that the deliberate overcrowding of the prison cells caused  
12 the detainees to sleep in such close physical proximity that it led to intra-detainee  
13 violence, yet they maintained this system in place for years. Worse, they used  
14 detainees known for raping and sexually assaulting others by intentionally placing  
15 detainees in their cells as punishment. An interrogator once told P-1673, quote, "I  
16 will put you in a cell where someone will rape you all night". End quote.

17 Another detainee was moved to what was called "house zero" as punishment. This  
18 cell was a cell that held detainees known for committing violence, including sexual  
19 violence, against other detainees. This detainee was gang raped by four detainees in  
20 this cell. He cried out to the guards for help, but no one came.

21 P-498 states, quote, "[i]f the guards wanted to torture someone, destroy him  
22 psychologically, intimidate him [...] to affect his dignity, they would place him inside  
23 this cell". End quote. Prisoners could hear people yelling for help and banging on  
24 the door of this cell.

25 Khaled El Hishri had the requisite *mens rea* for these crimes. Mitiga Prison was

1 characterised by the total control of detainees, an atmosphere of terror, widespread  
2 and systematic abuse, and absolute impunity. In such circumstances, rape and  
3 sexual violence were an entirely foreseeable and ordinary manifestation of  
4 the inherently coercive environment of the prison. In other words, at Mitiga, these  
5 crimes occurred in the ordinary course of events. Khaled El Hishri knew that these  
6 crimes were being committed by virtue, among others, of his leadership role and  
7 regular presence at the prison, his central role in Mitiga Prison's institutionalised  
8 mistreatment, and because he committed them himself against men, women, and  
9 children.

10 Your Honours, these are just some of the many torture methods used by  
11 Khaled El Hishri and the Mitiga Perpetrators, and just some of the many specific  
12 examples described by the former detainees. Other forms of mistreatment used both  
13 at the Naqliah and the Main Prison amounting to torture, cruel treatment, outrages  
14 upon personal dignity, and other inhumane acts, include:

15 Asphyxiation, in particular through close confinement in a box sometimes described  
16 as a coffin, for extended periods of time;

17 Sharp force, for example through the use of an electric drill on the flesh of a detainee;

18 Amputation, for example of most of the fingers on one hand;

19 Dental torture and de-nailing caused by severe beatings on the face, the hands and  
20 the feet of detainees;

21 Burning;

22 Chemical exposure through the gratuitous use of pepper spray in detainee cells;

23 Deprivation of essential conditions;

24 Humiliation and degrading treatment;

25 Threats and intimidation;

1 Sleep deprivation;  
2 Isolation and solitary confinement;  
3 Sensory overload;  
4 And other forms of psychological torture.  
5 Victims were also forced to witness the mistreatment of others, including relatives,  
6 which itself amounted to torture.  
7 For example, Khaled El Hishri often beat the women held under his control in front of  
8 their children. The children would hide between their legs, screaming and crying.  
9 He also shot a woman in the knee in front of her 13-year-old daughter.  
10 One particularly pervasive form of mistreatment inflicted by the Mitiga Perpetrators  
11 consisted of the dangerous and dehumanising conditions in which the detainees were  
12 held, and which permeated every aspect of their daily existence.  
13 These conditions satisfy the elements of the crime of torture, cruel treatment, outrages  
14 upon personal dignity, and other inhumane acts.  
15 Khaled El Hishri and the Mitiga Perpetrators did not simply deprive the victims of  
16 their physical liberty. They systematically denied the victims their basic human  
17 needs:  
18 They subjected them to starvation and dehydration;  
19 They denied them basic hygiene, adequate sleep, and necessary medical care;  
20 They left them without shelter, exposed to the cold or extreme heat;  
21 They confined them in unventilated cells devoid of natural light;  
22 They kept them in overcrowded cells, depriving them of any personal space or  
23 privacy, or, alternatively, subjected them to prolonged isolation;  
24 Some of them were held in secret for extended periods of time, leaving their relatives  
25 in prolonged uncertainty as to their fate and whereabouts. Many were deprived of

1 any meaningful contact with their family members;

2 They also deprived them of any sense of physical and psychological safety;

3 And ultimately, by keeping them in these conditions they took away their dignity.

4 Your Honours, on your screens is displayed an image which, although not an image

5 of Mitiga Prison itself, was provided to the Prosecution by survivors of the prison

6 because it reflects the conditions there.

7 Detainees were kept in small, extremely crowded cells for years on end. Detainees

8 slept directly on the ground. There was so little space that prisoners had to take

9 turns to sleep. One group of prisoners would sleep for a few hours while another

10 group remained standing waiting for their turn, often for hours and in difficult

11 positions, leaning against a wall, standing in the toilet area, or on one leg among

12 the sleeping prisoners because there was simply no space left for their second leg.

13 Those who were able to lie down on the ground were packed, quote, "like in a can of

14 sardines", unquote, sleeping on their sides, pressed by detainees on either side. One

15 detainee's feet would be next to the other detainee's face. P-1673 states, quote, "there

16 was no privacy; you could not move without touching the intimate parts of other

17 detainees". Unquote. Detainees became aggressive and also fought over space.

18 Some were sexually assaulted by other detainees. On his first night at Mitiga Prison,

19 P-571 was sexually assaulted by the detainee sleeping behind him and beaten in

20 the face by the one in front of him.

21 Detainees were also given inadequate and often inedible food, leaving them starving

22 and malnourished. Prisoners became obsessed with food to the point of stealing

23 small pieces of bread or fighting each other. Children and infants endured constant

24 hunger. Detainees were also provided insufficient and unhygienic drinking water,

25 including during the hot summer months. And because of this, many developed

1 kidney failure and urinary tract infections and some died from dehydration caused by  
2 \* acute diarrhoea.

3 Most detainees were held in squalid conditions. Wearing their only clothes,  
4 unshaven, detainees could rarely wash. They looked, quote, "like they were living in  
5 a cave." End quote. Witnesses describe their cells as dirty, never cleaned, filled  
6 with insects and covered in mould; they were hot and humid, airless, and smelled so  
7 bad that prison guards would often cover their mouths and noses when opening  
8 them and called the prisoners, quote, "dirty garbage."

9 P-486 states, quote, "[y]ou would not keep livestock there, never mind human beings"  
10 End quote. Some cells had just one toilet - often just a hole in the ground, with no  
11 privacy - for up to a hundred detainees.

12 Some days after arriving at Mitiga Prison, P-54 was brought to a small overcrowded  
13 cell without windows or ventilation. When the guards opened the cell door, it  
14 released a cloud of foul-smelling vapour from the crammed prisoners' breaths. The  
15 guards then kneed P-54 in the back to push him in.

16 P-568 states that it was a relief every time the guards took him out in the corridor to  
17 beat them, because it meant that they could have some fresh air.

18 Khaled El Hishri often took personal measures to increase the detainees' suffering, for  
19 example, by switching off the ventilation system in specific cells to punish detainees,  
20 or prohibiting the removal of garbage for several days.

21 Held separately in the Women's Section in the same unsanitary conditions, together  
22 with infants and children, women were denied basic menstrual care. By forcing  
23 some of these women to give birth in these conditions without medical help,  
24 Khaled El Hishri deliberately inflicted severe reproductive violence on these women.  
25 Your Honours, as a result of these conditions, disease was rampant in the prison.

1 Prisoners suffered from tuberculosis, diarrhoea, haemorrhoids, kidney failure, and  
2 many had scabies, rashes, and other skin conditions that made them scratch until they  
3 bled.

4 There was little to no medical care for detainees, which compounded the impact of  
5 these detention conditions and often made them lethal.

6 Detainees were often dumped in their cells with severe injuries from their torture -  
7 gunshot wounds, dislocated shoulders, broken bones and teeth, cuts, bruises, swollen  
8 body parts, including genitals - or they were left there with life-threatening health  
9 issues, malnourished, and exposed to infections and diseases.

10 Yet, the Mitiga Perpetrators, especially Khaled El Hishri, ignored and often explicitly  
11 refused to assist injured or sick detainees in distress.

12 Guards would threaten to torture or shoot those asking for help and even those  
13 helping other detainees. Prisoners were left to care for themselves.

14 Prisoners subjected to suspension torture were often sent back to their cells with their  
15 shoulders still out of place. P-54 describes seeing detainees with what looked like,  
16 quote, "birth defects on their wrists and shoulders". End quote.

17 Other prisoners would try to help them by stepping on their shoulders. P-498 recalls,  
18 quote, "[w]e are not doctors, not nurses, but we had to do something to bring these  
19 people back to normal". End quote.

20 In P-925's words, quote, "it was simply a matter of either recovering or dying". End  
21 quote. And in fact, many detainees did die in their cells and often died a slow death.

22 These deaths were not accidents, incidental, or isolated, your Honours. This was  
23 murder.

24 One day, P-571 heard a gunshot, when he looked through his cell's window he saw  
25 Khaled El Hishri stand next to a prisoner whose leg was bleeding. Khaled El Hishri

1 then ordered, quote, "dump him away [...] and let it become infected." End quote.

2 Prison guards often told detainees not to call them until a detainee was "cold",

3 meaning dead.

4 P-650 saw a detainee covered in blood, barely conscious, unable to speak, being

5 brought to his cell. When the other prisoners called for help, the guards warned

6 them that if they spoke up again, they would all be taken out to be tortured. Two

7 hours later, this prisoner died.

8 Dead bodies were often left with the surviving detainees for long periods before being

9 removed and dumped around the city with no formalities or identification.

10 Your Honours, the Mitiga Perpetrators also deprived the detainees of their basic sense

11 of physical and psychological safety, and made them live in a state of constant fear

12 and terror. The perpetrators fuelled this fear through their daily verbal abuse,

13 humiliation, and threats of indefinite captivity, violence, and death.

14 Two guards showed witness 720 a wooden baton covered in blood and faeces, and

15 then threatened to anally rape him with it.

16 P-1710 was once told, quote, "you will leave this place wrapped in a blanket". End

17 quote.

18 Khaled El Hishri himself once threatened to kill all detainees in the prison by

19 throwing a grenade into each cell.

20 Humiliation was a daily occurrence. While being beaten and insulted, P-1673 was

21 forced to bark like a dog and bleat like a goat. Others were forced to lick up their

22 own vomit after being forced to roll on the ground. Insults such as "dog" or "whore",

23 or insults targeting parents and relatives, are experienced as especially humiliating in

24 the Libyan context.

25 Your Honours, again these are just some of the examples of the type of abuse that was

1 part of daily life at Mitiga Prison.

2 Even when they were not targeted themselves, detainees could still see others being  
3 tortured, observed the wounded or dying prisoners in their own cells, or overhear  
4 the sounds of torture and human suffering throughout the prison.

5 P-595 described the sounds of Khaled El Hishri yelling at and insulting the women  
6 who were begging him to stop beating them as "terrifying" and "a daily occurrence".

7 P-650 confirms, stating, quote, "this was life in prison, hearing screaming, people  
8 crying and getting tortured and not being able to talk about anything."

9 Detainees were terrified of their name being called by the guards, as it meant that  
10 they would be taken out to the Naqliah. P-990 recalls, quote, "[w]hen a prisoner is  
11 called to the Naqliah, they become petrified and go to the bathroom with diarrhoea.  
12 Once you enter the Naqliah, you either leave in a casket or with a handicap". End  
13 quote.

14 Detainees were also terrified whenever Khaled El Hishri was around. P-1722 recalls  
15 that he and other prisoners in his cell would try to hide in the toilet - a space of barely  
16 one square metre - piling up on top of each other in an attempt not to be noticed by  
17 him and taken out for punishment.

18 Detainees were held for years in these conditions without knowing their fate.

19 Khaled El Hishri once told P-1736, quote, "Whoever comes here is a missing person."  
20 End quote. He often warned his victims that they, quote, "would not see the outside  
21 world until Libya had skyscrapers". End quote. That is maybe in some distant  
22 future, or never at all.

23 Most detainees were never charged, or brought before a prosecutor or a judge. Some  
24 detainees were so desperate for a referral that they started a hunger strike. One of  
25 them recalled, quote, "[w]e wanted to be brought before the attorney general or die".

1 End quote.

2 Even for those who were eventually brought before a prosecutor, these decisions  
3 were made arbitrarily, followed no regular procedure, and were often based on  
4 wholly fabricated charges.

5 When, years into his detention, P-942 was told that he would be brought before  
6 a prosecutor, an interrogator told him they, quote-unquote, "had nothing on [him]"  
7 and P-942 needed to speak so he could be referred. When the witness said that he  
8 had nothing to say, the man suspended him with his hands behind his back and  
9 electrocuted him. When he was finally brought before a prosecutor he was told that  
10 the many years he had already spent in the prison did not count, because  
11 the prosecutor had never been informed that he had been detained in the first place.  
12 Court decisions to release detainees did not matter. The Mitiga Prison Leadership,  
13 including Khaled El Hishri and Osama Njeem, they were the ones who decided  
14 whether prisoners could be released. As witnesses have explained, they returned  
15 many victims to their cells despite the issuance of a release order, which they refused  
16 to acknowledge, and sometimes simply tore up the release papers in front of  
17 the detainees.

18 Release often came as a surprise. The perpetrators let many out of the compound  
19 without explanation but with a warning that, if they spoke about what happened to  
20 them, they would be imprisoned again.

21 To this day, years after their release, the victims still do not know why they were  
22 imprisoned and lost years of their lives.

23 Throughout the charged period, the mistreatment that I just described was the daily  
24 reality of thousands of prisoners, shaping every moment of their existence for years  
25 on end.

1 The evidence shows that there are substantial grounds to believe that:

2 At least 945 identified victims were subjected to imprisonment, torture, cruel  
3 treatment, outrages upon personal dignity, and other inhumane acts, including 125  
4 women, 770 men, as well as 50 children, including 13 girls and 27 boys.

5 That at least 10 identified victims were raped.

6 That at least 49 identified victims were subjected to other forms of sexual violence.

7 And at least 89 identified victims were murdered or victims of attempted murder.

8 Consistent with your Honours' decision on the confirmation of charges in the Duterte  
9 case, these numbers of victims are non-exhaustive and merely illustrative of crimes  
10 charged in this case.

11 Most of these victims were subjected to multiple crimes inflicted by Khaled El Hishri  
12 and other perpetrators with extreme cruelty, often throughout a detention marked by  
13 never-ending terror.

14 Madam President, your Honours, this brings me to the conclusion of my submissions  
15 on counts 1 to 12.

16 Tomorrow morning our presentation, with your leave, will continue with  
17 the presentation on the crimes of enslavement and persecution by my colleague  
18 Ms Dianne Luping.

19 Thank you, your Honours.

20 PRESIDING JUDGE MOTOC: [16:51:18](Interpretation) Thank you, Mr van der  
21 Werf for your presentation.

22 So this marks the end of today's programme and we shall resume tomorrow at 10 a.m.  
23 with the continuation of the observations, the oral observations on the part of  
24 the OTP.

25 I thank the parties and participants, and I thank the court reporters, the technical staff,

1 and all those who have made this first day of the hearings to come off without a hitch.

2 Thank you very much.

3 THE COURT USHER: [16:51:54] All rise.

4 (The hearing ends in open session at 4.51 p.m.)

5 CORRECTIONS REPORT

6 The following interpretation corrections, marked with an asterisk \*, are brought into  
7 the transcript.

8 Page 2 line 16:

9 " MS PELLET: [10:03:50](No interpretation)"

10 is corrected to:

11 " MS PELLET: [10:03:50](Interpretation) Thank you, Madam President. The victims  
12 are represented by Paolina Massidda, Principal Counsel; Tars Van Litsenborgh;  
13 Ahmad Issa; Ana Peña; and myself, Sarah Pellet, Counsel at the Office of the Public  
14 Counsel for Victims."

15 Page 20 line 9-10:

16 "but we'll do our very best to stick to the 45-minute allotted time."

17 is corrected to:

18 "but we shall stick to the 45 minutes we have been allocated, in any case."

19 Page 20 line 17-24:

20 "We also appear, your Honours, on behalf of their individual families, whose lives  
21 have been forever affected by the unlawful detention of their loved ones and/or death  
22 of these latter. For some, this day has been 10 years in the coming. This hearing, far  
23 from being a straightforward formality, constitutes a crucial stage in understanding,  
24 or at least to attempt to understand, the unspeakable, thereby enabling their suffering  
25 to be at last recognised, and for justice to be done on their behalf. For the majority of

1 these people, understanding is key -- key in trying to surmount these tragic events."

2 is corrected to:

3 "We also appear, your Honours, on behalf of their respective families, whose lives  
4 have been forever affected by the unlawful detention of their loved ones and/or death  
5 of the latter. For the victims, this day has been 10 years in the coming. This hearing,  
6 far from being a straightforward formality, constitutes a crucial stage in  
7 understanding, or at least to attempt to understand, the unspeakable, thereby  
8 enabling their suffering to be at last recognised, and for justice to be done on their  
9 behalf. For the majority of these victims, understanding is key in trying to surmount  
10 these tragic events"

11 Page 21 line 5-7:

12 "For many, like for victim a/00003/26, it's not only through recognition by the Court  
13 and judicial truth that victims can begin to accept what they endured and start, as  
14 best they can, to heal. "

15 is corrected to:

16 "For many, like for victim a/00003/26, it is only through legal recognition and judicial  
17 truth that victims can begin to come to terms with what they have endured and,  
18 however difficult it may be, start to move towards recovery"

19 Page 22 line 17-19:

20 "They were subsequently branded as traitors, terrorists, supporters of opposing  
21 groups to RADA or to Daesh, "

22 is corrected to:

23 "They were subsequently branded as traitors, terrorists, supporters of opposing  
24 groups to RADA or of Daesh, "

25 Page 22 line 23-24:

1 "Accordingly, in many cases, victims were beaten upon capture, they were insulted,  
2 they were humiliated, and acted under duress even before their transfer to the  
3 prison."

4 is corrected to:

5 "Accordingly, in many cases, victims were beaten upon capture, they were insulted,  
6 they were humiliated, and restrained even before their transfer to the prison"

7 Page 24 line 17-18:

8 "I suffered from scabies, a constant itchiness throughout the entire time I was  
9 imprisoned"

10 is corrected to:

11 "I suffered from scabies or constant itchiness throughout the entire time I was  
12 imprisoned"

13 Page 27 line 2:

14 "Pregnant women and women giving birth were refused medical care, even urgent"

15 is corrected to:

16 "Pregnant women and women giving birth were refused urgent medical care"

17 Page 27 line 9-10:

18 "For numerous victims, this humiliation had upon them a more devastating effect  
19 than the blows themselves."

20 is corrected to:

21 "For numerous victims, this humiliation was just as devastating as the blows  
22 themselves"

23 Page 28 line 23:

24 "And he was perfectly described by the victims."

25 is corrected to:

1 "And he was perfectly identified by the victim"

2 Page 39 line 3

3 "and the subsequent resolution"

4 Is corrected to

5 "and the subsequent resolution No.1973 of 2011"

6 Page 39 line 25 to page 40 line 1

7 "the procedures against Mr El Hishri are phase 3 of resolution 1970"

8 Is corrected to

9 "the procedures against Mr El Hishri represents the third phase of the Office of the

10 Prosecutor's efforts to implement Resolution 1970"

11 Page 50 line 18

12 "to Resolution 1973, or '70"

13 Is corrected to

14 "to Resolution 1970"

15 Page 54 lines 6-7

16 "But what I would like to say, that every act starts immediately the following day

17 after the amendment takes effect."

18 Is corrected to

19 "But what I would like to say, that every act starts immediately the following day

20 after the amendment takes effect. This agreement and this authorization have not

21 been published in any Libyan document."

22 Page 83 line 12:

23 " P-733 states "

24 is corrected to Page 83 line 12:

25 "P-1733"

Confirmation of Charges

(Open Session)

ICC-01/11-01/25

- 1 Page 92 line 4:
- 2 "acuity"
- 3 is corrected to Page 92 line 4:
- 4 "acute"