

1 International Criminal Court

2 Pre-Trial Chamber I

3 Situation: Libya

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

5 Presiding Judge Iulia Antoanella Motoc, Judge Reine Adélaïde Sophie

6 Alapini-Gansou and Judge María del Socorro Flores Liera

7 Confirmation of Charges Hearing - Courtroom 1

8 Thursday, 21 May 2026

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

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

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

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

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

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

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

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

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

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

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

4 For the Prosecution, Deputy Prosecutor.

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

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

9 The Defence?

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

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

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

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

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

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

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

12 That's why I would say that the OTP, who were supposed to obtain all the documents
13 from the beginning before submitting an application for an arrest warrant, they used
14 different linguistic terms through the procedures. At the beginning, they used
15 certain terms but then they corrected and changed this terminology later in the DCC.

16 These three different groups of terms that the OTP used, well, first, they used the
17 term an "armed group", the second was "legal entity", and then the third term that
18 they used was a "legal entity that acts as an armed group".

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

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

1 they were using. In 66 per cent of the document, they describe the RADA group as a
2 "legal entity" and they used the term "armed group" in 33 per cent of the document.

3 And in their pre-trial brief, they used it only by * 33 per cent, but then they corrected
4 that * and they called it a "legal entity" by 66 per cent of the document and they did
5 not use at all the term 'legal entity operating as an armed group'.

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

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

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

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

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

1 its affiliation to the Libyan authorities.

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

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

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

14 These are some of the competencies of the apparatus.

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

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

19 * "First lieutenant" is a rank inside the Libyan Ministry of Interior.

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

23 And here, it says:

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

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

1 We move now to slide number 5.

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

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

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

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

15 * And in Article 8 of the same decision: the members shall have the status of judicial
16 officers when performing their duties, in accordance with applicable laws. And in
17 Article 9 paragraph 1: a budget is allocated for them, and the amount allocated for
18 their expenses is specified in the state's general budget.

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

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

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

1 independent budget and shall be subordinate to the Presidential Council."

2 While Article 4 reads as:

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

5 And in Article 5:

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

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

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

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

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

22 "Establishing a main Reform and Rehabilitation Institution under the name 'Tripoli',
23 located at the Mitiga Air Base, with a total area of (* 28,980 square metres)."

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

1 of the attorney general's office.

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

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

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

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

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

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

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

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

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

15 (Counsel confers)

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

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

23 How many people do you imagine should be working in this place in order * to
24 actually control a place of 28,980 square meters? The day before yesterday, the OTP
25 said that the members of the RADA might reach 1,500, but I didn't see the names of

1 1,500 members in any of the documents. I didn't read really any kind of document
2 that would -- that listed the names of the members of the RADA group. Where did
3 the OTP come with this figure? And who are these 1,500 people?

4 If the OTP is keen on conducting investigations clearly and strongly to submit it
5 before this Court, then they have to identify who are the RADA members exactly,
6 what are their functions, what is their structure, functionality and hierarchy as well so
7 that we can know whether Khaled El Hishri was a member in RADA/SDF or not.

8 What is proven before this Chamber, Madam President, was that Khaled El Hishri
9 worked as a security officer in the Libyan embassy in Morocco, so this is the only
10 proven document issued by the Libyan state about Mr El Hishri.

11 The OTP never mentioned the salary of Khaled El Hishri in the SDF. They did not
12 tell us who was the supervisor of Khaled El Hishri based on the paperwork and not
13 based on the sayings of some people. So some people were saying that Osama
14 Njeem was the supervisor of Khaled El Hishri, but Khaled El Hishri had superiority
15 over him. So this is not very logical.

16 So we will show you documents of the Libyan state, but this document that we will
17 show you later is confidential.

18 Can we imagine the amounts of money that were spent on the Mitiga complex? So
19 what is the exact number or amount for the salaries allocated and the -- or the
20 expenses for the Mitiga complex. So can we imagine who is funding this complex
21 and this group and giving them their salaries?

22 Based on the decisions that we have presented, Madam President, all Libyan
23 governments since the establishment of these apparatuses are those that were
24 spending on this group, regardless of its name. Abdul Dbeibeh's government was
25 also funding this group, and, according to the decision, the Minister of Finance issues

1 the decision and the orders to pay the salaries of the members of this group, because,
2 and briefly, the functions of all the RADA members are governmental functions.

3 Slide 13, to confirm what I had said, Madam President, this is a paper from the OTP
4 documents. So this is Mr Abdul Hamid Dbeibeh; and Mr Saddiq Al Sour, attorney
5 general; and Madam Halima Ibrahim, the Minister of Justice; in addition to
6 Mr Abdalraouf Kara, in a meeting inside the government office of Libya. And I will
7 read the news as submitted by the Prosecution.

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

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

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

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

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

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

1 based on all the letters by the Presidential Council.

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

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

16 "(1) [...]"

17 To prove the truth --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 motivations.

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

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

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

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

1 to be rejected.

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

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

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

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

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

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

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

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

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

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

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

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

14 I will be brief and will not take long.

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

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

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

1 El Hishri was personally involved in them.

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

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

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

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

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

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

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

11 * Our submissions here focus on two main axes:

12 There was no attack falling within the meaning of the international criminal law * and
13 the error by the Prosecution in the definition of the concept of civilian population.

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

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

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

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

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

18 The Special Court for Sierra Leone in the Fofana and Kondewa case recognised the genuine
19 and effective efforts to protect civilians weakened the allegation of an attack directed against
20 them. In this sense, the RADA group operated under the order -- orders of judicial
21 institutions in Tripoli; whereas Article 7 of the Rome Statute stipulates the attack must have
22 been carried out in implementation or in furtherance of the policy of a state or organisation.
23 But that is not the case in Tripoli. Not surprisingly, the OTP has not addressed this element,
24 or rather addressed it only marginally, because it simply doesn't exist. RADA/SDF, or what
25 is -- the so-called Mitiga Perpetrators have never had a policy aimed at attacking or

1 intimidating the residents of Tripoli. If there is a policy, it was a policy aimed at law
2 enforcement and combating crime in the most dangerous areas of the Libyan state, as is the
3 case in any country.

4 Second, the stipulation of the civilian population.

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

14 * The Office of the Prosecutor presented the entire population of the city of Tripoli, more than
15 one million people, in order to inflate the overall population figures and create the initial
16 impression that the requirement of a widespread attack had been met but then actually
17 limited the incidents of the Mitiga prison only. The Office of the Prosecutor appears to refer to
18 Tripoli and its surrounding areas, while limiting the alleged incidents to Mitiga Prison. Well,
19 they need to make their mind. Is it the whole of Tripoli or just Mitiga Prison?

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

24 Going back to the origin of this legal text, we find that it -- it originated in relation to * a
25 specific religious group in Germany and these conditions cannot be applied to an unspecified

1 group of people. The persons arrested by SDF/RADA, in accordance with its competencies
2 stipulated in official resolutions, were people who were committed or suspected of
3 committing crimes, such as kidnapping, terrorism, drug trafficking, murder, and theft. * The
4 fact that a person is suspected of a crime is not fixed or a fixed character or an element of his
5 or her own identity but is a temporary and transient legal status. Moreover, the RADA did
6 not target these individuals because of their inherent characteristics or personal identity, but
7 rather because of conduct deemed contrary to the law or public order and requiring intervention.
8 I will stop here, Madam President, with the crimes against humanity because, as we said, if
9 this element does not exist, then there is no point in discussing the rest of the elements.

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

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

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

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

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

1 submissions. Thanks very much, your Honour.

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

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

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

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

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

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

24 The Defence's repeated complaints about anonymous witnesses were framed in
25 highly dramatic terms, owing to comparisons to a boxer fighting with one arm behind

1 his back or a gambler forced to bet only on certain roulette numbers. While these
2 analogies were vivid, they were perhaps less persuasive than intended.

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

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

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

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

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

23 Yet, the Prosecution does not allege that he committed a single isolated act on an
24 unknown afternoon in a remote location. Rather, the allegation is that he occupied
25 a position of authority within an abusive detention system operating over years.

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

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

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

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

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

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

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

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

25 (3) At the time of the commission of the alleged crimes, the SDF/RADA had taken

1 control of the Mitiga Prison.

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

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

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

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

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

25 Turning to the submissions regarding Black Migrants, these were perhaps the most

1 strikingly detached from the evidentiary record corroborated by the victims' accounts.

2 The Defence argues first that Black Migrant detainees did not belong to the same
3 civilian population against whom the alleged attack was directed; and second, that
4 the allegation of enslavement had effectively been rejected at arrest warrant stage.

5 Neither submission withstands closer scrutiny.

6 The victims' accounts depict a far more structured and systematic pattern of abuse
7 extending far beyond incidental mistreatment of migrants in detention.

8 Victims consistently describe Black Migrants as occupying a distinct subordinated
9 position within Mitiga Prison, referred to as "slaves", deprived of their identity and
10 autonomy, forced into exhausting labour, compelled to participate in abusive
11 practices and subjected to coercion, sexual violence, humiliation, and the conditions
12 of complete dependency and subjection.

13 The evidence, taken as a whole, points to an organised system of domination and
14 exploitation rather than isolated or opportunistic misconduct.

15 Importantly, the Defence's submission rests on a legal premise that finds no clear
16 support in Article 7 of the Statute. The Defence appears to suggest that, for the
17 contextual elements of crimes against humanity to be met, every victim of an
18 underlying crime must belong to the same civilian population against whom the
19 attack is principally directed. Yet, Article 7 imposes no such requirement.

20 The chapeau of Article 7 requires that prohibited conduct be committed, I quote, "as
21 part of a widespread or systematic attack directed against any civilian population",
22 end of quote, and that the perpetrator possesses knowledge of that attack. The focus
23 of the inquiry is therefore whether the criminal conduct formed part of the attack and
24 bore a sufficient nexus to it. Nothing in the text of the provision requires that every
25 victim of each underlying crime belong to the principal civilian population against

1 whom the attack is directed.

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

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

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

24 Nothing in that reasoning suggests that each victim was required to independently
25 establish membership in the principal civilian population against whom the attack

1 was directed.

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

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

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

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

18 A plain reading of Article 7 of the Statute, interpreted in accordance with its ordinary
19 meaning, context, and its object and purpose is unambiguous: Any civilian
20 population may be the target of an attack under said provision and there exists no
21 requirement that a victim must be part of that population. Should any doubt remain,
22 recourse to supplementary means of interpretation, such as the preparatory works,
23 confirms that the drafters of the Statute intended to adopt a broad and inclusive
24 approach regarding the scope of victims of crimes against humanity, and deliberately
25 chose to not impose limitations based on group membership or status.

1 The Defence further argues that Black Migrants were detained for reasons unrelated
2 to opposition to RADA or its ideology. But this formulation, your Honours,
3 oversimplifies the Prosecution's theory. The allegation is not merely that migrants
4 held anti-RADA political views. Rather, the evidence shows that Black Migrants
5 were targeted precisely because of their vulnerability, race, nationality, precarious
6 legal status, and exploited as a source of forced labour for the benefit of RADA.
7 Systems of domination and exploitation do not require victims to be political
8 opponents in the conventional sense in order to fall within the ambit of crimes against
9 humanity.

10 Moreover, the evidence also reflects particularly severe and cruel treatment of Black
11 Migrants by the suspect, consistent with a specific persecutorial intent directed
12 towards this especially vulnerable segment of persons subjected to the attack.

13 The Defence presentation ultimately left a conspicuous void: Meaningful engagement
14 with the lived reality described by victims and substantiated through the evidentiary
15 record. Accounts of overcrowding, starvation, disappearances, torture, sexual
16 violence, forced labour, coercion, humiliation, ideological indoctrination and
17 a pervasive climate of fear - allegedly sustained at Mitiga for years - received only
18 cursory attention. Instead, the Defence devoted substantial time to contesting labels,
19 jurisdictional theories and procedural frameworks.

20 Far less effort was given to the central factual question of this case: Why dozens of
21 victims from diverse backgrounds recount strikingly similar patterns of abuse within
22 the same detention system, during the same period of time, under the authority of the
23 same armed group.

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

25 Madam President, your Honours, the victims submit that the evidence presented by

1 the Prosecution meets the evidentiary standard of substantial grounds to believe that
2 the suspect committed each of the crimes charged and that Mr El Hishri bears
3 individual criminal responsibility under Article 25 of the Statute.

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

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

10 Thank you, your Honour.

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

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

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

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

24 But for the moment, we rely on the DCC, the pre-confirmation brief, our written
25 submissions to the Defence observations, and I refer to the Prosecution's filing 155,

1 and our submissions during this hearing to support our case.

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

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

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

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

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

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

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

25 The only thing I would say, however, relates to the submissions made about

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

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

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

13 Excuse me.

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

23 We fought for the establishment of the International Criminal Court and we
24 supported it, and we still support it in the face of the intimidation and dwarfing
25 campaigns and making it a tool that can be unlawful. Madam President, esteemed

1 Chambers, this Court should not be reserved for Khaled El Hishri and whoever is in
2 his place. These seats here are dedicated for the killers of children and people who --
3 children who are being killed by planes and drones and their cities and homes are
4 being destroyed.

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

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

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

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

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

23 Subsequent to that, depending on that decision on the Court's jurisdiction in
24 a prescribed time, namely 60 days, the Chamber shall hand down its decision on the
25 charges entered against Mr El Hishri.

1 I would like to also thank the parties and participants particularly for efforts made to
2 ensure that these hearings are made in open session. I would also like to particularly
3 draw attention to the rigor of our interpreters, court reporters and all staff members
4 who have helped us over these three days.

5 The Court is adjourned.

6 THE COURT USHER: [11:43:52] All rise.

7 (The hearing ends in open session at 11.43 a.m.)

8 CORRECTIONS REPORT

9 The following interpretation corrections, marked with an asterisk *, are brought into
10 the transcript.

11 Page 2 lines 21-22:

12 "signed by the previous prime minister of Libya"

13 is corrected to:

14 "signed by the outgoing Libyan prime minister"

15 Page 2 lines 22-23:

16 "was not signed by anybody"

17 is corrected to

18 "was not signed by any party"

19 Page 4 line 3:

20 "30 per cent"

21 is corrected to:

22 "33 per cent"

23 Page 4 line 4:

24 "and they called it a "legal entity" by 66 per cent of the document"

25 Is corrected to

1 " and they called it a "legal entity" by 66 per cent of the document and they did not
2 use at all the term 'legal entity operating as an armed group'"

3 Page 4 line 10:

4 " from the beginning of these procedures."

5 Is corrected to

6 "from the beginning of these procedures, regarding the description of the group they
7 allege that Khaled El Hishri is a member of."

8 Page 5 line 19:

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

10 is corrected to:

11 ""First lieutenant" is a rank inside the Libyan Ministry of Interior"

12 Page 6 line 15-17:

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

16 is corrected to:

17 "And in Article 8 of the same decision: the members shall have the status of judicial
18 officers when performing their duties, in accordance with applicable laws. And in
19 Article 9 paragraph 1: a budget is allocated for them, and the amount allocated for
20 their expenses is specified in the state's general budget"

21 Page 7 line 15:

22 "we reach the real description of RADA group"

23 is corrected to:

24 "we reach the real description of RADA group or the "so-called" RADA"

25 Page 7 line 19:

1 "the establishment of the Mitiga Prison"

2 is corrected to:

3 "the establishment of what the OTP call Mitiga Prison"

4 Page 7 line 23:

5 "20,980 square metres"

6 is corrected to:

7 "28,980 square metres"

8 Page 9 line 23-24:

9 "to actually control such a big place as the Mitiga Prison"

10 is corrected to:

11 "to actually control a place of 28,980 square meters"

12 Page 20 line 11:

13 "So, we are trying to focus on three main axis"

14 is corrected to Page 20 line 11:

15 "Our submissions here focus on two main axes"

16 Page 20 line 13:

17 "that happened against the civilian population"

18 is corrected to:

19 "and the error by the Prosecution in the definition of the concept of civilian
20 population"

21 Page 22 line 16-17:

22 "They expanded the number of civilians to conclude the large population and then
23 they limited the acts to the Mitiga Prison"

24 is corrected to Page 22 line 16-17:

25 "The Office of the Prosecutor presented the entire population of the city of Tripoli,

1 more than one million people, in order to inflate the overall population figures and
2 create the initial impression that the requirement of a widespread attack had been met
3 but then actually limited the incidents of the Mitiga prison only. The Office of the
4 Prosecutor appears to refer to Tripoli and its surrounding areas, while limiting the
5 alleged incidents to Mitiga Prison"

6 Page 22 line 25:

7 "a specific religious group in Germany during World War II"

8 is corrected to:

9 "a specific religious group in Germany and these conditions cannot be applied to an
10 unspecified group of people"

11 Page 23 line 5:

12 "The fact that a person is suspected of a crime is not fixed or a fixed character or an
13 element of his or her own identity but is a temporary and transient legal status."

14 is corrected to:

15 "The fact that a person is suspected of a crime is not fixed or a fixed character or an
16 element of his or her own identity but is a temporary and transient legal status.

17 Moreover, the RADA did not target these individuals because of their inherent
18 characteristics or personal identity, but rather because of conduct deemed contrary to
19 the law or public order and requiring intervention"