

The International Criminal Court's Khaled El Hishri Arrest Warrant: Charges and Limitations

Questions & Answers



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Introduction

The International Commission of Jurists (ICJ) publishes this Q&A on the scope of the “charges”¹ retained in the arrest warrant for Khaled El Hishri, including their implications, at this stage of the proceedings, for an emblematic group of victims of alleged Rome Statute crimes in Libya, namely, migrants, refugees and asylum seekers.²

On 26 February 2011, the UN Security Council, acting under Chapter VII of the UN Charter and pursuant to article 13(b) of the Rome Statute of the International Criminal Court (“ICC” or “the Court”), referred the situation of Libya since 15 February 2011 to the Court’s Prosecutor.³ On 3 March 2011, the Office of the Prosecutor (OTP) opened an investigation into the Libya situation.⁴ On 12 May 2025, Libya lodged a declaration, pursuant to article 12(3) of the Rome Statute, with the Registrar of the Court, accepting the Court’s exercise of jurisdiction “with respect to alleged crimes in its territory from 2011 to the end of 2027” (the “article 12(3) declaration”).⁵

On 10 July 2025, the Court’s Pre-Trial Chamber I issued an arrest warrant for Khaled Mohamed Ali El Hishri (also known as “Al Booti”).⁶ Pursuant to it, Khaled El Hishri was arrested in Germany on 16 July 2025 and surrendered to the custody of the ICC on 1 December 2025.⁷ He first appeared before the Court on 3 December 2025.⁸ Khaled El Hishri is the first Libyan national in the Court’s custody. The Court has issued arrest warrants against eight other Libyan nationals, seven of whom remain at large at the time of writing.⁹

According to the ICC arrest warrant for Khaled El Hishri, at the time of the alleged crimes, he was an officer and first lieutenant of the Ministry of Interior and was “a Sheikh, founding member and senior official in [the Special Deterrence Forces (SDF/RADA)]”, an “armed paramilitary organisation supporting the [Government of National Accord (GNA)]”.¹⁰ The SDF was in charge of Mitiga Prison,¹¹ a detention facility located in the capital Tripoli, in western Libya, in or around which the crimes alleged in the arrest warrant were committed.¹² Mitiga Prison has become infamous for the serious crimes under international law that have been perpetrated there.¹³

1. Pursuant to article 58 of the Rome Statute the arrest warrant contains: “A specific reference to the crimes within the jurisdiction of the Court for which the person’s arrest is sought” and “A concise statement of the facts which are alleged to constitute those crimes.” The Pre-Trial Chamber must have found that there were reasonable grounds to believe that the person had committed the crimes referenced in the arrest warrant. The arrest warrant is distinct from the document containing the charges on which the Prosecutor intends to seek trial, pursuant to article 61 of Statute, charges that the Prosecutor can amend or withdraw until the hearing on the confirmation of the charges before the Pre-Trial Chamber. The arrest warrant, therefore, does not reflect the definitive scope of the charges in the case (see below, question 4).
2. Crimes against migrants, refugees and asylum seekers constitute one of the OTP’s key lines of inquiry in the Libya situation: see ICC, OTP, *Twenty-Third Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to Resolution 1970 (2011)*, 29 April 2022, §§ 25-32.
3. UN Security Council, *Resolution 1970 (2011)*, UN Doc. S/RES/1970(2011), 26 February 2011, § 4.
4. ICC, OTP, *Statement to the United Nations Security Council on the situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 (2011)*, 4 May 2011.
5. ICC, Registry, *Libya accepts ICC jurisdiction over alleged crimes from 2011 to the end of 2027*, 15 May 2025. For more on the stakes and implications of Libya’s article 12(3) declaration, see ICJ, *Libya’s acceptance of the International Criminal Court’s jurisdiction: stakes and implications*, August 2025.
6. ICC, Pre-Trial Chamber I, *Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri*, ICC-01/11-188-US-Exp, 10 July 2025 (“Arrest Warrant for Khaled El Hishri”).
7. ICC, *Situation in Libya: Khaled Mohamed Ali El Hishri in ICC custody*, 1 December 2025.
8. ICC, *Transcript of Khaled El Hishri’s First Appearance*, ICC-01/11-01/25-T-001-ENG, 3 December 2025.
9. The Court issued arrest warrants that remain pending against Saif Al-Islam Gaddafi, Abdurahem Al Kani, Makhlof Doumah, Nasser Al Lahsa, Mohamed Salheen, Abdelbari Al Shaqaqi, Osama Elmasry Njeem, and Saif Sneidel. For an updated list of public arrest warrants, see <https://www.icc-cpi.int/situations/libya>. Saif Al-Islam Gaddafi was reportedly [killed](#) on 3 February 2026, albeit the proceedings against him have not been terminated yet.
10. Arrest Warrant for Khaled El Hishri, §§ 94 and 106. The GNA is the predecessor of the Government of National Unity’s (GNU), the internationally-recognized government of Libya based in the capital Tripoli, in the West of the country. The SDF/RADA is now under the control of the Presidential Council, a Tripoli-based three-person body, led by Head of State Mohamed Al-Menfi, which shares the executive authority with the GNU.
11. Arrest Warrant for Khaled El Hishri, § 94.
12. *Ibid*, § 19.
13. See, e.g. Report of the Independent Fact-Finding Mission on Libya, UN Doc. A/HRC/50/63, 27 June 2022, §§ 36-38. The FFM documented such crimes since at least 2016, which was the beginning of its temporal mandate.

From around February 2015 to early 2020, Khaled El Hishri allegedly exercised control over Mitiga Prison.¹⁴ One of his subordinates in the SDF, Osama Elmasry Njeem, is also the subject of an ICC arrest warrant for crimes against humanity and war crimes committed in Mitiga Prison.¹⁵

Libya's article 12(3) declaration put an end to the judicial debate over whether the Court may exercise jurisdiction over the crimes against humanity and war crimes committed in Mitiga Prison. Prior to Libya's lodging the declaration, it had been argued that such crimes were too remote from the situation that triggered the UN Security Council's referral.¹⁶

On 26 March 2026, the Prosecution filed the document containing the charges on which it seeks to have Khaled El Hishri committed for trial before a Trial Chamber.¹⁷ The hearing before Pre-Trial Chamber I on the confirmation of charges is scheduled on 19 May 2026.¹⁸

1. Which crimes does the arrest warrant retain?

The Pre-Trial Chamber found that there were reasonable grounds to believe¹⁹ Khaled El Hishri was liable under article 25(3)(a) of the Rome Statute, as a direct perpetrator or co-perpetrator, for crimes against humanity and war crimes, including imprisonment,²⁰ torture,²¹ cruel treatment,²² outrages upon personal dignity,²³ rape, other forms of sexual violence,²⁴ murder,²⁵ and persecution on political grounds;²⁶ and under article 25(3)(b) of the Statute, for ordering others to commit the crimes of torture and sexual violence.²⁷ All crimes are alleged to have been committed in or around Mitiga Prison from around February 2015 to, at least, early 2020.

Regarding the crime against humanity of imprisonment, Pre-Trial Chamber I found that there were reasonable grounds to believe that many detainees at Mitiga Prison were not imprisoned on a lawful basis, but rather:

14. Arrest Warrant for Khaled El Hishri, § 96.

15. ICC, Pre-Trial Chamber I, [Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem](#), ICC-01/11-152-US-Exp-Anx, 18 January 2025. Osama Elmasry Njeem was initially arrested in Italy, an ICC State Party, which failed to surrender him to the Court and instead transferred him to Libya, which, in turn, indicated it would not extradite him to the Court. He officially remains in Libya's custody although his whereabouts and the status of the domestic proceedings against him, if any, are unclear.

16. In the arrest warrant for Osama Elmasry Njeem, issued in January 2025, namely five months before the article 12(3) declaration, Judge María del Socorro Flores Liera disagreed with the majority of Pre-Trial Chamber I, considering that the alleged crimes were not sufficiently linked to the situation that triggered the jurisdiction of the Court through the Security Council's referral. In light of this, she concluded that the Court, therefore, did not have jurisdiction over them. Judge del Socorro Flores Liera did not, however, disagree with the issuance of the arrest warrant in the case of Khaled El Hishri, which was issued after the article 12(3) declaration. See, ICJ, [Libya's acceptance of the International Criminal Court's jurisdiction: stakes and implications, Questions and Answers](#), August 2025, p. 6.

17. ICC, OTP, *The Prosecutor v. Khaled Mohamed Ali El Hishri*, [Document Containing the Charges](#), ICC-01/11-01/25-92, 26 March 2026 ("Document Containing the Charges").

18. ICC, [Transcript of Khaled El Hishri's First Appearance](#), ICC-01/11-01/25-T-001-ENG, 3 December 2025, p. 7, line 19. "The confirmation of charges hearing is not a trial. The purpose of the confirmation of charges hearing is to determine if there is sufficient evidence to establish substantial grounds to believe that the suspect, in this case Mr El Hishri, committed each of the crimes charged by the OTP. At this stage, the judges will not determine whether Mr El Hishri is innocent or guilty." See, ICC, [Questions and Answers: The Prosecutor v. Khaled Mohamed Ali El Hishri](#), April 2026, p. 1.

19. The evidentiary standard at the stage of the arrest warrant is "reasonable grounds to believe", Rome Statute, art. 58; Arrest Warrant for Khaled El Hishri, *supra* note 1, § 8. All of the Pre-Trial Chamber's findings in the arrest warrant apply this standard.

20. As a crime against humanity, under article 7(1)(e) of the Rome Statute.

21. As a crime against humanity and a war crime, under articles 7(1)(f) and 8(2)(c)(i) of the Rome Statute, respectively.

22. As a war crime, under article 8(2)(c)(i) of the Rome Statute.

23. As a war crime, under article 8(2)(c)(ii) of the Rome Statute.

24. Both as crimes against humanity and war crimes, under articles 7(1)(g) and 8(2)(e)(vi) of the Rome Statute, respectively.

25. As a crime against humanity and a war crime, under articles 7(1)(a) and 8(2)(c)(i) of the Rome Statute, respectively.

26. As a crime against humanity, under article 7(1)(h) of the Rome Statute.

27. As crimes against humanity and war crimes, under articles 7(1)(f) and 8(2)(c)(i) of the Rome Statute, and 7(1)(g) and 8(2)(e)(vi), respectively.

- because they allegedly supported or were affiliated to armed groups opposing the GNA, namely, the Islamic State of Iraq and Syria (ISIS) or the Libyan National Army (LNA);²⁸
- because they contravened the SDF/RADA's religious ideology, e.g., as a result of their being Christians, atheists, homosexuals or for engaging in "immoral behaviour"; or
- for the purpose of coercing others, such as family members, including for the latter to pay a ransom to have their detained relative released.²⁹
- The Chamber also referred to the violation of procedural rights during and after arrests.³⁰

Regarding the crime against humanity of persecution, which consists in "the intentional and severe deprivation of fundamental rights contrary to international law" committed against "any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, [or] gender" grounds "by reason of the identity of the group or collectivity",³¹ the Chamber found reasonable grounds to believe that the detainees were arrested because of their opposition to SDF/RADA or its political ideology, or "for not complying with SDF/RADA's expectations for their roles in society associated with their sex or gender", and that "the detainees who did not comply with the religious expectations of the SDF/RADA, such as detainees professing minority faiths or no faith at all, were, inter alia, mistreated and forced to attend religious classes". However, despite noting that, "the persecution went beyond mere political views and concerned a broader perception by the SDF/RADA about how the Libyan society ought to be organized", the Chamber retained only persecution on political grounds for the purposes of the arrest warrant. That said, since the Prosecutor may continue to investigate after issuance of the arrest warrant, the possibility of adding a charge of persecution on religious or gender grounds at the confirmation of charges stage remains open.³²

In addition, Pre-Trial Chamber I found reasonable grounds to believe that the torture methods in Mitiga Prison included beating, shooting, stress positions, and confinement in a metal box.³³ It also found that there were reasonable grounds to believe that rape, as well as other forms of sexual violence – such as sexualized mistreatment during questioning, abuses of a sexual nature, forced nudity and anal cavity searches – were committed against men and women by guards and other detainees.³⁴ It further found that the use of humiliating strip and cavity searches, and the deplorable detention conditions – including: overcrowding; solitary confinement in small cells; being left outside and exposed to the elements; lack of ventilation, food, water, and medication; and poor hygiene – met the material elements of the war crimes of cruel treatment³⁵ and outrages upon personal dignity.³⁶

Finally, the Chamber found that there were reasonable grounds to believe that a significant number of detainees were killed, including as a result of the torture they endured, untreated injuries, lack of medical care, being left outside in winter or starvation.³⁷ However, Pre-Trial Chamber I did not retain the allegation that Khaled El Hishri himself attempted to kill a detainee, finding there were reasonable grounds to believe, instead, that he had shot recklessly and without the intent to kill.³⁸

2. Which crimes did the Pre-Trial Chamber not retain in the arrest warrant?

The Pre-Trial Chamber did not find that there were reasonable grounds to believe that Khaled El Hishri committed the war crime of summary punishment, the crime against humanity of enslavement and the war crime and crime against humanity of sexual slavery.

28. The Libyan National Army (LNA) is a coalition of militias led by Field Marshall Khalifa Haftar, the *de facto* leader of the East of Libya, and is affiliated with the House of Representatives, the legislative body elected in 2014 and based in the East.

29. Arrest Warrant for Khaled El Hishri, § 29.

30. *Ibid*, § 30.

31. Rome Statute, art. 7(1)(h) and 7(2)(g).

32. Arrest Warrant for Khaled El Hishri, §§ 89-90.

33. *Ibid*, § 35.

34. *Ibid*, §§ 53 and 59.

35. *Ibid*, § 43.

36. *Ibid*, § 48.

37. *Ibid*, § 66.

38. *Ibid*, §§ 66-67.

Regarding the war crime of "passing of sentences without previous judgment pronounced by a regularly constituted court or 'summary punishment'", the Chamber found that the Prosecution did not substantiate why the treatment inflicted on the victims concerned "also qualified as the passing of a sentence", for example, "how the detention itself, which [...] was unlawful imprisonment, arbitrary or without any judicial grounds, can at the same time be a 'sentence'".³⁹ The Chamber excluded the majority of the alleged victims of this crime from its consideration of that charge for legal reasons detailed in question 3 below.⁴⁰

Regarding the crime of enslavement, the Chamber found that there were *indicia* showing that guards of Mitiga Prison exercised powers attaching to the right of ownership over "Sub-Saharan African and foreign detainees", noting that they were referred to as "slaves" and were forced to conduct hard labour or prepare fellow detainees for torture.⁴¹ However, the Chamber excluded these victims from its consideration of that crime for legal reasons detailed in question 3 below. With respect to other detainees, the Chamber considered that the Prosecution had failed to substantiate the exercise of such powers, albeit it noted that some detainees were forced to fight or to give blood, were assigned work responsibilities within the prison or were appointed to serve as informants.⁴² With regard to sexual slavery, the Chamber noted that the two allegations of rape appeared to be "isolated incidents", and that the Prosecution "had failed to show that the conduct in relation to specific victims occurred in a manner that could be characterised as sexual slavery".⁴³

3. Why did the Pre-Trial Chamber not retain the alleged crimes against certain groups of victims in the arrest warrant?

The Pre-Trial Chamber decided, implicitly or explicitly, not to retain the crimes allegedly committed against "Sub-Saharan African and foreign detainees", namely migrants, refugees and asylum seekers, in the Khaled El Hishri arrest warrant for the following reasons.

For the purposes of the type of war crimes alleged, which all concerned international humanitarian law (IHL) violations against persons deprived of their liberty, the Chamber stated that, "it must be shown that the circumstances of the arrest of specific alleged victims and the existence of an armed conflict at the time of arrest, established their protected status under IHL and the application [of] IHL to any conduct against them",⁴⁴ underscoring "that the victims [must have been] in the power or the hands of the opponent at the time of the relevant conduct." Therefore, according to the Chamber, the key questions were: (i) "whether [the alleged victims] were protected by IHL at the relevant time"; and (ii) "why they were detained".⁴⁵ The Chamber specified that, "[a] common criminal, who is detained for having committed a regular crime, is not, without more, protected under [...] IHL as such".⁴⁶ Accordingly, the Chamber considered that it must be shown that victims were detained "for reasons related to the conflict, as a result of which they were protected under IHL during their detention".⁴⁷ The Chamber found this to be the case with respect to "at least some of the detainees", "inter alia because they were suspected of being members of ISIS or belonging to General Haftar's forces".⁴⁸ Conversely, although the Chamber did not explicitly rule on the protected status of the migrants, refugees and asylum seekers detained at Mitiga Prison, in discussing crimes against humanity (see below), it observed that the Sub-Saharan African detainees were detained "due to their irregular situation in the

39. *Ibid*, §§ 74-75.

40. *Ibid*, § 73.

41. *Ibid*, §§ 79 and 81.

42. *Ibid*, §§ 80-81. Similarly, in January 2025, in Osama Elmasry Njeem's arrest warrant, which also relates to crimes against humanity and war crimes committed in Mitiga Prison, the same Pre-Trial Chamber did not retain the charges of enslavement and sexual slavery on the basis that the OTP had not substantiated one of the elements of the crimes, namely, the exercise of any or all of the powers attaching to the right of ownership over one or more persons. See, Arrest Warrant for Osama Elmasry Njeem, §§ 80 and 85.

43. Arrest Warrant for Khaled El Hishri, § 85.

44. *Ibid*, § 12

45. *Ibid*, § 14.

46. *Ibid*, § 14.

47. *Ibid*, § 15.

48. *Ibid*, § 17; see also §§ 38, 44, 54 and 61.

country”,⁴⁹ “for reasons unrelated to opposing SDF/RADA”.⁵⁰ This observation suggests that the Chamber would consider that migrants, refugees and asylum seekers had not been detained “for reasons related to the conflict” and, therefore, were not “protected under IHL during their detention” and could not be considered as victims of the alleged war crimes.

The Chamber’s approach to determine the protected status of the victims detained at Mitiga Prison appears to be essentially based on the requirement that the victims have fallen in the hands of the opponent in the context of deprivation of liberty. Yet, under IHL, in the context of a non-international armed conflict,⁵¹ such a requirement is debated.⁵² Moreover, neither the Rome Statute nor the ICC Elements of Crimes explicitly stipulates such a requirement. The ICJ considers that, to the extent that all the civilians taking no active part in the hostilities detained at Mitiga Prison, including migrants, refugees and asylum seekers, might actually be considered as protected under IHL during their detention, it would be open to the Chamber to analyse the additional requirement that the criminal conduct against them must take place in the context of and be associated with an armed conflict⁵³ by going beyond the reasons of their arrest.

As regards crimes against humanity, the contextual elements of which include “a widespread or systematic attack directed against any civilian population”,⁵⁴ Pre-Trial Chamber I found, consistent with its approach in the Osama Elmasry Njeem arrest warrant,⁵⁵ “reasonable grounds to believe that between at least February 2015 and at least the start of 2020, the conduct directed against the persons detained in Mitiga Prison, who were – at least in part – perceived to be opposed to the GNA or SDF/RADA, constituted a widespread and/or systematic attack against a civilian population”.⁵⁶

On this basis, in relation to the crime against humanity of enslavement, Pre-Trial Chamber I found that Sub-Saharan African detainees could not be considered “part of the same civilian population that was being attacked”, given that “they were detained for reasons unrelated to opposing SDF/RADA or its ideology”, namely, “due to their irregular situation in the country”.⁵⁷ It appears that the same reasoning would exclude Sub-Saharan African detainees from being considered as victims of all the other crimes against humanity retained in the arrest warrant

49. Ibid, § 79.

50. Ibid, § 81.

51. In the *El Hishri* case, the Prosecution submitted, and the Pre-Trial Chamber found that there were reasonable grounds to believe that, at the relevant period for the purpose of the arrest warrant, there was at least one non-international armed conflict between the GNA and the LNA (see supra note 28) in which SDF/RADA participated on the side of the GNA: see Arrest Warrant for Khaled El Hishri, §§ 11-12.

52. See, e.g., [ICRC commentary of common Article 3 of the Geneva Conventions](#), 2025, §§ 619-620: “The wording of common Article 3 [...] contains no limitation requiring a person taking no active part in hostilities to be in the power of the *enemy* in order to be protected under the article. Its protective scope therefore includes civilians [...] – be they a Party’s own forces or allied with or opposing them. [...] It is logical that civilians should enjoy the protection of common Article 3 regardless of whose power they are in. In practice, it is often impossible in non-international armed conflict to determine whether members of the general population not actively participating in hostilities are affiliated with one or other Party to the conflict. Limiting protection under common Article 3 to persons affiliated or perceived to be affiliated with the opposing Party is therefore difficult to reconcile with the protective purpose of common Article 3.”

53. ICC, Elements of Crimes, articles 8-2-c and e.

54. Rome Statute, art. 7(1): “[...] ‘crime against humanity’” means any of the following acts when committed *as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.*”

55. To recall, in its application for an arrest warrant against Osama Elmasry Njeem, the Prosecution had submitted that the civilian population consisted of the detainees at Mitiga Prison. However, Pre-Trial Chamber I, noting that “it would be circular to argue that the civilian population is defined by the victims of the crime”, found that the civilian population comprised “segments of the population in Libya, who – for a variety of reasons – were perceived to be opposing the SDF/RADA or this group’s ideology” (Arrest Warrant for Osama Elmasry Njeem, § 24). While the Chamber made that finding with respect to the crime against humanity of imprisonment, its finding applied to all the crimes against humanity alleged in the case, since these crimes were allegedly committed against detainees of the Mitiga Prison. Accordingly, in its application for an arrest warrant against Khaled El Hishri, the Prosecution submitted “that the civilian population against which an attack was directed, was comprised of ‘segments of the population in Libya perceived to be opposing SDF/RADA or its ideology’” (see Arrest Warrant for Khaled El Hishri, § 21).

56. Arrest Warrant for Khaled El Hishri, § 24

57. ICC, OTP, [Public Redacted Version of “Prosecution’s application under article 58 for a warrant of arrest against Khaled Mohamed Ali EL HISHRI \(“Khaled AL HISHRI”\)”, ICC-01/11-172-US-Exp, 3 April 2025, ICC-01/11-172-Red](#), 30 July 2025, §§ 52-53; Arrest Warrant for Khaled El Hishri, §§ 21 and 24.

against Khaled El Hishri, including imprisonment, torture, rape and other forms of sexual violence, murder and persecution.

With respect to this, the Pre-Trial Chamber's reasoning appears to be based on the fact that it had already narrowly defined the civilian population targeted by the widespread or systematic attack in the Osama El Masri Njeem arrest warrant, and on the fact that, accordingly, the Prosecution had done the same in its application for an arrest warrant against Khaled El Hishri.⁵⁸ Such a narrow definition of the civilian population targeted by a widespread or systematic attack could certainly be rectified in future submissions.

For the time being, however, the resulting exclusion of migrants, refugees and asylum seekers from the Khaled El Hishri arrest warrant may potentially be a serious blow to accountability for gross human rights violations and abuses amounting to war crimes and crimes against humanity and to the rights of these victims to truth, justice and redress.⁵⁹

The Independent Fact-Finding Mission on Libya (FFM), which was mandated by the UN Human Rights Council to investigate violations and abuses of human rights throughout Libya by all parties since the beginning of 2016 until the end of its operations in March 2023, considered that the crimes committed against migrants, refugees and asylum seekers, "in connection with their arbitrary detention" in various detention centers, including murder, enforced disappearance, enslavement, sexual slavery, torture, imprisonment, rape and other forms of sexual violence, persecution and other inhumane acts, amounted to crimes against humanity.⁶⁰ As regards the contextual element of crimes against humanity, the FFM defined the civilian population targeted by a widespread or systematic attack as the population of migrants in Libya, noting that they "form an identifiable group of individual civilians defined by their vulnerability and absence of legal status within Libya".⁶¹

Moreover, pursuant to article 15 of the Rome Statute,⁶² several NGOs submitted, in 2021 and 2022, communications to the OTP alleging that crimes falling within the jurisdiction of the Court had been committed against migrants, refugees and asylum seekers in various detention centres in Libya, including crimes against humanity and war crimes.⁶³ One such communication by a group of NGOs argues that, "[f]or each detention centre [analysed], [the crimes committed therein against migrants] may be viewed as forming part of separate systematic or large-scale attacks against a civilian population (namely the migrants detained therein)".⁶⁴ With regard to the characterization as war crimes, the same group of NGOs submitted that several factors satisfied the nexus requirement, including the fact that: "[t]he crimes have been committed by members of armed groups taking direct part in the hostilities"; "[m]igrants have been forced to perform military-related activities or have been forcibly recruited to join the fighting"; and "[t]he hostilities allowed the respective armed group to establish its military control over the respective detention centres".⁶⁵

58. See supra fn 55.

59. See, UN Commission on Human Rights, [Set of principles for the protection and promotion of human rights through action to combat impunity](#), E/CN.4/2005/102/Add.1, 8 February 2005.

60. FFM, [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/48/83, 29 November 2021, § 61; [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/50/63, 27 June 2022, § 75; [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/52/83, 3 March 2023, § 41.

61. FFM, [Report of the Independent Fact-Finding Mission on Libya](#), UN Doc. A/HRC/48/83, 29 November 2021, §§ 59 and 61.

62. Article 15 empowers the ICC Prosecutor to initiate investigations *proprio motu* on the basis of information received, including from NGOs. The Prosecutor shall analyze the seriousness of the information received (preliminary examination) to conclude whether the information provided constitutes a reasonable basis to proceed with an investigation, subject to authorization by the Pre-Trial Chamber.

63. *Fédération internationale pour les droits humains*, European Center for Human and Constitutional Rights, and Lawyers for Justice in Libya, [Article 15 Communication to the Office of the Prosecutor of the International Criminal Court Re: Situation in Libya – Crimes against Migrants and Refugees in Libya](#), 19 November 2021; Adala for All, StraLi and UpRights, [Article 15 Communication on War Crimes and Crimes Against Humanity Committed Against Migrants and Asylum Seekers in Libya](#) (executive summary), 17 January 2022.

64. Adala for All, StraLi and UpRights, [Article 15 Communication on War Crimes and Crimes Against Humanity Committed Against Migrants and Asylum Seekers in Libya](#) (executive summary), 17 January 2022, § 17.

65. Adala for All, StraLi and UpRights, [Article 15 Communication on War Crimes and Crimes Against Humanity Committed Against Migrants and Asylum Seekers in Libya](#) (executive summary), 17 January 2022,

4. Is the Pre-Trial Chamber's decision on the arrest warrant a final determination of the scope of the charges in the El Hishri case?

On 1 August 2025, the OTP sought to appeal certain findings of the arrest warrant issued by Pre-Trial Chamber I for Khaled El Hishri. Regarding the contextual elements of crimes against humanity, the Prosecutor contended that victims of such crimes did not have to be members of the same civilian population "determined to be the object of the widespread or systematic attack", arguing that only a nexus between the attack and the underlying crimes, which is "fact sensitive and multi-factored", must be established.⁶⁶ The OTP also challenged the Pre-Trial Chamber's requirement that victims of the alleged war crimes must have been detained for reasons related to the armed conflict, arguing that the Pre-Trial Chamber incorrectly limited the nexus requirement, which is "fact sensitive and multi-factored", to a single criterion excluding all others, and, alternatively, that it imposed a novel and additional threshold incompatible with the relevant provisions of the Rome Statute.⁶⁷

However, on 7 November 2025, the Appeals Chamber found the appeal inadmissible, holding that an arrest warrant is not a "decision with respect to jurisdiction" against which an appeal is possible.⁶⁸ Nonetheless, the Appeals Chamber left the door open to adjudicating these legal questions at a later stage. It noted that nothing prevented the OTP from making further submissions and presenting additional evidence to the Pre-Trial Chamber during the confirmation of charges, and that the decision on the confirmation of charges could be subject to an appeal.⁶⁹ Moreover, an arrest warrant is not the document in which the Prosecution presents the charges on which it seeks to have the suspect committed for trial, which, instead, are detailed in the "document containing the charges", pursuant to article 61(3)(a) of the Rome Statute. The Prosecution thus has the possibility to amend or complement its allegations against El Hishri in this document and may further amend any charges, pursuant to article 61(4) of the Statute, ahead of the hearing on the confirmation of charges on 19 May 2026.

The OTP filed the document containing the charges on 26 March 2026; it expanded "the charged period" – that is the period of time within which it asserts that Khaled El Hishri is criminally responsible for the crimes against humanity and war crimes specified by the charges – to between 1 May 2014 and 30 June 2020.⁷⁰ In this document, the Prosecution amended its allegations regarding the contextual elements of crimes against humanity: it submitted that "SDF/RADA carried out a widespread and systematic attack directed against the civilian population in and around Tripoli, including persons in the custody and/or control of the Mitiga Perpetrators, principally at Mitiga Prison (which was controlled by SDF/RADA)".⁷¹ It thus defined the civilian population targeted by the attack in broader terms than in the arrest warrant without confining it to the detainees of Mitiga Prison or to the opponents to the SDF/RADA ideology.

Regarding the contextual elements of war crimes, the Prosecution alleged that, "SDF/RADA contributed to its military and security capabilities including by (but not limited to) maintaining Mitiga Prison as a detention facility, including for (but not limited to) persons detained in connection to the conflict. The victims of the charged crimes were all civilians or fighters hors de combat, and in some cases were perceived as opposing the military and security interests

§ 16; see also, § 21, which with respect to jurisdiction and how crimes committed against migrants "are associated with the ongoing armed conflict underlying the [UN Security Council] referral", states that "the conflict in Libya is at the base of the manner, the motives, the ability, and the causes underpinning the commission of such crimes".

66. ICC, OTP, *Prosecution Appeal Brief concerning the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (ICC-01/11-188)*, ICC-01/11-199-US-Exp, 1 August 2025, §§ 40 and ff.

67. *Ibid* [ICC, OTP, *Prosecution Appeal Brief concerning the "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" (ICC-01/11-188)*, ICC-01/11-199-US-Exp, 1 August 2025,] §§ 15 and ff.

68. ICC, Appeals Chamber, *Decision finding the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" inadmissible*, ICC-01/11-214, 7 November 2025, interpreting article 82(1)(a) of the Rome Statute.

69. *Ibid* [ICC, Appeals Chamber, *Decision finding the appeal of the Prosecutor against the decision of Pre-Trial Chamber I entitled "Warrant of Arrest for Mr Khaled Mohamed Ali El Hishri" inadmissible*, ICC-01/11-214, 7 November 2025], § 41.

70. Document Containing the Charges, § 1. To recall, the arrest warrant covered the period "from around February 2015 to, at least, early 2020".

71. Document Containing the Charges, § 8.

of the [GNA]". It added that, "irrespective of the reason why persons were detained at Mitiga Prison, the [non-international armed conflict] played a substantial part in the ability of the [perpetrators] to carry out the alleged crimes and the manner in which they did so. In particular, the conflict ensured the critical importance of SDF/RADA's control over strategic assets such as the Mitiga Compound, and its consequent role in ensuring the security of Tripoli."⁷² The Prosecution therefore did not make specific submissions on the protected status under IHL of the victims, including the migrants, refugees and asylum seekers detained at Mitiga prison, who were not perceived as opposing the military and security interests of the GNA.

Moreover, the Prosecution alleged that the crime against humanity of enslavement was perpetrated with respect to "East, West, Central or Southern Africans ("Black Migrants"), and other non-Libyans of different nationalities and ethnicities, as well as some Libyans".⁷³ It further alleged that "Black Migrants" were persecuted on political grounds, "because their perceived irregular situation in Libya was seen as inconsistent with the Perpetrators' political agenda and views on migration", as well as "on nationality, race and/or ethnicity grounds".⁷⁴ However, the Prosecution did not make specific submissions as to whether they formed part of the civilian population against whom a widespread or systematic attack was directed.

The OTP also included persecution on religious and gender grounds in the charges.⁷⁵ Finally, the OTP no longer sought to charge the war crime of sexual slavery – although it did allege that the crime against humanity of enslavement was "sexualised"⁷⁶ – nor did it seek to charge the war crime of summary punishment.

Conclusion

The legal reasoning featured in the arrest warrant for Khaled El Hishri may preclude migrants, refugees and asylum seekers who have been detained in Mitiga prison over the relevant period and have allegedly been victims of Rome Statute crimes from participating in the ICC proceedings and/or seek reparation.⁷⁷ Such an outcome would be all the more regrettable given that, based on the pending public arrest warrants, thus far, no other case includes the specific crimes committed against these victims. It remains to be seen whether the Pre-Trial Chamber will adopt a different approach in its decision on the confirmation of charges in the *El Hishri* case based on the additional submissions of the Prosecution and, should it not do so, whether the Appeals Chamber will rule differently.

72. Document Containing the Charges, § 22.

73. Document Containing the Charges, § 43.

74. Document Containing the Charges, §§ 48, 49-a and 51.

75. Document Containing the Charges, §§ 48, 50 and 52.

76. Document Containing the Charges, § 43-b.

77. Pursuant to art. 68(3) of the Rome Statute, "Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."

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