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To the Office of the Prosecutor of the International Criminal Court

The Hague, the Netherlands

**Article 15 Communication on War Crimes and Crimes Against Humanity Committed
Against Migrants and Asylum Seekers in Libya**

Movement is life

G. Lane

[UpRights](#) is a non-profit initiative based in The Hague, Netherlands. UpRights strives for effective access to justice for victims of serious human rights violations and international crimes. UpRights works in collaboration with civil society and international organisations to promote victims' rights, providing professional assistance on matters concerning international criminal law and human rights law.

Adala For All is a not-for-profit organization, based in France, and composed of a network of dozens of Libyan human rights lawyers and jurists with expertise in the MENA region. Through its members, based in Libya, AFA works with victims and members of local CSOs in need of legal support to defend their cases in front of national courts and access to international accountability mechanisms.

[StraLi](#) is an Italian NGO aiming at the promotion and protection of human rights through the judicial system and, in particular, the use of strategic litigation tools. The organisation is mainly based in Turin, but has active members all over Europe. Although mainly composed of lawyers, it includes professionals from various fields – such as doctors, psychologists, social-media managers and journalists – to approach human rights protection from an holistic and multidisciplinary perspective.

I. EXECUTIVE SUMMARY	9
A. PRELIMINARY REMARKS.....	9
B. OUTLINE OF THE COMMUNICATION	11
1. Background – Section II.....	11
2. Crimes Allegedly Committed – Section IV	13
3. Alleged Perpetrators – Section V	14
4. Jurisdiction – Section VI.....	14
5. Admissibility – Section VII.....	15
II. BACKGROUND.....	17
A. HISTORY OF THE ARMED CONFLICT IN LIBYA AND THE ROLE OF THE ARMED GROUPS	17
1. The 2011 Revolution	17
2. The aftermath of the Libyan Revolution (November 2011-July 2012).....	19
3. The 2012 elections and mounting divisions (July 2012-February 2014).....	21
4. “Operation Dignity” and “Operation Libya Dawn” (February 2014-January 2015)	25
5. Attempts at political dialogue and the formation of the Government of National	
Accord (January-December 2015).....	28
6. The Failure of the Libyan Political Agreement (2016-2017).....	30
7. The “2018 Battle of Tripoli” (also known as the “Late Summer War”) (January	
2018-April 2019).....	33
8. The 2019/2020 LNA Offensive (April 2019-January 2020)	34
9. Resumption of the hostilities (January 2020-June 2020)	36
10. New ceasefire and signs of progress in the intra-Libyan dialogues (August 2020-	
December 2021)	37
B. LIBYA AND THE MIGRATORY FLOWS PHENOMENON	40
1. The migratory phenomenon in Libya before the February 2011 Revolution.....	40

2.	The fall of Ghaddafi, the involvement of the armed groups in the smuggling sector and in the operation and control of detention centres for migrants (2011-2017).....	42
3.	The consolidation of the armed groups’ anti-smuggling stance (2017 to date).....	44
C.	INTERNATIONAL EFFORTS TO PREVENT MIGRATION FROM LIBYA TO EUROPE.....	46
III. PARAMETERS OF THE COMMUNICATION		50
A.	ALLEGED ACTS/CRIMES UNDER THE PURVIEW OF THE COMMUNICATION	50
B.	PLACES OF THE ALLEGED COMMISSION OF THE CRIMES.....	50
C.	TIME PERIOD OF THE ALLEGED COMMISSION OF THE CRIMES.....	51
D.	PERSONS OR GROUPS INVOLVED	51
1.	Libyan actors.....	52
2.	Third State Actors	52
IV. CRIMES ALLEGEDLY COMMITTED		54
A.	WAR CRIMES	54
1.	Classification of the Armed Conflict	54
a.	Intensity of the NIAC	56
b.	Organisation of the parties involved in the conflict.....	63
2.	Underlying acts constituting war crimes and nexus with the armed conflict	65
a.	Abu Salim DC (Tripoli)	78
i.	<i>Overview</i>	78
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	78
iii.	<i>Figures of migrants detained in the Abu Salim DC and presence of migrants intercepted at sea in the centre</i>	80
iv.	<i>Underlying acts allegedly committed in Abu Salim DC</i>	80
v.	<i>Nexus with the armed conflict</i>	86
b.	Tarik al-Matar DC (Tripoli)	90
i.	<i>Overview</i>	90
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	91

iii.	<i>Figures of migrants detained in the Tarik al-Matar DC and presence of migrants intercepted at sea in the centre</i>	92
iv.	<i>Underlying acts allegedly committed in Tarik al-Matar DC</i>	93
v.	<i>Nexus with the armed conflict</i>	97
c.	Tarik al-Sikka DC (Tripoli)	100
i.	<i>Overview</i>	100
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	101
iii.	<i>Figures of migrants detained in the Tarik al-Sikka DC and presence of migrants intercepted at sea in the centre</i>	102
iv.	<i>Underlying acts allegedly committed in the Tarik al-Sikka DC</i>	102
v.	<i>Nexus with the armed conflict</i>	108
d.	Al-Mabani DC (formerly “Tobacco Factory”) (Tripoli).....	110
i.	<i>Overview</i>	110
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	111
iii.	<i>Figures of migrants detained in the al-Mabani DC and presence of migrants intercepted at sea in the centre</i>	112
iv.	<i>Underlying acts allegedly committed in al-Mabani DC</i>	113
v.	<i>Nexus with the armed conflict</i>	119
e.	Tajoura DC (Tripoli)	122
i.	<i>Overview</i>	122
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	123
iii.	<i>Figures of migrants detained in the Tajoura DC and presence of migrants intercepted at sea in the centre</i>	123
iv.	<i>Underlying acts allegedly committed in Tajoura DC</i>	124
v.	<i>Nexus with the armed conflict</i>	130
f.	Al-Nasr DC (Zawiya).....	133
i.	<i>Overview</i>	133
ii.	<i>Location, temporal scope, and armed group in charge of the centre</i>	134

iii.	<i>Figures of migrants detained in the al-Nasr DC and presence of migrants intercepted at sea in the centre</i>	135
iv.	<i>Underlying acts allegedly committed in al-Nasr DC</i>	137
v.	<i>Nexus with the armed conflict</i>	144
g.	Conclusion.....	147
3.	Existence of a plan or policy or large-scale occurrence	148
B.	CRIMES AGAINST HUMANITY	148
V.	ALLEGED PERPETRATORS/MODES OF LIABILITY	154
A.	INTRODUCTION	154
B.	LIBYAN ACTORS.....	155
C.	THIRD-STATE ACTORS - ITALIAN AND MALTESE AUTHORITIES (ARTICLE 25(3)(D) OF THE STATUTE).....	160
1.	Legal elements of Article 25(3)(d) of the Statute	160
2.	Groups of persons acting with a common purpose	162
3.	Italian authorities and officials contributed to the commission of the crimes against migrants detained in Libya.....	164
a.	The Italian authorities and officials provided to the LCG patrol vessels that were instrumental to the commission of the underlying crimes	166
b.	The Italian officials carried out maintenance of the LCG's patrol vessels.....	168
c.	The Italian authorities and officials trained members of the LCG.....	171
d.	The Italian authorities and officials delivered technological assets and information to the LCG to increase its capacity to perform maritime search and rescue missions	172
e.	The Italian authorities and officials assisted the Libyan authorities in setting up the Libyan SAR zone and manning the related activities	173
f.	The Italian officials coordinated rescue missions of the LCG from Libya and Rome	174

g.	Italian authorities and officials supported migration control activities in Libya engaging directly with armed groups operating in the area.	180
h.	Conclusion: the conduct of Italian authorities and officials qualifies as a form of contribution encompassed by Article 25(3)(d) of the Statute.	181
4.	The Maltese authorities and officials contributed to the commission of the crimes against migrants detained in Libya	183
a.	Maltese authorities and officials coordinated and/or instructed LCG's and private vessels' interception of migrants at sea and ensure their return to Libya	184
b.	Memorandum of Understanding between Malta and Libya in the field of combatting illegal immigration.....	187
5.	The contribution of Italian and Maltese authorities was provided in the knowledge of the intention of the groups to commit the crimes.....	187
VI.	JURISDICTION.....	193
A.	JURISDICTION UNDER UNSC RESOLUTION 1970	193
B.	ARTICLE 12(2)(B) OF THE STATUTE, CONCERNING THIRD-STATE ACTORS, NAMELY ITALIAN AND MALTESE AUTHORITIES.....	201
VII.	ADMISSIBILITY.....	202
A.	COMPLEMENTARITY	202
B.	GRAVITY	204
VIII.	CONCLUSION	206
IX.	ANNEX I – LIST OF ABBREVIATIONS.....	209
X.	ANNEX II – LIST OF SOURCES INCLUDING CASE LAW	213
A.	UNITED NATIONS	213
B.	COUNCIL OF EUROPE.....	224
C.	EUROPEAN UNION.....	225
D.	STATES	226
E.	NON-GOVERNMENTAL ORGANISATIONS.....	232

F.	RESEARCH PRODUCTS, EDITED VOLUMES, BOOKS, ACADEMIC ARTICLES.....	238
G.	BLOGPOSTS, SOCIAL MEDIA AND VIDEOS	243
H.	MEDIA OUTLETS	245
I.	CONSULTANCY ORGANIZATIONS	256
J.	CASE LAW AND JUDICIAL DOCUMENTS.....	257

I. EXECUTIVE SUMMARY

1. UpRights, StraLi, and Adala for All (cumulatively “Communication Senders”), file before the Office of the Prosecutor of the International Criminal Court (“ICC”) the present communication pursuant to Article 15 of the Rome Statute (“Communication”) concerning crimes committed in Libya against migrants and asylum seekers (collectively “migrants”).
2. This Communication details alleged crimes committed against thousands of migrants trapped in official detention centres (“DCIM Detention Centres”), in western Libya between 2017 and 2021. These centres, under the nominal control of the Department for Combatting Illegal Migration (“DCIM”), of the Government of National Accord (now the Government of National Unity), are in fact operated by armed groups taking an active part in the hostilities. The Communication outlines that in the DCIM Detention Centres, members of these armed groups systematically subject migrants (men, women and children) to various forms of mistreatments and abuse including murder, torture, rape, forced labour and forced conscription. An analysis of this conduct in six DCIM Detention Centres reveals that such acts amount to war crimes and crimes against humanity pursuant to Articles 7 and 8 of the Statute and fall within the jurisdiction of the ICC.

A. Preliminary Remarks

3. It is not the first time that atrocities of such magnitude have occurred so close to Europe. However, this is the first time that Europe accepts them as a grim reality, or as a necessary evil, that cannot be altered. In 1993, the world was shocked by the reports of atrocities occurring in the Balkans, the international community swiftly created a Tribunal to judge these crimes. In a few years, similar institutions were set up to ensure accountability for international crimes which occurred in Rwanda, Sierra

Leone and Cambodia. The establishment of the ICC was part of the process, probably its most ambitious step.

4. Thirty years later, however, the existence of a “pocket of impunity” at the borders of Europe has become openly accepted despite the massive amount of evidence of pervasive international crimes on Europe’s doorstep. Victims and witnesses are located throughout Europe and are capable of testifying to the situation, while readily available evidence clearly points to responsibilities within Europe.
5. These crimes differ from the past atrocities. International criminal law has historically addressed international crimes arising in the context of ethnic conflicts and repressive dictatorships. The genocide in Rwanda and the ethnic cleansing in the former Yugoslavia were triggered by underlying identity tensions reopened by the disaggregation that followed the end of the Cold War. New scenarios and emerging trends of this century, namely the advent of failed States and the massive movement of persons, require similarly robust responses to new challenges.
6. In Libya these two emerging trends coexist in a symbiotic relation. A failed state confronted with mass migration has led to disastrous consequences. The vacuum of power originating from the fall of the Gaddafi regime reshaped the smuggling and trafficking economy of the country, which in turn has fuelled conflict dynamics.
7. When they enter Libya, migrants are external elements in respect to the ongoing hostilities. They are not associated or aligned with any of the parties involved in the conflict. However, this very feature contributes to making them vulnerable, deprived of any protection against potential abuses. They are not subjected to crimes because of their identity or alignment, as in the former Yugoslavia and Rwanda.
8. To the contrary, the parties to the conflict target migrants because they are perceived as a crucial asset to advance their political and military objectives. Reduced as a form of commodity, migrants are exploited as a means of financing, to acquire political

leverage and standing, and, more importantly, as an additional resource for fighting efforts. The neutrality and vulnerability that characterise and affect the status of migrants present in Libya allows for the possibility to repurpose them depending on the goal to be reached.

9. In light of the scale and magnitude of the crimes committed against migrants in Libya and their correlation with the ongoing conflict dynamics, the Communication Senders respectfully ask the Prosecutor to investigate such crimes. It would be the first time that migration as a phenomenon, traditionally under the focus of human rights and refugee law, would be scrutinised through the lens of international criminal law.
10. Admittedly, such an exercise is complex. It requires disentangling legal categories from the factual application to which they were confined in the previous practice of international criminal courts and tribunals and reorient them to a different and new set of facts and dynamics. This, however, is not something of which international criminal law is incapable, but rather a new area in which it must expand. The ability for the international community to adapt to this challenge will test whether international criminal law, as developed in the last thirty years, is suitable to meet the new challenges that the world is facing.

B. Outline of the Communication

11. The present Communication contains five primary sections: (1) Background (Section II); (2) Crimes Allegedly Committed (Section IV); (3) Alleged Perpetrators (Section V); (4) Jurisdiction (Section VI); and (5) Admissibility (Section VII).¹

1. Background – Section II

12. The unstable political situation and ongoing conflict in Libya created a foundation for armed groups to perpetrate crimes against migrants in detention centres. The lack of

¹ Section III outlines the subject matter, geographical, temporal, personal parameters of this Communication.

a functioning central government in Libya and the proliferation of armed groups, never fully integrated into national institutions, has fuelled the progression of a continuous armed conflict. Numerous rounds of political negotiations between different stakeholders have not resolved ongoing insecurity and armed clashes. The mass migration of civilians through Libya towards Europe throughout this period allowed for an already vulnerable population to be subjected to international crimes.

13. Indeed, the fragmentation of power affecting Libya shaped the smuggling and trafficking industry in the country. Once under the strict control of Ghaddafi's regime, armed groups now use their position to penetrate and dominate this industry. The involvement of armed groups in the smuggling business developed over the course of multiple years. Between 2012 and 2014 armed groups confined their engagement into a sort of "predatory economy", obliging smugglers or traffickers to share with them part of their profits. After 2014 armed groups took direct control over the business themselves, operating migrants detention centres, including those under the nominal control of the DCIM, which were used principally as a smuggling hub. From 2017 armed groups re-focused their activities on migration control, using DCIM Detention Centres to prevent migrants from crossing the Mediterranean Sea.
14. The "anti-smuggling stance" of armed groups coincided with the growing pressure from European Union ("EU") and European States to stem the migration flows from Libya. Initially international efforts on the Mediterranean Sea were mostly humanitarian and aimed at rescuing migrants in distress. From 2016/2017 EU and European States, including Italy, shifted their efforts from rescue activities towards activities aimed at reducing the arrivals along the Central Mediterranean Route. In this context, a series of measures were undertaken in order to: (1) increase the ability of the Libyan Coast Guard ("LCG") to intercept migrants at sea; and (2) co-opt local communities in Libya in anti-smuggling efforts. These measures reduced significantly the arrivals of migrants in Europe, while increasing the migrant population detained in Libya.

2. Crimes Allegedly Committed – Section IV

15. In the context of ongoing instability, members of armed groups *de facto* in control of DCIM Detention Centres systematically subjected migrants, detained following their interception at sea, to a litany of serious abuses, including: murder, torture and/or cruel treatment, forced labour, hostage-taking, and various forms of sexual violence including rape and sexual slavery. This Communication details the crimes allegedly committed in the centres between 2017 and 2021 and specifically in six detention centres, namely: (1) the Abu Salim Detention Centre; (2) the Tarik al-Matar Detention Centre; (3) the Tarik al-Sikka Detention Centre; (4) the al-Mabani Detention Centre; (5) the Tajoura Detention Centre; and (6) the al-Nasr Detention Centre.
16. These acts as detailed qualify as war crimes under Articles 8(2)(c)(i)-(iii) and 8(2)(e)(vi) of the Rome Statute (“Statute”). The crimes have been committed by members of armed groups taking direct part in the hostilities. Migrants have been forced to perform military-related activities or have been forcibly recruited to join the fighting. The hostilities allowed the respective armed group to establish its military control over the respective detention centres. These factors indicate that these crimes are linked to the hostilities thus satisfying the war crime nexus requirement.
17. In parallel, the abuse and mistreatment inflicted against migrants in the DCIM Detention Centres qualify as crimes against humanity. The crimes committed in the centres analysed amount to murder, imprisonment, torture, enslavement, rape, sexual slavery and/or any other form of sexual violence under Article 7(1)(a), (c), (e)-(f), (g), (k) of the Statute. For each detention centre, such crimes may be viewed as forming part of *separate* systematic or large-scale attacks against a civilian population (namely the migrants detained therein). The conduct at each centre constitutes its own attack carried out pursuant to or in furtherance of an organizational policy to commit such attack.

3. Alleged Perpetrators – Section V

18. Members of armed groups in control of detention centres, staff of the DCIM and the LCG figure among the alleged perpetrators under Article 25(3) of the Statute for the crimes committed in the DCIM Detention Centres. Members of armed groups materially involved in the control of the DCIM Detention Centres may be held accountable under Article 25(3)(a) of the Statute for the crimes committed against migrants detained therein as direct perpetrators, co-perpetrators, and indirect co-perpetrators. At the same time, relevant responsibilities under Article 25(3)(a) or (d) for these crimes can be also detected in the conduct of staff of the DCIM and the LCG. With respect to the members of the LCG, the relevant contribution to the crimes stems from their efforts to intercept migrants at sea and return them to Libya where they are subsequently referred to DCIM Detention Centres.
19. In parallel to the responsibility of Libyan Actors, this Communication also addresses the implications of the conduct of Italian and Maltese authorities and officials aimed at stemming the flow of migrants from Libya to Europe *vis-à-vis* the alleged crimes. Between 2017 and 2021, Italian and Maltese authorities and officials provided crucial support to the LCG to intercept migrants at sea and return them to the DCIM Detention Centres, which included provision of assets, equipment, maintenance and trainings. Importantly, Italian and Maltese officials operated conjointly with the LCG coordinating its rescue operations to ensure that migrants at sea would be intercepted and returned to Libya. The information available indicates a causal connection between such contribution and the crimes migrants suffered in the detention centres. Such connection amounts to a contribution to the crimes pursuant to Article 25(3)(d) of the Statute.

4. Jurisdiction – Section VI

20. The crimes and the alleged conduct described in this communication fall squarely within the jurisdiction of the ICC in light of: (1) Article 13(b) of the Statute under

Resolution 1970 (2011) concerning *all* actors involved;² and (2) Article 12(2)(b) of the Statute, with respect to the conduct of Maltese and Italian authorities and officials.³ First, the alleged crimes analysed under the present communication fall within the parameters of the “situation in the Libyan Arab Jamahiriya” as referred by the UNSC pursuant to Resolution 1970 (2011). They took place on the Libyan territory, after 15 February 2011, they have been perpetrated by Libyan nationals or otherwise States Parties nationals and are associated with the ongoing armed conflict underlying the referral.

21. Indeed, the conflict in Libya is at the base of the manner, the motives, the ability, and the causes underpinning the commission of such crimes. These crimes are perpetrated by members of the armed groups involved in the conflict and in the same facilities as their headquarters (*manner*). Their commission served the purpose of their military campaign (*motives*). The participation in the hostilities of these armed groups has been pivotal to ensure or maintain control over the DCIM Detention Centres (*ability*). The revolution/conflict dynamics empowered and enabled the armed groups to dominate the smuggling sector and exert control over the DCIM Detention Centres (*causes*).

5. Admissibility – Section VII

22. The alleged crimes are admissible under Article 17 of the Statute. In terms of complementarity, as observed by the UN Fact-Finding Mission on Libya, in Libya there has been no attempt to ensure the accountability for the crimes committed against migrants in Libya. In light of the substantial inactivity of domestic authorities to address relevant criminal responsibilities, the relevant crimes are to be considered

² See Section IV. This includes the conduct and responsibilities of individuals referred to in Section V, namely Libyan Actors (members of the armed groups in charge of DCIM Detention Centres, DCIM and LCG officials) and Third Country Actors (Italian and Maltese authorities and officials).

³ See Section IV. This includes the individuals referred to in Section V.C, namely Third State Actors (Italian and Maltese authorities and officials).

admissible. In any event, Libya should be considered unable to carry out relevant domestic proceedings.

23. Likewise, there is a substantial inactivity *vis-à-vis* the alleged criminal conduct carried out by Italian authorities and officials. In Malta, only one criminal investigation addressed conduct of Maltese authorities. It was swiftly terminated by the Maltese judiciary.

II. BACKGROUND

24. The present section outlines background information which is material to understand the context in which the alleged crimes have been committed. Sections II.A and II.B concerning the history of the armed conflict in Libya and the migratory flows phenomenon assist in assessing: (1) the existence and development of the non-international armed conflict (“NIAC”) in Libya;⁴ (2) the nexus between the crimes and the armed conflict;⁵ and (3) the jurisdictional link between the crimes and the UNSC referral pursuant to Resolution 1970 (2011).
25. Section II.C, concerning the international efforts to prevent migration from Libya to Europe lays out background information relevant to assess the responsibilities of Third-State authorities and officials.⁶

A. History of the Armed Conflict in Libya and the role of the armed groups

1. The 2011 Revolution

26. In February 2011, mass demonstrations spread across Libya following similar popular uprisings which had erupted in neighbouring Egypt and Tunisia. Participants were calling for democratic reform and the end of the Ghaddafi regime.⁷
27. The arrest of a Libyan lawyer and human rights activist on 15 February triggered protests in Benghazi.⁸ The following day demonstrations broke out in different cities, intensifying on 17 February, the “Day of Rage”, which marked the anniversary of a government crackdown against protesters five years earlier.⁹ In Tripoli, large-scale

⁴ Section IV.A.1.

⁵ Sections IV.A.2, IV.A.2.a.v, IV.A.2.b.v, IV.A.2.c.v, IV.A.2.d.v, IV.A.2.e.v, IV.A.2.f.v.

⁶ Section V.C.

⁷ Human Rights Council, Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, 12 January 2012 (“2012 UN Commission of Inquiry Report”), para.26.

⁸ 2012 UN Commission of Inquiry Report, para.27.

⁹ 2012 UN Commission of Inquiry Report, para.27.

demonstrations began on 20 February and the clashes with security forces escalated in the following days,¹⁰ resulting in significant use of force.¹¹

28. The rebellion against the Ghaddafi regime quickly expanded city after city. By late February the regime had lost control of large parts of the country,¹² and an armed conflict developed between government forces and opposition armed forces.¹³
29. On 26 February, the Security Council adopted resolution 1970 (2011) which imposed sanctions against the Ghaddafi regime, and referred “the situation in the Libyan Arab Jamahiriya” to the International Criminal Court (“ICC”).¹⁴ Security Council resolution 1973 (2011) subsequently imposed a “no-fly-zone” over Libya and authorized “all necessary measures to protect civilians”.¹⁵ An intervention led by France, the United Kingdom, and the United States began on 19 March and continued from 31 March until 31 October under the auspices of NATO.¹⁶
30. Meanwhile, the regime registered a series of high-level defections, and a fragmented revolutionary front began to emerge, without strong central leadership and composed of various revolutionary armed groups (or *thuwwar*).¹⁷ Efforts to form a new government led to the establishment of the National Transitional Council (“NTC”), officially announced on 5 March as the sole representative of all Libya and chaired by former Minister of Justice Mustafa Abdul Jalil.¹⁸

¹⁰ 2012 UN Commission of Inquiry Report, para.28.

¹¹ 2012 UN Commission of Inquiry Report, paras.27-28.

¹² Wolfram Lacher, *Libya's Fragmentation: Structure and Process in Violent Conflict*, (I.B.Tauris 2020) (“Libya's Fragmentation”), pp.20-21.

¹³ 2012 UN Commission of Inquiry Report, para.30.

¹⁴ United Nations Security Council (“UNSC”), Security Council Resolution 1970 (2011), S/RES/1970, 26 February 2011 (“Resolution 1970 (2011)”), paras.4-8.

¹⁵ UNSC, Security Council Resolution 1973 (2011), S/RES/1973, 17 March 2011.

¹⁶ 2012 UN Commission of Inquiry Report, para.32.

¹⁷ Libya's Fragmentation, p.22.

¹⁸ Libya's Fragmentation, p.21.

31. However, tensions between the NTC and revolutionary armed groups soon surfaced, fuelled by rivalries among external actors who were competing to supply weapons to different revolutionary factions.¹⁹
32. Tripoli fell in August 2011, and, as Ghaddafi and his inner circle retreated to Sirte and Bani Walid, revolutionary armed groups exacted revenge in towns and communities accused of loyalty to the regime.²⁰ On 20 October 2011, revolutionary armed groups executed Ghaddafi in Sirte.²¹ Three days later, on 23 October, the NTC declared that Libya was liberated.²²

2. The aftermath of the Libyan Revolution (November 2011-July 2012)

33. Throughout the second half of 2011, the NTC faced increasing challenges. Its perceived lack of legitimacy and transparency as well as the inclusion of former government officials in its ranks exacerbated popular discontent over the Council's action and inaction.²³
34. On 22 November 2011, the NTC formed a transitional government and Prime Minister Abdurrahim el-Keib was given the mandate to lead the country to elections in 2012.²⁴ While the cabinet reflected the new post-Ghaddafi power balance, various constituencies, notably Benghazi, felt excluded and marginalised.²⁵
35. The struggles among revolutionary armed groups, particularly in Tripoli, posed additional challenges and paralysed the NTC and the transitional government which

¹⁹ Libya's Fragmentation, pp.22-23.

²⁰ Libya's Fragmentation, p.24.

²¹ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2011/727, 22 November 2011 ("November 2011 UNSG Report on UNSMIL"), para.3; Libya's Fragmentation, p.24.

²² November 2011 UNSG Report on UNSMIL, para.3; Libya's Fragmentation, p.24.

²³ UNSC, Final report of the Panel of Experts in accordance with paragraph 24 (d) of resolution 1973 (2011), S/2012/163, 20 March 2012, ("2012 UN Panel of Experts Report"), para.20.

²⁴ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2012/129, 1 March 2012 ("March 2012 UNSG Report on UNSMIL"), para.5.

²⁵ Libya's Fragmentation, p.25.

deferred strategic decisions and failed to establish a credible demobilisation program.²⁶

36. Government institutions made parallel attempts to integrate armed groups and resulted, in particular, in the establishment of the Libya Shield Force (“LSF”), a paramilitary force under the Ministry of Defence which armed groups joined despite maintaining their structure and autonomy.²⁷ These practices adopted to absorb some armed groups into Libyan institutions did not ultimately lead to successful integration into an effective army or police force.²⁸ Nominally under the Ministries of Defence or Interior, these groups were funded by the Central Bank of Libya and mandated to exercise security or law enforcement functions.²⁹ The State, however, could only exercise minimal supervision over these groups, which retained their autonomy and control over the facilities, including detention facilities occupied during the February 2011 Revolution.³⁰ The failure to effectively integrate armed groups into national security forces is one of the factors that contributed to Libya’s instability in the years that followed the revolution.
37. From a security standpoint, the fall of the Ghaddafi regime did not halt the violence.³¹ Between March and April 2012, the Libyan army and the LSF engaged in fighting in the south of Libya, in Bani Walid, against pro-Ghaddafi elements,³² and in Sabha and

²⁶ Libya's Fragmentation, pp.25-27; 2012 UN Panel of Experts Report, para.22 (“The National Transitional Council’s control has remained conditional, a product of continual negotiation with autonomous militia and local councils. Jockeying between rival militias has led to a number of violent incidents, while the lack of centralized control limits the Council’s ability to enforce international standards of human rights and due process.”).

²⁷ Libya's Fragmentation, pp.26-27. In parallel other armed groups were co-opted under the Supreme Security Committee, set up under the Ministry of Interior. See *ibid.*

²⁸ OHCHR, Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings, A/HRC/31/CRP.3, 23 February 2016 (“2016 OHCHR Investigation”), paras.33, 52.

²⁹ 2016 OHCHR Investigation, paras.33, 52.

³⁰ 2016 OHCHR Investigation, paras.33, 52.

³¹ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2012/675, 30 August 2012 (“August 2012 UNSG Report on UNSMIL”), paras.10-17.

³² UNSC, Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2013/99, 15 February 2013, (“2013 UN Panel of Experts Report”), para.31; March 2012 UNSG Report on UNSMIL, para.10.

Kufra.³³ Likewise, tensions between different armed groups and tribes escalated into armed clashes in various parts of Libya,³⁴ including Tripoli,³⁵ Zuwara, and in the Nafusa Mountains.³⁶ Also, other clashes occurred in Tripoli between the transitional government and armed groups protesting against the suspension of payments for the *thuwwar*.³⁷

3. The 2012 elections and mounting divisions (July 2012-February 2014)

38. In the period between July 2012 and February 2014, the political and security situation in Libya further deteriorated due to increased tensions among different political and armed groups.
39. While carried out without major incidents, the elections held on 7 July 2012³⁸ resulted in a fragmented legislature.³⁹ The major parties, the secularist National Force Alliance (“NFA”), led by Mahmoud Jibril, and Muslim Brotherhood’s Justice and Construction Party (“JPC”), failed to obtain a majority in the General National Congress (“GNC”).⁴⁰ The government formed on 31 October 2012 by former opposition member Ali Zeidan⁴¹ reflected such fragmentation and it included technocrats and representatives of Revolutionary and Islamist factions, as well as figures with diverse political backgrounds (including the NFA, JPC or Salafis) and different geographic provenance.⁴² Meanwhile, the NTC handed over its functions to the GNC on 8 August and was dissolved.⁴³

³³ March 2012 UNSG Report on UNSMIL, para.12; August 2012 UNSG Report on UNSMIL, paras.11-12. See also *Libya's Fragmentation*, pp.26-27.

³⁴ 2012 UN Panel of Experts Report, para.25.

³⁵ March 2012 UNSG Report on UNSMIL, paras.6, 9.

³⁶ August 2012 UNSG Report on UNSMIL, paras.13, 15.

³⁷ August 2012 UNSG Report on UNSMIL, paras.16-17.

³⁸ 2013 UN Panel of Experts Report, para.22.

³⁹ *Libya's Fragmentation*, p.29.

⁴⁰ *Libya's Fragmentation*, p.29.

⁴¹ *Libya's Fragmentation*, p.29; 2013 UN Panel of Experts Report, para.22; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2013/104, 21 February 2013 (“February 2013 UNSG Report on UNSMIL”), para.4.

⁴² *Libya's Fragmentation*, p.29.

⁴³ August 2012 UNSG Report on UNSMIL, para.9.

40. The heterogeneity of interests and factions represented in the government yet again resulted in paralysis.⁴⁴ Between January and May 2013, amid the government's inertia, the centre of the political tension within the GNC focused on debates concerning the Political Isolation Law ("PIL"). The PIL – a lustration measure of sorts – had, in fact, the potential to change dramatically the Libyan political landscape, excluding from public offices members of the current legislative and executive branches who, before the revolution, had been part of, or associated with, the regime.⁴⁵
41. The political struggle over the PIL saw the rise of a "hardliners revolutionary bloc" and deteriorated into armed violence on 5 March 2013, when armed elements and political groups besieged the GNC for twelve hours forcing the PIL to be adopted.⁴⁶ Enacted on 5 May 2013, the broad reach of the PIL also targeted former regime senior officials who had defected in the early stages of the February 2011 Revolution.⁴⁷ The following month, the Integrity and Reform Commission for the armed forces enforced similar scrutiny on the military.⁴⁸
42. The PIL had an impact on the composition of the GNC as well as the government, affecting mostly NFA members.⁴⁹ In response, the NFA boycotted the GNC and advocated for new elections, mobilising popular demonstrations and portraying the GNC as controlled by Islamists.⁵⁰ The government paralysis and the political crisis triggered by the PIL contributed to a growing sense of dissatisfaction with the GNC

⁴⁴ Libya's Fragmentation, p.29.

⁴⁵ Libya's Fragmentation, pp.30-31; February 2013 UNSG Report on UNSMIL, para.6 ("Deep divisions have emerged among members of the General National Congress and political forces, particularly with respect to the potential scope and application of such a law. There are fears that insistence on such a law could be motivated by a desire to alter the political balance of power that has emerged since the national elections held in July."). See also UNSC, Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2014/106, 19 February 2014, ("2014 UN Panel of Experts Report"), para.22.

⁴⁶ Libya's Fragmentation, p.31; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2013/516, 5 September 2013 ("September 2013 UNSG Report on UNSMIL"), para.5. See also 2014 UN Panel of Experts Report, para.22.

⁴⁷ September 2013 UNSG Report on UNSMIL, para.7; Libya's Fragmentation, p.30.

⁴⁸ September 2013 UNSG Report on UNSMIL, para.65.

⁴⁹ Libya's Fragmentation, p.31; September 2013 UNSG Report on UNSMIL, paras.9-10.

⁵⁰ Libya's Fragmentation, p.32.

work. This sentiment emerged, especially, among NFA supporters, local Libyan communities, and armed groups who felt marginalised, such as those residing in Zintan, Warshafana, and Benghazi.⁵¹

43. In this context, the kidnapping, albeit only for a few hours, of Prime Minister Zeidan by an armed group linked to the “Libyan Revolutionaries Operation Room”, in October 2013, is an illustrative example of the level of tensions reached in Libya at the time.⁵² Following his release, Zeidan moved his office to the Tripoli compound of the Zintani al-Sawaiq Battalion.⁵³
44. The general dissatisfaction with the GNC was also bolstered by intensifying rivalries over security institutions, enduring tensions between armed groups that continued operating outside government control,⁵⁴ and by an escalation of violence across the country between July 2012 and February 2014.⁵⁵
45. In August 2013, Ibrahim Jadran, leader of the Petroleum Facilities Guards, announced the formation of the Cyrenaica Political Bureau and took control of key oil terminals: Sidra, Ras Lanuf, and Zueitina.⁵⁶
46. In Bani Walid and in the south of Libya, armed clashes continued between the Libyan army and the remaining Ghaddafi loyalists.⁵⁷ The southern region was also affected

⁵¹ Libya's Fragmentation, p.34; September 2013 UNSG Report on UNSMIL, para.22 (“A tribal gathering in Zintan issued a statement strongly criticizing the General National Congress, the Government and political parties for the continued failure to build an effective army and police force.”).

⁵² 2014 UN Panel of Experts Report, para.30; Libya's Fragmentation, p.34.

⁵³ Libya's Fragmentation, p.34.

⁵⁴ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2014/131, 26 February 2014 (“February 2014 UNSG Report on UNSMIL”), para.16; 2014 UN Panel of Experts Report, paras.27, 35. See also 2016 OHCHR Investigation, paras.33, 52.

⁵⁵ 2013 UN Panel of Experts Report, paras.29-35; 2014 UN Panel of Experts Report, para.32.

Libya's Fragmentation, pp.33-34.

⁵⁶ *The Guardian*, Chris Stephen, Partition of Libya looms as fight for oil sparks vicious new divide, 16 March 2014 ([Url](#) - last visited: 14 January 2022); Libya's Fragmentation, p.33.

⁵⁷ 2013 UN Panel of Experts Report, para.31; February 2013 UNSG Report on UNSMIL, para.10; 2014 UN Panel of Experts Report, para.36.

by tribal conflicts⁵⁸ and armed clashes between government forces and armed groups involved in smuggling activities across the southern border.⁵⁹

47. In eastern Libya, Islamic armed groups took advantage of the vacuum of power created by the diffidence in the Tripoli government⁶⁰ and carried out a number of attacks and targeted killings in the Benghazi region.⁶¹ Attempts by the government to halt their activities resulted in retaliatory attacks against senior representatives of security forces.⁶² In addition, popular dissatisfaction against the *thwuuar* armed groups resulted in more violence.⁶³ On 8 June 2013, a demonstration outside LSF barracks precipitated in clashes between the brigade and the protesters, leaving 30 people dead.⁶⁴ Between November and December 2013 major clashes and demonstrations occurred in Benghazi and Derna, between Ansar al-Sharia and government security forces.⁶⁵
48. In Tripoli, armed groups originating from different areas of Libya continued engaging in fighting, despite GNC attempts to remove from the capital “illegitimate armed formations”.⁶⁶ Soon after the PIL was adopted, Zintani armed groups, the al-Sawaiq Battalion and Qa’qa’ Brigade, affiliated with the Ministry of Defense and the NFA, clashed with Misrata armed groups linked to Tripoli’s Supreme Security Committee.⁶⁷ Major clashes in Tripoli between these groups also occurred in June⁶⁸ and November 2013.⁶⁹ These confrontations led to a popular protest against the presence of armed

⁵⁸ 2013 UN Panel of Experts Report, para.30; September 2013 UNSG Report on UNSMIL, paras.28, 30-31.

⁵⁹ September 2013 UNSG Report on UNSMIL, paras.30-31.

⁶⁰ 2013 UN Panel of Experts Report, para.32. See also 2014 UN Panel of Experts Report, para.33.

⁶¹ 2013 UN Panel of Experts Report, para.33; February 2013 UNSG Report on UNSMIL, para.11 (referring to the 11 September 2013 attack against the United States Facilities in Benghazi and the attack against the Italian consul in January 2013).

⁶² 2013 UN Panel of Experts Report, para.33; September 2013 UNSG Report on UNSMIL, para.26; February 2013 UNSG Report on UNSMIL, para.11.

⁶³ Libya's Fragmentation, pp.33-34.

⁶⁴ 2014 UN Panel of Experts Report, para.33; September 2013 UNSG Report on UNSMIL, paras.23-24; Libya's Fragmentation, pp.33-34.

⁶⁵ February 2014 UNSG Report on UNSMIL, paras.20-21.

⁶⁶ September 2013 UNSG Report on UNSMIL, para.20.

⁶⁷ Libya's Fragmentation, p.33.

⁶⁸ September 2013 UNSG Report on UNSMIL, para.21; Libya's Fragmentation, p.33.

⁶⁹ February 2014 UNSG Report on UNSMIL, para.16; 2014 UN Panel of Experts Report, para.32.

groups in Tripoli on 15 November 2013, which resulted in 46 protesters being killed by Misrata groups.⁷⁰ After the incident, Misrata troops withdrew from Tripoli.⁷¹ Over the following months and until February 2014, the security environment continued to deteriorate and there was no significant progress in integrating members of the brigades into a national army and police force, nor in the disarmament of other armed groups.⁷²

4. “Operation Dignity” and “Operation Libya Dawn” (February 2014-January 2015)

49. Between February 2014 and January 2015 the most serious outbreak of armed conflict occurred, with the use of heavy weaponry and at least 100,000 people displaced.⁷³ The political and military tensions between the warring factions in Libya exacerbated and created a permanent fracture between Tripoli (west) and Benghazi (east).
50. In Cyrenaica, between the end of 2013 and the first months of 2014, the security situation was characterized by a significant deterioration with several armed clashes and targeted attacks, in particular in Benghazi and Derna.⁷⁴ The tension in eastern Libya was also compounded by a new political crisis in Tripoli. Prime Minister Zeidan was initially replaced with his Defence Minister Aballah al-Thinni, and then with Ahmed Maitig, in a contested election.⁷⁵ As a result, both Al-Thinni and Maitig acted as head of the executive.⁷⁶

⁷⁰ Libya's Fragmentation, p.34; February 2014 UNSG Report on UNSMIL, para.17; 2014 UN Panel of Experts Report, para.32.

⁷¹ Libya's Fragmentation, p.34; February 2014 UNSG Report on UNSMIL, para.16; 2014 UN Panel of Experts Report, para.32.

⁷² February 2014 UNSG Report on UNSMIL, para.2.

⁷³ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2014/653, 5 September 2014 (“September 2014 UNSG Report on UNSMIL”), para.2.

⁷⁴ February 2014 UNSG Report on UNSMIL, para.20-21; Libya's Fragmentation, pp.35-36. 2014 UN Panel of Experts Report, para.34.

⁷⁵ September 2014 UNSG Report on UNSMIL, paras.12-14; Libya's Fragmentation, p.35.

⁷⁶ Libya's Fragmentation, p.35.

51. In this context, on 14 February 2014, retired General Khalifa Haftar, announced the suspension of the GNC and the government in what appeared to be an attempted coup d'état.⁷⁷ While this move did not bring immediate political consequences, over the following three months General Haftar gathered significant support in the east.⁷⁸ On 16 May 2014, Haftar formed a coalition of army units, ex-revolutionary groups, and tribal militias under the name of the Libyan National Army ("LNA"), and launched "Operation Dignity" in eastern Libya against Ansar al-Sharia and other armed groups, re-united under the umbrella of the Benghazi Revolutionary Shura Council, and deemed responsible for insecurity in Benghazi.⁷⁹
52. Shortly after the launch of "Operation Dignity", Zintani-led armed groups based in Tripoli – Zintan Qa'qa and Sawaiq brigades – pledged allegiance to Haftar and staged an attack against the GNC in Tripoli, declaring its dissolution.⁸⁰ These developments resulted in violent clashes in Tripoli and the return of Misratan forces to the city.⁸¹
53. The situation escalated following the elections of a new legislative body, the House of Representatives ("HoR"), held on 25 June 2014.⁸² Severely impacted by violence and boycotts,⁸³ and with a limited turnout,⁸⁴ the elections resulted in a negative outcome for Islamist candidates as many independent candidates backed by the NFA as well as pro-regional autonomy candidates from the east were elected.⁸⁵ After its inaugural

⁷⁷ Libya's Fragmentation, pp.34-35; CBS News, Libya Major General Khalifa Haftar claims gov't suspended in apparent coup bid; PM insists Tripoli 'under control', 14 February 2014 ([Url](#) - last visited: 14 January 2022).

⁷⁸ Libya's Fragmentation, pp.34-35.

⁷⁹ UNSC, Final report of the Panel of Experts established pursuant to resolution 1973 (2011), S/2015/128, 23 February 2015 ("2015 UN Panel of Experts Report"), paras.32-33, 44; September 2014 UNSG Report on UNSMIL, paras.5, 24-25; Libya's Fragmentation, pp.35-36. The military operations in Benghazi and the east of Libya continued throughout the entire 2014. UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2015/144, 26 February 2015, ("February 2015 UNSG Report on UNSMIL"), paras.13-19.

⁸⁰ Libya's Fragmentation, p.36.

⁸¹ Libya's Fragmentation, p.36.

⁸² September 2014 UNSG Report on UNSMIL, paras.7-10.

⁸³ Libya's Fragmentation, p.36; Aljazeera, Libyans mourn rights activist amid turmoil, 26 June 2014 ([Url](#) - last visited: 14 January 2022).

⁸⁴ Libya's Fragmentation, p.36; September 2014 UNSG Report on UNSMIL, para.7.

⁸⁵ Libya's Fragmentation, p.37.

session on 4 August in Tobruk,⁸⁶ the HoR adopted a clear partisan stance, while GNC members continued claiming the illegality of the newly established body.⁸⁷

54. Following the elections, the separate hostilities taking place in Tripoli (with armed groups fighting to establish territorial control and access to the state budget) and in the east (with Haftar's forces trying to assert their control over the Benghazi area) "coalesced" into one single nation-wide conflict,⁸⁸ which centered around the legitimacy of the GNC and the HoR.
55. When the results of the elections were announced on 7 July, significant armed clashes erupted in the capital between Zintani groups aligned with the LNA/HoR, and Misratan forces in Tripoli (pro-GNC).⁸⁹ On 13 July 2014, armed groups from Tripoli and Misrata launched "Operation Libya Dawn" to expel Zintan Qa'qa and Sawaiq brigades from Tripoli.⁹⁰ The so-called Battle of Tripoli Airport lasted until 23 August 2014 and resulted in the destruction of the airport and the withdrawal of Zintan units. Overall, "Operation Libya Dawn" included extensive destruction of infrastructures, indiscriminate shelling of residential areas, occupation, and plundering of administrative and television buildings.⁹¹
56. Following the expulsion of the Zintani forces from Tripoli, the divide across the country deepened as the HoR labelled the coalition forming part of "Operation Libya Dawn" and Ansar al-Sharia as terrorist entities, and two parallel (governmental and legislative) institutions began to struggle for legitimacy.⁹² On one side, after the success of the "Operation Libya Dawn" in Tripoli, the GNC reinstated itself in the

⁸⁶ 2015 UN Panel of Experts Report, Annex 16, para.20.

⁸⁷ Libya's Fragmentation, pp.37-38.

⁸⁸ Libya's Fragmentation, p.36.

⁸⁹ Libya's Fragmentation, p.37. See also September 2014 UNSG Report on UNSMIL, paras.16-17.

⁹⁰ 2015 UN Panel of Experts Report, para.51; September 2014 UNSG Report on UNSMIL, para.18.

⁹¹ 2015 UN Panel of Experts Report, paras.57-58; See also *ibid.*, para.56 ("Fajr operations, through both targeted actions and the indiscriminate use of force, have caused considerable material and institutional damage, which led to massive population displacements"). See also September 2014 UNSG Report on UNSMIL, paras.19-22.

⁹² 2015 UN Panel of Experts Report, para.13; September 2014 UNSG Report on UNSMIL, para.4; Libya's Fragmentation, p.37.

capital announcing the creation of a Government of National Salvation (“GNS”) led by Omar Al-Hassi.⁹³ Whereas in Tobruk, the HoR gave Al-Thinni the mandate to form a government.⁹⁴ Haftar integrated his command within the “Libyan army” and under the HoR on 25 August 2014.⁹⁵

57. During the following months, “Operation Libya Dawn” extended its offensive outside Tripoli, engaging in fighting with Zintan forces near Gharyan, in the Nafusa mountains, in armed clashes in the southern province of Fezzan, and in the east.⁹⁶
58. Between August and November 2014, the Al-Thinni Government, with the support of the LNA, launched a counter-attack campaign against “Operation Libya Dawn” forces.⁹⁷ This resulted in a new spike of violence, with a series of airstrikes in Tripoli, Misrata, and Zliten.⁹⁸ However, the new escalation of violence did not yield a decisive military advantage for either party and, as the conflict protracted, the stalemate began to expose fragmentations in the two alliances.⁹⁹

5. Attempts at political dialogue and the formation of the Government of National Accord (January-December 2015)

59. In the first half of 2015, amidst a partial decrease in hostilities, the United Nations (“UN”) spearheaded a series of negotiations between the parties to the conflict.¹⁰⁰ The framework agreement proposed by the UN envisioned a Presidency Council chaired by a Prime Minister who would lead a Government of National Accord (“GNA”) functioning under two legislative bodies: the HoR and the State Council (mainly

⁹³ February 2015 UNSG Report on UNSMIL, para.7; 2015 UN Panel of Experts Report, para.13.

⁹⁴ February 2015 UNSG Report on UNSMIL, para.7; Libya’s Fragmentation, p.37.

⁹⁵ 2015 UN Panel of Experts Report, para.35.

⁹⁶ 2015 UN Panel of Experts Report, paras.52-54; February 2015 UNSG Report on UNSMIL, paras.8-9, 11-12.

⁹⁷ 2015 UN Panel of Experts Report, para.90.

⁹⁸ 2015 UN Panel of Experts Report, paras.90, 92-97.

⁹⁹ Libya’s Fragmentation, pp.42-43.

¹⁰⁰ Libya’s Fragmentation, p.42. February 2015 UNSG Report on UNSMIL, para.2; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2015/624, 13 August 2015 (“August 2015 UNSG Report on UNSMIL”), paras.1-19; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2016/182, 25 February 2016 (“February 2016 UNSG Report on UNSMIL”), paras.2-8.

composed of members of the GNC).¹⁰¹ The negotiations lasted throughout 2015, mostly because of the resistance of the GNC and the HoR,¹⁰² who, blocked by their respective hardliners, stalled UN efforts several times.¹⁰³

60. Against this backdrop, on 17 December 2015, the Libyan Political Agreement (“LPA”) was signed by individual members of the two legislative bodies, without a mandate from their respective organs.¹⁰⁴
61. From the security standpoint, the decline in the intensity of the conflict between the LNA and “Operation Libya Dawn”, was quickly interrupted in the second half of 2015.¹⁰⁵ In Tripoli, the hostilities resumed around June 2015,¹⁰⁶ with a series of incidents driven by a fracture within “Operation Libya Dawn” between armed groups supporting UN negotiations (including the Halbus Brigade, the Special Deterrence Force, Nawasi Brigade, and Abu Salim Brigade), and hardliner factions opposing any dialogue with the HoR/LNA.¹⁰⁷ In the second half of 2015 there was also a re-emergence of hostilities in eastern Libya as the LNA launched a series of offensives to expand its control over Benghazi and Ajdabiya.¹⁰⁸ In the south, throughout 2015, the parallel local conflicts that had followed the February 2011 Revolution continued.¹⁰⁹

¹⁰¹ UNSC, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2016/209, 9 March 2016 (“2016 UN Panel of Experts Report”), para.25.

¹⁰² Libya's Fragmentation, pp.43-48. According to Lacher “the key actors who had driven the descent into civil war [...] had lost all control and dynamics their actions had spawned. The allies they had mobilized had become increasingly independent or even turned against them”. Libya's Fragmentation, p.43.

¹⁰³ Libya's Fragmentation, p.44. Specifically, In April and July 2015 two of drafts of the preliminary framework agreement had been rejected either by the GNC or the HoR, respectively. 2016 UN Panel of Experts Report, paras.21-22; August 2015 UNSG Report on UNSMIL, para.9. In October 2015, both parties rejected the UN proposed final version of the agreement since it contained the names for the Presidency Council and the GNA. 2016 UN Panel of Experts Report, para.23.

¹⁰⁴ 2016 UN Panel of Experts Report, para.25; February 2016 UNSG Report on UNSMIL, para.8; Libya's Fragmentation, pp.45-46.

¹⁰⁵ 2016 UN Panel of Experts Report, para.36

¹⁰⁶ 2016 UN Panel of Experts Report, paras.37-39.

¹⁰⁷ 2016 UN Panel of Experts Report, para.39.

¹⁰⁸ 2016 UN Panel of Experts Report, paras.47-50, 54.

¹⁰⁹ 2016 UN Panel of Experts Report, paras.61-66.

62. Meanwhile, the presence of Islamic State in Iraq and the Levant (“ISIL”) in Libya became another factor of instability.¹¹⁰ The terrorist group imposed its control over Sirte (centre of the country),¹¹¹ and infiltrated Derna and Benghazi (in the east).¹¹²

6. The Failure of the Libyan Political Agreement (2016-2017)

63. Between 2016 and 2017, efforts to implement the LPA were soon frustrated by the lack of endorsement by the HoR and GNC, by the fragmentation of the Presidency Council, and by the parties’ internal divisions.¹¹³

64. Indeed, required to take every decision by consensus, the Presidency Council headed by Prime Minister Fayiz Al-Sarraj,¹¹⁴ was paralysed,¹¹⁵ and in January 2016 two of its members started openly boycotting it.¹¹⁶ The internal challenges of the Presidency Council were further compounded as the GNC and HoR continued to oppose the implementation of the LPA. The HoR refused to approve the agreement and did not endorse the appointment of the ministers indicated by Al-Sarraj,¹¹⁷ effectively blocking any dialogue with the GNA.¹¹⁸ Meanwhile, the new Prime Minister of the GNS, Khalifa al-Ghweil, who had taken over from Al-Hassi,¹¹⁹ opposed any attempts of the GNA to establish itself in Tripoli and gain legitimacy.¹²⁰ Similar opposition and

¹¹⁰ 2016 UN Panel of Experts Report, paras.57-60.

¹¹¹ 2016 UN Panel of Experts Report, paras.57-60.

¹¹² February 2016 UNSG Report on UNSMIL, paras.28-29.

¹¹³ See, for instance, 2016 UN Panel of Experts Report, para.25 (“However, five weeks after the signing of the Libyan Political Agreement, when the present report was finalized, significant uncertainties remained regarding the endorsement of the Government of National Accord by the House and its establishment in Libya.”).

¹¹⁴ February 2016 UNSG Report on UNSMIL, para.3.

¹¹⁵ Libya's Fragmentation, p.46.

¹¹⁶ Libya's Fragmentation, p.46.

¹¹⁷ Libya's Fragmentation, pp.47-48; February 2016 UNSG Report on UNSMIL, paras.3, 10; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2016/452, 16 May 2016 (“May 2016 UNSG Report on UNSMIL”), para.4; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2016/1011, 1 December 2016 (“December 2016 UNSG Report on UNSMIL”), paras.2-4.

¹¹⁸ UNSC, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2017/466, 1 June 2017 (“2017 UN Panel of Experts Report”), paras.33-35. The HoR’s main source of concern was Article 8 of the LPA, which required the Presidency Council to agree on all senior military positions, *de facto* dismissing Haftar. 2017 UN Panel of Experts Report, para.34; Libya's Fragmentation, pp.46, 48.

¹¹⁹ Libya's Fragmentation, p.43.

¹²⁰ 2017 UN Panel of Experts Report, paras.28-30, 32; May 2016 UNSG Report on UNSMIL, paras.3, 8; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/283, 4 April 2017 (“April 2017 UNSG Report on UNSMIL”), para.9.

criticism to the Presidency Council came from Abdallah Al-Thinni, Prime Minister of the Interim Government based in Bayda'.¹²¹

65. Against this backdrop and due to the ongoing hostilities, the situation again became extremely volatile. Tripoli remained under the control of different armed groups with conflicting agendas who often confronted each other in armed clashes over territorial control or funding.¹²² While the initial establishment of the Presidency Council in Tripoli was met with limited armed resistance,¹²³ lacking its own security forces, al-Sarraj was obliged to rely on the armed groups that had committed to the LPA.¹²⁴
66. This new dynamic created a fracture in the "Operation Libya Dawn" front which led to military confrontations in December 2016 and July 2017,¹²⁵ between the Tripoli-based armed groups siding with the Presidency Council and those aligned with GNS Prime Minister al-Ghweil.¹²⁶ As forces affiliated with the GNS were expelled from Tripoli in Spring 2017,¹²⁷ the armed groups who sided with the Presidency Council "acquired unprecedented influence over state institutions in the capital, intimidating officials, filling posts with their protégés and infiltrating administration".¹²⁸ The so-called "Tripoli's Militia Cartel" (the Tripoli Revolutionaries Brigade, Abu Salim

¹²¹ 2017 UN Panel of Experts Report, paras.31-32; December 2016 UNSG Report on UNSMIL, para.5; April 2017 UNSG Report on UNSMIL, para.9

¹²² December 2016 UNSG Report on UNSMIL, para.13; 2017 UN Panel of Experts Report, paras.54-55, 62-63.

¹²³ May 2016 UNSG Report on UNSMIL, para.12. Initially the Presidency Council was installed in the Naval Base of Abu Sitta. See *ibid.*, para.12.

¹²⁴ December 2016 UNSG Report on UNSMIL, para.12.

¹²⁵ April 2017 UNSG Report on UNSMIL, paras.14-16; 2017 UN Panel of Experts Report, paras.24, 28-30, 53-56, 60-64; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/726, 22 August 2017 ("August 2017 UNSG Report on UNSMIL"), para.10; Libya's Fragmentation, p.49.

¹²⁶ April 2017 UNSG Report on UNSMIL, paras.14-16. August 2017 UNSG Report on UNSMIL, para.10; 2017 UN Panel of Experts Report, paras.24, 28-29, 53-56, 60-64, Annex 15, Libya's Fragmentation, p.49.

¹²⁷ April 2017 UNSG Report on UNSMIL, paras.14-16; 2017 UN Panel of Experts Report, paras.54, 60-61; August 2017 UNSG Report on UNSMIL, para.10.

¹²⁸ Libya's Fragmentation, p.49.

Brigade, Nawasi Brigade, and Special Deterrence Force also known as Rada) formed an oligopoly that established its full control over Tripoli and its institutions.¹²⁹

67. While sporadic fighting between these fronts continued in the second half of 2017,¹³⁰ in October the Presidency Council launched military operations to secure the areas outside Tripoli, including in Sabratah (against ISIL affiliates), Wasrhafana (against LNA groups), and in Ra's Ajdir (close to the Tunisian border).¹³¹ In parallel, in December 2016, the Presidency Council, with the support of the United States, managed to liberate Sirte from ISIL.¹³²
68. Between 2016 and 2017, the LNA engaged in a series of heavy fighting in eastern Libya to ensure its control over Benghazi – largely achieved by July 2017¹³³– and in other eastern municipalities, including Derna and Ajdabiya.¹³⁴ Moreover, due to the expansion of the LNA in southern Libya,¹³⁵ the hostilities which had been predominately characterised by local tribal divides, began to be affected by national dynamics.¹³⁶

¹²⁹ SWP, Comment, Wolfram Lacher, Tripoli's Militia Cartel, April 2018, pp. 2-4 ([Url](#) – last visited: 14 January 2022); Global Initiative Against International Crime and Clingendael; Mark Micallef, Rupert Horsley and Alexandre Bish, The Human Conveyor Belt Broken – assessing the collapse of the human smuggling industry in Libya and the central Sahel, March 2019 (“March 2019 Global Initiative and Clingendael Report”), pp.2, 13-14 ([Url](#) – last visited: 14 January 2022); ISPI, Jason Pack, Kingdom of Militias, Libya's Second War of Post-Qadhafi Succession, 31 May 2019 (“2019 ISPI Report”), pp.19-20 ([Url](#) – last visited: 14 January 2022).

¹³⁰ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/140, 12 February 2018 (“February 2018 UNSG Report on UNSMIL”), para.15.

¹³¹ February 2018 UNSG Report on UNSMIL, paras.14-16.

¹³² April 2017 UNSG Report on UNSMIL, paras.23-25. Despite the liberation of Sirte, IS remained active in central, southern and eastern Libya in the following period. See for instance, February 2018 UNSG Report on UNSMIL, paras.24-28. See also Libya's Fragmentation, pp.45-46.

¹³³ August 2017 UNSG Report on UNSMIL, para.12. See also 2017 UN Panel of Experts Report, para.48; May 2016 UNSG Report on UNSMIL, paras.15-16; December 2016 UNSG Report on UNSMIL, para.15; April 2017 UNSG Report on UNSMIL, paras.18-19; February 2018 UNSG Report on UNSMIL, para.18.

¹³⁴ December 2016 UNSG Report on UNSMIL, paras.16, 17; April 2017 UNSG Report on UNSMIL, paras.17-18; August 2017 UNSG Report on UNSMIL, para.13; February 2018 UNSG Report on UNSMIL, paras.19-20.

¹³⁵ February 2018 UNSG Report on UNSMIL, para.22; Libya's Fragmentation, p.49.

¹³⁶ See, for instance, August 2017 UNSG Report on UNSMIL, para.14; Libya's Fragmentation, p.49.

7. The “2018 Battle of Tripoli” (also known as the “Late Summer War”) (January 2018-April 2019)

69. During this period, political efforts gravitated around a new round of UN-led negotiations between the parties to amend the LPA and reform the GNA.¹³⁷ In parallel, from late 2017 in western Libya resentment grew among several military and political factions, *inter alia* Misratah politicians and militia leaders, over the control exercised by a few Tripoli militias over State institutions.¹³⁸ The security situation in the west of the country became volatile in summer 2018 when the Kaniyat/7th Brigade from Tarhouna, alongside some armed groups from Misrata (the Steadfastness Front), launched an offensive against Tripoli-based forces in an attempt to challenge the oligopoly created by the Tripoli’s Militia Cartel.¹³⁹
70. By the end of August 2018 clashes escalated into full-scale fighting.¹⁴⁰ The “2018 Battle of Tripoli” (also known as the “Late Summer War”¹⁴¹) brought a month of intensive fighting and concluded with a ceasefire between the parties and the withdrawal of the Kaniyat/7th Brigade from Tripoli.¹⁴² Meanwhile, on other fronts in the south and the east, the LNA continued consolidating its control over key areas.¹⁴³
71. In November 2018, the UN announced a roadmap towards a National Conference and elections to bring to an end the prolonged transition.¹⁴⁴

¹³⁷ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/429, 7 May 2018 (“May 2018 UNSG Report on UNSMIL”), paras.5-6; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/780, 24 August 2018 (“August 2018 UNSG Report on UNSMIL”), paras.5-6; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2019/19, 7 January 2019 (“January 2019 UNSG Report on UNSMIL”), paras.5-6.

¹³⁸ Libya's Fragmentation, pp.51-52.

¹³⁹ January 2019 UNSG Report on UNSMIL, para.10; 2019 ISPI Report, pp.22-23; Libya's Fragmentation, p.49.

¹⁴⁰ January 2019 UNSG Report on UNSMIL, para.10.

¹⁴¹ 2019 ISPI Report, pp.22-23.

¹⁴² January 2019 UNSG Report on UNSMIL, paras.10-11; 2019 ISPI Report, pp.22-23; Libya's Fragmentation, p.49.

¹⁴³ May 2018 UNSG Report on UNSMIL, paras.14, 16; August 2018 UNSG Report on UNSMIL, para.12; January 2019 UNSG Report on UNSMIL, para.16.

¹⁴⁴ January 2019 UNSG Report on UNSMIL, para.4.

8. The 2019/2020 LNA Offensive (April 2019-January 2020)

72. In late February 2019, Haftar and al-Sarraj met and agreed on key conditions for a roadmap towards national elections, envisaging a single government and military command.¹⁴⁵ Nevertheless, shortly after, Haftar appeared to defy the agreement.¹⁴⁶
73. On 4 April, the LNA, led by Haftar, launched an offensive to take control of Tripoli.¹⁴⁷ The operation began from the south of the country, where Haftar had previously established bases and secured control of the al-Sharara oilfields between February and March 2019,¹⁴⁸ and quickly reached the outskirts of the capital.¹⁴⁹ The attack triggered the mobilization of armed forces aligned with the GNA,¹⁵⁰ and over the course of the year, developed into a nationwide confrontation.¹⁵¹
74. The fighting, which broke out only days ahead of the UN-facilitated National Conference, stalled the political process,¹⁵² and further polarized the already fragmented political landscape.¹⁵³ In response to the offensive, western Libyan forces overcame their divisions and Tripoli-based armed groups cooperated with armed groups from Misrata, Zawiya, and Amazigh.¹⁵⁴
75. The first stages of the conflict focused mainly in and around southern Tripoli, causing significant civilian casualties and damage to critical civilian infrastructure.¹⁵⁵ The

¹⁴⁵ Libya's Fragmentation, pp.53-54.

¹⁴⁶ Libya's Fragmentation, p.54.

¹⁴⁷ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2019/682, 26 August 2019 ("August 2019 UNSG Report on UNSMIL"), paras.2-3; Libya's Fragmentation, p.54.

¹⁴⁸ August 2019 UNSG Report on UNSMIL, para.22; UNSC, Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2019/914, 9 December 2019 ("2019 UN Panel of Experts Report"), para.12.

¹⁴⁹ Libya's Fragmentation, p.54; August 2019 UNSG Report on UNSMIL, paras.16-17.

¹⁵⁰ August 2019 UNSG Report on UNSMIL, para.2; Libya's Fragmentation, p.54.

¹⁵¹ 2019 UN Panel of Experts Report, para.11.

¹⁵² August 2019 UNSG Report on UNSMIL, para.2

¹⁵³ August 2019 UNSG Report on UNSMIL, para.6.

¹⁵⁴ 2019 UN Panel of Experts Report, para.13, Annex 6 (Appendix A); Libya's fragmentation, p.54.

¹⁵⁵ August 2019 UNSG Report on UNSMIL, para.3.

confrontations resulted also in displacement and a deterioration of the humanitarian situation.¹⁵⁶

76. While initially Haftar's forces had swiftly secured military gains, the conflict shifted towards a stalemate as several armed groups closed ranks behind the GNA.¹⁵⁷ The fighting continued throughout 2019¹⁵⁸ and expanded geographically to Tarhunah, Sirte, and Jufrah,¹⁵⁹ as well as to the south of the country.¹⁶⁰ Both sides of the conflict, GNA and LNA, received considerable military support from foreign actors, including, Turkey (pro-GNA)¹⁶¹ as well as the United Arab Emirates and the Russian Federation (pro-LNA).¹⁶² Third-party support was a critical element of the conflict which featured a systematic use of drones and airstrikes,¹⁶³ and the deployment of mercenaries.¹⁶⁴
77. There was a new escalation of hostilities on 12 December 2019, when General Haftar launched a new attack to capture Tripoli.¹⁶⁵ While the offensive and the subsequent mobilization of GNA-aligned forces provoked intensified clashes and substantial air activity, once again it did not yield significant territorial gains for either side of the

¹⁵⁶ August 2019 UNSG Report on UNSMIL, para.3.

¹⁵⁷ Libya's fragmentation, p.54.

¹⁵⁸ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/41, 15 January 2020 ("January 2020 UNSG Report on UNSMIL"), paras.2, 22-28.

¹⁵⁹ January 2020 UNSG Report on UNSMIL, paras.2, 22.

¹⁶⁰ January 2020 UNSG Report on UNSMIL, paras.2, 32.

¹⁶¹ January 2020 UNSG Report on UNSMIL, para.6.

¹⁶² SWP, Comment, Wolfram Lacher, International Schemes, Libyan Realities Attempts at Appeasing Khalifa Haftar Risk Further Escalating Libya's Civil War, November 2019, pp.1-4 ([Url](#) – last visited: 14 January 2022); SWP, Wolfram Lacher, The Great Carve-up, June 2020, pp.1-4 ([Url](#) – last visited: 14 January 2022).

¹⁶³ January 2020 UNSG Report on UNSMIL, paras.3, 22; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/360, 5 May 2020 ("May 2020 UNSG Report on UNSMIL"), para.3.

¹⁶⁴ January 2020 UNSG Report on UNSMIL, para.25; May 2020 UNSG Report on UNSMIL, para.3; UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/832, 25 August 2020 ("August 2020 UNSG Report on UNSMIL"), para.5. See also SWP, Wolfram Lacher, International Schemes, Libyan Realities Attempts at Appeasing Khalifa Haftar Risk Further Escalating Libya's Civil War, November 2019, p.1-4 ([Url](#) – last visited: 14 January 2022); SWP, Wolfram Lacher, The Great Carve-up, June 2020, pp.1-4 ([Url](#) – last visited: 14 January 2022).

¹⁶⁵ January 2020 UNSG Report on UNSMIL, para.8.

Tripoli area.¹⁶⁶ LNA forces managed, however, to prevail over the GNA forces in Sirte, taking control over the town, its airbase, and seaport on 6 January 2020.¹⁶⁷

78. After months of confrontations and no military breakthrough, on 8 January 2020, the Russian Federation and Turkey issued a joint statement calling for a ceasefire and urging the parties to negotiate a solution.¹⁶⁸ On 11 January, the GNA and the LNA agreed to the ceasefire and, two days later, Prime Minister al-Sarraj and General Haftar met in Moscow.¹⁶⁹ Meanwhile, diplomatic efforts focused on creating the conditions for an intra-Libyan dialogue, and a summit under the auspices of the UN was held in Berlin on 19 January 2020 to build momentum within the international community.¹⁷⁰

9. Resumption of the hostilities (January 2020-June 2020)

79. While the ceasefire led to a “relative reduction” in fighting, military confrontations gradually resumed in the following months as both parties redeployed forces in Tripoli.¹⁷¹ By February/March 2020, full-scale military confrontations resumed in southern Tripoli, as well as in the central and western regions of the country.¹⁷²
80. As the COVID-19 pandemic began to spread globally, several restrictions were imposed at the national level, and on 14 March 2020 Prime Minister al-Sarraj announced the state of emergency in Libya.¹⁷³ While initially both the LNA and GNA appeared to respond positively to calls for a humanitarian truce to allow local authorities to address the medical needs caused by COVID-19, military confrontations escalated once again in late March.¹⁷⁴

¹⁶⁶ January 2020 UNSG Report on UNSMIL, para.8.

¹⁶⁷ January 2020 UNSG Report on UNSMIL, para.8.

¹⁶⁸ January 2020 UNSG Report on UNSMIL, para.9.

¹⁶⁹ January 2020 UNSG Report on UNSMIL, para.9.

¹⁷⁰ January 2020 UNSG Report on UNSMIL, paras.9-16.

¹⁷¹ May 2020 UNSG Report on UNSMIL, para.2.

¹⁷² May 2020 UNSG Report on UNSMIL, paras.2, 24-26.

¹⁷³ May 2020 UNSG Report on UNSMIL, para.4.

¹⁷⁴ May 2020 UNSG Report on UNSMIL, paras.7-8, 27.

81. Specifically, on 23 March 2020, in response to the increase of LNA attacks on civilian neighborhoods in Tripoli,¹⁷⁵ the GNA launched “Operation Peace Storm”, intensifying the conflict in the northwest of the country.¹⁷⁶ Between April and May 2020,¹⁷⁷ the GNA was able to assert control over western coastal cities in the Tripoli area¹⁷⁸ and the Watiya airbase,¹⁷⁹ pushing back Haftar’s forces in the south and south-east areas around Tripoli.¹⁸⁰ On 5 June, the GNA eventually entered Tarhunah, putting an end to the LNA offensive against Tripoli.¹⁸¹
82. Nevertheless, amid sustained military support from third States and the deployment of mercenaries,¹⁸² both parties continued mobilising in the areas around Sirte and Jufrah, as the frontlines of the conflict shifted towards Libya’s central region.¹⁸³ In June 2020, the GNA launched an offensive to take control of the two cities, but the operation did not yield military gains and confrontations reached a stalemate.¹⁸⁴

10. New ceasefire and signs of progress in the intra-Libyan dialogues (August 2020-December 2021)

83. On 21 August 2020, Prime Minister, al-Sarraj and Speaker of the HoR, Saleh, in separate statements, called for a ceasefire across the country, for the demilitarization of Sirte, and for the resumption of oil production and exports,¹⁸⁵ while the LNA retained control of the oil crescent region.¹⁸⁶

¹⁷⁵ May 2020 UNSG Report on UNSMIL, paras.8, 27.

¹⁷⁶ May 2020 UNSG Report on UNSMIL, paras.8, 27.

¹⁷⁷ August 2020 UNSG Report on UNSMIL, paras.3, 29-33.

¹⁷⁸ May 2020 UNSG Report on UNSMIL, para.27 (the GNA forces managed to take control over Surman and Sabratah, as well as Ujaylat, Raqdalín, Jumayl, Zaltan and Assah); August 2020 UNSG Report on UNSMIL, paras.29-33.

¹⁷⁹ May 2020 UNSG Report on UNSMIL, paras.8, 27; August 2020 UNSG Report on UNSMIL, paras.3, 29.

¹⁸⁰ August 2020 UNSG Report on UNSMIL, paras.3-4, 30-31.

¹⁸¹ August 2020 UNSG Report on UNSMIL, paras.3-4, 33, 35.

¹⁸² August 2020 UNSG Report on UNSMIL, paras.5, 32.

¹⁸³ August 2020 UNSG Report on UNSMIL, paras.2, 5, 35.

¹⁸⁴ August 2020 UNSG Report on UNSMIL, paras.34-35.

¹⁸⁵ August 2020 UNSG Report on UNSMIL, para.9.

¹⁸⁶ August 2020 UNSG Report on UNSMIL, para.22.

84. In the following weeks, a *de facto* truce was held in central Libya, and under UN auspices, diplomatic efforts focused on engaging the Libyan parties in a ceasefire agreement, resuming political talks and advancing economic reforms.¹⁸⁷ Finally, on 23 October 2020, at the UN Office in Geneva, the two parties signed the agreement for a complete and permanent ceasefire,¹⁸⁸ and in the fall, progress was registered on the intra-Libyan dialogues, prompted by the Berlin Conference held in January.¹⁸⁹
85. Notwithstanding the ceasefire agreement, the GNA continued to maintain a military presence at Abu Qurayn and Washkah, while LNA affiliated groups maintained military presence between Sirte and Jufrah, and north of the Jufrah airbase.¹⁹⁰ The LNA also extended its military build-up in southern Libya, in and around Birak al-Shati's airbase.¹⁹¹
86. Throughout the first half of 2021 the efforts of the international community continued to centre around the intra-Libyan dialogues.¹⁹² Critical issues included the full implementation of the ceasefire agreement, which encompassed the withdrawal of mercenaries and foreign forces, confidence-building measures, and a roadmap towards national elections, scheduled for 24 December 2021, as previously agreed in the Libyan Political Dialogue Forum ("LPDF") in Tunis in November 2020.¹⁹³
87. On 5 February 2021, the LPDF, composed of Libyan civil society representatives, selected a new interim executive authority to lead the country towards national elections. Mohammad Younes Menfi (or Mnefi) was appointed as President-designate

¹⁸⁷ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/62, 19 January 2021 ("January 2021 UNSG Report on UNSMIL"), para.2.

¹⁸⁸ UNSC, Letter dated 27 October 2020 from the Secretary-General addressed to the President of the Security Council, S/2020/1043, 27 October 2020, Annex (Agreement for a complete and permanent ceasefire in Libya between the Libyan Army of the Government of National Accord and the Libyan National Army of the General Command of the Armed Forces, signed below by their authorized representatives and witnessed by the United Nations Support Mission in Libya (UNSMIL)).

¹⁸⁹ January 2021 UNSG Report on UNSMIL, paras.10-21.

¹⁹⁰ January 2021 UNSG Report on UNSMIL, para.9.

¹⁹¹ January 2021 UNSG Report on UNSMIL, para.9.

¹⁹² UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/752, 25 August 2021 ("August 2021 UNSG Report on UNSMIL"), para.2.

¹⁹³ August 2021 UNSG Report on UNSMIL, paras.3-4.

of the Presidency Council, Mossa al-Koni and Abdullah Hussein al-Lafi were selected as members-designate of the Council, and Abdul Hamid Mohammed Dbeibah was selected as the new Prime Minister-designate.¹⁹⁴ On 10 March 2021, the new Government of National Unity (“GNU”) received a vote of confidence by the HoR.¹⁹⁵

88. On 23 June 2021, the UN and Germany co-chaired the second Berlin Conference on Libya, which saw the participation of the GNU.¹⁹⁶ The Conference, *inter alia*, welcomed the initial steps towards a national reconciliation process and reiterated the importance of the upcoming elections and the need for all mercenaries and foreign forces to be withdrawn from the country.¹⁹⁷ Indeed, despite the peace efforts, throughout the period between May and August 2021, mercenaries continued to operate in Libya and foreign jet fighters and military ground support continued to be deployed.¹⁹⁸
89. In addition, beginning in January 2021, the stability of the Libyan situation was also affected by the reemerging rivalry between various armed groups in Tripoli and western Libya.¹⁹⁹ The renewed competition among these groups was at the basis of a series of incidents in the course of the year, which included an assassination attempt of the former Minister of Interior Fathi Bashaga in February 2021, the temporary takeover of the interim government headquarters by a militia in May 2021, an attack against the Municipal Council of Ain Zara launched by the Tripoli Revolutionary Brigade in July 2021, and armed clashes between armed groups in Tripoli in October 2021.²⁰⁰

¹⁹⁴ UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/451, 11 May 2021 (“May 2021 UNSG Report on UNSMIL”), paras.2, 5.

¹⁹⁵ May 2021 UNSG Report on UNSMIL, paras.2, 5.

¹⁹⁶ August 2021 UNSG Report on UNSMIL, para.8.

¹⁹⁷ August 2021 UNSG Report on UNSMIL, para.8.

¹⁹⁸ August 2021 UNSG Report on UNSMIL, para.7.

¹⁹⁹ May 2021 UNSG Report on UNSMIL, para.32; August 2021 UNSG Report on UNSMIL, para.30.

²⁰⁰ EASO, CoI Query, Country of Origin Libya, Query Code Q39-2021, Security situation in Tripoli between 1 January-31 October 2021, 3 November 2021 (“2021 Easo CoI Query”), pp.4-5 ([Url](#) – last visited: 14 January 2022).

90. As a stalemate emerged in the political/electoral track of the LPDF, at a ministerial-level meeting of the Security Council held on 15 July 2021, the Special Representative of the Secretary-General Jan Kubis voiced his concerns about the broader implications of the impasse.²⁰¹ Amidst a political stand-off over the constitutional basis for the elections during the summer, such positive momentum risked being undermined and even reversed.²⁰² Amid increasing tensions, on 22 December 2021, the High National Elections Commission announced the postponement of the elections scheduled on 24 December 2021.²⁰³

B. Libya and the Migratory flows phenomenon

91. This section analyses the phenomenon of migratory flows in Libya from the later part of Ghaddafi's regime until the present day. While impacted by the February 2011 Revolution, the evolution of smuggling and anti-smuggling policies in Libya was deeply affected (if not directed) by the emerging role of armed groups in the country following the end of the regime.

1. The migratory phenomenon in Libya before the February 2011 Revolution

92. For years Libya has been the place of destination and transit of migrants from different countries in Africa as well as from other regions.²⁰⁴ Even before the February 2011 Revolution, Libya's migration policies and political situation significantly contributed to the increasing exodus of migrants to Europe.²⁰⁵

²⁰¹ August 2021 UNSG Report on UNSMIL, para.10.

²⁰² August 2021 UNSG Report on UNSMIL, para.10.

²⁰³UNSMIL, Statement from the Special Adviser to the Secretary-General on Libya, 23 December 2021 ([Url](#) – last visited: 14 January 2022).

²⁰⁴ Clingendael, Floor El Kamouni-Janssen, "Only God can stop the smugglers" Understanding human smuggling networks in Libya, February 2017 ("2017 Clingendael Report"), p.6; OHCHR-United Nations Support Mission in Libya ("UNSMIL"), "Detained and Dehumanised" Report on Human Rights Abuses Against Migrants in Libya, 13 December 2016 ("2016 UNSMIL Report"), p.5.

²⁰⁵ 2017 Clingendael Report, pp.6-9.

93. Between 1998 and 2007, Ghaddafi established an open-door policy for migrants, encouraging free migration to Libya with no visa requirements.²⁰⁶ During this period, Ghaddafi used migration as a political tool both within Libya and in his external relations with European countries. Within Libya, Ghaddafi “tolerated or promoted” smuggling activities as means to maintain control over tribes and families.²⁰⁷ Externally, he exploited the question of migration to “leverage his standing” *vis-à-vis* Europe.²⁰⁸ Such an approach led to the 5-billion-dollar deal struck with Italy in 2009 in exchange for tighter controls on migration from Libya.²⁰⁹
94. Following this agreement, while wielding strict control over smuggling networks to maintain political leverage, Ghaddafi started introducing new measures, including visa requirements and detention/deportation policies for migrants.²¹⁰ For instance, in 2010 a new law was adopted (Law No. 19 of 2010), criminalising the irregular entry, stay and exit of migrants. As a result, foreign nationals in Libya became “illegal migrants”, a status which exposed them to detention without due process and interception at sea by the Libyan Coast Guard (“LCG”).²¹¹ These new policies resulted in a considerable decrease in the number of migrants arriving to Europe from Libya.²¹²

²⁰⁶ 2017 Clingendael Report, p.6.

²⁰⁷ Global Initiative against Transnational Organized Crime, Mark Micallef, The Human Conveyor Belt: trends in human trafficking and smuggling in post-revolution Libya, March 2017 (“2017 Global Initiative Report”), p.4 ([Url](#) – last visited: 14 January 2022).

²⁰⁸ 2017 Clingendael Report, p.6.

²⁰⁹ 2017 Clingendael Report, p.6.

²¹⁰ 2016 UNSMIL Report, p.5.

²¹¹ European Centre for Constitution and Human Rights (“ECCHR”), International Federation for Human Rights (“FIDH”), Lawyers for Justice in Libya (“LFJL”), “No Way Out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity”, 23 November 2021 (“ECCHR/FIDH/LFJL Report”), pp.14-15 ([Url](#) – last visited: 14 January 2022).

²¹² 2017 Clingendael Report, p.6.

2. The fall of Ghaddafi, the involvement of the armed groups in the smuggling sector and in the operation and control of detention centres for migrants (2011-2017)

95. Following the fall of Ghaddafi, the power vacuum that emerged in the aftermath of the February 2011 Revolution led to a “liberalisation” of smuggling activities.²¹³ Free from any centralised control, the “smuggling business” opened to new actors.²¹⁴ At the same time, the proliferation of new, and in some cases more organised, smuggling networks in Libya was also incentivised by a large influx of Syrian refugees transiting to Europe, consequently making the business more profitable.²¹⁵
96. However, the liberalised nature of the smuggling sector quickly dissolved as armed groups became a critical player. The involvement of armed groups in smuggling activities has been one of the main developments that contributed to reshaping the sector after 2011.²¹⁶ The lack of a recognised central authority, coupled with the fragmentation of the country under the control of multiple armed groups, “unequivocally marked the single most profound development after 2011, leading to mixed, long-term implications for both the smuggling industry as well as Libyan society as a whole.”²¹⁷
97. Against this background, the involvement of armed groups in the smuggling business has been multifaceted and developed over the course of the years following the revolution.

²¹³ 2017 Clingendael Report, pp.7-8; 2017 Global Initiative Report, p.5.

²¹⁴ 2017 Global Initiative Report, p.6; 2017 Clingendael Report, p.8. (“the influx of thousands of Syrian refugees with the aim of traveling to Europe, opening up the smuggling market in Libya to a range of opportunistic networks and boosting its lucrateness”)

²¹⁵ 2017 Global Initiative Report, pp.5-6 (“By the end of 2012, Libya found itself with a significant catchment of Syrians who wanted to leave and had the means to do it. Their substantial numbers and purchasing power helped hasten the changes taking place in the smuggling business.”) (references omitted); 2017 Clingendael Report, p.8.

²¹⁶ 2017 Global Initiative Report, pp.8-9.

²¹⁷ 2017 Global Initiative Report, p.9. See also *ibid.*, pp.30-31.

98. Between 2012 and 2014, most of the armed groups in Libya did not act directly as smugglers or traffickers.²¹⁸ Rather, they confined their engagement into a sort of “predatory economy”, requiring smuggling networks to pay a fee to be allowed to operate in their territory,²¹⁹ or to pass through checkpoints under their control.²²⁰ During this period, the militias inverted the trend in the smuggling sector, which returned to being a “protected market”,²²¹ as during the Ghaddafi era.²²²
99. From 2014 onwards, with the decrease of revenues from migrants,²²³ the armed groups turned from engaging in predatory activities, to direct involvement in smuggling activities, taking direct control over the business themselves.²²⁴
100. Some armed groups began running detention centres for migrants.²²⁵ In some cases, armed groups set up their own unofficial centres.²²⁶ In other instances, they ran or took over detention centres previously established by the regime which, after the revolution, had fallen under the authority of the Department for Combating Illegal Migration (“DCIM”),²²⁷ an organ operating under the Libyan Ministry of Interior and tasked with migration management responsibilities.²²⁸

²¹⁸ 2017 Global Initiative Report, p.32.

²¹⁹ 2017 Global Initiative Report, p.32.

²²⁰ 2017 Global Initiative Report, p.32.

²²¹ Institute for Security Studies (“ISS”) and Global Initiative, Mark Micallef and Tuesday Reitano, The anti-human smuggling business and Libya’s political end game, December 2017 (“2017 ISS and Global Initiative Report”), p.9 ([Url](#) – last visited: 14 January 2022).

²²² However, differently from what happened during the Ghaddafi’s regime, the new protected market was fragmented among the different militias according to their territorial control. 2017 Global Initiative Report, pp.8-9.

²²³ Global Initiative Against Transnational Organized Crime and Clingendael, Arezo Malakooti, The Political Economy of Migrant Detention in Libya: Understanding the players and the business models, April 2019 (“April 2019 Global Initiative and Clingendael Report”), p.19 ([Url](#) – last visited: 1 December).

²²⁴ 2017 ISS and Global Initiative Report, p.9.

²²⁵ April 2019 Global Initiative and Clingendael Report, p.19.

²²⁶ 2017 Clingendael Report, p.17.

²²⁷ 2017 Clingendael Report, p.16.

²²⁸ 2016 UNSMIL Report, p.13; April 2019 Global Initiative and Clingendael Report, p.20 (“In an attempt to absorb into the government the proliferation of militia groups and military councils that had been established during the revolution, the Department for Combating Illegal Migration was established within the Ministry of the Interior in May 2012 with a mandate to oversee detention centres in the country. It was also created for the purpose of integrating militia-run centres into the state system. In 2014 it was rebranded as the Directorate for Combating Illegal Migration and given a legal identity and financial independence”).

101. The armed groups' *de facto* control of detention centres under the authority of the DCIM ("DCIM Detention Centres") was consistent with the militias' growing role in law enforcement activities in Libya, amidst post-revolution power vacuum. However, beyond the appearance of counter-smuggling efforts, these groups used detention centres to make a profit, extorting money from migrants and facilitating smuggling activities.²²⁹
102. Essentially, the armed groups operated in a dual capacity. On the one hand, they supported the emerging government and carried out law and order functions by manning DCIM Detention Centres (anti-smuggling stance). On the other hand, however, they benefited economically from smuggling activities (pro-smuggling stance).²³⁰

3. The consolidation of the armed groups' anti-smuggling stance (2017 to date)

103. From 2017, armed groups in Libya shifted again their approach towards the migration issue, prioritizing law enforcement activities, focusing their efforts primarily on countering human smuggling, and preventing departures of migrants from Libya.²³¹
104. The new stance adopted by armed groups was largely triggered by renewed pressure from the European Union ("EU") and individual European countries to stem the migratory flows from Libya. From early 2017, Italy, in particular, engaged in a "multidimensional strategy" with Libyan authorities and local communities. In February 2017, Italy signed a Memorandum of Understanding ("MoU") with the GNA aimed at strengthening the capacity of the authorities responsible for tackling

²²⁹ 2017 Clingendael Report, pp.15-16, 26-28; April 2019 Global Initiative and Clingendael Report, p.19 ("By gathering migrants in one space and sending in a smuggler to offer his services, they could effectively control the smuggling market, or, at the very least, receive a share of smuggling profits. With time, many of the groups started to cut out the middleman and engage directly in smuggling"); 2017 Global Initiative Report, pp.37-38; Clingendael, Fransje Molenaar and Floor El Kamouni-Janssen, 'Turning the tide, The politics of irregular migration in the Sahel and Libya, February 2017, pp.54-57 ([Url](#) – last visited: 14 January 2022).

²³⁰ 2017 Clingendael Report, pp.15-16, 26-28.

²³¹ April 2019 Global Initiative and Clingendael Report, pp.5, 19; 2017 ISS and Global Initiative Report, pp.1-2; Global Initiative and Clingendael, March 2019 Global Initiative and Clingendael, pp.1-2.

illegal immigration, including the LCG,²³² and co-opting tribes and, possibly, militias in anti-smuggling efforts.²³³

105. Aside from external pressure, armed groups decided to re-focus on migration control to gain legitimacy in the eyes of the newly established GNA.²³⁴ In this context, armed groups replicated the same law enforcement model that the Tripoli's Militia Cartel had applied following the arrival of Al-Serraj in the capital.²³⁵
106. The new anti-smuggling stance adopted by armed groups resulted in a significant drop in the number of departures in the second half of 2017.²³⁶ Groups in control of DCIM Detention Centres prevented migrants from crossing the Mediterranean Sea,²³⁷ and the LCG, backed by the EU and Italy, expanded its ability to intercept migrants

²³² 2017 ISS and Global Initiative Report, pp.4-6.

²³³ April 2019 Global Initiative and Clingendael Report, p.19; 2017 ISS and Global Initiative Report, p.3 (“There is also mounting speculation that the Italian intelligence service has co-opted militias engaged in human smuggling and other illicit activities in a bid to stem the flow of migrants – a rumour consistently denied by the Italian authorities”). See also NuoveRadici.World, Cristina Giudici, 31 October 2019, *Sugli accordi con la Libia, secondo Giro è ora di cambiare giro*, 31 October 2019 ([Url](#) – last visited: 14 January 2022); *Il Fatto Quotidiano*, Mario Giro, *I Rischi di una Libia alla Somala*, 21 October 2018 (“Nei successive tre anni in Italia la Libia e’ diventata una questione di politica interna: si e’ fatto di tutto (e parlato con chiunque) affinche’ i migranti fossero trattenuti nei centri di detenzione. Al di la’ di ogni questione morale, tale scelta si e’ trasformata in un boomerang: abbiamo offerto alle milizie libiche la possibilita’ di ricattarci. Si e’ accettato di trattare con personaggi equivoci e alle ‘loro’ condizioni, mediante un opaco mercato”) ([Url](#) – last visited: 14 January 2022); 2017 ISS and Global Initiative Report, p.3 (“There is also mounting speculation that the Italian intelligence service has co-opted militias engaged in human smuggling and other illicit activities in a bid to stem the flow of migrants – a rumour consistently denied by the Italian authorities”).

²³⁴ April 2019 Global Initiative and Clingendael Report, p.19 (“The increase in interceptions at sea by the LCG led to an increase in the number of migrants in detention in the country, as migrants were routinely sent to detention centres after disembarkation. There was also a decrease in migrant smuggling from Libya as militia leaders, sensing an imminent end to the political status quo, began to attempt to launder their reputations by accepting incentives to serve as law enforcement partners of international donors”); March 2019 Global Initiative and Clingendael Report, p.13 (“the general cooption of militias into law-enforcement positions relates to the political landscape and how different militia leaders see themselves in it. Militias have been seeking to secure a future for themselves in whatever new political order emerges from the current impasse, and legitimizing their outfit is crucial in this regard.”).

²³⁵ March 2019 Global Initiative and Clingendael Report, p.13. See *supra*, Section II.A.6.

²³⁶ April 2019 Global Initiative and Clingendael Report, p.19.

²³⁷ ISPI, Matteo Villa, *Migrazioni e instabilità in Libia: c’è un nesso?*, 10 January 2020 ([Url](#) – last visited: 14 January 2022) (“È stata proprio questa rapida concentrazione dei traffici ad aver consentito a Italia e Ue di individuare le milizie con cui trattare nel 2017. Se così non fosse stato, il calo degli sbarchi non sarebbe stato altrettanto netto. Quel crollo fu infatti il risultato di una decisione precisa da parte di chi gestiva (e continua a gestire) i traffici: trattenere i migranti più a lungo nei centri di detenzione anziché metterli in mare, estrarne il più possibile denaro e altri utili (minacciando di tortura i migranti le cui famiglie non paghino il costo del “riscatto”, o sottoponendo le persone a lavori forzati e sfruttamento sessuale), e dimostrare a Tripoli e all’Europa di essere interlocutori affidabili, meritevoli di attenzione e di risorse finanziarie”).

at sea returning them to Libya.²³⁸ As a result, the number of migrants in DCIM Detention Centres,²³⁹ under the *de facto* control of the militias, increased.²⁴⁰

107. The redirection of focus on detention, rather than smuggling of migrants changed the line of revenues of armed groups. DCIM Detention Centres became a strategic asset for these groups, which allowed them to put their members on the government payroll.²⁴¹ They received state funding for the logistical and daily management of the centres,²⁴² and they made additional profits from smuggling and extorting migrants.²⁴³
108. As argued by Micallef, “[t]he human smuggling industry has gone from monetisation of movement to monetisation of captivity”.²⁴⁴

C. International efforts to prevent migration from Libya to Europe

109. As noted above,²⁴⁵ for years, both the migration policies and the political situation of Libya have had a significant impact on the increasing number of migrants trying to reach Europe. Between the early 2000s and the present, European States (including Italy and Malta) and international actors – especially the EU – put in place different initiatives to tackle migration flows departing from Libya.

²³⁸ See for instance, UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2018/807, 31 August 2018 (“August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.21; UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2020/876, 2 September 2020 (“September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.27; UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2020/275, 6 April 2020 (“April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.18.

²³⁹ April 2019 Global Initiative and Clingendael Report, pp.5, 19.

²⁴⁰ April 2019 Global Initiative and Clingendael Report, p.29 (“Given the power and influence of armed groups in Libya, it is impossible for the migrant detention centres, even the official ones, to operate effectively without the support or buy-in of these groups.”).

²⁴¹ April 2019 Global Initiative and Clingendael Report, pp.6, 29, 90.

²⁴² April 2019 Global Initiative and Clingendael Report, pp.29, 40-41.

²⁴³ April 2019 Global Initiative and Clingendael Report, pp.42-44.

²⁴⁴ Times of Malta, Sarah Carabott, How Libya's human smuggling industry evolved to cash in on captivity, 23 May 2021 ([Url](#) – last visited: 14 January 2022).

²⁴⁵ See Section II.B.1.

110. Italy, as one of the countries most affected by the migrant flow crossing the Mediterranean Sea, concluded several agreements with Libya between 2007 and 2009. These agreements led to “pushback” operations where Italian authorities, in coordination with the Libyan Government, intercepted migrants in open waters and returned them to Libya.²⁴⁶ In 2012, the European Court of Human Rights found that pushback operations violated the European Convention on Human Rights on the basis that they were inconsistent with the prohibition of refoulement and collective expulsion.²⁴⁷
111. In 2011, following the power vacuum created by the fall of the Ghaddafi regime, Libya’s security situation led to an ever greater flow of migrants departing from the Libyan coasts.²⁴⁸ Between 2013 and 2014 alone, the number of migrants who passed through the Central Mediterranean Route and reached Europe increased by 376 percent.²⁴⁹ According to the United Nations High Commissioner for Refugees (“UNHCR”), in 2016, of 181,436 migrants who arrived in Italy through the Central Mediterranean Route, 90 percent departed from Libya.²⁵⁰
112. In 2013, in response to the dramatic increase in migration flows and the concomitant increase in casualties and drownings in the Mediterranean Sea, the Italian government launched “Operation Mare Nostrum”, a military and humanitarian operation aimed at tackling the emergency in the Strait of Sicily.²⁵¹ Between 18 October 2013 and 31 October 2014, “Operation Mare Nostrum” rescued around 150,000 migrants in Libyan and international waters.²⁵² In parallel, in 2014 the EU established

²⁴⁶ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the Case of *Hirsi and Others v. Italy* (Application no. 27765/09), European Court of Human Rights, 29 March 2011, para.2.1.1.

²⁴⁷ *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, ECHR 2012.

²⁴⁸ 2016 UNSMIL Report, pp.5-6.

²⁴⁹ Altai Consulting, Migration Trends Across the Mediterranean: Connecting the Dots, prepared by Altai Consulting for IOM MENA Regional Office, June 2015, p.11 ([Url](#) – last visited: 14 January 2022).

²⁵⁰ UNHCR Bureau for Europe, Desperate Journeys, Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkans routes, February 2017, p.6.

²⁵¹ OHCHR-UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya 18 December 2018 (“2018 UNSMIL Report”), p.13.

²⁵² 2018 UNSMIL Report, p.13.

“Operation Triton” which, although to a lesser extent, also conducted search and rescue operations.²⁵³

113. Following the termination of “Operation Mare Nostrum” and “Operation Triton”, Italian and EU efforts shifted from rescue activities towards activities aimed at reducing the arrivals along the Central Mediterranean Route, both countering human smuggling and trafficking, and strengthening the capacity of the LCG to intercept migrants at sea to return them to Libya.²⁵⁴
114. From 2015 and 2016, Italy and the EU put in place several measures prioritising LCG capacity building over effective rescue operations efforts. In 2015, Italy established operation “Mare Sicuro”, which gradually shifted the focus from lifesaving to anti-trafficking and anti-smuggling activities. In 2017, the operation started providing direct assistance to the LCG to strengthen its capacity to intercept migrants at sea.²⁵⁵
115. Notably, the extension of operation Mare Sicuro’s mandate coincided with the signing in 2017 of the MoU between Italy and Libya, whereby Italy committed to providing logistical and financial assistance to the LCG and DCIM to “stem the illegal migrants’ fluxes” departing from Libya.²⁵⁶ In this context, the Italian authorities assisted the Libyan government in establishing a Search and Rescue zone (“SAR zone”), giving

²⁵³ Statement from the UN Special Rapporteur on the human rights of migrants, EU must develop innovative mobility solutions now to stop deaths at sea – UN experts, 20 April 2015, (“Mare Nostrum was replaced by EU Frontex operation Triton, which however is limited to defending Italy’s maritime border and therefore does not have the same reach as Mare Nostrum did.”) ([Url](#) – last visited: 14 January 2022).

²⁵⁴ 2018 UNSMIL Report, pp.13-16. *See* European Council, Council of European Union, Saving lives at sea and targeting criminal networks ([Url](#) – last visited: 14 January 2022); UNSC, Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2021/229, 8 March 2021 (“2021 UN Panel of Experts Report”), Annex 17.

²⁵⁵ Ministero della Difesa, Operazione Mare Sicuro (OMS) ([Url](#) – last visited: 14 January 2022); Forensic Oceanography, Mare Clausum, Italy and the EU’s undeclared operation to stem migration across the Mediterranean, May 2018 (“2018 Forensic Oceanography Report”), pp.34-35 ([Url](#) – last visited: 14 January 2022).

²⁵⁶ Memorandum d’intesa sulla cooperazione nel campo dello sviluppo, del contrasto all’immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana, 2 February 2017 (“MoU”) ([Url](#) – last visited: 14 January 2022) (English translation).

the LCG the prerogative to coordinate and perform search and rescue operations within such perimeter.²⁵⁷

116. Praising the Italian efforts to support the LCG,²⁵⁸ after Operation Triton the EU established a series of naval operations, including “Sophia” (2015) and “Irinì” (2020), which progressively abandoned search and rescue activities to focus only on LCG capacity building.²⁵⁹
117. While strengthening their cooperation efforts with the LCG, the EU and its Member States (mainly Italy and Malta), imposed measures aimed at restricting the search and rescue activities of non-governmental organisations (“NGOs”).²⁶⁰ As attested by the United Nations Support Mission in Libya (“UNSMIL”) and the Office of the High Commissioner for Human Rights (“OHCHR”) these measures included: (1) the obligation for NGOs to adopt codes of conduct to perform rescue activities; (2) investigations or allegations concerning potential collusions between NGOs and smugglers; (3) seizure of NGOs’ rescue ships; (4) orders to NGOs not to frustrate the LCG rescue activities; and (5) prohibition of, or delay in, docking in their ports.²⁶¹

²⁵⁷ 2018 Forensic Oceanography Report, pp.50-51.

²⁵⁸ 2018 UNSMIL Report, pp.14-15 (“On 2 February 2017, the Government of Italy signed a memorandum of understanding with the GNA, committing to providing technical and financial support to Libyan institutions engaged in combatting irregular migration, namely the DCIM and LCG. The European Council welcomed the agreement, with its priorities of “providing training, equipment and support” to key Libyan institutions adopted in the Malta Declaration”).

²⁵⁹ OHCHR, “Lethal Disregard”, Search and rescue and the protection of migrants in the central Mediterranean Sea, May 2021 (“2021 OHCHR Report”), p.10 (“In March 2019, the EU’s Naval Force for the Mediterranean (EUNAVFOR MED) operation SOPHIA officially ended its sea patrols, which had saved thousands of lives since 2015, and significantly shifted its focus from undertaking its own maritime SAR operations to strengthening surveillance by air as well as reinforcing support to the LCG through enhanced training and capacity-building. On 31 March 2020, operation SOPHIA was replaced by operation IRINI which has a specific mandate to implement the arms embargo on Libya imposed by the UN Security Council; however, IRINI vessels have no specific search and rescue mandate.”) (reference omitted).

²⁶⁰ 2018 UNSMIL Report, pp.15-17.

²⁶¹ 2018 UNSMIL Report, pp.15-17.

III. PARAMETERS OF THE COMMUNICATION

A. Alleged acts/crimes under the purview of the Communication

118. This Communication focuses on the crimes committed in DCIM Detention Centres based in western Libya under the *de facto* control of armed groups against migrants detained therein.²⁶²
119. The information available indicates the recurrence of the following war crimes: murder (Article 8(2)(c)(i) of the Rome Statute (“Statute”)); cruel treatment and torture (Article 8(2)(c)(i) of the Statute); outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(c)(ii) of the Statute); taking of hostages (Article 8(2)(c)(iii) of the Statute); rape, sexual slavery, and other forms of sexual violence (Article 8(2)(e)(vi) of the Statute).²⁶³
120. The information available also indicates the recurrence of the following crimes against humanity committed against migrants detained in DCIM Detention Centres: murder (Article 7(1)(a) of the Statute), imprisonment (Article 7(1)(e) of the Statute), enslavement (Article 7(1)(c) of the Statute), torture (Article 7(1)(f) of the Statute), rape, sexual slavery and other forms of sexual violence of comparable gravity (Article 7(1)(g) of the Statute), other inhumane acts (Article 7(1)(k) of the Statute).²⁶⁴

B. Places of the alleged commission of the crimes

121. The above crimes are alleged to have been committed in the territory under the control of the then GNA (now GNU), western part of Libya, especially in Tripolitania,

²⁶² See Section IV.A.2.

²⁶³ See Sections IV.A.2, IV.A.2.a.iv., IV.A.2.b.iv., IV.A.2.c.iv., IV.A.2.d.iv., IV.A.2.e.iv., IV.A.2.f.iv.

²⁶⁴ See Section IV.B.

where DCIM Detention Centres falling under the nominal authority of the GNA Ministry of Interior are located.

122. Between 2017 and 2021, the number of DCIM Detention Centres fluctuated. The information available indicates that the number of the DCIM Detention Centres ranged from as high as 26 in 2018 to around only six to eight centres in 2021.
123. While providing evidence concerning a criminal pattern that occurs in all the DCIM Detention Centres, the present Communication focuses on six specific detention centres, providing a detailed analysis of the abuses committed against migrants. These centres are: (1) the Tajoura Detention Centre (“Tajoura DC”); (2) the Tarik al-Matar Detention Centre (“Tarik al-Matar DC”); (3) the Tarik al-Sikka Detention Centre (“Tarik al-Sikka DC”); (4) the Abu Salim Detention Centre (“Abu Salim DC”); (5) the al-Mabani Detention Centre (“al-Mabani DC”); and (6) the al-Nasr Detention Centre DC (“al-Nasr DC”).

C. Time period of the alleged commission of the crimes

124. The Communication focuses on the alleged crimes committed between February 2017 until October 2021.²⁶⁵

D. Persons or groups involved

125. The Communication focuses on two sets of groups of persons involved in the alleged crimes: (1) Libyan actors; and (2) Third State actors, namely Italian and Maltese authorities and officials.²⁶⁶

²⁶⁵ See Section IV.A.2.

²⁶⁶ See Section V.

1. Libyan actors

126. Different Libyan actors are involved in the alleged crimes under the various prongs of Article 25(3) of the Statute. The information available suggests that members of the armed groups running the DCIM Detention Centres are responsible under Article 25(3)(a) of the Statute since they committed such crimes, as individuals, jointly with another or through other persons.²⁶⁷
127. Other Libyan actors, such as members of the DCIM and the LCG, may be also held accountable under Article 25(3)(a)-(d) of the Statute by virtue of their direct participation in and assistance/support to the crimes committed. In particular, the information available suggests that the LCG contributed to the alleged crimes by intercepting migrants at sea and returning them to DCIM Detention Camps. This form of contribution fulfils, *at minimum*, the requirements articulated by Article 25(3)(d) of the Statute.²⁶⁸

2. Third State Actors

128. The present Communication also focuses on the responsibility of third state actors, namely Italian and Maltese authorities and officials under Article 25(3)(d) of the Statute.²⁶⁹ By providing support, training, equipment, and coordination to the LCG, the Italian and Maltese authorities enabled the members of the LCG to intercept migrants at sea and transfer them back to the DCIM Detention Centres where they were subsequently mistreated.²⁷⁰ In other documented instances, these authorities also directly coordinated rescue missions performed by private vessels to ensure that migrants at sea would return to Libya.²⁷¹ The information available indicates that such

²⁶⁷ See Section V.B.

²⁶⁸ See Section V.B.

²⁶⁹ See Section V.C.

²⁷⁰ See Section V.C.3.

²⁷¹ See Sections V.C.3, V.C.4.

contribution has been provided with the knowledge of the intention of the armed groups to commit such crimes.²⁷²

²⁷² See Section V.C.5.

IV. CRIMES ALLEGEDLY COMMITTED

A. War Crimes

129. The information available indicates that in the period between February 2017 and October 2021, GNA-affiliated armed groups in *de facto* control of DCIM Detention Centres committed the following war crimes against migrants detained therein in the context of a NIAC: (1) murder, pursuant to Article 8(2)(c)(i) of the Statute; (2) torture and cruel treatment under Article 8(2)(c)(i) of the Statute; (3) outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute; (4) taking of hostages under Article 8(2)(c)(iii) of the Statute; and (5) rape, sexual slavery, and other forms of sexual violence under Article 8(2)(e)(vi) of the Statute.
130. The contextual elements for Articles 8(2)(c) and 8(2)(e) require, *inter alia*, that the conduct took place in the context of or was associated with an armed conflict not of an international character.

1. Classification of the Armed Conflict

131. It is undisputed that between 2011 and 2021 Libya was the theatre of, at least, a continuous NIAC.²⁷³ This conclusion has been reached in several instances by the

²⁷³ The involvement of different states during the February 2011 Revolution (including the United States, France, Italy and the United Kingdom) and in the ensuing conflict (including Turkey, the United Arab Emirates and Russia) may reflect additional different qualifications of the conflict between such states and the Libyan Government. However, the conflict between the Ghaddafi regime and armed groups, during the revolution, and the hostilities that continued following the end of the regime, between armed groups or armed groups and states authorities, such as the GNA, can be qualified as a NIAC.

ICC²⁷⁴ as well as UN entities including the OHCHR,²⁷⁵ UNSMIL,²⁷⁶ UNHCR,²⁷⁷ and, more recently, the UN Fact-Finding Mission on Libya.²⁷⁸

132. Accordingly, the present analysis concerning the qualification of the armed conflict primarily focuses on the intensity of the hostilities to show that a protracted armed conflict characterised by different phases has been ongoing in Libya since 2011. The present analysis further assists to establish that the underlying acts of war crimes as provided in Section IV.A.2 are linked to this conflict and fall within the jurisdiction of the ICC according to UNSC Resolution 1970 (Section VI).

²⁷⁴ ICC, *The Prosecutor v. Al-Werfalli*, ICC-01/11-01/17-2, Warrant of Arrest, 15 August 2017 (“2017 *Al-Werfalli* Arrest Warrant”), para.25 (“The Chamber finds that there are reasonable grounds to believe that an armed conflict not of an international character has been ongoing on the territory of Libya, from at least early March 2011, between governmental forces and different organized armed groups, or among various such armed groups”). See also ICC, *The Prosecutor v. Al-Werfalli*, ICC-01/11-01/17-13, Second Warrant of Arrest, 4 July 2018 (“2018 *Al-Werfalli* Arrest Warrant”), para.9.

²⁷⁵ 2012 UN Commission of Inquiry Report, para.30 (“By late February, an armed conflict had developed between armed opposition forces and Government forces”); 2016 OHCHR Investigation, paras.32 (“In 2011, an armed conflict developed after the Qadhafi regime used force against protestors in a reaction to Libyan citizens’ attempts to exercise democratic freedoms.”), 39; UNSMIL, The airstrikes on the Daman building complex, including the Tajoura DC, 2 July 2019, 27 January 2020 (“UNSMIL Investigation on the 2 July 2019 Airstrike”), para.34.

²⁷⁶ UNSMIL, Overview of Violations of International Human Rights and Humanitarian Law during the Ongoing Violence in Libya, 4 September 2014, p.1 (“This report by the United Nations Support Mission in Libya (UNSMIL), in cooperation with the Office of the United Nations High Commissioner for Human Rights (OHCHR), highlights human rights concerns arising from the violence between armed groups in Libya since mid-May 2014 to the end of August. In particular, the two largest cities, Tripoli and Benghazi, have been embroiled in internal armed conflicts with dire effects on civilians and the country’s infrastructure.”); UNSMIL, Update on Violations of International Human Rights and Humanitarian Law during the Ongoing Violence in Libya, 23 December 2014; OHCHR-UNSMIL, Report on the Human Rights Situation in Libya, 16 November 2015 (“16 November 2015 UNSMIL Report”), p.6 (“Libya continues to be affected by concurrent non-international armed conflicts.”).

²⁷⁷ UNHCR, UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea, September 2020 (“2020 UNHCR Position on Libya as a Safe Third Country”), para.2 (“Since 2014, protracted armed conflict between rival armed groups has resulted in large numbers of civilian casualties, displaced hundreds of thousands of people, disrupted people’s access to basic services and livelihoods, and destroyed vital infrastructure”) (footnotes omitted).

²⁷⁸ Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/48/83, 1 October 2021 (“2021 Fact-Finding Mission on Libya Report”), para.1.

a. Intensity of the NIAC

133. The February 2011 Revolution. Soon after the beginning of the unrest in Libya in February 2011, the ensuing confrontations between different revolutionary armed groups and state forces reached the intensity of a NIAC.²⁷⁹
134. October 2011-February 2014: growing security deterioration in Libya. In the aftermath of the declaration of the liberation of Tripoli and the death of Ghaddafi in October 2011,²⁸⁰ hostilities continued between the Libyan army and LSF against pro-Ghaddafi elements in the south of Libya at least until October 2013.²⁸¹
135. During the same period, between November 2011 and February 2014, tensions between local communities and armed groups gave rise to three major patterns of conflict in the west, the east, and the south of Libya, respectively, which exacerbated in ongoing episodes of violence.
136. In western Libya, in Tripoli in particular, both the failure of the central government to effectively integrate armed groups in state institutions and the growing political polarisation led to frequent fighting between different armed groups.²⁸² In 2012, for instance, armed clashes involved armed groups in Tripoli.²⁸³ Revolutionary groups also engaged in fighting against the authorities of the transitional government for the suspension of payments for the *thuwwar*.²⁸⁴
137. Between June and November 2013, the debate around the PIL caused a further escalation of violence in Tripoli between the Zintani armed groups based in Tripoli,

²⁷⁹ 2012 UN Commission of Inquiry Report, para.30; 2016 OHCHR Investigation, para.32.

²⁸⁰ November 2011 UNSG Report on UNSMIL, para.3; 2012 UN Panel of Experts Report, paras.19-20.

²⁸¹ 2013 UN Panel of Experts Report, para.31; March 2012 UNSG Report on UNSMIL, para.10; February 2013 UNSG Report on UNSMIL, para.10. See also 2014 UN Panel of Experts Report, para.36.

²⁸² March 2012 UNSG Report on UNSMIL, paras.6, 9; August 2012 UNSG Report on UNSMIL, paras.16-17. See also 2017 *Al-Werfalli* Arrest Warrant, para.5.

²⁸³ March 2012 UNSG Report on UNSMIL, paras.6, 9.

²⁸⁴ August 2012 UNSG Report on UNSMIL, paras.16-17.

the al-Sawaiq Battalion and Qa'qa' Brigade, and Misrata armed groups.²⁸⁵ Moreover, popular demonstrations against the armed groups in Tripoli further degenerated and resulted in the killing of 43 protesters.²⁸⁶ According to ICC Pre-Trial Chamber I, fighting between different armed groups in Tripoli between 2013 and 2014 “involved exchanges of heavy artillery and rocket fire, with the shelling of populated residential areas in Tripoli”.²⁸⁷ In parallel, the hostilities between armed groups spread in other areas of western Libya, including in Zuwara and in the Nafusa Mountains.²⁸⁸

138. Likewise, between 2012 and the beginning of 2014, Eastern Libya was affected by a deterioration of the security situation. Islamic armed groups attempted to establish their influence in the Benghazi regions by carrying out a series of attacks against the state institutions.²⁸⁹ On 8 June 2013, popular demonstrations against the presence of armed groups were brutally quelled by armed groups in Benghazi, resulting in the killing of 30 people.²⁹⁰
139. Besides the fighting against pro-Ghaddafi elements, the south of Libya was also the theatre of military confrontations between local communities, as well as between smugglers and state institutions.²⁹¹
140. May 2014-December 2015: “Operation Dignity” and “Operation Libya Dawn”. With “Operation Dignity” and “Operation Libya Dawn”, the growing instability and widespread violence reached its apex leading to a nationwide military confrontation.

²⁸⁵ September 2013 UNSG Report on UNSMIL, paras.20-21; February 2014 UNSG Report on UNSMIL, para.16. See also 2017 *Al-Werfalli* Arrest Warrant, para.5.

²⁸⁶ Libya's Fragmentation, p.34; February 2014 UNSG Report on UNSMIL, para.16; 2014 UN Panel of Experts Report, para.32.

²⁸⁷ 2017 *Al-Werfalli* Arrest Warrant, para.5.

²⁸⁸ August 2012 UNSG Report on UNSMIL, paras.13, 15.

²⁸⁹ 2013 UN Panel of Experts Report, para.33; February 2013 UNSG Report on UNSMIL, paras.11-12; September 2013 UNSG Report on UNSMIL, para.26.

²⁹⁰ 2014 UN Panel of Experts Report, para.33; September 2013 UNSG Report on UNSMIL, paras.23-24; Libya's Fragmentation, pp.33-34.

²⁹¹ 2013 UN Panel of Experts Report, para.30; September 2013 UNSG Report on UNSMIL, paras.28, 30-31.

141. Haftar's "Operation Dignity" was launched in May 2014 to oust the Islamic militia integrated into the Revolutionary Shura Council from Benghazi.²⁹² The operation involved the use of heavy weaponry, including mortar fire, airstrikes, and indiscriminate shelling.²⁹³ Haftar's struggle to achieve control over Benghazi continued until July 2017,²⁹⁴ following a series of offensives launched in mid-October 2014, 20 February 2016,²⁹⁵ and the first half of 2017.²⁹⁶
142. With "Operation Libya Dawn", pro-GNC armed groups from Tripoli and Misrata attacked forces aligned with Haftar, namely the al-Sawaiq Battalion's and Qa'qa' Brigade's position in Tripoli.²⁹⁷ Initially, "Operation Libya Dawn" involved six weeks of heavy fighting in Tripoli (mid-July to end of August 2014) with "airstrikes and shelling of populated areas in Tripoli, resulting in considerable casualties, and a massive displacement of persons."²⁹⁸ By the end of August 2014, the violence expanded outside Tripoli reaching the Warshafana and Azizyah regions and the Nafusa Valley, it included shelling and airstrikes and resulted in 120,000 displaced persons.²⁹⁹ Heavy fighting continued in these areas until the beginning of 2015, when it gradually scaled down to intermittent clashes following a series of local ceasefire agreements.³⁰⁰
143. The intensity of the conflict reached a new peak in the second part of 2015: in the west, with several incidents between groups belonging to "Operation Libya Dawn";³⁰¹ in

²⁹² 2017 *Al-Werfalli* Arrest Warrant, para.6.

²⁹³ 2015 UN Panel of Experts Report, paras.32, 44; September 2014 UNSG Report on UNSMIL, paras.5, 24-25; Libya's Fragmentation, pp.35-36. The military operations in Benghazi and the east of Libya continued throughout the entire 2014. See also February 2015 UNSG Report on UNSMIL, paras.13-19.

²⁹⁴ August 2017 UNSG Report on UNSMIL, para.12.

²⁹⁵ 2017 *Al-Werfalli* Arrest Warrant, para.6.

²⁹⁶ 2017 *Al-Werfalli* Arrest Warrant, para.6.

²⁹⁷ September 2014 UNSG Report on UNSMIL, paras.16-18; 2015 UN Panel of Experts Report, para.51.

²⁹⁸ 2016 OHCHR Investigation, para.36. See also 2015 UN Panel of Experts Report, paras.56-58; September 2014 UNSG Report on UNSMIL, paras.19-22.

²⁹⁹ 2016 OHCHR Investigation, para.37; 2015 UN Panel of Experts Report, paras.52-54; February 2015 UNSG Report on UNSMIL, paras.8-9, 11-12.

³⁰⁰ 2016 OHCHR Investigation, para.37. See also February 2015 UNSG Report on UNSMIL, para.2; August 2015 UNSG Report on UNSMIL, paras.1-19; February 2016 UNSG Report on UNSMIL, paras.2-8.

³⁰¹ 2016 UN Panel of Experts Report, paras.37-39.

the east, with a new LNA-led offensive against Benghazi and Ajdabiya;³⁰² and in southern Libya, where the LNA attacked forces aligned to “Operation Libya Dawn”.³⁰³

144. 2016-2017: conflict between the GNA and al-Gweil forces and consolidation of the LNA over Benghazi. Between 2016 and 2017, the intensity of the hostilities between armed groups remained high in various parts of Libya.
145. In that period,³⁰⁴ the establishment of the GNA in Tripoli bolstered a military confrontation between pro-GNA armed groups, including the Tripoli Revolutionaries Brigade, the Abu Salim Brigade and the Special Deterrence Force, against forces supporting former Prime Minister al-Gweil.³⁰⁵ Armed clashes continued also in the second part of 2017,³⁰⁶ and in October 2017 the GNA launched military operations to secure the areas outside Tripoli, including in Sabratha, Wasrhafana, and in Ra’s Ajdir.³⁰⁷ Meanwhile, in December 2016 the Presidency Council freed Sirte from ISIL, with the support of the United States and other countries.³⁰⁸
146. Along the lines of the national confrontation, local conflicts continued to unfold in western Libya. This included, for instance, armed clashes along the western coast, in Zawiya and Sabratha, between the various armed groups. Specifically, in 2016 and 2017 violent clashes were registered in Zawiya between the al-Nasr Brigade against the Al-Khadrawi and Al-Lahab militias, which were trying to take over the control of a refinery complex and migrants smuggling activities.³⁰⁹

³⁰² 2016 UN Panel of Experts Report, paras.47-50, 54.

³⁰³ 2016 OHCHR Investigation, para.39.

³⁰⁴ See *supra*, Section II.A.6.

³⁰⁵ 2017 UN Panel of Experts Report, paras.54, 60-61, Annex 15; April 2017 UNSG Report on UNSMIL, paras.14-16; August 2017 UNSG Report on UNSMIL, para.10.

³⁰⁶ February 2018 UNSG Report on UNSMIL, para.15.

³⁰⁷ February 2018 UNSG Report on UNSMIL, paras.14, 16.

³⁰⁸ April 2017 UNSG Report on UNSMIL, paras.23-25.

³⁰⁹ 2017 UN Panel of Experts Report, Annex 17, paras.2, 5. See also 2017 Altai Consulting Report, pp.88-89, 91.

147. 2018: the “2018 Battle of Tripoli” (also known as the “Late Summer War”). Armed clashes continued throughout 2018 with different intensity.³¹⁰ However, the violence escalated again in August/September 2018 in Tripoli when the Kaniyat/ 7th Brigade from Tarhouna, alongside armed groups from Misrata, launched an offensive to challenge the control of “Tripoli’s Militia Cartel”,³¹¹ namely the Tripoli Revolutionaries Brigade, the Abu Salim Brigade, and the Special Deterrence Force.
148. The offensive brought a month of intensive fighting between armed groups in the capital with “reckless use of weapons with wide-area impact in residential areas”³¹² which caused hundreds of casualties (including among civilians),³¹³ damage to property, including mosques and private homes,³¹⁴ and the displacement of thousands of families.³¹⁵
149. During the same period, on separate fronts in the south and in the east, the LNA continued to engage in armed clashes in order to consolidate its presence over key areas.³¹⁶
150. April 2019 – June 2020: The 2019/2020 LNA Offensive. Following the “2018 Battle of Tripoli”, a new peak of the conflict was reached during Haftar’s offensive against Tripoli. From 4 April 2019 through June 2020, LNA and GNA forces engaged in almost uninterrupted heavy armed clashes, mostly in Tripoli and other areas of western, central, and southern Libya. The 4 April LNA attack triggered the

³¹⁰ Aced, Targeting Tripoli: newly active militias targeting capital in 2018, 6 September 2018 ([Url](#): last visited: 14 January 2022).

³¹¹ January 2019 UNSG Report on UNSMIL, para.10; 2019 ISPI Report, pp.22-23; Libya's Fragmentation, p.49.

³¹² January 2019 UNSG Report on UNSMIL, para.28.

³¹³ January 2019 UNSG Report on UNSMIL, paras. 10, 28; Reuters, Ahmed Elumani, Tripoli clashes leave 115 dead, 383 injured- health ministry, 23 September 2018 ([Url](#) – last visited: 14 January 2022).

³¹⁴ January 2019 UNSG Report on UNSMIL, para.28.

³¹⁵ January 2019 UNSG Report on UNSMIL, para.28.

³¹⁶ May 2018 UNSG Report on UNSMIL, paras.14, 16; August 2018 UNSG Report on UNSMIL, para.12; January 2019 UNSG Report on UNSMIL, para.16.

mobilization of western armed groups, who realigned with the GNA,³¹⁷ and over the course of the year, the situation developed into a nationwide conflict.³¹⁸

151. While the conflict initially interested southern Tripoli (causing significant civilian casualties, damage to critical civilian infrastructure,³¹⁹ civilian displacement, and the deterioration of the humanitarian situation),³²⁰ throughout 2019,³²¹ the confrontations expanded geographically to Tarhunah, Sirte and Jufrah,³²² as well as to the south of the country.³²³ In light of the military support received from foreign states, the use of drones, airstrikes and mercenaries became a constant feature of GNA and LNA military operations.
152. The conflict continued until June 2020, despite an apparent short break in January 2020 due to an attempted ceasefire promoted by Turkey and Russia.³²⁴ In February and March 2020, the parties resumed full-scale military confrontations in southern Tripoli as well as in the central and western regions of the country.³²⁵
153. By the end of March, the hostilities continued in the north-west (with the GNA “Operation Peace Storm”)³²⁶ and in the south of Libya, and GNA forces entered Tarhunah on 5 June 2020.³²⁷ Following the fall of Tarhunah, the frontline shifted to the central region, especially Sirte and Jufrah, where both parties continued mobilizing troops.³²⁸ However, the June 2020 GNA offensive to take control of the two cities did not result in any military gains, leading to a stalemate.³²⁹

³¹⁷ August 2019 UNSG Report on UNSMIL, para.2; 2019 UN Panel of Experts Report, para.13, Annex 6 (Appendix A); Libya’s fragmentation, p.54.

³¹⁸ 2019 UN Panel of Experts Report, para.11.

³¹⁹ August 2019 UNSG Report on UNSMIL, para.3.

³²⁰ August 2019 UNSG Report on UNSMIL, para.3.

³²¹ January 2020 UNSG Report on UNSMIL, paras.2, 22-28.

³²² January 2020 UNSG Report on UNSMIL, paras.2, 22.

³²³ January 2020 UNSG Report on UNSMIL, paras.2, 32.

³²⁴ January 2020 UNSG Report on UNSMIL, para.9.

³²⁵ May 2020 UNSG Report on UNSMIL, paras.2-3, 7-8, 24-27.

³²⁶ May 2020 UNSG Report on UNSMIL, paras.8, 27; August 2020 UNSG Report on UNSMIL, paras.3-4, 29-33.

³²⁷ August 2020 UNSG Report on UNSMIL, paras.3-4, 33, 35.

³²⁸ August 2020 UNSG Report on UNSMIL, paras.2, 5, 35.

³²⁹ August 2020 UNSG Report on UNSMIL, paras.34-35.

154. Mid-2020 – Late-2021: Continued hostilities during the intra-Libyan dialogues. The call for a ceasefire by Prime Minister al-Sarraj and Speaker of the HoR Saleh in August 2020, and the diplomatic efforts that developed between June 2020 and July 2021, did not result in a lasting cessation of armed confrontations in Libya, nor did they bring a sufficiently stabilised situation that could be equated to a peaceful settlement.³³⁰ Haftar’s refusal to recognise the authority of the GNU³³¹ and the persisting military activities in Libya indicate that the armed conflict continued throughout 2021.
155. The information available also shows that armed groups continued to engage in armed confrontations involving the use of heavy weapons in various areas of the country, including in Tajoura (September 2020), Tarhuna (October 2020),³³² and Bani Walid (November 2020).³³³
156. Moreover, since January 2021 the reemerging rivalry between various armed groups in Tripoli and western Libya has contributed to ongoing instability.³³⁴ The renewed competition among these groups led to a series of incidents, which included an assassination attempt of the former Minister of Interior Fathi Bashaga in February 2021, the temporary takeover of interim government headquarters by a militia in May 2021, an attack against the Municipal Council of Ain Zara launched by the Tripoli Revolutionary Brigade in July 2021, and armed clashes between armed groups in

³³⁰ Cf. ICTY, *Prosecutor v. Boskoski and Tarculovski*, IT-04-82-T, Trial Chamber, Judgement, 10 July 2008, para.293; ICRC, *Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea*, 2nd edition, 2017, regarding Article 3, para.512.

³³¹ BulletinFrancoPaix, Wolfram Lacher, Libya: Elections at any cost?, October 2021 (“October 2021 Lacher Article”), p.3 BulletinFrancoPaix, Wolfram Lacher, Libya: Elections at any cost?, October 2021 ([Url](#) – last visited: 14 January 2022).

³³² OCHA, LIBYA October Humanitarian Bulletin, 24 November 2020, p.2 ([Url](#) – last visited: 14 January 2022) (“inter-group violence between GNA-aligned armed groups in the West has increased. This has included, in some instances, the use of heavy weapons in urban areas. There have been clashes reported in Tajoura in late September, between rival groups in Tripoli in early October and most recently in Tarhuna.”).

³³³ OCHA, LIBYA November Humanitarian Bulletin, 18 December 2020, p.1 ([Url](#) – last visited: 14 January 2022) (“This includes attacks by armed groups on Bani Waleed General Hospital and Sabratha isolation centre”).

³³⁴ May 2021 UNSG Report on UNSMIL, para.32; August 2021 UNSG Report on UNSMIL, para.30.

Tripoli in October 2021³³⁵ and in Zawiyah in August and October 2021.³³⁶ Throughout the entire period between May and August 2021, mercenaries continued to operate in Libya and foreign jet fighters and military ground support continued to be deployed.³³⁷ Turkey maintained its military presence in Libya.³³⁸

b. Organisation of the parties involved in the conflict

157. Hostilities in Libya also meet the NIAC “organisational” requirement.³³⁹ Since March 2011 the conflict was ongoing between “governmental forces and different organized armed groups, or among various such armed groups.”³⁴⁰
158. Various armed groups with various levels of organisation participated in the hostilities in Libya. In the instant case, and for the purpose of qualifying the armed conflict, the present analysis considers two organised armed groups,³⁴¹ which participated in the hostilities on opposite fronts: the Special Deterrence Force (based in Tripoli, pro-GNC first and later pro-GNA) and the Zintani Al-Saiqa Brigade (aligned to the LNA).³⁴²

³³⁵ 2021 Easo CoI Query, pp.4-5.

³³⁶ AfricaNews, Libya’s Zawiyah oil Refinery suffers damages due to armed clashes 27 October 2021 ([Url](#) – last visited: 14 January 2022); Reuters, Ahmed Elumami, Worst Tripoli fighting in a year shows limits of Libya peace push, 3 September 2021 ([Url](#) – last visited: 14 January 2022).

³³⁷ August 2021 UNSG Report on UNSMIL, para.7.

³³⁸ October 2021 Lacher Article, pp.3, 7.

³³⁹ See, for instance, ICC, *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Judgement, 8 July 2019 (“*Ntaganda* Trial Judgement”), paras.703-704.

³⁴⁰ 2017 *Al-Werfalli* Arrest Warrant, para.25.

³⁴¹ *Ntaganda* Trial Judgement, para.703 (In order to distinguish situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence, or other acts of a similar nature from a non-international armed conflict, (i) *at least two organised armed groups need to have been involved in* (ii) armed violence of a certain intensity).

³⁴² Neither of these groups are referenced below in the context of the underlying acts. The analysis of the organisational requirements under the NIAC serves only for the purpose of assessing the existence and the classification of the armed conflict, of a to establish individual responsibilities for alleged war crimes.

159. The Special Deterrence Force, also known as Rada, is an organised armed group active in Libya and has participated in various phases of the ongoing conflict, which involved protracted armed confrontations.³⁴³
160. The Special Deterrence Force is composed of at least 1,500 members and controls a portion of Tripoli's territory and infrastructure, including Mitiga Airport and a detention centre accommodating at least 2,600 detainees.³⁴⁴ The information available indicates that the Special Deterrence Force has a composite hierarchical structure with a principal leader (Abdulrauf Kara), other senior figures (Khalid al-Hishri Abuti, Moadh Eshabat, Hamza al-Bouti Edhaoui, Ziad Najim, Nazih Ahmed Tabtaba),³⁴⁵ and a chain of command.³⁴⁶ It also includes civil figures employed in administrative matters.³⁴⁷ In addition, the Special Deterrence Force appears to be equipped with heavy weapons and uniforms,³⁴⁸ as well as sophisticated devices to jam and tape telephone conversations,³⁴⁹ which suggest a significant logistical capacity of the group and a supply chain for military equipment. It also bears its own symbol and a Facebook profile.³⁵⁰ As noted, the Special Deterrence Force's long-term participation in the armed conflict reflects an ability to plan military operations. In addition, the composition, hierarchical structure, and military capacity of the Special Deterrence Force fulfil the organisational element required to meet the threshold for a NIAC.

³⁴³ The Special Deterrence Force participated in, *inter alia*: (1) "Operation Libya Dawn" in 2014 (2016 OHCHR Investigation, Annex II, p.91); (2) the fight in Tripoli against the al-Gweil Forces in 2016-2017 (Libya's Fragmentation, pp.49-50; 2018 *Al-Werfalli* Arrest Warrant, para.10); and (3) the 2019-2020 LNA Offensive (2019 UN Panel of Experts Report, Annex 6 (Appendix A)). See also Ministero dell'Interno, Commissione Nazionale per il Diritto di Asilo, Area II – Affari Internazionali e Comunitari, *Coi Unit*, Special Deterrence Force (SDF): struttura organizzativa e presenza di figure amministrative a carattere non militare; attività della SDF dal 2014 in poi, 1 March 2021 ("Report on Special Deterrence Force"), pp.5-8 ([Url](#) – last visited: 14 December 2022).

³⁴⁴ 2019 ISPI Report, p.25.

³⁴⁵ See for instance, United States Department of State, 2018 Trafficking in Persons Report - Libya, 28 June 2018 ([Url](#) – last visited: 14 January 2022).

³⁴⁶ Report on Special Deterrence Force, p.2.

³⁴⁷ Report on Special Deterrence Force, p.2.

³⁴⁸ See photo in Twitter, The Libya Observer, The Special Deterrence Force, one of the armed groups under #Tripoli Protection Force, announces "Badr Operation" to repel "the criminals and Kharijites.", 21 September 2018 ([Url](#) – last visited: 14 January 2022).

³⁴⁹ 2017 UN Panel of Experts Report, paras.168-169.

³⁵⁰ 2019 ISPI Report, p.25.

161. Likewise, the Al-Saiqa Brigade has been qualified as an organised armed group by ICC Pre-Trial Chamber I in the *Al-Werfalli* case. Pre-Trial Chamber I found that the Al-Saiqa Brigade, aligned to the LNA,³⁵¹ participated in the conflict from the onset of the revolution against Ghaddafi and took part in “Operation Dignity” in May 2014.³⁵² According to Pre-Trial Chamber I, the Al-Saiqa Brigade was “organised in a hierarchical structure, with field commanders, acting under the overall command of Colonel Bukhmada”,³⁵³ with a chain of command and the ability to plan military operations.³⁵⁴

2. Underlying acts constituting war crimes and nexus with the armed conflict

162. Together with other irregular migrants present in Libya, most of the migrants rescued at sea by the LCG are transferred to DCIM Detention Centres,³⁵⁵ nominally under the

³⁵¹ 2017 *Al-Werfalli* Arrest Warrant, para.25.

³⁵² 2017 *Al-Werfalli* Arrest Warrant, para.25.

³⁵³ 2017 *Al-Werfalli* Arrest Warrant, para.26.

³⁵⁴ 2017 *Al-Werfalli* Arrest Warrant, para.26.

³⁵⁵ See for instance 2021 Fact-Finding Mission on Libya Report, paras.66-67; UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2021/767, 2 September 2021 (“September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.34; 2021 UN Panel of Experts Report, para.43; 2019 UN Panel of Experts Report, para.55; 2018 UNSMIL Report, p.39; 2017 UN Panel of Experts Report, Annex 17, para.4; UNHCR, UNHCR Position on Returns to Libya - Update II, September 2018 (“2018 UNHCR Position on Returns to Libya – Update II”), para.19. See also Amnesty International, ‘No One Will Look For You’: Forcibly Returned From Sea to Abusive Detention in Libya, 15 July 2021 (“2021 AI Report”), p.6 ([Url](#) – last visited: 14 January 2022); Amnesty International, ‘Between Life and Death’: Refugees and Migrants Trapped in Libya’s cycle of abuse, 24 September 2020 (“2020 AI Report”), p.7 ([Url](#) – last visited: 14 January 2022); Amnesty International, Libya’s Dark Web of Collusion, Abuses against Europe-bound refugees and Migrants, 11 December 2017 (“2017 AI Report”), p.40 ([Url](#) – last visited: 14 January 2022); HRW, No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya, 21 January 2019 (“2019 HRW Report”), pp.21-26, 44, 51 ([Url](#) – last visited: 14 January 2022); April 2019 Global Initiative and Clingendael Report, p.34, Figure 9. See also 2021 OHCHR Report, pp.8-9, 17, 20; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.10 (“Nevertheless, refugees and migrants continue to be disembarked in Libya, mainly after interception by the Libyan coastguard and navy, but also by private vessels at the direction of Maritime Rescue Coordination Centre or individual Member States, with most of those disembarked in Libya subsequently sent to detention centres.”), 12 (“from 1 March until 31 July 2020, about half of the refugees and migrants disembarked in Libya were transferred to detention centres managed by the Directorate for Combating Illegal Migration”); UNSC,

control of the DCIM, but in fact, manned by armed groups taking active part in ongoing hostilities in Libya.³⁵⁶

163. Principally, the DCIM Detention Centres are situated in western Libya in the territory under the control of the former GNA.³⁵⁷ The number of DCIM Detention Centres has changed over time as some camps were closed (because of the conflict or by order of the DCIM) while others were opened.³⁵⁸ The number of DCIM Detention Centres varied from a maximum of 26, in 2018, to around only six to nine centres in 2021.³⁵⁹

Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2017/761, 7 September 2017 (“September 2017 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.40.

³⁵⁶ See for instance, September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.25, 34; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 (“Detention centres of the Directorate are registered with the Ministry of the Interior and operated by armed groups. These armed groups engaged in the fighting in support of the Government of National Accord following the assault on Tripoli by the Libyan National Army forces led by General Khalifa Haftar in April 2019.”); 2019 UN Panel of Experts Report, para.53; 2018 UNSMIL Report, pp.38-39 (“several detention centres continue to be effectively controlled by armed groups, with their own command-and-control structures”). See also 2021 AI Report, p.16; 2019 HRW Report, p.15; April 2019 Global Initiative and Clingendael Report, p.11. The information available indicates that while the DCIM staff is present in the DCIM Detention Centres, including a DCIM Director, they are nonetheless under the control of armed groups. See April 2019 Global Initiative and Clingendael Report, pp.92-93.

³⁵⁷ 2019 UN Panel of Experts Report, para.53; 2019 HRW Report, p.15.

³⁵⁸ 2021 AI Report, pp.16, 35.

³⁵⁹ For instance, in June 2016 the UNHCR mapped 24 DCIM Detention Centres (UNHCR, Libya, Detention Centres: Map of detention centres in Libya and related UNHCR protection activities, June 2016 ([Url](#) – last visited: 14 January 2022), while in 2018 UNSMIL counted 26 centres (2018 UNSMIL Report, pp.38-39). In 2019 the UN Panel of Experts on Libya established pursuant to resolution 1973 (2011) (“UN Panel of Experts”) estimated the existence of 20 centres (2019 UN Panel of Experts Report, para.53, Annex 19). In April 2020 the UN Secretary-General reported that the number of DCIM Detention Centres dropped to eleven (April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36). Recently, in March 2021, the UN Panel of Experts referred to the presence of six detention centres operating under the DCIM (2021 UN Panel of Experts Report, Annex 18), on 15 July 2021 Amnesty International referred to the existence of nine centres operating (2021 AI Report, pp.35-36, fn.171). However, in September 2021 the UN Secretary-General reported the existence of 20 official detention centres (September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.32).

164. Since 2017, multiple sources and reports including from the UN,³⁶⁰ NGOs³⁶¹ and think-tanks³⁶² have reported that in DCIM Detention Centres migrants are held without any judicial guarantee and in inhumane conditions of detention. The same sources have consistently confirmed that in DCIM Detention Centres migrants are subjected to various forms of mistreatment and abuse including murder,³⁶³ torture and/or cruel treatment,³⁶⁴ forced labour,³⁶⁵ hostage-taking³⁶⁶ and various forms of sexual violence including rape and sexual slavery.³⁶⁷
165. In 2018, UNSMIL outlined the abysmal detention situation of migrants in Libya. According to UNSMIL “[t]hey are systematically held captive in abusive conditions, including starvation, severe beatings, burning with hot metals, electrocution, and

³⁶⁰ See for instance, 2021 UN Panel of Experts Report, para.46; 2019 UN Panel of Experts Report, para.54; 2017 UN Panel of Experts Report, para.105, Annex 31; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.12-14, 17; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.11, 36-37; 2018 UNSMIL Report, pp.39-44; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19.

³⁶¹ See for instance, 2021 AI Report, pp.33-34; 2020 AI Report, pp.21-29; 2017 AI Report, pp.28-31; 2019 HRW Report; MSF Press Release, Libya: Arbitrary detention of refugees, asylum-seekers and migrants must stop, 1 September 2017 (“1 September 2017 MSF Report”) ([Url](#) – last visited: 14 January 2022).

³⁶² April 2019 Global Initiative and Clingendael Report, pp.83-84, 86-87, 91.

³⁶³ 2017 UN Panel of Experts Report, para.104; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.37; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.15; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2021 AI Report, p.38; 2020 AI Report, p.31.

³⁶⁴ 2019 UN Panel of Experts Report, para.54; 2017 UN Panel of Experts Report, para.104; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.15; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.37-38; 2018 UNSMIL Report, pp.44-45; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.35, 37-39; 2020 AI Report, pp.29-30; 2017 AI Report, pp.22-23, 31-32; 2019 HRW Report, pp.39-41, 43-44, 49.

³⁶⁵ 2019 UN Panel of Experts Report, para.54; 2017 UN Panel of Experts Report, para.104; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons UNSG Report, para.16; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36; 2018 UNSMIL Report, p.47; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.14, 21; 2020 AI Report, p.30.

³⁶⁶ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.13; 2018 UNSMIL Report, pp.28-29, 32; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.7-8, 23-26, 29-30; 2020 AI Report, pp.35-29; 2017 AI Report, pp.22-23, 31-32.

³⁶⁷ 2019 UN Panel of Experts Report, para.54; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.15; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.11, 36-37; 2018 UNSMIL Report, pp.45-47; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.35, 40-41; 2020 AI Report, p.30; 2017 AI Report, pp.22-23; Women’s Refugee Commission, “More Than One Million Pains”: Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, March 2019 (“2019 WRC Report”), pp.23-26 ([Url](#) – last visited: 14 January 2022).

sexual abuses of women and girls, with the aim of extorting money from their families through a complex system of money transfers, extending to a number of countries.”³⁶⁸

166. In 2021, the UN Secretary-General reported an identical picture of atrocities observing that “[m]igrants and refugees have been burned with hot metal and plastic fluids, exposed to stress positions, such as having their hands and legs tied for days, and deprived of food and drinking water despite showing signs of starvation. Sexual violence against men, women, boys, and girls continues to be documented. Migrants and refugees have recounted how they had been electrocuted through their genitals. Others have been subjected to sexual violence as a means of extorting money from their families.”³⁶⁹
167. The following paragraphs contain a description of the acts committed against migrants and the conditions under which they live in the detention centres. These acts and conditions may be constitutive of crimes under the Statute, as explained in other sections below. The following description is illustrative of the crime pattern occurring in detention centres and focuses only on few selected reports from the UN, NGOs and articles of major media outlets.
168. Conditions of detention. The conditions of detention in these camps have been described as “appalling”, “nightmarish” and “cruel, inhuman and degrading”.³⁷⁰ According to UNSMIL, DCIM Detention Centres are “structures unfit for human habitation, characterized by overcrowding, poor hygiene, inadequate lighting and ventilation, and insufficient access to washing and sanitation facilities.”³⁷¹ In this regard, the UN Secretary-General affirmed that “[t]he conditions of detention in most facilities are characterized by chronic severe overcrowding, poor hygiene, and a lack

³⁶⁸ 2018 UNSMIL Report, pp.5-6.

³⁶⁹ September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.28. See also *ibid*, para.29.

³⁷⁰ UNHCR, Submission by the Office of the United Nations High Commissioner for Refugees in the case of *J.S. and Others. v. Italy* (Appl. No. 21660/18) before the European Court of Human Rights, 14 November 2019, para.2.5, and references cited therein.

³⁷¹ 2018 UNSMIL Report, p.42.

of access to basic necessities or adequate medical care. Undernutrition in adults and children is rampant, particularly in facilities outside Tripoli. In some facilities, the conditions of detention in themselves may amount to torture or other ill-treatment.”³⁷²

169. Migrants have also directly confirmed chronic overcrowding and lack of ventilation in DCIM Detention Centres. They testified that they had difficulties in breathing because of the poor ventilation and overcrowding, with no space to sit or lie down, sharing mattresses with other detainees (sometimes three to five persons per mattress).³⁷³ In one site visit Human Rights Watch (“HRW”) staff were unable to access the detention facility “beyond the iron-barred door and enter the hallway because men sitting or standing occupied practically every available space”.³⁷⁴ In general no adequate access to outdoor space is provided.³⁷⁵ This evidence is corroborated by footage of DCIM Detention Centres showing migrants packed or crammed in filthy common rooms with no windows and with mattresses on the floor.³⁷⁶
170. The number of toilets and in general the hygienic facilities in DCIM Detention Centres were also reported to be wholly inadequate to serve the number of individuals in

³⁷² September 2017 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.42; September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.24 (“Migrants and refugees in Libya continued to be detained arbitrarily. Their detention was often prolonged and sometimes indefinite, with no judicial due process, procedural guarantees or consideration of individual protection needs. Conditions of detention continued to be dire and inhumane, with a lack of food, water, ventilation and sanitation being a common occurrence. Detention facilities were extremely overcrowded and were marked by an absence of women guards.”)

³⁷³ 2021 AI Report, pp.41-42. See also 2020 AI Report, p.28; 2017 AI Report, pp.30-31; 2019 HRW Report, pp.43, 51-52; 2018 UNSMIL Report, pp.42-43.

³⁷⁴ 2019 HRW Report, p.42. Chronic overcrowding of these facilities has been also confirmed by MSF staff visiting the DCIM Detention Centres. See for instance, MSF, Growing numbers of migrants and refugees returned to appalling conditions in Libya, 23 January 2019 (“23 January 2019 MSF Report”) ([Url](#) – last visited: 14 January 2022).

³⁷⁵ 2021 AI Report, p.43; 23 January 2019 MSF Report.

³⁷⁶ The Guardian, Sandra Johnson, Fresh evidence of violence at Libyan detention centres as boats turned back, 15 July 2021 ([Url](#) – last visited: 14 January 2022); The New Humanitarian, Sara Creta, Libya fails to stop migrant detention abuses, as EU-backed returns soar, 24 June 2021 ([Url](#) – last visited: 14 January 2022) (portraying a picture of Tarik al-Sikka Detention Camp); InfoMigrants, Julia Dumont, No, migrants in Libyan detention centres are not more likely to be resettled in Europe, 12 December 2019 ([Url](#) – last visited: 14 January 2022) (portraying a picture of Zintan Detention Camp); MSF, Providing assistance to migrants and refugees, 23 June 2017 (portraying a picture of Abu Salim Detention Camp) ([Url](#) – last visited: 14 January 2022). See also Le Iene, Libia, bombe sul campo profughi: "Migranti usati come scudi umani", video, 8 October 2019 (“8 October 2019 Le Iene Video”) ([Url](#) - last visited: 14 January 2022); Le Iene, “Migranti nei lager in Libia: e i nostri soldi dati alle ong?”, video, 29 April 2019 (“29 April 2019 Le Iene Video”) ([Url](#) – last visited: 14 January 2022).

detention.³⁷⁷ In some centres two or three toilets were made available for hundreds, if not thousands, of detainees.³⁷⁸ According to UNSMIL, in some cases migrants used bottles or buckets to urinate or defecate.³⁷⁹ The information available also reflects that guards prohibited detainees from accessing the toilet, forcing them to urinate in the cells.³⁸⁰

171. Likewise, reports showed inadequate access to medical services and facilities to cure/treat injuries, which were at times caused by ill-treatment, or infectious diseases.³⁸¹ Women delivered babies in the centres.³⁸² Lack of hygienic and health care facilities resulted in the death of children and led to spread of tuberculosis and scabies in these centres.³⁸³ Lack of food and drinkable water remained another common feature of DCIM Detention Centres.³⁸⁴ Reportedly, migrants generally received only pasta³⁸⁵ and were on some days given no food at all.³⁸⁶ Formula and milk were often

³⁷⁷ 2018 UNSMIL Report, pp.42-43.

³⁷⁸ 2019 HRW Report, pp.51-52; 2018 UNSMIL Report, pp.42-43.

³⁷⁹ 2018 UNSMIL Report, p.42.

³⁸⁰ 2021 AI Report, p.42.

³⁸¹ 2021 AI Report, p.42.

³⁸² 2021 AI Report, p.43.

³⁸³ 2021 AI Report, p.42; 2020 AI Report, p.28; 2019 HRW Report, p.52; MSF, MSF Warns of Inhumane Detention Conditions in Libya as EU Discusses Migration, 2 February 2017 (“2 February 2017 MSF Report”) ([Url](#) – last visited: 14 January 2022); MSF, Libya: Caring for Migrants and Refugees in the “Worst Moments” of Their Journeys, 22 June 2017 ([Url](#) – last visited: 14 January 2022); 1 September 2017 MSF Report; MSF, Libya: An endless cycle of suffering, 29 March 2019 ([Url](#) – last visited: 14 January 2022); MSF, Libya: Ongoing fighting endangers detained migrants and refugees, 9 May 2019 (“9 May 2019 MSF Report”) ([Url](#) – last visited: 14 January 2022); MSF, Libya: Detained refugees and asylum-seekers die from suspected tuberculosis and other diseases, 21 June 2019 (“21 June 2019 MSF Report”) ([Url](#) – last visited: 14 January 2022); MSF, Survivors on board the search and rescue ship Sea- Watch 4 finally offered a port of safety in Palermo, Italy, 1 September 2020 ([Url](#) – last visited: 14 January 2022).

³⁸⁴ 2021 AI Report, pp.42-43; 2020 AI Report, pp.28-29; 2019 HRW Report, pp.51-52; 2018 UNSMIL Report, p.42; 2 February 2017 MSF Report; MSF Press Release, Libya: Time Running Out for Hundreds of Migrants and Refugees in Dangerously Overcrowded Detention Center, 3 May 2018 ([Url](#) – last visited: 14 January 2022); 23 January 2019 MSF Report; MSF Press Release, Libya: Alarming rates of malnutrition and inhumane conditions in Tripoli detention centre, 20 March 2019 (“20 March 2019 MSF Press Release”) ([Url](#) - last visited: 14 January 2022); 9 May 2019 MSF Report; MSF, Libya: “What person would force another to live like this?” Thousands of migrants remain trapped in inhumane conditions, 25 March 2021 ([Url](#) - last visited: 14 January 2022); MSF Press Release, Ongoing violence against detained migrants forces MSF to suspend Tripoli centre activities, 22 June 2021 (“22 June 2021 MSF Press Release”) ([Url](#) - last visited: 14 January 2022). See also 2021 OHCHR Report, p.17 (reporting about migrants detained in Zuwara Detention Center being fed only once per day).

³⁸⁵ 2021 AI Report, pp.42-43; 2020 AI Report, pp.28-29; 2018 UNSMIL Report, p.42; 22 June 2021 MSF Press Release.

³⁸⁶ 2020 AI Report, pp.28-29; MSF, Libya: Migrants and Refugees Suffering from Disease and Malnutrition in Detention Centers, 19 May 2017 ([Url](#) – last visited: 14 January 2022); 20 March 2019 MSF Press Release.

not available for children.³⁸⁷ Migrants also reported to UNSMIL that they had to drink water from the toilet tap.³⁸⁸

172. Torture and other forms of mistreatment. UNSMIL, the OHCHR and the UN Panel of Experts published a series of reports based on interviews with migrants detained in the DCIM Detention Centres.³⁸⁹ These reports consistently found that members of armed groups in charge of the detention centres carried out torture and ill-treatment on a systematic and large-scale basis against detained migrants. These findings have been confirmed by multiple NGOs with direct access to the DCIM Detention Centres and victims.³⁹⁰
173. Detainees have described experiencing torture or cruel treatment including: electrocution; prolonged and severe beatings with cables, pipes, hoses or wooden sticks (including on the soles of the feet); punching, hitting and kicking all over the body; use of cigarette lighters to burn the soles of the feet; suspension in stress positions; threats of execution and/or sexual assault.³⁹¹ Media outlets interviewed migrants detained in the DCIM Detention Centres who confirmed the nature and the scale of such crimes.³⁹²

³⁸⁷ 2021 AI Report, pp.42-43; 2020 AI Report, pp.28-29; 2019 HRW Report, p.52; 2018 UNSMIL Report, p.42; 22 June 2021 MSF Press Release.

³⁸⁸ 2021 AI Report, p.43.

³⁸⁹ 2019 UN Panel of Experts Report, para.54; 2017 UN Panel of Experts Report, para.104; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.15; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.37-38; 2018 UNSMIL Report, pp.44-45; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19. See also See also 2021 OHCHR Report, p.17 (reporting migrants detained in Zuwara beaten by the guards of the detention centre).

³⁹⁰ 2021 AI Report, pp.35, 37-39; 2020 AI Report, pp.29-30; 2017 AI Report, pp.22-23, 31-32; 2019 HRW Report, pp.39-41, 43-44, 49; 1 September 2017 MSF Report; MSF, Libya: Detained migrants and refugees face worse conditions after closure of Misrata center, 18 October 2019 ([Url](#) – last visited: 14 January 2022); MSF, Libya: Man's death in detention center fire underscores urgency of evacuating refugees, 2 March 2020 ([Url](#) – last visited: 14 January 2022).

³⁹¹ 2018 UNSMIL Report, pp.44-45; 2021 AI Report, pp.35, 37-39; 2020 AI Report, pp.29-30; 2017 AI Report, pp.22-23, 31-32; 2019 HRW Report, pp.39-41, 43-44, 49.

³⁹² See also 8 October 2019 Le Iene Video; 29 April 2019 Le Iene Video.

174. Murder. The information available indicates that armed groups in charge of DCIM Detention Centres killed detained migrants during escape attempts.³⁹³ Migrants have also died due to torture and mistreatment.³⁹⁴ Some victims were beaten to death by the guards in charge of the detention camps.³⁹⁵ In addition, migrants who fell sick or were injured due to mistreatment have reportedly died from lack of subsequent medical care.³⁹⁶
175. Forced labour and forced military conscription. Multiple reports confirm that elements of armed groups in charge of DCIM Detention Centres have exploited migrants by forcing them to work without pay.³⁹⁷ Witnesses interviewed by UNSMIL reported that they were routinely forced to engage in “manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning.”³⁹⁸ These accounts were confirmed by the evidence gathered by Amnesty International and HRW.³⁹⁹ Migrants also stated that members of armed groups in charge of the detention centres forced them to undertake cleaning and construction works.⁴⁰⁰

³⁹³ September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.29, 36; 2021 AI Report, p.38; MEDU, The Torture Factory, Report on Human Rights Violations Against Migrants and Refugees in Libya (2014-2020), March 2020 (“2020 MEDU Report”), p.30 (Testimony of G.) ([Url](#) – last visited: 14 January 2022). See also May 2021 UNSG Report on UNSMIL, para.52; MSF, Libya: Nowhere to go but the sea, 17 January 2020 (“17 January 2020 MSF Report”) ([Url](#) – last visited: 14 January 2022); 2021 OHCHR Report, p.17 (reporting about several migrants shot by the guards of the Zuwara detention centre).

³⁹⁴ Tribunale di Messina, 5925/2019 R.G.N.R., 4893/2019 R.G. G.I.P., Judgment, 28 May 2020 (“Tribunale di Messina Judgment”), p.30.

³⁹⁵ Tribunale di Messina Judgment, pp.9, 14, 18.

³⁹⁶ 2020 AI Report, p.31; Tribunale di Messina Judgment, p.21 (referring to a witness’ testimony that two brothers from Guinea died after a beating, as they did not receive any treatment; in addition, the witness’s sister, who was ill, allegedly died due to lack of health care).

³⁹⁷ 2019 UN Panel of Experts Report, para.54; 2017 UN Panel of Experts Report, para.104; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36; 2018 UNSMIL Report, pp.29, 47; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 17 January 2020 MSF Report.

³⁹⁸ 2018 UNSMIL Report, pp.29, 47.

³⁹⁹ 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, pp.30-31; 2019 HRW Report, para.16

⁴⁰⁰ 2021 AI Report, pp.36-37; 2020 AI Report, pp.30-31; 2019 HRW Report, p.16

176. Direct evidence gathered by the UN and NGOs, as well as media sources, consistently shows that migrants in DCIM Detention Centres have been forced to engage in conflict-related activities including: (1) loading or unloading ammunition, cleaning weapons and transporting them to the frontline;⁴⁰¹ and (2) being forcibly recruited/conscripted by the very armed groups in charge of the respective detention centres.⁴⁰²
177. Extortion and hostage-taking. The armed groups in charge of the DCIM Detention Centres mistreat and abuse migrants, or their families, to force them to pay a ransom to ensure their release.⁴⁰³ Hostage-taking for ransom in detention centres has been consistently reported and confirmed throughout the years by nearly every entity or organisation that investigated human rights violations in the centres.⁴⁰⁴
178. According to Amnesty International, “[o]nce [migrants have been] detained, DCIM guards regularly extort ransoms for their release. Many of those interviewed reported that the amount requested by DCIM guards varied depending on individuals’

⁴⁰¹ See for instance, September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups. The Organization has also received credible information of forced recruitment among refugees and migrants”); April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups.”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; 2018 UNSMIL Report, p.29 (“According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning.”); UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2019/711, 5 September 2019 (“September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons”), para.47; UNSMIL Investigation on the 2 July 2019 Airstrike, paras.23-25; 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, pp.8, 41; 2019 HRW Report, p.17.

⁴⁰² See for instance, September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“The Organization has also received credible information of forced recruitment among refugees and migrants”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; DPA, UNHCR: Warring Libyan parties using migrants as fighters, 17 January 2020 (“17 January 2020 DPA Article”) ([Url](#) – last visited: 14 January 2022).

⁴⁰³ 2021 Fact-Finding Mission on Libya Report, para.66; 2021 UN Panel of Experts Report, paras.46, 49.

⁴⁰⁴ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.13; 2018 UNSMIL Report, pp.28-29, 32; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.7-8, 23-26, 29-30; 2020 AI Report, pp.35-29; 2017 AI Report, pp.22-23, 31-32; MSF, Open letter to European Governments, European governments are feeding the business of suffering, 6 September 2017 (“6 September 2017 MSF Open Letter”) ([Url](#) – last visited: 14 January 2022). See also Tribunale di Messina Judgment.

nationalities and perceptions of wealth.”⁴⁰⁵ The migrants “unable to pay were sometimes subjected to further torture and other ill-treatment in an attempt to extract any money from them.”⁴⁰⁶ An Italian criminal court, the Tribunale di Messina, found *beyond any reasonable doubt* that the guards of the al-Nasr DC, a DCIM detention centre in Zawiya, subjected migrants to mistreatment and torture with the purpose of forcing their families to pay a ransom for their release.⁴⁰⁷

179. Sexual and gender-related violence. The information available indicates that rape, sexual violence, and gender-related crimes are part of the pattern of crimes which occur in the DCIM Detention Centres.⁴⁰⁸ The UN Secretary-General has repeatedly observed that “[s]exual violence has been committed by guards of the Directorate for Combating Illegal Migration and non-State armed groups and used as a routine method for controlling and humiliating migrants and refugees. It continues to be perpetrated with impunity”.⁴⁰⁹ Men, women, and children detained in DCIM Detention Centres are subject to various forms of sexual violence.⁴¹⁰ According to Women’s Refugee Commission (“WRC”), “sexual violence against detainees is frequently perpetrated in front of others or video recorded on mobile phones [...]. Perpetrators send (or threaten to send) the video footage to detainees’ family members for extortion purposes.”⁴¹¹

⁴⁰⁵ 2021 AI Report, p.36.

⁴⁰⁶ 2021 AI Report, p.36.

⁴⁰⁷ Tribunale di Messina Judgment, pp.33-38.

⁴⁰⁸ 2019 UN Panel of Experts Report, para.54; 2018 UNSMIL Report, pp.45-47; 2020 UNHCR Position on Libya as a Safe Third Country, para.10; 2018 UNHCR Position on Returns to Libya – Update II, para.19; 2021 AI Report, pp.35, 40-41; 2020 AI Report, p.30; 2017 AI Report, pp.22-23; 2019 WRC Report, pp.23-26.

⁴⁰⁹ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.15; April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, paras.11, 37-38; September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.49. See also September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.35 (“Former migrants and asylum seekers who have been detained have reported systematic sexual violence against women, girls, men and boys in some detention centres under the control of the Directorate for Combating Illegal Migration. Survivors have reported that women and girls, boys and men were chosen by Directorate officials and were offered food and non-food items, or release, in exchange for sexual favours.”).

⁴¹⁰ 2019 WRC Report, pp.23-26; 6 September 2017 MSF Open Letter; 17 January 2020 MSF Report.

⁴¹¹ 2019 WRC Report, p.22. See also 6 September 2017 MSF Open Letter.

180. In reports published in 2017, 2020 and 2021, Amnesty International referred to evidence of sexual violence against migrants.⁴¹² Witnesses reported that guards inside the centres would provide clean sheets, clean water or access to the toilet in exchange for sexual intercourse with detainees.⁴¹³ For instance, a migrant detained in Shara' al-Zawiya testified that she was severely beaten and raped by a guard for refusing to comply with these demands.⁴¹⁴ Rapes in the form of arbitrary cavity searches performed by guards also frequently occur in the centres.⁴¹⁵
181. Additionally, the information available demonstrates that migrants are subject to sexual slavery.⁴¹⁶ A migrant testified that in an unspecified detention centre he was kept with other detainees in a separate building. There, migrants were raped on a regular basis.⁴¹⁷ The perpetrators were not the guards, but individuals who paid guards to rape the detainees.⁴¹⁸ Further, the UN Panel of Experts reported that women from sub-Saharan countries detained in DCIM Detention Centres have been sold on the local market as “sex slaves”.⁴¹⁹
182. Numbers and profile of the victims. Between 2017 and 2021, tens of thousands of migrants rescued at sea have been victims of the above-mentioned type of abuses. During that timeframe, the LCG alone intercepted and transferred back to Libya between 60,000 and 70,000 migrants.⁴²⁰ Overall figures of the centres during the same

⁴¹² 2021 AI Report, pp.35, 40-41; 2020 AI Report, p.30; 2017 AI Report, pp.22-23.

⁴¹³ 2021 AI Report, p.40.

⁴¹⁴ 2021 AI Report, p.40.

⁴¹⁵ 2021 AI Report, pp.40-41; 2019 WRC Report, p.22.

⁴¹⁶ 2019 WRC Report, pp.23-24.

⁴¹⁷ 2019 WRC Report, p.23 (“[t]here was open rape—rape in front of everyone else, against men and women. Men and women died by rape”).

⁴¹⁸ 2019 WRC Report, pp.23-24.

⁴¹⁹ 2017 UN Panel of Experts Report, Annex 30, para.3.

⁴²⁰ 2020 AI Report, p.17 (indicating that between January 2017 and November 2020, 60,000 migrants were intercepted by the LCG); Matteo De Bellis, *Lontano dagli occhi, Storia di Politiche Migratorie e Persone alla Deriva tra Italia e Libia*, People Idee ed. (2021), p.121 and reference cited therein (indicating that between January 2016 and 2021, 70,000 migrants were intercepted by the LCG). See also September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.13 (indicating that between 1 August 2020 and 31 July 2021, at least 24,670 migrants (89 per cent men, 6 per cent women, 4 per cent children and 1 per cent unknown) were returned to Libya); 2021 OHCHR Report, pp.1, 14 (observing that between January 2019 and December 2020 more than 20,300 migrants have been registered as rescued/intercepted at sea by the LCG).

timeframe indicate that migrants accommodated in such facilities were around 4,000 to 8,000 (at any given time in 2018),⁴²¹ 4,700 (in September 2019),⁴²² 8,000 (in December 2019),⁴²³ more than 3,000 (January 2020),⁴²⁴ 2,200-3,100 (December 2020),⁴²⁵ 6,100 (end of June 2021),⁴²⁶ 6,450 (mid-July 2021)⁴²⁷ and 7,000 (October 2021).⁴²⁸

183. The figures of migrants rescued at sea and the estimates of people in detention in DCIM Detention Centres provide only a general indication of the scale of migrants that have passed through such centres. DCIM Detention Centres do not possess registration mechanisms and migrants are transferred from centre to centre, sold to traffickers or routinely released in case the detainees manage to pay a sum of money to the guards.⁴²⁹ Moreover, once disembarked in Libya some migrants are victims of enforced disappearances.⁴³⁰ Additionally, while as of 2021, 99 percent of the population of the DCIM Detention Centres are migrants intercepted by the LCG,⁴³¹ in the past these centres also accommodated irregular migrants found in Libya.
184. With respect to the profiles of the victims, DCIM Detention Centres accommodate men, women, and children without distinction. The UN Secretary-General estimated that, in July 2021, 25 percent of the population detained in these centres were children.⁴³² As of 31 July 2020, children still represented 22 percent of detainees.⁴³³ Some of them arrive at the centres in both fragile physical and mental conditions

⁴²¹ August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.21; 2018 UNSMIL Report, p.39.

⁴²² September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.32.

⁴²³ 2019 UN Panel of Experts Report, para.53.

⁴²⁴ UNHCR, UNHCR UPDATE, Libya, 17 January 2020 ([Url](#) – last visited: 14 January 2022).

⁴²⁵ OCHA, Humanitarian Needs Overview Libya, Humanitarian Programme Cycle 2021, December 2020, p.16 ([Url](#) – last visited: 14 January 2022).

⁴²⁶ 2021 AI Report, p.6.

⁴²⁷ September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.26.

⁴²⁸ 2021 Fact-Finding Mission on Libya Report, fn.35.

⁴²⁹ AI Report 2021, pp.6, 33; 2021 Fact-Finding Mission on Libya Report, fn.35.

⁴³⁰ AI Report 2021, pp.5-6.

⁴³¹ 2021 UN Panel of Experts Report, para.43.

⁴³² September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.27.

⁴³³ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Person, para.13 (“As at 31 July 2020, more than 2,780 people, 22 per cent of whom are children, are estimated to be detained in detention centres managed by the Directorate for Combating Illegal Migration throughout Libya”).

following their journey through Libya at the hands of human traffickers after being rescued at sea.⁴³⁴

185. The abuse and violence perpetrated against migrants fulfil the elements of various war crimes including: (1) murder, pursuant to Article 8(2)(c)(i) of the Statute; (2) torture and cruel treatment under Article 8(2)(c)(i) of the Statute; (3) outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute; (4) taking of hostages under Article 8(2)(c)(iii) of the Statute; and (5) rape and sexual slavery under Article 8(2)(e)(vi).
186. As concrete examples of the crimes committed in the centres against migrants, the present communication will focus in the following sections on the crimes committed in six main DCIM Detention Centres, namely: (1) the Abu Salim DC; (2) the Tarik al-Matar DC; (3) the Tarik al-Sikka DC; (4) the al-Mabani DC; (5) the Tajoura DC; and (6) the al-Nasr DC.
187. The analysis of these six centres clearly shows the inhumane conditions of detention of migrants in the DCIM Detention Centres and confirms the larger pattern of criminality described above. Further, the information available concerning these six centres also reflects a clear link between the crimes against migrants and the armed conflict in Libya, thus satisfying the war crime nexus requirement.

⁴³⁴ 2018 UNSMIL Report, p.5 (“Many of those detained at DCIM centres are survivors of horrific abuses by smugglers or traffickers and are in need of tailored medical and psychological support and rehabilitation.”). See also *ibid.*, pp.34-38; MSF Press Release, Conflict in Tripoli puts lives in danger, demonstrating that Libya is not a safe place, 31 August 2018 ([Url](#) – last visited: 14 January 2022); 23 January 2019 MSF Report; 9 May 2019 MSF Report; 21 June 2019 MSF Report.

a. Abu Salim DC (Tripoli)

i. Overview

188. The Abu Salim DC is located in the Abu Salim district in Tripoli and has been operational since at least 2014.⁴³⁵ Officially managed by the DCIM and the Ministry of the Interior, the Abu Salim DC is, in fact, run by the Abu Salim Brigade, a GNA-affiliated armed group in control of the Abu Salim district, which participated in various phases of the conflict in Libya.⁴³⁶
189. The Abu Salim DC has accommodated thousands of migrants in detention, including migrants intercepted at sea by the LCG.⁴³⁷ In the Abu Salim DC, migrants were held in inadequate conditions of detention and systematically tortured, subjected to ill-treatment, forced labour, and hostage-taking.⁴³⁸ In particular, migrants were forced to carry out military-related activities, including forced to take direct part in the fighting.⁴³⁹
190. These acts qualify as murder, torture and/or cruel treatment, outrages upon personal dignity, and taking of hostages under Articles 8(2)(c)(i)-(iii) and took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁴⁴⁰

ii. Location, temporal scope, and armed group in charge of the centre

191. The Abu Salim DC is located in Abu Salim, a district in the south-east of Tripoli.⁴⁴¹ The complex was previously a high-security prison, known for the massacre carried

⁴³⁵ See *infra*, Section IV.A.2.a.ii.

⁴³⁶ See *infra*, Section IV.A.2.a.ii.

⁴³⁷ See *infra*, Section IV.A.2.a.iii.

⁴³⁸ See *infra*, Section IV.A.2.a.iv.

⁴³⁹ See *infra*, paras.205-206.

⁴⁴⁰ See *infra*, Section IV.A.2.a.v.

⁴⁴¹ 2019 UN Panel of Experts Report, Annex 19. See Google Maps ([Url](#) – last visited: 14 January 2022); Global Detention Project, Abu Salim Detention Centre, May 2021 (“May 2021 GDP Abu Salim DC”) ([Url](#) – last visited: 14 January 2022).

out during the reign of Colonel Ghaddafi.⁴⁴² Since at least 2014 the Abu Salim DC has served as a detention centre for migrants.⁴⁴³ A closure order for Abu Salim DC was issued between 2017-2018 by the DCIM director, Brigadier-General Mohamed Bashir.⁴⁴⁴ Nonetheless, the Abu Salim DC appears to be still operational.⁴⁴⁵

192. Abu Salim DC is formally managed by the DCIM and the Ministry of the Interior,⁴⁴⁶ but is, in fact, run by the Abu Salim Brigade,⁴⁴⁷ a group known for its use of extortion and kidnapping to raise funds.⁴⁴⁸ Originally a revolutionary group fighting against Ghaddafi in 2011,⁴⁴⁹ the Abu Salim Brigade took part in the hostilities which followed the fall of Ghaddafi⁴⁵⁰ and has around 800 fighters in its ranks.⁴⁵¹ The Abu Salim Brigade is led by Abdul-Ghani Kikli, known as Ghneiwa who, in January 2021, was promoted as head of the new Security Support Authority (or Stability Support Authority).⁴⁵²

⁴⁴² HRW, Libya: June 1996 Killings at Abu Salim Prison, 27 June 2006 (“27 June 2006 HRW Press Release”) ([Url](#) – last visited: 14 January 2022).

⁴⁴³ Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support and capacity-building needs, A/HRC/28/51, 12 January 2015 (“12 January 2015 UN OHCHR Report”), para.33.

⁴⁴⁴ 2018 UNSMIL Report, p.39, fn.153.

⁴⁴⁵ 2021 UN Panel of Experts Report, Annex 18, para.5. See also May 2021 GDP Abu Salim DC.

⁴⁴⁶ 2021 UN Panel of Experts Report, Annex 18, para.5; 2016 OHCHR Investigation, para.136; April 2019 Global Initiative and Clingendael Report, pp.87, 93.

⁴⁴⁷ 2015 UN Panel of Experts Report, para.80; 2016 UN Panel of Experts Report, para.86; 2016 OHCHR Investigation, para.136; August 2018 UNSG Report on UNSMIL, para.32. See also 2021 AI Report, p.39; Global Initiative, Harry Johnstone, Dominic Naish, Can Libya’s migrant-detention system be reformed?, 14 December 2020 ([Url](#) – last visited: 14 January 2022); 2019 ISPI Report, p.26; April 2019 Global Initiative and Clingendael Report, pp.87, 93; Domani, Sara Creta, L’anarchia delle deportazioni di migranti nel deserto libico, 1 June 2021 (“2021 Domani Article”) ([Url](#) – last visited: 14 January 2022). The Abu Salim Brigade is also known as Ghneiwa, Abu Salim Central Security, Abu Salim Central Security Force, Abu Salim Central Security Apparatus, Abu Salim Unit or Kikli Militia.

⁴⁴⁸ Chatham House, Tim Eaton, Abdul Rahman Alageli, Emadeddin Badi, Mohamed Eljarh and Valerie Stocker, The Development of Libyan Armed Groups Since 2014: Community Dynamics and Economic Interests, March 2020 (“2020 Chatham House Report”), p.19 ([Url](#) – last visited: 14 January 2022).

⁴⁴⁹ Government of the Netherlands, Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs), Country of origin information report on Libya, June 2020 (“2020 Netherlands-Ministry of Foreign Affairs Report on Libya”), p.21, fn.79 ([Url](#) – last visited: 14 January 2022).

⁴⁵⁰ 2019 ISPI Report, p.26.

⁴⁵¹ 2019 ISPI Report, p.26.

⁴⁵² 2021 AI Report, p.7. See also 2016 UN Panel of Experts Report, para.86; Amnesty International, Press Release, Libya: Ten years after uprising abusive militias evade justice and instead reap rewards, 17 February 2021 ([Url](#) – last visited: 14 January 2022).

iii. Figures of migrants detained in the Abu Salim DC and presence of migrants intercepted at sea in the centre

193. The Abu Salim DC mainly consists of migrants intercepted at sea.⁴⁵³ According to UNHCR data, a total of 1,400 refugees and migrants disembarked in the first six months of 2021 have been transferred to Abu Salim DC.⁴⁵⁴
194. In terms of general numbers, Global Initiative Against Transnational Organized Crime (“Global Initiative”) reported that approximately 560 migrants were detained at the Abu Salim DC as of April 2019, mainly of East African origin.⁴⁵⁵ The UN Panel of Experts documented 677 persons held in the Abu Salim DC in October 2019.⁴⁵⁶ By May 2021, the number of detainees had allegedly fallen to 416 individuals, including some unaccompanied children.⁴⁵⁷

iv. Underlying acts allegedly committed in Abu Salim DC

(a) Murder - Article (8)(2)(c)(i) of the Statute

195. Available information shows that migrants detained in the Abu Salim DC were killed during escape attempts from the facility. Further, first-hand testimony also suggests that guards of the centre beat a child resulting in his death.
196. Migrants held in the Abu Salim DC are “civilians”, they were not taking a direct part in hostilities at the time they were rescued or intercepted at sea nor at the time they were imprisoned in Libya. Therefore, pursuant to Article 8(2)(c)(i) of the Statute, the above-mentioned incidents amount to the war crime of violence to life and person, including murder.

⁴⁵³ April 2019 Global Initiative and Clingendael Report, p.34. See also 2021 UN Panel of Experts Report, para.43.

⁴⁵⁴ UNHCR, UNHCR Libya: Activities at Disembarkation, July 2021 ([Url](#) – last visited: 14 January 2022).

⁴⁵⁵ April 2019 Global Initiative and Clingendael Report, pp.87, 93.

⁴⁵⁶ 2019 UN Panel of Experts Report, Annex 19.

⁴⁵⁷ May 2021 GDP Abu Salim DC.

197. In May 2021, UNSMIL reported that on 23 and 26 February 2021, “guards at the Abu Salim DC [...] indiscriminately opened fire, killing at least five migrants and injuring many more”.⁴⁵⁸ According to Amnesty International, two witnesses testified that, on 13 June 2021, guards shot at migrants who were attempting to escape from the detention centre. The witnesses stated that, at least five migrants were hit by bullets and fell to the ground.⁴⁵⁹ In relation to this incident, *Médecins Sans Frontières* (“MSF”) reported that “on 13 June, automatic weapons were fired on people held in Abu Salim DC, causing multiple casualties”.⁴⁶⁰
198. In a separate incident, a 31-year-old refugee witnessed a guard beating a boy (believed to be around 16) who had attempted to escape until he collapsed and no longer moved. The witness added that after the guards dragged his body out of the hangar, he did not return (presumably he died).⁴⁶¹

(b) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

199. Migrants detained in the Abu Salim DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) being: (1) systematically physically assaulted and mistreated; (2) held in dire conditions of detention, in poor sanitary conditions without access to adequate food or medication; and (3) subjected to forced labour.
200. Under Article (8)(2)(c)(i) of the Statute, torture as a war crime requires the infliction of severe physical or mental pain or suffering to civilians or those *hors de combat* to obtain information, or as a form of punishment, intimidation or coercion, or for any reason based on discrimination of any kind.⁴⁶² Similar to torture, cruel treatment

⁴⁵⁸ May 2021 UNSG Report on UNSMIL, para.52. See also 2021 AI Report, pp.7 (Interview with “Jamal”), 38-39.

⁴⁵⁹ 2021 AI Report, p.39.

⁴⁶⁰ 22 June 2021 MSF Press Release. See also 2021 AI Report, p.45.

⁴⁶¹ 2021 AI Report, p.39 (Interview with “Amin”).

⁴⁶² ICC, *Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, paras.292-293. See also ICC, *Prosecutor v. Al Hassan*, ICC-01/12-01/18-461-Corr-Red, *Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, 13 November 2019 (“*Al Hassan Confirmation Decision*”), para.235.

requires the infliction of severe physical or mental pain or suffering upon one or more persons, including civilians or those *hors de combat*.⁴⁶³ However, as a residual category within Article 8(2)(c)(i), cruel treatment requires a lesser degree of suffering with respect to torture and does not require any specific purpose or intent.⁴⁶⁴

201. According to the information available, the individuals detained in the Abu Salim DC qualify as civilians, and the abuses they were subjected to meet the degree of suffering required by the war crime of torture and/or cruel treatment. Furthermore, the poor conditions of detention to which migrants were subjected and their performance of forced labour also qualify as cruel treatment.
202. Torture and other forms of ill-treatment. UN bodies and entities routinely reported cases of torture between 2015 and 2018 in the Abu Salim DC.⁴⁶⁵ In 2016, the UN Panel of Experts reported that “[a] specific room [in the Abu Salim DC] is used for torture”, and that “[s]everal so-called ‘inmates’ have ended up in nearby hospitals with severe injuries”.⁴⁶⁶ In 2018, UNSMIL and OHCHR observed in the Abu Salim DC “[p]atterns of torture included beatings, cigarette burns, electrocution, death threats, suspension in stress positions and confinement in small, suffocating spaces”.⁴⁶⁷ In 2018 and 2019, the OHCHR also documented allegations of torture perpetrated against female detainees, including beatings, whipping, and threats of a sexual nature.⁴⁶⁸ Following the 13 June 2021 incident, MSF raised concerns “about the repercussions of lack of treatment for those with potentially serious injuries and for the critically ill”.⁴⁶⁹

⁴⁶³ ICC Elements of Crimes, Article 8(2)(c)(i)-3.

⁴⁶⁴ *Al Hassan* Confirmation Decision, paras.255-257.

⁴⁶⁵ 12 January 2015 UN OHCHR Report, para.43; 2016 UN Panel of Experts Report, para.86; 2016 OHCHR Investigation, para.163; May 2016 UNSG Report on UNSMIL, para.40; December 2016 UNSG Report on UNSMIL, para.40; 2018 UNSMIL Report, p.44; August 2018 UNSG Report on UNSMIL, para.32.

⁴⁶⁶ 2016 UN Panel of Experts Report, para.86.

⁴⁶⁷ Human Rights Council, Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, A/HRC/37/46, 21 February 2018 (“2018 OHCHR Report”), para.64; Human Rights Council, Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights, A/HRC/40/46, 4 February 2019 (“2019 OHCHR Report”), para.63.

⁴⁶⁸ 2018 OHCHR Report, para.34; 2019 OHCHR Report, para.32.

⁴⁶⁹ 22 June 2021 MSF Press Release. See also 2021 AI Report, p.45.

203. In 2017, a migrant from Ghana reported to Medici per i Diritti Umani ("MEDU") that he had been locked up in Abu Salim DC, where he was beaten viciously with the iron end of a belt after being restrained, subjected to electric shocks, and had his eyes rubbed with chili pepper.⁴⁷⁰ He testified that the abuses have had significant, lasting effects on his ability to function.⁴⁷¹
204. Conditions of detention. In 2018, UNSMIL and the OHCHR documented patterns of torture, ill-treatment, denial of adequate medical treatment and inhuman prison conditions.⁴⁷² Some detainees testified that they had suffered from lack of food and adequate hygienic care. One detainee submitted that the insufficiency of food and items such as nappies for her baby meant that she could not properly care for her son and would go without food or drink for days at a time.⁴⁷³
205. Forced labour. HRW has acquired numerous statements of people who have been forced to work without pay, often in degrading and difficult circumstances. A 25-year-old Malian man testified that he was conscripted to lay bricks for eight months.⁴⁷⁴
206. There have also been attempts to bring migrants to the frontline of the conflict. In 2019, Euronews reported that a Sudanese refugee testified that the Abu Salim Brigade had attempted to recruit Sudanese refugees and send them to the frontline to load weapons.⁴⁷⁵ The witness had been taken to the Wadi Al-Rabea frontline along with four other detainees.⁴⁷⁶ A report from Small Arms Survey confirms that detainees in Abu Salim DC were forcibly recruited to fight in the armed conflict.⁴⁷⁷

⁴⁷⁰ 2020 MEDU Report, p.22 (Testimony of G.B.).

⁴⁷¹ 2020 MEDU Report, p.22 (Testimony of G.B.).

⁴⁷² 2018 OHCHR Report, para.64; 2019 OHCHR Report, para.63.

⁴⁷³ ABC News, Maggie Michael, Lori Hinnant, Renata Brito, Making Misery pay: Libya militias take EU funds for migrants, 31 December 2019 ("31 December 2019 ABC News Article") ([Url](#) – last visited: 14 January 2022).

⁴⁷⁴ 2019 HRW Report, pp.16-17 (Interview with "Ousmane").

⁴⁷⁵ Euronews, Sara Creta, UNHCR in Libya Part 4: The detention centres – the map and the stories, 7 October 2019 ("2019 Euronews Article") ([Url](#) – last visited: 14 January 2022).

⁴⁷⁶ 2019 Euronews Article.

⁴⁷⁷ Small Arms Survey, Jérôme Tubiana, Clotilde Warin, and Mahamat Saleh Mangare, Diaspora in Despair Darfuriian Mobility at a Time of International Disengagement, June 2020 ("June 2020 SAS Report"), p.61 ([Url](#) – last visited: 14 January 2022) referred to in 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51.

(c) Outrages upon personal dignity - Article 8(2)(c)(ii) of the Statute

207. The conditions of detention of migrants in the Abu Salim DC amount to outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute. In the specific circumstances of the case, the outrages include inhuman conditions of detention, medical neglect, strip searches, forced labour and forcing individuals to follow the militia to the frontline of the conflict.
208. The crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) of the Statute requires that the perpetrator humiliated, degraded or otherwise violated the dignity of one or more persons, and that the severity of such treatment was of such a degree that it is recognised as an outrage upon personal dignity.⁴⁷⁸ While the level of severity is an element that needs to be assessed on a *case-by-case* basis,⁴⁷⁹ the practice of the ICC and of the International Criminal Tribunal for the former Yugoslavia (“ICTY”)/International Criminal Tribunal for Rwanda (“ICTR”) considered that the following acts could amount to outrages upon personal dignity: rape;⁴⁸⁰ forcing an individual to walk naked in public;⁴⁸¹ the combination of suffering due to the inhuman conditions of detention, the ill-treatment and the proximity with other mistreated or tortured detainees.⁴⁸²
209. Ill-treatment. As noted above, multiple sources have reported on the prevalence of torture and cruel treatment in the Abu Salim DC.⁴⁸³ In 2017, UNSMIL and OHCHR received reports detailing patterns of torture, ill-treatment and inhuman living conditions in a number of detention facilities, including the Abu Salim DC.⁴⁸⁴ In 2018, the UN Secretary-General reported to the UNSC that UNSMIL had received credible accounts of torture and other ill-treatment, medical neglect and the denial of visits

⁴⁷⁸ *Al Hassan* Confirmation Decision, para.261.

⁴⁷⁹ *Al Hassan* Confirmation Decision, para.262.

⁴⁸⁰ *Al Hassan* Confirmation Decision, para.262 and references contained therein.

⁴⁸¹ *Al Hassan* Confirmation Decision, para.262 and references contained therein.

⁴⁸² *Al Hassan* Confirmation Decision, para.283.

⁴⁸³ See *supra*, paras.202-203.

⁴⁸⁴ 2018 OHCHR Report, para.64.

from families and lawyers.⁴⁸⁵ In particular, “[w]omen were strip-searched by or in front of male guards, and some were subjected to intrusive cavity searches”.⁴⁸⁶ In addition, in 2018 and 2019, UNSMIL and OHCHR documented allegations of torture and ill-treatment of women detainees, including beatings, whipping, and threats of a sexual nature.⁴⁸⁷

210. Conditions of detention. As noted above, in the Abu Salim DC migrants were held in dire sanitary conditions, being given little food, forced to drink unclean water, and deprived of adequate medical treatment.⁴⁸⁸
211. Forced labour. Migrants were forced to perform heavy manual work inside or in the proximity of the Abu Salim DC, including laying bricks. It has also been reported that the Abu Salim Brigade recruited migrants detained in the centre and sent them to the frontline in order to load weapons.⁴⁸⁹

(d) Taking of hostages - Article 8(2)(c)(iii) of the Statute

212. Abuses committed against migrants in the Abu Salim DC may also amount to the war crime of taking of hostages. According to Article 8(2)(c)(iii) of the Statute and the Elements of Crimes, this crime requires that the perpetrator seized, detained or otherwise held hostage one or more persons taking no active part in the hostilities, threatening to kill, injure or continue to detain such person or persons in order to compel a State, an international organisation, a natural or legal person or a group of persons to act or refrain from acting as an explicit or implicit condition for the safety or the release of such person or persons.
213. In the present case, families of migrants detained in the Abu Salim DC have been forced to pay a ransom to ensure the release of their relatives. In 2020, Chatham House

⁴⁸⁵ August 2018 UNSG Report on UNSMIL, para.32.

⁴⁸⁶ August 2018 UNSG Report on UNSMIL, para.39.

⁴⁸⁷ 2018 OHCHR Report, para.34; 2019 OHCHR Report, para.32.

⁴⁸⁸ See *supra*, para.204.

⁴⁸⁹ See *supra*, paras.205-206.

reported that people held in the centre testified that migrants kidnapped by the Abu Salim Brigade “are usually freed upon receipt of a ransom”⁴⁹⁰ and that the group uses kidnappings to raise funds for their activities.

v. Nexus with the armed conflict

214. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of, and were associated with, the ongoing armed conflict in Libya.
215. In order for the nexus requirement to be satisfied the perpetrator’s conduct need not take place as part of the hostilities, and the required nexus can be met even for crimes temporally or geographically remote from the actual fighting.⁴⁹¹ The armed conflict also need not have been causal to the commission of the crime. Instead, a sufficiently close link to the hostilities is required, namely that the conflict played a substantial part in the perpetrator’s ability to commit the crime, decision to commit it, or with regard to the purpose of its commission.⁴⁹² In this respect, factors indicating a link between the crime and the relevant armed conflict include that: (1) the perpetrator is a combatant; (2) the victim is a non-combatant or is a member of the opposing party; and (3) the crime may be said to serve the ultimate goal of a military campaign.⁴⁹³
216. These factors are neither exclusive nor need to be met cumulatively. In the ICTR *Rutaganda* case, the ICTR Appeals Chamber found the nexus requirement to be satisfied solely on the basis of the “combatant” status of the perpetrators and the “civilian” status of the victims.⁴⁹⁴ In the ICTY *Halilovic* case, the mere fact that soldiers had been “billeted” in a specific area “in preparation of combat operations” was

⁴⁹⁰ 2020 Chatham House Report, p.19 (Interview with residents from Abu Slim).

⁴⁹¹ *Ntaganda* Trial Judgement, para.731.

⁴⁹² ICC, *Situation in the Islamic Republic of Afghanistan*, ICC-02/17-138, Judgment on the appeal against the decision on the authorisation of an investigation into the situation in the Islamic Republic of Afghanistan, 5 March 2020 (“*Afghanistan* Appeal Judgement”), para.69; *Ntaganda* Trial Judgement, para.731.

⁴⁹³ *Afghanistan* Appeal Judgement, para.69.

⁴⁹⁴ ICTR, *The Prosecutor v. Rutaganda*, ICTR-96-3-A, Judgement, 26 May 2003 (“*Rutaganda* Appeal Judgement”), para.579.

considered sufficient to establish the nexus with the armed conflict for the crimes committed by those soldiers in the same area.⁴⁹⁵ Further, in the ICTR *Semanza* case crimes committed by civilians/non-combatants under the “pretext” of the conflict have also been considered closely related to the hostilities.⁴⁹⁶

217. Notably, the nexus has also been established with regard to crimes committed in areas (or detention centres) under the military control of the perpetrators, following combat operations. In the ICC *Al Hassan* case, the nexus requirement was considered satisfied for those crimes committed in Timbuktu after the perpetrators established their military control over the city and had the necessary authority and ability to use force and constraint against the individuals.⁴⁹⁷ Likewise, in the ICTY *Limaj* case, the ICTY Trial Chamber concluded that the crimes committed by the Kosovo Liberation Army (“KLA”) in the Llapushnik prison camp were linked to the conflict because, *inter alia*, the camp: (1) was set up after the KLA took control of the village of Llapushnik; (2) was run by KLA members; and (3) was dismantled after the KLA lost control of the area.⁴⁹⁸
218. In the specific circumstances of the Abu Salim DC, all of the above-mentioned factors are met. The members of the Abu Salim Brigade participated in the armed conflict and the migrants who suffered abuses in the Abu Salim DC did not take part or are not taking part in the hostilities. Moreover, the crimes served the purpose of furthering the Abu Salim Brigade.
219. As members of the Abu Salim Brigade, the perpetrators participated in the ongoing armed conflict in Libya. The perpetrators of the crimes committed against migrants in the Abu Salim DC took active part in the hostilities as members of the Abu Salim

⁴⁹⁵ ICTY, *Prosecutor v. Sefer Halilovic*, IT-01-48-T, Judgement, 16 November 2005 (“*Halilovic* Trial Judgement”), para.727.

⁴⁹⁶ ICTR, *Prosecutor v. Laurent Semanza*, No. ICTR-97-20-T, Judgement, 15 May 2003, para.518.

⁴⁹⁷ *Al Hassan* Confirmation Decision, paras.224-226.

⁴⁹⁸ ICTY, *Prosecutor v. Fatmir Limaj et al.*, IT-03-66-T, Judgement, 30 November 2005, para.174.

Brigade. Aligned with the GNA,⁴⁹⁹ the Abu Salim Brigade originated as a revolutionary brigade during the February 2011 Revolution against Ghaddafi's forces in 2011⁵⁰⁰ and has been in control of the Abu Salim neighbourhood since the end of the revolution.⁵⁰¹

220. The members of the Abu Salim Brigade participated in the main phases of the ongoing armed conflict in Libya. Specifically, in 2014, the brigade took part in "Operation Libya Dawn" and fought against the al-Sawaiq Battalion and Qa'qa' Brigade in Tripoli.⁵⁰² In 2016 and 2017, the Abu-Salim Brigade participated in the armed clashes that led to the expulsion from Tripoli of the forces aligned with former Prime Minister Al-Gweil to facilitate the establishment of the GNA.⁵⁰³ Likewise, in August/September 2018, it was involved in the armed clashes in the 2018 Battle of Tripoli (also known as the "Late Summer War").⁵⁰⁴ In 2019 and 2020, the Abu Salim Brigade fought against Haftar's forces in order to repel the 2019/2020 LNA Offensive against Tripoli,

⁴⁹⁹ 2019 UN Panel of Experts Report, Annex 19.

⁵⁰⁰ 2020 Netherlands-Ministry of Foreign Affairs Report on Libya, fn.79; Jamestown Foundation, Militant Leadership Monitor, Personalities Behind the Insurgency, September 2019 ("2019 Jamestown Foundation Report"), p.12 ([Url](#) – last visited: 14 January 2022). See *supra*, Sections II.A.1, IV.A.1.a.

⁵⁰¹ OHCHR/UNSMIL, Abuse Behind Bars: Arbitrary and unlawful detention in Libya, April 2018, fn.5.

⁵⁰² 2019 ISPI Report, p.26; Small Arms Survey, Briefing Paper, Wolfram Lacher and Alaa al-Idrissi, Capital of Militias: Tripoli's Armed Groups Capture the Libyan State, June 2018 ("2018 SAS Briefing Paper"), p.5 ([Url](#) – last visited: 14 January 2022), ("On 13 July 2014, a loose alliance of armed groups began attacking Zintani positions in Tripoli (see Map 1, p.6). The coalition, which subsequently became known as "Operation Libya Dawn", was largely made up of Misratan forces but also included Ghaniwa al-Kikli's forces (from Abu Slim)"); 2019 Jamestown Foundation Report, p.12. See *supra*, Sections II.A.4, IV.A.1.a.

⁵⁰³ 2017 UN Panel of Experts Report, paras.29, 54. See also 2018 SAS Briefing Paper, p.9 ("Tensions escalated again in February 2017 after a convoy carrying Sweihli came under fire near the Rixos, allegedly from elements of the Presidential Security Force (Al-Marsad, 2017a). The following month, Kikli, whose territory directly bordered the Rixos, joined with Tajuri to dislodge the remnants of the GNC, the Ghweil government, and affiliated armed groups from the area. Several days of heavy fighting ensued (Al-Wasat, 2017a). By that point, Kikli had, subsequent to several rounds of heavy fighting, emerged victorious from several confrontations with the Burki Battalion in al-Hadhba and a number of Misratan armed groups along the airport road."); 2019 Jamestown Foundation Report, p.13. See *supra*, Sections II.A.6, IV.A.1.a.

⁵⁰⁴ The Arab Weekly, Michel Cousins, As clashes resume, situation threatens to spin out of control in Tripoli, 23 September 2018 ([Url](#) – last visited: 14 January 2022); 2019 Jamestown Foundation Report, pp.13-14. See *supra*, Sections II.A.7, IV.A.1.a.

suffering heavy losses.⁵⁰⁵ In and of itself, the combatant status of the perpetrators, as members of the Abu Salim Brigade, is a factor indicative of the war crime nexus.⁵⁰⁶

221. Moreover, this element, combined with the fact that the Abu Salim Brigade has military control over the area where the Abu Salim DC is located, shows a clear link between the conflict and the perpetrators' ability to commit the crimes. Their military control over the area allows the members of the Abu Salim Brigade to run the Abu Salim DC and, consequently, to commit the crimes against migrants detained therein. It follows that the conflict, therefore, played a substantial part on the perpetrators' ability to commit the crimes.
222. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the Abu Salim DC did not take active part in the conflict or the hostilities.⁵⁰⁷
223. The underlying acts also served the purpose of furthering the military campaign of the Abu Salim Brigade. As noted above, migrants detained in the Abu Salim DC were forced to load ammunition and weapons.⁵⁰⁸ They have also been forcibly recruited by

⁵⁰⁵ 2019 UN Panel of Experts Report, Annex 6, appendix A, Item G8; 2020 Netherlands-Ministry of Foreign Affairs Report on Libya, p.21; Small Arms Survey, Briefing Paper, Wolfram Lacher, Who is Fighting whom in Tripoli? How the 2019 Civil War is Transforming Libya's Military Landscape, August 2019, pp.6-7 ("The militias that dominated Tripoli's security landscape in recent years—and are largely post-revolutionary formations— form a minor component of the forces opposing Haftar. The largest contingent of fighters from Tripoli (around 300)—and one that has suffered heavy losses—is that commanded by Abdelghani 'Ghaniwa' al-Kikli, who has for years headed militias in the Abu Slim district of the capital. Kikli's forces are fighting on the front around Tripoli International Airport") (footnote omitted) ([Url](#) – last visited: 14 January 2022). See also January 2019 UNSG Report on UNSMIL, para.10; 2019 Jamestown Foundation Report, p.13. See *supra*, Sections II.A.8-9, IV.A.1.a.

⁵⁰⁶ See *Afghanistan* Appeal Judgement, para.69. As noted above, under the ICTR jurisprudence, the "combatant" status of the perpetrator (together with the victim status as civilian/protected under Common Article 3 of the Geneva Convention), has been considered sufficient factor to satisfy the nexus requirement. See *Rutaganda* Appeal Judgement, para.579.

⁵⁰⁷ See also Humanitarian Law & Policy, Helen Obregón Gieseken, Eloise Ouellet Decoste, IHL & the protection of migrants caught in armed conflict, 4 June 2018 ("2018 Humanitarian Law & Policy") ([Url](#) – last visited: 14 January 2022). This except for the very moment in which the migrants engaged in fighting as forced by the members of the Abu Salim Brigade itself. Outside such limited temporal aspect, while in detention migrants are to be considered persons protected under Common Article 3 of the Geneva Conventions. Helen Obregon Gieseken, The Protection of Migrants under International Humanitarian Law, *International Review of the Red Cross* (2017), 99 (1) ("The Protection of Migrants under International Humanitarian Law "), 121–152, pp.138-140. The circumstances in which migrants were employed in the hostilities suggest that migrants did not assume a continuous combat function.

⁵⁰⁸ See *supra*, para.206.

the Abu Salim Brigade for the purpose to take part in the ongoing hostilities.⁵⁰⁹ This is amply corroborated by the numerous UN and NGOs reports indicating that migrants detained in DCIM Detention Centres were routinely obliged to carry-out military-related activities,⁵¹⁰ and forced to fight.⁵¹¹

224. In essence, migrants in the Abu Salim DC have been exploited as a resource for military purposes. The climate of fear created in the Abu Salim DC served to assist the Abu Salim Brigade's fighting efforts. Imprisoned and vulnerable to mistreatment, migrants became a resource for the Abu Salim Brigade to further their military goals and were not in a position to oppose or question their forced military deployment. As such, the conflict played a substantial part in the manner and purpose of the commission of the crimes against migrants.

b. Tarik al-Matar DC (Tripoli)

i. Overview

225. The Tarik al-Matar DC is located in Tripoli and was operational at least between August 2016 and September 2018.⁵¹² Officially under the DCIM, the Tarik al-Matar DC is manned by the 301 Infantry Battalion, a GNA-aligned armed group originating

⁵⁰⁹ See *supra*, para.206.

⁵¹⁰ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups. The Organization has also received credible information of forced recruitment among refugees and migrants”); April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups.”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.47 (“UNSMIL reports that there continue to be credible allegations of refugees and migrants detained close to military facilities, of weapons and munitions stored inside detention centres and of refugees and migrants forced to provide logistical support to armed groups that control detention centres.”); 2018 UNSMIL Report, p.29 (“According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning”); UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25; 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, p.41; 2019 HRW Report, p.17.

⁵¹¹ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“The Organization has also received credible information of forced recruitment among refugees and migrants”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; 17 January 2020 DPA Article.

⁵¹² See *infra*, Section IV.A.2.b.ii.

from Misrata and based in Tripoli, which participated in the hostilities in various phases of the Libyan conflict.⁵¹³

226. Between 2016 and 2018, the Tarik al-Matar DC accommodated thousands of migrants in detention, including migrants intercepted at sea by the LCG.⁵¹⁴ In the Tarik al-Matar DC, migrants were systematically tortured, subjected to ill-treatment and/or forced labour, and held in inadequate conditions of detention.⁵¹⁵ In particular, migrants were forced to unload weapons in a warehouse located in the proximity of the detention centre as well as obliged to take part in the fighting.⁵¹⁶
227. These acts qualify as torture/cruel treatment and outrages upon personal dignity under Articles 8(2)(c)(i)-(ii) and took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁵¹⁷

ii. Location, temporal scope, and armed group in charge of the centre

228. The Tarik al-Matar DC is located in Tripoli, in the western part of Libya.⁵¹⁸ The centre was operational between at least August 2016 and September 2018.⁵¹⁹ An Italian NGO has further reported the distribution of goods in the camp as late as November 2019.⁵²⁰
229. The Tarik al-Matar DC was under the control of the 301 Infantry Battalion, an armed group originating from Misrata and based in Tripoli.⁵²¹ It is composed of around 1500

⁵¹³ See *infra*, Section IV.A.2.b.ii.

⁵¹⁴ See *infra*, Section IV.A.2.b.iii.

⁵¹⁵ See *infra*, Section IV.A.2.b.iv.

⁵¹⁶ See *infra*, para.243.

⁵¹⁷ See *infra*, Section IV.A.2.b.v.

⁵¹⁸ 2019 UN Panel of Experts Report, para 55 (GPS coordinates: 31°59'29.60"N, 12°30'54.10"E).

⁵¹⁹ 2019 HRW Report, pp.46 (confirming that the centre was open prior to October 2017), 52-54 (confirming that the centre was still open in August 2018); IOM, Tripoli: Joint Rapid Situation Overview, Libya 21 September 2018, pp.1-2 (confirming that the Tarik al-Matar was closed on September 2018 due to the conflict) ([Url](#)– last visited: 14 January 2022).

⁵²⁰ Helpcode, Proseguono le distribuzioni dei beni di prima necessità, a Abu Salim – Trik al Matar e Zawiya, 2 December 2019 ([Url](#)– last visited: 14 January 2022) (reporting how soap and other goods were delivered to the “Trik al Matar” camp on 27 November 2019).

⁵²¹ April 2019 Global Initiative and Clingendael Report, p.93; DCAF – Geneva Centre for Security Sector Governance, Emadeddin Badi, Exploring Armed Groups in Libya: Perspectives on Security Sector Reform in a

members⁵²² and it was part of the Halbous Brigade, one of the largest armed groups that joined the February 2011 Revolution⁵²³ and “Operation Libya Dawn”.⁵²⁴

230. The 301 Infantry Battalion was created in 2015 based on a decision by the GNS.⁵²⁵ Between 2015 and 2018, it asserted control over the south-west area of Tripoli.⁵²⁶ Following the establishment of the GNA in Tripoli, the 301 Infantry Battalion became part of the so-called “Tripoli’s Militia Cartel” alongside the Nawasi Brigade, the Tripoli Revolutionaries Brigade, and the Abu Salim Brigade and the Special Deterrence Force.⁵²⁷ It also participated in various armed clashes in Tripoli in 2016, 2018 and 2019.⁵²⁸

iii. Figures of migrants detained in the Tarik al-Matar DC and presence of migrants intercepted at sea in the centre

231. The Tarik al-Matar DC detained migrants following their interception at sea by the LCG.⁵²⁹
232. The number of migrants detained in the Tarik al-Matar DC fluctuated between 600 and 1,900. As of February 2018, it was reported that there were “630 migrants detained in Tarik al-Matar DC, including 290 Nigerians, 200 Sierra Leoneans, 80 Ghanaians, and small groups of other nationalities of no more than five persons (such as Somalis).”⁵³⁰ In July 2018, it was reported that there were 1,770 detainees including

Hybrid Environment, 23 November 2020 (“2020 DCAF Report”), pp.57-60 ([Url](#) – last visited: 14 January 2022). See also 2019 ISPI Report, p.26.

⁵²² 2019 ISPI Report, p.26.

⁵²³ Libya’s Fragmentation, p.112.

⁵²⁴ 2020 DCAF Report, p.57; 2019 ISPI Report, p.26.

⁵²⁵ 2020 DCAF Report, p.57.

⁵²⁶ 2020 DCAF Report, p.57.

⁵²⁷ 2019 ISPI Report, pp.22, 24.

⁵²⁸ 2020 DCAF Report, pp.57-60.

⁵²⁹ ASGI, Profili critici delle attività delle ONG italiane nei centri di detenzione in Libia con fondi A.I.C.S., 15 July 2020 (“2020 ASGI Report”) ([Url](#) – last visited: 14 January 2022), p.6 (pdf page number); 2019 UN Panel of Experts Report, para.55.

⁵³⁰ Global Detention Project, Immigration Detention in Libya: “A Human Rights Crisis”, 18 August 2018 (“2018 GDP Report”) ([Url](#) – last visited: 14 January 2022), p.43.

680 Eritreans, 240 Sudanese and 200 Somalians.⁵³¹ Global Initiative reported that there were 400 migrants detained in the Tarik al-Matar DC as of December 2018.⁵³²

iv. Underlying acts allegedly committed in Tarik al-Matar DC

(a) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

233. Migrants detained in the Tarik al-Matar DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) being: (1) systematically physically assaulted and mistreated; (2) held in dire conditions of detention, in poor sanitary conditions without access to adequate food or medication; and (3) subjected to forced labour.⁵³³
234. The information available indicates that migrants in detention in the Tarik al-Matar DC qualify as civilians, and that the assaults and abuses suffered were inflicted as a form of punishment or intimidation/coercion and meet the degree of suffering required by the war crime of torture and/or cruel treatment. Moreover, the poor conditions of detention to which the migrants were subjected and their performance of forced labour, including heavy physical and manual activities, also qualify as cruel treatment.
235. Torture and other forms of ill-treatment. Numerous sources report that migrants detained in the Tarik al-Matar DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation and coercion. Based on interviews conducted in Tripoli in November 2017, UNSMIL concluded that migrants in the Tarik al-Matar DC were “systematically subjected to torture and other ill-treatment”.⁵³⁴

⁵³¹ 2018 GDP Report, p.43.

⁵³² April 2019 Global Initiative and Clingendael Report, pp.87, 93.

⁵³³ For the definition of the crime of torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) see *supra*, para.200.

⁵³⁴ 2018 UNSMIL Report, p.44.

236. A migrant reported to UNSMIL that on his first day of detention at the Tarik al-Matar DC he was beaten with a water pipe and wooden sticks because he had rushed out of the hangar to get bread in the morning.⁵³⁵ He also testified that guards walked on people lying on the floor.⁵³⁶ Another man interviewed affirmed that the migrants detained in the Tarik al-Matar DC were subjected to daily beatings and were struck with electric sticks in case they requested food, medical treatment or information about what would happen to them.⁵³⁷ The same interviewee reported that a man was killed in the camp.⁵³⁸
237. The information above is corroborated by the Italian Television programme “Le Iene” which reported on the detainees’ living conditions in the Tarik al-Matar DC based on interviews with migrants detained at the DC who managed to reach Europe.⁵³⁹ Those interviewed by Le Iene reported that the guards in the Tarik al-Matar DC repeatedly tortured and mistreated detainees through various methods including the use of electrified cables.⁵⁴⁰ Specifically, the victims testified that they had been subjected to “falanga” (hand and foot whipping), beatings with iron chains and electrocution, committed by guards to extort money from migrants detained in the centre.⁵⁴¹ The victims also reported that the guards drilled the palms of a Somali detainee with an electric drill.⁵⁴² A migrant provided evidence that a guard tried to pull out one of his teeth made out of gold with a forceps.⁵⁴³ Demonstrations about the conditions of detention in the centres were quelled by the guards with tear gas (used inside the centre), firing of weapons and violence (including beating the detainees until they were unconscious).⁵⁴⁴

⁵³⁵ 2018 UNSMIL Report, p.45.

⁵³⁶ 2018 UNSMIL Report, p.45.

⁵³⁷ 2018 UNSMIL Report, p.45.

⁵³⁸ 2018 UNSMIL Report, p.45.

⁵³⁹ 29 April 2019 Le Iene Video.

⁵⁴⁰ 29 April 2019 Le Iene Video, 00:03:38-00:04:53.

⁵⁴¹ 29 April 2019 Le Iene Video, 00:04:05-00:04:32.

⁵⁴² 29 April 2019 Le Iene Video, 00:04:59-00:05:06.

⁵⁴³ 29 April 2019 Le Iene Video, 00:05:07-00:05:18.

⁵⁴⁴ 29 April 2019 Le Iene Video, 00:05:30-00:06:07.

238. Cruel treatment also occurred in the form of enforced disappearance. ASGI reported that, in August 2018, 20 migrants previously intercepted at sea and detained in the Tarik al-Matar DC disappeared from the centre.⁵⁴⁵
239. On 7 August 2018, the Italian newspaper *Avvenire* confirmed the disappearance of 85 detainees, including 65 women and children.⁵⁴⁶ The disappearance led to a revolt in the Tarik al-Matar DC against the inhuman conditions of the camp, as migrants believed that they were being sold to smugglers.⁵⁴⁷
240. Conditions of detention. Conditions of detention in the Tarik al-Matar DC were appalling. Migrants reported that the centre was overcrowded with little to no space to move, and that sanitary facilities were not sufficient and often did not function,⁵⁴⁸ with only two functioning toilets for 1400 detainees.⁵⁴⁹ Because of the insufficient hygienic conditions, migrants contracted scabies, and at least six detainees died because of tuberculosis.⁵⁵⁰ The spread of tuberculosis in the Tarik al-Matar DC is also confirmed by the NGO *Tempi Moderni*, which reported that three young detainees died from tuberculosis in July 2018.⁵⁵¹
241. An Italian NGO involved in one of the projects funded by Italy in the Tarik al-Matar DC reported that the food received by detainees could not satisfy the calorie requirement, there was no cutlery available and the rations were scarce.⁵⁵² According to the same NGO, the situation caused difficulties for mothers of infants who required

⁵⁴⁵ 2020 ASGI Report, pp.28-29 (pdf page number), referring to *Tempi Moderni*, Emilio Druidi, Spariti 20 Profughi a Tarek Al Matar. I compagni: “Temiamo che li vendano ai trafficanti”, 7 August 2018 (“2018 *Tempi Moderni* Report”) ([Url](#) – last visited: 14 January 2022).

⁵⁴⁶ *Avvenire*, Paolo Lambruschi, Libia. La rivolta dei migranti nel lager: temono di essere venduti ai trafficanti, 7 August 2018 (“7 August 2018 *Avvenire* Article”) ([Url](#) – last visited: 14 January 2022).

⁵⁴⁷ 7 August 2018 *Avvenire* Article.

⁵⁴⁸ 2018 *Tempi Moderni* Report.

⁵⁴⁹ 29 April 2019 *Le Iene* Video, 00:03:050-00:03:056.

⁵⁵⁰ 29 April 2019 *Le Iene* Video, 00:05:030-00:05:040.

⁵⁵¹ 2018 *Tempi Moderni* Report.

⁵⁵² 2020 ASGI Report, p.20.

breastfeeding, since they could not produce enough milk due to their malnourishment.⁵⁵³

242. **Forced labour.** Migrants detained in the Tarik al-Matar DC were subjected to forced labour, mostly without pay.⁵⁵⁴ UNSMIL reported that migrants were forced to engage in “physically difficult manual labour”⁵⁵⁵ in farms and construction sites and, specifically, that they were forced to clean, cook, offload heavy items, and wash the vehicles of DCIM officials.⁵⁵⁶
243. The use of forced labour was confirmed in an interview conducted by HRW. Suleyman, a 30-year-old man from Darfur in Sudan, stated that he was forced to work without pay for the military camp of 301 Infantry Battalion and that he would receive no food, or one meal, per day.⁵⁵⁷ According to testimonies collected by InfoMigrants, migrants at the Tarik al-Matar DC were forced to unload weapons in a warehouse located a few meters from the detention centre.⁵⁵⁸ A report from Small Arms Survey confirmed that detainees in Tarik al-Matar DC were forcibly recruited to fight in the armed conflict.⁵⁵⁹

(b) Outrages upon personal dignity - Article 8(2)(c)(ii) of the Statute

244. The conditions of detention of migrants in Tarik al-Matar DC also qualify as the war crime of outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute.⁵⁶⁰
245. Migrants were held in squalid conditions of detention, systematically subjected to ill-treatment or torture and performed forced labour. Taken individually, or as a whole,

⁵⁵³ 2020 ASGI Report, p.22.

⁵⁵⁴ 2018 UNSMIL Report, p.47.

⁵⁵⁵ 2018 UNSMIL Report, p.47.

⁵⁵⁶ 2018 UNSMIL Report, p.47.

⁵⁵⁷ 2019 HRW Report, p.17.

⁵⁵⁸ InfoMigrants, Leslie Carretero, Témoignages: le travail forcé, l'autre facette de l'enfer que vivent les migrants détenus en Libye, 6 May 2019 (“6 May 2019 InfoMigrants Article”) ([Url](#) – last visited: 14 January 2022).

⁵⁵⁹ June 2020 SAS Report, p.61 referred to in 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51.

⁵⁶⁰ For the definition of the crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) see *supra*, para.208.

these circumstances constitute humiliating and degrading treatment that meets the level of severity required by Article 8(2)(c)(ii) of the Statute.

246. Ill-treatment. As noted above, multiple sources have reported the prevalence of ill-treatment and torture in the Tarik al-Matar DC.⁵⁶¹
247. Conditions of detention. As noted, the Tarik al-Matar DC was overcrowded. Migrants were confined in large rooms in poor hygienic conditions, with no ventilation and lack of food.⁵⁶² Because of the poor hygienic conditions, migrants contracted scabies and tuberculosis and some died as a result thereof.⁵⁶³
248. Forced labour. Migrants detained in the Tarik al-Matar DC were forced to perform heavy manual work mostly without any pay, merely receiving food.⁵⁶⁴ As noted above, migrants detained in the Tarik al-Matar DC were forced to engage in “physically difficult manual labour” in farms and construction sites, offloading heavy items.⁵⁶⁵ Migrants were also forced to engage in conflict-related activities, compelled to unload weapons and ammunition or forcibly recruited to fight in the conflict.⁵⁶⁶

v. *Nexus with the armed conflict*

249. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁵⁶⁷
250. The members of the 301 Infantry Battalion participated in the armed conflict, the migrants who suffered abuses in the Tarik al-Matar DC were persons protected under

⁵⁶¹ See *supra*, paras.234-239.

⁵⁶² See *supra*, paras.240-241.

⁵⁶³ See *supra*, para.240.

⁵⁶⁴ See *supra*, paras.242-243.

⁵⁶⁵ See *supra*, para.242.

⁵⁶⁶ See *supra*, para.243.

⁵⁶⁷ For the definition of the war crime nexus requirement see *supra*, paras.215-217.

Common Article 3 of the Geneva Conventions, and they were forced to engage in conflict related activities.

251. The perpetrators participated in the ongoing armed conflict in Libya as members of the 301 Infantry Battalion. The 301 Infantry Battalion is an armed group aligned to the GNA and its members took part in various parts of the ongoing conflict in Libya between 2016 and 2020.⁵⁶⁸ In 2016, the 301 Infantry Battalion was engaged in fighting against armed groups in Warshaffana.⁵⁶⁹ Between 2016 and 2017, the battalion further participated in the armed clashes that led to the expulsion from Tripoli of the forces aligned with former Prime Minister Al-Gweil to facilitate the establishment of the GNA.⁵⁷⁰ In 2018, it took part in the 2018 Battle of Tripoli (also known as “the Late Summer War”) to repel the attack of the Kaniyat/ 7th Brigade against Tripoli.⁵⁷¹ Between 2019 and 2020 it fought against Haftar’s forces during 2019/2020 LNA Offensive against Tripoli.⁵⁷²
252. In and of itself, the combatant status of the perpetrators, as members of the 301 Infantry Battalion, is a factor indicative of the war crime nexus.⁵⁷³ Moreover, this element, combined with the fact that the 301 Infantry Battalion had military control over the area where the Tarik al-Matar DC is situated,⁵⁷⁴ shows a clear link between the conflict and their ability to commit the crimes. From a purely causal standpoint, without that military control over the area, the members of the 301 Infantry Battalion would not be able to: (1) run the Tarik al-Matar DC; and (2) commit the crimes against

⁵⁶⁸ See *supra*, para.230.

⁵⁶⁹ 2020 DCAF Report, p.58.

⁵⁷⁰ 2020 DCAF Report, p.58. See *supra*, Sections II.A.6, IV.A.1.a.

⁵⁷¹ 2020 DCAF Report, p.59. See *supra*, Sections II.A.7, IV.A.1.a.

⁵⁷² 2019 UN Panel of Experts Report, Annex 6, appendix A, Item G2; 2020 DCAF Report, pp.59-60. See *supra*, Sections II.A.8-9, IV.A.1.a.

⁵⁷³ See *Afghanistan Appeal Judgement*, para.69. As noted above, under the ICTR jurisprudence, the “combatant” status of the perpetrator (together with the victim status as civilian/protected under Common Article 3 of the Geneva Convention), has been considered sufficient factor to satisfy the nexus requirement. See *Rutaganda Appeal Judgement*, para.579.

⁵⁷⁴ Tarik al-Matar was situated in western part of Tripoli area under the control of the 301 Infantry Battalion. 2019 HRW Report, p.17; 2019 UN Panel of Experts Report, para 55 (GPS coordinates: 31°59'29.60"N, 12°30'54.10"E); 2020 DCAF Report, p.57.

migrants detained therein. It follows that the conflict played a substantial part on the perpetrators' ability to commit the crimes.

253. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the Tarik al-Matar DC did not take active part in the conflict or the hostilities.⁵⁷⁵
254. The underlying acts also served the purpose of furthering the military campaign of the 301 Infantry Battalion. According to the testimonies collected by HRW and InfoMigrants, migrants detained at the Tarik al-Matar DC were forced to work in the bases of the 301 Infantry Battalion and to unload weapons in a warehouse located a few meters from the centre.⁵⁷⁶ Additionally, the information available confirms that 301 Infantry Battalion forcibly recruited migrants to fight in the armed conflict.⁵⁷⁷ The exploitation of migrants for military-related activities in the Tarik al-Matar DC is amply corroborated by the numerous UN and NGOs reports indicating that migrants

⁵⁷⁵ See also 2018 Humanitarian Law & Policy. This except for the very moment in which the migrants engaged in fighting as forced by the members of the 301 Infantry Battalion. Outside such limited temporal aspect, while in detention migrants are to be considered persons protected under Common Article 3 of the Geneva Conventions. The Protection of Migrants under International Humanitarian Law, 121–152, pp.138-140. The circumstances in which migrants were employed in the hostilities suggest that migrants did not assume a continuous combat function.

⁵⁷⁶ See *supra*, para.243.

⁵⁷⁷ See *supra*, para.243.

detained in DCIM Detention Centres were routinely obliged to carry out military-related activities,⁵⁷⁸ and forced to fight.⁵⁷⁹

255. As such, migrants were used as a resource for the 301 Infantry Battalion's military purposes. The climate of fear created in the Tarik al-Matar DC served to assist the 301 Infantry Battalion's fighting efforts. Imprisoned and vulnerable to mistreatment, migrants became a resource for the 301 Infantry Battalion to further its military goals and were not in a position to oppose or question their forced military deployment. As such, the conflict played a substantial part in the manner and purpose of the commission of the crimes against migrants.

c. Tarik al-Sikka DC (Tripoli)

i. Overview

256. The Tarik al-Sikka DC⁵⁸⁰ is located in Tripoli and has been active since 2017.⁵⁸¹ Officially directed by the DCIM, the Tarik al-Sikka DC is controlled by the Mohamed al-Khoja Militia ("al-Khoja Militia"), an armed group, which participated in various phases of the conflict in Libya.⁵⁸²

⁵⁷⁸ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 ("Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups. The Organization has also received credible information of forced recruitment among refugees and migrants"); April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 ("Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups."); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.47 ("UNSMIL reports that there continue to be credible allegations of refugees and migrants detained close to military facilities, of weapons and munitions stored inside detention centres and of refugees and migrants forced to provide logistical support to armed groups that control detention centres."); 2018 UNSMIL Report, p.29 ("According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning"); UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25; 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, p.41; 2019 HRW Report, p.17.

⁵⁷⁹ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 ("The Organization has also received credible information of forced recruitment among refugees and migrants"); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; 17 January 2020 DPA Article.

⁵⁸⁰ Also referred to as Tariq al Sikka, Trig el Sikka, or Triq al Seka.

⁵⁸¹ See *infra*, Section IV.A.2.c.ii.

⁵⁸² See *infra*, Section IV.A.2.c.ii.

257. Between 2017 and 2021, the Tarik al-Sikka DC accommodated thousands of migrants in detention, including migrants intercepted at sea by the LCG.⁵⁸³ In the Tarik al-Sikka DC migrants were held in inadequate conditions of detention and systematically tortured, subjected to ill-treatment, forced labour, enforced disappearance, and hostage-taking.⁵⁸⁴ In particular, migrants detained in the Tarik al-Sikka DC have been forced to clean and move weapons and ammunition, transport them to the frontline or pressured to join the fighting.⁵⁸⁵
258. These acts qualify as torture/cruel treatment, outrages upon personal dignity and taking of hostages under Article 8(2)(c)(i)-(iii) of the Statute and took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁵⁸⁶

ii. Location, temporal scope, and armed group in charge of the centre

259. Tarik al-Sikka DC is located in Tripoli, baladiyah (district) of Sahraa al-Zawiya.⁵⁸⁷ The detention centre is controlled and managed by the al-Khoja Militia under the command of Lieutenant Abdul Naser Hazam.⁵⁸⁸ The facilities where the Tarik al-Sikka DC is situated also serve as the military base of the al-Khoja Militia.⁵⁸⁹ It has been active since 2017 and reports show that it was still operational in 2021.⁵⁹⁰

⁵⁸³ See *infra*, Section IV.A.2.c.iii.

⁵⁸⁴ See *infra*, Section IV.A.2.c.iv.

⁵⁸⁵ See *infra*, para.271.

⁵⁸⁶ See Section IV.A.2.c.v.

⁵⁸⁷ April 2019 Global Initiative and Clingendael Report, p.87; March 2019 Global Initiative and Clingendael Report, p.25, Map 3.

⁵⁸⁸ Global Initiative, Conflict, Coping and COVID: Changing human smuggling and trafficking dynamics in North Africa and the Sahel in 2019 and 2020, April 2021 (“2021 Global Initiative Report”), pp.22, 26-27; April 2019 Global Initiative and Clingendael Report, pp.87, 93; 2021 Domani Article; See also CNN, Ben Wedeman, Waffa Munayyer and Gabriel Chaim, Migrants describe being tortured and raped on perilous journey to Libya, 9 October 2019 ([Url](#) – last visited: 14 January 2022).

⁵⁸⁹ April 2019 Global Initiative and Clingendael Report, p.87; 2021 Domani Article; HRW, Libya: Detained Migrants at Risk in Tripoli Clashes, 25 April 2019 (“25 April 2019 HRW Press Release”), (“At Tarik Al Sikka detention center, in Tripoli, militia members have stored weapons and munitions including shoulder-fired rockets, hand grenades, and bullets”) ([Url](#) – last visited: 14 January 2022); Foreign Policy, Sally Hayden, The U.N. is Leaving Migrants to Die in Libya, 10 October 2019 (“10 October 2019 Foreign Policy Article”) ([Url](#) – last visited: 14 January 2022).

⁵⁹⁰ 2021 UN Panel of Experts Report, Annex 18, para.5; 2021 AI Report, p.35; European Council for Refugees and Exiles (“ECRE”), Med: 12 left to Die and 182 Stranded as EU States Refuse Rescue, 17 April 2020 (“17 April 2020 ECRE News Report”) ([Url](#) – last visited: 14 January 2022).

iii. Figures of migrants detained in the Tarik al-Sikka DC and presence of migrants intercepted at sea in the centre

260. Reports detail that the Tarik al-Sikka DC accommodated up to 650 detainees at any given time.⁵⁹¹ Migrants intercepted at sea are detained in the centre.⁵⁹² In September 2020, the UN Secretary-General observed that despite overcrowding the Tarik al-Sikka DC continued to receive “new detainees” following their interception at sea.⁵⁹³ In particular, between 2017 and 2018, more than 5500 migrants intercepted at sea had been transferred to the Tarik al-Sikka DC.⁵⁹⁴ Migrants rescued by the LCG continued to be transferred to the Tarik al-Sikka DC also between 2020 and 2021.⁵⁹⁵

iv. Underlying acts allegedly committed in the Tarik al-Sikka DC

(a) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

261. Migrants detained in the Tarik al-Sikka DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i), being: (1) systematically physically assaulted and mistreated; (2) held in dire detention conditions without access to adequate food or medication; and (3) subjected to forced labour.⁵⁹⁶
262. Migrants in detention in the Tarik al-Sikka DC qualify as civilians. The assaults and abuse suffered were inflicted as a form of punishment or intimidation/coercion and meet the degree of suffering required by the war crime of torture and/or cruel treatment. In addition, the poor conditions of detention to which migrants were

⁵⁹¹ April 2019 Global Initiative and Clingendael Report, p.93; 2019 UN Panel of Experts Report, Annex 19; UNHCR, Refugees protest conditions in Libyan detention as resettlement solutions falter, 5 March 2019 (“March 2019 UNHCR Briefing Note”) ([Url](#) – last visited: 14 January 2022).

⁵⁹² 2021 OHCHR Report, p.20 (reporting about migrants intercepted by the LCG at sea transferred to Tarik al-Sikka DC); 2020 ASGI Report, p.6; The Guardian, Francesca Mannocchi, Torture, rape and murder: inside Tripoli’s refugee detention camps, 3 November 2019 (“3 November 2019 The Guardian Article”) ([Url](#) – last visited: 14 January 2022); Il Manifesto, Sarita Fratini, Schiavi-soldato dal mare alla guerra di Libia , 10 June 2020 (“10 June 2020 Il Manifesto Article”) ([Url](#) – last visited: 14 January 2022).

⁵⁹³ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Person, para.14.

⁵⁹⁴ April 2019 Global Initiative and Clingendael Report, p.34, Figure 9.

⁵⁹⁵ 17 April 2020 ECRE News Report.

⁵⁹⁶ For the definition of torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) see *supra*, para.200.

subjected and their performance of forced labour, including heavy physical and manual activities, also qualify as cruel treatment.

263. Torture and other forms of ill-treatment. Numerous sources reported that migrants detained in the Tarik al-Sikka DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation or coercion. According to UNSMIL, migrants in the Tarik al-Sikka DC were “systematically subjected to torture and other ill-treatment”.⁵⁹⁷ UNSMIL findings are also corroborated by the ECCHR, FIDH, and LFJL, which collected evidence of detainees being often subjected to beating in the centre.⁵⁹⁸
264. Ahmed, a Palestinian migrant reported to HRW having been beaten by guards with a wooden stick during detention at the Tarik al-Sikka DC merely for trying to speak with a representative of UNHCR.⁵⁹⁹
265. Ahmed also reported widespread indiscriminate and unjustified beatings against other migrants detained at the Tarik al-Sikka DC.⁶⁰⁰ He recalled that guards would beat migrants who tried to run away, together with any other detainees who were in their way.⁶⁰¹ In a specific instance, Ahmed had been beaten with a plastic hose after someone tried to escape.⁶⁰² He also stated that guards would enter cells and beat people randomly.⁶⁰³

⁵⁹⁷ 2018 UNSMIL Report, p.44.

⁵⁹⁸ ECCHR/FIDH/LFJL Report, para.21.

⁵⁹⁹ 2019 HRW Report, p.41, fn.108.

⁶⁰⁰ 2019 HRW Report, p.41, fn.108.

⁶⁰¹ 2019 HRW Report, p.41, fn.108.

⁶⁰² 2019 HRW Report, p.41, fn.108.

⁶⁰³ 2019 HRW Report, p.41, fn.108.

266. Al Jazeera, similarly, confirmed that detainees were tortured, beaten with metal, plastic or wooden sticks, deprived of food, or threatened.⁶⁰⁴ It reported that a journalist witnessed beatings at the centre and confirmed their punitive nature.⁶⁰⁵
267. Moreover, UNHCR, the International Organisation for Migration (“IOM”), Foreign Policy, and Amnesty International attested that in February 2019, the guards violently quelled a protest of hundreds of migrants complaining about the conditions of detention in the Tarik al-Sikka DC, including the absence of ventilation and the spreading of tuberculosis due to the lack of proper medication.⁶⁰⁶ During the incident more than 20 migrants, including children, were brought to an underground cell and tortured as retaliation for the protest.⁶⁰⁷
268. The widespread use of torture and ill-treatment against migrants in the Tarik al-Sikka DC is corroborated by the Italian television programme “Le Iene” that portrayed the detainees’ living conditions in the centre, interviewing migrants detained at the centre who managed to reach Europe.⁶⁰⁸ Interviewed migrants stated that in the Tarik al-Sikka DC migrants were systematically tortured and beaten.⁶⁰⁹
269. Extortion, disappearances and enslavement in the form of migrants being sold to other centres and traffickers have also been reported.⁶¹⁰ Available information reflects that migrants detained in the Tarik al-Sikka DC are sold to militias for military conscription.⁶¹¹

⁶⁰⁴ Al Jazeera, Sally Hayden, Inside Libyan detention 'hell' where refugee burned himself alive, 12 November 2018 (“12 June 2018 Al Jazeera Article”) ([Url](#) – last visited: 14 January 2022).

⁶⁰⁵ 12 June 2018 Al Jazeera Article.

⁶⁰⁶ March 2019 UNHCR Briefing Note; IOM, IOM Condemns Recent Violence in Libyan Detention Centre, 5 March 2019 ([Url](#) – last visited: 14 January 2022); 10 October 2019 Foreign Policy Article; Al Jazeera, Sally Hayden, Refugees in Libya ‘tortured’ for breaking out of detention centre, 2 March 2019 (“2 March 2019 Al Jazeera Article”) ([Url](#) – last visited: 14 January 2022); Amnesty International, Matteo de Bellis, Europe’s shameful failure to end the torture and abuse of refugees and migrants in Libya, 7 March 2019 ([Url](#) – last visited: 14 January 2022).

⁶⁰⁷ 10 October 2019 Foreign Policy Article; 2 March 2019 Al Jazeera Article.

⁶⁰⁸ 29 April 2019 Le Iene Video; 8 October 2019 Le Iene Video.

⁶⁰⁹ 29 April 2019 Le Iene Video, 00:03:36-00:03:15, 00:09:12-00:09:28.

⁶¹⁰ April 2019 Global Initiative and Clingendael Report, p.87; 2018 Tempi Moderni Report.

⁶¹¹ 10 June 2020 Il Manifesto Article.

270. Forced labour. According to UNSMIL, forced labour was reported by detainees who were held at the Tarik al-Sikka DC between 2017 and 2018.⁶¹² Altai Consulting also reported that detainees in the Tarik al-Sikka DC were used to build the centre's facilities.⁶¹³
271. Weapons and munitions were stored in the Tarik al-Sikka DC, which also hosts the Al-Khoja Militia headquarters.⁶¹⁴ Detainees were forced to move or clean them.⁶¹⁵ The communication filed by the ECCHR, LJFL, and FIDH before the ICC reflects the account of a migrant "Tesfay" detained in the centre between August 2018 and October 2019 attesting that detainees were often forced to load weapons onto trucks and transported to the frontline.⁶¹⁶ According to "Tesfay", migrants and refugees were also pressured to join the fighting.⁶¹⁷ These accounts are further corroborated by media outlets, including Foreign Policy, which reported the testimony of a former detainee who was forced to move and clean weapons and ammunition of the al-Khoja Militia.⁶¹⁸
272. Conditions of detention. The conditions of detention at the Tarik al-Sikka DC are particularly appalling. The centre is overcrowded with no space to sit or sleep, with inadequate light, ventilation, and food, as well as no sanitary and hygienic facilities.⁶¹⁹ Amnesty International collected statements from migrants detained in the centre that they had to share a mattress with three to five people, taking shifts to lie down, and

⁶¹² 2018 UNSMIL Report, p.47. See also ECCHR/FIDH/LFJL Report, para.21.

⁶¹³ Altai Consulting, Leaving Libya: Rapid assessment of municipalities of departures of Migrants in Libya, June 2017 ("2017 Altai Consulting Report"), p.51.

⁶¹⁴ 25 April 2019 HRW Press Release; ECCHR/FIDH/LFJL Report, para.21.

⁶¹⁵ 25 April 2019 HRW Press Release; ECCHR/FIDH/LFJL Report, para.21.

⁶¹⁶ ECCHR/FIDH/LFJL Report, para.21.

⁶¹⁷ ECCHR/FIDH/LFJL Report, para.21.

⁶¹⁸ Foreign Policy, Sally Hayden, Europe's Harsh Border Policies Are Pushing Refugees All the Way to Rwanda, 20 February 2021 ("20 February 2021 Foreign Policy Article") ("For months, the young Eritrean had been moving weapons and ammunition, cleaning, and even building a shelter for horses owned by Mohammed al-Khoja, the deputy head of the Government of National Accord's Department for Combating Illegal Migration.") ([Url](#) – last visited: 14 January 2022).

⁶¹⁹ 2021 AI Report, p.42; 29 April 2019 Le Iene Video, 00:01:34-00:01:54; 12 June 2018 Al Jazeera Article. See also 2021 Domani Article.

having to wait up to three hours to use the toilet.⁶²⁰ In some instances, the Tarik al-Sikka DC was so crowded that detainees would sleep in the bathrooms.⁶²¹ Sick or injured detainees are left with no assistance, and often die.⁶²² Tuberculosis outbreaks are common and diseases are exacerbated by malnutrition.⁶²³

273. Incidents involving inhuman conditions of detention also occurred during transfers to the detention centre while migrants were under the control of the DCIM or militia forces. For instance, according to UNSMIL, on 4 July 2017 migrants were left for hours inside a truck while being moved to the Tarik al-Sikka DC. Seven people died of suffocation.⁶²⁴

274. Overall impact of the mistreatment and living conditions in the Tarik al-Sikka DC. The dire condition of detention had a significant impact on detainees' physical and mental health, often exacerbating the previous traumatic experiences of many. For example, according to Foreign Policy, in October 2018, a Somali detainee committed suicide by setting himself on fire in the Tarik al-Sikka DC due to emotional distress.⁶²⁵

(b) Outrages upon personal dignity - Article 8(2)(c)(ii) of the Statute

275. The detention conditions in the Tarik al-Sikka DC also qualify as the war crime of outrages upon personal dignity under Article 8(2)(c)(ii) of the Statute.⁶²⁶

276. Migrants were held in deplorable conditions of detention and systematically subjected to ill-treatment and torture, used to perform forced labour and detained in the proximity of a military target (the military base and weapons store of the al-Khoja Militia) to avoid possible attacks by the LNA. Taken individually, or as a whole, these

⁶²⁰ 2021 AI Report, p.42.

⁶²¹ 2021 AI Report, p.42.

⁶²² 3 November 2019 The Guardian Article.

⁶²³ 31 December 2019 ABC News Article; 12 June 2018 Al Jazeera Article; March 2019 UNHCR Briefing Note; 10 October 2019 Foreign Policy Article. See also ECCHR/FIDH/LFJL Report, para.21.

⁶²⁴ 2018 UNSMIL Report, p.31.

⁶²⁵ 10 October 2019 Foreign Policy Article; 12 June 2018 Al Jazeera Article.

⁶²⁶ For the definition of the crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) see *supra*, para.208.

circumstances constitute humiliating and degrading treatment that meets the level of severity required by Article 8(2)(c)(ii) of the Statute.

277. Ill-treatment. As noted above, multiple sources have reported the prevalence of ill-treatment and torture in the Tarik al-Sikka DC.⁶²⁷
278. Conditions of detention. As detailed, in the Tarik al-Sikka DC migrants were confined in overcrowded spaces, in poor hygienic and sanitary conditions, with no ventilation and lack of food.⁶²⁸ Tuberculosis outbreaks were common.⁶²⁹
279. Forced labour. Migrants were forced to perform heavy manual work for the al-Khoja Militia, including loading and cleaning weapons used during the conflict.⁶³⁰
280. Enslavement. Migrants were sold to other centres and traffickers, or to militias for military conscription.⁶³¹

(c) Taking of hostages - Article 8(2)(c)(iii) of the Statute

281. Abuses committed against migrants in the Tarik al-Sikka DC also amount to the war crime of taking of hostages.⁶³²
282. The information available indicates that migrants detained in the Tarik al-Sikka DC were forced to pay ransom to ensure their release. According to the newspaper Domani, the guards of the Tarik al-Sikka DC sought a ransom of 700 USD to release migrants from the centre.⁶³³ Hostage-taking was also confirmed by ABC News, which

⁶²⁷ See *supra*, paras. 263-269.

⁶²⁸ See *supra*, paras.272-273.

⁶²⁹ See *supra*, para.272.

⁶³⁰ See *supra*, paras.270-271.

⁶³¹ See *supra*, para.269.

⁶³² For the definition of the crime of taking of hostages pursuant to Article 8(2)(c)(iii), see *supra*, para.208.

⁶³³ 2021 Domani Article.

reported that the centre generates a weekly profit of around 17,000 USD in ransom payments.⁶³⁴

v. Nexus with the armed conflict

283. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁶³⁵
284. The perpetrators of the crimes are members of the al-Khoja Militia and participated in the ongoing armed conflict, the victims are persons protected by Common Article 3 of the Geneva Conventions, and they were forced to engage in conflict-related activities.
285. As members of the al-Khoja Militia, the perpetrators participated in the ongoing armed conflict in Libya. The al-Khoja Militia is an armed group that eventually aligned with the GNA, and its members took part in various parts of the ongoing conflict in Libya. While initially fighting against the GNA in support of Khalifa al-Ghweil and the GNS,⁶³⁶ the al-Khoja Militia subsequently shifted its alliance and sided with the GNA.⁶³⁷ Among other operations, between 2019 and 2020, the al-Khoja Militia fought against Haftar’s forces during the 2019/2020 LNA Offensive against Tripoli.⁶³⁸

⁶³⁴ 2019 ABC News Article.

⁶³⁵ For the definition of the war crime nexus requirement see *supra*, paras.215-217.

⁶³⁶ 2017 UN Panel of Experts Report, Annex 15. See *supra*, Sections II.A.6, IV.A.1.a.

⁶³⁷ 2021 Global Initiative Report, p.26.

⁶³⁸ 2021 Global Initiative Report, p.26 (“These omissions were the result of the DCIM being unable to enforce such orders, achieving little and exacerbating tensions at a time when the defence of Tripoli against the LAAF was the priority – both al-Nasr and *Tariq al-Sikka* were associated with armed groups (the al-Nasr Battalion, a militia commanded by Mohammed al-Khoja) that were engaged in fighting against the LAAF.”) (emphasis added) ([Url](#) – last visited: 14 January 2022); Global Initiative, Harry Johnstone, Dominic Naish, Can Libya’s migrant-detention system be reformed?, 14 December 2020, (“One source said that al-Khoja’s influence had increased within the DCIM because of his role during the Battle for Tripoli.”) ([Url](#) – last visited: 14 January 2022). See *supra*, Sections II.A.8-9, IV.A.1.a.

286. In and of itself, the combatant status of the perpetrators, as members of the al-Khoja Militia, is a factor indicative of the war crime nexus.⁶³⁹ Moreover, as mentioned above, the facilities of the Tarik al-Sikka DC host also the base of the al-Khoja Militia and its weapons storage.⁶⁴⁰ This further suggests that the perpetrators' ability to commit the crimes is contingent on their "combatant" status, and in particular their membership to the al-Khoja Militia. Indeed, it indicates that their presence in the Tarik al-Sikka DC as well as their criminal conduct were linked to the conflict.⁶⁴¹
287. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the Tarik al-Sikka did not take active part in the conflict or the hostilities.⁶⁴²
288. The underlying acts also served the purpose of furthering the military campaign of the al-Khoja Militia. Migrants in the Tarik al-Sikka DC were forced to load ammunition and clean weapons,⁶⁴³ and to directly participate in the hostilities.⁶⁴⁴ The exploitation of migrants for military-related activities in the Tarik al-Sikka DC is amply corroborated by the numerous UN and NGOs reports indicating that migrants detained in DCIM Detention Centres were routinely obliged to carry-out military-

⁶³⁹ See *Afghanistan Appeal Judgement*, para.69. As noted above, under the ICTR jurisprudence, the "combatant" status of the perpetrator (together with the victim status as civilian/protected under Common Article 3 of the Geneva Convention), has been considered sufficient factor to satisfy the nexus requirement. See *Rutaganda Appeal Judgement*, para.579.

⁶⁴⁰ April 2019 Global Initiative and Clingendael Report, p.87; 25 April 2019 HRW Press Release, ("At Tarik Al Sikka detention center, in Tripoli, militia members have stored weapons and munitions including shoulder-fired rockets, hand grenades, and bullets"); 10 October 2019 Foreign Policy Article.

⁶⁴¹ *Halilovic Trial Judgement*, para.727 ("the Trial Chambers finds the fact that the ABiH soldiers were billeted in Grabovica in preparation of combat operations in Herzegovina, has played a substantial part in the soldiers' ability to commit the crimes.").

⁶⁴² See also 2018 Humanitarian Law & Policy. This except for the very moment in which the migrants engaged in the fighting as forced by the members of the al-Khoja Militia. Outside such limited temporal aspect, while in detention migrants are to be considered persons protected under Common Article 3 of the Geneva Conventions. The Protection of Migrants under International Humanitarian Law, 121–152, pp.138-140. The circumstances in which migrants were employed in the hostilities suggest that migrants did not assume a continuous combat function.

⁶⁴³ See *supra*, para.271.

⁶⁴⁴ See *supra*, para.271.

related activities,⁶⁴⁵ and forced to fight.⁶⁴⁶ Moreover, migrants were sold to militias for military conscription.⁶⁴⁷

289. Imprisoned and vulnerable to mistreatment, migrants became a resource for the al-Khoja Militia to further its military goals and were not in a position to oppose or question their forced military deployment. As such the conflict played a substantial part in the manner and purpose of the commission of the crimes against migrants.
290. Finally, as noted above, the fact that migrants were detained in proximity of a military target strengthens the conclusion that their illegitimate detention in the Tarik al-Sikka DC was linked to the armed conflict.⁶⁴⁸

d. Al-Mabani DC (formerly “Tobacco Factory”) (Tripoli)

i. Overview

291. The al-Mabani DC is located in the western part of Tripoli and has been operative since 2020.⁶⁴⁹ While initially functioning as an unofficial detention centre (known as the “Tobacco Factory”), in December 2020 the centre was officially recognised as a

⁶⁴⁵ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups. The Organization has also received credible information of forced recruitment among refugees and migrants”); April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups.”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.47 (“UNSMIL reports that there continue to be credible allegations of refugees and migrants detained close to military facilities, of weapons and munitions stored inside detention centres and of refugees and migrants forced to provide logistical support to armed groups that control detention centres.”); 2018 UNSMIL Report, p.29 (“According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning”); UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25; 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, p.41; 2019 HRW Report, p.17.

⁶⁴⁶ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“The Organization has also received credible information of forced recruitment among refugees and migrants”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; 17 January 2020 DPA Article.

⁶⁴⁷ See *supra*, para.269.

⁶⁴⁸ See *supra*, para.271.

⁶⁴⁹ See *infra*, Section IV.A.2.d.ii.

DCIM detention facility under the name of al-Mabani.⁶⁵⁰ The centre is run by the Public Security Agency, an armed group which participated in various phases of the conflict under the command of Emad Trabelsi who, in September 2020, was appointed as deputy head of the GNA Libyan Intelligence Services (“LIS”).⁶⁵¹

292. The al-Mabani DC has accommodated thousands of migrants in detention who were intercepted at sea by the LCG.⁶⁵² In the al-Mabani DC, migrants were murdered, tortured, subjected to ill-treatment, hostage-taking and rape, while held in dire conditions.⁶⁵³ The widespread violence and abuses committed against migrants prompted MSF to suspend its activities in the al-Mabani DC.⁶⁵⁴
293. These acts qualify as murder, torture/cruel treatment, outrages upon personal dignity, and taking of hostages under Articles 8(2)(c)(i)-(iii) of the Statute as well as rape and other forms of sexual violence under Article 8(2)(e)(vi) of the Statute. They took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁶⁵⁵

ii. Location, temporal scope, and armed group in charge of the centre

294. Al-Mabani (“the buildings” in Arabic) DC is located in the western part of Tripoli.⁶⁵⁶ The site is also known as the “Tobacco Factory”, based on the past function of the premises where the centre is located.⁶⁵⁷
295. While initially the centre operated as an unofficial detention centre known as the Tobacco Factory, at the end of 2020, the DCIM formalised al-Mabani DC as an official

⁶⁵⁰ See *infra*, Section IV.A.2.d.ii.

⁶⁵¹ See *infra*, Section IV.A.2.d.ii.

⁶⁵² See *infra*, Section IV.A.2.d.iii.

⁶⁵³ See *infra*, Section IV.A.2.d.iv.

⁶⁵⁴ See *infra*, Section IV.A.2.d.iv; 22 June 2021 MSF Press Release.

⁶⁵⁵ See Section IV.A.2.d.v.

⁶⁵⁶ Global Detention Project, Mabani Detention Centre ([Url](#) – last visited: 14 January 2022); 2021 AI Report, p.6. See also the location for the detention centre under the name of Tobacco Factory: Whispering Bell, Libya Weekly Political & Security Update, 26 February 2019, p.5 ([Url](#) – last visited: 14 January 2022).

⁶⁵⁷ 2020 AI Report, pp.7, 22; 2021 AI Report, p.17. Apparently, the centre was already operating as a prison before the revolution. See James Ohwofasa Akpeninor, Giant in the Sun: Echoes of Looming Revolution?, AuthorHouse, 28 August 2012, p.254.

facility for the detention of migrants.⁶⁵⁸ Despite the DCIM recognition, al-Mabani DC continues to be run by an armed group called Public Security Agency,⁶⁵⁹ which controls the area where the centre is located.⁶⁶⁰ The Public Security Agency is under the command of Emad Trabelsi,⁶⁶¹ who, in September 2020, was appointed as deputy head of the LIS.⁶⁶²

iii. Figures of migrants detained in the al-Mabani DC and presence of migrants intercepted at sea in the centre

296. There are no exact figures of the number of migrants detained in the centre when it operated as an unofficial detention facility. Since it became an official detention centre, the numbers of migrants detained in the al-Mabani DC has fluctuated between 1,000 and 3,400.⁶⁶³ It was reported that during the first weeks following its opening, the al-Mabani DC accommodated 300 migrants.⁶⁶⁴ Later, in April 2021, the number of detained migrants rose suddenly to 1,500,⁶⁶⁵ following the arrival of 1,200 migrants

⁶⁵⁸ 2021 AI Report, pp.17-18.

⁶⁵⁹ 2021 AI Report, pp.17-18; The Libya Observer, Abdulkader Assad, Clashes hit Libya's Tripoli once again, 17 March 2019, ("Al-Kashik is pro-Haftar fighter who was involved in 2014 fighting in Tripoli. He then escaped to Zintan but is currently working at the general security apparatus headed by Emad Al-Tarabulsi, who was pro-Haftar but later joined the Presidential Council and was tasked in security posts in western Tripoli.") ([Url](#) – last visited: 14 January 2022). The information available indicates that the director and other DCIM staff of former Tajoura DC are now in charge of Al-Mabani DC. 2021 AI Report, p.6.

⁶⁶⁰ 2021 AI Report, pp.17-18 ("The Tobacco Factory is located in Tripoli's Ghout al-Shaal neighbourhood and controlled by the Public Security Agency, a militia under the command of Emad al-Tarabulsi that was nominally allied to the UN-recognized GNA, the former government in control of western Libya"); Euronews, Sara Creta, Libya's detention centre closures: lancng lawlessness or consolidating political control?, 4 October 2021 ("2021 Euronews Article"), ("This year, a new refugee collection and return centre opened in Tripoli. Named Al-Mabani, it is in an area of Tripoli controlled by the militia leader Emad al Tarabulsi, who was appointed by Libya's former prime minister to a senior position in the intelligence service.") ([Url](#) – last visited: 14 January 2022).

⁶⁶¹ 2021 AI Report, pp.17-18; 2020 AI Report, p.22. Emad Trabelsi is also spelled Emad Al-Tarabulsi (HRW, Libya: Armed Groups Violently Quell Protests, Investigate Use of Lethal Force, Arbitrary Arrests, 10 September 2020 ("10 September 2020 HRW Article") ([Url](#) – last visited: 14 January 2022) or Imad Mustafa al-Tarabulsi (Dario Cristiani, Libya's Descent into Chaos: Warring Clans and Its Impact on Regional Stability, Jamestown Foundation, Terrorism Monitor Volume: 12 Issue: 24, 19 December 2014 ("2014 Dario Cristiani Article") ([Url](#) – last visited: 14 January 2022).

⁶⁶² Whispering Bell, Libya Weekly Political & Security Update, 15 September 2020, p.5 ([Url](#) – last visited: 14 January 2022).

⁶⁶³ Global Detention Project, Mabani Detention Centre ([Url](#) – last visited: 10 January 2022); WHO, Humanitarian Response, Libya, Bi-weekly operation update 1-15 June 2021, 21 June 2021 ("WHO Humanitarian Response 1-15 June 2021"), p.5 ([Url](#) – last visited: 14 January 2022).

⁶⁶⁴ MSF, Libya: One person dead and two injured in Tripoli detention center shooting, 9 April 2021 ("9 April 2021 MSF Report") ([Url](#) – last visited: 14 January 2022).

⁶⁶⁵ 9 April 2021 MSF Report.

intercepted at sea.⁶⁶⁶ In June 2021, 2,000 migrants were detained in the al-Mabani DC.⁶⁶⁷ As of January 2022, the Global Detention Project indicates the presence of 3400 migrants.⁶⁶⁸

297. Migrants intercepted at sea by the LCG have been transferred to the al-Mabani DC since it operated as an unofficial detention facility under the name of Tobacco Factory.⁶⁶⁹ Following its rebranding as the al-Mabani DC, the centre has been the first point of reception for new arrivals following disembarkation,⁶⁷⁰ and became “the largest functional DCIM centre holding disembarked refugees and migrants in western Libya” in 2021.⁶⁷¹ According to Amnesty International, in the first half of 2021, more than 7,000 migrants intercepted at sea were transferred there.⁶⁷²

iv. Underlying acts allegedly committed in al-Mabani DC

(a) Murder - Article (8)(2)(c)(i) of the Statute

298. Migrants detained in the al-Mabani DC were subjected to murder and/or attempted murder as a war crime pursuant to Article 8(2)(c)(i).
299. Multiple sources confirm at least one killing on 8 April 2021 by gunshot following an attempted escape.⁶⁷³ Two witnesses reported to Amnesty International that the guards fired multiple shots at the detainees killing one of them and injuring a number of others, including some children.⁶⁷⁴ These accounts were corroborated by a MSF

⁶⁶⁶ WHO, Bi-weekly health sector Libya operational updates 1-15 March, 15 March 2021 (“WHO Humanitarian Response 1-15 March 2021”), p.8 ([Url](#) – last visited: 14 January 2022).

⁶⁶⁷ 22 June 2021 MSF Press Release (“During a visit on 17 June to Mabani ‘Collection and Return’ detention centre, where at least 2,000 people are estimated to be held in severely overcrowded cells, MSF teams witnessed acts of violence carried out by the guards, including the indiscriminate beating of people who attempted to leave their cells to be consulted by our doctors”); WHO Humanitarian Response 1-15 June 2021.

⁶⁶⁸ Global Detention Project, Mabani Detention Centre ([Url](#) – last visited: 14 January 2022).

⁶⁶⁹ 2020 AI Report, p.22; The New Humanitarian, Nashed Mat, What Happens to Migrants Forcibly Returned to Libya?, 5 August 2020 ([Url](#) – last visited: 14 January 2022).

⁶⁷⁰ WHO Humanitarian Response 1-15 June 2021.

⁶⁷¹ 2021 AI Report, p.19.

⁶⁷² Amnesty International, Press Release, Libya: Horrific Violations in Detention Highlight Europe’s Shameful Role in Forced Returns, 15 July 2021 ([Url](#) – last visited: 14 January 2022).

⁶⁷³ 9 April 2021 MSF Report; 2021 AI Report, p.38.

⁶⁷⁴ 2021 AI Report, p.38.

medical team operating in the al-Mabani DC, which collected similar reports of the shooting incident.⁶⁷⁵ The MSF medical team transferred out of the centre two teenagers (17 and 18 years) with gunshot wounds for urgent medical care.⁶⁷⁶

(b) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

300. Migrants detained in the al-Mabani DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) of the Statute, being: (1) systematically physically assaulted and mistreated; (2) held in dire conditions of detention, in poor sanitary conditions without access to adequate food, drinking water or medication; and (3) subjected to enforced disappearance.⁶⁷⁷
301. The information available indicates that migrants in detention in the al-Mabani DC qualify as civilians and that the assaults and abuse suffered were inflicted as a form of punishment or intimidation/coercion and meet the degree of suffering required by the war crime of torture and/or cruel treatment. In addition, the poor conditions of detention to which migrants were subjected also qualify as cruel treatment.
302. Torture and other forms of ill-treatment. Migrants detained in the al-Mabani DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation, or coercion. The medical teams of MSF who had direct access to al-Mabani DC found that the guards in the centre carried out systematic mass violence to control the migrants detained in the centre.⁶⁷⁸ Specifically, MSF staff treated nineteen migrants detained in the centre “suffering from injuries caused by the beating, including fractures, cuts, abrasions and blunt force trauma.”⁶⁷⁹ Among the patients was an unaccompanied child who was not able to walk “after suffering

⁶⁷⁵ 9 April 2021 MSF Report.

⁶⁷⁶ 9 April 2021 MSF Report.

⁶⁷⁷ For the definition of the crimes of torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) see *supra*, para.200.

⁶⁷⁸ WHO Humanitarian Response 1-15 March 2021, p.8.

⁶⁷⁹ 22 June 2021 MSF Press Release.

serious wounds to the ankles.”⁶⁸⁰ The widespread use of violence prompted MSF to suspend its activities in al-Mabani.⁶⁸¹ MSF announced that “the persistent pattern of violent incidents and serious harm to refugees and migrants, as well as the risk to the safety of our staff, has reached a level that we are no longer able to accept.”⁶⁸²

303. The widespread use of violence against the migrants detained in the al-Mabani DC has also been confirmed by direct evidence collected by Amnesty International.⁶⁸³ According to nine migrants detained in the centre interviewed by Amnesty International, guards “would beat everyone” to terrorise and scare them⁶⁸⁴ and arrive drunk at night and harass them until the morning.⁶⁸⁵ Beatings were reported to regularly occur during meals.⁶⁸⁶
304. One of the migrants interviewed by Amnesty International gave evidence that during an escape attempt in February 2021, the guards first shot indiscriminately against the walls of the prison and then beat the detainees “mercilessly” with the back of their guns.⁶⁸⁷ The witness also reported another incident in which a detainee was beaten by the guards until he lost consciousness and started shaking. After being mistreated, he was not able to stand up or talk and received medical care only the day after.⁶⁸⁸
305. Conditions of detention. MSF reports that the living conditions in al-Mabani DC are “miserable”.⁶⁸⁹ The al-Mabani DC is severely overcrowded, with an average of four people per square meter, often with no space to lie down.⁶⁹⁰ The space where migrants

⁶⁸⁰ 22 June 2021 MSF Press Release.

⁶⁸¹ 22 June 2021 MSF Press Release.

⁶⁸² 22 June 2021 MSF Press Release.

⁶⁸³ 2021 AI Report, p.37.

⁶⁸⁴ 2021 AI Report, p.37.

⁶⁸⁵ 2021 AI Report, p.37.

⁶⁸⁶ 2021 AI Report, p.37.

⁶⁸⁷ 2021 AI Report, p.38.

⁶⁸⁸ 2021 AI Report, p.38.

⁶⁸⁹ WHO Humanitarian Response 1-15 March 2021, p.8; WHO, Humanitarian Response, Libya: Bi-weekly operational update 1-15 April 2021, 16 April 2021 (“WHO Humanitarian Response 1-15 April 2021”), p.5 ([Url](#) – last visited: 14 January 2022).

⁶⁹⁰ LCI, Migrants battus, blessés ou tués: MSF dans l'horreur des camps libyens, 24 June 2021 ([Url](#) – last visited: 14 January 2022); 9 April 2021 MSF Report.

are detained does not reach minimum standards of living and there is “no hygiene, no ventilation, unacceptable overcrowding, no sunlight in the cells and no available drinking water”.⁶⁹¹ From the opening of the centre, until at least April 2021, no drinking water was provided.⁶⁹²

306. MSF also reported the presence of infectious diseases “such as scabies and tuberculosis”.⁶⁹³ In March 2021, the IOM found one confirmed case of tuberculosis and 102 other suspected cases.⁶⁹⁴

307. Enforced disappearance. The information available indicates that before December 2020, when the centre functioned outside the framework of the DCIM (under the name of Tobacco Factory), hundreds of migrants were subjected to enforced disappearance.⁶⁹⁵ According to Amnesty International in 2020, “LCG and DCIM have been involved in the enforced disappearances of refugees and migrants by transferring them to unofficial places of detention” including the Tobacco Factory.⁶⁹⁶

(c) Outrages upon personal dignity - Article 8(2)(c)(ii) of the Statute

308. The conditions of detention of migrants in the al-Mabani DC also qualify as the war crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) of the Statute.⁶⁹⁷

309. Migrants were held in miserable conditions of detention and systematically subjected to ill-treatment and sexual abuses. Taken individually, or as a whole, these

⁶⁹¹ WHO Humanitarian Response 1-15 March 2021, p.8; WHO Humanitarian Response 1-15 April 2021, p.5; WHO Humanitarian Response 1-15 June 2021, p.4.

⁶⁹² WHO Humanitarian Response 1-15 April 2021, p.5 (MSF was conducting an emergency drinking water distribution every 3rd day of the month and “[a]fter many failed calls to other actors to intervene in solving the water issues at Almbani as per their mandate, MSF had to step in and provide a water treatment unit and drinking water system at the DC”).

⁶⁹³ 9 April 2021 MSF Report.

⁶⁹⁴ WHO Humanitarian Response 1-15 March 2021, p.5.

⁶⁹⁵ 2021 AI Report, p.18.

⁶⁹⁶ 2020 AI Report, p.23.

⁶⁹⁷ For the definition of the crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) see *supra*, para.208.

circumstances constitute humiliating and degrading treatment that meets the level of severity required by Article 8(2)(c)(ii) of the Statute.

310. Conditions of detention. As noted, in the al-Mabani DC, migrants are confined in “miserable” conditions of detention and confined in container-like cells with no ventilation, no sunlight, little food and no available drinking water.⁶⁹⁸ Migrants were exposed to infectious diseases such as scabies and tuberculosis.⁶⁹⁹
311. Torture and other forms of ill-treatment. Sources reported that migrants detained in the al-Mabani DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation or coercion, and that one person was killed and at least two persons were injured during a shooting incident.⁷⁰⁰ MSF also suspended its activity in the DC as the level of violence reached an unacceptable level of gravity.⁷⁰¹
312. Rape and sexual violence. Migrants in the al-Mabani DC are subjected to sexual humiliation and abuse. Direct testimonies from migrants collected by Amnesty International indicate that invasive and violent strip-searches are conducted on migrants on their reception at the al-Mabani DC.⁷⁰²

(d) Taking of hostages – Article 8(2)(c)(iii) of the Statute

313. Abuses committed against migrants in the al-Mabani DC also amount to the war crime of taking of hostages.⁷⁰³
314. In the specific circumstances of the case, available information shows that members of the Public Security Agency forced the families of migrants detained in the al-

⁶⁹⁸ See *supra*, paras.305-306.

⁶⁹⁹ See *supra*, para.306.

⁷⁰⁰ See *supra*, paras.299, 302-304.

⁷⁰¹ See *supra*, para.302 .

⁷⁰² 2021 AI Report, pp.40-41. See *infra*, paras.315-316.

⁷⁰³ For the definition of the crime of taking of hostages under Article 8(2)(c)(iii) of the Statute see *supra*, para. 212.

Mabani DC to pay a ransom in order to ensure their release.⁷⁰⁴ Euronews reported that migrants detained in the centre were forced to pay between 1,000 and 7,500 Libyan dinars (€185 - €1,390 at the official exchange rate) to the Public Security Agency in order to be released.⁷⁰⁵

(e) Rape and other forms of sexual violence – Article 8(2)(e)(vi) of the Statute

315. Abuses committed against male and female migrants detained in the al-Mabani DC may amount to the war crime of rape and/or sexual violence. According to Article 8(2)(e)(vi) of the Statute and the Elements of Crimes, this offence requires that the perpetrator invaded, by force, or threat of force or coercion, the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.
316. In the present instance, survivors reported being sexually abused when they were subjected to strip-searches on their reception to detention.⁷⁰⁶ Specifically, one female migrant reported to Amnesty International that during a search she was obliged to remain naked, a guard “put his hand in [her] anus” and asked “to open [her] private parts”.⁷⁰⁷ When she refused to do so she was slapped in her face.⁷⁰⁸ Likewise, a Nigerian man gave evidence that during the reception, the guards ordered the migrants to get naked and then proceeded to “search our bodies [and inside] our boxers, with force”.⁷⁰⁹

⁷⁰⁴ 2021 Euronews Article.

⁷⁰⁵ 2021 Euronews Article.

⁷⁰⁶ 2021 AI Report, pp.40-41.

⁷⁰⁷ 2021 AI Report, pp.40-41.

⁷⁰⁸ 2021 AI Report, pp.40-41.

⁷⁰⁹ 2021 AI Report, p.41.

v. *Nexus with the armed conflict*

317. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of and were associated with the ongoing armed conflict in Libya.⁷¹⁰
318. Specifically, the members of the Public Security Agency participated in the armed conflict and the migrants who suffered abuses in the al-Mabani DC did not or are not taking part in the hostilities. Moreover, the participation in the armed conflict enabled the Public Security Agency to take and maintain control over the al-Mabani DC and to commit the crimes therein.
319. The perpetrators participated in the ongoing armed conflict in Libya. The GNA-affiliated Public Security Agency originates from the al-Sawaiq Battalion, under the command of Emad Trabelsi, and its members took part in various parts of the ongoing conflict in Libya.
320. Emad Trabelsi's al-Sawaiq Battalion, along with other forces from Zintan, participated in the February 2011 Revolution (and in particular the liberation of Tripoli).⁷¹¹ Following the end of the Ghaddafi regime, the al-Sawaiq Battalion maintained its control over part of Tripoli until 2014,⁷¹² and was engaged in recurrent fighting with other armed groups present in the capital.⁷¹³ The al-Sawaiq Battalion has been involved in the protection of government officials and buildings in Tripoli since

⁷¹⁰ For the definition of the war crime nexus requirement see *supra*, paras.215-217.

⁷¹¹ PWP Conflict Studies, Jalel Harchaoui and Mohamed-Essaïd Lazib, *Proxy War Dynamics in Libya*, 2019 ("2019 PWP Report"), p.12 ([Url](#)– last visited: 14 January 2022). See *supra*, Sections II.A.1, IV.A.1.a.

⁷¹² 2019 PWP Report, p.12.

⁷¹³ September 2013 UNSG Report on UNSMIL, para.21; *Libya's Fragmentation*, p.33; February 2014 UNSG Report on UNSMIL, para.16; 2014 UN Panel of Experts Report, para.32. See *supra*, Sections II.A.3, IV.A.1.a.

the revolution and it has reportedly been assigned the role of protecting Prime Minister Ali Zeidan following his abduction in Tripoli.⁷¹⁴

321. In 2014, Trabelsi participated in “Operation Dignity” on the side of the LNA.⁷¹⁵ Following the withdrawal from Tripoli in August 2014, the al-Sawaiq Battalion disbanded and its members became part of the Special Operations Force under the command of Trabelsi, still on the LNA side.⁷¹⁶ In 2018, Emad Trabelsi and the Special Operations Force were co-opted under the GNA.⁷¹⁷ Trabelsi was appointed by Serraj as head of the Public Security Agency.⁷¹⁸
322. In September 2018, during the “2018 Battle of Tripoli” (also known as the “Late Summer War”), upon the request of the GNA, Trabelsi moved to Tripoli to secure the Janzour suburb against the Kaniyat/7th Brigade and Steadfastness Front.⁷¹⁹ He was also instrumental in stopping Haftar’s forces during the 2019/2020 LNA Offensive against Tripoli in 2019.⁷²⁰ In late August 2020, the Public Security Agency was reportedly involved in dispersing largely peaceful anti-corruption protests in Tripoli.⁷²¹ Reportedly, the armed group used heavy weapons and armoured vehicles to suppress dissent. The protesters were subjected to arbitrary detention, torture, and disappearances.⁷²² The “combatant” status of the perpetrators, as members of the

⁷¹⁴ Libya’s Fragmentation, p.34; Jason Pack, Karim Mezran and Mohamed Eljarh, Meet the Militias, Their Leaderships, Alliance System, and Subgroupings, Libya’s Faustian Bargains: Report Breaking the Appeasement Cycle, Atlantic Council, 2014 (“2014 Libya’s Faustian Bargains”), p.29 ([Url](#)—last visited: 14 January 2022). See *supra*, Section II.A.3.

⁷¹⁵ September 2014 UNSG Report on UNSMIL, paras.16-22; Libya’s Fragmentation, p.37; 2014 Dario Cristiani Article; 2019 PWP Report, p.12; 2019 ISPI Report, p.27. See also Libya’s Fragmentation, pp.36-37. See *supra*, Sections II.A.4, IV.A.1.a.

⁷¹⁶ 2019 PWP Report, p.12. See also September 2014 UNSG Report on UNSMIL, para.22.

⁷¹⁷ 2019 PWP Report, p.12.

⁷¹⁸ Libya Security Monitor, 4 July – 10 July: GNA instate Emad Trabelsi as the President of the General Security Directorate, 10 July 2018 ([Url](#)—last visited: 14 January 2022).

⁷¹⁹ 2019 ISPI Report, p.28; 2019 PWP Report, p.12. See *supra*, Sections II.A.7, IV.A.1.a.

⁷²⁰ 2019 ISPI Report, p.28; 2019 UN Panel of Experts Report, Annex 6, Appendix 1, Item G34 (identified as General Security Service). See *supra*, Sections II.A.8-9, IV.A.1.a.

⁷²¹ 10 September 2020 HRW Article.

⁷²² 10 September 2020 HRW Article.

Public Security Agency (formerly, al-Sawaiq Battalion and Special Operations Force) shows a link between the conflict and their ability to commit the crimes.⁷²³

323. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the al-Mabani DC did not take active part in the conflict or the hostilities.⁷²⁴
324. The participation in the armed conflict enabled the Public Security Agency to establish and maintain control over the al-Mabani DC (and formerly the Tobacco Factory) and to commit the crimes therein. As shown above, in 2014 following their participation in “Operation Dignity”, Trabelsi and the al-Sawaiq Battalion were dislodged from Tripoli.⁷²⁵ Trabelsi and his troop managed to return to Tripoli only after he was co-opted under the GNA and fought on its side against the 7th Brigade and Steadfastness Front (in 2018) and against the LNA (in 2019/2020).⁷²⁶
325. Against this background, the ability of the Public Security Agency to establish first the Tobacco Factory and later the al-Mabani DC in Tripoli was predicated on the armed group’s return to Tripoli following an agreement with the GNA and the subsequent participation in the fighting in its support in 2018 and 2019. Put otherwise, the military support that the Public Security Agency provided to the GNA has been instrumental for its members to set up the detention centre and, consequently, commit the crimes against migrants detained therein.⁷²⁷ As such, the conflict played a substantial part in the perpetrators’ ability to commit the crimes.

⁷²³ See *Rutaganda* Appeal Judgement, para.579.

⁷²⁴ See also 2018 Humanitarian Law & Policy.

⁷²⁵ See *supra*, para.321. See *supra*, Section II.A.4.

⁷²⁶ See *supra*, para.322. See *supra*, Section II.A.7-9.

⁷²⁷ *Al Hassan* Confirmation Decision, paras.224-226.

e. Tajoura DC (Tripoli)

i. Overview

326. The Tajoura DC was located in Tajoura town, east of Tripoli, and has been active at least between 2017 and October 2019.⁷²⁸ Officially under the DCIM, the Tajoura DC was manned by the al-Daman Brigade, an armed group which participated in various phases of the Libyan conflict.⁷²⁹
327. Between 2017 and 2020, the Tajoura DC accommodated thousands of migrants in detention, the majority of which were intercepted at sea by the LCG.⁷³⁰ Migrants were systematically tortured and subjected to ill-treatment, forced labour, and held in inadequate conditions of detention.⁷³¹ In particular, migrants detained in the Tajoura DC were forced by the al-Daman Brigade to clean/repair weapons, move munitions, and offload military items in the Tajoura port as well as to participate in the fighting.⁷³²
328. These acts qualify as torture/cruel treatment and outrages upon personal dignity under Articles 8(2)(c)(i)-(ii) and took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁷³³
329. Notably, on 2 July 2019, the Tajoura DC was hit by an airstrike (“2 July 2019 Airstrike”). The investigation carried out by UNSMIL into the 2 July 2019 Airstrike indicates that: (1) at the time of the attack the Daman Complex, where the Tajoura DC is located, was the headquarters of the al-Daman Brigade which contained weapons and munitions; and (2) as a result of the attack 53 migrants were killed and 87 injured.⁷³⁴ While confirming the allegations of torture and mistreatment against the

⁷²⁸ See *infra*, Section IV.A.2.e.ii.

⁷²⁹ See *infra*, Section IV.A.2.e.ii.

⁷³⁰ See *infra*, Section IV.A.2.e.iii.

⁷³¹ See *infra*, Section IV.A.2.e.iv.

⁷³² See *infra*, paras.339-341.

⁷³³ See *infra*, Section IV.A.2.e.v.

⁷³⁴ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.44-45.

migrants detained in Tajoura,⁷³⁵ UNSMIL also found that the al-Daman Brigade violated its international humanitarian law (“IHL”) obligations to remove the civilian detainees from an area of military objectives.⁷³⁶

ii. Location, temporal scope, and armed group in charge of the centre

330. Tajoura DC was located in Tajoura, a town in the Tripoli district, east of Tripoli city.⁷³⁷ Tajoura DC was part of the Daman building complex which also served as the headquarters of the al-Daman Brigade, an armed group operating in Tajoura affiliated with the GNA.⁷³⁸ While DCIM staff was present in the Tajoura DC, the al-Daman Brigade was in charge of the security of the centre.⁷³⁹ The Tajoura DC was operational at least between 2016/2017 and October 2019,⁷⁴⁰ even though the GNA Ministry of Interior ordered its closure on August 2019.⁷⁴¹ Nevertheless, evidence indicates that the Tajoura DC may have continued to operate until 2020.⁷⁴²

iii. Figures of migrants detained in the Tajoura DC and presence of migrants intercepted at sea in the centre

331. The number of migrants detained in the Tajoura DC fluctuated over time between approximately 200 and 1,126 persons. For instance, as of 8 July 2018, it was reported that over 1,100 migrants were detained at the Tajoura DC, including 1,000 men, 100 women and 26 children under the age of 14.⁷⁴³ In late October 2018, UNHCR registered 660 migrants detained in the camp.⁷⁴⁴ In December 2018, it was reported

⁷³⁵ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.23-28.

⁷³⁶ UNSMIL Investigation on the 2 July 2019 Airstrike, para.48.

⁷³⁷ UNSMIL Investigation on the 2 July 2019 Airstrike, para.2.

⁷³⁸ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.2, 43.

⁷³⁹ UNSMIL Investigation on the 2 July 2019 Airstrike, para.2; April 2019 Global Initiative and Clingendael Report, pp.87, 93; 2019 HRW Report, p.15.

⁷⁴⁰ 2019 HRW Report, pp.14-16 (confirming that the camp was open prior to June 2018 and referring to an interview with a migrant detained in Tajoura in 2016); April 2019 Global Initiative and Clingendael Report, p.34, Figure 9 (confirming that migrants were transferred to Tajoura DC since 2017); 2019 UN Panel of Experts Report, Annex 19, p.164, fn.107 (confirming that the Tajoura DC was operational in 2019).

⁷⁴¹ 2019 UN Panel of Experts Report, Annex 19, p.164, fn.107.

⁷⁴² Global Detention Project, Tajoura (Tajoura) Detention Centre ([Url](#) – last visited: 14 January 2022).

⁷⁴³ 2019 HRW Report, p.44.

⁷⁴⁴ 2019 HRW Report, p.47.

that between 800 and 1,000 migrants were in the Tajoura DC.⁷⁴⁵ In October 2019, following the 2 July 2019 Airstrike against the Tajoura DC and despite the closure order from the Libyan Ministry of Interior, the centre continued to accommodate around 200 migrants.⁷⁴⁶

332. The Tajoura DC accommodated migrants following their interception at sea by the LCG. The information available indicates that between 2017 and 2018 around 5,000 migrants intercepted at sea were transferred to the Tajoura DC.⁷⁴⁷ Amnesty International and HRW confirm the presence of migrants previously “rescued” at sea in the Tajoura DC.⁷⁴⁸

iv. Underlying acts allegedly committed in Tajoura DC

(a) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

333. Migrants detained in the Tajoura DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i), being: (1) systematically physically assaulted and mistreated; (2) held in dire conditions of detention, in poor sanitary conditions without access to adequate food or medication; and (3) subjected to forced labour.⁷⁴⁹
334. The information available indicates that migrants in detention in the Tajoura DC qualify as civilians, and that the assault and abuse suffered were inflicted as a form of punishment, intimidation, or coercion and meet the degree of suffering required by the war crime of torture and cruel treatment. In addition, the poor conditions of

⁷⁴⁵ April 2019 Global Initiative and Clingendael Report, p.93, Appendix: Detention Centres in Libya, item 31.

⁷⁴⁶ 2019 UN Panel of Experts Report, Annex 19, p.164.

⁷⁴⁷ April 2019 Global Initiative and Clingendael Report, p.34, figure 9.

⁷⁴⁸ 2019 HRW Report, pp.14-15 (“confirming that five Palestinians and two Syrians intercepted at sea were detained in Tajoura DC”), 44 (the Director of the Tajoura DC confirmed to HRW that most of the migrants detained in the centre had been intercepted at Sea by the LCG); 2017 AI Report, p.36 (confirming that on 6 November 2017, 47 migrants intercepted at Sea were transferred to Tajoura DC).

⁷⁴⁹ For the definition of the crimes of torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) see *supra*, para.200.

detention for migrants and their subjection to forced labour involving heavy physical and manual activities also qualify as cruel treatment.

335. Torture and other forms of ill-treatment. Numerous sources report that migrants detained in the Tajoura DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation or coercion. In 2018, UNSMIL concluded that migrants in the Tajoura DC were “systematically subjected to torture and other ill-treatment”.⁷⁵⁰ A migrant detained in the Tajoura DC reported to UNSMIL that, on his first day of detention, he was beaten with water pipes by a guard because he was too weak to stand up as ordered.⁷⁵¹ Following the beating he vomited blood and passed out.⁷⁵² The UNSMIL Investigation concerning the 2 July 2019 Airstrike subsequently corroborated these findings.⁷⁵³ Migrants reported to UNSMIL monitors that “they were routinely subjected to torture and other ill-treatment by personnel at the Tajoura DC. They indicated having been beaten with various objects (such as water pipes, metal bars, rifle butts and sticks), forced into uncomfortable positions (such as squatting for prolonged periods), punched and kicked.”⁷⁵⁴
336. HRW and MEDU also reported that migrants detained in the Tajoura DC were beaten due to attempts to speak to UNHCR staff visiting the centre,⁷⁵⁵ being unable to move quickly following demands by guards,⁷⁵⁶ trying to escape,⁷⁵⁷ or begging for food for their children.⁷⁵⁸ This information is corroborated by the Italian Television programme “Le Iene” which portrayed the detainees’ living conditions in the Tajoura DC, interviewing migrants who managed to reach Europe.⁷⁵⁹ Those interviewed by

⁷⁵⁰ 2018 UNSMIL Report, p.44.

⁷⁵¹ 2018 UNSMIL Report, p.45.

⁷⁵² 2018 UNSMIL Report, p.45.

⁷⁵³ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.23-25.

⁷⁵⁴ UNSMIL Investigation on the 2 July 2019 Airstrike, para.23.

⁷⁵⁵ 2019 HRW Report, p.48.

⁷⁵⁶ 2019 HRW Report, p.48.

⁷⁵⁷ 2019 HRW Report, p.48.

⁷⁵⁸ 2020 MEDU Report, p.25 (Testimony of Y.E.).

⁷⁵⁹ 8 October 2019 Le Iene Video.

Le Iene reported that the guards in Tajoura DC tortured and abused detainees continuously with different methods, including by extracting their fingernails and pouring burning hot melted plastic on their skin.⁷⁶⁰ Migrants were also threatened not to speak to international organisations, NGOs, or authorities visiting the camp.⁷⁶¹

337. Conditions of detention. HRW researchers who visited the Tajoura DC reported that migrants were detained in large rooms scattered with mattresses, without access to ventilation, and with no possibility to leave their rooms.⁷⁶² The quality and provision of food was also inadequate. Migrants detained in the Tajoura DC were only fed with pasta “shovelled into large metal plates, one for every four people”.⁷⁶³ The lack of adequate food in the Tajoura DC has been confirmed by migrants interviewed by MEDU. In particular, a 22-year-old woman from Cameroon stated that in Tajoura they received insufficient nutrition and that she witnessed a pregnant woman being beaten simply because she asked for food for her children.⁷⁶⁴
338. Forced labour. Migrants detained in the Tajoura DC were subjected to forced labour,⁷⁶⁵ without being paid, except for scraps of food and water.⁷⁶⁶ UNSMIL reported that migrants were forced to engage in “hazardous and difficult manual labour”⁷⁶⁷ and, specifically, that they were forced to work in the vehicle repair workshop, cleaning, cooking, offloading heavy items, and washing the vehicles of DCIM officials.⁷⁶⁸
339. Corroborating information indicates that migrants in the Tajoura DC were used and/or forced to assist the al-Daman Brigade’s efforts in its military campaign. Most

⁷⁶⁰ 8 October 2019 Le Iene Video (00:09:034-00:11:34).

⁷⁶¹ 8 October 2019 Le Iene Video.

⁷⁶² 2019 HRW Report, p.47. See also 17 January 2020 MSF Report.

⁷⁶³ 2019 HRW Report, p.47.

⁷⁶⁴ 2020 MEDU Report, p.25 (Testimony of Y.E.).

⁷⁶⁵ 2018 UNSMIL Report, p.47.

⁷⁶⁶ 2019 HRW Report, p.49; 2018 UNSMIL Report, p.47.

⁷⁶⁷ 2018 UNSMIL Report, p.47.

⁷⁶⁸ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25; 2018 UNSMIL Report, p.47. See also 17 January 2020 MSF Report.

notably UNSMIL's findings concerning the 2 July 2019 Airstrike show that the al-Daman Brigade forced migrants to clean weapons and move munitions in the Daman Building complex and offload military items in the Tajoura port.⁷⁶⁹ In February 2020, MEDU collected the evidence of a 20-year-old Sudanese migrant, previously detained in the Tajoura DC, who reported that "[t]here was a big warehouse near our prison, with weapons and munitions, and the Libyan guards forced us for months to go there to clean the rifles, and to order (sic) the ammunition boxes and the explosives."⁷⁷⁰ Likewise, HRW collected similar evidence from detainees in the Tajoura DC that were forced to repair military vehicles, and to load/unload and clean weapons.⁷⁷¹

340. Following the 2 July 2019 Airstrike, migrants confirmed their forced involvement in the military efforts of the al-Daman Brigade to different media, including the Associated Press ("forced to clean and repair weapons"),⁷⁷² France 24 ("conscripted to work for militias, cleaning weapons and transporting dead bodies"),⁷⁷³ and The Guardian ("[t]he police and soldiers force migrants to do cleaning work and load weapons. They [tell] migrants that if you know how to shoot a gun we will make you stay with us").⁷⁷⁴ The New York Times received photos of migrants detained in the Tajoura DC dressed "in military fatigues" and forced "to guard checkpoints, wash blood from ambulances and clean vehicles loaded with guns".⁷⁷⁵ Of particular note, The New York Times reported that migrants were armed and forced to participate in

⁷⁶⁹ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25.

⁷⁷⁰ 2020 MEDU Report, p.27 (Testimony of A.).

⁷⁷¹ 25 April 2019 HRW Press Release. See also HRW, Lost in Libya: A Refugee's Story of Captivity and Escape, 21 December 2019 ([Url](#) – last visited: 14 January 2022).

⁷⁷² Associated Press, Lori Hinnant and Sam Magdy, Officials: Migrants Return to Bombed Libya Detention Center, 16 July 2019 ("16 July 2019 AP News Article") ([Url](#) – last visited: 14 January 2022).

⁷⁷³ France24, Catherine Norris-Trent, Julie Dungalhoff, Abdallah Malkawi, Libya: The infernal trap, 9 December 2019 ("9 December 2019 France24 Article") ([Url](#) – last visited: 14 January 2022).

⁷⁷⁴ The Guardian, Sally Hayden, Fear and Despair engulf refugees in Libya's 'market of human beings', 15 April 2019 ("15 April 2019 The Guardian Article") ([Url](#) – last visited: 14 January 2022).

⁷⁷⁵ The New York Times, Sally Hayden, They Hoped to Reach Europe Before They Were Massacred, 3 July 2019 ("3 July 2019 The New York Times Article") ([Url](#) – last visited: 14 January 2022). See also The New York Times, Malachy Browne and Christiaan Triebert, How The Times Analyzed the Migrant Center Airstrike, 17 July 2019 ("17 July 2019 The New York Times Article") ([Url](#) – last visited: 14 January 2022).

the armed clashes on the frontline.⁷⁷⁶ A YouTube video posted by The New York Times shows pictures of migrants cleaning convoys and in military attire.⁷⁷⁷ During the video, a migrant reported that the al-Daman Brigade forced him to load weapons under threat of beatings.⁷⁷⁸

341. In the documentary “Libya No Escape to Hell” broadcasted in 2021,⁷⁷⁹ migrants testified that the al-Daman Brigade forced them to clean tanks,⁷⁸⁰ put dead bodies in a vehicle, and clean blood from ambulances.⁷⁸¹ According to a migrant interviewed they had no choice but to comply with the orders of the al-Daman Brigade (noting “when you say no you are fully in danger” and “you have no choice, unless you do not want to be alive”).⁷⁸²
342. Overall impact of the mistreatment and living conditions in the Tajoura DC. During their visit, HRW staff witnessed first-hand the impact of such dire conditions of detention in Tajoura, as they observed two suicide attempts and a woman on the floor of the cell having seizures.⁷⁸³ Following the 2 July 2019 Airstrike, UNSMIL monitors confirmed the OHCHR findings regarding “the serious consequences of the squalid conditions of detention of migrants and refugees on their physical and mental health, particularly as many had already suffered from traumatic experiences.”⁷⁸⁴

⁷⁷⁶ 3 July 2019 The New York Times Article (“Occasionally, refugees and migrants are taken from Tajoura to the frontline and to assist fighters. One former detainee said he was given an AK-47 and told to join the forces aligned with Mr. Serraj-aligned forces.”); 17 July 2019 The New York Times Article (“Some migrants told us they were conscripted to fight with a pro-government militia that ran the compound.”)

⁷⁷⁷ Youtube, The New York Times, Migrants Fleeing to Europe Were Bombed in Libya. We Examined Why, 11 July 2019 (“The New York Times Video”), (00:02:37-00:02:52) ([Url](#) – last visited: 14 January 2022).

⁷⁷⁸ The New York Times Video (00:02:39-00:02:48).

⁷⁷⁹ Magneto Press, Java Films, Director Sara Creta, Libya: No Escape To Hell, 2021 (“Libya: No Escape from Hell”).

⁷⁸⁰ Libya: No Escape from Hell (00:12:46-00:12:57).

⁷⁸¹ Libya: No Escape from Hell (00:13:05-00:13:40).

⁷⁸² Libya: No Escape from Hell (00:09:48-00:10:38).

⁷⁸³ 2019 HRW Report, p.47.

⁷⁸⁴ UNSMIL Investigation on the 2 July 2019 Airstrike, para.24.

(b) Outrages upon personal dignity - Article 8(2)(c)(ii) of the Statute

343. The conditions of detention of migrants in the Tajoura DC also qualify as the war crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) of the Statute.⁷⁸⁵
344. As reflected below, in the instant case, migrants were held in squalid conditions of detention and systematically subjected to ill-treatment or torture, used to performed forced labour and detained in the proximity of a military target (the weapons store of the al-Daman Brigade) to avoid possible attacks by the LNA. Taken individually, or as a whole, these circumstances constitute humiliating and degrading treatment that meets the level of severity required by Article 8(2)(c)(ii) of the Statute.
345. Conditions of detention. As noted, in the Tajoura DC migrants were confined to large rooms scattered with mattresses, in poor hygienic conditions, with no ventilation and lack of food.⁷⁸⁶ In addition, female migrants reported to UNSMIL that male guards entered and stared at them while they were in the toilet.⁷⁸⁷
346. Ill-treatment. As noted above, multiple sources have reported on the prevalence of torture and cruel treatment in the Tajoura DC.⁷⁸⁸
347. Forced labour. Migrants were forced to perform heavy manual work for the al-Daman militia including loading and cleaning weapons used during the conflict.⁷⁸⁹ Migrants were also forcibly recruited to engage in the fighting.⁷⁹⁰
348. Use of migrants to “shield” the weapons depot. In the context of the investigation in the 2 July 2019 Airstrike, UNSMIL found that the al-Daman Brigade violated IHL by placing migrants in the proximity of a military target.⁷⁹¹ Similar findings were also

⁷⁸⁵ For the definition of the crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) see *supra*, para.208.

⁷⁸⁶ See *supra*, para.337.

⁷⁸⁷ 2018 UNSMIL Report, p.46.

⁷⁸⁸ See *supra*, paras.334-336.

⁷⁸⁹ See *supra*, paras.338-341.

⁷⁹⁰ See *supra*, paras.338-341.

⁷⁹¹ UNSMIL Investigation on the 2 July 2019 Airstrike, paras.43-49.

reached by the Panel of Experts.⁷⁹² Despite the airstrike and its consequences, not all migrants were evacuated from the detention centre.⁷⁹³ Those remaining started a hunger strike claiming that the centre was unsafe and protesting against the forced labour.⁷⁹⁴ Nonetheless, as noted above, the Tajoura DC remained open at least until October 2019 and possibly even until 2020.⁷⁹⁵ These circumstances, together with the fact that migrants were not evacuated even after the Daman Complex had already been hit by an airstrike,⁷⁹⁶ may indicate the intention of the al-Daman Brigade to use the presence of migrants to shield and protect their military assets from possible attacks from the LNA.

v. Nexus with the armed conflict

349. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of and were associated with the ongoing armed conflict in Libya.⁷⁹⁷
350. As members of the al-Daman Brigade, the perpetrators participated in the ongoing armed conflict in Libya. The al-Daman Brigade is an armed group aligned to the GNA, and its members were involved in various parts of the ongoing conflict in Libya. While initially the al-Daman Brigade took part in “Operation Dignity” alongside Haftar’s forces,⁷⁹⁸ subsequently it shifted its alliance to side with the GNA.⁷⁹⁹ In this context, the al-Daman Brigade participated in the armed clashes that led to the expulsion from Tripoli of the forces aligned with former Prime Minister Al-Gweil to

⁷⁹² 2019 UN Panel of Experts Report, Annex 15, para.30.

⁷⁹³ UNSMIL Investigation on the 2 July 2019 Airstrike, para.25.

⁷⁹⁴ UNSMIL Investigation on the 2 July 2019 Airstrike, para.25.

⁷⁹⁵ See *supra*, para.330.

⁷⁹⁶ UNSMIL Investigation on the 2 July 2019 Airstrike, para.48. See also, 17 January 2020 MSF Report (indicating that before the airstrike of 2 July 2019, another attack targeted the Tajoura DC on 7 May 2019).

⁷⁹⁷ For the definition of the war crime nexus requirement see *supra*, paras.215-217.

⁷⁹⁸ 16 November 2015 UNSMIL Report, p.18 (“In a case also reportedly involving the Abu Salim armed group, a fighter in the Tajura-based Dhaman armed group allied with Operation Dignity, was reportedly killed after his capture during clashes in Tajura in April.”). See *supra*, Sections II.A.4, IV.A.1.a.

⁷⁹⁹ 2019 UN Panel of Experts Report, Annex 6, Appendix 1, Item G20; UNSMIL Investigation on the 2 July 2019 Airstrike, paras.2, 43.

facilitate the establishment of the GNA.⁸⁰⁰ In 2018, it took part in various clashes against rival militias.⁸⁰¹ Between 2019 and 2020, the al-Daman Brigade fought against Haftar's forces during the 2019/2020 LNA Offensive against Tripoli.⁸⁰² Moreover, in September 2020 and March 2021, the al-Daman Brigade engaged in armed clashes with the Tajoura Lions, a distinct militia based in Tajoura.⁸⁰³ In and of itself, the combatant status of the perpetrators, as members of the al-Daman Brigade, is a factor indicative of the war crime nexus.⁸⁰⁴

351. Moreover, as mentioned above, the facilities of the Tajoura DC also hosted the headquarters of the al-Daman Brigade.⁸⁰⁵ This further suggests that the perpetrators' ability to commit the crimes was contingent on their "combatant" status, and, in particular their membership to the al-Daman Brigade. Indeed, it indicates that their presence in the al-Daman complex as well as their criminal conduct were linked to the conflict.⁸⁰⁶
352. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the Tajoura DC did not take active part in the conflict or the hostilities.⁸⁰⁷

⁸⁰⁰ The Libya Observer, Fierce clashes between anti-GNA and pro-GNA forces break out in east Tripoli, 9 July 2017 ([Url](#) – last visited: 14 January 2022). See *supra*, Sections II.A.6, IV.A.1.a.

⁸⁰¹ Whispering Bell, Libya Weekly, Political & Security Update, 21 May 2018, p.5 ([Url](#) – last visited: 14 January 2022); Whispering Bell, Libya Weekly, Political & Security Update, 16 October 2018, p.5 ([Url](#) – last visited: 14 January 2022).

⁸⁰² 2019 UN Panel of Experts Report, Annex 6, Appendix 1, Item G20; UNSMIL Investigation on the 2 July 2019 Airstrike, paras. 2, 43. See *supra*, Sections II.A.8-9, IV.A.1.a.

⁸⁰³ The New Arab, Explosions and gunfire over Tripoli as fighting continues in the west, 25 September 2020 ([Url](#) – last visited: 14 January 2022); Archyde, Libya...Renewed clashes between Al-Wefaq militias in Tripoli, 12 March 2021 ([Url](#) – last visited: 14 January 2022).

⁸⁰⁴ See *Afghanistan* Appeal Judgement, para.69. As noted above, under the ICTR jurisprudence, the "combatant" status of the perpetrator (together with the victim status as civilian/protected under Common Article 3 of the Geneva Convention), has been considered sufficient factor to satisfy the nexus requirement. See *Rutaganda* Appeal Judgement, para.579.

⁸⁰⁵ UNSMIL Investigation on the 2 July 2019 Airstrike, para.2.

⁸⁰⁶ *Halilovic* Trial Judgement, para.727 ("the Trial Chambers finds the fact that the ABiH soldiers were billeted in Grabovica in preparation of combat operations in Herzegovina, has played a substantial part in the soldiers' ability to commit the crimes.").

⁸⁰⁷ See Section IV.A.2.e.iv. See also 2018 Humanitarian Law & Policy. This except for the very moment in which the migrants engaged in fighting as forced by the members of the al-Daman Brigade. Outside such limited temporal

353. The underlying acts also served the purpose of the al-Daman Brigade's military campaign. Migrants in the Tajoura DC were routinely forced to load ammunition and weapons, repair military vehicles, and engage in the fighting on the side of the al-Daman Brigade.⁸⁰⁸ They were accordingly exploited as a resource for military purposes. The exploitation of migrants for military-related activities in the Tajoura DC is amply corroborated by the numerous UN and NGOs reports indicating that migrants detained in DCIM Detention Centres were routinely obliged to carry out military-related activities,⁸⁰⁹ and forced to fight.⁸¹⁰ In essence, they were exploited for military purposes. Imprisoned and vulnerable to mistreatment, migrants became a resource for the al-Daman Brigade to further its military goals and were not in a position to oppose or question their forced military deployment. As such, the conflict played a substantial part in the manner and purpose of the commission of the crimes against migrants. Moreover, as noted above, the possibility that migrants were detained in proximity to a military target strengthens the conclusion that their illegitimate detention in the Tajoura DC was linked to the armed conflict.

aspect, while in detention migrants are to be considered persons protected under Common Article 3 of the Geneva Conventions. The Protection of Migrants under International Humanitarian Law, 121–152, pp.138-140. The circumstances in which migrants were employed in the hostilities suggest that migrants did not assume a continuous combat function.

⁸⁰⁸ See *supra*, paras.338-341.

⁸⁰⁹ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups. The Organization has also received credible information of forced recruitment among refugees and migrants”); April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.36 (“Refugees and migrants in detention centres continue to be subjected to forced labour, including being forced to load weapons and repair machine guns and cars belonging to armed groups.”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.47 (“UNSMIL reports that there continue to be credible allegations of refugees and migrants detained close to military facilities, of weapons and munitions stored inside detention centres and of refugees and migrants forced to provide logistical support to armed groups that control detention centres.”); 2018 UNSMIL Report, p.29 (“According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning”); UNSMIL Investigation on the 2 July 2019 Airstrike, paras.24-25; 2021 AI Report, pp.14, 21, 36-37; 2020 AI Report, p.41; 2019 HRW Report, p.17.

⁸¹⁰ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.16 (“The Organization has also received credible information of forced recruitment among refugees and migrants”); 2020 UNHCR Position on Libya as a Safe Third Country, para.10, fn.51; 17 January 2020 DPA Article.

f. Al-Nasr DC (Zawiya)

i. Overview

354. The al-Nasr DC is located in Zawiya, a town west of Tripoli, and has been operational since at least 2014.⁸¹¹ Nominally under the DCIM, the al-Nasr DC is manned by the al-Nasr Brigade (also known as Shuhada al-Nasr), an armed group which participated in the hostilities in various phases of the Libyan conflict.⁸¹²
355. Between 2014 and 2020, the al-Nasr DC accommodated thousands of migrants, many of which were intercepted at sea by the LCG.⁸¹³ In the al-Nasr DC, migrants were held in inadequate conditions of detention and systematically tortured, subjected to ill-treatment, hostage-taking, and sexual violence.⁸¹⁴ Some detainees have died as a result of torture or lack of health care, while others have been murdered while attempting to escape or as a form of punishment.⁸¹⁵
356. These acts qualify as murder, torture/cruel treatment, outrages upon personal dignity, and taking of hostages under Articles 8(2)(c)(i)-(iii) of the Statute as well as rape and sexual slavery under Article 8(2)(e)(vi) of the Statute. They took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁸¹⁶
357. Significantly, in July 2020, an Italian district court (Tribunale di Messina) convicted three guards involved in the detention of migrants in Zawiya of, *inter alia*, kidnapping, detaining, mistreating, or torturing migrants with the aim of extorting ransom money from their families.⁸¹⁷

⁸¹¹ See *infra*, Section IV.A.2.f.ii.

⁸¹² See *infra*, Section IV.A.2.f.ii.

⁸¹³ See *infra*, Section IV.A.2.f.iii.

⁸¹⁴ See *infra*, Section IV.A.2.f.iv. See also 2021 UN Panel of Experts Report, para.46.

⁸¹⁵ See *infra*, Section IV.A.2.f.iv.

⁸¹⁶ See *infra*, Section IV.A.2.f.v.

⁸¹⁷ Tribunale di Messina Judgment, pp.37-42.

358. Moreover, the UNSC designated Mohammed Al Amin Al Arabi Kashlaf (“Mohammed Kashlaf”), commander of the al-Nasr Brigade, and his close associate, Abd Al-Rahman al-Milad, also known as al-Bija (“al-Bija”), the head of LCG of Zawiya, and Osama Al Kuni Ibrahim, *de facto* manager of the al-Nasr DC, to the Libya Sanction Regime pursuant to Resolution 1970 (2011) in light of reports concerning mistreatment against migrants in the al-Nasr DC.⁸¹⁸ In particular, according to the UNSC, Mohammed Kashlaf controlled the al-Nasr DC through the Shuhada al-Nasr Brigade, where migrants were detained “in critical conditions” and “frequently beaten”, while women from sub-Saharan countries and Morocco “were sold on the local market as ‘sex slaves’”.⁸¹⁹

ii. Location, temporal scope, and armed group in charge of the centre

359. The al-Nasr DC is located in the Nasr area of Zawiya, a town west of Tripoli.⁸²⁰ The centre is part of the Zawiya oil complex⁸²¹ situated close to the Zawiya port – one of the main points of disembarkation of migrants intercepted at sea by the LCG.⁸²² The al-Nasr DC has been operational since late 2014, despite Libyan authorities’ attempt to close it in 2018.⁸²³

360. The al-Nasr DC is under the control of the al-Nasr Brigade, an armed group in charge of the security of the Zawiya Oil Refinery complex and surrounding areas since 2012

⁸¹⁸ UNSC, Press Release, Security Council Committee concerning Libya Adds Six Individuals to Its Sanctions List, SC/13371, 7 June 2018 ([Uri](#) – last visited: 14 January 2022); UNSC, Security Council 1970 Committee Adds One Entry to Its Sanctions List, SC/14674, 25 October 2021 ([Uri](#) – last visited: 14 January 2022).

⁸¹⁹ UNSC, Narrative Summary of Reasons for Listing – Lyi.025 Mohammed Kachlaf, 7 June 2018 (“Kashlaf - Narrative Summary”) ([Uri](#) – last visited: 14 January 2022). According to the UNSC, the Libyan Office of the Attorney General would have issued arrest warrants against Kachlaf and al-Bija in December 2017 due to their involvement in fuel smuggling. See UNSC, Final Report of the Panel of Experts on Libya on Libya established pursuant to Security Council resolution 1973 (2011), S/2018/812, 5 September 2018 (“2018 UN Panel of Experts Report”), para.143, Annex 43; 2019 UN Panel of Experts Report, para.224.

⁸²⁰ 2019 UN Panel of Experts Report, para.57, Annex 21, para.1; April 2019 Global Initiative and Clingendael Report, pp.27, 30, 75, Appendix, p.93.

⁸²¹ 2019 UN Panel of Experts Report, Annex 21, para.1; April 2019 Global Initiative and Clingendael Report, p.75.

⁸²² 2019 UN Panel of Experts Report, Annex 21, para.4; April 2019 Global Initiative and Clingendael Report, pp.32, 34, 75-77.

⁸²³ 2021 UN Panel of Experts Report, para.46, Annex 18. 2017 UN Panel of Experts Report, Annex 17, para.3; 2019 UN Panel of Experts Report, Annex 21, para.4; 2018 UNSMIL Report, p.39.

or 2014.⁸²⁴ The commander of the al-Nasr Brigade is Mohammed Kashlaf,⁸²⁵ a member of the Kashlaf clan of the Awlad Abuhumeira (or Awlad Bu Hmeira) tribe.⁸²⁶ In April 2016, the DCIM nominally brought the al-Nasr DC under its control but left in practice the al-Nasr Brigade in charge of providing security and managing the centre.⁸²⁷

361. The al-Nasr Brigade took active part in various phases of the ongoing armed conflict in Libya. It participated in the “Operation Libya Dawn” in 2014 and 2015,⁸²⁸ in violent clashes in Zawiya between 2016 and 2017,⁸²⁹ and in fighting in Sabratha in 2017.⁸³⁰ The al-Nasr Brigade also supported the GNA against the 2019/2020 LNA Offensive on Tripoli.⁸³¹

iii. Figures of migrants detained in the al-Nasr DC and presence of migrants intercepted at sea in the centre

362. In general, the number of migrants detained in the centre has fluctuated between 300 and 1,500.⁸³² Several survivors testified that, around June/July 2018, the centre hosted

⁸²⁴ According to most sources, the Al-Nasr Brigade was put in charge of the complex in July 2014 (see 2018 UN Panel of Experts Report, para.157, Annex 47, para.2; 2019 UN Panel of Experts Report, paras.57, 164, Annex 6, Figure 6.1 and Appendix A, Annex 21, para.1). However, other reports reflect that the brigade had been guarding the facility since 2012 (see 2017 UN Panel of Experts Report, Annex 17, para.2; 2017 Altai Consulting Report, p.89).

⁸²⁵ 2017 UN Panel of Experts Report, para.245, Annex 17, para.2, Annex 30, para.2; 2018 UN Panel of Experts Report, para.157; 2019 UN Panel of Experts Report, paras.57, 164.

⁸²⁶ 2017 UN Panel of Experts Report, Annex 17, para.2; 2019 UN Panel of Experts Report, Annex 21, para.7; April 2019 Global Initiative and Clingendael Report, p.75; African Heritage Institution, Rowland Chukwuma Okoli and Adaora Chukwurah, Proliferation of Armed Militias and Complicity of European States in the Migration Crisis in Libya, 2011-2017, AfriHeritage Research Working Paper July 2019 (“2019 African Heritage Working Paper”), p.13 ([Url](#) – last visited: 14 January 2022). 2021 Global Initiative Report, p.15.

⁸²⁷ April 2019 Global Initiative and Clingendael Report, p.75; 2017 UN Panel of Experts Report, Annex 30, para.2; 2019 UN Panel Report, para.57, Annex 21, para.3. See also Tribunale di Messina Judgment, pp.2, 5, 14-26, 30-32, 34-36; 2017 AI Report, p.27; 2017 Altai Consulting Report, p.94.

⁸²⁸ 2018 UN Panel of Experts Report, para.157; 2019 African Heritage Working Paper, p.13; April 2019 Global Initiative and Clingendael Report, p.75.

⁸²⁹ 2017 UN Panel of Experts Report, Annex 17, para.5; 2017 Altai Consulting Report, pp.88-89, 91.

⁸³⁰ April 2019 Global Initiative and Clingendael Report, p.75.

⁸³¹ 2021 Global Initiative Report, p.26; 2021 UN Panel of Experts Report, Annex 14, Images 14.1, 14.2; Associated Press, Rami Musa and Samy Magdy, In Libya, a rogues’ gallery of militias prepare for war, 16 April 2019 (“16 April 2019 AP News Article”), (“Zawiya is home to the Martyrs of Victory Brigade, another powerful militia that has joined the alliance against Hifter. Militiamen from Zawiya captured 100 of Hifter’s fighters the day after he launched his offensive. The leader of the Martyrs of Victory Brigade, Mahmoud Kachlaf, is under U.N. sanctions for allegedly running a large migrant smuggling network.”) ([Url](#) – last visited: 14 January 2022).

⁸³² 2017 Altai Consulting Report, p.95; 2019 UN Panel of Experts Report, Annex 19; April 2019 Global Initiative and Clingendael Report, p.75; Tribunale di Messina Judgment, pp.7, 14, 20, 23.

between 300 and 900 migrants.⁸³³ Global Initiative found that, in November 2018, 1,066 migrants from 24 different countries were present in the al-Nasr DC.⁸³⁴ According to the UN Panel of Experts, in September/October 2019 the centre housed approximately 1,230 migrants.⁸³⁵

363. Available information indicates that the al-Nasr DC accommodated migrants following their interception at sea by the LCG. In September 2020, the UN Secretary-General observed that “despite overcrowding”, the al-Nasr DC continued to receive “new detainees” intercepted at sea.⁸³⁶ The information available also indicates that between 2017 and the end of 2018 around 3,000 migrants intercepted at sea were transferred to the al-Nasr DC.⁸³⁷ According to the UN Panel of Experts, the LCG’s patrol boats under the control of al-Bija had been involved in intercepting migrants at sea and transferring them to the al-Nasr DC.⁸³⁸ This is also confirmed by Global Initiative which reported that, in 2017, the Zawiya Oil Refinery area was the main disembarkation point in Libya of migrants intercepted at sea.⁸³⁹
364. In interviews with migrants that had been intercepted at sea, conducted in July 2017 by Amnesty International, one survivor claimed that there were “many people, perhaps 15 boats” in the centre, while another confirmed that, after the group of 150 people he was part of had been disembarked in Zawiya, they were all taken to the al-Nasr DC.⁸⁴⁰

⁸³³ See Tribunale di Messina Judgment, pp.7, 14, 20, 23.

⁸³⁴ April 2019 Global Initiative and Clingendael Report, p.76.

⁸³⁵ 2019 UN Panel of Experts Report, Annex 19, Annex 21, para.5.

⁸³⁶ September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Person, para.14.

⁸³⁷ April 2019 Global Initiative and Clingendael Report, p.34, Figure 9.

⁸³⁸ 2017 UN Panel of Experts Report, Annex 17, para.4. See also 2018 UN Panel of Experts Report, Annex 49, para.2; 2017 AI Report, p.27; 2019 African Heritage Working Paper, pp.13-14.

⁸³⁹ April 2019 Global Initiative and Clingendael Report, pp.32-33 (see in particular p.33, Figure 8).

⁸⁴⁰ 2017 AI Report, pp.32, 41.

iv. Underlying acts allegedly committed in al-Nasr DC

(a) Murder - Article (8)(2)(c)(i) of the Statute

365. According to the testimony of migrants who had been detained in the al-Nasr DC, at least sixteen people detained there have been murdered by guards between April 2016 and June 2019.⁸⁴¹
366. In April 2016, UNSMIL observed that “four detainees sustained fatal gunshot wounds and 20 more were injured on 1 April during and in the aftermath of an apparent escape attempt from the detention centre”.⁸⁴² The UN High Commissioner for Human Rights reported that on 6 June 2019 at least one Sudanese woman was killed and another three injured by gunshots during a protest launched by migrants against the inhumane conditions of detention.⁸⁴³
367. In addition, some survivors who testified before the Tribunale di Messina have described several incidents resulting in the death of detainees. Among others, they reported that guards in the al-Nasr DC shot at four migrants attempting to flee from the detention centre sometime between August 2018 and February 2019,⁸⁴⁴ tortured one Ghanaian to death,⁸⁴⁵ and beat to death three Sudanese who complained about the guards’ violent behaviour.⁸⁴⁶ In three instances victims died as a result of beatings and lack of medical care.⁸⁴⁷

⁸⁴¹ 2021 UN Panel of Experts Report, para.46 (“Victims recounted acts of kidnapping for ransom, torture, sexual and gender-based violence, forced labour and *killings*”) (emphasis added).

⁸⁴² UN News, Libya: senior UN official calls for independent probe into migrant deaths at detention centre, 6 April 2016 (“6 April 2016 UN News Statement”) ([Url](#) – last visited: 14 January 2022).

⁸⁴³ Human Rights Council, Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, Report of the United Nations High Commissioner for Human Rights, A/HRC/43/75, 23 January 2020, para.40.

⁸⁴⁴ 2020 MEDU Report, p.30 (Testimony of G.).

⁸⁴⁵ Tribunale di Messina Judgment, p.18.

⁸⁴⁶ Tribunale di Messina Judgment, p.9.

⁸⁴⁷ Tribunale di Messina Judgment, p.21 (the witness testified that two brothers from Guinea died after a beating, as they did not receive any treatment; in addition, the witness’s sister, who was ill, allegedly died due to lack of health care). See also *ibid.*, p.14 (according to the witness, some victims... had been tortured personally by Ossama, the person in charge of the centre).

368. Migrants held in the al-Nasr DC qualify as civilians. They were not taking part in the hostilities at the time they were imprisoned. Such killings amount to the war crime of murder, pursuant to Article 8(2)(c)(i) of the Statute.

(b) Torture and Cruel Treatment - Article (8)(2)(c)(i) of the Statute

369. Migrants detained in the al-Nasr DC were subjected to torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) of the Statute.⁸⁴⁸ Consistent statements of survivors indicate that they were: (1) systematically physically assaulted and mistreated, both as a form of punishment and in order to force their families to pay a ransom; and (2) held in dire conditions of detention, in poor sanitary conditions without access to adequate food or medication.

370. Migrants detained in the al-Nasr DC qualify as civilians. The assaults and abuses suffered were inflicted as a form of punishment, intimidation, or coercion, and they meet the degree of suffering required by the war crime of torture or cruel treatment. In addition, the poor conditions of detention which migrants were subjected to meet the threshold for cruel treatment.

371. Torture and other forms of ill-treatment. Numerous sources report that migrants detained in the al-Nasr DC were routinely assaulted both physically and psychologically, including as a form of punishment, intimidation or coercion. In 2018, UNSMIL concluded that migrants in the al-Nasr DC were “systematically subjected to torture and other ill-treatment”.⁸⁴⁹ In 2019, the UN Panel of Experts reported that “[s]exual exploitation and violence, beatings, starvation, and other degrading treatment, including to minors, frequently occur”.⁸⁵⁰ One migrant interviewed by MEDU reported that he had witnessed an “endless amount of cruelties and tortures”

⁸⁴⁸ For the definition of the crimes of torture and cruel treatment as a war crime pursuant to Article 8(2)(c)(i) see *supra*, para.200.

⁸⁴⁹ 2018 UNSMIL Report, p.44. See also 2021 UN Panel of Experts Report, para.46 (“Victims recounted acts of kidnapping for ransom, *torture*, sexual and gender-based violence, forced labour and killing”) (emphasis added).

⁸⁵⁰ 2019 UN Panel of Experts Report, Annex 21, para.3.

aimed at extorting money from migrants, and that during the monitoring commission's monthly visits "the guards would hide all the instruments of torture".⁸⁵¹ H.A., a Syrian migrant, recalled that detainees were tortured and humiliated, and that in one instance, after a trafficker had showed up with about 70 Somalis he bought for 100 dollars each, the Somalis were tortured to extort money from their families.⁸⁵² A third migrant reported that the jailers shot at his feet, and injured him to obtain ransom.⁸⁵³ Survivors testified to Amnesty International that they had been tortured in the al-Nasr DC.⁸⁵⁴

372. In the judgment issued by the Tribunale di Messina on 28 May 2020 against three people accused of being members of a criminal organisation running the al-Nasr DC, the judges convicted all defendants – including in relation to the charges of torture.⁸⁵⁵ The judges found that survivors-witnesses who testified before the court had given consistent and credible accounts concerning mistreatments of migrants in the detention centre.⁸⁵⁶
373. In particular, six witnesses have described several incidents in which they were subjected to or witnessed torture. They testified that migrants were tortured because they complained about the violent behaviour of the guards,⁸⁵⁷ and/or in order to force migrants' families to pay a ransom to the organization running the centre.⁸⁵⁸ Among other things, the survivors recalled that they had been beaten with weapons,⁸⁵⁹ metal or wooden sticks, and rubber hoses,⁸⁶⁰ and whipped and shocked with electric

⁸⁵¹ 2020 MEDU Report, p.28 (Testimony of X.Y.).

⁸⁵² 2020 MEDU Report, p.29 (Testimony of H.A.).

⁸⁵³ 2020 MEDU Report, p.29 (Testimony of I.C.).

⁸⁵⁴ 2017 AI Report, p.32 (Testimonies of "Edward", "Munim", and "Bakary").

⁸⁵⁵ Tribunale di Messina Judgment, pp.39-41.

⁸⁵⁶ Tribunale di Messina Judgment, pp.30-31.

⁸⁵⁷ Tribunale di Messina Judgment, p.9.

⁸⁵⁸ Tribunale di Messina Judgment, pp.9, 14, 18, 21, 24, 26. See also 2020 MEDU Report, p.29 (Testimony of H.A.).

⁸⁵⁹ Tribunale di Messina Judgment, pp.21-22.

⁸⁶⁰ Tribunale di Messina Judgment, pp.9-11, 14, 17, 24.

wires.⁸⁶¹ One of them testified that a guard shot at one Nigerian's leg because he had stolen some bread.⁸⁶²

374. Conditions of detention. Between 2016 and 2019, the UN Panel of Experts and UNSMIL consistently reported that the conditions of detention at al-Nasr DC were inadequate as the centre was not equipped to hold migrants (especially women and children), severely overcrowded, with insufficient food.⁸⁶³
375. The Tribunale di Messina found beyond reasonable doubt that migrants detained in the al-Nasr DC were held in dire sanitary conditions, and that the amount of food and water they received did not meet the standard needed to survive.⁸⁶⁴ Witnesses consistently testified that they were held in appalling conditions, and that detainees died due to lack of available health care in the al-Nasr DC.⁸⁶⁵ In addition, food was insufficient, migrants had mostly been given bread and some pasta,⁸⁶⁶ and only had access to non-drinkable water.⁸⁶⁷
376. The findings of the Tribunale of Messina are further corroborated by the testimony of one survivor to MEDU that they could not seek medical help or take medicine despite the precarious health conditions arising from torture and violence.⁸⁶⁸ Another migrant described his conditions of detention at the al-Nasr DC as "like-hell".⁸⁶⁹ Detainees are locked in packed rooms with "no space to sleep on the floor at the same time" and only one toilet, and they "never see the light of the sun".⁸⁷⁰

⁸⁶¹ Tribunale di Messina Judgment, pp.9-11.

⁸⁶² Tribunale di Messina Judgment, p.24.

⁸⁶³ 2017 UN Panel of Experts Report, Annex 30, para.2; 2019 UN Panel of Experts Report, Annex 19, Table 19.1, Annex 21, para.5; 6 April 2016 UN News Statement.

⁸⁶⁴ Tribunale di Messina Judgment, p.32.

⁸⁶⁵ Tribunale di Messina Judgment, pp.14, 21.

⁸⁶⁶ Tribunale di Messina Judgment, pp.14, 17-18, 24.

⁸⁶⁷ Tribunale di Messina Judgment, pp.14, 18, 24.

⁸⁶⁸ 2020 MEDU Report, p.30 (Testimony of G.).

⁸⁶⁹ 2017 AI Report, p.30 (Testimony of "Mumin").

⁸⁷⁰ 2017 AI Report, p.30 (Testimony of "Mumin").

(c) Outrages upon personal dignity – Article 8(2)(c)(ii) of the Statute

377. The conditions of detention of migrants in the al-Nasr DC also qualify as the war crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) of the Statute.⁸⁷¹
378. In the instant case, migrants detained in the al-Nasr DC were held in dire conditions, systematically subjected to ill-treatment or torture, raped, and forced to have sexual intercourse with each other in front of others. They were also kept in cramped spaces shared with hundreds of others, including severely ill people who died as a result of tortures or lack of health care. Migrants detained in the centre were also sold to the migrant market or other detention centres. Taken individually, or as a whole, such circumstances constitute humiliating and degrading treatment that meets the level of severity required pursuant to Article 8(2)(c)(ii) of the Statute.
379. Ill-treatment. As noted above multiple sources have reported on the prevalence of torture and cruel treatment in the Al-Nasr DC.⁸⁷²
380. Conditions of detention. As noted above, in the al-Nasr DC migrants were held in dire sanitary conditions, given little food and forced to drink non-drinkable water.⁸⁷³ In 2019, the UN Panel of Experts reported that “[s]exual exploitation and violence, beatings, starvation, and other degrading treatment, including to minors” frequently occurred in the al-Nasr DC.⁸⁷⁴ The Tribunale di Messina found that migrants had been locked in for months (up to more than a year), and kept under the watch of armed guards in inhumane conditions of detention.⁸⁷⁵

⁸⁷¹For the definition of the crime of outrages upon personal dignity pursuant to Article 8(2)(c)(ii) see *supra*, para.208.

⁸⁷² See *supra*, paras.371-373.

⁸⁷³ See *supra*, paras.374-376.

⁸⁷⁴ 2019 UN Panel of Experts Report, Annex 21, para.4.

⁸⁷⁵ Tribunale di Messina Judgment, pp.14, 17-18, 21, 24, 26, 32-33. See also 2020 MEDU Report, p.29 (Testimony of H.A.).

381. Rape. Detainees in the al-Nasr DC were frequently subjected to sexual exploitation.⁸⁷⁶ One survivor testified before the Tribunale di Messina that he had often witnessed Ossama, the director of the centre, and other guards raping women inside the detention centre.⁸⁷⁷ In addition, a migrant interviewed by MEDU reported that he had witnessed a male detainee being forced to strip and to have sexual intercourse with another man.⁸⁷⁸
382. Migrants' trafficking. According to the UN Panel of Experts, initially the al-Nasr DC served to sell migrants to other smugglers.⁸⁷⁹ Between 2015 and 2017, migrants held in the detention centre were allegedly transferred to other detention centres, which paid between 20 and 120 euros per person.⁸⁸⁰ Furthermore, it has been reported that migrants were sold on the Libyan migrant market for about €800 per person.⁸⁸¹

(d) Taking of hostages – Article 8(2)(c)(iii) of the Statute

383. Abuses committed against migrants in the al-Nasr DC may also amount to the war crime of taking of hostages.⁸⁸²
384. In the specific circumstances of the case, the information available reflects that members of the al-Nasr Brigade forced the families of migrants detained in the al-Nasr DC to pay ransom in order to ensure their release.⁸⁸³ In its 28 May 2020 Judgment, the Tribunale di Messina found the three defendants criminally

⁸⁷⁶ See *infra*, paras.386-388. See 2019 UN Panel of Experts Report, Annex 21, para.4. See also 2021 UN Panel of Experts Report, para.46 (“Victims recounted acts of kidnapping for ransom, torture, *sexual and gender-based violence*, forced labour and killing”) (emphasis added).

⁸⁷⁷ Tribunale di Messina Judgment, p.21.

⁸⁷⁸ 2020 MEDU Report, p.30 (Testimony of G.).

⁸⁷⁹ 2017 UN Panel of Experts Report, Annex 17, para.3.

⁸⁸⁰ April 2019 Global Initiative and Clingendael Report, p.52.

⁸⁸¹ April 2019 Global Initiative and Clingendael Report, p.77.

⁸⁸² For the definition of the crime of taking of hostages under Article 8(2)(c)(iii) of the Statute see *supra*, para.212.

⁸⁸³ 2021 UN Panel of Experts Report, para.46 (“Victims recounted acts of *kidnapping for ransom*, torture, sexual and gender-based violence, forced labour and killing”) (emphasis added). See also April 2019 Global Initiative and Clingendael Report, p.77. See also September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Person, para.14 (“The United Nations continues to receive reports of extortion for money, forced labour, and disappearances of migrants and asylum seekers from the Suq al-Khamis and Nasir and Abu Isa in Zawiyah detention centres.”).

responsible, *inter alia*, for their participation in the criminal organization in charge of the al-Nasr DC, whose purpose was to kidnap, detain, and subject migrants to abuses in order to force their families to pay the ransom.⁸⁸⁴ The victims were forced to call their families after they had been beaten, and they would have been subjected to further abuse if their families did not agree to pay.⁸⁸⁵

385. The same *modus operandi* has been described by migrants to MEDU. I.C., a 25-year-old Guinean, reported that jailers had shot at his feet to obtain ransom;⁸⁸⁶ H.A., a Syrian migrant, reported that prisoners were being tortured during video calls to extort money from their families;⁸⁸⁷ according to X.Y., a migrant from Cameroon, what differentiated al-Nasr DC from other detention centres was the fact that if migrants paid the ransom, they could have been released.⁸⁸⁸ Survivors interviewed by Amnesty International stated that detainees had to pay between 500 and 700 Libyan dinars to be released.⁸⁸⁹ One of them confirmed that the guards would call the detainees' families while beating them so that they would send money.⁸⁹⁰

(e) Rape – Article 8(2)(e)(vi) of the Statute

386. Abuses committed against male and female migrants detained in the al-Nasr DC may amount to the war crime of rape.⁸⁹¹
387. In the present instance, the information available reflects that detainees were systematically subjected to rape and other forms of sexual violence.
388. One witness-survivor testified before the Tribunale di Messina that female detainees were often taken away by the guards in order to be raped.⁸⁹² H.A., a Syrian migrant,

⁸⁸⁴ Tribunale di Messina Judgment, pp.33-38.

⁸⁸⁵ Tribunale di Messina Judgment, pp.33-34.

⁸⁸⁶ 2020 MEDU Report, p.29 (Testimony of I.C.).

⁸⁸⁷ 2020 MEDU Report, p.29 (Testimony of H.A.).

⁸⁸⁸ 2020 MEDU Report, p.28 (Testimony of X.Y.).

⁸⁸⁹ 2017 AI Report, p.32 (Testimonies of “Mumin” and “Bakary”).

⁸⁹⁰ 2017 AI Report, p.32 (Testimony of “Bakary”).

⁸⁹¹ For the definition of the crime of rape pursuant to Article 8(2)(e)(vi) see *supra*, para.315.

⁸⁹² Tribunale di Messina Judgment, pp.24, 40-41.

reported to MEDU that “Somali women were all raped”.⁸⁹³ Another migrant interviewed by MEDU witnessed a male detainee being forced to strip and to have sexual intercourse with another man.⁸⁹⁴

(f) Sexual slavery – Article 8(2)(e)(vi) of the Statute

389. Abuses committed against female migrants may also amount to the war crime of sexual slavery. In accordance with Article 8(2)(e)(vi) of the Statute and Article 8(2)(e)(vi)-2 of the Elements of Crimes, the elements of this crime require, amongst others, that the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, including by purchasing or selling such a person or persons, and caused such person or persons to engage in one or more acts of a sexual nature.
390. After being transferred to, and detained in the al-Nasr DC, female detainees have allegedly been sold as sex slaves. In particular, according to the UN Panel of Experts, women from sub-Saharan countries and Morocco have been sold on the local market as “sex slaves”.⁸⁹⁵

v. Nexus with the armed conflict

391. The information available indicates that the underlying acts satisfy the war crimes nexus since they took place in the context of, and were associated with, the ongoing armed conflict in Libya.⁸⁹⁶
392. In the circumstances of the case, the members of the al-Nasr Brigade participated in the armed conflict and the migrants who suffered abuses in the al-Nasr DC did not take part in the hostilities. Moreover, the participation in the armed conflict enabled

⁸⁹³ 2020 MEDU Report, p.29 (Testimony of H.A.).

⁸⁹⁴ 2020 MEDU Report, p.30 (Testimony of G.).

⁸⁹⁵ 2017 UN Panel of Experts Report, Annex 30, para.3.

⁸⁹⁶ For the definition of the war crime nexus requirement see *supra*, paras.215-217.

the al-Nasr Brigade to take and maintain control over the al-Nasr DC and to commit the crimes therein.

393. As members of the Al-Nasr Brigade, the perpetrators participated in the ongoing armed conflict in Libya. The al-Nasr Brigade is an armed group and its members participated in various parts of the ongoing conflict in Libya at the national and local level.⁸⁹⁷ The al-Nasr Brigade is affiliated to the Awlad Bu Hmeira tribe, and following the power vacuum which emerged after the fall of Ghaddafi, it took control of the Zawiya refinery, allowing the militia's commander, Mohammed Kashlaf, to become the head of the Petroleum Facility Guards.⁸⁹⁸ In 2014 and 2015, the al-Nasr Brigade took part in "Operation Libya Dawn", together with most of the armed groups involved in fuel smuggling activities, including the Anas Al-Dabbashi militia commanded by Ahmed Al-Dabbashi a.k.a. Al-Amu.⁸⁹⁹ In 2019, the al-Nasr Brigade joined the coalition of militias that mobilised in support of the GNA against Haftar's forces during the 2019/2020 LNA Offensive against Tripoli.⁹⁰⁰
394. At the local level, the al-Nasr Brigade has repeatedly engaged in armed clashes against other local armed groups mainly in order to maintain its control of the oil refinery and fuel smuggling network as well as human smuggling and trafficking businesses.⁹⁰¹ Specifically, in 2016 and 2017, the al-Nasr Brigade took part in violent clashes in Zawiya against the al-Khadrawi and al-Lahab militias affiliated to the Awlad Saqr tribe, which tried to take control of the refinery complex and migrant smuggling activities.⁹⁰² In 2017, the al-Nasr Brigade was also involved in fighting in

⁸⁹⁷ See 2019 African Heritage Working Paper, p.13; 2017 Altai Consulting Report, pp.88-89; 2017 UN Panel of Experts Report, Annex 17, paras.2-3.

⁸⁹⁸ See 2019 African Heritage Working Paper, pp.12-13; 2017 UN Panel of Experts Report, Annex 17, para.2; 2019 UN Panel of Experts Report, Annex 21, para.7.

⁸⁹⁹ 2018 UN Panel of Experts Report, para.157. See also 2019 African Heritage Working Paper, p.13; April 2019 Global Initiative and Clingendael Report, p.75. See *supra*, Sections II.A.4, IV.A.1.a.

⁹⁰⁰ 16 April 2019 AP News Article; 2019 UN Panel of Experts Report, Annex 6, Appendix A, Item G13; 2021 Global Initiative Report, p.26. See *supra*, Sections II.A.8-9, IV.A.1.a.

⁹⁰¹ 2017 UN Panel of Experts Report, Annex 17, paras.2-3. See also 2019 African Heritage Working Paper, p.13; 2017 Altai Consulting Report, pp.88-89.

⁹⁰² 2017 UN Panel of Experts Report, Annex 17, paras.2, 5. See also 2017 Altai Consulting Report, pp.88-89, 91.

Sabratha, where it joined forces with al-Dabbashi.⁹⁰³ Significantly, the facilities of the al-Nasr DC host also the military base of the al-Nasr Brigade.⁹⁰⁴ This further suggests that the perpetrators' ability to commit the crimes is contingent on their "combatant" status, and, in particular their membership to the al-Nasr DC.⁹⁰⁵ Indeed, their presence in the al-Nasr DC, and thus their criminal conduct, was linked to the conflict.⁹⁰⁶

395. The victims of the crimes are persons protected by Common Article 3 of the Geneva Conventions. The migrants detained in the al-Nasr DC did not take active part in the conflict or the hostilities.⁹⁰⁷

396. The participation in the armed conflict enabled the al-Nasr Brigade to take and maintain control over the al-Nasr DC and to commit the crimes therein. Through its participation in the armed conflict both at the national and local levels, the members of the al-Nasr Brigade ensured their control over the al-Nasr DC and were able to commit the crimes against migrants detained therein. The information available reflects that the al-Nasr Brigade's participation in "Operation Libya Dawn" paved the way for its members to secure appointments to governmental positions, including in the DCIM, and to gain influence over the LCG's operations in Zawiya.⁹⁰⁸ Most notably, Mohammed Kashlaf obtained the appointment of one of his tribe members, al-Bija, as the commander of the LCG's local branch.⁹⁰⁹ As commander of the LCG, al-

⁹⁰³ April 2019 Global Initiative and Clingendael Report, p.75.

⁹⁰⁴ Tribunale di Messina Judgement, pp.7-8, 10.

⁹⁰⁵ In any event, as noted above, under the ICTR jurisprudence, the "combatant" status of the perpetrator (together with the victim status as civilian/protected under Common Article 3 of the Geneva Convention), is in and of itself a sufficient factor to satisfy the nexus requirement. See *Rutaganda* Appeal Judgement, para.579.

⁹⁰⁶ *Halilovic* Trial Judgement, para.727 ("the Trial Chambers finds the fact that the ABiH soldiers were billeted in Grabovica in preparation of combat operations in Herzegovina, has played a substantial part in the soldiers' ability to commit the crimes.").

⁹⁰⁷ See also 2018 Humanitarian Law & Policy.

⁹⁰⁸ 2017 UN Panel of Experts Report, Annex 17, para.4. See also 2019 African Heritage Working Paper, p.13.

⁹⁰⁹ 2017 UN Panel of Experts Report, Annex 17, para.4, Annex 30, para.1; 2018 UN Panel of Experts Report, Annex 49, para.2. See also 2017 Altai Consulting Report, p.89.

Bija's role was instrumental for the al-Nasr Brigade to receive an increasing number of migrants in the al-Nasr DC where they were subsequently abused.⁹¹⁰

397. More importantly, as noted above, the al-Nasr Brigade maintained its control over the al-Nasr DC following armed clashes which occurred in 2016 and 2017 against the al-Khadrawi and al-Lahab militias in Zawiya.⁹¹¹ These considerations strengthen the link between the crimes committed in the al-Nasr DC (especially after 2016/2017) and the armed conflict. Indeed, the al-Nasr Brigade's ability to commit the crimes in the al-Nasr DC has been predicated on the fact that it was successful in repelling the military attacks of the al-Khadrawi and al-Lahab militias.⁹¹²

g. Conclusion

398. The analysis of the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, and al-Nasr DC confirm the systematic pattern of abuses committed against migrants in the DCIM Detention Centres. The information that emerges concerning the abuses committed against migrants identifies a consistent criminal *modus operandi* of the armed groups in charge of such centres.
399. Every organisation and media platform focusing on the fate of migrants in Libya portrays the same tragic picture. Once intercepted at sea and disembarked in Libya, migrants are transferred to such centres where they face murder, torture, ill-treatment, inhumane conditions of detention, outrages upon personal dignity, forced labour, hostage-taking, and sexual violence.
400. The information available also reveals that the crimes committed in the DCIM Detention Centres are closely linked to the armed conflict. The perpetrators of the crimes are members of armed groups directly involved in the various phases of the

⁹¹⁰ 2017 UN Panel of Experts Report, Annex 17, para.4. See also 2018 UN Panel of Experts Report, Annex 49, para.2; 2017 AI Report, p.27; 2019 African Heritage Working Paper, pp.13-14.

⁹¹¹ See *supra*, para.394.

⁹¹² *Al Hassan* Confirmation Decision, paras.224-226.

conflict in Libya, including the revolution. The migrants detained in the centres are civilians and are exploited for military purposes. Lastly, the participation of the armed groups in the conflict was instrumental to maintaining control over the camps and committing the crimes therein.

3. Existence of a plan or policy or large-scale occurrence

401. The information available indicates that the alleged crimes described above were committed as part of a plan or policy of the armed groups in charge of the DCIM Detention Centres and occurred on a large-scale. As set out above, these groups have deliberately targeted migrants, including those rescued at sea by the LCG, as a way to extort money from them or use them in military-related operations. Likewise, the estimate of the DCIM Detention Centres suggests that between 2017 and 2020 tens of thousands of migrants have been mistreated.⁹¹³ This confirms the large-scale occurrence of crimes described above.
402. The existence of a plan or policy or large-scale occurrence of crimes is not a pre-requisite for the Court to exercise jurisdiction over war crimes.⁹¹⁴ However, such information may assist in the gravity determination.

B. Crimes against humanity

403. The UN Fact-Finding Mission on Libya concluded that migrants detained in DCIM Detention Centres have been subjected to crimes against humanity under Article 7 of the Statute, including, *inter alia*, murder, torture, imprisonment, rape, and enforced disappearances.⁹¹⁵ Likewise, the recent communication under Article 15 of the Statute, filed by the ECCHR, FIDH, and LFJL, concluded that migrants in Libya are subjected to imprisonment, enslavement, murder, torture, and rape as crimes against

⁹¹³ See *supra*, para.182.

⁹¹⁴ ICC, *The Prosecutor v. Bemba*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, 21 March 2016, para.126.

⁹¹⁵ 2021 Fact-Finding Mission on Libya Report, paras.57-58.

humanity.⁹¹⁶ In terms of the contextual elements of crimes against humanity, such crimes have been linked to a state policy.⁹¹⁷

404. The present communication does not focus on evidence or information reflecting such a policy, as its analysis is confined to evidence of the crimes occurring in the specific detention centres.
405. Nonetheless, in addition or in the alternative to the conclusion of the Fact-Finding Mission on Libya and the ECCHR/FIDH/LFJL, it is submitted that the information analysed in the context of war crimes occurring in DCIM Detention Centres permits, *at least*, the conclusion that the crimes committed in each centre stem from an organizational policy undertaken by the respective armed group in charge of such centre.
406. Rather than one overall attack, the crimes committed in each of the individual detention centres may be viewed as forming part of *separate* systematic (or large scale) attacks against a civilian population (namely, the migrants detained therein). The conduct at each centre therefore constitutes its own attack.
407. First, in each centre analysed, the abuses committed against migrants correspond to the underlying acts under Article 7 of the Statute. Without being exhaustive, such conduct includes:

- (i) Abu Salim DC: murder, imprisonment, torture, other inhumane acts;⁹¹⁸
- (ii) Tarik al-Matar DC: imprisonment, torture, other inhumane acts;⁹¹⁹

⁹¹⁶ ECCHR/FIDH/LFJL Report, p.23; ECCHR, FIDH, LFJL, Situation in Libya – Article 15 Communication on the Commission of Crimes against Migrants and Refugees in Libya, Executive Summary, 19 November 2021 (“ECCHR/FIDH/LFJL Communication – Executive Summary”), pp.8-9 ([Url](#) – last visited: 14 January 2022).

⁹¹⁷ 2021 Fact-Finding Mission on Libya Report, paras.57-58; ECCHR/FIDH/LFJL Report, p.23. According to the ECCHR Report the crimes are part of a state policy implemented by State and non-state actors. See also ECCHR/FIDH/LFJL Communication – Executive Summary, pp.8-9.

⁹¹⁸ See Section IV.A.2.a.iv.

⁹¹⁹ See Section IV.A.2.b.iv.

- (iii) Tarik al-Sikka DC: imprisonment, torture, enslavement;⁹²⁰
- (iv) Al-Mabani DC: murder, imprisonment, torture, rape and/or any other form of sexual violence;⁹²¹
- (v) Tajoura DC: imprisonment, torture, other inhumane acts;⁹²²
- (vi) al-Nasr DC: murder, imprisonment, torture, enslavement, rape, sexual slavery and/or any other form of sexual violence.⁹²³

408. Second, the information available indicates that, in each of these detention centres, the crimes collectively formed part of an *attack*, namely a course of conduct involving the multiple commission of the acts under Article 7(1) of the Statute.⁹²⁴

409. Multiple sources reflect that in the DCIM Detention Centres and, specifically, in the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, Al-Mabani DC, Tajoura DC, and al-Nasr DC, acts of violence against migrants are or have been committed on a systematic basis.⁹²⁵

⁹²⁰ See Section IV.A.2.c.iv.

⁹²¹ See Section IV.A.2.d.iv.

⁹²² See Section IV.A.2.e.iv.

⁹²³ See Section IV.A.2.f.iv.

⁹²⁴ ICC, *The Prosecutor v. Ongwen*, ICC-02/04-01/15, Trial Judgement, 4 February 2021 (“*Ongwen* Trial Judgement”), para.2674 (“An ‘attack’ in this context means a ‘course of conduct involving the multiple commission of acts referred to in [Article 7(1)]. The requirement that the acts form part of a ‘course of conduct’ indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts. The ‘multiple commission of acts’ sets a quantitative threshold involving a certain number of acts falling within the course of conduct.”) (references omitted).

⁹²⁵ See, for instance, 2018 UNSMIL Report, p.44 (“Interviews conducted by UNSMIL and other sources of information indicate that migrants and refugees detained at DCIM facilities *are systematically subjected to torture and other ill-treatment*. UNSMIL collected accounts of such violations committed in 2017 and 2018 at the Abu Salim, Gharyan, Janzour, Shuhada al-Nasr in al- Zawiya, Kararim, Mitiga, Surman, Tarik al-Matar, Tajoura, Tarik al-Tikka, Tarik al-Shouq, Zintan and Zuwara detention centres, all under DCIM at the time of the recorded violations.”) (emphasis added); 22 June 2021 MSF Press Release (“Following *repeated incidents of violence* towards refugees and migrants held in two detention centres in Tripoli, Libya, Médecins Sans Frontières (MSF) has announced that we feel obliged to temporarily suspend our activities in Mabani and Abu Salim detention centres. ‘This is not an easy decision to make, as it means we won’t be present in detention centres where we know people are suffering on a daily basis,’ said Beatrice Lau, MSF head of mission in Libya. ‘However, *the persistent pattern of violent incidents and serious harm to refugees and migrants*, as well as the risk to the safety of our staff, has reached a level that we are no longer able to accept.”) (emphasis added).

410. Rather than being isolated or random episodes of criminality, such acts of violence have been inflicted: (1) in a systematic and repeated manner as a means of punishment, extortion or exploitation; (2) by the same category of perpetrators, namely the members of the armed groups in charge of the centres; (3) in the same location, the respective detention centre; (4) against the same category of victims, the migrants detained therein.⁹²⁶ These features reflect that each detention centre falls within an organised criminal system in which the crimes committed against migrants are part of a “pattern of behaviour” or “overall flow of events” that meet the requirements of the attack under Article 7 of the Statute.
411. In addition, such course of conduct is directed against *a civilian population*.⁹²⁷ The acts do not target merely a limited and randomly selected group of individuals, but instead affect the majority of, if not all, migrants detained in the centres without distinction, persons who are “civilians”, as they do not take part in the hostilities.
412. Further, the manner of commission, the context, and the purpose of the crimes indicate that the attack/course of conduct involving multiple commission of the acts is carried out in furtherance of or pursuant to an *organisational policy*⁹²⁸ developed by the individual armed group in charge of the respective detention centre.
413. Indeed, the systematic and concerted fashion in which crimes against migrants were committed, the fact that they occurred in the context of detention centres, that such crimes are perpetrated by individuals acting in their official functions, that these

⁹²⁶ See Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

⁹²⁷ *Ongwen* Trial Judgement, para.2675 (“The course of conduct must be ‘directed against any civilian population’, namely a collective, as opposed to individual civilians. The civilian population must be the primary target of the attack and not an incidental victim of it. The presence within a civilian population of individuals who do not fall under the definition of ‘civilians’ does not deprive the population of its civilian character”) (references omitted).

⁹²⁸ ICC *The Prosecutor v. Katanga*, ICC-01/04-01/07, Judgement pursuant to Article 74, 7 March 2014 (“*Katanga* Trial Judgement”), para.1119 (“In the Chamber’s view, the connection of the term “organisation” to the very existence of the attack and not to its systematic or widespread nature presupposes that the organisation has sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute. It therefore suffices that the organisation [has] a set of structures or mechanisms, whatever those may be, that are sufficiently efficient to ensure the coordination necessary to carry out an attack directed against a civilian population”) referred to in *Ongwen* Trial Judgement, para.2677.

individuals belong to armed groups in control of the centres and, in some cases, these crimes serve the military goals of the individual armed groups are all indicative that such crimes are actively promoted or encouraged by the armed groups in charge of the respective centres, namely the Abu Salim Brigade, 301 Infantry Battalion, al-Khoja Militia, Public Security Agency, al-Daman Brigade, al-Nasr Brigade.⁹²⁹

414. Further, taken individually, these armed groups qualify as an *organisation* under Article 7(2) of the Statute. Each of these groups is composed of multiple elements,⁹³⁰ equipped with weapons⁹³¹ (including tanks),⁹³² and exercises control over part of the territory of the State.⁹³³ Their logistical and organisational capabilities allowed them to participate in the hostilities throughout the conflict,⁹³⁴ and manage detention centres with hundreds of detainees.⁹³⁵ There is no doubt that these armed groups

⁹²⁹ Notably, there is no indication that those materially responsible for such crimes have been subjected to disciplinary sanctions. To the contrary, such crimes have been committed with full impunity.

⁹³⁰ See *supra*, Sections IV.A.2.a.ii (the Abu Salim Brigade is composed of 800 fighters), IV.A.2.b.ii (the 301 Infantry Battalion is composed of 1500 fighters); IV.A.2.f.ii (the al-Nasr Brigade is composed of 1500 fighters).

⁹³¹ With respect to the heavy military equipment of the Abu Salim Brigade see Twitter, #Libya- video purportedly showing Ghneiwa/Kikli militia ("Stability Support Apparatus") mobilizing in Abu Salim, southern #Tripoli following alleged kidnapping of Fathi al-Kikli ([Url](#)- last visited: 14 January 2022). See also Sections IV.A.2.b.v (migrants detained in Tarik al-Matar DC were forced to load/unload weapons in the military base of the 301 Infantry Battalion); IV.A.2.c.iv(a) (the Tarik al-Sikka DC is also a military base with a weapons storage); IV.A.2.d.iv(a) (Public Security Agency's members are armed with weapons); IV.A.2.e.iv(a) (the Tajoura DC is also a military base with a weapons storage). See also Tribunale di Messina Judgment, p.8 (indicating that the al-Nasr DC was adjacent to the al-Nasr Brigade military base).

⁹³² See *supra*, Section IV.A.2.e.iv(a) (in the Tajoura DC migrants were forced by the al-Daman Brigade to load munitions, clean weapons and tanks). See also Tribunale di Messina Judgment, p.8 (indicating that the al-Nasr Brigade was equipped with tanks).

⁹³³ See *supra*, Sections IV.A.2.a.i (Abu Salim Brigade controls the Abu Salim district in Tripoli); IV.A.2.b.ii (The 301 Infantry Battalion controls the south-west area of Tripoli); IV.A.2.d.ii (the Public Security Agency controls the area of Tripoli where the Al-Mabani DC is placed); IV.A.2.f.ii (the al-Nasr Brigade controls the oil refinery where the al-Nasr DC is situated).

⁹³⁴ See *supra*, Sections IV.A.2.a.v (with respect to the Abu Salim Brigade participation in the hostilities) IV.A.2.b.v (with respect to the 301 Infantry Battalion's participation in the hostilities); IV.A.2.c.v (with respect to the Al-Khoja Militia's participation in the hostilities); IV.A.2.d.v (with respect to the Public Security Agency's and Trabelsi's participation in the hostilities); IV.A.2.e.v (with respect to the Al-Daman Brigade's participation in the hostilities); IV.A.2.f.v (with respect to the al-Nasr Brigade's participation in the hostilities).

⁹³⁵ See *supra*, Sections IV.A.2.a.ii (with respect to the Abu Salim Brigade's control over the Abu Salim DC), IV.A.2.b.ii (with respect to the 301 Infantry Brigade's control over the Tarik al-Matar DC), IV.A.2.c.ii (with respect to the Al-Khoja Militia's control over the Tarik al-Sikka DC), IV.A.2.d.ii (with respect to the Public Security Agency's control over the Al-Mabani DC), IV.A.2.e.ii (with respect to the Al-Daman Brigade's control over the Tajoura DC), IV.A.2.f.ii (with respect to the al-Nasr Brigade's control over the al-Nasr DC).

possess the means to carry out a widespread or systematic attack against a civilian population.

415. Lastly, there is also conclusive information that in each detention centre, taken individually, the alleged acts were committed in, at least, a systematic manner over a protracted period. Migrants detained in Abu Salim DC, the Tarik al-Matar DC, Tarik al-Sikka DC, Al-Mabani DC, Tajoura DC, and al-Nasr DC were subjected to continuous and recurrent atrocities, including murders, tortures, inhuman conditions of detention, forced labour, and forced military conscription, rapes or other forms of sexual exploitation. For each detention centre, the accounts of migrants confirm that these crimes occurred in a nearly identical manner and according to a similar *modus operandi*. The consistent pattern of criminality that emerges in these centres excludes any possibility of random occurrence of such acts.

V. ALLEGED PERPETRATORS/MODES OF LIABILITY

A. Introduction

416. In terms of criminal participation, the crimes analysed in Section IV involve the responsibility of several individuals acting in and outside Libya.
417. The abuses suffered by migrants in the DCIM Detention Centres are the result of a cycle of violence, which implicates a multitude of actors. The victims of these crimes are trapped in a sort of “supply chain” that, in most cases, involves initial detention and abuses, attempts to cross the Mediterranean Sea in desperate and dangerous conditions, interception by the LCG, their transfer back to Libya, and the return to DCIM Detention Centres where new atrocities occur. Often, migrants are forced to go through this cycle several times, until either they die at sea or in detention, reach the desired destination, or are eventually refouled or returned to their home countries.
418. Of the multitude of actors responsible for, or involved in, the alleged crimes in the DCIM Detention Centres,⁹³⁶ the present Communication focuses on two sets of groups of persons: (1) Libyan Actors; and (2) Third-State Actors, namely Italian and Maltese authorities.
419. The first group (Libyan Actors) comprises key individuals who are materially involved in the cycle of atrocities that migrants suffer, namely: the members of armed groups in control of the DCIM Detention Centres who commit the crimes, DCIM officials supporting the armed groups, and LCG personnel responsible for bringing migrants crossing the Mediterranean Sea back to Libya and eventually to the centres. Relevant commissions and contributions meet the requirements provided by Article 25(3)(a)-(d) of the Statute.

⁹³⁶ Including the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, al-Nasr DC.

420. The second group (Third-State Actors) encompasses authorities and officials of Malta and Italy who support the above-mentioned Libyan Actors in the execution of the crimes. The support provided by Italian and Maltese authorities and officials contributed to the commission of crimes against migrants in DCIM Detention Centres, including in the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, al-Nasr DC under Article 25(3)(d) of the Statute.

B. Libyan Actors

421. Different Libyan actors are involved in the crimes committed against migrants in the DCIM Detention Centres under the various prongs of Article 25(3) of the Statute, including members of the armed groups in charge of the centres,⁹³⁷ as well as DCIM and LCG officials.

422. Members of the armed groups in charge of the DCIM Detention Centres. Members of the armed groups running the DCIM Detention Centres bear the responsibility under Article 25(3)(a) of the Statute for the commission of crimes against migrants, whether as individuals, jointly with other actors or through other persons.

423. Setting aside the issue of direct perpetration, the information available indicates that these crimes are executed as part of an agreement or common plan between a plurality of perpetrators (co-perpetration). This conclusion is consistent with the systematic and concerted manner in which the crimes are committed,⁹³⁸ together with the facts that the direct perpetrators are part of a hierarchical structure (the specific armed group),⁹³⁹ they commit the relevant crimes in the context of their functions (running or providing security to the detention centres)⁹⁴⁰ and, in some cases, to the advantage

⁹³⁷ This includes members of: (1) the Abu Salim Brigade - in charge of the Abu Salim DC; (2) the 301 Infantry Battalion – in charge of the Tarik al-Matar DC; (3) the al-Khoja Militia – in charge of the Tarik al-Sikka DC; (4) the Public Security Agency - in charge of the al-Mabani DC; (5) the al-Dhaman Brigade - in charge of the Tajoura DC; and (6) al-Nasr Brigade – in charge of the al-Nasr DC. See *supra*, Sections IV.A.2.a-IV.A.2.f.

⁹³⁸ See *supra*, Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

⁹³⁹ See *supra*, Sections IV.A.2.a.ii, IV.A.2.b.ii, IV.A.2.c.ii, IV.A.2.d.ii, IV.A.2.e.ii, IV.A.2.f.ii.

⁹⁴⁰ See *supra*, Sections IV.A.2.a.ii and iv, IV.A.2.b.ii and iv, IV.A.2.c.ii and iv, IV.A.2.d.ii and iv, IV.A.2.e.ii and iv, IV.A.2.f.ii and iv.

of the group (*vis-à-vis* the forced recruitment or labour of migrants in military-related matters).⁹⁴¹

424. For instance, a clear indication of the existence of a common plan emerges in relation to the al-Nasr DC run by the al-Nasr Brigade. In that case, the 1970 Security Council Committee created pursuant Resolution 1970(2011) established that the mistreatment of migrants in the al-Nasr DC was the result of a criminal plan, which included Mohammed Kashlaf, head of the al-Nasr Brigade, Al-Bija, head of the LCG in Zawiya, and Osama Al Kuni Ibrahim, the *de facto* manager of the al-Nasr DC.⁹⁴² The narrative summaries in support of their designation on the UNSC Sanction List reflect a criminal scheme according to which migrants intercepted at sea by al-Bija had been transferred to the al-Nasr DC – run by the al-Nasr Brigade under the command of Kashlaf – and had been subjected to abuses and mistreatments by Osama Al Kuni Ibrahim and his subordinates, who operate under the direction of al-Bija and Kashlaf.⁹⁴³ This scheme was identified also by the Tribunale di Messina Judgment, which found *beyond reasonable doubt* the existence of a criminal association among those manning the centre, aimed at torturing and extorting money from migrants.⁹⁴⁴
425. In addition, apical members, commanders or senior figures of the armed groups involved in the crimes carried out in the DCIM Detention Centres may be held responsible for these crimes as indirect perpetrators. Indeed, the fact that these crimes are perpetrated by members of hierarchically structured armed groups in a concerted/systematic action is compatible with the inference that senior figures and commanders within the groups exert control over such conduct and use their subordinate apparatus of power to commit such crimes.⁹⁴⁵ The above-mentioned

⁹⁴¹ See *supra*, Sections IV.A.2.a.iv(b), IV.A.2.b.iv(a), IV.A.2.c.iv(a), IV.A.2.e.iv(a)-(b).

⁹⁴² Kashlaf - Narrative Summary; UNSC, Narrative Summary of Reasons for Listing – Lyi.026 Abd Al Rahman Al-Milad, 7 June 2018 (“al-Bija - Narrative Summary”) ([Url](#) – last visited: 14 January 2022); UNSC, Narrative Summary of Reasons for Listing – Lyi.029 Osama Al Kuni Ibrahim, 25 October 2021 (“Osama Ibrahim - Narrative Summary”) ([Url](#) – last visited: 14 January 2022). See also 2019 UN Panel of Experts Report, para.224.

⁹⁴³ Kashlaf - Narrative Summary; al-Bija - Narrative Summary; Osama Ibrahim - Narrative Summary.

⁹⁴⁴ Tribunale di Messina Judgment, pp.37-42.

⁹⁴⁵ *Katanga* Trial Judgement, para.1141.

evidence and judicial findings related to the criminal scheme behind the abuses committed against migrants in the al-Nasr DC is consistent with this conclusion and is illustrative of a pattern applicable to other centres.

426. LCG personnel. LCG personnel bear responsibility under Article 25(3) of the Statute for crimes committed against migrants intercepted at sea and transferred to DCIM Detention Centres. As noted, a large part of migrants end up detained and abused in the DCIM Detention Centres after being “rescued” by LCG personnel and transferred back to Libya.⁹⁴⁶ These centres include the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, al-Nasr DC.⁹⁴⁷
427. In this context, the conduct of LCG personnel is an integral part of the supply chain that leads to abuses in the detention centres. Indeed, the LCG conduct “form[s] part of a pattern characterized by dangerous operations at sea followed by a *systematic* transfer to a detention centre where migrants are kept for an indefinite period and where they are subjected to intolerable conditions that cause suffering and prompt them to utilise any means of escape, including paying money.”⁹⁴⁸
428. Here, the conduct of LCG personnel is instrumental, if not pivotal, to the crimes committed against migrants in these centres.⁹⁴⁹ LCG personnel operates as an indispensable *trait d’union* between the victims and the perpetrators of the crimes. Without the contribution of the LCG personnel, migrants attempting to cross the Mediterranean Sea would not reach the centres and would not be subject to the

⁹⁴⁶ See *supra*, Section IV.A.2 (concerning the presence of migrants rescued at sea by the LCG in DCIM Detention Centres).

⁹⁴⁷ See *supra*, Sections IV.A.2.a.iii, IV.A.2.b.iii, IV.A.2.c.iii, IV.A.2.d.iii, IV.A.2.e.iii, IV.A.2.f.iii.

⁹⁴⁸ 2021 Fact-Finding Mission on Libya Report, para.68 (emphasis added).

⁹⁴⁹ Article 25(3)(d) of the Statute does not require a specific degree or level of the contribution to the crime. To be captured under Article 25(3)(d) the contribution needs to have an effect on (or influence) the commission of the crime in terms of pure causation. *Al Hassan* Confirmation Decision, para.948 (“*S’agissant du degré de contribution requis pour déclarer engagée la responsabilité prévue à l’article 25-3-d du Statut, la Chambre fait sienne les conclusions des Chambres préliminaires I et II, dans leur composition antérieure, à savoir que le Statut n’exige pas que la contribution visée à l’article 25-3-d soit « importante » ou atteigne un seuil minimal. la contribution doit être de nature à influencer sur la commission du crime. En d’autres termes, si la conduite du suspect ne produit aucun effet de causalité sur la commission des crimes, cette conduite ne peut être qualifiée de « contribution » au sens de l’article 25-3-d*”) (references omitted).

atrocities perpetrated by the members of the armed groups in control of these camps. There cannot be any doubt over the causal nature of the LCG contribution *vis-à-vis* the occurrence of the crimes committed in the DCIM Detention Centres. The cause-effect relation between the interception at sea of migrants and the abuses they suffer in DCIM Detention Centres fulfils, at a *minimum*, the requirements under Article 25(3)(d) of the Statute *vis-à-vis* such crimes (“[i]n any other way contributes to the commission or attempted commission of such a crime”).⁹⁵⁰

429. Further, the information available suggests that the armed groups in DCIM Detention Centres qualify as a group of persons acting with a common purpose within the meaning of Article 25(3)(d) of the Statute.⁹⁵¹ Also in this case, the concerted and systematic occurrence of crimes, and the fact that the perpetrators commit the crimes in the context of their official duties and under the framework of a hierarchical structure are indicative of the existence of a common plan which aims at or entails the commission of such conduct.⁹⁵²

430. Lastly, the LCG’s contribution is made in the knowledge of the groups’ intention to commit the crimes. The fact that migrants are abused in DCIM Detention Centres is public knowledge, and is frequently covered by media, international organisations and NGOs.⁹⁵³ Libyan individuals, including members of the LCG, have been designated by the 1970 Security Council Sanction Committee in relation to their involvement in mistreating migrants in DCIM Detention Centres.⁹⁵⁴ Libyan authorities received specific recommendations from international organisations in

⁹⁵⁰ For a comprehensive analysis of the requirements of Article 25(3)(d) of the Statute see *infra*, Section V.C.1. With respect to the al-Nasr DC, the contribution of the LCG of Zawiya should be considered under Article 25(3)(a) of the Statute in terms of co-perpetration, indirect perpetration or indirect co-perpetration.

⁹⁵¹ *Katanga* Trial Judgement, para.1620. For the analysis of the legal elements of Article 25(3)(d) of the Statute see, *infra*, Section V.C.1.

⁹⁵² See *infra*, Section V.C.2.

⁹⁵³ See more extensively references in Section V.C.5.

⁹⁵⁴ Kashlaf - Narrative Summary; al-Bija - Narrative Summary; Osama Ibrahim - Narrative Summary.

relation to abuses that migrants suffer in the detention centres.⁹⁵⁵ According to the UN Fact-Finding Mission on Libya, “[s]ince the inception of boat pullbacks in the Mediterranean, Libyan authorities have been on notice of the widespread and systematic nature of the reckless interceptions at sea and the abuses within the centres.”⁹⁵⁶ In practice, there is no possibility that the LCG operates without knowing the fate of the rescued migrants, once they are disembarked in Libya.

431. DCIM officials. Available information also implicates DCIM officials in the crimes committed by the armed groups running the DCIM Detention Centres. DCIM staff are alleged to, *inter alia*: (1) be involved in the mistreatment of migrants in DCIM Detention Centres;⁹⁵⁷ (2) be involved in the management of DCIM Detention Centres (while not in control);⁹⁵⁸ (3) interfere with organisations visiting and monitoring the

⁹⁵⁵ See, for instance, 2021 Fact-Finding Mission on Libya Report, para.89(c); August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.23 (“UNSMIL continues to monitor human rights violations, including against migrants and refugees in Libya, and raises its concerns with relevant Libyan authorities, including the Libyan coastguard and navy and the Libyan Directorate for Combating Illegal Migration.”). See also September 2017 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.25. (“UNSMIL monitors the situation of migrants, including during and after interception and during detention, and has been raising its concerns with relevant interlocutors, including the Libyan Coastguard, the Libyan Directorate for Combating Illegal Migration”).

⁹⁵⁶ 2021 Fact-Finding Mission on Libya Report, para.69.

⁹⁵⁷ September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.32 (“Staff of the Directorate suspected of having committed violations and abuses against migrant detainees had been reinstated”); United States Department of State, 2021 Trafficking in Persons Report, June 2021, p. 615 (“Private employers and DCIM officials use detained migrants for forced labor in domestic work, garbage collection, construction, road paving, and agriculture.”) ([Url](#) – last visited: 14 January 2022); 2021 AI Report, pp.6 (“No information is available of the location and fate of those unaccounted for, amid consistent reports of extortion by DCIM officials of ransoms to secure detainees’ freedom; transfer between DCIM centres”), 35 (“DCIM officials and other armed men in uniform or civilian dress present in detention centres routinely resorted to unlawful lethal force against detained refugees and migrants, sometimes leading to killings and injuries.”); 2020 AI Report, pp.8, 27. 2017 AI Report, pp.8, 27, 31. 2019 HRW Report, p. 37 (reporting that three DCIM staff working in detention centres were suspended from duty after complaints of misconduct); 2018 UNSMIL Report, pp. 47 (finding that migrants were forced to clean vehicles of DCIM officials), 56 (recommending Libyan authorities to remove from duty officials against whom there are reasonable suspicions of involvement in human rights violations and corruption, pending effective prosecutions and investigations), 57 (recommending Libyan authorities to carry out investigations *vis-à-vis* DCIM personnel into all allegations of violations or abuses of human rights against migrants).

⁹⁵⁸ 2021 AI Report, p.6 (“The director and other DCIM staff in charge of al-Mabani at the time of writing previously ran the now-closed Tajoura DCIM detention centre, which was notorious for torture and other ill-treatment, forced labour and exploitation, and deaths in custody in suspicious circumstances. Similar patterns have been documented in al-Mabani, where detainees and others with direct knowledge consistently described torture and other ill-treatment, cruel and inhuman conditions of detention, extortion of ransom money, and forced labour”); 2019 HRW Report, p.15 (observing that DCIM Detention Centres are staffed with DCIM personnel, although controlled by the armed groups).

conditions of the centres;⁹⁵⁹ and (4) transfer migrants to the centres from disembarkation points.⁹⁶⁰ Aside for the issue of material perpetration of the crimes, the conduct of DCIM staff fulfil, at *minimum*, the standards and requirements of ancillary forms of liability pursuant to Article 25(3)(b)-(d) of the Statute.

C. Third-State Actors - Italian and Maltese Authorities (Article 25(3)(d) of the Statute)

1. Legal elements of Article 25(3)(d) of the Statute

432. Article 25(3)(d) of the Statute provides a residual form of responsibility, which focuses on the assistance, either internal or external, to a group of persons acting with a common purpose. In terms of the *actus reus* and *mens rea*, the requirements of Article 25(3)(d) of the Statute are lower than the other forms of liability set forth in Article 25(3). This form of liability appears to be the most suitable to qualify the conduct of European nationals that contributed to the underlying crimes described above.
433. With respect to the *actus reus*, Article 25(3)(d) requires that: (1) a group of persons acting with a common purpose committed a crime; and (2) the accused contributed to such commission in a way other than those contained in Article 25(3)(a)-(c).⁹⁶¹ The group does not need to be formally structured or incorporated into a military, political, or administrative entity.⁹⁶² Its criminal purpose implies the “specification of

⁹⁵⁹ 2018 UNSMIL Report, p.41 (concluding that DCIM officials interfere in field visits of organisations in DCIM Detention Centres).

⁹⁶⁰ 2021 AI Report, p.31 (“Refugees and migrants who had been returned to Libya in 2021 following interception at sea and interviewed by Amnesty International had all been disembarked in the two Tripoli ports. They recounted facing ill-treatment by the Libyan authorities, having little if any opportunity to speak with humanitarian organizations present, and being provided with misleading or no information by Libyan officials about where they or their loved ones would be taken next. *DCIM officials then boarded them on buses or other vehicles and transferred them directly to detention centres in all but four instances, in which refugees and migrants managed to avoid detention by escaping from the ports or en route to detention centres.*”) (emphasis added).

⁹⁶¹ See *Katanga* Trial Judgement, para.1620.

⁹⁶² *Katanga* Trial Judgement, para.1626.

the criminal goal pursued”, namely its scope, the type, and the identity of the members of the group.⁹⁶³

434. Importantly, while the purpose needs to involve an element of criminality (*i.e.* the commission of a crime), this does not need to be the ultimate goal of the group.⁹⁶⁴

435. As confirmed by the jurisprudence of the ICC, any level or degree of contribution engages liability under this provision.⁹⁶⁵ To fall under Article 25(3)(d), the contribution needs simply to have an effect on (or influence) the commission of the crime in terms of strict causation.⁹⁶⁶ Put otherwise, remote or limited conduct which contributed to (or had an effect on) the crime is captured by Article 25(3)(d). However, a direct nexus between the contribution and the execution of the crime is not required.⁹⁶⁷ Notably, it is irrelevant whether the accused acting under Article 25(3)(d) is a member of the group.⁹⁶⁸ In addition, the contribution to the crime does not need to be made through the material perpetrators themselves, as a direct nexus between the conduct of the accessory and that of the material perpetrator need not be established.⁹⁶⁹

436. As to the *mens rea*, under Article 25(3)(d), the contribution has to be intentional, in the sense that it must be made deliberately and with awareness.⁹⁷⁰ Consequently, the accused does not need to share the intent to commit the crime.⁹⁷¹

⁹⁶³ *Katanga* Trial Judgement, para.1626.

⁹⁶⁴ *Katanga* Trial Judgement, para.1627.

⁹⁶⁵ *Al Hassan* Confirmation Decision, para.948; ICC, *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, ICC-01/12-01/15, Decision on the confirmation of charges against Ahmad Al Faqi Al Mahdi, 24 March 2016, para.27; ICC, *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, para.44.

⁹⁶⁶ *Al Hassan* Confirmation Decision, para.948.

⁹⁶⁷ *Katanga* Trial Judgement, para.1635.

⁹⁶⁸ *Katanga* Trial Judgement, para.1631.

⁹⁶⁹ *Al Hassan* Confirmation Decision, para. 945 (“L’article 25-3-d exige en effet que le suspect «contribue de toute autre manière à la commission [...] d’un [...] crime». C’est donc une contribution à un crime qui doit être démontrée. Il n’est cependant pas nécessaire d’établir un lien direct entre le comportement du complice et celui de l’auteur matériel. Il n’est en outre pas nécessaire que le suspect soit sur le lieu du crime pour le tenir responsable”) (references omitted).

⁹⁷⁰ *Katanga* Trial Judgement, paras.1637-1638.

⁹⁷¹ *Katanga* Trial Judgement, para.1638.

437. Moreover, the subjective element is articulated under two alternative lines: (1) the aim of furthering the criminal activity or criminal purpose of the group; or (2) the knowledge of the intention of the group to commit the crime. The first alternative reflects a volitional character which goes beyond the mere result of the contribution. The last prong, however, is considerably lower and simply requires that the perpetrator has knowledge of the group's intention to commit the crimes as part of its common purpose.⁹⁷²

2. Groups of persons acting with a common purpose

438. The information available indicates that war crimes and crimes against humanity, committed against migrants detained in the DCIM Detention Centres following their interception at sea, are perpetrated by groups of persons acting with a common purpose, namely the armed groups in charge of the centres within the meaning of Article 25(3)(d) of the Statute.

439. As to the existence of the *group*, the various conducts involve numerous perpetrators operating under the hierarchical umbrella of an armed group that is *de facto* in charge of the concerned detention centre. Accordingly, each of the armed groups running DCIM detention centres can be qualified individually as a group under Article 25(3)(d) of the Statute.

440. The systematic character of these crimes confirms the existence of a *common criminal plan/purpose* entailing the commission of these crimes. The analysis of the underlying acts in the Abu Salim DC, Tarek al-Matar DC, Tarek al-Sikka DC, al-Mabani DC, Tajoura DC and the al-Nasr DC reveals that the crimes that are, or have been, committed against the detained migrants follow a specific *modus operandi*. In these centres, migrants are detained in degrading conditions, and are abused through tortures and other cruel treatments to enforce discipline and/or for the purpose of

⁹⁷² *Katanga* Trial Judgement, paras.1640-1642.

hostage-taking.⁹⁷³ In each of the detention centres analysed, these abuses occurred on a regular basis showing a criminal pattern that excludes random individual delinquency, but rather reflects a sequence of conducts adopted by a group of individuals, which is consistent with a common criminal plan.

441. Under a broader spectrum, the fact that such criminal pattern is replicated in the other DCIM Detention Centres⁹⁷⁴ is an additional indicator that these crimes are not the result of individual indiscipline of members of armed groups in charge of the various centres. The systematic character of this conduct, together with the fact that they were perpetrated by individuals that are members of, or linked with, armed groups in detention centres operated by such groups, provide a strong indication that the underlying crimes were part of a common plan/purpose adopted by a group of individuals.
442. Further evidence of a *common criminal plan/purpose* emerges from the specific nature of these crimes, which excludes the possibility that they are committed opportunistically, but rather to achieve the aims of the armed groups running the centres. This is particularly evident *vis-à-vis* the cases of: (1) the forced labour or recruitment of migrants for military activities of the armed groups;⁹⁷⁵ (2) the torture and cruel treatments aiming at their extortion or discipline;⁹⁷⁶ and (3) the trade of migrants to people in charge of other centres or to smugglers.⁹⁷⁷ This pattern entails a common criminal plan pursued by each of the various armed groups in charge of the detention centres.
443. In this regard, with respect to the al-Nasr DC, the Tribunale di Messina found beyond reasonable doubt that the crimes committed against migrants were perpetrated by

⁹⁷³ See *supra*, Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

⁹⁷⁴ See *supra*, Section IV.A.2.

⁹⁷⁵ See *supra*, Sections IV.A.2.a.iv(b) (Abu Salim DC), IV.A.2.b.iv(a) (Tarik al-Matar DC), IV.A.2.c.iv(a) (Tarik al-Sikka DC), IV.A.2.e.iv (Tajoura DC).

⁹⁷⁶ See *supra*, Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

⁹⁷⁷ See *supra*, Sections IV.A.2.c.iv(a)-(b), IV.A.2.f.iv(c).

members of a criminal organisation with the purpose of extorting money (“*associazione a delinquere*” pursuant to Article 416 of the Italian Criminal Code), which included the director of the Centre Ossama Milad (aka Osama Al Kuni Ibrahim),⁹⁷⁸ and members of the al-Nasr Brigade.⁹⁷⁹ The conclusion of the Tribunale di Messina is consistent with the findings of the UN Panel of Experts on Libya which attributed the abuses committed in the al-Nasr DC to the al-Nasr Brigade under the command of Mohammed Kashlaf.⁹⁸⁰

3. Italian authorities and officials contributed to the commission of the crimes against migrants detained in Libya

444. Between 2017 and 2021, Italian authorities – including government officials, members of the Italian parliament and military personnel – adopted a series of measures to set up the LCG and bolster it to intercept migrants attempting to cross the Mediterranean Sea and to return them to Libya.
445. These Italian authorities and officials provided to Libyan authorities and, in particular, the LCG and its members: (1) patrol vessels to perform search and rescue operations; (2) maintenance of the LCG vessels; (3) training; (4) infrastructure and equipment necessary for their activities; (5) assistance for the creation of the Libyan SAR zone; and (6) direct assistance during the LCG’s search and rescue operations through specific coordination.⁹⁸¹

⁹⁷⁸ Tribunale di Messina Judgment, pp.30-35. Osama Al Kuni Ibrahim is also known as Ossama Milad. See EU, Official Journal of the European Union, Council Implementing Decision (CFSP) 2021/1910 of 4 November 2021 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya, 4 November 2021 ([Url](#)- last visited: 14 January 2022).

⁹⁷⁹ IrpiMedia, Lorenzo Bagnoli, La Mafia di Zawiya, 8 July 2020 ([Url](#)- last visited: 14 January 2022).

⁹⁸⁰ 2017 Panel of Experts Report, Annex 17; 2018 UN Panel of Experts Report, Annex 49, para.2; 2019 UN Panel of Experts Report, para.224. See also Kashlaf - Narrative Summary.

⁹⁸¹ See *infra*, Sections V.C.3.a - V.C.3.f.

446. The “Italian support” was provided mainly in the context of “Operation Mare Sicuro” and the “Missione bilaterale di supporto e assistenza alla Libia” (“MIASIT”).⁹⁸² These two operations have been carried out under the legal framework of the MoU signed between Italy and Libya in February 2017 and renewed in February 2020.⁹⁸³
447. As the figures show, the assistance provided to the LCG was material to enhance its capability to intercept migrants and transfer them back to Libya. In 2015, LCG’s operations and rescue missions resulted in only around 0.5% of the total number of migrants rescued at sea (roughly 800 persons).⁹⁸⁴ By contrast, between 2017 and 2021, the LCG alone intercepted and transferred back to Libya between 60,000 and 70,000 migrants.⁹⁸⁵
448. The information available shows a causal connection between the Italian support provided to Libyan authorities and the crimes migrants suffered in the detention centres. Such connection amounts to a contribution to the crimes pursuant to Article 25(3)(d) of the Statute.⁹⁸⁶

⁹⁸² Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita al periodo 1° gennaio–31 dicembre 2019, anche al fine della relativa proroga per il periodo 1° gennaio–31 dicembre 2020, deliberata il 21 maggio 2020 (Doc.XXVI n.3), 4 June 2020 (“Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020”), Scheda 23/2019, pp.74-75 (referring to Miasit), Scheda 38/2019, 110-111 (referring to Mare Sicuro) ([Url](#) - last visited: 14 January 2022).

⁹⁸³ Memorandum d’intesa sulla cooperazione nel campo dello sviluppo, del contrasto all’immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana, 2 February 2017 ([Url](#) – last visited: 14 January 2022) (English translation). Under Article 1(C) of the MoU Italy agreed to provide technical and technological support to the particular Libyan authorities responsible for tackling illegal immigration, including the LCG and the relevant organs of the Libyan Ministry of Home Affairs. See *supra*, Sections II.B.3 and II.C.

⁹⁸⁴ 2018 Forensic Oceanography Report, p.33.

⁹⁸⁵ Matteo De Bellis, lontano dagli occhi, Storia di Politiche Migratorie e Persone alla Deriva tra Italia e Libia, People Idee ed. (2021), p.121 and reference cited therein (indicating that between January 2016 and 2021, 70,000 migrants were intercepted by the LCG). Between January 2017 and November 2020, LCG intercepted around 50,000 migrants at sea. See UNSMIL, Report on the human rights situation of migrants and refugees in Libya, Migration report from January 2017 to 30 September 2018, December 2018, p.1; UNHCR, Libya: Activities at Disembarkation, Monthly Update, December 2018, p.1; UNHCR, UNHCR Update Libya, 3 January 2020, p.1; UNHCR, UNHCR Update Libya, 6 November 2020, p.1. See also 2020 AI Report, fn.39.

⁹⁸⁶ Al Hassan Confirmation Decision, para. 945 (“L’article 25-3-d exige en effet que le suspect «contribue de toute autre manière à la commission [...] d’un [...] crime». C’est donc une contribution à un crime qui doit être démontrée. Il n’est cependant pas nécessaire d’établir un lien direct entre le comportement du complice et celui de l’auteur matériel. Il n’est en outre pas nécessaire que le suspect soit sur le lieu du crime pour le tenir responsable”) (references omitted) (emphasis added).

449. Indeed, following LCG’s interceptions, migrants were sent to DCIM Detention Centres, including the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, Tajoura DC and al-Nasr DC,⁹⁸⁷ where they were subjected to the alleged war crimes under Article 8(2)(c) and (e) of the Statute and crimes against humanity pursuant to Article 7(1) of the Statute.⁹⁸⁸ The conduct of Italian authorities and officials, thus, had a significant effect on the commission of these crimes.⁹⁸⁹ The conjoint efforts of the Italian authorities (through, *inter alia*, provision of assets, training and coordination) and the LCG (materially intercepting migrants at sea) are causal to the commission of the crimes perpetrated by the members of the armed groups running the DCIM Detention Centres where migrants were transferred once back in Libya.

a. The Italian authorities and officials provided to the LCG patrol vessels that were instrumental to the commission of the underlying crimes

450. Between 2017 and 2019, the Italian authorities provided at least sixteen patrol vessels to the LCG to perform rescue operations.⁹⁹⁰ Specifically: (1) four “Bigliani Class” patrol boats had been delivered to Libyan authorities in May 2017;⁹⁹¹ (2) two ‘Corrubia

⁹⁸⁷ See *supra*, Sections IV.A.2. (general presence of migrants intercepted at sea in DCIM Detention Centres), IV.A.2.a.iii (presence of migrants intercepted at sea in the Abu Salim DC), IV.A.2.b.iii (presence of migrants intercepted at sea in the Tarik al-Matar DC), IV.A.2.c.iii (presence of migrants intercepted at sea in the Tarik al-Sikka DC), IV.A.2.d.iii (presence of migrants intercepted at sea in the al-Mabani DC), IV.A.2.e.iii (presence of migrants intercepted at sea in the Tajoura DC), IV.A.2.f.iii (presence of migrants intercepted at sea in the al-Nasr DC).

⁹⁸⁸ See *supra*, Sections IV.A., IV.B.

⁹⁸⁹ Cf. *Katanga* Trial Judgement, para.1632.

⁹⁹⁰ See for instance, 2019 UN Panel of Experts Report, Annex 33, paras.3-4, Annex 34, Tables 34.1 (referring to “Fezzan”, “Ubari”, “Zuwarah”, “Ras Al Jadar”, “Sabratha”, “Zawia”, “Ibn Ouf”) 34.2 (referring to 10 patrol boats “500 class” to be donated by Italy).

⁹⁹¹ Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, deliberata dal Consiglio dei Ministri il 28 dicembre 2017 (Doc.CCL-bis n.1), 28 December 2017 (“Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017”), Scheda 24, pp.75-76 ([Url](#) – last visited: 14 January 2022). See also EUNAVFOR MED Operation SOPHIA – Monitoring Mechanism Libyan Coast Guard and Navy, Monitoring Report October 2017 – January 2018, February 2018 (“2018 EUNAVFOR MED Report”), pp.5-6, 19, Annex A ([Url](#) – last visited: 14 January 2022); See for instance, 2019 UN Panel of Experts Report, Annex 33, paras.3-4, Annex 34, Table 34.

Class' patrol vessels were delivered to the LCG in October/November 2018;⁹⁹² and (3) ten additional vessels on 2 November 2019.⁹⁹³

451. The LCG used these vessels to intercept migrants attempting to cross the Mediterranean Sea and return them to the DCIM Detention Centres.⁹⁹⁴ For instance, the information available directly implicates at least three among these boats, named "Ras al Jadar", "Ibn Ouf", and "Sabratha" in a series of the LCG's rescue operations. According to EUNAVFOR MED, between October 2017 and January 2018, the "Ras al Jadar", "Ibn Ouf", and "Sabratha" were used in 49 rescued operations out of a total 70 operations.⁹⁹⁵ Furthermore, these vessels were involved in specific documented incidents where migrants intercepted at sea were transferred back to DCIM Detention Centres.⁹⁹⁶

⁹⁹² Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita al periodo 1° ottobre – 31 dicembre 2018, anche al fine della relativa proroga per il periodo 1° gennaio – 31 dicembre 2019, deliberata il 23 aprile 2019 (Doc.XXVI n.2), 8 May 2019 ("Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019"), Scheda 24, pp.84-85 ([Url](#) - last visited: 14 January 2022); Analisi Difesa, Consegnato alla Libia il pattugliatore Corrubia, 2 November 2018 ([Url](#) - last visited: 14 January 2022). See also Article 1(b), Legge 9 agosto 2018, n.98, ("Conversione in legge, con modificazioni, del decreto-legge 10 luglio 2018, n.84, recante disposizioni urgenti per la cessione di unità navali italiane a supporto della Guardia costiera del Ministero della difesa e degli organi per la sicurezza costiera del Ministero dell'interno libici"), Gazzetta Ufficiale, Serie Generale n.189, 16 August 2018, ("Law No.98/2018") ([Url](#) - last visited: 14 January 2022).

⁹⁹³ April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.18; Article 1(a), Law No.98/2018; Ambasciata d'Italia, Scambio di note concernente la cessione al Governo libico di dieci unità navali "CLASSE 500" per il pattugliamento costiero, Nota Verbale n.1440, 16 May 2019, para.1 ([Url](#)- last visited: 14 January 2022).

⁹⁹⁴ 2021 AI Report, pp.11-12 ("With the support and funding of other EU member states and institutions, Italy has pursued cooperation with Libya to externalize EU borders even throughout years of conflict in Libya. *In particular, the Memorandum of Understanding between Italy and Libya, signed on 2 February 2017 and renewed without modification three years later, extended Italian efforts to keep refugees and migrants from reaching its shores by focusing on reconstructing Libyan maritime forces to return people crossing the central Mediterranean to Libya.* While enhancing Libyan coastguards' capacities, EU institutions and member states have concurrently worked to ensure that rescue obligations would not fall on their own actors, keeping their naval assets far from the central Mediterranean and targeting independent rescue NGOs with administrative obstacles and legal action, as documented by Amnesty International, UN agencies and other human rights and humanitarian organizations. *Together, such efforts have reduced the number of refugees and migrants disembarked in Italy, but they have also led to a dramatic increase in the number of people intercepted at sea by Libyan coastguards and returned to face arbitrary detention and a host of other well-documented human rights violations and abuses in Libya*") (references omitted) (emphasis added).

⁹⁹⁵ 2018 EUNAVFOR MED Report, pp.20-21, Figures 11, 12, 13, 14.

⁹⁹⁶ See *infra*, Section V.C.3.f. for the details of the mentioned incidents.

452. In addition, on 3 March 2021, the Italian authorities agreed to deliver to Libya two additional “Bravo” class vessels for search and rescue activities.⁹⁹⁷
453. Terrestrial vehicles for immigration patrol were also delivered. In July 2020, thirty vehicles (SUV) were supplied by the Italian Ministry of Interior as part of the EU border management programme in Libya, financed by Italy for €57.2 million.⁹⁹⁸
454. As recognised by the UN Secretary-General, the assets provided by Italian authorities to the LCG “formed the core of its capability” and bolstered its ability to perform rescue operations.⁹⁹⁹

b. The Italian officials carried out maintenance of the LCG’s patrol vessels

455. The Italian authorities carried out maintenance of LCG patrol vessels between 2017 and 2021, both on Italian and Libyan territory.¹⁰⁰⁰ This maintenance has been essential for the LCG to perform its rescue operations and to return migrants to DCIM

⁹⁹⁷ Ambasciata d’Italia, Scambio di note per la cessione di due battelli pneumatici classe ‘Bravo’ alla Guardia Costiera Libica, Nota Verbale 551, 3 March 2021, paras.1, 3 ([Url](#) - last visited: 14 January 2022).

⁹⁹⁸ EU Commission News Article, Directorate-General for Neighbourhood and Enlargement Negotiations, EU delivers support to border management in Libya, 16 July 2020 ([Url](#) – last visited: 14 January 2022).

⁹⁹⁹ April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.18 (“EUNAVFOR MED operation SOPHIA further reported that, from 1 September 2019 to 29 February 2020, the Libyan coastguard and navy performed roughly 65 per cent of the rescue and interception operations within the Libyan Search and Rescue Region. The operation’s assessment is that the capabilities of the Libyan coastguard and navy have been further strengthened. In 2019, the Libyan coastguard and navy began to coordinate several patrol vessels at sea concurrently, to achieve longer patrol times and to conduct night operations as well as multiple rescues at increased ranges from the coast, and now operates regularly at the limit of the Libyan Search and Rescue Region. The assets previously supplied by Italy under a bilateral memorandum of understanding between Italy and the Libyan coastguard and navy formed the core of that capability. In November 2019, Italy also supplied 10 in-shore patrol vessels for patrolling the territorial sea”) (references omitted).

¹⁰⁰⁰ With respect to maintenance activities performed by Italian personnel in **2017** see, e.g., Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 24, pp.75-76, Scheda 36, pp.101-102. With respect to maintenance activities performed by Italian personnel in **2018** see, e.g. Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019, Scheda 24, pp.84-85. With respect to maintenance activities performed by Italian personnel in **2019** see, e.g. Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020, Scheda 23/2019, pp.74-75, Scheda 38/2019, pp.110-111. With respect to maintenance activities performed by Italian personnel in **2020** see, e.g. Camera dei Deputati, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita all’anno 2020, anche al fine della relativa proroga per l’anno 2021, (Doc.XXVI n.4), 30 June 2021 (“Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021”), Scheda 20/2020, pp.149-150 ([Url](#) - last visited: 14 January 2022). With respect to maintenance activities performed (or to be performed) by Italian personnel in **2021**, Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 18/2021, p.208.

Detention Centres.¹⁰⁰¹ In 2018, EUNAVFOR observed that “[t]he Libyan Coast Guard, along with the Libyan Navy, has increased its patrolling activity and is able to sustain operations more consistently. *It should be acknowledged that th[ese] positive results have been possible thanks to the technical support provided by the Italian Navy’s maintenance assistance, framed in the overarching bilateral Italian effort.*”¹⁰⁰² Likewise the UN Secretary-General confirmed that the maintenance provided by the Italian officers were key in bolstering the LCG.¹⁰⁰³

456. On the Italian territory, Italian personnel carried out maintenance activities to LCG assets since 2017.¹⁰⁰⁴ In August 2017, Italy and Libya concluded an agreement concerning the restoration of two/three patrol vessels.¹⁰⁰⁵ The Italian authorities granted technical support to the Libyan fleet throughout 2018,¹⁰⁰⁶ including the refurbishment of up to eight patrol vessels that had previously been handed over to the LCG.¹⁰⁰⁷
457. Moreover, official documents of the Italian Parliament indicate that Italian armed forces were deployed to Libya between 2017 and 2020 to perform maintenance activities in the country.¹⁰⁰⁸ During this period, Italian personnel performed fifteen

¹⁰⁰¹ 2021 AI Report, pp.11-12.

¹⁰⁰² 2018 EUNAVFOR MED Report, p.29 (emphasis added).

¹⁰⁰³ August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.21 (“According to EUNAVFOR MED operation SOPHIA, the Libyan coastguard and navy have increasingly taken an active role in fighting illicit activities and saving lives at sea as a result of the training and additional equipment provided by the European Union and the bilateral efforts of some States, in particular Italy, which provided four patrol boats and maintenance support by the Italian Navy”).

¹⁰⁰⁴ 2018 EUNAVFOR MED Report, pp.5-6, 19, 29.

¹⁰⁰⁵ Altreconomia, Duccio Facchini, Gli affari lungo le frontiere. Inchiesta sugli appalti pubblici per il contrasto all’immigrazione “clandestina”, 1 January 2019 (“2019 Altreconomia Article”) ([Url](#) – last visited: 14 January 2022); Altreconomia, Duccio Facchini, L’Italia continua a equipaggiare la Libia per respingere i migranti. Il caso delle motovedette da riportare a Tripoli, 2 March 2020 (“2020 Altreconomia Article”) ([Url](#) - last visited: 14 January 2022).

¹⁰⁰⁶ Senato della Repubblica, Doc.CCL-bis n.1, p.173 (Scheda 24); See also Safa Alharathy, Italy provides marine equipment to Libya Coast Guard, The Libya Observer, 14 May 2018 ([Url](#) - last visited: 14 January 2022).

¹⁰⁰⁷ 2018 EUNAVFOR MED Report, pp.5-6.

¹⁰⁰⁸ Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, p.149 (“Dal 2017 al 2019, su specifica richiesta delle Autorità libiche, pervenuta per il tramite dei Dicasteri nazionali competenti, sono state effettuate le missioni in Libia, per un totale di 224 giorni, con l’impiego di 89 militari specializzati del Corpo, finalizzata a eseguire interventi di manutenzione delle imbarcazioni appartenenti al naviglio della Guardia Costiera della Marina Militare libica e della Genera’ Administration for Coastal Security. Nello specifico, si rappresenta che, nel mese di febbraio 2019, è stato, altresì, disposto l’impiego di un Pattugliatore Multiruolo per il trasporto a Tripoli di 3 container

missions on Libyan soil, for a total of more than 365 days of activities.¹⁰⁰⁹ Only in 2020, Italian personnel restored seven LCG vessels.¹⁰¹⁰

458. A substantial part of these activities was carried out via the Italian Navy vessels docked in Tripoli on a rolling basis (the “Borsini”, “Tremiti”, “Capri”, “Gorgona”, and “Caprera” ships) to provide support to the Libyan Naval Command.¹⁰¹¹ In April 2019, the internet media outlet “Insideover” published a small reportage on the activities of the Italian vessels deployed in Libya.¹⁰¹² In particular, members of the Italian crew confirmed that they provided technical support to the LCG in the form of maintenance activities¹⁰¹³ and provision of communication systems.¹⁰¹⁴

contenente materiali e impianti di maggiore ingombro, necessari ai lavori di rimessa in efficienza delle unità navali libiche. Nel corso del 2020, nel quadro della più ampia attività di cooperazione tra l'Italia e la Libia, al fine di potenziare le capacità operative delle citate Amministrazioni libiche, la Guardia di finanza ha provveduto, su esplicita richiesta delle Autorità del Paese nord- africano, a eseguire ulteriori interventi manutentivi impiegando aliquote di militari specializzati del comparto navale del Corpo”).

¹⁰⁰⁹ Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, pp.149-150.

¹⁰¹⁰ Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, p.149.

¹⁰¹¹ Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 36, pp.101-102; Al Arabiya, Italian ship arrives in Tripoli port despite threat, 4 August 2017 ([Url](#) – last visited: 14 January 2022); Libya Herald, Vanessa Tomassini, Serraj visits Libyan naval ship fixed by Italians, 13 January 2018 (“2018 Libya Herald Article”) ([Url](#) - last visited: 14 January 2022). See also La Repubblica, Libia, la nave della Marina Militare italiana nel porto di Tripoli, 10 August 2017 ([Url](#) – last visited: 14 January 2022); Analisi Difesa, Nave Tremiti nel porto libico di Abu Sittah, 10 August 2017 ([Url](#) – last visited: 14 January 2022); Ministero della Difesa, Difesa - Marina Militare: unità della Guardia Costiera libica effettua prima operazione di salvataggio dopo le verifiche di efficienza, 27 September 2017 (“27 September 2017 Ministero della Difesa Press Release”) ([Url](#) – last visited: 14 January 2022); Twitter, Forze Armate Stato Maggiore Difesa, (@SM_Difesa) (23 December 2017) #Libia Ministro #Alfano in visita all'equipaggio del Moto Trasporto Costiero Capri: la nave della @ItalianNavy fornisce supporto tecnico manutentivo alle navi della Marina e della Guardia Costiera libica per contribuire alla crescita delle loro capacità operative ([Url](#) - last visited: 14 January 2022); Ministero della Difesa, Libia: il Primo Ministro Al Serraj si complimenta con le Forze Armate italiane per il supporto tecnico, 11 January 2018 ([Url](#) – last visited: 14 January 2022); Analisi Difesa, Nave Caprera ha rimesso in mare 9 motovedette libiche, 10 May 2018 ([Url](#) – last visited: 14 January 2022).

¹⁰¹² Youtube, InsideOver, Fausto Biloslavo, Nave Capri a Tripoli. Supporto italiano alla Marina libica, 30 April 2019 (“InsideOver Video”) ([Url](#) – last visited: 14 January 2022).

¹⁰¹³ InsideOver Video, 00:51:00-00.01.23.

¹⁰¹⁴ InsideOver Video, 01:50:00-00.02.04.

c. The Italian authorities and officials trained members of the LCG

459. Between 2017 and 2021, the Italian authorities have provided training to members of the LCG, for the purpose of enhancing their skills and abilities to perform search and rescue missions at sea.¹⁰¹⁵
460. According to the then Minister of Interior, Matteo Salvini, by 27 June 2018, Italian officers trained 213 members of the LCG.¹⁰¹⁶ Trainings provided to the LCG included: (1) notions of navigation; (2) radiocommunications; (3) radar procedures; (4) bridge management; and (5) the use of the “SMART tracking system” (Service oriented infrastructure for Maritime trafficking Tracking).¹⁰¹⁷ The Italian Government, EUNAVFOR MED, and the UN Secretary General confirmed that training activities enhanced the LCG’s ability to perform search and rescue missions.¹⁰¹⁸

¹⁰¹⁵ With respect to training activities performed by Italian personnel in **2017** see, e.g., Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 24, pp.75-76. With respect to training activities performed by Italian personnel in **2018** see, e.g. Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019, Scheda 24, pp.84-85, Scheda 36, pp.121-122. With respect to training activities performed by Italian personnel in **2019** see, e.g. Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020, Scheda 38/2019, p.110. With respect to training activities performed by Italian personnel in **2020** see, e.g. Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 38/2020, p.110, Scheda 18/2021, p.208. With respect to training activities performed by Italian personnel in **2021**, Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 18/2021, p.208. See also Ministero dell’Interno, Minniti in Libia: fronte comune contro il traffico di migranti, 16 May 2017 ([Url](#) – last visited: 14 January 2022); Camera dei Deputati, Seduta del 17 maggio 2017, Intervento del Ministro dell’Interno Marco Minniti, p.46 ([Url](#) – last visited: 14 January 2022).

¹⁰¹⁶ See also Camera dei Deputati, Seduta 20, 27 June 2018, p 54 (Intervento del Ministro dell’Interno Matteo Salvini) ([Url](#) - last visited: 14 January 2022) (“Desidero infine ricordare l’impegno e il lavoro già svolto dal nostro Paese a sostegno della capacità di controllo della frontiera marittima libica: sono stati finora formati 213 uomini della guardia costiera libica”).

¹⁰¹⁷ Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020, Scheda 38/2019, p.110. The Service-oriented infrastructure for Maritime Traffic (SMART) system is a civilian maritime activities tracking tool developed by the Italian Navy. The tool’s embedded chat is used by LCG Operations Room for external communication exchange. 2018 EUNAVFOR MED Report, fn.4.

¹⁰¹⁸ Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020, Scheda 38/2019, p.110; 2018 EUNAVFOR MED Report, p.6. August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.21 (“According to EUNAVFOR MED operation SOPHIA, the Libyan coastguard and navy have increasingly taken an active role in fighting illicit activities and saving lives at sea as a result of the training and additional equipment provided by the European Union and the bilateral efforts of some States, in particular Italy, which provided four patrol boats and maintenance support by the Italian Navy”).

d. The Italian authorities and officials delivered technological assets and information to the LCG to increase its capacity to perform maritime search and rescue missions

461. Italian officials and authorities granted technical support to the LCG to increase their infrastructure capacity regarding maritime search and rescue missions.¹⁰¹⁹
462. Italian officials provided the LCG with a number of technological, informative, and logistical assets, including: (1) areal intelligence, surveillance, reconnaissance assistance with manned and unmanned aerial assets;¹⁰²⁰ (2) a communication and liaison station onboard a Navy vessel docked in Tripoli offering technical and logistical support to the LCG;¹⁰²¹ (3) communication infrastructures and technologies, including a secured network communication (SMART)¹⁰²² and radar;¹⁰²³ and (4) liaison and consultation activities.¹⁰²⁴

¹⁰¹⁹ Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 24, pp.75-76; Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019, Scheda 24, pp.84-85, Scheda 36, pp.121-122; Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020, Scheda 38/2019, p.110; Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 38/2020, p.110, Scheda 18/2021, p.208.

¹⁰²⁰ Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 36, p.102; 2018 EUNAVFOR MED Report, pp. 26-28.

¹⁰²¹ Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017, Scheda 36, p.101; Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 38/2020, p.110 (“Sull’unità navale nazionale ormeggiata nel porto di Tripoli è imbarcata una ridotta centrale di collegamento e comunicazione per la compilazione e condivisione della situazione marittima, nonché per il supporto dei mezzi della *Libyan Navy/Libyan Navy Coast Guard* che operano in mare per il contrasto all’immigrazione illegale dalla Libia.”); InsideOver Video, 01:50:00-00.02.04.

¹⁰²² European Parliament, Parliamentary questions – Answer given by Vice-President Mogherini on behalf of the Commission, Question reference: E-001511/2018, 22 June 2018, (“The Service Oriented Infrastructure for Maritime traffic Tracking (SMART) - an internet-based secured communication network provided by the Italian Navy – is used as an alert and coordination tool by all anti-piracy stakeholders. It has been designed to enable unclassified information sharing with military and civilian maritime stakeholders. The Libyan Coastguards are being trained to use it. It is similar to Mercury in the Indian Ocean.”) ([Url](#) - last visited: 14 January 2022).

¹⁰²³ Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019, Scheda 36, 121.

¹⁰²⁴ See, e.g., Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 38/2020, p.111 (“In particolare Mare Sicuro svolge le seguenti attività:[...] attività di collegamento e consulenza a favore della Marina e Guardia costiera libica”).

463. Since August 2017, Italian officials assisted Libyan authorities in setting up the Maritime Rescue Coordination Centre in Libya, not yet fully operational.¹⁰²⁵

e. The Italian authorities and officials assisted the Libyan authorities in setting up the Libyan SAR zone and manning the related activities

464. The Italian authorities assisted Libya in defining and declaring its SAR zone¹⁰²⁶ on 14 December 2017.¹⁰²⁷

465. With the establishment of the Libyan SAR zone, the Italian authorities could relinquish the duty to rescue migrants to Libyan authorities, attenuate their *de jure* responsibility for operations at sea, and partially modify their legal categorisation. In this regard, it has been noted that in 2019 and 2020, the Italian Coast Guard did not issue annual reports on SAR activities in the central Mediterranean Sea, which have been characterised as police operations related to the fight against illegal migration.¹⁰²⁸ However, available information indicates that the Libya SAR zone remained under *de*

¹⁰²⁵ Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita al periodo 1 gennaio – 30 settembre 2018, anche al fine della relativa proroga per il periodo 1 ottobre – 31 dicembre 2018, deliberata dal Consiglio dei Ministri il 28 novembre 2018 (Doc.XXVI n.1), 5 December 2018 (“Senato della Repubblica, Doc.XXVI n.1, Report on International Missions, 5 December 2018”), Scheda 36, p.87 (“A decorrere dal 1° agosto 2017, svolge altresì i seguenti ulteriori compiti, connessi con la missione in supporto alla Guardia costiera libica intesa a fornire supporto alle forze di sicurezza libiche per le attività di controllo e contrasto dell’immigrazione illegale e del traffico di esseri umani mediante [...] - collaborazione per la costituzione di un centro operativo marittimo in territorio libico per la sorveglianza, la cooperazione marittima e il coordinamento delle attività congiunte.”) ([Url](#) - last visited: 14 January 2022); Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021, Scheda 38/2020, p.110. *See also* European Parliament, Parliamentary questions – Answer given by Vice-President Mogherini on behalf of the Commission, Question reference: E-001511/2018, 22 June 2018 ([Url](#) - last visited: 14 January 2022). August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.12.

¹⁰²⁶ European Parliament, Parliamentary questions – Answer given by Mr Várhelyi on behalf of the European Commission, Question reference: E-004208/2020, 5 October 2020 ([Url](#) - last visited: 14 January 2022); European Parliament, Parliamentary question, Answer given by Mr Avramopoulos on behalf of the Commission, Question reference: E-000547/2018, 26 April 2018 ([Url](#) - last visited: 14 January 2022).

¹⁰²⁷ 2018 EUNAVFOR MED Report, p.8; August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons, para.12.

¹⁰²⁸ Altreconomia, Duccio Facchini, Soccorsi nel Mediterraneo: il report scomparso della Guardia costiera italiana, 20 July 2020 ([Url](#) – last visited: 14 January 2022); Altreconomia, Duccio Facchini, Se i naufraghi nel Mediterraneo diventano “persone intercettate in operazioni di polizia”. Le ricadute sui soccorsi, 8 October 2019 ([Url](#) - last visited: 14 January 2022).

facto Italian control/coordination.¹⁰²⁹ This is confirmed by a leaked document of the Italian Minister of Infrastructure and Transport, dated 28 December 2018, indicating that the Libyan SAR region was expected to be under LCG control only from July 2021.¹⁰³⁰

f. The Italian officials coordinated rescue missions of the LCG from Libya and Rome

466. The Italian authorities coordinated the LCG's rescue missions. According to the Tribunale di Catania, the coordination of the rescue operations conducted by the LCG in the Libyan SAR zone was "substantially performed by the Italian Navy".¹⁰³¹
467. The coordinating role of Italian Navy vessels in Tripoli has been explicitly confirmed by the Italian Ministry of Foreign Affairs¹⁰³² and the then Minister of Interior, Matteo Salvini.¹⁰³³ This is further reflected in two decisions of Tribunale di Catania and

¹⁰²⁹ See *infra*, Section V.C.3.f. See also GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy (Anonymized version), Submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights to the United Nations Human Rights Committee, 18 December 2019 ("GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy"), para.5 ([Url](#) – last visited: 14 January 2022).

¹⁰³⁰ Ministero delle Infrastrutture e dei Trasporti, Comando Generale del Corpo delle Capitanerie di Porto - Guardia Costiera, Le capacità di ricognizione nella difesa dei confini nel dominio marittimo, 28 February 2018, p.19 ([Url](#) – last visited: 14 January 2022).

¹⁰³¹ Tribunale di Catania, Sezione del Giudice per le Indagini Preliminari, No. 3476/18 R.G.N.R., No. 2474/18 R.G.GIP, Decreto di convalida e di sequestro preventivo, 27 March 2018 ("Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018"), p.21 ("la circostanza che la Libia non abbia definitivamente dichiarato la sua zona SAR non implica automaticamente che le loro navi non possano partecipare ai soccorsi, soprattutto nel momento attuale, in cui il coordinamento è sostanzialmente affidato alle forze della Marina Militare Italiana, con i propri mezzi navali e con quelli forniti ai libici") ([Url](#) - last visited: 14 January 2022). Altreconomia, Duccio Facchini, Gli occhi scomodi di Open Arms, l'inganno della Libia sicura e la "regia" italiana dei respingimenti, 5 November 2020 ([Url](#) - last visited: 14 January 2022).

¹⁰³² Ministero degli Affari Esteri, La Strategia Italiana Nel Mediterraneo, Stabilizzare le Crisi e Costruire un'Agenda Positiva per la Regione, December 2017 ([Url](#) – last visited: 14 January 2022), p.24 ("L'Italia ha immediatamente aderito a tale richiesta, inviando a Tripoli una nave officina che consente di rimettere in efficienza altre Unità navali libiche, ma anche di fornire un coordinamento delle operazioni di pattugliamento e di salvataggio in mare").

¹⁰³³ Youtube, Matteo Salvini, Salvini ringrazia l'equipaggio della nave "Caprera", 25 June 2018, (00.00.00-00.00.15) ([Url](#) - last visited: 14 January 2022). See also Lega-Salvini PremierForze Armate Stato Maggiore Difesa, (@LegaSalvini) (25 June 2018) #Salvini: Onorato di aver portato in Libia il sostegno del governo e del popolo italiano agli uomini della Marina Militare che coordinano le operazioni di salvataggio. STOP ai trafficanti di schiavi, stronchiamo il business dell'immigrazione clandestina. [Tweet] (emphasis added) ([Url](#) - last visited: 14 January 2022).

Tribunale di Ragusa.¹⁰³⁴ The 2018 EUNAVFOR MED Report provides further indications that Italian officials provided coordination support to the LCG through the Italian Maritime Rescue Coordination Centre (“IMRCC”), the Italian Commander in Chief Naval Fleet (“CINCNAV”) ships, and from the Italian Navy ship docked in Tripoli.¹⁰³⁵

468. In practice, Italian officials detected boats transporting migrants, informed the LCG on their location, and directed the LCG’s rescue missions.¹⁰³⁶ On 18 March 2019, the Director-General of the Directorate General for Migration and Home Affairs at the European Commission, Paraskevi Michou, confirmed that “[Italy] is supporting the Libyan Coast Guard a lot in particular in acting during the SAR event as a “communication relay””.¹⁰³⁷
469. This form of support addressed the main impediment of the LCG to perform rescue missions. Indeed, back in 2018, EUNAVFOR MED concluded that “the lack of an effective and reliable communication system was hampering Libyan capacity for a minimum level of execution and command and control, in particular to coordinate SAR/SOLAS events”.¹⁰³⁸ In this regard, the involvement of Italian officials in radio-directing the LCG was, and still is, crucial.
470. Italian officials, indeed, are still routinely implicated in the operations carried out by the LCG. While not exhaustive, the information available concerning a specific set of incidents (illustrated below) reflects the decisive role that Italian authorities play as a

¹⁰³⁴ Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018; Tribunale di Ragusa, Sezione del Giudice per le Indagini Preliminari, No. 1216-1282/18 R.G.N.R., No. 1182/18 R.G.GIP, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018 (“Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018”) ([Url](#) – last visited: 14 January 2022).

¹⁰³⁵ 2018 EUNAVFOR MED Report, pp.24, 26-27; 2018 Libya Herald Article.

¹⁰³⁶ 2018 Forensic Oceanography Report, pp.67-99. See also *infra*, paras.471-479.

¹⁰³⁷ Letter from the Director General of the Directorate General for Migration and Home Affairs at the European Commission, Paraskevi Michou, to the Executive Director of the European Border and Coast Guard Agency, Fabrice Leggeri, Ref. Ares (2019) 1755075 - 18/03/2019, 18 March 2019, p.2 ([Url](#) - last visited: 14 January 2022).

¹⁰³⁸ 2018 EUNAVFOR MED Report, p.26.

control, communication, and coordination centre of the operations materially conducted by the LCG.

471. Incident 1. On 27 September 2017, the Italian Navy warship “Andrea Doria” notified to the LCG the positions of two boats carrying migrants and assisted the LCG vessel “Al Kifah” to perform the rescue operation.¹⁰³⁹ The migrants rescued by the LCG were brought back to Libya.¹⁰⁴⁰ A journalist on board of the “Al Kifah” was able to report the communication flow between the Italian and Libyan vessels.¹⁰⁴¹ The fact that the LCG’s rescue operation was conducted in front of the “Andrea Doria” which displayed a banner in English and Arabic stating “keep away” is a further indication that the entire operation was conducted in full coordination between the LCG and the Italian officials.¹⁰⁴²
472. Incident 2. On 11 October 2017, the Italian Navy vessel “Andrea Doria” approached a boat in distress carrying 160 migrants and asked the LCG to intervene, despite the fact that the IMRCC had assigned the rescue operation to the NGO vessel “Vos Hestia”.¹⁰⁴³ In that instance, the “Andrea Doria” asked the LCG to approach the boat in distress at maximum speed (possibly to anticipate the “Vos Hestia”), stating also: “[w]e are waiting for you to perform interception”.¹⁰⁴⁴ As a result, 100 migrants were transferred back to Libya.¹⁰⁴⁵ This incident unfolded according to the same *modus operandi* adopted in the 27 September 2017 incident.¹⁰⁴⁶ The “Andrea Doria” arrived in

¹⁰³⁹ 2018 Forensic Oceanography Report, pp.68-69; VICE News, Italy is paying Libya to intercept migrants on the Mediterranean, 26 October 2017 (“2017 VICE Article”) ([Url](#) – last visited: 14 January 2022); 27 September 2017 Ministero della Difesa Press Release.

¹⁰⁴⁰ 2018 Forensic Oceanography Report, pp.68-69; 2017 VICE Article; 27 September 2017 Ministero della Difesa Press Release.

¹⁰⁴¹ Youtube, VICE News, Italy is paying Libya to intercept migrants on the Mediterranean, 25 October 2017 (“VICE Video”), 26 October 2017 ([Url](#) – last visited: 14 January 2022).

¹⁰⁴² VICE Video (00:01:21-00:01:25).

¹⁰⁴³ 2018 Forensic Oceanography Report, pp.70-73.

¹⁰⁴⁴ 2018 Forensic Oceanography Report, p.71.

¹⁰⁴⁵ 2018 Forensic Oceanography Report, pp.70-73.

¹⁰⁴⁶ See *supra*, para.471.

the proximity of a boat in distress, asked for the intervention of the LCG and remained in the area until the LCG concluded the rescue operation.¹⁰⁴⁷

473. Incident 3. On 6 November 2017, the IMRCC alerted the LCG boat “Ras Al Jadar” to rescue a sinking boat carrying more than 100 migrants located in international waters, which was already been approached by the NGO Vessel “Sea Watch 3”, also alerted by the IMRCC.¹⁰⁴⁸ The LCG prevented migrants from reaching the inflatable boats dispatched by the “Sea Watch 3”, and forced them to board the “Ras Al Jadar”.¹⁰⁴⁹ During the operation 20 migrants died, while the rest were transferred back to the Tajoura DC.¹⁰⁵⁰
474. Incident 4. On 15 December 2017, the “Aquarius” overheard via radio the Italian Navy vessel “Rizzo” directing the LCG vessel “Ibn Ouf” in two distinct rescue operations which resulted in the return of 262 migrants to Libya, and their subsequent transfer to a DCIM Detention Centre in Tripoli.¹⁰⁵¹ Survivors taken back to Libya confirmed that while they had contacted the Italian Coast Guard, they had been rescued by the LCG.¹⁰⁵²
475. Incident 5. On 27 January 2018, the IMRCC requested the “Aquarius” to search for a boat in distress in international waters west of Tripoli.¹⁰⁵³ While the NGO’s vessel was approaching the boat in distress, the IMRCC informed the crew of the “Aquarius” that an LCG vessel would assume control of the operation.¹⁰⁵⁴ The “Aquarius” later

¹⁰⁴⁷ 2018 Forensic Oceanography Report, pp.70-73.

¹⁰⁴⁸ 2018 Forensic Oceanography Report, pp.87-89.

¹⁰⁴⁹ 2018 Forensic Oceanography Report, pp.94-95; Internazionale, Annalisa Camilli, L’Italia rischia un processo per aver coordinato la guardia costiera libica, 8 May 2018 ([Url](#) – last visited: 14 January 2022); GLAN, Italy’s coordination of Libyan Coast Guard ([Url](#) – last visited: 14 January 2022); Youtube, Sea-Watch, Exclusive: Full incident of 6 November 2017 with the Libyan coast guard, 13 November 2017 ([Url](#) – last visited: 14 January 2022); Forensic Architecture, Sea Watch vs the Libyan Coastguard, 4 May 2018 ([Url](#) - last visited: 14 January 2022).

¹⁰⁵⁰ 2018 Forensic Oceanography Report, p.98.

¹⁰⁵¹ 2018 Forensic Oceanography Report, pp.76-78.

¹⁰⁵² 2018 Forensic Oceanography Report, p.78.

¹⁰⁵³ 2018 Forensic Oceanography Report, p.78.

¹⁰⁵⁴ 2018 Forensic Oceanography Report, p.78.

reported overhearing via radio communications according to which the LCG had intercepted two boats.¹⁰⁵⁵

476. Incident 6. On 15 March 2018, the IMRCC communicated to the NGO vessel “Open Arms” and to the Italian Navy vessel “Capri” (docked in Tripoli) the position of a vessel in distress carrying several migrants 40 nautical miles from the Libyan coast.¹⁰⁵⁶ The “Capri” informed the IMRCC that an LCG vessel was in charge of the rescue operation,¹⁰⁵⁷ and then confirmed the departure and the estimated time of arrival of said vessel.¹⁰⁵⁸ The IMRCC proceeded to relay the communication to the NGO vessel, informing them that the operation was under the LCG’s control.¹⁰⁵⁹ Despite the IMRCC’s communication and the “aggressive” presence of the LCG vessel “Ras Al Jadar”, the “Open Arms” started onboarding migrants, thus “interfering” with the LCG operation.¹⁰⁶⁰ As a result of the two “parallel” rescue operations, the “Capri” informed the IMRCC that some of the migrants had been rescued by the LCG vessel (and thus directed to Libya) and others by the “Open Arms”,¹⁰⁶¹ later disembarked in Italy.¹⁰⁶² As attested by the decisions of the Tribunale di Catania and the Tribunale di Ragusa, the evidence underlying this incident reveals, to its full extent, the coordination between the Italian authorities and officials and the LCG. It also shows

¹⁰⁵⁵ 2018 Forensic Oceanography Report, p.78.

¹⁰⁵⁶ Tribunale di Ragusa, Sezione del Giudice per le Indagini Preliminari, No. 1216-1282/18 R.G.N.R., No. 1182/18 R.G.GIP, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018 (“Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018”), p.2 ([Url](#) – last visited: 14 January 2022). See also Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018, p.3.

¹⁰⁵⁷ Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, p.2; Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018, p.3.

¹⁰⁵⁸ Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, pp.2-3; Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018, p.4.

¹⁰⁵⁹ Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, p.3. See also Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018, p.4.

¹⁰⁶⁰ Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, pp.4-7; Tribunale di Catania, Decreto di convalida e di sequestro preventivo, 27 March 2018, p.6. According to “Open Arms” the “Ras al Jadar” approached the boat of migrants with an aggressive behaviour. Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, p.4.

¹⁰⁶¹ Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, p.8.

¹⁰⁶² Tribunale di Ragusa, Decreto di rigetto di richiesta di sequestro preventivo, 16 April 2018, p.10.

the key role of the Italian Navy vessel docked in Tripoli and its functioning as a liaison and coordination centre for the LCG.

477. Incident 7. On 7 November 2018, the IMRCC instructed, on behalf of the LCG, a Panamanian merchant vessel, the “Nivin”, to rescue a boat in distress and to coordinate its action with the LCG.¹⁰⁶³ Once it had performed the rescue, the “Nivin” was directed by the LCG towards Libya,¹⁰⁶⁴ where the migrants resisted their disembarkation until the Libyan authorities used force against them.¹⁰⁶⁵
478. Incident 8. On 20 January 2019, the NGO Alarm Phone communicated the position of a boat carrying migrants to the IMRCC and Maltese authorities.¹⁰⁶⁶ According to the information available, the Italian Prime Minister instructed the Italian Foreign Intelligence Service to persuade the LCG to intervene.¹⁰⁶⁷ Following a lengthy negotiation, the Libyan authorities, that could not intervene directly, were convinced by members of Italian Intelligence to assume control of the rescue operation.¹⁰⁶⁸ A merchant vessel was requested to rescue the migrants and transfer them to the Libyan authorities.¹⁰⁶⁹ Six migrants died and 106 were transferred back to Libya.¹⁰⁷⁰
479. Incident 9. On 18 March 2019, the NGO vessel “Mediterranea Saving Humans” informed the IMRCC in Rome that a boat in distress had been located off the coast of

¹⁰⁶³ Forensic Oceanography, The Nivin case: Migrants’ resistance to Italy’s strategy of privatized push-back, December 2019 (“2019 Forensic Oceanography Report”), p.10 ([Url](#) – last visited: 14 January 2022). GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy, paras.27-30.

¹⁰⁶⁴ 2019 Forensic Oceanography Report, p.10; GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy, paras.31-35.

¹⁰⁶⁵ 2019 Forensic Oceanography Report, pp.10-11; GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy, paras.36-40; HRW, Libya: Migrants Forced off Ship at Libya Port, 21 November 2018 ([Url](#) - last visited: 14 January 2022).

¹⁰⁶⁶ The Conversation, Maurice Stierl, Migrants calling us in distress from the Mediterranean returned to Libya by deadly ‘refoulement’ industry, 7 February 2019 (“2019 The Conversation Article”) ([Url](#) - last visited: 14 January 2022). Il Corriere della Sera, Fiorenza Sarzanini, Migranti, «niente vittime». Il filo diretto tra Conte e gli 007. Nuove risorse per trattare con la Libia, 22 January 2019 (“2019 Il Corriere Article”) ([Url](#) - last visited: 14 January 2022).

¹⁰⁶⁷ 2019 The Conversation Article; 2019 Il Corriere Article.

¹⁰⁶⁸ 2019 The Conversation Article; 2019 Il Corriere Article.

¹⁰⁶⁹ 2019 The Conversation Article; 2019 Il Corriere Article.

¹⁰⁷⁰ 2019 The Conversation Article.

Libya.¹⁰⁷¹ The IMRCC, in contact with the Navy vessel “Capri” docked at the Tripoli port, informed the NGO vessel that a Libyan vessel was approaching and would take control of the operation.¹⁰⁷² The Italian newspaper Avvenire reported the full conversation between Italian officials and the LCG.¹⁰⁷³ However, as no LCG patrol vessel approached the location of the incident, the NGO crew intervened.¹⁰⁷⁴

g. Italian authorities and officials supported migration control activities in Libya engaging directly with armed groups operating in the area.

480. The information available suggests that Italian officials supported migration control activities, directly or indirectly (via the LCG and Libyan authorities), through armed groups involved in human trafficking and the management of detention centres.
481. According to numerous media outlets, in 2017, Italian authorities and Serraj’s government entered in an agreement with the Brigade 48 and the al-Ammu (a.k.a. ‘Martyr Anas al-Dabashi’) militias to control migration flows in Sabratha in exchange for equipment, boats, and possibly money.¹⁰⁷⁵ While denied by the Italian Government, in October 2018, the former Vice-Minister of Foreign Affairs appeared

¹⁰⁷¹ Avvenire, Nello Scavo, Migranti, così Roma comanda la Libia. La verità sui respingimenti/Audio, 18 April 2019 (“18 April 2019 Avvenire Article”) ([Url](#) - last visited: 14 January 2022).

¹⁰⁷² 18 April 2019 Avvenire Article.

¹⁰⁷³ 18 April 2019 Avvenire Article.

¹⁰⁷⁴ Avvenire, Nello Scavo, Migranti, così Roma comanda la Libia. La verità sui respingimenti/Audio, 18 April 2019 ([Url](#) - last visited: 14 January 2022).

¹⁰⁷⁵ AP News, Maggie Michael, Backed by Italy, Libya enlists militias to stop migrants, 29 August 2017 (“Bashir Ibrahim, the spokesman for al-Ammu militia, said that a month ago the two forces reached a “verbal” agreement with the Italian government and Serraj’s government to combat trafficking.[...] The security officials and activists in Sabratha interviewed by the AP said Italy struck the deal directly with the militias and that Italian officials had met with militia leaders.”) ([Url](#) – last visited: 14 January 2022); Le Monde, Jérôme Gautheret & Frédéric Bobin, Entre la Libye et l’Italie, petits arrangements contre les migrants, 14 September 2017 ([Url](#) – last visited: 14 January 2022); The New York Times, Declan Walsh and Jason Horowitz, Italy, Going It Alone, Stalls the Flow of Migrants. But at What Cost?, 17 September 2017 ([Url](#) – last visited: 14 January 2022); La Stampa Francesco Semprini, Così le milizie di Sabratha combattono per i soldi italiani, 27 October 2017 ([Url](#)– last visited: 14 January 2022). See also 2017 ISS and Global Initiative Report, p.9 (“There is also mounting speculation that the Italian intelligence service has co-opted militias engaged in human smuggling and other illicit activities in a bid to stem the flow of migrants – a rumour consistently denied by the Italian authorities. Whether the rumours of covert action by the Italians are true or false, the de facto co-option of the smuggling militias is happening in plain sight. As will be discussed, Sabrathan militias that are widely known to have run a major human smuggling operation abruptly halted their activities and instead turned to policing, sanctioned by institutions that fall under the internationally recognised GNA.”) (reference omitted).

to have confirmed contacts with armed groups in Libya to stem the migration flow.¹⁰⁷⁶ In 2019, former Vice-Minister Giro confirmed that the Italian Government supported Libyan militias to that end.¹⁰⁷⁷

482. As reported by Avvenire in an extensive investigative report, in 2017, Abd al-Rahman Milad (alias Bija), head of the LCG of Zawiya and linked to the al-Nasr Brigade, paid an official visit to Italy where he met with the Italian Coast Guard and visited detention centres for migrants.¹⁰⁷⁸ According to the UNSC Libya Sanctions Committee, “Milad heads the regional unit of the Coast Guard in Zawiya that is consistently linked with violence against migrants (...). Several witnesses in criminal investigations have stated that they were picked up at sea by armed men on a Coast Guard ship called ‘Tallil’ (used by al-Milad) and taken to the al-Nasr detention centre, where they are reportedly held in brutal conditions and subjected to beatings”.¹⁰⁷⁹

h. Conclusion: the conduct of Italian authorities and officials qualifies as a form of contribution encompassed by Article 25(3)(d) of the Statute.

483. Through extensive technical and material assistance, Italian authorities and officials strengthened the capabilities of the LCG and exercised control over its operations with a view to intercept migrants at sea and bring them back to Libyan detention centres. This to stem the migration flow from Libya.

¹⁰⁷⁶ Il Fatto Quotidiano, Mario Giro, I Rischi di una Libia alla Somala, 21 October 2018 (“Nei successive tre anni in Italia la Libia e’ diventata una questione di politica interna: si e’ fatto di tutto (e parlato con chiunque) affinche i migrant fossero trattenuti nei centri di detenzione. Al di la’ di ogni questione morale, tale scelta si e’ trasformata in un booming: abbiamo offerto alle milizie libiche la possibilita’ di ricattarci. Si e’ accettato di trattare con personaggi equivoci e alle ‘loro’ condizioni, mediante un opaco mercato”) ([Url](#) – last visited: 14 January 2022).

¹⁰⁷⁷ NuoveRadici.World, Cristina Giudici, 31 ottobre 2019. Sugli accordi con la Libia, secondo Giro è ora di cambiare giro, 31 October 2019 ([Url](#) – last visited: 14 January 2022).

¹⁰⁷⁸ Avvenire, Nello Scavo, La trattativa nascosta. Il libico supertrafficante di uomini in visita a Roma, 6 October 2019 (“6 October 2019 Avvenire Article”) ([Url](#) – last visited: 14 January 2022); Avvenire, Nello Scavo, Trattativa nascosta. Il viaggio del boss in Italia: Bija visitò altri centri migranti, 5 October 2019 (“5 October 2019 Avvenire Article”) ([Url](#) – last visited: 14 January 2022). More generally, <https://www.avvenire.it/search/bija>. See also Guardia Costiera, Una delegazione di Funzionari Libici e dell’Organizzazione Internazionale per le Migrazioni in visita al Comando Generale, 15 May 2017 ([Url](#) – last visited: 14 January 2022).

¹⁰⁷⁹ UNSC, Abd Al Rahamn Al-Milad ([Url](#) – last visited: 14 January 2022).

484. As such, the conduct of Italian authorities and officials qualifies as a form of contribution encompassed by Article 25(3)(d) of the Statute in relation to the crimes committed in DCIM Detention Centres against those migrants rescued at sea and returned to Libya.
485. Indeed, in terms of strict causality such conduct has an equivocal effect on the execution of the crimes.¹⁰⁸⁰ The provision of equipment, maintenance, training, and direct coordination enabled the LCG to intercept migrants at sea and return them to DCIM Detention Centres, where they have been subject to the crimes committed by the armed groups. The fact that such contribution may have been channelled through individuals who are not materially responsible for the crimes, rather than the contribution going directly to the perpetrators, is irrelevant for the purpose the liability of Italian authorities and officials. The contribution to the crime designed by Article 25(3)(d) does not need to be made directly to or through the material perpetrators themselves, as a direct nexus between the conduct of the accessory and that of the material perpetrator need not to be established.¹⁰⁸¹
486. Moreover, the conduct of the Italian authorities and officials is an integral part of the LCG's efforts and activities to intercept migrants and return them to Libya. The Italian officials participate in the LCG's rescue missions providing directions and coordinating the LCG's personnel. In addition, such rescue missions could not be performed without the assets, the maintenance, and the training provided by the Italian authorities and officials. Under this angle, the criminal contribution to the crimes, *i.e.* intercepting migrants at sea and returning them to DCIM Detention Centres, is the direct result of the coordinated action of both LCG staff and the Italian authorities and officials. The conduct of the LCG personnel and the Italian authorities and officials is entangled and inextricable.

¹⁰⁸⁰ *Al Hassan* Confirmation Decision, paras.945, 948.

¹⁰⁸¹ *Al Hassan* Confirmation Decision, para. 945.

487. An additional consideration supports this conclusion. Equipped, trained, and coordinated, the LCG operates as a sort of proxy of Italian authorities, which are prevented from performing a similar activity. Indeed, the efforts of the Italian authorities and officials to set up and empower the LCG stem from the very fact that following the ECtHR *Hirsi* Judgement, Italian authorities had been prevented from carrying out push-back operations to Libya, which have been carried out before 2012.
488. As a consequence, the “Italian support” to the LCG arises from the need to *reverse-engineering* the old push-back operations through the creation and use of intermediaries. To avoid violating the ECHR, the Italian authorities, attempted to shield their conduct using the veil of the LCG as a screen.¹⁰⁸² The extensive use of resources provided by Italian authorities to the LCG and the intricate mechanism of coordination of the rescue missions finds its genesis in the necessity to create an artificial hiatus between the acts and their legal implications.
489. However, despite this articulated and complex exercise put in place by the Italian authorities and officials, the essence (and the gravity) of their conduct remains essentially the same. The interposition of the LCG should not alter the legal implications of acts of Italian nationals under international criminal law.

4. The Maltese authorities and officials contributed to the commission of the crimes against migrants detained in Libya

490. The Maltese authorities and officials instructed and/or coordinated private vessels’ and the LCG’s interception of migrants at sea to ensure their return to Libya.¹⁰⁸³ Such conduct has been identified in a series of incidents that reveal the involvement of

¹⁰⁸² It is significant that, in 2017, in addressing the concerns of the CoE Human Rights Commissioner *vis-à-vis* the human rights implications of the MoU, the then Minister of Interior, Marco Minniti replied that in the context of the cooperation with Libyan authorities, Italian vessels would never be used to return rescued migrants to Libya. Letter of the Italian Minister of Interior Marco Minniti to the CoE Commissioner for Human Rights, 11 October 2017 (“Per quanto riguarda in particolare le Sue preoccupazioni, desidero darle assicurazione che mai navi italiane o che collaborano con la Guardia Costiera italiana hanno riportato in Libia migranti tratti in salvo.”).

¹⁰⁸³ See *infra*, Section V.C.4.a.

Maltese authorities and officials in returning migrants attempting to reach Europe by crossing the Mediterranean Sea.¹⁰⁸⁴

491. In addition, on 28 May 2020, Maltese authorities concluded with their Libyan counterparts a Memorandum of Understanding “in the field of combatting illegal immigration”.¹⁰⁸⁵ While extremely vague, the agreement appears to enhance the coordination between Maltese and LCG authorities to improve the capacity of the latter to intercept migrants.
492. According to the information available, there is a causal connection between the involvement of Maltese authorities in returning migrants to Libya and the crimes they suffered in the DCIM Detention Centres where they were detained upon their return. On this ground, the conduct of Maltese authorities and officials meets the requirements of Article 25(3)(d) of the Statute.¹⁰⁸⁶

a. Maltese authorities and officials coordinated and/or instructed LCG’s and private vessels’ interception of migrants at sea and ensure their return to Libya

493. Available information reveals that Maltese authorities coordinated the LCG’s rescue operations of migrants in distress at sea. Between 18 and 19 October 2019, Maltese authorities received a call concerning a boat in distress carrying about 50 people located in the Maltese SAR region.¹⁰⁸⁷ Ultimately, the migrants were intercepted by

¹⁰⁸⁴ See *infra*, Section V.C.4.a.

¹⁰⁸⁵ Memorandum of Understanding between the Government of National Accord of the State of Libya and the Government of the Republic of Malta in the field of combatting illegal immigration, 28 May 2020, (“Memorandum Malta-Libya”) ([Url](#) – last visited: 14 January 2022). See *infra*, Section V.C.4.b.

¹⁰⁸⁶ Al Hassan Confirmation Decision, para. 945 (“L’article 25-3-d exige en effet que le suspect «contribue de toute autre manière à la commission [...] d’un [...] crime». C’est donc une contribution à un crime qui doit être démontrée. Il n’est cependant pas nécessaire d’établir un lien direct entre le comportement du complice et celui de l’auteur matériel. Il n’est en outre pas nécessaire que le suspect soit sur le lieu du crime pour le tenir responsable”) (references omitted) (emphasis added).

¹⁰⁸⁷ Amnesty International, Malta: Waves of Impunity. Malta’s human rights violations and Europe’s responsibilities in the Central Mediterranean, 7 September 2020, (“AI, Malta: Waves of Impunity”), pp.10-11 ([Url](#) - last visited: 14 January 2022).

the LCG with the assistance of an aircraft of the Maltese Armed Forces.¹⁰⁸⁸ Once in Libya, migrants were transferred to the Tarik al-Sikka DC.¹⁰⁸⁹

494. A similar involvement of Maltese officials may have occurred on 14 March 2020, when a boat of migrants in the Maltese SAR Zone alerted the RCC Malta and was later rescued by the LCG.¹⁰⁹⁰
495. In August 2020, members of an NGO gave evidence about the LCG performing rescue operations in the Maltese SAR zone.¹⁰⁹¹ The fact that rescue operations in the Malta SAR zone are supposed to be coordinated by Maltese authorities may indicate that in that instance the LCG was acting under the directions of Maltese officials.¹⁰⁹²
496. Furthermore, OHCHR,¹⁰⁹³ the CoE Human Rights Commissioners,¹⁰⁹⁴ Amnesty International,¹⁰⁹⁵ Alarm Phone,¹⁰⁹⁶ and several media outlets¹⁰⁹⁷ implicate Maltese officials and authorities in enlisting private vessels to intercept migrants at sea and return them to Libya. These allegations have also been confirmed by the Maltese Government.¹⁰⁹⁸

¹⁰⁸⁸ AI, Malta: Waves of Impunity, pp.10-11.

¹⁰⁸⁹ AI, Malta: Waves of Impunity, p.10.

¹⁰⁹⁰ AlarmPhone, Press Release, Returned to War and Torture: Malta and Frontex coordinate push-back to Libya, 15 March 2020 ([Url](#) - last visited: 14 January 2022).

¹⁰⁹¹ 2021 OHCHR Report, p.22.

¹⁰⁹² Cf. 2021 OHCHR Report, p.22.

¹⁰⁹³ 2021 OHCHR Report, p.20.

¹⁰⁹⁴ CoE, Commissioner for Human Rights, A Distress Call for Human Rights. The widening gap in migrant protection in the Mediterranean. Follow-up Report, March 2021, pp.14-15 ([Url](#) - last visited: 14 January 2022).

¹⁰⁹⁵ AI, Malta: Waves of Impunity, pp.7-9.

¹⁰⁹⁶ AlarmPhone, Press Release, Twelve Deaths and a Secret Push-Back to Libya, 16 April 2020 (“2020 AlarmPhone Press Release”) ([Url](#) - last visited: 14 January 2022).

¹⁰⁹⁷ See, e.g., Avvenire, Nello Scavo, Malta, la "flotta fantasma" contro i profughi. Frontex scarica sugli Stati, 23 April 2020 (“23 April 2020 Avvenire Article”) ([Url](#) - last visited: 14 January 2022); Avvenire, Nello Scavo, Migranti. Strage di Pasquetta, la nostra ricerca della verità per 12 morti, 22 April 2020 (“22 April 2020 Avvenire Article”) ([Url](#) – last visited: 14 January 2022); Truth be Told, Manuel Delia, A boat with no name, 23 April 2020 ([Url](#) - last visited: 14 January 2022); The New York Times, Latest Tactic to Push Migrants From Europe? A Private, Clandestine Fleet, 30 April 2020 ([Url](#) – last visited: 14 January 2022).

¹⁰⁹⁸ Government of Malta, Press Releases, PR200673en, Statement by The Government of Malta, 15 April 2020 (“The Malta Rescue and Coordination Centre has coordinated the rescue of an immigrant boat that left Libya and, after a few days in Libyan waters, entered Malta’s Search and Rescue Area [...] In fact, the migrants were assisted by a commercial vessel, which was dispatched to the location of the boat for assistance. Later, a Libyan fishing vessel took the migrants on board.”) ([Url](#) – last visited: 14 January 2022)

497. The most infamous example of such practice is the so-called “Easter Monday Pushback” which occurred on 15 April 2020. On 10 April 2020, the NGO Alarm Phone alerted the Italian and Maltese authorities about a boat in distress with 63 migrants (including seven women and three children) in the Maltese SAR zone.¹⁰⁹⁹ Italy and Malta, took no action until the night between 13 and 14 April when air reconnaissance was carried out.¹¹⁰⁰
498. On 15 April 2020, after the LCG refused to intervene,¹¹⁰¹ the boat was intercepted by the “Dar Al Salam 1”, a Libyan flagged vessel docked in Malta.¹¹⁰² The crew of the “Dar Al Salam 1” told the migrants that they were working for Malta,¹¹⁰³ and returned them to Libya where they were referred to the Tarik al-Sikka DC.¹¹⁰⁴ Twelve migrants died during the rescue operation.¹¹⁰⁵
499. Following investigations revealed that the “Dar Al Salam 1” was acting under the direction of Neville Gafa, a former Maltese official, operating upon instructions of the Prime Minister’s Office to arrange the return of the migrants to Libya.¹¹⁰⁶ In this regard, Neville Gafa further revealed to judicial authorities and media outlets that he had been involved in similar operations for three years, either using a group of private vessels or coordinating the LCG’s rescue operations via radio.¹¹⁰⁷

¹⁰⁹⁹ AI, Malta: Waves of Impunity, p.7.

¹¹⁰⁰ AI, Malta: Waves of Impunity, p.7.

¹¹⁰¹ 22 April 2020 Avvenire Article.

¹¹⁰² AI, Malta: Waves of Impunity, p.7.

¹¹⁰³ La Repubblica, Strage di Pasquetta, parla una sopravvissuta: “Chi ci ha riportato in Libia era egiziano e lavorava per Malta”, 18 May 2020 ([Url](#) – last visited: 14 January 2022)

¹¹⁰⁴ AI, Malta: Waves of Impunity, p.7.

¹¹⁰⁵ AI, Malta: Waves of Impunity, p.7.

¹¹⁰⁶ Avvenire, Lorenzo Bagnoli, Nello Scavo, Inchiesta. Tripoli, Malta e Cosa nostra: tutte le rotte del “Libyagate”, 20 November 2021 (“20 November 2021 Avvenire Article”) ([Url](#) – last visited: 1 December 2021); AI, Malta: Waves of Impunity, p.8; 22 April 2020 Avvenire Article.

¹¹⁰⁷ AI, Malta: Waves of Impunity, p.7. Newsbook, Sylvana Delbono, The government uses Gafa’ to co-ordinate pushback, 29 April 2020 ([Url](#) – last visited: 14 January 2022); Times of Malta, Exposed: Malta’s secret migrant deal with Libya, 10 November 2019 ([Url](#) – last visited: 14 January 2022); Malta Today, Neville Gafa reveals controversial secret migration pact with Libya, 23 February 2020 ([Url](#) – last visited: 14 January 2022); Truth be Told, Manuel Delia, Now we know, 30 April 2020 ([Url](#) - last visited: 14 January 2022); 20 November 2021 Avvenire Article; IrpiMedia, Lorenzo Bagnoli, Migranti e gasolio, il cartello dei trafficanti coinvolto nella strage di Pasquetta, 27 October 2021 ([Url](#) – last visited: 14 January 2022).

b. Memorandum of Understanding between Malta and Libya in the field of combatting illegal immigration

500. Additional evidence of the involvement of Maltese authorities in the interception of migrants at sea is attested by the Memorandum Malta-Libya signed on 28 May 2020. In that instance, Maltese and Libya authorities committed to setting up two coordination centres, in La Valletta and Tripoli,¹¹⁰⁸ respectively, to provide support and coordination “relating to combatting illegal immigration in Libya and the Mediterranean region”.¹¹⁰⁹
501. Manned by mixed staff (Libyan and Maltese),¹¹¹⁰ the coordination centres are fully funded by Malta.¹¹¹¹ In addition, under the memorandum, Malta committed to propose funding *vis-à-vis* “additional maritime assets necessary for the interception and follow-up of human trafficking activities in the search and rescue region in the Mediterranean basin.”¹¹¹²
502. The Memorandum Malta-Libya is a further indication that Maltese officials operated jointly with the members of the LCG in returning migrants intercepted at sea to Libya.

5. The contribution of Italian and Maltese authorities was provided in the knowledge of the intention of the groups to commit the crimes

503. As previously noted, in terms of *mens rea*, Article 25(3)(d) of the Statute requires the contribution to be intentional and provided, at least, with the knowledge of the intention of the group to commit the crimes.

¹¹⁰⁸ Article 1 of the Memorandum Malta-Libya.

¹¹⁰⁹ Articles 1, 4 of the Memorandum Malta-Libya.

¹¹¹⁰ Article 2 of the Memorandum Malta-Libya (indicating that two Maltese officials and one Libyan official operate in the coordination centre in Malta and two Libyan officials and one Maltese official operate in Libya).

¹¹¹¹ Article 3 of the Memorandum Malta-Libya.

¹¹¹² Article 5 of the Memorandum Malta-Libya.

504. With respect to the first prong, there is no doubt that the contribution of Italian and Maltese authorities and officials has been made deliberately and with awareness. The assistance provided to the Libyan authorities, and in particular to the LCG, is the result of Governmental decisions, parliamentary debates, orders and instructions executed along a military chain of command, as well as a bureaucratic process. In addition, in most of the cases, such assistance was delivered following specific international agreements between Italy and Libya or between Malta and Libya.¹¹¹³
505. There is also no dispute on the fact that Italian and Maltese authorities/officials possess knowledge of the criminal intention of the armed groups in charge of the DCIM Detention Centres to commit the abovementioned crimes.
506. Information about the atrocities committed in the DCIM Detention Centres are public knowledge in Italy and Malta. Between 2016 and 2017, such crimes have been part of widespread media coverage both at the domestic¹¹¹⁴ and international levels.¹¹¹⁵ In

¹¹¹³ See *supra*, Sections V.C.3, V.C.4.b.

¹¹¹⁴ With respect to Italian media see for instance, Domani, Sara Creta, L'anarchia delle deportazioni di migranti nel deserto libico, 1 June 2021 ("2021 Domani Article") ([Url](#) – last visited: 14 January 2022); Avvenire, Nello Scavo, Documento. Libia: tangenti, segreti, torture, mafia politica, faide e patti indicibili, 20 March 2021 ([Url](#) - last visited: 14 January 2022) Il Manifesto, Sarita Fratini, Schiavi-soldato dal mare alla guerra di Libia , 10 June 2020 ("10 June 2020 Il Manifesto Article") ([Url](#) – last visited: 14 January 2022); Le Iene, Libia, bombe sul campo profughi: "Migranti usati come scudi umani", video, 8 October 2019 ("8 October 2019 Le Iene Video") ([Url](#) - last visited: 14 January 2022); Le Iene, "Migranti nei lager in Libia: e i nostri soldi dati alle ong?", video, 29 April 2019 ("29 April 2019 Le Iene Video") ([Url](#) – last visited: 14 January 2022); La Repubblica, Libia, continua la detenzione arbitraria dei rifugiati e dei migranti che arrivano nel Paese, 25 July 2018 ([Url](#) - last visited: 14 January 2022); La Repubblica, Libia, "I governi europei sono complici dei terribili abusi contro i migranti rifugiati", 12 December 2017 ([Url](#) – last visited: 14 January 2022). With respect to Maltese media see for instance, Times of Malta, 'We could have done nothing': PM testifies in Easter Sunday migrant return case, 29 September 2021 ([Url](#) – last visited: 14 January 2022); Times of Malta, Exposed: Malta's secret migrant deal with Libya, 10 November 2019 ([Url](#) – last visited: 14 January 2022); MaltaToday, Neville Gafà reveals controversial secret migration pact with Libya, 23 February 2020 ([Url](#) - last visited: 14 January 2022).

¹¹¹⁵ Foreign Policy, Sally Hayden, Europe's Harsh Border Policies Are Pushing Refugees All the Way to Rwanda, 20 February 2021 ("20 February 2021 Foreign Policy Article") ([Url](#) – last visited: 14 January 2022); The Guardian, Sandra Johnson, Fresh evidence of violence at Libyan detention centres as boats turned back, 15 July 2021 ([Url](#) – last visited: 14 January 2022); The Guardian, Francesca Mannocchi, Torture, rape and murder: inside Tripoli's refugee detention camps, 3 November 2019 ("3 November 2019 The Guardian Article") ([Url](#) – last visited: 14 January 2022); The Guardian, Sally Hayden, Fear and Despair engulf refugees in Libya's 'market of human beings', 15 April 2019 ("15 April 2019 The Guardian Article") ([Url](#) – last visited: 14 January 2022); The New York Times, Sally Hayden, They Hoped to Reach Europe Before They Were Massacred, 3 July 2019 ("3 July 2019 New York Times Article") ([Url](#) – last visited: 14 January 2022); The New York Times, Libya Rescues 279 Migrants at Sea, but 100 More Are Feared Dead, 10 January 2018 ([Url](#) – last visited: 14 January 2022); The Guardian, EU's policy of helping Libya intercept migrants is 'inhuman', says UN, 14 November 2017 ([Url](#) – last visited: 14 January 2022).

addition, Italian¹¹¹⁶ and Maltese¹¹¹⁷ authorities have repeatedly received notice of these crimes through letters and recommendations by international organisations and NGOs. In several occasions, the OHCHR and the UN Secretary General, for instance, have called for a moratorium on all interceptions and returns to Libya “in light of persistent allegations of abuse and mistreatment of migrants in the course of interceptions and upon return to Libya”.¹¹¹⁸ OHCHR also specifically recommended European States to ensure that: (1) all agreements or measures of cooperation on migration governance with Libya are consistent with their international law obligations; and (2) coordination with the Libyan authorities is conditioned upon assurances that migrants intercepted at sea will not be transferred back to Libya.¹¹¹⁹

507. In Italy, in particular, the question of atrocities committed in the DCIM Detention Centres was raised in every Parliamentary session in which the Government sought approval to set up and finance Italian assistance to the LCG.¹¹²⁰ The debate in the

¹¹¹⁶ Notice from international organisations include: (i) Council of Europe: CoE, Commissioner for Human Rights, Letter to Italian Minister of Foreign Affairs Mr Luigi Di Maio, CommHR/DM/sf 006-2020, 13 February 2020 ([Url](#) – last visited: 14 January 2022); CoE, Commissioner for Human Rights, Letter to Italian Minister of the Interior Mr Marco Minniti, CommHR/INM/sf 0345-2017, 28 September 2017 ([Url](#) – last visited: 14 January 2022); (ii) United Nations: 2021 OHCHR Report, p.13, 24; 2018 UNSMIL Report, Recommendations, p.55; UN Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Italy, CAT/C/ITA/CO/5-6, 18 December 2017, para.22. Notice from non-governmental organisations include: (i) Amnesty International: 2020 AI Report, p.12; 2017 AI Report, p.11; (ii) Human Rights Watch: 2019 HRW Report, p.9. See also 2017 AI Report, pp.56-59.

¹¹¹⁷ Notice from international organisations include: (i) Council of Europe: CoE, Commissioner for Human Rights, Letter to Prime Minister Mr Robert Abela, CommHR/DM/sf 013-2020, 5 May 2020; (ii) United Nations: 2021 OHCHR Report, p.13, 24; 2018 UNSMIL Report, Recommendations, p.55. Notice from non-governmental organisations include: (i) Amnesty International: AI, Malta: Waves of Impunity.

¹¹¹⁸ 2021 OHCHR Report, pp.8-9, 15; September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Person, para. 44.

¹¹¹⁹ 2021 OHCHR Report, p.24.

¹¹²⁰ See, e.g., **2020**: Senato della Repubblica, XVIII Legislatura, 236 Seduta, Resoconto Stenografico, 7 July 2020, pp.20-21 (De Falco), 21-22 (Verducci) (“la guardia costiera libica in realtà non esiste, come dimostrato da inchieste giornalistiche, dai dossier delle Nazioni Unite e del Consiglio di Europa, che ci chiedono entrambi di sospendere i rapporti e il supporto alla Guardia costiera libica, perché risulta essere un conglomerato di milizie armate spesso in lotta tra loro e spesso coinvolte in prima persona nel traffico di migranti e nella gestione dei cosiddetti, famigerati lager libici. Ecco perché votare il rifinanziamento significa voltarsi dall'altra parte di fronte a respingimenti illegali, detenzioni arbitrarie, torture, violenze, rapimenti, lavori forzati. Ma noi siamo l'Italia, non possiamo voltarci di fronte a questa immane catastrofe umanitaria.”) 26-27 (Bonino) (“L'Italia ha pagato un prezzo per fermare con ogni mezzo - dico bene, con ogni mezzo, anche il più disumano - i flussi nel Mediterraneo. Io non so, collega De Falco, se l'Italia è mandante. Sicuramente è pagante, questo sì - è il bancomat di queste operazioni insopportabili - e lo ha fatto scegliendo interlocutori che, come tanti casi di cronaca hanno dimostrato, erano i rappresentanti di organizzazioni criminali, compreso il famoso Bija, che se ne va in giro per l'Italia e pare che nessuno ne sappia niente. A me sembra

Italian Parliament concerning the Italian mission in Libya also reflects a full awareness of the conditions of detention in DCIM Detention Centres in Libya, the contribution

che l'Italia continui a pagare una sorta di riscatto all'incontrario: paga i carcerieri, non per liberare gli ostaggi, ma per tenerli prigionieri, facendo finta di non sapere, mentre invece lo sa e lo fa. Proprio per questo, il tipo di collaborazione con la Libia è un segmento della nostra cosiddetta politica di contrasto all'immigrazione clandestina”), 39-42 (De Petris) (“Che cosa avviene in Libia? Per fortuna c'è il quotidiano «Avvenire», che ringrazierò sempre perché forse è il giornale più documentato, quello che ci dà tutte le informazioni e ci permette di avere anche da qui uno sguardo sul mondo. Le ultime inchieste ci dicono cose molto gravi e non passa giorno senza che venga denunciato nelle carceri e nei centri detenzione il ricorso alla violenza e alle torture in modo continuo e sistematico [...] Ci sono decine di migliaia di migranti, rifugiati e richiedenti asilo sottoposti a questo genere di vessazioni, di torture e di ricatti. Nei centri della direzione generale per la lotta all'immigrazione clandestina sono detenute illegalmente, torturate e sottoposte a violenze di ogni genere migliaia di persone.”) ([Url](#) – last visited: 14 January 2022); **2019**: Senato della Repubblica, XVIII Legislatura, 130 Seduta, Resoconto Stenografico, 9 July 2019, pp.36-37 (Bonino) (“Sapete perfettamente che tutti coloro che rimandate indietro attraverso la Guardia costiera libica (da noi supportata e armata in prosecuzione di decisioni prese prima - questo lo devo dire - su cui avevo espresso tutta la mia opposizione), li rispettate semplicemente nei luoghi di tortura, come ormai è chiaro ed evidente[...]. Si tratta di un Paese con tre Governi, due Parlamenti e nessuno Stato e io credo che non sia legittimo, che sia una violazione del diritto internazionale rimandare indietro nei lager libici le persone salvate.”), 51-54 (Verducci) (“non possiamo più ignorare quanto avviene, quanto la cosiddetta Guardia costiera libica si sia macchiata in questi anni e mesi recenti di crimini documentati da inchieste giornalistiche, denunciati ripetutamente dall'ONU, dall'Alto commissariato delle Nazioni Unite per i rifugiati (UNHCR), dal Consiglio d'Europa: continue violazioni dei diritti umani che avvengono nei centri di detenzione, che sono come Lager, dove torture, stupri, estorsioni sono la norma. Tutto questo è documentato, signora Ministro [...]. Il segretario generale dell'ONU Guterres ha parlato di «crimini contro l'umanità», l'Alto commissario Nazioni Unite ha definito «disumano» la collaborazione tra l'Unione europea e la Guardia costiera libica. Sappiamo, come tutti, il perché: le motovedette libiche intercettano i migranti nel Mediterraneo centrale e li portano, o li riportano, indietro nei campi libici e questo non può e non deve avvenire con la complicità italiana. Uno dei capi della cosiddetta Guardia costiera è il famigerato al Milad, noto per il suo business: trafficante di uomini e di schiavi su e giù per il Mediterraneo, contrabbandiere, affondatore di navi dei migranti. Su tali crimini indaga la Corte internazionale di giustizia dell'Aia, secondo la quale le sue milizie sarebbero destinatarie di una delle navi fornite dall'Italia alla cosiddetta Guardia costiera libica.”) ([Url](#) – last visited: 14 January 2022); **2018**: Senato della Repubblica, XVIII Legislatura, 26 Seduta, Resoconto Stenografico, 25 July 2018, pp.42-43 (De Falco) (“Dicevo che molti di loro hanno subito torture e violenze feroci, anche perché la Libia affida la gestione dei soccorsi alle stesse autorità che poi portano i migranti nei famigerati centri di detenzione e quel Paese non offre, com'è stato detto, garanzie per l'incolumità dei migranti intercettati o dei naufraghi salvati in mare, né consente accoglienza e accesso a una procedura d'asilo”), p.44 (“le convenzioni internazionali non parlano di porti sicuri, ma di posti sicuri e la Libia non è un posto sicuro: non ci vanno i diplomatici, non ci vanno gli ambasciatori (salvo il nostro), la Farnesina sconsiglia di andarci e proprio l'altro giorno il Vice Premier di al-Sarraj è fuggito da Tripoli per problemi di sicurezza, verso Bengasi e la Turchia (uno dei Paesi che non richiede i visti). Peraltro che non sia un posto sicuro ce lo dicono la Corte europea dei diritti umani, persino la Commissione europea e le testimonianze univoche di centinaia, di migliaia di profughi, che hanno un unico racconto da fare: stupri, violenze e torture. Le avete viste come me, ne avete visto i reportage, le foto, eccetera. Anche se avete cuore di rimandare la gente che scappa in questi posti, io non credo che sia una grande prospettiva, una grande politica e neanche una grande visione.”), p.61 (Laforgia) (“Ecco, di fronte a tutto questo, di fronte alle immagini e alle denunce di organismi indipendenti come l'UNHCR o Amnesty International, che da mesi riportano le inaccettabili condizioni delle persone migranti in Libia, le violenze, le torture, gli stupri quotidiani, nonostante questo patrimonio di informazioni, i nostri Governi - l'attuale, ma anche quelli che lo hanno preceduto - si ostinano a considerare la Libia come un interlocutore cui affidare la vita di centinaia di migliaia di persone.”) ([Url](#) – last visited: 14 January 2022); **2017**: Camera dei Deputati, XVII Legislatura, Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione, 57 Seduta, Resoconto Stenografico, 10 October 2017, (Marco Minniti) (“In quest'ambito, naturalmente, si pone una questione che, a mio avviso, è cruciale. Nel momento in cui la Guardia costiera libica effettua le operazioni di search and rescue di cui ho parlato precedentemente, ossia salva migranti nel Mediterraneo e li riporta in Libia, nel momento in cui è stato giustamente sottolineato che le condizioni di vita nei centri di accoglienza libici sono inaccettabili per la comunità internazionale, si pone il problema di come intervenire.”) ([Url](#) – last visited: 14 January 2022).

of the LCG to these crimes, and the role that Italy had (and still has) in this regard. Throughout the years, members of the Italian Government recognised a widespread perpetration of crimes in DCIM centres.¹¹²¹ On 30 January 2020, the former Italian Deputy Minister of Foreign Affairs stated that the Italian Government was “aware of the calls made by the United Nations and of the accusations of human rights violations, in both the illegal and the official detention centres.”¹¹²²

508. As to Malta, media coverage reflects that, already in February 2020, a national political figure, Arnold Cassola, filed a communication under Article 15 of the Statute to the Prosecutor of the ICC with respect to Malta’s support to the LCG.¹¹²³
509. Specifically, while the notion of knowledge under the Statute does not require the perpetrator to know each and every circumstance under which a crime occurred, the information available indicates that the Italian and Maltese governments contributed to the crimes being aware of both the identity of the specific groups in charge of the centres, and their concrete criminal intent.
510. For instance, as noted above, the apical leaders of the al-Nasr Brigade operating in al-Nasr DC are subject to UNSC sanctions since July 2018, which apply in Italy and Malta as well.¹¹²⁴ Moreover, the crimes committed in the al-Nasr DC are under judicial scrutiny by the Italian courts.¹¹²⁵ Lastly, the Italian authorities engaged directly with

¹¹²¹ Vita, Mario Giro, “Le urgenze? Svuotare i centri di detenzione libici e garantire vie legali verso l'Europa”, 7 December 2017 ([Url](#) – last visited: 14 January 2022); Vita, Mario Giro: “In Libia lo Stato non c’è, così diventiamo solo ostaggi”, 19 July 2018 ([Url](#) – last visited: 14 January 2022).

¹¹²² Avvenire, Nello Scavo, Marina Sereni. “Memorandum Libia, si tratta. I decreti sicurezza da rifare”, 30 January 2020 ([Url](#) – last visited: 14 January 2022). The translation of the interview of the former Deputy Minister of Foreign Affairs is available on the website of the Ministry of Foreign Affairs. See Ministero degli Affari Esteri e della Cooperazione Internazionale, Interviews and Articles Summary, Sereni – «Libya Memorandum, negotiations are under way – The national security measures need to be overhauled» (Avvenire), 30 January 2020 ([Url](#) – last visited: 14 January 2022).

¹¹²³ The Malta Independent, Arnold Cassola asks International Criminal Court to investigate Joseph Muscat and Neville Gafà, 23 February 2020 ([Url](#) – last visited: 14 January 2022).

¹¹²⁴ Kashlaf - Narrative Summary; al-Bija - Narrative Summary; Osama Ibrahim - Narrative Summary.

¹¹²⁵ Tribunale di Messina Judgment.

al-Bija in the context of their assistance to the LCG to stop the migration flows from Libya.¹¹²⁶

511. The same applies with respect to the intention of the other armed groups in charge of the DCIM Detention Centres, and in particular the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, and Tajoura DC. The fact that these groups controlled specific detention centres,¹¹²⁷ the fact that these centres are accommodating migrants intercepted at sea by the LCG,¹¹²⁸ the fact that these migrants were subjected to abuses and mistreatment by members of these groups¹¹²⁹ was widely reported and covered by media, international organisations, and NGOs. For instance, as mentioned above, a very popular Italian TV show, “Le Iene”, broadcast by one of the major Italian TV Channels, in 2019, showed migrants’ testimonies and videos of abuses committed in the Tajoura DC, Tarik al-Matar DC and Tarik al-Sikka DC.¹¹³⁰

¹¹²⁶ 6 October 2019 Avvenire Article; 5 October 2019 Avvenire Article.

¹¹²⁷ See Sections IV.A.2.a.ii (referring to media articles and reports of international organisations and NGOs that the Abu Salim Brigade has control over the Abu Salim DC), IV.A.2.b.ii (referring to reports that the 301 Infantry Battalion had control over the Tarik al-Matar DC), IV.A.2.c.ii (referring to media articles and reports of international organisations and NGOs that the Al-Khoja Militia is in control of the Tarik al-Sikka DC), IV.A.2.d.ii (referring to media articles and reports of international organisations and NGOs that the Public Security Agency is in control of the al-Mabani DC), IV.A.2.e.ii (referring to media articles and reports of international organisations and NGOs that the Al-Daman Brigade was in control of the Tajoura DC).

¹¹²⁸ See Sections IV.A.2.a.iii (referring to media articles and reports of international organisations and NGOs that migrants intercepted at sea are present in the Abu Salim DC), IV.A.2.b.iii (referring to media articles and reports of international organisations and NGOs that migrants intercepted at sea were present in the Tarik al-Matar DC), IV.A.2.c.iii (referring to media articles and reports of international organisations and NGOs that migrants intercepted at sea are present in the Tarik al-Sikka DC), IV.A.2.d.iii (referring to media articles and reports of international organisations and NGOs that migrants intercepted at sea are present in the al-Mabani DC), IV.A.2.e.iii (referring to media articles and reports of international organisations and NGOs that migrants intercepted at sea were present in the Tajoura DC).

¹¹²⁹ See Sections IV.A.2.a.iv (referring to media articles and reports of international organisations and NGOs that migrants are abused in the Abu Salim DC), IV.A.2.b.iv (referring to media articles and reports of international organisations and NGOs that migrants were abused in the Tarik al-Matar DC), IV.A.2.c.iv (referring to media articles and reports of international organisations and NGOs that migrants are abused in the Tarik al-Sikka DC), IV.A.2.d.iv (referring to media articles and reports of international organisations and NGOs that migrants are abused in the al-Mabani DC), IV.A.2.e.iv (referring to media articles and reports of international organisations and NGOs that migrants are abused in the Tajoura DC).

¹¹³⁰ Le Iene, Libia, bombe sul campo profughi: "Migranti usati come scudi umani", video, 8 October 2019 ([Url](#) - last visited: 14 January 2022); Le Iene, “Migranti nei lager in Libia: e i nostri soldi dati alle ong?”, video, 29 April 2019 ([Url](#) – last visited: 14 January 2022).

512. These considerations confirm that the Maltese and Italian officials operated with the knowledge of the groups' intention to commit the above referenced crimes.

VI. JURISDICTION

513. The crimes analysed above in Section IV fall within the jurisdiction of the ICC in light of: (1) Article 13(b) of the Statute under Resolution 1970 (2011) with regard to *all* actors involved,¹¹³¹ and (2) Article 12(2)(b) of the Statute, with respect to Third-State actors, namely Italian and Maltese authorities and officials.¹¹³²

A. Jurisdiction under UNSC Resolution 1970

514. The crimes committed against migrants in the DCIM Detention Centres fall within the scope of the situation referred by the UNSC pursuant to Resolution 1970 (2011). These crimes took place on the Libyan territory, after 15 February 2011, and they are associated with the ongoing armed conflict. Further, the perpetrators are Libyan nationals or otherwise States Parties nationals.

515. Resolution 1970 (2011) frames the geographical, temporal, and personal parameters of the referred situation at paragraphs 4 and 6. Paragraph 4 confines the situation to the crimes committed on the territory of the "Libyan Arab Jamahiriya" (now the State of Libya) after 15 February 2011.¹¹³³ Paragraph 6 excludes from the ICC's investigations and prosecutions the acts or omissions of non-States Parties' nationals on the territory of the "Libyan Arab Jamahiriya" (now the State of Libya) related to operations established or authorised by the Security Council.¹¹³⁴ Resolution 1970

¹¹³¹ See *supra*, Section IV. This includes the conducts and responsibilities of individuals referred in Section V, namely Libyan Actors (members of the armed groups in charge of DCIM Detention Centres, DCIM and LCG officials) and Third Country Actors (Italian and Maltese authorities and officials).

¹¹³² See Section IV. This includes the individuals referred in Section V.C, namely Third State Actors (Italian and Maltese authorities and officials).

¹¹³³ Resolution 1970 (2011), para.4 ("Decides to refer the situation in the Libyan Arab Jamahiriya since 15 February 2011 to the Prosecutor of the International Criminal Court").

¹¹³⁴ Resolution 1970 (2011), para.6 ("Decides that nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall

(2011) does not provide any additional explicit indication *vis-à-vis* the parameters of the situation.

516. Based on a contextual interpretation of Resolution 1970 (2011), Pre-Trial Chamber I, in *Al-Werfalli*, further limited the scope of the situation to the “ongoing armed conflict” in Libya.¹¹³⁵ In reaching this conclusion, Pre-Trial Chamber I observed that crimes allegedly committed between 2016 and 2018 in Libyan territory by a Libyan national could fall within the purview of the ICC’s jurisdiction pursuant to the UNSC referral provided that they were associated with the conflict in Libya.¹¹³⁶
517. Two key aspects arise from the determination of Pre-Trial Chamber I. In addition to the parameters provided by paragraphs 4 and 6 of Resolution 1970 (2011), the situation of crisis underlying the UNSC referral has been confined to the crimes associated with the armed conflict in Libya. However, since the conflict is still ongoing, the ICC has jurisdiction over alleged crimes committed in Libya even several years after Resolution 1970 (2011), as long as such alleged crimes are sufficiently linked to the hostilities.
518. The acts analysed in Section IV meet all of these parameters. The crimes committed against migrants in the DCIM Detention Centres, and specifically in the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, and al-Nasr DC have been committed in the context of and were associated with the ongoing armed conflict in Libya.
519. Five main considerations support this conclusion.

be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State”).

¹¹³⁵ 2017 *Al-Werfalli* Arrest Warrant, para.23 (“In particular, the seven incidents occurring in Benghazi or surrounding areas between on or before 3 June 2016 until on or about 17 July 2017 are associated with the ongoing armed conflict underlying the referral by the Security Council pursuant to Article 13(b) of the Statute concerning the situation on the territory of Libya since 15 February 2011”). See also 2018 *Al-Werfalli* Arrest Warrant, para.20.

¹¹³⁶ 2017 *Al-Werfalli* Arrest Warrant, para.23; 2018 *Al-Werfalli* Arrest Warrant, para.20.

520. *First*, as illustrated above, the DCIM Detention Centres are operated by members of armed groups involved in the Libyan conflict,¹¹³⁷ some of which have been active since the revolution.¹¹³⁸ This is the case for the Abu Salim DC,¹¹³⁹ Tarik al-Matar DC,¹¹⁴⁰ Tarik al-Sikka DC,¹¹⁴¹ al-Mabani DC,¹¹⁴² Tajoura DC,¹¹⁴³ and al-Nasr DC,¹¹⁴⁴ all run by armed groups who participated in the hostilities in various phases of the Libyan conflict.

¹¹³⁷ See Sections IV.A.2.a.v, IV.A.2.b.v, IV.A.2.c.v, IV.A.2.d.v, IV.A.2.e.v, IV.A.2.f.v.

¹¹³⁸ For instance, the Abu Salim Brigade was a revolutionary brigade during the February 2011 Revolution against Ghaddafi's forces in 2011. 2020 Netherlands-Ministry of Foreign Affairs Report on Libya, fn.79; 2019 Jamestown Foundation Report, p.12; 301 Infantry Battalion originates from the Halbus Brigade from Misratah involved in the February 2011 Revolution since its early days. *Libya's Fragmentation*, p.112. The Public Security Agency led by Ahmed Trabelsi originates from the al-Sawaiq Battalion which participated in the February 2011 Revolution (and in particular the liberation of Tripoli). 2019 PWP Report, p.12 ([Url](#) – last visited: 14 January 2022); the al-Nasr Brigade was formed by Ali Busriba, nominally Professor at Zawiya University and member of the parliament which joined the Revolution as a tank driver. Once he had created the al-Nasr Brigade, Busriba appointed Mohamed Kachlaf as its commander. USAID, *Human Trafficking, Smuggling and Governance in Libya: Implications for Stability and Programming*, May 2020, p.10 ([Url](#) - last visited: 14 January 2022). In addition, al-Bija, a member of the Al-Nasr Brigade participated in the February 2011 Revolution being wounded. *Avvenire*, Nello Scavo, *La trattativa nascosta. Dalla Libia a Mineo, il negoziato tra l'Italia e il boss*, 4 October 2019 ([Url](#) – last visited: 14 January 2022).

¹¹³⁹ The **Abu Salim Brigade** in charge of the Abu Salim DC participated in: (1) the 2011 Revolution; (2) “Operation Libya Dawn” in 2014; (3) the fighting against the forces of Al-Gweil in 2016-2017 in support of the establishment of the GNA in Tripoli; (4) the 2018 Battle of Tripoli (also known as the Late Summer War) against the Kaniyat/ 7th Brigade and the Steadfastness Front from Misrata; (5) fighting against Haftar's forces in the 2019/2020 LNA Offensive. See Section IV.A.2.a.v.

¹¹⁴⁰ The **301 Infantry Battalion** in charge of Tarik al-Matar originated from the Halbus Brigade of Misrata which took part both in the revolution and “Operation Libya Dawn”. Following its creation the 301 Infantry Battalion participated in: (1) armed clashes against the Warshefana militias in 2016; (2) the fighting against the Al-Gweil forces in 2016-2017 in support of the GNA in Tripoli; (3) the 2018 Battle of Tripoli (also known as the Late Summer War) against the Kaniyat/7th Brigade and the Steadfastness Front from Misrata; and (4) fighting against Haftar's forces during the 2019/2020 LNA Offensive. See *supra*, Section IV.A.2.b.v.

¹¹⁴¹ The **Al-Khoja Militia**, in charge of the Tarik al-Sikka DC, currently aligned to the GNA fought on the side of Khalifa al-Ghweil against the GNA in 2016-2017 and took part in the fighting against the 2019/2020 LNA Offensive. See *supra*, Section IV.A.2.c.v.

¹¹⁴² The **Public Security Agency**, in charge of Al-Mabani DC, is a GNA-affiliated group under the command of the Zintani Commander Emad Trabelsi which originates from the al-Sawaiq Battalion (pro-Haftar until 2018). Under the command of Emad Trabelsi, the al-Sawaiq Battalion/Public Security Agency participated in: (1) the 2011 Revolution; (2) “Operation Dignity” in 2014; (3) the 2018 Battle of Tripoli (also known as the Late Summer War) against the Kaniyat/ 7th Brigade and the Steadfastness Front from Misrata; and (4) fighting against Haftar's forces during the 2019/2020 LNA Offensive. See *supra*, Section IV.A.2.d.v.

¹¹⁴³ The **Al-Daman Brigade**, in charge of the security of Tajoura DC, took part in “Operation Dignity” alongside Haftar's forces and later shifted to the GNA. Al-Daman took part in the fighting against the Al-Gweil forces in 2016-2017 in support of the GNA in Tripoli and against Haftar forces during the 2019/2020 LNA Offensive. In September 2020 and March 2021, the Al-Daman Brigade engaged in armed clashes with the Tajoura Lions another militia based in Tajoura. See *supra*, Section IV.A.2.e.v.

¹¹⁴⁴ The **Al-Nasr Brigade**, in charge of the Al-Nasr DC, is aligned with the GNA. The Al-Nasr Brigade participated in (1) “Operation Libya Dawn”; (2) armed clashes against the Al-Khadrawi and Al-Lahab militias in Zawiya between 2016 and 2017; (3) fighting in Sabrata alongside Al-Dabbashi forces; and (4) fighting against Haftar's forces during the 2019/2020 LNA Offensive. See *supra*, Section IV.A.2.f.v.

521. *Second*, migrants detained in most of the DCIM Detention Centres, including in the Abu Salim DC,¹¹⁴⁵ Tarik al-Matar DC,¹¹⁴⁶ Tarik al-Sikka DC,¹¹⁴⁷ Tajoura DC,¹¹⁴⁸ have been exploited for military-related activities, forced to load or unload ammunition, to clean weapons and vehicles (including tanks), and to transport weapons and ammunition. The information available also indicates that migrants in Abu Salim DC,¹¹⁴⁹ Tarik al-Matar DC,¹¹⁵⁰ Tarik al-Sikka DC,¹¹⁵¹ and Tajoura DC¹¹⁵² have been forcibly recruited to participate in the actual fighting. As a whole, the imprisonment and the climate of fear created in these centres served also to assist the armed groups' fighting efforts.
522. *Third*, the information available also indicates that the participation in the armed conflict was pivotal for the armed groups to gain or maintain control over the DCIM Detention Centres. This is especially clear *vis-à-vis* the al-Nasr Brigade and the Public Security Agency. Through their involvement in the war, both at national and local levels, these groups ensured their control over the al-Nasr DC and the al-Mabani DC and were able to commit crimes against migrants detained therein.
523. Between 2016 and 2017, the al-Nasr Brigade engaged in armed clashes against the Khadrawi and al-Lahab militias which challenged its control over the al-Nasr DC and the oil refinery. The al-Nasr Brigade's ability to commit the crimes in the al-Nasr DC has been contingent on the fact that it was successful in repelling these military attacks.¹¹⁵³ Likewise, the Public Security Agency managed to set up the al-Mabani DC only after it ensured its military control over the area where the centre is located.¹¹⁵⁴

¹¹⁴⁵ See *supra*, Section IV.A.2.a.iv-v.

¹¹⁴⁶ See *supra*, Section IV.A.2.b.iv-v.

¹¹⁴⁷ See *supra*, Section IV.A.2.c.iv-v.

¹¹⁴⁸ See *supra*, Section IV.A.2.e.iv-v.

¹¹⁴⁹ See *supra*, Section IV.A.2.a.iv-v.

¹¹⁵⁰ See *supra*, Section IV.A.2.b.iv-v.

¹¹⁵¹ See *supra*, Section IV.A.2.c.iv-v.

¹¹⁵² See *supra*, Section IV.A.2.e.iv-v.

¹¹⁵³ See *supra*, Section IV.A.2.f.v.

¹¹⁵⁴ See *supra*, Section IV.A.2.d.v.

524. *Fourth*, some of the DCIM Detention Centres, including the Tarik al-Sikka DC,¹¹⁵⁵ Tajoura DC,¹¹⁵⁶ and al-Nasr DC¹¹⁵⁷ are situated in the same facilities which host the armed groups and their weapons storage.
525. *Fifth*, the link between the crimes committed against migrants in detention centres and the ongoing armed conflict becomes clear when analysing the specific features of the conflict dynamics in Libya between 2011 and 2021.¹¹⁵⁸ The end of Ghaddafi's regime led to a fragmentation of power among multiple armed entities affiliated *inter alia* to local families, city-states, or tribes.¹¹⁵⁹ According to Marc Micallef, "[t]his fragmentation unequivocally marked the single most profound development after 2011, leading to mixed, long-term implications for both the smuggling industry as well as Libyan society as a whole."¹¹⁶⁰
526. Indeed, the armed groups used their position and leverage to replace Ghaddafi's control also over the smuggling/trafficking sector in Libya.¹¹⁶¹ They first replicated, and piecemealed, Ghaddafi's protection system of the "smuggling industry", and later began running the DCIM detention centres, previously established during the regime.¹¹⁶² Finally, with the establishment of the GNA and the growing external pressure to stem the migration flows, the armed groups re-focused their activities from smuggling/trafficking to migration control preventing migrants detained in DCIM Detention Centres from crossing the Mediterranean Sea.¹¹⁶³

¹¹⁵⁵ See *supra*, Section IV.A.2.c.v.

¹¹⁵⁶ See *supra*, Section IV.A.2.e.v.

¹¹⁵⁷ See *supra*, Section IV.A.2.f.v.

¹¹⁵⁸ See *supra*, Sections II.A, II.B.

¹¹⁵⁹ These groups secured key "governmental institutions and infrastructure[s]" in the capital and in their respective territories, frustrated any attempts to integrate them in the state apparatus, and began exercising state functions including law enforcement activities in full autonomy. 2017 Global Initiative Report p.9

¹¹⁶⁰ 2017 Global Initiative Report p.9 ("The breakup of state political and governing structures and the rise of militarisation in Libya marked a turning point for the human smuggling market, in which routes, hubs, actors and modalities evolved based on the ebb and flow of tribal and militia relations.").

¹¹⁶¹ See *supra*, Section II.B.2.

¹¹⁶² See *supra*, Sections II.B.2, II.B.3.

¹¹⁶³ See *supra*, Section II.B.3.

527. These dynamics clearly demonstrate how the manner in which migrants are detained and abused in the DCIM Detention Centres is directly linked to the conflict that originated in 2011. Without the conflict, armed groups would have never gained the power that they have now in Libya, the ability to exercise state-like functions and penetrate/shape the smuggling sector. Without the conflict, they would have never had the possibility to gain control of DCIM Detention Centres and, finally, to commit crimes against migrants detained therein.
528. These considerations indicate that the crimes suffered by migrants in DCIM Detention Centres are closely linked to the conflict underlying the UNSC referral under Article 13(b) of the Statute.
529. The conflict in Libya is central to the commission of the crimes, in terms of the manner of their commission, the perpetrators' motives and ability to commit them, and the causes underpinning their commission. These crimes are perpetrated by members of the armed groups involved in the conflict and in the same facilities that host their headquarters (*manner*). The perpetration of these crimes served the purpose of their military campaign (*motives*). The participation in the hostilities of these armed groups has been pivotal to ensure or maintain control over the DCIM Detention Centres (*ability*). The revolution/conflict dynamics empowered and enabled the armed groups to dominate the smuggling sector and exert control over the DCIM Detention Centres (*causes*).
530. In conclusion, the crimes described in Section IV: (i) have been committed on the Libyan territory after 15 February 2011 (paragraph 4 of Resolution 1970 (2011)); (ii) by Libyan nationals or otherwise nationals of member states (paragraph 6 of Resolution 1970 (2011)); and (iii) are strictly correlated with the armed conflict. These

considerations lead to the conclusion that such crimes fall within the scope of the situation referred to the Court by the UN Security Council in 2011.¹¹⁶⁴

531. Moreover, the subsequent practice of the UNSC confirms that the scope of the situation encompasses also crimes committed against migrants in Libya. During regular reporting to the UNSC, the ICC Prosecutor has repeatedly affirmed that the Office of the Prosecutor is investigating crimes committed against migrants in Libya,¹¹⁶⁵ including in “official detention centres”.¹¹⁶⁶ No member of the UNSC has objected to this approach or argued that such investigation may fall outside the scope of the situation referred.¹¹⁶⁷ To the contrary, the UNSC’s verbatim records of the relevant sessions reveal that UNSC members, including permanent members, praised

¹¹⁶⁴ In this regard, the analogous practice of other international criminal tribunals concerning the link between a crime and the armed conflict from a jurisdictional standpoint may be informative to assess whether the present crimes are sufficiently connected to the situation of crisis referred by the UNSC. Under Article 5 of the ICTY Statute, the ICTY had jurisdiction over crimes against humanity “when committed in armed conflict, whether international or internal in character”. The ICTY Appeals Chamber concluded that within the meaning of Article 5 of the ICTY Statute, the reference to the existence of an armed conflict is not a constitutive element of crimes against humanity, but only a jurisdictional prerequisite (confining, thus, the investigations and the prosecution of the ICTY only to crimes against humanity that had an underlying connection with the conflict in Yugoslavia). ICTY, *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgement, 15 July 1999, paras.249, 251. According to the ICTY jurisprudence, the mere geographical and territorial link between the crime and the conflict was considered sufficient to satisfy the jurisdictional link with the conflict required by Article 5 of the Statute ICTY, *Prosecutor v. Kunarac et al*, IT-96-23 & IT-96-23/1-A, Judgement, 12 June 2002, paras 82-83; ICTY, *Prosecutor v. Seselj*, Decision on the Interlocutory Appeal Concerning Jurisdiction, 2 September 2004, paras.13-14 (holding that to establish this link, the Prosecution was merely required to “establish that a widespread or systematic attack against the civilian population was carried out while an armed conflict in Croatia and/or Bosnia and Herzegovina was in progress”). Significantly, the UNSC’s creation of the ICTY shows similarities with a referral under Article 13(b) of the Statute.

¹¹⁶⁵ ICC, Twenty-Second Report of the Prosecutor of the International Criminal Court to the United Nations Security Council under Resolution 1970 (2011), 23 November 2021 (“2021 Report of the ICC Prosecutor”), paras.23-29; UNSC, Letter dated 19 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, S/2021/483, 20 May 2021 (“Letter dated 19 May 2021”), Annex I, p.4; UNSC, Letter dated 7 May 2020 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, S/2020/371, 7 May 2020 (“Letter dated 7 May 2020”), Annex I, pp.2-3; UNSC, 8660th meeting, S/PV.8660, 6 November 2019 (“S/PV.8660”), pp.3-4; UNSC, 8523rd meeting, S/PV.8523, 8 May 2019 (“S/PV.8523”), pp.3-4; UNSC, 8388th meeting, S/PV.8388, 2 November 2018 (“S/PV.8388”), p.3; UNSC, 8250th meeting, S/PV.8250, 9 May 2018 (“S/PV.8250”), p.4; UNSC, 8091st meeting, S/PV.8091, 8 November 2017 (“S/PV.8091”), pp.3-4.

¹¹⁶⁶ S/PV.8091, p.3 (“I also note with grave concern reports of unlawful killings, including the execution of detained persons; kidnappings and forced disappearances; torture; prolonged detentions without trial or other legal process; and arbitrary detention, torture, rape, and other ill-treatment of migrants in official and unofficial detention centres”); S/PV.8523, p.3.

¹¹⁶⁷ Letter dated 19 May 2021, Annexes I-XVI; Letter dated 7 May 2020, Annexes II-XVI; S/PV.8660; S/PV.8523; S/PV.8388; S/PV.8250; S/PV.8091.

and supported the Prosecutor’s stance in this regard.¹¹⁶⁸ Significantly, UNSC members never questioned or raised concerns about whether the crimes committed against migrants in Libya were sufficiently connected to the armed conflict, the February 2011 Revolution, or, more generally, whether they fell within the scope of the situation referred pursuant to Resolution 1970 (2011).¹¹⁶⁹

¹¹⁶⁸ Letter dated 19 May 2021, Annexes IV, p.10 (France), VIII, p.16 (Mexico); Letter dated 7 May 2020, Annex IV, p.6 (Belgium), Annex III, p.8 (Dominican Republic), Annex V, p.9 (Estonia), Annex VI, p.10 (France: “Unfortunately, violations of human rights and international humanitarian and refugee law are widespread. Attacks against the civilian population and medical infrastructure may constitute war crimes under the Rome Statute, as the Prosecutor rightly recalled. Trafficking in persons, migrant smuggling, arbitrary detention, mistreatment of detainees, enforced disappearance, torture, and sexual violence are unacceptable. There can be no doubt that anyone who incites or commits such crimes in Libya today is liable to prosecution, whether by the Libyan justice system or by the ICC”), Annex IX, p.14 (Niger), Annex XVI, p.22 (United Kingdom); S/PV.8660, p.5 (Belgium), 6 (France), 8 (Poland), 11 (Dominican Republic), 13 (United Kingdom, President: “The conflict is having an unacceptable impact on civilians, including migrants and refugees. The United Kingdom is clear that civilians should be protected and that those responsible for violations should be held accountable. The ICC is crucial to this”); S/PV.8523, pp.5 (United Kingdom), 7 (United States of America: “We remain concerned about abuses that human traffickers and smugglers have perpetrated against migrants, refugees and asylum-seekers in Libya. We support efforts to hold those individuals, including Government officials found to be complicit, accountable”), 7-8 (Germany), 11 (Belgium: “Equally, we applaud the work that has been done with a view to the potential prosecution of perpetrators of crimes against migrants”), 12 (Poland), 13 (France: “In that regard, and this is my third and final point, we commend the Prosecutor’s focus on human trafficking and the smuggling of migrants, which constitute a direct threat to peace and stability in Libya. The findings in the reports mentioned by the Prosecutor are illuminating and disturbing as to the seriousness and extent of such crimes. We welcome the rigorous approach taken by the Office, including its role in advancing investigations and prosecutions at the national level. We hope that it will be effective in combating impunity for crimes committed against migrants.”), 14 (Belgium: President); S/PV.8388, pp.8 (France: “We welcome the rigorous approach adopted by the Office of the Prosecutor. We hope that it will make it possible to effectively combat impunity for crimes committed against migrants. The Security Council has repeatedly reiterated the importance of prosecuting and trying the perpetrators of such acts.), 10 (Peru), 13 (Sweden), 14 (Netherlands: “The situation of internally displaced persons and migrants is a particular cause for concern. The Prosecutor is often the only hope that the victims have for ensuring accountability for the crimes committed. But she cannot do it alone”); S/PV.8250, pp.9 (Equatorial Guinea), 11 (France: “France welcomes the continued attention of the Office of the Prosecutor to crimes related to human trafficking and the smuggling of migrants, which are a direct threat to peace and stability in Libya”), 12 (Sweden: “We support the efforts of the Libyan General-Prosecutor’s Office to combat impunity for crimes related to migrants, as well as the active engagement, in the spirit of complementarity, of the Office of the Prosecutor with the national authorities in relation to crimes committed”); S/PV.8091, pp.6 (United Kingdom), 12 (Russian Federation), 13 (Sweden: “We share the view of the Office of the Prosecutor that certain crimes against refugees and migrants fall within the jurisdiction of the Court, and we support the initiative to explore the possibility of investigating crimes related to human trafficking and smuggling networks.”), 14 (Ethiopia), 15 (Ukraine), 16 (Italy, President).

¹¹⁶⁹ It is also noteworthy that in the context of the Sanction mechanism designed by paragraphs 15 through 21 of Resolution 1970 (2011), the UNSC designated individuals allegedly responsible for abuses against migrants. These individuals have been added to the same list alongside Mohammed Muammar Ghaddafi, Saif Al-Islam Ghaddafi, and Abdullah al-Senussi under the same legal basis (paragraph 22(a) of Resolution 1970 (2011)). Kashlaf - Narrative Summary; al-Bija - Narrative Summary; Osama Ibrahim - Narrative Summary. The designation of these persons alongside the individuals originally included on the sanction lists, and for which the ICC opened an investigation, further suggests that the UNSC understands that also the crimes allegedly committed fall in the scope of the situation originally referred.

532. The fact that the UNSC never objected to the Prosecutor's statements may also pave the way to an alternative interpretation of the scope of the UNSC referral to the one proffered in *Al-Werfalli*. Indeed, the UNSC practice suggests that the purview of "the situation in the Libyan Arab Jamahiriya", as originally referred, should be strictly construed on the sole basis of the geographical, temporal, and personal parameters identified in paragraphs 4 and 6 of the resolution. In such a case, there would be no additional requirement to assess whether a certain crime would be linked to the conflict.
533. In this regard, the absence of any other explicit parameter or limitation in Resolution 1970 should be read as the UNSC's intention to confer the widest jurisdictional scope possible (limited only in time and space) to investigate and prosecute crimes within Article 5 of the Statute committed in Libya. Restricting or curbing the situation as referred by the UNSC with additional parameters that do not stem clearly from Resolution 1970 would risk unnecessarily and unjustifiably restricting and hindering the scope of the UNSC referral.

B. Article 12(2)(b) of the Statute, concerning Third-State actors, namely Italian and Maltese authorities

534. In addition, or in the alternative, the conduct of Italian and Maltese nationals¹¹⁷⁰ underpinning the crimes committed against migrants intercepted at sea and subsequently transferred to DCIM Detention Centres falls within the jurisdiction of the ICC pursuant to Article 12(2)(b) of the Statute which covers the conduct of nationals of States Parties. Italy and Malta deposited their instruments of ratification of the Statute on 26 July 1999 and 29 November 2002, respectively.

¹¹⁷⁰ See *supra*, Section V.C.

VII. ADMISSIBILITY

535. The complementarity and gravity analysis of the crimes outlined in Section IV indicates that they are admissible pursuant to Article 17(1) of the Statute.

A. Complementarity

536. Apart from few negligible examples discussed below, no investigation or prosecution covers or has covered the crimes detailed in Section IV and the relevant conduct. The UN Fact-Finding Mission on Libya confirmed the “absence of accountability” for such abuses in Libya.¹¹⁷¹ There is a similar degree of domestic inaction concerning the conduct of Italian and Maltese authorities and officials as described in Section V. Their conduct and responsibilities have been largely unaddressed by domestic authorities.

537. To the knowledge of the Communication Senders only an infinitesimal part of the crimes committed in the DCIM Detention Centres has been covered by domestic proceedings. These include: (1) one prosecution in Italy concerning the crimes committed in the al-Nasr DC which resulted in the conviction of three low level perpetrators; (2) one investigation apparently covering alleged crimes against migrants in the al-Nasr DC carried out by Libyan authorities which was dismissed for lack of evidence; and (3) one investigation concerning potential responsibilities of Maltese authorities *vis-à-vis* a pushback operation which was swiftly dismissed.

538. These domestic proceedings do not affect the admissibility of the crimes analysed in this Communication. First, as mentioned, the Judgement of the Tribunale di Messina focuses on a limited crime base and does not cover the liability of the individuals most responsible for the crimes committed in the al-Nasr DC.¹¹⁷²

539. Second, as to the investigation conducted by the Libyan authorities, this apparently concerned the responsibilities of Abd al-Rahman Milad, also known as al-Bija, for

¹¹⁷¹ 2021 Fact-Finding Mission on Libya Report, para.60.

¹¹⁷² Tribunale di Messina Judgment.

human trafficking in relation to migrants detained in the Al-Nasr DC.¹¹⁷³ Al-Bija was arrested on 14 October 2020 pursuant to an arrest warrant issued by Libyan authorities on 23 April 2019.¹¹⁷⁴ In April 2021, Al-Bija was released and his case closed for lack of evidence.¹¹⁷⁵ This investigation however does not seem to be capable of affecting the admissibility of any of the crimes highlighted in Section IV. It is not clear to which extent the investigation carried out by Libyan authorities covered the crimes occurring in the Al-Nasr DC under the same crime/same conduct test. Moreover, in light of *the substantial collapse or unavailability of the Libyan judicial system*, the closure of the investigation for lack of evidence should be considered as indicative of Libya's inability to carry out relevant proceedings concerning crimes committed under Article 17(1)(b) of the Statute.¹¹⁷⁶

540. Third, as noted above, the Maltese authorities opened and swiftly closed an investigation concerning the responsibilities stemming from the Easter Monday pushback in Malta which occurred on 15 April 2020.¹¹⁷⁷ In the context of the investigation a former Maltese official provided evidence that he coordinated pushback operations through private vessels or coordinated the LCG under the instructions of the Prime Minister's Office.¹¹⁷⁸ Again, the investigation covered only one incident implicating Maltese authorities and, in light of the evidence gathered, its outcome is indicative of unwillingness.¹¹⁷⁹

¹¹⁷³ The Guardian, Lorenzo Tondo, Senior Libyan coastguard commander arrested for alleged human trafficking, 16 October 2020 ("16 October 2020 Guardian Article") ([Url](#) – last visited: 14 January 2022).

¹¹⁷⁴ 16 October 2020 Guardian Article.

¹¹⁷⁵ The Guardian, Lorenzo Tondo, Libya releases man described as one of world's most wanted human traffickers, 13 April 2021 ([Url](#) – last visited: 14 January 2022).

¹¹⁷⁶ 2021 Fact-Finding Mission on Libya Report, para.75 ("Challenges in ensuring accountability [in Libya] are also structural. Divisions between governmental and security apparatuses in the west and the east, a security vacuum in the south, the presence of criminal groups throughout the country, and the Government's lack of capacity and limited reach outside of western Libya, have severely weakened the judicial system and have inhibited the ability of Libya to prosecute human rights violations").

¹¹⁷⁷ Section V.C.4. See also AI, Malta: Waves of Impunity, pp.7-8.

¹¹⁷⁸ Section V.C.4. See also AI, Malta: Waves of Impunity, pp.7-8.

¹¹⁷⁹ Section V.C.4. See also AI, Malta: Waves of Impunity, pp.7-8.

541. In conclusion, nearly all the crimes and conduct referred to in Sections IV and V have not been addressed by domestic investigations or prosecutions (Inaction). Italian proceedings targeted low-level actors operating in Libya. The only Libyan investigation so far carried out does not impact the admissibility of the relevant cases *vis-à-vis* its scope and the potential inability of Libya to carry out its proceedings. The Maltese proceedings addressed a limited portion of the responsibilities highlighted in Section V and its outcome appears indicative of unwillingness.

B. Gravity

542. The information available indicates that the crimes meet the gravity threshold required by Article 17(1)(d) of the Statute considering their scale, nature, manner of commission and impact.

543. Scale. According to the figures discussed in Section IV, the number of victims of the crimes committed in DCIM Detention Centres and specifically, in the Abu Salim DC, Tarik al-Matar DC, Tarik al-Sikka DC, al-Mabani DC, Tajoura DC, and al-Nasr DC may be estimated in thousands if not tens of thousands.¹¹⁸⁰ The numbers grow exponentially if we consider the members of the families of the victims that often receive images or videos of their next of kin tortured and are forced to pay ransom to ensure their freedom. The description of the crimes committed in the DCIM Detention Centres suggests that they resulted in long term bodily or psychological harm to the victims and their families. In terms of geographical or temporal spread, these crimes have been characterised by a high intensity over an extended period of time.¹¹⁸¹ In general, international organisations and NGOs have reported the recurrence of these crimes regularly since 2016.¹¹⁸² In these centres victims are detained for months, if not

¹¹⁸⁰ See Section IV.A.2. See also Sections IV.A.2.a.iii, IV.A.2.b.iii, IV.A.2.c.iii, IV.A.2.d.iii, IV.A.2.e.iii, IV.A.2.f.iii.

¹¹⁸¹ See Section IV.A.2. See also Sections IV.A.2.a.ii, IV.A.2.b.ii, IV.A.2.c.ii, IV.A.2.d.ii, IV.A.2.e.ii, IV.A.2.f.ii.

¹¹⁸² See Section IV.A.2.

years, in abysmal conditions of detention and subjected to crimes systematically almost on a daily basis.¹¹⁸³

544. Nature of the crimes. Various crimes are perpetrated systematically in DCIM Detention Centres. These crimes include the following war crimes: murder (Article 8(2)(c)(i) of the Statute); cruel treatment and torture (Article 8(2)(c)(i) of the Statute); outrages upon personal dignity, in particular humiliating and degrading treatment (Article 8(2)(c)(ii) of the Statute); taking of hostages (Article 8(2)(c)(iii) of the Statute); rape, sexual slavery, and other forms of sexual violence (Article 8(2)(e)(vi) of the Statute).¹¹⁸⁴
545. These acts also include the following crimes against humanity: murder (Article 7(1)(a) of the Statute), imprisonment (Article 7(1)(e) of the Statute), enslavement (Article 7(1)(c) of the Statute), torture (Article 7(1)(f) of the Statute), rape, sexual slavery and other forms of sexual violence of comparable gravity (Article 7(1)(g) of the Statute), other inhuman acts (Article 7(1)(k) of the Statute).¹¹⁸⁵
546. Manner of commission of the crimes. As previously noted, the crimes have been committed systematically and resulted from a plan or organised policy or otherwise from the abuse of power or official capacity.¹¹⁸⁶ Victims detained in DCIM Detention Centres are in particular vulnerable conditions due to their migrant status, the atrocities suffered during their transit to Libya and other African countries and/or their rescue at sea.¹¹⁸⁷ Significantly, a specific degrees of vulnerability should be attached to specific categories of migrants that include, women (including pregnant women), and children, which according to the last estimates represent 20 percent of the detained population in the DCIM Detention Centres.¹¹⁸⁸

¹¹⁸³ See Section IV.A.2. See also Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

¹¹⁸⁴ See Section IV.A.2. See also Sections IV.A.2.a.iv, IV.A.2.b.iv, IV.A.2.c.iv, IV.A.2.d.iv, IV.A.2.e.iv, IV.A.2.f.iv.

¹¹⁸⁵ See Section IV.B.

¹¹⁸⁶ See Section IV.A.3. See also Sections V.B, V.C.1, V.C.2.

¹¹⁸⁷ See Section IV.A.2.

¹¹⁸⁸ See Section IV.A.2.

547. Impact of crimes. As a general matter, the nature and manner of the crimes suggest long term suffering for victims. The suicides and attempted suicides inside the DCIM Detention Centres confirm such degree of suffering.¹¹⁸⁹

VIII. CONCLUSION

548. For years, migrants have been trapped in Libya and subjected to a litany of atrocities and crimes in DCIM Detention Centres. As detailed in Section IV, these atrocities amount to international crimes within the subject matter jurisdiction of the ICC under Article 5 of the Statute, namely crimes against humanity and war crimes pursuant to Articles 7 and 8 of the Statute.

549. As outlined in Section V, the commission of these crimes is articulated according to a precise *modus operandi* aiming at blocking migrants in Libya and fully exploiting them while in detention. In this context, a series of actors are implicated in these crimes. These actors include:

- a. Members of the armed groups in charge of the DCIM Detention Centres. Their relevant conduct meets the requirements of Article 25(3)(a) of the Statute.
- b. DCIM staff who enable such detention and crimes, and LCG staff who ensure that migrants trying to reach Europe are redirected to such centres. To different degrees, their contribution meets the requirements of Article 25(3)(a)-(d) of the Statute.
- c. Italian and Maltese authorities and officials whose contribution is pivotal to ensure that migrants attempting to escape from Libya are returned to the DCIM Detention Centres. Their contribution meets the requirements of Article 25(3)(d) of the Statute.

¹¹⁸⁹ See Sections IV.A.2.c.iv.(a), IV.A.2.e.iv.(a).

550. The unconcealed and systematic manner in which such crimes are being committed is the result of a structural impunity gap. Such gap leaves full space to the most responsible for these crimes to operate blatantly disregarding basic considerations of humanity.

551. Based on these considerations, the Communication Senders respectfully request that the Prosecutor:

- Conclude that the crimes described above fall within the jurisdiction of the ICC under Article 13(b) of the Statute pursuant to Resolution 1970 (2011); and
- Pursue investigations of such crimes and the responsibilities of the individuals indicated above.

552. In the addition, or in the alternative, in case the Prosecutor concludes that the crimes described above do not fall within the situation as referred by Resolution 1970 (2011), the Communication Senders respectfully request that the Prosecutor:

- Conclude that the above-mentioned crimes committed in Libya fall within the jurisdiction of the ICC under Article 12(2)(b) of the Statute by virtue of the contribution of the Italian and Maltese nationals; and
- Open a preliminary examination pursuant to Article 15(1) of the Statute to assess whether there is a reasonable basis to believe that Italian and/or Maltese nationals are responsible for such crimes.

Dated this seventeenth day of January 2022

For UPRIGHTS

For STRALI

For Adala for All

IX. ANNEX I – LIST OF ABBREVIATIONS

Abbreviation	
Abu Salim DC	Abu Salim Detention Centre
al-Bija	Abd Al-Rahman al-Milad a.k.a. al-Bija
al-Khoja Militia	Mohamed al-Khoja Militia
al-Mabani DC	al-Mabani Detention Centre
al-Nasr DC	al-Nasr Detention Centre
CINCNAV	Italian Commander in Chief Naval Fleet
DCIM	Department for Combatting Illegal Migration
DCIM Detention Centres	detention centres nominally under the control of the Department Combatting Illegal Migration
EU	European Union
ECCHR	European Centre for Constitutional and Human Rights
FIDH	International Federation of Human Rights
Global Initiative	Global Initiative Against Transnational Organized Crime
GNA	Government of National Accord
GNC	General National Congress

GNS	Government of National Salvation
GNU	Government of National Unity
HoR	House of Representatives
HRW	Human Rights Watch
ICC	International Criminal Court
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IHL	international humanitarian law
IMRCC	Italian Maritime Rescue Coordination Centre
IOM	International Organisation for Migration
ISIL	Islamic State in Iraq and the Levant
JPC	Justice and Construction Party
KLA	Kosovo Liberation Army
LCG	Libyan Coast Guard
LIS	GNA Libyan Intelligence Services
LFJL	Lawyers for Justice in Libya
LNA	Libyan National Army
LPA	Libyan Political Agreement

LPDF	Libyan Political Dialogue Forum
LSF	Libya Shield Force
MEDU	Medici per i Diritti Umani
MIASIT	Missione bilaterale di supporto e assistenza alla Libia
Mohammed Kashlaf	Mohammed Al Amin Al Arabi Kashlaf
MoU	Memorandum of Understanding between Italy and the GNA signed on 2 February 2017
Memorandum Malta-Libya	Memorandum of Understanding between Libya and the GNA signed on 28 May 2020
MSF	Médecins Sans Frontières
NFA	National Force Alliance
NGO	non-governmental organisation
NIAC	non-international armed conflict
NSG	National Salvation Government
NTC	National Transitional Council
OHCHR	Office of the High Commissioner for Human Rights
PIL	Political Isolation Law
SAr zone	Search and Rescue zone
Statute	Rome Statute

Tajoura DC	Tajoura Detention Centre
Tarik al-Matar DC	Tarik al-Matar Detention Centre
Tarik al-Sikka DC	Tarik al-Sikka Detention Center
UN	United Nations
UN Panel of Experts	UN Panel of Experts on Libya established pursuant to resolution 1973 (2011)
UNHCR	United Nations High Commissioner for Refugees
UNSC	UN Security Council
UNSG	UN Secretary-General
UNSMIL	United Nations Support Mission in Libya
WRC	Women's Refugee Commission

X. ANNEX II – LIST OF SOURCES INCLUDING CASE LAW

A. United Nations

Abbreviation	Reference
Resolution 1970 (2011)	UNSC, Security Council resolution 1970 (2011), S/RES/1970, 26 February 2011
Resolution 1973 (2011)	UNSC, Security Council resolution 1973 (2011), S/RES/1973, 17 March 2011
November 2011 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2011/727, 22 November 2011
March 2012 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2012/129, 1 March 2012
August 2012 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2012/675, 30 August 2012
February 2013 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2013/104, 21 February 2013
September 2013 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2013/516, 5 September 2013
February 2014 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2014/131, 26 February 2014

September 2014 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, 5 September 2014, S/2014/653
February 2015 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2015/144, 26 February 2015
August 2015 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2015/624, 13 August 2015
February 2016 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2016/182, 25 February 2016
May 2016 UNSG Report on UNSMIL	UNSC, Report of the Secretary General on the United Nations Support Mission in Libya, S/2016/452, 16 May 2016
December 2016 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2016/1011, 1 December 2016
April 2017 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/283, 4 April 2017
August 2017 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/726, 22 August 2017
February 2018 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/140, 12 February 2018

May 2018 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2018/429, 7 May 2018
August 2018 UNSG Report on UNSMIL	UNSC, Report of the Secretary General on the United Nations Support Mission in Libya, S/2018/780, 24 August 2018
January 2019 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2019/19, 7 January 2019
August 2019 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2019/682, 26 August 2019
January 2020 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/41, 15 January 2020
May 2020 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/360, 5 May 2020
August 2020 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2020/832, 25 August 2020
January 2021 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/62, 19 January 2021

May 2021 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/451, 11 May 2021
August 2021 UNSG Report on UNSMIL	UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2021/752, 25 August 2021
September 2017 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2017/761, 7 September 2017
August 2018 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2018/807, 31 August 2018
September 2019 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2019/711, 5 September 2019
April 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General pursuant to paragraph 3 of Security Council resolution 2491 (2019), Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2020/275, 6 April 2020
September 2020 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General pursuant to paragraph 3 of Security Council resolution 2491 (2019), Smuggling of migrants and trafficking in persons in the

	Mediterranean Sea off the coast of Libya, S/2020/876, 2 September 2020
September 2021 UNSG Report on Smuggling of Migrants and Trafficking in Persons	UNSC, Report of the Secretary-General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2021/767, 2 September 2021
2012 UN Panel of Experts Report	UNSC, Final report of the Panel of Experts in accordance with paragraph 24 (d) of resolution 1973 (2011), S/2012/163, 12 February 2012,
2013 UN Panel of Experts Report	UNSC, Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2013/99, 9 March 2013,
2014 UN Panel of Experts Report	UNSC, Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2014/106, 19 February 2014
2015 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2015/128, 23 February 2015
2016 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2016/209, 9 March 2016
2017 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2017/466, 1 June 2017

2018 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya on Libya established pursuant to Security Council resolution 1973 (2011), S/2018/812, 5 September 2018
2019 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2019/914, 9 December 2019
2021 UN Panel of Experts Report	UNSC, Final Report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011), S/2021/229, 8 March 2021
Kashlaf - Narrative Summary	UNSC, Narrative Summary of Reasons for Listing – Lyi.025 Mohammed Kachlaf, 7 June 2018 (Url – last visited: 14 January 2022)
al-Bija - Narrative Summary	UNSC, Narrative Summary of Reasons for Listing – Lyi.026 Abd Al Rahman Al-Milad, 7 June 2018 (Url – last visited: 14 January 2022)
Osama Ibrahim - Narrative Summary	UNSC, Narrative Summary of Reasons for Listing – Lyi.029 Osama Al Kuni Ibrahim, 25 October 2021 (Url – last visited: 14 January 2022)
No abbreviation	UNSC, Press Release, Security Council Committee concerning Libya Adds Six Individuals to Its Sanctions List, SC/13371, 7 June 2018 (Url – last visited: 14 January 2022)
No abbreviation	UNSC, Press Release, Security Council 1970 Committee Adds One Entry to Its Sanctions List, SC/14674, 25 October 2021 (Url – last visited: 14 January 2022)

S/PV.8091	UNSC, 8091st meeting, S/PV.8091, 8 November 2017
S/PV.8250	UNSC, 8250th meeting, S/PV.8250, 9 May 2018
S/PV.8388	UNSC, 8388th meeting, S/PV.8388, 2 November 2018
S/PV.8523	UNSC, 8523rd meeting, S/PV.8523, 8 May 2019
S/PV.8660	UNSC, 8660th meeting, S/PV.8660, 6 November 2019
Letter dated 7 May 2020	UNSC, Letter dated 7 May 2020 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, S/2020/371, 7 May 2020
Letter dated 19 May 2021	UNSC, Letter dated 19 May 2021 from the President of the Security Council addressed to the Secretary-General and the Permanent Representatives of the members of the Security Council, S/2021/483, 20 May 2021
No abbreviation	UNSC, Letter dated 27 October 2020 from the Secretary-General addressed to the President of the Security Council, S/2020/1043, 27 October 2020
2021 Report of the ICC Prosecutor	ICC, Twenty-Second Report of the Prosecutor of the International Criminal Court to the United Nations Security Council under Resolution 1970 (2011), 23 November 2021
16 November 2015 UNSMIL Report	OHCHR-UNSMIL, Report on the Human Rights Situation in Libya, 16 November 2015
2016 UNSMIL Report	OHCHR-UNSMIL, "Detained and Dehumanised" Report on Human Rights Abuses Against Migrants in Libya, 13 December 2016

No abbreviation	OHCHR/UNSMIL, Abuse Behind Bars: Arbitrary and unlawful detention in Libya, April 2018
2018 UNSMIL Report	OHCHR-UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 18 December 2018
UNSMIL Investigation on the 2 July 2019 Airstrike	OHCHR-UNSMIL, The airstrikes on the Daman building complex, including the Tajoura Detention Centre, 2 July 2019, 27 January 2020
No abbreviation	UNSMIL, Overview of Violations of International Human Rights and Humanitarian Law during the Ongoing Violence in Libya, 4 September 2014
No abbreviation	UNSMIL, Update on Violations of International Human Rights and Humanitarian Law during the Ongoing Violence in Libya, 23 December 2014
2012 UN Commission of Inquiry Report	Human Rights Council, Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, A/HRC/17/44, 12 January 2012
2016 OHCHR Investigation	OHCHR, Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings, A/HRC/31/CRP.3, 23 February 2016
2021 Fact-Finding Mission on Libya Report	Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/48/83, 1 October 2021
12 January 2015 UN OHCHR Report	Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya and on related technical support

	and capacity-building needs, A/HRC/28/51, 12 January 2015
2018 OHCHR Report	Human Rights Council, Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, A/HRC/37/46, 21 February 2018
2019 OHCHR Report	Human Rights Council, Situation of human rights in Libya, including the implementation of technical assistance and capacity-building and efforts to prevent and ensure accountability for violations and abuses of human rights, A/HRC/40/46, 4 February 2019
No abbreviation	Human Rights Council, Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, Report of the United Nations High Commissioner for Human Rights, A/HRC/43/75, 23 January 2020
2021 OHCHR Report	OHCHR, "Lethal Disregard", Search and rescue and the protection of migrants in the central Mediterranean Sea, May 2021
2018 UNHCR Position on Returns to Libya – Update II	UNHCR, UNHCR Position on Returns to Libya - Update II, September 2018
2020 UNHCR Position on Libya as a Safe Third Country	UNHCR, UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea, September 2020

No abbreviation	UNHCR, Libya: Activities at Disembarkation, Monthly Update, December 2018 (Url – last visited: 14 January 2022)
No abbreviation	UNCHR, Libya, Detention Centres: Map of detention centres in Libya and related UNHCR protection activities, June 2016 (Url - last visited: 14 January 2022)
No abbreviation	UNHCR Bureau for Europe, Desperate Journeys, Refugees and migrants entering and crossing Europe via the Mediterranean and Western Balkans routes, February 2017
March 2019 UNHCR Briefing Note	UNHCR, Refugees protest conditions in Libyan detention as resettlement solutions falter, 5 March 2019 (Url – last visited: 14 January 2022)
No abbreviation	UNHCR, UNHCR Update, Libya, 3 January 2020 (Url – last visited: 14 January 2022)
No abbreviation	UNHCR, UNHCR Update, Libya, 17 January 2020 (Url – last visited: 14 January 2022)
No abbreviation	UNHCR, UNHCR Update, Libya, 6 November 2020 (Url – last visited: 14 January 2022)
No abbreviation	UNHCR/IOM, Press Release, IOM and UNHCR condemn the return of migrants and refugees to Libya, 16 June 2021 (Url – last visited: 14 January 2022)
No abbreviation	UNHCR, UNHCR Libya: Activities at Disembarkation, July 2021 (Url – last visited: 14 January 2022)

No abbreviation	UN Committee against Torture, Concluding observations on the combined fifth and sixth periodic reports of Italy, CAT/C/ITA/CO/5-6, 18 December 2017
No abbreviation	OCHA, LIBYA October Humanitarian Bulletin, 24 November 2020 (Url – last visited: 14 January 2022)
No abbreviation	OCHA, LIBYA November Humanitarian Bulletin, 18 December 2020 (Url – last visited: 14 January 2022)
No abbreviation	OCHA, Humanitarian Needs Overview Libya, Humanitarian Programme Cycle 2021, December 2020 (Url – last visited: 14 January 2022)
No abbreviation	Statement from the UN Special Rapporteur on the human rights of migrants, EU must develop innovative mobility solutions now to stop deaths at sea – UN experts, 20 April 2015 (Url – Last visited: 14 January 2022)
6 April 2016 UN News Statement	UN News, Libya: senior UN official calls for independent probe into migrant deaths at detention centre, 6 April 2016 (Url – last visited: 14 January 2022)
No abbreviation	UNSMIL, Statement from the UN Special Adviser to the Secretary-General on Libya, 23 December 2021 (Url – last visited: 27 December 2021)
WHO Humanitarian Response 1-15 March 2021	WHO, Biweekly health sector Libya operational updates 1-15 March, 15 March 2021 (Url – last visited: 14 January 2022)

WHO Humanitarian Response 1-15 April 2021	WHO, Humanitarian Response, Libya: Bi-weekly operational update 1-15 April 2021, 16 April 2021 (Url – last visited: 14 January 2022)
WHO Humanitarian Response 1-15 June 2021	WHO, Humanitarian Response, Libya, Bi-weekly operation update 1-15 June 2021, 21 June 2021 (Url – last visited: 14 January 2022)
No abbreviation	IOM, Tripoli: Joint Rapid Situation Overview, Libya, 21 September 2018 (Url – last visited: 14 January 2022)
No abbreviation	IOM, IOM Condemns Recent Violence in Libyan Detention Centre, 5 March 2019 (Url – last visited: 14 January 2022)

B. Council of Europe

Abbreviation	Reference
No abbreviation	CoE, Commissioner for Human Rights, Letter to Italian Minister of Foreign Affairs Mr Luigi Di Maio, CommHR/DM/sf 006-2020, 13 February 2020
No abbreviation	CoE, Commissioner for Human Rights, Letter to Italian Minister of the Interior Mr Marco Minniti, CommHR/INM/sf 0345-2017, 28 September 2017
No abbreviation	CoE, Commissioner for Human Rights, Letter to Prime Minister Mr Robert Abela, CommHR/DM/sf 013-2020, 5 May 2020
No abbreviation	CoE, Commissioner for Human Rights, A Distress Call for Human Rights. The widening gap in migrant protection in

	the Mediterranean. Follow-up Report, March 2021, pp.14-15 (Url - last visited: 1 December 2020)
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C. European Union

Abbreviation	Reference
No abbreviation	EU, Official Journal of the European Union, Council Implementing Decision (CFSP) 2021/1910 of 4 November 2021 implementing Decision (CFSP) 2015/1333 concerning restrictive measures in view of the situation in Libya, 4 November 2021 (Url - last visited: 14 January 2022)
No abbreviation	Letter from the Director General of the Directorate General for Migration and Home Affairs at the European Commission, Paraskevi Michou, to the Executive Director of the European Border and Coast Guard Agency, Fabrice Leggeri, Ref. Ares (2019) 1755075 - 18/03/2019, 18 March 2019, p.2 (Url - last visited: 14 January 2022)
2021 Easo CoI Query	EASO, CoI Query, Country of Origin Libya, Query Code Q39-2021, Security situation in Tripoli between 1 January-31 October 2021, 3 November 2021 (Url – last visited: 14 January 2022)
No abbreviation	EU Commission News Article, Directorate-General for Neighbourhood and Enlargement Negotiations, EU delivers support to border management in Libya, 16 July 2020 (Url – last visited: 14 January 2022)

No abbreviation	European Council, Council of European Union, Saving lives at sea and targeting criminal networks (Url – last visited: 14 January 2022)
2018 EUNAVFOR MED Report	EUNAVFOR MED Operation SOPHIA – Monitoring Mechanism Libyan Coast Guard and Navy, Monitoring Report October 2017 – January 2018, February 2018 (Url – last visited: 14 January 2022)
No abbreviation	European Parliament, Parliamentary questions, Answer given by Mr Avramopoulos on behalf of the Commission, Question reference: E-000547/2018, 26 April 2018 (Url - last visited: 14 January 2022)
No abbreviation	European Parliament, Parliamentary questions – Answer given by Vice-President Mogherini on behalf of the Commission, Question reference: E-001511/2018, 22 June 2018 (Url - last visited: 14 January 2022)
No abbreviation	European Parliament, Parliamentary questions – Answer given by Mr Várhelyi on behalf of the European Commission, Question reference: E-004208/2020, 5 October 2020 (Url - last visited: 14 January 2022)

D. States

6. Italy

Abbreviation	Reference
No abbreviation	Ambasciata d'Italia, Scambio di note concernente la cessione al Governo libico di dieci unita' navali "CLASSE

	500'' per il pattugliamento costiero, Nota Verbale n.1440, 16 May 2019 (Url - last visited: 14 January 2022)
No abbreviation	Ambasciata d'Italia, Scambio di note per la cessione di due battelli pneumatici classe 'Bravo' all Guardia Costiera Libica, Nota Verbale 551, 3 March 2021 (Url - last visited: 14 January 2022)
No abbreviation	Camera dei Deputati, XVII Legislatura, Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione, 57 Seduta, Resoconto Stenografico, 10 October 2017 (Url – last visited: 14 January 2022)
No abbreviation	Camera dei Deputati, Seduta n.20, 27 June 2018 (Url - last visited: 14 January 2022)
Camera dei deputati, Doc.XXVI n.4, Report on International Missions, 30 June 2021	Camera dei Deputati, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita all'anno 2020, anche al fine della relativa proroga per l'anno 2021, (Doc.XXVI n.4), 30 June 2021, Scheda 20/2020, pp.149-150 (Url - last visited: 14 January 2022)
No abbreviation	Guardia Costiera, Una delegazione di Funzionari Libici e dell'Organizzazione Internazionale per le Migrazioni in visita al Comando Generale, 15 May 2017 (Url – last visited: 14 January 2022)
Law No.98/2018	Legge 9 agosto 2018, n.98, ('Conversione in legge, con modificazioni, del decreto-legge 10 luglio 2018, n.84, recante disposizioni urgenti per la cessione di unità navali

	italiane a supporto della Guardia costiera del Ministero della difesa e degli organi per la sicurezza costiera del Ministero dell'interno libici'), Gazzetta Ufficiale, Serie Generale n.189, 16 August 2018 (Url - last visited: 14 January 2022)
MOU	Memorandum d'intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra Lo Stato della Libia e la Repubblica Italiana, 2 February 2017 (Url – last visited: 14 January 2022) (English translation)
27 September 2017 Ministero della Difesa Press Release	Ministero della Difesa, Difesa - Marina Militare: unità della Guardia Costiera libica effettua prima operazione di salvataggio dopo le verifiche di efficienza, 27 September 2017 (Url – last visited: 14 January 2022);
No abbreviation	Ministero della Difesa, Libia: il Primo Ministro Al Serraj si complimenta con le Forze Armate italiane per il supporto tecnico, 11 January 2018 (Url – last visited: 14 January 2022)
No abbreviation	Ministero della Difesa, Operazione Mare Sicuro (OMS) (Url – last visited: 14 January 2022)
No abbreviation	Ministero degli Affari Esteri, La Strategia Italiana Nel Mediterraneo, Stabilizzare le Crisi e Costruire un'Agenda Positiva per la Regione, December 2017 (Url – last visited: 14 January 2022)
No abbreviation	Ministero degli Affari Esteri e della Cooperazione Internazionale, Interviews and Articles Summary, Sereni – «Libya Memorandum, negotiations are under way – The

	national security measures need to be overhauled» (Avvenire), 30 January 2020 (Url – last visited: 14 January 2022)
No abbreviation	Ministero delle Infrastrutture e dei Trasporti, Comando Generale del Corpo delle Capitanerie di Porto - Guardia Costiera, le capacità di ricognizione nella difesa dei confini nel dominio marittimo, 28 February 2018, p.19 (Url – last visited: 14 January 2022)
No abbreviation	Ministero dell’Interno, Minniti in Libia: fronte comune contro il traffico di migranti, 16 May 2017 (Url – last visited: 14 January 2022)
No abbreviation	Camera dei Deputati, Seduta del 17 maggio 2017, Intervento del Ministro dell’Interno Marco Minniti
Report on Special Deterrence Force	Ministero dell’Interno, Commissione Nazionale per il Diritto di Asilo, Area II – Affari Internazionali e Comunitari, <i>Coi Unit</i> , Special Deterrence Force (SDF): struttura organizzativa e presenza di figure amministrative a carattere non militare; attività della SDF dal 2014 in poi, 1 March 2021 (Url – last visited: 14 January 2022)
Senato della Repubblica, Doc.CCL-bis n.1, Report on International Missions, 28 December 2017	Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, deliberata dal Consiglio dei Ministri il 28 dicembre 2017 (Doc.CCL-bis n.1), 28 December 2017 (Url – last visited: 14 January 2022)

No abbreviation	Senato della Repubblica, XVIII Legislatura, 26 Seduta, Resoconto Stenografico, 25 July 2018 (Url – last visited: 14 January 2022)
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Senato della Repubblica, Doc.XXVI n.2, Report on International Missions, 8 May 2019	Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita al periodo 1° ottobre – 31 dicembre 2018, anche al fine della relativa proroga per il periodo 1° gennaio – 31 dicembre 2019, deliberata il 23 aprile 2019 (Doc.XXVI n.2), 8 May 2019 (Url - last visited: 14 January 2022)
No abbreviation	Senato della Repubblica, XVIII Legislatura, 130 Seduta, Resoconto Stenografico, 9 July 2019 (Url – last visited: 14 January 2022)
Senato della Repubblica, Doc.XXVI n.3, Report on International Missions, 4 June 2020	Senato della Repubblica, Relazione analitica sulle missioni in corso e sullo stato degli interventi di cooperazione allo sviluppo a sostegno dei processi di pace e di stabilizzazione, riferita al periodo 1° gennaio–31 dicembre 2019, anche al fine della relativa proroga per il

	periodo 1° gennaio–31 dicembre 2020, deliberata il 21 maggio 2020 (Doc.XXVI n.3), 4 June 2020 (Url - last visited: 14 January 2022)
No abbreviation	Senato della Repubblica, XVIII Legislatura, 236 Seduta, Resoconto Stenografico, 7 July 2020 (Url – last visited: 14 January 2022)
No abbreviation	Letter of the Italian Minister of Interior Marco Minniti to the CoE Commissioner for Human Rights, 11 October 2017

7. Others

Abbreviation	Reference
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Memorandum Malta-Libya	Memorandum of Understanding between the Government of National Accord of the State of Libya and the Government of the Republic of Malta in the field of combatting illegal immigration, 28 May 2020 (Url – last visited: 14 January 2022)
2020 Netherlands-Ministry of Foreign Affairs Report on Libya	Government of the Netherlands, Ministerie van Buitenlandse Zaken (Ministry of Foreign Affairs), Country of origin information report on Libya, June 2020 (Url – last visited: 14 January 2022)

No abbreviation	USAID, Human Trafficking, Smuggling and Governance in Libya: Implications for Stability and Programming, May 2020 (Url - last visited: 14 January 2022).
No abbreviation	United States Department of State, 2018 Trafficking in Persons Report - Libya, 28 June 2018 (Url – last visited: 14 January 2022)
No abbreviation	United States Department of State, 2021 Trafficking in Persons Report, June 2021 (Url – last visited: 14 January 2022)

E. Non-Governmental Organisations

1. Amnesty International

Abbreviation	Reference
2017 AI Report	Amnesty International, Libya’s Dark Web of Collusion, Abuses against Europe-bound refugees and Migrants, 11 December 2017 (Url – last visited: 14 January 2022)
No abbreviation	Amnesty International, Matteo de Bellis, Europe’s shameful failure to end the torture and abuse of refugees and migrants in Libya, 7 March 2019 (Url – last visited: 14 January 2022)
AI, Malta: Waves of Impunity	Amnesty International, Malta: Waves of Impunity. Malta’s human rights violations and Europe’s responsibilities in the central Mediterranean, 7 September 2020 (Url - last visited: 1 December 2020)

2020 AI Report	Amnesty International, 'Between Life and Death': Refugees and Migrants Trapped in Libya's cycle of abuse, 24 September 2020 (Url – last visited: 14 January 2022)
No abbreviation	Amnesty International, Press Release, Libya: Ten years after uprising abusive militias evade justice and instead reap rewards, 17 February 2021 (Url – last visited: 14 January 2022)
No abbreviation	Amnesty International, Press Release, Libya: Horrific Violations in Detention Highlight Europe's Shameful Role in Forced Returns, 15 July 2021 (Url – last visited: 14 January 2022)
2021 AI Report	Amnesty International, 'No One Will Look For You': Forcibly Returned From Sea to Abusive Detention in Libya, 15 July 2021 (Url – last visited: 14 January 2022)

2. Human Rights Watch (HRW)

Abbreviation	Reference
27 June 2006 HRW Press Release	HRW, Libya: June 1996 Killings at Abu Salim Prison, 27 June 2006 (Url – last visited: 14 January 2022)
No abbreviation	HRW, Libya: Migrants Forced off Ship at Libya Port, 21 November 2018 (Url - last visited: 14 January 2022)
2019 HRW Report	HRW, No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya, 21 January 2019 (Url – last visited: 14 January 2022)

25 April 2019 HRW Press Release	HRW, Libya: Detained Migrants at Risk in Tripoli Clashes, 25 April 2019 (Url – last visited: 14 January 2022)
No abbreviation	HRW, Lost in Libya: A Refugee’s Story of Captivity and Escape, 21 December 2019 (Url – last visited: 14 January 2022)
10 September 2020 HRW Article	HRW, Libya: Armed Groups Violently Quell Protests: Investigate Use of Lethal Force, Arbitrary Arrests, 10 September 2020 (Url – last visited: 14 January 2022)

3. Medicines Sans Frontières (MSF)

Abbreviation	Reference
2 February 2017 MSF Report	MSF, MSF Warns of Inhumane Detention Conditions in Libya as EU Discusses Migration, 2 February 2017 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Libya: Migrants and Refugees Suffering from Disease and Malnutrition in Detention Centers, 19 May 2017 (Url – last visited: 14 January 2022)
No abbreviation	MSF Press Release, Libya: Caring for Migrants and Refugees in the “Worst Moments” of Their Journeys, 22 June 2017 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Providing assistance to migrants and refugees, 23 June 2017 (Url – last visited: 14 January 2022)
No abbreviation	MSF Press Release, Libya: Arbitrary detention of refugees, asylum-seekers and migrants must stop, 1 September 2017 (Url – last visited: 14 January 2022)

1 September 2017 MSF Report	MSF, Libya Must End Arbitrary Detention of Refugees, Asylum-Seekers, and Migrants, 1 September 2017 (Url – last visited: 14 January 2022)
6 September 2017 MSF Open Letter	MSF, Open letter to European Governments, European governments are feeding the business of suffering, 6 September 2017 (Url – last visited: 14 January 2022)
No abbreviation	MSF Press Release, Libya: Time Running Out for Hundreds of Migrants and Refugees in Dangerously Overcrowded Detention Center, 3 May 2018 (Url – last visited: 14 January 2022)
No abbreviation	MSF Press Release, Conflict in Tripoli puts lives in danger, demonstrating that Libya is not a safe place, 31 August 2018 (Url – last visited: 14 January 2022)
23 January 2019 MSF Report	MSF, Growing numbers of migrants and refugees returned to appalling conditions in Libya, 23 January 2019 (Url – last visited: 14 January 2022).
20 March 2019 MSF Press Release	MSF Press Release, Libya: Alarming rates of malnutrition and inhumane conditions in Tripoli detention centre, 20 March 2019 (Url - last visited: 14 January 2022)
No abbreviation	MSF Press Release, Libya: An endless cycle of suffering, 29 March 2019 (Url – last visited: 14 January 2022)
9 May 2019 MSF Report	MSF, Libya: Ongoing fighting endangers detained migrants and refugees, 9 May 2019 (Url – last visited: 14 January 2022)

21 June 2019 MSF Report	MSF, Libya: Detained refugees and asylum-seekers die from suspected tuberculosis and other diseases, 21 June 2019 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Libya: Detained migrants and refugees face worse conditions after closure of Misrata center, 18 October 2019 (Url – last visited: 14 January 2022)
17 January 2020 MSF Report	MSF, Libya: Nowhere to go but the sea, 17 January 2020 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Libya: Man’s death in detention center fire underscores urgency of evacuating refugees, 2 March 2020 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Survivors on board the search and rescue ship Sea-Watch 4 finally offered a port of safety in Palermo, Italy, 1 September 2020 (Url – last visited: 14 January 2022)
9 April 2021 MSF Report	MSF, Libya: One person dead and two injured in Tripoli detention center shooting, 9 April 2021 (Url – last visited: 14 January 2022)
No abbreviation	MSF, Libya: “What person would force another to live like this?” Thousands of migrants remain trapped in inhumane conditions, 25 March 2021 (Url - last visited: 14 January 2022)
22 June 2021 MSF Press Release	MSF Press Release, Ongoing violence against detained migrants forces MSF to suspend Tripoli centre activities, 22 June 2021 (Url - last visited: 14 January 2022)

4. Others

Abbreviation	Reference
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2020 AlarmPhone Press Release	AlarmPhone, Press Release, Twelve Deaths and a Secret Push-Back to Libya, 16 April 2020 (Url - last visited: 1 December 2020)
ECCHR/FIDH/LFJL Communication – Executive Summary	ECCHR, FIDH, LFJL, Situation in Libya – Article 15 Communication on the Commission of Crimes against Migrants and Refugees in Libya, Executive Summary, 19 November 2021 (Url – last visited: 14 January 2022)
ECCHR/FIDH/LFJL Report	ECCHR, FIDH, LFJL, “No Way Out: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity”, 23 November 2021) (Url – last visited: 14 January 2022)
GLAN, Communication to the United Nations Human Rights Committee in the case of SDG against Italy	GLAN, Communication to the United Nations Human Rights Committee In the case of SDG against Italy (Anonymized version), Submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights to the United Nations Human Rights Committee, 18 December 2019, para.5 (Url – last visited: 14 January 2022)
No abbreviation	GLAN, Italy’s coordination of Libyan Coast Guard (Url – last visited: 14 January 2022);

No abbreviation	Helpcode, Proseguono le distribuzioni dei beni di prima necessità, a Abu Salim – Trik al Matar e Zawiya, 2 December 2019 (Url – last visited: 14 January 2022)
2020 MEDU Report	MEDU, The Torture Factory, Report on Human Rights Violations Against Migrants and Refugees in Libya (2014-2020), March 2020 (Url – last visited: 14 January 2022)

F. Research products, edited volumes, books, academic articles

Abbreviation	Reference
No abbreviation	Acled, Targeting Tripoli: newly active militias targeting capital in 2018, 6 September 2018 (Url : last visited: 14 January 2022)
2019 African Heritage Working Paper	African Heritage Institution, Rowland Chukwuma Okoli and Adaora Chukwurah, Proliferation of Armed Militias and Complicity of European States in the Migration Crisis in Libya, 2011-2017, AfriHeritage Research Working Paper, July 2019 (Url – last visited: 14 January 2022)
2020 ASGI Report	ASGI, Profili critici delle attività delle ONG italiane nei centri di detenzione in Libia con fondi A.I.C.S., 15 July 2020 (Url – last visited: 14 January 2022)
October 2021 Lacher Article	BulletinFrancoPaix, Wolfram Lacher, Libya: Elections at any cost?, October 2021 (Url – last visited: 14 January 2022)
2020 Chatham House Report	Chatham House, Tim Eaton, Abdul Rahman Alageli, Emadeddin Badi, Mohamed Eljarh and Valerie Stocker, The Development of Libyan Armed Groups Since 2014:

	Community Dynamics and Economic Interests, March 2020 (Url – last visited: 14 January 2022)
No abbreviation	Clingendael, Fransje Molenaar and Floor El Kamouni-Janssen, Turning the tide: The politics of irregular migration in the Sahel and Libya, February 2017 (Url – last visited: 14 January 2022).
2017 Clingendael Report	Clingendael, Floor El Kamouni-Janssen, ‘Only God can stop the smugglers’ Understanding human smuggling networks in Libya, February 2017 (Url – last visited: 14 January 2022)
2020 DCAF Report	DCAF – Geneva Centre for Security Sector Governance, Emadeddin Badi, Exploring Armed Groups in Libya: Perspectives on Security Sector Reform in a Hybrid Environment, 23 November 2020 (Url – last visited: 14 January 2022)
17 April 2020 ECRE News Report	European Council for Refugees and Exiles (“ECRE”), Med: 12 left to Die and 182 Stranded as EU States Refuse Rescue, 17 April 2020 (Url – last visited: 14 January 2022)
No abbreviation	Forensic Architecture, Sea Watch vs the Libyan Coastguard, 4 May 2018 (Url - last visited: 14 January 2022)
2019 Forensic Oceanography Report	Forensic Oceanography, The Nivin case: Migrants’ resistance to Italy’s strategy of privatized push-back, December 2019 (Url – last visited: 14 January 2022).
2018 Forensic Oceanography Report	Forensic Oceanography, Mare Clausum, Italy and the EU’s undeclared operation to stem migration across the

	Mediterranean, May 2018 (Url – last visited: 14 January 2022)
No abbreviation	James Ohwofasa Akpeninor, Giant in the Sun: Echoes of Looming Revolution?, AuthorHouse, 28 August 2012
2018 GDP Report	Global Detention Project, Immigration Detention in Libya: “A Human Rights Crisis”, 18 August 2018 (Url – last visited: 14 January 2022)
May 2021 GDP Abu Salim DC	Global Detention Project, Abu Salim Detention Centre (Url – last visited: 14 January 2022)
No abbreviation	Global Detention Project, Mabani Detention Centre (Url – last visited: 10 January 2022)
No abbreviation	Global Detention Project, Tajura (Tajoura) Detention Centre (Url – last visited: 14 January 2022)
2017 Global Initiative Report	The Global Initiative against Transnational Organized Crime, Mark Micallef, The Human Conveyor Belt: trends in human trafficking and smuggling in post-revolution Libya, March 2017 (Url – last visited: 14 January 2022)
March 2019 Global Initiative and Clingendael Report	The Global Initiative against transnational organized crime and the Clingendael Institute, The Human Conveyor Belt Broken – assessing the collapse of the human smuggling industry in Libya and the central Sahel, March 2019 (Url – last visited: 14 January 2022)
April 2019 Global Initiative and Clingendael Report	The Global Initiative Against Transnational Organized Crime and Clingendael, Arezo Malakooti, The Political Economy of Migrant Detention in Libya: Understanding

	the players and the business models, April 2019 (Url – last visited: 14 January 2022)
No abbreviation	The Global Initiative Against Transnational Organized Crime, Harry Johnstone, Dominic Naish, Can Libya’s migrant-detention system be reformed?, 14 December 2020 (Url – last visited: 14 January 2022)
2021 Global Initiative Report	The Global Initiative Against International Crime, Conflict, Coping and COVID: Changing human smuggling and trafficking dynamics in North Africa and the Sahel in 2019 and 2020, April 2021 (Url – last visited: 14 January 2022)
No abbreviation	ICRC, Commentary on the Second Geneva Convention: Convention (II) for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 2nd edition, 2017
2019 ISPI Report	ISPI, Jason Pack, Kingdom of Militias, Libya’s Second War of Post-Qadhafi Succession, 31 May 2019 (Url – last visited: 14 January 2022)
No abbreviation	ISPI, Matteo Villa, Migrazioni e instabilità in Libia: c’è un nesso?, 10 January 2020 (Url – last visited: 14 January 2022)
2017 ISS and Global Initiative Report	Institute for Security Studies (“ISS”) and Global Initiative, Mark Micallef and Tuesday Reitano, The anti-human smuggling business and Libya’s political end game, December 2017 (Url – last visited: 14 January 2022)
2014 Dario Cristiani Article	Dario Cristiani, Libya’s Descent into Chaos: Warring Clans and Its Impact on Regional Stability, Jamestown

	Foundation, Terrorism Monitor Volume: 12 Issue: 24, 19 December 2014 (Url – last visited: 14 January 2022)
Libya's Fragmentation	Wolfram Lacher, Libya's Fragmentation: Structure and Process in Violent Conflict, (I.B.Tauris) 2020
No abbreviation	Matteo De Bellis, Lontano dagli occhi, Storia di Politiche Migratorie e Persone alla Deriva tra Italia e Libia, People Idee ed. (2021)
2014 Libya's Faustian Bargains	Jason Pack, Karim Mezran and Mohamed Eljarh, Meet the Militias, Their Leaderships, Alliance System, and Subgroupings, Libya's Faustian Bargains: Report Breaking the Appeasement Cycle, Atlantic Council, 2014 (Url – last visited: 14 January 2022)
The Protection of Migrants under International Humanitarian Law	Helen Obregon Gieseken, The Protection of Migrants under International Humanitarian Law, International Review of the Red Cross (2017), 99 (1) (Url – last visited: 14 January 2022)
2019 PWP Report	PWP Conflict Studies, Jalel Harchaoui and Mohamed-Essaïd Lazib, Proxy War Dynamics in Libya, 2019 (Url – last visited: 14 January 2022)
2018 SAS Briefing Paper	Small Arms Survey, Briefing Paper, Wolfram Lacher and Alaa al-Idrissi, Capital of Militias: Tripoli's Armed Groups Capture the Libyan State, June 2018 (Url – last visited: 14 January 2022)
No abbreviation	Small Arms Survey, Briefing Paper, Wolfram Lacher, Who is Fighting whom in Tripoli? How the 2019 Civil War is Transforming Libya's Military Landscape, August 2019 (Url – last visited: 14 January 2022)

June 2020 SAS Report	Small Arms Survey, Jérôme Tubiana, Clotilde Warin, and Mahamat Saleh Mangare, <i>Diaspora in Despair Darfurian Mobility at a Time of International Disengagement</i> , June 2020 (Url – last visited: 14 January 2022)
No abbreviation	SWP, Comment, Wolfram Lacher, <i>Tripoli’s Militia Cartel</i> , April 2018 (Url – last visited: 14 January 2022)
No abbreviation	SWP, Comment, Wolfram Lacher, <i>International Schemes, Libyan Realities Attempts at Appeasing Khalifa Haftar Risk Further Escalating Libya’s Civil War</i> , November 2019 (Url – last visited: 14 January 2022)
No abbreviation	SWP, Wolfram Lacher, <i>The Great Carve-up</i> , June 2020 (Url – last visited: 14 January 2022)
2019 WRC Report	Women’s Refugee Commission, <i>“More Than One Million Pains”: Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy</i> , March 2019 (Url – last visited: 14 January 2022).

G. Blogposts, social media and videos

Abbreviation	Reference
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29 April 2019 Le Iene Video	Le Iene, Migranti nei lager in Libia: e i nostri soldi dati alle ong?, video, 29 April 2019 (Url – last visited: 14 January 2022)
8 October 2019 Le Iene Video	Le Iene, Libia, bombe sul campo profughi: Migranti usati come scudi umani, video, 8 October 2019 (Url - last visited: 14 January 2022)
The New York Times Video	Youtube, The New York Times, Migrants Fleeing to Europe Were Bombed in Libya. We Examined Why, 11 July 2019 (Url – last visited: 14 January 2022)
InsideOver Video	Youtube, InsideOver, Fausto Biloslavo, Nave Capri a Tripoli. Supporto italiano alla Marina libica, 30 April 2019 (Url – last visited: 14 January 2022)
No abbreviation	Truth be Told, Manuel Delia, A boat with no name, 23 April 2020 (Url - last visited: 14 January 2022)
No abbreviation	Truth be Told, Manuel Delia, Now we know, 30 April 2020 (Url - last visited: 14 January 2022)
No abbreviation	Twitter, Forze Armate Stato Maggiore Difesa, (@SM_Difesa) (23 December 2017) #Libia Ministro #Alfano in visita all’equipaggio del Moto Trasporto Costiero Capri: la nave della @ItalianNavy fornisce supporto tecnico manutentivo alle navi della Marina e della Guardia Costiera libica per contribuire alla crescita delle loro capacità operative (Url - last visited: 14 January 2022)
No abbreviation	Youtube, Matteo Salvini, Salvini ringrazia l’equipaggio della nave “Caprera”, 25 June 2018 (Url - last visited: 14 January 2022)

No abbreviation	Twitter, Lega-Salvini PremierForze Armate Stato Maggiore Difesa, (@LegaSalvini) (25 June 2018) #Salvini: Onorato di aver portato in Libia il sostegno del governo e del popolo italiano agli uomini della Marina Militare che coordinano le operazioni di salvataggio. STOP ai trafficanti di schiavi, stronchiamo il business dell'immigrazione clandestina. [Tweet] (Url - last visited: 14 January 2022)
No abbreviation	Youtube, VICE News, Italy is paying Libya to intercept migrants on the Mediterranean, 26 October 2017 (Url – last visited: 14 January 2022)
No abbreviation	Youtube, Sea-Watch, Exclusive: Full incident of 6 November 2017 with the Libyan coast guard, 13 November 2017 (Url – last visited: 14 January 2022)

H. Media outlets

Abbreviation	Reference
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No abbreviation	AfricaNews, Libya's Zawyia oil Refinery suffers damages due to armed clashes 27 October 2021 (Url – last visited: 14 January 2022)
No abbreviation	Al Jazeera, Libyans mourn rights activist amid turmoil, 26 June 2014 (Url - last visited: 14 January 2022)

No abbreviation	Al Arabiya, Italian ship arrives in Tripoli port despite threat, 4 August 2017 (Url – last visited: 14 January 2022)
12 June 2018 Al Jazeera Article	Al Jazeera, Sally Hayden, Inside Libyan detention 'hell' where refugee burned himself alive, 12 November 2018 (Url – last visited: 14 January 2022)
2 March 2019 Al Jazeera Article	Al Jazeera, Sally Hayden, Refugees in Libya 'tortured' for breaking out of detention centre, 2 March 2019 (Url – last visited: 14 January 2022)
No abbreviation	Altreconomia, Duccio Facchini, Se i naufraghi nel Mediterraneo diventano “persone intercettate in operazioni di polizia”. Le ricadute sui soccorsi, 8 October 2019 (Url - last visited: 14 January 2022).
2020 Altraeconomia Article	Altreconomia, Duccio Facchini, L'Italia continua a equipaggiare la Libia per respingere i migranti. Il caso delle motovedette da riportare a Tripoli, 2 March 2020 (Url - last visited: 14 January 2022)
No abbreviation	Altreconomia, Duccio Facchini, Gli occhi scomodi di Open Arms, l'inganno della Libia sicura e la “regia” italiana dei respingimenti, 5 November 2020 (Url - last visited: 14 January 2022)
No abbreviation	Altreconomia, Duccio Facchini, Soccorsi nel Mediterraneo: il report scomparso della Guardia costiera italiana, 20 July 2020 (Url – last visited: 14 January 2022);
No abbreviation	Analisi Difesa, Nave Tremiti nel porto libico di Abu Sittah, 10 August 2017 (Url – last visited: 14 January 2022)

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No abbreviation	Analisi Difesa, Nave Caprera ha rimesso in mare 9 motovedette libiche, 10 May 2018 (Url – last visited: 14 January 2022)
No abbreviation	Analisi Difesa, Consegnato alla Libia il pattugliatore Corrubia, 2 November 2018 (Url - last visited: 14 January 2022)
No abbreviation	The Arab Weekly, Michel Cousins, As clashes resume, situation threatens to spin out of control in Tripoli, 23 September 2018 (Url – last visited: 14 January 2022)
No abbreviation	Archyde, Libya.. Renewed clashes between Al-Wefaq militias in Tripoli, 12 March 2021 (Url – last visited: 14 January 2022)
No abbreviation	AP News, Maggie Michael, Backed by Italy, Libya enlists militias to stop migrants, 29 August 2017 (Url – last visited: 14 January 2022)
No abbreviation	Associated Press, Maggie Michael, Backed by Italy, Libya enlists militias to stop migrants, 29 August 2017 (Url – last visited: 14 January 2022)
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