

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11
Date: 27 June 2011

PRE-TRIAL CHAMBER I

**Before: Judge Sanji Mmasenono Monageng, Presiding Judge
Judge Sylvia Steiner
Judge Cuno Tarfusser**

SITUATION IN THE LIBYAN ARAB JAMAHIRIYA

PUBLIC

Decision on the "Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI"

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

The Office of the Prosecutor
Mr Luis Moreno Ocampo, Prosecutor
Ms Fatou Bensouda, Deputy Prosecutor

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparation**

**The Office of Public Counsel for
Victims**

**The Office of Public Counsel for the
Defence**

States Representatives

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REGISTRY

Registrar
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Defence Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and Reparations
Section**

Other

PRE-TRIAL CHAMBER I (“Chamber”) of the International Criminal Court (“Court”) renders this decision on the “Prosecutor’s Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar GADDAFI, Saif Al-Islam GADDAFI and Abdullah AL-SENUSSI” (“Prosecutor’s Application” or “Application”);¹

I) Introduction

1. On 26 February 2011, the United Nations Security Council, acting under Chapter VII of the Charter of the United Nations, unanimously adopted Resolution 1970 referring the situation in the Libyan Arab Jamahiriya since 15 February 2011 (“the situation in Libya”) to the Prosecutor of the Court (“Prosecutor”), in accordance with article 13(b) of the Rome Statute (“Statute”).

2. On 3 March 2011, following a preliminary examination of available information, the Prosecutor announced that he had reached the conclusion that an investigation into the situation in Libya was warranted, and that he had therefore opened an investigation.²

3. On 4 March 2011, the Presidency of the Court issued a decision assigning the situation in Libya to the Chamber, pursuant to regulation 46 of the Regulations of the Court (“Regulations”).³

4. On 16 May 2011, the Prosecutor filed his Application under article 58 of the Statute requesting the issuance of warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi (“Muammar Gaddafi” or “Gaddafi”), Saif Al-Islam Gaddafi (“Saif Al-Islam Gaddafi” or “Saif Al-Islam”) and Abdullah Al-Senussi (“Abdullah Al-Senussi” or “Al-Senussi”) for their alleged criminal responsibility for the commission of crimes against humanity of murder and persecution of civilians from 15 February

¹ ICC-01/11-4-Conf-Exp and its annexes. The Chamber notes that the names of the three persons referred to in the Prosecutor’s Application are often spelled out in different ways. For the purposes of the present proceedings, the Chamber has followed the spelling used by the Prosecutor in his Application.

² See also ICC-01/11-2-US-Exp, para. 1.

³ ICC-01/11-1 and its annex.

2011 onwards throughout Libya in, *inter alia*, Tripoli, Benghazi, and Misrata, through the Libyan State apparatus and Security Forces, in violation of article 7(1)(a) and (h) of the Statute and as principals to these crimes in accordance with article 25(3)(a) of the Statute.⁴

5. The Chamber will hereunder analyse the information and evidence (“Materials”) provided by the Prosecutor in his Application in light of the standard set out in article 58 of the Statute to determine whether there are reasonable grounds to believe that Muammar Gaddafi, Saif Al-Islam and Abdullah Al-Senussi have committed the crimes alleged by the Prosecutor, and that their arrest appears necessary. Accordingly, the Chamber’s findings in the present decision are made in compliance with the requisite evidentiary threshold of “reasonable grounds to believe.” The Materials referenced hereunder have the purpose of providing the reasons underpinning the Chamber’s findings to the requisite threshold, without prejudice to the relevance of other Materials or subsidiary facts relied on by the Prosecutor that could also support the same findings.

II) Whether the case against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi falls within the jurisdiction of the Court and is admissible

A. Jurisdiction

6. Article 19(1) of the Statute requires the Chamber to satisfy itself that any case brought before the Court falls within its jurisdiction.

7. In relation to the jurisdiction *ratione temporis*, the Chamber notes that, by Resolution 1970 of 26 February 2011, the Security Council referred the situation in Libya since 15 February 2011 to the Prosecutor, pursuant to article 13(b) of the Statute. It further notes that, more specifically, the Prosecutor refers in his

⁴ ICC-01/11-4-Conf-Exp and its annexes.

Application to acts which were allegedly committed from 15 February 2011 to 28 February 2011 at the latest.⁵

8. In relation to the jurisdiction *ratione materiae*, the Chamber notes that the Prosecutor alleges that the conduct described in his Application gives rise to crimes against humanity, listed in articles 7(1)(a) and (h) of the Statute, insofar as it was part of a widespread or systematic attack directed against the civilian population in Libya.

9. Finally, in relation to jurisdiction *ratione loci* and *ratione personae*, the Chamber notes that the Prosecutor refers to conduct alleged to have been engaged in by Libyan citizens throughout Libya from 15 February 2011 to 28 February 2011 at the latest. Insofar as the situation in Libya has been referred to the Court by the Security Council acting pursuant to article 13(b) of the Statute, the present case falls within the jurisdiction of the Court despite the fact that it concerns the alleged criminal liability of nationals of a State that is not party to the Statute and for crimes which have been committed in the territory of a State that is not party to the Statute. At this juncture, the Chamber also notes that, consistent with its findings in the *Al Bashir* Case, the official position of an individual, whether he or she is a national of a State party or of a State which is not party to the Statute, has no effect on the Court's jurisdiction.⁶

10. In view of the foregoing, the Chamber is satisfied that the case against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi falls within the jurisdiction of the Court.

B. Admissibility

⁵ The Chamber notes that the Prosecutor in his Application referred at times to different time frames for the purposes of his Application ("from 15 of February 2011 onwards", para.1 and Count 1 and Count 2 at page 16; "As of 15 February up until the day of this Application", para. 24). However, the Chamber notes in the section on the underlying acts (Prosecutor's Application, paras. 92-135) the latest act referred to by the Prosecutor allegedly occurred on 28 February 2011 (para.130 (ix) in relation to Count 2).

⁶ *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, 4 March 2009, ICC-02/05-01/09-3, paras. 41-45.

11. Article 19(1) of the Statute provides that the "Court may, on its own motion, determine the admissibility of a case in accordance with article 17." Accordingly, the Statute bestows upon the Chamber a discretionary power to determine, on its own motion, the admissibility of any given case.

12. In light of the information provided by the Prosecutor in his Application,⁷ the Chamber decides, at this stage, not to exercise its discretion to determine, on its own motion, the admissibility of the case against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi as (i) the proceedings triggered by the Prosecutor's application for warrants of arrest are conducted on an *ex parte* basis;⁸ and (ii) there is no ostensible cause or self-evident factor which impels the Chamber to exercise its discretion pursuant to article 19(1) of the Statute.⁹

III) Whether there are reasonable grounds to believe that one or more crimes falling within the jurisdiction of the Court have been committed

13. The Prosecutor alleges that crimes against humanity have been committed across Libya as follows:

Count 1

Murder constituting a crime against humanity

(Article 7(1)(a) and Article 25(3)(a) of the Rome Statute)

From 15 February 2011 onwards, GADDAFI, as indirect perpetrator, and SAIF AL-ISLAM and AL-SENUSSI, as indirect co-perpetrators, committed crimes against humanity in the form of murder across Libya in, inter alia, Tripoli, Benghazi, and Misrata, through the Libyan State apparatus and Security Forces in violation of Articles 7(1)(a) and 25(3)(a) of the Rome Statute.

Count 2

Persecution

(Article 7(1)(h) and Article 25(3)(a) of the Rome Statute)

From 15 February 2011 onwards, GADDAFI, as indirect perpetrator, and SAIF AL-ISLAM and AL-SENUSSI, as indirect co-perpetrators, committed crimes against humanity in the form of persecution across Libya in, inter alia, Tripoli, Benghazi,

⁷ Prosecutor's Application, paras. 168-172.

⁸ ICC-01/09-42, para.6.

⁹ See Appeals Chamber Judgment of 13 July 2006, ICC-01/04-169, paras. 52-53.

Misrata and other Libyan localities through the Libyan State apparatus and Security Forces in violation of Articles 7(1)(h) and 25(3)(a) of the Rome Statute.

A. Whether there are reasonable grounds to believe that the contextual elements of at least one crime against humanity within the jurisdiction of the Court exist

14. The Prosecutor submits that the crimes referred to under Counts 1 and 2 were committed through the Libyan State apparatus and Security Forces against members of the civilian population, as part of a widespread and systematic attack. In the view of the Prosecutor, this attack was committed with a purpose to “quell the February 2011 popular demonstrations by all means” and pursuant to a State policy.¹⁰

15. At the outset, in light of the Materials, the Chamber notes that Muammar Gaddafi stated in a speech he delivered in the Green Square in Tripoli on 25 February 2011 that:

“I’m among the people, among the masses, even though Mu’ammar al-Qadhafi isn’t a president, king or head of state and he doesn’t have any constitutional or administrative powers”¹¹

16. In the same vein, the Chamber also notes the “Decree on Revolutionary Legitimacy” which states that the “legitimacy of the Leader of the Revolution stems from him being the leader of this great revolution.”¹²

17. The Chamber, accordingly, notes that Muammar Gaddafi does not hold any official title. The Chamber is however satisfied that there are reasonable grounds to believe that despite the absence of any official title, Muammar Gaddafi has, since 1969,¹³ become the *de facto* head of the Libyan State; he is the internally and

¹⁰ Prosecutor’s Application, para. 74.

¹¹ LBY-OTP-0007-0817, at 0819-0820. See also the speech he delivered on 22 February 2011, LBY-OTP-0007-0788, at 0790-0792, and at 0795.

¹² LBY-OTP-0007-0679, at 0681.

¹³ Constitutional Declaration, articles 18 and 33, LBY-OTP-0007-0682 at 0686 and 0688; Decision on the Revolutionary Command Council on Authorising the Chairman of the Council to Sign on its behalf, 12 December 1969, article 1, LBY-OTP-0007-0671, at 0672.

internationally recognised and undisputed leader of Libya and has since instituted a “one man rule” system.¹⁴

18. Muammar Gaddafi has organised and controls a State apparatus which, through the legal and security systems as well as through its control over the media, was designed to ensure the endurance of his regime.

19. The legal system in place dissuades and punishes the expression of any kind of dissenting views against Muammar Gaddafi's regime. Laws have been adopted to criminalise “propaganda against the regime and demonstrating against the government” and special courts have been created to try cases based on these laws,¹⁵ which violate freedom of speech, assembly and association.¹⁶

20. In this regard, it appears from the Materials that people who opposed the regime, referred to by the regime as “stray dogs”, as well as members of their families, were arrested, tortured and in some instances even disappeared.¹⁷

21. In addition, the media and telecommunications sectors also appear to be central to the regime's policy. The nationalisation of all print media¹⁸ and Muammar Gaddafi's control through his extended family and the Revolutionary Committees, of the State-owned media (newspaper, television, radio, internet and telephone companies)¹⁹ facilitated both the withholding of information²⁰ and the dissemination

¹⁴ Prosecutor's Application, paras. 59-72; See in particular, LBY-OTP-0002-0415, at 0418-0420 paras. 7-10 and 13; LBY-OTP-0007-0694, at 0694-0698 and at 0704 paras. 5-7, 17-18, 27-28, 30 and 92; LBY-OTP-0003-0009, at 0014-0015 paras. 30-31; LBY-OTP-0005-0182, at 0195 paras. 84-89; LBY-OTP-0003-0494, at 0504 para. 32, and at 0505 para. 35; LBY-OTP-0007-0065, at 0182; LBY-OTP-0007-0263, at 0467; LBY-OTP-0007-0059; LBY-OTP-0005-1267; LBY-OTP-0008-0164; LBY-OTP-0005-1233.

¹⁵ Prosecutor's Application, para. 57; LBY-OTP-0002-0599, at 0623; LBY-OTP-0002-0478, at 0544-0545.

¹⁶ Prosecutor's Application, paras. 54-55; Decision on the Protection of the Revolution of December 1969, LBY-OTP-0007-0673; Act No.71 of 1972 CE concerning the Outlawing of Party Political Activities issued by the Revolutionary Command Council, LBY-OTP-0008-0064; Penal Code, LBY-OTP-0005-0288; Act No(20) of 1991 AD on Promotion of Freedom, LBY-OTP-0008-0049.

¹⁷ LBY-OTP-0007-0694, at 0699 para. 43; LBY-OTP-0008-0159; LBY-OTP-0007-0065, at 0175-0176; LBY-OTP-0002-0415, at 0448-0449 paras. 135-137; LBY-OTP-008-0075, at 0081-0082 paras. 18-23; LBY-OTP-0007-0741, at 0742 para. 2.

¹⁸ LBY-OTP-0003-0009, at 0012 para. 18.

¹⁹ LBY-OTP-0003-0009, at 0012-0013 paras. 17-20; LBY-OTP-0002-0123, at 0136 para. 84.

²⁰ LBY-OTP-0003-0009, at 0012 para. 19.

of his speeches at all times, including during the events of February 2011 which form the basis of the Prosecutor's Application.²¹

22. Furthermore, the Materials presented to the Chamber reveal the extent and complexity of the Libyan security and military system which is notably comprised of the military, intelligence, police and *ad hoc* militias,²² hereinafter referred to as "Security Forces."

23. The Materials show that several units of the Security Forces were mandated to monitor the conduct of perceived dissidents to Gaddafi's regime. These units include (i) the Internal and External Security Services²³ and (ii) the Revolutionary Committees (*al-lijan al-thawriya*) which were, as early as May 2002, estimated to have 60 000 members who had infiltrated various layers of the Libyan society in order to spy on perceived dissidents.²⁴

24. In light of the aforementioned and on the basis of the Materials presented by the Prosecutor, the Chamber finds reasonable grounds to believe that the highest level of the State apparatus, through the legal system, the media monopoly and the

²¹ LBY-OTP-0003-0009, at 0012 paras. 17-20, and at 0013 para. 25; LBY-OTP-0002-0123, at 0136-0137 paras. 85-94.

²² Prosecutor's Application, para. 64. The Security Forces are notably comprised of :

(i) The Military Intelligence: Prosecutor's Application, para. 66; LBY-OTP-0002-0415, at 0429 para. 48; LBY-OTP-0007-0694, at 0696 para. 15, at 0698 para. 38;

(ii) the Libyan Armed Forces and the Police, Prosecutor's Application, paras. 72-73. See also LBY-OTP-0002-0376, at 0380-0383; LBY-OTP-0007-0694, at 0703 paras. 69 and 71-72; LBY-OTP-0007-0694, at 0702 para.69; LBY-OTP-0002-0415, at 0430 para.51;

(iii) The Internal and External Security Services: Prosecutor's Application, para. 66. See also LBY-OTP-0002-0376, at 0389-0390; LBY-OTP-0007-0694, at 0702-0703 paras. 69 and 73; LBY-OTP-0002-0415, at 0428 paras. 46-47;

(iv) The Revolutionary Committees (*al-lijan al-thawriya*) and its Bureau, Prosecutor's Application, paras. 67-68. See also LBY-OTP-0002-0376, at 0390-0392; LBY-OTP-0007-0694, at 0702-0703 paras. 69-75; LBY-OTP-0002-0415, at 0422 para. 22; LBY-OTP-0004-0051, at 0061 para. 67;

(v) The Revolutionary Guard (*Al-Haras Al-Thawry*), the Popular Guard (*Al-Haras Al-Sha'bi*) and the Revolutionary Combating Militias, Prosecutor's Application, paras. 69-71. See also LBY-OTP-0002-0376, at 0392-0393; LBY-OTP-0002-0415, at 0419 para. 11, at 0242 paras. 28-29;

(vi) Brigades and militia units, Prosecutor's Application, para. 72. See also LBY-OTP-0007-0694, at 0702-0703 paras. 69 and 71-72; LBY-OTP-0002-0415, at 0425 paras. 30-31, and at 0430 para. 52.

²³ Prosecutor's Application, para. 66. See also, LBY-OTP-0002-0376, at 0389-0390; LBY-OTP-0007-0694, at 0702-0703 paras. 69 and 74; LBY-OTP-0002-0415, at 0428 paras. 46-47.

²⁴ Prosecutor's Application, paras. 67-68. See also, LBY-OTP-0002-0376, at 0390-0392; LBY-OTP-0007-0694, at 0702-0703 paras. 69 and 75; LBY-OTP-0002-0415, at 0422 para.22; LBY-OTP-0004-0051, at 0061 para. 67.

Security Forces, designed a system which enables the monitoring, control and repression of any actual or perceived opposition to Muammar Gaddafi's regime.

25. It is alleged that the abovementioned State apparatus was used in order to prevent and respond to the demonstrations which started in Libya in February 2011.

26. Indeed, having already condemned the Tunisian uprising on Libyan State television on 15 January 2011,²⁵ in a series of subsequent speeches, Muammar Gaddafi and his son, Saif Al-Islam, who acts as a *de facto* prime minister,²⁶ stated their intention to suppress any kind of demonstrations against the regime. The Chamber refers to the following early speeches, among others:

- (i) on 20 February 2011, Saif Al-Islam Gaddafi declared that "the army from now [on] will have a key role in imposing security and in returning things to normal *at any price*" and stated "we will never give Libya up and we will fight to the last man and woman and bullet";²⁷ and
- (ii) on 22 February 2011, Muammar Gaddafi stated: "we shall move and the millions to sanitize Libya an inch at a time, a home at a time, a house at a time, an alley at a time, one by one until the country is rid of the filth and the uncleanness. We cannot allow Libya to be lost from us because of the forces of oppression"²⁸ and that "[o]fficers have been deployed to their tribes and their areas to lead these tribes and these areas, secure them, clear them of these rats."²⁹

27. In addition, on 16 February 2011, the State-owned telecommunication networks sent threatening SMS messages to all phones in Libya warning anyone who tried to touch the four red lines (the four red lines having been identified as the

²⁵ Prosecutor's Application, paras. 8 and 147; LBY-OTP-0005-1296 and LBY-OTP-0003-0328.

²⁶ See paras 67 and 72.

²⁷ Prosecutor's Application, para. 75, Speech of Saif Al-Islam, 20 February 2011, LBY-OTP-0007-0807 (English Translation by the Office of the Prosecutor).

²⁸ LBY-OTP-0007-0788, at 0804-0805.

²⁹ LBY-OTP-0007-0788, at 0796.

Islamic law, the security and stability of Libya, its territorial integrity and Muammar Gaddafi³⁰).³¹

28. Furthermore, the Materials demonstrate to the requisite threshold that people who were identified as dissidents to the regime or as planning the demonstrations of the 17 February 2011 were arrested by the Security Forces to prevent them from demonstrating³² and that this was later acknowledged by Saif Al-Islam Gaddafi during his speech on 20 February 2011.³³

29. The Materials presented by the Prosecutor also provide reasonable grounds to believe that Muammar Gaddafi, either directly or through the State apparatus, ordered the Security Forces to “discipline” the demonstrators. In this regard, the Chamber takes note of the evidence showing that:

- (i) units of the Security Forces were deployed throughout Libya;³⁴
- (ii) steps to recruit foreign nationals as mercenaries in support of the Security Forces were taken,³⁵ and
- (iii) orders to recruit 2 000 men who would be ready for any action notably in Benghazi³⁶ as well as orders to arm and send 400 members of the Revolutionary Committees to Benghazi were issued³⁷.

30. There is also information which indicates that there was a campaign to cover up the alleged crimes through the following acts: (i) targeting journalists to prevent

³⁰ LBY-OTP-0002-0478, at 0502; LBY-OTP-0005-0248, at 0255-0256 para. 44.

³¹ Prosecutor's Application, para. 58; LBY-OTP-0002-0123, at 0136-0137 para. 86; LBY-OTP-0005-0248, at 0255-0256 paras. 42-44.

³² LBY-OTP-0005-1462, at 1464; LBY-OTP-0005-1005.

³³ LBY-OTP-0007-0807 at 0809: “the State here and the security forces were vigilant in this matter – they took pre-emptive action before 17 February and arrested some of the organisers, our brothers who were organising that demonstration” (English Translation by the Office of the Prosecutor).

³⁴ Prosecutor's Application, para. 80; See also LBY-OTP-0003-0009, at 0018-0019 paras. 56-57, and at 0026-0027 paras. 110-115; LBY-OTP-0002-0415, at 0450 paras. 140-141, at 0454 para. 156, at 0456 paras. 162-163, at 0460-0461 paras. 176-178; LBY-OTP-0003-0539, at 0542-0544 paras. 22, 30 and 37; LBY-OTP-0003-0009, at 0026-0027 paras. 110-115; LBY-OTP-0007-0741, at 0743-0744 paras. 10-11 and 18-19, and at 0745 paras. 27-28 and 31.

³⁵ Prosecutor's Application, para. 81; LBY-OTP-0003-0494, at 0525-0526 paras. 93-95.

³⁶ LBY-OTP-0002-0415, at 0440 paras 94-96.

³⁷ LBY-OTP-0002-0415, at 0419-0420 para. 12, and at 0462 paras. 187-188.

them from reporting events, and punishing them for having done so;³⁸ (ii) repeatedly blocking satellite transmission of channels such as Al-Jazeera and Al-Hurra and disrupting internet and telecommunications services;³⁹ (iii) confiscating laptops, cameras, mobile phones SD and SIM cards from persons stopped at checkpoints;⁴⁰ (iv) removing dead bodies by the Security Forces including from the hospitals⁴¹ and throwing of at least one body into a rubbish truck in Tripoli;⁴² (v) searching for wounded protesters in the Tripoli hospital;⁴³ and (vi) leveling to the ground a Mosque which bore bullet holes as a result of an attack by the Security Forces in Al-Zawiyah;⁴⁴ and (vii) removing evidence of mass graves in Al-Zawiyah.⁴⁵

31. In light of the above, the Chamber is satisfied that there are reasonable grounds to believe that there was a State policy designed at the highest level of the State machinery aimed at deterring and quelling the February 2011 demonstrations by any means, including by the use of lethal force.

32. On the basis of the Application as well as the Materials presented, the Chamber is further satisfied that there are reasonable grounds to believe that, in furtherance of the abovementioned State policy, from 15 February 2011 until at least 28 February 2011, the Libyan Security Forces carried out throughout Libya, most notably in Benghazi, Misrata and Tripoli where more than 50% of the Libyan population resides, an attack against the civilian population taking part in demonstrations against Muammar Gaddafi's regime or perceived to be dissidents.

³⁸ Prosecutor's Application, para. 83; LBY-OTP-0005-1481; LBY-OTP-0005-1462, at 1462; LBY-OTP-0005-1195; LBY-OTP-0002-0265; LBY-OTP-0007-0047; LBY-OTP-0007-0057 and LBY-OTP-0005-0982.

³⁹ Prosecutor's Application, para. 86. See also, LBY-OTP-0005-1481, at 1481 and 1485; LBY-OTP-0003-0009, at 0012 para. 16; LBY-OTP-0007-0539, at 0546 paras. 39-42.

⁴⁰ Prosecutor's Application, para. 86. See also LBY-OTP-0005-0248, at 0266 para. 106; LBY-OTP-0003-0009, at 0028 paras. 122-123.

⁴¹ Prosecutor's Application, para. 87. See also LBY-OTP-0005-0248, at 0260 paras. 67-68; LBY-OTP-0002-0281, at 0282; LBY-0002-0188, at 0206 para. 65.

⁴² Prosecutor's Application, para. 87. See also LBY-OTP-0008-00075, at 0119 para. 163.

⁴³ Prosecutor's Application, para. 125; LBY-OTP-0005-0248, at 0259-0260 paras. 63-68; LBY-OTP-0002-0281; Prosecutor's Application, para. 109; LBY-OTP-0008-00075, at 0098 para. 85.

⁴⁴ Prosecutor's Application, para. 87. See also LBY-OTP-0005-0248, at 0262-0263 paras. 82- 85.

⁴⁵ Prosecutor's Application, para. 87. See also LBY-OTP-0005-0248, at 0262-0263, paras. 82- 85.

33. The Materials further show that the attack by the Security Forces followed a consistent *modus operandi* which *inter alia* entailed: (i) searching the homes of and detaining alleged dissidents;⁴⁶ (ii) shooting with heavy lethal weapons at civilians who gathered in public places, and with aerial and sniper fire support;⁴⁷ and (iii) ensuring that these events were subsequently covered up.⁴⁸

34. The Chamber further notes that, although the exact number of casualties resulting from the attack cannot be known due to the aforementioned campaign to cover up the events, there are reasonable grounds to believe that, as of 15 February 2011 and within a period of less than two weeks in February 2011, (i) hundreds of civilians were killed by the Security Forces; (ii) hundreds of civilians were injured, primarily as a result of the shootings by the Security Forces and (iii) hundreds of civilians were arrested and imprisoned by the Security Forces.⁴⁹

35. Accordingly, the Chamber finds reasonable grounds to believe that an “attack” within the meaning of article 7(1) of the Statute occurred and that the targeted population was civilians demonstrating against Muammar Gaddafi’s regime or those perceived to be dissidents to the regime. In light of the foregoing, the Chamber is also satisfied that it is established, to the requisite threshold, that the attack was widespread and systematic and in furtherance of a State policy aimed at deterring and quelling the February 2011 demonstrations by any means, including by the use of lethal force. Accordingly, the Chamber finds that there are reasonable grounds to believe that the contextual elements of the crimes against humanity alleged by the Prosecutor have been satisfied.

⁴⁶ LBY-OTP-0003-0494, at 0501 para. 25; LBY-OTP-0002-0415, at 0444 para. 113-114; LBY-OTP-0005-0795, at 0796; LBY-OTP-0005-1005; LBY-OTP-0005-1257; LBY-OTP-0003-0539, at 0540 para. 11; LBY-OTP-0007-0539, at 0544-0552 paras. 25-83.

⁴⁷ LBY-OTP-0005-1257; LBY-OTP-0002-0415, at 0460-0461 paras. 178 and 180-183; LBY-OTP-0005-1041; LBY-OTP-0005-1093; LBY-OTP-0008-0075, at 0093-0096 paras. 67-77, and at 0104-0106 paras. 108-112; LBY-OTP-0005-0182, at 0189 paras. 38-39, and at 0190 paras. 49-51; LBY-OTP-0005-0248, at 0256-0257 para. 50; LBY-OTP-0005-0913; LBY-OTP-0005-1202, at 1206; LBY-OTP-0002-0290.

⁴⁸ See *supra*, para.30.

⁴⁹ See below, paras 36-41 and paras 42-65. The Prosecutor advanced the number of 900 deceased.

B. Whether there are reasonable grounds to believe that the specific elements of the alleged crimes against humanity have been met

1. Whether there are reasonable grounds to believe that the crime against humanity of murder has been committed

36. The Chamber finds reasonable grounds to believe that in Benghazi:

- (i) on 16 February 2011, following the gathering of an increasing number of demonstrators in the area of Birka, as well as in Al Fatah street and Jamal Abdun Naser street,⁵⁰ Security Forces attacked the demonstrators with tear gas and live ammunition. It was reported that at least three civilian demonstrators were killed⁵¹;
- (ii) on 17 February 2011, at the Juliyana Bridge, Security Forces armed with machineguns barricaded the street to stop the demonstrators⁵² and opened fire on the unarmed demonstrators; they fired for a significant period of time at the demonstrators causing a number of deaths;⁵³ it is reported that, following this incident, the funeral of at least 30 people took place on 18 February 2011;⁵⁴
- (iii) on the same day, in Benghazi, a number of demonstrators were killed by Security Forces;⁵⁵ it is further reported that hundreds of civilians were

⁵⁰ Prosecutor's Application, para. 95; LBY-OTP-0007-0741, at 0473 para. 15.

⁵¹ Prosecutor's Application, para. 95; LBY-OTP-0005-1257.

⁵² Prosecutor's Application, para. 100; LBY-OTP-0002-0415, at 0460 paras. 176-177.

⁵³ Prosecutor's Application, para. 102; LBY-OTP-0002-0415, at 0460-0461 paras. 178 and 180-183.

⁵⁴ Prosecutor's Application, para. 102; LBY-OTP-0002-0415, at 0461 para. 183).

⁵⁵ Prosecutor's Application, para. 102; LBY-OTP-0005-1093, reporting the killing of 20 persons in Benghazi, 23 persons in Baida, 3 persons in Ajdabiya and 3 persons in Derna); LBY-OTP-0005-1117; LBY-OTP-0008-0015, at 15:29-15:41; LBY-OTP-0005-0795 at 0796 reporting the killing of at least 6 people in Benghazi; LBY-OTP-0002-0336, reporting the killing of 28 persons in Benghazi, 15 persons in Al Bayda at 100 km east of Benghazi; LBY-OTP-0005-1160, at 1169 reporting the killing of at least 15 persons.

received by the hospitals in Benghazi⁵⁶ and that some of the victims were as young as 11 or 12 years old;⁵⁷

- (iv) on 18 February 2011, a number of civilians between 13 to 35 years old, were reported to have been shot and killed by Security Forces while participating in the funeral procession for those killed the day before;⁵⁸
- (v) on the same day, it is also reported that the bodies of 35 demonstrators, almost all killed by the Security Forces with live ammunition, were received by the Al-Jalaa Hospital.⁵⁹ It is also reported that most of them had bullet wounds to the head and the chest⁶⁰;
- (vi) on 20 February 2011, it is reported that at least at least 60 demonstrators were killed by the Security Forces;⁶¹

37. There are also reasonable grounds to believe that, on 17 February 2011, in the eastern Libyan cities near Benghazi, such as Al-Bayda, Derna, Tobruk and in Ajdabiya, at least 29 peaceful demonstrators were killed as a result of violent attacks by Security Forces.⁶²

38. Furthermore, and on the basis of the Materials provided by the Prosecutor, the Chamber finds reasonable grounds to believe that, in Tripoli:

⁵⁶ Prosecutor's Application, para. 102; LBY-OTP-0004-0051, at 0058 paras. 45-46; Prosecutor's Application, para. 105, LBY-OTP-0005-1092, at 1093; LBY-OTP-0004-0051, at 0058 paras. 45-46, reporting that 50 corpses were received at the Benghazi Al-Hawary Hospital and 400 bodies at Benghazi Al-Jalaa Hospital.

⁵⁷ Prosecutor's Application, para. 102; LBY-OTP-0004-0051, at 0059-0060 paras. 47, 55.

⁵⁸ Prosecutor's Application, para. 105; LBY-OTP-0004-0099, at 07:56-08:50; LBY-OTP-0007-0741, at 0745 paras. 28 and 31.

⁵⁹ Prosecutor's Application, para. 107; LBY-OTP-0005-1041, reporting at least 34 people shot at with live ammunitions; LBY-OTP-0005-1092, at 1093; LBY-OTP-0005-0795, at 0797.

⁶⁰ Prosecutor's Application, paras. 105-106; LBY-OTP-0005-1041.

⁶¹ LBY-OTP-0005-0995. The Chamber notes that a source also mentions the number of 500 people being killed by the Security Forces on that single date in Benghazi. See LBY-OTP-0003-0494, at 0528-0530 paras. 101-104.

⁶² LBY-OTP-0005-1092 (reporting 23 people dead in Al-Bayda, 3 people in Ajdabiya and 3 people in Derna); LBY-OTP-0005-1257; LBY-OTP-0002-0336; LBY-OTP-0005-0795, at 0796.

- (i) on 17 February 2011, Security Forces fired automatic machineguns at civilian demonstrators in the Gurji, Ghot al-Sha'al and Fashloum areas, killing several protestors;⁶³
- (ii) on 18 February 2011, in the Fashloum area, Security Forces opened fire on civilian demonstrators causing many deaths;⁶⁴
- (iii) on the same day, in Al-Qadisya square, a helicopter belonging to Security Forces, armed with machine guns, fired on demonstrators that had gathered, killing a number of them;⁶⁵
- (iv) on 19 February 2011, at least 50 demonstrators were killed by the Security Forces in the Ben Ashour area;⁶⁶
- (v) on 20 February 2011, Security Forces fired at a civilian crowd that was demonstrating and throwing stones in reaction to the violent arrest of a group of girls who had been chanting slogans in support of Benghazi, causing the death of as many as 80 people;⁶⁷
- (vi) further on that day, after the sunset prayer, a demonstration spread all over the city and as civilian crowds marched towards the Green Square, Security Forces chased the demonstrators, shooting and killing a number;⁶⁸
- (vii) also on 20 February 2011, as well, on the way to Bab al-Azizya, in Al Syahya, Gergaresh road, Security Forces drove four vehicles into a crowd of civilian protesters and shot at them at close range causing the deaths of approximately 270 people;⁶⁹

⁶³ Prosecutor's Application, para. 108; LBY-OTP-0008-0075, at 0093-0096 paras. 67-77; LBY-OTP-0005-0182, at 0189 paras. 38-42; LBY-OTP-0005-0248, at 0253 para. 26.

⁶⁴ Prosecutor's Application, para. 109; LBY-OTP-0008-0075, at 0097-0098 paras. 82-83.

⁶⁵ Prosecutor's Application, para. 109; LBY-OTP-0005-0182, at 0190 paras. 49-51.

⁶⁶ Prosecutor's Application, para. 110; LBY-OTP-0008-0075, para. 93.

⁶⁷ Prosecutor's Application, par. 111; LBY-OTP-0008-0075, at 0102-0104 paras. 99-104.

⁶⁸ Prosecutor's Application, para. 112; LBY-OTP-0005-1116; LBY-OTP-0002-0265.

⁶⁹ Prosecutor's Application, para. 113; LBY-OTP-0008-0075, at 0104-0106 paras. 108-112.

- (viii) also on 20 February 2011, in the Al-Dribi area, during a demonstration in support of Benghazi, a number of demonstrators were also reportedly killed and injured by the Security Forces;⁷⁰
- (ix) from 20 to 22 February 2011, at least 62 dead bodies of demonstrators, victims of the random firing by the Security Forces, were brought to morgues in two hospitals in Tripoli;⁷¹
- (x) on 24 February 2011, Al-Zawiyah, a neighbouring town of Tripoli, was attacked by Security Forces from three directions (eastern and western side, and from the coastal front), an attack that resulted in at least 18 peaceful demonstrators being killed;⁷²
- (xi) on 25 February 2011, in Tripoli, after the midday prayer, a large number of civilians who had gathered outside mosques and were trying to make their way to the Green Square were shot by snipers and Security Forces with live ammunition and machine guns⁷³, and at least 100 of them were killed;⁷⁴
- (xii) on the same day, in Maydan al-Jaza'ir Square, the Security Forces fired teargas and bullets from several land cruiser vehicles into a crowd of civilians who were coming out of a mosque; the civilians who, witnessing this scene from their windows and balconies, reacted by shouting that the Security Forces were murderers, were also shot; it is also reported that the Security Forces hid in ambulances and killed those

⁷⁰ Prosecutor's Application, para. 113; LBY-OTP-0003-009, at 0019 paras. 59-60, at 0025 para. 98, at 0027 paras. 113-116.

⁷¹ Prosecutor's Application, para. 116; LBY-OTP-0002-0270; LBY-OTP-0005-1118; LBY-OTP-0005-1101, at 1102-1103.

⁷² LBY-OTP-0002-0188, at 0197-0198 paras. 31-33, at 0199 para. 36-39.

⁷³ Prosecutor's Application, paras. 119-120; LBY-OTP-0005-0913; LBY-OTP-0005-1202, at 1206; LBY-OTP-0005-0248, at 0256 para. 50; LBY-OTP-0002-0290, at 0291; LBY-OTP-0008-0075, at 0112-0115 paras. 137-147.

⁷⁴ LBY-OTP-0005-0248, at 0258-0259 paras. 59-61, and paras. 63-64; LBY-OTP-0002-0319; LBY-OTP-0005-0913.

- who sought assistance⁷⁵; during this event, at least 10 people were killed⁷⁶;
- (xiii) also on 25 February 2011, in Souq al-Jomaa near Green Square, Security Forces shot continuously at unarmed demonstrators using tear gas, guns and heavy weaponry, including anti-aircraft weapons,⁷⁷ and at least two persons were killed;⁷⁸
- (xiv) from 17 February 2011 onwards, an undetermined number of demonstrators were murdered and many more were injured when they were attacked by Security Forces in various districts of Tripoli including in the districts of Zawyet al Dahmani⁷⁹ and Tajoura⁸⁰ and in Arada where Security Forces shot live ammunition into a crowd who were leaving a mosque, thereby killing a number of civilians;⁸¹

39. In addition, in Misrata:

- (i) on 19 February 2011, in the area of Mosque Al-Sheikh next to the corner of Al-Bey, during a demonstration for the freedom of Benghazi, at least two civilian demonstrators were killed (one dying immediately and the other five days later) by Security Forces using live ammunition;⁸² and
- (ii) on 20 February 2011, civilian inhabitants of Misrata who had assembled to attend the funeral of a victim of the previous day's shootings were shot at during the procession by Security Forces using anti-aircraft guns and tear gas, at least four civilians were killed.⁸³

⁷⁵ Prosecutor's Application, para. 123; LBY-OTP-0005-0913 (it is also evidenced at the requisite threshold that in Souq al-Jomaa district, the Security Forces were also using ambulances to shoot at people).

⁷⁶ Prosecutor's Application, para. 123; LBY-OTP-0008-0075, at 0112-0115 paras. 137-146.

⁷⁷ Prosecutor's Application, para. 121; LBY-OTP-0005-0913; Prosecutor's Application, para. 119, LBY-OTP-0005-1202, at 1203.

⁷⁸ Prosecutor's Application, para. 121; LBY-OTP-0005-0248, at 0256-0257 para. 50.

⁷⁹ Prosecutor's Application, para. 124; LBY-OTP-0005-0913.

⁸⁰ Prosecutor's Application, para. 124; LBY-OTP-0008-0075, at 0116 para. 149; LBY-OTP-0002-0281, at 0282.

⁸¹ Prosecutor's Application, paras. 122-124; LBY-OTP-0008-0075, at 0116 para. 149; LBY-OTP-0005-0913, at 0914.

⁸² Prosecutor's Application, para. 127; LBY-OTP-0003-0539, at 0542-0243 paras.21-24.

⁸³ Prosecutor's Application, para. 128; LBY-OTP-0003-0539, at 0543 paras 25-26.

40. The Chamber notes that the circumstances of the killings and shootings make it difficult to provide an accurate number of those killed. As previously found by the Chamber, there was a campaign to cover up the events, as a result of which a considerable number of dead bodies are reported to have disappeared from hospitals and streets.⁸⁴ An unknown number of corpses were reportedly burnt. For example, it is reported that, on the road in Arada, near Souq al-Jom'a bridge, at least 20 burnt bodies with bloodied clothes were found.⁸⁵ It is further reported that the dead and wounded were removed from the streets, in some cases by Security Forces and in others by relatives of the victims.⁸⁶

41. The Chamber is accordingly satisfied that there are reasonable grounds to believe that, throughout Libya and in particular in Tripoli, Misrata and Benghazi as well as in cities near Benghazi such as Al-Bayda, Derna, Tobruk and Ajdabiya, murders constituting crimes against humanity were committed from 15 February 2011 until at least 25 February 2011 by Security Forces as part of the attack against the civilian demonstrators or alleged dissidents to the Libyan regime.

2. Whether there are reasonable grounds to believe that the crime against humanity of persecution has been committed

42. The Materials provided by the Prosecutor show that on several occasions throughout Libya, Security Forces abducted, arrested and tortured dissidents to Gaddafi's regime.

43. On 15 February 2011, in Benghazi, Security Forces arrested a lawyer who was organising a protest against Gaddafi's regime scheduled for the 17th of February 2011. He was considered by Security Forces as having acted as a representative of

⁸⁴ Prosecutor's Application, para. 125; LBY-OTP-0005-0248, at 0259-0260 paras. 63-68; LBY-OTP-0002-0281; Prosecutor's Application, para. 109; LBY-OTP-0008-0075, at 0098 paras. 84-85; Prosecutor's Application, para. 99; LBY-OTP-0002-0415, at 0457 paras. 165-166.

⁸⁵ Prosecutor's application, para. 125; LBY-OTP-0008-0075, at 0116 paras. 150, 152.

⁸⁶ Prosecutor's application, para. 121; LBY-OTP-0005-0248, at 0258, para. 58.

victims of the 1996 Abo Sleem⁸⁷ prison massacre.⁸⁸ Activists against the regime of Muammar Gaddafi were arrested, including a journalist and other demonstrators against the Abo Sleem massacre, in Benghazi, Tripoli, Misrata and elsewhere⁸⁹ between the 15 and 17 February 2011.

44. On 15 February 2011, Saif Al-Islam Gaddafi ordered the arrest of a Libyan author (Idriss-Al-Mismari) who was based in Benghazi and had, earlier on in the day, led a demonstration and spoken to Al Jazeera. As a result of this order, he went into hiding.⁹⁰ Several other writers, journalists and alleged dissidents were reportedly arrested or missing in Tripoli⁹¹ and elsewhere the following days.⁹²

45. On 19 February 2011, in Misrata, an individual planning a protest against the events which occurred in Benghazi was arrested⁹³ and ultimately released only after signing an undertaking that he would not protest or strike against Gaddafi's regime.⁹⁴

46. According to several reports, once taken into custody, protesters were subjected to torture.⁹⁵ One method entailed tying electric wires around their genitals and then turning electricity on. The other (known as *Fallga*) entailed tying their feet with a rope connected to a stick and then turning the person upside down and whipping him with an electric wire.⁹⁶

⁸⁷ LBY-OTP-0003-0494, at 0501 para. 25.

⁸⁸ LBY-OTP-0002-0415, at 0444 para. 113-114; LBY-OTP-0005-0795, at 0796; LBY-OTP-0005-1005.

⁸⁹ Prosecutor's Application, para. 130 (ii); LBY-OTP-0005-1005; Prosecutor's Application, para. 130 (iii); LBY-OTP-0005-1257.

⁹⁰ Prosecutor's Application, para. 130 (i); LBY-OTP-0002-0415, at 0445-0449 paras. 119-137.

⁹¹ Prosecutor's Application, para. 130 (ix); LBY-OTP-0002-0265, at 0265-0266.

⁹² Prosecutor's Application, para. 130 (x); LBY-OTP-0002-0188, at 0195 para. 23 (Al-Zawiyah); Prosecutor's Application, para. 130 (vi); LBY-OTP-0002-0415, at 0449 para. 137; LBY-OTP-0005-1462; LBY-OTP-0007-0040; LBY-OTP-0007-0049.

⁹³ Prosecutor's Application, para. 130 (iv); LBY-OTP-0003-0539, at 0540 para. 11.

⁹⁴ Prosecutor's Application, para. 130 (iv); LBY-OTP-0003-0539, at 0541 para. 17.

⁹⁵ Prosecutor's Application, para. 131; LBY-OTP-0005-0182, at 0194 para. 80.

⁹⁶ Prosecutor's Application, para. 134; LBY-OTP-0005-0248, at 0263 para. 87.

47. Abductions and subsequent torture of family members of alleged dissidents who could not be found have also been reported.⁹⁷ In Zliten, near Misrata, a list with names of a large number of demonstrators was compiled, many of whom were subsequently arrested.⁹⁸

48. The Materials presented by the Prosecutor further establish reasonable grounds to believe that on 24 February 2011, Security Forces raided a house in Tripoli. When they found a list of frequencies of banned television news channels, they blindfolded, hit and abducted the owner together with his neighbour. He was imprisoned, subjected to different forms of physical and verbal abuse and forced to sign a document stating that he "would not commit any further acts of civil disorder."⁹⁹ Once his blindfold was removed, the prisoner saw about 50 detained people in the same room.¹⁰⁰ In this respect, the Chamber further notes that internet and telephone communications were monitored by the Secret Service with a view to identifying individuals for arrest.¹⁰¹

49. The Chamber also finds reasonable grounds to believe that Security Forces launched against demonstrators violent attacks using live ammunition, machine guns and tear gas, and as a result of which hundreds of demonstrators were killed and even more injured.

50. Indeed, on 17 February 2011, unarmed demonstrators, who had gathered near the High Court in the centre of Benghazi to protest against the arrest of the individual who had been organising the forthcoming protest against Gaddafi's regime, were violently attacked by Security Forces who fired with live ammunition.¹⁰²

⁹⁷ Prosecutor's Application, para. 135; LBY-OTP-0002-0188, at 0195-0196 para. 26, at 0205 para. 64.

⁹⁸ Prosecutor's Application, para. 131; LBY-OTP-0005-0182, at 0194 paras. 78-79.

⁹⁹ Prosecutor's Application, para. 130 (vii); LBY-OTP- 0007-0539, at 0545-0559 paras. 32-127.

¹⁰⁰ Prosecutor's Application, para. 130(vii); LBY-OTP- 0007-0539, at 0552 para. 82.

¹⁰¹ Prosecutor's Application, para. 132; LBY-OTP-0005-0248, at 0253 para. 28.

¹⁰² LBY-OTP-0005-0795, at 0796.

51. Similar attacks by Security Forces continued to be staged in Benghazi, Tripoli, Misrata and neighbouring towns during the following days, as demonstrated in the following paragraphs.

52. On 16 February 2011, in Benghazi, civilian demonstrators were hit with sticks and dispersed by forces loyal to Muammar Gaddafi.¹⁰³ On 17 February 2011, Security Forces who first tried to prevent demonstrators from gathering and to disperse them in different areas of the town,¹⁰⁴ then attacked them throughout the night. Methods of attack included targeting demonstrators with anti-aircraft guns¹⁰⁵, hitting them with clubs and swords, and spraying them with acid.¹⁰⁶

53. A particularly violent attack was witnessed on 17 February 2011 near the Kobry (Juliyana Bridge) in Benghazi.¹⁰⁷ Armed men from Security Forces started shooting at the demonstrators with machine guns and those who were not shot and were not able to flee were arrested.¹⁰⁸ As a result of this attack, a large number of injuries and deaths among the demonstrators were reported.¹⁰⁹ Attacks by Security Forces continued against demonstrators throughout the night.¹¹⁰

54. On 18 February 2011, demonstrators gathered in Benghazi's square around the High Court and mingled with the funeral procession of the demonstrators who had been killed the previous day. On their way to the cemetery, they were stopped by Security Forces armed with Kalashnikovs at the Katiba military barracks (in the area of Birka) who fired at them, killing and seriously injuring several demonstrators.¹¹¹

¹⁰³ Prosecutor's Application, para. 95; LBY-OTP-0007-0741, at 0743 para. 15.

¹⁰⁴ Prosecutor's Application, para. 99.

¹⁰⁵ LBY-OTP-0004-0051, at 0058 para. 44; LBY-OTP-0004-0051, at 0058 para. 45.

¹⁰⁶ Prosecutor's Application, para. 134; LBY-OTP-0003-0494, at 0515 para. 61.

¹⁰⁷ Prosecutor's Application, para. 100; LBY-OTP-0002-0415, at 0459 to 0461 paras. 175-182.

¹⁰⁸ Prosecutor's Application, para. 100; LBY-OTP-0002-0415, at 0460-0461 paras. 176-183; LBY-OTP-0005-1257.

¹⁰⁹ Prosecutor's Application, para. 102; LBY-OTP-0002-0415, at 0461 para. 183; LBY-OTP-0004-0051, at 0058 para. 45 reports that 50 corpses of persons killed between 15 and 17 February 2011 were received at Benghazi Al-Hawary Hospital and 400 corpses at Benghazi Al-Jalaa Hospital.

¹¹⁰ Prosecutor's Application, para. 101; LBY-OTP-0005-1160.

¹¹¹ Prosecutor's Application, para. 104; LBY-OTP-0007-0741, at 0745 paras. 28-31.

55. Violent attacks by Security Forces on demonstrators started in Tripoli on 17 February 2011, when uniformed officers fired at civilians in the Gurji, Ghot-al-Sha'l and Fashloum areas, with automatic machine guns, leaving several protesters wounded and dead.¹¹²

56. On 20 February 2011, one of the most violent attacks occurred in Tripoli, when peaceful crowds of demonstrators in Green Square were fired at by Security Forces, resulting in a number of deaths and injuries.¹¹³ People who live in the area reported hearing the sound of machine gun fire¹¹⁴ and also seeing a car from which people were shooting in the direction of the demonstrators with AK47s.¹¹⁵ Later on that day, demonstrators were arrested, including some who had been taken to the hospital.¹¹⁶

57. On the same day, in Tripoli, demonstrators were chased and shot at from vehicles whose occupants were armed with machine guns in various parts of town (including the Al-Dribi area¹¹⁷ and the area of the main road Al-Syahya, Gergaresh) as a result of which demonstrators were killed and injured.¹¹⁸

58. Similar incidents of violent attacks by Security Forces using live ammunition against demonstrators were reported by several sources as having occurred on 21 and 22 February 2011;¹¹⁹ from 20 to 22 February 2011 only, as many as 62 corpses and at least 35 injured were reported being brought to hospitals in Tripoli.¹²⁰

59. On 24 February 2011, using tear gas and then live ammunition, the Security Forces attacked large crowds of demonstrators in Martyrs Square in the

¹¹² Prosecutor's Application, para. 108; LBY-OTP-0008-0075, at 0093-0096 paras. 67-77; LBY-OTP-0005-0182, at 0189 paras. 38-42.

¹¹³ Prosecutor's Application, para. 112; LBY-OTP-0005-1116; LBY-OTP-0002-0265

¹¹⁴ LBY-OTP-0002-0123, at 0131 para. 40.

¹¹⁵ LBY-OTP-0002-0123, at 0132-0133 paras. 55-59.

¹¹⁶ Prosecutor's Application, para. 112; LBY-OTP-0002-0265.

¹¹⁷ Prosecutor's Application, para. 113; LBY-OTP-0003-0009, at 0019 paras. 59-60; at 0025 para. 98; at 0027 paras. 113-116.

¹¹⁸ Prosecutor's Application, para. 113; LBY-OTP-0008-0075, at 0104-0106 paras. 108-112.

¹¹⁹ Prosecutor's Application, para. 115; LBY-OTP-0005-1101.

¹²⁰ Prosecutor's Application, para. 116; LBY-OTP-0002-0270; LBY-OTP-0003-0009, at 0024 para. 92.

neighbouring town of Al-Zawiyah, killing at least 18 people and injuring about 500 protesters.¹²¹

60. From 17 February 2011 up to at least 25 February 2011, in Tripoli's Green Square¹²² and in other districts such as Souq al-Jomaa, Ben Ashour, Tajoura, Arada, Zawyet al Dahmani, Fashloun and Maydan al-Jazaír square,¹²³ Security Forces shot randomly with machine guns at gathering crowds. A relative seeking to collect the body of a victim in the aftermath of the attack was forced to sign a statement saying that his brother was "a rat" from the opposition.¹²⁴

61. On 19 February 2011, in Misrata, demonstrators were first attacked by Security Forces with tear gas and then fired at, which resulted in at least two people being killed, one immediately and the other five days after the attack, and at least four others injured.¹²⁵

62. On 20 February 2011, Security Forces guards shot at a large crowd which had gathered in Misrata with anti-aircraft guns and tear gas; the shooting resulted in the deaths of at least four demonstrators and the injury of a large number of others.¹²⁶

63. Throughout their attacks, Security Forces continued their search for demonstrators also in hospitals, which led many wounded individuals to refraining from seeking medical assistance out of fear of arrest and subsequent reprisals¹²⁷. According to other reports, medical care was also denied to protesters.¹²⁸

¹²¹ LBY-OTP-0002-0188, at 0197-0198 paras. 31-33, at 0199-0200 paras. 36-41.

¹²² Prosecutor's Application, paras. 119-124; LBY-OTP-0005-0248, at 0258 para. 59; LBY-OTP-0005-0913.

¹²³ See above, para.38.

¹²⁴ Prosecutor's Application, para. 121; LBY-OTP-0005-0248, at 0258 para. 58.

¹²⁵ Prosecutor's Application, para. 127; LBY-OTP-0003-0539, at 0542 paras. 21-24.

¹²⁶ Prosecutor's application, para 127; LBY-OTP-0003-0539, at 0543 paras. 25-26.

¹²⁷ Prosecutor's Application, para. 135; LBY-OTP-0002-0265, at 0266.

¹²⁸ Prosecutor's Application, para. 135; LBY-OTP-0008-0075, at 0106 para. 115, and at 0120 para. 168; LBY-OTP-0005-1240.

64. Finally, the Chamber reiterates its findings made in relation to Count 1 as to the existence of reasonable grounds to believe that hundreds of demonstrators against Gaddafi's regime were killed by Security Forces.

65. In light of the foregoing, the Chamber is satisfied that there are reasonable grounds to believe that several acts of persecution based on political grounds were committed in various localities of the Libyan territory from 15 February 2011 until at least 28 February 2011. In particular, the Materials provide reasonable grounds to believe that inhuman acts that severely deprived the civilian population of its fundamental rights were inflicted on it because of its opposition to Gaddafi's regime. The civilians were targeted only on the basis of their political opposition (whether actual or perceived) to Muammar Gaddafi and his regime. The Chamber is further satisfied that there are reasonable grounds to believe that such acts of persecution were committed by Security Forces throughout Libya, in particular in the towns of Benghazi, Tripoli, Misrata and other neighbouring towns, from 15 February 2011 to at least 28 February 2011, as part of the attack against the civilian demonstrators and/or perceived dissidents to Gaddafi's regime.

IV) Whether there are reasonable grounds to believe that Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi are criminally responsible for the crimes alleged by the Prosecutor

66. The Prosecutor alleges that Muammar Gaddafi bears criminal responsibility as an indirect perpetrator, and that Saif Al-Islam Gaddafi and Abdullah Al-Senussi are responsible as indirect co-perpetrators, all pursuant to article 25(3)(a) of the Statute,¹²⁹ for the crimes against humanity of murder and of persecution based on

¹²⁹ Prosecutor's Application, para. 137.

political grounds committed from 15 February 2011 onwards¹³⁰ by Libyan "Security Forces", in Tripoli, Benghazi, Misrata and other localities in the Libyan territory.¹³¹

67. In particular, the Prosecutor alleges that Muammar Gaddafi has absolute control over the Libyan State apparatus, including its Security Forces, and that he decided to suppress the scheduled popular demonstrations by all means including the use of extreme and lethal violence.¹³² Accordingly, Muammar Gaddafi issued orders to his subordinates integrated within the State structure, including Saif Al-Islam Gaddafi and Abdullah Al-Senussi, who espoused and executed Muammar Gaddafi's plan which led to the commission of the crimes described in the Application. Both Saif Al-Islam Gaddafi and Abdullah Al-Senussi control relevant parts of the State apparatus and Security Forces: Saif Al-Islam Gaddafi, acting as Muammar Gaddafi's *de facto* prime minister and exercising control over finances and logistics, and Abdullah Al-Senussi, acting as head of the Military Intelligence and exercising control over certain security organs.¹³³

68. At the outset, the Chamber recalls that, as consistently held in the jurisprudence of the Court, article 25(3)(a) of the Statute embraces the notion of control over the crime as the determining criterion in distinguishing between principal and accessorial liability.¹³⁴ The Chamber also reiterates that, based on the notion of control over the crime, the Statute recognises in article 25(3)(a) "the

¹³⁰ As stated at paragraph 7 of the present decision, the Chamber notes that although the Prosecutor indicates as time-frame of the application crimes "committed from 15 February 2011 onwards", the Application is based only in acts which were committed from 15 February 2011 to 28 February 2011 at the latest.

¹³¹ Prosecutor's Application, para 1.

¹³² Prosecutor's Application, para. 136.

¹³³ *Ibid.*

¹³⁴ See Decision on the confirmation of charges ("*Lubanga Decision*"), 29 January 2007, ICC-01/04-01/06-803-tEN, para. 338; Decision on the confirmation of charges ("*Katanga Decision*"), 30 September 2008, ICC-01/04-01/07-717, para. 486; Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir ("*Al Bashir Decision*"), 4 March 2009, ICC-02/05-01/09-3, para. 210; Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, 15 June 2009, ICC-01/05-01/08-424, para. 348; Decision on the Prosecutor's Application for Summons to Appear for William Samoei Ruto, Henry Kiprono Kosgey and Josua Arap Sang, 8 March 2011, ICC-01/09-01/11-01, para. 39; Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, 8 March 2011, ICC-01/09-02/11-01, para. 35.

following four manifestations of the notion of control of the crime: direct perpetration, perpetration through another person or indirect perpetration, co-perpetration based on joint control and indirect co-perpetration.”¹³⁵

69. For a person to be considered criminally responsible as a principal to a crime pursuant to article 25(3)(a) of the Statute, as an indirect perpetrator or an indirect co-perpetrator, the jurisprudence of the Court has established the following common requirements: (a) the suspect must have control over the organisation;¹³⁶ (b) the organisation must consist of an organised and hierarchical apparatus of power;¹³⁷ (c) the execution of the crimes must be secured by almost automatic compliance with the suspect's orders;¹³⁸ (d) the suspect must fulfil the subjective elements of the crimes;¹³⁹ (e) the suspect must be aware of the factual circumstances enabling him or her to exercise control over the crime through another person in the case of indirect perpetration, or, in the case of indirect co-perpetration, be aware of the factual circumstances enabling him or her to exercise, jointly with another, control over the crime through another person.¹⁴⁰ Further, for indirect co-perpetration, the jurisprudence of the Court has identified three additional requirements: (a) existence of an agreement or common plan between two or more persons;¹⁴¹ (b) co-ordinated essential contribution by each co-perpetrator resulting in the realisation of the objective elements of the crime;¹⁴² and (c) the suspects must be mutually aware and mutually accept that implementing their common plan will result in the realisation of the objective elements of the crimes.¹⁴³

70. In relation to the mode of criminal liability attributed to the suspects, the Chamber is of the view that it is not bound by the legal characterisation of the

¹³⁵ *Al Bashir* Decision, para. 210. See also *Lubanga* Decision, paras. 326-328; *Katanga* Decision, para. 487.

¹³⁶ *Katanga* Decision, paras. 500-510.

¹³⁷ *Katanga* Decision, paras. 511-514.

¹³⁸ *Katanga* Decision, paras. 515-518.

¹³⁹ *Katanga* Decision, paras. 527-532; see also *Lubanga* Decision, paras. 349-360.

¹⁴⁰ *Katanga* Decision, paras. 538-539; see also *Lubanga* Decision, paras. 366-367.

¹⁴¹ *Katanga* Decision, paras. 522-523; see also *Lubanga* Decision, paras. 343-345.

¹⁴² *Katanga* Decision, paras. 524-526; see also *Lubanga* Decision, paras. 364-368.

¹⁴³ *Katanga* Decision, paras. 533-537; see also *Lubanga* Decision, paras. 361-365.

conduct put forth in the Prosecutor's Application. As previously held by the Chamber in the Lubanga case, pursuant to article 58(1) of the Statute, the Chamber is only bound by the factual basis and the evidence and information provided by the Prosecutor in his application.¹⁴⁴ In the view of the Chamber, a warrant of arrest shall be issued when the Chamber is convinced that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court, even if the Chamber disagrees with the Prosecutor's legal characterisation of the relevant conduct.¹⁴⁵

71. In the instant case, after carefully reviewing the Materials provided by the Prosecutor, the Chamber finds reasonable grounds to believe that pursuant to article 25(3)(a) of the Statute (i) Muammar Gaddafi and Saif Al-Islam Gaddafi are criminally responsible as indirect co-perpetrators of the crimes against humanity of murder and persecution based on political grounds that were committed in various localities of the Libyan territory from 15 February 2011 until at least 28 February 2011, as described in Section III of the present decision; and that (ii) Abdullah Al-Senussi is criminally responsible as an indirect perpetrator for the crimes against humanity of murder and persecution based on political grounds that were committed by members of the armed forces under his control in the city of Benghazi from 15 February 2011 until at least 20 February 2011, as described in Section III of the present decision, for the reasons hereunder developed:

Criminal Responsibility of Muammar Gaddafi and Saif Al-Islam Gaddafi

72. On the basis of the Materials provided by the Prosecutor, the Chamber finds that there are reasonable grounds to believe that, at all times relevant to the Application, Muammar Gaddafi had absolute, ultimate and unquestioned control

¹⁴⁴ Decision on the Prosecution Application for a warrant of arrest, Article 58, 10 February 2011, ICC-01/04-01/06-8-Corr, para. 15.

¹⁴⁵ *Ibid*, para. 16.

over the Libyan State apparatus of power, including the Security Forces.¹⁴⁶ Indeed, as already found in paragraphs 15 to 17 above, although Muammar Gaddafi claims not to have any position and not to be the President of Libya, he is recognized *inter alia* as the “ultimate authority or ruler”,¹⁴⁷ “political head of the government in Libya”,¹⁴⁸ or “ideological and spiritual head of the movement”.¹⁴⁹ The Chamber also finds reasonable grounds to believe that Saif Al-Islam Gaddafi, although not having an official position,¹⁵⁰ is Muammar Gaddafi’s unspoken successor and the most influential person within his inner circle;¹⁵¹ as such, at all times relevant to the Prosecutor’s Application, Saif Al-Islam Gaddafi exercised control over crucial parts of the State apparatus, including finances and logistics and had the powers of a *de facto* Prime Minister.¹⁵²

73. The Materials provided by the Prosecutor also substantiate the finding of the Chamber that there are reasonable grounds to believe that the Libyan State apparatus of power—including political, administrative, military and security branches—consists of a complex set of units and individuals, all of which are ultimately subject to the orders and control of the leader of the country, Muammar

¹⁴⁶ LBYP-OTP-0003-0009, at 0015 para. 30; LBYP-OTP-0002-0415, at 0418 paras. 7-9, at 0419 paras. 10-11, at 0420 para. 13, at 0421 para. 17, at 0422 para. 21; LBYP-OTP-0003-0494, at 0504 para. 32, at 0505 para. 35, at 0510 para. 48, at 0518 para. 69, at 0525 paras. 91-92; LBYP-OTP-0007-0694, at 0694-0965 para. 5, at 0695 para. 11, at 0696 para. 17, at 0698 para. 32; LBYP-OTP-0007-0729, at 0730 para. 11; LBYP-OTP-0007-0788, at 0790, at 0794 to 0797, at 0799-0800, at 0804; LBYP-OTP-0007-0807, at 0815-0816; LBYP-OTP-0007-0751, at 0751, and at 0753; LBYP-OTP-0007-0818, at 0820; LBYP-OTP-0005-0004, at 0006; LBYP-OTP-0007-0065, at 0076, at 0165, at 0169-0170, at 0174-0175, at 0177, and at 0182; LBYP-OTP-0002-0376, at 0383, and at 0400-0401; LBYP-OTP-0007-0879, at 0882-0883; LBYP-OTP-0007-0827, at 0832-0833; LBYP-OTP-0007-0679, at 0680; LBYP-OTP-0008-0125, at 0128.

¹⁴⁷ LBYP-OTP-0002-0415, at 0418 para. 7.

¹⁴⁸ *Ibid.* para. 8

¹⁴⁹ *Ibid.*, para 9.

¹⁵⁰ LBYP-OTP-0002-0415, at 0420 para. 14; LBYP-OTP-0003-0494, at 0499 para. 18.

¹⁵¹ LBYP-OTP-0007-0694, at 0698 para. 39.

¹⁵² LBYP-OTP-0002-0415, at 0418 para. 8, at 0420 para. 15, at 0421 para. 16, at 0421 para. 17, at 0426 para. 34; LBYP-OTP-0003-0494, at 0499 paras. 18-19, at 504 paras. 32-33, at 0526 para. 94-95, at 0528 para. 100; LBYP-OTP-0007-0694, at 0695 paras. 7-8, at 0697 para. 24, at 0698-0699 paras. 39-41, at 0702 para. 64, at 0704 para. 87; LBYP-OTP-0007-0788, at 0794, at 0797, and at 0801; LBYP-OTP-0007-0807, at 0809-0816; LBYP-OTP-0007-0751, at 0751, and at 0754; LBYP-OTP-0007-0065, at 0179; LBYP-OTP-0007-0036, at 0037; LBYP-OTP-0004-0153, at 0153.

Gaddafi.¹⁵³ Muammar Gaddafi orchestrates the exercise of his powers with the support and collaboration of his inner circle, the most influential of whom is his son Saif Al-Islam Gaddafi, who enjoys a prominent position within the Libyan hierarchy.¹⁵⁴ While Saif Al-Islam Gaddafi is subordinated only to Muammar Gaddafi,¹⁵⁵ he also enjoys undisputed control over crucial parts of the State apparatus and has the power to trigger the State machinery and issue orders to all of Muammar Gaddafi's subordinates, as they are, at the same time all subordinated to him.¹⁵⁶

74. The Chamber is further satisfied that the Materials provide reasonable grounds to believe that the power structure created by Muammar Gaddafi enables him to transmit orders directly¹⁵⁷ to every level of Libya's State apparatus staff, ensuring their immediate implementation.¹⁵⁸ Muammar Gaddafi's mandates are legally binding and their implementation is obligatory.¹⁵⁹

75. Within the various units of the State apparatus, especially the Security Forces, there are only vertical lines of communication and command, all of which ultimately lead to Muammar Gaddafi.¹⁶⁰ The Libyan Security Forces are comprised of a number of units and groups¹⁶¹ within which each individual fears the other.¹⁶² In addition,

¹⁵³ See para. 22 above. See also LBY-OTP-0002-0415, at 0419 para. 10, at 0421-0410 paras. 21-52; LBY-OTP-0007-0694, at 0697 para. 27, at 0701 para. 60.

¹⁵⁴ LBY-OTP-0002-0415, at 0418 para. 8, at 0420-0421 paras. 16-17, at 0426 para. 34; LBY-OTP-0003-0494, at 504 paras. 32-33; LBY-OTP-0007-0694, at 0698-0699 paras. 39-41.

¹⁵⁵ LBY-OTP-0002-0415, at 0421 para. 17.

¹⁵⁶ LBY-OTP-0002-0415, at 0420-0421 para 16, at 0426 para. 34-35, at 0431 para. 59; LBY-OTP-0003-0494, at 504-505 paras. 32-34; LBY-OTP-0007-0694, at 0700 para. 56, at 0701 para. 59.

¹⁵⁷ LBY-OTP-0002-0415, at 0419 para. 9, at 0422 para. 21, at 0425 para. 31, at 0426 para. 36; LBY-OTP-0007-0694, at 0695 para. 7, at 0699 para. 47.

¹⁵⁸ LBY-OTP-0002-0415, at 0418 para. 7, at 0422 para. 21.

¹⁵⁹ LBY-OTP-0007-0827, at 0834, and at 0839; LBY-OTP-0007-0679, at 0680.

¹⁶⁰ Prosecution Application, para. 138; LBY-OTP-0002-0010, at 0021 para. 76.

¹⁶¹ The Chamber notes that, based notably on document LBY-OTP-0002-0415, it is possible to identify among the complex net of Security Forces the following: 1. Revolutionary Militias, among which (a) Revolutionary Guards comprised of between 15.000 to 20.000 members; (b) Popular Guard; and (c) Revolutionary Combating Militias, tribal militias among which it is possible to identify at least 7 groups, the largest comprised by about 3.000 men; 2. Security Agencies, comprised by (a) Internal Security Service; (b) External Security Service; and (c) Military Intelligence; 3. Other Armed Groups, including (a) The Katiba, comprised of around 5.000 men; (b) The Central Support; (c) The Police; and

each unit is composed of a large number of members who are provided with strict and intensive military and paramilitary training.¹⁶³ The aforementioned ensures the interchangeable character of the lower echelons and of those who physically carry out Muammar Gaddafi's orders as well as the automatism of the Libyan State apparatus, which only needed to be activated by those who retain control over the actions of its subordinates. In the view of the Chamber, there are indeed reasonable grounds to believe that Muammar Gaddafi's and Saif Al-Islam Gaddafi's orders to any branch of the State apparatus automatically activated the State machinery leading to the compliance with such orders by any replaceable direct perpetrator.¹⁶⁴

76. The Chamber also finds that the evidence submitted by the Prosecutor provides reasonable grounds to believe that the scale of the concerted actions by Muammar Gaddafi and his son Saif Al-Islam Gaddafi leads to the inference that Muammar Gaddafi in coordination with his inner circle, including Saif Al-Islam Gaddafi, conceived and orchestrated a plan to deter and quell, by all means, the civilian demonstrations against the regime which began in Libya soon after the events in Tunisia and Egypt which led to the departure of their Presidents in the early months of 2011.¹⁶⁵

77. The Chamber finds reasonable grounds to believe that the abovementioned plan was effected through the use and control of various communication media, the monitoring of emails,¹⁶⁶ the sending of SMS messages¹⁶⁷ and the issuing of public speeches intended to disrupt demonstrations,¹⁶⁸ threaten possible dissidents and

(d) The 32 Brigade. *See* also LBY-OTP-0002-0415, at 0421-0410 paras. 21-52; LBY-OTP-0007-0694, at 0702-0703 paras. 69-77.

¹⁶² LBY-OTP-0002-0415, at 0428 para. 45.

¹⁶³ LBY-OTP-0002-0415, at 0419 para. 11, at 0429 paras. 49-50, at 0431 para. 56.

¹⁶⁴ LBY-OTP-0002-0415, at 0418 para. 7, at 0444 para. 111; LBY-OTP-0007-0694, at 0694-0965 para. 5, at 0697 para. 28, at 0700 paras. 53-54, at 0702 para. 64; LBY-OTP-0003-0494, at 0526 para. 94.

¹⁶⁵ LBY-OTP-0002-0123, at 0126 para. 13; LBY-OTP-0002-0415, at 0439-0440 para. 91-96, at 0441 para. 99, at 0443 para. 110; LBY-OTP-0003-0494, at 0508 paras. 43-44, at 0509 para. 46, at 0510 paras. 47-49, LBY-OTP-0007-0694, at 0700 para. 55.

¹⁶⁶ LBY-OTP-0002-0415, at 0442 para. 106.

¹⁶⁷ LBY-OTP-0002-0123, at 0136-0137 paras. 84 to 94.

¹⁶⁸ LBY-OTP-0005-0182, at 0193 paras. 70-71.

incite the population to act against those perceived to be dissidents.¹⁶⁹ The implementation of the plan also included the blocking of various internet and international television channels,¹⁷⁰ in order to prevent the population from accessing any source of information not emanating from the official State channels.¹⁷¹ As discussed in paragraph 30 above, a cover-up campaign was also implemented in order to conceal the commission of crimes by the Libyan State apparatus, notably through the removal of bodies and other traces of the events from the streets,¹⁷² the surveillance of hospitals to remove data and bodies,¹⁷³ and the arrests and manipulation of international journalists to prevent open and free reporting of the events as they occurred.¹⁷⁴

78. The Chamber further finds that Muammar Gaddafi and Saif Al-Islam Gaddafi contributed to the implementation of the plan by assuming essential tasks that led to the commission of the crimes listed in the Application. The contributions of both Muammar Gaddafi and Saif Al-Islam Gaddafi were essential for the realisation of the plan, since both had the power to frustrate the commission of the crimes by not performing their tasks.

79. Muammar Gaddafi's contributions were paramount for the implementation of the plan as he, *inter alia*: (i) conceived and designed the plan and oversaw its implementation;¹⁷⁵ (ii) issued orders to his closest direct subordinates in the Security Forces, among them Abdullah Al-Senussi, to mobilize troops in order to quell the popular demonstrations;¹⁷⁶ (iii) issued orders and publicly incited the population to

¹⁶⁹ LBY-OTP-0007-0788; LBY-OTP-0005-0182, at 0193 paras. 70-71.

¹⁷⁰ LBY-OTP-0002-0123, at 0132 paras. 51-52; LBY-OTP-0007-0539, at 0546 para. 42.

¹⁷¹ LBY-OTP-0002-0123, at 0132 para. 52; LBY-OTP-0003-0494, at 0518 para. 70; LBY-OTP-0007-0694, at 0704 para. 84.

¹⁷² LBY-OTP-0002-0123, at 0134 para. 69; LBY-OTP-0002-0415, at 0457 para. 166; LBY-OTP-0002-0188, at 200 para. 43.

¹⁷³ LBY-OTP-0005-0248, at 0260 paras. 67-68; LBY-OTP-0003-0009, at 0023-24 paras. 86-87, 92; LBY-OTP-0002-0188, at 0204 paras. 59-60.

¹⁷⁴ LBY-OTP-0002-0415, at 0443 para. 107; LBY-OTP-0007-0694, at 0704 para. 85.

¹⁷⁵ LBY-OTP-0003-0494, at 0508-0511 paras. 43-49; LBY-OTP-0007-0694, at 0701 para. 60; LBY-OTP-0007-0694, at 0701 para. 63, at 0702 para. 64.

¹⁷⁶ LBY-OTP-0002-0415, at 0442 para. 104, at 0455-0456 para. 160; LBY-OTP-0003-0494, at 0508 para. 43; LBY-OTP-0007-0694, at 0695 para. 6; LBY-OTP-0007-0729, at 0730 paras. 9-11.

attack civilians perceived to be dissidents;¹⁷⁷ (iv) authorised the release of a large number of prisoners in order to create a situation of chaos that would facilitate the intervention of Security Forces;¹⁷⁸ (v) ensured that direct perpetrators were provided with the necessary resources for the implementation of the plan;¹⁷⁹ (vi) ordered the widespread arrest of dissidents;¹⁸⁰ (vii) conceived, designed and implemented the cover-up campaign aimed at concealing the commission of crimes by Security Forces;¹⁸¹ (viii) publicly addressed the population in order to threaten and scare demonstrators;¹⁸² and (ix) granted financial benefits in order to gain and mobilise popular support.¹⁸³

80. Saif Al-Islam Gaddafi's contributions amounted to, *inter alia*: (i) support of and contribution to the design of the plan;¹⁸⁴ (ii) use of his powers and authority to ensure the implementation of the plan;¹⁸⁵ (iii) ordering the recruitment of mercenaries and the mobilization of militias and troops;¹⁸⁶ (iv) ordering the imprisonment and elimination of political dissidents;¹⁸⁷ (v) providing resources to Security Forces;¹⁸⁸ (vi) publicly addressing the population in order to threaten and scare demonstrators and mobilise Muammar Gaddafi's supporters;¹⁸⁹ and (vii)

¹⁷⁷ LBY-OTP-0007-0788; LBY-OTP-0005-1131, at 1131; LBY-OTP-0005-1288, at 1288.

¹⁷⁸ LBY-OTP-0003-0009 at 0015-16 paras. 35-38.

¹⁷⁹ LBY-OTP-0002-0123, at 0127 para. 20; LBY-OTP-0002-0415, at 0453 para. 149; LBY-OTP-0004-0155, at 0166.

¹⁸⁰ See above, paras. 42-48.

¹⁸¹ See above, para. 30.

¹⁸² LBY-OTP-0002-0123, at 0126 para. 13, at 0135 para. 78; LBY-OTP-0007-0694, at 0700 para. 49; LBY-OTP-0007-0788.

¹⁸³ LBY-OTP-0002-0123, at 0127 para. 20; LBY-OTP-0002-0415, at 0441 para. 101.

¹⁸⁴ LBY-OTP-0003-0494, at 0508-0512 paras. 43-52.

¹⁸⁵ LBY-OTP-0002-0415, at 0445 para. 121, at 0446 para. 123; LBY-OTP-0003-0494, at 0515 paras. 61-63, at 0526 paras. 94-95, at 0528 para. 100; LBY-OTP-0007-0694, at 0701 para. 59.

¹⁸⁶ LBY-OTP-0002-0415, at 0440 para. 94, at 0442 para. 104, at 0446 para. 122, at 0459 para. 174, at 0463 para. 190; LBY-OTP-0003-0494, at 0508 para. 43, at 0525-0526 para. 93, at 0526 para. 94, at 0531 para. 108; LBY-OTP-0007-0694, at 0699 para. 42.

¹⁸⁷ LBY-OTP-0002-0415, at 0447 para. 128, at 0449 para. 137.

¹⁸⁸ LBY-OTP-0003-0494, at 0525-0526 para. 93; LBY-OTP-0007-0694, at 0698 para. 40; LBY-OTP-0007-0751, at 0754.

¹⁸⁹ LBY-OTP-0003-0494, at 0532 para. 114; LBY-OTP-0007-0694, at 0700 para. 49; LBY-OTP-0007-0807, at 0816.

contributing to the cover-up campaign, notably by denying the commission of crimes by the Security Forces and shifting the responsibility to the demonstrators.¹⁹⁰

81. Considering the Materials provided by the Prosecution, and particularly taking into account the various speeches given by Muammar Gaddafi and Saif Al-Islam Gaddafi, the Chamber is further satisfied that there are reasonable grounds to believe that both suspects intended to bring about the objective elements of the crimes referred to by the Prosecutor in his Application.¹⁹¹ The two suspects also knew that their conduct was part of a widespread and systematic attack against the civilian population pursuant to the State policy, set up by them, of targeting civilians perceived to be political dissidents.¹⁹² The Chamber is also satisfied that there are reasonable grounds to believe that Muammar Gaddafi and Saif Al-Islam Gaddafi were both well aware of their senior leadership role within the structure of the Libyan State apparatus and of their power to exercise full control over their subordinates.¹⁹³

82. The Chamber is also satisfied that there are reasonable grounds to believe that Muammar Gaddafi and Saif Al-Islam Gaddafi were both mutually aware and accepted that implementing the plan would result in the realisation of the objective elements of the crimes.¹⁹⁴

83. Accordingly, the Chamber finds that there are reasonable grounds to believe that Muammar Gaddafi and Saif Al-Islam Gaddafi are both mutually responsible as principals to the crimes pursuant to article 25(3)(a) of the Statute, as indirect co-

¹⁹⁰ LBY-OTP-0007-0807, at 0809.

¹⁹¹ LBY-OTP-0007-0788, at 0790-0792, at 0795-0797, at 0799, and at 0803-0805; LBY-OTP-0003-0494, at 0524 para. 88; LBY-OTP-0007-0818, at 0820; LBY-OTP-0004-0155, at 0165 paras. 26-27; LBY-OTP-0005-1131, at 1131; LBY-OTP-0005-1288, at 1288; LBY-OTP-0007-0807, at 0816; LBY-OTP-0007-0751, at 0754; LBY-OTP-0004-0155, at 0165.

¹⁹² LBY-OTP-0003-0494, at 0521 paras. 79-80; LBY-OTP-0007-0788, at 0796-0797, at 0801, and 0803-0804; LBY-OTP-0007-0751, at 0754; LBY-OTP-0004-0155, at 0165.

¹⁹³ LBY-OTP-0007-0694, at 0699 para. 44; LBY-OTP-0007-0788, at 0793-0797, at 0799, and at 0803-0805; LBY-OTP-0007-0751, at 0753; LBY-OTP-0007-0818, at 0820; LBY-OTP-0007-0807, at 0816; LBY-OTP-0007-0751, at 0754; LBY-OTP-0004-0155, at 0165.

¹⁹⁴ LBY-OTP-0003-0494, at 0521 paras. 79-80, at 0525 para. 92; LBY-OTP-0004-0155, at 0165; LBY-OTP-0007-0807, at 0816; LBY-OTP-0007-0788; LBY-OTP-0007-0818, at 0820.

perpetrators of the crimes against humanity of murder and persecution based on political grounds that were committed in various localities of the Libyan territory from 15 February 2011 until at least 28 February 2011, as described in Section III of the present decision.

Criminal Responsibility of Abdullah Al-Senussi

84. The Chamber also finds reasonable grounds to believe that from 15 February 2011 until at least 20 February 2011, Abdullah Al-Senussi, the national head of the Military Intelligence,¹⁹⁵ one of the most powerful and efficient organs of repression of Muammar Gaddafi's regime and the state security organ in charge of monitoring the military camps and members of the armed forces,¹⁹⁶ exercised control over the armed forces under his command that were deployed in the city of Benghazi in order to suppress civilian demonstrations.¹⁹⁷

85. The Materials provide the Chamber with substantial grounds to believe that, due to his family ties and long lasting friendship with Muammar Gaddafi, Abdullah Al-Senussi occupied, at all times relevant to the Application, an important role within the Libyan hierarchy.¹⁹⁸ By virtue of his control over the Military Intelligence, Abdullah Al-Senussi, although subordinated to Gaddafi, is at the same time the highest authority of the armed forces, of which all members are subordinated to him.¹⁹⁹

86. As described in paragraph 75 above, the execution of the crimes was indeed secured by the interchangeability of the direct perpetrators who are in the lower

¹⁹⁵ LBY-OTP-0002-0415, at 0429 para. 48; LBY-OTP-0007-0694, at 0696 para. 15, at 0698 para. 38.

¹⁹⁶ Prosecutor's Application, para. 137; LBY-OTP-0002-0415, at 0429 para. 48; LBY-OTP-0007-0694, at 0696 para. 15, and at 0698 para. 38.

¹⁹⁷ LBY-OTP-0003-0009, at 0014 para. 26; LBY-OTP-0002-0415, at 0450 para 141, at 0461 para. 178; LBY-OTP-0003-0494, at 0508 para. 43, at 0518 para. 69, at 0525 para. 91; LBY-OTP-0007-0741, at 0742 para. 4, at 0744 para. 23; LBY-OTP-0007-0694, at 0695 para. 7, at 0696 para. 16, at 0698 para. 38; LBY-OTP-0008-0071.

¹⁹⁸ LBY-OTP-0002-0415, at 0435 paras. 75 to 77; LBY-OTP-0003-0494, at 0500-0501 paras. 24-25, LBY-OTP-0007-0065, at 0171 and at 0174; LBY-OTP-0002-0376, at 0385; LBY-OTP-0008-0075, at 0080 para. 14; LBY-OTP-0007-0694, at 0703 para. 73; LBY-OTP-0007-0729, at 0732 para. 24.

¹⁹⁹ LBY-OTP-0003-0009, at 0014 para. 26; LBY-OTP-0002-0415; LBY-OTP-0005-0182, at 0186 para. 21; LBY-OTP-0007-0065, at 0171; LBY-OTP-0007-0741, at 0742 para. 4.

echelons of the machinery of the Libyan State apparatus. The Chamber is satisfied that the Materials provide reasonable grounds to believe that Abdullah Al-Senussi, by virtue of his position within the hierarchy of the armed forces, was indeed in a position to trigger the actions of the armed forces and ensure compliance with such orders, and therefore, the commission of the crimes by any replaceable direct perpetrator.²⁰⁰

87. The Chamber is further satisfied that there are reasonable grounds to believe that Abdullah Al-Senussi, once instructed by Muammar Gaddafi to implement the plan of deterring and quelling civilian demonstrations against the regime in Benghazi,²⁰¹ used his powers over the military forces, commanded the forces in Benghazi²⁰² and directly instructed the troops to attack civilians demonstrating in the city.²⁰³ In the incident at the Juliyana Bridge in Benghazi on the 17 of February he directly ordered his troops to “shoot the dogs”.²⁰⁴

88. Considering the Materials provided by the Prosecution, the Chamber is further satisfied that there are reasonable grounds to believe that Abdullah Al-Senussi intended to bring about the objective elements of the crimes committed by the armed forces under his control from 15 February 2011 until at least 20 February 2011 in the city of Benghazi.²⁰⁵ The suspect also knew that his conduct was part of a widespread and systematic attack against the civilian population pursuant to a State policy of targeting civilians perceived to be political dissidents.²⁰⁶ The Chamber is also satisfied that there are reasonable grounds to believe that Abdullah Al-Senussi

²⁰⁰ LBY-OTP-0002-0415, at 0429 para. 48; LBY-OTP-0003-0494, at 508 para. 43.

²⁰¹ LBY-OTP-0003-0494, at 508 paras. 43-44, at 0510 para. 47, at 0517-0518 para. 69, at 0525 para. 91; LBY-OTP-0007-0694, at 0695 paras. 6 and 11; LBY-OTP-0005-0182, at 0186 para. 21.

²⁰² LBY-OTP-0003-0009, at 0014 para. 26; LBY-OTP-0002-0415, at 0443 para. 109, at 0445 para. 117, at 0450 para. 141, at 0451 para. 142, at 0455 para. 159, at 0456-0457 para. 167, at 0459 para. 172; LBY-OTP-0005-0182, at 0194 para. 75; LBY-OTP-0003-0494, at 0511 para. 50, at 0512-0513 para. 54, at 0517 para. 68, at 0517-0518 para. 69; LBY-OTP-0007-0539, at 0560 para. 141; LBY-OTP-0007-0743, at 0744 paras. 23 and 25.

²⁰³ LBY-OTP-0002-0415, at 0445 para. 117, at 0455 para. 157, at 0459 paras. 172-173, at 0460-0461 paras. 177-178, at 0462 para. 185; LBY-OTP-0003-0494, at 0512-0513 para 54, at 0518 para. 69; LBY-OTP-0007-0694, at 0695 para. 7, at 0696 para. 13, at 0698 para. 35; LBY-OTP-0007-0741, at 0747 para. 46.

²⁰⁴ LBY-OTP-0002-0415, at 0461 para. 178.

²⁰⁵ LBY-OTP-0002-0415, at 0461 para. 178.

²⁰⁶ LBY-OTP-0008-0070, at 0072, lines 5 to 15.

was aware of his senior leadership role within the structure of the military forces and of his power to exercise full control over his subordinates.²⁰⁷

89. As indicated earlier, the Materials provide the Chamber with reasonable grounds to believe that, contrary to Muammar Gaddafi and his son Saif Al-Islam Gaddafi, Abdullah Al-Senussi, once instructed by Gaddafi, implemented the plan that was devised by Gaddafi in coordination with his inner circle, including Saif Al-Islam. However, the Chamber is of the view that the existence of a chain of command, in which Muammar Gaddafi is the highest authority, does not prevent the attribution of principal responsibility to Abdullah Al-Senussi, who, although following orders from the highest authority within the hierarchy, is nonetheless in a privileged position of supremacy over a fundamental branch of the organised apparatus of power, the armed forces. In this regard, the Chamber finds reasonable grounds to believe that Abdullah Al-Senussi was capable of controlling the commission of the crimes from his respective level, through the armed forces that were at his disposal in the city of Benghazi, as he was in a position to secure that his orders were complied with almost automatically. Not only did Abdullah Al-Senussi play an essential role in the commission of the crimes by giving orders to the armed forces under his control, but at the same time, and as a result of his position, he had the power to determine whether and how the crimes were committed..

90. Accordingly, the Chamber finds reasonable grounds to believe that Abdullah Al-Senussi, due to his position within the Libyan hierarchy and his role in the implementation of the plan to deter and quell the civilian demonstrations against the Libyan regime, is responsible as principal to the crimes committed in Benghazi from 15 February 2011 until at least 20 February 2011 by the members of the armed forces under his control, under article 25(3)(a) of the Statute, as an indirect perpetrator.

²⁰⁷ LBY-OTP-0002-0415, at 0461 para. 178.

V) Whether the requirements of article 58(1)(b) of the Statute for the arrest of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi have been met

91. The Prosecutor contends that, in compliance with article 58(1)(b) of the Statute, the issuance of warrants of arrests is necessary (i) to ensure the appearance at trial of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi; (ii) to ensure that they do not obstruct or endanger the investigation or the court proceedings, and (iii) to prevent them from continuing with the commission of crimes.²⁰⁸

92. The Chamber will assess whether any of the criteria of article 58(1)(b) of the Statute are fulfilled with respect to each of the persons identified by the Prosecutor in his Application.

A. Muammar Gaddafi

93. The Materials provided by the Prosecutor show that Muammar Gaddafi has publicly challenged the legitimacy of Security Council Resolution 1970 which confers jurisdiction on the Court to investigate alleged crimes committed in Libya since 15 February 2011²⁰⁹ and has further made the "promise" to stay in Libya.²¹⁰ The Materials also adequately support the allegation that a broad cover-up operation with respect to the crimes committed by Security Forces was organised, *inter alia* through the arrests of eye-witnesses and journalists and the removal of dead bodies.²¹¹ In light of the role played by Muammar Gaddafi, as described in the present decision, as well as his public pronouncements, the Chamber is satisfied that, unless arrested, Muammar Gaddafi would not willingly appear before the

²⁰⁸ Prosecutor's Application, para. 179-182.

²⁰⁹ RTV Pink (Serbian TV), 27 February 2011, LBY-0001-0090; Al-Arabiya.net, "Gaddafi promise to stay in Libya and condemns the international sanctions against his regime", 27 February 2011, LBY-0005-1409.

²¹⁰ Al-Arabiya.net, "Gaddafi promise to stay in Libya and condemns the international sanctions against his regime", 27 February 2011, LBY-OTP-0005-1409; LBY-OTP-0007-0788, at 0795 lines 221-222 "I will fight to the last drop of my blood with the Libyan people".

²¹¹ See above, Section III.

Court and, unless and until arrested, would continue to resort to his powers and authority to direct the further commission and covering up of crimes.

94. The Chamber is therefore satisfied that the arrest of Muammar Gaddafi appears necessary to (i) ensure his appearance before the Court; (ii) ensure that, he does not continue to use his power to obstruct or endanger the investigation, in particular by orchestrating the cover-up of the crimes committed by the Security Forces; and to (iii) prevent him from continuing to use his power and absolute control over the Libyan State apparatus to continue the commission of crimes within the jurisdiction of the Court.

95. Accordingly, a warrant of arrest for Muammar Gaddafi appears necessary pursuant to article 58(1)(b)(i), (ii) and (iii) of the Statute.

B. Saif Al-Islam Gaddafi

96. As stated above,²¹² based on the Materials submitted by the Prosecutor, the Chamber is satisfied that there are reasonable grounds to believe that Saif Al-Islam Gaddafi, as *a de facto* Prime Minister, used his control over relevant parts of the State apparatus and Security Forces to implement the plan, which he devised in concert with Muammar Gaddafi, to quell the civilian demonstrations staged in protest against Gaddafi's regime. The Chamber notes that he delivered speeches in which, in line with those of his father's, he promised to "fight to the last man and woman and bullet" and further declared "[we] cannot leave our country."²¹³

97. In light of the role played by Saif Al-Islam Gaddafi, as described in the present decision, as well as his public pronouncements, the Chamber is satisfied that, unless arrested, Saif Al-Islam Gaddafi would not willingly appear before the Court and, unless and until arrested, would continue to resort to his powers and authority to direct the further commission and covering up of crimes.

98. The Chamber is therefore satisfied that the arrest of Saif Al-Islam Gaddafi appears necessary to (i) ensure his appearance before the Court; (ii) ensure that, he

²¹² See above, Sections III and IV.

²¹³ LBY-OTP-0007-0807, at 0816 line 348.

does not continue to use his power to obstruct or endanger the investigation, in particular by orchestrating the cover-up of the crimes committed by the Security Forces; and to (iii) prevent him from continuing to use his power and control over the Libyan State apparatus to continue the commission of crimes within the jurisdiction of the Court.

99. Accordingly, a warrant of arrest for Saif-Al-Islam Gaddafi appears necessary pursuant to article 58(1)(b)(i), (ii) and (iii) of the Statute.

C. Abdullah Al-Senussi

100. As stated above²¹⁴, based on the Materials submitted by the Prosecutor, the Chamber is satisfied that there are reasonable grounds to believe that Abdullah Al-Senussi, by virtue of his position as head of the Military Intelligence and the ensuing control over military forces, was instrumental in implementing Muammar and Saif Al-Islam Gaddafi's plan in Benghazi.²¹⁵

101. The Chamber observes that there are reasons to believe that Al-Senussi is still the head of the Libyan Military Intelligence and, accordingly, still in a position to instruct troops to both commit crimes and destroy the evidence pursuant to the plan devised by Muammar Gaddafi and Saif Al-Islam Gaddafi. The Chamber is therefore satisfied that Al-Senussi would not appear before the Court unless arrested and that, unless and until arrested, he will continue to obstruct and endanger the Court's investigations and to use his powers to further the commission of the crimes.

102. Accordingly, a warrant of arrest for Abdullah Al-Senussi is necessary pursuant to article 58(1)(b)(i), (ii) and (iii) of the Statute.

²¹⁴ See above, Section IV.

²¹⁵ LBY-OTP-0003-0494, at 0510 para. 47, at 0517-0518 para. 69, at 0525 para. 91; LBY-OTP-0007-0694, at 0695 paras. 6 and 11.

FOR THESE REASONS, the Chamber

DECIDES that the case against Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi falls within the jurisdiction of the Court;

DECIDES to issue warrants of arrest against Muammar Gaddafi and Saif Al-Islam Gaddafi for their alleged responsibility under article 25(3)(a) of the Statute for the following crimes against humanity committed across Libya from 15 February 2011 until at least 28 February 2011:

- (i) murders as a crime against humanity under article 7(1)(a) of the Statute; and
- (ii) persecution as a crime against humanity under article 7(1)(h) of the Statute.

DECIDES to issue a warrant of arrest against Abdullah Al-Senussi for his alleged responsibility under article 25(3)(a) of the Statute for the following crimes against humanity committed in Benghazi from 15 February 2011 until at least 20 February 2011:

- (i) murders as a crime against humanity under article 7(1)(a) of the Statute; and
- (ii) persecution as a crime against humanity under article 7(1)(h) of the Statute.

DECIDES that the warrants of arrest for Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi shall be included in separate self-executing documents each containing the information required by article 58(3) of the Statute;

DECIDES that as soon as practicable, the Registry:

- (i) shall prepare a request for cooperation seeking the arrest and surrender of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi containing the information and documents required by articles 89(1) and 91 of the Statute, and by rule 187 of the Rules; and
- (ii) shall transmit, in consultation and coordination with the Prosecutor, such request to the competent Libyan authorities in accordance with rule 176(2) of the Rules and to (i) all States Parties to the Statute; (ii) all of Libya's neighboring States; and to (iii) the United Nations Security Council members that are not States Parties to the Statute;

DIRECTS the Registrar, as appropriate, to prepare and transmit to any other State any additional request for arrest and surrender which may be necessary for the arrest and surrender of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi to the Court pursuant to articles 89 and 91 of the Statute, and if the circumstances so require, to prepare and transmit a request for provisional arrest in accordance with article 92 of the Statute;

FURTHER DIRECTS the Registrar, pursuant to article 89(3) of the Statute, to prepare and transmit to any State any request for transit which may be necessary for the surrender of Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi to the Court;

ORDERS the Prosecutor to transmit to the Chamber and to the Registry, as far as his confidentiality obligations allow, all information available to him that may assist in averting any risks to victims or witnesses associated with the transmission of the above-mentioned cooperation requests;

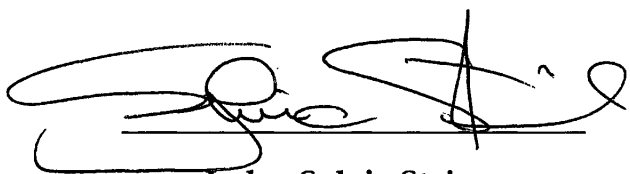
ORDERS the Prosecutor to transmit to the Chamber and to the Registry, as far as his confidentiality obligations allow, all information available to him that, in his view, would facilitate the transmission and execution of the above-mentioned cooperation requests.

Done in English, French and Arabic, the English version being authoritative.

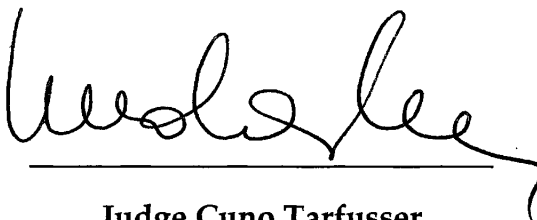


Judge Sanji Mmasenono Monageng

Presiding Judge



Judge Sylvia Steiner



Judge Cuno Tarfusser

Dated this Monday 27 June 2011

At The Hague, The Netherlands