



Original: English

No. ICC-01/15

Date: 24 June 2022

Date of the public redacted version: 30 June 2022

PRE-TRIAL CHAMBER I

Before:

**Judge Péter Kovács, Presiding Judge
Judge Reine Adélaïde Sophie Alapini-Gansou
Judge María del Socorro Flores Liera**

SITUATION IN GEORGIA

Public

Public redacted version of ‘Arrest warrant for Gamlet Guchmazov’

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

The Office of the Prosecutor

Mr Karim A. A. Khan
Ms Nazhat Shameen Khan
Mr Anton Steynberg

Counsel for the Defence

Legal Representatives of Victims

Legal Representatives of Applicants

Unrepresented Victims

**Unrepresented Applicants for
Participation/Reparations**

**The Office of Public Counsel
for Victims**

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

States Representatives

Amicus Curiae

REGISTRY

Registrar
Peter Lewis

Counsel Support Section

Victims and Witnesses Unit

Detention Section

**Victims Participation and
Reparations Section**

Other

PRE-TRIAL CHAMBER I (the ‘Chamber’) of the International Criminal Court (the ‘Court’) issues this warrant of arrest pursuant to article 58 of the Rome Statute (the ‘Statute’) for

Gamlet GUCHMAZOV,¹

a national of Russia and presumably Georgia, born on 9 July 1976 in South Ossetia, Georgia; head of the preliminary detention facility in Tskhinvali (the ‘KPZ’ or the ‘Isolator’) at the relevant time.² Last known passport number: 516192265 (valid from 23 May 2016 to 23 May 2021).

I. Procedural history

1. On 10 March 2022, the Office of the Prosecutor (the ‘Prosecutor’) applied for the issuance of a warrant of arrest (the ‘Application’)³ for Mr Gamlet Guchmazov (‘Mr Guchmazov’) for the following crimes within the Court’s jurisdiction committed in and around the territory of South Ossetia, Georgia, between 8 and 27 August 2008:

- (i) unlawful confinement (article 8(2)(a)(vii)-2 of the Statute);
- (ii) torture (article 8(2)(a)(ii)-1 of the Statute);
- (iii) inhuman treatment (article 8(2)(a)(ii)-2 of the Statute);
- (iv) outrages upon personal dignity (article 8(2)(b)(xxi) of the Statute);
- (v) hostage taking (article 8(2)(a)(viii) of the Statute); and
- (vi) unlawful transfer (article 8(2)(a)(vii)-1 of the Statute).⁴

II. Jurisdiction and admissibility

2. The Chamber finds that, pursuant to article 19(1), first sentence, of the Statute, on the basis of the materials submitted and without prejudice to future determinations

¹ First and last names alternatively spelled as ‘Hamlet’ and ‘Kuchmazov’, respectively.

² For a photograph, *see* Annex 9b of Prosecutor’s application pursuant to article 58 for warrants of arrest against Mikhail MINDZAEV, Gamlet GUCHMAZOV and David SANAKOEV, ICC-01/15-34-Conf-Exp (confidential, *ex parte*, only available to the Prosecution with public annexes 1-5, 9 and confidential, *ex parte*, annexes 6-8) (public redacted version notified on the same day, ICC-01/15-34-Red).

³ Prosecutor’s application pursuant to article 58 for warrants of arrest against Mikhail MINDZAEV, Gamlet GUCHMAZOV and David SANAKOEV, ICC-01/15-34-Conf-Exp (confidential, *ex parte*, only available to the Prosecution with public annexes 1-5, 9 and confidential, *ex parte*, annexes 6-8) (public redacted version notified on the same day, ICC-01/15-34-Red).

⁴ Application, paras 1-3.

on the matter, the case against Mr Guchmazov falls within the jurisdiction of the Court.⁵ The Chamber is satisfied that the incidents described in the Application amount to war crimes that have taken place between 8 and 27 August 2008, in or around South Ossetia, on the territory of Georgia (article 12(2)(a) of the Statute) and were associated with the conflict underlying the decision of the Chamber authorising the opening of an investigation.⁶

3. The Chamber declines, at this stage, to use its discretionary *proprio motu* power pursuant to article 19(1), second sentence, of the Statute to determine the admissibility of the case against Mr Guchmazov as there is no ostensible cause or self-evident factor which impels it to do so.⁷

III. Standard of proof

4. The Chamber's findings of facts, as set out below, are made based on the relevant evidentiary standard, namely 'reasonable grounds to believe', as required by article 58(1)(a) of the Statute. The evidence must only establish a reasonable conclusion that the person committed a crime within the jurisdiction of the Court. This need not be the only reasonable conclusion that can be drawn from the evidence.⁸

⁵ Appeals Chamber, *Prosecutor v Thomas Lubanga Dyilo*, Judgment on the Appeal of Mr. Thomas Lubanga Dyilo against the Decision on the Defence Challenge to the Jurisdiction of the Court pursuant to article 19(2)(a) of the Statute of 3 October 2006, 14 December 2006, ICC-01/04-01/06-772, paras 21-22.

⁶ Pre-Trial Chamber I, Decision on the Prosecutor's request for authorization of an investigation, 27 January 2016, ICC-01/15-12, para. 64 and p. 26.

⁷ See Appeals Chamber, *Situation in the Democratic Republic of the Congo*, Judgment on the Prosecutor's appeal against the decision of Pre-Trial Chamber I entitled "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58", 13 July 2006, ICC-01/04-169, paras 1-2, 52. See e.g. Pre-Trial Chamber I, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Warrant of Arrest for Omar Hassan Ahmad Al Bashir, 4 March 2009, ICC-02/05-01/09-1, p. 4; *The Prosecutor v. Callixte Mbarushimana*, Decision on the Prosecutor's Application for a Warrant of Arrest against Callixte Mbarushimana, 28 September 2010, ICC-01/04-01/10-1, para. 9; *The Prosecutor v. Ahmad Al Faqi Al Mahdi*, Mandat d'arrêt à l'encontre d'Ahmad Al Faqi Al Mahdi, 18 September 2015, ICC-01/12-01/15-1-Red, para. 12.

⁸ Appeals Chamber, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Judgment on the appeal of the Prosecutor against the 'Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir', 3 February 2010, ICC-02/05-01/09-73 (OA), paras 33, 39. See also Pre-Trial Chamber II, *The Prosecutor v. Sylvestre Mudacumura*, Decision on the Prosecutor's Application under Article 58, 13 July 2012, ICC-01/04-01/12-1-Red (confidential version issued on the same day), para. 19.

IV. Requirements of article 58(1) of the Statute

1. *Whether Mr Guchmazov has committed a crime within the jurisdiction of the Court (Article 58(1)(a) of the Statute)*

(a) **The conflict and parties involved and the contextual elements of war crimes**

5. The requested warrant of arrest concerns war crimes listed in Article 8(2)(a) and (b) of the Statute. The Prosecutor submits that the contextual elements for the alleged war crimes have been fulfilled throughout the relevant period, namely between 8 to 27 August 2008.⁹ For each of the war crimes alleged, the following two requirements must be established: (i) the conduct took place in the context of and was associated with an international armed conflict; and (ii) the perpetrator was aware of the factual circumstances that established the existence of an armed conflict.¹⁰

6. The Application discusses Russian occupation of Georgian territory.¹¹ An occupation does not immediately commence upon the overtaking of territory by the armed forces of the enemy, as the territory has to be ‘actually placed under the authority of the hostile army’.¹² However, the Chamber does not need to assess the start of any alleged occupation, because the war crimes alleged do not require the existence of an occupation,¹³ but merely the application of international humanitarian law (‘IHL’) for international armed conflicts to the conduct. An international armed conflict exists in case of declared war, in case of resort to armed force between two or more States, or a belligerent occupation.¹⁴

⁹ Application, para. 23.

¹⁰ Elements of Crimes, Introduction to Article 8; and elements 5 and 6 of article 8(2)(a)(ii)-1; elements 4 and 5 of article 8(2)(a)(ii)-2, article 8(2)(a)(vii)-1, and article 8(2)(a)(vii)-2; elements 6 and 7 of article 8(2)(a)(viii); and elements 3 and 4 of article 8(2)(b)(xxi).

¹¹ Application, paras 12, 26. *See also* para. 11 referring to GEO-OTP-0047-6804 (ECHR, *Case of Georgia v. Russia*, Judgment (Grand Chamber), 21 January 2021, Application no. 38263/08). The judgment of the ECHR contains a broad analysis of the events before it, including the legal nature of the occupation.

¹² Article 42 of the Hague Regulations of 1907. Determining whether an invasion by hostile armed forces has developed into a situation of occupation ‘is a question of fact’. United States Tribunal at Nuremberg, *Hostages trial*, Law Reports of Trial of War Criminals, Vol. III, UN War Crimes Commission, 1949, London, p. 55; ICJ, *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, Judgment, 19 December 2005, para. 173; and *Prosecutor v. Naletilić and Martinović*, Trial Judgment, 31 March 2003, IT-98-34-T, para. 211.

¹³ *See* the elements of crimes listed in n. 10 above.

¹⁴ Common Article 2 of the four Geneva Conventions of 1949.

7. For the purposes of the present consideration, it only needs to be noted that Russian and Georgian forces were engaged in hostilities from 8 August 2008 onwards, and that, subsequently, Russian forces remained on the territory of Georgia without Georgian consent.¹⁵ The Chamber is therefore satisfied that the evidence shows, to the requisite standard, that an international armed conflict existed from at least 8 August 2008 onwards and for the duration of the period relevant to this Application.

8. To consider whether a nexus between the alleged conduct and the international armed conflict between Russia, fighting together with South Ossetian forces, on the one hand and Georgia on the other, exists; in other words, whether IHL for international armed conflicts was applicable to the alleged conduct, the Chamber may consider, *inter alia*: (i) the status of the alleged perpetrators and victims, and whether they had a role in the fighting; (ii) whether the act may be said to serve the ultimate goal of a military campaign; and (iii) whether the crime is committed as part of, or in the context of, the perpetrator's official duties.¹⁶

9. The alleged crimes took place during the aforementioned armed conflict, in the South Ossetian part of Georgia. The information provided by the Prosecutor indicates that members of the Russian armed forces and South Ossetian security forces were involved at various stages of the alleged crimes, including the arrests and the exchange of the detainees.¹⁷ As discussed below where the Chamber considers the alleged crimes, the arrested civilians were perceived as being part of, or aligned with, Russia's enemy, namely Georgia,¹⁸ and part of them were interrogated on their supposed status as Georgian army reservists.¹⁹ Moreover, the exchange served, in part, to have Russian prisoners of war, and the bodies of Russian soldiers, returned to Russia. The alleged conduct of Mr Guchmazov in relation to the alleged crimes was carried out as part of his official capacity as the Head of the KPZ. The Chamber is therefore satisfied that there are reasonable grounds to believe that the alleged conduct took place in the context of the aforementioned international armed conflict, was also associated with

¹⁵ See, e.g. GEO-OTP-0002-7599, GEO-OTP-0002-7736, GEO-OTP-0002-1113.

¹⁶ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Judgment on the appeal of Mr Ntaganda against the "Second decision on the Defence's challenge to the jurisdiction of the Court in respect of Counts 6 and 9", ICC-01/04-02/06-1962, 15 June 2017, para. 68, referring to ICTY, *The Prosecutor v. Kunarac, Kovač, and Vuković*, Appeal Judgment, 12 June 2002, IT-96-23 and IT-96-23/1-A., para. 59.

¹⁷ See e.g. paras 12, 20, 32 below.

¹⁸ See para. 16 below.

¹⁹ See para. 21 below.

it, and IHL applicable during such conflicts applied to it; and this body of law could thus be violated.

10. Given the standard of analysis, the Chamber need not consider, for the purposes of the present decision, whether the situation in addition qualified as an occupation by Russia, or whether a non-international armed conflict existed alongside the aforementioned international armed conflict; and whether the alleged conduct, or part thereof, also or instead took place in the context of a non-international armed conflict.

11. As the alleged conduct took place during the height of the 2008 conflict, and given the position of the perpetrators on the ground and of Mr Guchmazov, the Chamber is satisfied that there are reasonable grounds to believe that the suspect was aware of the factual circumstances that established the existence of the aforementioned conflict.

(b) The crimes

(i) Unlawful confinement (article 8(2)(a)(vii) of the Statute)

12. Based on the evidence,²⁰ the Chamber finds reasonable grounds to believe that, between 10 and 12 August 2008, several villagers *perceived* as ethnic Georgians ('ethnic Georgians')²¹ or from mixed marriages, and who had not yet fled, were arrested in the Tskhinvali area, randomly in the streets or at home, by persons described as ethnic Ossetians dressed as policemen, in military uniforms, or in plain clothes, sometimes together with Russians or members of the Russian armed forces. Some of them were wearing white armbands meant to differentiate Russians and Ossetians from Georgians. Those arrests generally took place in a context of looting and/or the burning of houses by Ossetian militias and were conducted with a certain degree of violence, from discriminatory insults (such as 'Georgian pigs') to severe beatings. The persons arrested were brought to the KPZ detention centre where their

²⁰ P-0259, GEO-OTP-0041-0003; P-0246, GEO-OTP-0044-1085; P-0093, GEO-OTP-0020-1150; P-0161, GEO-OTP-0039-1003; P-0153, GEO-OTP-0028-0507; P-0213, GEO-OTP-0038-0281; GEO-OTP-0028-0507; P-0209, GEO-OTP-0039-0007; P-0211, GEO-OTP-0045-0348; P-0235, GEO-OTP-0039-0457; P-0266, GEO-OTP-0051-1033; P-0194, GEO-OTP-0032-1209; P-0354, GEO-OTP-0046-1589; P-0152, GEO-OTP-0028-0345; P-0194, GEO-OTP-0032-1209; P-0329, GEO-OTP-0044-1150; P-0333, GEO-OTP-0050-0002; P-0222, GEO-OTP-0039-0286; P-0208, GEO-OTP-0037-0102; P-0253, GEO-OTP-0050-0059; P-0285, GEO-OTP-0041-0991; GEO-OTP-0002-7736.

²¹ When using the term 'ethnic Georgians' or 'ethnic Ossetians' in the present decision, the Chamber refers to the way those persons are perceived by others, and will not be referring to an ethnicity that would exist *per se*.

personal items were seized, and where they remained in confinement between five to 18 days, before being brought to a check point where they would be handed over to the Georgian authorities in the context of the exchanges described below.²²

13. Although the elements of the war crime of unlawful confinement do not address this issue, the Chamber notes that IHL expressly provides for the possibility to detain civilians. In order to analyse whether the alleged confinement was ‘unlawful’, the Chamber must consider whether the confinement was in accordance, or instead contrary, to the relevant provisions of IHL. Pursuant to article 42 of the Fourth Geneva Convention of 1949²³ (the ‘Fourth Geneva Convention’), ‘[t]he internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary’.²⁴ According to the case law of the International Criminal Tribunal for the former Yugoslavia (‘ICTY’), protected persons can only be detained if the detaining power has ‘serious and legitimate reasons to think that [those protected persons] may seriously prejudice its security’²⁵ or ‘reasonable grounds to believe that the security [of the Detaining Power] makes it absolutely necessary’.²⁶ Being a national of, or aligned with, an enemy party cannot in itself be considered as threatening the security of the party in whose control the person is.²⁷ An individualised assessment must be made for each civilian taken into detention, as to whether this person poses a *particular* security risk.²⁸

14. In case of an occupation, internment may only be resorted to for ‘imperative reasons of security’.²⁹ Any justification for detaining civilians under article 78 of the Fourth Geneva Convention thus requires the detaining power to adhere to a higher

²² See paras 32-36 below.

²³ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949, 75 United Nations Treaty Series 973.

²⁴ The Chamber notes that the Application only implicitly alleges that Russia was the detaining power.

²⁵ ICTY, *Prosecutor v. Delalić, Mucić, Delić, and Landžo*, Judgment, 16 November 1998, IT-96-21-T (‘*Čelebići* Trial Judgment’), paras 576, 1134. See also ICRC Commentary of 1958 to the Fourth Geneva Convention, p. 258.

²⁶ ICTY, *Prosecutor v. Kordić and Čerkez*, Judgment, 17 December 2004 (‘*Kordić and Čerkez* Appeal Judgment’), IT-95-14/2-A, para. 73.

²⁷ See ICRC Commentary of 1958 to the Fourth Geneva Convention, p. 258; and *Čelebići* Trial Judgment, para. 577.

²⁸ See ICRC Commentary of 1958 to the Fourth Geneva Convention, p. 258; and ICTY, *Prosecutor v. Delalić, Mucić, Delić, and Landžo*, Appeal Judgment, 20 February 2001, IT-96-21-A (‘*Čelebići* Appeal Judgment’), para. 327 quoting ICTY, *Čelebići* Trial Judgment, para. 1134. See also *Čelebići* Trial Judgment, para. 578; ICTY, *Kordić and Čerkez* Appeal Judgment, para. 284; *Prlić et al.*, IT-04-74-T, para. 135.

²⁹ Article 78 of the Fourth Geneva Convention.

threshold than when the law of occupation would not be applicable. The Chamber will therefore, at this stage, apply the lower standard of article 42 of the Fourth Geneva Convention to analyse the actions of the detaining power.

15. The Chamber finds that in the present case there are reasonable grounds to believe that the confinement of several civilians was unlawful, for the following reasons.

16. First, the Chamber finds that there are reasonable grounds to believe that approximately 170 persons were arrested and subsequently detained at the Isolator, and that the majority of them were civilians, amongst which many women and elderly persons, who found themselves in the hands of a party to the armed conflict³⁰ opposite to the party they were perceived to be aligned with (the Georgian Government),³¹ because of their perceived ethnic background. Therefore there are reasonable grounds to believe that the majority of the aforementioned persons were protected persons under the Fourth Geneva Convention.

17. There are reasonable grounds to believe that at least some of the persons detained at the Isolator did not pose a security threat at the relevant time,³² or that any

³⁰ GEO-OTP-0041-0263; GEO-OTP-0041-0268; GEO-OTP-0041-0272; GEO-OTP-0041-0279; GEO-OTP-0044-1051; GEO-OTP-0002-7736, para. 25; P-0235, GEO-OTP-0039-0457, paras 49, 54; P-0282, GEO-OTP-0043-1622, paras 91, 99; P-0354, GEO-OTP-0046-1589, paras 37, 143, 155; Application, Annex 8.

³¹ The Chamber notes that according to article 4 of the Geneva Convention IV, ‘protected persons’ are ‘persons [...] who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals’. The Chamber adopts the interpretation of this provision made in the consistent jurisprudence of the ICTY, according to which ‘protected persons should not be defined by the strict requirement of nationality, as opposed to more realistic bonds demonstrating effective allegiance to a party to a conflict, such as ethnicity’. See ICTY, *Prosecutor v. Brđanin*, Judgment, 1 September 2004, IT-99-36-T, para. 125. See also *Prosecutor v. Tadić*, Appeal Judgment, 15 July 1999, IT-94-1-A, paras 164-168; ICTY, *Prosecutor v. Aleksovski*, Judgment, 24 March 2000, IT-95-14/1-A, para. 152; *Čelebići* Appeal Judgment, paras 82-83; *Prosecutor v. Naletilić and Martinović*, Judgment, 31 March 2003, IT-98-34-T, paras 206-207. See also Pre-Trial Chamber I, *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Decision on confirmation of charges, 30 September 2008, ICC-01/04-01/07-717, paras 289-292.

³² See the reasoning of the ICTY Trial Chamber adopted in the *Čelebići* case, ICTY, *Čelebići* Trial Judgment, paras 1131-1134, 1132 (‘However, it is clear that the confinement of a number of the civilians detained in the Čelebići prison-camp cannot be justified by any means. While it must be recognised that a detaining power is given a large degree of discretion to determine the behaviour which it deems detrimental to its security, it is clear to the Trial Chamber that several of the civilians detained in the Čelebići prison-camp cannot reasonably have been considered to pose any sufficiently serious danger to the detaining forces as to warrant their detention.’); ICTY, *Čelebići* Appeal Judgment, para. 330 (‘It was open to the Trial Chamber to accept the evidence of a number of witnesses that they had not borne arms, nor been active in political or any other activity which would give rise to a legitimate concern that they posed a security risk.’).

such threat was analysed on an individual basis, as required by IHL.³³ Instead, there are reasonable grounds to believe that the confinement was rather a collective measure, taken against a specific group of people, based on perceived ethnicity (namely, Georgian). In this respect, the Chamber notes that some persons were randomly arrested in the street³⁴ or arrested in groups (for example, as an entire household) and then detained together.³⁵ At the moment of the arrest, the only question that appears to have been systematically asked is whether they were ‘Georgian’, which they answered in the affirmative before being brought to the detention centre.³⁶ Once detained at the Isolator, apart from the interrogations of some of the youngest male detainees,³⁷ the evidence does not show that an assessment of the individual situation of each detainee was made. Instead, there are reasonable grounds to believe that the intention was to arrest and detain at least some of them in order to exchange them later. Some persons were told, already at the time of the arrest, that they were captured in order to be exchanged³⁸ or overheard conversations between the persons arresting them that the arrested persons should stay alive because they could be useful.³⁹ Others were told during their detention that they were detained in order to be exchanged.⁴⁰

18. Although, as indicated by the Prosecutor,⁴¹ ensuring the physical security of the detained persons was, in some instances, put forward by the detaining power to justify the detained persons’ confinement, ensuring the physical protection of civilians does not provide a legal basis under IHL to confine such persons.

19. In light of the foregoing, the Chamber finds that there are reasonable grounds to believe that the holding of the majority of the protected persons at the Isolator, between 10 and 27 August 2008, amounts to the crime of unlawful confinement under article 8(2)(a)(vii) of the Statute.

³³ See *Čelebići* Trial Judgment, paras 577, 578, 1134 ; *Čelebići* Appeal Judgment, paras 327, 330.

³⁴ [REDACTED]; [REDACTED]; [REDACTED].

³⁵ [REDACTED]; [REDACTED].

³⁶ See e.g. P-0235, GEO-OTP-0039-0457 (in particular, see para. 72); P-0093, GEO-OTP-0020-1150, para. 64.

³⁷ [REDACTED]; [REDACTED]; [REDACTED].

³⁸ [REDACTED].

³⁹ [REDACTED]; [REDACTED]; See also [REDACTED].

⁴⁰ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁴¹ Application, n. 115. See in addition P-0209, GEO-OTP-0039-0007, paras 79-82; GEO-OTP-0051-0318; GEO-OTP-0047-1121.

- (ii) *Torture (article 8(2)(a)(ii) of the Statute), inhuman treatment (article 8(2)(a)(ii) of the Statute), and outrages upon personal dignity (article 8(2)(b)(xxi) of the Statute)*

20. There are reasonable grounds to believe that some of the detainees, in particular the younger male detainees, were beaten several times, insulted, threatened, humiliated, or otherwise mistreated during their confinement at the Isolator,⁴² including immediately upon arrival at the detention facility.⁴³ There are reasonable grounds to believe that KPZ guards, police officers, and soldiers kicked the detainees and used a variety of blunt objects to beat them.⁴⁴ Whereas the beatings varied in intensity and duration, they reportedly often resulted in clearly visible injuries, [REDACTED],⁴⁵ and some of the alleged victims also reported mental suffering as a consequence.⁴⁶

21. Some of the detainees were interrogated, beaten, or threatened with the purpose of bringing them to admit that they were reservists.⁴⁷ Some other detainees were told to [REDACTED], and were beaten when refusing to do so.⁴⁸ In addition, some detainees were beaten as a form of punishment, for example, as collective punishment for what ‘the Georgians had done’, [REDACTED], or for not (immediately) complying with instructions.⁴⁹

22. There are reasonable grounds to believe that some of the detainees, in particular the younger male detainees,⁵⁰ were forced⁵¹ to collect and, at times, to also bury decomposing corpses of Georgian soldiers, in unhygienic circumstances and without

⁴² See, for example, [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. With regard to the dates, see [REDACTED]; and [REDACTED]. For [REDACTED], see [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See also [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁴³ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁴⁴ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See also [REDACTED]; [REDACTED]; [REDACTED].

⁴⁵ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See also [REDACTED].

⁴⁶ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁴⁷ [REDACTED]; [REDACTED]. See also [REDACTED]. See further [REDACTED].

⁴⁸ [REDACTED]; [REDACTED]; [REDACTED].

⁴⁹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See also [REDACTED]; [REDACTED].

⁵⁰ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁵¹ [REDACTED]; [REDACTED]. See also [REDACTED]. See also [REDACTED]; [REDACTED], [REDACTED]. [REDACTED], see [REDACTED]; [REDACTED], also referring to [REDACTED], [REDACTED], and [REDACTED]. See further [REDACTED]; [REDACTED]; [REDACTED].

protective equipment.⁵² Notably, the detainees were forced to collect and/or to bury corpses with their bare hands, and were not able to wash themselves after performing this work,⁵³ even though the bodies had been decomposing in the summer heat for several days.⁵⁴ When being taken out for work some of the detainees were harassed, insulted, and assaulted by the local population.⁵⁵

23. There are reasonable grounds to believe that the conditions in which the detainees were held were poor, in particular during the first days:⁵⁶ the cells were overcrowded;⁵⁷ sanitary facilities were either inexistent or did not allow for privacy;⁵⁸ and medical attention⁵⁹ for those who required treatment was limited.⁶⁰ Further, during the initial days of the detention, some detainees received no food and water, or only small amounts of dirty water.⁶¹ Later, the nutritional conditions improved slightly but the quantities of water and food provisions remained small.⁶² Due to the

⁵² [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. *See also* [REDACTED].

⁵³ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁵⁴ [REDACTED]; [REDACTED]; [REDACTED].

⁵⁵ [REDACTED]; [REDACTED]. [REDACTED]. [REDACTED]. However, as also acknowledged by the Prosecutor at paragraphs 42 and 63 of the Application, some of the guards appear to have intervened to protect the detainees. *See* [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED]; [REDACTED].

⁵⁶ P-0246, GEO-OTP-0044-1085, para. 175; P-0214, GEO-OTP-0051-1091, para. 82.

⁵⁷ P-0312, GEO-OTP-0044-0540, para. 132.

⁵⁸ P-0201, GEO-OTP-0046-0002, para. 108; P-0246, GEO-OTP-0044-1085, para. 175; P-0153, GEO-OTP-0028-0507, para. 125; P-0161, GEO-OTP-0039-1003, para. 80; P-0231, GEO-OTP-0044-1355, para. 48; P-0211, GEO-OTP-0045-0348, para. 170.

⁵⁹ P-0491, GEO-OTP-0047-4533, paras 135-137; P-0261, GEO-OTP-0047-5883, paras 93-99; P-0235, GEO-OTP-0039-0457, paras 105-109; P-0194, GEO-OTP-0032-1209, paras 252-253; P-0258, GEO-OTP-0042-0646, paras 119-121, 124; P-0362, GEO-OTP-0048-0049, paras 181-183; P-0238, GEO-OTP-0041-0063, para. 254; P-0093, GEO-OTP-0020-1150, para. 104; P-0208, GEO-OTP-0037-0102, paras 95-96; P-0144, GEO-OTP-0024-0066, para. 127; P-0184, GEO-OTP-0035-0539, paras 44-46, 56, 62, 70; P-0253, GEO-OTP-0050-0059, para. 53; P-0360, GEO-OTP-0046-1623, paras 76-78; P-0209, GEO-OTP-0039-0007, para. 86; P-0153, GEO-OTP-0028-0507, paras 167-169; P-0222, GEO-OTP-0039-0286, paras 143-145; P-0231, GEO-OTP-0044-1355, paras 83-87.

⁶⁰ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁶¹ P-0222, GEO-OTP-0039-0286, para. 139; P-0153, GEO-OTP-0028-0507, para. 130; P-0246, GEO-OTP-0044-1085, para. 175; P-0207, GEO-OTP-0047-7710, paras 24-29; P-0360, GEO-OTP-0046-1623, para. 96.

⁶² P-0362, GEO-OTP-0048-0049, paras 162, 165-166; P-0209, GEO-OTP-0039-0007, paras 83-84, 90; P-0312, GEO-OTP-0044-0540, paras 128-129; P-0184, GEO-OTP-0035-0539, paras 66-68; P-0093, GEO-OTP-0020-1150, paras 102, 106; P-0201, GEO-OTP-0046-0002, paras 110-111; P-0246, GEO-OTP-0044-1085, para. 176; P-0194, GEO-OTP-0032-1209, paras 188, 197; P-0491, GEO-OTP-0047-4533, paras 67-68, 70; P-0152, GEO-OTP-0028-0345, paras 188, 196; P-0161, GEO-OTP-0039-1003, paras 83, 87; P-0231, GEO-OTP-0044-1355, paras 60-62; P-0228, GEO-OTP-0046-1679, paras 89, 91; P-0208, GEO-OTP-0037-0102, para. 85; P-0359, GEO-OTP-0048-0017, para. 135; P-0213, GEO-OTP-0038-0281, para. 66; P-0360, GEO-OTP-0046-1623, paras 96-97; P-0222, GEO-OTP-0039-0286, para.

overcrowding, the kerosene-operated power generator and the intense summer heat, the air quality was extremely poor, rendering it difficult to breathe.⁶³

24. The conditions of detention reportedly improved slightly⁶⁴ after [REDACTED] on 23 and/or 24 August 2008.⁶⁵ After [REDACTED], the mistreatment of the detainees also decreased.⁶⁶

25. As established above,⁶⁷ there are reasonable grounds to believe that the majority of the individuals held at the Isolator, in the aforementioned poor conditions, were protected persons. In light of the repeated beatings, some of which resulted in clearly visible injuries, the repeated insults and threats, detainees being forced to work, and the general detention conditions, causing an atmosphere of anxiety, the Chamber finds that there are reasonable grounds to believe that severe physical or mental pain and suffering was inflicted upon several detainees (Elements of Crimes, article 8(2)(a)(ii)-2 of the Statute, element 1). In some of these cases, the pain or suffering appears to have been inflicted to obtain confessions of the detainees that they were reservists, or as a form of punishment, and/or to coerce the detainees to comply with instructions (Elements of Crimes, article 8(2)(a)(ii)-1 of the Statute, element 2). For these reasons, the Chamber finds reasonable grounds to believe that the aforementioned mistreatment of the detained individuals amounts to the crimes of inhuman treatment and torture pursuant to article 8(2)(a)(ii) of the Statute.

26. Furthermore, the Chamber recalls its above findings that the detainees were subjected to constant insults and poor detention conditions, with a lack of privacy in sanitary facilities, and that some detainees were subjected to forced work, which entailed the detainees having to collect the decomposing bodies of Georgian soldiers,

141; P-0153, GEO-OTP-0028-0507, para. 146; P-0223, GEO-OTP-0037-0600, para. 48; P-0253, GEO-OTP-0050-0059, para. 52; P-0235, GEO-OTP-0039-0457, paras 84, 88; P-0258, GEO-OTP-0042-0646, para. 107. *See also* P-0491, GEO-OTP-0047-4533, paras 68-69; P-0285, GEO-OTP-0041-0991, para. 124; P-0235, GEO-OTP-0039-0457, para. 88; P-0266, GEO-OTP-0051-1033, para. 185; P-0213, GEO-OTP-0038-0281, para. 66; P-0211, GEO-OTP-0045-0348, para. 342.

⁶³ P-0194, GEO-OTP-0032-1209, paras 186, 189; P-0312, GEO-OTP-0044-0540, para. 133; P-0235, GEO-OTP-0039-0457, para. 89; P-0161, GEO-OTP-0039-1003, para. 89; P-0153, GEO-OTP-0028-0507, para. 125; P-0491, GEO-OTP-0047-4533, paras 53, 69; P-0440, GEO-OTP-0047-7678, para. 47.

⁶⁴ [REDACTED].

⁶⁵ [REDACTED], GEO-OTP-0038-0307; [REDACTED], GEO-OTP-0047-5987; [REDACTED], GEO-OTP-0046-0043; [REDACTED], GEO-OTP-0039-0495; [REDACTED], GEO-OTP-0048-0079; and [REDACTED], GEO-OTP-0032-1261.

⁶⁶ P-0238, GEO-OTP-0041-0063, para. 235.

⁶⁷ *See* para. 16 above.

not only in unhygienic circumstances but also while being watched, harassed and insulted by the local population.⁶⁸ This treatment of the detainees was severely degrading and humiliating in nature. Accordingly, the Chamber finds reasonable grounds to believe that detainees were severely humiliated, degraded or their dignity was otherwise violated (Elements of Crimes, article 8(2)(b)(xxi) of the Statute, elements 1 and 2), and is satisfied that the supporting evidence is sufficient to establish reasonable grounds to believe that the crime of outrages upon personal dignity was committed.

(iii) Hostage taking (article 8(2)(a)(viii) of the Statute)

27. The Chamber has found that there are reasonable grounds to believe that approximately 170 persons were detained at the Isolator,⁶⁹ the majority of which were protected persons, and that from those detainees, at least 110 were transferred and handed over to the Georgian authorities between 21 and 27 August 2008.⁷⁰

28. The evidence⁷¹ further shows that prior to this transfer, starting around 12 August 2008, negotiations took place in Gori, between Georgian representatives, the Russian representative General Borisov, and the South Ossetian *de facto* authorities, represented by Mr Sanakoev. They discussed the release and ‘exchange’ of prisoners of war, corpses of deceased soldiers, but also of detained civilians. On the Russian/South Ossetian side, General Borisov was leading the negotiations. The Russian/South Ossetian side primary request concerned the release of Russian pilots, then other prisoners of war, and third South Ossetian militants or ‘*boyeviks*’; but also of General Dumbadze, detained for reasons other than the 2008 conflict, and South Ossetian persons convicted by the Georgian courts for serious crimes and serving their prison terms in Georgia, including the persons found responsible for an attack on a police building in Gori in 2005.

29. The Georgian side did not immediately agree to release General Dumbadze and the convicted persons, in particular those convicted for terrorist acts under Georgian domestic law before the 2008 conflict. In this context, the Russian/South Ossetian side

⁶⁸ See paras 20, 22-23 above.

⁶⁹ See para. 16 above.

⁷⁰ See para. 32 below.

⁷¹ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

leveraged the detention of the protected persons by threatening to continue to detain them in order to compel Georgian authorities to release convicted criminals as a condition for their release.⁷² On 21 August 2008, 59 women and elderly persons were handed over to the Georgian authorities and a promise was made to release 100 more civilians, while a list of 50 Ossetian convicts, who were serving their prison terms in Georgian prisons, was presented.⁷³ The Georgian side requested time to check the list and to consider applying presidential pardons, and the Russian/South Ossetian side made clear that during that time (until the release of the convicted persons), the promised 100 civilians would not be released and that it would be Georgia's fault if they die in the Isolator.⁷⁴ Partly because they were worried about the faith of the civilian detainees, the Georgian side eventually agreed to release General Dumbadze and Ossetians convicts and at least nine of them were exchanged on 27 August 2008 on the basis of presidential pardons or plea agreements.⁷⁵

30. Based on the foregoing, the Chamber finds that there are reasonable grounds to believe that the detainees were used as a bargaining tool in the negotiations. In addition, the Chamber recalls that the intention to hold civilian prisoners in order to use them for exchanges already seems to have been present at the moment of the arrests.⁷⁶

31. The Chamber finds that there are reasonable grounds to believe that detaining and threatening to continue to detain the protected persons in order to compel the Georgian authorities to release Ossetian convicts amounts to the crime of hostage taking pursuant to article 8(2)(a)(viii) of the Statute.

⁷² [REDACTED]; [REDACTED]; [REDACTED].

⁷³ [REDACTED]; [REDACTED]; GEO-OTP-0044-1051 (non-official translation) (*'il reste encore une centaine de personnes, nous allons négocier pour les échanger contre les Ossètes qui sont en Géorgie'*). See also [REDACTED].

⁷⁴ [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED].

⁷⁵ [REDACTED]; [REDACTED]; [REDACTED]. Compare Exchange Protocol dated 27 August 2008: GEO-OTP-0040-0078 (translation at GEO-OTP-0041-0278) with Presidential Decree to grant pardon to convicts GEO-OTP-0047-4386; GEO-OTP-0047-4399; GEO-OTP-0047-4403; GEO-OTP-0047-4393; GEO-OTP-0047-4397; GEO-OTP-0047-4407; GEO-OTP-0047-9968 GEO-OTP-0047-4411.

⁷⁶ See para. 17, n. 38, 39 above.

(iv) *Unlawful transfer (article 8(2)(a)(vii) of the Statute)*

32. The evidence⁷⁷ shows a reasonable basis to believe that between 21 and 27 August 2008 at least 110 persons,⁷⁸ amongst them protected persons,⁷⁹ were transferred from the Isolator to the Georgian authorities: on 21, 22, 24, and 27 August 2008. They were put in ‘Ossetian’ or ‘Russian’ buses, escorted by police officers and members of the Russian armed forces, taken to Gori and Karaleti, where they were handed over there to the Georgian authorities, who would take them to Tbilisi in Georgian buses. On the South Ossetian side, the exchanges were organised and decided by Mr Borisov and Mr Sanakoev, and implemented by members of the Russian armed forces, South Ossetian police officers, and Ossetians in plain clothes.

33. The Elements of Crimes require a perpetrator to have transferred one or more protected persons to another location. As the transfer must be ‘unlawful’, it must be made in violation of IHL. Article 8(2)(a)(vii)-1 of the Statute is based on the prohibition laid down in article 49 of the Fourth Geneva Convention.⁸⁰ Therefore, to interpret the unlawfulness component of the war crime, the Chamber must have regard to the aforementioned provision of the Fourth Geneva Convention. Article 49 of the Fourth Geneva Convention prohibits individual or mass forcible transfers of civilians, although a total or partial evacuation is permitted ‘if the security of the population or imperative military reasons so demand’. However, the handover of the civilians to the Georgian authorities cannot qualify as such an evacuation given that they were detained prior to the handover, and since no hostilities were taking place in the

⁷⁷ See the following exchange protocols: GEO-OTP-0040-0066 (translation GEO-OTP-0041-0263); GEO-OTP-0040-0070 (translation GEO-OTP-0041-0268); GEO-OTP-0041-0273 (translation GEO-OTP-0041-0272); GEO-OTP-0041-0278 (translation GEO-OTP-0041-0279). See also P-0246, GEO-OTP-0044-1085; P-0231, GEO-OTP-0044-1355; P-0153, GEO-OTP-0028-0507; P-0161, GEO-OTP-0039-1003; P-0208, GEO-OTP-0037-0102; P-0359, GEO-OTP-0048-0017; P-0093, GEO-OTP-0047-9072; P-0209, GEO-OTP-0039-0007; P-0235, GEO-OTP-0039-0457; P-0266, GEO-OTP-0051-1033; P-0282, GEO-OTP-0043-1622; P-0354, GEO-OTP-0046-1589; P-0223, GEO-OTP-0037-0006; GEO-OTP-0002-7736, para. 97; GEO-OTP-0002-7736.

⁷⁸ See Application, para. 94 and evidence referred therein.

⁷⁹ See para. 16 above.

⁸⁰ Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Court: Sources and Commentary* (Cambridge University Press 2002), pages 106-109.

relevant area at the relevant time.⁸¹ The Chamber notes that it is clear from the evidence that the present transfers did not relate to any of those two specific cases.⁸²

34. Indeed, while there is a reasonable basis to believe that one of the goals of the exchange was to obtain the release of ethnic Ossetians detained in Georgia,⁸³ there is also a reasonable basis to believe that a further aim was to permanently remove perceived ethnic Georgians from the territory of South Ossetia.⁸⁴

35. Additionally, the Chamber notes that, in order to constitute a violation of article 49 of the Fourth Geneva Convention, and thus amount to unlawful transfer, the transfer needs to be either (i) ‘forced’, or; (ii) based on a decision by the transferred person, which, given the circumstances, was not genuine.⁸⁵ In respect of (i), the evidence shows that in the present case the transferred persons were not asked whether they agreed to be transferred,⁸⁶ but rather simply forced to leave irrespective of their intentions.⁸⁷ In respect of (ii), whereas some of the detainees accepted to sign a document stating that they agreed to be handed over to the Georgian authorities, the Chamber is of the view that the circumstances prevailing at the moment of the transfer,⁸⁸ coupled with the fact that the detainees were not offered any genuine alternative options, impeded any genuine consent to be transferred on their part. Notably, the evidence shows that the majority of the transferred detainees were told

⁸¹ The present transfers took place between 21 and 27 August 2008, so days after a ceasefire agreement was signed on 12 August 2008 and after the cessation of armed hostilities.

⁸² The Chamber notes that the assistance of humanitarian organisations in the transfer have no bearing on the lawfulness or unlawfulness of the transfer. *See* ICTY, *Prosecutor v. Stakić*, Judgment, 31 July 2003, IT-97-24-T, para. 683.

⁸³ *See* para. 28 above. P-0266, GEO-OTP-0051-1033; P-0208, GEO-OTP-0037-0102, para. 111; P-0253, GEO-OTP-0050-0059, para. 82; P-0485, GEO-OTP-0047-6110, para. 151; P-0093, GEO-OTP-0047-9072, paras 12-17; P-0161, GEO-OTP-0039-1003, para. 124; P-0223, GEO-OTP-0037-0600, paras 101, 122.

⁸⁴ When President Eduard Kokoity, the then President of *de facto* South Ossetia authorities, was asked on 26 August 2008 if Georgian civilians will be allowed to return, he declared publicly ‘we do not intend to let anybody in here anymore. More than 18000 Ossetian refugees from Georgia are currently in North Ossetia. They are to be returned to South Ossetia’ (the translation from original Russian to French is even more explicit ‘*Nous n’avons pas l’intention de laisser rentrer qui que ce soit.*’). GEO-OTP-0005-0100, p. 0102. *See also* P-0354, GEO-OTP-0046-1589, paras 177-183; P-0077, GEO-OTP-0017-0572, paras 132-134; P-0139, GEO-OTP-0022-2002, para. 211; GEO-OTP-0043-1118.

⁸⁵ *See e.g.* ICTY, *Prosecutor v. Krstić*, Judgment, 2 August 2001, 98-33-T, paras 528-530.

⁸⁶ P-0093, GEO-OTP-0047-9072, para. 15; P-0208, GEO-OTP-0037-0102, para. 111; P-0253, GEO-OTP-0050-0059, paras 80-82; P-0246, GEO-OTP-0044-1085, para. 259; P-0209, GEO-OTP-0039-0007, para. 136; P-0228, GEO-OTP-0046-1679, para. 160; P-0223, GEO-OTP-0037-0006, para. 101.

⁸⁷ P-0231, GEO-OTP-0044-1355, paras 110-111.

⁸⁸ *See* paras 20-23 above. For example, one witness explained later to the Prosecution that, due to the conditions in which he was detained and the fact that he felt that his life was threatened, at the time, he would have signed ‘any paper’ in order to be released. *See* P-0194, GEO-OTP-0047-9627, paras 40, 41.

from one day to another that they would be ‘released’ (meaning, transferred), without having been given the option of being released to go home (without being transferred): their release was therefore conditioned to the acceptance of being transferred.⁸⁹

36. Based on the foregoing, the Chamber finds that there are reasonable grounds to believe that the transfer of the at least 110 persons – the majority of which were protected persons – amounts to the crime of unlawful transfer of civilians pursuant to article 8(2)(a)(vii) of the Statute.

(c) Guchmazov’s conduct and personal responsibility

37. Mr Guchmazov was the police officer in charge of the KPZ detention centre: he was referred to as the ‘Head of the Isolator’, the ‘prison chief’, the ‘chief of the detention facility’ or in similar terms.⁹⁰ Mr Guchmazov is said to have reported directly to Mr Mindzaev,⁹¹ and to have had an office inside the building of the Ministry of Internal Affairs (the ‘MIA’), like Mr Mindzaev.⁹²

38. The Prosecutor alleges that Mr Guchmazov is responsible for the crime of unlawful confinement under article 25(3)(a) of the Statute as a direct and/or indirect perpetrator or alternatively as an aider and abettor under article 25(3)(c) of the Statute.

39. The Chamber finds that upon their arrival at the MIA building, some of the detainees were registered and searched, and some had their personal items, such as ID cards, telephones, additional clothes, and money confiscated, before being brought to their cells.⁹³ [REDACTED].⁹⁴ Mr Guchmazov was regularly present at the MIA building and frequently interacted with the detainees.⁹⁵ Mr Guchmazov and his deputy ‘Chiko’ gave orders to KPZ guards, including a guard named ‘Kolia’, who executed

⁸⁹ See e.g. P-0359, GEO-OTP-0048-0017, paras 169-170; P-0208, GEO-OTP-0037-0102, paras 107-108; P-0246, GEO-OTP-0044-1085, para. 259.

⁹⁰ P-0218, GEO-OTP-0042-0207, para. 37; P-0209, GEO-OTP-0039-0007, para. 61; P-0238, GEO-OTP-0041-0063, para. 248; P-0194, GEO-OTP-0032-1209, para. 228. See also P-0418, GEO-OTP-0050-0184, para. 113; and P-0201, GEO-OTP-0046-0002, para. 120.

⁹¹ P-0218, GEO-OTP-0042-0207, paras 37-39.

⁹² P-0238, GEO-OTP-0041-0063, para. 248; P-0211, GEO-OTP-0045-0348, paras 189-190, 436-437 and Annex 1: GEO-OTP-0045-0394.

⁹³ P-0418, GEO-OTP-0050-0184, paras 113-116; P-0266, GEO-OTP-0051-1033, paras 157-163; P-0258, GEO-OTP-0042-0646, paras 90-92; P-0235, GEO-OTP-0039-0457, paras 66-69; P-0209, GEO-OTP-0039-0007, paras 65, 67; P-0208, GEO-OTP-0037-0102, paras 69-73. Compare also P-0214, GEO-OTP-0051-1091, paras 77-80.

⁹⁴ [REDACTED]. See also [REDACTED].

⁹⁵ P-0209, GEO-OTP-0039-0007, paras 61, 69. See also P-0201, GEO-OTP-0046-0002, paras 120-122.

such orders, for example, to take detainees out of their cells and to bring them upstairs to work.⁹⁶

40. The Chamber finds reasonable grounds to believe that Mr Guchmazov was aware that some of the detained persons were civilians, who were not posing a security risk and therefore not detained in accordance with the Fourth Geneva Convention; and that he was therefore aware of the factual circumstances that established the protected status of these persons under IHL.

41. Based on the foregoing, the Chamber finds that there are reasonable grounds to believe that Mr Guchmazov is responsible for the crime of unlawful confinement under article 25(3)(a) of the Statute as a direct and indirect perpetrator, as head of the KPZ and through his control over the KPZ guards, who detained the protected persons in the KPZ facilities, or as an aider and abettor pursuant to article 25(3)(c) of the Statute.

42. The Prosecutor alleges that Mr Guchmazov is responsible for the crimes of torture, inhuman treatment, and outrages upon personal dignity as a direct and/or indirect perpetrator under article 25(3)(a) of the Statute, or as an aider and abettor under article 25(3)(c) of the Statute.⁹⁷ The Chamber finds that there are reasonable grounds to believe that Mr Guchmazov was not only present when detainees were being mistreated⁹⁸ but also directly mistreated some, including by severely beating them.⁹⁹ Mr Guchmazov was also said to be present when a detainee was forced to [REDACTED].¹⁰⁰ Based on the foregoing, the Chamber finds that there are reasonable grounds to believe that Mr Guchmazov is responsible for the crimes of torture, inhuman treatment, and outrages upon personal dignity, as a direct and indirect perpetrator pursuant to article 25(3)(a) of the Statute, or as an aider and abettor pursuant to article 25(3)(c) of the Statute.¹⁰¹

⁹⁶ [REDACTED]. *See also* [REDACTED].

⁹⁷ Application, para. 107.

⁹⁸ [REDACTED]; [REDACTED]. [REDACTED].

⁹⁹ [REDACTED]. *See also* [REDACTED].

¹⁰⁰ [REDACTED].

¹⁰¹ As to the temporal scope, the Chamber recalls that above it found reasonable grounds to believe that following the [REDACTED] to the KPZ, the treatment of the detained persons and the detention conditions improved slightly (*see* para. 24 above). However, any such improvement does not affect the Chamber's findings as to the personal responsibility of the suspect for the period prior to the [REDACTED].

43. The Prosecutor alleges that Mr Guchmazov is also responsible for the crimes of unlawful transfer of civilians and hostage taking under article 25(3)(d)(ii) of the Statute as a contributor to a common purpose encompassing the crimes of unlawful transfer and hostage taking.

44. The Chamber finds that the evidence shows that a group acting with a common purpose existed, aimed at securing the release of South Ossetians held by the Georgian authorities by threatening the continued detention of the detainees in the KPZ, and at transferring these perceived ethnic Georgians out of the territory of South Ossetia into Undisputed Georgian Territory, as part of the exchange. The Chamber also finds that the implementation of this common purpose involved the commission of criminal acts, namely the crimes of hostage taking and unlawful transfer of civilians (protected persons). The Chamber finds that the *de facto* President Mr Kokoity,¹⁰² Mr Borisov and Mr Sanakoev¹⁰³ were part of the group of persons sharing this common purpose and the intent to use criminal means (hostage taking and unlawful transfers) to achieve it.¹⁰⁴

45. The Chamber finds that by securing the confinement of the detained persons at the KPZ (who were later subject to the unlawful transfer and hostage taking) and their transfer¹⁰⁵ which was executed by some of the KPZ guards, Mr Guchmazov contributed ‘in any other way’ to the implementation of the common purpose and the crimes of hostage taking and unlawful transfer of civilians under article 25(3)(d) of the Statute.

46. The Chamber is further satisfied that Mr Guchmazov acted with the required intent and knowledge for the specific crimes set forth in this decision, and that he was

¹⁰² GEO-OTP-0005-0100, p. 0102; GEO-OTP-0028-0187.

¹⁰³ See para. 28 above.

¹⁰⁴ The Chamber finds that the information put before the Chamber does not allow it to make a finding that Mr Boris Chochiev or Mr Taymuraz Khugayev were part of the group. As regards Mr Boris Chochiev, see Application, para. 111, n. 295 referring to [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]. See in particular [REDACTED]. [REDACTED]; [REDACTED] show that he was present at different points in time at the KPZ detention facilities or that he wanted the Ossetian convicts brought back to Ossetia, but do not show that he shared the intent to use criminal means to reach such a purpose. As regards Mr Taymuraz Khugayev, see Application, para. 111, n. 296 and evidence referred therein.

¹⁰⁵ Mr Guchmazov ordered the detained individuals to line up and make a list, registering their names when they were being released, as he was also in charge and present during this process. [REDACTED].

aware of the factual circumstances that established the existence of the international armed conflict.

47. Accordingly, the Chamber finds that there are reasonable grounds to believe¹⁰⁶ that Mr Guchmazov is responsible for the crimes of: (i) unlawful confinement (article 8(2)(a)(vii) of the Statute) as a direct and indirect perpetrator pursuant to article 25(3)(a) of the Statute or as an aider and abettor pursuant to article 25(3)(c) of the Statute; (ii) torture (article 8(2)(a)(ii) of the Statute), inhuman treatment (article 8(2)(a)(ii) of the Statute), and outrages upon personal dignity (article 8(2)(b)(xxi) of the Statute) as a direct and indirect perpetrator pursuant to article 25(3)(a) of the Statute or as an aider and abettor pursuant to article 25(3)(c) of the Statute; hostage taking (article 8(2)(a)(viii) of the Statute) under article 25(3)(d)(ii) of the Statute; and (iv) unlawful transfer (article 8(2)(a)(vii) of the Statute) under article 25(3)(d)(ii) of the Statute.

2. *Whether the arrest of Mr Guchmazov appears necessary (Article 58(1)(b) of the Statute)*

48. The Prosecutor submits that the arrest of Mr Guchmazov is necessary to ensure his appearance before the Court. He submits that ‘the deliberate and callous nature of the crimes, their use as an instrument of policy, and their commission under the auspices of authority in South Ossetia leads to the reasonable conclusion that [Mr Guchmazov is] unlikely to cooperate with a summons to appear’.¹⁰⁷

49. The Chamber notes that it was not provided with an early notice of the intention of the Prosecutor to request the issuance of a warrant of arrest against the suspect and stresses the importance of providing such notice.¹⁰⁸ The Chamber also notes that the request was made public.

50. After evaluating the information submitted by the Prosecutor, including public statements made by high level officials of the Russian Federation and Georgia,¹⁰⁹ the

¹⁰⁶ The Chamber notes that not all of the evidence cited in support of the specific allegations contained in paragraphs 118-120 of the Application, concerning Mr Guchmazov’s individual criminal responsibility, supports the entirety of the allegations, as parts of the cited evidence either relates to another suspect, does not mention Mr Guchmazov, or does not exactly reflect the Prosecutor’s allegations.

¹⁰⁷ Application, para. 134.

¹⁰⁸ See Regulation 53(2) of the Regulations of the Office of the Prosecutor.

¹⁰⁹ Application, para. 135.

Chamber is satisfied that the arrest of Guchmazov is necessary within the meaning of article 58(1)(b)(i) of the Statute to ensure his appearance before the Court.

FOR THESE REASONS, THE CHAMBER HEREBY

ISSUES a warrant of arrest for **Mr Gamlet GUCHMAZOV**, a national of Russia and presumably Georgia (last known passport number: 516192265; valid from 23 May 2016 to 23 May 2021), born on 9 July 1976 in South Ossetia, Georgia, for his alleged criminal responsibility pursuant to article 25(3)(a) of the Statute as a direct and indirect perpetrator, for unlawful confinement (article 8(2)(a)(vii) of the Statute), torture and inhuman treatment (article 8(2)(a)(ii) of the Statute), and outrages upon personal dignity (article 8(2)(b)(xxi) of the Statute); and alternatively pursuant to article 25(3)(c) of the Statute, for unlawful confinement (article 8(2)(a)(vii) of the Statute), torture and inhuman treatment (article 8(2)(a)(ii) of the Statute), and outrages upon personal dignity (article 8(2)(b)(xxi) of the Statute); and article 25(3)(d)(ii) of the Statute, for hostage taking (article 8(2)(a)(viii) of the Statute) and unlawful transfer of civilians (article 8(2)(a)(vii) of the Statute), as war crimes committed between 8 and 27 August 2008, in whole or in part, on the territory of Georgia, as set forth in this warrant of arrest;

DIRECTS the Registrar to prepare a Russian and Georgian translation of the present warrant and transmit it to the Russian and Georgian embassies at the seat of the Court;

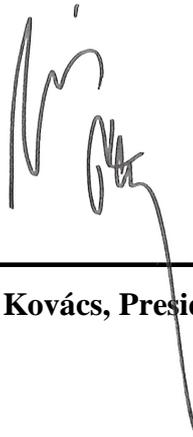
DECIDES that the Registrar shall, if at the indication of the Prosecutor a situation arises warranting to do so: (i) prepare a request for cooperation seeking the arrest and surrender of Mr Guchmazov and containing the information and documents required by articles 89(1) and 91 of the Statute and rule 187 of the Rules of Procedure and Evidence; (ii) transmit, in consultation and coordination with the Prosecutor, the request to the competent authorities of any relevant State, or to any international organisation, in accordance with article 87 of the Statute, to cooperate with the Court for the purpose of executing the request for arrest and surrender of Mr Guchmazov; and (iii) submit a progress report on the status of the execution of the request for cooperation no later than 15 days after the request is made;

DIRECTS the Registrar to prepare and transmit to any relevant State, in consultation and coordination with the Prosecutor, any request for transit pursuant to article 89(3) of the Statute or any request for provisional arrest pursuant to article 92 of the Statute which may be necessary for the surrender of Mr Guchmazov to the Court;

ORDERS the Office of the Prosecutor to transmit to the Registry all information available to it that may be of assistance in the execution of the request for arrest and surrender as well as any information of relevance to assessing any risks to victims and witnesses associated with the transmission of the request for arrest and surrender;

DIRECTS the Registrar to register the present decision in the record of the situation and to open a case record and transfer first the Application with all its annexes from the situation record into the case record once the suspect has made a voluntarily appearance, has surrendered, or has been arrested.

Done in English. Russian, Georgian, and French translations will follow. The English version remains authoritative.



Judge Péter Kovács, Presiding Judge



**Judge Reine Adélaïde Sophie
Alapini-Gansou**



**Judge María del Socorro
Flores Liera**

Dated this Thursday, 30 June 2022

At The Hague, The Netherlands