

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

No.: ICC-01/11
Date: 3 March 2025

PRE-TRIAL CHAMBER I

Before: Judge Iulia Motoc, Presiding Judge
Judge María del Socorro Flores Liera
Judge Reine Alapini-Gansou

SITUATION IN LYBIA

Public Document

**OPCV's Request to appear before the Chamber pursuant to
regulation 81(4) of the Regulations of the Court**

Source: Office of Public Counsel for Victims

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

☒ **The Office of the Prosecutor**

☐ **Counsel for the Defence**

☐ **Legal Representatives of the Victims**

☐ **Legal Representatives of the Applicants**

☐ **Unrepresented Victims**

☐ **Unrepresented Applicants
(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

Mr Osvaldo Zavala Giler

☐ **Counsel Support Section**

☐ **Victims and Witnesses Unit**

☐ **Detention Section**

☐ **Victims Participation and
Reparations Section**

☐ **Other**

I. INTRODUCTION

1. Pursuant to regulation 81(4) of the Regulations of the Court (the “Regulations”), the Principal Counsel of the Office of Public Counsel for Victims (the “OPCV” or the “Office”) requests to appear before the Pre-Trial Chamber to represent the general interests of Victims in relation to the “Prosecution's request for a finding of non-compliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM” (“Mr NJEEM” and the “Prosecution’s Request for a finding of non-compliance”).¹

2. The Republic of Italy’s failure to cooperate with the Court has directly harmed the Victims’ interests. The unwarranted inaction includes failing to secure the Suspect’s appearance before the Court and to preserve crucial evidence. As a result, Victims’ fundamental rights to justice, truth, and reparation have been infringed. Moreover, this obstruction has hindered investigations and heightened risks to victims and witnesses.

3. The Prosecution’s Request for a finding of non-compliance fundamentally affects the interest of the Victims. It is not merely a procedural formality, but a pivotal matter that has a direct impact on whether the Victims’ suffering will be acknowledged and repaired through a credible judicial process before this Court. At the core of the issues raised in the Request is the fundamental right of thousands Victims to justice, accountability, and reparations for the atrocities they have endured. Rejecting the Prosecution’s Request would perpetuate the impunity gap, undermining the broader

¹ See the “Public redacted version of the “Prosecution's request for a finding of noncompliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM”, 21 February 2024, ICC-01/11-163-US-Exp, [No. ICC-01/11-163-Red2](#), 25 February 2025 (the “Prosecution’s Request for a finding of non-compliance”) with Under Seal, *EX PARTE*, Annex I Available only to the Prosecution and Registry, No. ICC-01/11-163-US-Exp-AnxI, 21 February 2025. Pursuant to Pre-Trial Chamber I’s order, dated 24 February 2025, this document has been reclassified as “Public”, [No. ICC-01/11-163-AnxI](#).

objectives of international criminal justice and denying Victims the justice they rightfully deserve.

4. Victims are the most directly affected by the Republic of Italy's failure to cooperate. Following the news of this failure, Victims in contact with the Office expressed both disappointment at the prospect of being denied justice and their deep concern for the hundreds of individuals still in Libya, who remain exposed to the same crimes alleged in the Arrest Warrant against the Suspect.

5. Allowing the Office to appear before the Pre-Trial Chamber will ensure that the rights and interests of all these Victims are represented and duly taken into account at this stage. In addition, their observations can illustrate before the Chamber the severe impact of the non-compliance and will ensure that legal arguments do not remain abstract but are grounded in the lived experiences of those most affected by the alleged crimes. Recognizing the Victims' right to be heard in this matter will also strengthen their trust in the Court and affirm their role as key stakeholders in the pursuit of justice. The Principal Counsel files this request at this juncture in the interest of the efficiency and expeditiousness of the proceedings.

II. PROCEDURAL BACKGROUND

6. On 2 October 2024, the Prosecution filed under seal a request for a warrant of arrest for Mr NJEEM.²

7. On 18 January 2025, Pre-Trial Chamber I (the "Chamber") issued a warrant of arrest for Mr NJEEM ("Arrest Warrant"),³ as well as an order regarding his search and seizure of any evidence or device that may contain evidence and its transmission to the Court ("Search and Seizure Order").⁴

² See the "Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest" (Pre-Trial Chamber I), [No. ICC-01/11-162](#), 17 February 2025, para. 2, fn. 2.

³ *Ibid.*, para. 3, fn. 3.

⁴ *Ibid.*, para. 4, fn. 4.

8. On the same date, the Registry transmitted via e-mail to the Republic of Italy the Request for Provisional Arrest under article 92 of the Rome Statute (the “Statute”) along with copies of the Arrest Warrant and the Search and Seizure Order (the “Requests”).⁵
9. On 19 January 2025, the Italian police arrested Mr NJEEM in Turin.⁶
10. On 21 January 2025, the Italian authorities released Mr NJEEM and returned him to Tripoli, Libya, on a State-owned flight.⁷
11. On 24 January 2025, the Chamber issued a corrected version of the Warrant of Arrest and re-classified it as public.⁸
12. On 28 January and on 19 February 2025 the Italian Ministry of Justice sent two *note verbale* to the Registry.⁹
13. On 17 February 2025 the Chamber found that Italy’s arrest and subsequent release of Mr NJEEM, as well his transfer to Libya, “*warrants a determination [...] of whether it is appropriate to make a formal finding of non-compliance*” pursuant to article 87(7) of the Statute and invited the Republic of Italy to provide submissions regarding its failure under regulation 109 of the Regulations of the Court by 17 March 2025.¹⁰
14. On 21 February 2025, the Prosecution filed the Request for a finding of non-compliance.¹¹

⁵ See the Prosecution’s Request for a finding of non-compliance, *supra* note 1, para. 7.

⁶ See the “Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest”, *supra* note 2, para. 6.

⁷ *Ibid.*, para. 7.

⁸ See the “Decision issuing a corrected version of the ‘Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem’ dated 18 January 2025 (ICC-01/11-149-US-Exp) and appending the dissenting opinion of Judge Flores Liera” No. ICC-01/11-152-US-Exp with ANNEX Under Seal *ex parte*, only available to the Prosecution, No. ICC-01/11-152-US-Exp-Anx, (Pre-trial Chamber I), 24 February 2025. Pursuant to Pre-Trial Chamber I’s order dated 12 February 2025, the Decision has been reclassified as “Public”, [No. ICC-01/11-152](#). Pursuant to Pre-Trial Chamber I’s Decision No. ICC-01/11-153 dated 24 February 2025, the Annex has been reclassified as “Public”, [No. ICC-01/11-152-Anx](#).

⁹ See the “Invitation to the Italian Republic to provide submissions concerning its failure to surrender Osama Elmasry / Almasri Njeem to the Court following his arrest”, *supra* note 2, paras. 8-9

¹⁰ *Ibid.*, paras. 11-12.

¹¹ See the Prosecution’s Request for a finding of non-compliance, *supra* note 1.

III. SUBMISSIONS

15. The Office has been engaged in the Situation in Libya for several years. The Principal Counsel maintains contact with various lawyers and organisations representing victims, as well as with Victims directly affected by the Republic of Italy's failure to comply with the Requests.

16. The Victims' initial enthusiasm and relief upon hearing of the Suspect's arrest soon turned to despair as events unfolded, dashing their hopes for justice. The Suspect's release and the images of his return to Libya on State-owned flight have rekindled feelings of injustice and pain, reminding Victims of the suffering they endured due to the crimes allegedly committed by Mr NIJEM, as well as the ongoing suffering of others still exposed to such crimes in Libya.

17. In the circumstances, allowing the OPCV to appear in relation to the Prosecution's Request for a finding of non-compliance will provide the Chamber and other participants with essential insight into the real-world consequences of the State's inaction. Victims are the most directly affected by Italy's failure to cooperate, and their observations can illustrate the severe impact of this non-compliance on their ability to seek justice, establish the truth about the crimes they suffered and access reparations. Victims can provide unique standpoints on how Italy's non-compliance has obstructed the Court's work, impaired their own security, and emboldened those responsible for international crimes. Their voices will highlight the urgency of taking corrective action to ensure that similar obstructions do not undermine future cases. By sharing the Victims' perspectives, the OPCV will present legal arguments that are not merely theoretical, but are rooted in the real-life experiences of those who have endured suffering.

18. Accordingly, ensuring that Victims are heard on this issue reinforces the principles of inclusivity and victim-centered justice enshrined in the Statute. At the same time, the Office's input can assist the Chamber in its assessment on whether a

formal finding of non-compliance should be made and what steps should be taken to prevent further obstruction.

1. The OPCV's twofold mandate to appear in respect of specific issues and to represent the general interest of Victims

19. Pursuant to regulation 81(4) of the Regulations, “[t]he tasks of the Office of Public Counsel for victims shall include: [...] (b) Appearing, on the instruction or with the leave of the Chamber, in respect of specific issues; [...] and (e) Representing a victim or victims throughout the proceedings, on the instruction or with the leave of the Chamber, when this is in the interests of justice”.¹² This provision was amended to reflect the relevant practice of the Court and specifies, in its revised version, that the OPCV's appearance can be initiated either upon instruction of the Chamber or upon request of the Office itself.

20. In this regard, the Principal Counsel recalls that the OPCV was established as an independent permanent body within the Court “able to provide expert advice and assistance” on Victims' issues.¹³ Since the Office's inception, the practice of the Court and the responsibilities entrusted to the OPCV by both the Chambers and Victims have greatly contributed to the development of such expertise.

21. In the past, the Office requested, and was granted, leave to appear on specific issues pertaining to the general interest of Victims.¹⁴ In other instances, the Office

¹² See regulation 81(4) of the Regulations of the Court, Doc. [ICC-BD/01-05-16](#).

¹³ See FULFORD (A.), “The role of the Office of Public Counsel for Victims in trial proceedings”, in OPCV, [Helping victims make their voice heard: The Office of Public Counsel for Victims 5 years of activities](#), 2010, pp. 4-5.

¹⁴ See, *inter alia*, the “Decision on the ‘Request for Leave to File Amicus Curiae Submissions on Behalf of Human Rights Organizations in Afghanistan’ (ICC-02/17-35) and on the ‘Request to appear before the Chamber pursuant to regulation 81(4)(b) of the Regulations of the Court’ (ICC-02/17-39)” (Pre-Trial Chamber II), No. [ICC-02/17-43](#), 12 June 2019; the “Decision on the OPCV's request to participate in the reparations proceedings” (Trial Chamber I), No. [ICC-01/04-01/06-2858](#), 5 April 2012; the “Decision on the OPCV's ‘Second Request to appear before the Chamber pursuant to Regulation 81(4)(b) of the Regulations of the Court on issues related to the victims’ application process’” (Pre-Trial Chamber III), No. [ICC-02/11-01/11-57](#), 13 March 2012; the “Order on Written Submissions on the Interpretation of Regulation 42 of the Regulations of the Court (Regulation 28 of the Regulations of the Court)” (Trial Chamber II), No. [ICC-01/04-01/07-1205](#), 12 June 2009; and the “Order on the Office of Public

appeared at the Chambers' request.¹⁵ Said practice reflects the obligation binding on the OPCV to provide, where appropriate, assistance to Victims in accordance with its role and mandate before the Court.

22. Pre-Trial Chamber II relied on regulation 81(4)(e) of the Regulations to appoint the OPCV, noting that the Office is specifically mandated and possesses the expertise and experience to represent Victims.¹⁶ In turn, Trial Chamber I confirmed that the OPCV can appear in respect of specific issues pursuant to regulation 81(4)(b) of the Regulations by filing *"an application to address the Chamber on specific issues, notwithstanding the fact that it has not been requested to do so by the representatives of victims or any individual victims (this will usually relate to issues of general importance and applicability)"*.¹⁷ More recently, the Appeals Chamber has considered it appropriate for the OPCV to submit written observations under regulation 81(4)(e) of the Regulations regarding the general interests of Victims, following the submission of an appeal against an article 18(2) decision in the situation in the Philippines¹⁸ and in the Situation in the Bolivarian Republic of Venezuela I.¹⁹ Similarly, Pre-Trial Chamber I authorised the OPCV to submit observations in the Situation of the State of Palestine.²⁰

Counsel for Victims' request filed on 21 November 2007 (Trial Chamber I), No. [ICC-01/04-01/06-1046](#), 27 November 2007, para. 2.

¹⁵ See, *inter alia*, the transcripts of the hearings held on 30 October 2007, No. [ICC-01/04-01/06-T-58-ENG-ET WT](#), p. 13, lines 20-23, and on 4 December 2007, No. [ICC-01/04-01/06-T-62-ENG-ET WT](#), pp. 52-54.

¹⁶ See the "Decision on the Legal Representation of Victims" (Pre-Trial Chamber II), No. [ICC-01/14-01/18-205](#), 23 May 2019.

¹⁷ See the "Decision on the role of the Office of Public Counsel for Victims and its request for access to documents" (Trial Chamber I), No. [ICC-01/04-01/06-1211](#), 6 March 2008, para. 35.

¹⁸ See also the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), No. [ICC-01/21-66 OA](#), 21 March 2023.

¹⁹ See the "Decision on the OPCV's "Request to appear before the Appeals Chamber pursuant to regulation 81(4) of the Regulations of the Court" (Appeals Chamber), No. [ICC-02/18-54 OA](#), 21 July 2023. See also the "Decision on requests for victims' involvement and access to filings" (Appeals Chamber), No. [ICC-02/18-60 OA](#), 24 August 2023.

²⁰ See the "Public redacted version of the 'Decision authorizing the views, concerns and general interests of the victims'" (Pre-Trial Chamber I), No. [ICC-01/18-256-Red](#), 7 August 2024, para. 8.

2. The Prosecution's Request for a finding of non-compliance affects the general interest of Victims

23. Italy's failure to cooperate with the Court has severely impeded the exercise of its judicial functions. By refusing to execute the Arrest Warrant and the Search and Seizure Order, Italy has obstructed investigations into the Libya Situation and Mr NJEEM's conduct. The lack of cooperation has resulted in the loss of crucial evidence, thereby significantly undermining the Victims' pursuit of justice.

24. The decision to repatriate the Suspect to Libya instead of surrendering him to the Court has also placed Victims and witnesses, along with their families, at serious risk of harm. Without effective enforcement of the Court's orders, a climate of impunity prevails, discouraging Victims from coming forward and jeopardizing the security of those who have already provided testimony. Such actions reinforce a dangerous precedent where perpetrators of international crimes can evade accountability due to State obstruction and prejudice the personal interests of Victims.

25. In fact, seeking a finding of non-compliance under article 87(7) of the Statute against the Republic of Italy is not a mere procedural formality; it is a critical factor that will determine whether Victims' voices are heard and their suffering acknowledged through a credible judicial process. Central to these concerns is the fundamental right of Victims to justice, accountability, and reparations for the atrocities they have endured.

26. The Victims' need for justice cannot be overstated. Thousands of Victims have witnessed severe violations of international humanitarian law and human rights, including torture; rape and sexual violence, and murder. These actions have had devastating effects on individuals, families, and communities. For the Victims, justice involves not only the prosecution and punishment of those responsible but also the restoration of their dignity and assurance that such crimes will not recur. Transparent and independent investigations and prosecutions are necessary to uphold the integrity of the judicial process and to ensure that justice is not only done but is seen to be done.

Victims have a legitimate expectation that their grievances will be addressed impartially and that the alleged perpetrators will be held accountable.

27. Under the Statute, State Parties have a duty to cooperate fully with the Court in the investigation and prosecution of crimes within its jurisdiction and to facilitate the exercise of the Court's jurisdiction over those responsible when the complementary test is met. Said duty includes respecting the internationally recognised human rights of Victims during criminal proceedings, where the outcome of such proceedings leads *"to the identification, prosecution and punishment of those who have victimised them"*.²¹

28. For Victims, referring the matter to the Assembly of States Parties (the "ASP") and the UN Security Council (the "UNSC") is not just a procedural step; it is a fundamental means of upholding their right to justice, truth, and reparation. Victims have suffered heinous crimes and placed their trust in the ICC to bring perpetrators to account. If non-compliance remains unaddressed, it would send a disheartening message to all Victims of international crimes that their grievances can be disregarded without consequences. Ensuring that the ASP and the UNSC take action would reaffirm the ICC's commitment to justice and demonstrate that States Parties cannot ignore their obligations without facing consequences.

29. The issues raised pertain to impunity and accountability, which are of significant concern to Victims.²² This context justifies the intervention of the Office to

²¹ See the "Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), No. [ICC-01/04-01/07-474](#), 13 May 2008, para. 41.

²² See the "Separate opinion of Judge Sang-Hyun Song" appended to the "Decision of the Appeals Chamber on the Joint Application of Victims a/0001/06 to a/0003/06 and a/0105/06 concerning the 'Directions and Decision of the Appeals Chamber' of 2 February 2007" (Appeals Chamber), No. [ICC-01/04-01/06-925 OA8](#), 13 June 2007, para. 16: *"victims of serious crimes have a special interest that perpetrators responsible for their suffering be brought to justice, and this interest is protected by human rights norms"*. See also, the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-01/11-460](#), 3 October 2012, para. 10; the "Decision on victims' representation and participation" (Trial Chamber V), No. [ICC-01/09-02/11-498](#), 3 October 2012, para. 9; the "Decision on common legal representation of victims for the purpose of trial" (Trial Chamber III), No. [ICC-01/05-01/08-1005](#), 10 November 2010, para. 9(a); the "Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008" (Appeals Chamber), No. [ICC-01/04-01/06-1432 OA9 OA10](#), 11 July 2008, para. 97; and the "Decision on the Set of Procedural Rights

represent the general interests of Victims on these critical matters. Victims of the crimes committed in the Situation in Libya, along with their families, have the right to obtain justice, to know the truth, and to be redressed.

IV. CONCLUSION

30. For the foregoing reasons, the Principal Counsel respectfully requests the Pre-Trial Chamber to be allowed to submit written observations on the general interests of Victims in relation to the Prosecution's request for a finding of non-compliance under article 87(7) of the Statute against the Republic of Italy, within a deadline to be established by the Chamber.



Paolina Massidda
Principal Counsel

Dated this 3rd day of March 2025
At The Hague, The Netherlands

Attached to Procedural Status of Victims at the Pre-Trial Stage of the Case" (Pre-Trial Chamber I), [No. ICC-01/04-01/07-474 13-05-2008](#), paras. 31 and 34.