

ANNEX

CONFIDENTIAL

**Cour
Pénale
Internationale**

**International
Criminal
Court**



Original: English

No.: ICC-01/11

Date: 24 February 2025

Pre-Trial Chamber I

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

SITUATION IN LIBYA

Public Document

Victim's Request to Submit Observations

**Concerning a potential finding of noncompliance under article 87(7) against the
Republic of Italy, following the release of Osama Elmasry / Almasri NJEEM**

24 February 2024

Source: Victim A/75000/23

Represented by Dr. Adv. Omer Shatz & Dr. Adv Juan Branco

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

The Office of the Prosecutor Karim A. A. Khan KC	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	Amicus Curiae

REGISTRY

Registrar M. Zavala Giler, Osvaldo	Counsel Support Section
Victims and Witnesses Unit	Detention Section
Victims Participation and Reparations Section	Other

I. Background and Procedural History

1. In 2019 the applicant submitted an Article 15 Communication concerning Crimes Against Humanity against 'migrants' in the Central Mediterranean route. In 2020 the Prosecutor decided to assign this Communication to the Situation in Libya, and in 2022 the VPRS recognized the applicant as a victim ("**Victim**").
2. On 18 January 2025 the Pre-Trial Chamber I ("**Chamber**") overseeing the Situation in Libya (ICC-01/11) issued an arrest warrant against Osama Elmasry / Almasri NJEEM ("**Almasri**"). On 19 January 2025 Almasri was arrested in the Republic of Italy ("**Italy**").
3. According to the Victim, on 21 January 2025 three Italian officials ("**Suspects**") acted in concert to release Almasri from detention and to smuggle him from the country and the reach of international justice.
4. The Victim contends that by **acting to fail** the extradition of Almasri the Suspects committed offences against the administration of justice within the meaning of Article 70(c) and that, consequently, Italy has **failed to act** in accordance with its obligation to cooperate with the Court under Article 87(7).
5. To the best of the Victim's knowledge, thus far the Prosecutor has refrained from opening an investigation under Article 70.¹ The Prosecutor further refrained from requesting the Chamber to institute proceedings under Article 87(7).
6. But a well-settled case law grants victims a right to participate in proceedings under Article 87(7) of the Statute, and under the Rules of Procedure and Evidence of the Court ("**Rules**"), the Chamber may instruct the Prosecutor to open an investigation under Article 70 of the Rome Statute.

¹ As publicly announced by sources attributed to the OTP in several reliable Italian outlets.

7. Accordingly, on **6 February 2025**, the Victim submitted the Office of the Prosecutor (“OTP”) a request to open an investigation under Article 70 of the Rome Statute based on reliable information provided to the OTP (“Request”).
8. On the same day, mindful of Rule 165(1), which specifies that the Prosecutor may conduct such investigation *inter alia* “on the basis of information communicated by a Chamber”, the Victim filed to the Chamber “Information To the Pre-Trial Chamber Regarding Information and Request to the Prosecutor to Institute Proceedings Pursuant to Article 70 of the Rome Statute against Ms. Giorgia Meloni, Mr. Carlo Nordio, and Mr. Matteo Piantedosi” (“**Submission**”).
9. On **14 February 2025**, the Chamber instructed the Registry to file the Submission via a Registry’s transmission filing. Subsequently, the Registry transmitted the Submission.²
10. On **17 February 2025**, three days later after the Chamber instructed to file the Victim’s Submission, the Chamber found that the release in Italy and transfer of Almasri to Libya by Italy “warrants a determination on the part of the Chamber of whether it is appropriate to make a formal finding of non-compliance by Italy with the Court’s request for arrest and surrender of Mr Njeem to the Court; and whether the matter ought to be referred to the Assembly of States Parties and/or the Security Council”.³
11. The Chamber thus invited Italy to “make submissions to explain its failure to surrender ... Almasri... to the Court after he was arrested on Italian territory”.⁴ Specifically, the Chamber requested Italy “to provide submissions on its failure to surrender Mr Njeem to the Court. Italy is further invited to make submissions

² ICC-01/11-161-SECRET 17-02-2025

³ ICC-01/11-162, paragraph 10

⁴ ICC-01/11-162, page 3

on its failure to comply with the request for cooperation related to the search and seizure of materials found on or with Mr Njeem”.⁵

12. The Chamber refrained from inviting the Prosecutor to submit his observations.

Yet, on **21 February 2025**, a month after the Suspects smuggled Almasri from Italy and 4 days after the Chamber has already instituted proceedings against Italy in connection with Article 87(7) of the Rome Statute, the Prosecutor submitted to the Chamber a document titled “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” (“Prosecutor’s Request”).⁶

13. The Victim requests the Chamber to allow him to exercise his right to participate in the proceedings by submitting his observations on the matter at hand, including on the submissions of the parties to the proceedings, i.e., the Prosecutor and Italy (“Observations”). To ensure due process and proper administration of justice, the Victim further requests the Chamber to submit his Submission and Observations to the parties. As shown below, the Victim’s request is grounded in the Court’s well-settled case-law.

II. Victim Participation in Proceedings under Article 87(7) of the Rome Statute

14. As noted above, the Chamber instructed the Registry to file the Victim’s Submission concerning Article 70 of the Rome Statute.

15. Also the Prosecutor agrees that “Italy’s non-compliance exposed victims and witnesses, as well as their families, to the potential serious risk of harm.”⁷

16. The positions of both the Chamber and the Prosecutor are consistent with this Court’s case law, which allows Victims to submit their Observations in proceedings under Article 87(7) of the Rome Statute.

⁵ ICC-01/11-162, paragraph 12

⁶ ICC-01/11-163-Red

⁷ ICC-01/11-163-Red, paragraph 43

17. In the case of *the Prosecutor v. Abdallah Banda Abakaer Nourain* (“Nourain”), the Legal Representative of Victims filed a submission supporting the a finding of noncompliance under Article 87(7) of the Rome Statute.⁸
18. In the case of *the Prosecutor v. Uhuru Muigai Kenyatta* (“Kenyatta”), the Legal Representative of Victims filed submissions with respect to proceedings under Article 87(7).⁹ The Chamber invited victims to “provide further focused submissions”¹⁰ on the determination “whether Kenya had failed to comply with a cooperation request”,¹¹ after an Appeals Chamber instructed the Trial Chamber to take into account “all relevant factors”, including the conduct of the parties.¹²
19. In the case of *the Prosecutor v. Saif Al-Islam Gaddafi* (“Saif Al-Islam Gaddafi”), this Chamber (in different composition) in this Situation (ICC-01/11) noted that “Also the rights of the victims of the crimes attributed to Saif Al-Islam Gaddafi are affected by Libya’s failure to surrender him to the Court. In the absence of any proceeding aimed at determining whether he is criminally responsible for the crimes that resulted in the harm claimed by the victims, they are deprived of their right to have justice delivered, notwithstanding the Court’s jurisdiction over the case. As recently underlined by the legal representative of victims who have communicated with the Court and participated in the admissibility proceedings in the present case, “the victims have been waiting for justice for more than two years now” and “[t]he refusal of Libyan authorities to surrender and/or delay in the transfer of the suspect to the Court can only prejudice the interests of the victims in the proceedings”.¹³

⁸ ICC-02/05-03/09-641, paragraph 2

⁹ ICC-01/09-02/11-1037, paragraph 4

¹⁰ ICC-01/09-02/11-1033, paragraph 4

¹¹ ICC-01/09-02/11-1033, paragraph 3

¹² ICC-01/09-02/11-1032, paragraph 95

¹³ ICC-01/11-01/11-577, paragraph 29

20. In Saif Al-Islam Gaddafi, the Chamber further noted that it “cannot ignore its own responsibilities in the proceedings and its duty to deploy all efforts to protect the rights of the parties and the interests of victims”.¹⁴

21. In the present case, Almasri is accused of Crimes against Humanity in Libyan detention facilities *inter alia* against ‘migrants’ like the Victim and his late wife. The Victim alleges that he and his late wife have been victims of Crimes Against Humanity following their failed attempt to flee Libya via the Central Mediterranean, after which they were captured, abducted, forcibly transferred to and detained and abused in Libyan detention facilities by Libyan militias. The Victim further alleges that by obstructing or interfering with the attendance or testimony of Almasri, and by destroying, tampering with or interfering with the collection of evidence, the Suspects hindered the possibility to expose and potentially incriminate the perpetrators involved in their own victimization.

22. Because the personal interest of the Victim is affected, since submission of his views and concerns are not prejudicial to or inconsistent with the rights of Almasri, and given that the Court has previously deemed such proceedings appropriate for victim participation, the Court shall permit the Victim to submit his focused Observations in the present proceedings.¹⁵

III. Relief Sought

23. For these reasons, the Victim requests the Chamber to allow him to exercise his right to participate in the proceedings by submitting his focused observations, including on the submissions of the Prosecutor and Italy (“Parties”). To ensure due process and proper administration of justice, the Victim further requests the Chamber to submit his Submission and Observations to the Parties.

¹⁴ ICC-01/11-01/11-577, paragraph 32

¹⁵ Article 68(3) of the Rome Statute

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Dr. Omer Shatz, Adv.



Dr. Juan Branco, Adv.

on behalf of

Victim a/75000/23

Dated this 24 February 2025

Paris, FRANCE