



Original: English

No.: ICC-01/11
Date: 5 February 2025

THE OFFICE OF THE PROSECUTOR

SITUATION IN LIBYA

**IN THE CASE OF
*THE PROSECUTOR v. AL MASRI***

Public Document

**Request To Institute Proceedings Pursuant to Article 70 of the Rome Statute
against Ms. Giorgia Meloni, Mr. Carlo Nordio, and Mr. Matteo Piantedosi**

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 Khan

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. Procedural History

1. The Applicant, a Sudanese national from Darfur with a refugee status in France, alleges that his wife, himself and countless members of the targeted group he is a member of ('migrants') were victims of numerous and ongoing ICC crimes, perpetrated by Italian and other nationals of States Parties to the Rome Statute, in the Central Mediterranean and Libya, from 2015 to date.¹ The ICC Counsels representing the Applicant are Dr. Omer Shatz, the legal director of *front-LEX*, an NGO specializing in strategic litigation of migration-related matters; and Dr. Juan Branco, a lawyer specializing in criminal and international law.
2. Since **2017**, the ICC Prosecutor reports twice a year to the Security Council ('UNSC') on numerous and **ongoing** Crimes Against Humanity ('CAH') against 'migrants' in the Central Mediterranean route.² From 2017 to date, more than **120,000** children, women and men were captured, abducted, and forcibly transferred from the Mediterranean to Libya - constituting *inter alia* the CAH of deportation - then detained in atrocious camps, where they were subjected to CAH of imprisonment, murder, torture, rape, enslavement, enforced disappearances and other inhuman acts.³ After eight years these crimes are ongoing, on 18 January 2025 the Pre-Trial Chamber ('PTC') has issued an arrest warrant against one of the co-perpetrators of these crimes, aka 'Al-Masri'.⁴
3. In **2019**, the Applicant submitted a Communication with the Office of the Prosecutor ('OTP') pursuant to Article 15 of the Rome Statute ('Communication'). The

¹ Although the Victims Participation and Reparations Section ('VPRS') has granted the Applicant a victim status in 2022, to date the Office of the Prosecutor ('OTP') has neither interviewed nor informed the Applicant of any development in his case or in the Situation his case was attributed to.

² Office of the Prosecutor, "Statement of ICC Prosecutor to the UNSC on the Situation in Libya," statement, May 9, 2017, <https://www.icc-cpi.int/news/statement-icc-prosecutor-uns-c-situation-libya>. Compare with statements and reports of the UNSC from 2017 to date, which are available at https://www.icc-cpi.int/news/?f%5B0%5D=related_to:37.

³ See, e.g., <https://www.infomigrants.net/en/post/61570/libyas-coast-guard-has-intercepted-and-returned-nearly-21000-migrants-in-2024> and https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=3861&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=.

⁴ ICC, Pre-Trial Chamber-I, Situation in Libya, "Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem", ICC-01/11-149-US-Exp (18 January 2025), paragraphs 2 and page 34, available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180a94249.pdf>

Communication provided extensive body of evidence implicating senior EU and Italian officials, including former **Italian Prime Ministers and Ministers**, in these crimes.⁵

4. In **2020**, the (previous) Prosecutor decided to admit the Communication (OTP-CR-237/19). But instead of opening a Preliminary Examination on the **Situation in Italy**, or in the EU, the Prosecutor assigned the case to the Situation in Libya (ICC-01/11).⁶
5. In **2022**, the Prosecutor decided to investigate these undisputed CAH against ‘migrants’. But instead of independently investigating these crimes, and despite the allegations the Applicant made in the Communication, the Prosecutor joined a “Task Force”, composed of the alleged co-perpetrators, that is, the Italian and EU authorities.⁷
6. In **2023**, a Fact-Finding Mission to Libya (‘the FFM’), which was mandated by the United Nations, published its final report. The FFM corroborated the allegations raised in the Applicant’s Communication, finding that senior **Italian and EU officials were participating in the commission of these still ongoing Crimes Against Humanity against ‘migrants’ in the Central Mediterranean and Libya**.⁸
7. In **2024**, the OTP requested PTC-I to issue an arrest warrant against ‘Al-Masri’. The OTP considered the FFM report so credible that his request relies on evidence provided by the latter.⁹ **The OTP however ignored the FFM’s incriminating findings with respect to the criminal liability of Italian and other EU officials**, refrained from withdrawing from the “Task Force” and continued to share evidence with the Italian authorities regarding investigations against non-European suspects such as Al-Masri.

⁵ The full brief is available at <https://www.statewatch.org/media/documents/news/2019/jun/eu-icc-case-EU-Migration-Policies.pdf>.

⁶ On file with the authors, who are challenging this decision before the competent organs of the ICC.

⁷ ICC, Press Release: “Statement of ICC Prosecutor, Karim AA Khan QC: Office of the Prosecutor joins national authorities in Joint Team on crimes against migrants in Libya” (7 September 2022).

⁸ UN Human Rights Council Rep. of the Independent Fact-Finding Mission on Libya on Its Forty-Eighth Session, U.N. Doc. A/HRC/52/83, (Mar. 3, 2023)

⁹ See, e.g., paragraph 6 of the Arrest Warrant Decision. ICC, Pre-Trial Chamber-I, Situation in Libya, “Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem”, ICC-01/11-149-US-Exp (18 January 2025), paragraphs 2 and page 34, available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180a94249.pdf> [hereafter: ‘the Arrest Warrant’].

8. In **2025**, after Al-Masri was arrested in Italy, the Italian Prime Minister, Ms. **Giorgia Meloni**, the Italian Minister of Justice Mr. **Carlo Nordio**, and the Italian Minister of Interior, Mr. **Matteo Piantedosi** ('the Suspects'), all nationals of a state party to the Rome Statute, acted to release and smuggle Al-Masri from the country back to Libya.
9. The Applicant alleges that *inter alia* to prevent Al-Masri from providing incriminating information on their involvement in the crimes he is accused of, i.e., to conceal their implication in the said crimes, and to ensure these crimes continue uninterrupted, the Suspects **intentionally interfered with the investigation by tampering the collection of the testimony** of their counterpart.
10. The Suspects abused their executive powers to defy their international and national obligations to surrender Al-Masri to the ICC, in order to ensure he will remain outside the reach of the ICC. By doing so, the Suspects have allegedly obstructed the administration of justice within the meaning of Article 70 of the Rome Statute.

II. The Facts

11. On 2 October 2024, the Prosecutor applied – under seal – for an arrest warrant for Mr Osama Elmasry Njeem, also known as Osama Almasri Njeem or Al Masri, in connection with war crimes and **crimes against humanity** within the jurisdiction of the Court, allegedly perpetrated against civilians and including ‘migrants’, in Mitiga Prison, Libya, from 15 February 2015 onwards.¹⁰
12. On **18 January 2025**, Pre-Trial Chamber-I (‘PTC’) issued an arrest warrant against Al-Masri, pursuant to article 58(1) of the Rome Statute.¹¹ According to an ICC press release, “[t]he Chamber found that the crimes set out in the warrant **were committed** by Mr Njeem personally, ordered by him, or with his assistance...”.¹² Indeed, after the existence of the warrant was made public,¹³ a number of individuals publicly confirmed they were personally victimized by Al-Masri.¹⁴

¹⁰ The warrant of arrest for Mr Osama Elmasry Njeem lists “the war crime of outrages upon personal dignity pursuant to article 8(2)(c)(ii) of the Statute; the war crime of cruel treatment pursuant to article 8(2)(c)(i) of the Statute; the war crime of torture pursuant to article 8(2)(c)(i) of the Statute; the war crime of sexual violence pursuant to article 8(2)(e)(vi) of the Statute; the war crime of murder pursuant to article 8(2)(c)(i) of the Statute; and, the war crime of rape pursuant to article 8(2)(e)(vi) of the Statute committed in Mitiga Prison from 15 February 2015 onwards and for: the crimes against humanity of imprisonment pursuant to article 7(1)(e) of the Statute; the crime against humanity of torture pursuant to 7(1)(f) of the Statute; the crime against humanity of sexual violence pursuant to article 7(1)(g) of the Statute; the crime against humanity of rape pursuant to article 7(1)(g) of the Statute; the crime against humanity of murder pursuant to article 7(1)(a) of the Statute; and the crime against humanity of persecution pursuant to article 7(1)(h) of the Statute”. ICC, Pre-Trial Chamber-I, Situation in Libya, “Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem”, ICC-01/11-149-US-Exp (18 January 2025), paragraphs 2 and page 34, available at: <https://www.icc-cpi.int/sites/default/files/RelatedRecords/0902ebd180a94249.pdf>.

¹¹ After the majority was satisfied the PTC has jurisdiction over the case, and after confirming there are reasonable grounds to believe Al-Masri committed some of the crimes for which the Prosecutor requested the arrest warrant for. The Arrest Warrant, pages 34-35. See also ‘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’, ICC-01/11-152-US-Exp, with the Warrant and Judge Flores Liera’s dissenting opinion annexed as ICC-01/11-152-US-Exp-Anx (24 January 2025).

¹² ‘Situation in Libya: ICC arrest warrant against Osama Elmasry Njeem for alleged crimes against humanity and war crimes’ (22 January 2025), 4th paragraph, available at: <https://www.icc-cpi.int/news/situation-libya-icc-arrest-warrant-against-osama-elmasry-njeem-alleged-crimes-against-humanity> [hereafter: ‘ICC Press Release’].

¹³ On 24 January 2025, the PTC decided to unseal the arrest warrant against Al-Masri: “Since the arrest and subsequent release of Mr Njeem have made the existence of the Warrant known to the public, the Chamber considers that its under seal classification is no longer warranted. The Chamber therefore instructs the Registry to unseal the Warrant and the appended dissent, by making filing number ICC-01/11-152-US-Exp-Anx available to the public”. See ICC, Pre-Trial Chamber-I, Situation in Libya, “Decision unsealing the ‘Warrant of Arrest for Mr Osama Elmasry / Almasri Njeem’, issued on 18 January 2025”, ICC-01/11-153 (24 January 2025), available at: <https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd180a9424a.pdf>.

¹⁴ The authors are in contact with victims who were personally victimized by Al-Masri. See also, e.g., at Lavinia Parsi, ‘Un volo di stato chiude il caso Al Masri?’, available at: <https://www.giustiziainsieme.it/it/processo-penale/3373-un-volo-di-stato-chiude-il-caso-al-masri-lavinia-parsi>. See also:

13. On the same day, **18 January 2025**, “the ICC Registry, acting in consultation and coordination with the Office of the Prosecutor and under the Chamber’s authority, submitted a request for the arrest of the suspect to six States Parties, **including the Italian Republic**. The Court’s request was transmitted through the **channels designated by each State** and was preceded by advance **consultation and coordination with each State** to ensure the appropriate receipt and onward implementation of the Court’s request. The Court also conveyed real-time information indicating the possible whereabouts and movement of the suspect across the European Schengen zone. In tandem, as provided in the Statute, the Court made a request to INTERPOL to issue a Red Notice.”¹⁵

14. On **19 January 2025** Al Masri was “located in Turin, Italy... and was successfully arrested by the Italian authorities. The suspect was held in custody pending the completion of the required domestic proceedings related to his arrest and surrender to the Court. **At the request of, and acting out of full respect for, the Italian authorities, the Court deliberately refrained from publicly commenting on the arrest of the suspect. At the same time, the Court continued to pursue its engagement with the Italian authorities to ensure the effective execution** of all steps required by the Rome Statute for the implementation of the Court’s request. In this context, **the Registry also reminded the Italian authorities that in the event they identified any problems which may impede or prevent the execution of the present request for cooperation, they should consult the Court without delay** in order to resolve the matter”.¹⁶

i) Releasing Al-Masri

15. Under Italian Law, the Minister of Justice is the **sole** authority capable of instituting proceedings to surrender suspects to the ICC. Article 2(1) of Law 237/2012 submits that

<https://it.euronews.com/2025/02/03/una-vittima-delle-torture-di-almasri-denuncia-meloni-nordio-e-piantedosi-per-favoreggiamen>.

¹⁵ ICC Press Release, 5th paragraph.

¹⁶ ICC Press Release, paragraphs 6-8. See also <https://www.theguardian.com/world/2025/jan/21/libyan-general-arrested-in-turin-on-icc-warrant-for-alleged-war-crimes>.

“[t]he cooperation relations between the Italian State and the International Criminal Court are **entertained exclusively by the Minister of Justice**, who is competent to receive the requests of the Court and to give them course. The Minister of Justice, if he or she deems it necessary, coordinates his or her action with other concerned Ministers, with other institutions or other state organs. **The Minister has the faculty to present to the Court, if necessary, acts or requests.**”¹⁷

16. Articles 11(1) of this law specifically notes that “[w]hen the object of the request of the International Criminal Court is the surrender of a person against whom a warrant of arrest pursuant to article 58 of the Statute... the Attorney General at the Court of Appeals of Rome, **having received the acts**, requests to the same court of appeals the application of the measure of precautionary detention in respect of the person whose surrender is sought.”¹⁸

17. Article 2(3) Law 237/2012, which commands that ICC’s requests will be processed in a short time, further emphasizes the critical executive power vested in the hands of the Minister of Justice, in charge of regulating the extradition of international criminals to the ICC, and accordingly the ability to abuse this power to frustrate these proceedings.¹⁹

18. In the present case, **on the same day of the arrest**, i.e., on **19 January 2025**, the Italian judicial police (‘Turin DIGOS’) transmitted the relevant information on Al-Masri’s arrest to the Italian Court of Appeal of Rome **and to the Italian Ministry of Justice.**²⁰

¹⁷ Italian Law 237/2012. See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012;237>.

¹⁸ Italian Law 237/2012. See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012;237>.

¹⁹ Italian Law 237/2012. See <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2012;237> (“*Il Ministro della giustizia, nel dare seguito alle richieste di cooperazione, assicura che sia rispettato il carattere riservato delle medesime e che l’esecuzione avvenga in tempi rapidi e con le modalità dovute*”).

²⁰ Court of Appeal of Rome, Criminal Section IV, RG 11/2025, Order on surrender pursuant to Law 237/2012 to the International Criminal Court (21 January 2025) (“*La medesima comunicazione veniva trasmessa il 19.1.2025 al Ministero della Giustizia da parte della DIGOS di Torino*”).

19. On **20 January 2025**, a day after the Minister of Justice had been duly notified by the Turin Digos, it appears that the Italian Minister of Justice was notified again of Al-Masri's arrest, this time by the General Prosecutor of the Court of Appeals in Rome.²¹
20. Although the provisional arrest of Al-Masri was **“immediately communicated”** to the General Prosecuotr, even though **“on the same date, by the prosecutor to the MoJ [Minister of Justice-O.S.]... the MoJ remained silent for at least two days on the matter, failing to state its position and without formally transmitting the relevant acts.”**²²
21. On **21 January 2025 at 11:14** in the morning, an Italian governmental airplane (‘Falcon 900’) had departed from Rome, arriving to Turin around 12:15. This is the state-owned jet that will smuggle Al-Masri from Italy and the reach of the ICC to Libya. This detail shows that before the Minister of Justice pronounced on the matter (16:04), and more importantly **before the Court decided to release Al-Masri** (at about 17:00), the Suspects already knew their actions and inactions will lead to his release, and have already made arrangement for his swift smuggling from the country.²³
22. **On the same day at around 16:00** in the afternoon, when the plane on which Al-Masri will flee Italy was in Turin, the “Minister of Justice published a laconic note... saying that his office was **still assessing what to do** in relation to the transmission of the acts to the PG, in light of the “complexity of the paperwork”.²⁴

²¹ Court of Appeal of Rome, Criminal Section IV, RG 11/2025, Order on surrender *pursuant to Law 237/2012* to the International Criminal Court (21 January 2025) (“*Ministro interessato da questo Ufficio in data 20 gennaio u.s., immediatamente dopo aver ricevuto gli atti dalla Questura di Torino, e che, ad oggi, non ha fatto pervenire nessuna richiesta in merito. Per l’effetto non ricorrono le condizioni per la convalida e, conseguentemente, per una richiesta volta all’applicazione della misura cautelare. Ne deriva la immediata scarcerazione del prevenuto*”).

²² https://www.ejiltalk.org/the-failure-to-arrest-and-surrender-osama-elmasry-njeem-that-awful-mess-in-rome/?utm_source=pocket_saves.

²³ <https://www.unita.it/2025/02/05/cristiano-ronaldo-40-anni-perche-non-e-goat-storia-piu-forte-calciatore-sempre/>; See also <https://x.com/scandura/status/1881836176010821747>.

²⁴ https://www.ejiltalk.org/the-failure-to-arrest-and-surrender-osama-elmasry-njeem-that-awful-mess-in-rome/?utm_source=pocket_saves (“*considerato il complesso carteggio*”).

23. **On the same day at around 17:00**, when the 48 hours during which Al-Masri could have legally kept in provisional arrest were about to expire, and since no request had arrived from the Minister of Justice, the Italian Court of Appeal had no choice but to order the release of Al-Masri. The decision explicitly notes in this regard that in addition to the notification sent by the judicial police on 19 January 2025, on 20 January 2025 the General Prosecutor of the Court “immediately after receiving the documents from the Turin Police Headquarters”, had notified again the Minister of Justice “who, **to date, has not sent any request in this regard. As a result**, the conditions for validation and, consequently, for a request aimed at applying the precautionary measure do not exist. **The immediate release of the defendant follows...**”.²⁵
24. The Italian Court and the General Prosecutor noted that the police erred by applying a law regulating general²⁶ rather than ICC extradition proceedings; that the latter proceedings must be instituted by the Minister of Justice; that the Minister of Justice has been duly informed and formally **notified of the arrest** of Al-Masri by the relevant authorities; that notwithstanding he is the **exclusive authority** that is able to initiate proceedings to surrender Al-Masri to the ICC, Mr. Nordio “**to date, has not sent any request** in this regard”; that “**as a result**” the above-mentioned procedural mistake cannot be corrected and the “release of the defendant follows”.
25. On the same day of **21 January 2025 at 19:51** local time, i.e., **less than 3 hours after the Court ordered his release**, and when the Minister of Justice was still ‘assessing the complex paperwork’, Al-Masri had already departed from Turin on a state-owned plane

²⁵ Translation from Italian by the authors. Court of Appeal of Rome, Criminal Section IV, RG 11/2025, Order on surrender pursuant to Law 237/2012 to the International Criminal Court (21 January 2025) (“**Ministro interessato da questo Ufficio in data 20 gennaio u.s., immediatamente dopo aver ricevuto gli atti dalla Questura di Torino, e che, ad oggi, non ha fatto pervenire nessuna richiesta in merito. Per l’effetto non ricorrono le condizioni per la convalida e, conseguentemente, per una richiesta volta all’applicazione della misura cautelare. Ne deriva la immediata scarcerazione del prevenuto**”). The Court’s decision is available at: <https://www.giurisprudenzapenale.com/wp-content/uploads/2025/01/NAJEEEM-Osema-Almasri-Habish.pdf>

²⁶ Article 716 of the Italian Code of Criminal Procedure regulates ordinary criminal extradition proceedings.

and was on his way to Tripoli,²⁷ where he celebrated with his supporters his fugitive status.²⁸

26. On **22 January 2025**, the ICC published the above-cited Press Release on the matter, which lamented that contrary to the agreement between the ICC and the Italian authorities, **“without prior notice or consultation” with the Court , Mr Osama Elmasry Njeem was reportedly released from custody and transported back to Libya. The Court is seeking, and is yet to obtain, verification from the authorities on the steps reportedly taken. The Court recalls the duty of all States Parties to cooperate fully with the Court in its investigations and prosecutions of crimes.**”²⁹

27. Regardless of whether one adheres, or not, to the Court’s interpretation of Italian Law,³⁰ **“there appears to have been a breach by the Minister of Justice, who did not transmit the documents relating to the arrest warrant against Al Masri to the Attorney General. This appears even more relevant, since in addition to having received the request through the channels provided for these communications with the ICC, the Minister of Justice had been duly notified by the Turin Digos on January 19 and by the Attorney General on January 20. As noted in the order, on January 21 the Ministry had not yet sent any request relating to the arrest of Al Masri.”**³¹

28. To conclude, although it seems that the Minister of Justice was **informed of the issuance of the arrest warrant and the actual arrest by 3 different sources** - the ICC, the Judicial Police and the Attorney General - he decided to breach his obligation to

²⁷ <https://x.com/scandura/status/188179977752662421>.

²⁸ <https://www.rainews.it/video/2025/01/almasri-a-tripoli-portato-in-trionfo-tra-cori-di-schemo-per-litalia---video-eef49d1b-33cb-41f8-9778-568d59369790.html>.

²⁹ ICC Press Release, paragraphs 9-10.

³⁰ https://www.ejiltalk.org/the-failure-to-arrest-and-surrender-osama-elmasry-njeem-that-awful-mess-in-rome/?utm_source=pocket_saves and references there (in Italian): <http://www.sidiblog.org/2025/01/24/un-po-di-chiarezza-sulla-mancata-consegnadi-osama-elmasry-njeem-alla-corte-penale-internazionale/> ; <https://www.sistemapenale.it/it/opinioni/caianiello-meloni-una-discutibile-interpretazione-della-legge-di-cooperazione-dellitalia-con-la-cpi-commento-allordinanza-di-scarcerazione-nel-caso-almasri-davanti-alla-corte-dappello-di-roma?out=print>; <https://www.questionegiustizia.it/articolo/la-pagliuzza-e-la-trave-il-caso-almasri>; <https://www.avvenire.it/opinioni/pagine/amarezza-e-sconcerto-per-almasri-libero>.

³¹ Lavinia Parsi, ‘Un volo di stato chiude il caso Al Masri?’, translated from Italian, available at: <https://www.giustiziainsieme.it/it/processo-penale/3373-un-volo-di-stato-chiude-il-caso-al-masri-lavinia-parsi>

request the Court to arrest and surrender Al-Masri and instead to do nothing for 2 days, knowing that doing so will obligate the Court to order the release Al-Masri.

ii) Smuggling Al-Masri to Libya

29. In lieu of informing of the Court’s decision to the ICC, as required by the Rome Statute as was explicitly requested by the ICC, instead of taking measures to ensure the Al-Masri is re-arrested and remains in provisional detention under the applicable Italian Law, the Italian Minister of Interior, Mr. Matteo Piantedosi, secured the liberty of Al-Masri’s by **smuggling him on a state-owned jet out of the country and back to Libya, where he is currently a fugitive.**³²
30. After the smuggling of Al-Masri from Italy to Libya was revealed, Mr. Piantedosi cited “**urgent** security reasons” reasons for doing so.³³ However, according to some reports, Al-Masri entered Italy already on 6 January 2025 and re-entered on the 18 January 2025 and was not considered a security risk that necessitated his deportation. It was the ICC international arrest warrant, not any national warrant, the triggered his arrest, and his deportation was not an extradition to any other national law enforcement body, but to liberty as a fugitive.³⁴
31. Additional objective and external evidence refutes the Minister of Interior’s version. As noted above, the the Court rendered its decision only on 21 January 2025 at 5PM in the afternoon, shortly before the 48 hours of the provisional arrest were about to pass and only after the Minister of Justice still refrained from submitting Al-Masri’s file to the

³² Euronews, “Italy defends expulsion of Libyan warlord Osama al-Masri wanted by the International Criminal Court” (24 January 2025) (“*Piantedosi says al-Masri was repatriated to Tripoli for “urgent security reasons, with my expulsion order, in view of the danger posed by the subject”. The interior minister told the Senate, refusing to go into greater detail, citing a scheduled address to lawmakers next week.*”).

³³ Euronews, “Interior Minister Piantedosi: ‘Al Masri dangerous, expelled for state security’” (23 January 2025); see also https://www.repubblica.it/politica/2025/01/23/video/almasri_piantedosi_espulso_per_motivi_di_sicurezza_dello_stato-423957000/.

³⁴ https://roma.corriere.it/notizie/politica/25_gennaio_24/caso-almasri-lo-scontro-tra-roma-e-l-aia-sulle-procedure-e-sulle-date-lui-in-europa-dal-6-gennaio-1dc6adb1-5c18-41a7-8e79-0eb7ae564x1k.shtml.

Court. As reported in the media, the VIP plane the Italian government sent to smuggle this dangerous criminal out of the country (Falcon 900) had departed from Rome (Ciampino) in the AM, hours before the Court's decision to release Al-Masri was at all rendered. This evidences that the Suspects intended to cause the release as a result of the MOJ's inaction, and that they planned and made arrangement to smuggle Al-Masri in advance, before any "urgent security reasons" could have arisen, as Al-Masri was still in prison.³⁵

32. Also the version(s) of the Minister of Justice contradicts that of Mr. Piantedosi. If Al-Masri posed such a security risk, why did the Minister of Justice had made no request to the Court of Appeals and by doing so acted to release Al-Masri? Why – as noted below – the Minister of Justice claimed the ICC case against him was so weak that had it been submitted to the Court the latter would have rejected the request to arrest and surrender him to the ICC?

33. Contrary to Mr. Piantedosi's explanation, the decision-making of the Suspects was not legally but politically and criminally motivated. This allegation is gets further support from a statement made by the Italian Deputy Prime Minister and Minister of Foreign Affairs, Mr. Antonio Tajani, who made no mention of security risk but rather political or policy considerations. Mr. Tajani stated that

“The Hague is not the Gospel. It's not the Mouth of Truth... It's possible to have different opinions. Italy is not in check by anyone. We are a sovereign country and we carry out our policy”.³⁶

34. In her own statements, the Italian Prime Minister, Ms. Georgia Meloni, supported both the circumvention of the proceedings by her Minister of Justice related to the liberation of Al-Masri, and the measures taken by her Minister of Interior to smuggle Al-Masri

³⁵ <https://www.unita.it/2025/02/05/cristiano-ronaldo-40-anni-perche-non-e-goat-storia-piu-forte-calciatore-sempre/>. See also <https://x.com/scandura/status/1881836176010821747>.

³⁶ See, e.g., https://www.ansa.it/english/news/politics/2025/01/23/were-sovereign-state-says-tajani-on-almasri-case_4d50f558-fed9-428a-996f-a8cd13cddc65.html

from the country. In a stark contrast to the facts established by the Italian Court and also noted in the ICC Press Release, Ms. Melony claimed that “the arrest warrant **had not been properly communicated with the Italian justice ministry**, as is required by law”, a claim that neither the Minister of Justice himself nor the other Suspects have made.³⁷

35. Finally, on **5 February 2025**, the Minister of Justice provided yet another version for the turn of events. Testifying before the Italian Parliament, this time the Minister of Justice claimed the reason for his wilful inaction was the fact that the request “arrived in English without being translated”, that all he received was an “informal email of a few lines from Interpol three hours after al-Masri was arrested”, that there was ““absolute uncertainty about the date of the crimes committed,” given that “the document stated, on the one hand, that the crimes began in February 2011 and, on the other, in February 2015”, that “immense mess was made” by the ICC in this case, and that his role “is not simply that of a transit body for requests, it is not a paper pusher, but it is a political body, which must consider these requests in light of possible contact with other ministries and other institutions”. Also the Minister of Interior, Mr. Piantedosi, testified. According to him, “Almasri has never been an interlocutor of the government for matters pertaining to the management and contrast of the complex migratory phenomenon... The choice of repatriation methods... went hand in hand with **the assessment carried out for the expulsion of Almasri**...it was necessary to act quickly precisely because of the dangerousness profiles attributable to the individual and the risks that his stay in Italy would have entailed... The preparation of the plane, **already in the morning, falls within those preventive scenarios that are imagined for every eventuality**, even the transfer to another prison... expulsion, which the law attributes to the Minister of the Interior, was identified by me as the most appropriate

³⁷ See, e.g., <https://news.sky.com/story/italian-pm-giorgia-meloni-investigated-for-repatriating-libyan-warlord-wanted-on-international-arrest-warrant-13298740>

measure at that time to safeguard, together, the security of the State and the protection of public order”.³⁸

iii) Political attacks on the Italian Legal system

36. Be that as it may, in response to a complaint filed against the Suspects and another Italian official,³⁹ Ms. Meloni accused the Italian judiciary of being politically motivated and associated with the opposition, further undermining the integrity of the Italian prosecution and magistrates and their ability to investigate the matter domestically.⁴⁰

37. Ms. Meloni attacks on the Italian judiciary system for merely having sought to comply with Italian law, notifying her of the receipt of complaint, is a continuation of the Suspects’ political actions and inactions intended to circumvent the judicial proceedings in Italy that were instituted pursuant to the PTC arrest warrant. The success of the government in hijacking national judicial proceedings to fail the presentation of Mr. Al-Masri to the International Criminal Court, evidences the Suspects’ interference with ICC judicial proceedings, in violation of the obligations arising out of the Rome Statute.

iv) *mens rea*

38. After the Suspects requested the ICC **not to make public the arrest** of Al-Masri, the Suspects acted to **secretly and smuggle him from the country**. The Suspects knew the Minister of Justice is the only official that could submit the request that would lead to the processing of Al-Masri’s extradition to the ICC, and that the law prescribes a very

³⁸ <https://abcnews.go.com/Business/wireStory/italy-international-criminal-court-made-immense-mess-libyan-118479653>; <https://www.agenzianova.com/en/news/nordio-I-am-not-a-paper-pusher-of-the-cpi-piantedosi-almasri-never-been-an-interlocutor-of-the-government/>;

³⁹ Ansa, “Lawyer denounces Meloni and Piantedosi on the Almasri case” (23 January 2025). See also https://www.ansa.it/english/newswire/english_service/2025/01/28/lawyer-says-meloni-probe-due-act-2_72885577-25ec-47fc-8edc-10517c80785b.html.

⁴⁰ See, e.g., https://www.lemonde.fr/afrique/article/2025/01/31/enquete-sur-la-libye-giorgia-meloni-s-en-prend-a-nouveau-aux-juges_6525042_3212.html, and here https://www.francetvinfo.fr/replay-radio/d-un-monde-a-l-autre/en-italie-la-politique-migratoire-au-c-ur-de-l-affrontement-entre-giorgia-meloni-et-la-justice_7014329.html and here https://www.francetvinfo.fr/monde/italie/certains-juges-veulent-gouverner-en-italie-giorgia-meloni-contre-attaque-apres-la-liberation-d-un-responsable-libyen-recherche-par-la-cpi_7047308.html (“some judges want to govern”).

short time to do so (48 hours), and yet for two days they intentionally refrained from such submission, knowing it would ultimately lead to his release.

39. Although the ICC explicitly requested them to be informed of any difficulty encountered during the process, the Suspects intentionally refrained from informing the Court of the matter (‘without prior notice or consultation’). In fact, it seems the ICC learned about the release from the media, and only after Al-Masri was not in Italy. **When Al-Masri was already in Libya – a non-state party to the Rome Statute – the Court was still “seeking, and is yet to obtain, verification from the authorities”.**

40. The above is consistent with the fact that instead of taking legal action to re-arrest Al-Masri under the applicable national law, the Suspects were busy doing something else: As noted above, about 6 hours before the Court issued its decision, the Suspects have ostensibly already arranged the plane that would smuggle him out of Italy.

41. All these elements substantiate the *mens rea* of the Suspects, establishing reasonable grounds to believe they have committed offences related to the administration of justice under the Rome Statute.

42. This body of evidence is further reinforced by the strong motive the Suspects have to avoid their own criminal responsibility. For the Suspects must have been aware of the Applicant’s Communication, which was intensively deliberated, institutionally and publicly, both in Italy and in many other EU Member States (e.g. at the German Bundestag, the Spanish Congress, the European Parliament, the Council of Europe).⁴¹

⁴¹ See, e.g., https://www.corriere.it/esteri/19_giugno_03/dalla-francia-nuovo-esposto-all-aja-control-italia-politici-responsabili-crimini-control-umanita-73ba6960-857e-11e9-a4c5-122bac19b17d.shtml; <https://www.theguardian.com/law/2019/jun/03/icc-submission-calls-for-prosecution-of-eu-over-migrant-deaths>; https://www.lemonde.fr/international/article/2019/06/03/plainte-contre-l-union-europeenne-devant-la-cpi-pour-le-traitement-des-migrants-en-libye_5470685_3210.html; <https://www.spiegel.de/politik/ausland/fluechtlinge-in-libyen-rechtsanwaelte-zeigen-eu-in-den-haag-an-a-1270301.html>; https://elpais.com/internacional/2019/06/02/actualidad/1559497654_560556.html; <https://www.lefigaro.fr/flash-actu/deces-de-migrants-en-mediterranee-des-avocats-veulent-traduire-l-ue-en-justice-20190603>; <https://www.lesoir.be/239652/article/2019-07-31/ces-avocats-qui-veulent-poursuivre-leurope-pour-crime-contre-lhumanite>; <https://apnews.com/article/998475228a944e6ea7f4b005f9e1c293>.

43. This view is shared by many. One scholar considered that the behavior of the Suspects in the Al-Masri case should be interpreted **“in light of the complaints presented to the ICC against some Italian Ministers and former Ministers precisely in relation to the crimes committed against migrants in Libya”**.⁴² Another scholar argued that “[t]he sequence of acts and decisions and their timing in the Elmasry case **seem hardly compatible with the scenario of mere procedural errors by the involved (political) authorities, leading to the unavoidable “technical” consequence of his release and repatriation...** Moreover, the **deliberately passive behavior of the MoJ when time was absolutely of the essence** reveals that, to use a euphemism, giving effect to the Court’s request was certainly not among the priorities of his office. **The decision of the Minister of the Interior to immediately expel Elmasry, thereby preventing the still possible correction of the alleged procedural irregularities in the arrest, and his prompt transfer to Tripoli aboard a military flight whose departure can only be authorized at the highest governmental level, complete the picture of what seems to amount to a deliberate political decision to allow the escape of the suspect... A decision... to avoid any scrutiny also on the actions of Italian and of other European state officials, especially in relation to the management of migration issues in recent years...”**.⁴³

44. Be that as it may, the membership of the Suspects in the “Task Force” investigating the crimes Al-Masri is charged with, the reports the ICC Prosecutor regularly submits to the UNSC on these crimes, the UN Human Rights Council’s own report (FFM) corroborating the Suspects’ complicity in these crimes, countless reports of other UN bodies, international organizations and NGOS, debates in the Italian Parliament, reports

⁴² Lavinia Parsi, ‘Un volo di stato chiude il caso Al Masri?’, translated from Italian, available at: <https://www.giustiziainsieme.it/it/processo-penale/3373-un-volo-di-stato-chiude-il-caso-al-masri-lavinia-parsi>

⁴³ https://www.ejiltalk.org/the-failure-to-arrest-and-surrender-osama-elmasry-njeem-that-awful-mess-in-rome/?utm_source=pocket_saves

and investigations by international and national media on the Italian-Libyan agreements and cooperation – render the criminal risk they incur a fact of common knowledge.⁴⁴

45. The policies pursuant to which the ICC crimes reported in the Communication were committed were enhanced, prorogated, and intensified by the Suspects. Aware of their potential criminal liability before the International Criminal Court, the Suspects were equally aware that Al-Masri's surrender to the Court would have given the ICC access to a key witness and potentially a holder of additional evidence on their implication in crimes against humanity directed against a singled out civilian population ('migrants'), committed pursuant to their statal policies), whether the group is targeted before or after its members attempt to flee Libya via the Central Mediterranean route.

⁴⁴ Article 69(6) of the Rome Statute. Also compare with paragraph 5 of the Arrest Warrant in Al-Masri. See also <https://www.nytimes.com/2025/01/24/world/europe/italy-libya-migrants-international-criminal-court.html> and

III. The Law

46. As per Article 70 of the Rome Statute (Offences against the administration of justice), “[t]he Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

...

(c) Corruptly influencing a witness, **obstructing or interfering with the attendance or testimony of a witness**, retaliating against a witness for giving testimony or **destroying, tampering with or interfering with the collection of evidence;**”

47. As per Rule 162(2) of the Rule of Procedure and Evidence of the Court (Exercise of jurisdiction), “[i]n making a decision whether or not to exercise jurisdiction, the Court may consider, in particular:

(a) **The availability and effectiveness of prosecution in a State Party;**

(b) **The seriousness of an offence;**

(c) **The possible joinder of charges under article 70 with charges under articles 5 to 8;**

(d) **The need to expedite proceedings;**

(e) **Links with an ongoing investigation or a trial before the Court; and**

(f) **Evidentiary considerations.”**

48. As per Rule 165(1) of the Rule of Procedure and Evidence of the Court (Investigation, prosecution, trial and appeal), “[t]he Prosecutor may initiate and conduct investigations with respect to the offences defined in article 70 on his or her own initiative, on the basis of **information communicated by a Chamber or any reliable source.**”

49. The Suspects’ conduct reflect a serious breach of Italy’s obligation to cooperate with the ICC under *inter alia* Article 1 of Italian law 237/2012, as well as Article 89 of the Rome Statute, which provides that: “The Contracting States, in accordance with the provisions of this Part and the procedure provided by their national law, shall comply with requests for arrest and surrender.”

50. By preventing the arrest and extradition of Al-Masri and actively smuggling him out of a territory of a State Party to the Rome Statute, the Suspects intentionally obstructed or interfered with the attendance and collection of the testimony of Al-Masri, and by doing so they destroyed, tampered or interfered with the collection of evidence within the meaning of Article 70(c) of the Rome Statute.
51. Furthermore, each and every criterion listed in Rule 162(2) supports exercising the Court's jurisdiction over the alleged offences: evidentiary considerations related to both Al-Masri and the Suspects' cases ; the unbreakable link to undisputed and ongoing ICC crimes committed against 'migrants' since at least 2017 ; the need to expedite these proceedings given the duty to prevent and terminate these crimes and the OTP's failure to do so in the past 8 years; the possibility to join the charges under article 70 with charges under articles 5 and 7 of the Rome Statute on the basis of this complicity ; the seriousness of the offence; and the lack of effective prosecution in Italy, given its failure to investigate the crimes of the Suspects against 'migrants', the failure to arrest and surrender Al-Masri to the ICC, the political seniority of the Suspects – including a prime minister and the minister in charge of the domestic justice system – and their grave and repeated attacks and threats intended to undermine the Italian judiciary in order to avoid accountability for their conduct under Article 70 of the Rome Statute.
52. The unbreakable link between the alleged Article 70 offences and the Crimes Against Humanity which the FFM found the Suspects are committing, means that only the OTP can properly investigate these interrelated crimes. 23 years after the Rome Statute entered into force, Italy has still not incorporated crimes against humanity into its criminal code. In fact, it was one of the Suspects, Prime Minister Giorgia Meloni, who blocked the previous government's legislation on the matter, ensuring the Italian judiciary will remain one of few States Parties who did not incorporate Crimes Against

Humanity their national legislations. In these circumstances, Italy cannot resort to the principle of complementarity in this case.⁴⁵

53. Finally, in this case the Prosecutor's obligation to initiate investigations under Article 70 exceptionally hinges on both the information communicated by PTC-I in connection with the decision to arrest Al-Masri, *and* the reliability of the sources, first and foremost the present Communication, as well as the FFM report and the Applicant's Communication, which implicates the Suspects in Article 7 crimes.

⁴⁵ See, e.g., <https://www.justiceinfo.net/en/115500-italy-sticks-20-year-gap-international-crimes.html>.

IV. Conclusions

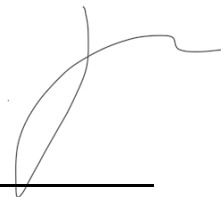
54. Since 2017 the Italian authorities are unwilling to prosecute Italian nationals for undisputed crimes against humanity against ‘migrants’, unwilling to independently prosecute *non*-Italian nationals for these crimes, and seemingly unwilling to collaborate with the ICC in the prosecution of these crimes as part of the ‘Joint Task Force’.
55. Now the Al-Masri case also evidence the Italian government and judiciary are not even capable to cooperate with the ICC when the latter finally seeks to independently prosecute and adjudicate these crimes.
56. On the contrary, the Suspects are determined to interfere with the ICC mandate and to violate the Rome Statute, to legally avoid their own criminal liability for these and associated ICC crimes, and to politically ensure that these ongoing crimes *a-la-ICC-Prosecutor*, will continue uninterrupted and will victimize thousands of new victims.
57. The Suspects in the Al-Masri case did not fail to act. They acted to fail and frustrate national and international criminal proceedings, for the purpose of “obstructing... the attendance or testimony of a witness... destroying, tampering with or interfering with the collection of evidence”, as per Article 70 of the Rome Statute.
58. After their plan to smuggle a fugitive to his home country was revealed, they moved to attack the ICC, to attack the Italian police, and even to attack Italian judges, falsely arguing the Minister of Justice was not informed and that the Italian judiciary is partial, not independent and politically motivated, in an attempt to circumvent investigation of their conduct in the Al-Masri case and avoid any accountability for their complicity in Crimes Against Humanity committed against ‘migrants’ in the Central Mediterranean route.
59. The Italian judiciary is not only unable to domestically prosecute Crimes Against Humanity, but also incapable to prosecute Article 70 offences, for the same reasons it has failed to arrest and extradite Al-Masri, namely because the Italian political

authorities, i.e., the Suspects, are using, misusing and abusing their executive powers to interfere and frustrate legal proceeding to ensure they avoid accountability, be it for the Al-Masri smuggling scandal, the crimes Al-Masri is charged with, or their own criminal liability in connection with Crimes against humanity against ‘migrants’.

60. Based on the above, the Office of the Prosecutor is respectfully requested to exercise its jurisdiction by investigating and, if necessary, prosecuting the Suspects for offences under Article 70, in connection with crimes under Article 7, of the Rome Statute.



Dr. Omer Shatz, Adv.



Dr. Juan Branco, Adv.

on behalf of
Victim a/75000/23

Dated this 5 February 2025

At Paris, FRANCE