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Professor Giuseppe Conte
President of the Council of Ministers of the Italian Republic
Presidency of the Council of Ministers
Palazzo Chigi
Piazza Colonna 37
00187 Roma
Italy

Dear President Conte,

I write on behalf of the International Commission of Jurists in relation to the invocation of the state secrets doctrine by the Italian Government in criminal proceedings to prosecute US and Italian agents before the First instance criminal tribunal of Milan, and subsequent appeals before the Court of Appeal in Milan and the Court of Cassation. These agents were found responsible for the rendition of Nasr Osama Mustafa Hassan (known as Abu Omar) in 2003, that the European Court of Human Rights found contrary to Italy's obligations in its judgment *Nasr and Ghali v. Italy*, that is currently awaiting execution.

The ICJ considers that the use of state secrets doctrine to obstruct accountability of Italian and US officials involved in gross human rights violations is utterly at odds with Italy's international legal obligations and an affront to the rule of law in Italy.

The International Commission of Jurists (ICJ) is made up of some 60 distinguished jurists from all regions the world. Since 1952, the ICJ has worked to advance and uphold the rule of law and human rights globally.

As you are aware, on 23 February 2016, the European Court of Human Rights ruled that the Italian Republic had breached the European Convention on Human Rights as a consequence of the conduct by certain Italian officials which entailed complicity in the rendition of Abu Omar. The misconduct involved both the rendition and the subsequent measures taken to hinder the investigations and trials of those accused of the rendition through the Italian government's invoking the state secrets doctrine (see, *Nasr and Ghali v. Italy*, Application no. 44883/09). While 23 of

the 26 CIA agents involved have been convicted *in absentia*, the European Court clearly held that the application of the state secrets doctrine created a situation of "impunity" (para. 272), because it impeded the trial of the SISMI agents allegedly implicated in the operation.

Italy has a duty to respect, protect and fulfil its human rights obligations under international law. It is well established that this includes the right of family members and the general public to know the truth about gross violations of human rights of victims.¹

The European Court of Human Rights has underlined

... the great importance of the present case not only for the applicant and his family, but also for other victims of similar crimes and the general public, who had the right to know what had happened. The issue of "extraordinary rendition" attracted worldwide attention and triggered inquiries by many international and intergovernmental organisations, including the United Nations human rights bodies, the Council of Europe and the European Parliament. ... ²

The rendition and secret detention system, as operated by the CIA and others, including private companies and officials from other States, involved multiple human rights violations. These violations include torture and other ill-treatment, arbitrary detention, and the right to be recognized as a person before the law. Renditions, including that of Abu Omar, also amount to enforced disappearances, which constitutes a serious crime under international law. In addition, Italy has an obligation under international law to investigate such acts effectively and to identify and bring to justice all those responsible for them, irrespective of considerations of national security or international co-operation.

In light of information that has emerged regarding involvement by certain States in Europe in the rendition programme, including several rulings of the European Court of Human Rights, it is essential that European states, including Italy, restore and uphold their commitment to the rule of law in countering terrorism.

The particularly serious criminal conduct at issue in the Abu Omar case makes accountability indispensable. In this regard, we urge you to reconsider the invocation of the state secrets doctrine in this case and in any other future case related to the rendition of Abu Omar. This doctrine must never prevent a State from respecting its obligation to address effectively, including under the criminal law, serious human rights violations and crimes under international law. Moreover, the doctrine cannot legitimately be invoked to protect the State from embarrassment or wrongdoing, precluding accountability for human rights

¹ *El-Masri*, ECtHR, Application no. 39630/09, 13 December 2012, § 191; UN General Assembly, Resolution 65/196; UN Human Rights Council resolutions Resolution 9/11 of 24 September 2008; Resolution 12/12 of 1 October 2009; Resolution 21/7 of 27 September 2012; UN Working Group on Enforced or Involuntary Disappearances, *General Comment on the Right to the Truth in Relation to Enforced Disappearances*; *UN Updated Set of Principles for the Promotion of Protection of Human Rights through Action to Combat Impunity*, UN Doc. E/CN.4/2005/102/Add.1, 8 February 2005, Principle 2; *Contreras et al. v. El Salvador*, IACtHR, 173, 26 and 170 (among others); *Guidelines on Eradicating Impunity for serious human rights violations*, approved on 30 March 2011; *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and of Serious Violations of International Humanitarian Law*.

² *El Masri*, para. 191.

violations. On the contrary, if impunity for grave violations of human rights is to be avoided, States must do all in their power to support investigations and prosecutions of crimes committed in the name of countering terrorism, including by actively seeking extradition of suspects.

The ICJ recalls that the Global Principles on National Security and the Right to Information (the "Tshwane Principles") affirm, in principle 10(A)(1) that

There is an overriding public interest in disclosure of information regarding gross violations of human rights or serious violations of international humanitarian law, including crimes under international law, and systematic or widespread violations of the rights to personal liberty and security. Such information may not be withheld on national security grounds in any circumstances.

These Principles have been endorsed by the Parliamentary Assembly of the Council of Europe in resolution 1954(2013) and the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression (A/70/361).

In consideration of the above, **the ICJ respectfully asks you, as President of the Council of Ministers, to lift the invocation of the state secrecy doctrine as it may have been applied directly or indirectly to the Abu Omar case.**

Respectfully yours,

A handwritten signature in blue ink, appearing to read 'Robert K. Goldman', written in a cursive style.

Robert K. Goldman
President, International Commission of Jurists