



Catherine Ashton

High Representative of the Union for Foreign Affairs and Security Policy
Vice President of the European Commission

Brussels, 8 September 2011
Our Ref: B1099

Dear Baroness Ashton,

Libya: Cooperation with the International Criminal Court

In line with the EU common position on the International Criminal Court (ICC) and UN Security Council Resolution 1970, I am writing to urge you publicly and privately to call on the National Transitional Council (NTC) to surrender Mu'ammar al-Gaddafi, his son Saif al-Islam and former military intelligence chief Abdallah al-Sanussi to the ICC as soon as they are captured.

In February 2011, the UN Security Council referred the situation in Libya to the Prosecutor of the ICC. Following an investigation, on 27 June, the Pre-Trial Chamber issued arrest warrants against the three men charging them with crimes against humanity of murder and persecution. The Libyan authorities are required by Resolution 1970 to cooperate fully with the ICC, which includes arresting and surrendering suspects charged by the Court. Amnesty International is therefore concerned at recent statements by the NTC that, instead of cooperating with the ICC, it intends to prosecute the suspects before national courts. There has been speculation surrounding potential support within the EU for this.

Any refusal to surrender the suspects to the ICC would violate the NTC's obligations under international law and delay justice to victims. To successfully challenge the ICC's prosecution of the cases, the NTC would need to demonstrate to the ICC that national authorities are genuinely able to prosecute the crimes. They are not in a position to do so at this time. The current justice system has failed to operate impartially and independently for decades and is unable to prosecute these men in accordance with international standards. The essential work of rebuilding the national justice system will take time and serious investment. The ICC is ready to act now to prosecute the men in accordance with the highest standards of international justice and could, if the men are convicted, order reparation for victims.

Prosecuting the men now in trials before the current national legal system would likely lead to violations of the right to a fair trial and possibly result in the death penalty. Instead, Amnesty International is calling on the NTC to surrender the suspects to the ICC, possibly requesting that the ICC hold hearings in Libya, and to begin as soon as possible the complex process of rebuilding the national justice system, to allow for future national investigations and prosecution of crimes under international law committed in the country. This could include seeking extradition of the ICC suspects once the ICC process is completed, if national charges are filed for crimes not addressed under the ICC charges.

It is essential that the EU promotes both respect for the ICC's arrest warrants and the urgent need to rebuild the Libyan justice system.

Yours sincerely

Dr. Nicolas J. Beger
Director