

Dr. Luís Filipe Marques Amado
President of the
Council of Ministers of the European Union

Brussels, 11 October 2007
Our ref. B703

Subject: Role of human rights concerns in EU-Libya relations

Dear Mr. Amado,

It is our understanding that on 16 October the General Affairs and External Relations Council will discuss a negotiating mandate for the Commission with regard to increased cooperation between the EU and Libya, based on the Memorandum of Understanding signed between the Commission and the Government of Libya on 24 July 2007.

Amnesty International outlined its concerns with regard to this Memorandum of Understanding, in a letter to Commissioner Ferrero Waldner on 27 July. The Libyan authorities need to proceed urgently with implementing much-needed reforms to the criminal justice system to ensure that the lessons of the tragic case of the six foreign medical workers are learnt and this situation is not allowed to reoccur. In this context, it is in the EU's direct interest to ensure that any increased engagement with Libya is accompanied by a parallel increased engagement on human rights concerns and judicial reform. We are therefore concerned that in the Memorandum of Understanding, no mention was made of judicial reform or any future dialogue on human rights issues as an integral component of increased cooperation.

Amnesty International receives details each month of cases of Libyan journalists and dissidents who are not receiving fair judicial process. However, it is increasingly difficult to obtain information on such cases, and there is little hope of them benefiting from the levels of international attention that brought the particular case of the medical workers to a conclusion. We therefore seek assurances from the Council and Commission that these concerns will not only continue to be raised in EU-Libya relations, but that the opportunity for increased engagement will be used to further human rights goals. This includes increasing flows of information available on individual cases and addressing the lack of legal safeguards and various other judicial problems that marked this crisis from the outset.

We are equally worried about Article 5 of the Memorandum. Although the provision is drafted in very vague terms as regards the commitment of the Commission, it explicitly refers to the future specific agreement between Libya and the EU dealing with a variety of topics, including the surveillance of Libyan sea and land borders in the context of irregular migration. The memorandum explicitly states that this will be "on behalf of the EU".

Amnesty International has frequently raised concerns as regards the respect for human rights of refugees and migrants in Libya and believes that there are compelling grounds for the EU to apply clear human rights conditionality to any initiative regarding co-operation on irregular migration with the Libyan authorities. The country is not a party to the 1951 Convention related to the Status of Refugees or its 1967 Protocol and although the UNHCR has an office in Tripoli, Libya still has not, to Amnesty International's knowledge, signed a cooperation agreement for a formal UNHCR presence in the country. In national legislation, there are no procedures which would allow asylum-seekers to present an application for recognition of their refugee status by the Libyan authorities. In addition, detention conditions of 'illegal immigrants' are reported to be deplorable and expulsions of large numbers of 'illegal immigrants' are carried out on a regular basis with no attention paid to protection needs. In 2007 Amnesty International launched two urgent actions regarding the risk of forcible

return from Libya of Eritrean nationals to Eritrea where they would be subject to ill-treatment including torture as punishment for "betraying" the country or fleeing military service and incommunicado detention. Amnesty International is also concerned by reports from inside detention centres that some of the Eritrean detainees have been tortured or otherwise ill-treated by guards in recent months.

Due to its poor human rights record, not least as regards asylum seekers and irregular migrants, Amnesty International believes that human rights conditionality should be an essential element of any future agreement in this field with Libya and hopes that this will be sufficiently reflected in the negotiating mandate that is to be approved by the Council. In the above-mentioned letter to Commissioner Ferrero-Waldner, Amnesty International expressed its concern about the absence of any reference to the need for such cooperation to be developed in full respect of asylum seekers', refugees' and migrants' rights. In The Hague Programme on strengthening the area of freedom, security and justice in the European Union, the European Council unambiguously stated that cooperation on migration issues will be provided to those countries that demonstrate a genuine commitment to fulfil their obligations under the 1951 Geneva Refugee Convention. This was explicitly repeated in the Council Conclusions on initiating dialogue and cooperation with Libya on migration issues adopted in June 2005. The Council called upon the Libyan authorities to demonstrate a genuine commitment to engage in effective cooperation with UNHCR and to respect the principle of non-refoulement. Also the extent and development of such cooperation was made dependent on Libya's commitments on asylum and fundamental rights.

As indicated above, there is little evidence to suggest that progress has been made with regard to respect for asylum seekers', migrants' and refugees' rights in Libya. As a result, it is of the greatest importance for the negotiating mandate of the Commission to reaffirm that further cooperation with Libya in this field must be based on compliance with regard to fundamental rights of refugees, asylum seekers and migrants, and in particular the principle of non-refoulement. As far as the negotiating mandate for the Commission would include cooperation with regard to search rescue/interception operations at sea, the issue of disembarkation "at a place of safety" of those rescued or intercepted is particularly problematic in the light of the absence of effective protection mechanisms in Libya. Transparency with regard to measures taken by Libya in this field through regular reporting from the Commission to the Council and the European Parliament will be key in ensuring real progress.

In anticipation of Libya being engaged into the EUROMED framework, it would seem not only appropriate but necessary for the human rights dimension to be incorporated from the outset as an essential element into any agreement with Libya.

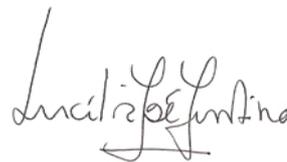
We hope that the concerns expressed in this letter will be duly taken into account.

Yours sincerely,



Dick Oosting

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