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DEEP POLITICAL CRISIS AMONG 'SERIOUS CHALLENGES' HAMPERING LIBYA'S EFFORTS

TO BUILD MODERN, DEMOCRATIC STATE, SECURITY COUNCIL TOLD

International Criminal Court Prosecutor, Libya Differ over Ex-Regime Detainees

Despite the Libyan people's strong determination to consolidate their freedom and build a modern democratic State, their country continued to face serious security challenges and a deep political crisis, the International Criminal Court's top prosecutor told the Security Council today.

Fatou Bensouda, the Court's Chief Prosecutor, said the steady decline in the security situation had hampered the investigative activities of her office, as well as possibilities for effective interaction with the Government of Libya. Strengthening the Government's ability to assume its security responsibilities remained the key to success, she added.

Ms. Bensouda said that reports of mistreatment and death by torture in illegal detention centres were also worrying. With 7,000 detainees still held across the country, the process of transferring them to State-controlled facilities needed speeding up, she said. "Illegal detentions and torture should have no place in modern Libya." Individuals accused of committing serious crimes in Libya must be brought to justice, either inside the country or at the International Criminal Court, she added declaring: "This is not negotiable." The Libyan Government had a legal obligation to cooperate fully with the Court, but its progress in handling the case of Abdullah al-Senussi — ruled inadmissible by the Court's Appeals Chamber — had been slow. It was even more regrettable, and of great concern, that the Government had failed to surrender Saif al-Islam Qadhafi, she said.

Ibrahim A. O. Dabbashi (Libya) said the national judicial authorities continued to work for recognition of Libya's jurisdiction over the Qadhafi and Senussi cases by the International Criminal Court. It also sought to develop a comprehensive strategy for trying all perpetrators, including those responsible for human rights violations, irrespective of their identities or those of their victims, he said, stressing that the Government was committed to ensuring accountability, fighting impunity, realizing justice for victims and protecting the rights of all. Concerning displacement, he said the future of the Tawergha inhabitants was among the Government's priorities, as it sought to strike a balance between ensuring justice and preserving the integrity of the political process.

Also speaking today were representatives of Chad, Jordan, Argentina, United States, Australia, Nigeria, France, China, Russian Federation, Lithuania, Luxembourg, Chile, Rwanda, United Kingdom and the Republic of Korea.

The meeting began at 10:07 a.m. and ended at 11:40 a.m.

Background

The Security Council met this morning for to hear a briefing on the situation in Libya by the Prosecutor of the International Criminal Court.

Briefing

FATOU BENSOUDA, Prosecutor of the International Criminal Court, said that, while the world witnessed the strong determination of the Libyan people to consolidate their freedom and build a modern democratic State that would uphold the rule of law and respect human rights, the country continued to face serious security challenges and a deep political crisis. The steady decline in the security situation had hampered the investigative activities of the Prosecutor's Office, as well as possibilities for effective interaction with the Government of Libya, she said.

Strengthening the Government's ability to assume its security responsibilities remained the key to success in their joint endeavours to bring lasting peace to the country, she continued. Reports of mistreatment and death by torture in illegal detention centres were also worrying, she said, noting that the number of detainees requiring transfer to proper Government-controlled detention centres had reportedly dropped from 8,000 to 7,000. The process of transferring prisoners to State-controlled facilities needed speeding up, she stressed. "Illegal detentions and torture should have no place in modern Libya."

The time had also come for the Government to resolve the Tawergha issue, she said, noting that the steps it had taken to plan a national conference on internal displacement, while welcome, were yet to bear fruit and must be intensified. It was important to bring all relevant stakeholders together to address alleged crimes in Tawergha, which would require resources from the international community. There was no doubt that Libya needed help with its transition to democracy and the rule of law, she said, underlining the critical importance of justice to lasting peace. It should be at the forefront of international efforts to help Libya.

"Individuals alleged to have committed serious crimes in Libya must be brought to justice, either in Libya or at the International Criminal Court," she continued, declaring: "This is not negotiable." However, progress had been slow in the case of Abdullah al-Senussi, which had been ruled inadmissible by the Appeals Chamber of the International Criminal Court. It was even more regrettable, and of great concern, that, despite the order for the Government to surrender Saif al-Islam Gaddafi, it had not yet done so. The admissibility decision was under appeal, but Libya still had a legal obligation to cooperate fully with the Court and to comply with the Appeals Chamber's orders, she said. "To be absolutely clear, the Government of Libya should immediately surrender Saif al-Islam Gaddafi to the Court."

She recalled that, following the signing of the memorandum of understanding on burden-sharing with the Government in 2013, her Office had held fruitful and constructive discussions with the Prosecutor General on the practical aspects of implementing the memorandum, as well as strategies for carrying out further investigations, prosecutions and possible arrests. The support of the Security Council and all States was critical for those efforts to bring those responsible for serious mass crimes to justice, she said.

In particular, support was crucial for the colossal task of collecting evidence to untangle the modus operandi of the networks responsible for committing crimes, she said. Telephone intercepts and sustained follow-up on funds transfers in order to establish the movements and whereabouts of persons under investigation could only be accessed with State assistance, and the Prosecutor's Office hoped it could count on their cooperation in facilitating the smooth arrest and surrender of those accused of such crimes. "This is key for sending a clear message to would-be Libyan perpetrators, and indeed all other would-be perpetrators, that the international community is watching and will no longer allow impunity to reign unchecked," she said.

MAHAMAT ZENE CHERIF (Chad) noted that 7,000 individuals had been detained without due process, emphasizing the necessity of both domestic and international justice. The

Court should continue its activities both inside and outside Libya. As for the Al-Senussi case, he expressed hope that the Court would continue its work in a transparent and objective manner. Perpetrators of serious crimes must be held accountable, but because the security situation inside Libya was so volatile, the Court must support efforts to build security capacity and re-establish the rule of law.

ZEID RA'AD ZEID AL-HUSSEIN (Jordan) noted that, since 2011, the Libyan Government had pledged to ensure accountability and restore the rule of law. However, challenges and obstacles, alongside the security problems could erode any progress made. The Government should expedite the conclusion of the burden-sharing memorandum of understanding signed with the Court, he said. There was also concern about the slow progress on detainees, and the Government should either release those held without sufficient evidence or, if evidence existed, ensure that they underwent due process. He expressed hope that the 30,000 displaced people from Tawergha would be able to return to their homes.

MARÍA CRISTINA PERCEVAL (Argentina) reminded the Government of its obligation to hand Saif al-Islam Gaddafi over to the Court, despite his ongoing trial in Libya. Noting with concern the existence of torture and detention centres, she said that, although the number of detainees had decreased, the central Government and local authorities should guarantee due process for detainees and release those found not guilty or who had already served their sentences. It was of critical importance to develop a strategy for ensuring the safe return of the internally displaced, she said, stressing that Libya’s need for legitimate institutions went beyond interaction with the International Criminal Court; it would require engagement by the whole international community.

MARK SIMONOFF (United States), urging Libya to cooperate with the Court and to ensure that perpetrators of the worst crimes were held accountable, said the Government could only benefit from working with the international community to bolster domestic capacity and ensure that detainees were held in accordance with applicable international legal obligations. All detainees must be treated humanely, he said, underlining also that, while the Government must conduct domestic investigations, it must also respect the rights of defendants, including those who had belonged to the former regime. Doing so would strengthen public confidence in the judiciary and in the rule of law. Expressing concern about rising instability, he said it threatened to undermine the revolution for which the Libyan people had fought so hard. “Together we must be clear about what is at risk,” he stressed.

PHILIPPA KING (Australia) said that, as long as militias, rather than the State, controlled the judicial process, it would be difficult to engage a judicial process consistent with international standards. The adoption of amnesty laws providing “revolutionaries” with immunity from prosecution was a cause of great concern. It was also vital to uphold the rights of defendants. Although Libya had challenged the Court’s jurisdiction in the cases of Saif al-Islam Qadhafi and Abdullah al-Senussi, it was essential that it not frustrate ongoing Court processes pending the decision of the Appeals Chamber in the latter case, she said.

KAYODE LARO (Nigeria) said that, while he understood that the Government wished to have Saif al-Islam Qadhafi prosecuted inside Libya, any such proceeding must be consistent with the Rome Statute. He pointed out that the Government had missed its own 2 March deadline for charging or releasing detainees, saying that was an important aspect of justice and urging the processing of all detainees.

GÉRARD ARAUD (France) said that since Libya’s revolution, the United Nations and regional organizations had condemned the brutal abuses committed by the country’s former leaders, and the International Criminal Court had rounded up perpetrators, regardless of rank or affiliation. Many issues had not yet been resolved, however, although Libyans had shown their determination to support a full and proper transition to democracy. Through cooperation, the Government could end impunity, he said, recalling that the authorities had expressed willingness to take seriously their responsibility to ensure justice. The memorandum of understanding was a positive step and it must be enforced, he said. Beyond the symbolic cases, however, were

practical challenges, including how to address crimes committed by Qadhafi supporters now outside Libya. Expressing regret that the return of the internally displaced was being delayed, he said allegations of torture, including that of children, were of great concern, declaring: “These practices must stop.”

LAI WEIMING ([China](#)) said progress had been made, but at the same time, the political situation remained unstable. Economic recovery was slow and the security situation was fragile. All parties in Libya should bear in mind their obligations and find solutions through political dialogue, he said. China welcomed the Government’s efforts to ensure justice, and expected international judicial institutions to respect the judicial sovereignty of countries with which they were engaged.

EVGENY ZAGAYNOV ([Russian Federation](#)) said the rapid deterioration of the situation in Libya did not affect the judicial sector alone, pointing out that the Government was not in control of the country, as attacks continued against the armed forces, foreigners, diplomats and activists, among others. Conditions had “morphed into a dangerous situation”, whereby weapons could fall into the hands of terrorists, he warned. The continuing intimidation of judicial personnel, the absence of proceedings on conflict-related cases, as well as human rights violations in detention situations were also of great concern. Emphasizing that the cases of Saif al-Islam Qadhafi and Abdullah al-Senussi must be tried at the International Criminal Court, he said the logic behind having them tried in Libya was unclear in view of the prevailing lack of counsel, security issues, difficulty in controlling the penitentiary system and other factors, to name a few. Additionally, there was a focus on prosecuting supporters of the former regime, whereas the Court’s report contained only a “standard mention” of the former insurgents, he said, recalling that the Prosecutor had declined to investigate the napalm bombing of civilians. That was not a balanced approach, and the Russian Federation hoped that it would be addressed.

RITA KAZRAGIENE ([Lithuania](#)), noting the challenges facing the Government, said the Court was an important and necessary partner of the Libyan authorities in their efforts to restore the rule of law and ensure accountability for the commission of serious crimes. In the cases of Saif al-Islam Qadhafi and Abdullah al-Senussi, however, admissibility was a judicial issue under the exclusive purview of the Court, and while the relevant decision remained under appeal, Libya had an obligation to surrender the former. The situation of conflict-related detentions was also a major concern requiring an urgent solution, she said, noting that the deadline set by the Law on Transitional Justice had expired and that 7,000 people had still not been accorded due process. Proper implementation of the law was important for establishing a basis for reconciliation.

SYLVIE LUCAS ([Luxembourg](#)) urged the Government to step up efforts to create a stable security environment, saying the Court and the international community at large must continue to help Libya during a crucial phase of its transition. It was to the credit of the authorities that they had assumed their judicial responsibilities by organizing domestic trials, but such efforts should not obstruct International Criminal Court proceedings, she said, urging Libya to hand the accused over. Concerning individuals detained following the conflict, she said many had been subjected to torture and other harsh treatment. They must be placed under the State’s control and those responsible for mistreating them, including through forced disappearance, must be held accountable.

EDUARDO GÁLVEZ ([Chile](#)) expressed concern that the Government’s self-imposed deadline for transferring detainees under its control had not been met, describing as a violation of fundamental human rights the fact that approximately 7,000 people were detained outside State control. Chile called for all detainees to be transferred into State custody at once. He stressed the need for a national strategy to respond to crimes committed against detainees in order to strengthen Libya’s transition to a modern justice system, in accordance with international standards.

OLIVIER NDUHUNGIREHE ([Rwanda](#)) said that, with security in place, it would be possible to maintain progress in other areas, but it was regrettable that the deteriorating security situation was impeding the Court’s investigation. Libya remained able and willing to conduct

prosecution in its national courts, and it was important that the Government do its part to hold all parties to the conflict accountable for serious crimes. Recalling his own country’s experience, he emphasized the importance of addressing crimes against humanity through national judicial institutions and processes, and urged the international community to extend support to the Libyan courts, including technical assistance.

MARK LYALL GRANT (United Kingdom), emphasizing that all those who had committed war crimes must be held accountable, encouraged the Government to conclude its negotiations with the Court’s Registrar. As for the question of trying Saif al-Islam Qadhafi and Abdullah al-Senussi in the national courts, he said that any action taken must be in line with the Rome Statute. Furthermore, all detainees must be held in accordance with the standards of international law. High-profile detainees provided an opportunity for the Government to demonstrate to the international community that it could hold fair trials, cooperate with the Court and uphold international law, he said. While the United Kingdom would continue to help Libya towards its goal of stability, it had an obligation to surrender Al-Senussi due to the admissibility of his case.

OH JOON (Republic of Korea), Council President, spoke in his national capacity, noting that the International Criminal Court had made meaningful achievements in dealing with the Libyan situation. The Government had shown a willingness to cooperate, although the situation on the ground had not always been ideal. Processing the remaining detainees as swiftly as possible would be a step in the right direction, while addressing the issue of internally displaced persons would contribute to national reconciliation, he said. Regarding the cases against Saif al-Islam Gaddafi and Abdullah al-Senussi, the Republic of Korea hoped that a workable solution could be found through continued interactions between the Prosecutor and the Government, he said, adding that it was clear that cooperation was what separated the situation in Libya from other cases before referred to the Council.

IBRAHIM O. A. DABBASHI (Libya) said that, following the dictatorship’s downfall, the new Government had declared its commitment to establishing justice, fighting impunity and working to establish respect for human rights and basic freedoms. Although Libya was not a party to the Rome Statutes, it had opted freely to work with the International Criminal Court. It had also requested United Nations assistance to help it build capacity and reform the security sector and the judiciary. Libya had established real partnerships with the International Criminal Court and the Human Rights Council that had resulted in the memorandum of understanding. He said there were currently 6,186 detainees in Libya, including 646 who had been tried and were now serving their sentences. The General National Conference had taken steps to amend the Criminal Procedure Law, thereby allowing courts to try some of the accused through a closed-circuit television system. As for Saif al-Islam Qadhafi and Abdullah al-Senussi, he emphasized that the judicial authorities continued to work for recognition of Libya’s judicial jurisdiction over their cases by the International Criminal Court. Libya also sought to develop a comprehensive strategy for trying all perpetrators, including those responsible for human rights violations, irrespective of their identity or that of the victim. Concerning displacement, he said the future of the Tawergha inhabitants was among the Government’s priorities, as it sought to strike a balance between ensuring justice and preserving the integrity of the political process.

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