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ICC Prosecutor Statement to the United Nations Security Council on the situation in Libya, pursuant to UNSCR 1970 (2011)

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Mrs Fatou Bensouda, Prosecutor of the International Criminal Court

New York, 14 November 2013

Mr. President,

This is the sixth time that my Office reports to the United Nations Security Council since the adoption of Resolution 1970, by which the Council, acting under Chapter VII of the UN Charter, referred the situation in Libya to the International Criminal Court. My Office appreciates the opportunity to once again engage with and update the Council on developments regarding the Libya situation and related proceedings before the Court.

Libya has come a long way since the 2011 uprising, which paved the way for the Libyan people to rebuild their country towards a more promising future. The new Libya has had notable successes, including the holding of the first democratic elections in half a century, but the country still faces formidable challenges. The security situation in Libya remains volatile and precarious as marked by car bombings, abductions and assassinations of public and security officials. This unfortunate fact has understandably hampered my Office's ability to operate in Libya in furtherance of its investigative activities. We hope that the security situation in Libya will improve to enable my Office to effectively follow up and intensify its investigations. My Office welcomes initiatives aimed at helping to rebuild Libya's military and law enforcement agencies to reinforce security for Libya and all Libyans. We call upon all States to assist Libya in its efforts to become a fully-fledged, secure, democratic society that adheres to the highest standards of justice. The Libyan people deserve no less.

Mr. President,

In this new century, Libya desires to become and be recognized as a stable, democratic society that fully observes the rule of law and punishes perpetrators of crimes that shock the conscience of humanity. These aspirations, while genuine and praiseworthy, are yet to be fully realized. There have certainly been promising gains: for instance, the draft law that would make rape during armed conflict a war crime in Libya is a most welcome step in the right direction. Conversely, it is a matter of great concern that thousands of detainees remain in uncertain conditions in the country, with multiple and apparently well-founded allegations of torture and even killings in detention having been reported. My Office fully shares the concerns of the United Nations that unless this problem is effectively addressed now, it will only escalate with time. It is incumbent upon the Ministers of Justice, Interior and Defence of the State of Libya to speedily ensure that detainees are transferred to proper government-controlled detention facilities where they can be either charged with their due process rights fully respected, or released where appropriate. Torture and inhuman treatment of prisoners should have no place in the new Libya.

Equally disturbing are the simmering tensions regarding the Tawergha minority issue. These tensions and the prospects for reprisals have the potential to re-ignite violence in the country. It bears stressing that those who seek to defend the revolution and see to it that it succeeds, are at real risk of burying it if they do not take concrete and immediate steps on this issue. The Fact Finding and Reconciliation Commission to be established following the adoption of the new transitional justice law must bring all parties together with a view to resolving the issue sooner rather than later. Let me recall that ordering the displacement of the civilian population for reasons related to the conflict other than for security or military imperatives is a crime over which my Office can still exercise jurisdiction.

Mr. President,

As I remarked during my last briefing report before this Council, Libya has embraced the Rome Statute process and chosen to engage with the Court. The admissibility challenges that are before the Court are testing the application of the Rome Statute provisions in a hitherto unprecedented manner. Libya through its active involvement in related proceedings before the Court is setting an example of how States can invoke complementarity to protect their sovereign right to investigate and prosecute their nationals. My Office and the Libyan government have robustly advanced our respective positions in court on the question of who should prosecute two accused Libyan nationals whom we both believe are most responsible for serious crimes under the Court's jurisdiction committed within the territory of Libya. On 11 October, the Pre-Trial Chamber of the Court issued its decision on the admissibility of the Abdullah Al-Senussi case, finding the case inadmissible

before the ICC. In essence, the Chamber was satisfied that in this specific case, Libya meets the statutory criteria for stopping my Office from continuing its investigations and prosecution of Abdullah Al-Senussi. After fully studying the decision, my Office has concluded that there is no legal basis for appeal. Should new facts arise in the future which negate the basis on which the case has been found inadmissible, my Office will not hesitate to request a review of the decision.

The challenge is now for Libya to demonstrate to the world that Al-Senussi will receive a genuinely fair, impartial and speedy trial that respects all his rights and fundamental guarantees including the right to counsel of his choice. It also falls upon this Council and the international community to assist Libya in this process and to ensure that justice is not only done, but is seen to be effectively done.

By contrast, in the case of Saif Al-Islam Gaddafi, the Pre-Trial Chamber has ruled the case admissible before the ICC on the grounds that Libya has failed to meet the legal criteria for making this case inadmissible. In its subsequent submissions to the Chamber, the Government of Libya has sought further time to provide additional information and the matter is currently under consideration by the Chamber. In the meantime, the Court has reiterated the obligation of the Government of Libya to surrender Mr. Gaddafi to its custody.

It is fundamentally important for this Council to equally remind and urge the Libyan Government to comply with the decisions of the Chamber even when they are inauspicious to the position advanced by the Government. I stress the critical importance for all States to respect and implement the decisions of the Court's judges. The obligation to surrender to the Court persons against whom arrest warrants have been issued must be respected. Political considerations have no place in law, impartially and independently applied. I strongly urge the Government of Libya to surrender Saif Al-Islam Gaddafi to the Court without further delay.

Mr. President,

There are many others who are alleged to have committed crimes and/or who continue to commit crimes in Libya since February 2011. Some are still inside the country while others are abroad where they continue to use their influence to destabilise the country and pose a security threat to civilians. It is impossible for the ICC alone to investigate and prosecute all perpetrators. Neither can Libya undertake this demanding task alone. Investigation and prosecution of the few by both ICC and the Government of Libya respectively should not result in impunity for the many. Joint complementary efforts of both the Government of Libya and the ICC, strongly and actively supported by the international community, are thus crucial for ending impunity in the country.

To this end, my Office and the Government of Libya have recently concluded a burden-sharing Memorandum of Understanding, the purpose of which is to facilitate our collaborative efforts to ensure that individuals allegedly responsible for committing crimes in Libya as of 15 February 2011 are brought to justice either at the ICC or in Libya itself. While my Office will prioritise its investigation and prosecution of those who are outside the territory of Libya and who are thus largely inaccessible to the Libyan authorities, the Government of Libya will prioritise investigations of those suspects who are within Libyan territory. I am also pleased to report that my Office and the Government of Libya have also committed to supporting each other's investigations and prosecutions through the exchange of information, subject to confidentiality and protection obligations. To be absolutely clear, this agreement does not relinquish the ICC or the Libyan courts of their respective jurisdiction, nor does it apply and/or affect the ongoing judicial proceedings in either the Saif Al-Islam Gaddafi or the Al Senussi cases.

The support of this Council and of the international community will be crucial for the colossal task of collecting evidence to untangle the modus operandi of the networks responsible for committing crimes. Amongst others, we will require telephone intercepts, and sustained follow-up on transfers of funds to establish the whereabouts and movements of persons under investigation. This is all information that we can only access through the assistance of States. Above all, we hope we can count on the cooperation of States in facilitating the smooth arrest and surrender of those against whom warrants will be issued. 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.

I view this Memorandum of Understanding as an important confidence-building measure in the working relationship between my Office and the Government of Libya, and my hope is that it will pave the way for closing the impunity gap in Libya. I welcome the memorandum as a positive commitment by the Government of Libya to accountability and providing justice to Libya's victims, and indeed, to cooperating with the ICC in the investigation and prosecution of additional cases against those most responsible for the most serious crimes under the Court's jurisdiction committed in Libya.

Mr. President,

I will conclude by reiterating that Libya's challenges are our own, and we will all share in the successes or failures of these efforts to bring justice to Libya's victims and peace and security to its people.

Toward that end, I again encourage the Government of Libya to make public a comprehensive strategy to address serious crimes committed in the country, regardless of who is the perpetrator and who is the victim. And I encourage Libya's partners to step up to the challenge ahead of us, to make effective not only the ICC's mandate in Libya, but that of this Council. I thank you for your attention.

Source: Office of the Prosecutor

For further information, please contact otpnewsdesk@icc-cpi.int.
You can also follow the Court's activities on YouTube and Twitter.

Source: Office of the Prosecutor