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Le Bureau du Procureur

The Office of the Prosecutor

Statement of Mrs Fatou Bensouda
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**United Nations Security Council on the Situation in Darfur,
pursuant to UNSCR 1593 (2005)**

New York, United States
Tuesday, 17 June 2014

Thank you, Mr President, your Excellencies,

1. Today's briefing marks the 19th visit of the Office of the Prosecutor to this Council to update its members on the situation in Darfur. December 2014 will be the 20th such briefing, and March 2015 will mark ten years since this Council referred the Darfur situation to the International Criminal Court. None of these markers give cause for celebration. Close to ten years since the much-lauded Council's referral of the situation in Darfur to the International Criminal Court, systematic and widespread crimes continue to be committed with total impunity in Darfur. It is indeed an understatement to say that we have failed the Darfur victims who continue to bear the brunt of these crimes.
2. Over the past years, a number of players including the International Criminal Court, the United Nations and others have been engaged in efforts to bring justice and other forms of relief to Darfur's victims. Time has now come for us to take a critical look at the impact of all of our efforts vis-à-vis Darfur. What have we achieved in concrete terms? Have we lived up to the expectations of Darfur's victims? Sadly, the intellectually honest answer is a resounding "No."
3. While the International Criminal Court may have significantly contributed to raising awareness about massive and systematic crimes committed in Darfur, the Court's best contribution to ending impunity through a judicial process that independently, fairly and impartially assesses the evidence and determines guilt or innocence, is yet to be achieved. The reality is that the ICC's judicial process cannot take place without arrests. Darfur suspects remain at large and no meaningful steps have been taken to apprehend them and bring them to justice.

To be clear, the Court does not have power to arrest those wanted under ICC arrest warrants - it is the responsibility of States and others to arrest and surrender them to the custody of the International Criminal Court.

4. Critical questions for which Darfur's victims seek answers from this Council are: For how much longer will legality and accountability be sacrificed at the altar of political expediency? What amount of suffering should Darfur's victims endure for this Council to act decisively on the situation in Darfur? As the Court, we remain of the firm view that enforcing warrants of arrest in Darfur is a key element for peace, stability and for ending the suffering of Darfur's victims.
5. Today, we are in the same position we have been since 2007 when warrants of arrest were issued against Mr Ahmad Harun and Mr Ali Kushayb. Even with the addition of another three arrest warrants, two for Mr Omar Al Bashir in 2009 and 2010, and one for Mr Abdelraheem Hussein in 2012, the situation has not changed. It is a sad reality that action from this Council has not been forthcoming when it mattered most for Darfur's victims. This fact reflects badly not only on the international criminal justice system of which the ICC is only a part, but it also greatly undermines the credibility of this Council as an instrument of international peace and security. Time is long overdue for the Government of the Sudan's consistent defiance of UN Security Council resolutions to be matched by this Council's decisive action.

Mr President,

6. Recent allegations that reporting of the UN Mission in Darfur, UNAMID, has been subject to manipulation, with the intentional effect of covering up crimes

committed against civilians and peacekeepers, in particular those committed by the Government of the Sudan, should be a matter of concern for all of us. These allegations call for a thorough, independent and public enquiry. While the responsibility for this manipulation may lie with a handful of individuals, it impugns the credibility of the mission as a whole and deprives advocates of peace and justice of an essential tool for evaluating the ever-evolving situation in Darfur. Victims in Darfur and the peacekeepers who have sacrificed their lives deserve better. We all do. It is hoped that this Council and indeed the United Nations as a whole would take immediate and concrete steps to establish the full facts and take appropriate action if the allegations prove to be well founded.

7. The implementation of the non-essential contacts policy, in particular with regard to the Darfur situation, deserves closer scrutiny within the United Nations system. As my Office suggested in its June 2013 report, application of the non-essential contacts policy requires a rigorous assessment as to whether such contacts are indeed strictly required for carrying out essential United Nations-mandated duties. Without such an on-going assessment, both before and after contacts with those subject to the Court's warrants of arrest, the potential for these individuals to take advantage of the United Nations' goodwill to legitimise their own actions looms large. In order to dispel misperceptions about the UN's engagements with those subject to ICC arrest warrants, the UN may wish to make public, to the extent possible, all its contacts with those subject to ICC warrants of arrest, including, to the extent necessary, providing explanations of why such contacts are deemed to have been strictly required for carrying out essential UN-mandated duties.

Mr President,

8. We have taken note of Mr Omar Al Bashir's travels during this reporting period, including his visits to Rome Statute States Parties. States Parties are clearly obliged to cooperate with the ICC in arresting and surrendering those subject to ICC warrants of arrest. In a recent Chamber decision, the Judges have made it clear that States Parties must consult with the Judges about any identified problems that may hinder their cooperation with the Court in effecting arrests. On the issue of immunity, the Judges also found that there could be no lack of clarity about Mr Omar Al Bashir's lack of immunity under Article 27 of the Rome Statute.
9. The question of Mr Al Bashir's travels remains a matter before this Council. Such travels are not simply a challenge for States Parties that Mr Al Bashir may visit. It is a challenge for all States to provide the necessary support and assistance to each other to ensure that an effective arrest and surrender can take place. In this regard, it is worth recalling that in addition to the obligations of Rome Statute States Parties, all Member States of the United Nations are urged by this Council to cooperate with the Court's investigations and prosecutions in Darfur.
10. As the Pre-Trial Chamber recently emphasised, "When the Security Council, acting under Chapter VII of the UN Charter, refers a situation to the Court as constituting a threat to international peace and security, it must be expected that the Council would respond by way of taking such measures which are considered appropriate, if there is an apparent failure on the part of States Parties to the Statute or Sudan to cooperate in fulfilling the Court's mandate as entrusted to them by the Council. Otherwise, if there is no follow up action on

the part of the Security Council, any referral by the Council to the ICC under Chapter VII of the UN Charter would never achieve its ultimate goal, namely, to put an end to impunity. Accordingly, any such referral would become futile.”

Mr President,

11. I share the deep concern of UNAMID Deputy Joint Special Representative Joseph Mutaboba and the UN Resident and Humanitarian Coordinator in Sudan Ali Al-Za'tari over the increasing violence in Darfur and the immense number of people who continue to be displaced. I likewise deplore the increasing constraints placed on those who are trying to aid the displaced, making it more and more difficult for them even to properly monitor the conditions of the displaced. The deliberate obstruction of humanitarian aid must end.


12. Equally concerning is the on-going patterns of aerial bombardments and armed attacks on civilian populations by militia/Janjaweed, and in particular, the involvement of the newest iteration of the Janjaweed, the Rapid Support Forces, led by Mohamed Hamdan. It is particularly disturbing that in February this year, the Rapid Support Forces shifted their operations from North Kordofan to Darfur. My Office's factual indicators seem to illustrate a similar pattern of indiscriminate and disproportionate attacks against civilians by the Rapid Support Forces. In all of the reported attacks, crimes against civilians were allegedly committed from the end of February onwards, coinciding with the deployment of the Rapid Support Forces to Darfur. In twelve of the seventeen reported attacks, civilian villages were set ablaze; in the majority of the attacks, the presence of rebels in the attacked areas is not reported while in others the

information available is ambiguous. All of the attacks were carried out in areas located in South and North Darfur.

13. This reporting period has also witnessed an increasing pattern of gang rapes of women and girls. I have just released a comprehensive Policy Paper on Sexual and Gender-Based Crimes. My Office recognizes that sexual and gender-based crimes are amongst the gravest under the Rome Statute. This policy paper will guide the Office's work in this area in Darfur and all other situations under the jurisdiction of the ICC.
14. Attacks on students, on civil society, and on local leaders, and in particular the 21 January attack in Zalingei, Central Darfur, in the course of which security forces attacked and beat students who protested military fees imposed on residents in support of military operations, are also very disturbing. Equally disturbing is the 3 April attack at the University of Nyala in South Darfur, during which a hundred students were beaten, dispersed with tear gas, and seven arrested. This followed a demonstration against the arrest of four students who had criticised the government over on-going killings, lootings and burnings in Darfur. The use of violence against unarmed civilians must be addressed.

Mr President,

15. Let me repeat what I have stated to this Council many times before: the Government of the Sudan, as the territorial State, has the primary responsibility and is fully able to implement the warrants, consistent with its sovereign authority. It has consistently failed to do so. At the same time, it has also failed to provide any meaningful measure of justice at the national level.

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16. I look forward to constructively interacting with the Council on the Darfur issue. What is needed is a dramatic shift in this Council's approach to arresting Darfur suspects. I appreciate efforts being made to ensure that this Council produces a substantive response to the eight outstanding communications from the Court. Likewise, I believe that concerted efforts to promote cooperation with the Court may help to fill the gap. In that regard, I kindly call on all States and this Council to find creative ways to support those amongst them that may be most vulnerable to planned visits by Mr Omar Al Bashir or other individuals wanted under ICC arrest warrants.

Mr President,

17. I thank the esteemed members of this Council for their attention, and for remaining actively seized of the Darfur situation. Darfur does not have to be a failure for this Council, for the UN, or for the International Criminal Court. It is incumbent upon all of us to take concrete and effective action now to ensure that our efforts to protect victims in Darfur show tangible results and do not go down in history as an indefensible failure.
18. I thank you, Mr. President, your Excellencies, for your attention. | **OTP**