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Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the alleged crimes committed by ISIS

Since the summer of 2014, my Office has been receiving and reviewing disturbing allegations of widespread atrocities committed in Syria and Iraq by the so-called Islamic State of Iraq and al-Sham/Greater Syria ("ISIS" *aka* "ISIL", "Daesh" or "IS"). Crimes of unspeakable cruelty have been reported, such as mass executions, sexual slavery, rape and other forms of sexual and gender-based violence, torture, mutilation, enlistment and forced recruitment of children and the persecution of ethnic and religious minorities, not to mention the wanton destruction of cultural property. The commission of the crime of genocide has also been alleged. In response to numerous inquiries about my Office's activities in relation to these allegations, I have decided to provide the following clarification.

The atrocities allegedly committed by ISIS undoubtedly constitute serious crimes of concern to the international community and threaten the peace, security and well-being of the region, and the world. They also occur in the context of other crimes allegedly committed by other warring factions in Syria and Iraq. However, Syria and Iraq are not Parties to the Rome Statute, the founding treaty of the International Criminal Court ("Court" or "ICC"). Therefore, the Court has no territorial jurisdiction over crimes committed on their soil.

Under the Rome Statute, the ICC may nevertheless exercise *personal jurisdiction* over alleged perpetrators who are nationals of a State Party, even where territorial jurisdiction is absent. On this basis, my Office has reviewed communications received alleging crimes committed by ISIS, with a view to assessing the prospect of exercising personal jurisdiction over States Parties nationals within the ranks of this organisation. In doing so, my Office took into account the scope of its policy, which is to focus on those most responsible for mass crimes.

The information gathered indicates that several thousand foreign fighters have joined the ranks of ISIS in the past months alone, including significant numbers of State Party nationals from, *inter alia*, Tunisia, Jordan, France, the United Kingdom, Germany, Belgium, the Netherlands and Australia. Some of these individuals may have been involved in the commission of crimes against humanity and war crimes. A few have publicised their heinous acts through social media. The information available to the Office also indicates that ISIS is a military and political organisation primarily led by

nationals of Iraq and Syria. Thus, at this stage, the prospects of my Office investigating and prosecuting those most responsible, within the leadership of ISIS, appear limited.

In this context, I have come to the conclusion that the jurisdictional basis for opening a preliminary examination into this situation is too narrow at this stage. A renewed commitment and a sense of urgency on the part of the concerned states may help identify viable avenues. The decision of non-Party States and the United Nations Security Council to confer jurisdiction on the ICC is, however, wholly independent of the Court.

It bears emphasising that under the Rome Statute, the primary responsibility for the investigation and prosecution of perpetrators of mass crimes rests, in the first instance, with the national authorities. I remain committed to consult with relevant States to coordinate, and possibly exchange information on crimes allegedly committed by their nationals to support domestic investigations and prosecutions, as appropriate. My Office also remains open to receive additional information which could provide further clarity on the positions occupied by State Party nationals within the ISIS organisational hierarchy.

I remain profoundly concerned by this situation and I want to emphasise our collective duty as a global community to respond to the plight of victims whose rights and dignity have been violated. ISIS continues to spread terror on a massive scale in the territories it occupies. The international community pledged that appalling crimes that deeply shock the conscience of humanity must not go unpunished.

As Prosecutor of the ICC, I stand ready to play my part, in an independent and impartial manner, in accordance with the legal framework of the Rome statute.

Background

The International Criminal Court is governed by the Rome Statute, which entrusts the Court with a specific and defined jurisdiction and mandate. A fundamental feature of the Rome Statute (articles 12 and 13) is that the Court may only exercise jurisdiction over international crimes if (i) its jurisdiction has been accepted by the State on the territory of which the crime was committed, (ii) its jurisdiction has been accepted by the State of which the person accused is a national, or (iii) the situation is referred to the Prosecutor by the Security Council acting under Chapter VII of the UN Charter.

The Office of the Prosecutor of the ICC conducts independent and impartial investigations and prosecution of the crimes of genocide, crimes against humanity and war crimes. The Office of the Prosecutor has opened investigations in: Uganda; Democratic Republic of the Congo; Darfur, Sudan; Central African Republic; Kenya; Libya; Côte d'Ivoire and Mali. The Office is also conducting preliminary examinations relating to the situations in Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq (alleged abuses by UK forces), Nigeria, Palestine and Ukraine.

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