

SUMMARY OF THE ELEVENTH HEARING HELD ON THURSDAY, 17 SEPTEMBER 2015

I/ SYNOPSIS

Proceedings commenced at 9:20 am and the judge called the witness, Mr. FRANSEN, to the stand. It shall be noted that Mr. Bandjim Bandoum was initially scheduled to take the stand today. The witness provided a brief summary of his career and was then questioned by all parties to the trial.

II/ HEARING OF THE WITNESS

A° - Testimony

The witness introduced himself to the court.

NAME: FRANSEN

FIRST NAME: Daniel

AGE: 49 years

OCCUPATION: Pre-Trial judge at the Special Tribunal for Lebanon

NATIONALITY: Belgian

Kinship with the defendant or victims: None

Under oath: Yes

The witness focused his testimony on the following points:

1°. The basis for the jurisdiction of the investigating judge

The Belgian investigating judge appeared before the court as a witness and provided details on his jurisdiction in the Belgian proceedings. He explained that the basis for him to proceed with an investigation was established following receipt of a complaint and a claim for criminal indemnification on 30 November 2000 at the office of the federal prosecutor and after seeking the services of a forensic expert to verify conformity of the facts with the statements of the complainants. Consequently, he confirmed that his jurisdiction was based on the law of 10 February 1999 establishing Belgium's universal jurisdiction over violations of international humanitarian law. Indeed, this law confers Belgium with far-reaching territorial jurisdiction over any acts of human rights violations regardless of the active or passive personality principle, the place where the violation was committed, and the alleged perpetrator. The witness then indicated that this law was

amended several times and the latest amendment dates back to August 2003. This amendment excluded private individuals from joining as a civil party and stipulated that only the federal prosecutor has jurisdiction to initiate criminal proceedings. The witness also specified that on-going cases in which the perpetrators were of Belgian nationality prior to committing the alleged crimes were exempted from this restriction. Lastly, the witness stated that he had sent a letter to the Chadian authorities enquiring about the immunity status of President Habré. In response, Chadian authorities indicated that this immunity was lifted by the national sovereignty conference of 1993. This was supported by the amnesty law of 9 June 1995.

2°. The investigation

The Belgian judge explained that in the performance of his assignment, he was duty-bound to investigate both incriminating and exonerating evidence. After verifying his jurisdiction and the lifting of President Habré's immunity, he prepared letters rogatory to travel to Chad. He received the authorization through diplomatic channels in late February and early March 2002. Mr. Fransen reminded that the role of the investigating judge is to investigate and prepare the work of the trial judge. During his investigation, he worked with judicial authorities in Chad (4 judicial police officers and 1 investigating judge). With his own team (4 judicial police officers and his clerk), they gathered the testimonies of DDS agents, political authorities and victims in Chad (in addition to the testimonies of victims in Belgium). They also visited the detention centres, the mass graves at Ambing and Ameralgoz and examined the DDS archives that were part of the investigation file. As part of their investigation, they prepared photographic reports and videos. The investigating judge explained that in the early stages of his mission, there were real misgivings about his investigation and it was after his departure that people were willing to testify. After examining the case, Mr. Fransen, as the investigating judge, considered that there was enough evidence to support the alleged facts. He therefore decided to initiate criminal proceedings and issued an international arrest warrant on 11 September 2005, but the Senegalese authorities failed to notify the defendant of this warrant. After a few years, the Senegalese authorities reached an agreement with the AU to establish the Extraordinary African Chambers to put Habré on trial. In his conclusion, the investigating judge however indicated that he believed his work was not done for he would have preferred to hear the defendant so as corroborate the incriminating and exonerating facts.

B° - Hearing of the witness

Emphasis was placed on verifying the veracity of sources of this investigation and the possible direct involvement of Habré.

1°. Verifying the veracity of sources

Following his testimony, questions were posed by the different parties to verify the reliability of sources of this investigation. The witness indicated that in the early stages of his investigation, he had access to sources such as the report of the commission of enquiry, reports of NGOs, copies of

DDS archives and press clippings. Regarding the authenticity of these archives, the witness averred that they were processed or handled by the commission. He however stated that they were not falsified. Indeed, the documents seized at the DDS were authenticated, in writing, by a Chadian judicial police officer. Subsequently, through a letter of request, copies of these documents were transported to Belgium where they were thoroughly verified and authenticated by experts. This allowed him to gain a better understanding of the structure and functioning of the DDS. Furthermore, the defence asked him if he did not find it suspicious that private individuals had in their possession elements relating to the investigation. In this regard, he indicated that it is not sacrilege to have received medical or other reports from Dr Diaffé, NGOs and the CNE. That being said, Mr. FRANSEN stated that ultimately, his decision was based on his own assessment of the facts.

Regarding the testimonies, he indicated that he heard victims and ex-DDS agents. In his opinion, the concordance, consistency and accuracy of these testimonies corroborating documents found at the DDS were remarkable. Furthermore, assessments conducted in 2001 by a court-certified Belgian medical examiner confirm that the ailments suffered by witnesses are compatible with the effects of stories that have been recounted. He also believes that the testimonies of victims were corroborated by those of DDS agents; and hence their credibility according to the witness. However, he reminds that, as a witness, he is not in a position to qualify the facts. This lies within the remit of the court.

Regarding visits to detention centres and mass graves, he confirmed that he visited most of the detention sites (DDS, swimming pool, president's office, etc.) and the mass graves of Amralgoz and Ambing. This allowed him to observe the conditions of detention and noted issues including prison over-crowding, poor ventilation and extremely small prison cells. At the swimming pool for instance, because of the slope, the further down you went, the less air there was. At the martyrs' camp also, detainees took turns to sleep. Further, according to the testimony of Ismaëla HACHIM (deceased), he had to sleep on a cadaver to cool his body. Regarding the causes of death in prisons, he mentioned asphyxia, malnutrition (50 grams of food per prisoner each day according to Saleh Younouss), lack of healthcare and hyperthermia. Moreover, these prisoners could also be executed or die from torture.

2°. The possible direct involvement of Habré

In response to questions from the different parties on the direct involvement of Habré in the activities of the DDS, the witness averred that according to the documents and testimonies that were available to him, it was Habré himself who gave orders to his operatives and there were cases where he would participate in person. To corroborate this, the witness mentioned the statements of certain DDS agents and close associates of Habré, such as Maldoun Bada Abbas who said: "Habré is very shrewd and elusive. He never communicates in writing with his operatives. He often uses coded language. Nonetheless, he was the one giving direct orders to his operatives. I can confirm this



because I lived with him in his house. I was his aide-de-camp in a way; I even defended him”. The witness also indicated that Habré handled even the smallest of details that were to be taken care of by heads of services, as illustrated by the order he signed himself allocating food ration to DDS detainees. The witness further made mention of a statement by Ngaly Ngoté Ngata who indicated that Habré was directly involved in interrogations through the use of a walkie-talkie.

He also reminded of the statement made by Khadija Hachim Hassan who said that she witnessed the interrogation of a Sudanese by Habré who had called on her to act as a translator because he knew her. She maintained that this Sudanese was later tied up and tortured under the orders of Habré who was present.

The witness stated that Habré was both Head of State and head of the military because he sometimes personally led military operations on the ground.

III/ IMPORTANT PROCEDURAL MATTERS

During the session, two key issues were raised by the defence.

Firstly, this witness was not scheduled to be heard today based on the provisional schedule. In this regard, the defence requested that the court comply with the schedule of evidentiary hearings, and recommended that it announce in advance the list of witnesses to be heard at the next session. This was done by the court today.

Then, the defence introduced a request challenging the appearance of the witness on account of his position as a judge. According to counsel for the defence “It is not part of our procedural or judicial practices for a judge to appear as a witness”. The court invited the defence to submit its request in writing.

IV/ TIME MANAGEMENT

After the opening of the hearing at 9:20 am, the presiding judge suspended proceedings from 10:17 am to 10:25 am due to unforeseen circumstances. The first break of the morning was at 11:10 am. The second session of the morning ran from 10:51 am to 12:25 am. Proceedings resumed in the afternoon at 2:10 pm and were adjourned for break at 4:16 pm. The last afternoon session was held from 4:45 pm to 5:37 pm. The hearing lasted 6 hours and 24 minutes. Today’s hearing therefore extended over a longer period than that of yesterday.