

## **African Court of Justice and Human Rights**

### **Pre-Trial Chamber II**

#### **The Prosecutor v. Aduga Bolo**

1. Zengin is a federal, democratic state of approximately 600,000 km<sup>2</sup>, with a population of 44 million. Its capital is the city of Kobole. It is a coastal state, bordered to the west and south by the Sipata Sea, making it a sought-after tourist destination. To the north, Zengin is bordered by a long mountain range that separates it from the Pindu, a constitutional monarchy, with dynamic economic growth. To the east is Chuma, a state with an authoritarian regime and strong nationalist demands. All of these states are members of the African Union and United Nations and have all ratified the Malabo Protocol and the 1999 International Convention for the Suppression of the Financing of Terrorism.
2. Since 2017, Zengin has had to face a conflict in Mapalo, the region in the northeast of the country. In this region, rich in natural resources, such as gold, oil, wood and diamonds, three groups coexist Zenginians (30%), Pinduan (10%, originating from the Pindu, they are established in Mapalo from the Middle Ages for commercial reasons) and the Chu (who represent 60% of the population of Mapalo). The rivalry for control of Mapalo's resources is one of the main causes of the conflict. During the fall of 2017, tensions worsened due to a government project to protect and redistribute land claimed and exploited without title by Chu notables. They can count on the support of the Chu Liberation Army (CLA), which multiplies the attacks against the institutions and representatives of Zengin located throughout the territory of Mapalo. Various reports from non-governmental organizations mentioned in this sense the death of hundreds of people between January and June 2018.
3. The government of Zengin decides, at the beginning of 2018, to send its army to counter the inclinations of the Chu who, in addition to the appropriation of land, are planning to secede and join Mapalo and Chuma. Serious abuses were allegedly committed against certain Chu figures, coldly murdered or kidnapped and tortured by soldiers of the Zenginian army.
4. In reaction, on February 13, 2018, the CLA targeted the hospital in Aberash the main town of Mapalo. According to Ginika, a global news agency and general practitioner, the mortar fire of the CLA caused the death of 8 wounded soldiers who were taken care of there, as well as 10 children treated in the neighboring pediatric department. An NGO

report Human Rights, headquartered in Chuma, indicates however that the hospital recently served as a secret annex to the military camp of the regular army based in Aberash and that various special operations were prepared there against those presented by the authorities as being "Rebels".

5. On April 13, 2018 Ginika reports that women from the locality of Funani (located 80 km from Aberash) were raped by CLA members on their way to Chuma and some were taken by force "for all intents and purposes" according to the words of the captain of the armed group reported by a local resident. A few days later, Msizi - an NGO disseminating classified documents from anonymous sources - releases a report from a CLA commander, Kefile Dineo, dated April 4, 2018, and addressed to the one he considers to be its direct leader, Aduga Bolo, affirming that *"as agreed, thanks to the spider's web woven over the entire territory of Mapalo, [his men] were now particularly careful to introduce chaos and disorder into the daily lives of the inhabitants of the region in order to turn the population around against the regular authorities. To this end, the kidnapping of young girls appeared to be very effective, in addition to the fact that it could constitute a fair reward for the young wolves who form our ranks. It goes without saying that 'troublesome' people will be eliminated"*.
6. On July 13, 2018, around 4 a.m., two military camps, the Funani forward camp and the Higher Army Institute in Aberash, were the subject of an attack claimed by the CLA. According to several testimonies collected by Ginika, the date was chosen in accordance with the advice of fetish members of the CLA who would exert a great influence on the daily life of Chu and up to the highest officials. In particular, it is said that Aduga Bolo is extremely afraid of betraying the witch doctors and scrupulously follows their advice. One of them would have considered that nothing could resist the group on July 13, that the spirits would guide their actions, that the opposing bullets would slide over their bodies. Specifically, the groups of armed individuals reportedly managed to enter the camps, stole arms and ammunition and were joined by certain soldiers. They also allegedly attacked a building of the International Committee of the Red Cross (ICRC) to steal vehicles and other material goods.
7. Finally, on July 6, 2019, a civilian aircraft from the Zenginian company, *AirLinesVision*, n ° ALV22, providing the link between Kobole and the capital of the Pindu; Meliru, is shot down in the Mapalo region. There are no survivors among the 283 passengers and 15 crew members. The Zenginian army and the CLA accuse each other of this accident. On September 6, 2020, the Zenginian prosecution presents the

preliminary conclusions of its investigation, claiming that the Buk missile was fired from the border between Zengin and Chuma, probably by an agent of the private military company Riko, a company registered in Chuma, and that both the missile and the firing platform were transported from Chuma. On December 12, 2020, international investigators come to the same conclusion.

### **Aduga Bolo**

8. Aduga Bolo was born on July 15, 1973 in Aberash and lives in Chuma. He is of Chu origin and is married to Hadija Daudi (sister of the incumbent President of Chuma) with whom he has three children. He brilliantly studied law and practiced as a lawyer while taking part in nationalist militant activities within the Chu Liberation Movement (MLC), a political movement he founded. He is a man with impressive physique and high verb, predisposed to mysticism. His qualities as a leader are legendary. On his appointment, by his brother-in-law, as Minister of Defense of Chuma on February 10, 2018, he reluctantly abandons the leadership of the MLC and he entrusts it to his little brother, Taribo, though he is regarded as, the unofficial leader of the military wing of this movement, the Chu Liberation Army (CLA) because of his proven skills in the matter. It has now been many years since he visited Mapalo territory, even though he maintains strong ties with members of his family and childhood friends living there.
9. Article 12 of the MLC statutes gave Aduga Bolo broad powers and duties, including in matters of internal organization and policy of the military and political branches of the MLC. Aduga Bolo's authority also extended to military logistics, including the acquisition and distribution of arms and ammunition. It seems that due to his regular contacts with his childhood friends and fighters there, Aduga Bolo was aware of the events in Mapalo. He would have said in particular, during a friendly dinner with his former student comrades, who have become fellow lawyers: *"Zengin wastes its wealth and despoils the Chu! But I tell you: a few attacks, a few well-targeted cruelties and the people of Mapalo will quickly forget their democratic culture to ask for the protection of a leader. And then who other than the President of Chuma to assume this honor? "* However, Aduga Bolo is monopolized by his ministerial functions, which he decides to leave after a year - he will however remain Special Advisor appointed by the President of Chuma, in matters of defense - and is not informed on everything that takes place in the theatre of operations. It seems, however, that he sometimes sanctioned those responsible for abuses. For example, Kefile Dineo was disciplined in May 2019,

reassigned to an internal department of the Ministry of Defense, and then sent to court-martial. Aduga Bolo also demanded that the abducted girls be brought back to their villages.

10. Some observers believe that Aduga Bolo, in his capacity as co-leader of the MLC, would have financed a terrorist organization, the CLA, to carry out attacks, in particular that of the flight ALV22. On this subject, a rumor circulates widely on social networks, in particular fed by his opponents: he would have given the order to shoot the flight ALV22 to the agents of the company Riko, of which he would be an unofficial leader. The investigative journal Angaza reveals that Hadija Daudi is the financial director of this company and that the latter would have provided in the past training services to some members of the CLA.

### **Presentation of the procedure**

11. On January 30, 2020, in accordance with article 46F (2) of the Malabo Protocol, the Peace and Security Council of the African Union referred to the Prosecutor by resolution 2540 (2020) the situation in Zengin (Mapalo), as of 1 January 2018.
12. At the request of the Prosecutor, on February 3, 2020, the Pre-Trial Chamber, in accordance with article 19Bis (2), issued an arrest warrant against the defendant, Aduga Bolo, in his capacity as military or hierarchical superior, for several war crime counts.
13. It also asked the Prosecutor for the reasons why he had not requested the Chamber to adopt provisional measures, in accordance with Article 19Bis (3).
14. On February 8, 2020, a delegation from the Office of the Prosecutor went to Chuma at the invitation of the Ministry of Justice and the Directorate of National Security, after being received by the Minister of Justice of Chuma. The discussions were deemed "fruitful" by both sides. During the meeting, detailed presentations shed new light on the investigative measures adopted or envisaged by the authorities of Chuma and enabled the Office to obtain clarifications on several points. The Prosecutor and Minister Lozi, on behalf of the Government of Chuma, agreed on the importance of an approach that is concerned with the plight of victims and pledged to collaborate in prosecuting the perpetrators of atrocities to account. *"I have great admiration for the courage and resilience that the victims have shown despite the extreme adversity they have had to endure during decades of conflict and violence. They deserve that justice be truly applied as soon as possible", said the ACJHR Prosecutor. "I look forward to continuing the constructive exchanges that we had today with the Government of*

*Chuma, in order to determine how best to serve justice in the framework of joint efforts without sacrificing our respective duties and responsibilities, which we owe ourselves. independently discharge under the Malabo Protocol ", added the Prosecutor. Minister Lozi added: "At this crucial time for the future of our country, we have made encouraging progress in determining the best way forward to ensure that no crime goes unpunished. We are convinced that we can jointly advance the cause of justice for all the victims of this long and devastating conflict in our neighbour thanks to our government's unwavering commitment to human rights and justice and to the full cooperation of the Prosecutor."*

15. On February 10, 2020, Aduga Bolo was arrested by the police in Chuma where he resides after the national authorities had lifted his immunity.
16. On March 20, 2020, the Kobole Criminal Court acquits Mr. Bolo of all the charges against him (war crimes). Indeed, at the end of a two-and-a-half-hour trial, the national magistrates ruled that the implication of the accused in the crimes with which he was accused in the arrest warrant issued by the ACJHR was not demonstrated "beyond a reasonable doubt". According to them, the accused was far too busy with his official functions and the management of "the great Army of Chuma" to lead "amateur soldiers" and stir up unrest in Mapalo. No witness could confirm that the accused had made statements indicating that he supported movements of terrorism with a view to destabilizing the region. The authorities of Zengin should rather "sweep in front of their door", in particular to judge "their soldiers who spread terror in Mapalo against the Chu" and to investigate "the corruption which plagues the State to the top". Moreover, the immunity of the former Minister of the Armed Forces should never have been lifted: Chuma is not a party to the Malabo Protocol and African Union's Peace and Security Council resolution 2540 (2020) is not, according to the terms of the national Constitution, directly applicable in the internal legal order.
17. After his acquittal, Aduga Bolo, again free to travel in an official capacity as a senior official of Chuma, decides to actively seek investors to support the activities of the MLC and CLA. On January 10, 2021, during one of his many trips, when he stopped at the Pindu, he joined, in the international area of the airport, a potential "investor" wanting to support the cause of the MLC. The man asks him to follow him to his hotel to show him the "business plan" on his computer. As soon as he left the international zone, the man, in reality a police officer from the Pindu, arrested him and forcibly took him to the airport police station. There, Mr. Bolo is deprived of his mobile phone and

placed in a cell where he remains 6 hours without eating or drinking, and without being able to interact with a lawyer speaking his language. His laptop is confiscated, and all of his documents examined, without his consent, by the police. On January 11, 2021, the Pindu places Aduga Bolo in custody and hands him over to the ACJHR.

18. In view of the confirmation of charges hearing, Pre-Trial Chamber III requests the observations of the Prosecutor and Defense counsel for June 06, 2022 on the following points:

- a) Is the case *The Prosecutor V Aduga Bolo* admissible before the African Court of Justice and Human Rights?
- b) Whether there are reasonable grounds to believe that, in the context of the said armed conflict, war crimes which took the form of intentional attacks against planned protected persons and property in Article 28D of the Malabo Protocol were committed in the territory of Zengin from February 2018?
- c) Are the facts presented capable of justifying the incorporation of responsibility of Aduga Bolo as a commander on the basis of Article 46B(3) of the Malabo Protocol?

# THE INTERNATIONAL HUMANITARIAN LAW MOOT COURT COMPETITION

## CLARIFICATION ANSWERS

The organizing committee would like to thank all the teams that have submitted the questions of clarifications of facts that were forwarded to the author of the hypothetical case. The following are the clarification of facts together with a few clerical errors.

1. The situation referred to the Court should read as follows: the situation in Mapalo (Zengin). The ACJHR is therefore likely to exercise its jurisdiction over crimes covered by the Malabo Protocol and committed on the territory of Mapalo in Zengin or by nationals of this State as of 1<sup>st</sup> January 2018.
2. Aduga Bolo was acquitted by the Criminal Court of Chatu, capital of Chuma (and not by the Criminal Court of Kobole, capital of Zengin).
3. Thanks to their divinatory power, witch doctors are able to predict the day and time at which an operation has the best chance of succeeding. This is why ALL carried out their attack on July 13, 2018, in accordance with the alignment of the stars predicted by the witch doctors. However, there is no formal hierarchical relationship between the witch doctors and Aduga Bolo.
4. The women from the area of Funani locality who had been abducted were brought back to their villages, except those who died during the expedition. A large number of them would have required medical attention which they did not receive.
5. The few soldiers who joined the groups of individuals who managed to enter the military camps in 2018 belonged to the Zengin regular forces.
6. Resolution 2540 (2020) was adopted unanimously following which, on 1<sup>st</sup> February 2020, the Prosecutor issued his request for the arrest warrant.
7. The reports of the non-governmental organizations Human Rights and Msizi as well as the information shared by the Ginika news agency were filed as evidence before the ACJHR.
8. Kefile Dineo was reprimanded, he was reassigned to an internal service of the Ministry of Defense (secretariat of the heritage of the army) and suffered a temporary lowering of rank. As for the Criminal Court of Chatu, it acquitted Mr. Adogo Bolo of the charges against him for war crimes and misdemeanors pursuant to the Criminal Code of Chuma as revised in 2016.