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INTERNATIONAL COURT OF JUSTICE

**CASE CONCERNING *CERTAIN CRIMINAL PROCEEDINGS IN FRANCE*
(*REPUBLIC OF THE CONGO* v. *FRANCE*)**

REPLY OF THE CONGO

July 2006

[Translation by the Registry]

INTERNATIONAL COURT OF JUSTICE

Case concerning *Certain Criminal Proceedings in France*
(*Republic of the Congo v. France*)

Reply

For: The Republic of the Congo,

having as its agent His Excellency Mr. Jacques Obia, Ambassador Extraordinary and Plenipotentiary of the Republic of the Congo to the European Union, to His Majesty King of the Belgians, to Her Majesty Queen of the Netherlands and to His Royal Highness Grand Duke of Luxembourg,

residing at 16 avenue Franklin Roosevelt, 1050 Brussels.

Against: The French Republic

As matters stand, the Republic of the Congo will refrain from responding to the arguments developed by the French Republic in its Counter-Memorial. Indeed, since the exchange of memorials on the merits, two new elements have arisen which have led the Republic of Congo to reconsider its position.

1. First, the *Chambre de l'instruction* of the Paris Court of Appeal, by a judgment dated 22 November 2004 (Annex 1), having before it an application for judicial investigation from the *Procureur de la République* of the Meaux *Tribunal de grande instance*, and ruling on a submission (*mémoire*) by Mr. Jean-François N'dengue, a Congolese army general, whom the judges responsible for investigating the complaint had examined, in violation, incidentally, of the diplomatic immunity which he enjoyed, annulled the application for a judicial investigation of 23 January 2002 and all subsequent proceedings.

The grounds for this annulment are stated in the judgment. Suffice it to say here that they reject the two heads of jurisdiction on which the investigating judges claimed to have based their investigation: with respect to the alleged crimes against humanity, the French courts do not have universal jurisdiction failing an international convention establishing it; with respect to the alleged torture or barbaric acts, the universal jurisdiction of those courts is, according to the provisions of the Convention of New York of 10 December 1984 and to Article 689-2 of the Code of Criminal Procedure, conditional upon the presence of the offender in France, which implies that he should be clearly identified, consequently making it impossible to issue an application for a judicial investigation against X, as was done in this case.

What the Republic of the Congo requested of the Court in its Application instituting proceedings and in its Memorial on the merits was to declare that the French Republic should, by appropriate legal means in accordance with its internal law, annul the application for a judicial investigation by the *Procureur de la République* of the Meaux *Tribunal de grande instance* dated 23 January 2002 and terminate the criminal proceedings which it had instituted.

In these circumstances, the Republic of the Congo notes that the French Republic has answered all its concerns. It has no doubt that the application to the *Chambre de l'instruction* by the *Procureur de la République* of Meaux resulted from instructions issued by the appropriate political authority, in accordance with Article 30 of the Code of Criminal Procedure, as had previously been the case of both the release, by decision of the *Chambre de l'instruction* dated

2 April 2004, in the hours following his arrest, of General N'dengue, whom the judges in Meaux had had no qualms about placing on remand, and the suspension of the investigation ordered by the President of that *Chambre* on 8 April 2004. Indeed such instructions attest to the fact that the authorities of the Republic responsible at the highest level for France's international relations were roused to action by all the irresponsible initiatives taken in this case at a junior level.

Consequently, the Republic of the Congo's Application is now devoid of purpose and it only remains for it to thank the appropriate authorities for their action.

However, the civil parties, the alleged victims of the *Beach* incident, have appealed on a point of law and the *Chambre Criminelle* of the *Cour de Cassation* hearing that appeal has yet to reach a decision. Thus the possibility that the judgment of the *Chambre de l'instruction* might be overturned in whole or in part has to be considered. The Republic of the Congo would then have to reconsider its position.

Pending the ruling by the *Cour de Cassation*, the Republic of the Congo requests the Court to give it an opportunity to add to the present Reply if necessary.

2. The legal proceedings instituted in Brazzaville, of which the Republic of the Congo has informed the Court in its previous written pleadings, led to proceedings on the merits before the *Cour d'assises* from 19 July to 17 August 2005 ending in the acquittal of all those accused.

This judgment has become final. In accordance with the subsidiary nature of universal jurisdiction based on the Convention of New York (see Memorial No. 27), it is in any event a bar to the exercise of such jurisdiction by the French courts.

Consequently, the Republic of the Congo requests the Court to give it an opportunity to add to the present Reply should the judgment terminating the criminal proceedings be overturned. It requests formal acknowledgment that in any event the decision of the Congolese court is *res judicata* and a bar to a continuation of those proceedings.

11 July 2006,

(Signed) Bruno ZINGA,
Minister Counsellor
on behalf of Jacques OBIA,
the Agent of the Republic of the Congo.

Annexes

1. Judgment of the *Chambre de l'instruction* of the Paris Court of Appeal of 22 November 2004.
 2. Judgment of the *Cour d'assises* of Brazzaville of 19 August 2005.
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ANNEX 1

JUDGMENT ON APPLICATION FOR THE ANNULMENT OF PROCEEDINGS OF THE FIRST *CHAMBRE DE L'INSTRUCTION* OF THE PARIS

Court of Appeal of 22 November 2004

Parties in the case:

Person under judicial examination

Jean-François N'dengue

Born on 05/05/1952 in Brazzaville (Congo)

Son of Marcel Omounga and Joséphine Ngala

Not in custody

Residing at 20 rue Brandzer, Brazzaville (Congo)

Formerly resident at 1 Avenue de la Concorde, Résidence Le Verseau, 77100 Meaux

Charges: Crimes against humanity: massive and systematic abductions of individuals, followed by their disappearance, torture or inhuman acts inspired by ideological motives and in pursuit of a concerted plan against a group of a civilian population.

Counsel: Mr. Vergès, 20 rue de Vintimille, 75009 Paris
Mr. Florand, 66 boulevard Malesherbes, 75008 Paris
Mr. Meilhac, 66 boulevard Malesherbes, 75008 Paris
Mrs. Richard, 1 rue Thiers, 95300 Pontoise

Legally Represented Witness

Norbert Dabira, 1 Avenue de la Concorde, Résidence Le Verseau, 77100 Meaux

Counsel: Mrs. Richard, 1 rue Thiers, 95300 Pontoise

Civil Parties

The Association for "Les Disparus du Beach"

Address for service at the office of Mr. Philippe Missamou, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

Counsel: Mr. Missamou-Baghana, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

The Association Survie

Address for service c/o Mr. William Bourdon, 156 rue de Rivoli, 75001 Paris

Counsel: Mr. Bourdon, 156 rue de Rivoli, 75001 Paris

List of 69 persons or associations whose address for service is Mr. Philippe Missamou, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

Counsel: Mr. Missamou-Baghana, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

Except for the following:

Madeleine Touanga née Bikindou and Marcel Touanga

Address for service c/o Mr. Samuel Bemba, 30 rue des Mahonias Bât 30 Esc 7, 06200 Nice

Counsel: Mr. Bourdon, 156 rue de Rivoli, 75001 Paris

Mr. Pantou, 7 bis rue Riquet, 75019 Paris

Mr. Missamou-Baghana, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

Fédération Internationale des Ligues des Droits de l'Homme (FIDH)
Address for service c/o Mr. Patrick Baudoin, 19 avenue Rapp, 75007 Paris
Counsel: Mr. Baudoin, 19 avenue Rapp, 75007 Paris

Ligue Française pour la Défense des Droits de l'Homme et du Citoyen (LDH)
Address for service c/o Mr. Patrick Baudoin, 19 avenue Rapp, 75007 Paris
Counsel: Mr. Baudoin, 19 avenue Rapp, 75007 Paris

Aubin Gautier Mackaya, Ghislain Matembele, Pascal Miena Youlou, Blanchard Mouele and
Linot Bardin Duval Tsieno
Address for service c/o Mr. Patrick Baudoin, 19 avenue Rapp, 75007 Paris
Counsel: Mr. Baudoin, 19 avenue Rapp, 75007 Paris

Armand Ngabounia
Address for service c/o Mr. Jean Bifouta, 1 allée Gabriel Fauré, 60180 Nogent-sur-Oise
Counsel: Mr. Opoki, 13 rue de l'Évangile, 75018 Paris

Observatoire Congolais des Droits de l'Homme (OCDH.)
Address for service c/o Mr. Patrick Baudoin, 19 avenue Rapp, 75007 Paris
Counsel: Mr. Baudoin, 19 avenue Rapp, 75007 Paris

SITA
Address for service c/o Mr. Philippe Missamou, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux
Counsel: Mr. Missamou-Baghana, 7 rue Claude Matrat, 92130 Issy-les-Moulineaux

Composition of the Court during the proceedings, deliberation and delivery of the judgment

- Mr. Gurtner, President
- Mrs. Civalero, Judge
- Mrs. Bernard-Requin, Judge.

All three were appointed in accordance with Article 191 of the Code of Criminal Procedure.

Registrar for the proceedings, and the delivery of the judgment: Mr. Mattei

The Public Prosecutor's Office, represented during the deliberations and the delivery of the judgment by Mr. Henriot, Advocate General

Proceedings

At the hearing in closed session on 27 September 2004, the following were heard:

- Mrs. Civalero, Judge, who presented her report;
- Mr. Henriot, Advocate General, who presented his observations;
- Messrs Bourdon, Baudoin, Missamou-Baghana and Pantou, counsel for the civil parties, who presented their summary observations;
- Mr. Florand, Mrs. Richard and Mr. Meilhac, counsel for the accused, who presented their summary observations and were the last to take the floor;

- Mr. Opoki, counsel for the civil party Armand Ngabounia, although duly informed, did not attend;
- Mr. Vergès, counsel for the accused, although duly informed, did not attend.

Summary of the proceedings

By an application of 5 April 2004, the Meaux *Procureur de la République* applied to this *Chambre de l'instruction* for a ruling on the possible annulment of proceedings.

The person charged, the civil parties and their counsel were notified of the date of the hearing by registered letters dated 27 July 2004, 9 September 2004 and 17 September 2004.

The file including the written application by the *Procureur Général* dated 16 July 2004 was filed with the registry of the *Chambre de l'instruction* and made available to counsel of the parties.

The following reports were initialled by the Registrar, communicated to the Public Prosecutor's Office and included in the record, in accordance with Article 198 of the Code of Criminal Procedure:

13 September 2004 — Mr. Missamou
on behalf of The Association for "Les Disparus du Beach"
Mr. Touanga
the families of the victims

23 September 2004 — Mr. Marcel Pantou
on behalf of Madeleine Touanga and Marcel Touanga

23 September 2004 — Mr. Bourdon and Mr. Missamou
on behalf of the Association Survie

23 September 2004 — Mr. Baudoin
on behalf of FIDH
LDH
Observatoire Congolais des Droits de l'Homme
Messrs Matembele
Tsieno
Mouele
Mackaya
Youlou
Kouandzi

24 September 2004 — Mrs. Richard
on behalf of Jean-François N'dengue

24 September 2004 — Mr. Vergès and Mr. Florand
on behalf of Jean-François N'dengue

Decision

Taken after due deliberation in accordance with Article 200 of the Code of Criminal Procedure.

Statement of facts

By letter of 7 December 2001 addressed to the Paris *Procureur de la République*, transmitted the same day to the Meaux *Procureur de la République*, the International Federation of Human Rights Leagues (Fédération Internationale des Ligues des Droits de l'Homme (FIDH)), the Congolese Observatory of Human Rights (Observatoire Congolais des Droits de l'Homme (OCDH)) and the Ligue Française pour la défense des droits de l'homme et du citoyen (the League) instituted proceedings against Denis Sassou N'guesso, President of the Republic of the Congo, Pierre Oba, Minister of the Interior, Norbert Dabira, Inspector-General of the Armed Forces, Blaise Adoua, Commander of the Republican Guard, and all others, claiming arbitrary arrest and disappearances of individuals who had sought refuge in the Pool region during the civil war of 1998 and had passed through the Democratic Republic of the Congo before returning to the Congo via the river port of Brazzaville, following a tripartite agreement establishing a humanitarian corridor.

It transpired from the complaint and the documents annexed thereto that those acts, which occurred between 5 and 14 May 1999, attributable to the named persons as the immediate superiors of the actual offenders could, as enforced disappearances, be defined both as torture and as crimes against humanity, having been committed against the civilian population on political and ethnic grounds, in a systematic manner in pursuit of a concerted plan.

The complaint stated that, when it was filed, General Norbert Dabira was in French territory, with an address given in Villeparisis (postcode 77270). It relied on the jurisdiction of the French courts under customary law as regards the ground of crime against humanity and on the basis of Article 639-2 of the Code of Criminal Procedure and the New York Convention of 10 December 1984 as regards the ground of torture.

After some enquiries as part of a preliminary investigation, *inter alia* verifying the address mentioned in the complaint, on 23 January 2002 the prosecutor's office in Meaux initiated a preliminary investigation against X on the grounds of "crimes against humanity: massive and systematic abductions of individuals, followed by their disappearance, and torture or inhuman acts for ideological reasons in implementation of a plan for concerted action against a group of the civilian population", by reference to Article 212-1 of the Criminal Code and Article 689-1 of the Code of Criminal Procedure.

Following a warrant issued by the investigating judge dealing with the case and after checking *inter alia* that diplomatic immunity could not be claimed, investigators took testimony from Norbert Dabira while he was held in custody, and he was then summoned by the investigating judge to appear as a legally represented witness.

Summoned again by the investigating judge, he failed to appear and a bench warrant (*mandat d'amener*) and subsequently an arrest warrant were issued against him, the latter after the Congolese Ministry of Defence had made it known that the person concerned was not authorized to appear as summoned.

The investigating judge also tried unsuccessfully, via the Ministry of Foreign Affairs, under Article 656 of the Code of Criminal Procedure, to obtain official evidence in writing from the President of the Congo, Denis Sassou N'guesso, during a visit by him to France.

The investigating judge also had investigations conducted to determine whether the other two persons referred to by the complaint, Pierre Oba and Blaise Adoua, as well as Jean-François N'dengue, Head of the Congolese police force, incriminated by statements gathered with respect to his involvement in the acts that were the subject of this complaint, were present in French territory or were likely to enter it.

Jean-François N'dengue was thus taken in for questioning on 1 April 2004 from his residence at 1 rue du Verseau, in Meaux; and when placed in custody, relied upon a mission letter giving him diplomatic immunity.

After various enquiries, following which the investigating judge considered that Jean-François N'dengue could not be granted such immunity, he was charged on the grounds referred to in the application, then made the subject of a committal warrant by the *juge des libertés et de la détention*, before being released following an appeal and emergency interim ruling.

The judicial investigation was suspended by order of the President of the *Chambre de l'instruction* on 8 April 2004, although several civil actions had been filed before and after that decision.

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On 5 April 2004, the Meaux *Procureur de la République* submitted an application for an annulment of the action taken by the investigators with respect to Jean-François N'dengue in execution of the warrant, by the investigating judge and by the *juge des libertés et de la détention*, and all subsequent proceedings, on the grounds that Jean-François N'dengue enjoyed diplomatic immunity and that, under Article 689-1 of the Code of Criminal Procedure, the investigating judge's powers extended to Norbert Dabira alone, as no additional application had subsequently named Jean-François N'dengue.

The *Procureur Général* made a similar application, adding a request that the court should annul all actions concerning Pierre Oba and Blaise Adoua seeking to determine whether they were present in French territory.

He also called for the mission letter, signed by Denis Sassou Nguesso and placed under seal as exhibit No. 1, to be returned to Jean-François N'dengue.

On the issue of diplomatic immunity, the *Procureur Général* observed that such immunity should be granted to Jean-François N'dengue, as the bearer of a letter entrusting him with a special mission whose authenticity had been established, in accordance with international custom, even though neither France nor the Congo were parties to the New York Convention of 8 December 1969, which defines such missions.

As regards the application for a judicial investigation, the *Procureur Général* maintained that it could not be criticized for the offences referred to, which fell under international law, international conventions on criminal matters and customary law, and the acts characterized as crimes against humanity were, moreover, linked to the crime of torture prosecuted under Article 689-2 of the Code of Criminal Procedure.

Finally, the *Procureur Général* asserted that although the application was improperly drafted "against X", on the basis of the text itself it could only refer to Norbert Dabira, the only person — in the light of the complaint and proceedings — likely to have participated in the acts complained of and to be present in French territory.

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The association “Les Disparus du Beach” and the civil parties represented by Mr. Missamou as counsel argued first that the application by the *Procureur de la République* was inadmissible as in their opinion diplomatic immunity did not constitute a procedural objection, it being a matter for the trial court to decide.

The civil parties also put forward the following arguments:

- diplomatic immunity cannot be relied on in relation to international crimes;
- France had not ratified the New York Convention, which makes provision for special missions;
- the mission claimed by Jean-François N’dengue did not really exist; he was actually on a private visit, and in addition his duties in his country would preclude such a mission being entrusted to him.

Lastly, the civil parties contended that the investigating judge, irrevocably seised of the facts by the application for an investigation against X, had duly communicated, in accordance with Article 80 of the Code of Criminal Procedure.

In his first memorial, Jean-François N’dengue referred to the arguments put forward by the *Procureur Général* and requested the annulment of the proceedings concerning Pierre Oba and Blaise Adoua.

In the second, he argued that:

- the application, according to the provisions of Article 689-1 of the Code of Criminal Procedure as they then were, could only be made against a named person;
- it had not been shown that Norbert Dabira was in French territory either when the complaint was made or when the investigation was opened, a conclusion which could not be drawn merely from the fact that Norbert Dabira had a residence in the country.

Consequently he asks the Court to annul the initial application and subsequent proceedings, to withdraw the international arrest warrant against Norbert Dabira and, lastly, to order the removal of his name from the record of persons sought by the police.

Admissibility

Whereas the aforementioned application falls within the provisions of Article 173 of the Code of Criminal Procedure conferring jurisdiction on the *Chambre de l’instruction* to declare the nullity of any proceedings vitiated by it;

Whereas consideration of the diplomatic immunity to which Jean-François N’dengue may be entitled is such as to affect the legality of the proceedings against him and, contrary to the arguments in his memorial, is not solely a matter for the trial court to decide; whereas, moreover, the object of the application is also to discuss the scope of the investigating judge’s remit;

Merits

Whereas the provisions of Article 689-1 of the Code of Criminal Procedure referred to in the present case by the initial application which brought the matter before the investigating judge are exceptional in that they allow prosecution and trial in France for offences committed outside French territory, although neither the offenders nor the victims are French nationals;

Whereas the provisions place a twofold condition on their application, namely that the offence must be one of those envisaged by the international conventions enumerated by Articles 689-2 to 689-9 of the Code of Criminal Procedure, and that the person prosecuted must be present in France when the proceedings are brought;

Whereas firstly, in this case, the initial application for an investigation refers not only to acts of torture, for the definition of which Article 689-2 of the Code of Criminal Procedure refers to the New York Convention of 10 December 1984, but also to crimes against humanity, which are not included in any of the above-mentioned conventions;

Whereas secondly, the application which initiated the investigation was issued against X, and thus does not include the information needed to establish that the condition relating to the presence on French soil of the person prosecuted has been met, though that finding is an essential prerequisite of the exercise of that exceptional jurisdiction;

Whereas the exceptional nature of the provisions of Article 689-1 of the Code of Criminal Procedure precludes the simultaneous application of the general provisions of Article 80 of the Code of Criminal Procedure, whereby the public prosecutor's office is entitled to make an application against persons named or unnamed;

Whereas, moreover, in the present case, the consequence of opening an investigation against X was to prompt the investigating judge to have Norbert Dabira, the only person, according to the *Procureur Général*, with respect to whom the investigation could be conducted, called to testify under a warrant, which is prohibited by Article 113-1 of the Code of Criminal Procedure when a person is identified by name in the application;

Whereas the application, which does not meet the legal conditions for it to be issued, shall be annulled, together with all subsequent proceedings;

Whereas the return of the mission letter, placed under seal as exhibit No. 1, shall be ordered, the other measures requested by Jean-François N'dengue being no more than the necessary consequence of the annulment of the proceedings;

ON THESE GROUNDS

The Court

Having regard to Articles 170 to 174, 194, 197, 199, 200, 206, 209, 216, 217, 801 and 802 of the Code of Criminal Procedure;

As to the form

Finds the seisin admissible;

As to the merits

Annuls the initial application and all subsequent proceedings;

Orders the return of the mission letter, placed under seal as exhibit No. 1;

Orders that the present judgment be executed upon the instructions of the *Procureur Général*.

(Signed) The Registrar
and the President.

ANNEX 2

**JUDGMENT NO. 6 OF 17 AUGUST 2005 OF THE *CHAMBRE CRIMINELLE*
BRAZZAVILLE COURT OF APPEAL, REPUBLIC OF THE CONGO**

Case between the Public Prosecutor's Department and

1. the Civil Parties regarding the disappearances at Brazzaville Beach

List of 61 individuals

Assisted and represented by Irénée Malonga, Félix Nkouka, François André Quenum, Marcel Ngoma, Alphonse Dianguitokoulou, lawyers

and

2. the Civil Parties regarding acts which took place other than at Brazzaville Beach

List of 15 individuals

Assisted and represented by Hervé Ambroise Malonga, Félix Nkouka, lawyers

V

- Norbert Dabira
- Blaise Adoua
- Guy Pierre Garcia
- Jean-François Ndengue
- Jean Aïve Allakoua
- Marcel Ntsourou
- Emmanuel Avoukou
- Gabriel Ondonda
- Rigobert Mobedet
- Vincent Vital Bakana
- Samuel Mbouassa
- Jean-Pierre Essouebe
- Yvon Dieudonné Sita Bantsiri
- Edouard Dinga Oba

— Guy Edouard Taty

Assisted and represented by Caty Richard, Jean-Philippe Esseau, Robert M. Dossou, Emmanuel Oko, Jean Petro, Gilles Pena-Pitra, Annick Patricia Mongo, Fatima Banzani Mollet, Thomas Djolani, Gérard Devillers, Dieudonné Djosso and Antoine Obambe, Armand Blaise Galiba, Simon Yves Tchicamboud, Armand Robert Okoko, Pierre Mabilia, Roger Bongoto, Anatole Elenga, Gilbert Bondongo, Gustave Kassa, Saint-Clair, lawyers

Charged with:

Genocide, crimes against humanity, war crimes

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The *Chambre Criminelle* of the Brazzaville Court of Appeal, Republic of the Congo, in its first session of 2005, at the *Palais de Justice* in Brazzaville on the seventeenth of August two thousand and five at 10 a.m., in the presence of:

— Charles Emile Appesse, First President, Brazzaville Court of Appeal: President;

— Anselme Tiele Gambia Dieudonné, Vice-President, Brazzaville Court of Appeal: Assessor;

— Christophe Pangoud, President of the *Chambre Criminelle*: Assessor;

And the following sworn in jurors chosen by lot sitting beside the Court:

— Jacob Dimi;

— Ekia Ekama;

— Auguste Ondon;

— Amédée Matouba;

— Prisca Matsima;

— Pauline Loungouedi;

Assisted by Antoine Mboubou, Chief Registrar of the Brazzaville Court of Appeal, taking the minutes of the hearing;

— Edouard Batantou, Chief Registrar;

Jean-Claude Olombi, Court Usher, acting Court Usher of the Hearings and Enforcement Service, appointed by the *Procureur Général* at the Brazzaville Court of Appeal;

Before Armand Robert Bemba, *Procureur Général* at the Brazzaville Court of Appeal, Ausone Julien Pierre Malanda, First Advocate General, Dominique Boukaka and

Dinard Alphonse Moubangou Moukonzi, Advocates General in the Public Prosecutor's Department;

The following judgment was delivered:

Between the Public Prosecutor's Department, represented by Armand Robert Bemba, Ausone Julien Pierre Malanda, Dominique Boukaka, Dinard Alphonse Moubangou Moukonzi, with an address for service in the Prosecutor's Office at the Brazzaville Court of Appeal

and

A. The civil parties regarding the disappearances at Brazzaville Beach, represented by:

List of 61 individuals

Counsel: Irénée Malonga, Félix Nkouka, André Quenum, Alphonse Dianguitokoulou and Marcel Ngoma, lawyers;

B. The civil parties regarding acts which took place other than at Brazzaville Beach

List of 14 individuals

Counsel for all 14: Ambroise Hervé Malonga, Immeuble Caprices de Marianne, Tel.: 661-93-91, and Félix Nkouka, B.P. 14.435, Tel.: 551-17-40, lawyers, on the one hand, and

1. Norbert Dabira, Congolese national, born on 24 June 1949 in M'Boma (Boundji district), son of David Dabira (deceased) and Jeanne Somboko (deceased), married, father of nine children, General in the Congolese Armed Forces, residing at Camp 15 Août, Brazzaville, not in custody, counsel: Caty Richard, Jean-Philippe Esseau and Armand Blaise Galiba, lawyers;
2. Blaise Adoua, Congolese national, born on 25 August 1956 in Liranga, son of Laurent Adoua (deceased) and Madeleine Mouabe (deceased), married, father of 11 children, General in the Congolese Armed Forces, residing at 210 Avenue Galieni, M'Pila, Brazzaville, not in custody, counsel: Robert Dossou, Emmanuel Oko and Gilles Pena-Pitra, lawyers;
3. Guy Pierre Garcia, Congolese national, born on 15 November 1949 in Les Saras (Mvouti district), son of Kitoko Matoudi (deceased) and Marie Madeleine Makosso (deceased), married, father of four children, residing in Brazzaville, not in custody, counsel: Robert Dossou, Jean Petro, Léon Pierre Versini and Saint Clair, lawyers;
4. Jean François Ndengue, Congolese national, born on 5 May 1952 in Brazzaville, son of Marcel Omouanga (deceased) and Joséphine Ngala (deceased), General in the National Police Force, married, father of five children, residing at 20 rue Bandza, Ouenzé, Brazzaville, not in custody, counsel: Gilles Pena-Pitra, Pierre Mabilia and Caty Richard, lawyers;
5. Jean Aïve Allakoua, Congolese national, born on 20 October 1960 in Djambala, son of Antoine Alakoua (deceased) and Thérèse Ngambani (deceased), Colonel in the National Police Force, married, father of five children, residing at Apartment D3G, Immeuble 32 Logements, not in custody, counsel: Annick Patricia Mongo and Robert Dossou, lawyers;
6. Marcel Ntsourou, Congolese national, born on 28 February 1956 in Kébara, son of Sébastien Onkala (deceased) and Henriette Mangandzounou, Colonel in the Congolese Armed Forces, married, father of three children, residing at 2061 rue Bangou, Quartier Batignolles,

Brazzaville, not in custody, counsel: Jean Philippe Esseau, Evelyne Fatima Banzani Mollet, Thomas Djolani and Léon Pierre Versili, lawyers;

7. Emmanuel Avoukou, Congolese national, born on 17 June 1955 in Loboko (Mossaka district), son of Didier Elongo (deceased) and Henriette Soukaneme (deceased), Colonel in the Congolese Armed Forces, married, father of four children, residing at 9-11 rue Berthe, Talangaï, Brazzaville, not in custody, counsel: Gerard Devillers, lawyer, Brazzaville.
8. Gabriel Ondonda, Congolese national, born on 14 May 1954 in Loukolela, son of Jean Ondonda (deceased) and Laurentine Kiba (deceased), Mining Engineer, married, father of five children, residing at 7 Avenue Nelson Mandela, Brazzaville Centre, not in custody, counsel: Djosso and Antoine Obambe, lawyers;
9. Rigobert Mobedet, Congolese national, born on 15 January 1963 in Ngbala, son of Alfred Mede and Rosalie Nakio, unmarried, father of five children, soldier, residing at 60 rue Lameth, Plateau des 15 Ans, Brazzaville, not in custody, counsel: Armand Robert Okoko and Joël Claude Paka, lawyers;
10. Vincent Vital Bakana, Congolese national, born on 19 July 1959 in Brazzaville, son of Joseph Bakana (deceased) and Germaine Makiza, unmarried, father of seven children, police officer, residing at 440 Avenue du Général de Gaulle, Mpissa, Brazzaville, not in custody, counsel: Armand Blaise Galiba and Anatole Elenga, lawyers;
11. Samuel Mbouassa, Congolese national, born on 31 October 1953 in Boundji, son of Edmond Mbouassa and Henriette Mouakoumba, married, father of five children, Lieutenant Colonel in the Congolese Armed Forces, residing at 63 rue Ndolo, Talangaï, Brazzaville, not in custody, counsel: Djosso, Antoine Obambe and Gilbert Bondongo, lawyers;
12. Jean-Pierre Essouebe, Congolese national, born on 13 March 1950 in Brazzaville, son of Vivien Essouebe and Faustine Ekondza, married, father of seven children, Colonel in the Congolese Armed Forces, not in custody, residing at 69 rue Enyellé, Ouenzé, Brazzaville, counsel: Jean Philippe Esseau, lawyer;
13. Yvon Dieudonné Sita Bantsiri, Congolese national, born on 2 May 1969 in Brazzaville, son of Eugène Sita Bonazebe and Angèle Diantete, married, father of three children, unemployed, residing at 155 rue Archambault, Bacongo, Brazzaville, not in custody, counsel: Antoine Obambe, Armand Robert Okoko, Gilbert Bondongo and Anatole Elenga, Lawyers;
14. Edouard Dinga Oba, Congolese national, born on 13 October 1957 at Abala, son of Joseph Oba (deceased) and Madeleine Ignama, married, father of eight children, Police Superintendent, residing at 39 rue Bouenza, Talangaï, Brazzaville, counsel: Emmanuel Oko, Pierre Mabilala, Robert Dossou, Joël Claude Paka and Anatole Elenga, lawyers;
15. Guy Edouard Taty, Congolese national, born on 13 October 1963 at Pointe-Noire, son of Léon Taty and Georgette Loumbou Loemba, unmarried, father of three children, Police Superintendent, residing at 32 Logements, Camp Milice, Brazzaville, not in custody, counsel: Joël Claude Paka, lawyer;

Charged with: genocide, crimes against humanity, war crimes;

Crimes laid down by and punishable according to Articles 1, 2, 3, 4 and 6 of Act No. 8/98 of 31 October 1998 defining and punishing genocide, war crimes and crimes against humanity;

Further;

The accused were properly summoned by the *Procureur Général* of Brazzaville Criminal Court to appear before the *Chambre criminelle* of that Court at the appointed place, day and hour for the opening of the hearings;

The case was called for public hearing on 19 July 2005;

It was suspended then adjourned to 20, 21 and 22 July 2005 for an investigation into the identities of the accused;

At the hearing on 23 July 2005, the First President of the Court of Appeal asked the Chief Registrar to read out, clearly and intelligibly, the decision referring the case against the accused to the *Cour Criminelle*;

After the referral decision had been read out, counsel for the civil parties, Ambroise Hervé Malonga, Félix Nkouka, François André Quenum and Irénée Malonga, and also counsel for the defence, Annick Patricia Mongo and Gilles Pena-Pitra, on behalf of their respective clients, raised objections *in limine litis* as to the validity of the proceedings;

The Public Prosecutor took the floor to make his submissions on the points raised;

The oral arguments of Caty Richard, Pierre Mabilia, Armand Blaise Galiba and Dieudonné Djosso, counsel for the defence, were also heard;

The hearing was suspended by the President and adjourned to 23 July 2005 for deliberations on the objections raised;

When the hearing resumed on 23 July 2005, the President read out the following provisional judgment:

The Court

Having regard to the items in the record of the proceedings against the following individuals: Norbert Dabira, Blaise Adoua, Guy Pierre Garcia, Jean-François Ndengue, Jean Aïve Allakoua, Marcel Ntsourou, Emmanuel Avoukou, Gabriel Ondonda, Rigobert Mobedet, Vincent Vital Bakana, Samuel Mbouassa, Jean-Pierre Essouebe, Yvon Dieudonné Sita Bantsiri, Edouard Dinga Oba and Guy Edouard Taty

Charged with genocide, war crimes and crimes against humanity,

Whereas after the reading of the referral decision and before considering the merits of the case, Hervé Amboise Malonga, counsel for the civil parties, Patricia Annick Mongo, counsel for the accused Jean-Aïve Allakoua, and Gilles Pena-Pitra, counsel for the accused Jean-François Ndengue, raised objections as to the validity of the proceedings in the case;

Whereas Hervé Ambroise Malonga justified his request for the proceedings to be declared null and void firstly, on non-compliance with the following articles:

- Article 199 of the Code of Criminal Procedure which provides that “the indictment shall be null and void unless it sets out the legal characterization of the facts on which the indictment is based; it shall also contain an arrest warrant for the accused stating their identify”;
- Article 238 of the Code of Criminal Procedure on the notification to the accused of the referral decision;

- Article 492 of the Code of Criminal Procedure on the time-limits to be complied with between the date when the summons is issued and the date fixed for the appearance of the accused before the trial bench;
- Article 141 of the Fundamental Law of the Congo which established the High Council of the Judiciary and subsequently on the conflict of jurisdiction as between the French and the Congolese courts over their right to hear the present case which in the Congo involves close advisers of the President of the Republic;

Whereas Annick Patricia Malongo invoked the imprecision of the offences with which her client was charged as ground for nullity;

Whereas Gilles Pena-Pitra called for the proceedings to be declared null and void inasmuch as the charges of war crimes of which his client was accused were time-barred under Act No. 21-99 of 20 December 1999 granting an amnesty for acts of war relating to the civil wars of 1993-94, 1997 and 1998-99;

Whereas the Public Prosecutor's Office, replying to each of the objections as to the validity of the proceedings in turn, asserted that:

- whereas the formal requirement that the accused be notified of the referral decision was properly fulfilled through the court usher and whereas in that respect counsel for the civil parties could not invoke an irregularity which did not prejudice the interests of his clients;
- whereas under the provisions of Article 141 (2), of the Code of Criminal Procedure, the Public Prosecutor's Office, as the guardian of public order, was free to act on an arrest warrant, and the failure to execute it could not invalidate the proceedings;
- whereas the non-compliance with the time-limits for summonses did not invalidate the proceedings;
- whereas, further, the outcome of any conflict of jurisdictions as between the *Cour de Cassation* in France and Brazzaville Criminal Court, if such existed, did not fall within the purview of Brazzaville Criminal Court, which, under the principle of national and territorial sovereignty, examined offences allegedly committed by Congolese nationals on Congolese soil against other Congolese citizens, when all concerned were resident in the Congo;
- whereas the unconstitutionality of the decree appointing the judges forming the bench in breach of Article 141 of the Congolese Constitution, must first be declared by the Constitutional Court before it could be invoked in the present court;
- whereas, in the absence of any special procedure for the prosecution of war crimes and crimes against humanity, the rules in the Code of Criminal Procedure in Congolese domestic law were the only ones applicable;
- whereas the objection as to the validity of the proceedings based on the amnesty law must be joined to the merits for it to be considered in the deliberations;
- whereas the notion of disappearance in criminal law was different from that of disappearance in civil law;

Whereas Caty Richard, counsel for the defence, referring to the conflict of jurisdiction between the French and Congolese courts, disputed the existence of any such conflict and contended that all French proceedings regarding the disappearances at Brazzaville Beach in the

Congo had been suspended as the application of 5 December 2001 requesting the investigating judge to open an investigation had been declared null and void;

Whereas Pierre Mabiala, counsel for the defence before the Criminal Court, had argued that the objections raised by Hervé Amboise Malonga were inadmissible, as only the failure to comply with Article 199 of the Code of Criminal Procedure was penalized by a declaration of nullity;

Whereas Alphonse Dianguitoukoulou, counsel for the civil parties challenged the objection regarding the lack of precision raised by Annick Patricia Mongo, alleging that the grounds for the judgment were sufficiently clear as to the charges against the accused;

Whereas Irénée Malonga, counsel for the civil parties, disputed the nullity of the proceedings on the ground of non-compliance with the amnesty law invoked by Gilles Pena-Pitra on the basis of the provisions of Article 2 of Decree No. 99-270 of 31 December 1999 laying down the conditions for the application of Act No. 21-99:

“within the meaning of the aforementioned law, any act detrimental to public order, physical integrity, individual freedom, private or public property is regarded as an act of war when it is committed during a period of civil war for war aims exclusively;

Any other act carried out during the same period but undertaken for the private interests of its perpetrator and which is thus extraneous to the prosecution of the war is not covered by the amnesty law”;

Whereupon the Court

Whereas the various objections raised by counsel for the parties should be answered as follows;

1. As to the failure to notify the accused of the referral decision

Whereas Ambroise Hervé Malonga, counsel for the civil parties, contends that the failure to notify the accused of the referral decision is a ground for absolute nullity;

Whereas, however, that objection cannot be sustained on the ground that, in the minutes of the examination conducted in accordance with Article 240 *et seq.* of the Code of Criminal Procedure, all the accused formally declared that they had been informed of the acts with which they were charged and which had given rise to their referral to the Criminal Court;

2. As to the failure to enforce the arrest warrant

Whereas Ambroise Hervé Malonga alleges that the failure of the Public Prosecutor's Department to enforce the arrest warrant issued against the accused by the referral decision is a ground for the substantive nullity of the proceedings;

Whereas, however, under the provisions of Article 141 of the Code of Criminal Procedure, an arrest warrant shall be enforced against the accused if, when duly summoned through the administrative channels of the Registry of the Criminal Court, he does not present himself on the appointed day to be questioned by the President of the Criminal Court and has no valid reason for failing to do so;

Whereas in the present case the accused, summoned through the administrative channels, presented themselves as formally required for that examination and have, since that date, appeared regularly before the bench;

Whereas consequently that non-textual objection of nullity, which does not prejudice the interests of the civil party, cannot be upheld.

3. As to the failure to comply with the time-limits for the summons

Whereas Ambroise Hervé Malonga objected that the present proceedings should be nullified for failure to comply with the time-limits applying to summonses;

Whereas, however, under the combined provisions of Article 492 and 493 of the Code of Criminal Procedure, failure to respect the time-limits for summonses shall not invalidate the proceedings, but, in the event of the party summoned presenting himself and at his request, the Court shall instead order an adjournment to a later hearing.

4. As to the conflict of jurisdiction

Whereas Amboise Hervé Malonga is seeking to have the current proceedings before Brazzaville Criminal Court nullified by alleging that the case is pending before the *Cour de Cassation* in France;

Whereas, however, that allegation of a conflict of jurisdiction between the French and Congolese courts is not substantiated by any item in the case file;

Whereas, nonetheless, foreign courts cannot, under the principle of complementarity, hear crimes of genocide, war crimes and crimes against humanity unless the domestic courts have neither the will nor the capacity to do so;

Whereas, in the present case, the Congo, a sovereign State, has instituted proceedings against the accused;

Whereas such nullity arising from the conflict of jurisdiction cannot be declared admissible;

5. As to the violation of Article 141 of the Constitution of 20 January 2002 by the President of the Republic

Whereas Ambroise Hervé Malonga contends that the current proceedings, from the judicial investigation to the current stage, have been conducted by judges appointed by the President of the Republic in manifest violation of Article 141 of the Constitution of the Congo;

Whereas such violation constitutes a ground for the nullity of the proceedings;

Whereas, however, that objection must be set aside on the ground that, despite enjoying full jurisdiction, the Criminal Court does not rule on the constitutionality of laws and other administrative acts;

Whereas in the Congo the unconstitutionality of a public text must be declared by the *Cour Constitutionnel*: whereas failing such recourse, the administrative act, by virtue of the presumption of legality, produces effects until it is nullified;

6. As to the imprecision of the charges

Whereas Patricia Annick Mongo submitted that the imprecision of the charges must incur nullity since it prejudices the rights of the accused to a fair trial;

Whereas, however, that argument cannot be upheld since the reasoning of the referral decision specifies and extensively defines the facts and the offences prosecuted;

7. As to the amnesty law for war crimes and the legality of civil actions

Whereas Gilles Pena-Pitra submitted that the referral of his client to the Criminal Court on a charge of war crimes is a violation of the amnesty law which should invalidate the proceedings;

Whereas likewise the failure to issue declaratory judgments on the disappearance of the victims by the civil parties rendered their civil actions inadmissible;

Whereas, however, the issues raised require interpretation which only be an examination on the merits can provide;

For these reasons

- ruling in open court and after hearing all the parties in a criminal case at first and last instance by a provisional judgment;
- rejects the objections to validity raised by Amboise Hervé Malonga and Patricia Annick Mongo;
- joins the objections raised by Gilles Pena-Pitra to the hearings on the merits;
- reserves the costs;

All the foregoing in accordance with Articles 267, 264, 265, 266, 141 (2), 199, 492 and 493 of the Code of Criminal Procedure, 238, 240;

After delivering the provisional judgment, the First President of the Court of Appeal began the preliminary examination of the accused as to the facts;

Each of the accused in turn replied by denying their criminal involvement in the acts being prosecuted;

The hearing was suspended and adjourned until 25 July 2005 for the hearing of the civil parties;

At the hearing of 25 July 2005, in the course of which the Public Prosecutor's Department and the civil parties were to provide the Court with evidence of the charges, Ambroise Hervé Malonga, counsel for the civil parties, raised a preliminary objection challenging the bench and jurors constituting the Criminal Court before the *Cour Constitutionnelle*.

Félix Nkouka, François André Quenum and Alphonse Dianguitokoulou also made additional submissions implicating the Congolese State;

Counsel put forward their explanations and grounds of defence;

- Ambroise Hervé Malonga, Félix Nkouka, François André Quenum and Irénée Malonga, counsel for the civil parties, in their oral arguments;
- Caty Richard, Pierre Mabiala, Gilles Pena-Pitra, Armand Blaise Galiba, Dieudonné Djosso and Annick Patricia Mongo, counsel for the defence, in their oral arguments;
- The Public Prosecutor's Department in its submissions;

The President suspended the hearing and the Court retired to deliberate on the objections raised;

When the hearing resumed, the President read out the following preliminary Judgment:

The Court

Having regard to items in the record of proceedings against the accused Norbert Dabira, Blaise Adoua, Guy Pierre Garcia, Jean-François Ndengue, Jean Aïve Allakoua, Marcel Ntsourou, Emmanuel Avoukou, Gabriel Ondonda, Rigobert Mobedet, Vincent Vital Bakana, Samuel Mbouassa, Jean-Pierre Essouebe, Yvon Dieudonné Sita Bantsiri, Edouard Dinga Oba and Guy Edouard Taty, charged with genocide, war crimes and crimes against humanity, in particular:

- the submissions of Ambroise Hervé Malonga, counsel for the civil parties, dated 25 July 2005, challenging the bench and the jurors constituting Brazzaville Criminal Court and calling for the suspension of the present proceedings pending a decision by the *Cour Constitutionnelle* on the merits of a claim before it that the appointment of the judges by decree of the President of the Republic should be ruled unconstitutional;
- the submissions by *Cabinet d'avocats* Félix Nkouka, François André Quenum & Alphonse Dianguitokoulou of 25 July 2005 with a view to bringing a civil action and indicting the Congolese State;

Having heard the explanations of Ambroise Hervé Malonga and Irénée Malonga;

Having heard the submissions of the Public Prosecutor's Department;

Having heard the oral arguments of Gilles Pena-Pitra, Pierre Mabiala and Jean Petro, counsel for the accused;

Whereas Ambroise Hervé Malonga contended in his oral argument that he was raising new preliminary objections challenging the bench and the jurors constituting the Criminal Court and calling for the suspension of the present proceedings pending a decision by the *Cour Constitutionnelle* ruling on his application of 25 July 2005;

Whereas the Public Prosecutor's Department and counsel for the defence, responding to the objections described as preliminary by Ambroise Hervé Malonga, rejected them as inadmissible on the basis of Article 324 of the Code of Criminal Procedure, which states that:

- “1. A preliminary legal objection shall be presented before any defence on the merits;
2. It shall only be admissible where its effect is to prevent the act for which prosecution is brought from constituting an offence;
3. It shall only be allowed if it is based on facts or arguments which substantiate the defendant's allegations . . .”

Whereas they likewise alleged that the challenge to the bench and the jurors as formulated was contrary to the formal requirements of the provisions of Articles 589 and 590 of the Code of Criminal Procedure:

“Any judge in a lower or higher court may be challenged on the following grounds:

(a) if the judge or his spouse are family members of or related by marriage to one of the parties or his spouse, up to the degree of cousin born of first cousin inclusively;

the challenge may be brought against the judge even in the case of divorce or death of the spouse, if the judge was related by marriage to one of the parties up to the second degree inclusively;

(b) if the judge or his spouse, or any persons for whom he acts as guardian, deputy-guardian, trustee or judicial counsel, or any companies or associations in the administration or supervision of which he is involved, have an interest in the dispute;

(c) if the judge or his spouse are family members of, or related by marriage to, the guardian, deputy-guardian, trustee or judicial counsel of one of the parties or of an administrator, director or manager of a company party to a dispute, up to the degree stated above;

(d) if the judge or his spouse are in a situation of dependency in relation to one of the parties;

(e) if the judge was involved in the case in the capacity of judge or counsel or if he made a witness statement as to the facts of the case;

(f) if legal proceedings have taken place between the judge, his spouse, their family members or relations by marriage in direct line and any of the parties, his spouse or family members or relations by marriage in the same line;

(g) if the judge or his spouse are involved in proceedings in which one of the parties is a judge;

(h) if the judge or his spouse, their family members or relations by marriage in direct line are involved in a dispute on a question similar to that in dispute between the parties;

(i) if anything has taken place between the judge or his spouse and one of the parties that was sufficiently serious to put his impartiality into question.

1. The person charged, the defendant, the accused and any party to the case who wishes to challenge an investigating judge, a police court judge, or one or more of the judges of the *Tribunal de Grande Instance*, of the Court of Appeal or of the Criminal Court, shall file an application with the President of the Court of Appeal, under penalty of nullity;
2. Members of the Public Prosecutor’s Department may not be challenged;
3. The application must identify by name the judge or judges challenged and include a statement of the grounds relied upon together with any relevant evidence in support of the application;

4. A party who has voluntarily referred a case to a Court of Appeal, a court of first instance or an investigating judge shall only be permitted to challenge the court by reason of a change of circumstances having occurred subsequently, and which is liable to constitute grounds for a challenge.”

Whereupon the Court

Whereas the objections allegedly characterized as preliminary by Ambroise Hervé Malonga are inadmissible, having been presented after the defence on the merits;

— the accused having already been examined on the acts which form the basis of the charge;

Whereas, moreover, the objections are not such as to prevent the acts for which prosecution is brought from constituting a criminal offence and are not supported by the facts, much less by the arguments, forming the basis of the claim by the civil party;

Whereas, however, the additional submissions made by *Cabinet d'avocats* Nkouka, Quenum & Dianguitoukoulou for the indictment of the Congolese State as civilly liable for the acts of its officials are admissible and may form the subject of oral arguments during the present proceedings;

For these reasons

— ruling in open court and after hearing all the parties in a criminal case at first and last instance by a provisional judgment;

— declares the so-called preliminary objections raised by Amboise Hervé Malonga challenging the bench and jurors composing the Criminal Court and calling for the suspension of the present proceedings pending a judgment by the *Cour Constitutionnelle* to be inadmissible;

— on the other hand, declares the application to indict the Congolese State as civilly liable for the acts of its officials to be admissible

— takes formal note of the filing of additional submissions bringing a civil action by Félix Nkouka;

— reserves the costs;

The foregoing in accordance with Articles 264, 265, 266, 267, 324, 589 and 590 of the Code of Criminal Procedure;

After the reading of that decision, Ambroise Hervé Malonga immediately announced his withdrawal from the case, while calling on his clients to leave the courtroom so as not to lend credence to what was a mockery of legal proceedings.

The hearing was suspended and adjourned to 26 July 2005;

When the hearing resumed on 26 July 2005, the President heard the civil parties and postponed the examination of the accused to 27 and 28 July 2005, which continued until 29 July, 1 and 2 August 2005.

Following the various examinations, the President called the accused and the civil parties together on 3 August 2005 and again on 4 August 2005, when he adjourned the hearing of the witnesses until 5 August 2005.

When the hearing resumed on 5 August 2005, Félix Nkouka, François André Quenum, Irénée Malonga and Alphonse Dianguitokoulou, counsel for the civil parties, requested a site visit of the Court;

The Public Prosecutor's Department made oral observations on that point;

Caty Richard, Pierre Mabilia, Gilles Pena-Pitra, Armand Blaise Galiba, Dieudonné Djosso and Annick Patricia Mongo, counsel for the defence, claimed that that measure was inappropriate;

After the oral arguments, the President suspended the hearing and the Court retired to deliberate on the request made;

When the hearing resumed, the President read out the following provisional judgment:

The Court

Having regard to the items in the record of the proceedings against the aforementioned Norbert Dabira *et al* on the charges of genocide, crimes against humanity and war crimes;

Having regard to the submissions dated 1 August 2005 by Mssrs Nkouka, Dianguitokoulou and Quenum, lawyers;

Having heard the oral argument of Marcel Ngoma, counsel for the civil parties, whereby he requested a site visit, before the preliminary ruling, to the place known as Brazzaville Beach on the Congo River, to the sites known as Marie Bouanga and the corniche behind the headquarters of the Central Military Intelligence Office (DCRM) and the Department of Military Security (DRM-ZAB), as well as the hearing of certain individuals, alleging that he was unable to provide grounds for the site visit immediately without compromising the basis of his legal argument;

Having heard the submissions of the Public Prosecutor's Department, which rejected the request as groundless;

Having heard Jean-Pierre Versini, Jean Petro, Gilles Pena-Pitra, Pierre Mabilia, Doussou, counsel for the accused, who on the basis of Articles 260 (2), and 266 of the Code of Criminal Procedure, argued that the requested measures be rejected;

Whereupon the Court

Whereas a site visit by a court bench is an investigative measure leading to findings useful for establishing the truth;

Whereas grounds must always be submitted for such a measure, even if officially requested by the judges, or, as here, by one of the parties to the case, requiring as it does the assistance of specialist units, technical experts and the forensic police;

Whereas no objective justification is given for the requests by the civil parties for the aforementioned site visits and for the hearing of certain persons at the current stage of the proceedings which would enable the court to organize its investigations effectively;

Whereas the judges and jurors are unable to assess whether those requests are wholly appropriate, in the interests of the sound administration of justice they should not be granted;

For these reasons

- The Court, ruling in open court and after hearing all the parties in a criminal case at first and last instance;
- by a provisional judgment;
- records the requests of counsel for the civil parties;
- rejects those requests, however, as unfounded;
- reserves the costs;

The foregoing in accordance with Articles 260 (2), 266, 267, 311 and 391 of the Code of Criminal Procedure;

After the reading of the decision and the close of the day's session, the President suspended the hearing and adjourned it until 8 August 2005 for the oral arguments;

When the hearing resumed on 8 August 2005, counsel for the civil parties, for the accused and the Public Prosecutor's Department presented their oral arguments and submissions on 9, 10, 11 and 12 August 2005, when the hearing was adjourned to 13 August 2005 for replies by all the parties;

When the hearing resumed on 13 August 2005 all the parties replied to the oral arguments of the other parties;

Counsel gave their explanations and set out their legal arguments;

The Public Prosecutor's Department made extensive observations;

Irénée Malonga, Félix Nkouka, François André Quenum, Alphonse Dianguitoukoulou and Marcel Ngoma, counsel for the civil parties, set out their oral arguments.

Caty Richard, Jean-Philippe Esseau, Robert M. Dossou, François Saint Clair, Leon Pierre Versini, Emmanuel Oko, Jean Petro, Gilles Pena-Pitra, Annick Patricia Mongo, Evelyne Fatima Banzani Mollet, Thomas Djolani, Gérard Devillers, Dieudonné Djosso and Antoine Obambe, Armand Blaise Galiba, Simon Yves Tchicamboud, Armand Robert Okoko, Pierre Mabiala, Roger Bongoto, Elenga, Gilbert Bondongo and Joël Claude Kassa, counsel for the accused, set out their oral arguments;

The Public Prosecutor's Department presented its oral submissions;

The last word was given to the accused;

The President declared the hearings closed and adjourned the proceedings until the delivery of the judgment on 17 August 2005;

At the sitting on 17 August 2005, the following Judgment was read by the President:

THE COURT

IN THE NAME OF THE CONGOLESE PEOPLE

After deliberation according to the law;

Whereas by judgment of the *Chambre d'Accusation* of Brazzaville Court of Appeal delivered on the eleventh of July two thousand and five, Norbert Dabira, Blaise Adoua, Guy Pierre Garcia, Jean-François Ndengue, Jean Aïve Allakoua, Marcel Ntsourou, Emmanuel Avoukou, Gabriel Ondonda, Rigobert Mobedet, Vincent Vital Bakana, Samuel Mbouassa, Jean-Pierre Essouebe, Yvon Dieudonné Sita Bantsiri, Edouard Dinga Oba and Guy Edouard Taty were referred to the present Criminal Court to answer charges that, in Brazzaville during 1999, or in any event at a time not covered by the ten-year period of prescription:

- (a) they committed or caused to be committed, in execution of a concerted plan to destroy, in whole or in part, the groups of refugees returning to national territory following the tripartite repatriation operation of persons who had left the national territory following the events of June 1997 and December 1998, the crimes of murder or wilful killings against such refugees or caused serious bodily or mental harm to those refugees;
- (b) in the same place and time, they committed serious violations of the Geneva Conventions of 12 August 1949 during a non-international armed conflict against those refugees or those identified as combatants;
- (c) in the same place and time, during a widespread and systematic attack, they committed crimes against humanity upon refugees returning to the national territory in what was known as the repatriation operation for refugees from the events of June 1997 and December 1998, which crimes against humanity consisted of killings or violations of the basic provisions of international and positive national law applicable to the imprisonment or the deprivation of the physical liberty of others, or to the unlawful sequestration, arrest or detainment of certain refugees or any other form of persecution of those persons followed by disappearances on political, ethnic or cultural grounds that are universally recognized as inadmissible under international law,

Acts proscribed and punished by Articles 1, 2, 3, 4 and 6 of Law No. 8/98 of 31 October 1998 defining and punishing genocide, war crimes and crimes against humanity;

Whereas on the basis of Article 249 of the Code of Criminal Procedure the President of the Court, in the interests of the sound administration of justice, *proprio motu* ordered that the accused be prosecuted and questioned only on the events at Brazzaville Beach;

Whereas the items placed on record and the oral proceedings held under the auspices of the Court, namely:

- information on the personality of the accused;
- reading of the referral judgment;
- incidents *in limine litis*, that is before any submissions on the merits;
- first examination of the accused;
- statements by the civil parties;

- second examination of the accused;
- hearing of witnesses and others with knowledge of the events;
- bringing together of witnesses and the accused;
- closure of the judicial investigation phase;
- oral arguments of counsel representing and assisting the civil parties;
- submissions of the Public Prosecutor's Department;
- oral arguments of counsel for the defence;
- replies of counsel for the civil parties;
- replies of the Public Prosecutor's Department;
- replies of counsel for the defence;
- final statements of each of the accused;
- closure of oral proceedings;
- beginning of deliberations in the case;

have established the following facts:

During the years 1998 and 1999, the Congolese Armed Forces were engaged in repelling multiple attacks by the armed militia known as the "Ninjas" upon Brazzaville and the surrounding areas, as illustrated by the attacks upon:

- PK de Mfilou, on 2 May 1999;
- Bilolo and the Military Academy, on 9 May 1999;
- Moukondo, on 12 May 1999;
- Maya-Maya Airport (Brazzaville), on 12 May 1999;
- Loumou, on 19 May 1999;
- Djambala, on 20 May 1999;

These non-international conflicts prompted the exodus of certain persons to the Democratic Republic of the Congo;

To put an end to the multiple sufferings endured by Congolese refugees in the Democratic Republic of the Congo, the Governments of the two Congos and the United Nations Office of High Commissioner for Refugees concluded a tripartite agreement to facilitate the voluntary repatriation of the populations forced into exile by the armed conflict;

Under this Agreement, 6,559 refugees voluntarily crossed the Congo River from Kinshasa aiming for Brazzaville Beach despite intensified fighting between the Congolese Armed Forces and the Ninja militias around Brazzaville;

According to a number of eyewitness statements, the security force for their arrival at the ATC Port in Brazzaville consisted of a number of soldiers from different units largely lacking in discipline;

Whereas after the border control formalities, certain refugees, for reasons yet to be explained, were kept back, many of them still missing;

Whereas after the end of the initial investigation, the Court heard in turn;

- André François Quenum, Alphonse Dianguitokoulou, Marcel Ngoma, Félix Nkouka and Irénée Malonga, counsel assisting and representing the civil parties;
- statements from 102 claimants for the victims and the statement of one survivor of the events;
- the submissions of the *Procureur Général*;
- Jean Petro, Robert Dossou, Armand Galiba, Gilles Pena-Pitra, Emmanuel Oko, Jean-Philippe Esseu, Patricia Annick Mongo, Gérard Devillers, Armand Robert Okoko, Joël Claude Paka, Simon Yves Tchicamboud, Evelyne Fatima Banzani Mollet, Pierre Mabilia, Thomas Djolani, Antoine Obambe, Gilbert Bondongo, Caty Richard, Léon Pierre Versini, Saint Clair and Anatole Elenga, counsel assisting the accused in their statements;
- the final statements by the accused;

Whereas in performing their duties, counsel for the civil parties, in their oral arguments, supported the characterization of the acts for which the accused were prosecuted and the indictment of the Congolese State, its sentencing as civilly liable for the acts of its officials and to the payment of an amount of one hundred million (1,000,000,000) CFA francs for each relative of a disappeared person;

Whereas, as co-plaintiffs with the Public Prosecutor's Department, the civil parties charge all the accused with the existence of a concerted plan to persecute and destroy the armed political group "The Ninjas";

Whereas other possibilities for putting into effect the plan to exterminate "The Ninjas", drawn up as a priority by the Central Military Intelligence Office, included the operation to repatriate refugees following the Tripartite Agreement signed on 10 April 1999 by the two Congos and the Office of the United Nations High Commissioner for Refugees;

Whereas upon their arrival at Brazzaville Beach the refugees were divided into three lines:

- women;
- children and the sick;
- adult males and able-bodied youths;

Whereas the third line was subjected to non-routine body searches and frisking by members of the Police and the Congolese Armed Forces;

Whereas some with bruises on their bodies and considered to be Ninjas were taken away and transported to military detention facilities, such as the Central Military Intelligence Office, the Republican Guard premises, the Brazzaville Military District (*Zone Autonome de Brazzaville*) and certain police stations;

Whereas these abductions were in some cases followed by disappearances, as yet unexplained;

Whereas the criminal acts of illegal arrests, detention and forced disappearances perpetrated by soldiers in the employ of the Congolese State must engage the civil liability of the State, which on the basis of, first, Article 7 of the Constitution of 20 January 2002 — “Human life is sacred. The State has an absolute obligation to respect it” — and, subsequently, of Article 2 of the Code of Criminal Procedure, Article 312 of the Code of Criminal Procedure and Article 1382 (5), of the Civil Code, must compensate the relatives of the disappeared for the various harms suffered as a result of these crimes against humanity;

Whereas the Public Prosecutor’s Department, setting out its charges, criticized the plurality of offences dealt with in the present case, the indictment having used various legal characterizations in turn to describe the offences of which the accused were charged;

Whereas it has thus abandoned the proceedings for genocide and war crimes against the accused and has limited itself to the offence of crime against humanity;

Whereas, moreover, it asserts that the acts prosecuted were committed by the soldiers of the Central Military Intelligence Office and the Republican Guard and correspond to a plan: to obtain military intelligence about “The Ninjas” in order to discover their organization, weapons and tactics;

Whereas, despite the difficulty of assembling material evidence to corroborate those assertions, it called upon the Court and the jury to base themselves on their personal conviction and accordingly:

to completely exonerate the following accused:

- Norbert Dabira;
- Guy Pierre Garcia;
- Emmanuel Avoukou;
- Rigobert Mobedet;
- Jean Pierre Essouebe;
- Guy Edouard Taty;

to acquit the following accused on the benefit of the doubt:

- Edouard Dinga Oba;
- Samuel Mbouassa;

to sentence the accused:

- Jean-François Ndengue, guilty of omission and negligence, to ten years’ hard labour suspended;
- Gabriel Ondonda, guilty of omission and negligence, to seven years’ hard labour suspended;
- Marcel Ntsourou, guilty of lying, omission and negligence, to nine years’ hard labour;

- Jean Aïve Allakoua, guilty of omission and negligence, to seven years' hard labour;
- Blaise Adoua, guilty of omission and negligence, to nine years' hard labour;
- Yvon Sita Bantsiri, guilty of denouncing members of The Ninjas at Brazzaville Beach, to five years' hard labour;
- Vincent Vital Bakana, guilty of denouncing members of The Ninjas at Brazzaville Beach, to five years' hard labour;

Whereas in the civil case the Public Prosecutor's Department argued that these acts, which occurred as a consequence of the failure of State Services, must therefore engage the civil liability of the State;

Whereas counsel for the accused submitted that there were insufficient grounds for the charges against the accused of the crimes of genocide, war crimes and crimes against humanity in relation to the disappeared of the Beach case;

Whereas the legal presumption of innocence in favour of the accused can only be disproved by the production of criminal evidence of the guilt of the accused: the judge may only follow his personal conviction in assessing the probative value of the evidence produced by the parties;

Whereas the acts prosecuted cannot be characterized under Congolese law as acts of omission or negligence, but only as positive acts;

Whereas the criminal liability of an accused can only be upheld if evidence is produced of a positive act;

Whereas in this respect none of the civil parties, witnesses or other persons with knowledge of the events produced during the course of the examination before the court any tangible evidence that the accused perpetrated the acts prosecuted;

Whereas even the evidence of negligence or omission relied on by the Public Prosecutor's Department has not been presented;

Whereas moreover international jurisprudence, which recognizes the liability of superiors through omission or negligence, requires first that the material perpetrator of the acts be identified and then that the chain of command relationship and knowledge of the fact omitted by the superior be demonstrated;

Whereas in the present case the prosecution has merely relied on witness statements based on hearsay which have no probative value in international law;

Whereas it is not possible to attribute the acts to the accused and no demonstration of cause and effect has been made by the prosecution;

Whereas, moreover, humanitarian crimes must be linked to a national policy;

Whereas, in the present case, none of the accused is a politician and no concerted plan or systematic and widespread executions have been referred to;

Whereas for procedural and substantive criminal law to be properly applied, all the accused would have to be declared not guilty as charged and consequently acquitted without fine or sentence;

Whereas the principal submission of Congolese State cited as civilly liable is that its civil liability cannot be engaged unless the criminal acts of its officials are proved and established;

Whereas, in the alternative and on the basis of Article 312 of the Code of Criminal Procedure, the Criminal Court, using its full jurisdiction, will finally assess the various civil party actions, basing itself upon the declarations, professions of good faith and identity documents submitted for the case, transferring the focus to the case of the disappeared of the Beach;

Whereas the accused, questioned on their closing statements, said that they placed their faith in the wisdom of the court and the jury as they reiterated their assertion that they had not committed the acts as charged;

Whereas the bench and the jury retired to deliberate and, before proceeding to a vote by written ballot on both the guilt of each of the accused and on the sentences, drew up the following list of points of law raised during the proceedings;

As to genocide, war crimes and crimes against humanity

Whereas genocide as defined by Article 1 of Act No. 8-98 of 31 October 1998 defining and punishing genocide, war crimes and crimes against humanity presupposes committing or inciting others to commit, as part of a concerted plan to destroy, in whole or in part, a national, ethnic, racial or religious group or other group determined by any other arbitrary criterion, one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;

Whereas Article 4 of the aforementioned Act means by war crimes:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) and other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law;

Whereas crimes against humanity as defined by Article 6 of the aforementioned Act presuppose committing as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) killing;
- (b) extermination;

- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on the basis of political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as inadmissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance;

Whereas such violent acts must be targeted against a group of the civilian population;

Whereas they must form part of a concerted plan;

Whereas only such conduct carried out in a concerted, planned and premeditated manner is criminal;

Whereas the existence of a structure for allocating and controlling the commission of violent acts among the various perpetrators must thus be characterized;

Whereas according to the legal provisions reiterated above, those offences constitute crimes of commission;

Whereas consequently, to constitute such an offence, an act by the perpetrator must be characterized;

Whereas the mere failure to act is not punishable as one of those crimes;

As to personal conviction

Whereas personal conviction means the power left to trial and appeal court judges to independently assess the value of the evidence duly presented during the oral arguments on which their conviction is based;

Whereas this freedom to assess must not be understood as total arbitrariness by judges in their consideration of the evidence;

Whereas personal conviction does not exempt judges from adopting a logical method in their assessment of the evidence presented to them;

Whereas the items of evidence on which trial and appeal court judges form their opinions must have been duly filed in the proceedings and freely discussed by the parties, judges not being able to base their conviction on their personal knowledge of the facts of the proceedings;

**As to criminal responsibility of a superior
by omission or dereliction**

Whereas on this point, dealt with at length in the jurisprudence of international humanitarian law, the knowledge of a superior is not necessarily required for criminal responsibility to be engaged;

Whereas it is enough for a superior to have had reason to know that his subordinates were about to commit or had committed a crime and not to have taken any necessary or reasonable steps to prevent such an act or punish those responsible;

Whereas positive identification of the perpetrators remains the primary requirement in engaging the responsibility of a hierarchical superior by omission or dereliction; for the principle of the responsibility of a hierarchical superior to be applicable, he must exercise effective control over the persons violating international humanitarian law, in other words he must have the material capacity to prevent and punish such breaches;

As to the concerted plan

Whereas planning presupposes that one or more persons consider committing a crime, that is, preparing it and also carrying it out;

As to instigation

Whereas this notion is understood as the act of inciting others to commit an offence, such instigation being punishable only where it leads to the actual commission of the offence desired by the instigator;

As to the widespread and systematic attack

Whereas a widespread attack is a large-scale attack against a civilian population, targeting a city, a country, an area or a municipality;

Whereas it is by virtue of the aforementioned facts and legal principles that the Court and the Jury answered the questions put to it as follows;

Concerning the criminal proceedings

1. Is Norbert Dabira guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

(a) killing members of the group;

(b) causing serious bodily or mental harm to members of the group;

- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder,

massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

2. Is Blaise Adoua guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

3. Is Guy-Pierre Garcia guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally inflicting great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

4. Is Jean-François Ndengue guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;

(i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally inflicting great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

5. Is Jean-Aïve Allakoua guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;

- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on the basis of political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;

- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

6. Is Marcel Ntsourou guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;

- (e) imprisonment or other severe deprivation of physical liberty in violation of the fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

7. Is Emmanuel Avoukou guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;

(d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

8. Is Gabriel Ondonda guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;

- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

9. Is Rigobert Mobede guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or

in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;

- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

10. Is Vincent Vital Bakana guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;

- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

11. Is Samuel Mbouassa guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;

- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

12. Is Jean-Pierre Essouebe guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;

- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on the basis of political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

13. Is Yvon Dieudonné Sita Bantsiri guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;

- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

14. Is Edouard Dinga Oba guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case in less than the last ten years, a concerted plan in order to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by way of one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the four Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) murder;

- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

15. Is Guy-Edouard Taty guilty of having implemented or having caused to be implemented in Brazzaville in 1999, or in any case less than ten years ago, a concerted plan to destroy, in whole or in part, a national, ethnic, racial, religious or any other arbitrarily defined group by one of the following acts:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction, in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children;
- (f) conspiring to commit genocide;
- (g) direct and public incitement to commit genocide;
- (h) attempt to commit genocide;
- (i) complicity in genocide?

Of having in the same time and place committed:

- (a) serious breaches of the Geneva Conventions of 12 August 1949;
- (b) other serious violations of the laws and customs applicable to international armed conflicts within the framework established by international law;
- (c) serious breaches of Article 3 common to the Geneva Conventions of 12 August 1949;
- (d) other serious violations acknowledged as applying to non-international armed conflicts within the framework established by international law?

Of having in the same time and place committed as part of a widespread and systematic attack against a civilian population, with knowledge of the attack:

- (a) killing;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or other form of sexual violence of comparable gravity;
- (h) persecution of any identifiable group or collectivity targeted on political, racial, national, ethnic, cultural, religious, gender or other grounds universally recognized as impermissible under international law;
- (i) enforced disappearances of persons;
- (j) crimes of tribal, ethnic or religious discrimination;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to the body or to mental and physical health, such as enforced prostitution, plunder, massive and systematic summary executions, the abduction of persons followed by their disappearance?

Answer: the Court and the jury by a majority of at least seven replied “No”.

**As to the Civil Action — the Court,
sitting without the Jury**

Whereas counsel for the civil parties, on the basis of Articles 2 and 312 of the Code of Criminal Procedure, as reparation for the harm suffered, have called upon the Court to sentence the State civilly liable for its officials guilty of the acts prosecuted to pay counsel for the civil parties various sums of money;

Whereas the hearings have, however, established that during the operation known as “the return of refugees from the Democratic Republic of the Congo”, with Brazzaville Beach as the

point of disembarkation in Congolese territory, the Ninja rebel militia launched offensives on various fronts both inside and around Brazzaville, for example at P.K. de Mfilou on 2 May 1999, at Bilolo and the Military Academy on 9 May 1999, at Moukondo on 12 May 1999, at Maya-Maya Airport on 12 May 1999, at Loumou on 19 May 1999 and at Djambala on 20 May 1999;

Whereas in order to contain and repulse those attacks, the security forces had to deploy in the various combat theatres, thereby reducing monitoring and security of the repatriation operation;

Whereas armed men, of whom neither the identity nor whether they were acting on the orders duly issued by the regular civil or military authorities has been established by the hearings, exploited the lax surveillance to commit acts of violence on certain refugees; whereas those acts resulted in the disappearance of some of them;

Whereas a presumption of fault rests with the State, thus engaging its responsibility, the repatriation operation having occurred at a time of increased attacks by the Ninja militias, it being the State's duty to scrupulously organize general security measures warranted by the hostilities;

Whereas both the hearings and the judicial investigation have established that the following persons are still apparently unaccounted for:

List of 85 names

Whereas the relatives of the disappeared have claimed compensation of 100,000,000 CFA francs per victim;

Whereas these disappearances facilitated by the failure of security cover at Brazzaville Beach warrant compensation in the sum of 10,000,000 CFA francs per disappeared person, an amount set by the Court in its discretion in view of the uncertainty regarding the physical and social identification of the disappeared persons and of their family ties with their relatives;

Whereas the Court dismisses all claims over and above the level stipulated;

Whereas, however, the civil actions of the following persons:

List of 46 persons

must be dismissed since the names of their relatives are not mentioned in the transport manifest established by the Office for the High Commissioner on Refugees.

For these reasons

Ruling in open court and after hearing all the parties in a criminal case at first and last instance;

the Court declares the accused:

- Norbert Dabira
- Blaise Adoua
- Jean François Ndengue
- Guy Pierre Garcia
- Marcel Ntsourou

- Jean Aïve Allakoua
- Jean Pierre Essouebe
- Emmanuel Avoukou
- Edouard Dinga Oba
- Gabriel Ondonda
- Rigobert Mobede
- Vincent Vital Bakana
- Samuel Mbouassa
- Yvon Dieudonné Sita Bantsiri
- Guy Edouard Taty

not guilty on the charges of genocide, crimes against humanity and war crimes against them;

- consequently pronounces their acquittal;
- declares, moreover, pursuant to Article 309 of the Code of Criminal Procedure, that none of the accused thus legally acquitted may be re-arrested or indicted again on the same grounds even under a different legal characterization;
- condemns the Congolese State to pay damages in the sum of ten million CFA francs (10,000,000) per disappeared person to their duly claiming relatives listed as follows in the present judgment:

List of relatives of 84 disappeared persons;

- dismisses any further claims they have;
- dismisses the claims of the civil parties not included in the manifest, who have not signed the declaration of good faith;

List of civil parties in respect of 43 disappeared persons;

- orders costs to be paid out of the public purse;

The foregoing on the basis of Articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 of Act No. 08-98 of 31 October 1998 defining and punishing war crimes and crimes against humanity, Article 3 common to the four Geneva Conventions of 12 August 1949 and Articles 215, 299, 300, 301, 302, 303, 304, 305, 306, 307, 309, 311 and 312 of the Code of Criminal Procedure;

The President, where appropriate, informs the accused that they are entitled to appeal to the *Cour de Cassation* and indicates the time-limit for any such appeal;

Thus found, adjudged and declared in a public hearing on the day, month and year indicated above;

In witness thereof, the present Judgment has been read and signed by the President who delivered it and the Chief Registrar.

Followed by the signatures

The registration details

Stamped free of duty at Brazzaville-Ouenzé

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