



**GREAT LAKES REGIONAL TRAINING
PROGRAMME IN INTERNATIONAL
HUMANITARIAN LAW AND HUMAN RIGHTS**

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**STRAIN IN THE
REPUBLIC OF BENKADI**

Practical Case

Kigali, 08 - 14 December 2019

STRAIN IN THE REPUBLIC OF BENKADI*

General context

1. The Republic of BENKADI is a country rich in natural resources such as gold, diamonds, uranium and cobalt. These resources are unequally distributed among its three major provinces. Most of this wealth is concentrated in the western and southern provinces.
2. The North province covers large desert areas and has been neglected by the central authorities for a long time. Situated far away from BENKA, the capital city located in the center of the country, the North province has always been hardly accessible because of a gaudy lack of roads since colonization.
3. Being a former colony of WHITELAND with an estimated population of 22 million, BENKADI did not attain its international sovereignty until 23 October 2003.
4. A dozen ethnic groups have always lived together in peace and harmony on this territory of 374,000 km², bordered on the East and North by SAHELISTAN, on the west by LIMALAND, on the South by the State of BERMURIE and the GRAY sea. The last born of the States in the region, BENKADI rather maintains peaceful relations with all its neighbors since its independence.
5. During the first five years of independence, the President of BENKADI, Colonel YASIRU FITSA, had put a lot of emphasis on building a nation-state. Betting on national unity as the bedrock of the country's economic development, he promised governance based on inclusive development.
6. Judged overall satisfactory, the results of President YASIRU FITSA allowed him to be widely re-elected for the first time in November 2008, then, a second time in December 2013 with, however, a very small majority. He will be re-elected in November 2018 following a highly disputed election. The political opposition, mainly based in the north of the country, accuses him of patrimonial management of power, neglect of the northern region, and accuses him of massive fraud during the 2018 elections.
7. Whilst President FITSA's early years of leadership generated a great deal of enthusiasm and consensus among the people, there were wide divergences over time.

* The facts of the strain in the Republic of Benkadi are in no way drawn from reality, but from the "academic" imagination. Any resemblance to real events is pure coincidence.

8. Political opposition gradually developed particularly in the north of the country. It accuses the ruling regime of having completely abandoned the northern region of the country which, according to them, has so far received no serious investment or significant development project.
9. It must be said that, in addition to opposition political leaders, the feeling of abandonment has widely been shared among the northern population for at least a decade. The latter, mostly FOTHA ethnic group, is not really represented in decision-making circles and in government positions.
10. The region's very low literacy rate since the colonial era has not favored the emergence of a strong intellectual and political elite among FOTHAs.

Electoral disputes

11. It is in this context that, following the general elections of November 2018, the electoral protest took a particular pace in the north of the country. Immediately after results were issued by the Independent Electoral Commission (IEC), the opposition leader KOLO KÈLÈTIGUI, whose northern province was the political stronghold, called his supporters to invade the streets to stop what he considered as an "election holdup".
12. On 26 November 2018, following this call, several hundred protesters invaded the streets of ZAMA, the main city in the North. Acts of vandalism were observed in some places. However, the police managed to contain the protesters. The confirmation by the Constitutional Council of the results announced by the IEC will only add fuel to the fire.
13. On 5 December 2018, the opposition called for demonstrations throughout the country, most of which were held in the North province. Protesters attacked police stations whose agents were literally beaten. Several state vehicles were set on fire.
14. Despite the use of tear gas, water tanks channels and rubber bullets, the BENKADI police forces were increasingly overwhelmed by demonstrators armed with slingshots and Molotov cocktails and inflammable liquids for their arsonist work.
15. The local newspaper, Benkadi Monitor, reported that around 20 demonstrators have been heavily beaten by the police and that at least ten well-known critics to the government have disappeared.
16. An important opposition blog revealed what appeared to be about 20 men simply executed and thrown into a mass grave in a slum near ZAMA. However, the Commissioner of the Regional Police refused to comment on these accusations.

17. On 13 December 2018, violence reached its peak at one of the largest opposition rallies. The Government police was overwhelmed and called on the army to control the protests.
18. Several hundred people were arrested. They were confined into detention centers where they spent more than a week without appearing before court or having the opportunity to speak to a legal counsel.
19. In the meantime, on 15 December, a decree was adopted by the Council of Ministers announcing that the Republic of Benkadi, considering the persistent crisis in the country, had suspended all its international human rights obligations.
20. While the strong crackdown on opposition activists was able to bring calmness by the end of 2018, Mr. KÈLÈTIGUI, who had meanwhile taken refuge in the neighboring state of SAHELISTAN, promised "a big fight".

The birth of an armed group

21. Mr. KÈLÈTIGUI's presence in SAHELISTAN was a surprise to none. Indeed, as a natural extension of the north of BENKADI, of which it has the same geographical and demographic characteristics, SAHELISTAN has never hidden its proximity to BENKADI's political opposition.
22. It is well known that Mr. KÈLÈTIGUI's party owed its creation and establishment in the northern region to regular funding from the Sahelistanese authorities. The SAHELISTAN Head of State has never hidden his sympathy for the Benkadian opposition leader whom he affectionately called his "brother".
23. After a period of calm at the end of the year 2018, a previously unknown armed group appeared in the northern region. On 1 January 2019, while the soldiers of NGADARI military group, a locality located in the extreme north of the country, have not yet recovered from the New Year's Eve celebration, armed men launched a grenade attack against their position.
24. The attack was immediately claimed in a statement aired on the so-called "Liberté/Freedom" radio station presumably based in the Sahelistan territory. The group was named BENKADI Liberation Movement (BLM) and the author of that statement was Mr. KOLO KÈLÈTIGUI.
25. As of 15 January, the BLM which claimed to represent the interests of the North and fight for inclusive governance, began bombing various cities across the country, mainly in the North, which was very well known to them. This situation led to a resurgence of clashes between the BLM and the Benkadian Armed Forces (BAF).

26. Although they had recently launched a vast recruitment campaign, the BAF seemed to be increasingly overwhelmed by the BLM, which had a few hundred men who *de facto* controlled a part of the territory and were subject to strict command. They also counted several former deserter officers from BENKADI army.
27. In just a few weeks, the BLM managed to occupy the northern part of BENKADI. Due to a refined recruitment system, the number of fighters in the group quadrupled in just two months.
28. It is worth noting that the group enjoyed great sympathy with the local population. Some families have made the affiliation of their sons to the group a matter of honor. In this way, the BLM managed to conduct operations against several military bases in the north and the center of the country.
29. An iron discipline was established in the group which had training camps in each strategic locality in the north. There were also zone commanders.
30. A rarely sophisticated surprise attack was even conducted on March 15, 2019 against the BAF staff in BENKA, the capital city. The attack, of kamikaze nature, did not count deaths other than the two members of the commando. However, some were wounded and extensive material damage was noticed.
31. The attack provoked a stir among Benkadians in general and drew the international community's attention to the situation in BENKADI.
32. In the north of the country, there were daily fights between the BLM and the government armed forces. There was also a high number of displaced people fleeing the fighting. Human rights organizations are worried. *The Initiatives for Peace and Human Rights (iPeace)* and *the Human Rights Agency (ADH)*, two local NGOs that are very active in the region, estimated that the fighting in recent days has resulted in tens of thousands of military and civilian deaths.
33. These organizations also denounced serious violations of international humanitarian law and human rights committed by both sides. Both NGOs reported cases of extrajudicial killings and rapes of civilians.
34. On 19 March 2019, following the attack on the capital city, the UN Security Council described the situation in BENKADI as a threat to international peace and security and called on all parties to an immediate ceasefire.

An invisible hand?

35. The BLM strike force surprised more than one observer of this crisis. To say the least, in a quarter, the group had an impressive military arsenal: AK47 assault rifles, battle tanks, machine guns, long-range shells.
36. The defeat of the BAFs in several localities had undoubtedly allowed the group to seize the abandoned military equipment, but it seems rather that all these weapons have been transported through a well-organized supply channel from SAHELISTAN.
37. On 30 March 2019, after a well-documented investigation, a special edition of the *Whiteland Gazette*, a well-known daily newspaper in WHITELAND, revealed the existence of links between SAHELISTAN and BLM insurgents. Not only would BLM secretly import weapons and explosives from SAHELISTAN, but it would also support BLM's political ambitions by funding some of its operations and providing military training to its members.
38. The press inquiry revealed above all that secret contracts had been concluded between the Sahelistanese authorities and Mr. KÈLÈTIGUI. These would concern the exploitation of oil, seemingly in abundance in the northern region, according to a discreet exploration mission recently conducted in the region by a multinational company based in WHITELAND and already operating in SAHELISTAN.
39. The publication of the article followed an expert report commissioned by the Sub-regional Organization for Cooperation and Peace (OCP), an intergovernmental organization bringing together the States of the region.
40. However, this report had not been made official because of the refusal of the expert appointed by the Sahelistan to sign it. The other experts did not stop to reveal the contents of the report to the media. The President of SAHELISTAN declined to comment on this. Moreover, he announced that his country would not extradite any member of the BLM wanted by the Benkadian Justice.

Governmental retaliation

41. It was no secret that the central government of BENKADI accused the people of the North of colluding with the BLM, which they describe as a terrorist group without faith or law and which must be "crushed" as such.
42. Following the loss of control of a large part of the northern province, the BAFs decided to conduct a vast military campaign called "Desert Storm". According to a statement from the Chief of Defense

Staff, General BAMORY MARFA, the goal was nothing more but "cleaning" the entire northern region.

43. The operation started on 15 April 2019 and during two weeks it killed 12,000 civilians, mostly women, children and the elderly. Most of these people were found dead in their homes after the passage of BAFs.

44. Human rights NGOs denounced serious, massive and systematic violations of human rights and international humanitarian law by BAFs. An appeal has been made to the international community to intervene and put an end to these massacres described as unacceptable. The central government, on the other hand, replied that those who support the BLM terrorists should be seen as accomplices and treated as such.

Humanitarian intervention?

45. In view of the seriousness of the situation prevailing in BENKADI, there was a growing demand for humanitarian intervention on behalf of the FOTHA civilian population massacred by the regime of Mr. YASIRU FITSA. The former colonial power, the WITHELAND was at the forefront of the initiative within the United Nations.

46. It should be recalled that, following the untimely appearances of the highly influential philosopher Mary Levy, announcing an ongoing extinction of the FOTHA of BENKADI, the Whitelandese opinion was finally convinced of the need for an intervention by the international community in order to "put an end to the massacre by Mr. FITSA of his own people". The United Nations Security Council has held several meetings but none of the draft resolutions to authorize the use of force has so far been adopted because of the veto from two of its permanent members.

47. Faced with this impasse, the African Union decided to take up its responsibilities. It should be recalled BENKADI was a member to the Organization since its independence. On 11 May 2019, during an extraordinary summit, the AU Assembly of Heads of State and Government, in Resolution 003/123, decided for a humanitarian intervention based on Article 4f of the AU Constitutive Act. The objective of the operation was to "protect the civilian population and civilian areas threatened with attacks in BENKADI".

48. It is known that since the reform of the Organization and in view of the implementation of this provision, a powerful military alliance called "BABAC" had been formed. This was a stand-by force, ready to intervene as soon as the Conference of Heads of State and Government invites them. The

practical modalities of the intervention as well as the rules of engagement are determined by the Staff Committee of BABAC.

49. Coincidentally, General MUSSO FARI, current Commander-in-Chief of BABAC, is Sahelistan and is considered very close to the authorities of his home country. Prior to his appointment as head of the AU Staff Committee, he served as Special Advisor to the Head of Sahelistan. Moreover, it seems that he has kept this high office in his country.

50. The practical details of the operation were decided by General FARI and his team. The code name was unveiled on 19 May 2019. It was called "Infinite Justice." As of 1 June 2019, BABAC troops took positions at a military base located in the extreme south of SAHELISTAN. Other positions were occupied in neighboring countries such as LIMALAND. The military objective was to force the BAFs to retreat and force them to respect human rights and international humanitarian law.

51. The military operations of BABAC were mainly airborne with the support of a ground commando unit consisting of a thousand men, a majority of whom of Sahelistan origin. The following actions are immediately undertaken by BABAC from the Saharan border:

(a) On 5 June 2019, BABAC's air force bombed a crossing bridge for the FABs to reach the northern part of the territory controlled by the BLM. The military command of BABAC justified this attack by the fact that the bridge, because of its location, was strategic to the Benkadian army. It turned out, however, that at the time of the bombing, a train transporting civilian passengers was passing under the bridge. The train was destroyed and 55 passengers were killed.

b) On 9 June 2019, BABAC military command ordered its air force to bomb the Benkadian National Radio and Television (RTNB) considered as an instrument of propaganda and popular support to the government. Indeed, several government officials used to go there to explain to the population the need and the legitimacy of the operation "Desert Storm" conducted in the north of the country by the national armed forces. The bombing of the RTNB resulted in the destruction of the buildings and the death of 25 people, all staff members of the RTNB.

(c) On 25 June 2019, the BABAC commando unit captured 10 BAF members and 15 BLM members. After consultation with the military command of BABAC, it was decided to transfer and detain them on the territory of LIMALAND.

(d) At the beginning of July 2019, in view of the fierce resistance opposed by the BAF, the BABAC military alliance decided to reinforce their troops on the ground. Several commando units were sent by the BABAC military command at the north of BENKADI. Violent fighting

erupted between the BABAC armed forces and the BAF. In view of the insecurity of the civilian population, the military command of BABAC decided on the evacuation and transfer of women of children and elderly people in the territory of SAHELISTAN. (e) On 15 July 2019, the FAB launched a missile on a residential area of a border town in the Sahalistanese territory. There were dozens of civilian victims including women and children. In reprisal, the BABAC military command also decided to launch an attack on a residential area of BENKA, the capital of BENKADI. According to General Musso Fari, the attack was rather targeting an advanced position of the Bengali army. He claimed that the BAFs infiltrated the civilian population and that they would pretend to be civilians in order to perpetrate surprise attacks against the BABAC forces. It was true that for several weeks, a military detachment of BAF had been stationed in a former hospital of this district but according to military source this detachment served only as a strategic and not operational base. The choice of the district was not a coincidence because it has been one of the strongest electoral strongholds of the ruling power in BENKADI and the BAFs could count on the complicity of the population.

52. The operation of 15 July 2019 left a horror scene in the northern district of BENKA. BABAC members entered the city around 4am and besieged it for two days, systematically separating men from women. A thousand unarmed men are simply executed. Women were confined to an impromptu detention center. Several of them claimed to have been raped and suffered other forms of sexual violence. The operation was a humanitarian tragedy. Images of extrajudicial executions as well as the burning of several cultural and religious sites were looping through foreign TV channels.

53. Human rights organizations on the ground spoke out to denounce a "human butchery". They directly accused the highest command of BABAC and called for criminal responsibility of the perpetrators of all the crimes committed during this political and military crisis.

54. The United Nations Security Council urgently convened for the umpteenth time, managed, *in extremis*, to adopt a resolution condemning the extreme violence perpetrated in the situation in BENKADI. Recalling that it had not authorized the military operation conducted by BABAC, the Council decided to impose a ceasefire and invited all stakeholders to strictly comply with its resolution.

55. Faced with the excitement of this operation in the world public opinion and the pressure of the international community (including the Security Council), in a statement to the press, the Prosecutor of the African Court of Justice and Human and Peoples' Rights (ACJHPR) affirmed that his office is following the situation closely and that arrest warrants would soon be issued against anyone suspected of having committed war crimes, regardless of their position. The Pre-Trial Chamber of that Court

had already granted its request to open an investigation in recent weeks. The Prosecutor assured that no crime will go unpunished.

56. The cease-fire was scrupulously respected by all parties. The AU Conference of Heads of State decided to end the intervention it had authorized. It considered that its objectives were diverted and that the intervention had turned into a massive support operation to the BLM. The Conference urged the Prosecutor of the ACJHPR to spare no effort to ensure that all the liabilities incurred in the context of the situation in BENKADI were established.

57. In the meantime, the latter had indeed issued an arrest warrant against General MUSSO FARI but also against the BAF Chief of Staff as well as the head of the BLM, Mr. KÈLÈTIGUI. These various arrest warrants have been transmitted under seal to all the Member States of the Union and have not been made public.

58. On 10 August 2019, General MUSSO FARI was in ABABA, the capital of the AU for a meeting on the results of the military intervention in BENKADI. After a week's work, he headed to the airport for SAHELISTAN. To his surprise, during the police formalities, he was arrested and taken to the detention center at ABABA International Airport.

59. An arrest warrant was shown immediately. It stated that he is being prosecuted for war crimes committed in BENKADI. A few hours later, he was transferred to ARUSHA in the Republic of PEACELAND, where the African Court of Justice and Human Rights sits. The hearings, as part of his trial, are scheduled for 8 to 14 December 2019.

TEST

I. Data

BENKADI is an African State. It is a party to the MALABO Protocol of June 2014, amending the Protocol to the Statute of the African Court of Justice on Human and Peoples' Rights. The MALABO Protocol was signed by Benkadi on 20 May 2015 and ratified on 29 July 2019. As a reminder, the MALABO Protocol entered into force on 22 March 2017 after the deposit of the fortieth instrument of ratification.

All States in the region, including BENKADI, are parties to the following international instruments: International Covenant on Civil and Political Rights (16 Dec. 1966); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (10 Dec. 1984); International Convention for the Protection of All Persons from forced Disappearance (2006); Charter of the

United Nations (June 26, 1945); African Charter on Human and Peoples' Rights (June 27, 1981); African Charter on the Rights and Welfare of the Child (July 1990); the 4 Geneva Conventions and their additional protocols of 1977 and 2005; Convention for the Protection of Cultural Property in the Event of Armed Conflict, with the Regulations of 1954; Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; Statute of the International Criminal Court (17 July 1998).

II. Questions

A. Advisory Panel

You are an international law expert and independent consultant in International Humanitarian Law, Human Rights and International Criminal Law. After the issuance of the arrest warrant, you are convened to ADDIS-ABABA to a meeting with the AU Peace and Security Council. The AU body wants to be legally informed about the whole situation in BENKADI. A delegation welcomes you to discuss the issue. You are requested to make a presentation of no more than 15 minutes during which you will clearly outline the main legal problems arising from the situation in BENKADI as well as the relevant international law responses. You are, however, asked not to dwell on the question of the criminal responsibility of the accused at this stage. The delegation will ask you questions for clarification.

Note: This consultative test is oral and will be held in the form of an interview with the Delegation of the Peace and Security Council of the African Union. It follows that no transmission of written documents to the government delegation is required. Only precision and conciseness are required.

B. Litigation procedure

The African Court of Justice, Human and People's Rights / International Criminal Law Section / Pre-Trial Chamber / Situation in Benkadi: *The Prosecutor vs. Musso Fari*.

Single written test

Under the Statute of the Court of Justice and Human Rights (including its MALABO amendment), a confirmation of charges procedure is required. As a reminder, the confirmation of charges procedure is not intended to establish the guilt of the accused. Rather, it seeks to ascertain whether there are

substantial grounds for believing that an accused committed the crimes alleged against them by the Office of the Prosecutor.

In the absence of its own procedure, the Pre-Trial Chamber of the African Court of Justice, Human and Peoples' Rights will apply the procedure before the International Criminal Court, particularly that followed in the case of confirmation of charges.

1. Legal adviser (s) and expert (s) in international law, you are contacted to be part of the team of the Prosecutor of the African Court of Justice, Human Rights and Peoples in the matter between the Prosecutor and MUSSO FARI. You are requested to prepare a summary not exceeding ten pages arguing that charges against the accused should be confirmed.

2. You are then contacted by the defense team to prepare a brief, not exceeding ten pages, defending the non-existence of substantial grounds to believing that your client may be prosecuted for war crime.

The deadline for submitting your briefs will be communicated to you later by the registry. Oral pleadings will begin on **8 December 2019** at the headquarters of the African Court of Justice, Human and Peoples' Rights.

- END -