

The Public Prosecution versus HABRÉ

Summary of the tenth hearing held on 16 September 2015

I/ SYNOPSIS

At the opening of the hearing at 9:10 am, the presiding judge called the witness to the stand and requested the lawyers of victims to proceed with those questions that had not already been raised by their colleagues. During the defence's examination of the witness an individual cried out in a loud voice to dispute his testimony. The court stayed proceedings in order to deliberate on the incident. After the court reached a decision on this incident, the defence continued its cross-examination of the witness.

II/ EXAMINATION OF THE WITNESS

Through their questions, the lawyers of victims led the witness to confirm aspects of the report he had presented at the previous day's hearing. The purpose was to re-examine the legitimacy and validity of the CNE's working methods as well as the conditions of detention and treatment of prisoners.

Besides, it was only the defence that called into question the working methods of the Commission and the personal credibility of the witness.

Regarding his personal credibility, the witness explained that he had performed his duties with a clear conscience and that at no point in time had his investigations been influenced by the authorities at the time, in this case President Déby. He consequently defended the omission from his report of the alleged atrocities perpetrated by the latter when he was Commander-in-Chief of the Armed Forces (the events of Black September). The populations affected had been too afraid to come forward and testify because they equated the commission to a new form of the DDS.

Additionally, the defence took the witness to task for his lack of action in the face of atrocities whilst he was a serving magistrate. The defence reinforced this point by asking him to recite the magistrate's oath, or name some of the values and virtues expected of the office. In reply he conceded that he wasn't "superman" and that in all sincerity he possessed neither the courage nor the power to tell the regime to enforce the law.

The defence raised the question of his alleged recommendation to the UN High Commission for Human Rights, which the witness acknowledged as possible but avowed no knowledge of. On Dottridge's direct involvement regarding the supposed recommendation, he explained that in all modesty it was the quality of his quite widely published work that had afforded him the opportunity. Equally, he made clear that he had no link with Mr Alingué, former Speaker of the National Assembly, or with the civil parties or victims in general. In summary, he felt he had testified without hatred.

Calling into question of the commission's methods: The issue of the work of Dr Hellène Diaffé, President of the Association of Victims of Repression in Exile was raised. Even if these victims were not actually in exile, Dr Diaffé helped to provide them with healthcare and her presence gave

Chadians confidence in the Commission. In the opinion of the defence, it was inadmissible that an effort on this scale could have been accomplished in Chad without the involvement of the public health authorities. The Chairman of the Commission countered that it was very difficult conducting this work with Chadians because there were no specialists in this field.

Regarding the scientific means used to identify exhumed bodies, the witness maintained that no medical examiners were practising in Chad at the time and no DNA testing was available to corroborate findings.

Concerning the testimonies, the defence qualified them as guesswork and subjective in the light of the prevailing context and the rehabilitation of certain DDS operatives. The defence considered it unthinkable to rely on such testimonies to establish President Habré's liability in the repression. At this point the witness stated that Habré did not issue written orders to the DDS operatives.

The defence also claimed that the published statistics were inflated (Ndjamena and its surroundings only make up 10% of the area that the commission was supposed to cover). The witness responded that lack of time and resources had prevented him from travelling throughout the country. On the basis of different reports and death certificates discovered at the DDS premises, the CNE evaluated the total number of deaths at 30 a day between the six detention centres. This number was reduced to 13 then multiplied by the number of days of the Habré reign. This amounted to approximately 37,900 deaths, rounded up to 40,000. Lawyers of victims however commented that this figure seemed minimal given the extent of the repression.

III/ DISORDERLY CONDUCT IN COURT AND THE RULING OF THE COURT

We will first recall the sequence of events, then consider the procedure and finally the court's ruling.

Sequence of events: While the defence was in the process of cross-examining the witness, an individual in the courtroom heckled the witness to produce proof of what he was saying. When he shouted “liar” the judge ordered him to be removed from the courtroom. He continued yelling while the gendarmes were removing him so the prosecution asked the judge to summon him. He was then led to the stand and the judge asked him to disclose his identity. He presented himself as Mohamad Togoyi, a 29 year-old student. He stated that he had interrupted the court for the sake of his country as the witness “was lying”. The judge asked him who was presiding over the court and would be passing judgement. The student stated that it was the judge, unfortunately. The judge asked him if he was aware that causing disorder in the court was an offence. He answered with a question “Should I be the one asking?”

The judge then adjourned the hearing in order to decide upon the case of Mr Togoyi.

The procedure: After the adjournment the judge called Mr Togoyi and notified him that causing disorder in the court is an offence under the Code of Criminal Procedure of Senegal. The judge asked Mr Togoyi if he had found a lawyer. He replied that the court was only there to seal people's fates, after which the judge pointed out that the court was following the procedure that enabled him to defend himself. At this point, a lawyer by the name of Alioune Cissé stepped forward as his counsel.

The judge reminded him firstly that he had persisted in gesticulating and remonstrating and then gave the floor to the prosecution. The latter put various questions to Togoyi who refused to reply, calling the prosecution “this man”. He stated that he was not brought up to behave in a disorderly manner. He nonetheless added “Who cares about what you say, show us the proof”. After asking him if he had any links with the defendant, the judge authorised the prosecution to proceed with its closing argument.

The prosecution put forward that Togoyi had used the term “liar”, and that the court had shown leniency so far despite Togoyi having already been thrown out of the courtroom previously for the same behaviour. For this reason there were now aggravating circumstances which meant that the offence of causing disorder in the court should be invoked. In application of Article 278 of the Senegalese Code of Criminal Procedure, the prosecution requested the court to find the defendant guilty of the offence of disorder in the court, punishable by a sentence ranging from two months to two years. The prosecution thus asked that the maximum penalty be applied.

Togoyi's lawyer asked the President to forgive the impertinence of youth; on the first occasion he had left the courtroom without causing disorder, meaning he was not a re-offender. Mr Cissé ventured that Togoyi had reacted spontaneously without wishing to disturb the peace and therefore the offence as charged had not been committed.

The judge asked Mr. Togoyi if he had a final word to add, and the latter stated that he had not planned his act but that he accepted responsibility for it. He also added that “there are untruths in the charges of the prosecution”.

As the judge had to consult with his colleagues, he asked Mr Togoyi to remain where he was because he was still on a detention order.

- **The ruling of the court:** After deliberation, the court decided by adversarial and public process to declare Mr Togoyi guilty of the charges brought against him and sentenced him to five months imprisonment, thus confirming the detention order.

IV/ TIME MANAGEMENT

The first session of the morning ran from 9:10 am to 10:18 am. The second session began at 10:59 am and ended at 12:37 pm. The hearing restarted in the afternoon at 2:12 pm, with a break at 3:52 pm. The final session ran from 4:24 pm to 5:47 pm. The day's proceedings were disrupted by Mr Togoyi. With the exception of this disorderly conduct in the courtroom, the cross-examination of the witness took up almost the entire hearing, from 9:53 am until the close of the day at 5:47 pm. The duration of the hearing on this day was 5 hours and 49 minutes.

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