

The Public Prosecution versus HABRÉ**SUMMARY OF THE THIRTEENTH HEARING HELD ON MONDAY, 21 SEPTEMBER 2015****I/ SYNOPSIS**

The hearing commenced at 9:23 am and two witnesses were called to the stand. The first was a forensic document examiner. He was appointed by the prosecution to prepare a report confirming that the documents he was to analyse were written by the same author. The second was a consultant for HRW who co-authored a book entitled “La plaine des morts” (The plain of the dead) recounting violations perpetrated during the Habré regime.

II/ HEARING OF WITNESSES**A°- Testimony of the first witness**

NAME: TANAKA

FIRST NAME: Tobin

AGE: 48 years

OCCUPATION: Forensic document examiner

PLACE OF RESIDENCE: Ontario, CANADA

Kinship with victims and the defendant: None

Under oath: Yes

Mr. TANAKA made his deposition with the assistance of two interpreters. One had already been presented during the previous day’s hearing, and the other was Serigne DIAGNE, aged 50 years. He lives in Dakar and is a conference interpreter. He was also sworn in.

The witness’ testimony touched on different points.

The expert’s approach. The witness prepared the report in 2014 to compare contentious paperwork. The objective was to determine if the known author of certain documents was the same individual who wrote the contentious documents. He received these documents on 17 March 2014 by electronic mail. The hard copies were transmitted to him on 31 March 2014. The file included two packages.

Package 1 had 7 different documents including 4 handwritten documents and 3 that only had signatures. This package essentially comprises a letter from Habré to the investigating judge, an arrest report with Habré’s signature and some of his journals. Package 2 included 17 separate documents.

For reasons of simplicity, the witness labelled Package 1 as containing paperwork whose author was known and Package 2 as containing the contentious paperwork.

The witness hence first verified if handwritten documents were not contaminated. In other words, whether there was not more than one author for the same document. The quality of the handwriting (known author's handwritten documents) was then analysed focusing on graphic forms and specific attitudes. Variations were hence observed relating to the type of calligraphy, type of writing, style (cursive or handwritten). According to the witness, it was also determined whether the writing was not disguised: in such cases, the author decides to voluntarily conceal his writing. In his analysis, he noted several variations between Package 1 and Package 2. And this created difficulties in the analysis of some documents.

Issues relating to this expertise. The expert noted issues relating to the legibility, quality and quantity of documents. The witness indicated that elements that influence legibility could be due to the speed at the time of writing. According to the witness, time is a major obstacle in the analysis of certain documents. For clarity purposes, the expert indicated that certain documents could not be examined and were excluded. The quality and quantity of documents were not ideal and did not allow to determine the author, even though there was a similarity percentage. For instance, for documents 3, 7, 9 and 12, the witness noted that the quantity of writing was limited. For documents 1, 2 and 8 (2 sections), the quality of the documents is quite poor and the complexity of writings quite high.

Conclusions of the expert. The witness avers that the results of his analysis tend to indicate that the known author of some of the paperwork is not the same as the person who authored the contentious paperwork. He reminds that in eight documents of the report (pages 11 to 19-20), it was not possible to determine if it was the same author (forms 5 and 11). It is not only about noting similarities and differences, but the scale must also be assessed. The absence of indications of 'non-natural' writings was also noted and comparing them with the known handwriting, there were neither differences nor similarities (form 13). In form D20-138, the witness confirms that certain elements suggest that the known author is the same individual who authored the contentious documents. Regarding Package 1 as a whole, the witness informs the court that it was written by the same author. However, he cannot exclude even the slightest intrusion by another author. There is a very strong likelihood for exclusion as well as a strong likelihood for confirmation.

B° - Testimony of the second witness

NAME: BERCAULT

FIRST NAME: Olivier

AGE: 54 years

NATIONALITY: French

OCCUPATION: Law professor at the University of San Francisco / Former consultant of Human Rights Watch (HRW)

PLACE OF RESIDENCE: California, USA

The presiding judge asked the witness to state the facts known to him in relation to this case. The witness co-authored a book edited by HRW entitled “La plaine des morts” (The plain of the dead) on 3 February 2013. Sources included: testimonies of victims and witnesses, records of interrogations by the CNE, and the DDS archives. His testimony centred first on the analysis of the DDS documents with two consultants under his supervision (recruited by HRW) and the assistance of some victims. Several documents were hence examined including lists of prisoners-of-war, numerous death certificates, interrogation records of detainees, etc. He then talked about torture, which he says was a widespread practice. The witness stated that he was shocked by two types of torture. These included the fact that certain detainees were locked up with cadavers. Also, locking up a detainee (Souleymane Guengueng in this case) in a small dark cell and later in another cell with a high intensity light bulb. The prisoner’s eyes were consequently damaged. Mr. Bercault visited the detention centres and was particularly affected by the prisons at the swimming pool and the president’s office.

Other key issues raised by the prosecution and lawyers of victims were essentially:

Sexual abuse: ten pages of the book talked about the conditions of female prisoners. There were two types of sexual abuse: rape and women being sexually submissive to the guards. In the latter case, it was a means of obtaining favours. The witness recounts the testimony of a woman who gave her body to the guards in exchange for food. This was corroborated by the testimonies of former prisoners. Owing to the psychological and cultural dimensions, sexual abuse was and still is difficult to expose.

The alleged authority of HRW on this trial: the witness maintains that it is the victims and their lawyers who are at the root of this trial. Contrary to what some believe, HRW is not piloting the trial. He indicated that if victims decided to stop the whole process today for lack of confidence in the judicial system, the Organization would follow suit. He stated that HRW is actually at the service of victims. Furthermore, the witness believes that the quality of the work accomplished is a testimony to the increased professionalism of HRW and NGOs in general, in the search for truth. And history has proven that no international trial can be conducted without the decisive intervention of NGOs, as illustrated in the Milosevic trial at the ICTY. International organizations were also of tremendous assistance to victims in Afghanistan even though the international community did not follow.

III/ TIME MANAGEMENT

The hearing commenced at 9:23 am, with a break at 10:56 am. The session resumed at 11:37 am. Court suspended proceedings at 12:16 pm for lunch. They resumed at 2:23 pm and took a break at 4:07 pm. The session resumed at 4:45 pm and court was adjourned at 5:45 pm. It should however be noted that the court has the tendency not to adhere with the announced break schedules (15 to 20 minutes). This afternoon for instance, it announced a 15-minute break and only came back after 39 minutes.



*Attribution Policy: TrustAfrica should be acknowledged in all reproductions of this report and use of its contents. A statement similar to the following will be acceptable: **“The production of this report has been made possible by TrustAfrica.”***