

THE TRIAL OF HISSÈNE HABRÉ

Hissène Habré, the ex-president of Chad, has been charged with committing crimes against humanity, war crimes, and torture by the Extraordinary African Chambers,¹ a special criminal court that was created by Senegal and the African Union for the express purpose of prosecuting the international crimes committed in Chad.² The historic trial commenced after a nearly 25-year campaign to bring the former ruler of Chad to justice. The trial marks the first time that a deposed ruler has been tried by a court of a country other than his own for human rights violations. It also marks the first time that a trial in Africa has relied on the international law principle of universal jurisdiction, which allows a court to hear a case concerning serious crimes committed abroad by foreign actors against foreign victims.³ The ICC cannot hear the case because its jurisdiction extends only to crimes committed after July 1, 2002, well after Habré's alleged crimes occurred.

Hissène Habré's Rule in Chad

In 1979, the Lagos Accord ended a long civil war in Chad, and Hissène Habré assumed a role in the new National Unity Government.

In 1982, Habré, backed by the United States and France, led a coup against Chad's president, Goukouni Oueddei, and began his repressive regime. Though he faced a number of rebellions during his rule, Habré maintained his power for eight years, and used campaigns of torture and murder to suppress opposition. In particular, Habré is accused of targeting the Hadjerai and Zaghawa ethnic groups, the population in the south of Chad, political opponents and all whom he perceived as threatening his power. Most of Habré's crimes were carried out by his political police, the Documentation and Security Directorate ("DDS").

In 1990, Habré was deposed by Chad's current President Idriss Déby, who served as commander in chief of Habré's forces during a murderous wave of repression against the south of the country in September 1984, known as "Black September." Habré fled to Senegal, where he has since remained.

Déby became President of Chad in 1991 and established a commission to investigate crimes committed during Habré's regime. In 1992, the Truth Commission published a report accusing Habré's government of an estimated 40,000 deaths and systematic torture.⁴

¹ *Extraordinary African Chambers: Hybrid Court to Try Former Dictator Hissène Habré*, INTERNATIONAL JUSTICE RESOURCE CENTER, Feb. 13, 2013. Available at <http://www.ijrcenter.org/2013/02/13/extraordinary-african-chambers-hybrid-court-to-try-former-chad-dictator-hissene-habre/>

² *Chronology of the Habré Case*, HUMAN RIGHTS WATCH, Apr. 27, 2015. Available at <https://www.hrw.org/news/2015/04/27/chronology-habre-case>

³ *Senegal: Chad Ex-Dictator to Stand Trial*, HUMAN RIGHTS WATCH, Feb. 13, 2015. Available at

<https://www.hrw.org/news/2015/02/13/senegal-chad-ex-dictator-stand-trial>

⁴ *Truth Commission: Chad*, UNITED STATES INSTITUTE OF PEACE. Available at www.usip.org/publications/truth-commission-chad

The Struggle To Prosecute Habré and the Formation of the Extraordinary African Chambers

In 1991, the Chadian Association of Victims of Crimes and Political Repression (“AVCRP”) organized in order to pursue legal proceedings against Habré and others who committed crimes during his regime. In 1999, Human Rights Watch became involved with the AVCRP and other similar groups in an attempt to bring Habré to justice.

At the start of 2000, the AVCRP and seven individual Chadian victims filed a criminal complaint in Senegal, where Habré was living. Habré was indicted, but, after interference by Senegal’s then-president, the Senegalese Appeals Court dismissed the indictment on the ground that Senegal had no jurisdiction over crimes committed outside of Senegal. The ruling was upheld by Senegal’s highest court in 2001.

In 2000, three Chadian victims who acquired Belgian nationality sought recourse by filing a criminal complaint against Habré in Brussels, under Belgium’s universal jurisdiction law for crimes against humanity and other grave offenses. About twenty other victims subsequently joined in the case. (Victims also filed complaints against Habré in Chad, and complaints against Senegal for failing to take action with the UN Committee against Torture.)

After a four-year investigation, Belgium, in 2005, issued an international arrest warrant charging Habré with crimes against humanity, war crimes, torture, and violations of international human rights law. This warrant was accompanied by the first of Belgium’s four extradition requests to Senegal. Habré was arrested, but released shortly thereafter when the Dakar Appeals Court declared it lacked jurisdiction to rule on the extradition request.

In 2006, the African Union asked Senegal to prosecute Habré “on behalf of Africa.” Senegal accepted this request. The Senegalese National Assembly adopted new laws giving Senegal universal jurisdiction to prosecute crimes against humanity, genocide, war crimes and torture committed outside of Senegal.

Between 2006 and 2009, international pressure on Senegal increased, as Senegal was criticized for not cooperating in the effort to bring Habré to justice. The European Union, African Union, Belgium, and the UN Committee Against Torture all called upon Senegal to either try Habré or extradite him. In 2010, the Court of Justice of the Economic Community of the West African States (ECOWAS) issued a ruling requiring Senegal to prosecute Habré before a special international tribunal. The African Union backed this plan.

Senegal resisted the plan to create a tribunal composed of Senegalese and international judges, but following increased pressure from the African Union and the UN Committee against Torture, as well as a second extradition request from Belgium, Senegal and the African Union eventually reached an agreement in 2011 to create an *ad hoc* international court. Senegal delayed in implementing the agreement until 2012, after a new president of Senegal was elected, and the International Court of Justice ruled that Senegal was in violation of its obligations under the UN Convention against Torture for failing to prosecute or extradite Habré. Shortly thereafter, Senegal and the African Union signed an agreement creating the Extraordinary African Chambers, and the Senegalese National Assembly adopted laws establishing the Chambers within Senegal’s judiciary system.

In February 2013, the Extraordinary African Chambers were inaugurated, and five months later, Habré was taken into police custody, charged with crimes against humanity, torture, and war crimes, and placed in detention. Over 1,000 victims registered as civil parties with the Chambers. Between 2013 and 2014, four investigative missions were sent to Chad.

In February 2015, the Investigative Judges of the Extraordinary African Chambers found that there was sufficient evidence for Habré to face charges of crimes against humanity, war crimes, and torture, and to commit him to stand trial on these charges. In April 2015, judges were appointed to the Chambers. The Presiding Judge is from Burkina Faso; the two other judges, as well as an Alternate Judge, are Senegalese.⁵

In order to expedite the trial and ensure it “do[es] not drag on for years,” prosecutors may elect to pursue Habré’s “most serious” crimes instead of each and every act of which he is accused. Prosecutors are also permitted to introduce into evidence the results of the prior Belgian and Chadian investigations.⁶

The Trial

The trial began on July 20, 2015, when Habré was forcibly brought to the courtroom by court officials after refusing to cooperate with the trial. Habré has consistently denounced the trial as a politically-motivated sham, and on the first day of trial, he loudly made these accusations and attempted to escape the grip of the security guards restraining him, as his supporters joined in creating a commotion, until Habré was removed from the courtroom.⁷ The court ordered that Habré be brought to appear by force the next day. On that second day of trial, Habré was present and relatively calm, but he and his lawyers continued to refuse their participation. As a consequence, the court appointed three new lawyers to represent Habré, and the trial was suspended for 45 days to allow his new legal team to prepare a defense.⁸

On September 7, the trial resumed. Habré was again dragged into the courtroom, and again resisted and decried the court’s legitimacy, but he was informed by the judges that the trial would proceed and that he would be present for each day.⁹ Habré has refused to cooperate with his appointed lawyers, and his original lawyers who declined to

⁵ *Chronology of the Habré Case*, *supra* n. 2.

⁶ *Senegal: New Court to Try Chad Ex-Dictator in Senegal*, HUMAN RIGHTS WATCH, Aug. 22, 2012. Available at <https://www.hrw.org/news/2012/08/22/senegal-new-court-try-chad-ex-dictator-senegal>

⁷ *Trial of Chad’s Ex-Dictator Begins in Senegal*, AL JAZEERA AMERICA, July 20, 2015. Available at <http://america.aljazeera.com/articles/2015/7/20/trial-of-chads-ex-dictator-begins-in-senegal.html>

⁸ Thierry Cruvellier, *For Hissène Habré, a Trial by Refusal*, NEW YORK TIMES, July 27, 2015. Available at http://www.nytimes.com/2015/07/28/opinion/for-hissene-habre-a-trial-by-refusal.html?_r=0

⁹ Marlise Simons, *Former Leader of Chad Hauled Into Court as Trial Resumes*, NEW YORK TIMES, Sept. 7, 2015. Available at <http://www.nytimes.com/2015/09/08/world/africa/former-leader-of-chad-hauled-into-court-as-trial-resumes.html>

participate in the trial have attended as spectators. As of October 22, 48 victims and witnesses had testified.

The trial began with testimony by experts and investigators. Among those who appeared were the president of Chad's Truth Commission who testified regarding documentation of summary executions, torture and disappearances under Habré's rule, and the Belgian judge who conducted the four-year investigation, and determined there were sufficient grounds to charge Habré. Human rights activists from Amnesty International and Human Rights Watch who investigated the case also testified.

A former member of Habré's police force, the DDS, described how the DDS Director met with Habré daily to give him interrogation reports on detainees that Habré returned with annotations: "E" for execute, "L" for set free and "V" for seen.¹⁰

Victims began to testify during the fourth week. The first witnesses testified as to abuses committed against the Hadjerai ethnic group. They told of the disappearances of loved ones, mass shootings of prisoners and the burial of prisoners in a mass grave. Witnesses then testified to crimes committed against the Zaghawa population following Habré's suspicion that three Zaghawa government leaders (including the current president, Déby) were plotting a coup against him. (Déby escaped; the other two officials were killed.) Documentation submitted to the court indicated that 302 Zaghawa were arrested, and 135 were executed or died in detention.¹¹ The victims also included four women who made headlines with their testimonies of sexual slavery. (Habré's indictment does not, at this time, include charges of sexual violence or enslavement, and the victims' lawyers have asked that these charges be added.)¹²

The trial has reportedly been postponed until November 9, 2015, and is now expected to continue into next year.¹³

Among the challenges that prosecutors face are defending the legitimacy of the court, proving direct involvement by Habré in the offenses committed, and overcoming the difficulties of witnesses' lapses in memory regarding events that took place over 25 years ago.¹⁴

If Habré is found guilty, the maximum sentence he will face is life imprisonment; the court can also order him to pay a fine or forfeit assets.

¹⁰ Krishnade Calamur, *The Legacy of the Pinochet Trial*, THE ATLANTIC, Oct. 17, 2015. Available at <http://www.theatlantic.com/international/archive/2015/10/chad-habre-trial-pinochet/411004/>

¹¹ *Live Updates: the Trial of Hissène Habré*, HUMAN RIGHTS WATCH. Available at <https://www.hrw.org/blog-feed/trial-hissene-habre>

¹² *Senegal: At Hissène Habré Trial, Sexual Slavery Accounts*, HUMAN RIGHTS WATCH, Oct. 22, 2015. Available at <https://www.hrw.org/news/2015/10/22/senegal-hissene-habre-trial-sexual-slavery-accounts>

¹³ AFP, *Trial of Former Chad Dictator Suspended to Nov 9*, THE GUARDIAN, Oct. 29, 2015. Available at <http://www.ngrguardiannews.com/2015/10/trial-of-former-chad-dictator-habre-suspended-to-nov-9/>

¹⁴ Calamur, *supra* n. 9; *Testimony Mounts in Habré Trial, But Is There a Smoking Gun?* JUSTICEINFO, Sept. 15, 2014. Available at <http://www.justiceinfo.net/en/live-feed/2161-.html>; Reed Brody, *The Victims Testify*, HUMAN RIGHTS WATCH, Sept. 30, 2015. Available at <https://www.hrw.org/content/281790>