

## The former Chadian leader, Hissène Habré charge for War Crimes

The Extraordinary African Chambers, a special international criminal tribunal set up in Senegal by the African Union, is trying the former leader of Chad, Hissène Habré, at the Palais de Justice in Dakar Senegal. He is accused of crimes against humanity, war crimes and torture<sup>1</sup> committed during his eight-year rule from 1982 to 1990.<sup>2</sup> A Chadian National Commission found that over 40, 000 torture victims of Habré regime; the method of torture it is submitted includes: forcing detainees to swallow water, spraying of gas into the nose and mouth, forced ingestion of exhaust pipe fumes, burns, prolonged cohabitation with corpses, food and water deprivation, flogging and electric shock.<sup>3</sup>

The opening of the case represents a historic step for African justice. It is the first time that the courts of one country on the continent have prosecuted the former ruler of another country for alleged human rights violations.<sup>4</sup> It is also the first universal jurisdiction case to proceed to trial in Africa.<sup>5</sup>

Sometimes referred to as the 'Pinochet' of Africa, Habré's one-party regime was backed by the CIA and France to topple Muammar Gaddafi<sup>6</sup>, he like some leaders in the continent had

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<sup>1</sup> William A. Schabas, War Crimes, Crimes Against Humanity and the Death Penalty, *Albany Law Review*, Vol. 60 1997, p. 733 – 770.

<sup>2</sup> A Chadian National Commission of Inquiry established by the Ministry of Justice after Habré was deposed. See Decree Creating the Commission of Inquiry into the Crimes and Misappropriations Committed by Ex-President Habré, his Accomplices and/or Accessories; Decree No 014/PCE/CJ/90, 29 December 1990.

<sup>3</sup> Sangeeta Shah, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *Human Rights Law Review (HRLR)*, 13.2 (2013), p. 251; Kritz (ed.), *Transitional Justice: How Emerging Democracies Reckon with Former Regimes, Volume 3: Laws, Rulings and Reports* (Washington DC: US institute of Peace, 2004) 51 at 71 – 72; Reed Brody, Bring a Dictator to Justice: The case of Hissène Habré, *Journal of International Criminal Justice (JICJ)* 13 (2015), p. 209 – 210. Available a <http://jicj.oxfordjournals.org/content/13/2/209.full.pdf+html> [Access date 17 August 15]; M. Bronner, 'Our Man in Africa', *Foreign Policy*, January/February 2014, available at <http://foreignpolicy.com/2014/01/24/our-man-in-africa/> [Access on 17 August 2014].

<sup>4</sup> Most violent crimes it is submitted is conducted in a state of high emotion when the actor is not approachable by the rational advice. "don't do this or you will be punished". See Christoph J.M. Sufferling, Can Criminal Prosecution be the Answer to Massive Human Rights Violations? *German Law Journal*, Vol. 05, No. 12, p. 1484; Reed Brody, Bring a Dictator to Justice: The case of Hissène Habré, *Journal of International Criminal Justice (JICJ)* 13 (2015), p. 209. Available a <http://jicj.oxfordjournals.org/content/13/2/209.full.pdf+html> [Access date 17 August 15]

<sup>5</sup> In 2001, the International Court of Justice (ICJ) handed Belgium and its universal jurisdiction law a stinging defeat. See Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), 14 February 2002, ICJ Reports (2002) 3.

<sup>6</sup> Reed Brody, Bring a Dictator to Justice: The case of Hissène Habré, *Journal of International Criminal Justice (JICJ)* 13 (2015), p. 209. Available a <http://jicj.oxfordjournals.org/content/13/2/209.full.pdf+html> [Access date 17 August 15].

seized power under a coup in 1982 during which he had a special relationship with the Reagan administration, his forces received military training while his one-time chief military adviser Idriss Déby backed by Libya took control of N'Djamena, Hissène Habré under a French arranged exile meekly left the country with his lackeys to Cameroon and then to Senegal where he took refuge for some time.<sup>7</sup> However, after more than 22 years of persistent effort from victims and NGOs such as the Chadian Association for the Promotion and Defence of Human Rights (ATPDH), the former CIA dubbed the “quintessential desert warrior” is finally in the dock<sup>8</sup>

In February 2000, a judge in Senegal indicted Habré for torture, crimes against humanity and other barbaric acts.<sup>9</sup> This move is in line with the United Nations (UN) Torture Convention<sup>10</sup> which Senegal has ratified<sup>11</sup>. However, the decision was dismissed because the Appellate Court argue that despite Senegal’s ratification of the Torture Convention, Senegalese courts lacked jurisdiction to try crimes committed abroad because the Convention had not been implemented into national law.<sup>12</sup> In 2005 Belgium sorts for extradition of Habré but a Senegalese court rule that she lacked jurisdiction to extradite.<sup>13</sup> Senegal proceeded to refer the case to the African Union (AU) who appointed in 2006 a Committee of Eminent Jurist to look into the case of Habré<sup>14</sup>, in May of the same year, the UN Committee responding to a case file in 2001 against victims found that Senegal has violated the Torture Convention by

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<sup>7</sup> M. Bronner, ‘Our Man in Africa’, *Foreign Policy*, January/February 2014, available at <http://foreignpolicy.com/2014/01/24/our-man-in-africa/> [Access on 17 August 2014].

<sup>8</sup> The Guardian, <http://www.theguardian.com/world/2013/jul/03/chad-hissene-habre-charged>, [Access date 17 August 2015].

<sup>9</sup> Reed Brody, Bring a Dictator to Justice: The case of Hissène Habré, *Journal of International Criminal Justice (JICJ)* 13 (2015), p. 210. Available a <http://jicj.oxfordjournals.org/content/13/2/209.full.pdf+html> [Access date 17 August 15].

<sup>10</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture), 10 December 1987.

<sup>11</sup> International Court

of Justice (ICJ), Press Release on Questions Relating to Obligation to Prosecute or Extradite (Belgium v. Senegal), the judges by majority concluded that the Republic of Senegal, by failing to make immediately a preliminary inquiry into the facts relating to the crimes allegedly committed by Mr. Hissène Habré, has breached its obligation under Article 6, paragraph 2, of the Torture Convention, p. 4. Available at, <http://www.icj-cij.org/docket/files/144/17084.pdf> [Access date 16 August 2015].

<sup>12</sup> Reed Brody, Bring a Dictator to Justice: The case of Hissène Habré, *Journal of International Criminal Justice (JICJ)* 13 (2015), p. 210. Available a <http://jicj.oxfordjournals.org/content/13/2/209.full.pdf+html> [Access date 17 August 15]; Reed Brody, “The Prosecution of Hissène Habré – An “African Pinochet””, 35 *New England Law Review* (2001) 321 – 345; Sangeeta Shah, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *Human Rights Law Review (HRLR)* 13(2013), p. 352.

<sup>13</sup> *JICJ* 13 (2015), p. 211.

<sup>14</sup> *JICJ* 13 (2015), p. 211; Assembly of the African Union, Decision On The Hissène Habré Case and The African Union, Sixth Ordinary Session, Doc. Assembly/AU/Dec.103(VI), 23 – 24 January 2006, available online at [www.au.int/en/sites/default/files/ASSEMBLY\\_EN\\_23\\_24\\_JANUARY\\_2006\\_AUC\\_%20SIXTH%20ORDINARY\\_SESSION\\_DECISIONS\\_DECLARATIONS.pdf](http://www.au.int/en/sites/default/files/ASSEMBLY_EN_23_24_JANUARY_2006_AUC_%20SIXTH%20ORDINARY_SESSION_DECISIONS_DECLARATIONS.pdf) (Access date 15 August 2015)

failing to prosecute or extradite Habré.<sup>15</sup> The African Union and the Committee of Eminent Jurist concurred that Senegal should try him on behalf of Africa through a special tribunal with an international character.<sup>16</sup> This move is in line with the recommendation of the UN Convention against Torture; the UN Committee against Torture and the AU mandate to trial Habré.<sup>17</sup> Though Belgium had asserted that Senegal has failed to fulfil its obligation to try Habré under the Convention Against Torture (CAT) and customary international law, the ICJ held that the diplomatic exchanges between Belgium and Senegal concern only provisions of CAT, and that the issue whether there exist an obligation for a State to prosecute crimes under customary international law that were allegedly committed by a foreign national abroad is clearly distinct from any question of compliance with that State's obligation under the Torture Convention, she held that it was only a dispute regarding obligation under CAT.<sup>18</sup>

Senegal argued that Belgium is not interested to see that Habré is prosecuted under CAT because none of the alleged victims of the acts attributed to Mr. Hissène were Belgian citizens at the time the alleged crimes were committed, while Belgium on the other hand argued that its claim arise from its obligation as a party to CAT and the special interest that would distinguish Belgium from other parties to the Convention and give it a specific position in the *Affaire Habré*.<sup>19</sup> However, things changed in March 2012 after President Wade was defeated in a presidential election by Macky Sall, who immediately announced plans to prosecute Habré in Senegal.<sup>20</sup> In July of the same year the ICJ ruled that Senegal must without delay submit the case of Mr. Hissène to a competent authority for prosecution if it does not extradite him, this act revived the move to prosecute Habré by Senegal and the AU, that led to the creation of the Extraordinary African Chambers<sup>21</sup>. The Chamber's mandate will be to prosecute those responsible for serious international crimes committed in

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<sup>15</sup> Suleymane Guengueng et al. v. Senegal, Communication No. 181/2001, U.N. Doc. CAT/C/36/D/181/2001 (2006), para. 10. Available at <http://www1.umn.edu/humanrts/cat/decisions/181-2001.html> [Access date 16 August 2015]; Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) Merits, 20 July 2012, at 13, available at: [www.icj-cij.org](http://www.icj-cij.org) [Access date 17 August 2015]; Sangeeta Shah, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *Human Rights Law Review (HRLR)* 13(2013), p. 352 and 355.

<sup>16</sup> Sangeeta Shah, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *Human Rights Law Review (HRLR)* 13(2013), p. 356.

<sup>17</sup> Decision on the Hissène Habré Case, 1 July 2011, Assembly/AU/Dec.371(XVII), at 3.

<sup>18</sup> Sangeeta Shah, Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), *Human Rights Law Review (HRLR)* 13(2013), p. 356 - 357.

<sup>19</sup> *Ibid*, 357.

<sup>20</sup> *JICJ* 13 (2015), p. 213.

<sup>21</sup> *JICJ* 13 (2015), p. 213.

Chad between 1982 and 1990, the court structure will allow victims participation and the demand for reparations.<sup>22</sup> On 2 July 2013, the Chambers indicted Mr. Hissène for war crimes, crimes against humanity and torture, and On July 15 2013, 1015 victims registered as civil parties with the Chambers under a team of lawyers led by Chadian attorney Jacqueline Moudeïna who is coordinator of the Coalition and president of the ATPDH<sup>23</sup>

On 20 July 2015, Mr. Hissène trial open in Senegal as security forces ushered Habré into court room prompting yells from his supporters. Dressed in white robes and a turban, the 72-year-old raised a fist and cried out loud “God is greatest”, before being ushered out again.<sup>24</sup> This trial is expected to last for several months as victims and those concern wait impatiently for the verdict.

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<sup>22</sup> *JICJ* 13 (2015), p. 213: The Agreement between the UN and the Royal Government of Cambodia provide a legal framework for the Cambodia Extraordinary Chambers to allow victims to exercise their rights under Article 12(1) of the 2003 of this agreement. See David Boyle, The Rights of Victims: Participation, Representation, Protection, Reparation, *Journal of International Criminal Justice (JICJ)*, 4 (2006), 307 - 313 at p. 308.

<sup>23</sup> *JICJ* 13 (2015), p. 213 - 214.

<sup>24</sup> The Guardian, <http://www.theguardian.com/world/2015/jul/20/former-chad-dictator-hissene-habre-war-crimes-trial> [Access date 18 August 2015].