

CASE STUDY 5: SENEGAL – THE TRIAL OF HISSÈNE HABRÉ: A PROSECUTION ON THE HORIZON

The case of Hissène Habré has been pushed from domestic to regional to international courts and back, but the former president of Chad is yet to answer the serious allegations that have been levelled against him. However, after concerted efforts by a number of actors – not least civil society which has refused to relent in its call for justice – it appears that the victims of Habré’s alleged crimes will soon finally have their day in court.

Background

The case has been before a variety of forums.

Senegal

Habré is alleged to have ordered large-scale violations of human rights during his eight years in power, which ended in 1990, including arrests of political opponents, detentions without trial or under inhumane conditions, mistreatment, torture, extrajudicial executions and enforced disappearances. He was granted political asylum by Senegal, and has been living in exile there for the last two decades. Attempts to bring him to justice began in 2000, when victims of his past crimes lodged a complaint against him with a senior investigating judge in Senegal, who swiftly indicted Habré for having aided and abetted crimes against humanity and acts of torture and barbarity and placed him under house arrest. However, Habré successfully appealed the decision to indict him on the basis that the courts of Senegal had no jurisdiction over crimes committed outside the territory of Senegal by a foreign national against foreign nationals. Notably the Court found that the Senegalese Code of Criminal Procedure did not provide for universal jurisdiction.³⁹

Belgium

Around the same time, a Belgian national of Chadian origin lodged a complaint with a Belgian investigating judge against Habré accusing him of *inter alia*, serious violations of international humanitarian law, torture and genocide. A number of other individuals lodged similar complaints before the same judge. The complaints were based on Belgium’s universal jurisdiction law and the Convention Against Torture. As a result, the Belgian judge contacted Chad requesting mutual legal assistance in his investigation, with which Chad duly complied, further stating that it had waived Habré’s immunity in 1993. The Judge also contacted Senegal requesting information regarding the on-going proceedings against Habré. Based on his investigations, the Belgian judge issued an international warrant for Habré in September 2005 for serious violations of international humanitarian law, torture, genocide, crimes against humanity and war crimes. That same month Belgium formally requested the extradition of Habré by Senegal to Belgium.

AU

A Senegalese court, however, refused the request for extradition on the basis that Habré enjoyed permanent functional immunity in respect of acts committed while he was in office, and Senegal referred the issue to the AU. In July 2006, the AU decided that Habré’s prosecution fell “within the competence of the African Union, ... mandate[d] the Republic of Senegal to prosecute and ensure that Hissène Habré is tried, on behalf of Africa, by a competent Senegalese court with guarantees for fair trial”.⁴⁰ Furthermore, the AU mandated the AU chairperson to “provide Senegal with the necessary assistance for the effective conduct of the trial”.⁴¹

The Standoff between Belgium and Senegal

A dispute then ensued between Belgium and Senegal over the effect of the AU’s decision on Belgium’s extradition request and Senegal’s obligation to extradite or prosecute Habré under the Torture Convention. Notably, in 2006 the UN Committee Against Torture found that Senegal had violated the Torture Convention by not adopting such “measures as may be necessary”⁴² to establish its jurisdiction over the crimes listed in the Convention, and failing to submit Habré’s case to its competent authorities for prosecution or, in the alternative, complying with Belgium’s extradition request.

In response, Senegal repudiated its previous position that Habré enjoyed immunity and in 2007 implemented a number of legislative reforms related to the prosecution of international crimes in order to comply with the Torture Convention, as well as to give effect to its obligations under the Rome Statute (see Chapter 5). Notably, the legislation provided for the prosecution of crimes which “at the time and place where they were committed, were regarded as a criminal offence according to the general principles of law recognised by the community of nations, whether or not they constituted a legal transgression in force at that time and in that place”.⁴³ Furthermore, it empowered Senegalese courts to prosecute a foreigner accused of committing acts outside its territory “if he is under the jurisdiction of Senegal or if a victim is resident in the territory of the Republic of Senegal [or of Senegalese nationality at the time the acts are committed], or if the Government obtains his extradition”.⁴⁴ In other words, it empowered them to exercise universal jurisdiction.⁴⁵

Senegal informed Belgium of these measures and repeated the AU’s call for states and international donors to “mobilise all the resources, especially financial resources, required”⁴⁶ for the trial. In response, Belgium reiterated its request for judicial cooperation. As a result of the standoff, in February 2009, Belgium instituted proceedings before the ICJ, claiming that Senegal was obliged to bring criminal proceedings against Habré for acts including crimes of torture and crimes against humanity, failing which Senegal was obliged to extradite him to Belgium so that he could answer for these crimes before the Belgian courts.⁴⁷

African Regional Courts

At this stage regional courts became involved in the matter. First, the newly established African Court on Human and Peoples Rights, in its first decision rendered on 15 December 2009, refused to hear a case brought against Senegal that sought the withdrawal of the case against Habré. The African Court did so on the basis that Senegal had not made a declaration accepting its jurisdiction to entertain such applications in terms of the Protocol to the African Charter on Human and Peoples Rights on the establishment of an African Court of Human and Peoples Rights.⁴⁸ Then, in November 2010, the Court of Justice of the Economic Community of West African States (ECOWAS) found that “the mandate which Senegal received from the African Union was in fact to devise and propose all the necessary arrangements for the prosecution and trial of Mr Habré to take place, within the strict framework of special ad hoc international proceedings”.⁴⁹

In July 2010, 117 African CSOs joined Nobel Peace Prize winners Archbishop Desmond Tutu and Shirin Ebadi and other activists in calling on Senegal and the AU to move forward with the trial of Habré, noting:

“The victims of Mr Habré’s regime have been working tirelessly for 20 years to bring him to justice, and many of the survivors have already died. Instead of justice, the victims have been treated to an interminable political and legal soap opera.”⁵⁰

The AU has made a number of pronouncements in respect of Habré. In January 2011, it “request[ed] the Commission [on the Implementation of Decision Assembly/AU/Dec.297 (XV) on the Hissène Habré Case] to undertake consultations with the Government of Senegal in order to finalise the modalities for the expeditious trial of Hissène Habré through a special tribunal with an international character consistent with the ECOWAS Court of Justice Decision”,⁵¹ and then in July 2011 it urged Senegal “to carry out its legal responsibility in accordance with the United Nations Convention against Torture[,] the decision of the United Nations ... Committee against Torture[,] as well as the said mandate to put Hissène Habré on trial expeditiously or extradite him to any other country willing to put him on trial”.⁵² In January 2012, the AU “request[ed] the Commission ... to continue consultations with partner countries and institutions and the Republic of Senegal[,] and subsequently with the Republic of Rwanda[,] with a view to ensuring the expeditious trial of Hissène Habré and to consider the practical modalities as well as the legal and financial implications of the trial”.⁵³