

## **Report on Steps Taken by the Government of Senegal to Bring Hissène Habré to Justice**

### **Introduction**

Hissène Habré is alleged to be responsible for large-scale atrocities committed during the time he ruled Chad, from 1982-1990. The victims of these atrocities, which include torture and extrajudicial killings, have awaited justice for over twenty years; many survivors have died in the interim. Habré has resided in Senegal since his ouster in 1990. The United States government has long advocated that those responsible for the most serious crimes of international concern be held accountable for their crimes, and has urged that Habré be tried or extradited for trial in accordance with international law principles.

To date, Senegal has neither tried nor extradited Habré. With respect to prosecution, efforts to establish proceedings in Senegal – in keeping with the African Union's (AU) call on July 2, 2006, for Senegal to prosecute Habré "on behalf of Africa" – have effectively stalled, despite the fact that talks with the AU had reached an advanced stage by May 2011. With respect to extradition, Belgium has sought Habré's extradition from Senegal since 2005 to face charges in a suit filed by Chadian victims residing in Belgium. Extradition authority exists pursuant to the Convention Against Torture (CAT). To date, Senegal has not extradited Habré and earlier this year, Senegalese courts rejected a third Belgium extradition request based on purported deficiencies in the underlying paperwork. Belgium has now submitted a fourth extradition request which is pending in the Senegalese courts, and has also filed suit against Senegal in the International Court of Justice (ICJ) claiming that Senegal breached its obligations under the CAT and customary international law by failing to submit Habré to prosecution or extradite him. The alternative of prosecution in another African state has also been considered, potentially in Rwanda, though various victims' and human rights organizations have called for the trial to be held in Belgium, and Chad would also support a Belgian trial. No further action has been taken to establish proceedings outside Senegal.

The peaceful March 2012 election of President Macky Sall served as a testament to Senegal's democracy and institutions. President Sall and his new administration may help to catalyze action on bringing Habré to justice in a manner consistent with Senegal's international obligations.

## **Efforts to Bring Habré to Justice**

Actions by Chadian victims against Habré have been ongoing for over a decade. On January 26, 2000, seven Chadian nationals filed complaints in Senegal alleging that Habré directed acts of torture and crimes against humanity during his tenure as president of Chad. On February 3, 2000, a Dakar trial court indicted Habré as an accomplice to torture, barbarous acts, and crimes against humanity. These proceedings stalled when the Dakar Court of Appeals ruled on July 4, 2000, that “crimes against humanity” did not form part of Senegalese law, and that the Senegalese criminal code did not allow the exercise of extraterritorial jurisdiction over acts of torture committed by an alien outside Senegalese territory, a decision subsequently affirmed by the Cour de Cassation, the highest court in Senegal, in March 2001. Other victims, including three Belgian citizens, then filed complaints against Habré in a Brussels court beginning on November 30, 2000 (the extradition requests at issue today in Senegal stem from this Belgian action). After a lengthy investigation, on September 19, 2005, a Belgian magistrate issued an international arrest warrant against Habré on charges including crimes against humanity and torture, and Belgium formally sought his extradition. Senegalese authorities arrested Habré on November 15, 2005, but Senegal refused to extradite him after its Court of Appeals ruled that it lacked jurisdiction to rule on an extradition request for a former head of state. Senegal asked the AU to indicate which jurisdiction was competent to try Habré.

In January 2006, the AU established a Committee of Eminent African Jurists to consider all aspects of the Habré case and assess options for his trial. In May 2006, the UN Committee Against Torture found that Senegal was in breach of its obligation under the CAT by failing to try Habré, and called on Senegal to try or extradite him. The CAT commits state parties to take measures to establish jurisdiction over extraterritorial torture in certain instances, including when the defendant is a national of that state or, if it does not extradite him, is present in that state. Under the CAT, states are also obliged to submit cases of torture to their competent authorities for prosecution or extradite the defendant to a requesting state.

Upon completion of the Committee of Eminent African Jurists’ review and its recommendation that Senegal should try Habré, on July 2, 2006, the AU called on Senegal to prosecute Habré “on behalf of Africa,” and President Wade agreed to do so. Senegal amended its laws in February 2007 to allow jurisdiction over the alleged crimes. A subsequent constitutional amendment in July 2008 – which confirmed that the principle of nonretroactivity does not apply to genocide, war

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crimes and crimes against humanity – helped to lift remaining legal obstacles to domestic proceedings against Habré. However, negotiations over funding and the framework for the trial proceeded to stretch over the next several years (as noted above, proceedings against Habré have not yet commenced in Senegal). In October 2008, Habré filed an action in the Court of Justice of the Economic Community of West African States (ECOWAS) alleging that retroactive criminal laws violate Article 15 of the International Covenant on Civil and Political Rights. In February 2009, Belgium filed suit in the ICJ, claiming that Senegal had breached its CAT obligations to either submit Habré to prosecution or extradite him. In May of that year, Senegal pledged not to permit Habré to leave the country pending final judgment by the ICJ.

In November 2010, after negotiations with Senegal over international assistance with funding the costs of a Habré trial, international donors agreed to fully fund an 8.6 million euro trial budget. Immediately before the donors' conference, the ECOWAS Court (to which Senegal is a bound party) ruled that Habré's trial must be carried out by a special or ad hoc procedure of an international character rather than within Senegal's domestic court system. In January 2011, the AU proposed the creation of a special court within Senegal's judicial system, to be composed of Senegalese and other African judges. A January 31, 2011 AU decision called on an AU commission to consult with Senegal to finalize arrangements for a "special tribunal with an international character consistent with the [ECOWAS] Court of Justice Decision." The ensuing negotiations with the AU on the structure of the proposed ad hoc court and trial procedures reached an advanced stage. In May 2011, however, Senegalese representatives withdrew from the talks. In subsequent interviews, President Wade said that he was no longer willing to prosecute Habré in Senegal. On July 8, 2011, Wade indicated that Senegal would expel Habré to Chad. However, many, including the UN High Commissioner for Human Rights, feared Habré would be mistreated were he returned to Chad, and President Wade reversed his decision two days later.

Meanwhile, on March 15, 2011, Belgium renewed its extradition request to Senegal. It reiterated the request through a subsequent communication to Senegal in July of 2011. On July 21, 2011, Chadian Foreign Minister Moussa Faki Mahamat told the AU Commission that Chad would support the extradition of Habré to Belgium. President Wade said in a July 21, 2011, interview that Belgium's extradition request was before a Senegalese court and that although he would have preferred Habré be judged in Africa rather than "by a former colonial power," if the court judged the extradition to be legal, Habré "could" be sent to

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Belgium. But on August 18, 2011, the Dakar Court of Appeals rejected the request, citing deficiencies in Belgium's supporting documentation.

Belgium submitted its third extradition request on September 5, 2011. In a September 22, 2011, message to President Wade, Secretary of State Hillary Clinton urged that Habré be held accountable for his alleged crimes consistent with Senegal's domestic law and procedures, be it through trial in Senegal or extradition to Belgium. In a January 4, 2012, interview with France 24 television, Wade said that, "Very probably, Hissène Habré will be sent to Belgium. I have referred Belgium's request to the Dakar Court of Appeals. If the Court decides it, he will be extradited." The Dakar Court of Appeals again rejected the request on January 10, 2012, ruling that Belgium's demand did not conform to Senegal's legal provisions, including by failing to include authentic documentation of the arrest warrant against Habré. In a January 18, 2012, press release, Belgium claimed it had provided the requisite documents to the Senegalese authorities on several occasions since 2005, and it appeared that those documents had not been forwarded to the competent Senegalese court. At the same time, Belgium submitted a fourth extradition request to Senegal and asked that the accompanying documentation be forwarded to the court. That request is still pending in the Senegalese courts.

On March 21, 2012, the ICJ concluded six days of public hearings in a case initiated by Belgium in February 2009, in which Belgium argued that Senegal has breached its obligations, under the CAT and customary international law, by failing to submit for prosecution or extradite Habré for torture, war crimes, crimes against humanity, and genocide. Senegal, in turn, argued that there is not a genuine dispute between the parties as to Senegal's obligations under the CAT and that it has fulfilled its obligations under the CAT by taking concrete steps to prepare for Habré's prosecution. The ICJ will likely render a decision no earlier than in the next several months, and the timeframe could be considerably longer. Because of the manner of relief at issue, a ruling in Belgium's favor would likely only affirm Senegal's obligation to submit Habré for prosecution or extradite him, in effect bringing the proceedings full circle.

Although efforts to try Habré domestically in Senegal or extradite him to Belgium have thus far stalled, recent political transitions in Senegal may alter the landscape for action: on March 25, President Wade lost his re-election bid and President Macky Sall was sworn in on April 2. Officials of the new administration have indicated that Senegal has the will and intention to prosecute Habré in Senegal in a venue consistent with the ECOWAS decision, but that it is also

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anticipating and will comply with forthcoming decisions from the ICJ and the Dakar Court of Appeals. The timeframe for those proceedings is uncertain and likely lengthy. In the interim, there are concrete steps Senegal can take to bring Habré to justice. Should it choose to pursue prosecutions within Senegal rather than extradition to Belgium (and barring a decision from either the ICJ or the Dakar Court of Appeals to the contrary), the government can demonstrate its willingness to move quickly and return in the near-term to the solid foundation laid in AU talks, rather than restart the process anew, with appropriate assistance from the international community. If progress is not forthcoming on efforts to extradite or prosecute, the Department of State will continue to press vigorously for expedient action by Senegal in finally holding Habré to account. After twenty years, the victims deserve justice and their day in court.

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