

## Human Rights Watch

Summary of oral verdict delivered in the case of Hissène Habré before the Extraordinary African Chambers in the Senegalese courts - May 30, 2016

Unofficial summary - based on notes taken in court

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The clerk of the Court called the court back in session for the judgment. Hundreds of members of the public were lined up to view the decision that was soon to be rendered in the case of Hissène Habré with regard to article 23 of the *Statuts des Chambres Extraordinaires* and 318 al. 1 of the Code of Criminal Procedure of Sénégal. This would be the oral announcement of the judgment; the written findings and conclusions would come later.

Judge Kam began with a detailed summary of the trial. The trial began on 20 July 2015, but was suspended 21 July 2015 until 7 September 2015 to allow the appointed lawyers to familiarize themselves with the case. Between 9 and 16 September 2015, 96 victims testified; there were 56 exhibits and 2000 minutes of hearing and archive. Oral argument took place from 8 to 11 February 2016. Closing arguments and deliberation took place on 11 February 2016.

The accused, Hissène Habré, was President of the Republic of Chad from 7 June 1982 to 1 December 1990. On 16 February 2015, the *Chambre extraordinaire d'instruction* charged Habré with the crimes of torture, homicide, executions, illegal detention, breach of physical integrity, torture, and abduction of civilians.

The prosecution argued that individually responsible through his complicity and incitement of these activities, even if he did not personally carry all of them out. Specifically, he was charged with not having stopped crimes against prisoners of war and that he was the ultimate supervisor for all other accused crimes in Chad. For the crimes of rape, however, direct responsibility was alleged.

Lawyers for the civil parties argued that Habré retained responsibility for planning and overseeing the culpable organizations and that he directly ordered crimes against persons. They also alleged direct responsibility for the rapes, operation of a joint criminal enterprise, and aiding and abetting.

The defense rejected any responsibility on behalf of Habré. They argued that there was no evidence. Regarding crimes committed in southern Chad, they argued that Habré could not have given the order to commit these crimes because he was in Mecca at the time and it is impossible to prove he was aware of these unreported crimes.

The court summarized the crimes committed in Chad between 7 June 1982 and 1 December 1990:

First, the repression of political opponents, the population in the the south, the Hagarai, and the Zagawa.

In the week after Habré took power, he began to undertake mass arrests. Initially, these were carried out against political opponents (members of the GUN). Soon, however, any Chadian citizen suspected of being part of the opposition was arrested. This included extrajudicial arrests and interrogations conducted by the DDS and the BSIR, followed by incarceration in N'Djamena in DDS prisons. (The Court noted that there were seven main prisons run by the DDS.) These prisons violated criminal laws with systematic torture on a massive scale: Members of the DDS and BSIR were responsible for the torturous acts; the detention conditions were appalling with much overcrowding; and there were many deaths caused by the conditions of detention.

There was also repression of the civil population in the south, considered to be allies. The violent repression in the south began in August 1984 and lasted until September. This period is known as "Black September." A presidential delegation was sent to the south to participate in the repression, including arrests, torture, systematic execution, and transfer to N'Djamena for detention. There were also massacres at the farm of Dehli. The Court noted that it was not able to conclude that there was proof to support culpability for 17 people killed in Negada; forces involved there included the FANT, the BSIR, the DDS, and the presidential guard.

Starting in 1987, the repression of the Hagarai began. This included collective punishment for rebellion, for which a special commission was created. Tactics used included arrest, torture, detention, abduction, and execution; the repression was particularly brutal in Mango, with arrest and execution of many Hagarai. The perpetrators of these acts were the DDS, the BSIR, and the presidential guard.

The Zagawa were incarcerated and a special commission was created for the crackdown, operated by members of the DDS and BSIR. They arrested, tortured, jailed, executed, and disappeared the Zagawa. Military planes were provided to transfer some of the people who were arrested. This too was authored by the DDS, the BSIR, the presidential guard, and the intelligence service.

There is no proof that Arabs and foreigners were attacked as ethnic groups. This could have been done because of their opposition to the government.

The desire to arrest all opponents to the government was so high that it led the DDS to turn against its own officers.

The Court's conclusion: There were attacks against the civil population in Chad constituting the crime of torture and crimes against humanity. Nonetheless, there is no proof that the crimes of looting and expropriation were committed.

The degree of organization was not enough, with regard to human rights law respecting international armed conflicts, to characterize the conduct as war crimes.

Second, the Court considered sexual assaults on women prisoners.

Elements of proof: between 1984 and 1989, many women were forced to have sexual relationships with the DDS officers, prisons authorities, and soldiers of the BSIR. From 1985 to 1986, 11 women were raped by soldiers in a military camp [name unknown]. Between 1988 and 1989, nine women were raped in the camp of Ouadidou.

The Court used its power of reclassification to characterize these crimes as torture, rape, and crimes against humanity. There were also crimes against humanity for sexual slavery regarding the offenses in the camps.

Third, the Court considered violence against prisoners of war.

There is proof that indicates that, on 30 July 1983, the FANT arrested civilians and soldiers, and then killed them. Many prisoners of war were also tortured. 5000 fighters were arrested by the FANT and then imprisoned, followed by mistreatment and torture.

Prisoners transferred to N'Djamena faced shortages of water and food. 150 prisoners were chosen to be executed; only one survived. The officers of the DDS executed 19 prisoners after 1987. Following the battle of August 1983, 53 war prisoners were captured and shot by the FANT.

The Court considered that, at the time of those events, there was at the north of Chad both an internal conflict and an armed conflict against Libya. The Court is convinced that those facts properly characterize these crimes as war crimes, murder, torture, and illegal detention.

Nonetheless, the elements of the case do not compel the Court to apply the same designation to the crime of illegal transfer of prisoners or the right for prisoners to be judged with equity. [??]

The Court discussed the testimony by Hadija. Her testimony is consistent and is supported by the testimony of another female prisoner. Her silence could be explained by the fact she was scared and modest. The Court is convinced that she was telling the truth and that Habré forced her to have sex with him 3 times and oral sex after putting a pen into her lower belly and legs. The Court is also sure that Habré knew that she did not agree to those relationships and that he used his position as President to carry these acts out. Habré was declared guilty of rape, crimes against humanity, and torture.

The Court also discussed liability for the execution of soldiers suspected to have committed the massacre. In 1985, soldiers of the FANT killed more than 70 people. A week later, the FANT brought a message from Habré back to the village that denied his culpability for the massacre; those responsible were executed in order to gain back the trust of the village. This also characterizes crimes against humanity.

The Court discussed Habré's responsibility for group criminal enterprises. The elements of proof demonstrate that throughout his regime, the different phases of repression followed a similar procedure: selection of enemies, arrest, and detention, with collaboration between the DDS, the BSIR, the FANT, the presidential guard, and the presidential investigation services unit. Enemies of the regime were systematically tracked across all of Chad. An 8-year-long, wide-scale wave of repression had a common objective: to repress and prevent all opposition. This objective existed from when Habré took power. He resorted to homicide, abductions, disappearance, torture, and other inhuman acts. These elements of proof don't suggest that all the members of the criminal enterprise intended to participate in the rapes, but rape was a natural consequence of the common criminal enterprise. Women were detained in a climate of violence. The Court considered that members of a common enterprise may claim that there were many members, but there is evidence that Habré controlled the security organs involved in the joint venture, authorized and established the network of prisons, ensured the smooth operation of this enterprise, gave orders to arrest and execute, directly involved himself in interrogation and torture sessions, and was ultimately Supreme Chief of the Armies and Minister of Defense. He controlled the FANT and authorized transfers to the N'Djamena prison. The Court was convinced that Habré acted in concert with members of a common criminal enterprise and used those bodies to carry out the joint venture, but he was the decisive figure in this collaboration. In spite of his knowledge of the crimes, Habré did not sanction those who carried them out. He created an environment of impunity across Chad. The Court had no doubt that he

intended to commit these crimes, as highlighted by his explicit declaration of criminal intentions in a speech on 19 May 1989.

The Court found him guilty of torture, murder, summary execution, kidnapping, and inhuman acts. They were convinced that it was foreseeable that the crimes of rape and slavery were likely to be committed in this common criminal enterprise, and found him guilty of crimes against humanity, rape, and sexual enslavement.

The Court found him guilty of war crimes. There is evidence that he had effective control of the FANT and the DDS and personally involved himself in their operations. There is no doubt that he was aware of the torture of prisoners of war.

Habré is considered guilty of murders, torture, inhuman treatment, illegal detention and war crimes.

**Verdict:**

The Court found Hisssein Habré guilty of the following crimes under articles 10-2 :

- Crimes against humanity of rape, forced slavery, murder, mass executions, kidnapping and disappearing, torture
- Autonomous crime of torture

And under article 10-4:

- War crimes of murder, torture, inhuman treatments and illegal detention
- War crimes of murder, torture and inhuman or degrading treatment

Nonetheless, the Court found him not guilty of the crime of illegal transfer of prisoners.

In order to determine the punishment, the Court considered the gravity of the facts, their durability, the fact the crimes led to trauma, the fact that he had all the power, and that he created a system where impunity and terror ruled. The Court also noted that he was guilty of rapes, the fact that he did not recognize the importance of the court, and that he didn't talk or show his face.

The Court also considered his age and the fact that he was a good father as attenuating circumstances. They determined that these factors were outweighed by the aggravating factors they had previously listed.

The Court condemned Hisssein Habré to life imprisonment.

**Verdict in French**

**Hissène Habré est coupable, en application de l'article 10-2 du Statut des Chambres:**

- des crimes contre l'humanité de viol, d'esclavage sexuel, d'homicide volontaire, de pratique massive et systématique d'exécutions sommaires, d'enlèvement de personnes suivis de leur disparition et de torture (articles 6-a, 6-b, 6-f et 6-g);
- du crime autonome de torture (article 8).

**Hissène Habré est coupable, en application de l'article 10-4 du Statut des Chambres:**

- des crimes de guerre d'homicide volontaire, de torture, de traitements inhumains et de détention illégale (articles 7-1-a, 7-1-b et 7-1-f);
- des crimes de guerre de meurtre, de torture et de traitements cruels, inhumains ou dégradants (article 7-2-a).

**Hissène Habré est acquitté du crime de guerre de transfert illégal (article 7-1-f).**