

THE PROSECUTOR V. HISSEIN HABRÉ
The Trial Chamber of the Extraordinary African Chambers
Decision on Reparations
July 29, 2016

Judges:

Judge Gberdao Gustave Kam, Presiding
Judge Amady Diouf
Judge Moustapha Ba
Judge Pape Ousmane Diallo

Prosecution:

Mr. Mbacké Fall
Mr. Youssoupha Diallo
Ms. Anta Ndiaye Diop
Mr. Moustapha Ka

Defense:

Mr. Mounir Ballal
Mr. Mbaye Sene
Mr. Abdoul Gning

Civil Party Representatives for Clément Abaïfouta and Others:

Ms. Jacqueline Moudeina
Mr. Assane Dioma Ndiaye
Mr. Georges-Henri Beauthier
Mr. William Bourdon
Mr. Lambi Soulgan
Ms. Delphine Djiraibe
Mr. Alain Werner

Civil Party Representatives for RADHT and AVCRP:

Ms. Fatimata Sall
Mr. Laminal Ndintamadji
Mr. Philippe Houssine
Mr. Yaré Fall

Gender Keyword(s): Rape; Rape, Torture; Sexual Slavery

Procedural History: On June 30, 2013, following the orders of the Prosecutor of the Extraordinary African Chambers (EAC), Hisssein Habré was arrested and placed in custody.¹ On July 2, 2013, the Prosecutor seized the investigative chamber of the EAC with an indictment charging Hisssein Habré, Saleh Younouss, Mahamat Djibrine aka El Djonto, Guihini Kore,

¹ *Ministère Public c. Hisssein Habré*, Jugement, 30 May 2016, ¶ 60.

Abakar Torbo Rahma, and Zakaria Berdet for crimes against humanity, war crimes, and the stand-alone crime of torture committed in Chad between June 7, 1982, and December 1, 1990.² The same day, the investigative chamber indicted Hisssein Habré of these crimes and ordered his immediate detention.³ On July 15, 2013, and July 23, 2013, several groups of both direct and indirect victims joined the proceedings as civil parties, including *Clement Abaifouta and Others* (representing 291 direct victims and 725 indirect victims for a total of 1016 victims), *Réseau des Associations des Droits de l'Homme du Tchad* (RADHT), and the *Association des Victimes de Crimes et Répressions Politiques au Tchad* (AVCRP).⁴ These civil parties solicited reparations under article 27(1) of the EAC Statute.⁵ On May 30, 2016, the EAC convicted Habré of the crimes against humanity of rape, forced slavery, murder, the massive and systematic practice of summary executions, enforced disappearance of persons, and torture and inhumane acts under Article 6 of the EAC Statute.⁶ The Chamber also found Habré guilty of the stand-alone crime of torture under article 8 of the EAC Statute⁷ as well as the war crimes of murder, torture, inhuman treatment, illegal detention, and cruel treatment under Article 7 of the EAC Statute.⁸ The Trial

² *Id.* ¶ 61.

³ *Id.* ¶¶ 62, 96

⁴ *Id.* ¶¶ 66-68.

⁵ Article 27(1) of the EAC Statute provides that “The reparations measures awarded by the Extraordinary African Chambers are restitution, compensation and rehabilitation.” This digest uses the English translation of the EAC Statute prepared by Human Rights Watch, which is available at: <https://www.hrw.org/news/2013/09/02/statute-extraordinary-african-chambers#>.

⁶ *Ministère Public c. Hisssein Habré*, Jugement, 30 May 2016, p. 536. Article 6 of the EAC Statute defines crimes against humanity as “any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population:

- a) Rape, sexual slavery, enforced prostitution, enforced sterilization, or any other form of sexual violence of comparable gravity;
- b) Murder;
- c) Extermination;
- d) Deportation;
- e) The crime of apartheid;
- f) The enslavement or massive and systematic practice of summary executions, kidnapping of persons followed by their enforced disappearance;
- g) Torture or inhumane acts intentionally causing great suffering or serious injury to body or to physical or mental health, on political, racial, national, ethnic, cultural, religious or gender grounds.”

⁷ *Ministère Public c. Hisssein Habré*, Jugement, 30 May 2016, p. 536. Article 8 of the EAC Statute provides for jurisdiction over the stand-alone crime of torture, defined as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

⁸ *Ministère Public c. Hisssein Habré*, Jugement, 30 May 2016, p. 536. Article 7 of the EAC Statute defines “war crimes” as “any of the following acts concerning members of the armed forces, prisoners of war, or civilians, or property protected under the provisions of the Geneva Conventions of 12 August 1949:

- a) Murder;
- b) Torture or inhuman treatment, including biological experiments, or willfully causing great physical or mental suffering;
- c) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- d) Compelling a prisoner of war or other protected person to serve in the armed forces;

Chamber acquitted Habré of the war crime of illegal transfer.⁹ The Chamber sentenced Habré to life imprisonment.¹⁰ On July 29, the Chamber issued its decision on reparations for the civil parties,¹¹ which is digested here with a focus on the reparations for victims of crimes involving sexual and gender-based violence.

Disposition: The Trial Chamber orders Hissain Habré to pay the following individual reparations:

- 20,000,000 francs CFA to each victim of repeated rape or sexual slavery;
- 15,000,000 francs CAFA to each victim of arbitrary detention, torture, prisoners of war, and survivors of massacres;
- 10,000,000 francs CFA to each indirect victim (¶ 82).

The Chamber rejects the civil party requests for collective reparations (*id.*). The Chambre also declares inadmissible the civil party claims for reparations against the Chadian State because the State was not “given the opportunity to participate in the trial and contest the facts” because the request for reparations against the State was received after the close of trial (¶ 71, 75-75, 82).

Key Gender-Based Holdings:

RAPE

- In its judgments, the Trial Chamber convicted Habré of rape as a crime against humanity for the rapes of women and young girls detained by DDS agents and by Habré himself, as

e) Depriving a prisoner of war or other protected person of the rights of fair and regular trial;

f) Unlawful deportation or transfer or unlawful confinement;

g) Taking of hostages.”

Article 7 further provides for the jurisdiction of the Extraordinary African Chambers over “serious violations of Common Article 3 of the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Armed Conflicts and of the Second Additional Protocol to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, of 8 June 1977. These violations include:

a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

b) Collective punishments;

c) Taking of hostages;

d) Acts of terrorism;

e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

f) Pillage;

g) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;

h) Threats to commit any of the foregoing acts.”

⁹ *Ministère Public c. Hissain Habré*, Jugement, 30 May 2016, p. 536.

¹⁰ *Ministère Public c. Hissain Habré*, Jugement, 30 May 2016, p. 536.

¹¹ The reparations decision is appended to the Court’s judgment, and follows immediately after page 561 of the judgment.

well as the rapes of women held in the military camp of Ouadi-Doum by the camp's commander and other members of the military.¹²

- The Chamber decides to group together victims of rape and sexual slavery for the purpose of evaluating their reparations requests, noting that both of the groups were victims of several crimes, including torture and inhuman treatment, and thus that “these different harms are similar” (¶ 59). The Chamber finds that the victims « experienced physical, material, moral, and psychological damages of which they continue to experience the effects » (¶ 62). Given these harms et « the diversity of cases to consider », the Chamber « fixes the amount of reparations for each victim of sexual slavery and repeated rape at twenty million (20,000,000) francs CFA » (*id.*).

RAPE, TORTURE:

- In its judgment, the Trial Chamber convicted Habré of torture as a crime against humanity, as well as the stand-alone crime of torture, for the rapes of women and young girls detained by DDS agents, by members of the military, and by Habré himself.¹³ The Chamber also convicted Habré of rape for the same acts.¹⁴
- In its reparations decision, the Chambre fixes the amount of reparations for each victims of torture at fifteen million (15,000,000) francs CFCA, noting the serious harms and physical effects that these victims have suffered, including “loss of vision or of an eye, , skin lesions, fractures, sexual dysfunction, [and] heart, lung, gastrointestinal, muscular, and neurological problems” (¶¶ 64-65). Nevertheless, given that there is another group of victims which includes all the victims of rape and sexual slavery et to which the Chamber awarded 20,000,000 francs CFA each, it is not clear that there are any victims of rape who would receive these reparations for torture.

SEXUAL SLAVERY

- In its judgment, the Trial Chamber convicted Habré of sexual slavery as a crime against humanity for conduct committed by the commander and members of the military at the military camps of Ouadi-Doum and Kalait, who subjected women confined in the camps to forced sexual relations and to household labor et over whom they exercised “the powers associated with property rights.”¹⁵
- The Chamber decides to group together victims of rape and sexual slavery for the purpose of evaluating their reparations requests, noting that both of the groups were victims of several crimes, including torture and inhuman treatment, and thus that “these different harms are similar” (¶ 59). The Chamber finds that the victims « experienced physical, material, moral, and psychological damages of which they continue to experience the effects » (¶ 62). Given these harms et « the diversity of cases to consider », the Chamber « fixes the amount of reparations for each victim of sexual slavery and repeated rape at twenty million (20,000,000) francs CFA » (*id.*).

Other issues:

¹² *Ministère Public c. Houssein Habré*, Jugement, 30 mai 2016, ¶¶ 1516-1532 & p. 536.

¹³ *Ministère Public c. Houssein Habré*, Jugement, 30 mai 2016, ¶¶ 1571-89, 1806-1807 & p. 536.

¹⁴ *Ministère Public c. Houssein Habré*, Jugement, 30 mai 2016, ¶¶ 1516-1532 & p. 536.

¹⁵ *Ministère Public c. Houssein Habré*, Jugement, 30 mai 2016, ¶¶ 1571-82 & p. 536.

REPARATIONS

- The Chamber recalls that the EAC’s Statute permits it to award certain forms of reparations, namely restitution, compensation, and rehabilitation (¶ 54). In addition, the Chamber notes that the Statute provides “reparations may be awarded to victims individually or collectively, regardless of whether they participated in the procedures before the Extraordinary African Chambers” (*id.*). Regarding the evaluation of the amount of reparations, the Chamber notes that it is not required “to specify the bases upon which” it determines the amount (¶ 58).
- The Chamber decides to group together victims of rape and sexual slavery for the purpose of evaluating their reparations requests, noting that both of the groups were victims of several crimes, including torture and inhuman treatment, and thus that “these different harms are similar” (¶ 59). The Chamber finds that the victims « experienced physical, material, moral, and psychological damages of which they continue to experience the effects » (¶ 62). Given these harms et « the diversity of cases to consider », the Chamber « fixes the amount of reparations for each victim of sexual slavery and repeated rape at twenty million (20,000,000) francs CFA » (*id.*).