



## Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)

**ARGUED: 25 November 2024**

**DECIDED: 26 November 2024**

1 The Dissenting Opinion was agreed to and signed by Justice Deinek of the Republic of Mozam-  
2 bique and Justice Evans of the Kingdom of Sweden.

### 3 History/Facts

4 In 1990, Mr. Hissne Habr fled the Republic of Chad, herein referred to as Chad, following his forced  
5 removal from the presidential position, and proceeded to take refuge in the Republic of Senegal,  
6 herein referred to as Senegal. On 25 July 1999, the Kingdom of Belgium, herein referred to as Belgium,  
7 signed the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punish-*  
8 *ment*. On 26 January 2000, seven criminal complaints were filed in Dakar, Senegal. That same year on  
9 3 February, Mr. Habr is indicted in the Senegalese court and placed under house arrest. 4 July 2000 the  
10 indictment is dismissed as it was determined Senegalese law does not provided for the prosecution of  
11 Mr. Habr, Senegal proceeds to immediately start drafting an amendment to Senegalese constitution  
12 to provide for prosecution of Mr. Habr. 26 October 2000, 17 victims file in Chad's criminal court. 30  
13 November 2000, three Chadian victims who later acquired Belgian nationality filed a criminal com-  
14 plaint in the District Court of Brussels. 17 April 2001, President Wade of Senegal attempts request Mr.  
15 Habr leave Senegal. 23 April 2001, The Committee against Torture calls on Senegal not to expel Mr.  
16 Habr and to take all necessary measures to keep him in Senegal. 27 September 2001, Senegal agrees  
17 to hold Mr. Habr within their borders after intervention by the UN Secretary-General. 19 September  
18 2005, after a four year investigation, Judge Franssen of Belgium issues an international arrest warrant  
19 for Mr. Habr. 15 November 2005, Mr. Habr is placed in detention by Senegalese authorities. 26 Novem-  
20 ber 2005, Senegal defers judgment on the competent jurisdiction to try this case to the African Union.  
21 2 July 2006, The African Union deems Senegal has proper jurisdiction to try this case. 31 July 2007, the  
22 Senegalese National Assembly adopts legislation allowing the Senegalese courts to prosecute. 23 July  
23 2008, Senegal's parliament adopts an amendment to the constitution allowing Senegalese courts ju-  
24 risdiction over crimes against humanity committed before the 2007 legislation. Following that 20 new  
25 cases are filed in Senegalese criminal court. In that same year, Belgium was found in violation of Article  
26 10 of the Convention against Torture. 19 February 2009, Belgium brings the court before the ICJ.

### 27 Jurisdiction

28 The jurisdiction of the International Court of Justice has been secured through a variety of differ-  
29 ent avenues. The first of which is Article 30 of the Convention Against Torture. Article 30 states that "Any  
30 dispute between two or more parties concerning the interpretation or application of this convention  
31 which cannot be settled through negotiation shall, at the request of one of them, be submitted to ar-  
32 bitration. If within 6 months from the date of the request for arbitration the parties are unable to agree  
33 on the organization of arbitration, any one of those parties may refer the dispute to the International  
34 Court of Justice." This gives the ICJ the jurisdiction to hear cases under this treaty. The African Union  
35 also stated that the court has Jurisdiction. Assembly/AU/Dec.127(VII) 5 "Considering the jurisdiction of  
36 the International Court of Justice in this case." The African Union, upon hearing this case in their own  
37 court, states that the jurisdiction lies within the ICJ if the case is brought before them.

38 The final Jurisdictional backing is the statute of the court. Article 36 states that when there is  
39 a point of contention between 2 countries, the court has jurisdiction in this case. As this is a point of  
40 contention between the two countries, the ICJ has jurisdiction.

#### 41 Summary of Arguments

42 Belgium approached the Court seeking a decision by the Court on the extradition or persuasion  
43 of Mr. Hissne Habr. Belgium alleged that Senegal was in violation of the Convention against Torture and  
44 Other Cruel, Inhuman or Degrading Treatment or Punishment articles IV, V, V,I and VII. They claimed  
45 that Mr. Habr needed to be extradited to Belgium in order to prosecute as Senegal had violated the  
46 convention and failed to follow international law.

47 Senegal additionally argued that they have been altering Senegalese law since the first charge  
48 was brought against Habre in 2000. Senegal now has a new constitution, and says that under this new  
49 constitution, they should be able to prosecute in the near future. The new constitution has only been in  
50 effect for one year.

#### 51 Opinion

52 1.It is in the opinion of the Justices that signed that Senegal is not violate the Convention against  
53 Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment articles IV, V, V,I and VII. Arti-  
54 cle IV states,"Each State Party shall ensure that all acts of torture are offences under its criminal law." In  
55 the case of the Senegal, all acts of torture are offences under Senegalese law. In the issue of Senegal,  
56 it was the jurisdiction of the court that did not allow the immediate prosecution of Mr. Habre. Article  
57 V would be in violation if the Parliament of Senegal did immediately work to alter their law and con-  
58 stitution following the court case in Senegal that showed a gap in the legal system. They were not in  
59 violation of Article VI as following the initial filing of a criminal case in the Senegalese court, the State  
60 had immediately made a preliminary inquiry into the facts with their arrest and holding of Mr. Habre in  
61 2000. Neither was it in violation of Article VII, as until 2005 Senegal could not safely extradite Mr. Habre.  
62 In fact, after 2005 multiple international governmental bodies, including the UN itself and the African  
63 Union, called on Senegal to keep Mr. Habre within their custody.

64 2. Belgium cannot prosecute due to a 2003 amendment to the Belgium Law Concerning The  
65 Punishment of Grave Breaches of International Humanitarian Law. This law states that if the country  
66 they are attempting to extradite from is considering war crimes, Belgium cannot then extradite and  
67 prosecute the accused. This means that under Belgium's own law they cannot prosecute Mr. Habre.  
68 Extraditing Mr. Habre to Belgium in order to prosecute him is direct violation of Belgium law and is  
69 against the best interest of the global community.

70 3. Under Article 3, "No state Party shall expel, return, or extradite a person to another state where  
71 there are substantial grounds for believing that he would be in danger of being subjected to torture."  
72 This is the main reason that extradition to Chad would not be possible. Chad has put out a death order  
73 for Mr. Habre, and he would not be safe there. During the oral arguments, Belgium stated that "House  
74 Arrest is not enough of a punishment for a genocidist." This shows they have decided the outcome of  
75 this case before even hearing him in court. It is our stance that Belgium hasn't substantially shown the  
76 safety of Hissene Habre, leading us to question the legitimacy of their claims against Senegal.

77 4. The timeline discrepancies in this case pose a major concern. One such discrepancy is the  
78 issue of Belgium not being a party to this agreement for the first half of the time frame they listed as  
79 opportunity to prosecute. Another discrepancy is the order in which criminal complaints were filed. The  
80 first formal complaint was actually filed by Senegal and then Chad making Belgium the Third party to  
81 file a case. Senegal then filed 20 additional claims in 2008 under their revised constitution. These re-  
82 vised laws allow Habre to be prosecuted in Senegal. As well, prior to Belgium's request for extradition  
83 only 4 years ago, Senegal could not extradite. Senegal could not extradite to Chad as they never ac-  
84 cepted this request. He would not have been safe, and there was no other country that was able to or  
85 wished for an extradition before 2005.

86 5. The most common legal themes are those of the Burden of Proof. The lowest burden of  
87 proof is the Preponderance of the Evidence. Even when not explicitly stated, the preponderance of the  
88 evidence is used. No judge would make a ruling where the 51% likelihood of the preponderance of the  
89 evidence is not met. If the burden of proof is not met then the default ruling is for the Respondent.

90 We do not feel as though at this most basic level, the burden of proof has been effectively met. The  
91 preponderance of the evidence says it is 51% likely that the statement made by the petitioner is correct  
92 and that simply is not the case. Belgium did not prove to any certainty that there was an inherent risk  
93 to Senegal nor that they would be any safer.

94 Conclusion

95 In conclusion, the Justices that signed this dissenting opinion hold the view that Belgium did  
96 not provide substantial evidence that they would prosecute or that at this point Senegal would be  
97 unable to move forward with the multiple cases against Mr. Habre within Senegal. We do not believe  
98 that extradition is within the best interest of the international community at this time. We request tha  
99 Mr Habre remain in Senegal while awaiting charges in a trial from the African Union. We request the  
100 African Union try the case and if there are questions on how best to proceed with that, we will provide  
101 clarification as needed.

Signed By

A handwritten signature in cursive script, appearing to read "Kaylin Evans".

---

Justice Kaylin Evans

A handwritten signature in cursive script, appearing to read "Jacqueline Deinek".

---

Justice Jacqueline Deinek