

-Humanitarian Law RULES!

Center for the Study of Humanitarian Law
Newsletter

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Hissène Habré's Case - Head of State Immunity?

Mr Hissène Habré is the first former head of state to be convicted by a court of another state. Habré, who ruled over Chad from 1982 to 1990, was alleged to have carried out some 40,000 politically motivated murders and was implicated in 200,000 cases of torture during his rule, in order to discourage people from challenging his leadership. In 1990, he was deposed and fled to Senegal.

Senegal was reluctant to bring Habré to trial for these alleged crimes. However, following international pressure and possibly a change in leadership, Senegal signed an agreement with the African Union (AU) to establish an Extraordinary African Chambers in the Senegalese court system (CAE) to try Habré. The CAE found Habré guilty of war crimes, crimes against humanity, and torture and sentenced him to life imprisonment.

A key question raised when prosecuting heads of state is whether they enjoy immunity in criminal proceedings. In answering this, there are two types of immunity that must be considered: "functional immunity" and "personal immunity". Functional immunity prevents a head of state from being held personally responsible for "official acts". However, functional immunity does not apply to genocide, war crimes, and crimes against humanity, thereby enabling heads of state to be prosecuted for such crimes. On the other hand, personal immunity is absolute, meaning that foreign domestic courts cannot exercise criminal jurisdiction over a sitting head of state, even when charged with crimes against humanity and war crimes. It remains controversial, however, as to whether there are exceptions to this rule for allegations of genocide, or whether states assisting the International Criminal Court (the ICC) can arrest and surrender a serving head of state to the ICC. In any event, any ad hoc tribunal established by the United Nations Security Council can prosecute a serving head of state.

In Habré's case, given that he was no longer a head of state, he could not rely on personal immunity to avoid prosecution. The more significant issue was whether any state would be willing to prosecute him. Habre's case shows that, while the AU has persistently opposed the issuing of arrest warrants against sitting African heads of state, Africa is willing to prosecute former African leaders in Africa, providing that the time is right.

LIBRARY HOURS

July 2016

Mon to Fri: 8.45am – 5.30pm

UPCOMING EVENTS

ECCC Lecture Series – *Saturday 20 August, time TBA*

International Humanitarian Law
Documentary Series – *dates TBA*

RESEARCH AT THE LIBRARY

Did you know that you can access online databases, Westlaw International and Westlaw UK, at the library? These databases give you access to 1000s of documents that will help you with your research. And if you need help using them, we're more than happy to assist!

