

IN THE INTERNATIONAL COURT OF JUSTICE

**THE KINGDOM OF BELGIUM,
APPLICANT**

V.

**THE REPUBLIC OF SENEGAL,
RESPONDENT**

MEMORIAL OF THE REPUBLIC OF SENEGAL

COMES NOW the Republic of Senegal, and for its Memorial to the Court, respectfully states the following:

STATEMENT OF LAW:

- 1.) Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984): Senegal is a signatory to the Convention and acknowledges its obligations under Articles 5 and 7 to either prosecute or extradite individuals accused of torture. However, Senegal disputes Belgium's interpretation of these obligations within the context of state sovereignty and regional stability.
- 2.) Customary International Law: Senegal recognizes the principle of universal jurisdiction for serious international crimes, but emphasizes that the prosecution of former heads of state, particularly those who were granted asylum, must take into account the complexities of state sovereignty, regional stability, and international cooperation.
- 3.) African Union's Role: Senegal's actions have been guided by the African Union, a regional body, in accordance with the principle of subsidiarity. Senegal has accepted the AU's recommendation to try Habré within its jurisdiction, in line with the notion of regional adjudication of international crimes.

STATEMENT OF FACT:

Hissène Habré, former President of Chad from 1982 to 1990, is accused of grave international crimes, including war crimes, torture, and crimes against humanity. Following his ousting, Habré sought asylum in Senegal. Senegal adhering to international principles, including non-refoulement acts, granted Habré political asylum, fully aware of the sensitive nature of the allegations and the regional dynamics at play.

Alleged victims, including citizens of Belgium, lodged complaints in the Senegalese court. However, due to jurisdictional limitations, under Senegalese law at the time, the complaints were dismissed. In 2005, Belgium initiated extradition proceedings under the principle of Universal jurisdiction, citing Senegal's obligation to prosecute or Extradite Habré under the 1984 Convention Against Torture (CAT).

In light of the complexities of international justice and regional stability, Senegal deferred matters to the African Union (AU). In 2006, the AU's Committee of African Jurists recommended that Senegal prosecute Habré within its jurisdiction. Senegal accepted the AU's recommendation and has since undertaken significant legislative and procedural reforms to align its legal system with the international standards for the prosecution of serious international crimes.

On 19 February 2009, Belgium filed an application before the International Court of Justice (ICJ), alleging that Senegal violated its obligations under the Convention Against Torture by failing to either prosecute or extradite Habré

STATEMENT OF JURISDICTION:

- 1.) Senegal disputes the jurisdiction of the International Court of Justice under Article 30 of the Convention Against Torture. Senegal maintains that no genuine legal dispute exists between Belgium and Senegal regarding the interpretation or application of the Convention.
- 2.) The referral of the matter to the African Union and Senegal's acceptance of the AU's recommendation to prosecute Habré within its jurisdiction demonstrate a commitment to justice and regional stability. Senegal's actions, including legislative reforms, reflect its good faith compliance with its international obligations.
- 3.) Accordingly, Senegal contends that Belgium's claim of inaction is unfounded, and there is no legal basis for the ICJ to intervene in this matter. The issue falls squarely within the regional framework provided by the African Union.

ARGUMENTS

I. Lack of Jurisdiction

1. Senegal asserts that the ICJ lacks jurisdiction under Article 30 of the Convention Against Torture. No genuine dispute exists between Senegal and Belgium, as Senegal has demonstrated active steps toward prosecution.
2. Senegal's referral to the AU, and subsequent acceptance of the AU's recommendation to try Habré, indicate that Senegal is pursuing a regional geographic solution consistent with its obligations under international law. As such, regional mechanisms for justice, led by the AU, should be the primary forum for adjudication.
3. International adjudication is unwarranted when effective regional processes, endorsed by the relevant legal authorities, are functioning. Belgium's attempt to bypass these mechanisms undermines the principle of subsidiarity and regional sovereignty.

II. Senegal's Actions in Good Faith

1. Senegal has taken substantial legal and procedural steps toward prosecuting Habré. Delays are attributable to legislative and judicial reforms necessary to establish the framework for prosecuting serious international crimes, rather than a failure to act.
2. In accepting the AU's recommendation to prosecute Habré, Senegal has demonstrated a clear commitment to fulfilling its obligations under the Convention Against Torture. These actions are in full alignment with the international community's expectations of states acting in good faith.
3. Senegal's legal system, at the time of Habré's asylum, did not possess a comprehensive framework for the prosecution of international crimes. Since then, Senegal has undertaken significant reforms, including the amendment of national legislation, to align its judicial system with international standards.

III. Prosecution in Senegal Is a Regional Solution

1. Regional solutions, particularly within the context of international crimes involving former heads of state, are more appropriate and sensitive to the nuances of regional stability. The African Union, as the leading continental body, has played a pivotal role in this case by providing legal recommendations to Senegal.
2. Senegal contends that Belgium's insistence on extradition undermines the regional judicial process and could destabilize the delicate balance of justice and peace within the region. Senegal remains fully committed to ensuring justice, but through the regional mechanisms prescribed by the AU.
3. Belgium's application attempts to interfere with Senegal's sovereignty and the African Union's adjudicative role, thus disregarding the importance of regional adjudication of international crimes.

IV. Absence of Dispute

1. No genuine legal dispute exists between Belgium and Senegal. Senegal has consistently maintained its commitment to prosecuting Hissène Habré, and Belgium's claim that Senegal has failed to act is unsupported by the facts.
2. Senegal has acted in good faith, taking into account the legal and procedural complexities involved in the case. The absence of a completed trial does not indicate a failure to comply with international obligations, but rather reflects the necessary judicial reforms required for such a complex case.
3. Belgium's application to the ICJ, insisting on extradition, is an unnecessary and premature escalation, as Senegal is prepared and committed to prosecuting Habré within its own jurisdiction.

SUMMARY AND REQUESTS

Reiterating the fact that Senegal has acted in accordance with its obligations under the 1984 Convention Against Torture and in line with the African Union's recommendations, the Republic of Senegal prays the Court to adjudge and declare that: The International Court of Justice lacks jurisdiction to hear Belgium's claims, as no genuine dispute exists between Senegal and Belgium under Article 30 of the Convention Against Torture. Senegal has fulfilled its obligations under the Convention Against Torture, by taking significant steps toward the prosecution of Hissène Habré, including legislative reforms and adherence to the African Union's recommendation to try Habré within Senegal. The Court should dismiss Belgium's application and recognize that Senegal's compliance with regional judicial mechanisms aligns with international law and respects the principle of subsidiarity. The Court should order Belgium to refrain from interfering in the ongoing regional judicial process, respecting the role of the African Union and Senegal's sovereign right to prosecute Hissène Habré domestically.