

COMMENTARY

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The Extraordinary African Chambers: A New Approach to Victim Participation in International Criminal Tribunals?

This guest post is written by Jeanne Elone, a program officer at [TrustAfrica](#). The views expressed below do not necessarily reflect the views of the Open Society Justice Initiative.

Twenty-five years after his fall from power, former Chadian President Hissène Habré is standing trial before the Extraordinary African Chambers in Dakar, Senegal. The Extraordinary African Chambers (EAC) is an *ad hoc* chamber established within the Senegalese courts by [agreement](#) between the African Union and the government of Senegal. The mandate of the EAC is to judge those most responsible for the crimes committed in Chad between 1982 and 1990, the period of Habré's presidency, during which an estimated 40,000 people were killed or disappeared. President Habré's regime was marked by grave human rights violations and targeted violence against the Chadian population, notably against specific ethnic groups including the Sara, the Hadjarai, the Zaghawa, and Chadian Arabs. The charges against Habré include crimes against humanity, war crimes, and torture, and are based on the findings of a [nineteen month-long investigation](#).

The Extraordinary African Chambers are groundbreaking in many respects. This is the first time an African head of state is facing justice in another African country. It is also one of the first occasions that an African court is operating under the principle of universal jurisdiction. The EAC is especially pioneering in the role played by victims in bringing the case to trial as well as their participation in proceedings. As a result, the EAC has the potential to inform the practice of victim participation in international criminal trials.

Victims and their advocates have been at the center of the pursuit of justice for the crimes committed in Chad under Habré's regime. Beginning in the 1990s, Chadian victims' organizations sought legal action against the ousted president. Before there was any hope of bringing Habré to justice, victims' associations in Chad compiled documentary evidence. [Souleymane Guengueng](#), an accountant who was jailed for two and half years, collected over 792 testimonies from victims of the Habré regime. His fellow prisoner and friend, [Clement Abaifouta](#), was also able to store thousands of documents recovered from the Habré regime's political police, the Documentation and Security Directorate (DDS), which became the basis for future legal action.

Habré's trial before the Extraordinary African Chambers in Senegal crowns a hard-won battle led by Chadian and Senegalese victims' organizations over more than 20 years. The first case was filed in 2000 before judicial authorities of Senegal, where Habré has lived since fleeing Chad in 1990. After declaring itself not competent to hear the case, Senegal received an injunction from the International Court of Justice (ICJ) to extradite the former Chadian president if he could not be tried in domestic courts. The decision followed a complaint filed by Belgium against Senegal before the ICJ after Senegal refusal to extradite Habré to Brussels. Under pressure from victims' organizations and the [ICJ extradition order](#), the government of Senegal sought counsel from the African Union which recommended that Senegal try Habré "on behalf of Africa." On January 30, 2013 the [statute](#) of the Extraordinary African Chambers was adopted and on July 20, 2015 the trial of Hissène Habré opened in Dakar, Senegal.

Given victims' central role in bringing Habré to justice, their participation in the trial is necessary in order to render the proceedings legitimate and credible. The EAC is governed by international law and the Senegalese Penal Code. Unlike the majority of *ad hoc* tribunals to date, the EAC is rooted in the civil law system, which provides significant opportunities for victim participation. These include victims' ability to constitute civil parties and the right to join civil claims with criminal prosecutions. This is markedly different from the common law system, where the participation of victims is generally restricted to the role of witnesses or submitting impact statements.

Victims have historically also had narrow participation in international criminal tribunals. At the ICTY and ICTR, for example, victims have a limited role in trials, much like in a common law system. At the ICC, victims have an expanded role and are allowed to be active participants in the trial. However, they are not able to constitute civil parties. Victims' participation as civil parties before the Extraordinary African Chambers (EAC) builds and expands on the jurisprudence of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the only other *ad hoc* tribunal based on the civil law system.

As a result, and pursuant to article 14 of its statute, the EAC has accepted both direct victims and indirect victims of the Habré regime to constitute themselves as civil parties. After 25 years, the main evidence of the crimes committed is based on the testimonies and experiences of victims, those who survived the brutalities committed against them and those who suffered the loss of loved ones. As a result, both direct and indirect victims have been at the center of proceedings from the start.

However, because the interpretation of the EAC statute is under the discretion of the judges, it remains to be seen whether the judges' decisions will facilitate more active victim participation. Thus far, the presiding judge has been favorable to victims' participation both as witnesses and civil parties and has allowed a wide latitude in the role played by civil parties during the criminal phase of the trial. This marks a departure from the ECCC jurisprudence, for example, where judges decided to limit the participation of victims in order to address concerns related to equality of arms. This has not been the case so far in the Hissène Habré trial, where all 10 civil party lawyers have been able to address the court and question witnesses for both the prosecution and the defense.

The central role of victims in the Habré trial represents an important opportunity to consider alternative modes of victim participation in international trials. While the circumstances of the EAC are unique, a single defendant accused of crimes during a relatively limited time period, the case remains instructive for future efforts to advance accountability on the continent. Moreover, the role of Senegalese and Chadian civil society and journalists in monitoring the trial and relaying information to victims' communities in Senegal and Chad also provides an important learning experience for future *ad hoc* tribunals in Africa. The proposed Special Court for the Central African Republic may present the next opportunity to advance the practice of victim participation in international tribunals, hopefully informed by the lessons learned from the Extraordinary African Chambers.