

Justice delayed...but delivered

Accountability for sexual violence and the trial of Hissène Habré

Key points: regional prosecution of conflict-related sexual violence; universal jurisdiction; evidence; testimony of sexual violence victims; amending indictments to include sexual violence; amicus curiae submissions on conflict-related sexual violence; proving rape and sexual slavery as crimes against humanity; elements of sexual slavery; proving non-consent through evidence of coercive circumstances; direct perpetration of sexual violence by senior official; application of ICTY and ICTR jurisprudence on sexual violence; sexual violence as torture; compensation for sexual violence crimes

The 30 May 2016 verdict against the former Chadian dictator Hissène Habré marked the end of a long journey to find justice for the many victims of his crimes. The Extraordinary African Chambers (EAC or Chambers) found Habré guilty of numerous war crimes and crimes against humanity which had been committed between 1982 and 1990, when he was the President of Chad, and oversaw the notorious Directorate of Document and Security (DDS). The Chambers concluded that at Habré's direction and with his endorsement, the DDS carried out thousands of killings, torture, rapes, arbitrary imprisonment and other heinous acts. He was specifically found guilty of murder, torture and inhumane treatment, illegal transfer and detention, and violation of life and physical health as war crimes, as well as of rape, sexual slavery, deliberate murder, massive and systematic public executions, kidnapping and disappearance, torture and inhumane acts as crimes against humanity. He was also found guilty of torture as a separate offence under the Statute of the Extraordinary African Chambers. He was sentenced to life in prison.

A total of 93 witnesses, including many survivors of the crimes Habré committed and oversaw during his tenure as Chadian President, appeared before the EAC, most travelling from Chad to Senegal for the trial. Their testimony was instrumental to the three-judge panel in finding Habré guilty of the crimes from which he had escaped prosecution for over 25 years.

Read more: background to establishment of the EAC:

The case brought before the EAC was not the first time charges had been brought against Habré. The road to the Extraordinary Chambers was a long and onerous one. In January 2000, a complaint against him was initially filed by a group of Chadian victims in Senegal where he fled after being deposed. The following month, a Senegalese judge indicted Habré on charges of crimes against humanity, torture and "barbaric acts." This indictment was dismissed by the Appellate Courts. In dismissing the case, the Appellate Courts determined that the Senegalese courts lacked the competence to try crimes which were committed abroad.

After the case was dismissed in Senegal, three Belgian citizens of Chadian origin filed another case against Habré in Belgium in November 2000. For four years, Belgian authorities investigated the case and subsequently indicted Habré in 2005, at which

time they sought his extradition from Senegal. A Senegalese court held that it lacked competence to make a ruling on their extradition request.

In 2006, the African Union called upon Senegal to prosecute Habré “on behalf of Africa” in its own courts. Senegalese law was subsequently amended to allow universal jurisdiction over international crimes, including torture and crimes against humanity. Days before a budget for his trial was agreed to in November 2010, the Court of Justice of the Economic Community of West African States ruled that Habré should be tried before a “special ad hoc procedure of an international character.” In response to this request, the AU proposed the creation of special chambers within the Senegalese justice system. Senegal rejected this plan in May 2010. In July 2011, Senegal’s foreign minister ruled against holding Habré’s trial there. Thereafter, the Chadian government declared its support for Habré’s extradition and trial in Belgium.

Between 2011 and 2012, Belgium issued three additional extradition requests to the Senegalese government which were never properly transmitted to the Senegalese courts. In response, Belgium filed suit against Senegal before the International Court of Justice (ICJ). The ICJ found that Senegal had failed to meet its obligations under the UN Convention against Torture and Other Cruel, Inhumane, or Degrading Treatments or Punishment. It ordered Senegal to either extradite Habré or prosecute him “without further delay.”

The new Senegalese President, Macky Sall, supported the ICJ decision and reaffirmed its commitment to start the trial against Habré. Subsequently Senegal and the AU reached an agreement to create the EAC which were inaugurated in Dakar on 8 February 2013. The EAC conducted a nineteen month investigation, finding sufficient evidence to indict. The trial against Habré commenced in July 2015.

Evidence of sexual violence emerges belatedly

Habré’s trial marked the first time that a court established in one African country prosecuted the former leader of another for crimes against humanity and war crimes under the principle of universal jurisdiction. It is also the first instance of a former head of state charged with human rights abuses being found guilty of personally committing crimes of sexual violence.

The case is also noteworthy for the recognition of sexual violence crimes committed during conflict, which were not initially enumerated in the indictment against Habré. Reed Brody of Human Rights Watch (HRW), who was integrally involved in seeing the case against Habré brought to trial, explained that in early interviews women who had survived imprisonment under the regime never mentioned rape, which is a taboo subject in traditional Chadian society.¹ He also noted that the HRW study on Habré’s rule hardly mentioned rape nor was it included in the indictment. But as the possibility of Habré’s trial became more concrete, the survivors who had endured sexual violence began to share their stories.²

It was mid-trial before a survivor of sexual violence came forward to describe what had occurred to her during the rule of Habré’s regime. Her testimony opened the door to more victims coming forward – who testified in open court without protective

¹ Breaking the Silence of a Dictator, Reed Brody, Huffington Post, 22 June 2016.

² Breaking the Silence of a Dictator, Reed Brody, Huffington Post, 22 June 2016

measures within a few meters of Habré. It soon became apparent that acts of rape and other forms of sexual violence were the norm during Habré's reign. Victims of the sexual violence included men, women, and children. Examples cited in testimony included the rape and killing of a girl who was less than 10 years old; the transfer of women to a desert camp where the detained women were used as sex slaves and domestic servants; and the torture of imprisoned men and women, including some pregnant women, with bayonets, pieces of wood and electric shocks.

Realizing the importance of adding these sexual violence crimes to the charging instrument against Habré, the Human Rights Center at University of California, Berkeley School of Law, along with sixteen leading international experts in the field of sexual violence, filed an Amicus Curiae brief. The argument presented supported the, "requalification of charges so as to more fully account for the rape, sexual slavery, forced prostitution and other forms of sexual violence" which had been established throughout the trial by the testimony of the victims.³ The Chambers did not formally admit the brief into the case record, as the filing of amicus briefs is not common practice in the Senegalese courts. However, Judge Kam commented that the brief would serve as a helpful resource in the judges' deliberations. Additionally, the filing and subsequent public dissemination of the brief made it possible for the victims' lawyers to incorporate the arguments made within it into their own arguments. Ultimately, the judges permitted the revision of the charges to include counts of sexual and gender-based violence and when the verdict was read against Hissène Habré, he was found guilty of sexual slavery and rape as crimes against humanity and as the underlying act of the crime of torture.

The absence of sexual violence charges in the Habré indictment is not a unique occurrence in the prosecution of crimes committed in conflict situations. A myriad of reasons may coalesce which result in overlooking and undercharging sexual violence. These reasons can include unintentionally placing less importance on sexual violence during the investigative stage. This may occur as a result of the overwhelming number of crimes being examined, or narrow approaches to the perpetrators pursued or the evidence collected. Additionally, because of the very nature of sexual violence crimes, victims may be reluctant to come forward with their evidence. Victims may balance the potentially negative effects of testifying (such as, stigma, security concerns, social consequences for themselves and their families, ostracisation etc) against the probability that their disclosure will lead to any tangible justice. The Habré case underscores the importance of investigators working international crimes being appropriately trained to remain vigilant to the likelihood that sexual violence crimes were committed and to tailor their approaches to the investigations accordingly. It also highlights the importance of considering whether new steps to investigate sexual violence are needed over time, particularly when investigations have been ongoing for many years, but concrete prospects of criminal accountability have only developed at a later stage.

Drawing on international precedents to define crimes of sexual violence

In its reasoning, the Chambers relied on ICTY jurisprudence on sexual violence, including the landmark cases *Furundžija*, *Kvočka et al.* and *Kunarac et al.*, as well as the jurisprudence of the ICTR, ICC and the SCSL, to reach its conclusions.

³ [Amicus Curiae Brief - Human Rights Center - University of California Berkeley, School of Law](#)

The Chambers concluded that the crime of sexual slavery enumerated in Article 6 of the EAC's Statute is a form of enslavement and focused on the material elements of: (1) the exercise of ownership rights over a person (for example, by means of buying, selling, lending, bartering, or imposing a similar deprivation of their liberty) and, (2) causing such persons to engage in one or more acts of a sexual nature.⁴ The Chambers noted sexual slavery is a continuous crime and relied upon the Judgment in *Kunarac et al.* in establishing that the amount of time a victim is enslaved should be considered when determining the exercise of ownership.⁵

With regard to the women held in the desert military camps, the Chambers found that the transfer and detention of these women to the isolated military camps in the midst of mined surroundings eliminated any freedom of movement. In essence, this had the effect of depriving the women of their liberty. Additionally, it found that the perpetrators took advantage of the women's vulnerable position by enslaving the women, forcing them to do domestic work and raping them.⁶ In finding that the elements of sexual slavery had been established, the Chambers noted that the women in the camps were forced to live in captivity for prolonged periods of time with no possibility of escape and exercised no autonomy. Furthermore, the Chambers noted that the perpetrators exerted complete control over of the women, including their reproductive powers.⁷

In its discussion of rape, the Chambers relied upon the definition of consent established in *Kvočka et al.*⁸ It also cited the *Kunarac et al.* Appeals Chamber in holding that, in cases of crimes against humanity or war crimes, the circumstances are nearly always coercive, which makes any notion of true consent impossible.⁹

The Chambers found in its discussion of torture and the treatment of female prisoners that, in addition to the long interrogations, sustained and repeated bodily and psychological abuse, the prisoners also suffered from "sexualized abuse". This included the electrocution of genitalia and the insertion of a bayonet into one detainee's vagina.¹⁰

The Chambers quoted the *Kunarac et al.* Appeals Chamber's determination that certain acts, such as rape, inherently cause severe pain and suffering justifying their characterisation as torture.¹¹ In its discussion, the Chambers highlighted the connections between rape and other forms of ill treatment as well as the frequency and institutionalisation of the violence against Habré detainees. Additionally, it found the rape and abuse of the women detainees was intended to punish and/or intimidate, or to obtain information or a confession from the victims.¹²

⁴ Trial Judgement, *Ministère Public c. Hissein Habré*, para. 1502, citing, *inter alia*, Rome Statute, Elements of Crimes, Article 7(1)(g)-2.

⁵ *Habré* TJ paras.1503-1504.

⁶ *Habré* TJ, para.1535

⁷ *Habré* TJ, para.1536

⁸ *Habré* TJ para.1508.

⁹ *Habré* TJ,para.1510.

¹⁰ *Habré* TJ,para.1572.

¹¹ *Habré* TJ,para.1552.

¹²*Habré* TJ,para.1573.

The EAC's reliance upon the jurisprudence of the ICTY, ICTR, ICC, and SCSL illustrates the important progress which has been made over the past several years in moving forward the understanding of sexual violence in conflict. The addition of the sexual violence charges by the Chambers against Habré was a huge victory for the victims of his crimes and also signals to other would-be perpetrators that accountability for these types of crimes can happen, regardless of the passage of time.

Compensation for sexual violence victims

On 29 July 2016, Habré was ordered by the EAC to pay millions of US-Dollars in reparations to his more than 4,700 victims, who were civil parties in the trial against him. In the words of Souleymane Guengueng, a survivor of the notorious Habré prisons and founder of the Association of Victims of Crimes of the Regime of Hissène Habré, "Money will never bring back my friends...But money is important to heal the wounds, to take victims out of poverty, and to show that we have rights that must be recognised." Habré was ordered to pay each survivor of rape and sexual slavery 20 million Central African francs (\$33,898); each survivor of torture, arbitrary detention, and mistreatment during imprisonment 15 million Central African francs (\$25,424); and each surviving family member of victims 10 million Central African francs (\$16,949). The Chambers rejected the civil parties request for collective reparations. It is yet uncertain where the money will come from to pay the victims, because upon Habré's arrest the authorities seized only two small bank accounts and a house in Senegal worth less than one million dollars. According to the Chadian Truth Commission, when Habré was ousted and fled Chad, he stole around 11.8 million Euros from the national treasury. Additionally, it is believed that he received many cash gifts during his time as Chadian President, including one million U.S. Dollars from Saddam Hussein. To that end, Jacqueline Moudeina, the attorney representing the civil party victims, believes the ongoing search for his hidden financial resources will be essential.

Lessons for the future

Following this verdict, there is much speculation as to whether the EAC will serve as a blueprint for other hybrid courts to be set up in the future. The EAC was set up by the African Union within the existing Senegalese justice system for the sole purpose of bringing the case against Habré to trial. It operated within a relatively small budget of \$9.5 million (as compared to the ICC or other ad hoc tribunals) and was able to bring the case to a conclusion within 10 months, a short time frame given the scope and breadth of the crimes committed. The verdict demonstrates to both the population and international legal observers that, under universal jurisdiction, justice could be sought in a regional court in Africa and delivered against those most powerful who are culpable of grave offences.

In the Habré case, the collective and tireless work of the victims, their advocates and various NGOs, including the extensive assistance and advocacy of Human Rights Watch, came together to make sure that his victims would not be forgotten and that Habré would be held accountable. It was through their sheer determination and persistence that justice for all those who suffered under Hissène Habré's rule was finally found. Nevertheless, the case again underscores the risk that sexual violence crimes will be missed during the investigation of international crimes and the need for proactive strategies, as well as continued vigilance and review to reduce the prospects of this happening again in the future.