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DOCUMENTATION

Victims bring a Dictator to Justice

The Case of Hissène Habré

By Reed Brody

Member of actalliance

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Content

Foreword

Already in the 1990's Werner Lottje, the founder of the Human Rights Unit within the German Diakonie, followed the fate of the victims of Hissène Habré's regime and their fight against impunity. He was convinced that when perpetrators of human rights violations are brought to justice the circle of further human rights violations is interrupted. A state that does not prosecute human rights violations suggests that it is not founded on the rule of law, but on arbitrariness. Victims have no chance of compensation or reparation.

The case of the victims of the ex-dictator Habré shows impressively how important it is for victims of human rights violations to testify in court, and therefore publicly, on the brutal acts and the injustice done to them. Only after the court proceedings had begun and after having been encouraged by the victims' lawyer Jacqueline Moudeïna, did the women who had been sexually abused by Habré's soldiers and by Habré himself decide to testify. Although sexual abuse is a taboo subject in Chad and it was very difficult for them to speak about the systematic rapes, they described the great relief and contentment they felt at being able to tell their personal stories of suffering in front of the perpetrator and the judges.

What also makes this trial especially historic is the forum in which it took place: Following a lengthy process in Belgium and before the International Court of Justice, Habré was finally tried before a newly created court in Senegal where both national and international law was applied. It was also new that this trial did not take place in Europe but rather on the African continent. This lead to significantly more acceptance in Africa than there is for cases coming from The Hague, which is often perceived as neocolonial.

Besides these successes, the documentation also shows, however, how much endurance is required to hold someone accountable for international law crimes. It took more than two decades before Habré was finally convicted. Time and again, it seemed that there would be no further progress. However, the victims' associations and their lawyers did not give up and, with ingenuity and courage, they often broke new legal ground. Furthermore, the Habré case demonstrates to non-governmental organizations and financial donors how important a long-term commitment is in the cases of crimes under international law. As these cases will rarely lead to results in the regular project cycle of three years with its narrow impact measurement. Therefore Human Rights Watch deserves credit for its perseverance. The human rights organization continued working on this case even in times when there seemed to be no success in sight. This can serve as a lesson for future processes.

The case against Habré, as it was managed by Jacqueline Moudeïna and the other victims' lawyers, was a masterpiece of strategic litigation. They linked the work on the individual case with a lot of awareness-raising and outreach work. This was not just to move the case itself forward, but also to make public the stories of many other victims of the Habré regime. That way they managed to use the case to raise awareness and come to terms with the past far beyond the individual case. By pointing out at the structures and mechanisms that led to the injustice this work also plays an important role in preventing these sorts of violations from reoccurring.

The current human rights violations in Chad show just how important this is. Even though the trial received a lot of attention in Chadian society, the human rights situation in the country is getting worse again.

Unfortunately it was not possible to address the role of western states before the court. The United States and France, in particular, set Habré up as an opponent of Gaddafi and supported him for a long time. Today the international community continues to support the Chadian government in the context of measures to combat terrorism due to its geographic location and, in doing so, is further strengthening a regime which, post-Habré, is still based on repression and arbitrariness and not on the rule of law or the protection of human rights.

It is especially due to the tireless commitment of the lawyer Reed Brody that Habré was finally tried after two decades. We are therefore pleased that we managed to recruit Mr. Brody as author of this documentation. Even though Habré was convicted at first instance, this does not by any means constitute an end point in the struggle for the rule of law and justice. Instead, it is a milestone which should encourage us all to continue the long fight for human rights and justice – in Chad and in many other countries in the world.

JULIA DUCHROW
Head of the Human Rights and Peace Unit
Brot für die Welt

Summary

On May 30, 2016, a special court in Senegal convicted the exiled former dictator of Chad Hissène Habré of crimes against humanity, war crimes and torture, including rape and sexual slavery. It was the first time ever that a head of state had been prosecuted in the courts of another country. The case was widely hailed as a milestone for justice in Africa. In July 2016, the court ordered Habré to pay approximately 90 million euros in victim compensation. The case is now on appeal.

Most importantly, the trial was the fruit of what the Toronto Globe and Mail called "one of the world's most patient and tenacious campaigns for justice" (York 2013), waged over two decades by Habré's victims and their supporters, who improbably succeeded in creating the political conditions to bring a former African president to justice in Africa, with the support of the African Union.

The uniqueness of the campaign was that it put the victims at the center, creating not just an irresistible political dynamic but a trial itself that both showcased the victims' efforts and largely met their expectations. Even rape victims broke their 25-year silence to testify. As Thierry Cruvellier, a frequent critic of international courts, remarked glowingly in the New York Times, "[n]ever in a trial for mass crimes have the victims' voices been so dominant" (Cruvellier 2016).

The launch of proceedings against Habré before the Extraordinary African Chambers in Senegal also spurred justice efforts back in Chad, where a court in 2015 convicted 20 Habré-era agents and ordered the government to pay millions in victim compensation.

Like the 1998 London arrest of Chile's Augusto Pinochet, which inspired the Chadian victims to pursue justice in Senegal, the Habré case has motivated many others, in Africa and elsewhere, to think about potential justice campaigns.

The Habré case shows that it is possible for a coalition of victims and NGOs, with tenacity and imagination, to create the conditions for a successful universal jurisdiction prosecution, even against a former head of state.

This paper seeks to highlight some of the lessons of the Habré campaign, in the hopes that it can assist others who are organizing to bring their tormentors to book.

The Beginnings

The Habré Regime

Hissène Habré seized power in the former French colony of Chad in 1982, overthrowing the government of Goukouni Wedeye. The United States under Ronald Reagan supported Habré's military advance on the capital N'Djamena with covert CIA paramilitary support and the US and France backed him throughout his rule, seeing him as a bulwark against the expansionist designs of Libya's Muammar Gaddafi.

Habré's regime was responsible for widespread political killings, systematic torture, thousands of arbitrary arrests, and the targeting of ethnic groups. Habré's political police, the sinister Directorate de Documentation et Securité (DDS) "directly responsible to the Presidency" (Human Rights Watch 2013b), according to an internal document, was responsible for the worst of the regime's crimes. The DDS spun, again in its own words, a "spider's web over the whole length of the national territory" (Human Rights Watch 2013b), and served as Habré's eyes and ears. Neighbors spied on neighbors. Children were encouraged to denounce their parents. Seven secret DDS prisons were dotted throughout the capital, including one on the grounds of Habré's presidential palace. The most notorious prison was La Piscine, converted from a colonial-era swimming pool that Habré divided into cells and covered over with a cement slab. Prisoners died of malnutrition and disease in the overcrowded underground cells, especially in the unbearable summer heat, but the guards would sometimes wait until several detainees had died before clearing out the bodies.

Abuses began as soon as Habré came to power in 1982, when he sent his forces to control the south, whose leaders opposed his rule. In the repression, culminating in "Black September" 1984, villages were attacked, pillaged, burned and destroyed. Educated Chadians from the south were systematically arrested and executed.

Ruling a country with hundreds of ethnic groups required building coalitions, but Habré trusted no one, particularly if they were not from his own small Gorane clan. Each of the four successive DDS Directors was from his inner circle, and the last one was his nephew, Guihini Korei. When leaders of the Hadjeraï and the Zaghawa ethnic groups, who had helped him take power, dared to oppose him, their entire populations were savagely persecuted. Mass arrests were followed by torture and killings. Many Hadjeraï and Zaghawa villages were burned to the ground.

In December 1990, Habré was deposed by Idriss Déby Itno, his former military chief, and with US assistance he fled across the continent to Senegal.

Arriving in Senegal with a large retinue and a fortune which he had stolen during his eight years in power, Habré put himself in the graces of the Senegalese elite, distributing money to the powerful Islamic marabouts, investing in real estate, adding a Senegalese wife to his family and courting the rich and influential.

The Victims Organize

As he watched dozens of his cellmates succumb to torture and disease in Habré's prisons, Souleymane Guengueng, falsely accused of assisting the armed opposition, took an oath that if he ever got out of jail alive, he would bring his tormentors to justice. Guengueng, a deeply religious accountant with the inter-governmental Lake Chad Basin Commission, had never been involved in politics, but his prison experience would give a new meaning to his life.

When Habré was overthrown in 1990, the prison doors swung open, and Guengueng and other survivors did get out alive. Idriss Déby promised Chadians peace and justice and even set up a Truth Commiss ion to investigate Habré's crimes. Many prison survivors were

Meeting of the Victims' Association in Chad

Victims discussing strategy for court procedures

scared to come forward, though, when no one knew what tomorrow might bring: The history of Chad had been one brutal despot after another. No one wanted to stick his neck out. But Guengueng used his charisma to persuade some other Christian former detainees from the south of Chad to speak with the new Truth Commission and then to form an association of victims to claim justice. Then they joined forces with a group of Muslim detainees from the north.

Painstakingly, over the next year, Guengueng and his colleagues interviewed 792 former prisoners and the widows and relatives of those killed, and prepared rudimentary files on each one, with their pictures and their stories. They hoped to use these files to bring Habré and his accomplices to justice and to win compensation for those who had suffered.

But it soon became clear that the new government was not really interested in justice. Although the Truth Commission said that Habré's regime left 40,000 victims, President Déby let the commission's report die. Many of Habré's former collaborators (including Déby himself) were now back in the government and the new police. They began to threaten the survivors who, without funding or outside support, were unable to press their case.

The Pinochet Precedent

Then on the night of October 16, 1998, London police arrested General Augusto Pinochet, acting on a Spanish warrant charging the former dictator with human rights crimes committed in Chile during his seventeen-year rule. The British courts rejected Pinochet's claim that he was entitled to immunity as a former head of state and ruled that he could be extradited to Spain to stand trial. In its final ruling, the British House of Lords held that the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Torture Convention) obliged the United Kingdom as a state party to "prosecute or extradite" an alleged torturer such as Pinochet who was found on its territory (House of Lords). Although Pinochet ultimately was sent home to Chile on health grounds, the ruling that a former president could be arrested anywhere in the world gave hope to victims worldwide that they too could use "universal jurisdiction" to bring their tormentors to justice abroad.

In 1999, in the wake of the Pinochet case, Amnesty International, Human Rights Watch (HRW), the International Commission of Jurists, the Fédération Internationale des Ligues des Droits de l'Homme (FIDH) and other NGOs were looking at ways to build on the Pinochet precedent (Brody 2001). Discussions at Human Rights Watch put forward criteria for choosing the 'next Pinochet case' including: a request from national NGOs; the availability of evidence; the absence of legal barriers such as immunity; the independence of the judiciary and respect for human rights in the forum country; and most importantly the likelihood of success. When the Chadian Association for the Promotion and Defense of Human Rights (ATPDH) asked Human Rights Watch to help Habré's victims bring him to justice in his Senegalese exile, all these criteria seemed to be fulfilled. Senegal's democratic tradition and its leadership role on international rights issues made a successful prosecution conceivable. Senegal was the first country in the world to ratify the treaty establishing the International Criminal Court, and had, like the U.K., ratified the UN Torture Convention obliging it to "prosecute or extradite" Habré. In addition, the case was appealing because it presented the possibility that a country in the Global South would exercise universal jurisdiction, overcoming what many complained was a paradigm of European courts prosecuting defendants from formerly colonized countries.

Chronology of the Hissène Habré Case

1990
DECEMBER 1 – Habré is overthrown and flees to Senegal.

2000
JANUARY 26 – Seven Chadians file a complaint against Habré in Senegal.
FEBRUARY 3 – A Senegalese judge indicts Habré, places him under house arrest.
JULY 4 – After political interference, the Senegalese Appeals Court dismisses the indictment.
OCTOBER 26 – In Chad, 17 victims file complaints against Habré's accomplices.
NOVEMBER 30 – Other victims file a criminal complaint against Habré in Belgium.

2001
MARCH 20 – Senegal's highest court affirms the dismissal.
APRIL 17 – President Wade asks Habré to leave Senegal.
APRIL 18 – Victims file a case against Senegal with the UN Committee Against Torture (CAT) which calls on Senegal to keep Habré there.

2005
SEPTEMBER 19 – Belgium asks for Habré's extradition.
NOVEMBER 25 – Senegalese court says it has no competence to hear the extradition request.
NOVEMBER 27 – Senegal "refers" the case to the African Union (AU) to "indicate the competent jurisdiction to try this case".

2006
MAY 18 – The UN CAT rules Senegal has violated the Convention against Torture by failing to prosecute or extradite Habré and requests compliance.
JULY 2 – AU mandates Senegal to prosecute Habré "on behalf of Africa".

2007 – 2010
Senegal amends laws to permit trial but asks full payment of trial funds. Donors and Senegal negotiate a budget of € 8.6 million, which is promised at donors' meeting.

2009
FEBRUARY 19 – Belgium asks the International Court of Justice (ICJ) to order Senegal to prosecute Habré or to extradite him.

2010
NOVEMBER 18 – The ECOWAS Court of Justice rules that Senegal can only prosecute Habré before an ad hoc international tribunal.
DECEMBER 10 – Senegalese President Wade says "I've had enough of it at this point. (...) I am going to get rid of him."

2012
MARCH 26 – Macky Sall defeats incumbent Wade.
JULY 20 – The ICJ rules unanimously "Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him."
JULY 24 – Senegal and the AU agree to establish the Extraordinary African Chambers in the Senegalese Courts" (EAC).

2013
FEBRUARY 8 – The EAC is inaugurated.
JUNE 30 – Habré is taken into police custody.
JULY 2 – Habré is charged with crimes against humanity, torture and war crimes.

2015
FEBRUARY 13 – Pre-trial judges hold Habré over for trial.
MARCH 25 – A Chadian court convicts 20 Habré-era security agents of murder and torture and orders massive reparations.
JULY 20 – Habré's trial begins in Senegal but is adjourned when his lawyers fail to appear and court appoints new lawyers.
SEPTEMBER 7 – Habré's trial resumes and lasts through February 11, 2016.

2016
MAY 30 – The EAC convicts Habré of crimes against humanity, war crimes and torture, including rape and sexual slavery, and sentences him to life imprisonment.
JULY 29 – The Court orders Habré to pay millions in victim compensation. The Case is now on appeal.

Building a Campaign for Justice

To provide support for the case, HRW assembled a coalition, which came to be called The International Committee for the Fair Trial of Hissène Habré (the 'Coalition'), including the victims and the leading human rights groups in Chad and Senegal, together with Agir Ensemble pour les Droits de l'Homme and the FIDH. With support from this Coalition, and using the information that Guengueng and his colleagues put together, as well as the Truth Commission report, the victims went to Dakar to file a criminal complaint as *parties civiles* (civil parties) before a Senegalese judge in January 2000. To everyone's surprise, the judge indicted Habré in February 2000 on charges of torture, crimes against humanity, and other barbaric acts. The indictment was leading news across Africa and it seemed that justice would be swift. However, after political interference by newly-elected President Abdoulaye Wade, Senegalese appellate courts dismissed the case on the ground that despite Senegal's ratification of the UN Convention against Torture, its courts lacked competence to try crimes committed abroad because the Convention had not been implemented into national law.

The case would have ended there – and indeed some of the original NGOs dropped out – but the Coalition looked for another possible venue for Habré's trial. The two countries whose universal jurisdiction laws then permitted its courts to open an investigation even without the presence of the alleged perpetrator were Spain and Belgium. After consultations with human rights lawyers in both countries, the Coalition chose Belgium for linguistic consistency and because of a small Chadian refugee population from whom some plaintiffs could be recruited. Spanish lawyers litigating cases from Latin America also worried that "exotic" cases with no ties to Spain would "sink the boat" of universal jurisdiction.

With Coalition support, a group of different victims, including three Belgian citizens of Chadian origin, filed a case against Habré in Belgium in November 2000. At the same time, Guengueng and the other Dakar victim/plaintiffs lodged a communication against Senegal with the UN Committee Against Torture (CAT). In April 2001, President Wade (having interfered to prevent a trial in Senegal) declared that he had given Habré one month to leave Senegal, raising the possibility that Habré would find refuge in a country out of the reach of a possible extradition request from Belgium. In a preliminary ruling issued weeks later, however, CAT called on Senegal to 'take all necessary measures to prevent Mr. Hissène Habré from leaving the territory of Senegal except pursuant to an extradition demand' (Letter from Chief to Brody 2001). When President Wade at first claimed not to know of the decision, the Coalition got UN High Commissioner for Human Rights Mary Robinson and then UN Secretary-General Kofi Annan to intercede and Wade agreed to heed the committee's call.

The case against Habré now depended on Belgium's universal jurisdiction law. In 2001, the International Court of Justice (ICJ) handed the law a stinging defeat in the Arrest Warrant case (Democratic Republic of the Congo v. Belgium), holding that Belgium's warrant against a sitting Congolese foreign minister violated the DRC's state immunity. In its decision, the ICJ even suggested that former rulers such as Habré enjoyed immunity from the jurisdiction of foreign courts for all acts committed during their period of office other than for acts committed "in a private capacity" (Arrest Warrant of 11 April 2000 – Democratic Republic of the Congo v. Belgium). After the ICJ decision, the Belgian authorities were ready to drop the investigation of Habré but the Chadian NGOs in the Coalition were able to convince their government formally to waive Habré's immunity of jurisdiction, a move which put the case on a totally different diplomatic footing.

The ambitious Belgian law next came under political attack in 2003 from states whose officials were targeted, particularly the United States. U.S. Defense Secretary Donald Rumsfeld even threatened Belgium that it risked losing its status as host to NATO's headquarters if it did not rescind the law. As the law crumbled, the Coalition brought Chadian victims to Belgium to plead their case in meetings with several ministers and key leaders from the major political parties. This personal diplomacy by the victims paid off as the Belgian Parliament inserted a "grandfather clause" saving the Habré case and a few others despite the law's repeal.

The Belgian judge investigated the case on and off for four years, including a key investigative mission to Chad, before indicting Habré in 2005 on charges of crimes against humanity, war crimes, and torture and seeking his extradition from Senegal. The battle over extradition played out as a contest between an international community pressing for extradition and Senegalese public opinion largely opposed to extradition, as Habré's supporters played the "race card" against both Belgium and the Coalition (see for example Sanakré 2005). Their argument that one of the Europe's most bloody colonial powers had no moral right to put an African leader on trial held sway with a large part of Senegalese opinion.

Victims, activists, and lawyers file first complaint against Habré in Dakar in 2000

As he had in 2001, President Wade stepped in with a pseudo-Solomonic political solution. A Senegalese court, again after political interference, ruled that it lacked competence to decide on the extradition request but two days later Senegal "referred" the case to the African Union (AU) Summit to "indicate the competent jurisdiction to try this case" (Statement by the Ministry of Foreign Affairs, Senegal).

The AU referral had no legal grounding, but threatened to put the case in the hands of many rulers who themselves could be worried about human rights prosecutions. Wisely, the AU appointed a Committee of Eminent African Jurists, in January 2006 to 'consider all aspects and implications of the Hissène Habré case as well as the options available for his trial' (African Union 2006). In the meantime, in May 2006, in response to the case filed in 2001 by Guengueng, the UN Committee against Torture concluded that Senegal had violated the UN Convention against Torture by failing to prosecute or extradite Habré. The Committee called on Senegal 'to submit the present case to its competent authorities for the purpose of prosecution or to extradite him'. The CAT also noted Senegal's obligation to 'adopt the necessary measures, including legislative measures, to establish its jurisdiction' over Habré's alleged crimes (Guengueng et al. v. Senegal 2006).

Meeting only days after CAT's ruling, the Committee of Eminent African Jurists recommended Habré's prosecution be carried out in Senegal, and the AU heads of state called on Senegal to prosecute Habré "on behalf of Africa". President Wade accepted the AU mandate and Senegalese law was then amended to give the country's courts extraterritorial jurisdiction over international crimes. However, when the Coalition filed a new complaint in Senegal in 2007 under the amended law, Wade argued that Senegal needed full up-front funding of € 33 million from the international community before beginning any prosecution. Three years of halting negotiations over the trial budget, including two high-level missions by European Union and ICC officials ensued, until Senegal and donor countries finally agreed in November 2010 to a budget of € 8.6 million for Habré's trial.

Just days before the budget agreement, the Court of Justice of the Economic Community of West African States (ECOWAS), acting on a petition by Habré's lawyers, issued a bizarre ruling that Habré could only be tried before a "special ad hoc procedure of an international character." This ruling threatened to (and perhaps was intended

to) derail everything because the least expensive hybrid court, the Special Court for Sierra Leone, cost about € 270 million – some 30 times more than was available to the Habré court. Habré's lawyers proclaimed that the case was now dead. Within two months, however, the AU responded to the ECOWAS ruling by proposing a plan for "extraordinary chambers" within the Senegalese justice system with only the trial court and appeals court president appointed from outside of Senegal by the AU. Wade rejected the plan, however, before entering into talks with the AU leading to a preliminary agreement. In May 2011, though, Senegal withdrew from the negotiations.

In the face of Senegal's stalling, Belgium, where the Coalition had continually nurtured the political backing cultivated during the victims' 2002-2003 visits, brought an unprecedented case against Senegal at the International Court of Justice to seek a ruling that Senegal was obliged to prosecute or extradite Habré.

Wade continued to rule out Habré's prosecution in Senegal, but faced with international pressure, he kept looking for solutions other than a politically-toxic extradition to Belgium. In 2011, Wade cut a deal with Rwanda to send Habré there for trial. Rwanda was seeking to rehabilitate the reputation of its judiciary so that European states would return Hutus accused in the genocide to face trial there. Fearing that a trial in Rwanda would not be independent and not allow the kind of civil society activism which the Coalition hoped would accompany the trial, Jacqueline Moudeïna, the victims' lead lawyer, and Clément Abaifouta, the president of the victims' association, went to Rwanda and successfully persuaded the authorities to drop the idea. Also in 2011, Wade announced that he was immediately expelling Habré back to Chad but, days later, retracted his decision in the face of an outcry from Habré's lawyers, the UN High Commissioner for Human Rights and the Coalition itself that Habré could not get a fair trial and might even be killed there.

A Court Is Established

The breakthrough finally came with two events in 2012. In March, Macky Sall defeated Wade in Senegal's presidential elections. The Coalition – including a Senegalese survivor of Habré's jails – had visited Sall in 2009, when he was in the opposition (as it had visited almost all leading politicians in Senegal). Sall said then that he was embarrassed by Senegal's handling of the case. In July, the ICJ, deciding on the merits of Belgium's petition, found that Senegal had violated the UN Torture Convention and ruled unanimously that '*Senegal must, without further delay, submit the case of Mr. Hissène Habré to its competent authorities for the purpose of prosecution, if it does not extradite him*' (Questions Concerning the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment).

The new Senegalese authorities, spearheaded by activist Justice Minister Aminata Touré (but over the objections of the Prime Minister who was Habré's friend and banker), reached out to the Coalition which worked with Senegal and the AU to revive the plan to create "Extraordinary African Chambers" (EAC) inside the existing Senegalese court structure. An agreement was signed in August 2012. The Chambers' mandate was to prosecute not just Habré but the "person or persons most responsible" for international crimes committed in Chad between 1982 and 1990, including genocide, crimes against humanity, war crimes, and torture. In keeping with the French-based Senegalese legal system, the Chambers' statute provided that victims were permitted to participate in proceedings as civil parties, represented by legal counsel, and to seek reparations.

Funding for the court came from Chad (2 billion CFA francs or US$ 3,743,000), the European Union (€ 2 million), the Netherlands (€ 1 million), the African Union (US$ 1 million), the United States (US$ 1 million), Belgium (€ 500,000), Germany (€ 500,000), France (€ 300,000), and Luxembourg (€ 100,000).

On 2 July 2013, the Chambers indicted Habré for war crimes, crimes against humanity and torture, and placed him in pre-trial detention. On 15 July, the first 1,015 victims registered as civil parties with the Chambers, represented by a team of lawyers led by Jacqueline Moudeïna.

The investigative judges conducted four missions ("commissions rogatoires") to Chad, accompanied by the chief prosecutor and his deputies as well as police officers. Like the Belgian team many years before them, the judges were met by an overwhelming response from the victims and Chadian society which certainly made an impact on them. During their visits, the judges gathered statements from 2,500 direct and indirect victims and key witnesses, including former officials of the Habré government. They analysed the thousands of DDS documents recovered by HRW, assigned experts to dissect Habré's command structure, and, with the support of the Argentine Forensic Anthropology Team, uncovered mass graves.

Olivier Bercault and Reed Brody (right) uncover DDS documents in 2001

The Chambers' Chief Prosecutor requested the indictment of five further officials from Habré's administration suspected of being responsible for international crimes. None of them was brought before the court, however. Three of the suspects remain at large, while the other two stood trial in a Chadian court on similar charges, and Chad refused their transfer to Dakar.

Building the Case

To build the factual case further after the first charges were filed, HRW and the FIDH sent a team of researchers to Chad to interview victims. This was followed up by repeated missions by HRW which interviewed over 300 victims and witnesses, including a key insider – a former high-ranking DDS official living in Paris interviewed over several days who gave a 50-page statement. The key moment in the investigation, however, came in 2001 when Reed Brody and Olivier Bercault of HRW stumbled on tens of thousands of DDS documents in its abandoned N'Djamena headquarters. Among the papers were daily lists of prisoners and deaths in detention, interrogation reports, surveillance reports, and death certificates. The files detailed how Habré placed the DDS under his direct control and kept tight control over DDS operations. HRW entered the documents into a data base and analysis by the Human Rights Data Analysis Group revealed the names of 1,208 people who were killed or died in detention and 12,321 victims of torture and detention. In these files alone, Habré received 1,265 direct communications from the DDS about the status of 898 detainees.

All this information was used in the legal complaints filed in Belgium in 2000 and 2001 and in Senegal in 2007 and finally before the EAC. (HRW also produced a 714-page study based on the evidence collected "The Plain of the Dead" (Human Rights Watch 2013a).)

The Ripple Effect in Chad

For over two decades, Habré's victims have also struggled for justice back home. In 1992, the Chadian truth commission recommended the prosecution in Chad of those who participated in crimes during Habré's rule. It also called for DDS officers to be relieved of their state security duties and for measures to be taken to honour the memory of the victims.

In 2000, after filing the case against Habré in Dakar, the victims' association took the courageous action of filing criminal complaints against security officials from the Habré regime who remained in Chad. For years the case

Trial of DDS agents in Chad 2015

went nowhere, however, while threats by the officials forced Guengueng into exile and harassed other victims. Jacqueline Moudeïna, the Chadian lawyer who has guided the victims since 2000, narrowly survived an assassination attempt in 2001 by one of the former Habré aides. A 2005 Human Rights Watch report identified 41 former mid-level and high-level DDS agents still holding key leadership or security positions in Chad (Human Rights Watch 2005). The report also found that the truth commission's other recommendations remained largely ignored.

Then in 2013, in the wake of the launch of the EAC, the Chadian government, not wanting to appear laggard, took a series of positive actions. Chadian president Idriss Déby publicly expressed his support for the Habré trial and the domestic prosecution of former DDS agents, as well as his intent to provide reparations to the victims. The Chadian authorities arrested 22 former DDS agents whose cases had been pending since 2000. The Chadian government was also the leading contributor of the Extraordinary African Chambers. In 2014, however, when the EAC unexpectedly began to look past Habré to others "most responsible", the Chadian government seemed to get cold feet. President Déby, who had once been Habré's military chief, was said to fear he would be implicated. He refused to transfer two wanted DDS suspects to the EAC and, perhaps to justify that refusal, rushed them to trial in Chad without a proper pre-trial investigation.

The Chad trial, played out before a packed courthouse and excerpted nightly on national television, nevertheless provided many dramatic moments. About 50 victims described their torture and mistreatment at the hands of DDS agents. On March 25, 2015, the court convicted 20 agents on charges of murder, torture, kidnapping and arbitrary detention. The court sentenced seven men to life in prison, including Saleh Younous, a former director of the DDS, and Mahamat Djibrine, described by the Truth Commission as one of the "most feared torturers in Chad", the two men whom Chad refused to transfer to Senegal. Also sentenced was Mahamat Wakeye, the man who allegedly ordered the assassination attempt on Jacqueline Moudeïna. The Chadian court ordered the Chadian government to pay half of the US$ 125 million in reparations to 7,000 victims and those convicted to pay the other half. The court also ordered the government, within a year, to erect a monument to those who were killed under Habré and to turn the former DDS headquarters a museum (Decision of 25 March 2015 – Ministère public et Ismael Hachim et autres contre Saleh Younous Ali, Warou Fadoul Ali et Autres). These were both among the long-standing demands of the victims' associations. Almost two years after the court decision, however, the Chadian government has not implemented any of these compensatory measures.

The Trial of Hissène Habré

On July 20, 2015 the long-awaited trial of Hissène Habré began. The first day, Habré and his supporters created an outburst and Habré began pushing his guards and had to be removed before an opening ceremony highlighted by Jacqueline Moudeïna's moving address on behalf of the victims. The next day, after Habré instructed his lawyers to refuse to appear because he considered the court to be illegitimate, the court appointed three Senegalese lawyers to defend him and adjourned for 45 days so they could prepare.

The first day after the recess, Habré was brought in to the court by force, kicking and screaming. After that, he was brought into the courtroom for each session before the doors to the public opened. Except for outbursts at the beginning and the end, he remained silent the entire time, his face concealed behind a turban and sunglasses, in a seeming trance, never even turning to face the witnesses against him, even when – as many did – they attempted to address him directly.

Jacqueline Moudeïna at the opening of the Habré trial

The chambers sat for 56 days and heard from 93 witnesses, about two thirds of them the survivors of crimes, many active in the campaign to bring Habré to justice. The trial examined evidence regarding alleged crimes committed during various periods in Chad under Habré: attacks against the Hadjerai ethnic group (1987), the Zaghawas (1989), and southern populations including the so-called "Black September" in 1984; the arrest and torture of political prisoners, and the treatment of prisoners of war.

Survivors described their experience in prisons and camps, where torture was systematic and rape of women detainees frequent. Other witnesses included historical experts, the president of the 1992 Chadian truth commission, former members of the DDS, the Belgian judge who carried out a four-year investigation into a complaint filed against Habré in Belgium, a French doctor who treated 581 torture victims, researchers from Amnesty International and Human Rights Watch, and forensic, statistical and handwriting experts. Bandjim Bandoum, once a top DDS agent, testified about the agency's inner workings. He explained that when reports on detainees were sent to the presidency, they came back with annotations: E for "executer - execute"; L for "liberer - set free" or V for "vu - seen". "Only the president could request a release", he said.

A court-appointed handwriting expert confirmed that it was Habré who, on one of the uncovered DDS documents, responded to a request by the International Committee of the Red Cross for the hospitalization of certain prisoners of war by writing "From now on, no prisoner of war can leave the Detention Center except in case of death".

The most dramatic testimony came from four women sent to a camp in the desert north of Chad in 1988 who testified that they were used as sexual slaves for the army and that soldiers had repeatedly raped multiple women. Two were under 15 at the time. The recovered DDS confirm that women were sent to the desert and record the imprisonment of the four former detainees who testified. One of the women, Khadidja Hassan Zidane, stunned the court when she testified that Habre himself had personally raped her four times. Kaltouma Deffalah, one of the survivors of sexual slavery, testified defiantly that she was "very proud and strong to be here today telling [her] story when this man [Habré], who was once the dictator, is sitting there silently". It was a sentiment expressed, in one way or another, by many of the survivors who testified.

On May 30, 2016, the court convened to deliver its judgment. Chief judge Gberdao Gustave Kam of Burkina Faso read an hour-long summary of the decision, finding Habré guilty of crimes against humanity, war crimes and torture, including rape and sexual slavery. The court, noting that torture and repression were his form of governing, sentenced Habré to life imprisonment.

Two months later, the court ordered Habré to pay approximately 90 million euros in victim compensation. Without explaining its reasoning, the Court awarded each of the survivors of rape and sexual slavery was € 30,490, each survivor of torture and arbitrary detention and each mistreated former prisoner € 22,865 euros, and each indirect victim (the heir of a deceased victim) € 15,243 euros. (So far, however, the court has only located assets worth about € 600,000.)

Habré's court-appointed lawyers have appealed the conviction, and the victims have cross-appealed portions of the compensation order. In particular, the victims want to establish a Trust Fund, as provided in the EAC statutes, both to administer any recovery and to assist in locating and seizing Habré's assets.

Outreach

Until the eve of the trial, the arrangements for recording and broadcasting the hearings were up in the air, with the Coalition and some donor countries pressing for maximum exposure, while Habré's supporters opposed any broadcast at all, and the trial budget was seemingly insufficient for what was needed. At the last moment, Senegal agreed to put in funding and the trial was recorded in its entirety with three cameras, streamed on the internet and broadcast on Chadian television. Almost all the sessions were been posted to the internet. This was a major success in ensuring that the trial was meaningful to, and understood by, the people of Chad and Senegal.

The Chambers, through a consortium of NGOs from Senegal, Belgium and Chad that received a contract from the court, undertook outreach programs to both Chad and Senegal. The consortium trained journalists in both countries, organized public debates, created a website and produced materials to explain the trial.

The Coalition also received a grant from the Open Society Initiative for West Africa to facilitate the travel of Chadian journalists to Senegal to cover the trial, and the travel of Senegalese journalists to Chad during the pre-trial proceedings.

Some Lessons Learned

Placing the Victims and Their Stories at the Center of the Justice Struggle

Progressive lawyers understand that the emancipatory possibilities of litigation can only be achieved when the affected and oppressed parties are in the center of the legal struggle. It is unfortunately very rare in international justice for victims to play that role, but they did so in the Habré case, and it proved as well to be a major factor in creating the political conditions to bring Habré to justice, as their stories captured the attention of the public and of policy-makers.

In Africa, in particular, the Habré case is associated with survivors like Guengueng, Clement Abaifouta the president of the victims' association who had to bury his cell mates in mass graves, and their courageous lawyer, Jacqueline Moudeïna. The three of them have taken the lead media roles, been profiled repeatedly in international and African publications and have won international prizes for their struggle.

The victims' direct pleas were also the key to engaging policy-makers. Only Guengueng's personal approach to Belgian officials in 2002 saved the case from dismissal when the Belgian universal jurisdiction law was repealed. Looking the officials in the eyes, Guengueng recalled the importance of the Belgian judges' visit: "You sent us a judge. There were victims who exposed themselves for the first time, who actually filed past their torturers to tell their story to your judge. You can't simply abandon us now!" Guengueng played on Belgian pride with the story of how he after attended the Brussels trial of accused Rwandan genocidaires in 2001 he had gone back to Chad to tell his comrades that Belgium had a great justice system and that they had made the right choice. With his constant references to his time in prison, to his religious

Souleymane Guengueng fulfills his oath

It took 25 years, but in the end Souleymane Guengueng testified at the trial of Hissène Habré.

Guengueng, a deeply religious civil servant, watched his cellmates perish from torture and disease during 2.5 years in Habré's prisons. When Habré was overthrown in 1990, Guengueng used his considerable charm to persuade still-frightened victims to seek justice.

In 2000, Guengueng, along with others, went to Senegal to file the first legal case against Habré. Back in Chad, Guengueng filed a more dangerous case against Habré's henchmen still in positions of power there. Their threats forced Guengueng into exile, but he continued to lobby around the world.

The trial for which Guengueng fought so long finally began in July 2015. On November 18, it was his turn to speak, and he was ready.

In a steady voice, Guengueng began by addressing the court: "In 1988, I was wrongfully accused and imprisoned in inhuman conditions. From the depths of my cell, from the depths of that madness, I took an oath before God that if I got out alive, I would fight for justice. I am convinced that if God allowed me to remain alive, it was to carry out this mission, in memory of those who died and disappeared. With my friends, and with the help of Chadian and international organizations, we undertook a 25-year campaign for justice. Because of that stubbornness, I was fired from my job. I was threatened by the henchmen of Hissène Habré. And I had to go into exile in the United States. But this stubbornness has paid off and today I stand before you."

When Habré fled Chad and Guengueng walked out of prison, he had the presence of mind to take with him the crude utensils he had carved in jail, the fly-swatter he made from a cow's tail and the sandy meal the prisoners were given. As the judges looked on in amazement, he unpacked them and displayed them in court. "I've been waiting 25 years to show you these," he said.

As Guengueng spoke, Habré listened silently, his face covered by a turban and sunglasses. "Today, I felt ten times bigger than Hissène Habré," said Guengueng

Adapted from Reed Brody's trial blog www.hrw.org/blog-feed/trial-hissene-habre

faith, and to his hopes in Belgium, he had the politicians eating out of his hands, and brought some of them to tears. And he impressed upon them that, whatever amendments they made to the universal jurisdiction law, they had to allow his case to go forward.

The visible leadership of the victims made it impossible for Habré to paint himself as a political victim or to tar his prosecution as imperialistic (though he certainly tried both). After Habré was arrested by the EAC in 2013, for instance, his wife wrote a teary open letter to President Sall complaining that his arrest had disrupted their family life and that her children now had to pass Ramadan without their father. Two days later, Khaltouma Daba, a Chadian widow and vice-president of the victims' association, responded that her family life had been shattered when her husband was taken away by Habré's political police, that her children had now had passed 26 Ramadans without their father. At least, she said, Mrs. Habré knew where her husband was and that his case was being treated according to the law. Daba's picture and letter were all over the Senegalese press.

When Habré's lawyers announced that he did not want to appear in court (the court brought him in by force), Guengueng mocked Habré in the Senegalese press, asking if the once-omnipotent dictator was now afraid to look the survivors in the eyes and listen to their testimony.

The active involvement of the one living Senegalese survivor of Habré's jails, Abdourahman Guèye, also helped the outreach to the Senegalese public.

This protagonism contrasts with the invisibility of the victims in many Hague-based prosecution attempts which have played out as North-South confrontations. Can the informed international public identify one prominent Darfur or Kenya post-election violence victim? Between a Hague prosecutor and an African president, many, at least in Africa, will choose the president. Between Souleymane Guengueng and the despot who kept him in a secret dungeon, not so many.

The impact of the Habré case – on the victims, back in Chad, on the possibilities of other justice efforts – has also been amplified by the role of the victims. Naomi Roht-Arriaza discussed this factor in 2005 (Roht-Arriaza, 2005).

> *"It is striking to compare the mixed impact of the [international] tribunals on victims and on local justice processes with the seemingly much greater and less ambiguous impact of (…) transnational investigations [such as the Pinochet, Argentina, Guatemala, and Habré cases].*

Souleymane Guengueng with the 792 collected files

> *Why? One answer has to do with the agency of victims and survivors. Rather than play passive roles in litigation driven by prosecutors, the victims and witnesses, and their organizations and attorneys, were the driving forces behind the cases. (…) The cases stirred imaginations and opened possibilities precisely because they seemed decentralized, less controllable by state interests, more, if you will, acts of imagination."*

Building a Transnational Advocacy Coalition

Working as a team across borders, with the victims in the forefront, was a perpetual challenge given the gulf between international activists with access to the media and financial resources and national activists without the same possibilities.

To build such a team meant developing a partnership between Chadians and Senegalese, whose realities are very different (the Chadians often viewed the Senegalese with suspicion and resentment). It also meant bridging the very real divide between Chadian NGOs, with some advocacy background, and often unsophisticated and illiterate Chadian victims. It meant giving equal weight to

Chadians' interest in achieving justice at home in Chad while involving them as protagonists in the campaign abroad. It meant accessing rehabilitative victims' services. It meant training the victims' leadership to be effective advocates (as suggested by the title of one Coalition workshop "From Victims to Human Rights Activists").

Significantly, all the main components of the Coalition (HRW, the victims' leadership, the Chadian lawyers and the Senegalese activists) were in essential agreement on the key strategic choices: Habré should be tried in Senegal if possible, but elsewhere if necessary; He should not be extradited back to Chad where he could not get a fair trial; The role of Chadian president Idriss Déby in Habré's crimes would neither be highlighted nor minimized. Talking points were sometimes circulated and debated as issues arose. In 2009, at a time when things were stalling in Senegal, the Coalition decided to shift its work even more towards the Habré case in Senegal in the hope (borne out by events) that a Habré trial abroad would spur action back in Chad. In July 2011, when Senegal withdrew from talks with the AU to establish a court, the NGOs in the Coalition called it a "last straw", and announced a "major change of strategy," saying they "were fast losing all hope for a trial in Senegal", and "would now press to have Habré sent to Belgium" (Chadian Association for the Promotion and Defense of Human Rights et al. 2011).

After several years of informal cooperation dominated by Human Rights Watch, in 2007 the Coalition created a Steering Committee as its executive body to improve coordination of action and to fix and gain acceptance for the political, diplomatic, and legal orientations. The Steering Committee was (and is) composed of Jacqueline Moudeïna (president of the Chadian Association for the Promotion and Defense of Human Rights), who is the overall coordinator; Reed Brody (formerly of Human Rights Watch), who is secretary; Souleymane Guengueng (founding president of the Association of Victims, AVCRHH); Alioune Tine (formerly general secretary for the African Assembly for the Defense of Human Rights, RADDHO, now regional director of Amnesty International); Dobian Assingar (Chadian League for Human Rights, FIDH); André Barthelemy (Agir Ensemble pour les droits de l'Homme, France) and Clement Abaifouta, the current president of the AVCRHH.

The Steering Committee was also put in charge of the victims' legal team (also lead by Moudeïna, and including Chadian, Senegalese and international lawyers).

The Steering Committee usually met in conjunction with other activities, and was in contact by e-mail. Within the orientations decided by the Steering Committee, daily operational decisions were made by Moudeïna and Brody. The Coalition's secretariat was located at Human Rights Watch in Brussels (and in Dakar during the trial) with a full time staff coordinator and up to five interns under the supervision of Moudeïna and Brody. Its day-to-day work involved:

- keeping in touch with the partners to share information, fix strategy, and decide on tactics;
- developing the factual and legal case against Habré through on-the-ground research, meeting with victims and Habré-era "insiders" and legal research, and preparing the legal dossiers;
- working with the legal team on cases in Chad, Belgium, Senegal, CAT, the ECOWAS Court of Justice, and finally the EAC;
- raising money;
- training of Chadian victims and, prior to the trial, of the legal team;
- keeping in touch with and providing information to Senegalese and Chadian officials, donor governments, the UN, the AU, and other outside actors including African NGOs and civil society;
- writing advocacy documents such as press releases, letters and position papers;
- working with the media on articles, TV programs and documentaries;
- building international awareness around the case;
- helping the victims' association on its campaigns within Chad;
- helping victims individually – including finding rehabilitation and medical help, dealing with personal emergencies; and in some cases, helping with relocation and asylum;
- following the political situation in Chad and Senegal;
- organizing the international travel of the partners, particularly to and from Chad and Senegal;
- keeping French and English pages on the HRW websites, and a Facebook page;
- assuring the financial administration of the campaign. This was almost a full-time job given the amount of international travel, pass-through grants, and individual consultancies involved (see below).

Demonstration of Hissène Habré 's victims in N'Djamena in 2005

Depending on the circumstances, advocacy was conducted on behalf of the Coalition, on behalf of the main NGOs jointly, or on behalf of HRW. Each NGO retained its freedom of action within the policies agreed upon by the group.

Creating the Political Will in the Forum State

A major challenge in any universal jurisdiction case is creating the necessary political will in the forum state. With the exception of the Pinochet case, the record of "bystander" states in prosecuting high-level political crimes committed abroad is not encouraging.

In the aftermath of the Pinochet arrest, a number of failed attempts to prosecute "traveling tyrants" showed just how difficult it would be. In August 1999, when Izzat Ibrahim al-Duri, a top aide to Iraqi President Saddam Hussein, visited Vienna to receive medical treatment, a local city councilman filed a criminal complaint against him, citing his active role in Iraq's genocide against the Kurds. Less than forty-eight hours later, the Austrian government let him leave the country, placing its relations with Iraq above its international treaty obligations. In November 1999, the former tyrant of Ethiopia, Mengistu Haile Mariam, wanted by the Ethiopian authorities on charges of genocide and crimes against humanity, visited South Africa to receive medical treatment. Despite calls from local and international groups for his arrest, and despite South Africa's strong human rights record, he was not apprehended and he returned to exile in Zimbabwe, where the government of Robert Mugabe has sheltered him since his fall.

The record since then has not been any more promising. In 2005, for instance, when Uzbek Interior Minister Zokir Almatov, accused crimes against humanity in the May 2005 massacre of unarmed civilians in the Uzbek city of Andijan, visited Germany, Germany's federal prosecutor refused to open a criminal investigation.

When a Senegalese court first dismissed the Habré case in 2001 following political interference, the Coalition understood that it would not prevail unless it persuaded the president of Senegal (and the president of Chad) that it was not in their political interest to stand in the victims' way.

Pinochet's prosecution in Spain (where a conservative government opposed the case) was only possible due to

the independence of Spain's judiciary, a large and integrated Chilean exile community in Spain, and strong popular support for the prosecution. The decision by the British government to proceed against Pinochet after receiving the Spanish arrest warrant was likewise only possible because Tony Blair, who had just recently defeated Margaret Thatcher, was embarking on an "ethical foreign policy" and Pinochet was a widely-despised icon of repression.

The Pinochet case in Spain also had an important champion in Juan Garcés, a Spanish lawyer who had worked closely with former Chilean president Salvador Allende – he was in Allende's office when Pinochet's forces began to bomb the presidential palace – and headed the Salvador Allende Foundation. A similar bridging role was played in the Argentine universal jurisdiction cases in Spain by Carlos Slepoy, an Argentine exile practicing law in Spain. Garcés and Slepoy both had "intimate knowledge" of the territorial state, "the personal passion to pursue justice" and "the ability to navigate Spanish law, politics and public relations" (Roht-Arriaza 2005).

None of these factors was present in Senegal. The Chadian community there is small. Though Senegal and Chad were both French colonies, they developed very differently, and there is little contact. Habré was not well known and his crimes were committed at a time and in a place which attracted limited international attention. There was no activist in Senegal familiar with Chad, and no Chadian activist with the intimate knowledge of Senegalese politics to play a bridging role.

In addition, Habré, who emptied out his country's treasury before fleeing, used that money to build a network of supporters in Senegal. In the Wade government, the prime minister and the justice minister (later foreign minister) were former lawyers of Habré. Several leading Senegalese newspapers and TV stations vocally opposed efforts to prosecute Habré. Most importantly, leaders of the powerful Tidjiana Muslim brotherhood, the largest in Senegal, openly lobbied against Habré's trial.

To build political support, and to overcome the lack of a bridging agent, the Coalition created a "Senegalese Coalition for the Fair Trial of Hissène Habré" (COSEJEHAB) with a paid part-time coordinator to organize activities, including:

- regular visits to Senegal by groups of victims from Chad, who gave interviews, held news conferences and met with opinion-makers (press, politicians, NGOs, trade unions etc);
- the active involvement of Senegalese survivor Abdourahman Guèye, who was a constant presence alongside the survivors who came from Chad;
- the hiring of well-respected journalist as a part-time communications consultant;
- a platform in favor of the trial which included Muslim and Christian religious leaders, mainstream politicians, respected scholars and a leading businessman.
- the airing on Senegalese TV stations of international documentaries on the Habré case; (In 2009 when two Senegalese TV stations repeatedly showed a French documentary with its powerful images of the victims' suffering and their quest for justice, people began stopped the victims on the streets to wish them well.)
- sending 15 Senegalese journalists over the years to Chad to allow the Senegalese people better to understand the case, hear about Habré's crimes and see Chadian support for Habré's trial. (When Wade visited Chad in June 2010, for instance, the editor of a leading Senegalese newspaper went as well. He covered the victims' public hearing in Djamena and his front-page headline was "Wade greeted by a rain of tears in Chad". He followed with a series of in-depth articles on the case.)

Habré's forces did the same, of course. In press conferences, articles, and on the web, as well as in a documentary which was repeatedly shown on a major pro-Habré TV station, they asserted that Habré was a hero, that Chadian president Idriss Déby was behind the prosecution, manipulating the victims and the human rights NGOs. Reed Brody and Human Rights Watch were particular targets of Habré supporters, accused of being western outsiders.

As a result of the competing campaigns, Senegalese public opinion was always divided. When Belgium sought Habré's extradition in 2006, though, opinion lined up strongly against sending an African leader to Europe to be prosecuted.

The victims' narrative dominated international media, however, and this increasingly permeated elite Senegalese opinion. Four major French television documentaries portrayed Habré's crimes and the victims' struggle. Coverage in Radio France Internationale (RFI), the most influential media outlet in francophone Africa, with wide listenership in Senegal, was almost solidly in tune with the victims' message, as were Jeune Afrique, France 24 television, TV5 Monde, etc. (leading the Habré camp to complain bitterly about French influence).

Habré's influential supporters, including the powerful religious leaders, probably counted more with the Senegalese authorities than human rights groups and generalized public opinion. On several occasions, president Macky Sall reportedly told interlocutors that the decision to proceed with Habré's trial was a politically risky one.

It was only when the trial began and actual witnesses and survivors began to testify about the atrocities they suffered, testimony that was reported on Senegalese nightly news and most of the daily papers, that public opinion swung decisively in the victims' favor.

Building International Pressure on Senegal

If Senegalese domestic opinion was divided, it was certainly international pressure that made the difference in persuading Senegal to press forward. Among the key levers used:

- **The UN Committee against Torture (CAT):** CAT's April 2001 preliminary ruling that Habré should stay in Senegal pending an extradition request preserved the status quo all the way through the 2012 ICJ ruling. The Coalition made a tactical choice to keep those preliminary measures in force and not to press CAT for a ruling on the merits until Belgium had actually made an extradition request. After CAT's final ruling, the Coalition worked closely with CAT, which sent regular reminders to the Senegalese government. Finally, at the Coalition's urging, CAT (whose members were excited to have an anti-impunity case rather than the non-refoulment which dominate its docket) went to Senegal in August 2009 to apply pressure on Senegalese authorities. It was the first time in CAT history that it conducted a visit in situ to follow-up on one of its rulings.

- **Belgium:** Only Belgium's political will rescued the case, again and again. After the victims' initial lobbying saved the pre-trial investigation from the repeal of the universal jurisdiction law, the Coalition reached out to lawyers, professors and especially parliamentarians across Belgium's notorious linguistic and political divides. As in Senegal, Chadian victims visited Belgium, penned op-eds, met with policy-makers. One of the plaintiffs who was a naturalized Belgian played a key role in the advocacy. The Coalition drafted a 2006 Belgian Senate resolution which called on the government to seize the ICJ if Senegal continued to stall – an action which seemed like a political longshot, but which Belgium actually did in 2009, thanks both to the political support the Coalition had generated and the personal commitment of key allies in the ministries of justice and foreign affairs (notably Gérard Dive, head of the Belgian Task Force for International Criminal Justice). A key rule of advocacy, of course, is to reward those who take the right steps, and the Coalition made sure that each Belgian action was followed by letters of support from parliamentarians and favorable press reviews. Taking another country to the ICJ is the diplomatic equivalent of war, and the few cases filed each year with the ICJ almost always deal with disputed territory or revenue, not the abstract right of a few torture victims to justice. A Le Soir editorial was aptly entitled "Belgium's Courage to Seek Justice for Habré's Victims" while the naturalized Belgian victim's op-ed was "Habré's victims thank Belgium".

Souleymane Guengueng speaking to reporters at the Habré trial 2015

- The **African Union** became a key, if improbable, ally. When Wade "referred" the Habré case to the AU in 2005 it meant that the likes of Robert Mugabe of Zimbabwe and Omar al-Bashir of Sudan would decide

what should be done with one of their former colleagues – knowing that any arrangement for Habré could apply to them tomorrow. Engaged in a tug of war with the International Criminal Court, however, the AU secretariat – in particular the Legal Director Ben Kioko – was able to see the benefit of being able to prosecute African crimes in Africa. The creation of the Committee of Eminent African Jurists ensured that there would be a political rather than legal solution. After the AU "mandated" Senegal to prosecute Habré, it never relented.

- The **United States,** although it had supported Habré's rule, became a key supporter of the case under President Obama, who personally congratulated Macky Sall on his leadership. Leading US Senators wrote regularly to Senegal. In September 2011, Secretary of State Hillary Clinton wrote to Wade to urge a speedy trial. Following a visit to Capitol Hill by Moudeïna, Guengueng and Brody, the US Congress in December 2011 congressional requested Secretary Clinton to report on "steps taken by the Government of Senegal to assist in bringing Habré to justice". In her ensuing June 2012 report to Congress, Clinton stated that, "[a]fter 20 years, the victims deserve justice and their day in court" (and urged Senegal to take "concrete steps" to prosecute Habré (US Department of State 2012). Stephen J. Rapp, U.S. ambassador-at-large for war crimes issues, made several trips to Senegal and well as to Chad to press for progress.

- **African civil society:** The case was a leading cause for African NGOs again helping to deflect any North-South divides. In 2010, for instance, a petition signed by Bishop Desmond Tutu and 117 African human rights groups from 25 countries, complained that Habré's victims had been *"working tirelessly for 20 years to bring him to justice", yet had "been treated to an interminable political and legal soap opera"* (Human Rights Watch 2010).

- **France,** which had supported Habré before abandoning him at the very end in favor of Idriss Déby, was more reticent to get involved, perhaps because of its general indisposition to the acrobatics of pressing for the prosecution of those whom it backed, perhaps because of its "Françafrique" ties to other abusive African depots who certainly opposed Habré's trial. In 2007, however, after speaking with Moudeïna and Brody, the French Human Rights Minister Rama Yade, a woman of Senegalese origin, convinced the newly elected Nicolas Sarkozy to announce in Dakar his support for the case.

The Coalition also enlisted the **European Union** (which negotiated the final budget with Senegal and was a source of constant pressure), the **European Parliament** (which passed two resolutions on the case), the **Universal Periodic Review** (where, in 2013, ten states congratulated Senegal on moving forward), the **Special Rapporteur on Torture** (who criticized Senegal's 2001 dismissal and repeatedly referred to the case thereafter), and the **UN High Commissioner on Human Rights** (who intervened several times) among others.

Bringing Forward Accounts of Sexual Violence

Habré was convicted for the rape of Khadidja Hassan Zidane and for overseeing a policy of sexual slavery. The verdict is being hailed as a breakthrough for sex crimes prosecutions.

The irony, though, was that sexual violence almost wasn't part of the case at all. In HRW's early interviews with women prison survivors (interviews conducted in private by women), the women never mentioned rape, a taboo in traditional Chadian society. The 714-page HRW study on Habré's rule hardly refers to rape, and the charge was not included in the indictment. It was only as the campaign picked up steam and Habré's trial appeared likely, that the survivors began, hesitantly, to give their full stories to their Chadian lawyer and trusted advisor, Jacqueline Moudeïna, who coaxed them through their concern about coming forward. Moudeïna even returned to Chad during the trial to persuade some of the reluctant survivors to come testify, and she was there in the court, putting them at ease and giving them the courage and the confidence to testify. It is hard to imagine that these women would have been comfortable sharing their stories with foreign investigators and travelling to an impersonal international court to testify.

The women's dramatic testimony coincided with international attention to the non-inclusion of sex crimes in the case, including several press articles and an Amicus brief (rejected by the court but certainly noted) by

leading professors and practitioners. The EAC granted the victims' request to amend the charges to include sexual violence.

In retrospect, it is hard to see how the Coalition could have gotten the survivors to open up about their rape experiences in the early days without being in a position to offer any form of assistance or redress. Once the EAC were formed, however, a targeted effort should have been made in view of the trial to go back to all women survivors. None of the trial participants – judges, prosecutors, civil party lawyers – was familiar with the elements of sexual crimes or of best practices in presenting evidence, a gap which should have been addressed before the trial.

The Role of the Territorial State – Chad

One of the main variables in an extraterritorial prosecution is the role and attitude of the state in which the crimes were committed, the state where the victims and most of the evidence is located.

Chad had a multi-layered view of the Habré prosecution. President Idriss Déby had built his legitimacy partly on the demonization of the man he overthrew, and many of his own friends and family had been killed in the purge of his Zaghawa ethnic group. But many of Habré's collaborators were now part of the government. Indeed, perhaps uppermost in his mind, Déby had also been part of Habré's machine for years – in particular, he was the military chief during the murderous "Black September" 1984. And Déby, an authoritarian leader with a record of abuses, could not be comfortable with the idea that civil society actors had brought his predecessor to justice.

At the outset, the Chadian government was very cooperative with the prosecution efforts, perhaps believing (like most people) that nothing would come out of them and that they were a good way of immobilizing Habré who still had ties to rebel groups operating out of Sudan. The Chadian government waived Habré's immunity of jurisdiction and invited the Belgian judge to investigate in Chad – without which the case would have been impossible. When the EAC were created, Chad was the leading contributor, signed a judicial cooperation agreement with Senegal, and invited four missions by the EAC.

In 2014, however, when the EAC unexpectedly began to look past Habré to others 'most responsible', the Chadian government seemed to get cold feet as President Déby was said to fear he would be personally targeted or at least implicated. Chad refused to transfer two wanted DDS suspects to the EAC and also refused to allow the jailed DDS agents, key witnesses against Habré, to testify. It did, however, allow the trial to be televised in its entirety on state TV.

Funding

Long campaigns cost money. The budget of the Extraordinary African Chambers, a paltry € 8.6 million, pales in comparison to other international and hybrid tribunals. But sustaining the political and legal work to get to the trial required 15 years of funding. This covered the costs of the secretariat, salaries for the Chadian lawyers, the victims, and staff in Chad, Senegal and Brussels, international travel (the airfare alone from Chad to Senegal is some € 1,200), trainings, conferences, the creation of a system of victims' focal points to distribute information, honoraria for international lawyers at trial, etc.

Over the years, Human Rights Watch was able to access millions of euros from donors to support the Coalition. Importantly, the vast majority of that funding went

While the case was pending, Jacqueline Moudeïna convinced the victims of sexual violence to testify

directly from donors to the Chadian and Senegalese groups involved in the campaign. HRW hired a consultant, for instance, to draft a proposal to the European Union which granted € 500,000 to the APTDH for work around the trial. The Bertha Foundation has funded Moudeïna's work for several years, as well as that of her legal fellows. Other major donors accessed by HRW included Oxfam/Novib, the MacArthur Foundation, Oak, The Pro Victimis Foundation, and the Nando Peretti Foundation. It was much easier to get donors to support African organizations than a behemoth like HRW, whose work many were already funding anyway. This arrangement also gave the African groups control over the money and somewhat balanced their inherent dependence on HRW. But it probably required the credibility (and certainly the fundraising skill) of HRW to persuade donors to stay the course, especially during the lean years when success was far from certain.

Dealing with Double-Standards in International Justice

There is no doubt that international justice, like the international order in general from which it cannot be divorced, is riddled with double standards. As noted, one of the reasons that HRW took up the Habré case in 1999 was precisely because it offered a country of the Global South, Senegal, a chance to exercise universal jurisdiction. Still, the Habré camp accused his pursuers of being western agents, paid by Gaddafi (until he was killed) or France (which had switched allegiance from Habré to Déby at the last minute). After Habré was convicted and sentenced to life imprisonment, he cried out "Vive l'Afrique, à bas la Françafrique". Habré's court-appointed lawyer ended his appellate summation by asking "[W]ill Mr. Reed Brody go after George Bush, will he go after Ariel Sharon?" (Brody in fact wrote a HRW report calling for the torture and war crimes investigation of Bush and wrote a book "Faut-il juger George Bush?")

Many others asked why the US and France, which had supported Habré, were not targeted. There is a difference, of course, between individual criminal liability and political or historical responsibility. HRW searched for, but did not find, evidence of direct individual criminal participation by westerners in Chad. It did, however, in virtually all of its communications, press releases and reports about the case, recall that Habré was brought to power and supported by the US and France, and worked with journalists on long-read stories about that support (eg. Bronner 2014). In the aftermath of Habré's conviction, HRW published two long reports on U.S. and French support for Habré during his rule (Human Rights Watch 2016).

Working at the Trial

Several human rights colleagues have described how, once cases they investigated had been taken on by an international court, they "lost" control of the case to the court's prosecutor who developed her own evidence, her own theory of the case, etc. This never really happened here, and probably for several reasons. First, the investigations carried out by HRW and the Coalition were always designed to be used in a criminal trial rather than only in human rights reports, so "linking" evidence from "insiders" and the regime's archives had already been uncovered. Second, the EAC investigators simply did not have the resources or the time to start from scratch, and were forced to begin with the evidence the Coalition had developed, as well as its theory of the case – indeed it never got to the point where they knew more about the facts than the Coalition did. During the EAC's pre-trial investigation, it was the associations which brought the victims to see the investigators, and during the trial it was often the associations who acted as logistical intermediaries, especially for victims outside the capital. Third, the partie civile-system ensured that the victims were parties at the trial and could officially press at every stage their view of the case and the evidence they had collected. The civil parties, of course, were the only Chadians (other than Habré) at the trial. Fourth, and perhaps most important, the recognition that the trial was the fruit of the victims' long campaign gave them the legitimacy to demand that their view of the case be presented.

Before the trial, the victims' legal team studied the experience of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the only other case of civil party participation in an international trial of mass crimes, and one at which the ECCC has struggled to find the proper role for the civil parties. Among the problems detected at the ECCC were (1) clashing theories between the prosecutor and the civil parties, (2) lack of coordination among the civil parties themselves, and (3) deficiencies in representation due to (a) a lack of legal knowledge and experience by the Cambodian lawyers combined with (b) a

lack of familiarity by international pro-bono lawyers about the case or the evidence (Hoven 2014). To a large extent, the Coalition was able to avoid these problems because of its preparation and legitimacy, and its close work with the prosecutor. The Coalition organized trainings in Dakar and Paris, including moot courts, for Moudeïna's legal team to bolster their capacities and confidence. While relations between the Chadian and international lawyers were often strained, Moudeïna's uncontested role both as the lead lawyer and the bridge to the victims/clients was an important cohesive factor. There was a second civil party group, representing Chadian victims' associations seen as close to the current Déby government, which largely deferred to the Moudeïna-led group.

The dossier d'instruction – the case file presented by the investigating judges to the trial court – included not only the more than 2,500 procès verbaux (sworn statements) taken by the pre-trial investigators, but the tens of thousands of DDS documents uncovered by HRW, the voluminous Belgian file, the Truth Commission's report and the statements from DDS officials taken by the Truth Commission (also uncovered by HRW). At trial, the Coalition secretariat prepared, for each witness and victim who would testify, a file containing all their previous statements and all the DDS documents in which their name figured or which related to their story, as well as suggested lines of questioning.

Persistence and Tenacity

Perhaps the most important lesson, after putting victims in the center, is persistence – and imagination. The New York Times wrote that '[n]umerous brutal leaders have taken power and mass killings have unfolded on the African continent since Mr. Habré's ouster. But his case has proved unusual for the tenacity of his victims, and of Human Rights Watch, in seeking to bring him to justice' (Nossiter 2013). Indeed, in a case which looked dead so many times, the victims and their supporters made it clear that they were just never going away until they saw Habré in court. When the case was thrown out in Senegal, they went to Belgium. When Wade threatened to expel Habré, they used CAT to keep him in Senegal. When the Belgian law was repealed, they obtained a grandfather clause. When Senegal went to the African Union, they improbably turned the AU into an ally which then helped them overcome the ECOWAS ruling. When Senegal stalled, they pressed Belgium to take the case to the ICJ.

It was not always easy to sustain hope when the case seemed to be going nowhere. Some of the NGOs who joined the initial effort dropped out when the case was dismissed in Senegal. The personal obsessions of a handful of people like Guengueng, Abaifouta and Moudeïna made all the difference. A successful movement is often a series of small victories, at each point gaining people, skills, and momentum (Popovic 2007), and this was certainly the case here. The three arrests of Habré (2000, 2005, 2013), the victories at CAT, in Belgium, at the African Union, and the ICJ, each brought new allies and new hope. With time, the campaign became stronger, more conscious of its wider goals. We have often remarked to each other that, while many survivors died in those 17 years, and the victims had to wait 17 long years for justice, the trials, when they finally came, were much more meaningful (not to mention much better prepared and documented) because of the shared understanding of what we hoped to achieve.

At the victims' association in Chad, the celebrations over the verdict were marked by a deserved sense of accomplishment. During the trial, which was televised each day, thousands of Chadians watched their former president in the dock – put there not by the current Chadian government, which is the way things usually happen in Chad, but because a group of brave Chadians had fought to get him there. In summing up the message of the trial, Moudeïna said: "We have shown the world that victims can bring a dictator to justice". It's an example that others can try to repeat.

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