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Hissène Habré's rape acquittal must not be quietly airbrushed from history

Kim Thuy Seelinger

Though ruled out on procedural grounds, Khadidja Zidane's testimony against the former Chad president highlights some uncomfortable truths about attitudes towards survivors of sexual violence

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Almost a year ago, I sat in the [extraordinary African chambers](#) of the courts of Senegal and watched as Hissène Habré, the former president of Chad, was [convicted of multiple war crimes](#), crimes against humanity and acts of torture.

The judgment was hailed as a victory for international criminal justice. It was the first time a national court had used principles of universal jurisdiction to prosecute a former head of state for crimes of this nature.

After hearing detailed, horrific accounts of rape and sexual slavery, the [judges added sexual violence](#) to Habré's charge sheet. One shocking testimony came from [Khadidja Zidane](#), who explained how, almost 30 years earlier, Habré had summoned her from prison to the presidential palace and raped her.



📷 Hissène Habré reacts as he is escorted in to stand trial by police at the Palais de Justice in Dakar, Senegal. Photograph: EPA

Habré was convicted of half a dozen crimes under international law, including rape and sexual slavery as a crime against humanity. The conviction reflected not only the mass rape and sexual slavery his security forces committed in prisons and military camps, but what Habré had done to Zidane in the presidential palace. This was an extraordinary conviction. Normally, high-level defendants in war crimes cases are charged with responsibility for the acts of their subordinates, not their own. Last month, Judge Ougadeye Wafi **upheld all convictions** against Habré except one. All the sentences for the mass sexual violence committed by his security forces were maintained, but Habré was acquitted of raping Zidane. The appeals court took pains to emphasise that the acquittal was a procedural matter and did not reflect on Zidane's credibility. It said the new facts Zidane offered in her trial testimony came too late to be included within the new charges of sexual violence, so they could not serve as the basis for a conviction.

The appeals decision was seen as a victory. However, Habré's rape acquittal should not be allowed to pass unnoticed. It not only sheds light on Senegalese criminal procedure, it also reveals some persistent and paradoxical truths about sexual crimes: not least that it is often difficult for survivors to come forward in a clear and timely way, and that these cases require sensitive investigation from the

start.

Survivors of sexual violence face several challenges when considering whether to disclose their experiences. These are intimate crimes, often imbued with a sense of shame. Many survivors fear stigmatisation, harassment, blame or retaliation. Many need psychosocial support, medical care, safe shelter. Many risk losing their spouses. For all these reasons, disclosure of sexual violence can require time and supportive conditions.

Our legal processes are not built that way. Despite having decades of jurisprudence establishing forms of sexual violence as war crimes, crimes against humanity and acts of genocide, we still often fail to support disclosure from the beginning of these investigations. In this case, it is easy to imagine why the Chadian police or the Senegalese investigating judges did not question Habré's victims about intimate violations more thoroughly. They are largely untrained about gender-based violence, and broaching the subject of rape is still seen as taboo.

This mistake has been made in other courts, too. Sexual violence charges have been added retrospectively in cases before the international criminal tribunal for Rwanda and at the international criminal court. Slowly, though, we are learning. In 2014, the prosecutor of the international criminal court released [guidance on considering sexual and gender-based crimes at every stage of investigation and prosecution](#). But these guidelines are not easily accessed or applied by national courts, particularly where evidentiary rules and processes may differ.

At the extraordinary African chambers in Dakar, the judge was gentle and encouraging when questioning Zidane at trial, but it was too late.

Perhaps we can take Habré's rape acquittal at face value. The appeal court held that the relevant facts had not been raised when the investigating judges were determining the factual bounds of the case, and under Senegalese procedural law they could not therefore be used.



📷 Malian judge Ougadeye Wafi, centre, upholds Hissène Habré's life sentence. Photograph: Seyllou/AFP/Getty Images

Equally, perhaps this is not just a procedural issue. Perhaps it is about how gender inequality and stigma make it tremendously difficult for some survivors of sexual violence to speak out, much less have confidence that criminal justice institutions will support them. Either investigations practice must be improved to explore these crimes sensitively from the moment evidence collection begins, or trial procedures must allow for the possibility that victims may not disclose neatly or “on time”. Or both.

Either way, Zidane's testimony was not in vain. After decades of silence, she confronted her former president in court. She told the trial judges what he did to her, and the whole world heard.

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