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Nottingham  
Rights Lab

# Forced Marriage Case Notes

## *Katanga Case*

*The Prosecutor v Germain Katanga*

ICC-01/04-01/07

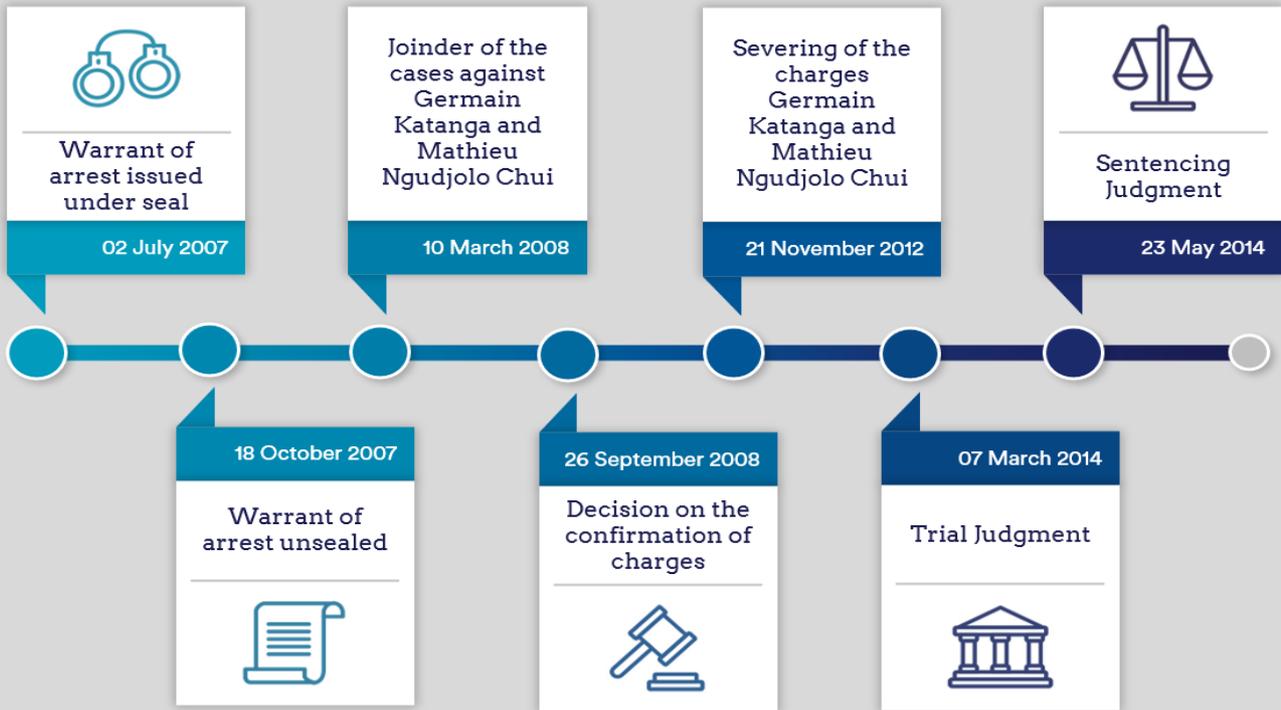
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Arts and  
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## Key dates of the case



## What happened?

After over a century of imperialist exploitation, the Democratic Republic of the Congo (DRC) has experienced decades of fighting between militaries and splintered ethnic militias over control over territory and natural resources amongst others in the Ituri region. The Force de Résistance Patriotique en Ituri (FRPI) is an armed group in Ituri. It has been implicated in the use of child soldiers in attacks against civilians, murder, abduction, rape, sexual slavery, destruction of property and looting.

Germain Katanga was president and commander in chief of the FRPI. As such he assisted the planning of attacks and provided logistical support.

## The International Criminal Court

The International Criminal Court (ICC) was established in 1998 and began operations in 2002. It is headquartered in The Hague in the Netherlands with a Liaison Office to the United Nations in New York and seven Country Offices in Kinshasa and Bunia (DRC), Kampala (Uganda), Bangui (Central African Republic), Abidjan (Côte d'Ivoire), Tbilisi (Georgia), and Bamako (Mali). The ICC is the first independent, permanent international criminal court to investigate and try individuals for the most serious crimes of international concern: genocide, war crimes, crimes against humanity and the crime of aggression. The ICC can investigate and prosecute crimes committed within member states, crimes committed by nationals of member states, and crimes in situations referred to the Court by the United Nations Security Council. It is intended to complement national judicial systems. Therefore, it can exercise its jurisdiction only when national courts are unable or unwilling to prosecute alleged criminals. The Rome Statute serves as the Court's foundational document. It is a multilateral treaty and States which become party to the it become members of the ICC. As of September 2020, there are 123 ICC Member States.

The Office of the Prosecutor opened official investigations in 13 countries and indicted 45 individuals, including Germain Katanga in the DRC. The DRC ratified the Rome Statute in 2002 and referred the situation in its territory to the ICC two years later.

The ICC charged Katanga with, and acquitted him of, rape and sexual slavery as well as the use of child soldiers as his responsibility for the crimes could not be proven beyond reasonable doubt. Nevertheless, he was sentenced to 12 years imprisonment for murder, attacking a civilian population, destruction of property and pillaging.



## What does the case say about forced marriage and modern slavery?

In the case against Katanga, the ICC heard evidence that, during attacks against their hometowns and villages, the FRPI killed women of Hema ethnicity and (gang) raped and abducted women ostensibly belonging to other ethnic groups. Fighters took women to their camps and imprisoned them or made them their wives without observing traditional elements of courting and marriage such as the payment of a dowry. Some women were imprisoned first and forced into marriage later. Either way, women were controlled, deprived of their liberty and freedom of movement, and subjected to acts of sexual violence by soldiers, commanders, and fellow prisoners. Those acts included (gang) rape, forced pregnancy and forced nudity. Women were also required to cook and clean for the fighters, fighters' wives, and their own forced husbands. They had to obey orders and could not refuse or escape for fear of death, physical and verbal assault, and recapture as well as due to constant surveillance. As a result of their experiences, women suffered severe physical and mental harm and were rejected by their communities. Some of the women were under 18 years of age. They spent between 3 and 18 months with the FRPI.

The [Pre-Trial Chamber](#) concluded that those acts amounted to rape and sexual slavery. It recognised the latter as a particular form of enslavement that also encompasses forced marriage as well as domestic and sexual servitude. Quoting the [1998 Final Report of the Special Rapporteur on Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict](#), the Pre-Trial Chamber was of the opinion that

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*“forms of sexual slavery can, for example, be ‘practices such as the detention of women in “rape camps” or “comfort stations”, forced temporary “marriages” to soldiers and other practices involving the treatment of women as chattel, and as such, violations of the peremptory norm prohibiting slavery.” (para 431)*

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The [Trial Chamber](#) also understood forced marriage to be a form of sexual slavery. It noted that, in the context under discussion, the use of the term ‘wife’ was a clear reference to acts of sexual violence perpetrated in a coercive environment. It demonstrated ownership over a person for the purpose of sexual abuse. In contrast to highlighting the coercive environment in which forced wives lived, the Defence submitted that women formed consensual relationships with fighters and married them willingly. However, this was rejected by victim witnesses and the Trial Chamber alike.

# Significance and points to note

The case against Germain Katanga is significant and interesting for many reasons.

Comparable to [Case 002/02](#) before the Extraordinary Chambers in the Courts of Cambodia, in *Katanga*, the ICC recognised rape in and outside of forced marriage, including rape of prisoners. This gives a fuller picture of women's experiences in times of armed conflict.

While the Court showed that women are raped independent of their marital status, the evidence highlighted a clear connection between rape and forced marriage when perpetrators of rape told their victims that they had become their wife. Interestingly, those forced marriages were not, or not always, exclusive relationships for either of the forced spouses. Men shared a wife and forced husbands allowed other men to use their forced wife for sexual purposes.

Similarly to the non-exclusive sexual relationships, it appears that broader conjugal relationships were not exclusive either. Domestic work, for example, was not predominantly carried out by forced wives for their forced husbands but also by female prisoners and abductees for the fighting group or combatant's wives.

In noting this, the ICC in *Katanga* painted a complex picture of rape, sexual slavery and forced marriage. The close link between rape and forced marriage can be interpreted in different ways. The label 'wife' could be used as a euphemism for rape, as a more acceptable way of framing one's actions. It could also reflect the everyday reality of intimate partner violence in the DRC at the time. Or it could indicate that forced marriage is predominantly a sexual crime. This might justify the categorisation of its sexual elements as a form of sexual slavery. Considering that a number of FRPI men shared a wife, it also supports the Court's determination that fighters collectively exercised powers attaching to the right of ownership over women and therefore collectively enslaved them for sexual purposes.

Two other things are noticeable here. One, exclusivity might not be a marker of forced marriage, be it a form of sexual slavery, another inhumane act amounting to a crime against humanity, or a crime in and of itself. And two, the term 'wife' might describe more than one form of conflict-related gender-based and sexual violence that women experience.

Furthermore, the *Katanga* case highlights that gender cannot be seen as separate from other identity markers such as ethnicity. Rather, an intersectional lens is necessary to gain a full understanding and to adequately address the conflict-related harm women suffer.

# Learning from institutions and decisions

## Decision on the Confirmation of Charges

### Rape

- Prosecutor v Jean-Paul Akayesu (Amended Indictment) ICTR-96-4-I (16 February 1996): para 440

### Sexual Slavery

- Bassiouni MC, 'Enslavement as an International Crime' (1991) 23 N.Y.U.J. Int'l L. & Pol. 458: para 432
- Boot M, 'Article 7 Crimes against Humanity para. 1 (g) Rape ... or any other form of sexual violence of comparable gravity' in Otto Triffterer (ed), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article* (2nd edn, CH Beck 2008): para 432
- Commission on Human Rights 'Final Report of the Special Rapporteur on the Situation of Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict' (22 June 1998) UN Doc E/CN.4/Sub.2/1998/13: para 431, 432
- Commission on Human Rights 'Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission Resolution 1997/44' (26 January 1998) E/CN.4/1998/54: para 431, 432
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Indictment) IT-96-23-T "Foča case" (19 June 1996): para 431
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (07 September 1956) 266 UNTS 3 (Supplementary Slavery Convention): para 430

## Trial Judgment

### Sexual Slavery

- Commission on Human Rights 'Systematic Rape, Sexual Slavery and Slavery-Like Practices during Armed Conflict: Update to the Final Report Submitted by Ms. Gay J. McDougall, Special Rapporteur' (06 June 2000) UN Doc E/CN.4/Sub.2/2000/21: para 976, 978
- Commission on Human Rights 'Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, Submitted in Accordance with Commission Resolution 1997/44' (26 January 1998) UN Doc E/CN.4/1998/54: para 978
- Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T "AFRC Case" (20 June 2007): para 976, 978
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Trial Judgment) ICTY IT-96-23-T and IT-96-23/1-T "Foča case" (22 February 2001): para 976
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Appeals Chamber Judgment) ICTY IT-96-23 and IT-96-23/1-A "Foča case" (12 June 2002): para 976
- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT "RUF Case" (02 March 2009): para 976
- Prosecutor v Charles Taylor (Trial Judgment) SCSL-03-01-T (18 May 2012): para 976, 977
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (07 September 1956) 266 UNTS 3 (Supplementary Slavery Convention): para 975



## Additional reading and resources

Amnesty International, 'DRC: All you need to know about the historic case against Germain Katanga' 6 March 2014 - accessed 14 January 2021 (available [here](#))

Coalition for the International Criminal Court, 'Germain Katanga' accessed 14 January 2021 (available [here](#))

Coalition for the International Criminal Court, 'Katanga and Ngudjolo Chui Cases' accessed 14 January 2021 (available [here](#))

International Crimes Database, 'The Prosecutor v. Germain Katanga' accessed 14 January 2021 (available [here](#))

International Criminal Court, 'Democratic Republic of the Congo' accessed 14 January 2021 (available [here](#))

International Criminal Court, 'Katanga Case' accessed 14 January 2021 (available [here](#))

International Justice Monitor, 'Background' accessed 14 January 2021 (available [here](#))

International Justice Monitor, 'Germain Katanga & Mathieu Ngudjolo Chui' accessed 14 January 2021 (available [here](#))

Militia Man accessed 14 January 2021 (available [here](#))