



University of
Nottingham
Rights Lab

Forced Marriage Case Notes

Muhimana Case

The Prosecutor v. Mikaeli Muhimana

ICTR-95-1B

June 2021

This case note was prepared by Dr Hannah Baumeister as part of AHRC-funded project “To Have and To Hold”: Understanding the Relationship between Forced Marriage and Modern Slavery, led by Dr Helen McCabe



Arts and
Humanities
Research Council

Key dates of the case



Indictment

03 February 2004



Trial Judgment

28 April 2005



Appeal Chamber
Judgment

21 May 2007

What happened?

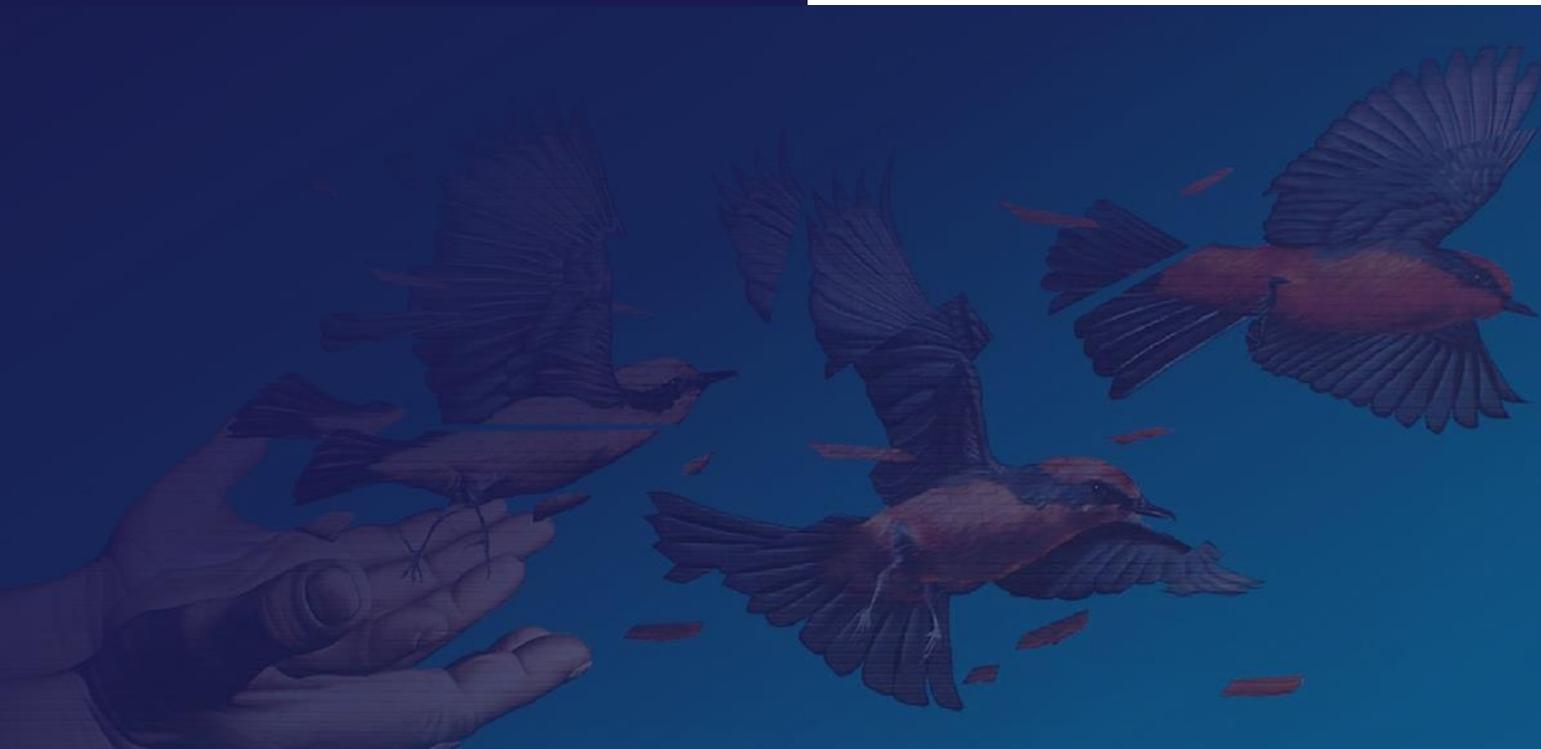
The Rwandan genocide took place in 1994. Triggered by the assassination of President Juvenal Habyarimana, soldiers, gendarmes, politicians, Hutu militias and ordinary citizens perpetrated acts of genocide, crimes against humanity and war crimes primarily against Tutsi civilians and moderate Hutus.

Mikaeli Muhimana was Municipal Councillor of Gishyita Sector in Kibuye Prefecture (in Western Rwanda) at that time. As such, he was well known and held a position of influence. Using his position, Muhimana mobilised, armed, worked with and led civilians, the police and militias to kill Tutsi civilians and refugees, and organised and participated in their killing and rape.

The International Criminal Tribunal for Rwanda

The United Nations Security Council established the International Criminal Tribunal for Rwanda (ICTR) to prosecute persons responsible for genocide and other serious violations of international humanitarian law. Until its closure in 2015, the Tribunal was located in Arusha, Tanzania, and had offices in Kigali, Rwanda. Its Appeals Chamber was located in The Hague, Netherlands.

The ICTR charged Muhimana with, and found him guilty of, committing and abetting acts of genocide, rape and murder. He was sentenced to life imprisonment.





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

While Muhimana was not charged with forced marriage or sexual slavery, the Tribunal heard related evidence under the charge of rape. The [Trial Chamber](#) considered evidence that a female Tutsi refugee, Witness BG, was abducted and taken to the house of a member of the Hutu militia *Interahamwe*, Mugonero, where she was kept under guard and subjected to several rapes by her captor. Defence witnesses testified that BG voluntarily married her captor for protection and that she received additional material benefits from him.

They also gave evidence that Mugonero did not rape BG and that they separated amicably, following her initiative. Countering the statements of the Defence witnesses, the Trial Chamber found that the coercive circumstances at the time made it impossible for BG to consent to marry or cohabit with a member of the Hutu militia who had participated in the killing of people she had been hiding with.

Significance and points to note

The evidence presented in the case against Mikaeli Muhimana suggests a strong connection between forced marriage and rape. This can be interpreted in different ways. The label ‘marriage’ could be used to legitimise rape. It could also indicate that forced marriage predominantly is a sexual crime. This might justify the categorisation of its sexual elements as a form of sexual slavery.

Considering that the evidence suggests that Mugonero exercised powers attaching to the right of ownership over BG by controlling her movement, physical environment and sexuality and by taking measures to prevent her escape, and that he subjected her to acts of a sexual nature by raping her, his conduct could also have been considered as an act of sexual slavery.



Learning from other institutions and decisions in the Trial Judgment

Rape

- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 535, 537, 538
- Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo (Trial Judgment) T-96-21-T “Čelebići case” (16 November 1998): para 540, 547
- Prosecutor v Anto Furundžija (Trial Judgment) ICTY IT-95-17/1-T (10 December 1998): para 539, 545
- Prosecutor v Alfred Musema (Trial Judgment) ICTR-96-13-T (27 January 2000): para 540
- Prosecutor v Eliézer Niyitegeka (Trial Judgment) ICTR-96-14-T (16 May 2003): para 540
- 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 541
- 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 542, 544
- Prosecutor v Laurent Semanza (Trial Judgment) ICTR-97-20-T 15 May 2003 para 548



Additional reading and resources

Chenault S, ‘And Since Akayesu? The Development of ICTR Jurisprudence on Gender Crimes: A Comparison of Akayesu and Muhimana’ (2008) 14 New England Journal of International and Comparative Law 221, 14 January 2021 (available [here](#))

The Hague Justice Portal, ‘Muhimana, Mikaeli’ accessed 14 January 2021 (available [here](#))

International Crimes Database, ‘The Prosecutor v. Mikaeli Muhimana’ accessed 14 January 2021 (available [here](#))

Oxford Public International Law, ‘Prosecutor v Muhimana (Mikaeli), Trial Judgment, Case No ICTR-95-1B-T, ICL 556 (ICTR 2005), 28th April 2005, United Nations [UN]; United Nations Security Council [UNSC]; International Criminal Tribunal for Rwanda [ICTR]; Trial Chamber III [ICTR]’ (2005) accessed 14 January 2021 (available [here](#))