



Forced Marriage Case Notes

Nuon Chea and Khieu Samphan Case

*The Co-Prosecutor v Nuon Chea and Khieu
Samphan*

Case 002/02

June 2021

Key dates of the case



Closing Order

15 September 2010



Trial Judgment

16 November 2018

What happened?

The Khmer Rouge

From April 1975 to January 1979, the ruling party in Cambodia, called the Communist Party of Kampuchea (CPK) or Khmer Rouge, planned and created policies to build their version of a socialist state. To achieve their goals, the Cambodian population was forcibly transferred from their homes to worksites where they faced harsh conditions, starvation, forced labour, mistreatment, torture, disappearances and killings. As part of their collectivist approach, the Khmer Rouge practiced forced marriages and targeted groups such as Buddhists and the Cham because of their religion and ethnicity. Because they resisted the CPK, the Vietnamese population was also targeted with widespread killings, torture, rape and other inhumane acts.

Nuon Chea and Khieu Samphan held leadership roles in the Khmer Rouge. Nuon Chea was the Deputy Secretary of the party. Khieu Samphan had various roles including President of the State Presidium. As such, they knew or had reason to know that crimes such as executions of enemies and elites, forced marriages, and other inhumane treatment were perpetrated at security centres and worksites; and that acts of religious and ethnicity-based persecution and genocide were committed against the Vietnamese and the Cham in Cambodia. Nuon and Khieu had the power to prevent and punish these crimes but they did not.

The Extraordinary Chambers in the Courts of Cambodia

In 1997, the Cambodian government requested that the United Nations assist in establishing a tribunal to prosecute Khmer Rouge senior leaders and those most responsible for the crimes committed during the Khmer Rouge reign. The [Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea \(ECCC\)](#) was created in 2003. It is a hybrid court in that it combines Cambodian and international judges, prosecutors and defence lawyers and applies both Cambodian and international law. It is based in Phnom Penh, Cambodia.

The ECCC charged Nuon and Khieu with and found them guilty of crimes including enslavement, forced marriage and rape in the context of forced marriage. Both were sentenced to life imprisonment.



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

The Khmer Rouge's policy of forced marriage was based on a view of intimate extramarital relationships as dangerous, contrary to the party's collectivist approach, and a vestige of the ancient bourgeois regime. To further its revolutionary project, the CPK took a "parental" role and matched couples mostly in their twenties based on their compatible political and social status, age, location and ethnicity. However, who of those within a group of people with matching backgrounds would be married could be determined randomly, for example through drawing numbers. Some women were married to former monks who had been forcibly disrobed as part of the Khmer Rouge's effort to eradicate Buddhism from society. Others were married to disabled soldiers as a way to reward them for their service and to ensure their care. Yet others were remarried after their former spouse disappeared or was deemed unsuitable for example because of their nationality.

favoured individuals like soldiers could sometimes choose their spouse and have their choice approved by the authorities. However, taking the initiative to marry out of turn could also be punished by death.

Often, forced spouses had never met before their wedding ceremony. They were frequently married without advance notice in group weddings of up to 100 couples.

Before the ceremony, forced spouses were provided with new black clothing and krama scarves (a traditional Cambodian garment). They were then brought together either sitting or standing next to each other or holding hands. Forced spouses were made to make vows to love and accept each other, to live together, and to respect and work to achieve the objectives of, and produce children for, Angkar ("The Organisation", that is, the CPK) and the revolution. On some occasions, spouses also had to salute or walk under a flag and read out their spouses' biographies.

Most ceremonies were only attended by the forced spouses and members of the authorities. The parents of forced spouses were generally absent. Some ceremonies included Buddhist blessings and were followed by a shared meal, and a few forced newlyweds were allowed to visit their parents for a short period of time after the ceremony. In general, however, forced spouses were then taken to their matrimonial home where they were forced or coerced to consummate the marriage and to produce children.

After the wedding night or a short "honeymoon" period, couples were split up and assigned to different collectives. They were brought back together regularly, between once a week and once a month, for procreation. Some had to ask permission to see their forced spouse. This indicates that marital relationships remained under the control of the CPK.

In case 002/02, the Judges considered evidence that, despite feeling upset, disappointed and fearful, people could not refuse their marriage or its consummation and they could not separate or get divorced. They had nowhere to go and feared being married to someone less desirable or being punished severely such as: by death, imprisonment, beatings, rape by soldiers or forced spouses; or being sent to a mobile unit or worksite, or for re-education or “imagination counselling”.

The widespread climate of coercion meant that spouses did not give genuine consent to their marriage or sexual intercourse. Witnesses testified that some individuals committed suicide to avoid being subjected to such marriages. Others were deeply traumatised by the experience. Nevertheless, some forced spouses experienced a sense of relief, a reduction in dread and fear, and a bond with their forced partner and appreciated the access to food that came through the forced marriage. After the fall of the Khmer Rouge, some couples who were forcibly married stayed together while others separated. Neither diminished the criminal nature of forced marriage.

Regarding the conduct, ensuing harm and protected interest of a crime of forced marriage, the Co-prosecutors stated that forced marriage covers situations where “a perpetrator compels a person by force, threat of force, or coercion to serve as a conjugal partner”

(Co-Prosecutors’ Closing Brief, [Part 1](#) and [Part 2](#)). They emphasised that forced marriage removes the right to get married freely to a partner of choice.

Similarly, the [Co-Lawyers for Civil Parties](#) stressed the lack of free and valid consent of at least one of the parties to the marriage as the central element of the crime of forced marriage. Furthermore, they understood forced marriage as a uniquely multi-layered crime that can involve rape, sexual slavery, forced pregnancy and forced domestic labour. Taken individually, those elements can amount to separate crimes with materially distinct elements. The Co-Lawyers elaborated that people were controlled and ordered how, where and when to conduct their conjugal life.

They considered this to be an exercise of powers attaching to the right of ownership and therefore an act of enslavement by the CPK.

They interpreted the forced sexual intercourse aimed at producing children for the revolution as an act of forced pregnancy.

In line with the categorisation of forced marriage as another inhumane act amounting to a crime against humanity, the [Trial Chamber](#) defined forced marriage as a situation in which,

“victims endured serious physical or mental suffering or injury or a serious attack on human dignity of a degree of gravity comparable to that of other crimes against humanity [and] were forced to enter into conjugal relationships in coercive circumstances... [T]he perpetrators knew of the factual circumstances that established the gravity of their acts.” (para 1444-1445)

It found that threats of forced marriage, being forced into marriage with a stranger, and forced consummation of the marriage in a coercive environment resulted in severe and long-lasting mental and physical suffering of forced spouses. Additionally, it found that the coercive environment made it impossible for forced spouses to genuinely consent to marital sexual intercourse. In the case of forced wives, this amounted to rape. In the case of forced husbands, however, it did not. The rape definition applied by the Trial Chamber required penile penetration and the Chamber deemed penile penetration of the forced husband impossible in a monogamous heterosexual marriage. However, it found that forced sexual intercourse could have amounted to a different form of sexual violence perpetrated against forced husbands. However, without clear evidence that marital rape caused men serious mental and physical suffering, the Chamber was unable to reach a conclusion regarding the matter.

The Trial Chamber found that the Khmer Rouge pursued its policy of forced marriage to prevent immoral behaviour, to reconstruct the country and its society as part of a socialist revolution and to rapidly increase the population of “desirable citizens” through births. Marriage became part of a person’s duty to their country to propagate the Communist state.

The Trial Chamber rejected the argument that forced marriage was akin to traditional marriages in peace time. It differentiated forced marriage from traditional marriage by the absence of parental, ancestral and communal involvement, a relationship of care and mutual trust between the spouses and those arranging their marriage, and traditional and religious rituals.



Significance and points to note

Case 002/02 is the first case in which an international or internationalised court entered a conviction for the nation-wide perpetration of forced marriage against women and men. Building on this, the court developed a gender-neutral definition of forced marriage. However, it implies that one member of the couple is the direct perpetrator and the other the victim of forced marriage. Arguably, this was rarely if ever the case in Cambodia, or in other conflict situations for that matter, where a third party, here the CPK, forced both spouses into a conjugal association.

While the ECCC took a largely gender-neutral approach to Case 002/02, it made not always helpful gendered distinctions regarding rape and forced procreation. Following its chosen

definition of rape, only women can be victims of marital rape while men become victims of a different form of sexual violence perpetrated within marriage. Unrelated to definitional problems but rooted in biological and social reality, the Trial Chamber acknowledged that forced pregnancy and forced parenthood affect women more than men. However, the Khmer Rouge did not increase their rations or ease their workload.

This indicates that Case 002/02 also encourages further consideration of the crimes related to forced marriage. While cases before the Special Court for Sierra Leone focus on forced marriage and its relationship to different forms of slavery such as sexual slavery and forced labour as a form of enslavement, Case 002/02 considered the relationship of forced marriage to different forms of sexual violence such as rape and forced pregnancy which could suggest an understanding of forced marriage as a sexual crime. The type of forced marriage perpetrated in Cambodia might allow for that conclusion, considering that it was mainly an attempt to socially engineer the future population through forced procreation.

While the Trial Chamber found Nuon and Khieu guilty of marital rape, the Defence appealed the decision drawing on patriarchal national laws that advance an outdated presumption of consent between spouses and therefore differentiate between the crime of rape within and outside of marriage. The appeal is pending.

In addition to the definition of forced marriage and crimes that can be related to it, the case also provides an opportunity to consider different forms of, and labels for, forced marriage. While the judges referred to the conduct as 'forced marriage', Expert Witness Levine suggested that this label causes forced spouses to feel ashamed about their experience and their relationship. The Defence followed the Expert Witness' interpretation in their Appeal Brief.

The Defence also suggested that forced and arranged marriages are two terms for the same conduct, and that arranged marriages evolved into forced marriage with the development of human rights law that placed a focus on individual consent to marriage. In doing so, it followed the Co-Prosecutors and Co-Lawyers in centring consent as the main interest that the crime of forced marriage protects.

Building on this and also considering the harm inflicted through forced marriages, the Defence suggested that thwarted marriages where a person was prevented from marrying someone of their choice and instead forced to marry another do not amount to forced marriages. Similarly, Expert Witness Kasumi Nakagawa distinguished between forced and authorised marriages which she described as situations where women agreed that her parents or the CPK would arrange her marriage.

In addition to considering forced, arranged, authorised and thwarted marriages, Expert Witness Levine threw conscripted marriages into the mix. She was of the view that forced marriages under the Khmer Rouge are more appropriately understood in this way, as a form of national service and part of a person's duty to the country. This label might encourage and allow courts to draw stronger connections between the use of child soldiers and forced marriage.

While forced marriages and marital rape played an important role in Case 002/02, sexual violence outside that context has not been addressed. The judges argued that rape in detention centres and at worksites, for example, were not in line with the regime's policy and therefore fell beyond the scope of the case.

Learning from other institutions and decisions

Closing Order

Rape in Security Centres

- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 1426
- Prosecutor v Kaing Guek Eav (Trial Judgment) 001/18-07-2007/ECCC/TC “Case 001” (26 July 2010)
- Prosecutor v Anto Furundžija (Trial Judgment) ICTY IT-95-17/1-T (10 December 1998): para 1426
- Prosecutor v Sylvestre Gacumbitsi (Appeals Chamber Judgment) ICTR-01-64-T (07 July 2006): para 1426

- 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): paras 1426
- Prosecutor v Michaeli Muhimana (Appeals Chamber Judgment) ICTR-95-1B-A (21 May 2007): para 1426
- Prosecutor v Alfred Musema (Trial Judgment) ICTR-96-13-T (27 January 2000): para 1426

Rape in Forced Marriage

- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 1430, 1433
- Prosecutor v Kaing Guek Eav (Trial Judgment) 001/18-07-2007/ECCC/TC “Case 001” (26 July 2010): para 1430
- Prosecutor v Anto Furundžija (Trial Judgment) ICTY IT-95-17/1-T (10 December 1998): para 1430
- Prosecutor v Sylvestre Gacumbitsi (Appeals Chamber Judgment) ICTR-01-64-T (07 July 2006): para 1430
- 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 1430

- Prosecutor v Miroslav Kvočka and others (Trial Judgment) IT-98-30/1-T (02 November 2001): paras 1433
- Prosecutor v Michaeli Muhimana (Trial Judgment) ICTR-95-1B-T (28 April 2005): para 1430, 1433
- Prosecutor v Alfred Musema (Trial Judgment) ICTR-96-13-T (27 January 2000): para 1430, 1433
- Prosecutor v Tharcisse Muvunyi (Trial Judgment) ICTR-00-55 (12 September 2006): para 1433
- Prosecutor v Jean de Dieu Kamuhanda (Trial Judgment) ICTR-99-54A (22 January 2004): para 1433
- Prosecutor v Laurent Semanza (Appeals Chamber Judgment) ICTR-97-20-A (20 May 2005): para 1433

Forced Marriage

- Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (Appeals Chamber Judgment) SCSL SLS-2004-16-A “AFRC case” (22 February 2008): para 1442

- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT “RUF Case” (02 March 2009): para 1442

Trial Judgment

Rape

- Allied Control Council Law No. 10 Punishment of Persons Guilty of War Crimes, Crimes against Peace and Against Humanity (20 December 1945) 3 Official Gazette Control Council for Germany 50-55 (1946): para 732
- Cyprus v Turkey (Trial Judgment) 25781/94 (12 May 2014): para 732
- Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (12 August 1949) 75 UNTS 287, 6 UST 3516, TIAS 3365: para 732
- Instructions for the Government of Armies of the United States in the Field, General Order No. 100 (24 April 1863) (Lieber Code) <http://avalon.law.yale.edu/19th_century/lieber.asp#sec2> accessed 09 August 2013: para 372

- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 732
- Prosecutor v Kaing Guek Eav (Trial Judgment) 001/18-07-2007/ECCC/TC “Case 001” (26 July 2010): para 731
- 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 732
- 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 732
- Prosecutor v Ieng Sary (Decision on Ieng Sary’s Appeal Against the Closing Order) 002/19-09-2007-ECCC/OCIJ (PTC75) (11 April 2011): para 732
- Prosecutor v Ieng Sary, Ieng Thirith, Nuon Chea and Khieu Samphan (Decision on Appeal by Nuon Chea

and leng Thirth Against the Closing Order) 002/19-09-2007-ECCC/OCIJ (PTC 145 & 146) (15 February 2011): para 732

- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT “RUF Case” (02 March 2009): para 732
- USA v Sadao Araki and others (Trial Judgment) (IMTFE, 04 November 1948): para 732

Forced Marriage

- Prosecutor v Alex Tamba Brima, Brima Bazzy Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T “AFRC Case” (20 June 2007): para 744, 747
- Prosecutor v Dominic Ongwen (Confirmation of Charges) ICC-02/04-01/15 (23 March 2016): para 745, 747
- Prosecutor v leng Sary (Decision on IENG Sary’s Appeal Against the Closing Order) 002/19-09-2007-ECCC/OCIJ (PTC75) (11 April 2011): para 746
- Prosecutor v leng Sary, leng Thirth, Nuon Chea and Khieu Samphan (Decision on Appeal by NUON Chea and IENG Thirth Against the Closing Order) 002/19-

09-2007-ECCC/OCIJ (PTC 145 & 146) (15 February 2011): para 746

- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Appeals Chamber Judgement) SCSL-04-15-A “RUF Case” (26 October 2009): para 744
- Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217 A (III) (UDHR): para 743

Additional reading and resources

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Yang S, 'Trial Chamber Case 002/02 Against Nuon Chea and Khieu Samphan (Extraordinary Chambers in the Courts of Cambodia)' (2020) 59(1) International Legal Materials 159