



Forced Marriage Case Notes

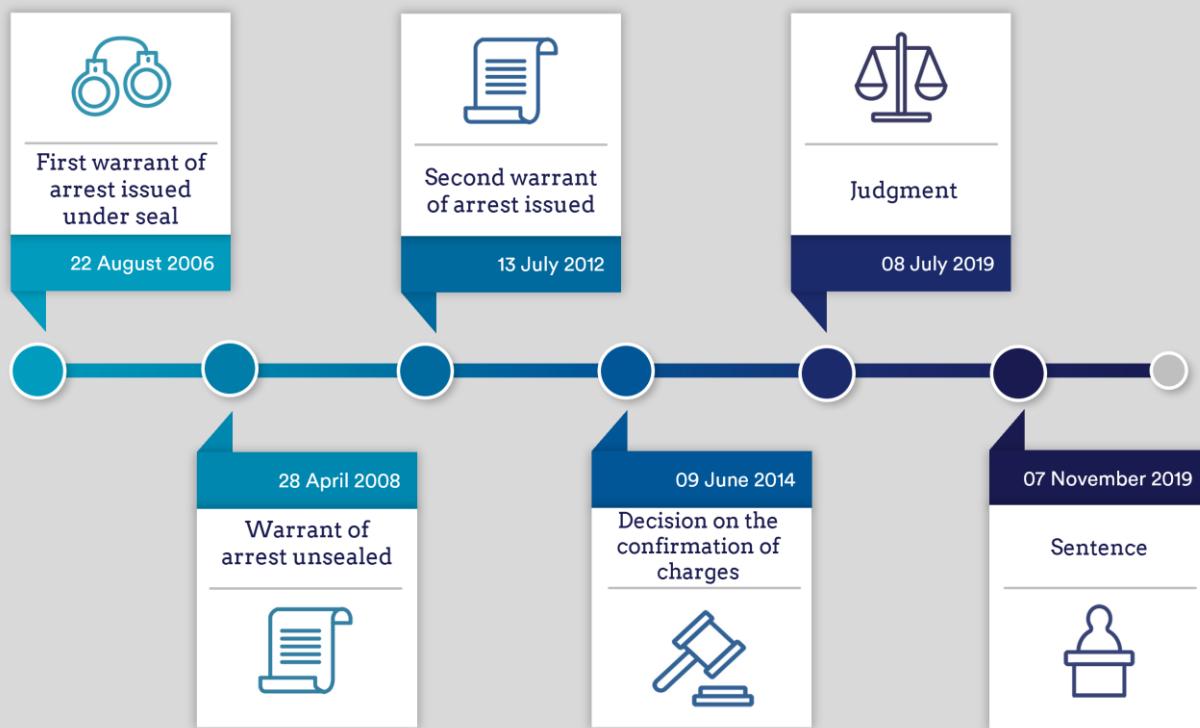
Ntaganda Case

The Prosecutor v Bosco Ntaganda

ICC-01/04-02/06

July 2021

Key dates of the case



What happened?

After over a century of imperial exploitation, the [Democratic Republic of the Congo \(DRC\)](#) has experienced decades of fighting between militaries and splintered ethnic militias over control of territory and natural resources in, amongst other places, the Ituri region.

The Union des Patriotes Congolais (UPC) and its military wing, the Force Patriotique pour la Libération du Congo (FPLC), is an armed group in the Ituri region of the DRC. During the Ituri conflict, the UPC/FPLC has been implicated in ethnic massacres, torture, abduction, rape and forced recruitment of young people. Fighters drugged child soldiers and subjected them to harsh training regimes and a variety of severe punishments. Child soldiers took part in fighting and intelligence gathering. They were also used as bodyguards, porters, cooks and cleaners. In addition, girls were raped, sexually enslaved and forced into marriage with fighters.

Bosco Ntaganda was the Deputy Chief of the Staff and commander of operations of the FPLC. As such, he played a key role in planning and running FPLC operations.

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 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 Bosco Ntaganda 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 Ntaganda with, and found him guilty of, amongst other crimes, rape and sexual slavery of civilian men and women, civilian prisoners, and child soldiers. He was sentenced to 30 years imprisonment. The verdict and the sentence are currently subject to appeals.



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

In the case against Ntaganda, the ICC heard evidence that the UPC/FPLC abducted women and girls between the ages of 9 and 20. They were taken to UPC/FPLC prisons, military training camps and/or houses of commanders. There, male UPC/FPLC soldiers and commanders beat, dehumanised, raped and sexually enslaved them, took them as concubines and forced them into marriage, sometimes at gunpoint, sometimes using the weapon to kill women after assaulting them. Women were also forced to carry out tasks such as guarding, portering, cooking, cleaning, fetching water and doing laundry for commanders and their wives. Additionally, abductees were forced to undergo military training and participate in military operations. They could not leave or resist for fear of death and acts of violence perpetrated by fighters other than their captor. Some were also followed at all times to prevent escape. Abductees stayed with the UPC/FPLC for a period of one day up to several months.

Acts of conflict-related sexual and gender-based violence had severe, complex and long-term consequences including psychological trauma and physical injuries that in some cases led to death. Some women became pregnant and some were forced to have an abortion because of ill treatment. Some felt ashamed for what happened to them, were stigmatised and feared reprisals.

In *Ntaganda*, the ICC had to determine whether International Humanitarian Law (IHL) protects persons taking part in hostilities from crimes committed by fellow fighters as well as by opponents. The [Pre-Trial Chamber](#) clarified that the sexual character of the crimes of rape and sexual slavery precludes active participation in hostilities at the same time. Consequently, it found that UPC/FPLC child soldiers continued to enjoy protection under IHL from these crimes. Notably, the Trial Chamber emphasised that while acts of sexual violence perpetrated within armed forces are criminal, it was not generally pronouncing on whether they constitute a war crime.

Commenting on the relationship between sexual slavery and the use of child soldiers, the [Trial Chamber](#) found that the distinguishing feature was that women and girls who were sexually enslaved were held captive, threatened, and continuously forced to engage in sexual intercourse with UPC/FPLC soldiers. This amounted to a deprivation of their liberty collectively imposed by members of the UPC/FPLC. Here, the Chamber noted that the crime of sexual slavery may involve more than one perpetrator and that acts of sexual violence do not have to be committed by the one who exercised rights attaching to the powers of ownership. Notably, the Pre-Trial Chamber found that mere imprisonment or its duration does not satisfy the element of ownership over the victim.

The Trial Chamber determined that the language of ‘wife’ or ‘partner’ used by victim witnesses to describe their experience did not undermine the fact that they were forced into a certain form of sexual conduct. Rather, the Chamber found that the term ‘wife’ was commonly used to refer to coerced sexual relationships.

In addition to the coercive environment that victims found themselves in and that made genuine consent to sexual intercourse or marriage impossible, the Court also highlighted that, due to their age, children are incapable of giving informed consent.



Significance and points to note

In the case against Bosco Ntaganda, the ICC recognised conflict-related sexual and gender-based violence against women and men and acknowledged rape as a weapon of war. In finding Ntaganda guilty of sexual slavery, the Trial Chamber set a new precedent by determining that acts of sexual violence directed at fellow fighters are also a crime recognised under international criminal law.

While the Court mentioned language related to forced marriage, it did not feature prominently and was not distinguished from the crimes of rape and sexual slavery. This might have been because it was not charged separately – and neither was abduction, trafficking and forced (domestic) labour – or because of the close connection between rape and forced marriage. Evidence in the *Ntaganda* case suggests that the label ‘wife’ was used by fighters to legitimise rape. However, it does not appear to indicate an exclusive conjugal relationship as women and girls were raped by many fighters. Consequently, the Court viewed forced marriage as predominantly a sexual crime.

Learning from other institutions and decisions

Decision on the Confirmation of Charges

Rape

- Prosecutor v Jean-Pierre Bemba Gombo (Trial Judgment) ICC-01/05-01/08 (21 March 2016): para 49
- Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui (Confirmation of Charges) ICC-01/04-01/07 (30 September 2008): para 49
- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 49, 50

- United Nations Office of the High Commissioner for Human Rights, 'Rapport du Projet Mapping concernant les violations les plus graves des droits de l'homme et du droit international humanitaire commises entre mars 1993 et juin 2003 sur le territoire de la République démocratique du Congo' (2010): para 94

Sexual Slavery

- Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui (Confirmation of Charges) ICC-01/04-01/07 (30 September 2008): para 53
- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 53

- 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 53

Rape and Sexual Slavery of Child Soldiers

- Prosecutor v Charles Taylor (Trial Judgment) SCSL-03-01-T (18 May 2012): para 79

- 'Report on Children associated with armed groups in Ituri' (2004): para 82

Trial Judgment

Rape

- Prosecutor v Jean-Pierre Bemba Gombo (Trial Judgment) ICC-01/05-01/08 (21 March 2016): para 933, 934, 935
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Trial Judgment)

- SCSL-04-16-T "AFRC Case" (20 June 2007): para 935
- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 934
- Prosecutor v Jean-Paul Akayesu (Trial Judgment) ICTR-96-4-T (02 September 1998): para 935

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 952
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Trial Judgment) SCSL-04-16-T "AFRC Case" (20 June 2007): para 952

- Prosecutor v Germain Katanga (Trial Judgment) ICC-01/04-01/07 (07 March 2014): para 952
- 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 952
- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Trial Judgement) SCSL-04-15-PT "RUF Case" (02 March 2009): para 952
- Prosecutor v Charles Taylor (Trial Judgment) SCSL-03-01-T (18 May 2012): para 952



Additional resources

BCC, 'Bosco Ntaganda Sentenced to 30 Years for Crimes in DR Congo' (7 November 2019) (available [here](#))

Carlson K, 'Why the Ntaganda Judgment Shows that the ICC has Found its Footing' (16 July 2019) The Conversation (available [here](#))

Coalition for the International Criminal Court, 'Bosco Ntaganda' (available [here](#))

Coalition for the International Criminal Court, 'ICC Sentences 30 Years Imprisonment to Ntaganda on 18 Counts of International Crimes' (08 November 2019) (available [here](#))

Guilfoyle D, 'A Tale of Two Cases: Lessons for the Prosecutor of the International Criminal Court? (Part I)' (28 August 2019) EJIL:Talk! (available [here](#))

Human Rights Watch, 'Bosco Ntaganda' (available [here](#))

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

International Criminal Court, 'Ntaganda Case' (available [here](#))

International Justice Monitor, 'Bosco Ntaganda' (available [here](#))

Open Society Justice Initiative (available [here](#))