



University of
Nottingham
Rights Lab

Forced Marriage Case Notes

RUF Case

*The Prosecutor v Issa Hassan Sesay, Morris
Kallon and Augustine Gbao*

July 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
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Key dates of the case



Amended
Consolidated
Indictment

06 May 2004



Trial Judgment

25 February 2009



Sentencing
Judgment

8 April 2009



Appeals
Chamber
Judgment

26 October 2009

What happened?

The Revolutionary United Front

The armed conflict in Sierra Leone lasted from 1991 until 2002.

The Revolutionary United Front (RUF) was one of the fighting groups involved in the conflict. After initially aiming to overthrow the government, RUF leaders and fighters, many of them child soldiers, used the support it received from the former president of Liberia, Charles Taylor, to commit acts of terrorism, murder, mutilation, pillage, forced labour, abduction, rape, sexual slavery and forced marriage against civilians, humanitarian personnel and United Nations peacekeepers to create an atmosphere of terror and to gain control of the country's diamond mines. In particular, women and girls were abducted to serve as fighters, spies, bodyguards, porters, cooks, cleaners and wives to members of the RUF.

The Special Court for Sierra Leone

In 2000, the Government of Sierra Leone sent a request to the United Nations Security Council (UNSC) to establish a Special Court to prosecute those most responsible for the commission of crimes against humanity, war crimes and other serious violations of international humanitarian law and Sierra Leonean law. The [Special Court for Sierra Leone \(SCSL\)](#) was created in 2002 and dissolved in 2013. It was based in Freetown, Sierra Leone, with offices in Freetown, The Hague, and New York City.

Issa Hassan Sesay, Morris Kallon and Augustine Gbao, three leaders of the RUF, were charged with, and later found guilty of, amongst other crimes, sexual slavery and forced marriage as acts of terrorism, rape, sexual slavery, other inhumane acts (forced marriage), outrages upon personal dignity, the use of child soldiers, and abduction and forced labour as enslavement. Sesay was sentenced to 52 years' imprisonment, Kallon to 39 years, and Gbao to 25 years.



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

Regarding forced marriage, the [Trial Chamber](#) identified a consistent pattern of conduct. RUF fighters captured, abducted, and sometimes raped women and girls, regardless of their age or existing marital status. They married them against their will and forced them into exclusive conjugal relationships that were marked by rape, forced pregnancy, forced drugging, forced domestic labour for their forced husband, and forced participation in combat and combat support tasks for the forced husband and the fighting group. Forced wives were unable to refuse or leave their forced husband for fear of being killed, beaten, or sent to the front lines in an act of retribution. Additionally, continuous monitoring, intimidation, manipulation, and other forms of duress prevented disobedience or escape. This violent and hostile environment also meant that women could not have willingly and genuinely consented to the marriages and sexual relationships.

After initial confusion about the nature of forced marriage, the Trial Chamber determined that it is not predominantly a sexual crime. On the one hand, the Trial Chamber found that perpetrators exercised control and powers attaching to the right of ownership over women by depriving them of their liberty, forcing them into exclusive conjugal relationships, and forcing them to engage in acts of a sexual nature. The Trial Chamber opined that the choice of the term “wife” by the RUF was deliberate and strategic, aimed at enslaving and psychologically manipulating women to treat them like possessions. Following this interpretation, the Chamber understood forced marriage as a form of sexual slavery.

On the other hand, the Trial Chamber defined the *actus reus*, the criminal act, of forced marriage as the imposition of a forced conjugal association. According to the Trial Chamber, this association carries with it lasting social stigma. Together with the associated fear and shame, it hindered ex-forced wives’ recovery and reintegration into society and resulted in their displacement from their home towns and support networks. This harm is in addition to the physical injuries they suffered through rape.

Highlighting the grave suffering and serious injury to the physical and mental health of forced wives indicates an understanding of forced marriage as another inhumane act amounting to a crime against humanity. In addition, the Trial Chamber determined that acts of forced marriage, just like acts of rape and sexual slavery, constitute a severe humiliation, degradation, and violation of the dignity of the victims, indicating that forced marriage can also be seen as an act of outrage upon personal dignity. Similarly, just like rape and sexual slavery, forced marriages can amount to an act of terror when committed against a civilian population with the specific intent to terrorise.

Differentiating forced marriage from rape and sexual slavery, the Trial Chamber clarified that forced marriage requires a forced conjugal association based on exclusivity between the perpetrator and victim. Rape requires sexual penetration. And sexual slavery requires the intentional exercise of powers attaching to the right of ownership and acts of a sexual nature. The Appeals Chamber further clarified that forced marriage or sexual slavery are continuous crimes and that consent is not an element of either. Consequently, it is important to consider the circumstances within a forced marriage as well as those surrounding the initial act of marriage.

Regarding the purpose of forced marriage, the Trial Chamber found that it was both a tactic of war and a way to obtain unpaid logistical support for the fighting group.

In response to the Accused's and Defence's claims that victims consented to the marriage, the Trial Chamber compared conflict-related forced marriages and traditional marriage in Sierra Leone. It highlighted that the traditional marriages included an element of parental or family consent, which was lacking in cases of forced marriage.



Significance and points to note

The RUF case was the first that resulted in convictions for forced marriage as a crime against humanity separate from sexual slavery. To arrive at this finding, the Trial Chamber highlighted the distinct elements of both crimes, a forced conjugal association based on exclusivity between the perpetrator and victim for forced marriage, and an intentional exercise of powers attaching to the right of ownership and forcing a person to engage in acts of a sexual nature for sexual slavery. The Trial Chamber recognised that both crimes include rape and that rape again requires the distinct element of sexual penetration. The Chamber also indicated that forced marriage includes other crimes such as forced pregnancy, forced labour and forced participation in hostilities. However, the conduct was not charged as such.

Furthermore, while the evidence showed that forced wives participated in direct combat and were forced to perform combat support tasks, the Trial Chamber applied a gendered approach to forced marriage and the use of child soldiers. Only women and girls were considered to be victims of forced marriage whereas boys were viewed as the only victims to experience forced recruitment and forced participation in hostilities. Following from this, the Trial Chamber found active participation in hostilities to include the use of children to commit crimes of amputation, killing, rape and enslavement against civilians but not the use of children as domestic labour or for food finding missions. Consequently, the Trial Chamber only partially considered women's and men's, girls' and boys' experiences of the conflict.

Learning from other institutions and decisions in the 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 144
- Assembly of States Parties to the Rome Statute of the International Criminal Court 'Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002' (09 September 2002) ICC-ASP/1/3 (Part II.B) (International Criminal Court Elements of Crime): para 145, 147, 148
- Hague Convention (IV) Respecting the Laws and Customs of War on Land and its Annex: Regulation concerning the Laws and Customs of War on Land (18 October 1907) 36 Stat 2277, 187 CTS 2271, Bevans 631, 205 Consol TS 277, 3 Martens Nouveau Recueil (ser 3) 461: para 144
- Instructions for the Government of Armies of the United States in the Field, General Order No. 100 (24 April 1863) (Lieber Code): para 144
- 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 144
- Prosecutor v Zejnil Delalić, Zdravko Mucić, Hazim Delić, and Esad Landžo (Trial Judgment) T-96-21-T "Čelebići case" (16 November 1998): para 144
- Prosecutor v Sylvestre Gacumbitsi (Appeals Chamber Judgment) ICTR-01-64-A (07 July 2006): para 148
- Prosecutor v Anto Furundžija (Trial Judgment) ICTY IT-95-17/1-T (10 December 1998): para 144, 147
- 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 144
- 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 147
- Prosecutor v Miroslav Kvočka and others (Appeals Chamber Judgment) IT-98-30/1-A "Omarska, Keraterm & Trnopolje Camps" (28 February 2005): para 144
- Prosecutor v Mikaeli Muhimana (Appeals Chamber Judgment) ICTR-95-1B-A (21 May 2007): para 148
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (08 June 1977) 1125 UNTS 3 (Additional Protocol I): para 144
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (08 June 1977) 1125 UNTS 609 (Additional Protocol II): para 144
- UNSC Resolution 827 (25 May 1993) UN Doc S/RES/827 (Statute of the International Criminal Court for the Former Yugoslavia): para 144
- UNSC Resolution 955 (08 November 1994) UN Doc S/RES/955 827 (Statute of the International Criminal Court for Rwanda): para 144

Sexual Slavery

- 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 156
- 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 156, 157, 162
- Foča case: para 155, 157, 160, 161, 163
- Rome Statute of the International Criminal Court (17 July 1998) 2187 UNTS 3: para 154
- UNSC Resolution 1820 (19 June 2008): para 156

Forced Marriage, Rape and Sexual Slavery

- 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 2306, 2307

Use of Child Soldiers

- Constitution of 1988 with Reforms through 2005, Brazil: para 186
- Constitution of the Kingdom of the Netherlands 2002: para 186
- Constitution of the Kingdom of Thailand: para 186
- The Constitution of the Republic of Hungary: para 186
- Constitutional Law of the Republic of Angola: para 186
- Defence Act 1903 (Act No. 20 of 1903), Australia: para 186
- Immigration and Naturalization Service v Jairo Jonathan Elias-Zacarias, 502 U.S. 478; 112 S. Ct. 812; 117 L. Ed. 2d 38; 60 U.S.L.W. 4130, United States Supreme Court, 22 January 1992: para 186
- National Constitution of the Argentine Republic: para 186
- Political Constitution of the Republic of Chile of 1980: para 186
- Prosecutor v Moinina Fofana and Allieu Kondewa (Trial Judgment) SCSL-04-14-T “CDF case” (02 August 2007): para 187, 195
- Prosecutor v Moinina Fofana and Allieu Kondewa (Appeals Chamber Judgment) SCSL-04-14-A “CDF case” (28 May 2008): para 184, 185, 190, 191, 194
- Prosecutor v Thomas Lubanga Dyilo (Decision on the Confirmation of Charges) ICC-01/04-01/06 (29 January 2007): para 185
- Prosecutor v Duško Tadić (Appeals Chamber Judgment) IT-94-1-A (15 July 1999): para 189

Enslavement (Forced Labour)

- Prosecution v Milorad Krnojelac (Trial Judgement) IT-97-25-T (15 March 2002): para 196, 202
- 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 196, 198, 199
- 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 200
- United States of America v Pohl and others (13 January 1947 - 11 August 1948) “Pohl/WVHA case”: para 203



Additional resources

Amowitz LL and others, ‘Prevalence of War-Related Sexual Violence and Other Human Rights Abuses Among Internally Displaced Persons in Sierra Leone’ (2002) 287(4) JAMA 513) (available [here](#))

The Hague Justice Portal, ‘The RUF Accused’ (available [here](#))

Human Rights Watch, 'Sierra Leone: Getting Away with Murder, Mutilation, Rape' (1999) (available [here](#))

Human Rights Watch, 'Sowing Terror: Atrocities Against Civilians in Sierra Leone' (1998) (available [here](#))

Human Rights Watch, '"We'll Kill You If You Cry": Sexual Violence in the Sierra Leone Conflict' (2003) (available [here](#))

International Crimes Database, 'Sesay et al.' (available [here](#))

Lexisitus, 'Article 7(1)(c) Enslavement' (available [here](#))

Marks Z, 'Sexual Violence in Sierra Leone's Civil War: "Virgination", Rape, and Marriage' (2013) African Affairs 67 (available [here](#))

McKay S, 'Girls as "Weapons of Terror" in Northern Uganda and Sierra Leonean Rebel Fighting Forces' (2005) 28(5) Studies in Conflict and Terrorism 385

Oosterveld V, 'The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments' (2011) 40 Cornell International Law Journal 49

Oosterveld V, 'Forced marriage judgment at the Special Court for Sierra Leone' (27 February 2009) IntLawGrrlz (available [here](#))

Oosterveld V, 'Sierra Leone Special Court: Sentences of 25, 40 and 52 Years for Gender-Based Crimes' (8 April 2009) IntLawGrrlz (available [here](#))

Special Court for Sierra Leone, 'The Prosecutor vs. Issa Hassan Sesay, Morris Kallon and Augustine Gbao' (available [here](#))

