



The Role of Parliamentarians in Implementing Forced Marriage as a Crime Against Humanity into Domestic Law

Date: 22 April 2021

Time: 17h-18h30 (Kampala) / 16h-17h30 (The Hague) / 10h-11h30 (New York)

Venue: virtual (Zoom)

Registration (required):

<https://us02web.zoom.us/meeting/register/tZcvf-2rqj8uHNCzfgIcGTyZ0Ai4ypgpnz-e>

I. Draft Agenda

- 17:00- 17:05 **Hon. Levy Nazaré**, Vice-President of the National Assembly (Sao Tomé & Príncipe), PGA Board Member, *Introductory remarks*
- 17:05-17:15 **Ms. Anushka Sehmi**, Legal representative of victims before the International Criminal Court in the case of *Prosecutor v. Dominic Ongwen*, *Review of the Ongwen decision and its implications*
- 17:15-17:25 **Hon. Mariam Solaimankhail**, MP (Afghanistan)
- 17:25- 17:35 **Ms. Grace Acan (Uganda)**, Community Rights Advocate, Women's Advocacy Network
- 17:35- 17:45 **Ms. Jackline Atingo (Uganda)**, Research-Consultant, Justice & security research project, London School of Economics; expert on victims' rights
- 17:45-17:55 **Hon. Millie Odhiambo-Mabona**, MP (Kenya), PGA Board Member
- 17:55-18:05 **Ms. Frederika Schweighoferova**, PGA Senior Legal Officer of the International Law and Human Rights Programme – *The Role of Parliamentarians in Implementing Forced Marriage as a Crime against Humanity in their Domestic Legislation*
- 18:05-18:30 *Open discussion and questions*

Ms. Alix Vuillemin, Senior Advocacy Adviser, Women's Initiatives for Gender Justice (*Moderator*)

II. Objective of this Event

On 4 February 2021, in a landmark decision, the International Criminal Court (ICC) found Dominic Ongwen, a former child soldier and Commander of the Sinia Brigade of the Lord's Resistance Army in Uganda, guilty of 61 crimes, including forced marriage as a crime against humanity. This decision marks the first time that the ICC found a perpetrator responsible for this international crime.

In the decision, the Court reiterated that entering a marriage with the free and full consent of another person was a fundamental right. It concluded that forced marriage was violating this right by imposing on the victim, regardless of her or his will, the obligations that came with marriage, such as exclusivity of the (forced) conjugal union— as well as the consequent social stigma. The Court also recognised the serious impact of such crime on the physical and psychological well-being of victims since it could lead to their ostracisation, to mental trauma and to attacks on their dignity.

Despite the grave harm suffered, forced marriage, which includes child marriages, remains a common practice worldwide. According to the United Nations, every year there are around 12 million girls who are married before they reach the age of 18. Through its decision, the ICC sends a clear message to the international community that forced marriages committed as part of a widespread or systematic attack against civilians is a crime against humanity falling under the competence of the Court. States Parties to the Rome Statute of the ICC have therefore the responsibility to implement the crime of forced marriage into their domestic legal framework.

This roundtable seeks to contribute to the fight against impunity and to improve access to justice for victims of international atrocities. To this end, PGA, as part of its Campaign for the Rome Statute and the International Criminal Court, prepared a toolkit to better support Parliamentarians in domesticating the crime of forced marriage as a crime against humanity, and will present it during the event. It will also be the occasion to address how and to what extent this decision of the ICC might have a concrete impact on States' willingness to criminalise forced marriage and to implement the Rome Statute in their national legal framework. It will be a unique occasion to create a space where lawmakers, experts, survivors, and members of the civil society can exchange on best practices, challenges and ways forward to domesticate the ICC.

Finally, this roundtable, aligning with PGA's Campaign to End Child, Early and Forced Marriage (CEFM), seeks to empower lawmakers to become leaders in the defence and promotion of girls' and women's human rights. It aims to encourage the creation of a legal and policy framework that can guarantee access to justice for all girls and women. This roundtable notably builds on a [Strategic Dialogue among parliamentarians and civil society on ending Child, Early and Forced Marriage in Kenya](#), co-organised with Girls Not Bride, in December 2020.

III. The evolution of the crime of forced marriage in international criminal law

(i) The Special Court for Sierra Leone: A landmark decision

The case of Issa Hassan Sesay, Morris Kallon and Augustine Gbao before the Special Court for Sierra Leone (SCSL) is a landmark decision for the criminalisation and prosecution of forced marriage as a crime against humanity. It was in fact the very first time that an international court ever convicted individuals on this charge.

Sesay, Kallon and Gbao were three high-ranking members of the Revolutionary United Front who committed crimes against humanity and war crimes during the war in Sierra Leone between 1991 and 2002. Among other crimes, they were found guilty in February 2009 for the kidnapping of women who were forced to become their 'wives' and to perform domestic chores and sexual acts for them.

In its decision, the SCSL made a clear distinction between the crime of forced marriage and any other forms of sexual violence, such as sexual slavery. In fact, the crime of forced marriage requires a marital bond which does not exist for any other crimes. The SCSL also established that the crime of forced marriage could be charged as 'other inhumane act' and made it clear that under no circumstances a victim could genuinely consent to be forcibly married.

(ii) The International Criminal Court: Building on the legacy of the SCSL

As mentioned above, the Ongwen case marks the first time the International Criminal Court found an individual guilty of the crime of forced marriage as a crime against humanity. In its decision, the ICC followed the legacy of the SCSL and confirmed that forced marriage was a crime distinct from any other forms of sexual violence since it sought to criminalise the act of imposing a marital status over a person. The Court went further and defined the crime of forced marriage as "forcing a person, regardless of his or her will, into a conjugal union with another person by using physical or psychological force, threat of force or taking advantage of a coercive environment".

In addition to the Ongwen case, forced marriage as a crime against humanity has also been charged in the case of Al Hassan Ag Abdoul Aziz, an alleged member of Ansar Eddine and *de facto* chief of Islamic police in Timbuktu (Mali). The ICC Pre-Trial Chamber concluded the repeated instances of rape, sexual violence, physical and psychological abuse, forced pregnancy and enslavement of girls might have been committed in the course of forced marriages. It confirmed that in addition to "other inhumane acts", forced marriages might give rise to the crimes of rape and sexual slavery. Moreover, forced marriages were indicated to form a part of the policy of a gender-based persecution. In the decision, the Chamber intended to go beyond the harm caused by sexual violence, and to recognise the broader social stigma and psychological harm that victims could suffer from this crime. The case is currently on trial, but the Ongwen's jurisprudence has certainly created an important precedent that should be followed by the ICC in future judgements.