



Parliamentarians for Global Action
Parlamentarios para la Acción Global
Action Mondiale des Parlementaires
برلمانيون من أجل التحرك العالمي



The Role of Parliamentarians in Implementing Forced Marriage as a Crime against Humanity in their Domestic Legislation



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Child Marriage is not Tradition,
It's a Violation of Human Rights.

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Introduction



Forced marriages are marriages in which one or both parties have not personally expressed their full and free consent to the marriage. This human rights violation represents a harmful practice which disproportionately affects women and girls globally. **Forced and child marriage** disrupts women's and girls' education, increases their vulnerability to violence, discrimination and abuse, and prevents their full participation in economic, political and social spheres. Child marriage is often accompanied by early pregnancy and results in higher maternal morbidity and mortality rates.

On 4 February 2021, in a landmark decision, the International Criminal Court (ICC), with the jurisdiction over "[the most serious crimes of concern to the international community as a whole](#)", found Dominic Ongwen, a former child soldier and Commander of the Sinia Brigade of the Lord's Resistance Army in Northern Uganda, [guilty of 61 crimes](#), including of forced marriage as a crime against humanity. This decision marks the first time that the ICC found a perpetrator responsible for the crime of forced marriage.*

In its decision, the Court held 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 ICC also recognised the serious impact of such crime on the physical and psychological well-being of victims as it could lead to their ostracization, mental trauma and 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 around [12 million girls](#) are married before they reach the age of 18. [This accounts for 28 girls every minute](#).

Through its decision, the ICC sends a clear message to the international community that a forced marriage committed as part of a widespread or systematic attack against civilians is a crime against humanity falling under the jurisdiction of the Court. In order to offer adequate legal protection to their population, the States Parties to the Rome Statute of the ICC have therefore the responsibility to implement the crime of forced marriage, as well as other crimes against humanity, into their domestic legal framework.

Why should Parliamentarians domesticate the crime of forced marriage as a crime against humanity?

In the [2021 report](#), the UN Secretary-General noted that sexual and gender-based crimes (SGBC), including forced marriage, were used as a tactic of war to systematically terrorize enemies and to assert power over a community. Recognising its global occurrence and the far-reaching damaging effects, the target 5.3 of the Sustainable Development Goals (SDGs) commits all UN Member States to 'eliminate all harmful practices, such as child, early and forced marriage' by 2030.

Protecting girls and boys from child marriage is a moral imperative and responsibility of the State. However, accountability for SGBC has too often been the exception rather than the rule, leaving victims and survivors – both women and men – without any possible avenues to obtain justice for the harms suffered under international and national jurisdictions.

The International Criminal Court has been established to prosecute the gravest human rights violations, namely genocide, crimes against humanity, war crimes, and crimes of aggression. Through its Rome Statute, which explicitly criminalizes the crime of **rape, sexual slavery, enforced prostitution, forced pregnancy, and enforced sterilization**, the Court became a pivotal instrument to overcome the inadequate treatment of SGBC under international and national legislation.

Through its jurisprudence and the [2014 Policy Paper on Sexual and Gender-Based Crimes](#), committing to integrating a gender perspective and analysis into all of the ICC Prosecutor's work, the ICC has significantly contributed to the development of gender justice under international criminal law. The recognition by the ICC that forced marriage as a crime against humanity can be successfully prosecuted as "*other inhumane act of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health*" serves as another example of its contribution to the fight against impunity for SGBC.

Nevertheless, the Court is a court of **last resort** and will only act in **complementarity** with national jurisdiction- that is, when the State is unwilling or unable to investigate and prosecute these crimes genuinely. States have the primary responsibility to ensure that their authorities have the possibility to prosecute these crimes before their own legal system.

Members of Parliament, therefore, should use their legislative prerogatives to advance the implementation of the Rome Statute in their domestic legal framework to guarantee that victims and survivors can benefit from its enhanced legal protection and have access to justice, including for SGBC and the crime of forced marriage. In addition, the recognition and criminalisation of SGBC in the national legal framework can help bolster the prevention and deterrence of these crimes in the future and will contribute to a growing gender jurisprudence for international crimes.

What Can Parliamentarians Do?

Parliamentarians are key players in ending child, early and forced marriage, as they can lead the development of relevant legislation and policies, set the political agenda as opinion leaders on ending the practice, pass domestic budgets, monitor implementation, and ensure accountability for both national and international commitments, including to reach target 5.3 of SDG 5. Parliamentarians can guarantee the voices of citizens, particularly of girls, are heard in order to mobilise political will and commitment to end child, early and forced marriage.



Dra. Johana Bermudez, Member of the National Congress of Honduras, with her daughter.



Hon. Levy Nazaré, Member of the National Assembly of São Tomé and Príncipe, and his daughters.

Addressing Discrimination as a Root Cause of Forced Marriages

Since SGBC are deeply rooted in discriminatory measures and attitudes that promote gender inequalities, to prevent these crimes, including forced marriages, Parliamentarians should first ensure that their **national legal framework does not condone gender discrimination**, especially against women and girls. To that end, Parliamentarians can:

- **Promote the ratification** and bring about the **implementation** of international and regional instruments promoting gender equality, including the [Convention on the Elimination of All Forms of Discrimination against Women](#); the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#); the [Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa](#) as well as the amended [Rome Statute](#) of the ICC.
- Introduce and adopt legislations that:
 - **sets the minimum uniform age for marriage at 18 years** and adopts necessary administrative, legal and financial measures to ensure its effective implementation (e.g.: promote registration of marriages and births).
 - **adopts judicial safeguards** to ensure that both parties have given their **free and informed consent to the marriage**, and prevent the use of legal guardian consent, judicial consent or other exceptions that may give rise to forced marriages.
- Encourage launching **awareness-raising campaigns** on forced marriages.
- **Repeal laws** that could allow or give rise to child, early or forced marriages, including those that enable the perpetrators of rape, sexual abuse, sexual exploitation, abduction, people trafficking or modern forms of slavery to escape prosecution and punishment if they marry their victims.
- **Eliminate social standards and cultural traditions** which infringe on the rights and freedom of young girls and women.

Preventing Forced Marriages as a Crime Against Humanity

To promote domestic prosecution of the crime of forced marriage as a crime against humanity, Parliamentarians can:

- Ensure the preparation and adoption of **legislation** that:
 - incorporates the **definitions** of the SGBC and general principles under the **Rome Statute**.
 - facilitates the **reintegration of victims of forced marriages** into society, through rehabilitation, psycho-social counselling, protection mechanisms and economic empowerment opportunities.
- Request **adequate trainings of the law enforcement authorities and judiciary** to ensure they have the knowledge, capacity, and expertise to deal with SGBC cases, including cases of forced marriage.
- Request the **establishment of a specialized unit** with expertise to investigate and prosecute international crimes, including SGBC and forced marriages.
- Ensure that national courts have the competence to **directly apply the jurisprudence of international courts** and tribunals.
- Make sure the **law provides for adequate legal guarantees and protection measures** to ensure the safety, psychological and physical wellbeing of victims, survivors and witnesses of SGBC.

Forced Marriage as a Separate Crime Against Humanity

While the Rome Statute does not criminalize forced marriage as a **separate** crime – and as evidenced by its jurisprudence, 'other inhuman acts' may be interpreted to encompass the crime of forced marriage – legislators can take a step forward and propose the criminalization of forced marriage as a separate offense in their national legal system under crimes against humanity.

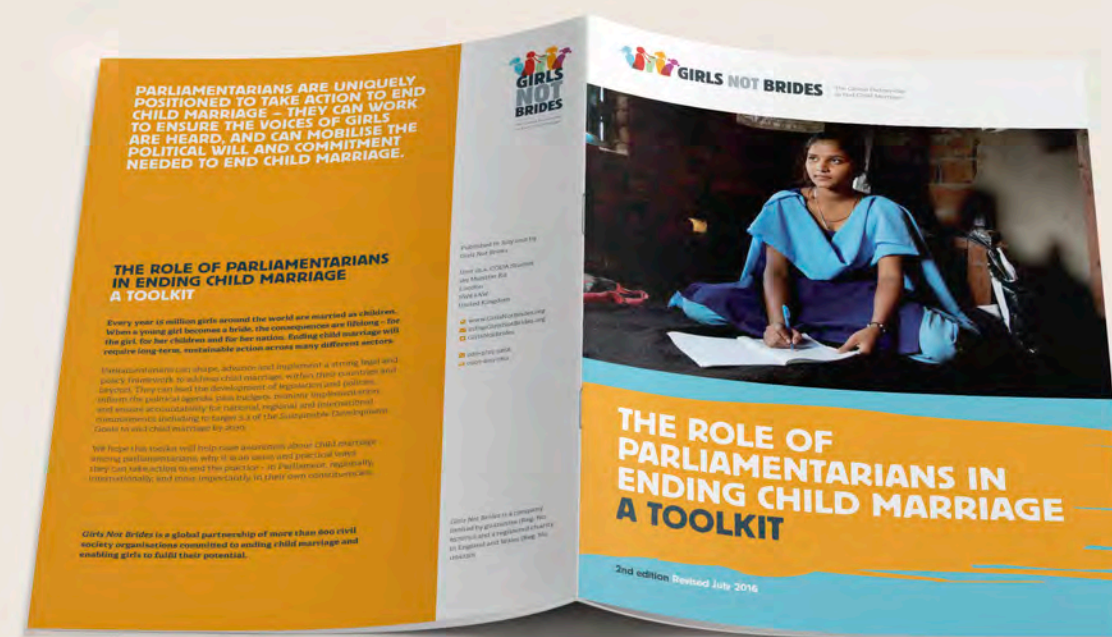
Currently, only the 33 States Parties to the [2011 Istanbul Convention on violence against women](#) have the obligation to take the necessary measures to explicitly criminalize “*the intentional conduct of forcing an adult or a child to enter into a marriage*” (art. 37). In accordance with the growing jurisprudence of international tribunals, such crime, if conducted as part of a widespread or systematic attack directed against any civilian population, could amount to a crime against humanity.



Need assistance or have a question? Contact us.

Through its [Campaign for the Universality and Effectiveness of the Rome Statute of the International Criminal Court \(ICC\) system](#), Parliamentarians for Global Action (PGA) offers its support and technical assistance to Parliamentarians wishing to advance the fight against impunity and promote the Rule of Law, including through the domestic implementation of the Rome Statute. For assistance, contact Ms. Frederika Schweighoferova, PGA Senior Legal Officer, at schweighoferova@pgaction.org.

For Parliamentarians seeking to become leaders in the defence and promotion of women’s and girls’ human rights, visit PGA’s [Campaign to End Child, early and Forced Marriage \(CEFM\)](#) where you can find more information, including the [Toolkit on the Role of Parliamentarians in Ending Child Marriage](#). The toolkit was prepared by Girls Not Brides with inputs from PGA. For assistance contact Mónica Adame, Program Director at monica.adame@pgaction.org

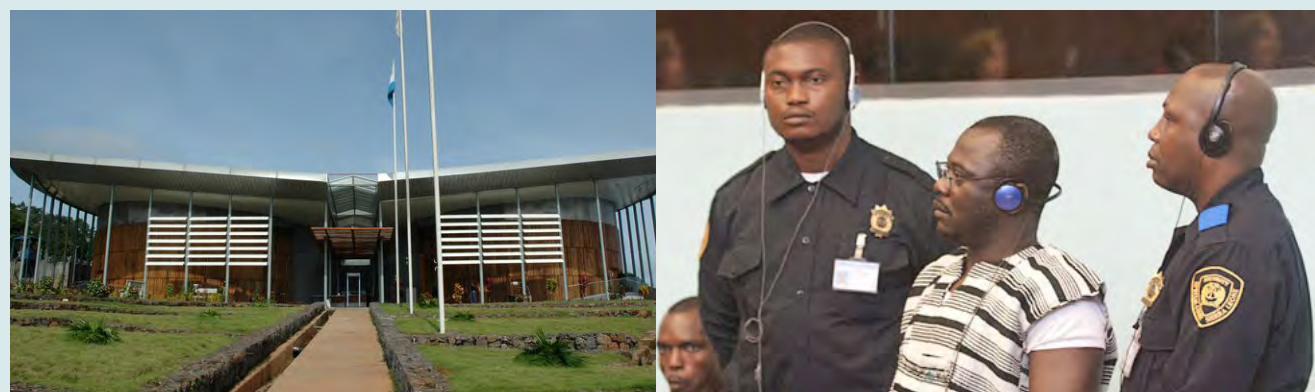


The crime of forced marriage in international criminal jurisprudence

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

While forced marriage was for the first time recognised by an international tribunal as a distinct crime against humanity in the *AFCR* case by the SCSL Appeals Chamber in 2008, it was only in the *RUF* case judgment, pronounced one year later, that the SCSL actually convicted individuals for the crime.

The accused, Sesay, Kallon and Gbao, were three high-ranking members of the Revolutionary United Front (RUF) who were convicted for crimes against humanity and war crimes committed in the context of the war in Sierra Leone which lasted between 1991 and 2002. Among other crimes, they were found guilty for abducting women who were forced to become their 'wives' and to perform domestic chores and sexual acts for them.



The Special Court for Sierra Leone, Freetown, Sierra Leone

Morris Kallon, former RUF Deputy Area Commander

The SCSL distinguished between forced marriage and other forms of sexual violence, such as rape and sexual slavery, recognising the both sexual and non-sexual components of forced marriages. The "conjugal" was understood to include sexual intercourse, domestic labor, childcare and child bearing. It shed light on the fact that the victims had no other option than to become bush wives, as they had no leverage to negotiate and "could not escape for fear of being killed". It moreover held that forced marriages amounted to "outrages on personal dignity" and were used to spread terror among civilians, amounting to the act of terror. Given its complexity and a long-lasting stigmatization of the women and girls the crime created, SCSL concluded that the forced marriage constituted a distinct crime within 'other inhumane act' under crimes against humanity, done as a 'pattern of conduct' by RUF on a large scale.

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

The judgment in the *Ongwen* case marks a significant milestone in accountability for SGBC and forced marriages, constituting the first time the ICC found an individual guilty of the crime of forced marriage as a crime against humanity. Following the legacy of the SCSL, the ICC confirmed that the relationship of exclusivity between the spouses was one of the aspects that set the forced marriage apart from other forms of sexual violence. The Court defined 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**". The judgment represents another step towards acknowledging and crystallising forced marriage as a distinct crime against humanity, falling under a residual provision of 'other inhumane acts'.



Dominic Ongwen, former commander in the Ugandan guerilla group Lord's Resistance Army

Al Hassan Ag Abdoul Aziz, former member of Ansar Eddine

In addition to the *Ongwen* case, forced marriage as a crime against humanity has also [been charged](#) against *Al Hassan Ag Abdoul Aziz*, a member of Ansar Eddine and *de facto* chief of Islamic police in Timbuktu (Mali). The ICC Pre-Trial Chamber concluded that 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 have given rise to the crimes of rape and sexual slavery. Moreover, forced marriages were indicated to form a part of a broader gender-based persecution policy.

The subsumption of other serious international crimes under forced marriage demonstrates the extreme gravity and complexity of the crime and the far-reaching moral, psychological and physical harm it inflicts on victims. While still on trial, the *Al Hassan* case contributes to achieving the goals enshrined in the international system of women's rights and advancing the accountability for SGBC, including sexual slavery and forced marriage.



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PGA, a non-profit, non-partisan international network of approximately 1,300 legislators in over 140 elected parliaments around the globe, aims to promote peace, democracy, the rule of law, human rights, gender equality and population issues by informing, convening, and mobilizing parliamentarians to realize these goals.

Gender Equality and Inclusion Programme

Ending Child, Early and Forced Marriage

Ending Child, Early and Forced Marriage

The Campaign to End Child, Early and Forced Marriage (CEFM) was launched in 2014.

It seeks to empower parliamentarians to become leaders in the defense and promotion of the human rights of girls and women.

This includes promoting an effective monitoring, funding and implementation of Sustainable Development Goal (SDG) 5: To achieve gender equality and empower all women and girls, particularly by addressing target 5.3 on ending all harmful practices such as child, early and forced marriage.

www.pgaction.org/gei/cefm/

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Human Rights Programme

Ending Child, Early and Forced Marriage

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Under its Campaign on the Universality and Effectiveness of the Rome Statute system, PGA has contributed to the ratification/ accession of 78 of the 123 States Parties to the Rome Statute International Criminal Court (ICC).

In addition, as of 2021, PGA has contributed directly to the decision-making and drafting processes that led to the enactment of approximately 37 legislative packages on domestic implementation of the Rome Statute.

PGA Secretariat supports this joint effort with technical and legal assistance to its members.

www.pgaction.org/ilhr/rome-statute/

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