

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: English

**No. ICC-02/04-01/15 A
Date: 15 November 2021**

THE APPEALS CHAMBER

Before: Judge Luz del Carmen Ibáñez Carranza, Presiding
Judge Piotr Hofmański
Judge Solomy Balungi Bossa
Judge Reine Alapini-Gansou
Judge Gocha Lordkipanidze

SITUATION IN UGANDA

IN THE CASE OF *THE PROSECUTOR v. DOMINIC ONGWEN*

Public

Request for leave to submit amici curiae pursuant to Rule 103 of the Rules of Procedure and Evidence on the “Appeal of Mr Dominic Ongwen against the “Trial Judgment” of Trial Chamber IX of 4 February 2021

Source:

Ms Ardila, Mariana
Ms Fernández-Paredes, Teresa
Ms Ibáñez, María Cecilia
Ms Kravetz, Daniela
Ms SáCouto, Susana
Ms Seoane, Dalila

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

The Office of the Prosecutor

Mr Karim A. A. Khan, Prosecutor
Ms Helen Brady

Counsel for the Defence

Mr Krispus Ayena Odongo
Chief Charles Achaleke Taku
Ms Beth Lyons

Legal Representatives of the Victims

Mr Joseph Akwenyu Manoba
Mr Francisco Cox

Ms Paolina Massidda

REGISTRY

Registrar

Mr Peter Lewis

1. This Request for Leave to submit observations on the merits as *amici curiae* is filed pursuant to paragraph 4 of the Appeals Chamber Order No. ICC-02/04-01/15 A,¹ and Rule 103 of the ICC's Rules of Procedure and Evidence. The Applicants will provide submissions that can assist the Chamber in the proper determination of the following two matters identified in paragraph 19(b) of the Appeals Chamber's Order: (A) the legal interpretation of the crime of forced pregnancy; and (B) the standards applicable to assessing standards of sexual violence.

I. Applicants requesting leave

2. The Request for Leave is presented collectively by several highly qualified scholars and practitioners of international law, most of whom are members of the Latin American Network for Gender-based Strategic Litigation (ReLeG).² Ms. Susana SáCouto directs the War Crimes Research Office at American University Washington College of Law, where she teaches courses on international criminal law (ICL). She has advised and provided legal assistance on ICL issues to international, regional and domestic courts, and has published widely on gender issues in ICL. She is an Advisory Council Member of the International Association of Prosecutors' Prosecuting Conflict-Related Sexual Violence Network, and former co-chair of the American Society for International Law's Women in International Law Interest Group. Ms. Daniela Kravetz is an international criminal justice and gender practitioner. She supports domestic accountability efforts in various national jurisdictions, and is also an adjunct professor at American University Washington College of Law, where she teaches on women's rights in international law. She has worked as a prosecutor in the Office of the Prosecutor of the International Criminal Tribunal for the former Yugoslavia (ICTY), among other roles. Ms. Dalila Seoane is Senior Legal Analyst at the Centre for Climate Crimes Analysis, having previously worked at Civitas Maxima and for the Office of the High Commissioner for Human Rights, as well as with national jurisdictions in the

¹ Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence), 25 October 2021.

² See <https://www.releg.red/whoweare>.

investigation of international crimes. Ms. Teresa Fernández-Paredes is a gender expert and human rights lawyer working in strategic litigation, advocacy, legal investigations and research on women's rights. She currently coordinates the legal work on cases of torture and other grave human rights violations of the World Organization Against Torture (OMCT).³ Ms. Mariana Ardila is a managing attorney at Women's Link Worldwide (WLW)⁴ and currently co-leads the organization's global work on reproductive rights, transitional justice and international gender crimes. She is a law professor at Externado University of Colombia, and has published the book, [The Human Right of Women to Contraception](#). Ms. María Cecilia Ibáñez also works as an attorney at WLW, litigating cases concerning sexual and reproductive rights and representing victims before the Colombian Special Jurisdiction for Peace. She is a lecturer in international human rights law at Universidad de los Andes in Colombia.

II. Summary of Submissions

A. *Legal Interpretation of the Crime of Forced Pregnancy*

3. On the issue of the legal interpretation of the crime of forced pregnancy, the Applicants will provide an informed analysis on the importance of understanding forced pregnancy as a distinct form of reproductive violence, as well as on how the definition of this crime is necessarily grounded in International Human Rights Law (IHRL) according to article 21(3) of the Rome Statute.

4. Reproductive violence has often been overlooked, narrowly defined, and seldom prosecuted in contexts of mass violence.⁵ While examples of reproductive crimes have been documented in several cases prosecuted before international courts and tribunals, these precedents have seldom included legal charges or legal findings on those crimes. A common challenge is that reproductive crimes are often subsumed under the definition of sexual violence rather than examined as distinct violations. This is evident in the explicit wording of article 7(1)(g) of the Rome Statute, and in the

³ See <https://www.omct.org>.

⁴ See <https://www.womenslinkworldwide.org/en>.

⁵ See GREY, Rosemary, "[The ICC's First 'Forced Pregnancy' Case in Historical Perspective](#)", JICJ (2017), Vol. 15 (5), pgs. 905-930.

jurisprudence of both the ICTY and the ICC.⁶ Although it is technically possible to include specific categories of gender-based violence, such as forced pregnancy, within a broad concept of “sexual violence”, acts of reproductive violence should be examined as distinct violations to adequately capture and characterize the specific harms suffered by victims, in particular women, which affect their reproductive autonomy in contexts of conflict and repression.

5. The recognition of reproductive crimes as distinct violations has resulted from the evolution and increased visibility of reproductive rights in IHRL, within the notion of gender-based violence. These developments are based on human rights treaties and soft-law decisions and instruments, which have contributed to clarifying the scope and definition of reproductive violence and to identifying its diverse manifestations based on the recognition of a woman’s right to personal and reproductive autonomy, the right to family and other internationally recognized human rights standards. Given the limited progress in international criminal law in recognizing reproductive violence as a distinct category of violations, it is necessary to examine such developments in IHRL to determine the definition and legal elements of crimes such as forced pregnancy. Understanding the crime of forced pregnancy in accordance with IHRL supports the Trial Chamber’s findings on this crime. It also serves to demonstrate that both material elements of the *actus reus* as well as the *mens rea* have been established in this present case. Taking into consideration developments in IHRL and, therefore, analyzing the crime of forced pregnancy as a form of reproductive violence, is consistent with the Court’s obligation under Article 21(3) of the Rome Statute to apply and interpret the Statute and other relevant law “consistent[ly] with internationally recognized human rights, and be without any adverse distinction founded on grounds such as gender”, and is also essential to ensuring the *effet utile* of the Rome Statute.

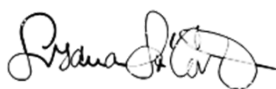
⁶ See ICC, *Prosecutor vs. Muthaura and Kenyatta*, ICC-01/09-02/11-445, Trial Judgement, 24 July 2012; ICTY, *Prosecutor vs. Kvočka*, IT-98-30/1-T, Trial Judgement, 2 November 2001.

B. Standards Applicable to Assessing Evidence of Sexual Violence

6. The Applicants will also present an informed analysis on the assessment of the evidence of sexual violence crimes. Special attention will be drawn to the fact that the same evidentiary standards applied to other categories of international crimes must also be applied to sexual violence. Pursuant to international criminal⁷ and human rights⁸ jurisprudence concerning sexual violence, victim evidence is often central to establishing the charges, in particular in the absence of direct eyewitnesses or of physical evidence. The testimony of a victim of sexual violence should be afforded the same presumption of reliability as the testimonies of victims of other crimes.⁹ Although corroboration of a victim's testimony is not a legal requirement under article 63(4) of the ICC Rules of Procedure and Evidence, corroboration can be obtained by examining a victim's account together with other available forms of evidence, such as that of other witnesses and experts. This other evidence may contribute to both reinforcing the victim's account and clarifying the violent context in which the conduct occurred. In addition, a trial chamber may establish the existence of a specific context based on an analysis of patterns of violence to adequately assess the reliability of evidence of sexual violence, including that provided by victims.

III. Relief Sought

7. For the reasons stated above, the Applicants respectfully seek leave to file *amici curiae* observations in the form of a written brief.



Susana SaCouto



Dalila Seoane



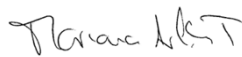
Teresa Fernández



María C. Ibañez



Daniela Kravetz



Mariana Ardila

Dated this 15th day of November 2021
At The Hague, The Netherlands

⁷ ICTY, *Prosecutor vs. Delalić et al.*, IT-96-1-T, Trial Judgement, 16 November 1998, paras. 956-957; ICTR, *Prosecutor vs. Gacumbitsi*, ICTR-2001-64-A, Appeals Judgement, 7 July 2006, paras. 106-107.

⁸ Inter-American Court of Human Rights, *Case of Rosendo Cantú et al. vs Mexico*, Preliminary objection, merits, reparations and costs, Judgment of 31 August 2010.

⁹ ICTY, *Prosecutor vs. Delalić et al.*, ICTY-96-2-A, Appeal Judgement, paras. 504-505.