



Forced Marriage Case Notes

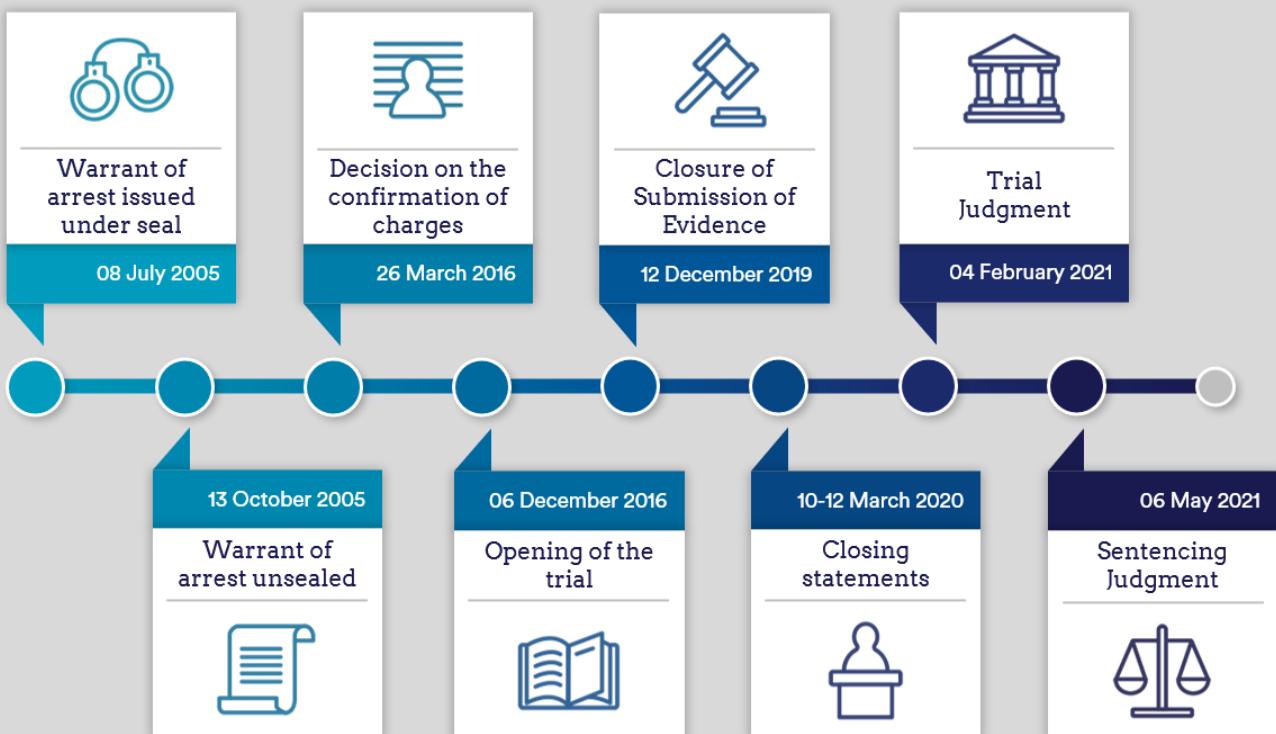
Ongwen Case

The Prosecutor v. Dominic Ongwen

ICC-02/04-01/15

June 2021

Key dates of the case



What happened?

In the late 1980s, the Lord's Resistance Army (LRA), under the leadership of Joseph Kony, began an insurgency against the government of Uganda with the aim to overthrow it. This resulted in an armed conflict predominantly between the LRA and the national authorities mainly in Northern Uganda.

The LRA has been implicated in attacks against civilians perceived to be affiliated with and/or supporting the Ugandan government, displacement, destruction of property, pillage, murder, torture, mutilation, abduction, forced marriage, rape, sexual slavery, enslavement, forced pregnancy, and the use of child soldiers.

Dominic Ongwen was forced to join the LRA as a child soldier and rose in its ranks to the position of a commander. As such, he ordered, oversaw, controlled, co-ordinated and directly participated in acts of conflict-related violence.

The International Criminal Court found Ongwen, amongst others, guilty of forced marriage, torture, rape, sexual slavery, enslavement, forced pregnancy and outrages upon personal dignity. He has been sentenced to 25 years imprisonment.

The International Criminal Court

[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 the 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 Al Hassan in Mali. Mali ratified the Rome Statute and referred the situation in its territory to the ICC.



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

The LRA abducted or captured civilian women and girls between the ages of 7 and 20 years and forced them into marriage with fighters. Young abductees were preferred as wives as they were expected to be healthy and HIV negative.

Forced wives, classified by beauty, character and education, were distributed to fighters based on rank and merit. While higher ranking fighters could choose their wives, women were assigned to fighters of lower ranks. Some fighters could refuse a woman. If they refused too many, some would be suspected of impotence but not pressured to take a wife and passed over on other occasions. A fighter's widow was either given to another man or could choose a new husband subject to the permission of commanders. Similarly, some women had limited agency as to who they were initially assigned to as wife but only consented to the marriage within the framework of the coercive environment and general system of control they found themselves in.

This institutionalised system of forced marriage was articulated in general policy terms to the fighting group's members and to a certain extent even to the public at large, regulated by a specific set of rules, and controlled by LRA leaders. Some women went through a cleansing or initiation ritual that involved bathing and being smeared with shea nut oil before they were given to their forced husbands. However, traditional marriage ceremonies did not take place. Instead, forced marriage began at the point of abduction, when women felt obliged to accept a fighter's request to stay in his household as a wife, or when they were first raped by their forced husband, sometimes at gunpoint.

Acts of sexual violence continued throughout their marriage, and rape resulted in forced pregnancies, forced childbearing, and forced parenthood. Additionally, forced wives were forced to cook, collect food, fetch water, fetch and chop wood, cut grass for bedding, and do washing and portering. They suffered physical abuse such as beatings as a means of coercion, intimidation or punishment, for example for breaking the rules or making mistakes. Forced wives were also forced to witness and participate in acts of violence such as combat, pillage, and beatings and killings of captured enemies or civilians who had tried to escape.

Very young girls were given to fighters as domestic servants ("ting ting") first and forced into marriage when they were considered old enough. Sexual intercourse with uninitiated girls was prohibited, marking a distinction between ting ting and forced wives. However, effectively the status as a ting ting did not protect girls from sexual abuse by the head of the household they were assigned to, and when they were around 12 years old they were forced into marriage.

While forced marriages were violently enforced exclusive relationships for forced wives, they could temporarily be placed under the control of another man for practical reasons, for example when their husband was away on a mission. They were allowed to cook for another man but prohibited from doing their laundry or bringing them water. Contrary to the exclusivity expected from forced wives, forced husbands often had more than one wife: some had two or three, others had 10 or 20, Kony had up to 90 wives.

Forced wives could not leave or refuse their forced husbands for fear of death or beatings at the hand of a fighter, a superior, their forced husband or a co-wife. Similarly fear of recapture and severe punishment deterred escape. Additionally, some forced wives were guarded to prevent their escape. The LRA was concerned especially about the escape of senior women who knew how the group behaved and therefore could not be compared with new recruits. Forced wives stayed with the LRA for up to 13 years until they found a way to escape or were released. For some forced wives, escape was motivated by the poor health or capture of their children. In some cases escape or release ended forced marriages: in other cases forced spouses stayed together even after they had left the LRA.

To the LRA, women were “spoils of war, awarded as prizes without any more say in the matter than if they had been animals or inanimate objects ... [They were] regarded ... as ... possessions: sometimes valued, but ultimately disposable and replaceable.” ([Prosecution’s Pre-Trial Brief](#), para 500-501).

Forced marriage was used as a means to control a person’s sexuality, to prevent adultery and sexually transmitted infections, to reward fighters and to demonstrate and increase their status in the group, to keep the fighting group operational, to create bonds within the fighting group to prevent escape, and to breed a new Acholi nation.

Forced marriage caused psychological trauma, long-term physical injuries, and lasting social challenges. Some forced wives continue to see themselves as wives to their forced husbands even after they have left the LRA. The label ‘marriage’ attached to their relationships manipulated them into loyalty towards their forced husbands. It rendered them unable to deny their forced husband’s wishes and made them feel saved from more abuse by other fighters.

“The whole concept of marriage – its social status, property rights, inheritance rights, legitimising effect upon children, importance as the foundation of the family unit, and potential source of comfort and companionship to marital partners – is perversely reconstructed for the victims of forced marriage.” ([Prosecution’s Pre-Trial Brief](#), para 511) However, without the traditional marriage rituals, they receive none of these benefits. Most ex-forced wives who returned to their communities with children born of forced marriage experienced pervasive discrimination, stigma, and rejection by their families, partly because their forced marriages did not conform to cultural standards that include courtship and dowry payments, partly because ex-forced wives were seen as collaborators, rebels and killers. This hinders their recovery and reintegration into society. Ex-forced wives have a sense of lost life and lost opportunities. They face difficulties forming new relationships, especially if they have children born of forced marriage. This shows that forced marriage is a continuous crime that transcends space in that it does not require the immediate geographical proximity of the perpetrator.

In addition to charges of rape, enslavement, sexual slavery, forced pregnancy, torture and outrage upon personal dignity, the Court charged forced marriage as another inhumane act.

The Defence, however, argued that it was subsumed under the crime of sexual slavery. The Prosecution countered that, taking advantage of a coercive environment, forced marriage served as a gateway for other sexual and gender-based crimes such as sexual slavery. Similarly, the Pre-Trial and Trial Chamber were of the opinion that, generally, forced marriage will be committed in circumstances in which the victim is also sexually or otherwise enslaved by the perpetrator.

The Trial Chamber, for example, interpreted the fact that forced wives were occasionally released as an indication that they were constrained and could not leave of their own choice.

Nevertheless, forced marriage differs from sexual slavery and enslavement as well as from rape and forced pregnancy in terms of conduct, ensuing harm and protected interests. The Court stated that forced marriage includes restrictions on the freedom of movement, repeated sexual abuse that can result in forced pregnancy, and forced (domestic) labour. However, “the central element of forced marriage is the imposition of ‘marriage’ on the victim, i.e. the imposition, regardless of the will of the victim, of duties that are associated with marriage, as well as of a social status of the perpetrator’s ‘wife’” (Decision on the Confirmation of Charges, para 93), resulting in social stigma.

Drawing on the jurisprudence of the Special Court for Sierra Leone, the Pre-Trial Chamber emphasised the violently enforced exclusivity of forced marriages as a unique element that distinguishes it from other crimes such as sexual slavery and characterises it as not predominantly a sexual crime. As for the ensuing harm, the Chamber determined that forced marriage violates the right to consensually marry and establish a family which is distinct from, for example, the right to physical and sexual integrity, and the right to personal liberty. And it is this right to consensually marry and establish a family that demands protection. The Pre-Trial Chamber opined that the unlawfulness of forced marriages is irrelevant to their criminality.

Comparing the conduct involved in forced marriage to other crimes, enslavement is an exercise of powers attaching to the right of ownership over a person by imposing on them a deprivation of liberty. Sexual slavery is a specific form of enslavement, qualified by the additional fact that the victim is also caused to engage in at least one act of a sexual nature. Consequently, sexual slavery involves an exercise of ownership powers over a person and subjecting that person to acts of a sexual nature not limited to rape, and has the loss of personal liberty and (sexual) autonomy at its heart. The core feature of rape is bodily invasion through penetration performed under coercive circumstances resulting in a loss of physical and sexual integrity. Forced pregnancy involves confining women who had forcibly been made pregnant with the intent to affect the ethnic composition of a population or to carry out other grave violations of international law. An act of torture is marked by the perpetrator inflicting severe physical or mental pain or suffering upon a victim who is in their custody or under their control and the pain or suffering does not arise only from, and is not inherent in or incidental to, lawful sanctions.

Significance and points to note

The case against Ongwen consolidated the law around conflict-related forced marriage by categorising it as another inhumane act amounting to a crime against humanity and defining it as the imposition, regardless of the will of the victim, of duties associated with marriage and with the consequent social stigma. Additionally, the case clarified the boundaries between the crime of forced marriage and related crimes such as sexual slavery, enslavement, rape and forced pregnancy.

Ongwen was found guilty of multiple counts of a wide range of sexual and gender-based crimes, including rape, sexual slavery, enslavement, forced marriage, forced pregnancy, torture and outrage upon personal dignity. The Defence argued that forced marriage would be subsumed under sexual slavery and that the charges of rape and sexual slavery as well as the charges of sexual slavery and enslavement are based on the same alleged conduct and that concurrence of crimes is not permissible. The Trial Chamber, however, emphasised the materially distinct elements of the four crimes and the nuances in Ongwen's and the LRA's conduct and survivors' experiences that make the concurrence of crimes permissible.

Some women in the LRA experienced non-consensual or forced sexual intercourse without being under the complete control of another person. Others were deprived of their personal liberty and freedom of movement, subjected to forced labour, and physically and psychologically abused but not subjected to sexual violence. Some women experienced rape, deprivation of liberty and freedom of movement, forced labour, and physical and psychological abuse that violated their right to personal liberty. Others experienced it in the context of forced marriage as a violation of their right to consensually marry and establish a family that began at the point of abduction, forced cohabitation or the first rape and ended with their escape or release. Therefore, the concurrence of crimes is crucial to reflect the wide scope of acts of violence perpetrated by the LRA, ensuring accountability for conflict-related sexual and gender-based crimes.

Notably absent from this list of crimes, however, are charges that link forced marriage and the use of child soldiers. Furthermore, while the Court took note that men lived under the same coercive circumstances as women in the LRA and asked questions related to the imposition of a marriage upon men, a focus was placed on men as perpetrators and women as survivors of forced marriage and sexual and gender-based violence.

Ongwen is the first person the ICC charged with, and found guilty of, the crime of forced marriage as another inhumane act, even though the Rome Statute does not explicitly list the crime of forced marriage.

As [Valerie Oosterveld](#) argues, this categorisation reflects the conduct's distinctive and multifaceted nature. It avoids a too-narrow categorisation that misrepresents the nature of the offence as a predominantly sexual crime. Instead, forced marriage is understood to include sexual and non-sexual elements.

This highlights that, in times of armed conflict, women do not only experience sexual, but also other forms of violence.

However, classifying forced marriage as an inhumane act arguably conceals the serious violations it encompasses. Similarly, while the terminology and classification of forced marriage as another inhumane act has advantages, it can also be argued that the use of the noun 'marriage' hides the exploitation of gender roles, control, coercion and violence that are typical of forced marriage. As the Pre-Trial Chamber emphasises, mutual consent is seen as crucial to a marriage. Therefore, the use of the noun 'marriage' suggests a degree of voluntarism that harms forced wives and hides the responsibility of the perpetrators. It suggests that the services a forced wife renders to her forced husband are part of a marriage agreement rather than forced or coerced. However, the adjective 'forced' shows that the noun 'marriage' is a perversion of what it really means.

Thus, despite these potential downsides, the term 'forced marriage' makes it easier to identify and stress the distinctive overarching socio-economic as well as physical harm associated with an interrelated collection of particular offences. Forced marriage is more than the sum of its parts and the totality makes it a distinct crime that is not captured fully by other international criminal law terms such as rape or sexual slavery, or in a collection of separate charges. However, it is crucial to determine the exact parts of forced marriage on a case-by-case basis to cover different forms of forced marriage.



Learning from other institutions and decisions

Decision on the Confirmation of Charges

Forced marriage

- Convention on the Elimination of Discrimination against Women (18 December 1979) 1279 UNTS 13 (CEDAW): para 94
- International Covenant on Civil and Political Rights (16 December 1966) 999 UNTS 171 (ICCPR): para 94
- Prosecutor v Alex Tamba Brima, Brima Bazzi Kamara and Santigie Borbor Kanu (Appeals Chamber Judgment) SCSL SLS-2004-16-A “AFRC case” (22 February 2008): para 89, 93
- Prosecutor v Nuon Chea and Khieu Samphan (Closing Order) 002/19-09-2007/ECCC/OCIJ “Case 002/02” (15 September 2010): para 90
- Prosecutor v Issa Hassan Sesay, Morris Kallon and Augustine Gbao (Appeals Chamber Judgement) SCSL-04-15-A “RUF Case” (26 October 2009): para 89
- Universal Declaration of Human Rights (10 December 1948) UN Doc A/RES/217 A (III) (UDHR): para 94

Trial Judgment

Rape

- Prosecutor v Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido (Appeals Judgment) ICC-01/05-01/13 (27 November 2019): para. 751
- Prosecutor v. Bosco Ntaganda (Trial Judgment) ICC-01/04-02/06 (08 July 2019): paras 1204-120

Additional reading and resources

Baines E, ‘Complicating Victims and Perpetrators in Uganda: On Dominic Ongwen’ (July 2008) JRP Fieldnote 7, available [here](#).

de Vos D, ‘A Day to Remember: Ongwen’s Trial Starts on 6 December’ (05 December 2016), available [here](#).

de Vos D, ‘Confirmation of Charges Hearing in Dominic Ongwen Case: Hopeful Signs for Gender Justice?’ (04 February 2016), available [here](#).

de Vos D, ‘ICC Trial Against Dominic Ongwen Commences: Some Thoughts on Narratives’ (08 December 2016), available [here](#).

Human Rights Watch, 'Questions and Answers on the LRA Commander Dominic Ongwen and the ICC', available [here](#).

International Criminal Court, 'Uganda', available [here](#).

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

International Justice Monitor, 'Dominic Ongwen', available [here](#).

Kan G, 'The Prosecution of a Child Victim and a Brutal Warlord: The Competing Narrative of Dominic Ongwen' (2018) 5 SOAS Law Journal 70.

Kasande SK, 'The Trial of Dominic Ongwen: Has the Time for Accountability for Sexual Crimes in Contexts of War Finally Come?' (13 March 2020), [here](#).

Kasande SK and Mugero J, 'The Ongwen Verdict: A Step Closer to Acknowledgment and Justice for Victims in Northern Uganda', available [here](#).

Ladisch V, 'From Rejection to Redress: Overcoming Legacies of Conflict-Related Sexual Violence in Northern Uganda' (27 October 2015), available [here](#).

Lorenzo R and Pangalangan A, 'Dominic Ongwen and the Rotten Social Background Defense: The Criminal Culpability of Child Soldiers Turned War Criminals' (2018) 33 American University International Law Review 605, available [here](#).

Oosterveld V, 'Forced Marriage and the Special Court for Sierra Leone: Legal Advances and Conceptual Difficulties' (2011) 2 Journal of International Humanitarian Legal Studies 127.

Open Justice Initiative, 'Briefing Paper: The Trial of Dominic Ongwen at the ICC: Closing Statements', available [here](#).

Open Justice Initiative, 'The Trial of Dominic Ongwen at the ICC: The Judgment', available [here](#).

Women's Initiative for Gender Justice, 'Trailblazing ICC Judgment on SGBC – Ongwen Verdict Advances International Accountability for Forced Marriage and Forced Pregnancy' (04 February 2021), available [here](#).

