

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

*Original: English*

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

**Date: 27 October 2021**

**THE APPEALS CHAMBER**

**Before:** Judge Luz del Carmen Ibáñez Carranza, President  
 Judge Piotr Hofmański  
 Judge Solomy Balungi Bossa  
 Judge Reine Alapini-Gansou

**SITUATION IN UGANDA**

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

**Public Document**

**Request for leave to submit an Amicus Curiae pursuant to Rule 103(1) of the Rules  
 of Procedure and Evidence**

**Source: Dr. Mohammad Hadi Zakerhossein**

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

**Counsel for the Defence**

Mr Krispus Ayena Odongo

**Legal Representatives of the Victims**

Mr Joseph Akwenyu Manoba

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

[2 names maximum]

**The Office of Public Counsel for the  
Defence**

[2 names maximum]

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

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**Registrar**

M. Peter Lewis

**Counsel Support Section**

**Victims and Witnesses Unit**

**Detention Section**

**Victims Participation and Reparations  
Section**

**Other**

## I. Introduction

1. The Applicant, who is an expert in international criminal law, requests leave to submit an *amici curiae* observation in the form of a written brief pursuant to Rule 103(1) of the Rules of Procedure and Evidence (“the Rules”) on the legal interpretation of the crime of forced marriage as crimes against humanity under the Rome Statute. The Applicant’s submission might assist the Appeals Chamber in the proper determination of the legal characterization of the forced marriage by taking into account the well-established principle of fair labeling.

## II. Procedural History

2. On 4 February 2021, Trial Chamber IX convicted Mr Dominic Ongwen of, *inter alia*, forced marriage under Paragraph K of Article 7 of the Rome as crimes against humanity.
3. On 21 July 2021, the Defence filed its appeal brief against the Conviction Decision, arguing, *inter alia*, forced marriage is not a cognizable crime under the Statute.
4. On 25 October 2021, the Appeals Chamber ordered qualified scholars and practitioners request leave to submit observations on the merits of the legal questions presented in the order concerning, *inter alia*, the crime of forced marriage.

## III. Applicable Law

5. Rule 103(1) of the Rules provides “At any stage of the proceedings, a Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to submit, in writing or orally, any observation on any issue that the Chamber deems appropriate”.
6. The Appeals Chamber has previously allowed *amicus curiae* submissions when they were “desirable for the proper determination of the case” and in cases where the novelty of the issues raised could benefit from *amicus curiae* submissions.<sup>1</sup>
7. The Appeals Chamber thereby has the full discretion to grant *amicus curiae* observations where there is reason to believe that such submissions will help the Chamber reach the right decision on the jurisdictional issue before it. The Court previously held that the core rationale underlying an *amicus curiae* submission is that the Chamber be assisted in the determination of the case by an independent intervener having no other standing in the proceeding.<sup>2</sup>

## IV. Specific Issues to be Addressed

8. The Applicant respectfully requests to submit observations on the following issue: The legal interpretation of the crime of forced marriage.
9. Based on his relevant extensive researches, the Applicant will provide analysis on the proper characterization and fair labeling of forced marriage. The Applicant will support the view that the principle of fair labeling requires the Court to treat forced marriage as an independent inhuman act and as a separate and distinct crime from sexual slavery. Labelling functions as a message, and as such it shall fairly represent harm inflicted upon victims and the nature of the conduct concerned and its gravity. Categorizing

<sup>1</sup> Appeals Chamber, “Decision on ‘Motion for Leave to File Proposed Amicus Curiae Submission of the International Criminal Bar Pursuant to Rule 103 of the Rules of Procedure and Evidence’”, 22 April 2008, ICC-01/04-01/06-1289.

<sup>2</sup> *Situation in the Republic of Kenya*, Decision on Application for Leave to Submit *Amicus Curiae* Observations, Pre-Trial Chamber II, ICC-01/09-35, 18 January 2011, para. 6

forced marriage as sexual violence may silence the voice of those victims whose suffering is graver than adverse impacts of sexual violence. Forced marriage does not only target the sexual integrity of victims, but it also violates the fundamental right to free marriage. The Applicant in his *amicus curiae*, if granted, describes in detail all kinds of harm, consequences and adverse impacts produced by forced marriage, which requires the Court to consider them by prosecuting forced marriage as a separate criminal act.

10. The Applicant rejects the Defense' stand on the categorization of forced marriage. The absence of its name in the legal texts applicable to the Court does not mean that forced marriage cannot be prosecuted independently. On the contrary, forced marriage evidently belongs to the Paragraph K category as a residual clause whose aim is to support those types of victimization that have not been explicitly referred to in the Rome Statute. The Court shall prosecute forced marriage under the Paragraph 7 category to indicate that using marriage as a shield does not allow the perpetrators to escape justice, but it is an independent crime per se. In his *amicus curiae*, if granted, the Applicant discusses the cultural and criminological aspect of forced marriage which makes it distinct from sexual crimes.
11. Considering this *amicus curiae* diversifies the sources the Chamber takes into account and helps the Chamber to derive general principles of law in a more precise way.

## V. Expertise of the Applicants

12. Dr Mohammad Hadi Zakerhossein is an assistant professor in international criminal law at University of Tehran, Iran. He holds a PhD in law awarded by Tilburg University, The Netherlands. His PhD research project addressed the situation selection regime at the International Criminal Court (the ICC). Since then, sexual and gender-based crimes have been at the center of his research and studies. He has published various analytical and critical books and articles on different issues within the ICC in both English and Farsi, including some articles on forced marriage and sexual crimes at the ICC.

## Conclusion

For the reasons mentioned above, the Applicant respectfully requests the Chamber to grant him leave to submit observations pursuant to Rule 103(1).

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Dr. Mohammad Hadi Zakerhossein



Dated this 28 October 2021

At Tehran, Iran

At [place, country]