

**Report on advancing gender justice - May 2022***Analysis and accessibility: engaging ICL practitioners on SGBC accountability developments*

In the second half of 2021, Women's Initiatives hosted two events in the context of the annual Assembly of States Parties (ASP) to the Rome Statute of the International Criminal Court (ICC).

The [first event](#), on the topic of Gender in International Criminal Law (ICL), took place on 1 December 2021 and was co-hosted with the editors of the forthcoming book "Gender and International Criminal Law," the International Gender Champions The Hague, and representatives of Uruguay, Canada, Australia and Switzerland to the Netherlands. The event brought together Patricia Viseur Sellers, Indira Rosenthal, Susana SaCouto, Valerie Oosterveld, Rosemary Grey, Melanie O'Brien and Daniela Kravetz - leading feminist international criminal and humanitarian law practitioners and academics, to discuss misconceptions concerning gender in the prosecution of sexual violence and other gender-based crimes in ICL. The panel discussion informed the audience on the impact that a limited conceptualization of SGBC has on accountability efforts and the protection of rights. It also allowed for in-depth discussions with the event's co-sponsoring states parties on the issues at hand, which served to further solidify and hone their expertise and commitment toward gender justice in ICL. The audience consisted of representatives of academia, civil society and states parties to the Rome Statute.

The [second event](#) took place on 14 December 2021 and featured a discussion on Fatou Bensouda's legacy as ICC Prosecutor, around the launch of a stocktaking report by the International Federation for Human Rights (FIDH) on the same topic, focusing on three key areas: accountability for SGBC; preliminary examinations; and outreach to victims, affected communities and civil society organisations. WIGJ consultant Diane Brown shared during the event that overall, Prosecutor Bensouda left behind a strong legacy in addressing SGBC, providing a solid foundation for current Prosecutor Karim Khan to build upon. Other speakers shared thoughts and expertise on ways to enhance the work of the OTP. The [section of the report on accountability for SGBC](#), developed early 2021, was co-authored by Women's Initiatives and will serve as a precursor to the planned comprehensive report analysing the ICC jurisprudential developments on SGBC to date.

*Moving the dial on forced pregnancy – the Ongwen case*

Women's Initiatives was joined by Dr Rosemary Grey, the Global Justice Center and Amnesty International to submit an [amicus curiae brief](#) on the crime of forced pregnancy. The amicus brief was in response to a call by the ICC Appeals Chamber of the ICC's *Ongwen* case to apply for leave to submit amici on topics including the legal interpretation of forced marriage, sexual slavery, forced pregnancy and the standard applicable to assessing evidence of sexual violence. The brief explains that the proposal to enumerate 'forced pregnancy' in the Rome Statute was first made by the Women's Caucus for Gender Justice in 1997 to acknowledge the incomparable harm caused to the victim: 'Where impregnation or enforced pregnancy results, the invasion of the body and self is total. Women are being treated as chattel for the purpose of reproduction; this is another form of gender enslavement.'

Following the submission of the amicus on forced pregnancy, Women's Initiatives and colleagues were one of ten out of 19 amici invited to present to the Court on 15 February 2021, on the legal elements of and the interests protected by the crime of forced pregnancy and on the interpretation of article 7(2)(f) of the Rome Statute when it provides that the definition of the crime of forced pregnancy "shall not in any way be interpreted as affecting national laws relating to pregnancy". Presenting on behalf of the amicus group, President of the Global Justice Center Akila Radhakrishnan underscored that forced pregnancy is a distinct crime protecting the legal interest of personal, sexual and reproductive autonomy, and that political and cultural consideration are irrelevant for the Chamber's consideration.

With 19 counts underlining 11 SGBC charges, the *Ongwen* trial was the first at the ICC with such a broad spectrum addressing SGBV. It was the first time that the crime against humanity of forced marriage was charged as an 'other inhumane act' was being prosecuted before the ICC, as well as the first time that the crime of forced pregnancy was prosecuted before an international court. Given the significant number of amici submissions on SGBC in the *Ongwen*, Women's Initiatives is considering hosting a symposium to highlight the expertise on SGBC shared with the Court, once the Appeals Chamber decision is made public.

#### *Advancing on accountability for SGBC in Colombia*

On 17 December 2021, Women's Initiatives held a [panel discussion](#) on the topic of "Accountability for SGBC in Colombia: better understanding acts of a sexual nature to break the circular definition of sexual violence." At the event, we launched the [\(Colombian\) Practical Guide on Acts of a Sexual Nature](#), a document of guidance for Colombian practitioners working to address sexual violence, featuring the following: a background on the relevant legal framework; indicia on acts of sexual nature; examples of key legal decisions, from domestic, regional and international jurisprudence; and excerpts from consultations with experts. The panel featured Ruby Mae Axelson, Legal Consultant at Global Rights Compliance; Mariana Ardila, Managing Attorney at Women's Link Worldwide; Diana Maria Cubillos, Senior Legal Officer at the Gender Committee of the Special Jurisdiction for Peace (JEP); and Reinere Jaramillo, Magistrate at the JEP. The speakers exchanged on the concepts of acts of a sexual nature as understood and prosecuted in Colombian criminal law. This exchange helped advance the discussion on SGBC prosecution in jurisdictions other than the ICC, to share experiences and enhance capacity on complex sexual violence cases, but also to increase the accessibility of Colombian practitioners to ICC jurisprudence.

#### *The ICC OTP policy initiative on gender persecution*

In light of the [invitation](#) of the ICC Office of the Prosecutor to provide initial comments on the nature, scope and elements of a new policy initiative to advance accountability for gender persecution under the Rome Statute, Women's Initiatives advocated for parties with expertise to participate in the consultations and share their input in order to further transparency and generate a more comprehensive policy. On 2 February 2022, WIGJ intervened at a meeting of the Working Party on Public International Law (COJUR) of the Council of the European Union to encourage EU member states to reach out to national experts and engage in the initial round of consultations.

Women's Initiatives reached out to civil society colleagues to prepare the ground for a potential joint submission to reaffirm gender as a social construct, encourage the OTP to explore how gender persecution intersects with persecution on other grounds. To that end, Women's Initiatives joined a letter penned by MADRE to call for a survivor-centered policy and meaningful participation of survivors, and root the policy in international human rights law, recognizing multiple and intersecting forms of discrimination. We engaged with Lisa Davis, the Prosecutor's Special Advisor on Gender Persecution, to discuss a potential submission and avenues to enhance advocacy on this initiative.

#### *Discussions on an initiative to draft a Convention on Conflict Related Sexual Violence*

Women's Initiatives engaged in discussions with the Mukwege Foundation, and with the UK FCDO Office for Conflict, Stabilisation and Mediation on an initiative to spearhead an International Convention on Conflict Related Sexual Violence. The initiative follows the [recommendation](#) of Dr Mukwege as a member of the Gender Equality Advisory Council (or GEAC, an independent group of experts convened by UK Prime Minister Boris Johnson under the UK's G7 Presidency) calling on the leaders of the G7 to condemn the use of sexual violence in conflict, and to lead the development of an international

convention to eliminate sexual violence in conflict. As a result of the recommendation, in November 2021 UK Foreign Secretary Liz Truss launched a campaign to tackle sexual violence in conflict around the world, including a proposal to consider a potential convention.

The initiative offers an opportunity to galvanize international community response to conflict related sexual violence, as to date, it is not explicitly prohibited in international law in the same way as other methods of warfare, such as starvation. However, a relevant consideration on moving forward with this initiative is the overlap that such convention would have with the Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity.

*Observations on the way forward*

Women's Initiatives has continued monitoring cases before the ICC where charges for SGBC have been brought. Overall, 17 (57%) of the 30 ICC cases involving war crimes, crimes against humanity and/or genocide have included charges for SGBC and nine of these cases have had SGBC charges successfully confirmed to trial. In 2022-2023, Women's Initiatives plans to conduct research and an analysis of jurisprudential developments on SGBC at the ICC.