

PRIMERS FOR INTERNATIONAL ACCOUNTABILITY IN ASIA: FORCED MARRIAGE

What Is Forced Marriage And Is It An International Crime?

Drawing on the International Criminal Court (ICC) Office of the Prosecutor's [Policy on Slavery Crimes](#), for the purposes of this primer, forced marriage is defined as **'a situation in which a person is compelled to enter into a conjugal union with another person by the use of physical or psychological force, or threat of force, or by taking advantage of a coercive environment.'** In an [amici curiae](#) brief submitted to the ICC Appeals Chamber, forced marriage is characterised as being composed of two types of harm. Firstly, the 'violation by the accused of the victim's relational autonomy' and secondly, the 'constellation of rights violations.' 'Relational autonomy' draws upon a key principle of marriage in international human rights law, which is consent. As stated in international human rights documents, including the [Universal Declaration of Human Rights](#), the [International Covenant on Civil and Political Rights](#), and the [Convention on the Elimination of All Forms of Discrimination Against Women](#), 'marriage shall be entered into only with the free and full consent of the intending spouses.'

That said, it is important to note that forced marriage is not defined as such in the Rome Statute of the ICC, and other international and hybrid tribunals have contributed to understanding forced marriage's distinct characteristics. In 2008, forced marriage was first recognised as a crime against humanity of 'other inhumane acts' by the [Appeals Chamber of the Special Court for Sierra Leone](#) (SCSL). Moreover, the term 'conjugal partner' was favoured over 'marriage,' as it does not have a universal definition. This definition also reflects how force and coercion can take on many forms, as [members within armed groups](#) have also been ordered to marry, and scholars have highlighted that often [the circumstances create coercion](#).

Due to patriarchal attitudes and societal understandings of marriage, it is typically women and girls who are considered victims of forced marriage during atrocities. International law judgements, such as the SCSL judgement, have also leaned into this binary, eliminating the possibility that boys and men can *also* be victims of forced marriage. However, in 2022, the Extraordinary Chambers in the Courts of Cambodia (ECCC), which oversaw trials for crimes committed under the Khmer Rouge regime, [concluded](#) that victims of forced marriage can include both men and women. This decision noted that the policy of forcibly marrying individuals, who were often strangers, to enforce unconditional loyalty to the state violated various rights and was of 'comparable gravity to the enumerated crimes against humanity.'

To date, forced marriage has been charged as a crime against humanity of 'other inhumane acts,' distinct from crimes of sexual violence. Importantly, these decisions acknowledge the [non-sexual](#), yet gendered nature¹ of these harms, which include the extraction of labour in the form of domestic work, childbearing, and childcare [under the guise of marital responsibilities](#), as well as the violation of relational autonomy, psychological suffering, loss of education, health consequences, and stigmatisation. In most situations of forced marriage, the victims' gender plays a key role in their victimisation, and many of the consequential harms occur due to their roles determined by social constructs. As yet, forced marriage has not been recognised as a standalone international crime. International(ised) criminal courts have been [debating](#) its definition and its distinct characteristics, in particular, to distinguish it from the existing crimes of humanity and war crimes of 'rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, or any other form of sexual violence of comparable gravity.'

When Has Forced Marriage As A Crime Against Humanity Been Prosecuted?

Forced marriage has been prosecuted at the SCSL ([2008](#), [2013](#)), the ECCC ([2018](#)), and the ICC ([2021](#)).

¹ See AJC's primer on [gender and international criminal law](#) for more on gender-based crimes.

SCSL: The crime of forced marriage is not included in the SCSL Statute. Initially, the Trial Chamber in the [Prosecutor v Brima, Kamara and Kanu](#) case determined that the women who were forced into marriages with members of the Armed Forces Revolutionary Council (AFRC) were not in marriages, but in situations of ownership and enslavement and consequently, subsumed forced marriage into the crime of sexual slavery. The [Appeals Chamber](#) then overruled the judgement by addressing the plethora of physical, mental, and psychological harms that occurred as a result of these marriages and found that the crime of forced marriage constitutes the crime against humanity of 'other inhumane acts.' However, in the SCSL's final case, [Prosecutor v Taylor](#), the Trial Chamber did not 'consider the nomenclature of "marriage" to be helpful' and instead viewed the situation as a 'conjugal form of enslavement.' Thus, they concluded that 'conjugal slavery' was not a new crime and, instead, a 'descriptive component of a distinctive form of sexual slavery.'

ECCC: Prosecutors at the ECCC brought charges of forced marriage perpetrated under the Khmer Rouge regime in Cambodia in [Case 002/02](#) against Nuon Chea and Khieu Samphan. While the forced marriages in Cambodia differed greatly from those in Sierra Leone, the judgement in Cambodia focused on the coercive circumstances experienced by both spouses in the marriages, which included the use of violence and threats of death. As a result, marriage partners were considered victims of a third party – the Khmer Rouge authorities. While the SCSL focused on enslavement, the ECCC used norms from IHRL to structure their analysis, in particular, the principle of consent.

ICC: In a first, in the case of [Prosecutor v Dominic Ongwen](#) (2021), the ICC convicted the former Lord's Resistance Army commander of the crime of forced marriage. In December 2022, the ICC's [Appeals Chamber](#) upheld Ongwen's conviction and asserted that '[t]he central element of forced marriage is the imposition of a conjugal union and the resulting spousal status on the victim.' They also acknowledged that 'forced marriage is not necessarily sexual in nature but entails a "gendered harm", which is essentially the imposition on the victim of socially constructed gendered expectations and roles.'

Despite the progress being made in gaining greater nuanced recognition of forced marriage as a gendered crime, these judgements are limited to specific case situations, indicating a lack of accountability on a larger scale. In June 2024, Trial Chamber X of the ICC published its judgement in the Al Hassan case, in which he was [acquitted](#) of all gender-related criminal charges, including forced marriage, which has been well documented in Mali at the hands of Ansar Dine and Al Qaeda in the Lands of the Islamic Maghreb (AQIM). In December 2024, both the [Defence and the Prosecutor decided to discontinue their appeals](#) against the guilty verdict, which if pursued, could have been an opportunity to address the gendered harms committed in Timbuktu.

Should Forced Marriage Be Recognised As A Distinct Crime Against Humanity?

While forced marriage has been prosecuted as a crime against humanity of 'other inhumane acts', there are arguments in favour of recognising forced marriage as a distinct crime against humanity of its own. Scholars have argued that forced marriage is a complex, multi-layered crime that involves specific [elements of psychological and moral suffering](#). It [represents a vilification of a highly symbolic social and religious institution](#), and the significance of marriage can also [prevent](#) victims or their families from ending these marriages even if the conflict is over. Other experts have called for the recognition and elaboration of forced marriage as a distinct crime against humanity due to its [highly gendered character](#) and have highlighted the value of giving forced marriage distinct recognition to [demonstrate commitment to punishing perpetrators of gender-based crimes](#). Moreover, while many of the separate elements of forced marriage are already addressed by existing offences in international criminal law, [forced marriage is far more than its constituent elements](#), and existing crimes against humanity do not [capture the totality of the perpetrator's conduct or the victim's experience](#).

Likewise, civil society organisations have argued for its inclusion in the draft Crimes Against Humanity Convention. An [expert brief](#) identifies that including forced marriage as a separate violation in the list of prohibited acts would: (1) more directly reflect the gravity and widespread nature of forced marriage in armed conflict and

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atrocities situations; (2) recognise the strength of existing case law on forced marriage; and (3) avoid continuous relitigation on the nature of forced marriage and its status in international criminal law.

Finally, recognising forced marriage as a distinct crime against humanity would signal a commitment to justice and accountability for victims of forced marriage, [recognise their suffering](#), and enable them to articulate the harms they have experienced.