The Draft Crimes Against Humanity Convention

An Opportunity to Codify the Crime of Forced Marriage

PROPOSAL

The inclusion of forced marriage as a standalone violation in the forthcoming Convention on Crimes Against Humanity is essential for preventing and providing redress for this harm.[1] States should:

Add forced marriage as a standalone violation to the list of prohibited acts in Article 2(1) of the draft Crimes Against Humanity Convention.

Forced marriage should be defined in Article 2(2) as "compelling a person 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 or an inability to give genuine consent, including because of age."[2]

RATIONALE

By recognizing forced marriage as a separate crime, we can ensure that its distinct harms are recognized and met with consistent legal responses.

Forced marriage inflicts two unique harms:

1. the violation of relational autonomy, stripping victims of their agency to choose their spouse, and
2. forced imposition of gendered social roles, as victims are subjected to socially-constructed 'spousal' duties – often including sexual exclusivity, domestic labor, reproduction, and child rearing – under coercive conditions.

When forced marriage is committed as part of a widespread or systematic attack against a civilian population, it constitutes a crime against humanity.[3]

Forced marriage directly violates victims' internationally recognized human rights to consensually marry and/or establish a family, or to choose not to do so.[4] Forced marriage often entails a range of other human rights violations, including but not limited to: sexual and physical violence, forced pregnancy, other reproductive violence such as forced childbirth, and loss of liberty, security, dignity, health, and education, as well as the imposition of social stigma and psychological trauma. The stigma, psychological trauma, and human rights violations associated with forced marriage are frequently intergenerational. While some of these violations might be separately prosecutable under international criminal law, others often go unaddressed.

International courts have previously acknowledged these harms, prosecuting forced marriage under the residual category of the crime against humanity of "other inhumane acts" in the context of conflicts in Sierra Leone,[5] Cambodia,[6] and Uganda.[7] However, the fact that forced marriage is not listed as a distinct and directly-named violation has meant that it has been subjected to repeated litigation over its legal status. This results in inefficiency, inconsistency, and uncertainty in prosecutions.

When the law clearly defines a crime, accountability mechanisms function more effectively, and survivors can seek justice without the additional burden of proving that the course of conduct they suffered amounts to a crime. Codifying forced marriage as a standalone crime would bring legal and moral clarity, and ensure systematic redress for victims.

FREQUENTLY ASKED QUESTIONS

Q: Would the proposal to include forced marriage as a crime against humanity also prohibit arranged marriage?

No. Forced marriage as a crime against humanity is separate and distinct from arranged marriage. Forced marriage is imposed on one or both parties, often under threat of harm or in coercive environments, including conflict zones. Specifically, forced marriage as a crime against humanity is a denial of the ability to choose who one has a relationship with (denial of relational autonomy) **in the context of** a widespread or systematic attack directed against civilians, where the perpetrators have knowledge of the attack.

Q: How is this different from sexual slavery?

Though they may coincide or overlap, forced marriage and sexual slavery are distinct crimes. Sexual slavery is marked by the perpetrator exercising ownership rights over the victim while compelling them to engage in acts of a sexual nature. Forced marriage involves coercing the victim into 'spousal' roles and duties that often include but are not limited to sexual servitude, including obligations such as domestic labor, child-care, and restrictions on sexual autonomy outside of the imposed marriage. While forced marriage can also entail both sexual violence and enslavement, it is defined by the non-consensual imposition of a conjugal relationship on the victim. The forced obligations of 'wife', 'husband', or 'spouse' create unique harms that are distinct from those encompassed by sexual slavery.[8]

Q: Is this a crime only committed against women?

No. While forced marriage often disproportionately affects women and girls, all people can be victims of this crime and the proposed definition reflects that. Historical precedents, such as forced marriages under the Khmer Rouge in Cambodia, demonstrate that both men and women were coerced into unions against their will. The crime targets relational autonomy, regardless of the gender of the victim.

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1 This factsheet summarizes *The Draft Crimes Against Humanity Convention and Forced Marriage*, a legal brief published in 2023. The full proposal is available here.

2 The International Criminal Court (ICC), Prosecutor v. Ongwen, Judgment on the appeal of Mr. Ongwen against the decision of Trial Chamber IX of 4 February 2021 entitled "Trial Judgment", Case No. ICC-02/04-01/15 A, Appeals Chamber, Judgment, 15 December 2022 (hereafter Ongwen Appeals Judgment). Conjugal unions include both formal and informal bonds that convey the status of husband, wife, or spouse upon the participants. These unions are often legally or culturally recognized through ceremonies or legal documentation, but these formal elements are not required. Ongwen Appeals Judgment, para. 1024.

3 *Ongwen* Appeals Judgment.

4 *Universal Declaration of Human Rights* (UN Doc. 217 A (III)) (1948), Art. 16; *International Covenant on Civil and Political Rights* (999 U.N.T.S. 171) (1966), Art. 23; *International Covenant on Economic Social and Cultural Rights* (993 U.N.T.S. 3) (1966), Art. 10; *Convention on the Elimination of All Forms of Discrimination Against Women* (1249 U.N.T.S. 13) (1979), Art 16.

5 The Special Court for Sierra Leone (SCSL), *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-T, Trial Chamber, Judgment, 2 March 2009, paras. 1464, 1473; SCSL, *Prosecutor v. Sesay, Kallon and Gbao*, Case No. SCSL-04-15-A, Appeals Chamber, Judgment, 26 October 2009, paras. 726, 849, 861-862.

6 The Extraordinary Chambers in the Courts of Cambodia (ECCC), *Co-Prosecutors v. Nuon Chea and Khieu Samphân*, Case No. 002/19-09-2007/ECCC/TC, Trial Chamber, Judgment, 16 November 2018, paras. 741, 4172, 4198, 4303-4305; ECCC, *Co-Prosecutors v. Khieu Samphân*, Case No. 002/19-09-2007-ECCC/SC, Supreme Court Chamber, Judgment, 23 December 2022, paras. 1444-1591.

7 ICC, *Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15-422-Red [93], Pre-Trial Chamber, Decision on the confirmation of charges against Dominic Ongwen, 23 March 2016, paras. 92-94 (*Ongwen* Confirmation of Charges); ICC, *Prosecutor v. Ongwen*, Case No. ICC-02/04-01/15, Trial Chamber IX, Judgment, 4 February 2021, paras. 3026, 3069, 3116 (*Ongwen* Trial Judgment); *Ongwen* Appeals Judgment, *supra* note 2, paras. 978-1041.

8 Note that some conduct may constitute both sexual slavery and forced marriage. In such cases, the crimes can be charged cumulatively.