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## The Many Harms of Forced Marriage: Insights for Law from Ethnography in Northern Uganda

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# The Many Harms of Forced Marriage

Insights for Law from Ethnography in Northern Uganda

Myriam S. Denov\* and Mark A. Drumbl\*\*

## Abstract

*Harnessing an interdisciplinary framework that merges elements of law and social science, this article aims to recast the crime of forced marriage, and thereby enhance accountability, in light of knowledge acquired through ethnographic fieldwork in northern Uganda. More specifically, we draw upon the perspectives and experiences of 20 men who were ‘bush husbands’ in the Lord’s Resistance Army (LRA). These men were abducted by the LRA between the ages of 10 and 38 and spent between 6 and 24 years in captivity. During their time in the LRA, these men became ‘bush husbands’ with each man fathering between 1 and 11 children. In-depth interviews explored men’s perspectives and experiences related to sexual violence, forced marriage, parenthood and post-war accountability. The data reveal the complexity of men’s self-identified positions not only as high-ranking members of the LRA, but also as captives of the LRA, as victims of forced marriage, as perpetrators, and as caring fathers and husbands. These findings nuance extant understandings and assumptions of men and masculinities in the context of forced marriage. Drawing from these findings, we articulate several key implications for law — notably, that law acknowledges the harms that the crime of forced marriage and sexual violence affects and imposes on all implicated parties, including boys, girls, men, and women.*

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While noting the gendered component of the harms of forced marriage, as well as sexual violence, that disproportionately affects women and girls, the ethnographic data suggest detaching the criminalization of forced marriage from a largely gender-based analysis to a more gender-neutral one rooted in multiparty coercion. Senior commanders who order forced marriages should face criminal sanction that recognizes the totality of the harms caused, including to both husbands and wives and the children born of these compelled unions: this move would augment the retributive, deterrent and expressive value of criminal punishment. Finally, a granular and textured understanding of forced marriage would lay groundwork for more effective, tailored and targeted reintegrative and rehabilitative programmes for all afflicted parties.

## 1. Introduction

This article examines the practice of forced marriage within the Lord's Resistance Army (LRA), a non-state armed group engaged in armed conflict with the Ugandan government from 1986 to 2007. While the LRA is now largely defeated, at the time of writing it remains marginally active in the Democratic Republic of Congo (DRC). The conduct of a handful of LRA leaders is under investigation and prosecution at the International Criminal Court (ICC), as well as domestically in Uganda.<sup>1</sup> These proceedings are starkly exceptional in that the Ugandan Amnesty Act was passed in 2000. This Act guaranteed amnesty for conflict-related crimes to all who 'renounced the rebellion'.<sup>2</sup> As military approaches and peace talks failed, amnesties were advanced as part of an alternative strategy to quell the LRA insurgency by incentivizing LRA abductees to escape and demobilize while guaranteeing protection from retribution for any crimes committed while in the armed group.<sup>3</sup> LRA leader Joseph Kony, wanted by the ICC, remains at large.

The LRA is implicated in the commission of massive human rights abuses. Forced marriage is among these crimes. Pursuant to the Universal Declaration of Human Rights, all individuals have the right to marry and to found a family; marriage, moreover, shall be entered into only with the free and full

- 1 The trial of Colonel Thomas Kwoyelo (alias Latoni), a former military official in the LRA, is the first case in Uganda arising out of the LRA conflict. It is proceeding before the domestic International Crimes Division. Kwoyelo, denied amnesty, faces 93 charges, including murder, rape, defilement, destruction of crops and property, recruitment of child soldiers and other crimes against humanity. The proceedings against Kwoyelo have triggered extensive interlocutory and constitutional litigation. His criminal trial commenced in September 2018, but has been plagued with delays. Kwoyelo reportedly entered the LRA when he was abducted walking to school as a teenager.
- 2 P. Bradfield, 'Reshaping Amnesty in Uganda: The Case of Thomas Kwoyelo', 15 *Journal of International Criminal Justice (JICJ)* (2017) 827–855.
- 3 M. Denov and A. Cadieux Van Vliet, 'Children Born of Wartime Rape on Fatherhood: Grappling with Violence, Accountability and Forgiveness in Post-War Northern Uganda', *Peace and Conflict: Journal of Peace Psychology* (in press).

consent of the intending spouses.<sup>4</sup> Forced marriage therefore constitutes a human rights violation and an affront to the human dignity of all persons regardless of their gender. What is more, when forming part of a systematic or widespread attack against a civilian population, forced marriage constitutes a violation of international criminal law. Two internationalized criminal tribunals — the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Court for Sierra Leone (SCSL) — have convicted several individuals of forced marriage as a crime against humanity falling under the category of other inhumane acts.<sup>5</sup> The ICC Prosecutor has charged forced marriage in two cases, one of which concerns Dominic Ongwen, an LRA Brigadier Commander who had been abducted into the LRA as a young child.<sup>6</sup>

Previous research and analysis on forced marriage has, for the most part, failed to address the perspectives of implicated men and boys. This article aspires to share with international lawyers the perspectives of men abducted or enlisted into the LRA ('bush husbands') and their experiences of forced marriage and fatherhood. Derived from ethnographic fieldwork in northern Uganda, the perspectives of these LRA 'bush husbands' help to unpack the *range of harms* occasioned by forced marriage. Section 2 of the article introduces the background and context of the LRA and armed conflict in northern Uganda. Section 3 sets out the research methodology this article deploys for the purposes of data collection from and about men formerly in the LRA. Sections 4, 5, 6 and 7 unpack the experiences of men in forced marriage relationships, as derived from the research fieldwork, including perspectives on abduction, violence, conjugality, agency, coercion, choice and family in the LRA. This article then turns to international criminal law. Section 8 sets out international criminal law regarding forced marriage as it presently is constituted largely through the efforts of the SCSL and ECCC. Section 9 contemplates a variety of reforms to international criminal law that would take into account the data derived from the research fieldwork. Section 10 specifically considers how the ongoing prosecutions of forced marriage at the ICC could benefit from attention to ethnographic evidence. Section 11 concludes by suggesting and promoting an inclusive discourse that might dilute the

4 *Universal Declaration of Human Rights*, UN Doc. A/810 91, 10 December 1948, Arts 16(1)–16(2). See also *International Covenant on Civil and Political Rights*, 999 UNTS 171, 16 December 1966, Art. 23(3) ('No marriage shall be entered into without the free and full consent of the intending spouses.');

5 *Convention on the Elimination of All Forms of Discrimination against Women*, 1249 UNTS 13, 18 December 1979, Art. 16(1)(b) (guaranteeing women 'the same right freely to choose a spouse and to enter into marriage only with their free and full consent').

6 See *infra* Section 8.

6 On 23 March 2016, ICC Pre-Trial Chamber II confirmed charges, including forced marriage, against Dominic Ongwen. See Judgment on the Confirmation of Charges against Dominic Ongwen, *Ongwen* (ICC-02/04-01/15), Pre-Trial Chamber II, 23 March 2016 (hereafter 'Ongwen Confirmation of Charges'). Ongwen faces 70 charges allegedly committed between July 2002 and December 2005. The second ICC case concerns Al Hassan Ag Abdoul Aziz, chief of the Islamic police in Timbuktu, Mali, when Islamist militant rebels occupied the city in 2012–2013. In September 2019, ICC Pre-Trial Chamber I confirmed all charges of war crimes and crimes against humanity brought against Al Hassan.

*reductively oppositional binaries* of gender (male or female) that currently dominate international criminal law discourse.

## 2. Background and Context

During armed conflict in northern Uganda (1986–2007), the LRA violently attacked villages, pillaged communities, and abducted an estimated 60,000 to 80,000 children — both boys and girls.<sup>7</sup> The LRA pursued children for several reasons: children might not know the area well enough to escape; they would be easier to indoctrinate than adults; and their abduction would terrorize and demoralize families and communities.<sup>8</sup>

Women and girls abducted by the LRA became enmeshed in armed conflict through multiple servitudes as porters, combatants, fighters, sex slaves and cooks.<sup>9</sup> As a critical part of his military and ideological operations, Kony organized, orchestrated and implemented a forced marriage system.<sup>10</sup> Girls were captured and ‘given’ to ‘husbands.’<sup>11</sup> Women and girls in the LRA endured brutal and profound acts of sexual, psychological and physical violence and torture. These experiences frequently occurred within the context of these coerced conjugalities.<sup>12</sup> While men and boys suffered grievous sexual violence in the LRA,<sup>13</sup> the forced marriage experience differed between the implicated men and boys, on the one hand, and the implicated women and girls on the other, notably when it came to the imposition of sexual abuse within these compelled family units.

It is generally reported that high-ranking members of the LRA would determine when men and women were ready to be ‘married’.<sup>14</sup> While research has

7 F. Shanahan and A. Veale, ‘How Mothers Mediate the Social Integration of their Children Conceived of Forced Marriage Within the Lord’s Resistance Army’, 51 *Child Abuse & Neglect* (2016) 72–86.

8 M. Denov and A.A. Lakor, ‘Post-War Stigma, Violence and “Kony Children”: The Responsibility to Protect Children Born in Lord’s Resistance Army Captivity in Northern Uganda’, 10 *Global Responsibility to Protect* (2018) 217–238.

9 A. Veale et al., ‘Participation as Principle and Tool in Social Reintegration: Young Mothers Formerly Associated with Armed Groups in Sierra Leone, Liberia, and Northern Uganda’, 22 *Journal of Aggression, Maltreatment & Trauma* (2013) 829–848.

10 K. Carlson and D. Mazurana, *Forced Marriage within the Lord’s Resistance Army, Uganda*, Feinstein International Center, May 2008, available online at <https://fic.tufts.edu/wp-content/uploads/Forced+Marriage+within+the+LRA-2008.pdf> (visited 26 January 2020).

11 Denov and Lakor, *supra* note 8.

12 *Ibid.*

13 O. Aijazi, E. Amony and E. Baines, ‘“We Were Controlled, We Were Not Allowed to Express Our Sexuality, Our Intimacy Was Suppressed”: Sexual Violence Experienced by Boys’, in M.A. Drumbl and J.C. Barrett (eds), *Research Handbook on Child Soldiers* (Edward Elgar Publishing, 2019) 95–109, at 102–105.

14 O. Aijazi and E. Baines, ‘Relationality, Culpability and Consent in Wartime’, 11 *International Journal of Transitional Justice* (2017) 463–483, at 471.

shown that most women and girls had little or no choice in the matter,<sup>15</sup> men's and boys' experiences with forced marriage appear more varied. Some men were forced to accept the wives assigned to them while others may have had choice (at times considerable) in the matter.<sup>16</sup>

For the most part, extensive research on the LRA has explored its historical beginnings and political objectives, the experiences of children it abducted,<sup>17</sup> the perspectives of women who were forcibly married,<sup>18</sup> and the implications of its violence for post-conflict reconstruction.<sup>19</sup> Scant mention has been made of, or research undertaken about, 'bush husbands' or the reality of men/boys in forced marriage or as compelled parents.<sup>20</sup> We believe these epistemic patterns lead to narrative silences.

We are not alone in this regard. Aijazi and Baines, for instance, contend that '[r]ights-based approaches to forced marriage in wartime document forms of harm women experience to the exclusion of men's experiences'.<sup>21</sup> These scholars posit how this dearth of literature on men's experiences has tended to foster a largely dichotomous narrative of LRA women and girls as victims and LRA men and boys as perpetrators.<sup>22</sup> The binary reductionism of this categorical parsimony belies the far more complex realities of life within the LRA. In addition to their experiences of forced marriage, women and girls took part in hostilities and were involved in perpetrating brutal acts against other LRA members and civilians, often for survival and self-preservation.<sup>23</sup> Research has also suggested that men who exited the LRA identified coercion and torture as the basis for their actions within the armed group.<sup>24</sup> Men and boys in the LRA experienced multiple forms of sexual violence that, regrettably, remain

15 M. Denov et al., 'Mothering in the Aftermath of Forced Marriage and Wartime Rape: The Complexities of Motherhood in Postwar Northern Uganda', 9 *Journal of the Motherhood Initiative for Research & Community Involvement* (2018) 158–176.

16 Aijazi et al., *supra* note 13, at 99–102.

17 S. Vindevogel et al., 'Forced Conscription of Children during Armed Conflict: Experiences of Former Child Soldiers in Northern Uganda', 35 *Child Abuse & Neglect* (2011) 551–562; A. Veale and A. Stavrou, 'Violence, Reconciliation and Identity: The Reintegration of Lord's Resistance Army Child Abductees in Northern Uganda', 2003 *Institute for Security Studies Monographs* (2003) 69.

18 Denov et al., *supra* note 15; E. Baines, *Buried in the Heart: Women, Complex Victimhood and the War in Northern Uganda* (Cambridge University Press, 2017).

19 I. Derluyn et al., 'Post-traumatic Stress in Former Ugandan Child Soldiers', 363 *The Lancet* (2004) 861–863.

20 Aijazi et al., *supra* note 13, at 99 ('Research on forced marriage is usually conducted from the perspective of women who were often abducted as girls.').

21 Aijazi and Baines, *supra* note 14, at 463.

22 *Ibid.*, at 465; see also Aijazi et al., *supra* note 13, at 105–106.

23 J. Annan, M. Brier and F. Aryemo, 'From "Rebel" to "Returnee": Daily Life and Reintegration for Young Soldiers in Northern Uganda', 24 *Journal of Adolescent Research* (2009) 639–667; E.K. Baines 'Complex Political Perpetrators: Reflections on Dominic Ongwen', 47 *The Journal of Modern African Studies* (2009) 163–191; S. Kramer, 'Forced Marriage and the Absence of Gang Rape: Explaining Sexual Violence by the Lord's Resistance Army in Northern Uganda', 23 *Journal of Politics and Society* (2012) 11–49.

24 C. Dolan, 'Victims Who Are Men', in F. Ni Aolain, N. Cahn, D.F. Haynes, and N. Valji (eds), *Oxford Handbook of Gender and Conflict* (Oxford University Press, 2017); M.A. Drumb, 'Victims

poorly redressed (or even acknowledged). In sum, men and boys abducted into the LRA filled an interstitial space, at once victims as well as victimizers.<sup>25</sup>

Drawing on an interdisciplinary framework merging law and social science, this article aims to develop international law and accountability in light of knowledge acquired through fieldwork conducted in northern Uganda. In order to acquire a deeper understanding of the complexity of forced marriage, particularly from the underexplored perspectives of men, one of the coauthors (Denov) and her team embarked on a research project exploring the views of a sample of men formerly affiliated with the LRA who were ‘bush husbands’. In focusing our attention on the experiences of men, our intention is in no way to diminish or render invisible the immense suffering of women and girls who were subjected to forced marriage.<sup>26</sup> Instead, we hope to draw attention to the complexity of men’s experiences in relation to forced marriage, highlighting their realities as simultaneously perpetrators, victims, fathers and husbands. In doing so, we hope to cultivate a deeper awareness of the reality that the harms of the crime of forced marriage have implications for *all affected parties*, including boys, girls, men and women. We suggest that this finding demonstrates the need to detach the criminalization of forced marriage from one that is solely female-focused to one that captures the complex lived realities of *both* males and females and is rooted more broadly in coercion. This conceptual shift, we argue, would promote an inclusive *gender-informed approach* that examines the experiences of both male and female victims of forced marriage, upends assumptive constructions of these experiences and who is harmed by them, and encourages a fine-grained assessment of the commonalities and differences of these experiences. We believe our research contributes to a number of key goals envisaged for this special issue — notably, to identify innovations, best practices and lessons to be learned from prosecutions of conflict-related sexual violence while also underscoring the value of thoughtful invocation of interdisciplinary approaches to enrich law’s epistemic frame and operational effectiveness.

### 3. Methodology

Data collection with a total of 20 males who were formerly in the LRA occurred between January 2017 and June 2018. Participants were identified, approached and interviewed by local northern Ugandan researchers who were part of the research team and who held in-depth knowledge of the LRA’s history, membership, wartime activities and areas of operation. This enabled the team to access potential participants and also verify their former affiliation with the LRA. Indeed, participants were included in the study if they were

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Who Victimise’, 4 *London Review of International Law* (2016) 217–246; Veale and Stavrou, *supra* note 17, at 69.

25 For discussion of these fluid categories, see Drumbl, *supra* note 24.

26 See Denov et al., *supra* note 15.

male, had been formerly affiliated with the LRA, were 'married' in the bush, and fathered children who were born in captivity. Informed consent was obtained from all participants.

At the time of the research interviews, male participants were aged between 29 and 67 years. These men were all forcibly abducted by the LRA between the ages of 10 and 38 years and spent between 6 and 24 years in captivity. During their time in the LRA, these men fathered between 1 and 11 children each. Data were collected in the northern Ugandan districts of Gulu, Pader, Agago, Omoro and Nwoya, representing both urban and rural contexts. Interviews explored men's perspectives on sexual violence, forced marriage, fatherhood, the LRA command structure, children born in captivity and post-war reintegration. Interviews were conducted in Acholi and audio-recorded with permission. All data were translated and transcribed into English.

The data collected from the participants were invariably affected by their willingness to disclose sensitive information. Given that participants were asked about their perspectives and direct experiences with forced marriage and sexual violence, it is possible that they may have minimized, denied, embellished or reframed their involvement in acts of perpetration, coercion and victimization. These tactics have indeed been documented in other studies of genocide perpetrators who sought to control the presentation of self and restore positive self-concepts and social identity in the aftermath of mass violence.<sup>27</sup> That said, while it might be that (some) participants may have minimized their acts of physical, psychological and sexual violence, in other instances, the interviews demonstrate participants' direct acknowledgement of such acts. While we stand behind the validity of the data, we acknowledge the intricacies of interviews with individuals who have committed acts of grave violence, which highlight the challenge in unravelling the paradoxes associated with complex perpetratorhood. Since so little has been culled on men's experiences in the LRA, we believe that documenting their perspectives on forced marriage and sexual violence is relevant and important in and of itself. What is more, we also believe that participants' narratives can be extended into the context of law insofar as that these perspectives have the capacity to shape and inform legal theory and practice.

Data were analysed using a thematic analysis framework.<sup>28</sup> This inductive qualitative analysis approach aims to describe and understand how people feel, think and behave within a particular context relative to a specific research topic and focuses on describing those experiences.<sup>29</sup> The research team utilized inductive thematic analysis, whereby themes were data-driven and not organized into preexisting coding frames.<sup>30</sup> The two co-authors subsequently met to

27 E. Bryant et al., 'Techniques of Neutralization and Identity Work Among Accused Genocide Perpetrators', *Social Problems* (2017) 1–19.

28 J. Aronson, 'A Pragmatic View of Thematic Analysis', 2 *The Qualitative Report* (1995) 1–3.

29 G.C. Guest, K. MacQueen and E.E. Namey, *Applied Thematic Analysis* (Sage, 2011), at 13.

30 V. Braun and V. Clarke, 'Using Thematic Analysis in Psychology', 3 *Qualitative Research in Psychology* (2006) 77–101.

share, discuss and note common themes and subthemes. A conceptual coding tree was then created, allowing patterns and the relationship between themes to be visually mapped, ultimately providing a complex picture of forced marriage and sexual violence in the LRA.

#### 4. Men's Experiences of Abduction and Violence

All participants used harrowing terms to describe their abduction. They unpacked missed opportunities and losses resulting from their abduction, their truncated childhoods, the death of loved ones during their time in the LRA and the overall suffering they experienced in the bush. The period of abduction and initial indoctrination in the LRA was depicted as a time of great hardship and adversity and of being brutally forced to participate in acts of violence. Participants recounted their abduction and its impact:

I was abducted when I was in school. My peers with whom I was at the same level of education are far better than me in many ways; they completed their education and they have good jobs. Some of them support me when they see me [tone of regret]. That is one bad thing that happened in my life. Secondly, when I was abducted, I got separated from my parents. This kept me worrying a lot about them and they too worried a lot about me. So it created a big relationship gap between my family and I for the many years I was away from them. Thirdly, it created hatred between the civilians and us who were in the LRA. This is because some of the people in our communities still perceive us as those who were committing atrocities on them when we were in the LRA. It created a bad atmosphere between me and other civilians. (Male participant #10)

In 1993, LRA abducted me from [my] village. I was abducted at night together with my brothers and other community members. We began moving with the luggage they gave us to carry. I was only 14 years old. We moved and suffered a lot that time. Whoever got tired and could not continue moving were killed. I saw two people being killed because they were tired and had swollen legs. There was also one person who tried to escape, but unfortunately, he was caught and killed. Each time the rebels killed anyone it wouldn't affect their movement ... they would keep going. Even me myself, I had swollen legs. But with the mercy of God, I toiled and reached where they wanted me to reach. Loads were given irrespective of your age. (Male participant #19)

In addition, participants also shared the violence they endured during the course of their time in the LRA, which often left long-term disabilities and health consequences:

Kony and I were failing to reach a common understanding. I was beginning to disagree with what the LRA was doing. Before I was demoted, I was caned 300 strokes of the cane. I became ill and passing blood in my urine. Up to now I still visit the hospital. My liver is not functioning ... it's rotten [tone of devastation]. [Is the complication with your liver the result of the beating that you received while in the bush?] Yes. (Male participant #4)

I received a bullet injury that ripped off part of my leg. That has kept me partially crippled and that is why you see me walking abnormally. (Male participant #11)

## 5. Men's Understanding of Forced Marriage and Family in the LRA

Reporting on men formerly associated with the LRA, Denov et al. found that forced marriage was used as a tactic to prevent civilian rape, as well as a means to prevent abductees from escaping the LRA.<sup>31</sup> 'Marriages' were used to assure internal compliance and encourage allegiance to the LRA. Moreover, Denov and Cadieux Van Vliet suggested that the creation of LRA 'families' — through forced marriage and children born of these 'marriages' — was deliberately used to deepen abductee ties and bonds within the LRA, creating a sense of belonging and cohesion and a means for abductees to 'forget their worries' regarding abduction and the LRA's ongoing culture of violence.<sup>32</sup> In this sense, forced marriage was a tool of social control that affected not only high-ranking commanders, but also lower level cadres in the LRA. The term 'commander' within the LRA encompassed a range of agency and authority, as well as power and subordination.

A key finding of the research interviews documented in this article is that forced marriage was deliberately and carefully orchestrated and controlled by those in positions of power and influence. This finding maps onto conclusions drawn elsewhere by Aijazi, Amony and Baines, who note that in the LRA '[o]nly a small group of commanders close to Kony, or Kony himself, determined who could marry and when they could marry ... [e]ven senior commanders often did not have a choice of whom they could take as a wife, or who the girl or young woman under their care was given to.'<sup>33</sup> Participants in this study pointed to a highly organized, hierarchical process for allocating girls to specific men. These participants explained:

We had many departments in the LRA, each having a specific role to play. ... The LRA had a department that was in charge of handling abducted girls. Usually when young girls were abducted, the department head would decide from the [male] soldiers present, who of them were ready to be with a wife. So, a list of names would be forwarded, and the girls would be given to the men as per the names on the list. (Male participant #16)

Usually during the high-command meeting, Joseph Kony would suggest or order that such-and-such a commander should be given a wife. The girls are abducted and given to the commanders chosen by Kony. (Male participant #9)

The high-ranking commanders created 'marriages' in the LRA to preoccupy the minds of the commanders so that they would not develop ideas of escaping. Marriage was also created to remove a situation where one is always worrying about home. (Male participant #13)

31 M. Denov et al., 'Complex Perpetrators: Forced Marriage, Family, and Fatherhood in the Lord's Resistance Army', 94 *Revista de Historia Jerónimo Zurita* (2019) 139–160.

32 Denov and Cadieux Van Vliet, *supra* note 3; Denov et al., *supra* note 31, at 148.

33 Aijazi et al., *supra* note 13, at 101. See also *ibid.* at 99 ('[s]ex was only permitted between men and women within a "marriage" sanctioned by senior commanders, at a time of their determination, and between two persons they selected for it').

‘Marriages’ were reportedly undertaken after substantive planning and observation, according to key characteristics of both the males and females in question:

First of all, in the LRA girls are not given to the boys/men according to the age of the girls. They [high command] considered the ability/readiness of the boy or man to begin staying with the girl. They considered how hard working the boy was, how you conduct yourself and sometimes your physical appearance. Again, if the boy was young, he was not given a girl until he was ready to have a wife. (Male participant #3)

The question of the age of girls at the time of forced marriages was addressed by this participant:

[Question: What age were the girls considered ‘ready’ for commanders?] They were usually 15 years and 16 years old girls. [Some men have said that they were given girls as young as 12 years old; was that true?] ... Some top commanders would admire the young girls of even 12 years old and they would begin staying with them — this is a case of rape ... Yes, it was happening ... Yes, [girls 12 years of age] was common with the top commanders mainly. (Male participant #4)

Alongside the practice of forced marriage, the LRA high command also reportedly initiated forced pregnancy and birth of children. As noted elsewhere by Denov and Lakor,<sup>34</sup> the forced wife system had among its objectives to produce a new clan and the next generation of LRA fighters. An ‘important rationale for the regulation of marriage within the LRA was to promote distinctive forms of moral purity for the creation of a “new” and superior Acholi nation.’<sup>35</sup> The deliberate plan to produce children was explained by participants in this study as linked to the spiritual prophecy of Kony, as well as a way to boost the morale within the LRA through the birth of children. Women and girls were thus a key and essential means to achieve Kony’s goals:

It was prophesised by ‘Lakwena’ [Kony] that there would come a time when the LRA would have children. So, there was no way that the prophecy made by Lakwena [Kony] would have to come to pass without women to give birth to those children. (Male participant #12)

Having children in the bush is inappropriate. But according to the order from above ... ‘We will overthrow the government with all our children and return home with all of them’ was the statement from Joseph Kony. (Male participant #3)

## 6. Agency and Coercion, Choice and Choicelessness

What became clear through interviews is that interviewees straddled multiple identities — they were simultaneously perpetrators of violence and atrocities, captives, commanders, husbands and fathers. Many were both victims and victimizers. This section outlines the complexity of their roles within the LRA.

34 See Denov and Lakor, *supra* note 8.

35 Aijazi et al., *supra* note 13, at 101.

During interviews, several participants discussed their involvement in violence. As an example, this participant shared several instances of his direct participation in abduction, sexual violence, forced pregnancy and the power he wielded in doing so:

The good thing was that as a commander, I would instruct my subordinates to execute an order and it is done. I would order for girls to be abducted; and they would do that [laughs about it]. (Male participant #20)

It happens. Sometimes you have to force [a girl] to come to you when you feel the urge to have sex. But even before sex, you would try to sweet talk her into submitting to having sex with you. (Male participant #20)

My wives were abducted and taken into the LRA against their will. They probably also gave birth unwillingly. (Male participant #20)

Other participants focused on and discussed the behaviours of others, not themselves, in relation to the perpetration of sexual violence and forced marriage:

There were a few individuals who would be given a chance to choose for themselves a girl they desired to be with. But most of the men from the rank of Sergeant were given the abducted girls to be their spouses. For the case of the higher-ranking officers, that is to say, those who were above the ranks of Sergeant, the abducted girls were brought before them in two phases; the first lot of girls was brought before them for them to choose from. Then the second lot were brought before them and given to them randomly. (Male participant #8)

The girls who were ready to be given out to the commanders to serve as wives were brought before the high-ranking commanders say like the brigade commander to choose from. The rest of the lower ranking commanders were given girls to be their wives at random. (Male participant #12)

In discussing forced marriage, however, many men described having limited choice in the matter. Given that participants and their 'wives' were abducted and compelled to obey the norms and rules of the LRA, participants often viewed their marriage as a union that they could not refuse. In a situation where they felt they had limited or no choice, participants spoke of 'being trapped', having 'no option' but to 'take on' a wife. These participants explained:

It was wrong. Had it not been for strict [LRA] rules to follow, I feel all men should have refused [wives]. For me, I couldn't refuse for the second time because I was already weak with gunshot wounds, and they insisted she cook for me. She was at the boss' place because her husband was shot dead. They convinced me the same way the devil deceives. I had no option. I accepted to have her ... I engaged her into an agreement so that I would not force her [for sex] against her will. I had very little interest in her, but I refused to give any room for my boss to have suspicion of me doing anything against them. The woman then told me she had no problem with the idea. We were both abducted and the only thing we should keep in our minds, is living. ... Then I saw sense in her and we started staying together, and God blessed us with a girl. (Male participant #19)

I told you earlier that when girls were abducted and taken to the LRA camps, they were gathered in one place. For example, a girl is brought forward and was told: 'From now on,

this is your husband — have you heard?’ ‘I have heard’, the girl would reply. So it was the same thing that happened to me. I was given my wife in a similar manner. We would then begin staying together, knowing what to expect of each other. (Male participant # 7)

Most of the women ... in the bush did not have sex out of consent. It was also not deliberate on the side of the men. It was the commanders who would order a man to be with a given girl/woman. Also, a girl was ordered to be with a given man. So because of that, when the two are going to have sex, they already know that they were meant to stay together and have sex. (Male participant #4)

Human beings cannot be given to another the way clothes are distributed. So the situation or circumstances in which girls were given to men to serve as their wives without their consent would amount to ‘rape’. Like it or not, you will have to accept to be together. (Male participant #17)

It has elsewhere been reported that ‘if LRA “husbands” showed reluctance to have sex with their forced wives they would be punished by their commanders’.<sup>36</sup> Some participants similarly explained that dire consequences could arise if men refused to take on a wife or accept the individual that was ‘given’ to them. Punishments reportedly ranged from suspicion, insubordination, and demotion all the way to execution:

First of all, an investigation would be carried out to find out why he has rejected an offer of a wife. They would want to find out your perception about the LRA. In some cases, you are demoted and they further observe your reactions. (Male participant #15)

There were some officers who refused to accept the girls given to them. But for fear of being misunderstood for always refusing/rejecting the girl given to you, one would have to accept the girl given to him. Actually, most of those who were abducted as young boys and rose through the ranks to become officers in the LRA did not have any interests of having wives in the bush. (Male participant #15)

Yes, sometimes you are punished severely for refusing a girl given to you as a wife. (Male participant #13)

This often led to participants to take on a wife against their will:

I happened to have declined an offer of a wife in 1991 when I had barely been three years in captivity. The commanders stated clearly that [refusing a wife] was an act of indiscipline, which was punishable harshly. They further stated that I seemed to have an intention of escaping back home. Of course, the punishment for an escapee was punishable by execution. I had to reverse my decision and quickly accept the offer [of marriage]. (Male participant, #7)

Some participants who reported being coerced into marriage also related trying to ‘make the best’ of a difficult situation. Within the powerful structural constraints and culture of violence that embodied the LRA, participants spoke of the ways in which, over time, their marriages became relationships that offered them protection, support and comfort. For example:

The relationship had not been a good one at the initial stage but since we were both trapped in the same environment and had the same experience ... something positive or

36 Carlson and Mazurana, *supra* note 10, at 5.

fairly positive had to come out of it. We later became like a brother and sister to support, protect, and comfort each other. (Male participant #7)

Within Kony's 'system', participants reported a fundamental lack of choice in the bush, as well as a need to follow orders in relation to marriage, family and life decision-making:

I see a big difference now that we are at home [postwar]. Right now at home, we decide for ourselves unlike in the bush where we were not free to decide on a number of issues that may be affecting our lives (Male participant #14).

In the bush it was about taking orders. Right now with my wife, we are able to come up with a plan and work towards fulfilling our goals without having to worry that someone will dictate over it. (Male participant #14)

## 7. Family and Fatherhood

As noted earlier, the use of 'marriage' and creation of LRA 'families' were deliberate strategies used to assure internal compliance and foster allegiance to the LRA. Nevertheless, many participants narrated positive sentiments regarding their wives and children. Participants expressed how their wives supported them by completing household chores and caring for children. Nonetheless, participants were acutely aware of the coercion, precariousness and anxiety that contoured all relationships within the LRA, including with family members.

Yes, I considered us a family, but given the circumstances that we were in, we did not know what the next day would hold for us. (Male participant #17)

[Question: Did you consider your family important in the bush?] God only gives you a gift of a family once. To me, the gift of family was God given. My family is my beginning and the end. I strived hard to ensure that I took good care of my family. (Male participant #4)

For others, family unity was impossible because military interventions dictated all decisions, rendering relationships within the home an expression of captivity. Some participants reported that they did not build their own family — instead, family was imposed upon them:

I did not think of us being a family because everyone was accountable to high command. Everyone had to follow orders and regulations put in place. It is not like here at home where every decision is taken within the family without being answerable to anyone. There is a high level of freedom at home, even the wives we had in the bush were governed by the same regulations put in place for them. (Male participant #9)

[Question: Did you feel you had a family of your own?] No, I didn't have a family of my own because when I was still there I was under someone's command. I was there like a tool. (Male participant #19)

Interviewees reported feelings of love, affection and protection toward their children born in captivity and at times described them as sources of joy and hope. Having children represented the fulfilment of one's social duty within the

LRA to produce a family and offspring. Participants emphasized the innocence of their children, regardless of their own status as rebels.

Children are important because they will carry on our blood when we die. That is why even with the LRA children were very important. That was also why whenever we were under attack by government forces, we would make sure that child and mothers were the first to be evacuated to safety. That alone was a clear indication that children were important to the LRA. (Male participant #2)

Children are naturally important to everyone. A child does not have a mentality of a rebel; it is the child's father who is the rebel. A child being a citizen of Uganda is also an important thing. They are the hope of the future. (Male participant #8)

Fatherhood in the bush was described as particularly challenging. Participants were acutely aware of the challenges that raising children in the bush presented. They reported struggling to protect their children from the dangers of armed conflict and the quest to acquire essential food and goods through any means necessary (often looting). Fathers reported their devastation when they lost their children, many of whom died in the bush. The meaning and importance of fatherhood was described by this participant, who lost six children during captivity:

In total, I lost six kids — one boy and five girls born in captivity. They were so dear to me. I still have the memory of how I soothed them. No, it was too much! I named all my children by the names of my family members I was forced to leave back home. I saw my children as the continuation of the family that I was forced to leave. . . . A father is a father no matter what circumstances but one that no child ever called his/her father anything else other than a father in the LRA. Children in captivity were close to their father. In harsh situations fathers took full responsibilities to protect, feed, treat and comfort children. They then grew up with the knowledge that a father means everything. (Male participant #7)

## 8. International Criminal Law as it is

The SCSL was the first internationalized tribunal to prosecute forced marriage. It did so in the context of armed conflict in Sierra Leone, which began full-scale in the early 1990s, between rebel militias [the Revolutionary United Front (RUF) and African Forces Revolutionary Council (AFRC), assisted by Liberian President Charles Taylor and the Civil Defence Forces (CDF)], which rallied to support the Sierra Leonean government. Civilian populations suffered horribly in this conflict. Mass violence included endemic rape, sexual slavery, killings, torture, amputations and forced marriage. While some men suffered sexual violence,<sup>37</sup> the focus of the SCSL's prosecutorial efforts sharply gravitated towards the widespread sexual victimization of women and girls.

<sup>37</sup> Human Rights Watch, "We'll Kill You If You Cry": Sexual Violence in the Sierra Leone Conflict', 16 January 2003, available online at <https://www.hrw.org/report/2003/01/16/well-kill-you-if-you-cry/sexual-violence-sierra-leone-conflict> (visited 26 January 2020) (passim references in Part V thereof).

When it came to forced marriage, questions arose about how to categorize this violence in terms of law. Should forced marriage be seen as a predominantly sexual crime and subsumed within the crime against humanity of sexual slavery, or should forced marriage (which is not enumerated as an independent crime) be charged within a residual category of crimes against humanity entitled and 'other inhumane acts' under Article 2(i) of the SCSL Statute?<sup>38</sup>

The first forced marriage case before the SCSL involved the AFRC rebels. While the SCSL Trial Chamber majority in that case characterized forced marriage as sexual slavery and thereby dismissed the charge of forced marriage as redundant,<sup>39</sup> the SCSL Appeals Chamber subsequently overturned this decision.<sup>40</sup> The Appeals Chamber did so in order to recognize that forced marriage is not 'predominantly a sexual crime',<sup>41</sup> but a compelled association that 'entailed mutual obligations for both parties, the "wives" being coerced into performing various duties, including sexual intercourse, domestic labour and forced pregnancy, while the "husbands" provided food, clothing and protection, notably against rape by other men'.<sup>42</sup> The Appeals Chamber defined forced marriage as 'a situation in which the perpetrator through his words or conduct, or those of someone for whose actions he is responsible, compels a person by force, threat of force, or coercion to serve as a conjugal partner resulting in severe suffering, or physical, mental or psychological injury to the victim'.<sup>43</sup> Aspects specific to forced marriage include the coerced nature of conjugality, the encroachment on private decision-making spaces, the role of military and political leaders instead of family and relatives in determining the marriages, the crushing of dignity and autonomy, the compulsory nature of parenthood, the linkage with the war effort, and the role of forced marriage in the terrorization of the general population. In the AFRC case, the Appeals Chamber, however, declined to enter fresh convictions against the accused on the forced marriage charges.<sup>44</sup> That said, its approach to forced marriage as an inhumane act was followed in the RUF case in which the first

38 Another debate at the SCSL (and later at the ECCC) arose as to distinctions between forced marriage and arranged marriage. Parental and community involvement and consent in the arrangement of marriages, as well as ceremony and ritual and subsequent support by the extended family, were seen as key elements present in arranged marriages but not in forced marriages.

39 Judgment, *Brima, Kamara and Kanu* (SCSL-04-16-T), Trial Chamber II, 20 June 2007, §§ 710–713.

40 Judgment, *Brima, Kamara and Kanu* (SCSL-04-16-A), Appeals Chamber, 22 February 2008, §§ 190–199.

41 *Ibid.*, § 190.

42 J. Close, 'Forced Marriage as an Independent Crime Against Humanity in the ICC Decision Confirming the Charges against Dominic Ongwen', International Law Blog, 20 June 2016, available online at <https://internationallaw.blog/2016/06/20/forced-marriage-as-an-independent-crime-against-humanity-in-the-icc-decision-confirming-the-charges-against-dominic-ongwen/> (visited 23 November 2019).

43 Judgment, *Brima, Kamara and Kanu*, Appeals Chamber, *supra* note 40, § 196 (noting also the implication of a relationship of exclusivity between the husband and the wife to which disciplinary consequences would arise in the case of breach).

44 *Ibid.*, § 202.

convictions on this charge were issued.<sup>45</sup> When it came to the nature of forced marriage in Sierra Leone, the practice within the RUF was comparable to that of the AFRC.

A paradox arises, however. Even though the SCSL *conceptually* approached forced marriage as an independent crime, distinguishing it from sexual slavery, the *operational* investigation, narration and prosecution of forced marriage in Sierra Leone remained deeply female-specific. Forced marriage was seen as an institutionalization of violence, notably sexual violence, against women and girls. The victimology remained simple. ‘Bush wives’ became a commonly referenced term in international legal discourse.<sup>46</sup> Only ‘bush wives’ were constructed as victims. No mention was made of ‘bush husbands’ other than generically as perpetrators. Forced pregnancy was the operative language; forced parenthood much less so.

Whether this narrative framing captures the totalities of the harms endured and committed by and against women, boys, girls and men in Sierra Leone remains unclear. What is clear, however, is that this is how prosecutors discursively presented the crime to the SCSL judges. SCSL judges in turn authenticated and officialized this frame. It was easy to do so, since the factual record of entrenched misogyny was overwhelming as to the horrors inflicted upon ‘wives’, at times under the total control of their husbands, in these compelled unions.<sup>47</sup> While ‘surfacing’ the plight of women and girls and finally beginning to redress international criminal law’s longstanding silence on misogynistic gender-based violence, this narrative framing has nonetheless been chided for underinclusiveness and for essentializing the harms that arose in Sierra Leone. Valerie Oosterveld remarks that the SCSL did not examine sexual violence committed against boys and moreover that far fewer girls than boys testified at the SCSL about their training and combat experience.<sup>48</sup> Oosterveld also notes that ‘the potential victim status of boys forced to commit rape or sexual violence was not discussed in the judgments’.<sup>49</sup> She describes these elisions as ‘gender “blind spots”’.<sup>50</sup>

45 Judgment, *Sesay, Kallon and Gbao* (the RUF case) (SCSL-04-15-A), Appeals Chamber, 26 October 2009, §§ 735–736.

46 Rebel groups (notably the RUF) had strategically invoked the term ‘wife’ to enslave and manipulate women and girls. See V. Oosterveld, ‘The Gender Jurisprudence of the Special Court for Sierra Leone: Progress in the Revolutionary United Front Judgments’, 44 *Cornell International Law Journal* (2011) 49, at 52.

47 One study reports that 60% of interviewed girl soldiers reported that they had served as ‘wives’ to members of fighting forces in Sierra Leone. S. McKay and D. Mazurana, *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War* (Rights and Democracy, 2004), at 92.

48 V. Oosterveld, ‘The Construction of Gender in Child Soldiering in the Special Court for Sierra Leone’, in M.A. Drumbl and J.C. Barrett (eds), *Research Handbook on Child Soldiers* (Edward Elgar Publishing, 2019) 74–94. Oosterveld remarks that the category of ‘bush wife’ overwhelmed that of ‘fighter’ in the case of girls, which she critiques, in that these categories should not be considered as mutually exclusive in that many ‘bush wives’ fought and undertook multifaceted roles within contexts of coercion.

49 *Ibid.*, at 80.

50 *Ibid.*, at 75.

Forced marriage, then, was initially constructed by international lawyers from within the Sierra Leonean experience as a crime against women and girls, which meant that the initial projection of this crime onto the international legal stage and within the international legal imagination became deeply female-focused.

A decade, more or less, would pass before the next international conviction for forced marriage. In November 2018, the ECCC issued convictions for the crime of forced marriage as systematically enforced by the Communist Party of Kampuchea (CPK) in Democratic Kampuchea (DK) from 1975 to 1979.<sup>51</sup> The ECCC did so in proceedings against senior officials Nuon Chea (who passed away in July 2019) and Khieu Samphan.<sup>52</sup> Both defendants were additionally convicted of genocide and various other international crimes. The ECCC followed the conceptual lead of the SCSL Appeals Chamber and approached forced marriage as a crime against humanity under the category 'other inhumane acts'.<sup>53</sup>

The ECCC Trial Chamber determined that only *Angkar* ('the organisation' — how the CPK referred to itself after taking power) could make a 'thorough assessment' regarding the regulation of marriage.<sup>54</sup> The official forced marriage policy had multiple objectives: to encourage population growth, to control sentimental or sexual interactions outside of marriage that were seen as endangering the revolution and violating ethics, to abandon private ownership, and to destroy the relationships between children and their parents insofar as *Angkar* was to supplant the role of parents.

Once 'matched' by *Angkar*, individuals (generally unknown to each other beforehand) usually were not consulted, nor necessarily even informed, about the match until the day of the wedding. These 'weddings' often involved many couples. Once married, spouses could not divorce. Male–female relationships without the approval of *Angkar* were prohibited: '[s]ex and romance outside of marriage were forbidden, on pain of death.'<sup>55</sup> At the 'wedding', couples were instructed to make a commitment, which included gratitude toward *Angkar* and an obligation to produce children for *Angkar*, to respect and love each other, to respect the principles of *Angkar*, to adhere to DK's policy, and to work and be productive for the country. These 'weddings' departed from any Cambodian tradition. Neha Jain notes that '[n]evertheless, most of these marriage relationships continued in post-conflict Cambodia'.<sup>56</sup>

Newlywed couples were monitored after their weddings to ensure they 'consummated the marriage' and were forced to do so — if not, they were re-

51 Judgment, Case 002/02, ECCC Trial Chamber, 16 November 2018. The judgment is 2,268 pages long.

52 Summary of Judgment, Case 002/02, ECCC Trial Chamber, 16 November 2018.

53 *Ibid.*, § 7 (the charges 'in relation to the regulation of marriage' also explicitly included 'rape in the context of forced marriage'); Closing Order, Case 002, ECCC Trial Chamber, 15 September 2010, §§ 1442–1445.

54 Judgment, Case 002/02, *supra* note 51, §§ 3522–3523, 3536–3568.

55 N. Jain, 'Forced Marriage as a Crime against Humanity', 6 *JICJ* (2008) 1013–1032, at 1025.

56 *Ibid.*, at 1026.

educated or physically assaulted.<sup>57</sup> Some women were raped either by commanding officers or their ‘husbands’; some couples were forced at gunpoint to consummate the marriage in front of officers.

In contradistinction to the SCSL, and in accordance with the facts as presented to it, the ECCC Trial Chamber approached forced marriage more capriciously and did not construct the crime as being specific to women and girls. The ECCC underscored how men and women were coerced into marriage and forced to procreate in order to produce children for the regime. However, the ECCC held that men could not be the victims of rape as defined by the ECCC in the context of forced marriage, though women could be characterized as such.<sup>58</sup> The Chamber considered instead whether men were subjected to sexual violence of such gravity that it amounted to other inhumane acts. The Chamber perfunctorily found that there was evidence that men were indeed subjected to sexual violence that was contrary to human dignity, but was unable to reach a finding on the seriousness of the mental and physical suffering experienced by these men.<sup>59</sup> So, ultimately, the Chamber left things such that forcing man to consummate a marriage and to procreate was not a sufficiently grave act to constitute sexual violence. Scholars have criticized this outcome. Melanie O’Brien notes that this understanding of rape or sexual violence fails to acknowledge the structural oppression of being coerced into serving as a ‘bull’.<sup>60</sup> To add our own view: mandated forced procreation within compelled conjugal unions inherently constitutes non-consensual sexual conduct structurally and systematically imposed by the state (or non-state actor) upon both parties to the ‘marriage’.

## 9. International Criminal Law as it Might Become

The narratives offered by LRA ‘bush husbands’ evoke multiple themes. These include perceptions of systemic captivity, duress and constraint; fear and anxiety; being in the grip of Kony’s spiritualism; a sense of loss, alienation and falling behind peers who had never been abducted; lacking in agency but trying to make the best of a bad situation; suffering trauma, hardship and ongoing physical injury; exercising great power over ‘bush wives’ who suffered terrible pain; having limited and at times no choice in whom to ‘marry’, thereby being forced into these unions as well; feeling compelled to procreate for the existential well-being of the LRA; having the capacity to bully, intimidate, harm and violate, while also being bullied, intimidated, harmed and violated; and expressing empathy towards the children who were born out of the forced conjugal relationships.

57 Judgment, Case 002/02, *supra* note 51, §§ 3641–3661.

58 *Ibid.*, § 3701. Rape within the context of forced marriage was separately charged.

59 *Ibid.*

60 M. O’Brien, ‘Jurisprudential Evolution: Genocide and Forced Marriage in ECCC Case 002/02’, Presentation, 16 July 2019, IAGS Conference (Phnom Penh, Cambodia).

What implications, if any, might these perceptions shared by LRA men in forced marriage relationships have for the *legal construction* of forced marriage as a crime? Should these perceptions matter? Yes, we think so. Might the legal content and operational scope of the crime of forced marriage under international law shift in light of these expressed experiences? How and to where?

We suggest as a starting point to illuminate the harms that the crime of forced marriage imposes on *all affected parties*, including boys, girls, men and women. These harms include the evisceration of agency in fundamental associative decisions; the purging of ceremony, tradition and extended family involvement in the rite of matrimony; destroying community relations and cultural practices; the militarization of private life; the weaponization of the family; and the ordering of private relations in accordance with the socially engineered strictures of public life including fidelity to the state or organization.

International courts have struggled with differentiating sexual slavery and forced marriage. If a key element that distinguishes sexual slavery and forced marriage as two different crimes is the trauma of imposing a compelled association (in the case of forced marriage), then it seems that considering the situation of men in those relationships, many of whom apparently also experienced such trauma, could better help differentiate these crimes and, thereby, promote overall coherence within international criminal law.<sup>61</sup> In addition, forced or compelled parenthood, which was — to varying degrees — an entrenched aspect of forced marriage for both ‘husbands’ and ‘wives’, ought to be more centrally considered as a key life-altering outcome occasioned by this odious practice. A deeper invocation of the *parenthood aspect* of forced marriage (both motherhood and fatherhood) also would highlight the needs of the children born of these unions and, in this sense, instantiate a broader protection of the ‘best interests’ of these children in line with this key precept of the United Nations Convention on the Rights of the Child.<sup>62</sup>

While recognizing that sexual violence occurring within forced conjugality most disproportionately affects women and girls, our data suggest detaching the criminalization of forced marriage from a largely female-focused analysis to one that incorporates the complex experiences of *both* males and females and which is rooted in a gender-informed assessment of how coercion affects *both* males and females. As is outlined in the ICC’s 2014 Policy Paper on Sexual and Gender-Based Crimes, a ‘gendered perspective’ requires ‘an understanding of the differences in status, power, roles and needs between males and females, and the impact of gender on people’s opportunities and interactions’.<sup>63</sup> We

61 Cf. L. Nacyte, ‘Female Victims Only? Casting Doubt on the Prosecution of Forced Marriage in Ongwen’s Case’, *A Contrario International Criminal Law*, 4 May 2017, available online at <https://acontrarioicl.com/2017/05/04/female-victims-only-casting-doubt-on-the-prosecution-of-forced-marriage-in-ongwens-case/> (visited 23 November 2019) (noting that ‘the distinctiveness of forced marriage might be partially obscured due to the omission of male victims’).

62 *United Nations Convention on the Rights of the Child*, 1577 UNTS 3, 20 November 1989, Art. 3(1).

63 Office of the Prosecutor, *Policy Paper on Sexual and Gender-Based Crimes*, International Criminal Court, June 2014, available online at <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes-June-2014.pdf> (visited 26 January 2020), at 3.

argue that drawing upon such a perspective and capturing the complex experiences of both males and females would expand the crime of forced marriage and thereby permit the independent condemnation of the full amplitude of the hurts and harms of the crime base that terrorizes the general population. This would also mean that state or organizational mandating of men into forced procreation, forced sexual relations and forced parenthood can constitute a grave act of sexual violence and rape against men and boys as well as against women and girls.

In terms of post-conflict reconstruction, diversifying the epistemic base to include the complex and varied narratives of men would help refine remedial and reintegrative policies to cover the full spectrum of affected parties including the children born out of forced conjugal unions and the relationships they have with the initial crime victims—namely, their parents.

Senior commanders who order forced marriages should face criminal sanction that recognizes the totality of the harms caused, including to both husbands and wives, which would augment whatever potential retributive, deterrent, and expressive value that criminal punishment may convey.

Along the way, this project queries why forced marriage may have become seen as disproportionately harmful to women and girls. This article inquires whether this derives in part from a sense that marriage is perceived as a more valuable social institution to girls and women and the implicit associations that may be made between feminine accomplishment and marriage. These implicit associations may presume that males care much less about ‘marriage’ than females and that for males, wives and sexual partners are interchangeable. To this end, peeling away these assumptions and stereotypes might help foster cultures of gender equality and human dignity.

To be sure, the data presented in this article consist of narratives by men in the LRA of their own perceptions of their own experiences and self-assessments of their own conduct, including violent acts of sexual abuse that they themselves perpetrated. Interviews with women and girls coerced into forced marriages may reveal very different perceptions, reactions and experiences.<sup>64</sup> The point of this article is not to place these accounts in contrast or in competition. It is not to gaslight anyone’s experiences. It is not to suggest a zero-sum game. It is not to ‘correct’ a factual record or ‘privilege’ one narrative voice over another. Rather, it is to add to the accumulated knowledge base and thereby to further enrich the epistemology of forced marriage (i.e. what and from where do we know what we know about forced marriage in the LRA in northern Uganda?). This process of accretion and informational expansion can serve to expose the full extent of the harms of this compelled practice without diminishing the severity of harms that forced marriage and spousal rape inflict on girls and women. This more refined epistemology, moreover, maps on to the painful conundrum that victims may victimize others, those who are hurt in turn may harm, and thereby contributes to a more sophisticated aetiology of mass violence. Condemning the harms endured by women

64 See Denov et al., *supra* note 15.

and girls in forced marriage relationships is not mutually exclusive from or incommensurable with recognizing the harms that these heinous practices inflicted upon the men and boys.

## 10. Looking Ahead to the ICC

The ICC has charged both sexual slavery and forced marriage. An ICC Trial Chamber has convicted for sexual slavery of women and girls.<sup>65</sup> In one early confirmation of charges decision, an ICC Pre-Trial Chamber seemed to align with the SCSL Trial Chamber and conceptualized forced marriage as a form of sexual slavery of women and girls.<sup>66</sup> That said, in the *Ongwen* case, the ICC confirmed charges of forced marriage as another inhumane act within the meaning of Rome Statute Article 7(1)(k) (crimes against humanity). At the ICC, therefore, forced marriage is now being prosecuted as an independent crime distinguished from sexual slavery.

That said, the operational approach thus far of the ICC in the *Ongwen* case is one in which the crime of forced marriage in northern Uganda is narrated as women and girls as victims and men and boys as generic perpetrators. A very similar framing to that of the SCSL is emerging. In the confirmation of charges against Ongwen, for example, the ICC Pre-Trial Chamber noted that ‘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”’.<sup>67</sup> The Prosecutor’s statements in the *Ongwen* case regarding forced marriage revolve only around the coerced experiences of women and girls as ‘wives’.<sup>68</sup> The Prosecution’s pre-trial brief in *Ongwen* insisted that the exclusivity of the forced conjugal union pertained only to the ‘wife’, a point which may arguably have been the case for Ongwen personally, but which the ethnographic record suggests was not the case for many LRA ‘bush husbands’. On 6 March 2018, an ICC Trial Chamber declined a request from the legal representative for victims to add three witnesses to present evidence on sexual violence against men and boys in northern Uganda. This Trial Chamber ruled that because the sexual crimes charged against Ongwen involve crimes against women and girls, hearing evidence from male victims of sexual violence would

65 Judgment, *Ntaganda* (ICC-01/04-02/06-2359), Trial Chamber VI, 8 July 2019. Ntaganda was also convicted of 17 other counts including child soldiering, rape and murder. In November 2019, he was sentenced to a thirty-year term of imprisonment. He appeals.

66 Judgment on the Confirmation of Charges, *Katanga and Ngudjolo* (ICC-01/04-01/07), Pre-Trial Chamber I, 30 September 2008, § 431 (Ngudjolo ultimately was acquitted on all charges; Katanga was convicted on some charges, but acquitted on the sexual slavery charge).

67 *Ongwen* Confirmation of Charges, *supra* note 6, § 93.

68 International Criminal Court, ‘Ongwen Case: Office of the Prosecutor Opening Statements, 6th December 2016’, 6 December 2016, available online at <https://www.youtube.com/watch?v=n0nmvIn-94o&feature=youtu.be> (visited 26 January 2020), at 27:14–33:59.

not be ‘appropriate and necessary for the determination of the truth’.<sup>69</sup> The evidence, it was ruled, fell outside the scope of the charges.<sup>70</sup> When the legal representative for victims subsequently urged the Trial Chamber to reconsider, the Trial Chamber rejected this request. Although the ICC Office of the Prosecutor has developed a policy paper on gender-based crimes, as discussed earlier, that advances an inclusive ‘gender perspective’, in practice it strikes us that this policy is not fully implemented in the *Ongwen* proceedings. Once again, we suggest that a greater cognisance of the ethnographic evidence ought to nudge these prosecutorial efforts into a more holistic appreciation of the harms and, thereby, advance a capaciously gender-informed frame that considers the range of experiences of men and boys.<sup>71</sup>

The ICC’s second case in which forced marriage is charged concerns Al Hassan Ag Abdoul Aziz (former de facto chief of the Islamic police in Timbuktu, Mali). Thus far, these proceedings also hew to a female-only focus. The charges against Al Hassan involve his participation in a policy of forced marriages, sexual slavery and gender-based persecution which victimized the female inhabitants of Timbuktu, Mali, in 2012–2013, and led to repeated rapes and enslavement of women and girls.<sup>72</sup>

Now, to return to the LRA, Ongwen himself is alleged to have had nine wives. His personal experiences of forced marriage, if proven, might match those of the essentialized narrative — namely, of an all-powerful husband exercising total free will, authoritatively selecting wives, indenturing them, and rampantly abusing them sexually. However, when it comes to narrating the nature of forced marriage in northern Uganda, we remain concerned that the official judicial authentication that might emerge from the *Ongwen* proceedings will not match or reflect the far more granular ethnographic record. This we feel is problematic from a pedagogic and educational perspective, which we assert should be rooted in comprehensiveness, and from the

69 Public Redacted Version of Decision on the Legal Representatives for Victims’ Requests to Present Evidence and Views and Concerns and Related Requests, *Ongwen* (ICC-02/04-01/15-1199-Red), Trial Chamber IX, 6 March 2018, § 58.

70 Accountability for violence in northern Uganda also omits any discussion of the conduct of the national Ugandan armed forces. This elision arises because the ICC is only investigating the LRA. Lino Owor Ogora points out that this, too, has implications for the redress of sexual violence against men and boys, noting that government soldiers ‘committed numerous human rights violations against the civilian population, including male rape, or “*tek-gungu*” as it came to be known in the Acholi language.’ L.O. Ogora, ‘Sexual Violence against Men and Boys and its Relevance to the Trial of Dominic Ongwen’, *International Justice Monitor*, 24 April 2018, available online at <https://www.ijmonitor.org/2018/04/sexual-violence-against-men-and-boys-and-its-relevance-to-the-trial-of-dominic-ongwen/> (visited 26 January 2020).

71 Although the 2007 Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lord’s Resistance Army/Movement (Juba, Sudan) propounds a ‘gender-sensitive approach’, it too only references women and girls within this frame. See *Letter Dated 2007/07/16 from the Permanent Representative of Uganda to the United Nations Addressed to the President of the Security Council*, UN Doc. S/2007/435, available online at <https://digitallibrary.un.org/record/603742?ln=en> (visited 26 January 2020).

72 Warrant of Arrest for Al Hassan Ag Abdoul Aziz, *Al Hassan* (ICC-01/12-01/18), Pre-Trial Chamber I, 27 March 2018.

expressive aetiological concern of fully documenting ‘what happened’ and ‘how it happened’. This universalization of a limited strand of experience also is worrisome in terms of creating expectations and assumptions that will occlusively permeate reconstructive and reintegrative efforts in northern Uganda to rehabilitate war-affected individuals, including many ‘bush husbands’ whose experiences may materially depart from Ongwen’s.

Furthermore, Ongwen is accused of directly committing and also *having responsibility* for a system of ‘forced exclusive conjugal partners’.<sup>73</sup> Clearly, part of the charges concern his alleged involvement in this broader system, into which many lower-level LRA fighters were structurally and coercively drawn. It would behove the interests of justice, we feel, for this broader array of the experiences of men, women, girls, and boys within this ‘system’ to be elevated into the record. It may be that Ongwen exercised total control in terms of the forced marriages within his command authority and exploited both men and women. A crucial distinction arises between situations where a person forces another into being that person’s spouse and, on the other hand, situations in which two people are coerced into marriage and compelled procreation by a third party. In the latter situations, which ostensibly would attach to contexts where powerful senior commanders implement a system of forced marriage, ensuring all victims have their voices heard would certainly assist judges in reaching findings of fact and also, in cases of conviction, adequately weighing retributive and deterrent goals.

## 11. Conclusion

A thoughtful incorporation of original qualitative data into criminal law adjudication might soften the pneumatics and hydraulics of penal process and their tendencies to both overdraw and overlook. Among the values of ethnographic work is to explicate how forced marriage as a mechanism of atrocity may assume different forms in different places. This is a valuable caution to law’s push towards universalism which can germinate convenient assumptions that may simply not be reflective of the diversity of lived experiences. While the ECCC may have gone some way to pluralize these discussions when it affirmed the different nature of forced marriage in Cambodia — which was more gender-inclusive than in Sierra Leone — it is unclear whether the ongoing prosecutorial and investigative efforts by the ICC in northern Uganda remain sufficiently attuned to actual on-the-ground experiences.

On this note, reimagining the crime against humanity of forced marriage as rooted more in coercion might facilitate open-ended (rather than preordained) information-gathering at the earliest stages of atrocity investigation, interviewing, compilation of a factual record, and ultimately presentation of penal cases.

73 V. Oosterveld, ‘Symposium: Rights Protection in International Criminal Law and Beyond: Forced Marriage: Terminological Coherence and Dissonance in International Criminal Law’, 27 *William and Mary Bill of Rights Journal* (2019) 1263, at 1263 (referencing Ongwen Confirmation of Charges, *supra* note 6).

The resultant process might prove to be more inclusive and capacious. It is of value to reflect the broad gamut of victimization and perpetration, to listen to the voices of all victims (men and women, girls and boys) and to grapple with the painful realities of how the persecuted may persecute others. Such an analysis might also separately unveil ageist assumptions that underpin much of the work of international criminal tribunals: the young, after all, are not always weak. As for adults, well, they may not always be strong. But that is a topic for another day.

It also strikes us as worthy of mention that, whether inadvertently or not, differential approaches are emerging to how forced marriage is conceptualized and criminally prosecuted as between Africa (Uganda, Sierra Leone, Mali) and Asia (Cambodia). This concerns us because it might seem *implicitly easy* to cast the crimes in an African context as derivative of essentialized and spectacularized tropes of African masculinities. Accordingly, we wonder whether this discussion bears some relevance to the ICC's lingering, and languishing, perceived 'Africa problem'.

Coerced, compelled, arranged and forced marriage has been identified by human rights activists as an ongoing phenomenon in Uganda well outside the context of armed conflict or the LRA. For the most part, these identification efforts stylize the phenomenon as uniquely affecting women and girls.<sup>74</sup> We believe that the analysis suggested by this article, while originating within the context of the LRA and armed conflict, bears significance when it comes to assessing marriage nationally within Uganda and elsewhere and giving force at the domestic level to international human right law's insistence on matrimony as consensual and dignified for all individuals regardless of their gender. We also believe that the inclusive analysis we suggest gestures towards another crucial conversation — namely, to look *beyond the traditional binaries* of gender (reductively male or female) that currently dominate international criminal law discourse and practice.

74 See e.g. Immigration and Refugee Board of Canada, 'Uganda: Forced Marriages, Including Prevalence Among the Buganda [Baganda] Ethnic Group, and Among Educated Buganda Women: Protection and Support Services Available to Women Who Refuse a Forced Marriage (2012 - October 2015)', UGA105342.E, 22 October 2005, available online at <https://www.refworld.org/docid/577b73384.html> (visited 26 January 2020); see also the 'Girls Not Brides' campaign, available online at <https://www.girlsnotbrides.org/child-marriage/uganda/> (visited 26 January 2020).