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Forced Marriage within the Lord's Resistance Army, Uganda

Khristopher Carlson, LL.M., & Dyan Mazurana, Ph.D.

May 2008

This project is generously supported by the International Development Research Centre, Canadian International Development Agency, Unicef-Uganda, AVSI-Uganda, and the Feinstein International Center, Tufts University.



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My own daughter came back with two children from that abuse inflicted on her by the rebels. She was 14 when she was taken and she came back after eight years. I am sure in your country, a child goes missing (pause), let's say a parent goes to pick a child from school and he is not there. Five minutes is enough for that parent to panic. But eight years I have been waiting, knowing very well what the rebels do, their brutality. (sigh) Every day we were wondering, "Has the child died today? Has she been injured? Is she bleeding to death? Has she been abandoned in the bush alone? Has she been killed and her body is rotting somewhere? Has the bomb been dropped on her?" (painful sigh)¹

—A mother whose 14 year-old daughter was abducted and forcibly married to an LRA commander. From *The Other Side of the Country*. Dir. Catherine Hébert. 2007. DVD. Mango Films.

For the past eight years I have been in the bush. I was totally cut off from the world. It's like being put in a tomb, you are still breathing, but you are in there. (long pause) In the bush it was always horrible.

I didn't understand at first what they were talking about (hesitantly), you know, someone very old, in his late 50s. (sigh) You cannot imagine, you know (long pause), I thought maybe he was out of his head, not joking, because I have never seen any of them joking. But after that, they just (hesitates), they just have to tie you up and somebody rapes you, just like that (sadly and very faint).

I was always, always afraid they might ask me to kill somebody, I was always, always afraid to do that. (long pause) One day some girl tried to escape, and they asked us, all 30 of us girls to come. We went there not knowing what was going to happen (pause) they gave us all big sticks and they ordered us to beat her to death (very sad and with a gasp). We could not imagine doing this and (heavy sigh) we refused, we refused (trails off). We refused, but, we were beaten so badly, to the extent that we all had to beat her to death (very faintly and sad) and so we did (trails off).

There was no day when you would get up and smile to see the sun rise, because everyday you would think, maybe today, maybe today will be the end of me.

—Young woman abducted at 14 years of age and given as a forced wife to an LRA commander. She is the daughter of the woman quoted above.

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Cover photograph, “Former forced wife with child, northern Uganda” by Khristopher Carlson.

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FORCED MARRIAGE
WITHIN THE
LORD'S RESISTANCE ARMY, UGANDA

Khristopher Carlson, LL.M., and Dyan Mazurana, Ph.D.

I. EXECUTIVE SUMMARY

The Lord's Resistance Army (LRA)—a rebel movement fighting the government of Uganda—is estimated to have kidnapped over 60,000 Ugandan children and youth. Those abducted include one in three male adolescents and one in six female adolescents in northern Ugandan. While in captivity thousands of abducted young women and girls—most of whom are from the Acholi, Lango, and Iteso peoples—fought, cooked, carried supplies, fetched water, and cleaned for LRA fighters and commanders, including those who organized and carried out their abductions. Many of those abducted also served as forced wives to male members of the group. Half of those forced into marriage bore children. A minority of abducted females was forced to fight and some used violence against their own communities.

This report is based on in-depth investigation, primarily drawing on the testimony of 103 women and girls who were abducted and forced into marriage with LRA combatants. The authors also interviewed parents and family members of abducted females; ex-LRA combatants; religious, clan, and community leaders; local government officials; Acholi and Langi clan leaders and people responsible for customary law; lawyers, and local, national, and international NGOs working in northern Uganda.

Our evidence reveals that the crimes committed against these females were not haphazard, but were methodically organized by the senior leadership of the LRA. The presence of forced wives in the LRA served to bolster fighter morale and support the systems which perpetuate cycles of raiding, looting, killing, and abduction. The LRA leadership exercised rigid control over the sexuality of abducted women and girls through intimidation, discrimination, and violence. The LRA leader, Joseph Kony, is thought to have forcibly married more than 40 females and to have fathered dozens of children through rape and forced marriage. At any one time his commanders had on average five forced wives, while lower level fighters had one or two. Kony imposed strict rules governing how abductees may interact with each other and behave within the force. Rules have been enforced with beatings and killings and some abducted females have been forced to

beat or kill other abducted females. When abducted females died or escaped the senior leadership sent orders to field commanders to seize replacements, often specifying the number required and the age, physical appearance, and intelligence of girls to be seized. Better-educated girls were highly sought after. If 'wives' of top commanders were suspected of showing interest in, or sought help from, other male fighters they would be killed. If LRA 'husbands' showed reluctance to have sex with their forced wives they would be punished by their commanders.

Some formerly abducted females are experiencing family or community rejection and/or are being intimidated by demobilized ex-LRA combatants seeking to reclaim their 'wives' and or children born from the relationships. Many returned women have found it difficult to access arable land. Those with children are particularly vulnerable and some have been forced by economic necessity to enter into relationships with men—sometimes more than one—most of whom provide little assistance. Some non-Acholi women have been allowed home only on condition that they abandon children born from forced marriages with their LRA captors. Others in need of protection and support have entered into sexual relationships with Ugandan army troops or with male relatives. Our study found no evidence to support claims often made by Acholi leaders that Acholi girls wish to continue the marriages forced on them during their captivity. Many ex-abductees told us they live in constant fear of random violence from men and that the Ugandan authorities do nothing to protect them or their few assets.

As momentum builds to end this tragic episode in the history of Uganda it is vitally important to document and analyze the pattern of command responsibility within the LRA for these crimes, their long-term physical and psychological effects and how the experiences of abducted women are affecting their reception by families and communities as the women return home and hope to realize their rights as Ugandan citizens.

These forced marriages are not recognized or binding as formal marriages by any international or Ugandan legal standard or within northern Ugandan customary law. However, the dilemmas posed by the return of the abducted women from LRA captivity have given rise to a varied set of responses from key stakeholders—the government of Uganda, NGOs, religious and clan leaders, parents and other relatives, the International Criminal Court (ICC), and other members of the international legal community. Further confusion has arisen when the ex-LRA combatant responsible for the abduction and/or acceptance of a 'wife' lives in close proximity to the former abductee. Increasingly, the national and international community is told by the LRA's top leadership, the President of Uganda, and a group of

religious and traditional leaders that the traditional and customary practices of the Acholi and Langi are able to deal with the kinds of harms committed during the conflict.

It is important to question whether this is really the case. Are these strongly patriarchal systems really equipped to deal with the kinds of sexual and gender-based crimes that characterize the practice of forced marriage? Do they provide space for women to independently assert their rights? Do they contain accountability and compensatory measures for the nature of the multiple crimes committed during forced marriages? Are they sufficiently robust after a conflict which has terrorized Acholi and Langi communities across northern Uganda? Should indictments by the International Criminal Court be acted upon and, if so, should they include specific charges relating to forced marriage and how should they be framed? As international lawyers struggle to come to terms with the phenomenon of forced marriage within armed conflict what are the implications for the emerging corpus of international law regarding sexual and gender-based crimes?

Conventions protecting women and girls from sexually violent crimes during armed conflict have consistently failed to recognize or address the kinds of crimes being committed in contexts like northern Uganda. It is only in the past decade that special tribunals for the former Yugoslavia and Rwanda have achieved precedent-setting convictions of those responsible for sexual and gender-based crimes as instruments of warfare. Prosecutors to the Special Court for Sierra Leone are attempting to make further advances and have filed indictments that for the first time recognize forced marriage as a crime against humanity.

The ICC has brought charges against five LRA commanders. Unfortunately, and by contrast with Sierra Leone, they lack the potential for progressive jurisprudential development in this important area of international crimes. Of the gender and sexual-based crimes perpetrated during the northern Uganda only three crimes have been charged: two crimes against humanity—sexual enslavement and rape—and one war crime—inducing rape. Three of the five indicted commanders are not charged with any gender or sexual-based crimes. With one indictee, Vincent Otti, now dead, Kony is the only LRA commander charged with a sexual or gender based crime. Simply put, the ICC's indictments fail to recognize the breadth of the crimes committed by the LRA and unless new indictments are issued, the ICC will fail to perform its role of holding criminals responsible for serious crimes.

Under the auspices of the government of South Sudan the Ugandan government and the LRA signed an agreement in July 2007 and again in February 2008 that entrusts great responsibilities to traditional systems of reconciliation. However, our research has found no evidence that these mechanisms can be expected to address the violent and widespread crimes

carried out during the northern Ugandan conflict—for they have never had to evolve to contend with such protracted and widespread brutality. In any case, during the course of the war, clans and, more generally, ethnic groups' leadership, have lost their authority and ability to consistently enforce various customary norms. Avenues of dialogue between clans have broken down and the proliferation of weaponry has greatly disrupted traditional methods of negotiating, paying, and collecting compensation. Furthermore, most formerly abducted females told us they were extremely dissatisfied after being asked to take part in traditional ceremonies meant to 'cleanse' girls of their guilt and experiences of rape, forced impregnation, and child-bearing in captivity. Vocal women leaders condemn these rituals as arcane and unable to address the crimes perpetrated by the LRA against women and girls.

Unless attitudes and current customary practices are modified to appropriately and effectively address forced marriages, the rights and welfare of the forced wives and their children will be further made vulnerable to abuse. It is abundantly clear that national and international systems must work alongside, and in some cases take precedence over, any traditional mechanisms.

Uganda's Amnesty Act—a measure introduced by the Ugandan Government in 2000 to provide immunity from prosecution for those agreeing to abandon armed struggle against the state—should not be allowed to stand in the way of individual forced wives seeking redress from individual LRA fighters and ex-fighters for violations of their rights and for maintenance of themselves and their children.

We strongly argue that it is insufficient in Uganda, and in any other conflict context, to simply prosecute on the basis of the single constituent acts within forced marriage—rape, sexual slavery, enforced pregnancy, forced labour, enslavement, and/or torture. It is time that forced marriage—by way of abduction into a fighting force—became a codified crime in international law. For at the moment there is a tendency to characterize women and girls who have suffered these wrongs solely as sexual slaves. Such a designation ignores a central element of the injustice they have suffered—the forced imposition of the status of marriage—and its chronic ongoing consequences long after conflicts have been formally ended. The dimensions of forced marriages should no longer be confused with those of the more singular crimes of sexual slavery or rape. The lived experiences and longer-term consequences of forced marriages demand different responses with regard to disarmament, reintegration, community acceptance, accountability, justice and reparation.

II. INTRODUCTION AND STUDY OVERVIEW

This paper focuses on the experiences of those women and girls forcibly married within the LRA and their attempts to reintegrate in civilian life after captivity. It documents and describes how females were often beaten, raped, impregnated, and forced to assume the role of ‘wife’ to the fighters or commanders to whom they were given. As this paper documents, the responsibility for the crimes committed against these females clearly lies with the top LRA leadership which played the central role in orchestrating the systematic and widespread abduction of females for the purpose of forced marriages.

As evidence within this paper demonstrates, none of these forced marriages are recognized or binding as formal marriages by any legal standard in Uganda or within northern Ugandan customary law. To the contrary, both Ugandan and international law criminalize elements that comprise forced marriage. Forced marriages, for example, include international crimes of rape, sexual slavery, enforced pregnancy, enslavement and torture, and in nearly all cases, forced labor.¹ More recently, it has been argued by prosecutors within the Special Court for Sierra Leone (SCSL) that the coercive nature and imposition of the status of marriage serves as the means from which these individual crimes can be perpetrated, making the act of forced marriage more than the sum of its parts.² The effects forced marriages have on a female, both physically and psychologically, as well as how she is treated by her family and community upon return, influence her choices and ability to fully realize her rights as a citizen.

Following this introduction, Section II begins with the study overview. In order to contextualize the discussion of forced marriage with the LRA, we provide a brief introduction and overview of the Acholi and Langi³ people, the ethnic groups most heavily affected by the 21-year war in northern Uganda and which are the subject of this report. We then offer a brief overview of the conflict itself and its effects on the civilian population.

In Section III we detail the practice of forced marriage within the LRA, including the crimes and the harms faced by young women and girls. We document and discuss a clear pattern of command responsibility within the LRA for this crime. We discuss some of the main challenges that the women and girls and their children face upon leaving the LRA and returning to

1 See the Rome Statute on the International Criminal Court (1998).

2 Correspondence with Melissa Pack, Office of The Prosecutor, Special Court for Sierra Leone, November 24, 2004.

3 To avoid misunderstanding, it should be noted the Lango (plural Langi) people mostly live in the Lango sub-region in the north-central area of Uganda.

civilian life. Then, we detail and discuss the different attitudes and responses among NGO, government, religious and clan leaders regarding the practice and realities of forced marriage both during and after LRA captivity.

In Section IV, we investigate developments in international law regarding sexual and gender-based crimes, with a focus on the crime of forced marriage. We use these developments to reflect upon the indictment of the top five commanders of the LRA. We then turn our attention to the Uganda statutory and treaty legal systems, to inquire as to whether those systems are able to sufficiently address the kinds of crimes committed against women and girls subjected to forced marriage. Increasingly, the national and international community are told by the LRA's top leadership, the President of Uganda, and a group of Acholi religious and traditional leaders that the Acholi and Langi traditional and customary systems and practices will be able to deal with the kinds of harms committed during the conflict. We assess the case now being made that the LRA should not be accountable to international court processes and that indictments by the International Criminal Court (ICC) should not be acted upon. We then turn attention to the Acholi and Langi traditional and customary systems and practices to highlight the ways in which those systems deal with the kinds of sexual and gender-based crimes that we have shown to characterize the practice of forced marriage. In particular, we explore how these systems actually function and document the extent to which they contain accountability and compensatory measures for the kinds of crimes that have been committed during forced marriages. Because both Acholi and Langi ethnic groups are strongly patriarchal, we also investigate the ways in which women and girl's rights are or are not upheld in these systems.

In Section V, we offer recommendations and concluding thoughts on charging forced marriage as a crime against humanity, both by the Office of the Prosecutor of the ICC, as well as within the proposed special unit of the High Court of Uganda that will be convened to prosecute those persons who bear the greatest responsibility for serious violations of international law (in specific crimes against humanity and grave breaches of the Geneva Conventions). We also discuss how sexual crimes and the crime of forced marriage might best be handled within traditional justice mechanisms at the community level.

STUDY METHODS AND SITES

Between 2001 and 2007, the authors conducted in-depth interviews with 103 formerly abducted women and girls forced into marriage within the LRA. The authors also conducted in-depth interviews with informants including parents and family members of these women and girls; formerly abducted boys and men from the LRA; former commanders and intel-

ligence officers within the LRA; religious, clan, and community leaders; local government officials; clan leaders from the Acholi and Langi ethnic groups; persons responsible for the maintenance of customary law within the Acholi and Langi clans and ethnic groups; local, national, and international NGOs working in northern Uganda; and Ugandan lawyers. Interviews were conducted in a variety of settings, including in villages, internally displaced camps and towns in all of the five most war-affected districts in northern Uganda: Apac, Gulu, Kitgum, Lira, and Pader.⁴

We also drew from a small but growing body of literature on women and girls associated with fighting forces, with a particular interest on research into practices tantamount to forced marriage.⁵

All interviews were then transcribed and all data was managed by the authors. Triangulation was used throughout the study to check data validity and consistency. Data analysis was conducted primarily using text analysis through deductive coding.

OVERVIEW OF UGANDA

Uganda is located in eastern Africa and is bordered by the Democratic Republic of Congo, Kenya, Rwanda, Sudan, and Tanzania. There are approximately 25.6 million people from over 50 tribal and ethnic groups in Uganda. English is the official language. Fifty-one percent of the population is 14 years or younger. Life expectancy is 45.7 years.⁶

4 A total of 210 people were interviewed for this paper between June 2001 and April 2007. They included 103 formerly abducted females and women who had served as forced wives within the LRA, seven formerly abducted boys and men, four former LRA commanders or officers, 15 parents or relatives of girls or women subjected to forced marriage by the LRA, 18 local government officials, 28 religious, clan, and community leaders, 23 NGO staff, seven lawyers working with former abductees, three officials with the Ugandan Human Rights Commission, three officials with the Uganda Amnesty Commission, and seven residents of camps for internally displaced persons.

5 See Coalition to Stop the Use of Child Soldiers (2000) [Coalition]. *Girls with Guns: An Agenda on Child Soldiers for Beijing Plus Five*. London; Hobson, M. (2005) *Forgotten Casualties of War: Girls in Armed Conflict*. Save the Children UK: London; Human Rights Watch [HRW] (March 2003). *Stolen Children: Abduction and Recruitment in Northern Uganda*. New York; HRW (2005) *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*. New York; ISIS-WICCE (1998) *Women's Experiences of Armed Conflict in Uganda, Gulu District 1986-1999*, Part I. ISIS-WICCE: Kampala, Uganda; McKay, S. and D. Mazurana, (2004) *Where are the Girls? Girls in Fighting Forces in Northern Uganda, Sierra Leone and Mozambique: Their Lives During and After War. Rights and Democracy*: Montreal; Save the Children Denmark (2003, November) *A Study on the Views, Perspectives and Experiences of "Social Integration" Among Formerly Abducted Girls in Gulu, Northern Uganda*. Gulu, Uganda.

6 UNDP: Uganda Human Development Report 2005. http://hdr.undp.org/en/reports/nationalreports/africa/uganda/uganda_2005_en.pdf

Uganda has substantial natural resources, including fertile soils, regular rainfall, and sizable deposits of copper and cobalt. Agriculture is the most important sector of the economy and employs over 80% of the workforce. Coffee accounts for the bulk of export revenues. Over 35% of the national population lived below the poverty level in 2003 as compared to 41.7% of the northern population.⁷ Other indicators of well-being are also considerably worse in northern Uganda.

THE ACHOLI AND LANGI PEOPLE OF NORTHERN UGANDA

Ninety percent of the population of northern Uganda belongs to the Acholi ethnic group, which is closely related to, and shares the same language with, the Luo tribal group that live along the border of Lake Victoria near western Kenya. The Acholi live predominantly in the northern districts of Kitgum, Pader, and Gulu. The Langi are their neighbors to the south and live predominately in the heavily war-affected Lira and Apac districts.

Both the Acholi and the Langi are relatively non-hierarchical and organized largely along patrilineal clan lines. Historically, the Acholi and the Langi people did not have a central political authority, nor unifying economic structures or religious practices. They did, however, each have their own supreme leader who was elected by the leaders of the various clans and who served as a rallying point during periods of crises and for defensive purposes.

Marriage played a central role in unifying clans, with a high value placed on bride price. Traditionally, education of women and girls was not considered a priority. Girls stayed at home to learn their future roles as wives. Land was communally owned on a clan and family basis with individual plots allocated to individual clan and family members. Women and girls were primarily responsible for the cultivation of crops and gathering of foodstuffs. The primary source of wealth was livestock, especially cattle, which were cared for by boys and men and controlled by men.

ARMED CONFLICT IN NORTHERN UGANDA

The conflict in northern Uganda began shortly after the current president, Yoweri Museveni, took power through a military coup in 1986. The take-over by Museveni's forces, the National Resistance Army (NRA), came after years of political, military and social turmoil dating back to the regime of Idi Amin in the 1970s. The NRA took power after battling the national army, then known as the Ugandan National Liberation Army (UNLA). Northerners comprised a disproportionate part of the UNLA officer corps. Fearing retribution from the victorious NRA, many soldiers

⁷ Ibid.

fled to the north. Some demobilized, while others crossed the border into Sudan. The NRA pursued them, some NRA soldiers committing gross human rights abuses—including pillage, rape, torture, theft of cattle, and destruction of infrastructure. These events sowed the seeds of rebellion in the north and the late 1980s saw the emergence of a series of resistance movements with varying degrees of popular support. The most durable of the line of resistance leaders was Joseph Kony and the forces he gathered about him became known—after several earlier iterations—as the Lord’s Resistance Army or LRA.

Kony based the LRA in southern Sudan in the early 1990s and received overt support from the Sudanese government for much of the decade as part of Khartoum’s efforts to destabilize their main regional enemy, the Sudan People’s Liberation Army (SPLA). In turn, the Ugandan government supported the SPLA, creating a proxy war between the two countries. Overt support to the LRA from the Sudanese government dwindled in the late 1990s due to increased international pressure and an agreement between Khartoum and Kampala, but covert support to Kony from elements within the Sudanese military allegedly continues. By 2006 the LRA had established camps in the north-eastern region of the Democratic Republic of Congo and in 2008 established camps in south-eastern region of the Central African Republic.

Unlike earlier popular northern resistance movements, such as Alice Lakwena’s Holy Spirit Movement (HSM), the LRA quickly lost popular support among the local population due primarily to the terror it inflicted against civilians. Attacks upon the populations of Acholiland (Gulu, Kitgum and Pader Districts) increased and intensified in the 1990s and quickly spread to the Lango and Teso sub-regions. The Ugandan national army, renamed the United People’s Defense Force (UPDF) began to forcibly move civilians into camps and ‘protected villages’ allegedly to cut the rebels’ food supply. Corraling the population was also meant to decrease the abduction and forced recruitment of children and youth into the LRA. However, the extent to which the government of Uganda (GoU) has been able to offer protection to civilians in the displacement camps has been inconsistent. Many of the most serious massacres and waves of abduction occurred after people were forced into the ‘protected villages’, which are in reality camps for internally displaced persons (IDPs). In 2003, the GoU encouraged the creation of local defense units (LDUs) to provide protection to the population. These militias are under the control of the UPDF but are often poorly trained and facilitated and lack regular salaries and other support.

The World Food Program (WFP) has been providing food rations to the internally displaced population since the mid-1990s and operates under

heavy security provided by the UPDF.⁸ The number of national and international NGOs and UN organizations has increased in the north in the last four to five years as the humanitarian situation has worsened and world attention to the conflict has increased. Insecurity and limited humanitarian access often hinder effective programming and monitoring, and many organizations rely on UPDF escorts to travel to most of the camps in Kitgum and Pader districts.

The war in northern Uganda has been a war against the Acholi and Langi people with the civilian population bearing the brunt of the attacks. In the late 1980s and early 1990s, 98 percent of the Acholi's cattle—and large numbers of goats, sheep, and poultry—were stolen by raiders from the neighboring Karamajong tribes, the UPDF and its proxies and, to a lesser extent, the LRA.⁹ Stripped of their assets and the wealth associated with cattle, family economic insecurity increased and women's workloads increased. Whereas prior to the war few women and girls worked outside the home, they now had to turn to casual labor to try and make ends meet. At the same time, unemployment increased. A trend towards according higher value to girls' education was reversed as the number of schoolgirls dropped, schools closed due to conflict and lack of resources, and the LRA targeted schools to abduct children. As nearly all rural schools closed down young girls were increasingly forced into early marriages as soon as they attained puberty as parents sought strategic ways to increase protection for their daughters. Other young women became concubines of government soldiers as a means to seek extra protection.

Although the conflict between the GoU and the LRA is usually considered to be the main problem in the north, there are a series of overlapping issues that affect the humanitarian and political situation. For instance, violent and at times deadly cattle raids by the Karamojong are one of the most pressing security threats for much of the population in the eastern part of Acholiland and Lango and Teso sub-regions. In addition, the economic, political and social marginalization of the northern populations by the GoU underlies all aspects of the conflict. This is unlikely to change either as a result of GoU military successes or negotiated peace with the LRA.

8 WFP rations were at 75% of total food needs until 2006 when they dropped to 60% for most recipients in Kitgum and Pader and to 40-50% in Gulu district and Lango sub-region (Apac and Lira districts). Ration levels are set to decrease further in the second half of 2006, but extremely vulnerable individuals (EVIs) will be provided with 100% rations. This category currently includes widow-headed households, child-headed households, disabled-headed households and households affected by HIV.

9 IRIN, *Recruitment of Karamojong warriors to fight rebel group*, 9 September 2003. http://www.irinnews.org/report.asp?ReportID=36465&SelectRegion=East_Africa&SelectCountry=UGANDA

III. FORCED MARRIAGE WITHIN THE LRA

RECOGNIZING THE CRIME OF FORCED MARRIAGE

During the two decades of armed conflict in northern Uganda, the LRA has systematically targeted and abducted females, in part, for the purpose of forcibly marrying them to commanders and fighters. Recent studies find that a quarter of all females abducted for any length of time were forcibly married to members of the LRA, and that half of them gave birth to children from these forced relationships.¹⁰

Forced marriages are coercive relationships without valid consent of the female and her family. They have the traditional characteristics of shared domicile, bearing of children, domestic responsibilities, exclusivity and sex.¹¹ The nature of these relationships forces women and girls to take on roles as sexual partners, mothers to the children born from these relationships, cooks, domestics, water collectors, porters, food producers, and gatherers. The relationships consist of a familial aspect where children are born and raised by abducted mothers and their captor husbands. Distinct from sexual slavery or enslavement, the element of a conjugal union makes forced marriages an independent crime.

Mistakenly, females forced into marriage are commonly referred to as “sex slaves.” This inaccurate categorization of their activity within the LRA perpetuates a common misunderstanding about their roles and experiences. This misunderstanding leads to inappropriate responses in addressing the realities women and girls face within reintegration processes and in developing accountability mechanisms to address the multitude of crimes and rights violations they have experienced.

Currently, forced marriage by way of abduction into a fighting force is not a codified crime in international law. However, forced marriage includes constituent acts that are codified crimes in international customary and human rights law. These crimes include rape,¹² sexual slavery,¹³ enforced

10 Jeannie Annan, Chris Blattman, Christopher Carlson and Dyan Mazurana, *The State of Female Youth in Northern Uganda: Findings from the Survey of War Affected Youth (SWAY)*, Feinstein International Center: Tufts University, Medford MA, 2008.

11 See “Prosecutor’s Submissions to Trial Chamber’s Questions Pursuant to Status Conference,” *Prosecutor v. Norman, Fofana and Kondewa*, Doc., SCSL-2004-14-PT (551-558), Special Court for Sierra Leone, p. 5., made available to authors from the Coalition for Women’s Human Rights in Conflict Situations.

12 Rome Statute, Art. 7(1)(g).

13 Rome Statute, Art. 7(1)(g).

pregnancy,¹⁴ forced labor,¹⁵ enslavement¹⁶ and torture.¹⁷ At the same time, the crime of forced marriage cannot be reduced to any one or combination of the abovementioned individual crimes as those crimes do not require the element of forced conjugality found in forced marriage (as discussed in detail in Section IV). The terms sexual slave, sexual slavery and sexual enslavement, for example, do not encompass the actualities of the forced status of marriage (within the LRA) or other conjugal dimensions that LRA commanders impose upon abducted females distributed to male fighters. Sexual slavery, a form of enslavement, denotes a crime whereby there exists a sexual element to the crime of slavery in addition to a coercive element where women are forced to perform sexual services.¹⁸ The element of conjugality, absent from sexual slavery, is a central component to the act of forced marriage and makes the crime both a sexually and non-sexually gender-based crime. Within the context of Uganda, females abducted for the purpose of forced marriage are expected to perform activities similar to civilian women married under consensual circumstances. In addition, forced wives are used in such a way that their presence and purpose serves to strengthen the effectiveness of the rebel force directly (e.g., as fighters) and indirectly (e.g., as domestic laborers). Furthermore, the presence of forced wives in the LRA served to bolster fighter morale and support the systems which perpetuate cycles of raiding, looting, killing, and abduction.

There is no question that rape, sexual slavery, torture, enforced pregnancy, and forced labor exacted upon women and girls have profound physical and psychological repercussions. What is often overlooked when forced wives are characterized as solely sexual slaves is a particular quality of the injustice they have suffered—the forced imposition of the status of marriage. The consequences of the status of wife upon a young female abducted into the LRA and taken by a commander or fighter are complex and, as we examine below, the practice often has a profound impact on the affected females and their children, and families and communities of return.

Within captivity, it is the coercive context of forced marriages that women and girls have to provide for themselves or their children through satisfactorily performing sexually, domestically, and militarily for their captor husbands and commanders. Therefore, it is imperative that the dimensions of forced marriages not be confused with those of the more singular crimes of sexual slavery or rape as the lived experiences and longer-term conse-

14 Rome Statute, Art. 7(1)(g).

15 See Rome Statute, Elements of Crimes, Art. 7(1)(c).

16 Rome Statute, Art. 7(1)(c).

17 Rome Statute, Art. 7(1)(f).

18 See the *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences*, Ms. Radhika Coomaraswamy, UN Doc. E/CN.4/1998/54.

quences of forced marriages demand different responses with regard to disarmament, reintegration, community acceptance, accountability, justice, reparation, and social transformation processes.

FORCED MARRIAGE WITHIN THE LRA

The information we present regarding forced marriage within the LRA details and analyzes this crime as it occurred within the larger LRA camps in South Sudan during the mid 1990s until 2004, when the LRA broke up the larger camps, dispersed in South Sudan and moved into northern Uganda and then into the Democratic Republic of Congo (DRC) and now the Central African Republic (CAR). Many of our informants were members of these larger LRA camps, including those that housed LRA top leadership, including Joseph Kony, Vincent Otti, Sam Kollo, and Kenneth Banya. We do not have information on the practice of forced marriage within LRA camps now located in the DRC and CAR, although we hypothesize that many of the roles played by forced wives we documented in South Sudan are still occurring elsewhere. Likewise, we were able to collect significantly less information on the crime of forced marriage as it was carried out in the mobile units of the LRA that would stay out for months at a time and received little communication from LRA leadership. This said, the information we collected from individuals that had spent significant amounts of time (several years in a number of cases) within the larger LRA camps in South Sudan gives us confidence in the accuracy of the practice there, which we describe below.

LRA abductions of males and females were concentrated within the districts of the Acholi region of northern Uganda (i.e., the districts of Gulu, Kitgum, and Pader), although neighboring areas, particularly Lango, have also been greatly affected. Males and females have been abducted from Lango, Teso, West Nile, and South Sudan.¹⁹ Abducted children make up the majority of the LRA, with preference towards young adolescents; for example, a 14-year-old is three times more likely to have been conscripted than a nine- or 23 year-old.²⁰ It is estimated that over 60,000 children and youth have been abducted over the course of the conflict, including one in three male adolescents and one in six female adolescents in Acholiland.²¹

19 Baines, Erin. *Roco Wat I Acoli: Restoring Relationships in Acholi-land: Traditional Approaches to Justice and Reintegration*, September, 2005. Lui Institute, Vancouver, BC.

20 Blattman found that a youth of 14 was three times more likely to be abducted than was a person who was nine or 23 years of age. See Christopher Blattman, "The Causes of Child Soldiering: Theory and Evidence from Northern Uganda" draft manuscript.

21 Annan et al., 2008.

A number of reports on abductees within the LRA highlight girls' and women's roles as sexual slaves.²² However, studies that focus on the involvement of females within the LRA find that girls' and women's roles are multiple and complex. A previous study by the authors on former female captives found that the top three primary roles women and girls reported undertaking were as porters (41 percent), food producers (22 percent) and fighters (12 percent). Just over half (51 percent) reported being forced to serve as wives as either a primary or secondary role during their time in captivity. Additionally, 49 percent reported serving as fighters as a secondary role.²³

If held longer than two weeks, females who have attained puberty were at greater risk of being forcibly married to a male commander or fighter within the LRA than those who have not reached puberty or who exit the LRA soon after abduction. Once abducted, the LRA leadership exercised control over the sexuality of women and girls through the group's rigid hierarchical structure. Control of females was achieved through intimidation, discrimination, and violence. Strict rules govern how abductees may interact with each other and behave within the force. Rules dictating interpersonal conduct within the group are enforced with beatings and killings, with abducted females sometimes forced to beat or kill other abducted females.²⁴ Those who behave favorably are rewarded with material goods including loot, food or access to medicine by their captor husbands, while those who resist are singled out for abuse, punishment, and sometimes death on the orders of high ranking commanders.²⁵

The abduction and distribution of females was often orchestrated by the top LRA leadership, which dictated the number of females targeted for abduction, their placement within LRA units, and which males would take them as wives. As detailed in other reports on northern Uganda and confirmed during interviews by the authors, the majority of abducted women and girls forced into marriage are given to LRA commanders and higher ranking fighters as opposed to lower ranking fighters.²⁶ At the large camps

22 Amnesty International [AI] (1997) *Uganda: Breaking God's Commands: The Destruction of Childhood by the Lord's Resistance Army*. Amnesty International: New York.; Angulo, Joy. June 2000. *Gender, abduction and reintegration in Northern Uganda*. (Occasional Paper No. 6). Kampala, Uganda: Makerere University, Department of Women's Studies.; Human Rights Watch [HRW] (March 2003). *Stolen Children*; HRW (July 2003) *Abducted and Abused: Renewed Conflict in Northern Uganda*. New York.

23 McKay and Mazurana, 2004.

24 Interviews, March and April 2007, Pader and Kitgum districts.

25 Interviews, March and April 2007, Pader and Kitgum districts.

26 Annan et al., 2008; Amnesty International, Uganda, *Breaking God's Commands*. (1997); Allen, T. (2005) *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention*. Crisis States Research Centre, Development Studies Institute, London School of Economics: London.; McKay and Mazurana, 2004; Formerly abducted (FA)

in South Sudan, determinations of which men receive which girls were made by Kony, Otti, or others appointed by them to distribute captive females.²⁷

A senior member of Otti's inner circle claimed that most of the abducted females aged 15 and older taken into Sudan between 1998 and 2003 were distributed to males.²⁸ Commanders reportedly kept updated records on female abductees to track the number of newly acquired females, escapees, and the deaths of females and their children within LRA units and camps. This information was then reportedly passed to Otti in order to provide the LRA leadership with updated numbers on female abductions and provide information on how many females were available for distribution.²⁹

When numbers of abductees were considered below quota or a certain number had escaped or died, orders were communicated back to LRA units instructing them to abduct specified numbers of females. For each escaped or dead female from the LRA camps, more would be abducted to replace them. LRA units were instructed to abduct enough females to compensate for those lost, meaning that enough females needed to be abducted to offset the numbers of those killed, wounded or left behind during the return march back to the LRA's Sudan-based camps.

Raids carried out in towns and camps were executed by stand-by forces (i.e., small, quick units) to loot supplies and abduct children and youth. Once raids had been completed, radio calls would be made to LRA commanders notifying them of the number of female and male abductions and if those numbers were sufficient to commanders, the force would return to Sudan with the newly acquired captives. In other cases, between 1998 and 2003, our informants reported that as many as 400 LRA fighters crossed in and out of Sudan in groups of 10 to 20 and communicated among themselves the numbers of abductions to be carried out. It was then routine for LRA commanders to give clearance to these small forces to return to Sudan with the captives.³⁰ It is unclear if those giving the orders were with the LRA forces in Uganda for these raids or if they remained in Sudan.

Once taken into the larger LRA camps, most women and girls were not immediately distributed. There are some females who have reported being

women and girls gave conflicting reports regarding the ability of FA boys to take forced wives. Some researchers reported that some formerly abducted (FA) boys wished to refuse a wife because they had no means of providing for a family, but could not refuse an order from top LRA leadership (Allen 2005). However, informants formerly associated with the LRA reported to the authors that the boys could refuse to take forced wives. Likewise, they could also request them.

27 Interview, Lira District, 2 July 2006.

28 The total number of females taken to South Sudan is unknown.

29 Interview, Lira District, 7 February 2006.

30 Interview, Lira District, 7 February 2006.

distributed a day after abduction, but this appears to be uncommon. Upon reaching the group's destination, women and girls were isolated from all sexual contact, in some cases up to three months, and not distributed as wives until a later period. During this time they underwent an initiation process in which they were taken to designated areas and smeared with oils and earth for protection. Some females reported being told that this oil would emit a scent detectable by UPDF soldiers and that if they allowed themselves to be captured or surrendered that the UPDF would promptly subsequently kill them.³¹

Women and girls who had been forcibly married into the LRA, as well as other former abductees and LRA commanders and intelligence agents we interviewed, indicated that orders for distribution of women and girls came from Kony and Otti.³² Higher ranking commanders, such as Kolo and Banya, are also reported to have selected the females they wanted, while lower-ranking commanders were given forced wives on the basis of decisions from Kony, Otti, Banya or a person holding a position called the BM.³³

A former captive turned LRA intelligence officer who witnessed the distribution of captive females on numerous occasions explained that the BM decided who was to be given as a wife. It was confirmed by other informants that the BM is an official rank held by a number of top ranking LRA personnel who received and carried out orders from Kony and Otti. Thus, command responsibility for these acts lies at the top of the LRA chain-of-command.

Top commanders, including Kony, Otti and Kolo, would describe to the BM the type of girl they wanted, including her age, physical appearance, and intelligence.³⁴ If recent abductees matched these desired characteristics then they were collected and distributed to the commanders. It was an order to then go to those men and become their wives, and resistance was punishable by rape, severe beating, torture or death.³⁵

LRA commanders appear to display a pattern in their preferences of the types of females they wanted as forced wives. It was common for com-

31 Interview, Lira District, 7 February 2006. Interviews, formerly abducted females, March 8, 2007, March 13, 2007.

32 Interviews, formerly abducted females, Lira District, Uganda, 10-12 June 2005. Interviews, formerly abducted females, Gulu District, Uganda, 21-22 June 2005.

33 Interview, formerly abducted male, Lira, Uganda, 18 June 2005; interview, formerly abducted male, Lira, Uganda, 18 June 2005. It was not known to the informant what BM meant, or whether or not it was in fact an acronym.

34 See also Amnesty International [AI] (1997) *Uganda: Breaking God's Commands: The Destruction of Childhood by the Lord's Resistance Arm*, p. 7.

35 Interview, formerly abducted male, Lira District, 2 July 2006; Interview, formerly abducted male, Kitgum district, 13 March 2007.

manders to favor educated girls and those considered the most physically attractive. It was said that better educated girls were valued as they could do such things as record information, writing down numbers and locations as they were dictated to them by commanders receiving information via radio. Once the senior commanders selected the girls they wanted, the lower-ranking fighters would be given a wife from those that remained. A majority of the girls we interviewed reported that there were more females than males within their units, however, data on abductions suggests males comprised an estimated two-thirds of the whole LRA population.³⁶ The girls' observations may come from the fact that the females remained in the larger camps while the mobile units which contained more males spent longer periods outside the larger camps.

This pattern of targeting educated girls underscores the challenges faced by many women and girls who return from captivity hoping to regain the benefits of earlier education.³⁷ It also draws attention to the weakened state of northern Uganda's education systems and the inherent challenges the communities of the north face in developing intellectually stalwart citizens, particularly females, to assist the region's rebuilding, and maintain a sustained post-conflict development phase.

Formerly abducted women and girls gave conflicting reports regarding boys' and young men's ability to refuse to take forced wives. Some interviewees reported that there were captive boys and young men that wanted to refuse because they had no way to provide for the captive wife and potential children from the relationship, but could not refuse since it was an order from the top LRA leadership.³⁸ Others reported that the males could refuse to take forced wives or in other cases make a request to commanders to have a wife.³⁹

One informant, whose job included observation and maintenance of the forced wives for Otti, explained that Otti would come and chose the females he wanted based on their physical attractiveness and education levels. After selecting his forced wives-to-be, he would have them taken to a hospital in Juba and checked for physical and sexual illnesses. Those girls who were determined to have untreatable illness remained with the LRA but were expected to fight and were not taken by Otti as wives. For the others, once any traceable illness had been treated, Otti would take them as

36 One study estimates that the ratio of male to female abduction into the LRA is 3:1. Annan et al., 2008.

37 Females who were forced into marriage and birthed at least one child in captivity are three times less likely to return to school than those who did not give birth while in captivity. Annan et al., 2008.

38 Allen, 2005, p. 28, note. 53.

39 Interview, formerly abducted male, Lira Town, 18 June 2005; interview, formerly abducted females, Lira, Uganda, 10 June 2005.

his wives and engage in sex. If he discovered or suspected any of his forced wives of either showing interest in, or seeking help from, other male fighters they would be killed.⁴⁰ Similarly, Otti reportedly told fighters and other abductees that if girls were seen talking alone together they were likely planning an escape. Likewise, girls with blank expressions on their faces or who “looked miserable” were also suspected of planning escape, and should be punished, sometimes by death.⁴¹ Two girls we spoke with whose captor husbands were escorts to Otti said that they never saw him kill any of his forced wives but witnessed that he ordered other LRA males to kill when he wanted a wife dead.⁴²

While some females were hand-picked by commanders, others were told by commanders to become the forced wives of selected males. In some cases former forced wives describe a type of lottery system used by LRA commanders to distribute them to LRA males. Articles of clothing would be collected from males and placed in a pile or in individual bags. Each female would then grab a piece of clothing, or bag of clothing, from the pile until all females had done so. The males would then identify their clothing and whichever female possessed that clothing became his new forced wife. In one instance, a newly forced wife was required by her new husband to immediately wash the clothes in the bag she had just selected, quickly relegating her to a role of forced labor.⁴³ Males who received forced wives included both those already having wives and other male fighters taking a wife for the first time. Which males would be selected for this type of distribution was determined by that male’s commanding officer.⁴⁴

Prepubescent females were also distributed but not expected to serve as wives, at least not immediately. Instead, they served as domestic slaves tasked with menial jobs such as sweeping camps or fetching water.⁴⁵ They were commonly referred to as tink-tinks. They were kept in the force with the explicit purpose that they would transition into the role of forced wife upon reaching puberty. In most cases we documented the tink-tink stays with the man she is given to, referred to as the “father,” until she is old enough to transition into the role of forced wife. She then becomes either the wife to that man, or in rare cases, is given to another man as a forced wife.⁴⁶ It is understood by most formerly captive females we interviewed

40 Ibid.

41 Interviews, Kitgum district, 8 March 2007 and 13 March 2007.

42 Interview, Kitgum district, 13 March 2007.

43 Interviews, formerly abducted females, Kitgum district, 12 March 2007.

44 Interview, formerly abducted female, Kitgum district, 13 March 2007.

45 Interview, formerly abducted female, Lira Town, 17 June 2005; interview, formerly abducted and forced wife with one child from the relationship, Lira, Uganda, 17 June 2005.

46 Interview, formerly abducted female, Kitgum district, 8 March 2007.

that intercourse with pre-pubescent girls is forbidden for the reasons that they cannot bear children and concerns of causing permanent physical harm prior to distribution as a wife.⁴⁷

There are other rules governing who enters into forced marriages. Some women and girls are exempt. These exempt females include women and girls who had previously been forcibly married into the LRA but whose captor husbands were killed in battle. The LRA policy seemed to be that such a female can refuse to take another captor husband and instead dedicate herself to the cause and maintenance of the LRA as a whole. Our informants noted this act as a rare occurrence. No interviewee knew of widows with children who refused to reenter into another forced marriage, explaining that LRA policies and practices of loot distribution made it nearly impossible to provide enough food for the children unless one relied on a captor husband for assistance.⁴⁸ To illustrate, an Acholi women held in captivity for eight years was given to another man after her captor husband was killed by UPDF troops. She explained that although she was given a choice and was not instructed to go with the man, she was unable to think of another way outside of escape or capture by the UPDF to provide food and shelter for the child fathered by the dead LRA fighter.⁴⁹

According to our informants, abductions primarily targeted Ugandan females and not Sudanese. One explanation for this is that the LRA commanders were seeking to avoid SPLA or Sudanese government retaliatory responses.⁵⁰ Contrary to speculation on the part of former captives that some females were traded to “Arab” Sudanese in exchange for medicine, weapons or other supplies, our informants reported that Otti would not allow females to be traded for two reasons: they were Ugandan and they were needed in the LRA camps.⁵¹ This admission suggests the importance given to the presence and participation of females within the force, bringing attention to the fact that they were more than mere disposables, but valued labor and support for LRA units and camps generally and for individual fighters specifically.

47 Interviews, formerly abducted females, Kitgum district, March and April 2007.

48 Interview, Atyim, T., Child Protection Officer, Save the Children, Lira Town, February 2006.

49 Interview, formerly abducted female, Lira Town, 17 June 2005.

50 Interview, former intelligence officer to Vincent Otti, Lira District, 7 February 2006.

51 Ibid.

Newly abducted females are closely guarded, with those females taken as wives of higher-ranking fighters typically “protected” under armed guard. This “protection” was often organized to prevent the escape of females⁵² more than it was to defend them from an enemy or internal aggression.⁵³

According to informants from Otti’s camp, non-Acholi females were rarely allowed to be taken or given as co-wives to the same man. Otti and other commanders reportedly were concerned that non-Acholi females would conspire and organize escape efforts and or inflict injury to their captor husband, who, in most cases, was Acholi.⁵⁴ According to a male who spent several years within the camp of Vincent Otti, Acholi girls were favored to girls from other tribes and were treated better—or not as badly—as the others. According to this informant, when LRA rules or taboos were broken or petty violations occurred, an Acholi girl would not be punished as badly as a non-Acholi accused of the same infraction.⁵⁵ It was also stated that Iteso and Langi girls were often told to work harder at digging and harvesting food crops than were the Acholis.⁵⁶ Of the Acholi girls interviewed in Pader and Kitgum districts, all claimed that forced wives of different tribes received the same treatment and that there were no special privileges for forced wives based on ethnic or clan associations. They claimed that any differences in the treatment of forced wives was dependent on the rank of their captor husband, with the wives of lower-ranking fighters often performing jobs such as cooking and cleaning for the wives of commanders and higher-ranking fighters. In some cases we documented, Acholi fighters had more than one non-Acholi wife, countering the claim that non-Acholi females were always kept apart within LRA households.⁵⁷

LRA leader Joseph Kony reportedly has forcibly married more than 40 females from different tribes and has fathered dozens of children through rape and forced marriage.⁵⁸ By some accounts, there is a *de facto* policy within the LRA of forcibly impregnating forced wives. Some former LRA fighters reported that their sex life with their forced wife was monitored and some claimed that medical treatment was given if their wife failed to conceive.⁵⁹ Some women and girls reported that not all males wanted to

52 Allen, 2005; McKay and Mazurana, 2004.

53 Interviews, formerly abducted females, Gulu District, February 2004 and June 2005.

54 Ibid; Interviews, formerly abducted females, Lira District, Gulu District, Apac District, Uganda, February 2004, June 2005; interview, former intelligence officer to Vincent Otti, Lira District, 7 February 2006.

55 Interviews, formerly abducted females, Lira Town, 2 July 2006.

56 Interview, Lira Town, 2 July 2006; Interviews, three formerly abducted females, Lira Town, 3 July 2006.

57 Interviews, Pader and Kitgum Districts, March and April 2007.

58 Allen, 2005, p. 35.

59 Allen, 2005; Dyan Mazurana, personal correspondence, December 2002.

have sex or beget children but, at times, they were directed by top commanders to have sex with their forced wives. Our informants stressed that the reason for sexual activity was to produce children.⁶⁰

Recalling that females were often threatened with violence or physically beaten for refusing sex with their captor husbands, the fact that some males also did not want to have sex with their forced wives did not diminish a female's probability of being beaten for refusing sex. To the contrary, it was reported that males would nearly always comply with commanders' orders to engage in sex to avoid themselves being punished, further weakening the ability of the forced wives to protect themselves from rape. In addition, commanders' threats to punish males for not engaging in sex with their forced wives bolstered commanders' control of compliant captor husbands, manipulated males' sense of masculinity within the group, and increased the occurrence of rape and pregnancy. By promoting pregnancy within the LRA and forcing females to bear children, fighters become fathers and forced wives mothers, further hardening the dependence females had on captor husbands for support and protection. The longer-term effects of this are also manifold—the new mothers are required to care for children; maintain a relationship with her captor husband within the group to allow for the continuation of material and food support; and ultimately confront a more challenging prospect of leaving the LRA with a child or children to care for and reintegrate to a community. These dependencies, of the child to the mother, the forced wife to the captor husband, and the captor husband to the commander and LRA as a whole all contribute to the reinforcement of the status of marriage and makes breaking those dependencies difficult if and when females and their children exit the LRA.

There are also reports that women and girls who failed to conceive were punished,⁶¹ and we collected information that girls or women caught trying to prevent or abort pregnancies were killed.⁶² Most forced wives receive no access to prenatal care or trained assistance during child-birth, resulting in numerous health risks and, we suspect, high death rates of both mothers and their children.⁶³

All formerly forced wives and former LRA commanders and fighters we interviewed confirmed that forced wives who did not have children were expected to fight.⁶⁴ It was also reported that they were sometimes forced to carry their infant children behind them so their hands were free to carry

60 Interviews, formerly abducted females, Gulu, Lira, Pader and Kitgum districts, July 2006, March and April 2007.

61 Allen, 2005, p. 35.

62 McKay and Mazurana, 2004.

63 Ibid.

64 McKay and Mazurana, 2004.

and fire weapons.⁶⁵ According to a source who worked closely with the former commander, Otti had dozens of forced wives and preferred that those without children fought alongside him. He felt they should “contribute their part” to the LRA’s effort to overthrow the government.⁶⁶

Abducted women and girls with children conceived out of captivity found it difficult to maintain themselves and their child(ren). To illustrate, one girl we interviewed was pregnant at the time of her abduction and gave birth six months later. She was not taken as a wife during this six-month period and was told after birthing the child that it was a “useless civilian baby” because its father was not an LRA fighter. She was given little provisions such as food and clean water for herself or her new-born child. She believed that this deprivation did not allow her to produce enough breast milk and this is what eventually led to her child’s poor health and eventual death. Soon after her baby died, the girl was given as a wife to a fighter and later birthed two children from that man. She was his sixth wife and was disliked by the co-wives who physically abused her and who reportedly conspired to tell lies to their captor husband, accusing her of stealing and wasting food and water. As a result, her captor husband beat her and withheld food.⁶⁷

Many women and girls became co-wives, especially when married to commanders. Recent studies find that commanders within the LRA had on average five forced wives at any time, while lower level fighters had one or to two.⁶⁸ Information we gathered from former forced wives, intelligence officers within the LRA, and other captives serving within the force’s ranks confirm that a majority of fighters within the LRA had two or more wives and commanders had three to four times as many. In many cases, having multiple wives also meant having multiple children born from those wives. For example, a 19-year-old Langi woman was one of six wives to a 49-year-old LRA Acholi man having eight children among them, each wife having at least one child.⁶⁹ Another Langi woman was one of nine wives and during her eight years of captivity observed commanders having as many as 15 to 20 different wives under his control.⁷⁰ Another 22 year-old Acholi woman was one of seven wives with ten children born between them. She had two children born of forced marriage and described being beaten regularly by her captor husband because her children often cried.⁷¹

65 Interview, Pader district, March 2007.

66 Interview, former intelligence officer in LRA, Lira District, 18 June 2005.

67 Interview, formerly abducted female, 7 March 2007.

68 Annan et al., 2008.

69 Interview, formerly abducted female, Lira Town, 17 June 2005.

70 Interview, formerly abducted female, Gulu Town, 22 June 2005.

71 Interview, cultural leader, Gulu Town, 31 July 2006.

Forced wives report being threatened with death if they tried to escape captivity with their children. One Acholi girl we interviewed believed that her captor husband was serious in this threat as he once spent nearly a week away from the camp looking for another wife and her child after they escaped. She said that he followed her footprints from the camp and tried to find her back in her home near Kitgum town.⁷²

LEAVING THE LRA

Studies looking at exit patterns for formerly abducted females find that a majority of them, in some studies up to two thirds, are directly reintegrating into IDP camps, villages and urban centers and do not pass through reception centers.⁷³ Upon return from captivity, family and community members may stigmatize and isolate returning females and their children. Some females report verbal and physical threats and harm resulting from people's frustration, anger, and fear of returnee females. Likewise, some of the children born of forced marriages are also reportedly stigmatized and can be rejected outright by extended family, often irrespective of whether the mother is accepted back or not.⁷⁴ Compared to former forced wives and or their children that are rejected by members of their family, those former forced wives accepted back by family and community appear more likely to be positive about the future and are less likely to be pressured out of their home communities due to stigmatization and or threats.

There are a variety of repercussions experienced by returnee forced wives due to family or community rejection. For example, those who return with children and are not well received appear to be more likely to engage in sexual relations with multiple men, often resulting in situations in which a young mother has children by different men, most of who provide little support.⁷⁵ It is reported that some young former forced wives engage

72 Interview, former forced wife, Pader district, 7 March 2007.

73 Annan et al., 2008; McKay and Mazurana, 2004; Save the Children Denmark, 2002; Verhey, B. (2004) *Reaching the Girls: Study on Girls Associated with Armed Forces and Groups in the Democratic Republic of Congo*. UK: Save the Children and the NGO Group: CARE, IFESH and IRC.

74 Susan McKay, M. Burman, M. Gonsalves and M. Worthen (2006, January), *Girls Formerly Associated with Fighting Forces and Their Children: Returned and Neglected*. *Child Soldiers Newsletter*. Coalition to Stop the Use of Child Soldiers: London.

75 One Acholi women returned from the LRA to an IDP camp outside of Gulu. Although she had no children born from the bush, she had two children born to different men inside the camp. She explained that she "became a friend" to the men for economic reasons. Despite the men never having ever been a part of the LRA, her two children were still called "rebel babies." (See also McKay, S, and M. Robinson. (2005) *A Conference on Girl Mothers in Fighting Forces and Their Post-War Reintegration in Southern and Western Africa*. The Rockefeller Foundation Bellagio Center: Bellagio, Italy. Conference Report.; McKay et al., 2006).

in sexual relations with various men in an attempt to secure protection and economic support.⁷⁶ Sometimes these men are UPDF soldiers in camps. Notably, all girls we interviewed who have engaged in sexual relations with government soldiers were still in those relationships at the time of interview.

For some former forced wives, being mothers or experiencing the transformative events which took place while in captivity means that they see themselves as adults and wish to be treated as such.⁷⁷ Therefore, the Acholi belief that “*mon pe ribo ot*” (women do not live in the same house together) results in the returnee mothers seeking out their own shelter for themselves and their child(ren).

Access to land further inhibits females’ ability to earn income and feed or shelter children.⁷⁸ Some women and girls reported returning from captivity to IDP camps to find that nearby family-owned land had been repossessed. On two different occasions, the father of the returnee females died during the time they were in captivity. Upon arrival at the IDP camp where their families lived, the girls learned that land once under the families’ ownership had been confiscated by others within the camps, barring the returnees access to it. Despite efforts to reclaim land through local councils and camp leaders, their attempts were denied or action never taken on their behalf.⁷⁹

INVOLVEMENT WITH CAPTOR HUSBANDS OUTSIDE OF CAPTIVITY

Females who leave captivity and forced marriages have had a variety of experiences and harbor complex emotions regarding their captor husbands. Different researchers have come to different conclusions about the relationships these women have with their former captors. A recent representative study we conducted with colleagues found that over 90 percent of formerly forced wives wish to remain separated from their captor husbands.⁸⁰ Nonetheless, during our interviews, we learned that some captor husbands have reportedly told their forced wives that they will come looking for them once they too leave the fighting group. Some have expressed a desire to “reclaim” these females and their captive-born children. Both Acholi and

76 See also Lenz, J. (2004) *Armed with Resilience*. MA Thesis, Oxford Brookes University.

77 According to interviews with clan leaders and NGO staff that were from the local ethnic groups, when a girl or woman has had children and her own house, she is at a different stage in the community and it is uncommon that she would return again to the home of her parents.

78 Civil Society Organizations for Peace in Northern Uganda [CSOPNU] (2004a) *Land Matters in Displacement: The Importance of Land Rights in Acholiland and What Threatens Them*, Kampala, Uganda.

79 Interviews, formerly abducted females, Lira District, 4 February 2006.

80 Annan et al., 2008.

Langi females report their former captor husbands have threatened physical punishment if they are believed to engage in a relationship with another man. These threats instill fear and anxiety in the former forced wives and lead some females to seek protection from male members of their own family or other community members such a clan or village leader. Some have chosen to live anonymously within urban centers, developing social networks outside of family and friends with the desire to remain unidentified and hence, untraceable.

One young woman we interviewed living in an IDP camp outside of Gulu is part of a cooperative group with three other former forced wives. They alternate living in the town center and in the IDP camp some distance from the town. The young woman told us that she and the other three women have no family within the camp and remain largely isolated. They purchase food and materials within the camp and sell them at a higher price within the town. The women are then able to provide for themselves and their children while maintaining a tenuous anonymity away from their families and in doing so hope to avoid detection by their former captor husbands.⁸¹

COMMUNITY RESPONSES TO FORCED MARRIAGE

A number of other studies have focused on the efforts of reception centers, NGOs and local groups to assist females who have been abducted by the LRA.⁸² Our paper focuses on the response of prominent religious and traditional leaders and local councilors (LCs) within Acholiland and the Lango sub-region to the practice of forced marriage.

We found a strong trend among some prominent leaders within Acholiland to seek to perpetuate the forced marriages once females have left the LRA. To illustrate, according to a Commissioner of the Amnesty Commission in Gulu town, Mary Oker, girls who return with children and wish to remarry non-LRA males “become a social problem”.⁸³ By choosing to marry or live with a man other than the captor husband from the bush and father to her children, Oker claims the girl is “making the situation of the rights of that father a serious matter.”⁸⁴ Oker thinks that it is not possible for the girls to care for the children if they remain on their own or select another man, and she had doubts that the girls will be able to cope with a

81 Interviews, formerly abducted females, Gulu District, 1 February 2006.

82 See Allen 2006; Annan et al., 2006; Annan et al., 2008.

83 Interview, Mary Oker, Gulu Town, 31 Jan 2006.

84 Ibid.

new man. Oker's primary concern about the former captor husbands is "for the fathers of these children to have access to the children that are born [within the LRA]".⁸⁵

Oker's ideas and actions concerning what is best for the girls and their children are shared by Karima Lanyero of Women in Peacebuilding, which is a part of the Acholi Religious Leaders Peace Initiative, also based in Gulu town. Lanyero says that within the African context children born in the bush belong to the father and the child belongs to the clan of the father from the LRA. "Parents should simply accept the fathers of their daughter's children," she says.

Importantly, according to both Acholi and Langi customary law and practice, children born out of recognized wedlock (that includes all LRA forced marriages) always belong to the mother and the mother's clan (discussed in detail below). Hence, it is unclear to these authors what "African context" Lanyero refers to in presenting her case. Nevertheless, one of Women in Peacebuilding's activities is to sensitize communities so that the forced marriages can be formalized when the girls return from captivity.⁸⁶ The Acholi Religious Leaders Peace Initiative has a prominent presence in northern Uganda and influence on the current peace talks. When its members espouse such views they can significantly impact people's perceptions of forced marriages, including how females and children returning from such relationships are treated and what their 'appropriate' roles should be. It is important to recognize that the ideas of Oker and Lanyero are less than harmonious with the ideas former forced wives. As mentioned above, the vast majority of returnee females want nothing to do with their former captor husbands.⁸⁷

All religious and political leaders in the Lango sub-region interviewed by the authors offered significantly different opinions from those described above. Some continue to strongly speak out against the crimes committed during forced marriages within the LRA. To illustrate, a prominent Anglican cleric in Lira described the abduction and forced marriage of Langi girls by the LRA as "cultural destruction," saying that the importance of marriage for the Langi is to develop strong clan networks and build healthy, supportive families.⁸⁸ His opinion is that Langi women and girls forced into LRA marriages need to return to Langi communities and rebuild their lives apart from captor husbands. His views were shared by all Langi cultural

85 Ibid.

86 Interview, Karima Lanyero, Gulu, 24 June 2006. Customary law in the north is clear that a child does not belong to its father if no dowry or compensation of any kind has been paid to the family of the mother in cases where children are born of rape or outside of marriage.

87 See also Annan et al., 2008.

88 Interview, Religious Leader, Lira Town, 6 February 2005.

leaders we interviewed over the course of this research. Two cultural leaders in Lira believe returnee forced wives should return to their Langi communities and raise their children there. They contended that fathers of children born in captivity have no claim to the children or to the girls or women they forcibly impregnated while inside the LRA.⁸⁹

Significantly, it appears extremely rare for former forced wives from Lango (Lira and Apac districts) to want to reunite with their captor husbands. There are deep resentments on the part of many of the Langi families and cultural and clan leaders towards the Acholi males within the LRA, as they charge that these are the men that abducted, forcibly married, raped, and impregnated their daughters and sisters. This strong condemnation is evident in the harsh rebukes and threats to some former LRA males who have tried to approach Langi families to contact their former forced wives and their children. In some cases the authors documented, Langi fathers and brothers personally threatened to kill the former LRA males if they pursued their daughters or sisters whom had been forcibly married in the bush.

In most cases we documented in Lango sub-region, the abducted females are raising the child(ren) born from captivity, or her mother does so. In a few cases, we found that while the formerly forced wife has been accepted back by her family, her children have been rejected and sent to live with the clan of the Acholi who was her captor husband, even if that male was still with the LRA in the bush. It is not known how many children have been rejected by Langi former forced wives or the families or communities to which they return, but based on our research we believe that such occurrences are rare.

Nonetheless, the options that returnee forced wives have regarding their own place of resettlement and existing economic opportunities to provide for themselves and their children are limited, regardless of tribal or clan association. An official with the Ugandan National Human Rights Commission's office in Gulu shared with us evidence of a number of child mothers now living in the UPDF barracks with their former fighter husbands who after quitting the LRA have been recruited by the army. Girls interviewed by the Human Rights Commission say that their lives "have been wasted" and if the LRA husband can provide for them then they must stay with them because there are no other options.⁹⁰ However, according to this Human Rights Commission official, many of the girls he spoke with said they want to support themselves independently from these men. Again, this is in contrast to the assumption and claims made by some leaders within the

89 Interviews, cultural and clan leaders, Lira Town, 3 February 2006.

90 Interview, Uganda Human Rights Commission, Gulu Town, 23 June 2006.

Acholi community and persons in the reception centers in Acholiland who told us that former forced wives freely chose to remain with their captor husbands upon leaving the bush because it is the best choice for them.⁹¹

One representative from the Amnesty Commission in Gulu stated in interviews with the authors that the females that do come out of the bush have two options: they can either choose to return to the captor husband from the bush or leave the relationship altogether.⁹² Such statements and beliefs are naïve and fail to recognize the more complex reality of the experiences of these women and girls both during and after captivity. As described above, women and girls and their children often return to situations of extreme poverty and destitution, which influences their options for survival. They may also return to communities that either reject the forced marriage, as throughout Lango sub-region, or communities that pressure them to formalize the marriages, as documented throughout Acholiland.

Additionally, many females are co-wives to LRA commanders and fighters, sometimes with five or more co-wives to one man. Given the economic challenges most males face when leaving the LRA, it is difficult to imagine that all returnee forced wives have the free choice to return to the captor husband to formalize or continue relationships originating from captivity. To illustrate, in one instance in Gulu town, a male formerly with the LRA returned to an IDP settlement on the fringe of town. The local council members representing his village told the authors that each of the five forced wives the man had taken while he was with the LRA came to him with expectations of support for the upkeep of the children he fathered. However, as the man had no means to support himself, the women were forced to seek assistance within other communities. One of the local council members told us, “there is little we can do for these girls. One came to us for assistance [in seeking maintenance] but how can we force the man to provide what he cannot provide for himself?”⁹³

We documented some cases in which forced wives and their children returned to their captor husbands, but the relationships were tense and eventually disintegrated. For instance, two formerly forced wives returned to a captor husband who had resettled in a sub-camp outside of Gulu town. Each wife received a sewing machine from the Gulu Support the Children Organization (GUSCO) reception center to assist with the continuation of their skills training and generate income. The man, who had fathered three children while holding the two women in captivity, stole one of the sewing machines and attempted to sell it in Gulu town. GUSCO subsequently intervened and repossessed both sewing machines leaving the women with

91 Ibid.

92 Interview, Patrick Okee of the Amnesty Commission, Gulu Town, 31 January 2006.

93 Interviews, Local Council officials, Gulu sub camp, 30 January 2006.

nothing. The police cautioned the man for his attempt to sell the machine. Nothing more was done to assist the two women and one ultimately left the household to try and support herself elsewhere.⁹⁴

In another example, a returnee forced wife and mother of two children from the relationship had returned to the industrial area sub-ward near Gulu town where her captor husband from the bush was living with another wife from captivity. She approached local council officials claiming that the man had taken materials she had received as a resettlement package including a mattress, jerry cans, and cooking pots. The local councilor intervened to urge the man to return the items and provide support for her and the children as he earned income tailoring. The woman living with the man, a former co-wife to the other women involved, became unhappy when the man purchased a mattress for the other woman and physically attacked her with a panga (machete).⁹⁵ We documented other similar cases of fights between former co-wives in IDP communities in Acholiland. These fights have been blamed on competition for scarce resources and the attention of the male head-of-household.⁹⁶

The number of females who freely choose to return to their former captor husbands is unknown. However, we do see a difference in Lango sub-region as compared to Acholiland. The few Acholi females interviewed who remain in the relationship said they did so primarily for two reasons. First, they claim they felt were unable to marry outside of their captive relationship. For example, we documented cases where men do not want to marry women and girls known to have 'belonged' to a LRA commander due to fear that the commander will come back for the female and the children, and possibly take retribution upon the new husband.⁹⁷ Second, they said they were told by people within reception centers, by the Amnesty Commission or by other friends or former captives, that remaining with their former captor was the only or best option for them.

In some instances, former forced wives say they want the man to return from the bush and support his children and, in fewer cases, the former forced wife herself. Importantly, the majority of formerly forced wives (nearly 70 percent) said that someone should be held accountable for the violence inflicted upon them and that they should receive some sort of reparation. The females said the reparations should come not from the captor husband (whom they wanted nothing to do with) but from the Government of Uganda via NGOs.⁹⁸

94 Ibid.

95 Interview, Local Council official, Industrial Sub-ward, Layibi Division, Gulu, 31 January 2006.

96 Interviews, formerly abducted females, Pader district, 11-13 March 2007.

97 Interviews, clan leaders, Pader district, 11 March 2007.

98 Annan et al., 2008.

Several NGO officials in northern Uganda that we interviewed stated that some young women who re-entered marital relations with their former captor husbands (after both had left the LRA) experienced domestic abuse and eventually took their children and left the man.⁹⁹ When we asked local council officials presiding over a sub-camp in Gulu town what should be done when returnee captor husbands physically abuse their former forced wives or children the response was to say that nothing should be done. One said, “for cases of domestic abuse, [the former LRA captor husband] should not be punished for this. This is a domestic affair, a family affair, and if the [returnee males] are punished it might send the wrong message to those still in the bush.”¹⁰⁰ Such opinions that domestic abuse is a “family affair” are not uncommon in northern Uganda.¹⁰¹ Such attitudes allow for the perpetuation of crimes, physical abuse, psychological suffering, and impunity.

Within the LRA, former forced wives explain that punishments and physical abuse could be anticipated if certain rules were broken or particular taboos breached. The former forced wives said that by knowing these rules they could modify behavior to minimize the probability that physical abuse inflicted upon them. However, some explain that within civilian communities, where domestic violence can result from male frustration or aggression, sometimes compounded by drunkenness, they cannot anticipate when they will be beaten by their domestic partners or husbands. They also report that they feel there is little that they can do to prevent a continuation of the violence. Impunity prevails as local council officials charged with responding to incidents of domestic violence are purposefully inactive.¹⁰²

Other local council officials we interviewed in Acholiland and Lango said that perpetrators of domestic abuse should be charged with a crime and held accountable within the local council court system. Recognizing the merit in offering amnesty for all former captives, they are clear that crimes committed outside of captivity should be punishable and domestic violence is not an exception. However, these opinions were not shared by most local councilors we spoke with.

Having provided findings regarding forced marriage inside the LRA and some of the main challenges facing women and girls once they leave the LRA, we now turn our attention to the nature of crimes within forced marriage.

99 See also Save the Children, 2004.

100 Interview, Local Council official, Gulu sub camp, 30 January 2006.

101 K. Carlson and D. Mazurana, *Beating Wives and Protecting Culture: Violent Responses to Women's Awakening to Their Rights*, Humanitarian Exchange, Humanitarian Practice Network, No. 36, December 2006.

102 Ibid.

IV. FORCED MARRIAGE IN INTERNATIONAL, NATIONAL, AND CUSTOMARY LAW IN UGANDA

This section looks at how the crimes committed within forced marriage practices within the LRA that we presented above have developed within international and national law and precedents established through customary practice.

DEVELOPMENTS IN INTERNATIONAL LAW REGARDING SEXUAL AND GENDER-BASED VIOLENCE

International law protecting women and girls from violent crimes during armed conflict has strengthened over the last 50 years. However, it remains insufficient in recognizing and addressing the kinds of crimes committed against them.¹⁰³ Historically, the key conventions protecting women and girls from sexual and gender-based violence and exploitation in armed conflict include The Hague Convention IV and the Geneva Conventions and their Additional Protocols.¹⁰⁴

The Hague Convention IV (1907)¹⁰⁵ offers protection of “family honor and rights” and is accepted as customary international law.¹⁰⁶ The Geneva Conventions (1949) do not explicitly mention sexually violent crimes in Common Article 3, which outline the protections afforded to civilians and those hors de combat in non-international armed conflicts. Where rape is mentioned, it is characterized as an honor crime.¹⁰⁷ In article 27 of Geneva Convention IV reference is made to sexually violent crimes and a guarantee laid out that “women shall be especially protected against an attack of their honor, in particular against rape, enforced prostitution or any form of indecent assault.”¹⁰⁸ The Additional Protocol II (1977) to the Geneva Con-

103 This section draws on work previously presented in Carlson, Khristopher. (2005) *Forced Marriage during Armed Conflict in Northern Uganda: An Analysis of Applicable International, National and Customary Law*, LL.M. Dissertation, University of Essex: UK.

104 Bideke, M. (2002) *Gender Crimes in the International Court Criminal Court Statute*. Available from <http://justint.org/Gender%20Crimes%20in%20the%20ICC%20Statute.htm>; Copelon, R. (2000) “Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,” in *McGill Law Journal*, 46., Toronto: McGill University; *The Lieber Code*, of 1863, General Orders No. 100, Washington, 24 April 1863.

105 Hague Convention IV (1907), Art. 46.

106 There is some concern with usage of the word ‘honor’ as it suggests that such crimes are less serious than other crimes committed against the person, see Bideke (2002).

107 Hague Convention IV.

108 Article 27 of the *Geneva Convention Relative to the Protection of Civilian Persons in Time of War*, *Geneva Convention IV* prohibits “any attack of [women’s] honour, in particular against

ventions relating to the protection of civilians in non-international armed conflicts makes mention of gender-based crimes as violations of dignity and honor or humiliating or degrading treatment and lists rape, forced prostitution, and any other form of indecent assault.¹⁰⁹ The same Protocol's Article 4 makes mention of the prohibition of rape.¹¹⁰

The Nuremberg and Tokyo trials after World War II largely ignored the sexual nature of crimes committed against women as the Allied Powers chose not to charge war criminals with rape (as a crime against humanity). Although the trials of the International Military Tribunal for the Far East demonstrated willingness to charge and convict some perpetrators responsible for the mass rape of civilians, it ignored the Japanese military camps that forcibly held over 200,000 women in sexually slavery.¹¹¹

Historically, survivors and their advocates have had great difficulty in getting courts to recognize, much less prosecute, sexual and gender-based crimes committed during armed conflict.¹¹² However, within the last decade, prosecutions of sexual and gender-based crimes in the Ad Hoc International Criminal Tribunal for the Former Yugoslavia (ICTY) and the Ad Hoc International Criminal Tribunal for Rwanda (ICTR) have resulted in precedent-setting convictions of some of those responsible for such crimes. In doing so, both the ICTY and ICTR have made important rulings recognizing the degree to which women and girls suffer from sexually violent crimes and acknowledging how those crimes are perpetrated on the basis of women's and girls' sex and gender roles. The jurisprudence of the ICTY and ICTR, in addition to the adoption of the Rome Statute of the ICC, has moved international law to a point where sexual violence, including

rape, enforced prostitution, or any form of indecent assault." Common Art. 3 (1) (c) refers to "outrages upon personal dignity, in particular humiliating and degrading treatment," whereas Art. 147 describes grave breaches.

109 While Common Article 3 to the Geneva Conventions applicable to internal armed conflict left rape implicit, Protocol II to the Geneva Conventions forbids rape explicitly, but characterizes it as "outrages upon personal dignity" comparable to "humiliating and degrading treatment" rather than as a physical assault. See Protocol Additional to the Geneva Convention (1977). The word "rape" was inserted by the drafting committee in order to delete a provision regarding the protection of women, see Bothe, M., K. J. Partsch and W. A. Solf. (1982) *New Rules for Victims of Armed Conflicts: Commentary on the Two 1977 Protocols Additional to the Geneva Conventions of 1949*, Hingham, MA: Martinus Nijhoff Publishers., p. 642.

110 Geneva Conventions, Protocol Additional II, Art. 4.

111 Coalition for Women's Human Rights in Conflict Situations. (2003) *Submission by the Coalition for Women's Human Rights in Conflict Situations to the Truth and Reconciliation Commission, Sierra Leone*. Available from <http://www.womensrightscoalition.org/advocacyDossiers/sierraLeoneTR/submissiontotr.php>

112 Copelon, 2003.

rape and sexual slavery, are now considered on a par with crimes of non-sex specificity. For example, rape can constitute torture or mutilation and forced nakedness can constitute inhumane treatment.¹¹³

The first case to lead to a conviction for a sexually- based crime since WWII was in the ICTY in *Prosecutor v. Tadic*,¹¹⁴ involving the sexual abuse of males. In February 2001, the ICTY delivered the first convictions of sexual violence as a crime against humanity in *Prosecutor v. Kunarac*,¹¹⁵ recognizing rape and enslavement as crimes against humanity. This trial was also the first international indictment to recognize and deal exclusively with sexual crimes on multiple levels, examining what constitutes rape and exploring the dimensions of what has become known as “sexual autonomy,” which is violated “wherever the person subjected to the act and has not freely agreed to it or is otherwise not a voluntary participant.”¹¹⁶ By establishing this framework, the court asserted that the victim’s ability to genuinely give consent, in light of external pressures in armed conflict zones, in part, differentiates legal from illegal sexual acts.¹¹⁷

In a November 2001 ICTY judgment, the trial chamber, in defining rape, included forced marriage as a crime of sexual violence.¹¹⁸ It stated in its judgment that sexual violence is not limited to rape and includes such crimes as sexual mutilation, forced marriage, and forced abortion.¹¹⁹ The ICTY ruling acknowledged that sexual violence may encompass more than one form of abuse, and allows for the inclusion of additional forms of sexual violence, including sexual mutilation and forced marriage. In addition, the *Furundzija* case brought to the ICTY was the first indictment to deal exclusively with rape and sexual assault of an individual woman.

The Trial Chamber in the *Kvočka* case made the link between sexual violence and inhuman treatment, concluding that inhuman acts within the meaning of Article 5 of the ICTY Statute (crimes against humanity) in-

113 See *Prosecutor v. Kunarac, Kovac and Vokovic*. Case No. IT-96-23 and IT-96-23/1, Trial Chamber (22 February 2001); *Prosecutor v. Delalic, Mucic, Delic and Landzo (Celebici case)*. Case No. IT-96-21-T, Trial Chamber (16 November 1998); *Prosecutor v. Akayesu*. Case No. ICTR-96-4-T, Chamber Trial (2 September 1998), para. 687 and 697.

114 *Prosecutor v. Tadic*. Case No. IT-94-1, Trial Chamber (7 May 1997) and Appeals Chamber (27 February 2001).

115 *Prosecutor v. Kunarac*, et al.

116 *Ibid.*, para. 457.

117 Boon, K. (2001) “Rape and Forced Pregnancy Under the ICC Statute: Human Dignity, Autonomy, and Consent,” in *Columbia Human Rights Review*, 32:3. New York: Columbia.

118 *Prosecutor v. Kvočka, Kos, Radic, Zigic and Prac*. Case No. IT-98-30/1-T, Trial Chamber (2 November 2001). See <http://www.un.org/icty/Supplement/supp29-e/kvočka.htm>, for mention of forced marriages., para. 139.

119 *Ibid.*, para 140.

cluded “serious bodily or mental harm through such means as beatings, torture, sexual violence, humiliation, harassment, psychological abuses and confinement in inhumane conditions.”¹²⁰

The Rutaganda case of the ICTR concluded that, serious bodily or mental harm... includes acts of bodily or mental torture, inhumane or degrading treatment, rape, sexual violence and persecution.¹²¹

The Furundzija and Kunarac judgments also provide jurisprudence for the crime of enslavement. The ICTY considered several factors in determining enslavement including: the control of someone’s movement and physical environment; psychological control; measures taken to prevent escape; force and threat of force or coercion; time duration; subjection to cruel treatment and abuse control of sexuality and forced labor.¹²² The ICTY ruled that forced domestic labor and sexual services were vital components of enslavement.

In the Akayesu case of the ICTR, the link between sexual violence and other non-sex related crimes is made in the Trial Chamber’s decision that,

sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.¹²³

It continued on by stating that, coercive circumstances need not be evidenced by a show of physical force. Threats, intimidation, extortion... which prey on fear or desperation may constitute coercion, and coercion may be inherent in certain circumstances.¹²⁴

Important jurisprudence regarding the links between torture and sexual violence are found within a number the ICTY and ICTR decisions. In Tadic, sexual violence included willful killing and torture. Rape was also recognized as torture in the Furundzija and Delalic cases. The Foca case

120 *Prosecutor v. Kunarac, et al.*

121 *Prosecutor v. Rutaganda*. Case No. ICTR-96-3, Trial Chamber (6 December 1999). In *Akayesu*, it was determined that bodily or mental harm did not need to be “permanent and irremediable,” and that rape and other acts of sexual violence apply, see *Akayesu*, para. 502, 706-707, 731-734.

122 *Prosecutor v. Kunarac, et al.*, para. 543.

123 *Prosecutor v. Akayesu*, para. 688.

124 *Ibid.*, para. 596-598, 686-688.

concluded that rape and sexual violence equated to torture and enslavement.¹²⁵ The ICTR decision against Akayesu also made the link between sexual violence as a form of torture.¹²⁶

In comparing the language used in *Furundzija* and that of the Rome Statute, we see that the Rome Statute uses the word “invasion” rather than the ICTY “penetration.” The word invasion casts rape from the perspective of the victim—who is invaded—rather than the perpetrator—who penetrates.¹²⁷ Again, this is a necessary shift from earlier male-focused concepts of honor. In so doing, the threshold of what constitutes rape is lowered, therefore broadening what can be considered rape. This same principle helps frame an understanding of forced marriages as not merely something that perpetrators are not entitled to enter into, but rather as a violation of the rights and integrity of women and girls.

The Rome Statute¹²⁸ represents the most comprehensive listing of codified crimes against women and girls. It pertains to crimes as they occur both during and outside of armed conflict. It is the first permanent, treaty-based, international criminal court set up to promote the rule of law and punish perpetrators of the gravest international crimes, including the crime of genocide, crimes against humanity, war crimes and crimes of aggression.¹²⁹ With regard to crimes against humanity, the ICC has jurisdiction over the following acts when committed as part of a widespread or systematic attack against women and girls: enslavement, deportation or forcible transfer of population, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity.¹³⁰ In addition to crimes against humanity, the court has jurisdiction over war crimes, with a similar, but shorter, listing of gender crimes under Article 7. Under Article 8, those crimes include rape, sexual slavery, forced pregnancy or any other form of sexual violence also constituting a grave breach of the Geneva Conventions.¹³¹

The Statute of the SCSL, which draws from the enumerated sexual and gender-based crimes within the Rome Statute, affords the SCSL jurisdiction over those persons who bear the greatest responsibility for serious violations of international law and Sierra Leonean law committed in the ter-

125 *Prosecutor v. Furundzija*. Case No. IT-95-17/1-T 10, Trial Chamber (10 December 1998), para. 176; *Prosecutor v. Delalic et al.*, para. 941 and 963; *Prosecutor v. Jankovic, et al.* (Foca Case)- Case No. IT-96-23-PT, Counts 56-59.

126 *Prosecutor v. Akayesu*, para. 505-509, 516, 594, 597, and 688.

127 *Ibid.*

128 Uganda ratified the Rome Statute in June 2002.

129 Rome Statute, Art. 5(1).

130 *Ibid.*, Art. 7(1)(c), (d), (f) and (g).

131 *Ibid.*, Art. 8(2)(b)(xxii).

ritory of Sierra Leone since 30 November 1996.¹³² Article 2 of the Statute provides a non-exhaustive listing of crimes falling under the court's jurisdiction to prosecute as crimes against humanity.¹³³ The SCSL's list of prohibitions includes rape, sexual slavery, enforced prostitution, forced pregnancy and any other form of sexual violence committed as part of a widespread or systematic attack directed against any civilian population.

The OTP for the SCSL is pursuing the advancement of sexual and gender-based crimes during armed conflict with indictments that recognize forced marriage as a crime against humanity.¹³⁴ In its indictments, the OTP has included forced marriages under Count 8—an “inhumane act.”¹³⁵ These indictments are significant. They signify both the prosecution's responsiveness to act on detailed evidence of the physical and psychological damage upon women and girls of forced marriages during the conflict and the court's commitment to take issue with gender-based violent crimes within its jurisdiction. It also marks the first time an international court has recognized sexual and gender-based crimes committed against women and girls who were at the time members of a fighting force.¹³⁶

In Sierra Leone, the OTP is focused on the structure of subordination that was organized by fighters and commanders against women and girls during that country's conflict. At present, the OTP is challenged to convince the court that the crime of forced marriage is not subsumed under sexual slavery. This is, unfortunately, the slant the Court has taken on this

132 Ibid., Art. 1(1).

133 The term “widespread” may be defined as massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims. (See *Prosecutor v. Akayesu*, para. 580). Systematic signifies the organized nature of the acts of violence and the improbability of their random occurrence, although systematic does not preclude that crimes against humanity can emerge spontaneously and proceed in an organized or patterned way, see *Prosecutor v. Kunarac*, para. 429.

134 Crimes against humanity were first defined in the Nuremberg Trials. At present, they include those crimes listed within the Statute of the SCSL “when committed as part of a widespread and systematic attack directed against any civilian population, with knowledge of the attack.” See also the Rome Statute. These crimes can also be committed and prosecuted outside of armed conflict.

135 Counts 6 and 7 are rape and sexual slavery, respectively.

136 The Cape Town Principles define child soldiers as “any person under 18 years of age who is part of any kind of regular or irregular armed force in any capacity, including but not limited to cooks, porters, messengers, and those accompanying such groups, other than purely as family members. Girls recruited for sexual purposes and forced marriage are included in this definition. It does not, therefore, only refer to a child who is carrying or has carried arms”. p. 1 (our emphasis). The Paris Principles: Principles and guidelines on children associated with armed forces or armed groups (2007), build upon the Cape Town document and provide more detailed information for implementing programs for war-affected girls and boys.

particular crime.¹³⁷ This has the effect of anchoring gender-based crimes to sexual violence crimes, constricting the scope of consideration for women's and girls' experiences within armed conflict.¹³⁸

The OTP of the SCSL is pursuing forced marriages as a crime against humanity due to the rebel Revolutionary United Force's (RUF) and the rebel Armed Forces Revolutionary Council's (AFRC) widespread practice of abducting women and girls to be forced wives during the war.¹³⁹ In April 2004, the OTP requested that the consolidated indictments against the accused RUF and AFRC commanders be amended to include forced marriage as a crime against humanity.¹⁴⁰ The OTP stated that because women were held for so long under the threat of harm or death, the crimes differed from those of rape, sexual slavery or other war crimes prosecuted in other courts.¹⁴¹ The OTP has further claimed that the charge of forced marriage, as an "other inhumane act" under Article 2(i) of the SCSL Statute, is not rendered duplicitous because it contains elements that are not required in the crimes of enslavement, sexual slavery or "any other form of sexual violence" contained in Article 2 of the Statute.¹⁴²

DEVELOPMENT OF INTERNATIONAL LAW REGARDING FORCED MARRIAGE DURING
ARMED CONFLICT

The Trial Chamber in *Prosecutor v. Kvočka et al.* recognized forced marriage as a prosecutable crime during periods of armed conflict. The OTP of the SCSL has presented the explicit arguments regarding the crime of forced marriage as a crime against humanity.¹⁴³ The OTP of the SCSL

137 The Court dismissed the forced marriage charge against all AFRC indictees.

138 See Parmar, Sharanjeet, "Case Note: The Special Court for Sierra Leone's ruling on the crime of forced marriage as an element of sexual slavery is a step backwards for the development of gender crimes," (2008). Made available to authors from the Coalition for Women's Human Rights in Conflict Situations.

139 Stephens, 2004.

140 See *Prosecutor v. Sesay, et. al.*, and *Prosecutor v. Brima, et. al.*, *Decision on Prosecution Request for Leave to Amend the Indictment* (2005).

141 Stephens, 2004.

142 The ICTY's Appeals Chamber in the *Celebici* case held that an element is materially distinct from another if it requires proof of a fact not required by the other. See *Celebici* Appeal Judgment, 20 February 2001, para. 412-413.

143 The report of the Special Rapporteur for Systematic Rape, Sexual Slavery, and Slavery-Like Practices during Armed Conflict drew out the layered components of forced marriage as it relates to sexual violence. However, the Special Rapporteur's analysis fell short of considering the multi-layered components of non-sex specific violence within the crime of forced marriage. See the United Nations (1998b), para. 45. The Trial Chamber in *Prosecutor v. Kvočka et al.* recognized forced marriage as a prosecutable crime during periods of armed conflict. See *Prosecutor v. Kvočka, et. al.*

framed the charge of forced marriage as an inhumane act carried out in a widespread fashion.¹⁴⁴ According to a member of the OTP, the focus of forced marriage is not upon sexual slavery, which is often a consequence of forced marriage, but on the forcible imposition of the status of marriage itself,¹⁴⁵ therefore incorporating elements of sexual access, domestic duties and other expectations. Furthermore, the Prosecution argues that forced marriage is not sexual slavery “as the element of conjugality is not an element of sexual slavery.”¹⁴⁶

There are a number of elements that the OTP of the SCSL is drawing upon in arguing the crime of forced marriage. This includes, foremost, the element of conjugality within these forced relationships between male fighters of the RUF and AFRC and female abductees. Indeed, the crime of sexual slavery is present, but the crime of forced marriage further accounts for the proper nature of crimes committed during the conflict; female abductees were labeled as wives and their marital status was imposed by threat and force. In addition, the OTP highlights the diminished capacity for the victim to leave the captor husband, which could include for reasons of forced impregnation; forced child-bearing; physical restraint or markings that identify the victim as belonging to a particular group or captor; strong feelings of culpability on the part of the victim if she was forced to commit atrocities; and the fear of inability to reintegrate due to stigma and abuse by community members because of her past association with the fighting force. The OTP also stresses that in the aftermath of the conflict, the victim may continue to be linked to the perpetrator to a greater extent than would a survivor of sexual slavery, due in part to forced pregnancy, forced child-bearing, and the belief by herself, her family or her community that she is a collaborator with the perpetrator and thus will not be accepted back into her family or community of origin.¹⁴⁷ Documented evidence supports all of these experiences among forced wives in Sierra Leone as well as northern

144 *Prosecutor v. Brima, Kamara and Kanu*. Case No. SCSL-2004-16-PT. Amended Consolidated Indictment (18 February 2005); *Prosecutor v. Sesay, Kallon and Gbao*. Case No. SCSL-2004-15-PT, Amended Consolidated Indictment, (18 February 2005).

145 Melissa Pack, Prosecutor, SCSL, personal communication with author, 1 April 2005.

146 See note 139. See “Prosecutor’s Submissions to Trial Chamber’s Questions Pursuant to Status Conference,” *Prosecutor v. Norman, Fofana and Kondewa*, Doc., SCSL-2004-14-PT (551-558), Special Court for Sierra Leone, p. 6., made available to authors from the Coalition for Women’s Human Rights in Conflict Situations.

147 Interview, M. Pack; Personal Communication, D. Crane, Chief Prosecutor of the SCSL, 17 March 2005; Kendall, S. and M. Staggs. (2005) *Interim Report on the SCSL, From Mandate to Legacy: The SCSL as a Model for Hybrid Justice*, University of California, Berkeley, War Crimes Studies Center, Berkeley: UC Berkeley; Stephens, A. (2004) “Forced Marriage Pursued as Crime in Sierra Leone Tribunal Cases,” *UN Wire*, 16 April 2004, available from <http://www.globalpolicy.org/intljustice/tribunals/sierra/2004/0416marriage.htm>. At present, the cases involving the RUF are on-going. The earliest any ruling will be made regard-

Uganda, and demonstrates the serious physical and mental harm perpetrated against females. This evidence underscores the comparable severity of the crime to those enumerated with the Rome Statute, namely rape, torture, sexual slavery, forced impregnation and enslavement,¹⁴⁸ all components of forced marriage but without the additional component of forced conjugality.¹⁴⁹

Because the prohibition of forced marriage is not yet crystallized within a category of law, the prosecution of this crime relies on the force of relevant law which is codified in customary international law, international law and criminal jurisprudence. Therefore, in addition to evidence gathered from victims and witnesses, prosecution draws from court decisions delivered in the ICTY and ICTR, the codified crimes of the Rome Statute of the ICC, the authority of the provisions within the court's own statute, as well as potential rulings from the SCSL. Thus, as this crime is prosecuted now—and as it is encouraged by the authors to be prosecuted in Uganda—the challenge will be in convincing the court that forced marriage should stand as a separate crime, of comparable seriousness to the acts enumerated in Article 7 of the Rome Statute.¹⁵⁰

There is precedent for charges of forced marriage to include elements of sexually violent crimes, humiliating or degrading treatment, rape, forced domestic and sexual services, coercion, inhuman treatment and torture (as discussed below).

In reference to the ICTY ruling in the Kunarac case,¹⁵¹ the elements of forced domestic labor and sexual services on both a camp-wide and individual basis should be closely examined in future prosecution of forced marriages within fighting forces. In addition, the Kunarac case established that although duration of time is not an element of enslavement, the longer the period of enslavement, the more serious the offense.¹⁵² In the case of many current armed conflicts, the duration of some forced marriages within fighting forces is multiple years, reaching over a decade for some captives in northern Uganda.¹⁵³

ing forced marriages as a crime against humanity in the RUF cases will be early 2008. In the AFRC cases, the accused were convicted of rape and sexual slavery. They were not, however, convicted of forced marriages.

148 See Rome Statute, Arts. 7(1)(f), 7(1)(g) and 7(2).

149 *Prosecutor v. Norman, Fofana and Kondewa*, SCSL Doc., SCSL-2004-14-PT, p. 7.

150 Article 7(1)(k) of the Elements of Crimes listed as an element of “any other inhumane act” that it be of “a character [e.g., nature and gravity] similar to any other act referred to in article 7”. See the ICC’s “Elements of Crimes” http://www.icc-cpi.int/library/about/officialjournal/Element_of_Crimes_English.pdf

151 *Prosecutor v. Kunarac*, para. 542.

152 *Ibid.*, para. 121, 356.

153 Carlson (2005); Save the Children (2005).

Precedent set in *Akayesu* case could be reflected upon to argue the coercive element in forced marriages should be examined closely to determine the degree to which women and girls were forced into relationships through rape or the threat of rape and address the issue of non-consensual sex within “marriage” as rape.¹⁵⁴

Drawing on precedence set in *Kunarac*¹⁵⁵ regarding “sexual autonomy,”¹⁵⁶ future prosecutions of forced marriage during armed conflict may also consider distinctions regarding the victim’s ability to genuinely give consent when determining the degree to which women or girls did or did not consent to their “marriages” with armed fighters and commanders. For example, in the case of forced marriages, the prosecution pressed in *Kunarac* that it is the loss of mental and physical autonomy that leads to the loss of sexual autonomy within a forced relationship.¹⁵⁷

In the ICTY, forced marriages as a classification of a crime encompasses a number of the same components of inhumane treatment found in the *Kvočka* case. Those elements include serious bodily or mental harm through such means as beatings, torture, sexual violence, humiliation, psychological abuses and confinement in inhumane conditions.¹⁵⁸

Importantly, the *Furundzija* case rulings demonstrate that torture, a peremptory norm of customary international law,¹⁵⁹ can be inflicted by individuals operating outside of an official state capacity (as required within the Torture Convention).¹⁶⁰ The ICTY made clear that within the context of armed conflict, any person can commit the act of torture within the framework of war crimes or crimes against humanity.¹⁶¹ This is important as it could be drawn upon in future prosecutions of the non-state actions of armed opposition commanders in implementing their de facto policies of forced marriage. Drawing upon the links made within the ICTY and the ICTR as to what constitutes torture, forced marriages could take on the added element of this peremptory customary norm, thus giving more weight to the severity of this crime against women and girls.

154 *Prosecutor v. Akayesu*, para. 596-598, 686-688.

155 *Prosecutor v. Kunarac*, para. 440.

156 *Ibid.*, para. 457.

157 *Ibid.*, para. 440.

158 *Prosecutor v. Kvočka*, para. 180.

159 As ruled by the ICTY in the *Furundzija* case, see Dinstein, Y. (2004) *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge: Cambridge University Press., p. 24.

160 See Article 1 of the 1984 Convention against Torture, which states within its meaning of torture that it must be “inflicted by or at the instigation of or with the acquiescence of a public official or other person acting in an official capacity.”

161 *Prosecutor v. Akayesu*, para. 597, 687.

In regard to the psychological and physical characteristics of forced marriage, it may also be possible to argue that the crime of forced marriage constitutes torture. Notably, the Akayesu case of the ICTR determined that torture can be committed when family members are forced to watch the execution of other family members¹⁶² as is reported in situations of abduction by armed groups for purposes of forced marriage, whereby women and girls are forced to watch the execution of family members trying to prevent their abduction. The women and girls are then forcibly married to members of the fighting forces, at times even to the males who executed their family members.¹⁶³ Thus, while torture is only one of a multiplicity of elements potentially involved in forced marriages, it could be examined to determine its role in an overt strategy by fighting groups or forces to forcibly sever women and girls' family and community ties, and to try to thwart their desire to escape once forcibly married to a captor husband.

In summary, there are a number of significant developments within international law regarding sexual and gender-based violence, particularly regarding precedent set in the ICTY, ICTR and SCSL, that could be drawn upon in future prosecutions of the perpetrators of forced marriage.

INDICTMENTS BY THE INTERNATIONAL CRIMINAL COURT

Unlike the developments on gender and sexual-based crimes within the ICTY and ICTR, the ICC's current charges against the five LRA commanders under indictment lack the potential for progressive jurisprudential development in this area of international crimes. Of the numerous gender and sexual-based crimes perpetrated during the northern Uganda conflict against women and girls, only three crimes have been charged: two crimes against humanity, sexual enslavement and rape,¹⁶⁴ and one war crime, inducing rape.¹⁶⁵ Of those three charges, only two of the five accused have been charged, Joseph Kony and former second-in-command Vincent Otti, now dead.¹⁶⁶ No where in the remaining three indictments did the Prosecutor for the ICC include sexual or gender-based crimes.

The ICC's indictments fail to recognize the breadth of sexual and gender-based crimes committed by the LRA against women and girls. Although the charges of rape and sexual enslavement as individual crimes touch on a portion of the joint composition of the crime of forced marriage, they are not tantamount to the crime of forced marriage and the

162 *Prosecutor v. Akayesu*, para. 597, 687.

163 Field notes, Uganda, February 2004, June 2005.

164 See Rome Statute, Art. 7(1)(g).

165 See Rome Statute, Art 8(2)(e)(vi).

166 Kony's indictment includes sexual enslavement, rape and inducing rape, while Otti's indictment does not include inducing rape.

ICC has failed elsewhere to act on other sexual and gender-based crimes including forced pregnancy (which is a crime within its Statute). The OTP for the ICC should petition the pre-trial chamber to amend the indictments against LRA commanders for both their individual participation in forced marriages and their command responsibility in overseeing a larger systematic operation in which thousands of female abductees were forcibly married to LRA fighters and commanders.¹⁶⁷

The Ugandan legal system does not have an existing crime which corresponds to the crime of forced marriage (discussed in more detail below). One of the OTP for the ICC's responsibilities in the case of Uganda is to provide criminal jurisdiction and perform its duty of holding perpetrators accountable when the national system cannot try such crimes.

UGANDAN NATIONAL LAW AND FORCED MARRIAGES WITHIN THE LRA

Given the historical tensions and grievances between the populations of the north and the LRA and the current central government of Uganda, it seems highly unlikely that, unchallenged, the state will take any proactive measures to fully enforce its own laws or that the LRA top leadership will have any appetite for taking responsibility for its crimes and seek to foster real accountability and justice. Therefore, it falls to the victims of forced marriage, their families and clans and those who support them to seek justice, accountability and reparation for crimes committed.

The rights of women and girls in Uganda are enumerated in a number of different legal texts, including the Constitution of Uganda and the Children's Statute of 1996. While the Constitution outlines a number of general rights and protections for women and girls, the Children's Statute, designed to essentially serve as the foundation of child law in Uganda, operationalizes the Constitution as it pertains to the rights and protections of girls.

The Constitution enumerates a number of rights bestowed upon women and girls and their children born of forced marriages that are pertinent to the crimes committed within the LRA. They include the right to life, right to respect for human dignity and protection from inhuman treatment, freedom from slavery and forced labor, freedom of movement, right to education, right to family life, including freedom to marry by consent, redress of historical imbalances against marginalized groups, including women and girls, rights of children to publicly funded education, right to compensation when fundamental freedoms are breached, and right to payment of compensation where human rights have been violated.¹⁶⁸ While individual

167 The pre-trial chamber which would take any decision to amend the arrest warrants, on application of the prosecutor, under Rome Statute article 58(6), and then later to confirm the charges if LRA suspects are brought into custody under article 61.

168 *Constitution of the Republic of Uganda* (1996).

members of the LRA ordered and committed the crime of forced marriage, it is the responsibility of the government of Uganda to guarantee its citizens their rights and to act when they are violated. Where the government cannot guarantee rights' protections, international human rights bodies must intervene.

The provisions of the Amnesty Act (discussed below) do not allow for the criminal prosecution of crimes committed by LRA members. Despite the Ugandan Penal Code's clarity defining criminal acts and their corresponding punishments, the Ugandan government has demonstrated that its interests lie in pardoning the rebel group's top leadership through the granting of amnesty. While some crimes excused by the Amnesty Act carry only short prison sentences, others are capital crimes.

Acts committed by members of the LRA against forced wives that are criminalized within the Penal Code Act include: abduction;¹⁶⁹ abduction with intent to confine;¹⁷⁰ abduction or kidnapping in order to subject a person to grievous harm or slavery;¹⁷¹ kidnapping of children;¹⁷² kidnapping with intent to confine;¹⁷³ kidnapping or detaining with intent to murder;¹⁷⁴ confinement of children;¹⁷⁵ detention with sexual intent;¹⁷⁶ attempted rape;¹⁷⁷ rape;¹⁷⁸ indecent assaults on girls or women;¹⁷⁹ defilement of girls under 18 years of age;¹⁸⁰ conspiracy to defile;¹⁸¹ procuration;¹⁸² procuring

169 *Uganda Penal Code Act*, CAP 106, (1998), Chapter XV, sec. 120.

170 *Ibid.*, sec. 120.

171 *Ibid.*, Chapter XXV, sec., 237.

172 *Ibid.*, sec. 239. Kidnapping from Uganda is defined as any person who conveys any person beyond the limits of Uganda without consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from Uganda, see *ibid.*, Chapter XXV, sec. 231. Abduction is defined as any person who by force compels, or by any deceitful means induces, any person to go from any place. See *ibid.*, sec. 233.

173 *Ibid.*, sec. 236.

174 *Ibid.*, sec. 235.

175 *Ibid.*, Chapter XVI, sec. 155.

176 *Ibid.*, Chapter XV, sec. 129(1).

177 *Ibid.*, Chapter XIV, sec. 119.

178 *Ibid.*, sec. 117.

179 *Ibid.*, sec. 122.

180 *Ibid.*, sec. 123.

181 *Ibid.*, sec. 135.

182 *Ibid.*, sec. 125(a) (The attempt to procure any girl or women under the age of 21 to have unlawful carnal connection, either within Uganda or elsewhere.)

defilement of a girl or woman;¹⁸³ abetting or aiding defilement;¹⁸⁴ negligent act to spread infectious diseases;¹⁸⁵ fraudulent pretense of marriage;¹⁸⁶ bigamy;¹⁸⁷ fraudulent marriage ceremonies;¹⁸⁸ desertion of children;¹⁸⁹ neglect to provide food for children;¹⁹⁰ child stealing;¹⁹¹ attempt to murder;¹⁹² conspiracy to murder;¹⁹³ murder;¹⁹⁴ killing unborn children;¹⁹⁵ and unlawful compulsory labor.¹⁹⁶ It is important to note that some of these crimes continue to be perpetrated against formerly forced wives outside of captivity by the very men who held them during captivity. Crimes such as the desertion of children, neglect to provide food for children, indecent assaults on women and girls and unlawful confinement and abduction continue at present, both within the LRA for those still in captivity, and within communities of those who have left.

The Amnesty Act provides amnesty for any person who has been or is engaged in fighting against the government of Uganda. The Act includes all persons acting as “collaborators” of rebellion against the current Ugandan government. Under the Act, for all persons who renounce and abandon involvement in armed conflict against the government, they:

shall not be prosecuted or subjected to any form of punishment for the participation in the war or rebellion for any crime committed in the cause of the war or armed rebellion.¹⁹⁷

The Amnesty Act is designed to prevent criminal prosecution of any member of a group that participates or supports armed opposition activity against the state of Uganda.

LRA returnees are encouraged and, for those through formal reintegration centers, are theoretically required to sign an amnesty certificate. By signing the certificate, the returnee admits to having committed crimes

183 Ibid., sec. 126(a), (The procuring of any girl or woman by threats or intimidation to have any unlawful carnal connection either in Uganda or elsewhere.)

184 Ibid., sec. 127.

185 Ibid., Chapter XVII, sec. 166.

186 Ibid., Chapter XVI., sec. 149.

187 Ibid., sec. 150.

188 Ibid., sec. 151.

189 Ibid., sec. 152.

190 Ibid., sec. 153.

191 Ibid., sec. 155. (This includes detention of a child.)

192 Ibid., Chapter XXI, sec. 197.

193 Ibid., sec. 201

194 Ibid., Chapter XIX, sec. 183.

195 Ibid., Chapter XXI, sec. 205.

196 Ibid., sec. 243.

197 Uganda, *Amnesty Act*, Part II, Secs. 3 and 4.

against the state, regardless if a returnee is an abductee, child or participated in any crime. For children abducted and forced against their will to participate in any LRA activity, it is impressed upon them that they are responsible for a crime and the government of Uganda is willing to forgive their crime(s) should they accept amnesty. The incentive to accept amnesty is eligibility for material and financial assistance from the state in the form of a resettlement package. Notably, a recent study found that only one third of eligible females had applied for amnesty, even though the resettlement package includes a (relatively) large cash payout.¹⁹⁸

While the Act does not explicitly state that private individuals or institutions are barred from bringing criminal proceedings against any member of the LRA, the Act removes the disincentive of prosecution to encourage members of the LRA to renounce their participation in armed opposition to the state. Should any criminal charges be brought by a private individual or institution, the accused would only need to invoke the protection of the Article 28 (10) of the Constitution of the Republic of Uganda 1995, which protects individuals against trial for offences for which they have already been pardoned: "No person shall be tried for a criminal offence if the person shows that he or she has been pardoned in respect of that offence". Amnesty is defined, *inter alia*, as a 'pardon'.

Should a prosecutor bring charges against an alleged LRA perpetrator before he had applied for amnesty, he would still be entitled to seek amnesty as per Section 3 of the Amnesty Act. Although the Act did not anticipate prosecutions other than by the Director of Public Prosecutions (DPP), the Court would refer the matter to the DPP if the person were in custody (Section 4 (4)). But if the accused had not been detained in relation to the crimes, the court would likely dismiss the case on the grounds that the accused was entitled to the amnesty for that crime. As a stop measure, the DPP is also entitled to discontinue proceedings instituted by third parties (Article 120 (3) (d)), but only with the consent of the Court.

Another issue private citizens or institutions would face in bringing criminal charges against former or current members of the LRA is a jurisdictional one. In some cases, Uganda criminal law is limited to offences committed within the national borders, but this is not always the case.¹⁹⁹ The foremost exceptions to this are crimes relating to treason and terrorism,²⁰⁰ but other crimes are also criminalized when committed in part or wholly within the territory of Uganda. In accordance with Section III (6) of the Penal Code Act:

When an act which, if wholly done within the jurisdiction of the court would be an offense against this Code is done partly within and partly

198 Annan et al., 2008.

199 See notes 177 and 178.

200 *Amnesty Act*, Section 4(1) and *Anti Terrorism Act*, 2002.

beyond the jurisdiction, every person who, within the jurisdiction, does or makes any part of such act may be tried and punished under this code in the same manner as if such act had been done wholly within the jurisdiction.

When considering war crimes and or crimes against humanity, including sexual enslavement, forced impregnation, and other sexual and gender-based crimes part of international criminal law (as outlined above), they are not reflected in Ugandan national law. Hence, any criminal procedure within Uganda would have to rely on the Ugandan penal code (as discussed above). How Ugandan courts would treat civil cases stemming from these crimes is unknown.

The position of some within the Amnesty Commission, religious community, and local councils is that none of the widespread crimes or rights violations committed against women and girls forcibly married are prosecutable or subsequently punishable because of the protections afforded to perpetrators of LRA crimes under the Amnesty Act. This perception is incorrect. As the Act states in Section 1: “‘amnesty’ means a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the state.” Contrary to the opinions of those mentioned above, as the Amnesty Act currently stands, private citizens can pursue civil action against LRA rights violators; this is particularly pertinent to former forced wives with children born of these relationships as they may seek maintenance compensation for the provisional care of their children from the children’s fathers (discussed in more detail below).

The local council (LC) system is among the more accessible options for females and their families to begin legal recourse for any disputes arising with former captor husbands regarding child custody, restraining orders which may be placed against captor husbands/fathers seeking their children, and the protection of the privacy of the victim while her case is being held within any court, as per the Uganda Children’s Statute. However, LC systems are often weak and discriminate against women and children (discussed below).

The LC system provides a link between the bodies of national and local customary law. Although in theory local councillors are to be trained in children’s rights and versed in the Ugandan Children’s Act, in practice they are not. However, that has not prevented LCs from making decisions and formulating a wide range of opinions on the subject of forced marriages. The LC system has received some of the cases brought by victims of LRA forced marriage currently seeking legal remedy, most commonly in the forms of child maintenance and damage compensation.

Beyond the LC systems, some formerly forced wives have sought assistance from national agencies, district level courts, and legal assistance providers, including NGOs, in the north. Claims of rights violations have been filed and atonement for those crimes provided. The Ugandan Hu-

man Rights Commission has received cases of forced marriages in Gulu town where girls and their families have sought assistance from the captor husband. In two instances, both the women and man from the forced relationship appeared at the Commission and terms were negotiated between the two. In one case, the male was willing to accept responsibility for what had happened and provide for the children. When such agreements are made within the Human Rights Commission, the document stating what responsibilities have been negotiated and accepted by the two parties can become evidence of the agreement made should one party fail to comply with his or her own commitment. The case could then be taken to the Family and Children's Court or the Magistrate's court for prosecution if necessary.²⁰¹ However, very few cases make it to the Human Rights Commission and only a handful deal with forced marriage within the LRA.

There is only one functioning Family and Children's Court in the five most war-affected districts of northern Uganda and it is located in Gulu township. The court sits higher within the national system than the LC system and its legal judgments are based on national law. The Family and Children's court in Gulu appears to be sympathetic to the situation facing former forced wives but gaining access to the court is a challenge, as a backlog of cases prevents it from providing timely assistance. Affording legal representation is also difficult within this court system and can be the decisive factor in whether someone pursues this option.

The most relevant civil action for women and girls forcibly married is the pursuit of maintenance assistance for themselves and their children. The purpose of civil proceedings involving formerly forced wives and their children applying for maintenance from former captive husband is twofold: to acknowledge wrongs and obtain damages. If they were to move forward with civil cases, here again women and girls will face difficulties. First, calculations have to be made both on the maintenance needs of the children and the right of the mother for compensation. Second, calculations will have to be made on how much one could feasibly expect the defendant to provide. Difficulties arise when the individual cannot or will not pay maintenance and then the proceedings are directed towards movable or immovable assets. Further complications are apparent when the defendant has no regular income and therefore garnishee order options are unavailable. Even if an award were to go in favor of the claimant, the defendant might still not pay. In this case the claimant could ask that the defendant be committed to civil prison in hopes of forcing him or his relatives to pay the award and hence remove him from prison. However, the successful claimant would actually have to bear the cost of the incarceration.

It will be revealing to see if any civil cases are brought against former members of the LRA and if the government of Uganda would move to

201 Interview, Adam Kibwanga, Uganda Human Rights Commission, 23 January 2006.

close this loophole in the Amnesty Act. Such a move by the government of Uganda could be interpreted as a means to remove disincentives for rebels to return. On the other hand, it could also be interpreted as a means to again further undercut the rights of women and girls who were forcibly married in the LRA, as well as the rights of the children born of rape within these forced relationships.

We find that depleted judicial resources in the north make formal options off limits to most victims and their families. The only option currently available is either prosecution for constituent crimes of forced marriage (e.g., rape), or civil actions for child maintenance. This reality underscores the importance of both legal reform and the establishment of a new body like the special unit of the Ugandan High Court (discussed in detail below) to address this crime.

For Uganda to uphold its responsibilities for the special unit of the Ugandan High Court, and to make credible admissibility challenges to the ICC cases, it must make crimes against humanity and command responsibility part of its domestic law, which could be done through enacting Uganda's ICC implementing legislation or through a revision of its own national laws and closing the Amnesty Act loophole. Either one of these actions would ensure that forced marriage could be charged as a crime against humanity under national law. Indeed, the GoU has indicated its intent to provide for these crimes within its laws as part of the implementation of its agreements signed in Juba.²⁰² Another aspect to consider is that even though ICC implementing legislation and ICC arrest warrants both share the same limit on temporal jurisdiction (i.e., only crimes committed after 2002), some jurisdictions permit retroactive prosecutions of crimes against humanity because such crimes were illegal, even if not specifically mentioned within national law.

ACHOLI AND LANGI CUSTOMARY MARRIAGE

There are provisional requirements that must be met to legitimate customary marriage for both the Acholi and Langi. For the bride, she and her parents or family representative must give their consent to the marriage for it to be valid. Consent is also needed from the bridegroom and his parents/guardian.

Under lawful marriage practices, the family of the bridegroom is also responsible for providing a dowry to the bride's father. If he or his family cannot provide for this, his clan may assist in providing the negotiated dowry

202 See the GoU reply to the ICC's pre-trial chamber's request for information about the impact of the peace agreements on the execution of its arrest warrants <http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-286-Anx2-ENG.pdf>

price.²⁰³ The bride's father, upon expressing his satisfaction with the negotiated dowry payment, allows for marriage to proceed.²⁰⁴ The exchange of dowry is akin to the signing of a contract—a price paid for the benefit of acquiring a new family/clan member able to produce children to sustain a clan's population. Within the production of a dowry, it is important to recognize the obligatory assistance provided by clan and family to facilitate inter-clan exchanges such as marriage. Under customary law, the absence of dowry when taking a wife is an act synonymous with abduction.²⁰⁵

In customary marriage practices the dowry can include a number of different items essential for the traditional agro-pastoral lifestyle of the Langi and Acholi, such as cows, goats, chickens and other goods. In northern Uganda today, however, dowry price is generally much less financially demanding on the bridegroom's family and or clan. Extreme poverty, the looting of nearly all livestock and forced removal from their agricultural lands, means fewer people are able to pay substantial dowries.²⁰⁶ However, this does not mean that the dowry payment is any less significant.²⁰⁷ A number of informants discussed the fact that the payment of dowry is necessary to establish bonds between families and clans, as well as help perpetuate the possibility of further customary marriage within families. For example, some families use dowry collected from the marriage of one daughter to then pay the dowry for the marriage of a son.²⁰⁸ A breach of this rule is a violation of customary law and a damage fine may be payable to the family and clan of the female. Without the dowry, the marriage is simply invalid. The same is true of civil marriages. Where free consent of the female involved is not possible, the marriage is void.²⁰⁹

When a woman marries, it is customary that any children she has from past relationships (marital or extra-marital) do not join her new husband's home, nor do those children join her new husband's clan. If a woman has children from a previous marriage, the husband from that marriage has legal

203 *Cik me nyom Alango* (Customary marriage Laws of the Langi), translated by Ocen Laury Lawrence, June 2005, available from author, *ibid.*, Sec 1.2.1. The dowry is negotiated between the two families, typically with the bride's father or other family representative making initial demands.

204 *Ibid.*, Sec 1.3.7. and 1.4.5.

205 Interview, clan leader, Haji Musa Odngo 10 June 2005.

206 *Ibid.*; Interview, Bua-Okol, Local Council Official, Olilim, Lira district, 8 June 2005.

207 *Ibid.*; Tosh, J. (1978) *Clan Leaders and Colonial Chiefs in Lango: The Political History of an East African Stateless Society*, Oxford: Clarendon Press.

208 One girl returnee forcibly married to an LRA commander expressed some relief at the thought that her family was under no pressure to marry her since she had no brothers in need of dowry assistance for their own weddings. Interview with formerly abducted female, Stock-Farm internally displaced camp, Lira district, 11 June 2005.

209 *Cik me nyom Alango* (2005).

custody of children born from that marriage as per customary practice.²¹⁰ If there is no legitimate husband, as is the case for forced wives returning from the LRA, the children belong to and fall under the custodianship of the woman (i.e., mother to the children) or the woman's father.²¹¹ In the circumstances of forced marriages, it is possible under northern customary law for a former LRA male to pay compensation to the mother's family or clan for the child and claim custodianship.²¹²

Some LRA captor husbands have returned from the bush and sought out their forced wives and children with the aim of reclaiming the child and also the mother (i.e., the former forced wife). However, within Acholi and Langi customary law, the father of such a child does not have legal claim to the child or the former forced wife because of the uncustomary nature of the relationship from LRA captivity. At the more emotional and reactive level, how parents and clans of forced wives deal with issues of child custody and maintenance in light of captor husbands' desires to reconnect with forced wives and or their children vary.²¹³ One informant whose daughter returned with a child of a forced marriage described his encounter with her former captive husband as unnerving. When the former LRA fighter visited his home asking for the girl and child, this informant spoke of difficulty in restraining himself from killing the former fighter then and there.²¹⁴ Former forced wives and their families and clans have leverage granted by customary law (and Ugandan national law) to bar the perpetrators of forced marriages from claiming any legitimate relation with the girl or woman or any claims to custody of the children born as a result of such relations.

Customary law in northern Uganda also provides protections and deterrents for sexual exploitation of women and girls. Those laws pertinent to forced marriages within the LRA concern sexual exploitation, pre-marital sex, and sexual-related cultural taboos and practice. In customary law, it is an offense for men and women to engage in sex prior to marriage. In

210 This assumes that he has paid dowry for the children to the mother's father. Divorce is possible for Langi and Acholi women but is uncommon. Ugandan law requires that a couple be married for three years before filing for divorce becomes possible. Upon divorce, the original dowry payment must be returned to the husband's clan and the woman must return to her own family's clan. Any children born from this relationship would remain with, and be the property of, their father.

211 Interview, Bua-Okol. Typically, in situations where children are under the legal custody of their mother's father, if the father is not living, custody would fall to the next senior male family member, such as the father's brother.

212 For example, compensation in Langi custom is typically the payment of one cow for a child up to 13 years-old (interview, Bau-Okol).

213 An *Awitoing*, a chairman of a clan, has power to decide the custody of children in extenuating circumstances where intra-clan disputes exist, interview, Yosum Odur, Paramount Chief, Lango Sub-Region, Uganda, 14 June 2005.

214 Interview, father of former forced wife, Lira, Uganda, 10 June 2005.

the situation of pregnancy prior to marriage, the male is charged with a customary offense and subsequently required to pay a fine to the female's family and clan. Fines are also levied on the offending male when sexual relations take place and pregnancy does not result. In the application of customary law, the difference between these two cases is the amount of fine, or damage payment, charged to the male and his family. Where damage payments are due from sex-related relationships, they are to be paid to the father of that girl or woman.

These fines, which can include money, livestock or other material goods, are designed to compensate the family of the violated female. Many factors influence the particulars of damage payments regarding sexual exploitation, such as the ages of those involved, their status as students or laborers and the relationship between family and or clan, depending on who is involved in the customary infraction. The fine is higher for a crime committed against a female who is in school—the higher the education level, the greater the fine. As mentioned above, the top commanders of the LRA preferred girls with higher educational backgrounds. Considering all the relevant factors within a particular case, family and clan members meet to determine the proper damage payment to be received as allowed under customary laws.

Clan mediators, rather than local or family and children courts, mostly settle cases involving extra-marital sexual relationships.²¹⁵ This is typically done with two objectives. First, it seeks to guarantee that the violations committed against the female are properly and fairly addressed and compensated for, at least as far as the family and clan of the girl or woman are concerned.²¹⁶ Second, it enables clans to resolve disputes, on mutual terms, through dialogue, admission of guilt, the verbal gesture of forgiveness, and negotiation. Rape, for example, is a capital offense in both northern customary and national law, but rarely are perpetrators taken before a government court.²¹⁷

Rape cases are often resolved outside of the national court system, avoiding the possibility of capital punishment and allowing for the violated female and her family/clan to gain compensation from the accused member and his clan.²¹⁸ In addition, out-of-court resolutions regarding rape tend to favor the victim of rape due to the lower standard of evidence required to prove such cases, as compared to the standards required in a national

215 The crimes of rape and defilement, defined as sexual intercourse with any girl under 18 years of age, are offenses punishable by death. (the Penal Code Act, Secs. 118 and 123.1.). Only the High Court has jurisdiction over capital punishment cases. See Republic of Uganda, Courts of Judicature.

216 Interview, clan leader, Lira district, 9 June 2005.

217 The Penal Code Act, Chapter XIV, sec. 117, 118; Interview, Bau-Okol.

218 Interview, Bau-Okol.

court.²¹⁹ Importantly, it is through customary means that compensation is often made available. Such cases will involve a number of senior persons within a clan, ostensibly increasing the ability of the accused to provide compensation.²²⁰ This practice should have an influence regarding the initiative of women and girls forcibly married in the LRA and their families in seeking compensation.

ACHOLI AND LANGI CUSTOMARY MECHANISMS

We now turn to customary mechanisms to investigate what options are available for addressing the crimes committed and harms suffered during forced marriage. In the Agreement on Accountability and Reconciliation, signed June 2007 by delegations from the Government of Uganda and the LRA it is emphasized that traditional accountability and reconciliation processes be “promoted to become a central part of accountability and reconciliation” in northern Uganda.²²¹ While the agreement addresses crimes and rights violations against adult and youth women and children—a significant precedent in a post-conflict mandate—it is important to proceed cautiously with assigning a central role to traditional processes of accountability and reconciliation. To illustrate, Acholi traditional systems can serve some, but not all, Acholi needs of reconciliation between the LRA and Acholi communities. However they cannot be expected to address crimes committed outside of the Acholi region nor can they fully address crimes of forced marriage. The importance of the application of Ugandan national law, as well as a broad, regional accountability and reconciliation process that is informed by all war-affected regions of the north (Acholi, Lango, Teso, West Nile) cannot be understated. We stress here that traditional systems alone cannot sufficiently address the majority of gender-based and sexual crimes carried out within and by the LRA. Hence, national and international systems must work parallel to, and in some cases take precedence over, traditional mechanisms.²²²

Significantly, traditional systems of reconciliation and accountability cannot address such violent and widespread crimes carried out during this

219 Ibid.

220 Notably, among the Acholi and Langi, rape is considered an extremely serious crime. Indeed, the compensation required for rape is higher than compensation required of murder.

221 *Agreement on Accountability and Reconciliation Between the Government of The Republic of Uganda and the Lord's Resistance Army/Movement*, Juba, Sudan (2007).

222 The Ugandan Constitution recognizes differences of cultural and customary values among the many ethnic groups in Uganda and it voids all laws or customs inconsistent with its provisions. This can be particularly important when considering challenges women and girls may face when seeking redress from former captor husbands and their clans when customary laws conflict on such matters. *Constitution of the Republic of Uganda* (1996), Sec. 2.2.

conflict such as forced marriages—they have not evolved in this way. This can be illustrated by looking at both how traditional systems deal with the individual crimes that comprise forced marriages as well as looking at the experiences of those former forced wives who have returned from captivity to communities in northern Uganda.

Acholi and Langi clan and village leaders express differences in their approach to handling crimes and violations that occurred as a result of forced marriages within the LRA. However, within Langi and Acholi customary law there is similar customary practice on child custody, maintenance, sexual violence, compensation and enforcement.

Where the two differ is attitudes that Acholi and Langi leaders have in how to deal with the former forced wives and their children once they return to their respective communities. Generally, Langi leaders see the issue concerning the abduction and forced marriage of women and girls as a regional peace and security issue, while many of the Acholi community and religious leaders interviewed for this study have a tendency to internalize the issue, with focus more on what it means for Acholi males and females and less attention on how neighboring tribes are coping with former forced wives returning to their areas.

Another weakness in reliance on traditional systems is that during the course of the war, clans and, more generally, ethnic groups' leadership, have lost their authority and ability to consistently enforce various customary norms.²²³ Insecurity has contributed to a lack of communication among clans, which is compounded with the fragmentation of clan unity due to displacement throughout the north.²²⁴ This, among other things, has led to two outcomes: one, clan authority to enforce customary law is weak, undermining that authority and allowing for a greater role of local councils to address clan issues, and; two, disputes remain unsettled between clans and ethnic groups thus increasing feelings of mistrust and resentment.²²⁵ The weakened state of Acholi and Langi customary systems is reflected in the normative attitudes and practices on how crimes and violations that occur within forced marriages are dealt with.

For some returnee forced wives and the identified resettled fathers of their children, it is difficult for clans to negotiate terms corresponding customary compensation for what occurred during the forced relationships. In

223 Interview, clan leader, Lira district, 9 June 2005. Apart from the LC Courts mentioned above, there are informal customary courts established at multiple levels. They include family courts, clan courts, inter-clan courts and inter-tribal courts. These courts are headed by the elder within each respective group with each working towards the same general concepts of justice, including truth, compensation and restoration. (For more on Acholi justice, see Baines, 2005.)

224 Ibid.

225 Ibid.; interview, father of former forced wife, Lira, Uganda, 10 June 2005.

the past, sexual violations or pregnancy for unmarried girls, were dealt with through clan or tribal dialogue. An agreement would be reached, such as a payment of dowry in cases of marriage, or other compensation in instances of rape or child birth outside of wedlock. Today, however, resources that could be used for dowry or compensation—when men are identified as the fathers of captive-born children—are often considered too important to be spent on such cases. If and when dowry payments are collected, such payments could be paid as compensation to the family of the forced wife if children were born from the relationship. Or compensation could be paid if it is decided to continue the relationship under an agreement of marriage or a formal partnership recognized by the parents and or clan members and relatives with consent of the woman involved.

All interviewees spoken to by the two authors (including former LRA or civilian community members) felt that the marriages the captive women and girls were forced into were not legitimate marriages either by customary or Ugandan law. This does not, however, negate the females' (or their families') claim to compensation. As one Langi former forced wife explained, traditional marriages do not take place in the LRA and the females forcibly married recognize this reality. This girl was one of five wives given to a 50-year-old man.²²⁶ Another girl, a 17-year-old who was abducted when she was 14, explained that she was given to a boy on the orders of her commander. A young 15-year-old captive fighter requested that he be given a wife and once that request was granted, he forced the girl to carry his possessions and have sex with him. She was adamant that, despite having a child born of the relationship, the relationship was imposed on her and she will not accept to live with any man who forced sex with her.²²⁷ In cases such as these, it is more likely that any payment, should it be made, would be a compensation payment for the damages inflicted on the female, her family, and her clan.

Such payments, as mentioned above, are dependent on the identification and admission of participation in a forced marriage, whether forced or voluntary, by the captive husband. The element of truth-telling is essential for such cases to move forward within traditional mechanisms. Indeed, the admission of having committed the crime is a primary feature of determination of guilt and subsequent redress by means of compensation.²²⁸

Under Acholi and Langi customary law, minors most often do not receive compensation for violations committed against them. Instead, it is their parent or guardian who will bring a case forward and who is most likely to receive and determine how monetary or material compensation

226 Interview, formerly abducted female, Lira district, 9 June 2005.

227 Interview, formerly abducted female, Lira, Uganda, 17 June 2005.

228 Interview, clan leader, Lira District, 9 June 2005, Interviews, clan leaders, Kitgum and Pader districts, March and April 2007; Baines, 2005.

will be used. Where a violation has been committed against an adult, the head of the family would bring forward any case. When an individual commits an offense against a fellow clan member, that clan's elders mediate a resolution between the two families concerned. If the offense is committed against a member of another clan, it is the offender's clan that is also held responsible. It is thus the responsibility of the clans as a whole to resolve any violation of customary practice through the clans' leaders. Significantly, it is necessary that this dialogue produce admission of guilt by the offending party and a verbal gesture of forgiveness by the violated party.²²⁹ In the case of forced marriages, in regard to captor husbands, they are responsible for the offense of forcibly marrying abducted women and girls. At the same time, however, it is their clan that is accountable to compensate for these acts under Acholi and Langi customary laws.

The duty of the violated clan is to seek truth-telling, compensation and restoration of harmony with the offending clan. In most cases, compensation is expected within one month of concluding the negotiated terms, and it is not the duty of the violated clan to punish the perpetrator.²³⁰ Punishment for the perpetrator is determined and carried out by his or her clan. Any punishments are carried out with the objective of reinforcing clan values.

For females who have returned from the bush, access to their father's clan or the captive husband's clan can increase the possibility of social and or economic support. Clan leaders can play a critical role in their ability to enable the recognition of crimes and facilitate a process of reconciliation and healing for victims and perpetrators. For example, cases involving extra-marital sexual relationships are typically not filed in courts, but are resolved by the intervention of clan mediators.²³¹ This is particularly true of northern Uganda during the years of conflict when regular courts have been non-existent, inaccessible or barely functional. The purpose of using clan mediators for such instances is done with two objectives. First, clan mediation seeks to guarantee that the violations committed against the female are properly and fairly addressed and compensated for, at least as far as the family and clan of the girl or woman are concerned.²³² Second, the

229 Interview, clan leader, Lira district, 9 June 2005; Interview, Bau-Okol; Interview, Yokusum Odur, Paramount Chief, Lango Sub-region, 14 June 2005; See Baines, 2005, p. 61-64 for the most important elements of traditional justice, the establishment of truth, the voluntary nature of the process, the payment of compensation, and the restoration of social relations among family and clans.

230 Interview, clan leader, see note 186.

231 The crimes of rape and defilement, defined as sexual intercourse with any girl less than 18 years of age, are offenses punishable by death. (the Penal Code Act, Chapter XV, sec. 118 and 123(1)). Only the High Court has jurisdiction over capital punishment cases.

232 Interview, clan leader, 9 June 2005; interview, Odur.

mediation enables clans to resolve disputes, on mutual terms, through dialogue, admission of guilt, the verbal gesture of forgiveness and negotiation. It has always been a function of the clan systems to award compensation to victims and families when a crime, defined within customary codes, has been committed. It is through the admission of guilt and the payment of compensation that crimes are seen (by all parties) to be acknowledged by the perpetrator. By accepting compensation, the victim acknowledges that the crime has been atoned for and together the process of reconciliation can unfold and harmony be reestablished.

Historically, when disputes were unsettled, compensation left unpaid or revenge killings carried out, clans would arm themselves with spears and confront adversarial clans face-to-face to settle differences.²³³ Today, however, this simply no longer happens. Armed conflict and the widespread proliferation of small arms and other automatic weapons have disrupted traditional methods of negotiating, paying and collecting compensation.

Traditional methods for bringing offenders before the clans are further complicated by the fact that LRA fighters responsible for abductions and forced marriages are often well outside the influence or control of their clans. It is extremely difficult for them to be held accountable by their own clans so long as they remain in the bush. Subsequently, the former forced wives whose captors have not come out of the bush may have little redress through customary law because of difficulties of locating and enforcing clan obligations on former captor husbands. Formerly forced wives may also desire to leave the matter alone altogether and move on with their lives, hoping the captor husband never reemerges.

However, this does not diminish the fact that it is the clan of the offending male which is responsible for addressing and attending to violations of customary law. As one clan leader expressed,

Each clan is responsible for bringing in their [LRA affiliated] clan member. Whatever clan one LRA fighter is from, that clan needs to be responsible for his behavior and must do what it can to bring him in.²³⁴

Importantly, throughout a number of the authors' interviews, informants expressed disappointment at what they thought was a misguided and feeble effort by Acholi tribal and clan leaders to reign in the Acholi male LRA fighters from their various clans. They felt that as elders to these LRA fighters, it was their duty to do more to stop their continued participation within the rebel group. Several examples were given by Langi informants of instances in the late 1980s where Langi traditional leaders had stopped armed rebellions and talked young men out of the bush. These examples were

233 Interview, Odngo.

234 Ibid.

given to illustrate how clan leadership could enforce control over members who had armed themselves in rebellion, forcing them to put down their weapons, come back into the community and seek non-violent means of addressing grievances.

Current efforts to address inter-tribal conflict regarding the LRA and forced marriages are mixed. To illustrate, a group of Acholi clan leaders in Atanga IDP camp stated that Acholi girls were not promiscuous like Langi girls and therefore ceremonies for the Langi girls to address crimes of rape and child-bearing in the LRA were not necessary. Ceremonies are necessary, they said, for the Acholi girls because they are well-raised with Acholi values that avoid pre-marital sexual activity.²³⁵ This opinion is not shared by all clan leaders in Acholiland. A group of clan leaders in Kitgum-Matidi IDP camp expressed concern when told by the authors that Langi clan leaders expect apologies and peace dialogue to take place between that Acholi and Langi. They said that if the Langi leaders feel this way, then steps should be taken to properly address the needs of both tribes with the ultimate objective of helping females forcibly married into the LRA and mending relations between the two tribes.²³⁶

Informants contended that given the scale of involvement of young men of particular clans and ethnic groups in the LRA, and the fact that LRA leadership and top commanders primarily come from Gulu district, such efforts by clan leaders and elders are necessary. Perhaps as importantly, if such efforts are not seen to be made, it is perceived that one clan or ethnic group is not giving full respect to the laws and customs of other clans or ethnic groups. This may foment resentment towards that clan or, as has been expressed in a number of interviews, resentment towards an entire ethnic group. More positively, the same sense of clan responsibility could be drawn upon to begin to alleviate tensions that exist among clans and ethnic groups regarding the behavior of members of the LRA. More specifically, it could be used to encourage community acceptance for forcibly-married returnees and their children.²³⁷

Clan leaders' opinions mirror those of most of the former forced wives with whom we discussed accountability for the orchestrated abductions, distribution, and ultimate forced marriage and child-bearing within the LRA. As one leader explained in Kitgum-Matidi, establishing the ladder of command responsibility is key to determining who is responsible. It is then necessary, he continued, to look at how that chain of command has organized the abductions and forced marriages and determine how to go forward from there once the perpetrators and commanders have been iden-

235 Interview, four clan leaders, Atanga IDP camp, Pader district, 11 March 2007.

236 Interview, seven clan leaders and elders, Kitgum-Matidi IDP camp, Kitgum district, 11 March 2007.

237 McKay and Mazurana, 2004.

tified. This process could include clan elders, tribal leaders and other community leaders to organize efforts to confront the widespread phenomenon of forced marriage that has gone on during the course of the conflict.²³⁸

Finally, without government action to uphold its protective obligations regarding the people affected by war in northern Uganda customary laws remain difficult to enforce. As one clan leader explained,

Customary laws are effective only to a point and we can appeal for their relevance and enforcement. We cannot physically act on them in the state of things now. The government is government and we do not have the power to do what government can do. If [LRA fighters] should be [held accountable], we as a clan cannot enforce these decisions.²³⁹

Customary law in the north can be an effective tool to reconcile clans and potentially ease the process of reintegrating former LRA commanders, male-abductees and captor husbands into clan communities. Through the process of customary reconciliation, women and girls may find greater possibility to gain compensation and hence empower them with the means to make decisions of where or with whom to live which are not driven by purely economic considerations. But how clans work to restore intra- and inter-clan harmony may impact the avenues women and girls have within customary law to seek redress and resolve their cases. Unless attitudes and current customary practices are modified to appropriately and effectively address forced marriages, the rights and welfare of the forced wives and their children will be further vulnerable to abuse.

CLEANSING CEREMONIES FOR FORCIBLY MARRIED FEMALES

For females who have experienced forced marriage within the LRA there are no specific rituals or ceremonies to address the crime of forced marriage. Although there are ceremonies designed to welcome returnees back to communities, the ceremonies are often perfunctory. Ceremonies that are meant to ‘cleanse’ girls of their guilt and experiences of rape, forced impregnation and child-bearing in captivity are described as being inadequate.

The most common ritual performed for women and girls upon their return from captivity is nyono tongweno, a ceremony involving the returnee female stepping on a raw egg. This ritual, performed either for an individual upon her return or for large groups of returnees,²⁴⁰ is designed to ‘cleanse’

238 Interview, clan leader, Kitgum-Matidi IDP camp, Kitgum district, 11 March 2007.

239 Interview, clan leader, Lira district, 9 June 2007. Interview, cultural leaders, Lira district.

240 McLaughlin, Abe, “Africa after War: Paths to Forgiveness” *Christian Science Monitor*, 23 October 2006.

the female upon her return home. This ceremony can be coupled with moyo kum and goyo laa, or “cleansing the body” and “blessing by elders”, respectively.

These ceremonies, as described by the girls who experienced them, can include the participation of parents, community members, and elders within the clan. Clan and tribal chiefs have also been said to participate. In some cases the rituals have provided a sense of relief and alleviated notions of guilt on the part of returnee women and girls,²⁴¹ but most of the females interviewed by the authors said that they found little meaning in the ceremonies and derived little sense of ‘relief’ from what they had experienced while in captivity. A recent study also found that formerly forced wives are the least likely of any category of the formerly abducted to participate in traditional cleansing ceremonies.²⁴²

Such ceremonies have been described by those who participated in them as “wasteful” and “useless.”²⁴³ One former forced wife described her frustration with the ceremony and complained that she was not permitted to wash the wet egg from her foot until she returned home well after the ceremony was completed. “The ceremony has done nothing for me as I still experience psychological trauma and physical discomforts,” she explained.²⁴⁴ One former forced wife and young mother in Kitgum district spoke for many when she told us she had been forced to participate in the ceremony because “it is what the community people want, not what I need.”²⁴⁵

In one IDP camp, clan leaders explained that the stepping on the egg is symbolic of the end of an experience away from home and that it is necessary to mark the return of the formerly abducted through this ceremony. They claim that all returnee former wives have undergone the ceremony in the community. However, two former forced wives from the same community reported not having undergone the ceremony and not wanting to. Another former forced wife in the same camp explained that she was told by elders in the camp to perform the egg-stepping ceremony but no one explained to her why she was to do it or what benefit she (or anyone else) would gain from the experience.²⁴⁶

Traditionally, instances of rape within communities not associated with armed conflict are addressed through the performance of a ‘cleansing’ ritual different from the egg-stepping ceremony. In instances of rape, rituals in-

241 Baines, 2005.

242 Annan et al., 2008.

243 Interviews, formerly abducted females, Pader and Kitgum districts, March and April 2007.

244 Ibid.

245 Interview, formerly abducted female, Kitgum district, 11 March 2007.

246 Interview, formerly abducted female, Pader district, 30 March 2007.

clude clan elders in addition to other family or community members. They are designed to cleanse girls from the impurities associated with the crime of rape and require that the female and accompanying elders visit the place where the rape occurred where a ritual involving slaughtering a goat takes place. However, for most former forced wives it is not possible to travel the distances to where rapes occurred, if the locations are known at all. Other locations, such as those within South Sudan, are simply beyond reach. When it is not possible to return to the exact place of the rape, clan elders say that there is no other option available for the performance of the ritual and traditional cleansing is no longer an option. However, the elders explained that a raped female can come to them for counseling if needed.²⁴⁷

In terms of compensation for rape cases, clan elders said that compensation for such crimes is unlikely unless such instances resulted in the pregnancy of the girl and birth of a child. Even then, they said, compensation would not be paid for the act of rape, but instead for the maintenance of the child born of the relationship as per customary practice. Therefore, rape remains unpunished and inculpable under the customary practices of the Acholi systems. Women leaders in Kitgum and Pader Districts express frustration with the ossified and arcane nature of traditional ceremonies, saying that they seldom address the root of crimes committed against women and girls. One woman local council member explained that the welcoming ceremonies for females, including those raped and forcibly married, are:

old and untouchable ceremonies that cannot be adapted to fit the needs of the girls returning or [address] the crimes committed in the bush ... these ceremonies are the same ceremonies that have always been carried out by the elders and there is nothing that we, as women, can do to change them.²⁴⁸

Another woman local council member thinks that the Acholi rituals are considered so old and traditional that the male elders in the communities will not allow for them to be changed as doing so would be considered an insult to Acholi culture and ancestral custom.²⁴⁹

247 Interview, four clan leaders, Pader district, 9 March 2007.

248 Interview, Sandy Latigo, Pajule IDP camp, Pader district, 30 March 2007.

249 Interview, LC official, Pader district, 30 March 2007.

V. CONCLUSION

FORCED MARRIAGE AS A CRIME AGAINST HUMANITY

Forced marriage as it was practiced by the LRA is a crime against humanity, distinct from other crimes such as rape, sexual slavery, and enslavement. With its central element of forced conjugality, the character of the crime falls outside the domain of other enumerated sexual violence crimes. The arguments made by the Prosecution to the Special Court for Sierra Leone support our contention that charges of forced marriage should be brought against members of the LRA. The Prosecution in Sierra Leone observed that the full scope of the acts of sexual violence against girls and women would be lost if the only charges to be brought forward were based on broad categories of enslavement, sexual slavery or another form of sexual violence. Unfortunately, to date, in the case of gendered and sexual violent crimes in Uganda, the ICC has only introduced the charges of rape and sexual enslavement. Given the severity of the crime of forced marriage, it is the duty of the ICC to act and hold accountable those responsible for the organization and perpetration of forced marriage within the LRA.

The ICC has jurisdiction only for crimes committed after 2002. However, we argue that forced marriage is an ongoing act because the status of marriage and in many cases resulting child(ren) impacts the status of women and their rights long after the conflict or the relationship ends. Hence, by including the crime of forced marriage within the indictments the OTP and the pre-trial chamber of the ICC would contribute positively to remedy the limited and temporal scope of the Court's jurisdiction.

Considering the low capacity at the international level to carry out trials of all those suspected of crimes against humanity and war crimes (not to mention the reluctance of political leaders in Uganda to allow for international trials), it is paramount that the proposed special unit within Uganda's High Court ensure that the crime of forced marriage is recognized and addressed at both national and local levels.

Thus, implementation of the Agreement on Accountability and Reconciliation and its Annex requires amending the substantive law in Uganda to provide a basis for bringing charges that would reflect the scope and gravity of those crimes presently charged by the ICC. Either the ICC should retain jurisdiction over and prosecute these crimes, including forced marriage, or the special unit within Uganda's High Court should be empowered through legislation to bring the same prosecutions.

The Agreement on Accountability and Reconciliation and Annex detail the parameters for investigation and prosecution. The Annex states:

Investigations shall:

- a) Seek to identify individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians;
- b) Reflect the broad pattern of serious crimes and violations committed during the conflict;
- c) Give particular attention to crimes and violations against women and children committed during the conflict.

Prosecutions shall focus on individuals alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions.²⁵⁰

The agreement and the subsequent Annex also lay out the parameters for a fact and truth finding body. The Annex states:

The Government shall by law establish a body to be conferred with all the necessary powers and immunities, whose functions shall include:

- a) to consider and analyze any relevant matters including the history of the conflict;
- b) to inquire into the manifestations of the conflict;
- c) to inquire into human rights violations committed during the conflict, giving particular attention to the experiences of women and children;
- d) to hold hearings and sessions in public and private;
- e) to make provision for witness protection, especially for children and women;
- f) to make special provision for cases involving gender based violence;
- g) to promote truth-telling in communities and in this respect to liaise with any traditional or other community reconciliation interlocutors;

²⁵⁰ *Annexure to the Agreement on Accountability and Reconciliation*, Principle Agreement, Part 4, (13) and (14).

- h) to promote and encourage the preservation of the memory of the events and victims of the conflict through memorials, archives, commemorations and other forms of preservation;
- i) to gather and analyze information on those who have disappeared during the conflict;
- j) to make recommendations for the most appropriate modalities for implementing a regime of reparations, taking into account the principles set out in the Principal Agreement;
- k) to make recommendations for preventing any future outbreak of conflict;
- l) to publish its findings as a public document;
- m) to undertake any other functions relevant to the principles set out in this Agreement.²⁵¹

The Agreement and its Annex allow for the use of traditional justice mechanisms to, in some cases, deal with crimes committed during the war. However, our research finds that traditional measures are inadequate to address the crime of forced marriage. Hence, given the bifurcated scheme outlined in the Agreement and its Annex, and in light of the inadequacies of traditional measures to address forced marriage, the only acceptable and adequate remedy is 1) for forced marriage to be considered a crime within the mandate of the special unit, and not a lesser offence to be dealt with through traditional measures, and 2) the special unit should prosecute not only top LRA leadership but also those LRA commanders responsible for the crime of forced marriage.

ADDRESSING SEXUAL AND GENDER CRIMES IN TRUTH TELLING AND
PROSECUTORIAL BODIES²⁵²

Public acknowledgment and condemnation of egregious abuses suffered are important first steps in providing recognition and redress to victims of violence. Speaking the truth and condemning the atrocities committed against a

251 *Annexure to the Agreement on Accountability and Reconciliation*, Principle Agreement, clauses 2.2 and 2.3.

252 The ideas in this section draw from the excellent work of Nowrojee, B., "Making the Invisible War Crime Visible: Post-Conflict Justice for Sierra Leone's Rape Victims," *Harvard Human Rights Journal* 18 (2005) 85-105.

person constitute steps to restore the humanity of the victim and her value in society. This is an especially critical step for a person who has been stripped of everything, including her essential humanity.²⁵³

In regards to both the truth telling body and special unit of the Ugandan High Court called for within the Agreement on Accountability and Reconciliation, signed in June 2007 as part of the ongoing Juba peace process, and the Annex signed in February 2008 that details the actual implementation mechanisms, Sierra Leone offers a number of important lessons for those attempting to address the crime of forced marriage in Uganda (and elsewhere). First, it is vital that those bodies take seriously the responsibility to address gender and sexual crimes. In the case of Uganda this is mandated within the Agreement on Accountability and Reconciliation.²⁵⁴ Further, the agreement's provision for gender balance on both bodies is both far-sighted and welcome.

The statute for the special unit of the Ugandan High Court for prosecutable crimes should include, rape, sexual slavery, enforced prostitution, forced pregnancy, any other form of sexual slavery, indecent assault, and any other inhuman acts. We propose that charges of forced marriage could then be brought under the category of "other inhuman acts" which is within the legal category of crimes against humanity referenced in the Agreement on Accountability and Reconciliation.

Undoubtedly there will be resource and staff constraints, but we believe members of both the truth telling body and the special unit of the High Court should commit themselves to receiving training and support to bolster their ability to address sexual and gender abuses. By doing so, they would send a clear message that addressing gender and sexual violence is an institutional priority. Given the nature of the crimes committed consideration should be given to hiring staff with experience in gender and sexual related crimes and in juvenile justice in order to support the truth telling body and the special unit of the Ugandan High Court.

Women, girls, men and boys who have survived these crimes should be able to come forward and testify in comfort and privacy. They should be given options on how they would like to testify: in camera before the commissioners or judges; at public hearings where their identity would be shielded by a screen, or at public hearings in which they could speak openly

253 Ibid. p. 104.

254 For further information and analysis of the agreement, see reports from Human Rights Watch and Amnesty International at <http://hrw.org/backgrounder/ij/uganda0707> and [http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/LRON-7CTEZN-full_report.pdf/\\$File/full_report.pdf](http://www.reliefweb.int/rw/RWFiles2008.nsf/FilesByRWDocUnidFilename/LRON-7CTEZN-full_report.pdf/$File/full_report.pdf)

before audiences. The latter two options would help to break the silence and stigma around sexual crimes and violations and the myriad of abuses suffered during forced marriage.

Commissioners and judges who have demonstrated the sensitivities needed to allow for a safe, non-traumatizing, and dignified questioning of witnesses should be present for the questioning of witnesses who have suffered sexual crimes and violations. Uganda would do well to follow the practice of Sierra Leone's Truth and Reconciliation Commission (TRC) and ensure that any female witness giving testimony on sexual crimes and violations without the presence of a female commissioner or judge is informed of the option of deferring testimony until one is present. Girls, boys, women and men should be provided with a comfortable, private space and their identity protected before and after testimony regarding sexual and gender crimes.

Both bodies should be in contact with the Ugandan Red Cross to arrange for a nurse and ambulance to be available throughout the hearings or testimonies to assist in case a witness became emotionally distressed. They should also reach out to local human, women's and children's rights organizations to encourage them to participate in the proceedings, give testimony and provide assistance and support.

Within the truth telling body, consideration should be given to holding special hearings on the situation of women and girls within northern Uganda and the crimes and violations they suffered, which would include forced marriage. Such hearings could have a very positive effect. In Sierra Leone, the TRC session on gender violence was the best attended and was handled in such a sensitive way that victims of sexual violence who testified reported few complaints about the testimony process.²⁵⁵

The final report of the truth telling body should include sections on the effects of armed conflict on women and children—as stipulated in the Agreement on Accountability and Reconciliation—as well as discussion of the use of sexual and gender violence throughout the conflict by all parties. Recommendations arising from the report should also pay close attention to these findings and propose ways to help survivors move forward in the post-conflict period.

Finally, the work of these two bodies must be widely publicized. Justice not only needs to be done, it needs to be seen to be done. Human and financial resources should be provided to ensure that as soon as these bodies are formed they are able to engage in outreach and information dissemination. These activities should continue throughout their life spans. Outreach must be gender and generational aware and makes concerted efforts to reach out to victims.

255 Interviews with Sierra Leone women's organizations, Freetown, Sierra Leone, May 2003, cited in Nowrojee, 2005.

ADDRESSING SEXUAL AND GENDER CRIMES WITHIN COMMUNITIES

Much discussion of crimes and accountability is taking place, and will continue, in communities. The Juba peace negotiations and the Agreement on Accountability and Reconciliation highlight the role of local justice mechanisms. In the forums which will grapple with accountability and reconciliation issues within the different conflict-affected ethnic communities it is important that designated, safe spaces are made for women and girls to speak, talk amongst themselves, and be heard. Traditional justice mechanisms in Africa, including Uganda, have been dominated by men, and women and children rarely fare well within them. This was recognized by the agreement. Often women and children need the male head of their household to bring complaints forward in order for them to be seriously addressed by male leaders. Hence, parallel processes for women and children to speak out are necessary. These forums could include female-only spaces where women and girls exchange information and decide upon their agendas and strategies for action.

In addition, it is important that there are spaces where women and girls can speak out and be heard by male leaders and other community members. As we have shown in this paper, customary practices governing the processes of reconciliation are performed predominately by male clan and community elders. It is important that male elders are not excluded from community-level action aimed at empowering women and girls to organize and implement plans of action to achieve justice within traditional or formal justice mechanisms. Male elders can play an important role in bringing issues of gender and sexual violence to the inter-clan 'table' to be addressed as a central and meaningful part of community and regional reconciliation procedures.

Such forums could be particularly important for those who have suffered the crime of forced marriage. Since this crime is widely known, and girls, women and their families from multiple ethnic groups have been victims, the convening of public discussions by traditional, religious and social institutions—and subsequent public condemnations of these atrocities—would significantly contribute to justice, accountability and rebuilding the lives of survivors and their families.

About the Authors

Khristopher Carlson is Senior Researcher at the Feinstein International Center at Tufts University. He specializes in international human rights and humanitarian law, with an emphasis on youth and armed conflict. Carlson has worked as a consultant and advisor for various governments on projects regarding youth in conflict and post-conflict situations in Angola, Burundi, the Democratic Republic of Congo, Northern Uganda, South Sudan, and Sierra Leone. Carlson's current research focuses on forced marriage practices within armed groups, as well as youth participation within traditional and local justice systems.

Dyan Mazurana is Associate Professor and Research Director for Gender, Youth, and Community at the Feinstein International Center. Her areas of specialty include women's human rights, war-affected children and youth, armed conflict, and peacekeeping. Mazurana works with a variety of governments, UN agencies, human rights and child protection organizations regarding improving efforts to assist youth and women affected by armed conflict, including those associated with fighting forces. Her research focuses on the experiences of armed conflict on youth combatants and civilian populations and their efforts for justice and peace. She has worked in Afghanistan, the Balkans, and southern, west and east Africa. Her current research focuses on Uganda and South Sudan.