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**The American University in Cairo**

**School of Public Affairs**

**ARMED CONFLICT IN LIGHT OF COLONIALISM'S LEGACY:  
REWEAVING THE SOCIAL FABRIC OF UGANDA**

**A Thesis Submitted to the**

**Department of Law**

**in partial fulfillment of the requirements for the degree of  
Master of Arts in International Human Rights Law**

**By**

**Rebekah Ernst**

**December 2009**

The American University in Cairo

School of Public Affairs

Armed CONFLICT IN LIGHT OF COLONIALISM'S LEGACY: REWEAVING  
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School of Public Affairs  
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ARMED CONFLICT IN LIGHT OF COLONIALISM'S LEGACY: REWEAVING  
THE SOCIAL FABRIC OF UGANDA

Rebekah Ernst

Supervised by Professor Alejandro Lorite Escorihuela

ABSTRACT

Uganda, a former British colony, has been in a state of conflict since achieving independence in 1962. The current government has been at arms with the Lord's Resistance Army (LRA) for over 20 years, making it Africa's longest running war. Exploring the root causes of the conflict and establishing a common historical narrative is crucial to identifying prospects for peace. Uganda's unique colonial legacy provides a framework for understanding the patterns of government policies and attitudes that have fostered an atmosphere of unrest and rebellion. The imperial mission established the territory through policies of violence, subjugation, exploitation, intimidation, and division, sowing seeds of disunity into Uganda's fertile soil. Successive regimes after independence followed similar patterns of behavior toward their citizens, capitalizing on imperial stereotypes and regional divisions of labor to elevate themselves and gain power. The Acholi people in the northern region have borne the heaviest burden under the weight of exclusionary policies and demeaning rhetoric, and are blamed for much of the conflict. For Uganda to move toward peace, the attitudes and policies that are tearing society apart and perpetuating the war need to be reversed, the truth needs to be told in an atmosphere conducive to forgiveness and responsibility, and the nation needs leadership that seeks national unity and reconciliation over personal wealth and power.

## TABLE OF CONTENTS

I. Introduction .....	1
II. Peace and Justice.....	5
A. The goal of society: shalom .....	5
1. Belief in God as moral ground for human rights .....	6
2. Religion as an instrument of oppression.....	8
B. Traditional African Culture.....	10
1. African Humanism.....	10
2. Personalist Morality .....	11
3. Acholi Worldview: Bad Surroundings.....	12
C. Development of the African state and its regional human rights system .....	15
1. Independence: Socialism in response to Colonialism.....	15
2. Economic, Social, and Cultural Rights .....	17
a) Development.....	17
b) Role in armed conflict.....	19
D. Discussion.....	21
III. Historical Narrative.....	23
A. Colonialism: The civilizing project .....	23
1. Racist ideology.....	23
2. War of annexation.....	24
B. Reification and codification of Ugandan ethnic identities.....	26
1. Colonial rhetoric .....	26
2. Colonial practices.....	29
C. Neocolonial power struggles.....	30
D. Legacy of violence and degradation .....	35
1. Military action and war talk .....	36
2. Displacement and “protected villages” .....	40
a) Organization.....	43
b) Rebel collaborators .....	44
c) Sexual violence .....	46
E. Discourse and the dominant narrative of the war .....	47
1. Peripheral and irrational.....	47
2. A war on, and with, and against children.....	50
3. Exclusively religious and ethnic in nature .....	51
4. Humanitarian, not political .....	57
F. The marginalized north .....	60
IV. Mechanisms for building peace .....	64
A. No peace without justice.....	64
B. No justice without truth .....	65
1. Truth and forgiveness .....	66
2. Truth and responsibility .....	69
3. Truth and restitution.....	72
C. Institutional reform .....	74

D. Leadership from within.....	76
V. Conclusion .....	80

## I. Introduction

The British established the Ugandan protectorate in 1894, and its development was driven by a “divide-and-rule” strategy,<sup>1</sup> intentionally weakening indigenous power networks and institutions. When Uganda achieved independence in 1962, it could not break out of the fragmented, hierarchical organization imposed by the British. Ethnic, religious, and sub-regional tensions escalated in the following years, as different groups contended for state power. Oppressive military regimes and violent insurgencies characterized much of the modern historical development since independence, culminating in the longest civil war on the African continent, beginning in 1986 and continuing through today.<sup>2</sup>

Looking at the tiny Ugandan nation would now reveal a social fabric torn along ethnic, religious, political, historical, and interpersonal lines, severed and frayed and in need of mending. The two decades of war between the Lord’s Resistance Army (LRA) and the Ugandan government has devastated the region. The catalyst for this conflict can be traced back through the years of independence to the era of colonial administration. That is where threads of disunity were woven into the fabric and slowly unraveled in communities of those subjected to imperial rule, giving them an incentive to rebel and a pattern of violence to emulate. Rather than frame the conflict in terms of chronological events, then, I’m exploring the patterns of the current government’s behavior that reflect the practices of Uganda’s colonial

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<sup>1</sup> Chris Dolan, *Understanding war and its continuation: The case of northern Uganda*, 70 (University of London, Ph.D. dissertation, 2005).

<sup>2</sup> See Human Rights Watch, *Africa's Longest War Still Taking Lives*, 19 June 2009, available at: <http://www.unhcr.org/refworld/docid/4a3f8d3c1e.html> (accessed 11 December 2009).

predecessors and have perpetuated the violence. These patterns indicate practical avenues to peace, speaking to Uganda's particular worldview and colonial legacy.

My argument is that a particular approach to truth and reconciliation, as guided by an African perspective sensitive to the role of religion in oppression and liberation, is the way to bring peace to Uganda as a healing process. Therefore, the thesis does the following: in chapter one, I frame a relationship between human rights and religion; next I connect this to the place of human rights in the African context understood as a postcolonial political context where the rights of peoples are given political centrality; I draw out of this context the role of economic, social, and cultural rights in escalating armed conflict since independence, and ultimately the need for addressing all the root issues of Uganda's conflict in light of its colonial legacy, from a reoriented worldview sensitive to religion and the particular Ugandan perspective.

Having begun with a discussion of the foundations of a flourishing society that meet human rights standards within Uganda's specific cultural and postcolonial context, in the second chapter I will narrate the historical background to the war by describing how the imperialist mission represented an inversion of these relationships that are fundamental to peace and prosperity in a community. A healthy society requires a kind of spiritual consensus that acknowledges the value in the individual and the community, and sees resources as belonging to both. The colonial attitudes and policies corrupted society in an effort to secure power through control, containment, violence, and exploitation. These instruments of subjugation carried over into successive regimes after independence, and the ideologies that fueled such treatment have permeated the deepest recesses of Ugandan society and culture.



The imperialist mission was centered on the extraction of resources at a minimum cost to the colonizing government. Racist ideologies legitimated their efforts to “civilize” and “protect” the local inhabitants through violence, intimidation, and militarization. The reification and codification of ethnic identity was instrumental in the colonial administration’s effort to control the region, creating more rigid ethnic and socioeconomic divides that were then employed in the post-independence struggles for power.<sup>3</sup> Resentment and violence have since characterized interethnic relationships and major shifts in power.

The government’s response to the LRA resistance has revealed a lack of commitment to peace, favoring the military option, often in tandem with diplomatic efforts, and turning civilians into military targets for both government soldiers and rebels. The forced resettlement of millions of people into “protected villages,” or camps, has largely been a policy to control and contain the movements of northerners, as both a military strategy to monitor potential rebel supporters and a form of social torture.<sup>4</sup>

In the dominant discourse, the war is narrated as perpetrated by the LRA against its own people and, therefore, irrational,<sup>5</sup> as well as peripheral to the country’s development and success. It is described as principally religious and ethnic in nature, and both sides have rhetorically taken stands on religious and ethnic grounds in their

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<sup>3</sup> SVERKER FINNSTROM, *LIVING WITH BAD SURROUNDINGS, WAR AND EXISTENTIAL UNCERTAINTY IN ACHOLI LAND, NORTHERN UGANDA* 10 (Duke University Press 2003).

<sup>4</sup> Dolan describes the war in Uganda as a guise under which social torture is perpetrated. *See supra* note 1.

<sup>5</sup> Dolan, *supra* note 1, at 19-20.

dealings with each other.<sup>6</sup> Colonial stereotypes and slanderous references are woven into government rhetoric regarding the rebels in an effort to promote itself as the rational party to the conflict and the protector of its citizens.<sup>7</sup> In the eyes of the world, then, the conflict is largely seen as a humanitarian affair, with very little to no political dimension.

Having traced the conflict back through the years since independence to Uganda's imperial origins and unveiling patterns of subjugation and religious manipulation, in chapter 4 I will indicate avenues to peace that essentially bridge the chasms of social divide. Because the consequences of colonialism were overwhelmingly in the destruction of social cohesion, the best mechanisms for peace will be in the reweaving and rebuilding of relationships between individuals, tribes, communities, and each of those respective groups with their government. A common national narrative based on the truth and facilitating accountability and reconciliation is the first step in this long process. Justice must be served, but it must resonate with the community in a way that not only reduces impunity, but supports the victims and builds peace between people. The truth encourages healing, and is absolutely paramount to achieving justice as long as it is accompanied by forgiveness, responsibility, restitution, and reform. Finally, strong indigenous leadership is essential to advancing unity and prosperity—leadership that will bring about a fundamental shift in the way the government engages with its citizens, antithetical to Uganda's colonial legacy.

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<sup>6</sup> *Id.*, at 133.

<sup>7</sup> Finnstrom, *supra* note 3, at 113.

## II. Peace and Justice

### A. The goal of society: shalom

A bird's eye view of the world shows the community as a social fabric made up of threads interwoven and interdependent. Individual lives are as fragile as thread, but as many of them are woven together into the fabric, they are strong and beautiful. In the same way that the strength of the individual thread is only as strong as the fabric into which it is woven, so the individual lives in a community are measured by the strength of their interdependency.

When people with access to money, resources, and advantages see these as belonging not just to themselves but invest what they have in the community rather than clinging to it, there is social shalom. In the Judeo-Christian tradition, *shalom* is “the webbing together of God, humans, and all creation in justice, fulfillment, and delight”<sup>8</sup> We usually call it peace, but shalom means far more than a ceasefire or peace of mind, it means “*universal flourishing, wholeness, and delight.*”<sup>9</sup> It is an “ideal in which peace combines with justice; but more than that, when peace combines with delight in right relationships with God, with self, with fellow humans and with nature.”<sup>10</sup>

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<sup>8</sup> Neal Plantinga, *Educating for Shalom: Our Calling as a Christian College*, available at <http://www.calvin.edu/about/shalom.htm>.

<sup>9</sup> *Id.*

<sup>10</sup> Ron Wells, *Educating for Shalom* (Perspectives: A Journal of Reformed Thought, June/July 2004) available at <http://www.rca.org/Page.aspx?pid=3338>.

The realization of peace, or *shalom*, is what society aspires to; it is the goal of our advancement. This webbing together of society, however, depends on individual attitudes and distribution of resources. Justice is when the resources of those with more are being invested into the lives of those with less. Injustice is when people hold onto their resources, ignoring the needs in the community or seeking to gain power over others, because then the social fabric unravels. The breakdown of society is in the social structures that spread misery and injustice, “squenching the realization of what human life was meant to be.”<sup>11</sup> The laws and policies and ways of functioning and dealing with each other as a society become the instruments of injustice.

Nick Wolterstoff argues that “in response to this we are not to avert our eyes from our social condition...rather, we are to struggle to alter those structures and the dynamics behind them, so that the alienation is diminished and the realization advanced.”<sup>12</sup> Justice, then, is striving to go to the places where the fabric is breaking down and weaker members of society are falling through, taking resources and plunging them into those areas of the community, and ultimately changing the structures that oppress and weigh people down.

### **1. Belief in God as moral ground for human rights**

The concept of *shalom* draws a profound connection between religion and human rights as the underpinnings of a flourishing society. Harvard Law professor Alan Dershowitz concluded that the notion of inherent dignity in every individual couldn't be derived from nature, because nature thrives on violence and predation, on

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<sup>11</sup> Nick Wolterstoff, *Until Justice and Peace Embrace* (Eerdmans, 1983), at 23.

<sup>12</sup> *Id.*

the survival of the fittest.<sup>13</sup> As Ronald Dworkin observes, if we want to defend human rights, we must try to discover something beyond utility that argues for these rights.<sup>14</sup>

In Michael Perry's book, *Toward a Theory of Human Rights*, he concludes that "there is a religious ground for the morality of human rights," but that "it is far from clear that there is a non-religious ground, a secular ground, for human rights."<sup>15</sup> Sartre also famously argued that if God does not exist, "there can no longer be any good a priori, since there is no infinite and perfect consciousness to think it. It is nowhere written that 'the good' exists, that one must be honest or must not lie, since we are now upon the plane where there are only men."<sup>16</sup> If there is no God, then there is no way to determine if any one action is "moral" or "immoral," leaving it up to the subjective opinion of individuals to say they like something or think it's right.

It could then be argued that human rights were constructed because it's in the best interest of the community.<sup>17</sup> However, if rights are simply based on majority opinion, there is nothing to appeal to when the majority decides it's not in their best interest to provide human rights. Then it must be determined who has the right to declare what is right and wrong and codify it for the rest of society. If the underlying foundation of human rights principles is not rooted in the existence of an objective standard of morality, the majority will always potentially oppress or seek to

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<sup>13</sup> *Id.*

<sup>14</sup> ALAN M. DERSHOWITZ, *SHOUTING FIRE: CIVIL LIBERTIES IN A TURBULENT AGE*, 15 (Little, Brown, 2002).

<sup>15</sup> MICHAEL PERRY, *TOWARD A THEORY OF HUMAN RIGHTS: RELIGION, LAW, COURTS* 6 (Cambridge University Press, 2007).

<sup>16</sup> JEAN-PAUL SARTRE, *EXISTENTIALISM IS A HUMANISM, EXISTENTIALISM FROM DOSTOYEVSKY TO SARTRE* (ed. Walter Kaufman, Meridian Publishing Company, 1989) *available at* <http://www.marxists.org/reference/archive/sartre/works/exist/sartre.htm>.

<sup>17</sup> TIM KELLER, *THE REASON FOR GOD* 156 (Penguin Books Ltd, 2008).

exterminate the minority, and the minority will have no defense.<sup>18</sup> In contrast, a belief in a God with an objective moral standard supports the worldview that sees rights as belonging to the community not just yourself, with all individuals and minorities included in the great fabric of creation.

Without an objective standard we can't justify our obligation to morality, but we know it exists. Nietzsche understood this problem, "The masses blink and say: 'We are all equal—Man is but man, before God we are all equal.' Before God! But now this God has died."<sup>19</sup> Raimond Gaita, an atheist, also admits:

Only someone who is religious can speak seriously of the sacred... We may say that all human beings are inestimably precious, that they are ends in themselves, that they are owed unconditional respect, that they possess inalienable rights, and, of course, that they possess inalienable dignity. In my judgment these are ways of trying to say what we feel a need to say when we are estranged from the conceptual resources [i.e. God] we need to say... Not one of [these statements about human beings] has the power of the religious way of speaking... that we are sacred because God loves us, his children."<sup>20</sup>

## **2. Religion as an instrument of oppression**

If the world was made by a God of peace, justice, and love, we know that violence, oppression, and hate are wrong. Furthermore, if the world is fallen, broken, and needs to be redeemed, that explains the violence and disorder seen all over the world. "If you believe human rights are a reality, then it makes much more sense that God exists than that he does not."<sup>21</sup> The foundation for peace and justice does not simply end with a belief in God, however. It's important to distinguish between

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<sup>18</sup> *Id.*

<sup>19</sup> F. Nietzsche, Thus Spoke Zarathustra, part IV, *On the Higher Man*, near the end of section I.

<sup>20</sup> RAIMOND GAITA, A COMMON HUMANITY: THINKING ABOUT LOVE AND TRUTH AND JUSTICE. (Quoted in MICHAEL J. PERRY, TOWARD A THEORY OF HUMAN RIGHTS 7 and 17-18).

<sup>21</sup> Keller, *supra* note 17, at 156.

spiritual beliefs, because not just any belief in God or an objective moral standard results in the preservation of human rights and the overall shalom in a community.

A question posed by Nietzsche sheds light on barriers to peace in the religious worldview: “Why does man not see things? He is himself standing in the way: he conceals things.”<sup>22</sup> Religious people can just as easily become conduits of evil as non-religious; look at any dictatorial regime to see that neither the religious or secular have cornered the market on evil. The idea that one group has the ultimate truth and holds the ultimate standard by which all other people are judged leads to racism, slavery, and genocide. In the quest for power, governments and rebels wield the doctrines of religion to legitimate their cause and justify their violence. They indeed cannot see truth that leads to the peaceful flourishing in society because they are blinded by their own selfish ambition and fear of losing power and control.

Imperialism, especially, is rooted in an ultimate standard of morality that has bred only self-righteousness, self-absorption, and superiority over the “savages” of distant lands. Using their moral code as a measure of civilization, colonial powers justified economic expansion at an exorbitant cost to the “less civilized” societies in territories containing a wealth of natural resources and manpower to be exploited. Even missionaries who may have opposed the more cruel aspects of colonial policies were supportive of colonization as far as it facilitated a political environment that would allow for missionary activity, so that they found themselves playing an important role in the legitimization of imperial expansion in all forms.<sup>23</sup>

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<sup>22</sup> FRIEDRICH NIETZSCHE, DAYBREAK, s. 483 (R.J. Hollingdale translation).

<sup>23</sup> Exploring Africa, Unit Two: Studying Africa through the Social Studies, Module 7B: African History, the Era of the Global Encroachment, Teacher’s Edition, *available at*

## **B. Traditional African Culture**

Having considered the foundation of human rights as dictated by a religious worldview and the potential for manipulation of religion for the purpose of gaining power, we will now consider how a religious worldview, based on the biblical understanding of *shalom*, is favorable to the particularly African perspective. From this worldview, for an administration of justice to positively contribute to a flourishing society, human rights need to affirm both the dignity of the individual and the good of the community. No single culture can speak for all of humankind or solve its problems,<sup>24</sup> but generally the collective nature of traditional African society is conducive to the realization of human rights and social shalom. African society broadly operates from a worldview of group solidarity and collective responsibility, in contrast to Western notions of individualism and the social contract that free the individual from the constriction of the group.<sup>25</sup>

### **1. African Humanism**

African humanism emphasizes this interdependency of human beings, putting the individual on a continuum with the dead, living, and yet unborn.<sup>26</sup> Humanity's "self-centeredness is countered...by a deep and lasting socialization towards we-thinking resulting in a conception of the self that is unlike the Western conception."<sup>27</sup>

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<http://exploringafrica.matrix.msu.edu/teachers/curriculum/m7b/activity2.php> (accessed December 10, 2009).

<sup>24</sup> Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RIGHTS. QUART. 309, 325 (1987).

<sup>25</sup> *Id.*, at 323.

<sup>26</sup> Jeanne M. Woods, *Rights as Slogans: A Theory of Human Rights Based on African Humanism*, 17 NATL. BLACK L. J., 52-66 (2003).

<sup>27</sup> Cobbah, *supra* note 24, at 325.



Within this view of the African self as interdependent is the double notion of rights and duties, whereby the community helps the individual exercise his or her rights so that person can contribute to community development; thus the duties of the individual are the rights of the community and vice versa. Personhood is inherently connected to community, with obligations to the self, the family, and society.<sup>28</sup>

There is also a responsibility of the individual to future generations. However, nihilism prevents many African societies from being capable of investing in the future of their children and their children's children. Women in Uganda have had many children for the sole purpose of having additional labor contributions; these children have little hope for an education or a life outside of extreme poverty. Not only that, but the idea of preserving the environment for future generations is put on the backburner when civil war displaces peoples from their land and forces them to overuse small plots in IDP camps.

## **2. Personalist Morality**

Simeon Ilesanmi argues that a personalist morality centered on the religious principle of relationality bridges the gap between individualists and collectivists.<sup>29</sup> In a collectivist society, the individual's dignity is affirmed by their membership in the group, while in an individualist society, the self is prioritized at the expense of others, and society suffers as a result.<sup>30</sup> Personalism, on the other hand, recognizes both the

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<sup>28</sup> Woods, *supra* note 26.

<sup>29</sup> Simeon O. Ilesanmi, *Human Rights Discourse in Modern Africa: A Comparative Religious Ethical Perspective* 29 J. RELIG. ETHICS 293 (2001).

<sup>30</sup> *Id.*

individuality and sociality of people.<sup>31</sup> Through the concept of justice as dictated by religion, people are aware of their responsibility for their own existence as well as others, including what is right and wrong in how we treat one another, as opposed to acting on self-interest alone, or in complete self-denial.

### **3. Acholi Worldview: Bad Surroundings**

Narrowing in on a view of the Acholi people in the north of Uganda shows how traditional culture and religion intersect in daily life in the context of protracted armed conflict. The Acholi have suffered the most as a result of the ongoing war, and they will often describe these living conditions as “bad surroundings,” both when the fighting is intense and when it is at a lull, because there is still no peace.<sup>32</sup> As they struggle for balance and a comprehensible life in the midst of war and displacement, they still build for a future where “wealth can be imagined, even planned for.”<sup>33</sup> Growing cattle, young people getting married, democracy and the opportunities for education are signs of “good surroundings,” on which they set their hopes.<sup>34</sup> Good surroundings are “when things are normal, the society thriving, facing and overcoming crisis.”<sup>35</sup> Bad surroundings speak less about bad things happening and more about the stress and uncertainty about the future as the conflict continues, the

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<sup>31</sup> *Id.*

<sup>32</sup> Finnstrom, *supra* note 3, at 10.

<sup>33</sup> *Id.*, at 11.

<sup>34</sup> *Id.*

<sup>35</sup> OKOT P’BITEK ARTIST, THE RULER: ESSAYS ON ART, CULTURE, AND VALUES 27 (Nairobi: Heinemann Kenya, 1986).

fact that “the whole thing is out of hand, that the entire apparatus of the culture cannot cope with the menace anymore.”<sup>36</sup>

The concept of bad surroundings is derived from a lack of control, so it’s easy to see how religion is employed in the existential effort to cope with difficult situations in order to exercise some control, especially if the “drive to experience the world as meaningful” is the foremost of human universals.<sup>37</sup> Clifford Geertz describes man as entirely dependent on symbols. “Without our ability to create, grasp, and use symbols...he would be...a kind of formless monster with neither sense of direction nor power of self-control, a chaos of spasmodic impulses and vague emotions.”<sup>38</sup> Malinowski said that when the order of things cannot be controlled fully, humans turn to ritual and magic to reduce uncertainty and anxiety.<sup>39</sup> Finnstrom describes this as a sort of “lived realism” where “religious beliefs and practices are used to diagnose, explain, and interpret the individual causes of misfortune and illness.”<sup>40</sup>

The meaning of peace and the means to achieve it are vastly different in the competing dominant world religions, but in Uganda, the Acholi spirit world is mixed with precepts from both Christianity and Islam. Unfortunately, syncretism in Uganda has served to extend the pretext for superiority into the attitudes and actions of successive regimes as well as rebel groups, as to existentially negate the distinct message of either religion. What are left are religious precepts out of the context of

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<sup>36</sup> *Id.*, at 27.

<sup>37</sup> ALF. HORNBERG, *THE POWER OF THE MACHINE: GLOBAL INEQUALITIES OF ECONOMY, TECHNOLOGY, AND ENVIRONMENT* 237 (Walnut Creek, California: AltaMira Press, 2001).

<sup>38</sup> CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES: SELECTED ESSAYS* 99 (Basic Books, 47<sup>th</sup> Edition, 2003) (1973).

<sup>39</sup> BRONISLAW MALINOWSKI, *MAGIC, SCIENCE AND RELIGION, AND OTHER ESSAYS* (Garden City, N.Y.: Doubleday Anchor Books, 1948).

<sup>40</sup> Finnstrom, *supra* note 3, at 27.

their original message, wielded for power and control by both the Ugandan government and the LRA.

However, the biblical worldview, if understood in its entirety, is still the most powerful frame of reference for achieving peace, and resonates deeply with African circumstances because it is a faith of hope for the poorest of the poor. In fact, there has been a significant shift in Christianity's geographical center of gravity to the global south, so that today, Africans, Asians, and Latin Americans are more typical representatives of Christianity than Americans or Europeans.<sup>41</sup> "Nearly 200 years after the first wave of missionaries arrived in Africa, Christianity is growing faster here than anywhere else in the world. There are more than 390 million Christians in sub-Saharan Africa today, up from 117 million in 1970, a trend due mostly to evangelism." according to the Center for the Study of Global Christianity.<sup>42</sup>

The Masai, a semi-nomadic tribe in neighboring Kenya and northern Tanzania, have captured the heart of the Christian faith from an African perspective in a creed composed in 1960 in collaboration with missionaries:

We believe in the one High God, who out of love created the beautiful world and everything good in it. He created Man and wanted Man to be happy in the world. *God loves the world and every nation and tribe on the Earth.* We have known this High God in darkness, and now we know Him in the light. God promised in the book of His word, the Bible, that He would save the world and all the nations and tribes.

We believe that God made good His promise by sending His Son, Jesus Christ, a man in the flesh, a Jew by tribe, born poor in a little village, who left His home and was always on safari doing good, curing people by the power of God, teaching about God and man, showing *the meaning of religion is love.*

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<sup>41</sup> Noll, Stephen. *Global South Christendom: Is it Inevitable?* (23 October 2008) available at <http://pewforum.org/events/051805/global-christianity.pdf>.

<sup>42</sup> Shashank Bengali Knight Ridder *Newspapers Uganda is leading Africa's boom in Christianity*, Deseret News, Salt Lake City (Dec. 11 2008) available at [http://findarticles.com/p/articles/mi\\_qn4188/is\\_20060326/ai\\_n16174855](http://findarticles.com/p/articles/mi_qn4188/is_20060326/ai_n16174855).

He was rejected by his people, tortured and nailed hands and feet to a cross, and died. He lay buried in the grave, but the hyenas did not touch him, and on the third day, He rose from the grave. He ascended to the skies. He is the Lord.

We believe that all our sins are forgiven through Him. All who have faith in Him must be sorry for their sins, be baptized in the Holy Spirit of God, live the rules of love and share the bread together in love, to announce the Good News to others until Jesus comes again. We are waiting for Him. He is alive. He lives. This we believe. Amen.<sup>43</sup>

The backbone of the Masai faith is a profound connection between all living beings created by a loving God who not only promises to save humanity, but has in fact entered into humanity's suffering to display the greatest act of love in all of history, giving up His life and taking the wrath for our sin.

### **C. Development of the African state and its regional human rights system**

#### **1. Independence: Socialism in response to Colonialism**

Stepping back to look at the development of the independent African nation-state, its regional human rights system can also be seen to have been greatly influenced by the African culture and perspective.<sup>44</sup> Colonialism set the stage for a unique nationalist movement, though, that overemphasized the collective at the expense of the individual. The Organization of African Unity, for example, was established in the early 60's primarily to ensure decolonization, and its concern for preserving the independence of states far outweighed notions of individual rights,

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<sup>43</sup> CREEDS AND CONFESSIONS OF FAITH IN THE CHRISTIAN TRADITION (Edited by Jaroslav Pelikan and Valerie Hotchkiss, Yale University Press. 4 vols.). (emphasis added)

<sup>44</sup>El-Obaid and Appiagyei-Atua take a balanced approach to critiquing this system, acknowledging both the centrality of human rights to Africa's development and the historical factors that influenced the realization of these rights. See El-Obaid Ahmed El-Obaid and Kwadwo Appiagyei-Atua, *Human Rights in Africa: A New Perspective on Linking the Past to the Present*, 41 MCGILL L.J. 819 (1996).

with socialism incorporated into its purposes and principles.<sup>45</sup> Likewise, the African Charter on Human and People's Rights was heavily influenced by African socialism and nationalism and was also, therefore, more concerned with unity, non-interference, and liberation than individual human rights.<sup>46</sup>

El-Obaid and Appiagyei-Atua point out the problems with the socialist push, noting that it was born out of the myth of a *merrie Africa*, an idealized, conflict-free traditional African society that was disrupted by colonization.<sup>47</sup> Leaders who wanted to see this society reinstated upon independence failed to analyze the political forms of traditional societies and the concept of rights that went with each to see that, as elucidated by Ilesanmi, indigenous African culture is not monolithic or homogeneous, nor is it morally irreproachable.<sup>48</sup> There are in fact traditional practices that are abominable and completely devastating to human dignity. Yet, evolution within a society is always taking place, and those who see African culture as a commodity that should be "salvaged" from the past are ignoring the existential transformation of cultures over time.<sup>49</sup>

The Charter, adopted in 1981, prioritized the community and duties, without recognizing the inherent rights of the individual that enable individuals to perform duties and contribute to the community. However, the Charter notably brought together civil and political rights along with economic, social, and cultural rights, and

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Ilesanmi, *supra* note 29.

<sup>49</sup> *Id.*, at 309.

peoples' rights, making it the most comprehensive of the regional instruments.<sup>50</sup> The interconnectedness and seamlessness of rights embodied in the Charter is a distinguishing feature that, as Chidi Anselm Odinkalu asserts, puts its implementing institutions and human rights advocates in a position to “pioneer imaginative approaches to the realization of these rights.”<sup>51</sup> The bringing together of all three generations of rights highlights the value of regional arrangements, which is not in picking and choosing rights from the Universal Declaration of Human Rights, but in realizing all of these rights in a way that is legitimate within the context and culture of regions of the world that have very different worldviews.

## **2. Economic, Social, and Cultural Rights**

### **a) Development**

One thing that states have failed to acknowledge with regard to peoples' rights is that the survival of the particular way of life of indigenous peoples “depends on access and rights to their traditional land and the natural resources thereon.”<sup>52</sup> The violation of this right is directly connected to the violation of a host of other rights under the charter, such as non-discrimination, freedom to take part in the cultural life of a community, and self-determination, to name a few. The case before the African Commission brought by the Social and Economic Rights Action Center against Nigeria was important in this regard. The Commission, mandated under Article 45 of

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<sup>50</sup> Chidi Anselm Odinkalu, *Analysis of Paralysis or Paralysis by Analysis? Implementing Economic, Social, and Cultural Rights Under the African Charter on Human and Peoples' Rights*, 23 HUM. RIGHTS QUART. 327 (2001).

<sup>51</sup> *Id.*, at 335.

<sup>52</sup> The African Commission of Human and Peoples Rights (ACHPR), *Report of the Working Group of Experts on Indigenous Populations/Communities* 89 (2005).

the Charter to promote and protect rights, interpret charter provisions, and undertake other tasks referred to it,<sup>53</sup> propelled international jurisprudence on economic, social, and cultural rights in its decision regarding this case.

Not only did its decision give voice to article 21, the right to freely dispose of wealth and natural resources, but it revealed the potential for a cross-generational approach to breaking barriers between all the other rights through the Commission's creative interpretation of international instruments.<sup>54</sup> Furthermore, though it was "unique to the particular history and political economy of Nigeria, the violations charted in the case resonate in many other African countries, and in states elsewhere around the world confronting the twin issues of resource exploitation and environmental protection in a fragile ecosystem, and where indigenous and minority communities and their rights are involved."<sup>55</sup>

The SERAC case, then, was a sort of coming of age for the Commission, "bringing together many principles that were scattered throughout the Commission's previous decisions."<sup>56</sup> While Civil and Political rights had generally been given the most attention by the Commission, this case brought Economic, Social, and Cultural rights to the forefront, obliging states to respect, protect, promote, and fulfill all of these rights.<sup>57</sup>

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<sup>53</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, at article 45.

<sup>54</sup> J. Oloka-Onyango, *Reinforcing Marginalized Rights in an Age of Globalization: International Mechanisms, Non-State Actors, and the Struggle for Peoples Rights in Africa*, 18 AM. U. INT. L. R. 851 (2003).

<sup>55</sup> *Id.*, at 873.

<sup>56</sup> Oloka-Onyango, *supra* note 54.

<sup>57</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. No. 155/96, para. 44 (2001).



Ironically, as progressive and important as these duties are for human rights jurisprudence in Africa, they serve to illuminate the gap between the promises of the Charter and the reality of state performance. This is especially the case for economic, social, and cultural rights, the provisions for which (in addition to group rights) have set the African human rights system apart from other regions in a very positive way, but which have simultaneously been very poorly enforced. It wasn't really until escalating armed conflicts in the 1990's and their associated atrocities acted as an impediment to economic development that the push for human rights was brought center stage. However, poverty and underdevelopment have been used as an excuse by governments to justify their non-enforcement, presupposing that economic, social, and cultural rights are more resource-intensive than civil and political rights.<sup>58</sup> In reality this isn't the case, especially considering the importance of education for even the potential of economic development. As Agbakwa argues, "underdevelopment does not justify partial enforcement any more than poverty justifies parents consistently feeding one child to the neglect of their other children."<sup>59</sup>

#### **b) Role in armed conflict**

The non-recognition or under-conceptualization of economic and social rights have triggered conflicts or made them "more pervasive and intractable than they would have otherwise been."<sup>60</sup> Agbakwa argues that an "absence of mechanisms for adjudicating violations or threatened violations of economic and social rights makes

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<sup>58</sup> Shedrack C. Agbakwa, *Reclaiming Humanity: Economic, Social, and Cultural Rights as the Cornerstone of African Human Rights*, 5 YALE HUM. RTS. & DEV. L. J. 177-216, (2002).

<sup>59</sup> *Id.*, at 188.

<sup>60</sup> Shedrack C. Abgakwa, *A Path Least Taken: Economic and Social Rights and the Prospects of Conflict Prevention and Peacebuilding in Africa*, 47 J. AFR. L., 40 (2003).

the resort to extra-legal means for redress attractive and all but inevitable.”<sup>61</sup> He describes how all citizens have minimum expectations of their governments, so when there is no other viable means of being heard or seeing change, citizens will make their demands in militant terms. He concludes that “the hope for conflict prevention and sustainable peace building effort or strategy lies in the proper recognition of the role of economic and social rights in igniting these conflicts and the centrality of effective protection of socio-economic rights in peace building and in preventing future conflicts.”<sup>62</sup>

Agbakwa nuances his argument by observing how “constitutional guarantees of socio-economic rights per se cannot forestall conflicts,” but that the “opportunities and processes they create are likely to curb incidents that usually provide motivation for conflicts.” These guarantees are “vital (indispensable) tools for good governance and peaceful coexistence based on mutual recognition of everyone’s humanity,” because “the greatest benefit of guaranteeing enforceable (or justiciable) rights is the assurance it gives to people that effective mechanisms for adjudicating violations or threatened violations of their rights are available.”<sup>63</sup>

While they are not the only available means to achieving social justice, then, justiciable rights have potential for mediating conflict because they provide a “peaceful avenue for aggrieved individuals to attempt to compel a change,”<sup>64</sup> and at least an opportunity “to give voice to human suffering, to make it visible, and to

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*, at 46.

<sup>64</sup> *Id.*, at 46.

ameliorate it."<sup>65</sup> Constitutional guarantees provide a forum for the oppressed, "wretched of the earth,"<sup>66</sup> to tell stories of their exclusion, dehumanization and marginalization.<sup>67</sup> At the heart of these guarantees is the recognition of shared humanity between all people, which is crucial to moving forward into a peaceful flourishing society.

#### **D. Discussion**

Francis Stewart, in analyzing the horizontal inequalities among religious or ethnic groups and their role in inciting violent conflict, details how "human motivation of the actors involved is clearly at the heart of any conflict situation. If a conflict is to be avoided or stopped, this motivation must be understood and the conditions leading to a predisposition to conflict reduced or eliminated."<sup>68</sup> In the context of protracted armed conflict, an effective justice system must help break the cycle of political violence by making sure that the root causes of conflict are recognized and addressed. If at the heart of armed conflict is a plight for socio, political, and economic inclusion of dehumanized and marginalized individuals or people groups, the attitudes and policies that have divided and denigrated them must be changed. A long-standing, violent conflict such as Uganda's begs the question, what is the source of the violence, and what is fueling its continuation?

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<sup>65</sup> U. Baxi, *Voices of suffering and the future of human rights*, 8 *TRANSNL. L. & CONTEMP. PROBLEMS*, 127 (1998).

<sup>66</sup> FRANTZ FANNON, *THE WRETCHED OF THE EARTH* (Grove Press, New York, 1965).

<sup>67</sup> C. Scott and P. Macklem, *Constitutional ropes of sand or justiciable guarantees? Social rights in a new South African Constitution*, 1 *U. PA L. REV.* 141, 147 (1992).

<sup>68</sup> Francis Stewart, *The Root Causes of Conflict: Some Conclusions* 7 (Queen Elizabeth House, University of Oxford Working Paper No. 16, 1998).

Behind all the issues relating to the understanding and enforcement of rights and good governance in modern African states, and particularly in Uganda, are the attitudes and policies of the colonial era. Colonialism wielded violence in all forms as an instrument of control, justified by moral supremacy and racist ideology to accumulate wealth and power. Because humanity's interconnectedness is central to shalom in society, violence used as an instrument of power tears apart social relationships. Violence is then perpetuated by these severed relationships and exacerbated by the disparity of resources within society. Colonialism, then, paved the way for successive regimes to treat citizens much like the colonial subjects of the former territories.

### **III. Historical Narrative**

We just saw how human rights are secured by a religious worldview that strikes a balance between the needs of the individual and the community, and how the particular African cultural perspective and historical circumstances have generally played into the development of regional human rights standards, as well as fueling armed conflict. Recognizing and addressing underlying historical causes of the current conflict in Uganda, specifically, leads to a common national narrative very much colored and shaped by colonialism.

#### **A. Colonialism: The civilizing project**

Arab traders in slaves and ivory moved into the region in the 1850s, devastating the area by fusing trade with robbery and setting native tribes against each other.<sup>69</sup> The imperialist mission that followed in the late 1800's was driven by competition between European nations, and was essentially designed to extract resources and subjugate the local population, ripping the fabric of society apart at the seams in the process.

##### **1. Racist ideology**

European explorers spread a mindset that conformed to the racist ideas that dominated Europe at the time. Samuel Baker traveled extensively through Africa on the imperial mission to suppress the slave trade, but his travelogues show racist perceptions: "The treachery of the negro is beyond belief; he has not a moral human

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<sup>69</sup> Finnstrom, *supra* note 3, at 32.

instinct, and is below the brute. How is it possible to improve such abject animals? They are not worth the trouble, and they are only fit for slaves, to which position their race appears to have been condemned.”<sup>70</sup>

“Racist ideologies offered timely legitimacy to the imperial dimension of this expansion and even legitimated the gross violence that eventually led to genocide in some of the imperial and industrial peripheries.”<sup>71</sup> John Hanning Speke described the Africans he met as “both morally and physically, little better than brutes, and as yet there is no better prospect for them.”<sup>72</sup> He spoke for them by saying that “the great cause is their want of a strong protecting government.”<sup>73</sup> This “protection” was actually a guise for “oppression,” which characterized colonial rule and continued into post-colonial governance.

Speke elaborated on his perception of the people he encountered in the region as inadequate to rule over the land:

“This country being full of sweet springs, accounts for the denseness of the population and numberless heads of cattle. To look upon its resources, one is struck with amazement at the waste of the world: if instead of this district being in the hands of its present owners, it were ruled by a few scores of Europeans, what an entire revolution a few years would bring forth! An extensive market would be opened to the world, the present nakedness of the land would have a covering, and industry and commerce would clear the way for civilization and enlightenment.”<sup>74</sup>

## **2. War of annexation**

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<sup>70</sup> SAMUEL WHITE BAKER, ISMAILIA: A NARRATIVE OF THE EXPEDITION TO CENTRAL AFRICA FOR THE SUPPRESSION OF THE SLAVE TRADE, ORGANIZED BY ISMAIL, KHEDIVE OF EGYPT 315 (London: Macmillan, vol. 2, 1874).

<sup>71</sup> Finnstrom, *supra* note 3, at 58.

<sup>72</sup> JOHN HANNING SPEKE, WHAT LED TO THE DISCOVERY OF THE SOURCE OF THE NILE, 344-345 (London: W. Blackwood and Sons, 1864).

<sup>73</sup> *Id.*, at 344.

<sup>74</sup> *Id.*

The European mission revolved around opening up space for trade, after industrialization in Europe necessitated new markets and new sources of raw material and manpower.<sup>75</sup> Uganda would eventually supply England with cotton, coffee, tea, and other raw materials<sup>76</sup> The market economy, however, was established on extremely unequal terms, extracting ivory, for example, at a minimum estimated profit of 1,500 to 2,000 percent.<sup>77</sup>

What's more, European explorers paved their way through violence, intimidation, and militarization. The colonialists controlled the population through taxes, confiscation of weapons, and forced recruitment of porters and labor. Baker claimed exclusive control over raw materials and considered anyone who failed to comply or pay taxes as hostile, and, therefore, a legitimate military target.<sup>78</sup> Entire villages were destroyed in the effort to secure materials. In Baker's own words:

“The first steps in establishing the authority of a new government in a tribe hitherto savage and intractable were of necessity accompanied by military operations. War is from annexation, and the law of force, resorted to in self-defense, was absolutely indispensable to prove the superiority of the power that was eventually to govern. The end justified the means.”<sup>79</sup>

The violence was considered legitimate for moral reasons, in effort to civilize the Africans through militarization. Baker believed that “if it were possible to convert the greater portion of African savages into disciplined soldiers, it would be the most rapid stride towards their future civilization...a savage who has led a wild and

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<sup>75</sup> Finnstrom, *supra* note 3, at 57.

<sup>76</sup> MAHMOOD MAMDANI, *POLITICS AND CLASS FORMATION IN UGANDA* 48 (London: Heinemann, 1976).

<sup>77</sup> Baker, *supra* note 70, vol. 2, at 250.

<sup>78</sup> Finnstrom, *supra* note 3, at 59.

<sup>79</sup> Baker, *supra* note 70, vol. 2, at 513.

uncontrolled life must first learn to obey authority before any great improvement can be expected.”<sup>80</sup>

## **B. Reification and codification of Ugandan ethnic identities**

Ethnic belonging is about drawing boundaries and using differences and similarities or orient oneself within the world. However, “ethnic identity and culture are socially lived, and created and recreated in everyday life.”<sup>81</sup> Ethnic identity cannot therefore be categorized into the pre-colonial and modern. The region known as Acholi-land was a contact zone for different stakeholders, of which the colonialists were the most influential. However, its forceful power was not strictly formative or final, but functioned on a continuum with pre-colonial and post-colonial occurrences. Acholi ethnic identity and other Ugandan ethnic identities were reified or codified because of colonialism, but Acholi collective belonging is not a colonial invention, imposed from above.<sup>82</sup>

### **1. Colonial rhetoric**

Colonial rulers first created Gulu in 1910 and Chua in 1914, and later merged them into what was labeled as the Acholi district.<sup>83</sup> They regarded themselves as instrumental in the formation of an overall ethnic belonging, helping them realize themselves as belonging to a nation or tribe:

“The urgent trend of modern administration has been *to bring the clans together and to make the Acholi conscious of their unity as a single people*, without destroying their individualistic background. To this end the districts of Gulu (today’s Gulu and

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<sup>80</sup> Baker, *supra* note 70, vol. 1, at 302.

<sup>81</sup> Finnstrom, *supra* note 3, at 32.

<sup>82</sup> *Id.*, at 31.

<sup>83</sup> Finnstrom, *supra* note 3, at 37.



Amuru) and Chua (today's Kitgum and Pader) were amalgamated in 1937, when a unified Acholi district was formed with headquarters at Gulu: at the same time the Acholi Council, with seats not only for chiefs but for representatives of the people from all parts of the country, was brought into being.<sup>84</sup>

Colonial scholarship further encouraged systematic comparison between groups, categorized them into those like kingdoms with a centralized authority, and those without.<sup>85</sup> The non-Bantu speaking people were defined by what they lacked. Postlethwaite, the pioneer colonial administrator of Acholiland said, "I became so discouraged by the absence of any real chiefs with definite, permanent tribal authority, that I found my mind turning for salvation to the old Buganda Agent policy of the Eastern Province of Uganda and, in fact, I actually installed one or two Banyoro as advisers to individual chiefs."<sup>86</sup> Postlethwaite notes that he was "dealing with a tribe who had no system of ancient holdings, nothing that answered to the Bataka (patrilineal clan heads) of...Buganda."<sup>87</sup>

The Bantu speaking Buganda kingdom of central Uganda, instead, was the "constant and normative point of reference"<sup>88</sup> As colonial explorers had headed up from Buganda over the Nile into Acholiland they described "the tribes grew increasingly more primitive; they were back in a region of naked, painted men who carried bows and arrows and who knew nothing of the arts and crafts of Buganda."<sup>89</sup> The arts and crafts of the Baganda were thought to be "far beyond the level attained

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<sup>84</sup> Rennie Bere, *An outline of Acholi History*, 11 UG. J. 1, 8 (1947). (emphasis added)

<sup>85</sup> MEYER FORTES AND E. E. EVANS-PRITCHARD, INTRODUCTION TO AFRICAN POLITICAL SYSTEMS 5 (edited by Meyer Fortes and E. E. Evens-Pritchard, Oxford: Oxford University Press/International African Institute, 1940).

<sup>86</sup> J. R. P. POSTLETHWAITE, I LOOK BACK 56 (London: T.V. Boardman, 1947.).

<sup>87</sup> *Id.*, at 65-66; quoted also in FRANK KNOWLES GIRLING, THE ACHOLI OF UGANDA 175 (London: Her Majesty's Stationary Office, 1960).

<sup>88</sup> Finnstrom, *supra* note 3, at 41.

<sup>89</sup> ALAN MOOREHEAD, THE WHITE NILE 68 (London: H. Hamilton 1960).

by neighboring peoples,”<sup>90</sup> and both the religion and state reached a higher standard of development than other countries.<sup>91</sup> These people eventually carried out much administration for the British in the areas outside of Buganda, serving as tax collectors and labor organizers and insisting on the exclusive use of their language (Luganda) and traditional dress.<sup>92</sup>

The Acholi, on the other hand, were seen as lacking proper leadership but plenty suited to military recruitment. Postlethwaite, who recruited Acholi into the King’s African rifles during WWI, said that the Acholi took “to soldiering like ducks to water.”<sup>93</sup> In this way, the colonized subjects were labeled as warlike, as in a “colonial mirror which reflects back onto the colonialists the barbarity of their own social relations, but as imputed to the savage or evil figures they wish to colonize.”<sup>94</sup>

Missionaries also encouraged the production of texts that dealt with Acholi culture and history, compiling myths and histories and “promoting a higher degree of cultural coherence throughout Acholiland.”<sup>95</sup> Missionary competition created divisions between Catholicism and Anglican Protestantism, with Catholicism taking the dominant position in Acholiland.<sup>96</sup>

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<sup>90</sup> WLATER RUSCH, *KLASSEN AND STAAT IN BUGANDA VOR DER KOLONIALSEIT: UBER DIE ENTWICKLUNG DER PRODUKTIONSVERHALTNISSE IN BUGANDA BIS ZUM ENDE DES 19. JARHUNDERTS AND DIE HERAUSBILDUNG EINES STAATES, SEINEN AUFBAU UND SEINE FUNKTIONEN* 374 (Berlin: Akademie-Verlag, 1975).

<sup>91</sup> *Id.*, at 390.

<sup>92</sup> Library of Congress Studies: Uganda, *available at* <http://memory.loc.gov/frd/cs/ugtoc.html>.

<sup>93</sup> Postlethwaite, *supra* note 86, at 71.

<sup>94</sup> Michael Taussig, *Culture of terror, space of death: Roger Casement’s Putomayo report and the explanation of torture*, 26 COMP. STUD. SOC. HIST. 467, 485 (1984).

<sup>95</sup> Finnstrom, *supra* note 3, at 39.

<sup>96</sup> Finnstrom, *supra* note 3, at 40.

## 2. Colonial practices

In addition to colonial scholarship, colonial practices were influential in creating more rigid ethnic boundaries and divides, especially in that colonial rulers demonstrated a “concern for keeping the natives in the places they belong.”<sup>97</sup> For instance, the market economy was to restrict interethnic movements. The products that had been exchanged in trade networks across the region could not compete with cheap goods mass produced in England.<sup>98</sup> Furthermore, the prices of trading licenses and taxes were so high that European and Indian large business owners eventually replaced local traders.<sup>99</sup> Development was also unevenly distributed between the two parts of the country, with the south securing railroad transport, cash crops, mission education, and the seat of government.<sup>100</sup> By the time of independence, the northerners were seen as soldiers, civil servants were southerners, and merchants were Asians.

Colonial practices furthermore demonstrated an ambition not to unite the Acholi for the sake a united Acholi nation, as they had claimed, but as a strategy to better administer the protectorate.<sup>101</sup> For example, the majority of chiefs appointed by the British were commoners, not hereditary successors to precolonial chiefs, and they were only nominated if they were willing to cooperate with the administration.<sup>102</sup>

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<sup>97</sup> John Orr. Dwyer, *The Acholi of Uganda: Adjustment to Imperialism*, Ph.D. dissertation 202, Columbia University, New York (1972).

<sup>98</sup> Finnstrom, *supra* note 3, at 38.

<sup>99</sup> *Id.*, at 39.

<sup>100</sup> Library of Congress Studies: Uganda, *supra* note 92.

<sup>101</sup> Finnstrom, *supra* note 3, at 41.

<sup>102</sup> Girling, *supra* note 87, at 200-201.

### C. Neocolonial power struggles

After independence, African leaders inherited infrastructures that were designed for economic extraction and lacking a tradition of accountability to the governed, so they perpetuated the generally anti-democratic and repressive measures and attitudes of their colonial predecessors. Regional and ethnic boundaries were manipulated and compounded by regimes scrambling for power all throughout Africa.

Unlike most other colonial territories, Uganda achieved independence from Britain in 1962 without a struggle, because the British had set the stage for withdrawing before an effective nationalist movement could be organized.<sup>103</sup> When Uganda achieved independence it was divided between its major kingdoms, of which the Baganda kingdom was most powerful. The independence constitution reflected the hierarchy of these different ethnic groups, granting federal status to the kingdom of Buganda, semi-federal status to the kingdoms of Ankole, Bunyoro and Toro, and district status to Acholi, Bugisu, Bukedi, Karamoja, Kigezi, Lango, Madi, Sebei, Teso and West Nile.<sup>104</sup>

The Baganda, whose population exceeded one million, whose territory covered most of the favored south, and whose people asserted superiority over their neighbors, best exemplified local nationalism in the newly independent state.

“Subimperialism and Ganda cultural chauvinism” produced a legacy of resentment

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<sup>103</sup> Library of Congress Studies: Uganda, *supra* note 92.

<sup>104</sup> PHARES MUKASA MUTIBWA, UGANDA SINCE INDEPENDENCE: A STORY OF UNFULFILLED HOPES 24 (London: Hurst, 1992).

and discord between the Baganda and its neighboring ethnic groups when they should have been working together to build a functioning independent state.<sup>105</sup>

Milton Obote, the leader of the Uganda People's Congress (UPC), was elected as the country's first Prime Minister. Obote was faced with the challenge of meeting the demands of these divergent interest groups, especially of the Baganda and their kabaka, Mutessa II, who was designated to the ceremonial role of president and head of state. By 1966, the relationship between Obote and the kabaka deteriorated and Obote's armed forces drove the kabaka out of his palace into exile in Britain. Obote then introduced a new constitution, which brought an end to the existence of the hereditary kingdoms, and declared himself the new executive president.<sup>106</sup>

Obote wanted to implement a Common Man's Charter full of anti-capitalist, anti-imperial, anti-feudal, and anti-tribal rhetoric.<sup>107</sup> This "Move to the Left" was welcomed in the north as a move toward further decolonization because the colonial authority had favored the Baganda's feudal model with a centralized sociopolitical organization, but the Baganda opposed it as chauvinistic and anti-Baganda.<sup>108</sup> Obote's military protégé, Idi Amin, whom he had relied on to maintain power by force, then gained enough support to overthrow him in 1971. He had support from British and Israeli forces, who quickly recognized him as the new head of state, as well as arms

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<sup>105</sup> Library of Congress Studies: Uganda, *supra* note 92.

<sup>106</sup> *Id.*

<sup>107</sup> Finnstrom, *supra* note 3, at 66.

<sup>108</sup> *Id.*

and military technology supplied by global traders connected to companies in the US, UK, Soviet Union, and Libya.<sup>109</sup>

With Obote and a small army of his supporters exiled in neighboring Tanzania, Amin appointed himself as the new president, and for eight years Uganda was subjected to his brutal military regime. Obote was from Langoland, bordering Acholiland in the north, and even though his ministers came from all over the country, he became associated with the whole Lango group and Acholi also because many of his security forces were Lango and Acholi. Amin, on the other hand, was from the West Nile region, and recruited people from that area to his armed forces. Amin specifically targeted the Acholi people of the north for their support of Obote,<sup>110</sup> but anyone else who was considered a threat was in grave danger during Amin's stay in power. He ordered mass killings of Acholi soldiers and executed many prominent Acholi politicians and intellectuals.<sup>111</sup>

Support for Amin decreased significantly by 1978, when Tanzanian President Nyerere's army joined with Obote's army to overthrow Amin. The troops succeeded in expelling him to Saudi Arabia, but clashes between military leaders continued. The

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<sup>109</sup> *Id.*, at 67; Oliver Furley, *Britain and Uganda from Amin to Museveni: Blind eye diplomacy*, in CONFLICT RESOLUTION IN UGANDA (edited by Kumar Rupesinghe, Oslo: International Peace Research Institute: London, James Churrey; Athens: Ohio University Press, 1989); Mahmood Mamdani, *Imperialism and fascism in Uganda*, Trenton, N.J.: Africa World Press of the Africa Research and Publications Project (1984).

<sup>110</sup> International Crisis Group (ICG), "Conflict History: Uganda", November 2006, available at [http://www.crisisgroup.org/home/index.cfm?action=conflict\\_search&l=1&t=1&c\\_country=111](http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=111).

<sup>111</sup> Amnesty International, *Disappearances and Political Killings: Human Rights Crisis of the 1990s: A Manual for Action*, available at [http://web.amnesty.org/aidoc/aidoc\\_pdf.nsf/d45725da5fa95f1f80256a2b00642199/cde8ef35a67e99e3802569a70019299e/\\$FILE/a3307593.pdf](http://web.amnesty.org/aidoc/aidoc_pdf.nsf/d45725da5fa95f1f80256a2b00642199/cde8ef35a67e99e3802569a70019299e/$FILE/a3307593.pdf); see also HENRY KYEMBA, A STATE OF BLOOD: THE INSIDE STORY OF IDI AMIN (New York: Ace Books, 1977), *Special report: Who were Amin's victims?* The Daily Monitor, 13 June 2007, available at <http://web.archive.org/web/20070613161724/http://www.monitor.co.ug/specialincludes/ugprsd/amin/articles/amin6.php>. (accessed on December 10, 2009.)

violence of Amin's regime was largely associated with West Nilers, so soldiers in Obote's army took revenge on the people in that region, while pro-Amin insurgents were attacking from Congo and Sudan, compounding the violence in the West Nile region.<sup>112</sup>

Yusuf Lule, academic and former principal of Makerere University, and the Uganda National Liberation Front (UNLF) established an interim government, but Lule was removed after only three months and replaced by Godfrey Binaisa, a member of Obote's UPC.<sup>113</sup> Other militias began to rapidly recruit members, leading to a military coup on May 10, 1980 led by Major General David Oyite Ojok, but also including Paulo Muwanga, chair of the Military Commission, Tito Okello, one of the commanders of Obote's army, and current president Yoweri Kaguta Museveni.<sup>114</sup>

As a result of rigged elections in 1980 Obote once again came into power, with Muwanga as vice president and minister of defense, but Museveni and his newly formed National Resistance Army (NRA) immediately launched a guerrilla war in the rural areas of Uganda to challenge him. Museveni took up arms because of the so-called rigged elections, holding that there was an "absolute need to revolutionize Ugandan politics in the aftermath of Amin's fall from power...because 'the system' that brought Obote back to power had been 'created' by the colonialists and 'inherited

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<sup>112</sup> Finnstrom, *supra* note 3, at 65.

<sup>113</sup> Library of Congress Studies: Uganda, *Uganda after Amin, The Interim Period: 1979-1980*, available at <http://memory.loc.gov/cgi-bin/query/r?frd/cstdy:@field%28DOCID+ug0022%29>.

<sup>114</sup> ICG, *supra* note 110.

at independence.’ It was then ‘perfected’ by Obote in the 1960s and ‘matured’ under Amin’s rule.”<sup>115</sup>

In the course of the next four years, Obote’s regime committed widespread atrocities in the counterinsurgency against Museveni’s NRA. The fighting took place primarily in the Luwero triangle of central Uganda. The Acholi were largely held responsible for the atrocities committed, and many people saw Museveni’s war as against a “regime of northerners, rather than the war for democracy that Museveni claimed it to be.”<sup>116</sup> Witnesses before the Human Rights Commission described the army as Acholi even though they were from other places.<sup>117</sup>

In 1985, Obote was overthrown by General Tito Okello and a group of soldiers, returning the country to military rule for less than a year until Museveni pushed his way to Kampala and took over in 1986. Museveni then implemented a four-year interim government with a “no-party” system that restricted political parties from entering candidates directly into elections. His government received widespread international support, and Uganda’s economy began to improve.<sup>118</sup> However, his government in many ways followed the pattern of every other previous regime, clutching onto power at all cost, and demonizing and opting for the military response to opposition. Rather than ending the many years of fighting and oppression, then, Museveni’s takeover marked the beginning of several new conflicts in the north and

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<sup>115</sup> Finnstrom, *supra* note 3, at 67: quoting from PHARES MUKASA MUTIBWA, UGANDA SINCE INDEPENDENCE: A STORY OF UNFULFILLED HOPES (London: Hurst, 1992), and YOWERI K. MUSEVENI, WHAT IS AFRICA’S PROBLEM? 31 (Kampala: NRM Publications, 1992).

<sup>116</sup> Finnstrom, *supra* note 3, 74; New Vision, October 9 2002; TIM ALLEN, TRIAL JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE LORD’S RESISTANCE ARMY 199 n. 5 (London: Zed books, 2006).

<sup>117</sup> ICG, *supra* note 110.

<sup>118</sup> *Id.*



peripheral areas of Uganda, including the conflict with Joseph Kony and his LRA, which has continued up to this day.

#### **D. Legacy of violence and degradation**

Political history professor Mwangusa Ndebesa noted that, around the time of independence, the “seed of disunity was already there before 1962 among different ethnic communities.”<sup>119</sup> He emphasized, however, that even with all those differences a unified nation could have been forged, except the State has “failed to shape the attitude and culture of Ugandans; those who have held state power have done it not because they wanted to use the State as an instrument for creating unity but to consolidate their power perpetually.”<sup>120</sup>

When the Uganda People’s Congress’ Joseph Ochieno was asked to give an assessment of Uganda 47 years after independence, he also stated frankly that Uganda does not have a united, cohesive society at this point, and in many ways has regressed. “To use the popular term in town we have only had a change of guard in that we have an African at the helm in State House. Our economy is still largely controlled externally.”<sup>121</sup> The general practice of the colonial authority was to control and contain the population through violence and degradation. In the same way today, even with the great strides Uganda has taken economically, the current government treats much of its population the same way as the imperialists from whom it achieved independence.

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<sup>119</sup> *Seeds of disunity sown before 1962*, Daily Monitor, October 17 2009, [http://www.monitor.co.ug/artman/publish/news/Seeds\\_of\\_disunity\\_sown\\_before\\_1962\\_93047.shtml](http://www.monitor.co.ug/artman/publish/news/Seeds_of_disunity_sown_before_1962_93047.shtml).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

“What we see is a terrible legacy of colonialism. When client countries were seen as extended farms for the mother country, they had only one road leading to the port... We no longer have mother countries; we no longer have client countries, yet we have not developed a road network between ourselves. We kept our barriers.”<sup>122</sup> Ibrahim here is addressing the African regional economic institutions and their need to be integrated for moving forward in a global economy, but the spirit of his statement rings true all the way down to individual relationships within post-colonial Ugandan society. “We kept our barriers.”<sup>123</sup>

### **1. Military action and war talk**

When Museveni took power in 1962, Obote’s and Okello’s soldiers fled to the north and launched the Uganda People’s democratic Movement/Army (UPDM/A). As Museveni’s troops followed them northward their behavior deteriorated. “Killings, rape, and other forms of physical abuse aimed at noncombatants became the order of the day soon after the soldiers established themselves in Acholiland, which was foreign territory to them.”<sup>124</sup> Before the war, cattle had been the Acholi’s most valuable commodity, but as a result of the army’s looting almost all of the cattle were

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<sup>122</sup> Mo Ibrahim, quoted in *Africa: Viable Nations Depend on Integrating Economies*, Says Business Leader, 5 October 2009, available at <http://allafrica.com/stories/200910050089.html>.

<sup>123</sup> *Id.*

<sup>124</sup> Finnstrom, *supra* note 3, at 71; ROSALBA OYWA, IN ARMS TO FIGHT, ARMS TO PROTECT: WOMEN SPEAK OUT ABOUT CONFLICT (edited by Olivia Bennett, Jo Bexley, and Kitte Warnock, London: Panos, 1995); Ruddy Doom and Koen Vlassenroot, *Kony’s message: A new Koine? The Lord’s Resistance Army in northern Uganda*, 98 AFR. AFF, 390 (1999); Ogenga Otunnu, *Causes and consequences of the war in Acholiland*, in PROTRACTED CONFLICT ELUSIVE PEACE: INITIATIVES TO END THE VIOLENCE IN NORTHERN UGANDA (edited by Okello Lucima, London: Conciliation Resources and Kacoke Madit, 2002); M. L. Pirouet, *Human rights issues in Museveni’s Uganda*, in CHANGING UGANDA: THE DILEMMAS OF STRUCTURAL ADJUSTMENT AND REVOLUTIONARY CHANGE (edited by Holder Bernt Hansen and Michael Twaddle, London: James Currey; Kampala: Fountain Press; Athens: Ohio University Press; Nairobi: Heinemann Kenya, 1991).

lost. This destruction of wealth was so severe that people claimed it was worse than the Amin era.<sup>125</sup> Amin had mostly targeted politicians, soldiers, and intellectuals, not ordinary people deep in the bush.

As Dolan points out, “the Government’s failure to deal with the high levels of impunity enjoyed by the UPDF seemed to many people in northern Uganda to be an implicit authorization of that abuse, further proof that the Government shared in the devaluation of the Acholi.”<sup>126</sup> As a result, there was widespread support for armed resistance, either directly or as the only perceived means of survival. Furthermore, Acholi soldiers from Uganda’s previous armies had a hard time reintegrating into rural life and being reconciled to their communities, and instead joined other rebel groups.

The Ugandan government has favored the military option as the primary method of responding to resistance, but as Chris Dolan and others point out, the LRA could have been overcome by military means many years ago.<sup>127</sup> The fact that they haven’t reflects the government’s lack of commitment to peace and its agenda for retaining control through violence. The government has also pursued these military operations alongside diplomatic efforts and negotiations, so that its diplomatic efforts have not aimed to deal conclusively with the LRA, but have instead proven to be a form of war talk, or “peace jokes.”<sup>128</sup> For example, in the course of meetings between representatives of both the Government and the LRA during 1993 and 1994, an uneasy ceasefire was brought to a swift end when Museveni issued an ultimatum to

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<sup>125</sup> Finnstrom, *supra* note 3, at 71.

<sup>126</sup> Dolan, *supra* note 1, at 231-232.

<sup>127</sup> Dolan, *supra* note 1, at 38.

<sup>128</sup> Local parlance, quoted in Finnstrom, *supra* note 3, at 229.

the rebels giving them seven days to retreat from the bush or be killed.<sup>129</sup> Of course this led to a dramatic resurgence of violence within only a few days.

Most recently, in 2006, a cessation of hostilities agreement was signed and a new round of peace talks took place in Juba, Sudan, culminating in a comprehensive settlement in March 2008.<sup>130</sup> The Final Peace Agreement included eight substantive agreements, each signed by the leaders of the LRA and Ugandan government, but this time Kony failed to appear for the final signing of the cover Agreement in April, and has since refused to sign it while simultaneously initiating a new wave of attacks and abductions in northeastern Congo.<sup>131</sup>

When the November deadline passed without Kony's signature and international donor support for the peace process ran aground, the armies of Uganda, the Democratic Republic of the Congo, and southern Sudan launched a joint military offensive in December called Operation Lightning Thunder.<sup>132</sup> Unfortunately, even with the support of the United States, because of poor planning, insufficient logistical support, and too few U.N. peacekeepers and Congolese soldiers, this operation was largely a failure.<sup>133</sup> It weakened the LRA, but did not succeed in apprehending any of its leaders. Also, it resulted in reprisal attacks on civilians that have killed around 500 civilians in northeastern Congo and Southern Sudan, and displaced another 70,000,

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<sup>129</sup> Dolan, *supra* note 1, at 76; Allen, *supra* note 116, at 48.

<sup>130</sup> Report and Recommendations of the Chief Mediator of the Peace Process between the Government of the Republic of Uganda and the Lord's Resistance Army, 16 June 2008, *available at* [http://www.beyondjuba.org/peace\\_agreements.php](http://www.beyondjuba.org/peace_agreements.php).

<sup>131</sup> Enough Project/Resolve Uganda Statement on 'Operation Lightening Thunder,' *No Excuses: the end of the Lord's Resistance Army is in sight* (16 Jan 2009) *available at* [http://www.enoughproject.org/files/publications/Joint\\_LRA\\_statement\\_jan\\_16\\_Final.pdf](http://www.enoughproject.org/files/publications/Joint_LRA_statement_jan_16_Final.pdf).

<sup>132</sup> *Id.*

<sup>133</sup> Julia Spiegel & Noel Atama, Enough Project, *Finishing the Fight against the LRA 2* (12 May 2009), *available at* <http://www.enoughproject.org/publications/finishing-fight-against-lra-strategy-paper>.

bringing the total number of displaced in the area to over 100,000.<sup>134</sup> Only 10 days after the launch of this operation the LRA retaliated in series of attacks on at least three villages, with the intent to “inflict that maximum number of deaths quickly by targeting gathered villages.”<sup>135</sup> These attacks are known as the Christmas massacres.

Operation Lightning Thunder demonstrated an unprecedented level of cooperation between the governments of the DRC, Uganda, and southern Sudan. It also has been said that if the US were to take the lead in supporting another military operation, taking greater responsibility for the execution and outcomes of the operation, apprehending Kony would be possible.<sup>136</sup> A report by Enough, an American think tank, has maintained that the LRA’s “highly centralized hierarchy is one of the rebel group’s key weaknesses,”<sup>137</sup> insisting that the atrocities will continue as long as Kony and other top commanders are at large. No matter how tricky it will be, they suggest a counterinsurgency targeted strictly at the leaders to avoid widespread civilian casualties.<sup>138</sup>

However, that would not bring an end the conflict in the way many would hope. The focus on apprehending Kony militarily is essentially individualizing a very complex war into a reductionist explanation. It serves the government’s agenda to maintain power by diverting blame for the violence away from them, minimizing the issues that give rise to armed resistance in the first place. It also feeds into the agenda of western powers who see conflict as essentially boiling down to an individual, part

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<sup>134</sup> Enough Project/Resolve Uganda, *supra* note 131.

<sup>135</sup> Human Rights Watch, *The Christmas Massacres* section VI (16 Feb 2009), *available at* <http://www.hrw.org/en/reports/2009/02/16/christmas-massacres>.

<sup>136</sup> Julia Spiegel & Noel Atama, *supra* note 133.

<sup>137</sup> Enough Project/Resolve Uganda, *supra* note 131.

<sup>138</sup> *Id.*

of the liberalist and modernist celebration of “the individual self as the locus of consciousness and experience,” but which fails because it “renders relations invisible—from personal relationships to transnational and global relations.”<sup>139</sup> Again, it diverts attention away from their role in the power relationships and structural circumstances that motivate such individuals to rebellion.

## 2. Displacement and “protected villages”

Government counterinsurgency tactics have also turned civilians into military targets for both government forces and the rebels. In 1991, for example, the government launched Operation North, which antagonized the LRA into maiming and killing hundreds of people assumed to be government collaborators.<sup>140</sup> Further campaigns have been launched, culminating in Operation Iron Fist in 2002, and Iron Fist II in 2004. As a result of the first Iron Fist offensive, which intended to destroy the LRA by attacking their bases within Sudan, the LRA expanded the scale of its abductions, killings, and looting.<sup>141</sup> As Human Rights reported, the army then responded by forcing people to move back into camps.<sup>142</sup>

This pattern of military operations followed by LRA reprisals against citizens has characterized the conflict, and has contributed to the perception of the Acholi as “war-like.” It echoes the policies of the colonial administrator Samuel Baker, who in the effort to “civilize” through militarization, converted men in Acholiland into

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<sup>139</sup> HARRI ENGLUND, FROM WAR TO PEACE ON THE MOZAMBIQUE-MALAWI BORDERLAND 183-184 (Edinburgh: Edinburgh University Press, International African Institute, London 2002).

<sup>140</sup> Allen, *supra* note 116, at 47.

<sup>141</sup> HRW, *The Christmas Massacres*, *supra* note 135, at 12.

<sup>142</sup> Human Rights Watch, *Abducted and Abused: Renewed Conflict in Northern Uganda*, vol. 15 No. 12(a), July 14, 2003, available at <http://www.hrw.org/en/reports/2003/07/14/abducted-and-abused-0>.

soldiers who in turn “turned to gross abuse and violation of the local people” upon Baker’s departure.<sup>143</sup>

The abuse and targeting of civilians by both sides of the conflict is best illustrated in the policy of Internally Displaced Persons (IDP) camps. The government began to forcefully resettle a large number of the population into camps, or “protected villages” as they were officially called, in 1996. At the height of the conflict in 2006, there were at least 1.8 million people in IDP camps.<sup>144</sup> “Improvements in security have allowed some 1.3 million internally displaced persons (IDPs) to return to their areas of origin. However, as of June 2008, nearly 480,000 people were still living in camps.”<sup>145</sup>

Part of the colonial policy was to control the movements of the different ethnic groups or “tribes” by creating districts. Many Acholi were forced into internal displacement during colonial rule, through a “policy of compulsorily moving large numbers of the population of Western Acholiland and concentrating them beside the main road.”<sup>146</sup> The official reason was for evacuating areas where there had been sleeping sickness, but it was also admittedly for making the task of administration easier.<sup>147</sup>

In the same way today, the forced resettlement of civilians into camps is not for the sole purpose of protecting the population, but a policy of control and

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<sup>143</sup> Finnstrom, *supra* note 3, at 60.

<sup>144</sup> UNHCR Country Operations Profile: Uganda, *available at* <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e483c06>.

<sup>145</sup> *Id.*

<sup>146</sup> Girling, *supra* note 87, at 175.

<sup>147</sup> Finnstrom, *supra* note 3, at 144.

“enforced domination.”<sup>148</sup> Talking about the Hutu refugees in Tanzania, Malkki sees the camp as a “technology of power” that helps “to constitute ‘the refugees’ as an object of knowledge and control.”<sup>149</sup> It is also indicative of what Galtung described as “structural violence.”<sup>150</sup>

“Under physical violence human beings are hurt somatically, to the point of killing. It is useful to distinguish further between ‘biological violence,’ which reduces somatic capability...and ‘physical violence as such,’ which increases the constraint on human movements—as when a person is imprisoned or put in chains, but also when access to transportation is very unevenly distributed keeping large segments of a population at the same place with mobility a monopoly of the selected few.”<sup>151</sup>

The camps violate every major category of rights, and nearly all the UN’s Guiding Principles on Internal Displacement.<sup>152</sup> In the camps people have been denied access to their land and, therefore, their livelihoods have been extremely compromised, as well as access to education, health services, and most basic rights of citizenship. They were established without due consultation with the people affected,<sup>153</sup> lasted longer than required,<sup>154</sup> failed to recognize peoples’ dependency on their land,<sup>155</sup> failed to achieve basic standards of living in terms of shelter, water, food, sanitation, clothing, medical care,<sup>156</sup> and denied them the right to “move freely in and out of camps or other settlements.”<sup>157</sup> As Dolan puts it, what has passed for

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<sup>148</sup> *Id.*, at 144.

<sup>149</sup> LIISA H. MALKKI, *PURITY AND EXILE: VIOLENCE, MEMORY, AND NATIONAL COSMOLOGY AMONG HUTU REFUGEES IN TANZANIA* 236-237 (Chicago: University of Chicago Press, 1995)

<sup>150</sup> Johan Galtung, *Violence, peace and peace research*, 6 (3) *J. PEACE RES.*, 167-191 (1969).

<sup>151</sup> *Id.*, at 169.

<sup>152</sup> Guiding Principles on Internal Displacement, U.N. Doc. E/CN.4/1998/53/Add.2 (1998), noted in *Comm. Hum. Rts. res.* 1998/50,

<sup>153</sup> *Id.*, at 7.3.

<sup>154</sup> *Id.*, at 6.

<sup>155</sup> *Id.*, at 9.

<sup>156</sup> *Id.*, at 18,19.

<sup>157</sup> *Id.*, at 14.



‘protection’ in northern Uganda has in fact been a cover for violation and mass humiliation.<sup>158</sup>

**a) Organization**

The organization of the camp is such that the army detachment is stationed in the center of the camp, surrounded by the thousands of people the army is supposed to protect. Finnstrom documents the statements of people who said that to live in the camps is “to be a living shield (kwot) between two fighting forces.”<sup>159</sup> The rebels often loot the camps after relief distributions, which they see as their fair share since the food aid is a consequence of their armed resistance in the first place.<sup>160</sup> The camps have also been magnets for attacks from the LRA because they perceive the displaced population as supporters of the government, and the population has therefore become tactical targets in the LRA’s effort to establish control or exact revenge.

The forced encampment has furthermore undermined traditional ways of organizing life.<sup>161</sup> The camps were formed out of many villages crammed together into a single unit, which is fundamentally antithetical to Acholi patterns of settlement. Acholi settlement patterns are characterized by the “splitting off of sub-units from a village to go and establish new ones as a means of dealing with a fundamental tendency for a state of imbalance to be set up in the village.”<sup>162</sup>

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<sup>158</sup> Dolan, *supra* note 1, at chapters 5–7.

<sup>159</sup> Finnstrom, *supra* note 3, at 143.

<sup>160</sup> *Id.*, at 156.

<sup>161</sup> *Id.*, at 146.

<sup>162</sup> Dolan, *supra* note 1, at 228.

**b) Rebel collaborators**

The camps can be understood in terms of a military strategy to control and monitor potential rebel supporters, since in the eyes of the government, all Acholi are potential rebel collaborators.<sup>163</sup> The army controls the camps, and civilians in the camps are often accused of being rebel collaborators and then ill-treated or tortured.<sup>164</sup> HRW has documented cases of the army arresting and detaining people who are accused of being associated with the LRA, and use “ill-treatment and torture as methods of interrogation”<sup>165</sup> According to the Uganda Human Rights Commission’s report for 2008, torture cases dominated the types of abuse reported to the commission, accounting for nearly 30% of the cases reported. An article in the New Vision notes that torture was allegedly used in an operation in the north to disarm people who illegally possessed firearms. Complaints against the army nearly doubled since 2007, and complaints against police were second only to private individuals.<sup>166</sup>

Those, for example, who are found outside are often assumed to be rebels or rebel collaborators and may be shot or beaten to death. This happens frequently in certain areas when civilians breach the curfew, even if by only a few minutes. The local military battalion imposes a curfew on the civilian population; it sets a time by

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<sup>163</sup> *Id.*, at 142.

<sup>164</sup> Human Rights Watch, *Concerns regarding Torture and other Cruel, Inhuman or degrading Treatment or Punishment in Uganda*, May 2005.

<sup>165</sup> *Id.*

<sup>166</sup> *Govt Yet to Pay Sh2b to Victims of Torture in 2008*, The New Vision, 16 October 2009, available at <http://www.newvision.co.ug/D/8/26/698121>,

which they have to return to the camp, and another time by which they have to be inside their huts.<sup>167</sup>

Human Rights Watch reports that “the killings sometimes seem to be for no discernable reason—other than because the soldiers can do as they wish and later claim the civilians injured or killed were ‘rebel collaborators,’ whatever the circumstances.”<sup>168</sup>

“Regardless of the presence of possible rebels or rebel collaborators inside displaced persons’ homes inside the camps, the UPDF has the duty to take all feasible precautions to protect the civilian population under its control against the effects of attacks. Soldiers carrying out an attack must be able to distinguish between legitimate military targets and civilians. Shooting into huts inside displaced persons camps where there was no apparent rebel activity is an indiscriminate use of force in violation of the laws of war. The summary execution of any person is a war crime.”<sup>169</sup>

People have also reported being held in pits or in barracks for prolonged periods, and very few receive a trial.<sup>170</sup> Those held in this way are being denied their right to be free from arbitrary arrest and detention.<sup>171</sup> There is no basis in the law for

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<sup>167</sup> HRW, *Concerns regarding Torture and other Cruel, Inhuman or degrading Treatment or Punishment in Uganda*, *supra* note 164.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*, at 26.

<sup>170</sup> *Id.*, at 30.

<sup>171</sup> International Covenant on Civil and Political Rights, article 9 (1): “1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” While this right may be suspended in time of “emergency which threatens the life of the nation” under article 4, no state of emergency has been declared in Uganda or even in northern Uganda, and no effort has been made to suspend these and related civil rights in the ICCPR or under

the army to detain people unless it is in the context of the battlefield, and even those captured must be turned over to the authorities for criminal prosecution. However, HRW has interviewed many people who were not captured on the battlefield and have been held in military detention without an opportunity to see or challenge the evidence against them.<sup>172</sup>

**c) Sexual violence**

Civilians also have not been protected against “rape, mutilation, torture, inhuman or degrading treatment or punishment and other outrages upon personal dignity, such as acts of gender-specific violence, forced prostitution, or any form of indecent assault.”<sup>173</sup> In many conflicts sexual violence is used as a tactic for terrorizing people and gaining power over them. It “destroys the very fabric of society and breaks down the ties that hold communities together,” and, therefore, “it is used as a tool in these conflicts to intimidate, humiliate, destroy and captivate enemy populations.”<sup>174</sup>

In Uganda, both the LRA and the Ugandan government have employed sexual violence as a means of terrorizing and gaining power. Young girls are raped and forced to be the sex slaves, or “wives,” of LRA leaders,<sup>175</sup> and Kony himself is said to

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Ugandan laws. Human Rights Watch, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, Vol. 17, No. 12(A), 35 (September 2005).

<sup>172</sup> *Id.*, at 36.

<sup>173</sup> Guiding Principles, *supra* note 152, at 11.

<sup>174</sup> Stephan Rapp, *Special Briefing by Ambassador-at-Large for Global Women's Issues Melanne Verveer and Ambassador-at-Large for War Crimes Issues Stephen Rapp*, State Department Briefing Room, Washington, DC, October 2, 2009, available <http://www.state.gov/s/gwi/rls/rem/2009/130211.htm>.

<sup>175</sup> See Abigail Leibig, *Girl Child Soldiers in Northern Uganda: Do Current Legal Frameworks Offer Sufficient Protection?* 3 NW. U. J. INTL HUM. RTS. 6 (April 8, 2005) available at <http://www.law.northwestern.edu/journals/jihr/v3/6>.

have had up to 50 girls in his household at a time.<sup>176</sup> A report by UNICEF in 2005 found rape to be the most common form of violence in the Pabbo IDP camp in Gulu.<sup>177</sup> Because of the lack of discipline and accountability within the army, women are especially vulnerable to abuse by soldiers and others in the community. Soldiers often attack women and girls when they are outside the camps collecting firewood or water or tending to crops. Abuse is compounded when UPDF boosts its presence in an area where there has been an increase LRA activity. HRW documented how the “extra protection” in Kitgum Matidi camp in 2004 resulted in many women getting raped.<sup>178</sup>

## **E. Discourse and the dominant narrative of the war**

### **1. Peripheral and irrational**

Uganda is widely held by academics and international organizations like the International Monetary Fund as a “success story of reconstruction, structural adjustment, and economic liberalization.”<sup>179</sup> In the dominant discourse about the conflict, it is portrayed as peripheral to the country’s development and success.

The north and the Acholi have been blamed for Uganda’s violent past, and the colonial stereotype of the Acholi as warriors has been used to generate more fear and mistrust. “In Museveni’s war propaganda, the enemy was alleged to be northerners in

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<sup>176</sup> *Statement by the Chief Prosecutor on the Uganda Arrest Warrants*, Office of the Prosecutor, International Criminal Court, The Hague, October 14, 2005, available at [http://www.icc-cpi.int/library/organs/otp/speeches/LMO\\_20051014\\_English.pdf](http://www.icc-cpi.int/library/organs/otp/speeches/LMO_20051014_English.pdf), at 5.

<sup>177</sup> UNICEF, *Suffering in Silence: A Study of Sexual and Gender Based Violence (SGBV) in Pabbo Camp, Gulu District, Northern Uganda* (June 15, 2005) available at <http://www.unicef.org/media/files/SGBV.pdf>.

<sup>178</sup> HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, *supra* note 171, at 33.

<sup>179</sup> Finnstrom, *supra* note 3, at 125.

general and Acholi in particular.”<sup>180</sup> In one public speech Museveni allegedly evoked the metaphor of the Acholi as grasshoppers in a bottle, where they will eat one another before they find the way out through the bottleneck.<sup>181</sup> Museveni calls the rebels “hyenas” from time to time, portraying them as “wild creatures, which in many African cosmologies means that they have vitality and power, but more, that they represent the uncultured wilderness, danger, depredation, death, sorcery, and witchcraft.”<sup>182</sup> He also calls the rebels “criminals” and “murderers” and denies the political dimension to the conflict by referencing their alleged use of “mysticism instead of science,” “witchcraft,” and “backwardness.”<sup>183</sup>

This reflects the kind of perception of Acholi as violent and war-like, and culturally backward, and has led to gross mistreatment of the Acholi people. For example, “it appears that NRA soldiers were repeatedly told that the Acholi were the enemies, so when the NRA arrived in Acholiland, they first behaved well, but soon begun to destroy Acholiland systematically.”<sup>184</sup>

Allen describes how the war in the north has actually had certain political advantages for Museveni’s government.<sup>185</sup> Most of the fighting has taken place in the north where he has no power base, and “the horrific violence and weird spirituality of the LRA allowed his government to present the north as a kind of barbaric

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<sup>180</sup> Juma Okuku, *Ethnicity, state power and the democratization process in Uganda* 22-23 (Discussion Paper no. 17, Uppsala: Nordic Africa Institute, 2002).

<sup>181</sup> Finnstrom, *supra* note 3, at 106.

<sup>182</sup> *Id.*, at 114.

<sup>183</sup> Museveni, *supra* note 115, at 173.

<sup>184</sup> Onyango-Odongo, Daily Monitor, December 10, 1997

<sup>185</sup> Allen, *supra* note 116, at 48.

periphery.”<sup>186</sup> In this way Museveni presents himself as the protector of the great south, or at the very least the best alternative to the Acholi and violent northerners. The government is portrayed as protecting its own citizens, and the LRA violence receives considerably more attention while the Ugandan army elevates itself as the rational and modern party to the conflict.<sup>187</sup>

In a recent speech at the first East Africa Community (EAC) Peace and Security Conference, Museveni emphasized that outside forces that led to colonization were the greatest threats to Africa, not “small groups” like the Interahamwe or Kony’s LRA. “These are not the real dangers to Africa.” His assertion is that these groups are “colonial residues” that would be defeated.<sup>188</sup> This kind of talk and representation of the rebels make comprehensive peace talks difficult. The rebels oppose the Ugandan government’s hierarchical system of approach to the conflict, in which government leaders are promoted as the superior party, “the ones to forgive the inferior party.”<sup>189</sup>

Museveni’s rhetoric has also continued to assert that Ugandans are not mature enough for multiparty politics.<sup>190</sup> Juxtaposed with the common label by local political and religious leaders of the rebels as “children in the bush” who are encouraged to “come out from the bush,” because the war is “useless,” the bias is clearly that the conflict is between Acholi parents and their children in the bush. The LRA is said to be “led by self-proclaimed mystic Joseph Kony whose guerrillas spread terror

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<sup>186</sup> *Id.*

<sup>187</sup> Finnstrom, *supra* note 3, at 113.

<sup>188</sup> Henry Mukasa, *East Africa: Museveni Wants Joint Force*, New Vision, 5 October 2009, available at <http://allafrica.com/stories/printable/200910060004.html>.

<sup>189</sup> Finnstrom, *supra* note 3, at 229.

<sup>190</sup> *Id.*, at 228.

through their Acholi communities, attacking civilians, kidnapping tens of thousands of children to serve as soldiers and ‘wives,’ and slicing the lips and noses off their victims.”<sup>191</sup> A common description is that “the mysterious LRA is notorious for mutilating victims and abducting children — forcing the boys to fight and the girls to become rebels' concubines.”<sup>192</sup> In this way the war is portrayed as the LRA against its own people and therefore irrational.

## **2. A war on, and with, and against children**

The conflict is often represented as primarily fought by abducted children. Typical estimates of child abductions are that “nearly 90% of LRA fighters are enslaved children – nearly 6,000 are still missing and it is not known whether they are dead or alive.”<sup>193</sup> World Vision claims that 10,000 children were abducted in 2002 alone,<sup>194</sup> but it is not clear where this figure came from, or how many are still with the LRA. Chris Dolan, on the other hand, based on statistics from reception centers in Gulu up to 2002, found that the number of children remaining with the LRA was “at the very most around 900.”<sup>195</sup>

While child abductions are a horrendous tactic employed by the LRA, children are not the primary source of manpower for the rebel forces. UNICEF

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<sup>191</sup> *Displaced Ugandans gripped by violence over land*, Daily Monitor, 22 October 2009, available at [http://www.monitor.co.ug/artman/publish/regional-special/Displaced\\_Ugandans\\_gripped\\_by\\_violence\\_over\\_land\\_93395.shtml](http://www.monitor.co.ug/artman/publish/regional-special/Displaced_Ugandans_gripped_by_violence_over_land_93395.shtml).

<sup>192</sup> *LRA gain ground in Northern DRC*, Daily Monitor, 15 October 2009, available at [http://www.monitor.co.ug/artman/publish/regional-special/LRA\\_gain\\_ground\\_in\\_Northern\\_DRC\\_92995.shtml](http://www.monitor.co.ug/artman/publish/regional-special/LRA_gain_ground_in_Northern_DRC_92995.shtml).

<sup>193</sup> *Appeal for Uganda's abducted children*, BBC News Online, 8 December 2000.

<sup>194</sup> World Vision, *Pawns of Politics: Children, Conflict and Peace in Northern Uganda* 37, Washington, DC: World Vision (2004).

<sup>195</sup> Chris Dolan, *Which children count? The politics of children's rights in northern Uganda* (2002) available at <http://www.c-r.org/our-work/accord/northern-uganda/which-children-count.php>.



conducted a survey of all abductions and found that between 1990 and 2001, almost 28,903 people had been taken from Gulu, Kitgum, Pader, Apac, and Lira districts.<sup>196</sup> Less than 10,000, or a third of the total reported abductions, were children, and 77% of those 10,000 abducted children returned home within a year and another 15.9% the following year.<sup>197</sup> The pattern and scale of child abduction has changed over the years, but it has never been the only form of recruitment into the LRA. The war is not, as the UN Under-Secretary-General for Humanitarian Affairs Jan Egeland has said, “a war on, and with, and against children.”<sup>198</sup>

The picture of the rebel group as primarily composed of children is problematic in that it fuels the perception of LRA irrationality and ignorance, as well as implying that combatants are not accountable for their participation, since they are abducted and traumatized children. The abduction of children, however, has been a deliberate strategy to systematically terrorize the population, as is the targeted killing of children and babies. Indoctrinating and forcing children to do horrible things, especially kill members of their own family, “inverts the moral order” and demonstrates the power of the LRA.<sup>199</sup>

### **3. Exclusively religious and ethnic in nature**

The religious dimension of the conflict attracts more attention because of the gross violence and human rights abuses perpetrated by the rebels, which has been

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<sup>196</sup> UNICEF, *Abductions in Northern Uganda and South-western Uganda: 1986-2001*, Uganda: UNICEF (November, 2001).

<sup>197</sup> *Id.*, at 7.

<sup>198</sup> IRIN interview with UN Under-Secretary Mr Jan Egeland, 12 November 2003, quoted in *SCiU Statement on the ICC Prosecution of LRA* (February 2004).

<sup>199</sup> Allen, *supra* note 116, at 64.

motivated in terms of religion and morality. The colonial effort to justify by moral reasons the process of civilizing Africans through militarization has shaped the motivation and rhetoric of both the Ugandan government and LRA in their efforts to secure power and advance civilization in Uganda. The imperialist powers appealed to religion and morality to legitimate the colonial expansion. Now, both the Ugandan government and the LRA have appealed to religion to justify not explaining themselves.

For the LRA, a “claim to a new moral order provides them with the legitimacy to abduct children into their ranks...motivation to mutilate or even kill people.”<sup>200</sup> Kony justifies LRA atrocities by saying “if you picked up an arrow against us and we ended up cutting off the hand you used, who is to blame? You report us with your mouth, and we cut off your lips. Who is to blame? It is you! The Bible says that if your hand, eye or mouth is at fault, it should be cut off.”<sup>201</sup>

In the 1994 peace talks, “the LRA said they were guided by the Holy Spirit and, therefore, beyond question.” However, true Biblical teaching emphasizes that being filled with the Holy Spirit leads to humility and submitting to one another out of love and reverence for Christ.<sup>202</sup> The government, on the other hand, said “they were guided by the Bible verse which indicates that Government authority is God-given – and that the LRA should therefore not question them.”<sup>203</sup>

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<sup>200</sup> Finnstrom, *supra* note 3, at 5.

<sup>201</sup> Allen, *supra* note 116 at 42.

<sup>202</sup> Ephesians 5:18-21 “be filled with the Spirit...always giving thanks for all things in the name of our Lord Jesus Christ to God, even the Father; and be subject to one another in the fear of Christ.”

<sup>203</sup> Dolan, *supra* note 1, at 133.

This statement also reflects an attitude of superiority, which a true Biblical understanding does not support. An appeal to Biblical authority is only legitimate when references are understood within the full context of history and moral teaching. This government representative was quoting from the Apostle Paul's letter to the Romans, in which he exhorts people to "be in subjection to the governing authorities, for there is no authority except from God, and those which exist are established by God."<sup>204</sup> This is no small text; it is a great theme of God's sovereignty over the establishment and disestablishment of every government in the world today and throughout history.

The point Paul is making here and elsewhere is to submit to the civil authority out of reverence for God, not the ruler. They are not God; God is God.<sup>205</sup> It is for the good of people to have a civil authority rather than everyone doing what is right in their own eyes. This authority should not be a "terror to good conduct, but to bad,"<sup>206</sup> which is defined by the moral law of God. The authority exists as "a minister of God to you for good."<sup>207</sup> Paul wanted the Roman authorities who would read this letter to see that God and His moral law have ultimate authority, but that Christians are not revolutionaries against Caesar's throne; Christians are harmless lovers of lost and hurting people who will actually do much good in the empire. Furthermore, he is saying that humility and self-denial are much more important than how we are treated by anyone, which carries implications for the attitudes of individual members of society and also for the government, which is composed of individuals. Consider that

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<sup>204</sup> New American Standard Bible, Romans 13:1.

<sup>205</sup> "Be subject for the Lord's sake to every human institution," 1 Peter 2:13.

<sup>206</sup> New American Standard Bible, Romans 13:4.

<sup>207</sup> *Id.*

earlier in that same letter to the Romans from which the Ugandan government extracted their “God given authority,” Paul exhorts people to “not be haughty in mind, but associate with the lowly. Do not be wise in your own estimation. Never pay back evil for evil to anyone.”<sup>208</sup>

Museveni continues to reference Biblical scripture to air his ambivalence toward peace negotiations. When an Amnesty Act was introduced in 2000 for all rebels, he said that he didn’t believe in it, and instead suggested “we should apply the law of Moses; an eye for an eye, a tooth for a tooth, to bring discipline to society.”<sup>209</sup> From statements like this, human rights organizations conclude in reports that the war is rooted in ethnic mistrust and religious beliefs, but don’t address other dimensions of the conflict. It’s true that religion and ethnicity play a very powerful role, but less as the source of conflict and more as a weapon of war. In the same way that religion is employed as a shallow platform for the parties to the conflict to advance their agenda and legitimize their actions, both sides have capitalized on ethnic belonging and stereotypes. As Finnstrom aptly describes, “stereotypes of dominant traditions and fixed categories become the shorthand that mask other, more complex social realities.”<sup>210</sup>

Insiders in Museveni’s nonparty movement describe the Acholi as a “military democracy.”<sup>211</sup> One scholar says that because of their recruitment into the King’s African Rifles during colonization, eventually the Acholi found solidarity in their

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<sup>208</sup> New American Standard Bible, Romans 12:16-17.

<sup>209</sup> New Vision, January 21, 2000.

<sup>210</sup> Finnstrom, *supra* note 3, at 80.

<sup>211</sup> ONDOGA AMAZA, MUSEVENI’S LONG MARCH FROM GUERRILLA TO STATESMAN 213-214 (Kampala: Fountain Publishers, 1998)

“militarized ethnicity,”<sup>212</sup> and with the Acholi as “the military aristocracy of the north,” Uganda was divided along “primordial lines.”<sup>213</sup> He continues by pointing out that “what matters from the point of view of the colonial genesis of ‘tribalism’ is the simple fact that a broad new Acholi political consciousness became superimposed over the narrower parochialisms of the sub-units of the Acholi.”<sup>214</sup>

It’s true that the colonial politics of ethnification were in fact an avenue of anticolonialism.<sup>215</sup> Finnstrom notes that “just as ethnic codification was a primary means through which the colonial power of indirect rule tried to keep its control, so ethnic belonging was to become one of the main ways of protesting against the very same control.”<sup>216</sup> However, Mazrui’s conclusion that the Acholi ultimately took on this idea of being a “military ethnocracy” is narrow and reduces people to “passive objects of imposed change.”<sup>217</sup>

Dolan notes how the recruitment and abduction of new combatants to the LRA was intended to help incorporate non-Acholi into a whole new Acholi community.<sup>218</sup> Dolan describes the ‘New Acholi’ identity as a sort of mythologized

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<sup>212</sup> Ali Mazrui, *Soldiers as traditionalizers: Military rule and the re-Africanization of Africa*, 28 (2) WORLD POLIT. 258 (1976).

<sup>213</sup> ALI MAZRUI, *SOLDIERS AND KINSMEN IN UGANDA: THE MAKING OF A MILITARY ETHNOCRACY* 40, 49 (Beverly Hills, California: Safe Publications, 1975).

<sup>214</sup> Mazrui, *Soldiers as traditionalizers: Military rule and the re-Africanization of Africa*, *supra* note 179, at 261.

<sup>215</sup> See Mahmood Mamdani, *Indirect rule, civil society and ethnicity: The African dilemma*, in FROM POST-TRADITIONAL TO POST-MODERN? INTERPRETING THE MEANING OF MODERNITY IN THIRD WORLD URBAN SOCIETIES (edited by Preben Kaarsholm, Roskilde, Denmark: International Development Studies, Roskilde University, 1995); MAHMOOD MAMDANI, *CITIZENS AND SUBJECT: CONTEMPORARY AFRICA AND THE LEGACY OF LATE COLONIALISM* (Princeton, N.J.: Princeton University Press, 1996); Juma Okuku, *Ethnicity, state power and the democratization process in Uganda* (Discussion Paper no. 17, Uppsala: Nordic Africa Institute, 2002).

<sup>216</sup> Finnstrom, *supra* note 3, at 42.

<sup>217</sup> *Id.*, at 80.

<sup>218</sup> Dolan, *supra* note 1, at 120.

‘Old’ Acholi, cleansed of the corruption of westernizing influences.<sup>219</sup> In practice, though, Kony has failed to break away from the ethnic divisions in his organization. Many of those who voluntarily joined the LRA have had their own political agendas and were, therefore, frustrated by the extreme degree of control and ethnicized command structure.<sup>220</sup>

The idea of belonging and exclusion has been “integral to the LRA’s demands for recognition and validation, and to the Government’s refusal to give it.”<sup>221</sup> A government official during the 1994 peace talks described them as ‘local,’ an attitude very much reminiscent of Uganda’s colonial predecessors, who reluctantly condescended themselves to engage with the ‘natives’ who were “both morally and physically, little better than brutes.”<sup>222</sup> The term ‘local’ is heavily loaded in the context of the severe under-development characterizing northern Uganda. It connotes the idea of something not being ‘up-to-date,’ or being an unofficial or second-rate substitute for ‘the real thing.’<sup>223</sup>

It also goes back to such practices as the election of chiefs during the colonial administration, which were heavily influenced by the British administrators, so that individuals who were willing to cooperate with the administration were nominated at a much higher rate than hereditary chiefs of the precolonial kingdoms.<sup>224</sup> In the words of one colonial administrator: “In the first place must be put the fact that an inherited capacity to ‘make rain’ and to carry out other traditional functions did not

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<sup>219</sup> *Id.*

<sup>220</sup> *Id.*, at 140.

<sup>221</sup> *Id.*, at 133.

<sup>222</sup> Finnstrom, *supra* note 3, at 58.

<sup>223</sup> Dolan, *supra* note 1, at 134..

<sup>224</sup> Finnstrom, *supra* note 3, at 41.

necessarily also ensure possession of those qualities which make a sound administrator, tax collector or magistrate.”<sup>225</sup> Now in a similar way, the Ugandan constitution dictates that the chiefly offices are titular only, and don’t have any administrative, legislative, or executive powers.<sup>226</sup>

#### **4. Humanitarian, not political**

However the LRA is portrayed, though, whether as a spiritual group, as terrorists, as rebels or criminals, the fact is that they do articulate a political agenda, one that could even be seen as representing Acholi grievances. The media portrays the LRA rebels as fighting for the sole purpose of ruling the country on the basis of the Ten Commandments.<sup>227</sup> However, they have published at least three manifestos, in 1996, 1998, and 1999, expanding on a number of political objectives:

“Restoration of multi-party politics; introduction of constitutional federalism; promotion of human rights; development of nation wide economic balance; establishment of nation wide peace and security; ending corruption; free and fair elections; good international relations with neighbors; separation of the military from the judiciary and executive arm of government; and reforming parliament to empower it to deal with ‘critical, political and economic issues of the country.’”<sup>228</sup>

In the eyes of the world, though, the conflict is still seen as humanitarian, not political. NGOs, donors, churches, media, and the UN are all seen as external actors, responding to the situation rather than having a generative role.<sup>229</sup> After Jan Egeland

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<sup>225</sup> Rennie M. Bere, *Land and chieftainship among the Acholi*, 19 (1) UG. J. 51 (1955).

<sup>226</sup> Finnstrom, *supra* note 3, at 45.

<sup>227</sup> See, for example, Sam Farnar, *I will use the Ten Commandments to liberate Uganda*, The Times, 28 June 2006, available at <http://www.timesonline.co.uk/tol/news/world/article680339.ece>.

<sup>228</sup> Samuel B. Tindifa, *Listen to the People! Towards an inclusive approach to the peace process in Northern Uganda* 36 (HURIPPEC Working Paper No.3 of 2006), available at [http://www.beyondjuba.org/working\\_papers.php](http://www.beyondjuba.org/working_papers.php).

<sup>229</sup> Dolan *supra* note 1, at 20.

said “northern Uganda must be one of the worst humanitarian crises in the world,” it has been commonly referred to in the media as “the most forgotten crises in the world.”<sup>230</sup>

In a recent visit to the Acholi region when the Under-Secretary-General for Humanitarian affairs John Holmes attended the African Union Special Summit on Refugees, Returnees and IDPs, he stressed that “Humanitarian, recovery and development actors must redouble their commitment to working with the government and people of Uganda to help the most vulnerable members of the displaced population return to their homes, and to ensure that those who have already returned have the basic services they need.”<sup>231</sup> He went on to describe the challenges for the some 500,000 who have not been able to return home from the IDP camps due to age, disability, illness, or impediments to land rights and ownership.<sup>232</sup>

The article was then characteristically topped off by pointing to the “cause” of the displacement: “The LRA, which terrorized northern Uganda for two decades, has been accused of committing atrocities including mutilations and the recruitment of child soldiers.”<sup>233</sup> This prevailing understanding of the conflict as at the hands of a rebel group with no legitimate agenda other than to terrorize, and in the hands of external humanitarian actors to help the government protect its citizens, completely undermines the responsibility of the government itself for its role in perpetuating the

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<sup>230</sup> New Vision, November 11, 2003; Daily Monitor, November 11, 2003.

<sup>231</sup> *Uganda: Top UN Humanitarian Official Visits Long-Displaced Citizens*, UN News Service, October 21, 2009, available at <http://allafrica.com/stories/200910220002.html>.

<sup>232</sup> *Id.*

<sup>233</sup> *Id.*



conflict, and the humanitarian actors for being complicit in government policies that control, contain, and oppress the population.

Although relief has been promoted as detached from the local reality and therefore neutral and nonpartisan, the humanitarian regime has been entangled in the practices and politics of the war, operating essentially as “local administrators” for the Ugandan government.<sup>234</sup> This has led to high levels of mistrust among the displaced people, and increased violence against them by the rebels. It has also resulted in an economy of dependency among the displaced population, which only serves the government’s ambition to control and contain them.

A particular NGO intervention deserves attention for its perpetuation of misguided stereotypes and shortsighted solutions: The creation of “demonstration” plots to teach improved agricultural techniques, such as the World Vision-USAID Food Security Project. The World Vision program in Gulu and Kitgum produced beans and maize that were sold to the WFP for relief distribution to Sudanese refugees. By promoting this “example that will lead to self-sustainability” and “development that will help building peace and understanding in the north and in Uganda,”<sup>235</sup> they were implying that “people’s impoverishment is their own fault – if only they knew how to farm properly they would be self-reliant.”<sup>236</sup>

In fact, the problem for these people was not a lack of agricultural skills but access to their land. “NGOs’ emphasis on teaching people how to survive on very little land, rather than helping them to get back onto the land they already knew how

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<sup>234</sup> Finnstrom, *supra* note 3, at 158.

<sup>235</sup> Dolan, *supra* note 1, at 192.

<sup>236</sup> *Id.*, at 192

to manage suggested an underlying ‘modernization’ agenda, and a preparedness to sanction de facto land alienation.”<sup>237</sup>

The government recently proposed another idea of giving tractors to displaced persons who have returned to their villages, in order to meet the intended three acres per household goal for cultivation in the next planting season.<sup>238</sup> However, the returnees responded by pointing out that tractors that consume fuel and break down do not empower people, rather they should be given ox-ploughs, which are cost effective and practical for the impoverished.<sup>239</sup> This type of development proposal is characteristic of the externally imposed development programs that serve the interests of the donors but don’t actually meet the needs of the community.

#### **F. The marginalized north**

Regional divisions were a central issue in the national politics after independence. “What opposition groups in the north and east of the country have in common is not ethnic identity or cultural traditions, but a history of being only peripherally included in the economic structures and processes of the country.”<sup>240</sup> The colonial divisions of labor emerged and cemented themselves in the post-independence state. Labor was recruited from the north, while most of the

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<sup>237</sup> *Id.*, at 261.

<sup>238</sup> James Eriku, *IDPs reject tractors for farming*, *Daily Monitor*, October 26 2009, available at [http://www.monitor.co.ug/artman/publish/regional-special/IDPs\\_reject\\_tractors\\_for\\_farming\\_93564.shtml](http://www.monitor.co.ug/artman/publish/regional-special/IDPs_reject_tractors_for_farming_93564.shtml).

<sup>239</sup> *Id.*

<sup>240</sup> AMII OMARA-OTUNNU, *The dynamics of conflict in Uganda*, in *CONFLICT IN AFRICA 230* (edited by Oliver Furley, London: I. B. Tauris Publishers, 1995).

development and social services like education and hospitals were concentrated in central Uganda, and efforts to expand have not been successful.<sup>241</sup>

Today the north is one of the poorest areas of the country, and the war is posed as an obstacle to northern development. 63% population lives below the poverty line, compared to the national average of 38%.<sup>242</sup> “Inequitable development makes the country more vulnerable to ills like conflict and HIV/Aids and therefore is a burden in achieving national progress,” said UN Resident Coordinator for Uganda, Mr. Theophane Nikyema, in his message to mark the World Day for the Eradication of Poverty.<sup>243</sup> “Statistics show that northern Uganda is the worst performing region in terms of development indices and poverty prevalence. This makes the region more vulnerable but also a development burden.”<sup>244</sup> At least 17 million people don’t have access to food compared to 12 million in 1992.<sup>245</sup> The northern and eastern areas of Uganda are most affected by food insecurity because of the war.<sup>246</sup>

A recent Uganda Bureau of Statistics report titled, “Spatial trends of poverty and inequality in Uganda 2002-2005,” shows that the proportion of Ugandans still living in absolute poverty is 31 percent, about 9 million people, with the majority of

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<sup>241</sup> Finnstrom, *supra* note 3, at 102.

<sup>242</sup> New Vision, February 16, 2005.

<sup>243</sup> Evelyn Lirri Al-Mahdi, *UN to Uganda: Stop regional imbalances*, Daily Monitor, October 19, 2009, available at [http://www.monitor.co.ug/artman/publish/news/UN\\_to\\_Uganda\\_Stop\\_regional\\_imbalances\\_93202.shtml](http://www.monitor.co.ug/artman/publish/news/UN_to_Uganda_Stop_regional_imbalances_93202.shtml).

<sup>244</sup> *Id.*

<sup>245</sup> *17 million Ugandans starving*, Daily Monitor, 15 October 2009, available at [http://www.monitor.co.ug/artman/publish/regional-special/17\\_million\\_Ugandans\\_starving\\_92975.shtml](http://www.monitor.co.ug/artman/publish/regional-special/17_million_Ugandans_starving_92975.shtml).

<sup>246</sup> *Id.*

these found in the east and northern regions.<sup>247</sup> This, however, according to the report, is an improvement from the 39 per cent of people who were living in abject poverty in 2002. The report shows that distribution of the decline was particularly skewed to the urban areas and sub counties in the central and western regions, while in the north and north eastern sub-regions, the poverty levels remained particularly severe, with levels standing at 64.8 percent compared to 40 per cent in the eastern region and 19.3 percent in the western region.<sup>248</sup>

The impoverishment of displaced persons, among other factors, has caused a breakdown in social values. As a result of poverty, child abuse was ranked next to torture in the number of complaints to the Uganda Human Rights Commission in 2008, including the failure of parents to take care of their children.<sup>249</sup> Also, soldiers are often the “richest” people in area because they receive regular income. As one community leader put it, “Soldiers are often the only ones in the camps with money. They can entice young girls, even married women, into sex.”<sup>250</sup> Parents sometimes complain that soldiers have “defiled” their children, many younger than sixteen.<sup>251</sup>

The socio-economic collapse of the north is such that: “Despite the humanitarian assistance they have received...the overall picture is one of severe destitution: of a population accustomed over generations to a situation of relative self-reliance and even prosperity that has been reduced to dependency, idleness and

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<sup>247</sup> Anthony Bugembe and Francis Kagolo, *Uganda: New Study Names Poorest Locals*, The New Vision, 3 February 2009, available at <http://allafrica.com/stories/200902040120.html>.

<sup>248</sup> *Id.*

<sup>249</sup> *Govt yet to pay sh2b to victims of torture in 2008*, New Vision, 16 October 2009, available at <http://www.newvision.co.ug/D/8/26/698121>.

<sup>250</sup> Human Rights Watch interview, community leader, Kitgum, March 7, 2005, in *supra note 133*, at 34.

<sup>251</sup> HRW, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*, *supra note 171*, at 34.

debilitating uncertainty with respect to what the future may hold for them and their children.”<sup>252</sup>

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<sup>252</sup> W. Weeks, *Pushing the Envelope: Moving beyond 'protected villages' in Northern Uganda* 4, (New York, UNOCHA, 2002).

#### **IV. Mechanisms for building peace**

##### **A. No peace without justice**

The pursuit of justice cannot be divorced from the pursuit of peace, for in fact justice is an integral part of peace; they are not mutually exclusive, but mutually reinforcing. The understanding of peace as *shalom*, an ideal webbing together of people, leads to an understanding of justice as sharing and investing what everyone has into the lives of everyone else, to build up a strong flourishing community. The imperialist mission essentially dissolved all social cohesion by extracting wealth and imposing racist ideologies, securing control at all costs to the colonized subjects. Ugandans continue to pay the price as successor governments have carried on this legacy of superiority and violence. The path to peace requires an overhaul in the way that leaders engage with their citizens and rebels engage with their neighbors, not fueled by selfish ambition and desperately holding onto power by grinding down the population, but by earning the right to lead and empowering society.

“For justice to be done in a way which supports victims, builds peace, and reduces impunity, the mechanisms have to be owned by the beneficiaries.<sup>253</sup> A transitional justice policy must reflect the will of the community while meeting international human rights law standards. The mechanisms need to be negotiated, in the same way a development project is owned by the beneficiaries who are actively involved in the design and implementation of the project. Failure to involve and

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<sup>253</sup> Chris Dolan, *Imposed Justice and the need for Sustainable Peace in Uganda* 3, Presentation to the Beyond Juba Project/AMANI Forum training in Transitional Justice for Parliamentarians, Entebbe (18 July 2008).

represent the community leaves you “with boreholes which are abandoned at the first mechanical failure,” says Chris Dolan, describing how “justice mechanisms are no different to boreholes. If they are to be sustainable and to make a contribution to sustainable and positive peace, then they must involve local ownership.”<sup>254</sup> Along the same line is the idea of giving returnees tractors to cultivate the land that require fuel and mechanical repair rather than ox-ploughs which are customary and sustainable for the people. Those kinds of investments don’t actually help the community, because they are not locally owned.

For a justice system to resonate with the community and promote national unity, it must aim to rebuild or reconstruct institutions that are conducive to a stable and fair political system, as well as channel economic resources in such a way as to meet this end. In this way the community must be fully represented, adequately addressing the needs of all those affected or it will create divisions and generate future conflicts.

## **B. No justice without truth**

Justice must contribute to individual healing and link individual with community experiences of violence, which establishes a relationship between the delivery of justice and psycho-social healing. To contribute to individual healing, the truth must be known and officially acknowledged.<sup>255</sup> Truth-telling is a pre-requisite for reconciliation because it is necessary for the restoration of social order and broken relationships. It encourages healing because even where there is no legal option for

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<sup>254</sup> *Id.*, at 4.

<sup>255</sup> Yasmin Sooka, *Traditional Justice as an instrument in peace building*, 28 January 2009, at 5.

redress, spelling out what has happened and understanding how it has affected people is critical to process of healing. It is not a product to be handed over for a nation to heal, rather it's a profound experience of confronting history and building a shared narrative as a foundation on which to build the country's future.

### **1. Truth and forgiveness**

The act of truth telling is not sufficient by itself; the offender needs to take responsibility, there needs to be restitution for the offense, and there needs to be a safe atmosphere for emerging stories. Society must be open to bearing the painful details of the abuse and atrocities committed, and forgiving those individuals who have acted as perpetrators. Forgiveness incurs a cost to the victim, but is necessary for the inclusion of individuals who have become outcasts because of their role as perpetrators in the conflict.

For example, formerly abducted children are considered “morally tainted” after the things they have been exposed to in the bush.<sup>256</sup> They feel judged and abandoned, since neighbors and other people avoid them. People hold that former combatants have *cen* in their head that will affect the wider surroundings. *Cen* is the spirits of people who have died violently, and can be translated as “vengeance ghost” or “troublesome spirit.”<sup>257</sup> The idea is that people who witness violence or experience violence in war can be disturbed, start behaving “asocially, amorally, and eventually in violent and destructive ways.”<sup>258</sup>

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<sup>256</sup> Finnstrom, *supra* note 3, at 162.

<sup>257</sup> *Id.*, at 159.

<sup>258</sup> *Id.*, at 160.



These children often end up on the streets and survive by employing the patterns of illicit and violent behavior they learned with the LRA. They blame their behavior on the harsh conditions they face in their daily life without getting support from their communities.<sup>259</sup> The community steps in by calling on the police, who respond by rounding them up off the streets and shuffling them through a rehab center before returning them to their relatives. However, a rehabilitation officer in Gulu said that families regard children who have been abducted by the LRA and have committed crimes as “outcasts,” and it is therefore hard to take them home once they’ve been through the rehabilitation center.<sup>260</sup> The relatives won’t accept them after the crimes they’ve committed.

To foster an atmosphere of reconciliation and encourage forgiveness, non-legal strategies might be as effective as legal ones and may even be more successful in this case.<sup>261</sup> As Croatian theologian Miroslav Volf observes, “forgiveness flounders because I exclude my enemy from the community of humans even as I exclude myself from the community of sinners.”<sup>262</sup> Mutual forgiveness is critical for reconciliation, and only possible outside of the government’s and international community’s hierarchical approach to dealing with the rebels, reflected in the system of punitive justice and pattern of military operations. Traditional justice mechanisms provide a legitimate avenue for forgiveness to take place in a community because

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<sup>259</sup> Paul Amoru and James Eriku, *Tall order resettling Gulu’s street children*, Daily Monitor, 17 October 2009, available at [http://www.monitor.co.ug/artman/publish/news/Tall\\_order\\_resettling\\_Gulu\\_s\\_street\\_children\\_93050.shtm](http://www.monitor.co.ug/artman/publish/news/Tall_order_resettling_Gulu_s_street_children_93050.shtm).

<sup>260</sup> *Id.*

<sup>261</sup> See A. AN-NA’IM, *The legal protection of human rights in Africa: how to do more with less* in HUMAN RIGHTS: CONCEPTS, CONTESTS, CONTINGENCIES (A. Sarat and T.R. Kearns, 2001).

<sup>262</sup> MIROSLAV VOLF, *EXCLUSION AND EMBRACE: A THEOLOGICAL EXPLORATION OF IDENTITY, OTHERNESS, AND RECONCILIATION* (Abingdon Press, 1996).

they manifest equality and shared humanity. They take place on neutral ground between both victim and perpetrator, and all parties genuinely step out to admit and take responsibility for their wrongdoings. In this way, personal responsibility is encouraged and accountability expanded to the whole community.

Particularly in Acholi ritual ceremonies, participation is voluntary and therefore non-confrontational, using social pressure and spiritual beliefs as incentives rather than the fear of law. These mechanisms give both the victim and perpetrator an active role in the process, creating an atmosphere of openness and accountability in a complicated situation of protracted impunity and where it's difficult to distinguish between victim and perpetrator.

Traditional and religious leaders, largely in collaboration with international aid agencies, have been advocating for collective *mato oput* ceremonies. *Mato oput*, is a social reconciliation ceremony for after a killing, whereby the wrongdoer admits responsibility, asks for forgiveness, and pays compensation. It has been generalized and romanticized, though, to “become a sort of euphemism for healing rites or blessings performed by the *rwodi moo* (anointed chiefs), which promote reintegration of former LRA combatants into society by offering ‘forgiveness.’”<sup>263</sup> The concept of *mato oput* is not unique to the region, and was never part of any pre-colonial legal code.<sup>264</sup> However, it's useful as a form of social healing, to re-establish social relations, hierarchies, and shared moral norms.

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<sup>263</sup> Allen, *supra* note 116, at 134.

<sup>264</sup> Allen, *supra* note 116, at 162.

Truth and Reconciliation Commissions have also been a successful model for exploring root causes of conflict and ending the “mythology of lies” perpetuated by the former states of South Africa and Sierra Leone.<sup>265</sup> A full investigation of the conflict in Uganda, with public hearings, could also then help to provide a complete picture of the nature, causes, and extent of human rights violations in the country since Museveni came to power in 1986. It would be equally open to individuals on both sides of the conflict, both in the government and the LRA, and it could be combined with punitive justice mechanisms for those who bear the greatest responsibility, modeled in part after the Special Court for Sierra Leone.

## **2. Truth and responsibility**

One of the advantages to a Truth and Reconciliation Commission, as well as ritual ceremonies, is that it encourages both forgiveness and accountability. Ignoring accountability only deepens impunity and perpetuates violence, because where there is a perception of past injustices going unpunished, violence usually recurs. Stephan Rapp, U.S. ambassador-at-large for war crimes issues said in remarks to the state department that “it is critical that human rights violators, such as those who commit rape as a tactic of war, be held responsible for their crimes if such practices are to stop...If you don’t hold people to account for these kind of offenses, they’ll be repeated. This will be a tool, a technique to intimidate the population, in order to keep people in power, in order to gain power.”<sup>266</sup>

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<sup>265</sup> Sooka, *supra* note 255, at 6.

<sup>266</sup> Rapp, *supra* note 174.

Since the Nuremberg tribunals after World War II, the dominant view has favored the criminal justice option for responding to human rights violations. However, international criminal justice with its narrow focus on prosecutions is just one part of the broad scope of requirements for positive and sustainable peace.

The International Criminal Court, in particular, was created in 1998 as an independent institution with jurisdiction over the crime of genocide, crimes against humanity, war crimes, and eventually, the crime of aggression.<sup>267</sup> The list of crimes in its Statute is more extensive than in any other individual treaty outlining the laws of war, “covering virtually every breach of the Conventions and Protocol I.”<sup>268</sup> The Statute also makes express reference to a State or *organizational policy* to commit crimes against humanity,<sup>269</sup> recognizing the “unprecedented capacity of contemporary insurgencies and terrorist groups to commit large scale atrocities against civilians.”<sup>270</sup> The Court’s first case came when President Museveni referred the situation concerning the LRA in December 2003.<sup>271</sup>

The Court has jurisdiction for crimes committed only since the Statute was entered into force on July 1, 2002,<sup>272</sup> but, in 2005, the Prosecutor’s investigation resulted in a wealth of evidence from those few years to justify issuing arrest warrants for the top five leaders of the LRA. None of these men have been apprehended since the warrants were unsealed in 2005, but some have argued that the warrants helped

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<sup>267</sup> Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90, entered into force July 1, 2002, Article 5(1).

<sup>268</sup> LESLIE C. GREEN, *THE CONTEMPORARY LAW OF ARMED CONFLICT* 325 (Third Edition, 2008).

<sup>269</sup> Rome Statute, *supra* note 267, at Article 7(2)(a).

<sup>270</sup> Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court*, 99 AM. J. INTL L. 403, 412 (2005).

<sup>271</sup> *President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC*, press statement, The Hague, 29 January 2004.

<sup>272</sup> Rome Statute, *supra* note 267, at Article 11(1).

create the pressure needed to bring the LRA to the negotiating table.<sup>273</sup> It could equally be argued that the (albeit faint) possibility that the ICC might extend its investigations into Government abuses in northern Uganda helped to persuade the GoU to engage seriously in peace talks.<sup>274</sup>

The Court intervention has sparked heated debates about the relationship between peace, justice, and impunity, and even the nature of justice itself within a post-colonial African State.<sup>275</sup> In the debate surrounding the ICC, a number of overlapping reservations have been raised, including that the ICC is biased, or that it will exacerbate the violence, ignore local justice mechanisms, and undermine the peace process.<sup>276</sup>

The Prosecutor intends to secure convictions and, therefore, needs to establish a clear pattern of crimes and a line of command.<sup>277</sup> He is limited then by the Court's jurisdictional mandate, which dates only back to 2002, not far enough to investigate all of the government's activities. The government has been sensitive to its reputation, and has been more legitimately engaged in the peace process since inviting the spotlight on the country in 2003. Since referring the situation with the LRA to the Court, the government has adjusted many of its policies. Although, as Human Rights Watch has documented, Museveni's military continue to commit serious human rights abuses.<sup>278</sup> The Court's response to requests for investigations into these abuses was

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<sup>273</sup> See Allen, *supra* note 116.

<sup>274</sup> Chris Dolan, *Uganda Strategic Conflict Analysis* 17 (Sept 2006), available at [http://www.beyondjuba.org/briefing\\_papers.php](http://www.beyondjuba.org/briefing_papers.php).

<sup>275</sup> *Id.*

<sup>276</sup> Allen, *supra* note 116, at 96.

<sup>277</sup> *Id.*, at 89.

<sup>278</sup> HRW, *Africa's Longest War Still Taking Lives*, *supra* note 2.

that “the alleged crimes perpetrated by the Ugandan government were not grave enough to reach the threshold.”<sup>279</sup>

The main problem with the ICC’s involvement is that any path toward peaceful resolution of the conflict must include the government taking responsibility for its role in killing, looting, destroying, and committing other crimes against its citizens in the north ever since 1986. The Court’s arbitrary mandate and gravity threshold don’t allow for an avenue to peace in this way. Its role in exacting retributive justice does not facilitate an understanding of the embedded political, historical, and structural conditions that have caused and exacerbated the conflict. There are social injustices in the everyday lives of people, interfering with their access to land, wealth, humanity and dignity, which must be addressed before peace will be achieved. As the High Commissioner for Human Rights Judge Navi Pillay argues, “where societies are destroyed by cataclysmic war and mass crimes, while prosecutions are one mechanism to deal with the individual crimes, in the aftermath of war there is a great moral vacuum which the law alone cannot fill.”<sup>280</sup>

### **3. Truth and restitution**

The effectiveness of transitional justice can be measured by the reparative measures, which are a sign of good faith and the government’s genuine intention to include the Acholi within the country equally as citizens. The Acholi prefer compensation and reconciliation to revenge when dealing with disputes and deaths, because vengeance perpetuates violence while compensation maintains order.

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<sup>279</sup> Representative of the Court quoted in Allen, *supra* note 116, at 193.

<sup>280</sup> Sooka, *supra* note 255, at 6.

Farming land is a valuable resource in Uganda, and a highly charged issue in the discourse surrounding compensation. Colonial settlers seized huge tracts of the most fertile land for themselves, and senior politicians since independence have taken land for favors and patronage. Military figures as well have taken advantage of the war to grab land belonging to IDPs.

For many, then, the return home from IDP camps has been fraught with land disputes and allegations of land grabbing. Because the system of land ownership is communal in the sense that outside urban areas people do not hold individual land-titles, it is hard for individuals to reclaim plots they once owned. The government, furthermore, has refused to compensate people for property destroyed during the war, calling the idea “sheer madness.”<sup>281</sup> For people to return home voluntarily and with dignity, however, they will need a form of material assistance from the government. A 2007 survey by land experts in Acholi and Lango regions showed that 73% of respondents who lost resources want compensation.<sup>282</sup> In 2009 study of IDPs exiled in Kampala, “respondents frequently linked the need for reparations, their individual ability to move forward in life, and the community’s overall well-being.”<sup>283</sup>

In a study on the perspectives of urban IDPs in Kampala, respondents held the government at least in part responsible for the conflict, either through failing to protect them or actively “encouraging” rebellion to eliminate the Acholi people as a political threat.<sup>284</sup> Respondents wanted the government to pay reparations, but

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<sup>281</sup> New Vision, 14 July 2008.

<sup>282</sup> *IDPs seek compensation; government rejects claims*, The New Vision, April 2008.

<sup>283</sup> Paulina Wyrzykowski and Benard Okot Kasozi, *Violence, Exile, and Transitional Justice: Perspectives of Urban IDPs in Kampala* 15, (Beyond Juba Project, Briefing Note No. 3, August 2009).

<sup>284</sup> *Id.*, at 13.

acknowledged the challenges of calculating the appropriate amount, and the potential for corruption in the process of dissemination. They were also likely to demand the return of their cattle lost during the conflict, since cattle are perceived as crucial to the Acholi way of life and agricultural production. They seemed to most want assistance in returning home, though, alongside “developmental measures and an official apology by both the LRA and the government.”<sup>285</sup> This is not surprising, considering the untenable state of uncertainty and exile to which they have become accustomed.

### **C. Institutional reform**

There are many areas of public policy that can and need to be addressed to reverse the marginalization and oppression of segments of Uganda, which in turn have fueled armed resistance and protracted conflict. An area of law that serves as an illustration of the type of changes that will need to take place is the treatment of displaced persons. IDPs are not protected under international law like refugees who have crossed an international border. However, as the experiences of the population in northern Uganda vividly illustrate, “displacement not only violates an individual's dignity but can also amount to a violation of their human rights, including inter alia their rights to life, shelter, food, an adequate standard of living, property, equality, and non-discrimination. It also often exposes the most vulnerable among them, women and children in particular, to illness, destitution, exploitation, gender-based

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<sup>285</sup> *Id.*, at 13.



violence, and forcible recruitment into armed groups.”<sup>286</sup> The policy of camps in Uganda has provided ample evidence for these types of violations.

Recently, African leaders met at the Special Summit of the African Union in Kampala to adopt the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, the first legal instrument of its kind to bind an entire region on internal displacement.<sup>287</sup> The convention, in its preamble, underscores the need to “promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions.”<sup>288</sup> It references and reinforces the UN Guiding Principles of Internal Displacement, and elaborates on the obligations of States in all phases of displacement, from prevention to protection and facilitation of sustainable return, integration, or relocation.<sup>289</sup>

Notably, the Convention prohibits displacement as a military strategy and requires States to criminalize acts of arbitrary displacement and hold responsible those who commit these acts, including both State and non-state actors.<sup>290</sup> It also requires States to “prevent political, social, cultural, and economic exclusion and marginalization that are likely to cause displacement of populations or persons by virtue of their social identity, religion or political opinion.”<sup>291</sup> It provides for the

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<sup>286</sup> *An African solution to internal displacement: AU leaders agree to landmark convention*, Brookings-Bern project on Internal Displacement, 23 October 2009, available at <http://reliefweb.int/rw/rwb.nsf/db900sid/ADGO-7X4RES?OpenDocument&rc=1>.

<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> African Union, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 22 October 2009, available at: <http://www.unhcr.org/refworld/docid/4ae572d82.html>, at Article 3.

<sup>291</sup> *Id.*, at Article 3.1.b.

resolution of disputes related to property and compensation and other forms of reparations for damage as a result of displacement.<sup>292</sup> “It is a good convention,” said Dismas Nkunda of the New York-based International Refugee Rights Initiative. “The key test to the continent’s commitment to it will be the implementation...so we need to ensure that this convention is respected by setting some kind of benchmarks against which we will evaluate its implementation.”<sup>293</sup> Hopefully the fact that this summit was held in Kampala is a sign of the government’s commitment to adjust their policies toward the displaced northern population.

#### **D. Leadership from within**

It is clear that nothing militarily has been successful in quenching the LRA up to this point, and peace negotiations have not born fruit. In January, the Security Council “strongly condemned the recent attacks” by the LRA and “emphasized that those responsible must be brought to justice.”<sup>294</sup> The United States has included the LRA in its Terrorist Exclusion List and in August 2008 added Kony to its list of “specially designated global terrorists.”<sup>295</sup> The U.S. is not a party to the Rome Statute and has maintained a hostile position toward its existence, nevertheless it supported the recent military operation against the LRA, and many suggest that the US could still help finish the job if it increased its support.<sup>296</sup>

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<sup>292</sup> *Id.*, at Article 11, 12.

<sup>293</sup> *Africa: Talking about forced displacement*, IRIN news, 22 October 2009, available at <http://allafrica.com/stories/200910220979.html>.

<sup>294</sup> *Security Council Press Statement on Lord's Resistance Army*, UN Security Council press statement, SC/9576, January 16, 2009, available at <http://www.un.org/News/Press/docs/2009/sc9576.doc.htm>.

<sup>295</sup> *US Imposes Sanctions on LRA Leader*, Institute on War and Peace reporting, September 5, 2008, available at [http://www.iwpr.net/?p=acr&s=f&o=346556&apc\\_state=henh](http://www.iwpr.net/?p=acr&s=f&o=346556&apc_state=henh).

<sup>296</sup> *See, for example*, Julia Spiegel & Noel Atama, Enough Project, *Finishing the Fight against the LRA*, *supra* note 133.

Recently, for instance, a bill has gained momentum in the House and Senate called the LRA Disarmament and Northern Uganda Recovery Act. This bill emphasizes that apprehending top LRA commanders is the key to ending the violence, and calls President Obama to invest in a second military operation and support reconciliation and transitional justice initiatives in the war-affected communities.<sup>297</sup> A report by Enough, an American think tank, notes that the LRA's "highly centralized hierarchy is one of the rebel group's key weaknesses,"<sup>298</sup> insisting that the atrocities will continue as long as Kony and other top commanders are at large. However tricky it will be, they suggest a counterinsurgency targeted strictly at the leaders to avoid widespread civilian casualties. Human Rights Watch also emphasizes that "US - not Ugandan - leadership is a key component in any multilateral strategy to protect civilians and apprehend the groups commanders."<sup>299</sup>

However, Mo Ibrahim, the Sudanese-born cellphone pioneer who founded the Index of Governance that ranks the quality of Africa's governments, said that at the heart of building peace is the need for real leadership, not from foreign powers like the US, but from within the country.<sup>300</sup> Acholi mythology emphasizes that a chief's power is not absolute, that he "must earn his position and demonstrate his ability to lead his subjects."<sup>301</sup> How does one lead but by ensuring that people have their needs met, enough food to eat and a hope for the future for their children, distributing

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<sup>297</sup> ResolveUganda, *What the Bill Does*, Legislation Brief, available at <http://www.resolveuganda.org/legislation/overview>.

<sup>298</sup> Allen, *supra* note 116.

<sup>299</sup> HRW, *Africa's Longest War Still Taking Lives*, *supra* note 2.

<sup>300</sup> allAfrica interview with Mo Ibrahim, *supra* note 122.

<sup>301</sup> Finnstrom, *supra* note 3, at 243.

wealth and investing resources so that the social fabric is tightly interwoven and strong.

For example, President Joaquim Chissano stopped the civil war in Mozambique by “extending his hand to his enemy” and treating them as fellow citizens, inviting them to fight peacefully in free and fair elections.<sup>302</sup> Ibrahim describes the day that Chissano won the Ibrahim Prize for Achievement in African leadership, saying they could not find him to give him his prize. He was deep in the bush somewhere between Sudan and Uganda searching for Kony to secure peace between the Ugandan government and the LRA, and that day also happened to be his 68<sup>th</sup> birthday.

Also in South Africa, it took the leadership of Nelson Mandela to facilitate a peaceful transition of power from the apartheid regime to a non-racial democracy. Mandela defined his task as “reconciliation, of binding the wounds of the country, of engendering trust and confidence.”<sup>303</sup> His sense of shared humanity enabled him to deal with others on equal footing, even his enemies and oppressors, without humiliating them. He would not condone their abuse of power, but believed that all men are capable of changing if their hearts are touched. His goal was to “liberate the oppressed and the oppressor both.”<sup>304</sup> His attitude was crucial to generating the will of divided people to move towards each other despite so many years of colonial devastation and the oppression of apartheid.

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<sup>302</sup> Ibrahim, *supra* note 122.

<sup>303</sup> Andrew Brink, *Mandela: A tiger for our time*, 15 (22) Mail & Guardian (4 June 1999), available at <http://www.anc.org.za/ancdocs/history/mandela/about%20and%20to/brink.html>.

<sup>304</sup> *Id.*

To this day, “it’s the idea of Nelson Mandela that remains the glue that binds South Africa together,” said Mondli Makhanya, editor in chief of The Sunday Times... There’s the love of the man, but there’s also the question: Who will bind us?”<sup>305</sup> Giving back to Ugandans their sense of citizenship and inclusion in society will be no easy task. However, it begins with a leader who will stand and say with Mandela, “I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities.”<sup>306</sup>

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<sup>305</sup> Celia W. Dugger, *At 91, Madela endures as South Africa’s ideal*, New York Times, 8 November 2008, available at

[http://www.nytimes.com/2009/11/09/world/africa/09mandela.html?\\_r=1&ref=global-home](http://www.nytimes.com/2009/11/09/world/africa/09mandela.html?_r=1&ref=global-home).

<sup>306</sup> Nelson Mandela, *Statement from the Dock*, S v. Nelson Mandela and Others, 1964.

## **V. Conclusion**

It's difficult to say when a war actually begins, because history reaches back farther than we often admit. Modern explanations of conflict in Africa tend to be reductionist, minimizing the complex social, political, and historical realities that play into armed resistance in favor of single root causes like ethnicity and religion and even colonialism. None of these are the single root cause of today's conflict between the LRA and the Ugandan government, however. Ethnicity is a significant aspect because just as ethnic codification was a primary means of control for colonial powers, so ethnic belonging has been used as an instrument of resistance, and made the foundation for differentiating oneself in political and cultural terms. In the same way the colonialists imposed their "truth" onto people and subjugated them under the weight of imperial ascendancy, indigenous political leaders have maintained a hierarchical approach to engaging with the "other" in their own country, be it rebels, ethnic or religious groups, or geographical sub-regions.

Specifically, the Acholi have been marginalized by Museveni's government in part because of a presupposition that they are inherently violent and barbaric, a stereotype that can be traced back to the colonial perception of the Acholi as war-like. The LRA atrocities are associated with the northerners in general and Acholi in particular, and they are therefore treated with disdain. Ugandans themselves have even expressed concern about this "fixation of meaning to a limited set of cultural and

ethnic stereotypes that propaganda of war and chauvinistic politics impose upon the local social realities and national order of things.”<sup>307</sup>

If absolute power and monopoly of resources is the highest goal, it’s in the government’s interest to elevate itself not only rhetorically, but also existentially through uneven development, forced displacement, and general policies of violence and exclusion. This approach to governance is a highly destructive and shortsighted, though. As the social fabric is torn under the weight of the divisive and denigrating approach of this government toward its citizens, unraveling continues at the interpersonal and community level. Families, neighbors, tribes, towns, and entire geographical regions are split and pit against each other on every imaginable term, with violence perpetuating violence and bitterness rooting itself into society.

What’s needed to break this cycle is for everyone to find consensus in a historical national narrative that unveils the heart of the conflict, with its many threads and evolving storyline. The weapons of truth and forgiveness must be used to end the mythology of lies, and with greater force than the weapons of war so long used by the colonial powers, and now by both the government and the LRA. Shalom in Uganda will only be possible when there is a radical shift in the way people see and relate to one another, when a common national identity prevails over ethnic, religious, historical, and other divisions, and when the thread of shared humanity is held up as the one that has been holding the torn fabric together through it all.

The foundation of truth and reconciliation in the elevation of shared humanity is radically empowered by an understanding of human rights from a biblical

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<sup>307</sup> Finnstrom, *supra* note 3, at 7.

worldview. The racist and religious superiority behind imperialism and colonialism, fueling division violence and bitterness in Ugandan society, is exposed for what it really is in light of the religious definition of humanity and our interconnectedness with one another in a flourishing community. The idealism in this hope is not practical on the surface, especially with the emphasis on retributive justice and criminal punishment, so the next question would be how to build a seemingly utopist Ugandan society out of the inveterate pattern of retaliation and devastation of protracted conflict.

However practical it may seem to get even to get justice, civil rights champion and preacher Martin Luther King Jr. humbly observed how the practical way has “led inexorably to deeper confusion and chaos. Time is cluttered with the wreckage of communities which surrendered to hatred and violence.”<sup>308</sup> He sympathized with our temptation to retaliate, but soberly concludes, “if this happens, the new order we seek will be litter more than a duplicate of the old order,” and instead “we must in strength and humility meet hate with love.”<sup>309</sup>

Dr. King courageously declared, “the darkness of racial injustice will be dispelled only by the light forgiving love,” which is the “the most potent instrument available in mankind’s quest for peace and security.”<sup>310</sup> This love, “so beautifully exemplified in the life our Christ,”<sup>311</sup> can be summed up in three simple words: “love your enemies.” Injustice and oppression are destroyed by these words, and as they are

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<sup>308</sup> Martin Luther King Jr., *Strength to Love* 55-57 (Fortress Press, 1981), *available at* <http://loveyourenemies.wordpress.com/2009/02/06/isnt-love-impractical-mlk/>.

<sup>309</sup> *Id.*

<sup>310</sup> *Id.*

<sup>311</sup> *Id.*



instead wielded as a weapon in Uganda, they will accomplish the seemingly insurmountable by empowering and reconciling all members of society to one another.