The Impact of Internal Conflict on Customary Institutions and Law: The Case of Uganda

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Abstract

Customary institutions are used successfully in some Ugandan communities, but not in others. There may be several explanations for this. First, the nature of social institutions clearly changes over time; it is likely that the utility of traditional practices has also changed accordingly. Secondly, the presence of protracted civil conflict in various parts of the country has altered the manner in which people are able to live and deal with conflict. Thirdly, the scope of conflict may have caused traditions to become dislocated or modified beyond any recognizable or useful form, which may have caused traditional mechanisms to become less useful or entirely obsolete. Fourthly, societies in Uganda are stratified very differently; this organization has had a major role to play in whether and how such mechanisms are used. Fifthly, the homogeneity of the population could be a key factor in whether, and whose, "traditions" are used in a given community.

A significant amount of research surrounding traditional practices of conflict resolution and social reconstruction has been conducted in Uganda.[1] Many of these studies have claimed, wrongly, that traditional mechanisms are the best possible solution.[2] Most of these studies have centred around traditional practices in northern Uganda, as a kind of antidote to the horrors of the civil conflict that was concentrated there from the mid-1980s until the early 2000s. Indeed, enough interest in these practices has been garnered that the government of Uganda itself extolled the virtues of their use in resolving the conflict with the Lord's Resistance Army (LRA).[3]

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2 See A Branch "Ethnojustice: The theory and practice of 'traditional justice' in northern Uganda" (paper presented at the conference on Reconstructing Northern Uganda, held by the Nationalism and Ethnic Conflict Research Group, The University of Western Ontario, London, 5–6 April 2008).

3 R Rugunda "A search for durable peace in northern Uganda" (keynote address to the Stakeholders Consultative Meeting on the Juba Peace Talks, Kampala, Uganda, 30 August 2006).

It is becoming increasingly clear, however, that these traditional practices are used successfully in some communities but not in others, in the north and elsewhere. The author's work on traditional practices throughout Uganda, and a small number of studies carried out on practices other than those in the north, have pointed to differences in these practices throughout the country.[4] This article explores a number of potential hypotheses that might explain these differences.

BACKGROUND AND HISTORY OF CONFLICT IN UGANDA

Since independence in 1962, Uganda has been wracked by conflict. Under both Idi Amin and Milton Obote, many thousands of Ugandans were wounded and killed. It is estimated that between 300,000[5] and 500,000[6] Ugandans were killed during the time of Idi Amin, from 1971 to 1979. Under the rule of Obote, between 1980 and 1985, approximately 300,000[7] to 500,000[8] were also killed. The current President, Yoweri Museveni, seized power by means of military force in 1986. As with his predecessors, Museveni has faced considerable opposition from many of the 56 different ethnic groups throughout the country. Between 1986 and 2008, Museveni faced more than 27 armed insurgencies.[9]

Added to this is the complex web of transitional justice instruments that have been employed (often frivolously) to deal with the millions of criminal

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4   See JR Quinn "Gender and customary mechanisms in Uganda" in D Bergoffen, C McNeely, PR Gilbert and T Harvey (eds) *Confronting Gender Justice: Women's Lives, Human Rights* (2010, Routledge) 482. See also L Jabs "You can't kill a louse with one finger: A case study of intra-versus inter-group conflict in Karamoja, Uganda" (2010) 35/3 *Peace and Change* 483; and JR Quinn "Social reconstruction in Uganda: The role of informal mechanisms in transitional justice" (2007) 8/4 *Human Rights Review* 389.

5   P Briggs *Uganda* (1998, The Globe Pequot Press) at 23.

6   YK Museveni *Sowing the Mustard Seed* (1997, Macmillan) at 41.

7   H van Houten and G Porter (eds) *Spectrum Guide to Uganda* (1998, Interlink Books) at 53; T Ofcansky *Uganda: Tarnished Pearl of Africa* (1996, Westview) at 55.

8   Interview with A Nadduli, LC5 district chairman, Luweero Town, Uganda, 17 November 2004 (on file with the author).

9   These include rebellions by Action Restore Peace, Allied Democratic Forces, Apac Rebellion, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, The Lord's Army, LRA, National Federal Army, National Union for the Liberation of Uganda, Ninth October Movement, People's Redemption Army, Uganda Christian Democratic Army, Uganda Federal Democratic Front, Uganda Freedom Movement, Ugandan National Democratic Army, Uganda National Federal Army, Ugandan National Liberation Front, Ugandan National Rescue Fronts I and II, Ugandan People's Army, Ugandan People's Democratic Army, Uganda Salvation Army and the West Nile Bank Front. Compiled from L Hovil and Z Lomo "Behind the violence: Causes, consequences and the search for solutions to the war in northern Uganda" (2004, Refugee Law Project working paper 11) at 4; and L Hovil and Z Lomo "Whose justice? Perceptions of Uganda's Amnesty Act 2000: The potential for conflict resolution and long-term reconciliation" (2005, Refugee Law Project working paper 15) at 6.

acts committed in Uganda.[10] Two truth commissions have been appointed to deal, in turn, with the disappearances committed specifically under Idi Amin,[11] and all of the abuses committed between 1962 and 1986.[12] Subsequently, an Amnesty Act was promulgated in 2000, under which 22,107 ex-combatants were granted amnesty by July 2008.[13] The International Criminal Court began an investigation into the crimes perpetrated by Kony and other senior LRA members in 2004.[14] Aside from this, national courts and traditional practices of acknowledgement are also entitled to hear evidence in such cases.

These conflicts have devastated Uganda. Throughout the country, especially in the north, although also in Luweero Triangle and elsewhere, people continue to suffer the effects of conflict. The physical scars are easy to see: women in Luweero Triangle have been ostracized from their communities because of gynaecological fistulae; many former abductees in northern Uganda have only scar tissue where once there were noses and lips; and hospitals and schools are in a state of disrepair. The emotional and social costs, though harder to spot at first glance, also remain and are more difficult to fix. The author posits that customary practices of acknowledgement might be able to assist in coming to terms with the social and emotional scars caused by conflict.

WHAT ARE TRADITIONAL PRACTICES, AND HOW ARE THEY USED IN UGANDA?

As the author has written elsewhere,[15] cultures and societies around the world have traditionally had highly complex, highly developed systems for dealing with conflict and conflict resolution, and the social deficits brought about by conflict; these are called customary law. In traditional times, these systems had a number of elements, including mediation, arbitration, adjudication, restitution and punishment: the same retributive elements included in the kinds of systems familiar in "modern" justice. They also often included

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10 JR Quinn "Chicken and egg? Sequencing in transitional justice: The case of Uganda" (2009) 14/2 *International Journal of Peace Studies* 35.

11 See R Carver "Called to account: How African governments investigate human rights violations" (1990) 89/356 *African Affairs* 391.

12 See JR Quinn *The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti* (2010, University of British Columbia Press).

13 Interview with M Draku, principal public relations officer, Amnesty Commission, Kampala, 7 July 2008 (copy on file with the author).

14 JR Quinn "Getting to peace? Negotiating with the LRA in northern Uganda" (2009) 10/1 *Human Rights Review* 55.

15 JR Quinn "Tradition?! Traditional cultural institutions on customary practices in Uganda" (2014) 3 *Africa Spectrum* 29; and id "Here, not there? Theorizing about why traditional mechanisms work in some communities, not others" (paper presented to the International Studies Association, New York, 15 February 2009).

elements of restoration and reconciliation[16] and these elements typically functioned in tandem.

In many parts of the world, these practices were moved aside to make way for modern, western ideas and practices. Colonial rulers disparaged the traditional customs and only allowed "natives" within the colonies to utilize them, setting up separate mechanisms for use by "non-natives", effectively creating a dual system.[17] In Uganda, traditional practices were officially prohibited in 1962, at the time of independence, in favour of a harmonized court system modelled on the British system.[18] Uganda's 1967 Constitution, promulgated by Obote, outlawed the many kingdoms and traditional cultural institutions across the country. Yet the kingdoms and other traditional cultural institutions remain, and traditional practices have continued to be used in different parts of the country.[19] Traditional cultural institutions themselves have special status under article 246 of Uganda's 1995 Constitution (the 1995 Constitution). Traditional practices are now legally provided for under legislation, including article 129 of the 1995 Constitution, which provides for local council courts[20] to operate at the sub-county, parish and village levels,[21] and the Children Statute 1996, which grants these courts the authority to mandate many things including reconciliation, compensation, restitution and apology.[22] The Ugandan government subsequently included these practices in the Agreement on Accountability and Reconciliation and the subsequent annexure that emerged from the Juba Peace Talks.[23] Although these

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16 JR Quinn "Accountability and reconciliation: Traditional mechanisms of acknowledgement and the implications of the Juba peace process" (paper presented at the conference on Reconstructing Northern Uganda, above at note 2).

17 M Mamdani *Citizen and Subject* (1996, Fountain Publishers) at 109–10.

18 The British Colonial Office *Report of the Uganda Relationship Committee* (1961).

19 Briggs *Uganda*, above at note 5 at 22.

20 The local council courts were formerly known as resistance council courts and "were first introduced in Luweero in 1983 during the struggle for liberation. In 1987 they were legally recognized throughout the country": JM Waliggo "The human right to peace for every person and every society" (paper presented at a public dialogue organized by the Faculty of Arts, Makerere University in conjunction with Uganda Human Rights Commission and NORAD, Kampala, 4 December 2003, on file with the author) at 7.

21 "Uganda: Constitution, government and legislation", available at: <http://jurist.law.pitt.edu/world/uganda.htm> (last accessed 30 April 2005).

22 *The Children's Statute*, 1996, for example sec 6.

23 These documents were signed in June 2007 and February 2008 respectively and form part of a five-part agreement. Although these agreements were signed, at the time of writing this article the final agreement (which was to have been a comprehensive peace agreement) had not been signed and both parties had abandoned the talks. See Quinn "Accountability and reconciliation", above at note 16. Through the Justice, Law and Order Sector Transitional Justice Working Group, the Ugandan government established a task force to try to determine the modalities of the inclusion of these practices within the International Criminal Division of the High Court and elsewhere (see interviews with C Gashirabake, of the Ministry of Justice and Constitutional Affairs, Kampala, 4 July 2008, and Hon Jus J Ogoola, principal justice, High Court and chairman of the Transitional Justice Working Group, Kampala, 25 September 2008: copies on file

mechanisms broadly fit within very different approaches to justice, whether retributive or restorative, and fulfil different roles within their respective societies, from cleansing and welcoming estranged persons back home to prosecution and punishment, what they have in common is that they draw upon traditional customs and ideas in the administration of justice in modern times.

These institutions are still widely used throughout the country by many of the 56 different ethnic groups.[24] Among the Karamojong, the *akiriket* [councils of elders] adjudicate disputes according to traditional customs[25] which include cultural teaching and ritual cleansing ceremonies.[26] The Acholi use a complex system of ceremonies in adjudicating everything from petty theft to murder;[27] in the current context, at least two ceremonies have been adapted to welcome ex-combatant child soldiers home after they have been decommissioned: *mato oput* [drinking a bitter herbal soup to cleanse impurities] and *nyono tong gweno* [a welcome ceremony in which an egg is stepped on over an opobo twig].[28] These ceremonies are similar to those used by the Langi, called *kayo cuk*, the Iteso, called *ailuc*, and the Madi, called *tonu ci koka*.[29] The Lugbara, in the northwest of the country, maintain a system of elder mediation in family, clan and inter-clan conflict.[30] In 1985, they held an inter-tribal reconciliation ceremony, *gomo tong* [bending the spear], to signify that "from that time there would be no war or fighting between Acholi and Madi, Kakwa, Lugbara or Alur of West Nile".[31] A similar ceremony, *amelokwit*, took place between the Iteso and the Karamojong in 2004.[32]

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with the author). When Hon Jus Ogoola retired as the working group's chairman, much of the "attention fizzled out in the donor community for the work" (interview with GO Otobi, program manager, Northern Uganda Women's Empowerment Program, CARE, Kampala, 14 May 2012: copy on file with the author).

24 For a more in-depth discussion of the use of traditional mechanisms in Uganda, see JR Quinn "What of reconciliation? Traditional mechanisms of acknowledgement in Uganda" in JR Quinn (ed) *Reconciliation(s)* (2009, McGill-Queen's University Press) 174.

25 B Novelli *Karimojong Traditional Religion* (1999, Comboni Missionaries) at 169–72 and 333–40.

26 Interview with P Lokeris, minister of state for Karamoja, Kampala, 18 November 2004 (copy on file with the author).

27 See T Harlacher, FX Okot, CA Obonyo, M Balthazard and R Atkinson *Traditional Ways of Coping in Acholi: Cultural Provisions for Reconciliation and Healing From War* (2006, Thomas Harlacher and Caritas Gulu Archdiocese).

28 For an excellent description of *mato oput* see S Finnström *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (2003, Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no 35) at 297–99.

29 Annexure to the Agreement on Accountability and Reconciliation between the Ugandan government and LRA / Movement (Juba, 19 February 2008) (Annexure), art 21.1.

30 J Ndrua *A Christian Study of the African Concept of Authority and the Administration of Justice Among the Lugbari of North Western Uganda* (MA dissertation, 1988, Catholic Higher Institute of Eastern Africa) at 42–56.

31 Finnström *Living With Bad Surroundings*, above at note 28 at 299.

32 Iteso focus group, conducted by the author, Kampala, 31 August 2006.

In some areas, however, these practices are no longer used regularly. The author posits that traditional practices are, in fact, used far less widely in the "greater south" and among Ugandans of Bantu origin.[33] From time to time, however, the Baganda use the traditional *kitewuliza* [a juridical process with a strong element of reconciliation] to bring about justice.[34] Among the Bafumbira, land disputes, in particular, are settled through traditional practices, with local council officials adjudicating.[35] The Annexure to the Agreement on Accountability and Reconciliation also lists those mechanisms used by the Ankole, called *okurakaba*,[36] although the author has uncovered only weak anecdotal evidence of their continued use.[37]

People from nearly all of the 56 ethnic groups in Uganda have reported to the author that "everyone respects these traditions"[38] and that reconciliation continues to be an "essential and final part of peaceful settlement of conflict".[39] However, many people, particularly young educated Ugandans who live in the city, have also reported that they have never participated in such ceremonies.[40] Nevertheless, a common understanding of these symbols, ceremonies and institutions and their meanings remains throughout Uganda, even in those areas where such practices are no longer followed.

WHY TRADITIONAL PRACTICES ARE USED HERE, NOT THERE

What no-one has yet explored are the reasons behind why these mechanisms are utilized in some societies, while they have seemingly been abandoned by others. For they are by no means used universally across the country. This article now explores five potential hypotheses.

Social change

Institutions change over time.[41] "Social change is the alteration of social interactions, institutions, stratification systems, and the elements of culture over

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33   See JR Quinn "Here, not there: Theorizing about why traditional mechanisms work in some communities, not others" (paper presented at the Canadian Political Science Association annual meeting, Saskatoon, 6 June 2007).

34   Waliggo "The human right to peace", above at note 20 at 7. Also, JM Waliggo "On Kitewuliza in Buganda, 3 May 2005" (copy on file with the author) at 1.

35   Interview with Hon Jus P Tabaro, High Court justice, Kampala, 14 July 2008 (copy on file with the author).

36   Annexure, art 21.1.

37   Interview with GW Katatumba, *enganzi* [prime minister] of Ankole Kingdom and chairman of the Nkore Cultural Trust, Kampala, 24 June 2008 (copy on file with the author).

38   Confidential interview with Sabiny man studying at Makerere University, Kampala, 7 November 2004 (copy on file with the author).

39   Waliggo "The human right to peace", above at note 20 at 9.

40   Northern Uganda focus group, conducted by the author, Kampala, 23 August 2006 (copy on file with the author).

41   Max Weber was one of the early proponents of the theory of social change; see M Weber *Economy and Society: An Outline of Interpretive Sociology* (1968, Bedminster Press).

time."[42] Like any social practice located in the sphere of actions that is governed by human activity, it is to be expected that social customs will become modified as those actions that inform them also become altered.

Thus, like all institutions, traditional practices have also changed. In neighbouring Rwanda, the *gacaca* courts represent the embodiment of this idea. They are a newly constituted practice that has been constructed in the manner of a collection of traditional practices which had ceased to exist for a number of years, and that now carry the same, traditional name. Similarly, traditional elders courts that operate in aboriginal communities across Canada[43] and Navajo courts that have been (re)created in the United States[44] mimic the traditional practices that used to exist. They are modelled on old institutions, with changes made to make them relevant to contemporary circumstances. In this way, they are "neo-traditional" institutions.[45]

In other instances, these traditions have continued without interruption over time, but have gradually been adapted. Traditional values and teachings continue to inform the ritual of such practices. *Conselho* psychological healing in Angola[46] and ceremonies to "cool the heart[s]" of child ex-combatants upon their return to their home communities in Sierra Leone, are said to be an extension of traditional practices, although they have become modified over time.[47] As such, these customs look very similar to the kinds of mechanisms that are understood to have existed in pre-western societies. In many cases, these mechanisms have also been formalized, in that their proceedings are regularized and carried out according to pre-arranged and codified rules. This is also the case in Uganda.

It is not surprising that the role played by traditional mechanisms of justice has changed. As has been shown about social institutions throughout the world, these kinds of conventions change over time, influenced by current social practice. The intrusion of colonial powers into Uganda caused a significant upheaval in the country's social customs, as did the centralization of governance structures.

The introduction and subsequent influence of other religions, particularly Christianity, cannot be underestimated in this case. The evangelical revival

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42   ML Andersen and HF Taylor *Sociology: Understanding a Diverse Society* (2005, Thomson Wadsworth) at 618.

43   R Ross *Returning to the Teachings* (1996, Penguin).

44   P Bluehouse and J Zion "*Hozhooji Naat'aanii*: The Navajo justice and harmony ceremony" in (1993) 10/4 *The Mediation Quarterly* 328.

45   S Brown "Forging national unity in Rwanda: Government strategies and grassroots responses" (paper presented at Reconciliation, a conference held by the Nationalism and Ethnic Conflict Research Centre at The University of Western Ontario, London, Ontario, 14–15 May 2005). See also P Hayner *Unspeakable Truths* (2001, Routledge) at 192.

46   C Eyber and A Ager "*Conselho*: Psychological healing in displaced communities in Angola" (September 2002) 360/9336 *The Lancet* 871 at 871.

47   R Shaw "Rethinking truth and reconciliation commissions: Lessons from Sierra Leone" (February 2005, United States Institute of Peace, special report 130) at 9.

in central Uganda in 1926 seems to have led many to convert to Christianity, and Pentecostalism in particular.[48] This conversion to Christianity forcefully led many to reject traditional mechanisms,[49] although a number of people interviewed referred to the level of compatibility between their religious beliefs and Acholi traditional mechanisms and saw no contradiction. This is of great concern for those who have converted to Christianity but hold their traditional beliefs as well. Many are also concerned that some groups, including religious leaders, are co-opting the process. One woman said:

> "It is no use performing healing rituals in town. The thing they are doing now is a big mistake. It will take all the *cen* [evil spirits] to the place where it is done. Those rituals will have to be done by clan elders. The Acholi are losing their culture. Culture was created by God. I am very Christian. Jesus goes with my culture. I love God so much. I respect Catholics. They brought Jesus to us. But they must correct their mistake. I helped set up the Acholi Traditional Ritual and Prayer Committee. We collected information and messages from old elders and summarized them. Instead of listening, the *rwodi mo* [annointed traditional chiefs] are fighting those people. It is because the religious leaders are mobilizing the *rwodi mo*. They are saying the old ways are Satanic ... They are fighting against the real rituals. We need to mobilize the elders for prayers and rituals. I don't want *rwodi mo* interfering."[50]

There is some evidence of the decline in the use of these practices.[51] "The traditional values, cultural knowledge and social institutions of everyday life are threatened."[52] "Certain practices and beliefs are still widespread in some areas of Acholi but less common in others. Moreover, some rituals might not have been performed for a long time in a particular area because it has not been possible to put together all the necessary components due to extreme poverty or war-time insecurity, but might still be applicable and sought after by the community."[53]

Furthermore the social meanings of the ceremonies that are still practised appear, in some cases, to be shifting[54] as people move farther away from

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48   Interview with J Kitakule, Inter-Religious Council of Uganda, Kampala, 24 September 2008 (copy on file with the author).

49   Interview with Hon K Sempange, Kampala, 18 November 2004.

50   T Allen *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (February 2005, Crisis States Research Centre, Development Studies Institute, London School of Economics) at 80.

51   Allen reports that a study funded by the Belgian government revealed that young people no longer automatically respect the elders: id at 76.

52   Finnström *Living With Bad Surroundings*, above at note 28 at 201.

53   Harlacher et al *Traditional Ways of Coping in Acholi*, above at note 27 at 113.

54   Finnström *Living With Bad Surroundings*, above at note 28 at 298.

their *gemeinschaft* communities[55] toward better education and jobs in cities. Among the Karamojong[56] and also the Acholi,[57] cultural education through practice and social education is beginning to decline. Yet, even institutions no longer in common use provide strong examples of social order:

> "It would be wrong to imagine that everything traditional has been changed or forgotten so much that no traces of it are to be found. If anything, the changes are generally on the surface, affecting the material side of life, and only beginning to reach the deeper levels of the thinking pattern, language content, mental images, emotions, beliefs and response in situations of need. Traditional concepts still form the essential background of many African peoples, though obviously this differs from individual to individual and from place to place. I believe ... that the majority of our people with little or no formal education still hold on to their traditional corpus of beliefs."[58]

These kinds of ceremonies "help us deepen our experience of events, cope with them, humanize them".[59]

"These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance."[60] Traditional practices, for example, have been widely reported to be used in northern Uganda to deal with those children who have returned home after forcible abduction, during which time they have been forced to commit unspeakable atrocities. Traditionally, Acholi ceremonies of *mato oput* and *nyouo tong gweno* were utilized to bring about healing between a perpetrator and his victim(s). In the present context, multiple ceremonies of both are being carried out in which hundreds of perpetrators are healed at a time, each walking on the same broken egg and drinking from the same soup.[61]

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55 Ferdinand Tonnies made a distinction between *gemeinschaft* communities, which he saw as tightly-knit primary kinship groups, and *gesellschaft* communities, which he identified when "people ... leave their primary groups for association with those who may be strangers": F Tonnies *Community and Society* (translated by CP Loomis, ed) (1957, University of Chicago Press) at 65.
56 Novelli *Karimojong Traditional Religion*, above at note 25 at 201–25.
57 Finnström *Living With Bad Surroundings*, above at note 28 at 76 and 219. See also EEE Pritchard *Witchcraft, Oracles and Magic Among the Azande* (1937, Clarendon Press) at 154.
58 JS Mbiti *African Religions and Philosophy* (1969, East African Educational Publishers) at xi.
59 A Shorter *African Culture* (1998, Paulines Publications Africa) at 61.
60 Finnström *Living With Bad Surroundings*, above at note 28 at 299.
61 B Afako "Reconciliation and justice: 'Mato oput' and the Amnesty Act", available at: <http://www.c-r.org/our-work/accord/northern-uganda/reconciliation-justice.php> (last accessed 19 May 2008).

Conflict

Conflict causes tremendous upheaval. The scope and scale of conflict in Uganda has been immense. Including the LRA conflict, it is estimated that three million people have been killed, tens of thousands gravely injured, tens of thousands abducted and forcibly conscripted,[62] and close to two million forced to flee situations of conflict within their own country. Similarly, dozens of conflicts have affected different parts of the country since independence in 1962, causing death and destruction. It is the case that the presence of protracted civil conflict in various parts of the country has altered the manner in which people are able to live and, consequently, to deal with conflict.

The effect has been that people have been forced to live apart from their *gemeinschaft* communities, in reconstituted and blended settings like camps for internally displaced persons (IDPs). It is estimated that 1.8 million[63] people were internally displaced within northern Uganda, living in ostensibly protected camps for IDPs, a figure which represented more than 80 per cent of the region's population. These camps are an "integral part of the Ugandan government's anti-insurgency policy. In some places, anyone who refused to move from their rural homes was forcibly displaced".[64] Effectively, the people were "herded into camps where they [are forced to] survive on relief aid".[65] "While roughly 230,000 people have left the camps, few have actually returned home. Most have been relegated to smaller resettlement camps where conditions are often as bad (or worse) than the older, more established sites."[66] The camps have led to a phenomenon of "suspended animation";[67] people have put off carrying out the activities of daily life, merely trying to survive, hoping that they would soon be able to leave the camps and return to their homes to pick up where they had left off.

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62 The exact number of abductees in the LRA conflict is unknown. Pham, Vinck and Stover estimate that "the LRA abducted 54,000 to 75,000 people, including 25,000 to 38,000 children, into their ranks between 1986 and 2006": PN Pham, P Vinck and E Stover "The Lord's Resistance Army and forced conscription in northern Uganda" (2008) 30/2 *Human Rights Quarterly* 404 at 404. "The scale of abduction is a matter of speculation due to insufficient monitoring": Allen *War and Justice*, above at note 51 at iii. Forced conscription has been reported in many of the conflicts that have taken place since 1962, into both government and rebel ranks; see D Pain *The Bending of Spears: Producing Consensus for Peace and Development in Northern Uganda* (1997, International Alert) at 29.

63 Interview with G Latim, secretary to the paramount chief of Acholi, Gulu Town, Uganda, 22 November 2004 (copy on file with the author); also *Pawns of Politics: Children, Conflict and Peace in Northern Uganda* (2004, World Vision) at 4.

64 Allen *War and Justice*, above at note 51 at 23.

65 M Odokonyero "Acholi's political 'elephant breed' fails" (10 March 2006) *The Monitor* (Kampala).

66 Enough "Northern Uganda monthly report" (April/May 2007), available at: <http://www.enoughproject.org/region/northern-uganda/overview.php> (last accessed 20 April 2007).

67 In medical terminology, "suspended animation" refers to the slowing of vital functions by external means without resulting in death.

Research has begun to demonstrate that those who have been living in the camps are fearful of encountering violence upon their return and are, therefore, reluctant to do so. While many people do remain in the camps, a number have begun to transit back and forth regularly between the camps and their village homes; in one community, more than 53 per cent of the population reported maintaining a residence in both the camp and their community.[68] For many, these camps, in which people have been living since the mid-1980s to early 1990s, have become communities.[69] Some have suggested that a substantial number of IDPs may not ever be able to return to their homes.[70] In this case, the enforced "communities" that have sprung up within the camps may be formalized, and the camps themselves will become permanent.

As such, the behavioural patterns of those forced to live in the camps have also changed. For example, it is considered too dangerous to sit around the traditional *wang oo* [campfire] at night, where such issues ought to be discussed. "Thus the oral tradition and all that is bound up in it has been subsumed beneath the constant threat of violence."[71] "War is destroying our tradition. In the camps, the animals are not there - not even chickens, not even the eggs that the ones who come back from the bush have to step on. And we can no longer sit at night and discuss all these things. The army tells us to stay inside."[72] "You know, the camp is like a tree where you are getting shelter, it is not like a home where cultural things can be carried out."[73]

> "If you look at the way huts are built, squeezed together, and what people do at night – even at daytime – has removed respect completely now … Morally we are completely broken, the Acholi way of life is torn apart … Raping women has not been acceptable in Acholi culture, but today it is very pleasing. Killing has never been accepted in Acholi culture, but today it is considered a game. Go and see in the street what kind of games people play, the words people use. Our children now talk about laying ambush, shoot to kill – war games. Before they used to play marriage games, dancing games, hunting games. Now they make tanks, lorries, airplanes."[74]

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68   EP Green "Communities in transition" (paper presented at the conference on Reconstructing Northern Uganda, above at note 2).

69   Ibid.

70   "UNDMT Technical Group status report: Preparatory planning for displaced persons", cited in C Dolan *Understanding War and Its Continuation: The Case of Northern Uganda* (PhD dissertation, 2005, University of London) at 167.

71   L Hovil and JR Quinn "Peace first, justice later" (2005, Refugee Law Project (RLP) working paper 17) at 24.

72   RLP interview with young man, Acholi Bur IDP camp, Pader, 15 March 2005, id at 26.

73   RLP interview with elderly woman, Corner Kamdini, Kitgum Town, 14 March 2005, id at 27.

74   RLP interview with elderly man, Gulu Town, 3 March 2005, id at 27.

> "Our culture was very rich. Education was not just got from formal classrooms. *Wang-oo* was the place all the cultural, moral education happened. In camps the *wang-oo* is not there. Now parents do not have time to talk to their children ... Now the basic 'family' is destroyed and also the community at large. The camp situation has left people not believing in reality. They now have this as their way of life, they now dwell on artificial life, the hand-outs, feeding on WFP [World Food Program-provided food]. Being dependent is now part of the system, something that used not to happen".[75]

Some of the people of Northern Uganda have reported that traditional mechanisms can no longer be applied in any meaningful way in a context of displacement; ceremonies have little meaning when there is no place to perform them and food is so scarce that there are no animals left to sacrifice.[76] "The pre-war cultural agency of the displaced Acholi people diminishes. In the long run, the situation is of course socially destructive."[77]

In part because of the dislocation of the community into camps, and in part because the ceremonies themselves are being changed to some extent to deal with the present and formerly unknown circumstances, they feel that it is not proper to carry out these ceremonies. The *rwot* [chief] of Atiak reiterated these concerns: "[the performing of *mato oput* and other healing ceremonies] has to be done by the elders of each *kaka* [clan] [and not by government officials, as is being done now]. This thing they have been conducting in Gulu is not good. But what can I do? They accepted to do it there. They must do it separately [and not in groups as it is currently being done]. If they do it in the town it will make things worse. It will bring *cen* there..."[78]

Added to this is the effect of displacement on children, who are no longer growing up within the type of environment that is conducive to passing on the ideas and values that underpin many of the cultural mechanisms. Many now feel that traditional mechanisms have become obsolete. Yet others believe that traditional practices ought to be resumed once people return home.[79] "[Traditional mechanisms] can work if all the people have gone to their normal settlements, not as IDPs. Because then you are sure of where your son or child is. But if we return to our homes, then we can start to do these things again."[80] Many see the use of traditional mechanisms as a vital component to the whole process of return, symbolizing aspects of social cohesion that have been lost in the process of displacement.

There is some support for carrying out traditional practices in the camps. "Our chiefs are trying to revitalize the system, but not fully. Because now,

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75　RLP interview with young man, Kichwa, 13 March 2005, id at 27.
76　Id at 24–25.
77　Finnström *Living With Bad Surroundings*, above at note 28 at 204.
78　Cited in Allen *War and Justice*, above at note 50 at 79.
79　Hovil and Quinn "Peace first", above at note 71 at 24–25.
80　RLP interview with elderly woman, Kichwa, 14 March 2005, id at 28.

many of the cleansing ceremonies for example are done here in Gulu. If it could be done in the camps, I think many of the young there would see, 'this is the way things used to be done'. But when things are only done in Gulu, then only the wrongdoers see what is being done."[81] Indeed, some feel that the younger generation does not recognize or understand such mechanisms any longer, a complaint that is not uncommon in many societies around the world. It has become difficult to "teach the children [the] Acholi culture".[82]

The war itself has caused tremendous change and dislocation. As a result, the use of traditional practices has slowed or even stopped.

Scope of conflict

Closely related to the manner in which people are able to deal with conflict is the scope of conflict and its relation to the use of traditional practices. It is likely that the extent of conflict in the present circumstance may have caused such traditions to become dislocated or modified beyond any useful form. One example of this type of modification is the group *mato oput* ceremonies, discussed above, which would have little meaning and would be largely unrecognizable if applied outside the current conflict situation.

Some maintain that none of the traditional practices was ever designed to deal with conflict on this scale. The magnitude of conflict throughout Uganda, and particularly in the north, has never been seen before. When asked, many Ugandans acknowledge that violence and murder have taken place on such a scale that it is no longer possible to determine who is responsible for individual deaths. There is no parallel to the severity or longevity of the LRA conflict in the history of the country. As one man living in the same IDP camp said, "Kony has brought killings where people kill in their own clans and families. This is so complex that I do not think it can easily be handled."[83]

Yet there have been cases of massive conflict throughout the modern history of Uganda. Particularly gruesome conflicts have erupted and spilled across ethnic borders. And solutions have been found, particularly at the inter-ethnic level. For example, this occurred with the *gomo tong* between leaders from across the greater north, in the realm of "traditional resolution between warring clans or tribes when a symbolic spear from each is bound together and then broken".[84] Similarly, a ceremony known as *amelokwit*, took place between the Iteso and the Karamojong in 2004. While not entirely common,

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81   RLP interview with middle-aged man, Gulu Town, 3 March 2005 id at 28.
82   B Oballim, camp leader, Labuje Camp, Kitgum, cited in *Trapped in Anguish: A call for Acholi reconciliation* (2006, video produced by Northern Uganda Peace Initiative, Eyez on Africa).
83   RLP interview with middle-aged man in Acholi language, Gulu Town, 3 March 2005, in Hovil and Quinn "Peace first", above at note 71 at 30.
84   Pain *The Bending of Spears*, above at note 62 at 88.

these ceremonies have been developed and used regularly in responding to crises on a grand scale.[85]

What is less clear is whether such practices can and should extend to the kinds of circumstances created in the context of war. Finnström and others maintain that they can.[86] Whether they should is a question that remains to be answered.

Stratification

The author has noted that those ethnic groups that were traditionally organized hierarchically, such as the Baganda, are far less likely to utilize these mechanisms. Conversely, those ethnic societies that were arranged horizontally, with a system of equal clans, like the Acholi, are more likely to continue to utilize these mechanisms. It seems that the hierarchical stratification of societies with entrenched kingdoms, whose social order was organized from top to bottom, were more likely to co-ordinate whole formalized political systems, of which justice formed one part. Certainly, this is the case in Buganda, where the *kitawuliza* courts, used mostly at the sub-sub-county level, were headed by the head of that particular political stratum; he, in turn, reported to *muluka* chiefs, and so on, up to the *katikkiro* [prime minister] and ultimately the *kabakka* [king], who had the power to reverse the decisions made.[87] This pattern seems to repeat itself in Uganda today, in that those ethnic groups with highly stratified kingdoms, including Buganda, Toro, Ankole and others, use such traditions infrequently.

There are five likely causes as to why, over time, societal organization had a role to play in the way such mechanisms are utilized. The first is that the Baganda and several of the other kingdoms were colonized first. Their first contact with the British came in the late 1800s. Britain formally declared a protectorate over the area which now comprises Buganda in 1894.[88] At that time, the country was divided into a series of indigenous kingdoms and chieftaincies, each of which had its own ruler and leadership system.[89] Britain colonized the Kingdoms of Bunyoro, Toro, Ankole and Bugosa in 1896, although formal agreements between the kingdoms and the British were not signed until as late as 1933.[90] In 1900 the Buganda Agreement, a treaty between the British protectorate and the kingdom of Buganda, was signed: an attempt to establish indirect British rule in the protectorate. The system of indirect rule suited the British because it was less costly to install Buganda chiefs as

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85   Finnström *Living With Bad Surroundings*, above at note 28 at 299.

86   Id at 299–300.

87   Interview with Dr L Walusimbe, Institute of Languages, Makerere University, Kampala, 16 May 2006 (copy on file with the author).

88   ML Pirouet "Uganda: History to 1971" in J Middleton (ed) *Encyclopedia of Africa South of the Sahara* (1996, Charles Scribner's Sons) 303.

89   D Berg-Schlosser and R Siegler *Political Stability and Development: A Comparative Analysis of Kenya, Tanzania and Uganda* (1990, Lynne Rienner Publishers) at 97.

90   Briggs *Uganda*, above at note 5 at 15.

agents and to create local chiefs to do their bidding.[91] By contrast, other regions of the country were not colonized until several years later. Karamoja, for example, was declared a closed district in 1911.[92] The protectorate was extended to include the "north" in 1911 (Kigezi, Lango) and 1913 (Acholi, Karamoja). West Nile, previously "leased" to the Congo, became part of Uganda in 1914.[93] As such, these districts have a shorter history with the British, and even then the "indirect" system of rule left them able to conduct their own affairs as they saw fit. In these areas, "governance was highly decentralized, and power lay in the hands of elders who practised a form of democratic government".[94] By 1920, for example, Lango had considerably more traditional leaders in place than did most of the kingdoms located in the central region.[95]

The second possible reason is that the Baganda and other kingdoms were so eager to curry the favour of the British that they whole-heartedly adopted the systems suggested and / or imposed by the British. The Kingdom of Buganda was Uganda's principal kingdom during this period, and the British counted the Baganda[96] as its main strategic ally. The Baganda became the highly favoured agents of the British Crown, acting as tax collectors and labour recruiters, and forcing Buganda culture on those from other parts of the new Protectorate of Uganda.

The third likely reason for the divide along these lines is the outlaw of the kingdoms under Obote I in 1967; many Ugandan royals, including the *kabakka* of Buganda, went into exile during that time.[97] The kingdoms were restored in 1993, but without any political powers.[98] The kingdoms' existence is protected under the 1995 Constitution.[99] However, those ethnic groups that were stratified horizontally, in a system of equal clans, were unaffected by this decision, as their structures of governance were allowed to remain in place. Conversely, those ethnic groups whose heads were effectively banished were stripped of their decision-making apparatus. In Buganda from 1953–55, for example, a panel recommended that proposals for local government and clan matters be put on hold until the *kabakka* was able to return from exile abroad.[100] Thus they were more likely to have acquiesced to the demands of the centralized government.

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91 Van Houten and Porter (eds) *Spectrum*, above at note 7 at 47.
92 A Pazzaglia *The Karimojong: Some Aspects* (1982, EMI della Coop Servizio Missionaria) at 59.
93 Briggs *Uganda*, above at note 5 at 17.
94 Van Houten and Porter (eds) *Spectrum*, above at note 7 at 46.
95 ABK Kasozi *The Life of Prince Badru Kakungulu Wasajja* (1996, Progressive Publishing House) at 81.
96 "The people of Buganda are referred to as Baganda (the singular form is Muganda), their language is referred to as Luganda, and they refer to their customs as *Kiganda* customs": From The Buganda Home Page "Introduction", available at: <http://www.buganda.com/bugintro.htm;internet> (last accessed 24 May 2003).
97 Briggs *Uganda*, above at note 5 at 25.
98 Van Houten and Porter (eds) *Spectrum*, above at note 7 at 298–99.
99 1995 Constitution, art 246.
100 Kasozi *The Life of Prince Badru*, above at note 95 at 81–82.

The fourth reason has to do with the geography of Uganda. The epicentre of power has long centred around the Kingdom of Buganda, which geographically occupies the central area of the country. The seat of government under the British was Entebbe, and since independence has been Kampala, both of which are in Buganda. For the most part, those ethnic groups which have kingdoms and are stratified vertically are located in reasonable proximity to Buganda. Those groups which are stratified horizontally tend to be located further away from the centre of government.

The fifth reason takes into consideration the ethnic dissimilarity that exists in Uganda between those of Bantu descent and those of Nilotic descent. Those of Bantu origin tend to occupy the west, south and east of the country, while the Nilotes tend to occupy the north and northeast. These groups continue to speak languages derived from either their Bantu or Nilotic roots; Bantu languages are structurally inter-related, as are the Nilotic Luo languages, which makes the transmission of ideas and culture much easier within a particular ethnic / linguistic group. Again, those ethnic groups which have kingdoms and are stratified vertically tend to be Bantu in origin.

Homogeneity

Others question the relevance of such institutions in rapidly urbanizing and globalizing societies. They worry that, "the traditional values, cultural knowledge and social institutions of everyday life are threatened".[101] Furthermore as people move farther away from their *gemeinschaft* communities, the social meanings of the ceremonies that are still practised appear, in some cases, to be shifting.[102]

It is the case, though, that, in urbanizing *gesellschaft* societies, the resulting society is not homogenous, but heterogeneous. As such, the conduct of such cultural practices becomes more difficult. In Acholi society, for example, the earliest converts to Islam became disenfranchised and "ceased to be an Acholi".[103] Thus homogeneity seems a likely factor in whether, and whose, "traditions" are used in a given community.

The composition of Uganda's population is difficult to determine, since census data are inaccurate and out-of-date; the last official figures are from 1991. But it is estimated that 85 per cent of Uganda's population lives in rural areas.[104] The population of cities has grown rapidly in recent decades: the city of Kampala, for example, grew by 159 per cent between 1980 and 1991,

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101 Finnström *Living With Bad Surroundings*, above at note 28 at 201.

102 Id at 298.

103 Kasozi *The Life of Prince Badru*, above at note 95 at 83.

104 Rural Poverty Portal "Rural poverty in Uganda", available at: <http://www.ruralpovertyportal.org/english/regions/africa/uga/index.htm> (last accessed 19 May 2008); Earth Trends "Population, Health, and Human Well-Being - Uganda", available at: <http://earthtrends.wri.org/pdf_library/country_profiles/pop_cou_800.pdf> (last accessed 19 May 2008).

and continues to grow rapidly.[105] Cities such as Njeru have experienced fantastic growth: in 1980, its population was recorded as 3,880, which had grown to 69,452 by 2005.[106] Overall, according to 2005 estimates, close to 7 per cent of Uganda's total population[107] lives in its ten largest cities. These cities, particularly Kampala, are composed of people from many different ethnic groups, many of whom have also inter-married. In contrast, only one rural area, the district of Tororo, is identified as "multi-ethnic".[108]

Interviews with Ugandans raised, or living, in Kampala have indicated that they have less familiarity with traditional practices.[109] Some admitted that they had never seen even one of these kinds of rituals.[110] This certainly fits with the hypothesis that heterogeneity decreases a society's reliance on traditional cultural practices.

The number of IDPs in northern Uganda roughly equals the population there. As outlined above, it is estimated that, at the height of the conflict, 1.8 million people were displaced within the greater north, a figure which represents 5.7 per cent of the total population of Uganda, but nearly 80 per cent of the population of the north. These people, too, are "urbanized" after a fashion. Yet their ethnic composition is mainly homogeneous.

CONCLUSIONS

The use of traditional practices in Uganda cannot be said to be uniform throughout the country. Indeed, it is difficult to generalize. There are indications that several factors have caused their use to increase or decline. Of greatest importance are the role and scope of conflict, the consequences of which are magnified throughout the country. Yet other hypotheses seem to have greater validity when attempting to explain the marked divergence. Chief among these is the stratification of Ugandan society, as explained by a number of different factors. The results of social change and homogeneity, when added, offer a compelling explanation for this variation.

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105 "Uganda: City Population", available at: <http://www.citypopulation.de/Uganda.html> (last accessed 19 May 2008); "2005 Population Estimates for Cities in Uganda", available at: <http://www.mongabay.com/igapo/2005_world_city_populations/Uganda.html> (last accessed 19 May 2008). These figures represent actual cities only, not urban agglomerations including suburbs.

106 Ibid.

107 "Uganda" in "The world fact book" (Central Intelligence Agency), available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/ug.html> (last accessed 19 May 2008).

108 S Ayo-Odango (ed) *The Need for National Reconciliation: Perceptions of Ugandans on National Identity* (December 2004, Civil Society Organisations for Peace in Northern Uganda and Jamii Ya Kupatanisha) at 3.

109 Northern Uganda focus group conducted by author, Kampala, 23 August 2006.

110 Interview with Dr G Bantebya, head, Women and Gender Studies Department, Makerere University, Kampala, 29 August 2006 (copy on file with the author).