



Africa Spectrum

Quinn, Joanna R. (2014),
Tradition?! Traditional Cultural Institutions on Customary Practices in Uganda, in:
Africa Spectrum, 49, 3, 29-54.

URN: <http://nbn-resolving.org/urn/resolver.pl?urn:nbn:de:gbv:18-4-7811>

ISSN: 1868-6869 (online), ISSN: 0002-0397 (print)

The online version of this and the other articles can be found at:

www.africa-spectrum.org

Published by

GIGA German Institute of Global and Area Studies, Institute of African Affairs
in co-operation with the Dag Hammarskjöld Foundation Uppsala and Hamburg
University Press.

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Tradition?! Traditional Cultural Institutions on Customary Practices in Uganda

Joanna R. Quinn

Abstract: This contribution traces the importance of traditional institutions in rehabilitating societies in general terms and more particularly in post-independence Uganda. The current regime, partly by inventing “traditional” cultural institutions, partly by co-opting them for its own interests, contributed to a loss of legitimacy of those who claim responsibility for customary law. More recently, international prosecutions have complicated the use of customary mechanisms within such societies. This article shows that some traditional and cultural leaders continue to struggle to restore their original institutions, some having taken the initiative of inventing new forms of engaging with society. Uganda is presented as a test case for the International Criminal Court’s ability to work with traditional judicial institutions in Africa.

■ Manuscript received 13 September 2013; accepted 24 August 2014

Keywords: Uganda, conflict management, peacekeeping, cultural tradition, peace and conflict research

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Transitional justice is concerned with how societies move from conflict to peace or from authoritarian regimes to democracy – by dealing with the resulting questions of justice and social healing. Among the “tools” that theorists and practitioners of transitional justice have at their disposal in restoring social cohesion after conflict are customary methods of acknowledgement. While such practices have not yet become part of the mainstream as much as truth commissions and tribunals have, evidence of their utility in several societies is beginning to appear. The use of these customary practices of acknowledgement in Uganda is widespread. Each of the 56 different ethnic groups across the country has at some point relied on such practices. This paper explores the forces brought to bear on the leaders of the newly restored traditional cultural institutions. It further assesses the agency of traditional cultural institutions in their use. This analysis is carried out in the context of the ever-turbulent political situation in Uganda, and of the sordid legacy of conflict in that country.¹

An emerging field, transitional justice is defined by the International Center for Transitional Justice (ICTJ) as “the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses” (ICTJ n.d.). There are a number of responses that are frequently mounted in the wake of such violence, including trials, truth commissions, official apologies and compensation. Transitional justice seeks recognition for the victims of abuses, and along the way also seeks to contribute to promoting peace, reconciliation and democracy.

I am particularly interested in mechanisms like the now-famous *mato oput* which have been employed in situations following conflict, particularly after civil war and rebellion, and which came to international attention in the early 2000s, when Joseph Kony and the Lord’s Resistance Army (LRA) were focused on Northern Uganda. At that time, leaders outside the structures of government attempted to deal with the situation using the tools at their disposal: customary practices that were familiar to everyone and that conveyed the authority of the elders – something to which nearly everyone was culturally attuned. These practices are not unique to the Acholi, and this paper attempts to describe the development of the traditional cultural institutions – the traditional leaders, chiefdoms and kingdoms – throughout the country that govern and regulate the use of these practices. The complicated use of customary

1 Research for this project was carried out with assistance from the United States Institute of Peace (SG-135-05F), with research assistance from Stéphanie Anne-Gaëlle Vieille.

practices in general is interwoven, of course, with the presence of the International Criminal Court (ICC), which became embroiled in the situation in Northern Uganda, and whose involvement caught many there by surprise. But the Court itself has now recognized the traditional leaders, and professes to understand the importance of alternative dispute resolution, which has continued to exist long after it was meant to have been abolished. The coming of the Court to Uganda, and particularly to Northern Uganda, put extra pressure on an already tense situation in which the LRA and the government of Uganda were openly engaged in conflict, and in which 1.8 million people in Northern Uganda had been displaced.

There is a significant and growing body of literature on customary law and traditional justice. Much of it focuses on Africa, including works by Zartman (2000), who describes many traditional practices from across the continent, and Huysse and Salter (2008), who offer a similarly descriptive consideration of customary practices themselves. Likewise, there is a growing literature on the use and/or revitalization of customary practices throughout the world (Rouland 1994, Schmeidl 2009). It is useful to note that these practices are not, themselves, “traditional”; this is why, in many cases, I have opted instead to use the term “customary” to convey the idea that these practices are commonly used, and founded upon long-continued practices, even though they are not themselves “traditional”. That is, as Finnström (2003) and Hobsbawm and Ranger (1988) and others have noted, they have continued to develop and change across time. The particular practices that exist today may faintly resemble practices from the past – or they may not. But they *do* need to fit the situations that confront them in the present day, and be of real utility for their users.

This paper considers the traditional cultural institutions, those kingdoms and chiefdoms that are responsible for these practices, in Uganda. Since their official reinstatement, which is to say “recognition” by the government of Uganda, the leaders themselves, and the institutions they represent, have been buffeted by any number of forces. In many ways, they have been co-opted. This is especially important to understand, because so many have been promoting the use of these kinds of practices as a tool for Uganda’s transition. But it is imperative both that we understand just how and why the traditional cultural institutions themselves are pushing for specific policies and outcomes, and that we pay attention to the forces and influences they face.

Methodology

As part of a larger, ongoing study, I have been engaged since 2004 in an examination and analysis of the use of customary practices of acknowledgement in Uganda. Over the past ten years, I have conducted a total of 371 interviews, focusing on a number of different elements of customary practices. I am specifically interested in the role that these processes play in a society's acknowledgement of past crimes and abuses, and how they are able to succeed where other "Western" approaches, like truth commissions, have failed (see Quinn 2010 b, c).

The "wave" of research that focuses on traditional cultural leaders is the fifth of eight distinct enquiries into customary mechanisms in Uganda. Each is a qualitative survey of the manner in which customary practices could be and are being used, and each focuses on a different aspect of these instruments – particularly on the opinions of various stakeholder groups in their use. Some of the data that supports the arguments made in this paper has been collected in interviews with members of other stakeholder groups, including conflict-affected women, government officials and religious leaders. This particular wave focuses on the attitudes of traditional cultural institutions (TCIs) and their leaders towards customary practices, and the difficulties engendered by the use of such practices.

In total, I conducted 34 interviews in June and July 2008, with 24 leaders of traditional cultural institutions and 10 government officials involved in the regulation of traditional cultural institutions.² I also earlier interviewed three leaders of traditional cultural institutions in 2004, and one later, in October 2008. These TCI leaders represented 13 of Uganda's more than 56 different ethnic groups: Acholi, Adhola, Alur, Ankole, Bukanjo, Bufumbira, Bugisu, Buganda, Busoga, Karamoja, Teso and Tooro – some of which are recognized by the government of Uganda, and some of which are not. The interviewees themselves held a number of roles, including Prime Minister, Head of the Royal Clan, Crown Prince, and Ministers of Cultural Affairs or Youth, within the governments of the various kingdoms and TCIs.

2 Unless otherwise specified, direct quotations are those of people who wished to remain anonymous in this paper.

Background and History of Conflict

Since the time of 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 (Briggs 1998: 23) and 500,000 (Museveni 1997: 41) Ugandans were killed during the rule of Idi Amin, from 1971 to 1979. Under the rule of Obote, between 1980 and 1985, the numbers of those killed are similarly estimated at between 300,000 (n.n. *Uganda* 1998: 53; Ofcansky 1996: 55) and 500,000 (Nadduli interview, 2004). 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 (Hovil and Lomo 2004, 2005), seven of which caused significant upheaval.³

Added to this is the complex web of transitional justice instruments that have been employed (often frivolously) to deal with the millions of criminal acts committed in Uganda (Quinn 2009a). Two truth commissions have been appointed to deal, in turn, with the disappearances that occurred specifically under Idi Amin (Carver 1990: 391-415) and all of the abuses committed between 1962 and 1986 (Quinn 2010a). Subsequently, the Amnesty Act 2000 was promulgated, under which 22,107 ex-combatants would subsequently receive amnesty by July 2008 (Draku interview, 2008). The ICC began an investigation into the crimes perpetrated by Kony and other senior LRA members in 2004 (Quinn 2012). Aside from this, national courts and customary practices of acknowledgement are also entitled to hear evidence in such cases.

These conflicts have devastated the country. Throughout the country, and 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 obstetric 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. Yet the emotional and social costs, though harder to spot at first glance, remain too. These “scars” are more difficult to fix. I posit that customary

3 The main insurgencies were Ugandan People’s Democratic Army (UPDA), Holy Spirit Movement (HSM) I and II, Lord’s Resistance Army (LRA), West Nile Bank Front (WNBF), Ugandan National Rescue Front (UNRF) II and Ugandan People’s Army (UPA).

practices of acknowledgement might be able to assist in coming to terms with the social and emotional scars caused by conflict.

Customary Practices of Acknowledgement

Traditionally, cultures and societies around the world had highly complex, highly developed systems for dealing with conflict and conflict resolution – and for dealing with the social deficits brought about by conflict, commonly called “customary law” (Quinn 2005). In traditional times, these systems carried out a number of functions, including mediation, arbitration, adjudication, restitution and punishment – the same retributive elements included in the kinds of systems familiar in “modern” justice. They often also included elements of restoration and reconciliation (Quinn 2005). These elements typically functioned in tandem.

In many parts of the world, these practices were shoved aside to make way for modern, Western ideas and practices. Colonial rulers disparaged such traditional customs, and allowed only “natives” within the colonies to utilize them, setting up separate mechanisms for use by “non-natives”, effectively creating a dual system (Mamdani 1996: 109-110). In Uganda, customary practices were officially prohibited in 1962, at the time of independence, in favour of a harmonized court system modelled on the British system (The British Colonial Office 1961). The 1967 Constitution, promulgated by Obote, outlawed the many kingdoms and traditional cultural institutions across the country. Yet the kingdoms and other TCIs remain, and customary practices have continued to be used in different parts of the country (Briggs 1998: 22). Sklar refers to this as “mixed government” or “mixed polity” (Sklar 1999: 115-121). Traditional cultural institutions themselves have special status under Article 246 of the Constitution (Constitution 1995). Customary practices are now legally recognized by legislation, including Article 129 of the 1995 Constitution, which provides for local council courts (Waliggo 2003: 7) to operate at the sub-county, parish and village levels (Government of Uganda 1995), and the Children’s Statute of 1996, which grants these courts the authority to mandate any number of things including reconciliation, compensation, restitution and apology (Government of Uganda 1996). The government of Uganda has included these practices in the recent Agreement on Accountability and Reconciliation and its subsequent annexure, which emerged out of the Juba Peace Talks (Gashirabake interview, 2008; Ogoola interview, 2008). Although these 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 practices are, of course, vulnerable to problems including authoritarianism and other abuses of power. Any number of spoilers, both from within and from outside the communities where these practices are used, have caused confusion and problems for these practices and for the people who are subject to them (Quinn 2010a, 2010b). These include the imposition of administrative chiefs in the colonial period, including the Payira clan, which today “promote[s] its chief as the paramount Acholi leader” (Finnström 2003: 70) – even as “agents of other clans, such as the Koch clan, claim paramount Acholi recognition” (Finnström 2003: 71). Power dynamics have shifted drastically since that time. The ability of kin-based groups to provide checks and balances was taken away by what Mamdani calls “the white chiefs of Africa” (Mamdani 1996: 115; see also Quinn 2010a). Post-colonization and after independence, President Yoweri Museveni has also played havoc with the legitimization of those who claim responsibility for customary law. “The politicization of ethnic groups was exacerbated by these leaders” (Behrend 1999: 19; Hansen 1997).

These institutions are still widely used throughout the country by many of the 56 different ethnic groups (Quinn 2009c). Among the Karamojong, the *akiriket* councils of elders adjudicate disputes according to traditional custom (Novelli 1999: 169-172, 333-340), which includes cultural teaching and ritual cleansing ceremonies (Lokeris interview, 2004). The Acholi use a complex system of ceremonies in adjudicating everything from petty theft to murder (Harlachar et al. 2006), although these broke down to a large extent in the mid-1980s, when thousands of Acholi soldiers returned from the conflict in Luweero as “internal strangers [who] caused unrest and conflict” (Behrend 1999: 19-24). 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 the bitter herb) and *nyono tong gweno* (a welcome ceremony in which an egg is stepped on over an *opobo* twig) (Finnström 2003: 297-299). The *mato oput*, particularly, received international attention, which has brought it under closer scrutiny by the government of Uganda, the ICC and others (Baines 2007; Annexure 2008; Ogoola interview, 2008). These ceremonies are similar to those used by the Langi, called *kayo cuki*, the Iteso, called *ailuc*, and the Madi, called *tonu ci koka* (Annexure 2008, Art. 21.1). The Lugbara, in the northwest of the

country, maintain a system of elder mediation in family, clan and inter-clan conflicts (Ndrua 1988: 42-56). In 1985 an inter-tribal reconciliation ceremony, *gomo tong* (bending the spear), was held to signify that “from that time there would be no war or fighting between Acholi and Madi, Kakwa, Lugbara or Alur of West Nile” (Finnström 2003: 299). A similar ceremony, *amelokwit*, took place between the Iteso and the Karamojong in 2004 (Iteso Focus Group 2006).

In some areas, however, these practices are no longer used regularly. Customary practices are, in fact, used far less widely in Uganda’s “greater south” and among Ugandans of Bantu origin (Quinn forthc.). From time to time, however, the Baganda use the traditional *kitenvuliza*, a juridical process with a strong element of reconciliation, to bring about justice (Waliggo 2003: 7, 2005: 1). Among the Bafumbira, land disputes, in particular, are settled through customary practices, with local council officials adjudicating (Tabaro interview, 2008). The Annexure to the Agreement on Accountability and Reconciliation also lists those mechanisms used by the Ankole, called *okurakaba* – although I have uncovered only weak anecdotal evidence of their continued use (Katatumba interview, 2008).

People from nearly every one of the 56 ethnic groups in Uganda have reported to me that “everyone respects these traditions” (confidential interview with Sabiny man, 2004) and that reconciliation continues to be an “essential and final part of peaceful settlement of conflict” (Waliggo 2003: 9). But many, particularly young, educated Ugandans who live in the city, have also reported to me that they have never participated in such ceremonies (Northern Uganda Focus Group 2006). Even still, throughout Uganda there is a common understanding of these symbols, ceremonies and institutions, along with their meanings – even in those areas where such practices are no longer carried out.

Traditional Cultural Institutions

It is important to understand the context in which customary practices are used. In particular, it is important to understand the particularities of the various chiefdoms and kingdoms that have authority over them. It is also important to recognize the political force they exert, and the forces that are exerted on them. Prior to Western contact in the late 1800s, the area which is now Uganda was divided into a series of indigenous kingdoms and chieftaincies, each of which had its own ruler and leadership system (Berg-Schlosser and Siegler 1990: 97). 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. Britain had colonized the Kingdoms of Bunyoro, Tooro, Ankole and Busoga in 1896, although formal agreements between the kingdoms and the British were not signed until as late as 1933 (Briggs 1998: 15). Other regions of the country were not colonized for several years afterwards. The British protectorate was extended to include the “north” in 1911 (Kigezi, Lango) and in 1913 (Acholi, Karamoja). West Nile, previously “leased” to the Congo, became part of Uganda in 1914 (Briggs 1998: 17). In these areas, “governance was highly decentralized, and power lay in the hands of elders who practised a form of democratic government” (n.n. *Uganda* 1998: 46). Governance of the kingdoms and other traditional cultural institutions continued in this manner for nearly half a century.

As outlined above, in 1967, Milton Obote abolished the kingdoms in an attempt to gain sole control of the country (Briggs 1998: 25). 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. Until that point, Buganda had been “recognised as having full federal status, [and] the other kingdoms were granted semi-federal status” (Briggs 1998: 20-21). From that time forward, many of the leaders of many of the ethnic groups across the country were forced into exile. Even so, the people secretly continued to look to their cultural leaders for advice and support.

The kingdoms were restored in 1993 (Government of Uganda 1993) but without any political powers (n.n. *Uganda* 1998: 298-299). The briefly worded statute reads as follows:

Whereas the National Resistance Army sitting in Gulu on the 3rd day of April, 1992, after discussing the return of traditional sites to the traditional groups concerned resolved as follows:

“It has no objection to the relevant national authority entering into discussions with the concerned traditional groups with a view to their eventual return or any other mutually acceptable, appropriate arrangement concerning those sites;

Provided that this does not interfere with the security of the country.”

Then, in 1996, these traditional cultural institutions were reinstated under Article 246 of the Constitution (1995):

246. (1) Subject to the provisions of this Constitution, the institution of traditional leader or cultural leader may exist in any area of

Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies.

(2) In any community, where the issue of traditional or cultural leader has not been resolved, the issue shall be resolved by the community concerned using a method prescribed by Parliament. (Government of Uganda 1995, Art. 246)

In 2010, the government introduced the Institution of Traditional or Cultural Leaders Bill in order

to operationalise Article 246 of the Constitution on the institution of traditional or cultural leader. The Bill seeks to provide for the existence of traditional and cultural leaders in any area of Uganda in accordance with the Constitution. It provides for the recognition of traditional and cultural leader [sic] by the Government, and their privileges and benefits; to provide for the resolution of issues relating to traditional or cultural leaders which have not been resolved in any community; and for related matters. (Institution of Traditional or Cultural Leaders Bill)

At the time of writing, twelve traditional cultural institutions had been restored, which is to say that the government of Uganda now officially recognizes them: the Acholi Chiefdom, Tieng Adhola Chiefdom, Alur Kingdom, Buganda Kingdom, Bunyoro Kingdom, Buruuli Chiefdom, Busoga Kingdom, Kooki Chiefdom, Lango Chiefdom, Teso Chiefdom, Tooro Kingdom (Government of Uganda, Ministry of Gender 2008) and Ruwenzururu Kingdom (Associated Press 2009). Subsequent legislation established a system of regional assemblies to handle cultural matters relating to the traditional or cultural leader, clan and sub-clan leadership, cultural and customary practices (listed as cultural funeral rites, although there is no mention as to whether there could be others) and cultural institutions (Government of Uganda 2005, Art. 3, 8). Those twelve traditional cultural institutions that have been restored can operate legally. Each has a legal mandate, a council or parliament with officers and ministers parallel to official state institutions, and a slate of activities for which they are responsible (European Commission 2008: 8-12).

Yet there has been some controversy about the reinstatement of others. In particular, the Ankole Kingdom met with resistance from the government of Uganda in reinstating the *omugabe* (king). Prince John Barigye, heir to the throne, was crowned *omugabe* on 20 November 1993, but his coronation was “nullified” by the president, who is himself an ethnic Ankole and has a vested interest in the outcome of affairs in his home district (Anna Howard Shaw Center n.d.). The disagreement arises

from a deep-seated division between the Bahima and the Bairu. “The issue of the restoration of the Ankole kingship was first tabled in 1993, but it has remained unresolved since then while continuing to engage proponents and opponents in numerous [...] battles. Kingship, which in essence one would expect to constitute a symbol of integration and unity, in Ankole [is] an instrument of division and conflict” (Doornbos 2001: 105). “The president himself decided to stop it” (confidential interview Ministry of Gender, Labour and Social Development official, 2008). “Museveni calls himself the kingmaker, and uses the paramount chiefs and gets some benefit from them” (confidential interview Mutooro man, 2008). The president claimed that “the people had to first decide whether they wanted the kingdom” (Oluka 2005). Yet Barigye inhabited the royal Ankole Palace (Oluka 2005) and, until his death in 2011, headed the Nkore Cultural Trust, an organization dedicated to the reinstatement of the Ankole Kingdom. The Banyankore Trust Foundation has since been established in opposition (Katatumba interview, 2008).

Many of the traditional cultural institutions that have been recognized did not exist prior to the abolition of kingdoms in 1967. For example, the position of *kwar adbola* (chief of chiefs of the Jopadhola) was conceived of only after the 1993 statute that restored the kingdoms; no such position had ever existed before. “No *kwar adbola* had existed previously, but the clans had divided, and so it was decided that someone was needed to reunite the Jopadhola” (Oburu interview, 2008). “The last cultural leader, many, many years ago, was a military leader called Majanga. He emerged to deal with war, out of his own prowess. He was generally acknowledged and accepted. When your leadership ends, you merge into society without special anything. If the next big issue is pestilence, a different leader would come” (Alowo interview, 2008). Today, the *kwar adbola* and his cabinet, the *tieng adbola*, are recognized by the government.

“In some communities, there is more than one claimant”, and the Ministry of Gender, Labour and Social Development checks “the authenticity of each” (Lubega interview, 2008). In September 2008, for example, when the *isebantu kyabazinga* (king) of Busoga died, a vacancy was left in the top spot in the kingdom. Although a quorum of Busoga chiefs elected a new *isebantu kyabazinga*, the government of Uganda issued a constitutional challenge to block the election (Muyita and Kirunda 2009). At the time of writing, the *kyabazinga* issue had not been resolved.

In other cases, there is interference from inside and outside. When King Patrick Kaboyo Olimi VII of Tooro died in 1996, for example, and his infant son was crowned king, a power vacuum developed, wherein

the Council of Regents competed for influence with the young king's mother. To complicate matters further, the guardianship of the king was, in fact, shared with President Museveni (The Batebe of Toro Foundation n.d.). The Kingdom of Tooro is still grappling with how the system of governance should proceed, and high-profile people have been deposed from the Council of Regents over disagreements with the queen mother, among others (Ndoleriire interview, 2008). "The kingdom is somehow sort of stuck after the late king" (confidential interview Mutooro man, 2008).

Still other kingdoms have capitalized on their restoration, and are pressing for further gains. The campaign for more autonomy by the Kingdom of Buganda, for example, has grown in scope and scale since it was restored in 1993. The kingdom now seeks a form of federalism commonly referred to as *federo*. It argues that *federo* is a return to pre-independence governance arrangements (Kingdom of Buganda n.d.). Uganda has pushed for a federal arrangement almost since its reinstatement in 1993 (Englebert 2002: 347). The debate has led to "violence between state forces and kingdom supporters" (Goodfellow and Lindemann 2013: 3). As of the time of writing, Museveni and the government of Uganda have soundly rejected federalism, although the Kingdom of Buganda continues to press the issue.

Traditional Leaders' Roles and Objectives

Although they had been restored for nearly two decades at the time of writing, the principle concern of all of my interviewees who were involved in traditional cultural institutions is building up their institutions. In the course of my research, for example, I was given tours through palaces and burial grounds, in which the TCIs very obviously wanted to show me the centrepieces of their cultural restoration. "Abolishment [of the TCIs] was a kind of dark ages for traditional leaders" (Khamalwa interview, 2008). Throughout the decades when traditional and cultural leaders and institutions were forbidden, the government put in place a parallel system. The traditional leaders to whom I spoke claim that these systems never replaced the traditional systems that had long been in place but, rather, co-existed with them (Balunywa interview, 2008). The traditional and cultural leaders have embarked on a programme of revival. "They find their justification very much in the past, and so struggle to reinvent themselves" (De Coninck interview, 2008). In fact, all of the traditional cultural institutions and leaders with whom I spoke are working toward the same goals: first, the preservation of culture; second, the promotion of unity within their ethnic groups; third, the promotion of development; and, fourth, the promotion of education (Kamorasi

interview, 2008). Other interviewees echoed these sentiments (Akello interview, 2008; Oburu interview, 2008).

The promotion of culture and cultural practices, including customary practices of acknowledgement, in some cases, has been especially important for the traditional cultural institutions in Uganda, and many have focused on this aspect almost exclusively. Busoga, for example, has established a Cultural Research Centre dedicated to the study and documentation of customary practices.⁴ Others have seized upon a pilot project offered by the government to implement “mother tongue training” in various districts to students in Primary 1 through Primary 3, and have begun to study the effects of this kind of education (Becker interview, 2008; see also Cultural Research Centre 2007).

In other respects, traditional cultural institutions have held themselves out as cultural service providers (De Coninck interview, 2008), able to perform marriage ceremonies and funeral rites (Akello interview, 2008). The Kingdom of Buganda, for example, has established a youth leadership club and youth councils like *abana bakintu* to help Baganda youth learn about their culture (Mukasa interview, 2008); similarly, the Iteso Cultural Union has begun to open cultural clubs in schools (Akello interview, 2008). In some cases, they have gone further than simply reinstating old programmes, implementing “neo-traditional” customs (Brown 2005; Hayner 2001). In Tooro, for example, a programme has been established to teach the social values of the Batooro to young girls, in much the same way that grandmothers and “aunties” would have done fifty years ago: modelled on a beautiful and intelligent princess called Kogeri (Rugumayo interview, 2008). In this way, girls are learning social values and learning to appreciate Batooro history at the same time. “What you see in cultural revival is from civil society” (Rugumayo interview, 2008).

This focus on values is another aspect shared by all of the leaders of traditional cultural institutions with whom I spoke. The idea of social teaching, through processes including circumcision in areas like Sebei, and the *wang oo*⁵ throughout Northern Uganda, have traditionally been instruments through which the values and important knowledge about the community were conveyed. This included customary practices of acknowledgement. Yet, particularly in Northern Uganda, because of the protracted civil conflict there, the use of customary practices of acknowledgement has been destroyed (Hovil and Quinn 2005; Quinn 2009a). “Conditions have forced the people to forget traditions, although these

4 See <www.crcjinja.org/culture.html> (21 November 2014) and Kayaga interview, 2008.

5 The *wang oo* is a traditional talk held in a communal fire place.

practices are still existing” (Akello interview, 2008). There is a real sense that these values have been lost on the present generation, for a variety of reasons; this feeling was echoed by many of my interviewees (Rugumayo interview, 2008; Katatumba interview, 2008). “We are scared because the youth seem to be adding things that are not from our culture. There is also some concern that adults may no longer have the moral and traditional role to arbitrate. Young people know more about the world than adults [...] so their moral authority is being undermined because they may not understand, all because things are moving too fast for them” (Rugumayo interview, 2008). “They borrow what they admire from elsewhere” (Akello interview, 2008). Today, “the traditional and cultural institutions are the last vestige of those most cherished values” (De Coninck interview, 2008). And traditional cultural institutions are committed to furthering these practices because “when people are reminded of their social responsibilities (for example, confronting [their] own actions) there will be unity” (Oburu interview, 2008).

Yet a number of interviewees reported that, particularly with reference to customary practices of acknowledgement, which remain a valued mechanism through which justice is sought in many parts of the country, the presence of elected or appointed government officials has somehow tainted these processes. “Politically elected leaders play more to the gallery than to justice, and are often held hostage by the electorate. So when the local council chief arbitrates, justice can be compromised” (Rugumayo interview, 2008). Many traditional cultural institutions, therefore, have resolved to work alongside government-appointed or elected officials in carrying out these functions (Kamorasi interview, 2008). For its part, the government has relegated these tasks to traditional and cultural leaders because “traditional mechanisms would be difficult to regulate” (Kainamura interview, 2008); the codification of such rituals “sets up an expectation of rules, through more ceremonies, and rules to follow” (Komakech interview, 2008).

The traditional and cultural institutions have taken an interest, too, in development, as recognized by the Ministry of Gender, Labour and Social Development (Nakadama 2008). “If we want to own our development, culture is a must” (De Coninck interview, 2008; Government of Uganda, Ministry of Gender, Labour and Social Development 2006). So attention is being paid, and resources directed to, fields including traditional medicine (Cross-Cultural Foundation of Uganda 2008b) and other aspects of development including gender, the environment, governance and artisanal creations (Cross-Cultural Foundation of Uganda 2008a). The Uganda Kings and Cultural Leaders Forum (UKCL), a federation of

16 traditional cultural institutions, is explicitly involved in what they call “human solidarity and development”. They seek to lobby governments and “development partners for socio-economic enhancement, and [to] propagate the principle and practice of unity in diversity as a prerequisite for international justice and peace” (UKCL n.d.). The leaders themselves, however, have been at the centre of conflicts over newly discovered resources including oil, which jeopardizes their position of influence in “development” writ large to a great extent (Abdallah 2012).

All of the traditional and cultural leaders also remain committed to pursuing “peace”. “Traditional leaders need to be involved in the peace-building process. The kingdoms could do so much to bring lasting peace” (Oburu interview, 2008). As such, they regularly lobby MPs for peace. For example, TCIs from Teso and Karamoja negotiated the Magoro Peace Accord (Akello interview, 2008). Indeed, the officially recognized traditional cultural institutions see themselves as specially equipped to lead national efforts towards reconciliation. The Acholi held a *wang oo*⁶ in March 2007, “organized by the Acholi cultural leader, Rwot David Onen Acana” (Laker 2007) as a way of mediating between the Ugandan and LRA delegations at the peace talks in Juba, South Sudan. Delegations from the office of the Acholi Paramount Chief (Harera, Linga and Nyakairu 2007) were present in Juba throughout the talks, acting almost as a cushion between the two parties. In May 2008, the Acholi paramount chief and the other traditional cultural institutions came together with the government of Uganda to promulgate the Lira Declaration, a document that commits the TCIs to efforts aimed at the betterment of their peoples through the promotion of peace, social justice and development, and in which the government committed to support traditional cultural institutions (Uganda Traditional Cultural Institutions 2008).⁷

One of the most significant outcomes of the Juba agreements in this regard is the inclusion of customary justice practices, whose involvement was a result of the presence of the traditional cultural leaders of Acholi throughout the talks, who persuaded LRA/M and government negotiators to include them. The agreement commits the government to “examin[ing] the practices of traditional justice mechanisms in affected areas, with a view to identifying the most appropriate roles for such mechanisms” (Annexure 2008, Art. 20.0). The Principal Agreement recognizes that the legal framework must be substantially altered to incor-

6 The *wang oo* held in March 2007 was organized as a larger peace conference.

7 It must be noted that these interventions were not successful. At the time of writing, a final comprehensive peace agreement remains unsigned, and Kony and the remaining LRA are at large.

porate these mechanisms (Agreement 2007, Art. 4.4, 5.1). The difficulty lies in the fact that codification of these rituals poses significant problems. Formalizing the existing mechanisms could force changes to the ways in which they operate (Agreement 2007, Art. 4.4, 5.1). *Okukaraba* – a customary judicial practice used by the Ankole in southwestern Uganda, far removed from the conflict in Northern Uganda – “was added [into the agreement] to ensure national reconciliation, so all Ugandans could be reconciled. There was a lot of debate about it” (Gashirabake interview, 2008). The voices of the traditional leaders present in Juba were heard, at least on this point.

Co-opting Traditional Cultural Institutions

The government of Uganda is playing a significant role in the workings of traditional cultural institutions. The Ministry of State for Gender, Labour and Social Development, under which traditional cultural institutions are regulated, called on TCIs to “continue [promoting their] positive values. Traditional and cultural institutions are helping us so much” (Nakadama 2008). But far from being arm’s-length regulators, the government of Uganda has actually inserted itself in the day-to-day workings of the traditional cultural institutions themselves. As a result, “cultural leaders have learned to do [their work] within the divisions of the state” (Khamalwa interview, 2008).

For example, “traditional leaders and institutions [are] financially provided for” (Museveni 2004) by the government of Uganda. According to one official, “the government financially supports the cultural leaders at 5,000,000 UGX per month. The support is limited to the leader. The president didn’t want [the cultural leaders] to start begging, so gave them a stipend to make them comfortable so they can get respect” (confidential interview Ministry of Gender, Labour and Social Development official, 2008). In addition, the government has pledged to support institutional programming originating within the TCIs, including community mobilization for health improvement, language, education, sports and music. Yet this funding has been divisive within the TCIs, in large part because it is merely a “tokenistic” amount (De Coninck interview, 2008).

In return, the government works with the traditional cultural institutions on issues of common interest. “Some activities, [the traditional cultural institutions] are carrying out on behalf of government and donors” (Kamorasi interview, 2008). “The amnesty process [for example] began by advocacy from the traditional cultural institutions and the Acholi

Religious Leaders' Peace Initiative in the Acholi sub-region" (Onega interview, 2008), the chairman of the Amnesty Commission has revealed. "We rely on customary chiefs to help us" (Onega interview, 2008).

In other instances, government officials rely on traditional cultural institutions to assist in implementing their policies. "Museveni knows the kings have a great deal of influence on people" (confidential interview Mutooro man, 2008). Indeed, TCIs give authority to the government of Uganda, which many see as having been somehow grafted onto traditional power structures. The former Minister of State for Karamoja, for example, emphasized that "[we] must know how to call the elders [...] because they give government officers the authority to talk" (Lokeris interview, 2004). His successor reiterated that "as minister, you have to go through the system of [them] blessing and initiating you into their culture. The *akiriket* (council of elders) has to bless any project originating in the Office of the Prime Minister so it could be taken over. So now it is their own because you have the blessing of the elders" (Kajara interview, 2008). The Amnesty Commission, too, relies on traditional cultural institutions to forward its agenda: "While persuading the rebels to abandon conflict in the community, the traditional leaders have been persuading the community to accept the rebels back in, after amnesty. We use them to prepare the community" (Onega interview, 2008). The policy of the Amnesty Commission is that "the traditional cultural institutions are very strong organizations in their areas, so we say 'We would like you to help us know how to bring peace in your own area, because your people are going to obey and respect what you tell them. If we come through you, we are likely to get peace in this area'" (Draku interview, 2008).

Certainly, this is the case with the customary justice practices promised in the Agreement on Accountability and Reconciliation between the government and the Lord's Resistance Army, signed in Juba. It is the position of the Ministry of Justice and Constitutional Affairs that "traditional leaders will need to handle traditional mechanisms. A perpetrator may be acquitted by the court, but must still appear before the *mato oput*. He may be punished legally, but must still have culture applied" (Gashirabake interview, 2008).

Far from being a secret, the government officials to whom I spoke were very open about this involvement. It could simply be the case that people respect the traditional cultural institutions, so the government respects them too. "The word of the [traditional] leaders is final, and the people will respect them" (De Coninck interview, 2008). Yet it seems, somehow, to go deeper: "Museveni is anti-culture. He has got his own

reasons” (confidential interview TCI official, 2008). This was a sentiment echoed by many.

The leaders of the traditional cultural institutions seem comfortable with this arrangement – for now. But one can only imagine the turmoil that will be created if and when the government of Uganda asks TCIs to support policies that they do not want to support, even as the Ugandan government continues to pay the monthly stipend on which the TCI leaders have come to depend. This is, seemingly, another open secret: “Museveni brought the kingdoms on, but he had certain aims in doing so. He says, ‘If you don’t cooperate, we can always reverse you’ and that kind of thing” (confidential interview Mutooro man, 2008).

Implications for Transitional Justice

In this paper I have made a considerable effort to outline the situation for traditional cultural institutions in Uganda. But I have also attempted to demonstrate their attitudes and objectives, in light of the considerable pressure that they face from “being in bed” with the government of Uganda. I believe that these circumstances have exerted considerable force on the political situation surrounding the use of customary practices of acknowledgement in that country.

Beyond that, however, there are a number of implications for transitional justice in Uganda – and more broadly – that must be explored:

First, it is clear that the traditional cultural institutions – those that are officially recognized – have only a tenuous grasp on the use of these practices. Although government officials have repeatedly said that such practices are within the purview of the traditional cultural institutions, the government is now set to attempt to codify and/or formalize the use of such customary practices of acknowledgement without much, if any, input from the TCIs themselves. Traditional cultural leaders have been left out of the Justice Law and Order Sector (commonly referred to as “JLOS”) Transitional Justice Working Group altogether (Ogoola interview, 2008).

Second, traditional cultural institutions themselves wield enormous influence. Or at least that is the widely held perception. It is commonly understood that even Joseph Kony, before embarking on his rebel crusade, sought (and received) the blessing of the Acholi elders in his attempt to oust Museveni from government (Komakech interview, 2008). It is certainly the case that the government of Uganda needs traditional cultural institutions to make any of a number of moves, from the implementation of policy to “selling” its various ideas to the populace. Para-

doxically, given the assertion above that the TCIs have only a tenuous grasp on these practices, the implications of this are enormous, in that TCIs and their leaders could, at least in theory, capitalize on this influence with the government to promote their own agendas.

Third, customary practices are set to be included in an official strategy of transitional justice. Although there is some debate as to how Uganda's customary practices are different from, for example, Rwanda's *gacaca* courts (Quinn *forthc.*), this marks the first time that the ICC will be asked to rule on the use of such courts. Within the ICC framework, it remains to be seen whether these customary practices of acknowledgement will meet the complementarity principle after all.

Fourth, a report by the secretary-general of the United Nations (2004) called for "local" solutions to issues of transitional justice. To be sure, the inclusion of customary practices at all stems directly from the involvement of the TCIs and their leaders in the Juba talks, and from their influence on both parties. This very "local" solution will test the secretary-general's foundational principle.

Fifth, and finally, Uganda is a test case in many ways. Of course, Uganda marks a pre-transitional case of transitional justice – or it may simply be that Uganda's transition has lasted for more than forty years! But it is ultimately a test case for the ICC, which is trying to find its feet and establish critically needed sound precedents. So it is entirely possible that the ICC may reject the very notion of Ugandan institutions meeting the complementarity requirements at all, and the arrangements put in place under the International Criminal Division of the High Court (including provisions for customary practices of acknowledgement) may be shelved. It remains to be seen whether the government of Uganda will deign to honour the agreements it made in Juba if the ICC removes the power of prosecution – at least for Kony and the other LRA leaders indicted by the Court. The fact that the government of Uganda did little to end this conflict or to prosecute its perpetrators prior to the interest of the ICC⁸ speaks volumes.

8 Museveni officially referred the situation to the ICC in December 2003. It had been commonly assumed that Museveni approached the Court before the Office of the Prosecutor approached him. Information has since surfaced that the chief prosecutor actually approached Museveni to ask him to refer the situation (Waddell and Clark 2008: 43).

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Tradition?! Traditionelle Institutionen gewohnheitsrechtlicher Praxis in Uganda

Zusammenfassung: Dieser Beitrag zeigt die Bedeutung auf, die traditionelle Institutionen generell für die Rehabilitierung von Gesellschaften haben, insbesondere aber im nachkolonialen Uganda. Indem das derzeitige Regime „traditionelle“ kulturelle Einrichtungen einerseits teilweise erst geschaffen und andererseits für die eigenen Interessen instrumentalisiert hat, trug es zum Legitimitätsverlust von Akteuren bei, die Verantwortung für die Anwendung von Gewohnheitsrecht beanspruchen. In jüngster Zeit hat die internationale Strafverfolgung die Anwendung gewohnheitsrechtlicher Verfahren schwieriger gemacht. Die Autorin beschreibt die Bemühungen traditioneller Führungspersönlichkeiten, ihre ursprünglichen Institutionen erneut zu beleben. Einige von ihnen bemühen sich auch, auf neuartige Weise gesellschaftliche Bedeutung zu gewinnen. Uganda wird als Testfall für die Fähigkeit des Internationalen Strafgerichtshofs gesehen, mit traditionellen Rechtsinstitutionen in Afrika zu kooperieren.

Schlagwörter: Uganda, Konfliktmanagement, Friedenssicherung, kulturelle Tradition, Friedens- und Konfliktforschung