Chapter 7
Madly Off in All Directions: Civil Society and the Use of Customary Justice as Transitional Justice in Uganda

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Introduction

Transitional justice has typically relied on a handful of mechanisms, including trials, truth commissions and reparation programmes, in seeking justice after conflict. In many societies, however, these mechanisms have less salience and value than do customary practices of justice (Quinn 2009b: 47–49; Quinn 2015a: 242; Allen 2006: 145; Waldorf 2006: 1; Opiyo interview 2012). In Uganda, communities in the greater west, south and central regions have simply not engaged with the typical transitional justice mechanisms (Quinn 2010; Quinn 2015b: 225). Civil society in Uganda, largely in the form of nongovernmental organisations (NGOs), but also religious organisations like the Acholi Religious Leaders Peace Initiative (ARLPI) at the height of the conflict in northern Uganda, for example, has taken on at least some of the burden of helping communities in dealing with a complicated and still-difficult past. As is discussed below, the wide range of transitional justice mechanisms available to Ugandans has, for a variety of reasons, been out of reach. Some Ugandans wanted access to retributive, court-based justice, which is now available only for the highest ranking perpetrators in the form of the International Criminal Division of the High Court. Others wanted a truth-seeking process, which has been denied. Some put stock in the amnesty that was made available. And others attempted to avail themselves of reparations. But all of this has been ad hoc. No systematic transitional justice approach has been implemented. The national Transitional Justice Policy, which had been talked about for several years with civil society, remained un-implemented at the time of writing, as discussed below. Instead, civil

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society at the community level turned to customary justice, a community-based system of practices that is well known to the people who use it. In Uganda, customary justice has taken the place of "foreign" practices like trials and truth commissions in pursuing similar objectives as mechanisms more often used elsewhere.

At the height of the conflict in northern Uganda, the use of customary justice[1] was very much on the agenda, both for the government and for civil society.[2] Numerous efforts were underway to promote its codification, integrate its operations into transitional justice systems, and develop broader recognition for its contribution. Yet today, in large part due to a series of directives from the president's office, the attention of Ugandan civil society has shifted to a series of other activities, leaving the debate and the preparations that had been generated in a kind of limbo. The people who were once at the forefront of the customary justice campaign—that is, those who were the leaders in *transitional* justice efforts in the country—have, in many cases, been reassigned or have moved on of their own accord to other work. Shifts in priorities and modes of engagement by both the international donor community and the Government of Uganda (GOU) have led to civil society diverting their attention to other goals.

This chapter considers the role and activities of NGOs in Uganda that are, and were formerly, working within the domestic framework, and working to satisfy the demands of the government so that they will be permitted to carry out their work, or risk being shut down. It examines their work against the backdrop of international precedent, which suggests how and when transitional justice efforts should be mounted, and tends to predict modes of success. It also considers just how transitional justice demands in Uganda have been met through the use of customary practices of justice and acknowledgement, in the absence of a coherent governmental transitional justice strategy.

Although other civil society actors, including community-based organisations (CBOs), have worked in this sector, this chapter focuses primarily on NGOs and international nongovernmental organisations (INGOs), since their work is (a) at the national level, and (b) the GOU has put in place new controls to severely restrict and limit NGO activities. The chapter explores the changing circumstances in which transitional justice is being contemplated, including a shift in the focus of civil society away from northern Uganda, and a change in the personnel who oversee such projects at those civil society organisations. It further considers the breakdown in communication between these groups and the international donor community, and the role of donor influence on these agendas, which continue to be manipulated by the Ugandan Government.

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 justice and acknowledgement

[1] I use the term "customary justice", recognizing that the practices in use have changed over time. The commonly used term in Uganda is "traditional justice".

[2] These mechanisms are used across Uganda, but the northern Uganda conflict opened up a space to be able to talk about their use. The agreements signed at Juba, between the Lord's Resistance Army and the Government of Uganda, somewhat codified them (Quinn 2009a).

in Uganda. I am specifically interested in the role that these processes play in a society's acknowledgement of past crimes and abuses, as part of a larger programme of transitional justice and social rebuilding. I am further concerned with how they are able to succeed where other "western" approaches, like the truth commission, have failed (Quinn 2010). In total, I conducted 29 interviews in May and June 2012 with representatives of the NGO and INGO community in Uganda. Some of the data that supports the arguments made in this chapter is further corroborated by interviews I conducted with members of other stakeholder groups, including conflict-affected women, government officials and religious leaders, between 2004 and 2015 as part of that broader study, and a couple of interviews from 2016.

Together, these data provide a comprehensive picture of the situation surrounding the use of customary justice and how it has changed over time. I was interested to see whether and how the organisations see customary justice as having any utility in the overall justice process, following the conflicts that have been experienced in Uganda since independence. I specifically targeted those groups that had been working on ideas of "peace and justice" or "reconciliation", as transitional justice is often called there. And in many cases, I purposely went back to talk to NGO and INGO staffers whom I had interviewed in previous rounds of research. What I found was that, although the organisations themselves remained, two major changes were apparent. First, many of the people I knew were no longer in those roles, either because they had begun working on other issues within the same organisation or because they had moved on to different organisations. Second, the organisations themselves were no longer focused on the possibility of incorporating customary justice into a broader system of justice, and customary justice work had been all but abandoned.

The picture that emerges, then, conveys a sense of what has been happening in the discussion and implementation of transitional justice broadly and customary justice specifically in Uganda. The chapter clearly articulates a particular perspective from among the members of civil society with whom I spoke, although I recognise that these views might not be universal. But the complex history of conflict in Uganda must be taken into account in order to understand the contours and nuances of the debate I outline in the chapter.

Background

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 time of Idi Amin, from 1971 to 1979, largely in central Uganda. Under the rule of Obote, between 1980 and 1985, approximately 300,000 (*Uganda* 1998: 53; Ofcansky 1996: 55) to 500,000 (Nadduli interview 2004) were killed, again mostly in central Uganda and in Luweero District in particular.

The current president, Yoweri Museveni, and the National Resistance Army (now National Resistance Movement, or NRM) seized power by means of military force in 1986. As with his predecessors, Museveni met with considerable opposition from many of the 56 different ethnocultural groups throughout the country. Since coming to power, Museveni has faced more than 27 armed insurgencies,[3] including the most famous in the modern era: the Lord's Resistance Army (LRA) under the leadership of the now-infamous Joseph Kony. The LRA waged a conflict against the GOU in northern Uganda from roughly 1986 to 2008, displacing more than 1.8 million people, abducting children for use as child soldiers and carrying out vicious campaigns of brutality throughout much of the region.

These multiple conflicts have devastated 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 ostracised from their communities because of gynaecological fistulae; 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.

The State of Ugandan Transitional Justice

Official Mechanisms

An erratic mix of transitional justice instruments has been utilised in Uganda to deal with the millions of violations committed there (Quinn 2009b). In 1971, to appease the international community, Idi Amin appointed a truth commission to deal with disappearances he, himself, had ordered (Carver 1990). In 1986, Museveni appointed another truth commission to consider the abuses committed between 1962 and 1986 (Quinn 2010). Subsequently, the GOU promulgated an Amnesty Act, under which 22,107 ex-combatants received amnesty by July 2008 (Draku interview 2008).[4]

The International Criminal Court (ICC) began an investigation into the crimes perpetrated by Kony and other senior LRA members in 2004 (Quinn 2008). The Ugandan Government established a War Crimes Division, now the International

[3] These include rebellions by the Action Restore Peace, Allied Democratic Forces, Apac, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, the Lord's Army, Lord's Resistance Army, 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 (Hovil and Lomo 2004: 4; 2005: 6).

[4] This is the latest publicly available data at the time of writing.

Criminal Division, of the High Court to thwart further ICC action, despite the fact that Museveni himself referred the situation in northern Uganda to the ICC's Office of the Prosecutor, ostensibly in exchange for his own immunity, since the Ugandan Government, through the military, reportedly also carried out crimes against humanity and war crimes during the conflict in northern Uganda.[5] Reparations have largely not been paid, despite a government resolution passed in 2014 and another draft policy prepared by the Northern Uganda Social Action Fund (NUSAF). The GOU claims that national development plans like NUSAF and the Peace Recovery and Development Plan (PRDP) II are sufficient, despite their lack of focus on individual harms.[6] Aside from this, the government has empowered national courts and customary courts to hear evidence in both human rights cases and reparations claims.

Uganda is widely known for using a range of international and domestic transitional justice mechanisms, despite the lack of any kind of transition. Yet most of these mechanisms have lain dormant after being implemented, or have been unwilling or unable to provide any form of "justice" to the victims and survivors of the many conflicts that have taken place throughout the country. These processes have all been initiated by the government, which remains in control of the various transitional justice processes, and not by civil society.

Customary Justice

Across the country, Ugandans understand customary justice to be a useful means of resolving conflicts. Even High Court justices, if they have land disputes to resolve, resort to customary justice practices (Tabaro interview 2008). Such practices were of particular utility to the people of northern Uganda during the LRA conflict, when state institutions were unavailable to them. There has been considerable discussion about whether and how these practices could be codified and used more broadly as a means of getting past the atrocities committed in the LRA conflict. As I have written elsewhere, the practices have suffered from a number of changes in Ugandan society, including that the institutions that implement them have clearly changed over time and the utility of traditional practices has come into question; the presence and scope of protracted civil conflict have changed the way people are able to deal with conflict; the stratification of Uganda's many different ethnocultural groups has shaped where and how these mechanisms are used; and a community's

[5] Museveni officially referred the situation to the ICC in December 2003. It has been commonly assumed that Museveni approached the Court first. Information has surfaced that the chief prosecutor actually approached Museveni to ask him to refer the situation. There is a great deal of debate about what this discrepancy means (Waddell and Clark 2008: 43).

[6] A total of 14,000 individual claimants, through the Acholi War Debt Claimants Association, won a court-ordered settlement for their 2006 case, although the funds have been slow to come and there were allegations of fraud and fund mismanagement at the time of writing. A number of similar advocacy groups have sprung up among victims to push for compensation from the GOU.

homogeneity often governs whether or not, and whose, "traditions" are used in a given community (Quinn 2015b).

At the time of independence in 1962, customary practices were made illegal and the outgoing British decided upon a harmonised legal system modelled on the British system (British Colonial Office 1961). The many kingdoms and traditional cultural institutions that existed across the country were banned by President Obote in 1967. Yet the institutions and practices persisted (Briggs 1998: 23). Traditional cultural institutions are today recognised under Article 246 of the 1995 Constitution (Republic of Uganda 1995). Customary practices are now legally provided for under legislation, including Article 129 of the Constitution, which provides for the operation of Local Council Courts[7] at the sub-county, parish and village levels (Uganda: Constitution, Government & Legislation), and the Children Statute of 1996, which grants these courts the authority to mandate any number of remedies, such as reconciliation, compensation, restitution and apology (Republic of Uganda 1996).

The GOU included these practices in the 2008 Agreement on Accountability and Reconciliation and the subsequent Annexure, which emerged out of the Juba Peace Talks (Quinn 2008; Gashirabake interview 2008; Ogoola interview 2008).[8] Although these mechanisms fit broadly 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, they draw upon commonly observed customary practices and ideas in the administration of justice in modern times.

These institutions are still widely used throughout the country by many of the 56 ethnocultural groups (Quinn 2009a). The Karamojong use the *akiriket* councils of elders to adjudicate disputes according to custom (Novelli 1999: 169–172, 333–340) through cultural teaching and ritual cleansing ceremonies (Lokeris interview 2004). The Acholi continue to use a complex system of ceremonies in adjudicating everything from petty theft to murder (Harlacher et al. 2006). Throughout the conflict between the LRA and GOU and after, at least two ceremonies were adapted to welcome child soldiers home after they were decommissioned: *mato oput* ("drinking the bitter herb") and *nyono tong gweno* (a welcoming ceremony in which an egg is stepped on over an *opobo* twig) (Finnström 2003: 297–299). These ceremonies are similar to those used by the Langi, called *kayo cuk*, the Iteso, called *ailuc*, and the Madi, called *tonu ci koka* (GOU and LRA 2008: Art.21.1). In the northwest of the country, the Lugbara use a system of elder mediation in family, clan and interclan conflict (Ndrua 1988: 42–56). In 1985, an intertribal reconciliation ceremony, *gomo tong* ("bending the spear"), was held to signify that "from that time there

[7] The LC 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" (Waliggo 2003: 7).

[8] Although these agreements were signed, at the time of writing the final agreement had not been signed for more than 8 years, and both parties had walked away from the talks. When the Working Group's Chairman, Justice Ogoola, retired, much of the "attention fizzled out in the donor community for the work" (Otobi interview 2012).

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, these practices are no longer used regularly. Customary practices are, in fact, used far less widely in the "greater south" and among Ugandans of Bantu origin (Quinn 2015b). From time to time, however, the Baganda use the customary *kitewuliza*, a juridical process with a strong element of reconciliation, to bring about justice (Waliggo 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 mechanisms used by the Ankole, called *okurakaba* (GOU and LRA 2008: Art.21.1), although I have uncovered only weak anecdotal evidence of their continued use (Katatumba interview 2008).

People from nearly every ethnocultural group in Uganda have reported to me that "everyone respects these traditions" (Confidential interview 2004) and that reconciliation continues to be an "essential and final part of [the] peaceful settlement of conflict" (Waliggo 2005: 9). At the same time, many young, educated Ugandans who live in the city told me that they have never participated in such ceremonies (Northern Uganda focus group 2006). Still, a common respect for these symbols, ceremonies, institutions and their meanings remains throughout Uganda, even in those areas where such practices are no longer carried out. This has been controversial, and opinions have changed throughout the conflict. Adam Branch (2014), for example, reported that these mechanisms have been distorted and in practice amount to what he calls "ethnojustice".

Civil Society Efforts

The GOU has been reluctant to support formal transitional justice mechanisms in any real way. Although it has initiated a number of processes and institutions, it has largely failed to support them, and has, in fact, backed away from many of them after putting them in place, as it did with the ICC (Quinn 2009b). It is likely that the GOU fears that senior officials will be implicated through legitimate transitional justice processes, and for this reason has simply opted not to act on this front. A draft Transitional Justice Policy that was first promised in 2008 and then made public in 2013 was a specious attempt by the GOU to mollify the ICC, international donors and national NGOs, which worked hard to draft the document for policymakers. NGOs have noted that

> at official levels, steps to implement transitional justice have become highly bureaucratic; opportunities for civil society participation in Transitional Justice Working Group[9] meetings

[9]The Transitional Justice Working Group, a consortium of government, civil society actors and international donors.

> and initiatives have greatly diminished, and the space for engagement has become more constricted. (Otim and Kihika 2015: 4)

Notwithstanding earlier promises to the contrary, civil society has been excluded, for the most part, from involvement in and engagement with the transitional justice policy. Civil society actors, including the INGOs International Center for Transitional Justice and *Avocats Sans Frontières* and the Uganda-based African Youth Initiative Network, have complained that "civil society representatives were only invited at the end of the process to attend the validation meeting and to submit comments on the third draft of the transitional justice policy" (Otim and Kihika 2015: fn. 29; ASF 2013: 18).

As a result, CBOs and NGOs tended to focus on the development of customary justice as a means of settling the accounts of the conflict. To be sure, during the conflicts and subsequent occupations by victorious rebel groups, including Museveni's NRM, when there was no rule of law and little protection or justice to be had through any formal mechanisms, the population relied on customary justice to deal with their problems. As noted above, while this reliance has largely disappeared in the south of Uganda, it has continued on a wide scale throughout the greater north, where the LRA conflict was widespread. People have relayed to me how they trust and rely on these practices, which makes customary justice one of the only viable transitional justice responses in modern Uganda. As such, customary practices of justice are a useful lens through which to consider civil society's role in the promotion and implementation of transitional justice in that country.

Civil society in Uganda, as elsewhere in Africa, has many different layers and a rich constellation of actors taking part at each level. The sector is led mainly by national, Uganda-based NGOs and INGOs, many of whom are bolstered by international donors that have pushed for transitional justice initiatives. Faith-based organisations, including the dominant faith groups (the Roman Catholic Church and the Church of Uganda), as well as interfaith groups like the Inter-Religious Council and smaller regional organisations like ARLPI, have played what might be called a supporting role. The same can be said of CBOs, which do not play a role on the national stage but which work with NGOs and INGOs and are often the ones to implement various initiatives. The transitional justice strategy, ad hoc as it is to date, has reluctantly been agreed to by the GOU, which has tended to acquiesce to the demands of civil society and the donor community in implementing any transitional justice initiatives, and then walked away from them almost completely, thereby ensuring that they will not work.

The head of the National NGO Board, a state regulatory agency, defined civil society groups as follows:

> A community-based organization (CBO) is supposed to be a very small, small organization doing something for the welfare of the community—even a foreigner cannot be involved; CBOs should operate only at the sub-county level. A non-governmental organization is anything that operates beyond the sub-county level, from the county level upwards. This helps foreigners know their line of working. Civil society and NGOs are always looked as the same, yet civil society is much broader; a country is split into the government sector and private sector, and anything else is civil society—anyone else with a common interest is

> civil society. Civil society is much broader. Some people refer to 'civil society' and they mean 'NGO' (Okello interview 2015).

NGOs, CBOs, voluntary development organisations, faith-based organisations and trade unions are represented at the national level by the Uganda National Nongovernmental (NGO) Forum, which also offers affiliate membership to such groups "registered in or outside the countries [sic]" (Uganda National NGO Forum 2003). Until 2016, all of these groups were governed by the Non-Governmental Organisations Registration Act, Cap. 113. That Act was repealed and replaced with a new Non-Governmental Organisations Act, which decrees that NGOs must "not engage in any act which is prejudicial to the security and laws of Uganda" (Republic of Uganda 2016: Art. 44(d)). It is important to note that different standards apply, under the Act, to national NGOs than to foreign NGOs, as discussed below. The head of the NGO Board rationalised this, saying "this helps foreigners know their line of working" (Okello interview 2015).

The GOU monitors and constrains all NGO activities. The acting secretary of the NGO Board explained that this tight regulation is necessary for three reasons:

> First, under the security component: NGOs, if not clearly regulated, can be used as agents for terrorists.[10] You need to know if they are giving them money. Second, under the public interest component: Government agencies are given the responsibility for looking after the best interests of the public. If someone says they will do something, is it being done on the ground, or is it only a 'briefcase NGO'? Third, under accountability: The government helps NGOs become accountable to the public. (Okello interview 2015)

As such, the GOU has extraordinary regulatory power over NGOs: "The Minister may, subject to this Act, give to the [National NGO Board] written directions of a general or specific nature relating to its functions to which it shall be bound to comply" (Republic of Uganda 2006: Art. 2(12)). NGOs are often ordered to close if they do not comply. Since these organisations must renew their registration with the GOU annually, most are very concerned about adhering to the GOU's stated priorities. NGOs talk openly about their concerns regarding censure from the NGO Board. One interviewee noted, "The Government requires NGOs to register each year and checks carefully what they are working on. He has been threatening churches and talks to them about things that don't mean anything so they won't insist on important things" (Confidential interview 2012a). In one example, the NGO Board banned 38 Ugandan NGOs in mid-2012 when they were accused of "undermining the national culture by promoting homosexuality" (Smith 2012). In another example, an international donor consultant recounted a particular research project she had been involved with, working with both an NGO and an INGO, wherein the groups "got into trouble with Government for looking into and supporting opposition political parties" (Confidential interview 2012b).

In this way, the GOU attempts to keep a tight grip on NGO activities, even as it outwardly claims that "it is essential for the concept of civil society that their actions are not planned or dictated by the Government" (Republic of Uganda 2010: 4).

[10] The GOU uses the language around "terrorism" as a justification to crack down on NGOs.

In reality, "aid priorities in this country are always political decisions", said one international donor employee, "Political analysis is missing! The Government wants to demonstrate to the world that they are in charge" (Confidential interview 2013).

Changing Circumstances

Where, before, clusters of NGOs and INGOs, donors and donor agencies were actively pushing for a policy of reconciliation and the clear use of customary justice, which was agreed to by the GOU (Republic of Uganda 2007: Art. 3.1.; Republic of Uganda and LRA 2008: Arts. 19–22), by 2012 NGOs were very clear that the use of customary practices and a more general policy of "reconciliation [had] fallen out of fashion" (Nalwoga interview 2012). This has continued.

For example, the Peace, Recovery and Development Plan for Northern Uganda (2007–2010) at least nodded to the need for customary justice and acknowledgement, in specifying the need to "ensure that formal and non-formal accountability and justice mechanisms are in place" (Republic of Uganda 2007: 97). A debate about and preparations for the potential expanded use, broader recognition and codification of customary practices was underway in earnest. The then-current Peace, Recovery and Development Plan for Northern Uganda, Phase 2 (2012–2015) (PRDP II), in contrast, conflated customary and formal mechanisms with dispute resolution and focused on only semi-related questions, including sexual and gender-based violence (Republic of Uganda 2011: 35). The successor to the World Bank-mandated Poverty Eradication Action Plan, which at least talked about the need for social rebuilding and justice in northern Uganda (Ministry of Finance 2004a), was the National Development Plan (Republic of Uganda 2010: 4), which does not mention the conflict in northern Uganda explicitly, nor lay out any kind of reconciliation or justice strategy.[11]

Failure to Implement Official Mechanisms

It is commonly understood throughout the country that questions of justice in Uganda have shifted to "holding the Government and the LRA to account—but only the LRA, really", as one NGO national coordinator told me (Omona interview 2012). This accountability centres on the International Criminal Division of the High Court. The GOU's priorities do not really extend beyond that kind of formal

[11] The National Development Plan does mention the tumultuous period from 1971 to 1979, when Uganda was governed by Idi Amin, although it does not list the insurgencies faced by Museveni since he came to power in 1986, nor the period from 1980 to 1985 when Obote returned to power. It further lists stability and peace as one of its 6 "vision" points without any further elaboration.

justice, presumably because it is concerned with satisfying the requirements of the ICC's Pre-Trial Chamber in relation to the charges against Kony and other top LRA commanders.

The one exception is a small project piloted by the Justice Law and Order Sector (JLOS) in 2012, under the Ministry of Justice, through the Uganda Law Reform Commission.[12] "The Uganda Law Reform Commission was given responsibility to study customary mechanisms, to see whether customary justice can be used, what mechanisms are in place, structures on the ground, and so on" (Adongo interview 2012). Its report was delayed by many months and was not publicly available at the time of writing. JLOS staffers told me, however, that "justice is a process and it's taking its time. The focus has been on formal justice because that was the first step. So now, the next step is to look at informal justice" (Zarifis interview 2012). None of this had been effectively conveyed to any of the groups that used to work on customary justice.

Many of the NGOs and INGOs that formerly carried out research and programming in the area of customary justice are no longer working on this question, although a handful, like the Refugee Law Project, continue the work (Tumuwesigye interview 2012). One NGO representative noted, "For a Ugandan to come out that I am doing research on a cultural aspect, it is now not the right thing to do" (Otobi interview 2012). Yet the people to whom I spoke, all of whom were familiar with the intricacies of the customary justice question, saw inherent value in the customary practices, and often mused that they wished the practices were back on the table. One interviewee said, "Maybe if we had taken the time to deal with issues of reconciliation using the traditional ways, issues of land and domestic violence wouldn't be so big" (Apunyo interview 2012). Another noted, "It's not too late for traditional mechanisms, but this needs to be part of the whole justice framework" (Omona interview 2012). This was substantiated over and over again by my interviewees, who told me that "even formal justice institutions in Uganda are acknowledging that formal justice does not entirely address justice needs" (Ejoyi interview 2012).

Many feel that customary justice has both proper authority and legitimacy: "At a local level, traditional justice has more legitimacy. People relate to it much more strongly" (Opiyo interview 2012). As one international consultant reported to me, "These mechanisms are being used" (Okille interview 2012). As for how frequently, an NGO staffer told me that "people still rely on these traditional things a lot. If you go in the village, you still find it. It is something that has been in our culture for decades and centuries, and cannot go away" (Opobo interview 2012).

[12] "JLOS is a sector-wide approach adopted by Government bringing together institutions with closely linked mandates of administering justice and maintaining law and order and human rights, into developing a common vision, policy framework, unified on objectives and plan over the medium term. It focuses on a holistic approach to improving access to and administration of justice through the sector wide approach to planning, budgeting, programme implementation, monitoring and evaluation". See https://www.jlos.go.ug:442/index.php/about-jlos/our-history.

Shifting Focus and Direction

Another striking change, mentioned by most of the NGOs with which I spoke, is that Museveni has pushed all of the NGOs and INGOs away from their work in northern Uganda and towards the region of Karamoja, in the northeast of the country. As the acting secretary of the NGO Board justified it, the rationale for the GOU to "register, coordinate and monitor NGO activities" is to "provide for the regulation of these freedoms" (Okello interview 2015). He made no secret of the fact that he believed government could and should be in the business of deciding what NGOs are able to do, and forcing them to go in the particular direction the GOU chooses.

Many NGOs told me that they were no longer working in northern Uganda because of a government directive. For example, I was told that "after the Kony war in 2007, the focus moved to Karamoja" (Mugumya interview 2012). The PRDP II explains that the "situation has evolved considerably since [2005–2007] as almost all displaced people have resettled, and the priorities in the North have shifted away from humanitarian support to peace building and development" (Republic of Uganda 2011: 5). The Office of the Prime Minister has declared that "following the resolution of the conflict that faced the region there is renewed impetus for growth" (Office of the Prime Minister, "Northern Uganda"). And the GOU has indicated that the activities once carried out in northern Uganda, including "initiatives [to] promote peaceful resolution of conflicts; undertake peace education and other peace activities in the communities", are now to focus on Karamoja (Republic of Uganda 2010: 366–367). Museveni's wife, Janet Museveni, was appointed minister of state for Karamoja affairs in 2009, and in 2011 she was appointed minister for Karamoja affairs, a move many saw as "rais[ing] the prospect of the Karamoja region's social problems getting attention that goes beyond political tokenism" (Wakabi 2009). One interviewee noted, "Janet's appointment brought the issue to light. For the first time, someone can articulate that to Museveni" (Confidential interview 2013).[13]

Museveni's "push" towards Karamoja has been met with confusion and scepticism from civil society. "MPs are changing the goal posts every day", reported one faith-based NGO worker, who continued, "Government is derailing attention away from other things" (Nalwoga interview 2012). I heard from many people at both NGOs and INGOs that "in 2009, government aid went to Karamoja. But I'm not sure it has rested there" (Otobi interview 2012). The government's stated focus on Karamoja has created an environment in which NGOs feel unable to focus on any other region of the country, despite what they think still remains to be done in northern Uganda. Most Ugandan NGO representatives I spoke with feel that they may only carry out activities explicitly sanctioned by the government, even if their funding comes from other sources.

[13] It is worth noting that opinion on Janet Museveni's involvement is divided. Some contended that "she was not going to change anything after all", or alleged that the Museveni family is engaged in a land grab that will give them access to oil and mineral rights to resources just being discovered in the region. Popular sentiment, though, ultimately gauges her appointment as a back-room deal to enable her eventual succession (Kanyana 2012; Nalugo 2012).

One INGO consultant, who is herself from northern Uganda, wondered whether the Karamoja move was "a broader strategy by the government to deflect attention somehow" (Confidential interview 2012b). The GOU has a complicated history in northern Uganda, owing to the 30-year LRA conflict and the activities of the Uganda People's Defence Force there. The GOU allowed the conflict to go on, unstopped, for years and only reluctantly stepped up its response in the early 2000s. Many of the people to whom I spoke indicated that they felt that the GOU had no desire to rebuild northern Uganda following the conflict, since it viewed northerners as having been supporters of former President Obote, against whom Museveni fought in the 1980s to secure the presidency. Northern Ugandans and a growing number of people across the rest of the country, therefore, suspect malicious neglect of northern Uganda after the LRA conflict to be at the root of Museveni's decision to shift attention to Karamoja. "The Government had a lot to do with pushing international donors away from emergency work in northern Uganda", said one interviewee. "Where international NGOs have come in is that we haven't done a good job in saying those areas still need a lot of work, in getting evidence, in advocacy" (Muculezi interview 2012). The GOU policy has effectively forced NGOs and INGOs to focus on Karamoja at the expense of northern Uganda and even a number of INGOs I interviewed felt obliged to follow this directive, or face having their programmes suspended too.

Other interviewees were quick to point out that "interest is measured regarding the presence of international NGOs. Maybe there are no international NGOs left in Karamoja" (Otobi interview 2012). Others still reported that "international donors are still in the north" (Othieno interview 2012). It is true that the stated focus of the PRDP II is on both northern Uganda *and* Karamoja, although everyone to whom I spoke indicated that they had been shunted away from northern Uganda and towards Karamoja.

Personnel Turnover

This shift has caused a revamping of the kinds of programming that NGOs are able to offer, and significant rearranging of the personnel who are now in place to advise on and carry out such programmes. Of the 29 people I interviewed in the "peace and justice" sector of the NGO and INGO space in Uganda, 21 were new to their jobs within the past year or so. And many of those were people I knew in the past when they served in other capacities. These interviewees were well aware of the implications of the shift that had taken place (Tumuwesigye interview 2012; Ocan interview 2012).

One casualty of this shift is that institutional memory of customary practices built up under old personnel has not been passed along to the people now occupying their positions. Yet, interviewees seemed puzzled by the shift: "There used to be a whole dialogue about national reconciliation. I don't know where that went" (Confidential interview 2012b). I could find no evidence that organisations were

doing anything to counter this loss, such as knowledge management, evaluation, and exit interviews. In many cases, the problem was compounded by a lack of personal knowledge about customary practices. Interviewees noted that while the "peace and justice" sector was once staffed with people from northern Uganda, the newcomers are mostly from the west and south of Uganda. Many reported that "people from the west [and south] don't know their [own] culture", let alone the Acholi culture (Ocan interview 2012), or that "if you're not in conflict yourself, then you don't know what the traditions mean" (Nalwoga interview 2012). Others explained the lack of institutional memory this way: "Nationals working on files bring their own exposure and experiences and knowledge of context, and must try to explain that to their managers to show them the importance" (Barigye interview 2012). Still others admitted that they and their staff simply do not understand the conflict in northern Uganda, and so these kinds of matters do not seem important to them (Kizza-Aliba interview 2012).

In any case, the agenda relating to reconciliation and customary practices of justice and acknowledgement is not what it once was.

Communication Breakdown

Another factor in the shift away from customary practices is the disconnect between the people and institutions working in the "peace and justice" sector regarding what is being discussed and the priorities being articulated.

As always, part of the difficulty is that the GOU does not speak with one voice. The Minister of Finance has spoken openly about the problem, proposing that "collaborative efforts between the different parts of Government should be continuously encouraged and promoted" (Ministry of Finance 2004b: 6). Instead, documents spelling out national priorities, as noted above, conflict with one another. The PRDP II signals something quite different from the National Development Plan, both of which are different from the former NUSAF and NUSAF II. Both plans are seen by nearly everyone I spoke with as a cop-out by the government on the important post-conflict justice questions that remain unanswered. As the then coordinator of the Civil Society Organization for Peace in Northern Uganda commented, "The PRDP itself is a problem. It is highly politicised, and has lost its meaning for people" (Omona interview 2012). Some contend that "the realisation of these plans is lacking" (Odong interview 2012). Nearly all agree that "law and order and the conventional justice system has taken over. And the government is moving in that direction in the PRDP, too" (Nalwoga interview 2012).

Outside of these policy documents, the work has largely been left to JLOS. "It is supposed to be going through those channels. The government is trying to limit NGO voices. [International donors and donor organisations] are called to meet with the Prime Minister, who tells them not to do X or Y" (Confidential interview 2012b). JLOS, in turn, takes items to Cabinet for approval. "Cabinet is easy to convince", reported one international technical advisor for JLOS, "The challenge is with

Parliament" (Zarifis interview 2012). Others noted a serious difference of opinion between JLOS and the Minister of Internal Affairs, and between JLOS and the Uganda Law Reform Commission—an agency that ostensibly reports to the JLOS as well (Odong interview 2012).

Another fundamental issue is the failure of JLOS to adequately articulate its goals to the NGO and INGO community, or to take in any of the feedback it regularly gets from that community (Adongo interview 2012). Unlike in other countries where government is unresponsive, in Uganda NGOs are reluctant to work autonomously or to find other channels, although certainly CBOs did so during the height of the LRA conflict, by utilising customary justice. Today, the alternative forms of mobilisation going on are in other, related sectors, such as vocational training for war-affected and formerly abducted youth. Yet people in northern Uganda still feel like their "justice" needs have not been met. JLOS is talking about different priorities to different agencies and sending mixed signals to civil society actors. The significant delay in the publication of the Uganda Law Reform Commission's report, and the subsequent delay in a workshop to disseminate the findings to the NGO community, has not helped (Zarifis interview 2012), nor has the government's failure to articulate and legislate a national transitional justice policy. The NGO and INGO representatives to whom I spoke expressed frustration with the current state of affairs.

In part because of the GOU's abdication of its responsibility in the "peace and justice" sector, civil society has stepped in to fill the gap. Many NGOs play an important role in the GOU's strategy, and are recognised as "development partners" and "main actors" in the PRDP (Republic of Uganda 2007: iii). In many ways this is the GOU paying lip service to NGOs' contribution, since NGOs are only able to do as much as their NGO Board permits allow. This makes for a Catch-22, wherein the GOU says that NGOs are the main actors but then refuses to allow them to act. Nonetheless, the Humanitarian Policy Group notes that the number of specialised NGOs is likely to increase in "response to complex ethical and operational dilemmas" such as the decades of conflict and insecurity in northern Uganda (Macrae et al. 2002: 12). To some extent, that has been the case in Uganda. Several people expressed to me that NGOs do fill a critical gap, in some ways: "NGOs have replaced the vacuum in northern Uganda" (Ejoyi interview 2012).

Donor Influence

There is a question regarding the extent of the GOU's control. As the GOU itself notes, "The Government has to rely on external financing for much of the budget expenditures" (Republic of Uganda 2010: 4). A local newspaper reported that "donors fund[ed] 25 per cent of Uganda's 2012/13 budget by $4.5b (Shs11.2 trillion)" (Monitor Team 2012). These donors have begun to cooperate, and to coordinate their efforts. In early 2006, a Group of Seven Plus One states banded together

to support the idea of "peace" in Uganda both morally and financially.[14] A constellation of international governments have put in place a joint agency called the Donor Governance Facility, made up of Denmark, Sweden, Norway, the United Kingdom, Austria, Ireland, the Netherlands and the European Union, which coordinates those countries' funding allocations and sets joint priorities. The facility now funds the JLOS and the Uganda Human Rights Commission, among other GOU agencies in Uganda, for example (Barigye interview 2012). Another group, made up of Ireland, Norway, Sweden and Denmark, supplies "earmarked budget support" to the PRDP II (Republic of Uganda 2011: 2).

Yet, one faith-based NGO staffer echoed what I heard from a few: "The government puts a lot of pressure on donor agencies" (Confidential interview 2012b). Within the NGO community, there is some sense that the government exerts a modicum of control over donors' priorities: "If the government says Karamoja needs X, there's no way donors can't" (Omona interview 2012). As long as this funding is in the direction of the initiatives supported by Museveni's government, the funding does not appear to be problematic: "The government has its consortium. Within that framework, government is managing to herd groups in their direction" (Zedriga interview 2012). And indeed, a senior policymaker in the Ministry of Justice and Constitutional Affairs, when asked whether things have shifted over the past couple of years, asked, "What has changed? Now we are the ones who are in control, not like that time" (Gashirabake interview 2012).

But funding from donors is required if any of the GOU's programming is to go ahead. The PRDP spells out three distinct funding modalities for the work it has planned:

1. PRDP budget grant: GoU provides PRDP grant funding through the budget [36% of which is provided by donors] ….
2. On-budget special projects: Some donors provide support through on-budget "special projects" which are managed by the government (e.g. NUSAF II, funded by the World Bank and DFID, and KALIP and ALREP, which are funded by the EU).
3. Off-budget funding: The third modality is off-budget funding, where donors and other development partners implement projects without the involvement of government, either directly or through NGOs and CSOs (Republic of Uganda 2011: 2).

Little wonder, then, that the GOU seeks to manage NGO activity to some extent, and to regulate the activities in which civil society groups like NGOs are able to participate. The GOU has no control of NGOs if their funding is "off-budget" and flows directly from donors to civil society, effectively by-passing the GOU.

In fact, contrary to most interviewees' perceptions, the GOU must abide by the wishes of international donors if it wants to maintain or increase the funding it receives: "Donors play a pronounced advisory role when the budget is being

[14] The Group of Seven Plus One was composed of Belgium, Germany, Ireland, the Netherlands, Norway, Sweden, the United Kingdom and Canada.

formulated, and critics have questioned the influence of donor interests within the budget process. However, given Uganda's high reliance on donor funding, it is unlikely that the role of donors in the budget system can be minimized at present" (Owomugasho/World Bank website). In December 2012, for example, donors announced

> deeper and longer aid cuts … in response to massive public corruption. The European Union ambassador to the country announced … that the EU, the United Kingdom, the World Bank, Austria and other countries had suspended up to $300 million promised in budgetary support each year, up to 2013 … Sweden and Ireland had earlier suspended their project support and thus the new agreement suspends all their funds to Uganda while Norway withdrew all of its support in 2011. (Jeanne and Njoroge 2012)

It is the third category, "off-budget funding", "where donors and other development partners implement projects without the involvement of Government, either directly or through NGOs and CSOs" (Republic of Uganda 2011: 2), that tells the enormity of the tale. Funding is given directly to local organisations to carry out the programming of international donors, without having to be accountable to the GOU and without the GOU's knowledge or consent. To some extent, donors act as patrons, not partners, in the sector (Nesiah 2016). Many NGOs themselves admit to allowing international donors to call the tune and to set the agenda for their programmatic decision-making. It is true that large, well-established NGOs have a higher degree of autonomy, relative to other NGOs, but even they admit to being frustrated by identifying real needs in Ugandan society and then struggling to find funding to allow them to work on those particular issues. The executive director of the Refugee Law Project expressed his frustration at donors' inability to deal with ongoing issues like those related to transitional justice, which do not fit neatly into budget cycles, or necessarily translate to the programmatic priorities that donors have set (Dolan interview 2015). This was echoed by another Refugee Law Project staffer, who noted that "[government expects that] donors have their priorities set by the government. Government has said transitional justice is not a priority so funding has been pulled. Post-Juba, donors had different agendas" (Oola interview 2015). The same holds true for INGOs: "The kind of funding we have is driven by what the donors decide. You might have a very good proposal, but you will fail to find funding for it" (Businge interview 2016).

In an ideal world, "planning [must] come first, then development … Before raising a single dollar, an institution should have a clear sense of its mission, aspirations, and priorities—and take the lead … Too much donor control is hazardous to a nonprofit organization's integrity" (Donor Direction 2000). This is because "all aid, at all times, creates incentives and disincentives" (Uvin 1999: 4). Some donors seek "to (maximally and directly) control the use of funds, either by keeping the funds and their use in the hands of the donor, or by delegating them to third parties (NGOs or multi-bi-arrangements)" (Uvin 1999: 10). "What is at issue is how [donors'] financial power is translated into a set of operational relationships in a contentious sphere, particularly given contested legitimacy and weak capacity of governments in recipient countries" (Macrae et al. 2002: 68). And so donors become "pushers and prodders" (Macrae et al. 2002: 70).

This is important in trying to understand how and why thinking about and programming in support of customary justice and reconciliation have all but disappeared from the landscape. Because the majority of NGOs in Uganda simply do not have the luxury of having continued budget support that allows them to pick and choose the kinds of work they pursue, they are beholden to the donors, which drive particular agendas. The deputy director of programmes at a national NGO told me that "most NGOs have only project support, so it is difficult to divert support to other priorities" (Muwanga interview 2012). Another described it this way: "Local organisations might not have their own resources to tackle these, so there is a tendency to look at where is the donor focus to tap into that" (Apunyo interview 2012). As a result, another said, "organisations will shift and people break off and go to where the money is" (Ocan interview 2012). Several people also reported that the number of NGOs has dropped off considerably since their peak in 2004, citing "donor fatigue" (Ocan interview 2012; Omona interview 2012).

Many NGOs do try to act in ways they think the donors want, so as to attract funding. Interviewees reiterated to me that the problem of attracting and keeping donor funding was common across Ugandan NGOs and INGOs, many of whom rely on donor funding. "There is a popular thought of making the *mzungu* [white person] like you, so you do what they want" (Ocan interview 2012). A faith-based organisation staffer told me that "NGOs have to follow the donor lead regarding our priorities" (Nalwoga interview 2012), and so, as her co-worker said, "we tend to look at the international donors' focus in determining our priorities" (Apunyo interview 2012). Another interviewee confirmed that "donors have always called the shots" (Otobi interview 2012). The trouble, as one INGO manager told me, is that "when you're dancing to the tune of the donor, you're not looking after the people you want to help. Those other NGOs are trying to go to Karamoja because that's where the donor wants them to go, but without understanding why, and what situation they will find there" (Byamukama interview 2012). Indeed, "more than 70% of our NGOs began after the early 2000s. They distorted the way that our people live, and offered a better alternative to their life. It affected the people negatively and positively" (Opobo interview 2012).

Being too eager to please can be a problem, particularly when donors seek to advance a particular agenda. As one interviewee put it, "donors are the blue-eyed girl for Uganda. Now NGOs are becoming cautious" (Nalwoga interview 2012). "It is a problem for NGOs to know their role", though, reported one research organization's executive director (Okello interview 2012). "Many times", an INGO representative told me, "donors drive the agenda because they have the envelope. But many NGOs don't locate the debate in the international instruments that are available, so they don't help themselves" (Barigye interview 2012).

Donors themselves may not always know what the important issues are on the ground. "Even donors may not know precisely what they wish to advance", one faith-based organisation representative told me (Otobi interview 2012). I frequently heard from NGOs and INGOs that "donors often make decisions based on a lack of

knowledge, where there is a lack of information given to them, and on what they know from back in Europe. Sometimes, there is a lack of cultural sensitivity" (Barigye interview 2012). "Sometimes donors do come to ask for inputs" about what NGOs think is best (Othieno interview 2012), but NGO and INGO interviewees indicated that this was rare. But there was no question among the people I spoke to that "donors help a lot to determine the agenda" (Ejoyi interview 2012). A great number of donors have shifted away from funding transitional justice issues, per se, while others persist in the sector.

In part, this comes from donors' own carefully defined stand on a variety of issues. "We can't just support an institution that doesn't recognise basic human rights", said the senior programme officer for the Democratic Governance Facility (Barigye interview 2012). For World Vision, a Christian INGO, for example, the spirit worship that is often part of customary justice in Uganda is problematic. Their approach was "not to stop [their initiatives in northern Uganda] from doing traditional practices, but we made it clear that donor money will not be used for these activities—although the children were free to do their own spiritual things" (Odong interview 2008). In another example related to me by a staffer at an international donor agency, the agency was approached for funding by *Rwot Acana*, the traditional cultural leader of the Acholi, but it had reservations regarding gender and deferred a review of the request until they could be sure that gender concerns would be properly mitigated (Confidential interview 2013).

Further confusion stems from lack of coordination, especially for those organisations funded outside of the GOU's budget process. Ugandan NGO interviewees expressed frustration about the confusion this can create. One, for example, told me that "NGOs don't know what each other is working on, and there's sometimes 80–90% of duplication of work. It can send contradictory messages to the community if two NGOs are working there from different angles" (Okello interview 2012). A now more than decade-old report recommended that to clear this confusion up, "a more systematic approach would improve efforts … which are often duplicated, or remaining gaps are often not addressed efficiently. There is a need for these institutions and policies to work together in better coordination on [these] issues" (NUPI 2006: iii).

Conclusions

NGOs and INGOs in Uganda that formerly worked in the "peace and justice" sector on issues related to the use of customary practices of justice and acknowledgement have gone madly off in all directions. No formal transitional justice policy has been enacted. The GOU has shifted its attention to the International Criminal Division of the High Court. NGOs are no longer working on "peace and justice", broadly speaking. They have been pushed by the GOU into working in the Karamoja region,

where issues of acute conflict are not in evidence, and where there is not a need for transitional justice. NGO workers themselves have also moved on. As a result, programmes supporting customary justice—the only form of transitional justice that was much in evidence from 1986 to the time of writing—have all but disappeared. The official transitional justice mechanisms appointed by the GOU, meanwhile, have never come close to fulfilling their mandates, nor to effecting any kind of proper transition.

More important, the disconnect between actors has led to serious confusion. The GOU's failure to articulate any one particular position is problematic, as always. But the failure of JLOS to articulate a convincing strategy for policymakers to pursue is particularly worrying, because the "peace and justice" agenda has been left to them. Internationally funded NGOs have stepped in where they can, circumventing the funding and regulatory problems faced by nationally funded NGOs. But they face increasing pressure from both the GOU and from international donors to influence and support the official transitional justice policy process, which remains in draft form after years of negotiation. Even foreign NGOs are not immune from the vagaries of the GOU, as they, too, are regulated by the GOU's NGO Board.

The critical role of international donors, and of the influence they continue to exert, has been largely overlooked in analyses of how and why customary practices of justice and acknowledgement are or are not being pursued in Uganda. It is essential to understand that NGOs are caught between the GOU and international donors, without any real understanding of how to steer the process according to their own principles and unable to be informed by their own experiences in communities.

National NGOs have significant experience within communities across the country. In many cases, they are from the very communities that need assistance. Local staffers understand the ethnocultural specificities, as well as the practical limitations of any programmatic goal, although this is lessened when NGOs are staffed by Ugandans who come from other areas of the country and are less familiar with local practices. But NGOs are either unwilling or unable to articulate these ideas to international donors who simply need a group, any group, to carry out the programmes they seek to fund. This has not been helped by the rotating staff contingents that have passed through these NGOs, taking with them any institutional memory that once existed.

At the same time, with all available hands assisting programming that is either conceived of and funded by the ever-opaque GOU or by international donors that are not always, themselves, clear about what their on-the-ground programming should encompass, few are listening to communities' wants and needs. And so even though community members continue to ask for support for customary practices of justice and acknowledgement, and for more community-based approaches to resolving long-standing conflicts, none is forthcoming for now. People continue to use customary justice on a small scale to address transitional justice issues, at the community level, but any formalisation or codification of its use, or any justice across ethnocultural groups—as has been advocated by some—has not been carried out.

Civil society in Uganda is fundamentally constrained by the strict control of the GOU. The GOU is not interested in any real pursuit of transitional justice, which it fears would see its members held to account for their own past actions. For this reason, it is easier for the GOU to avoid committing to transitional justice and instead to use the guise of transitional justice as a tool for acquiring some semblance of legitimacy. NGOs, INGOs and other civil society actors have been pushed into other sectors, and those that continue to work in the "peace and justice" sector do so without much support.

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Author Queries

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Queries	Details Required	Author's Response
AU1	Text citation missing for the references "Government of Canada. (n.d.), Quinn, J. R. (2005).". Please check and provide text citation.	
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