

Power to the People? Abuses of power in traditional practices of acknowledgement in Uganda¹

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Traditional practices of acknowledgement in Uganda, as a means of bringing about the resolution of conflict and the rebuilding of society, are ostensibly used by and for the people. The literature has tended to view these practices as being an appealing, community-based alternative to other practices of transitional justice that are often top-down and far-removed from the opinions, activities, and values of the community. Yet traditional practices are sometimes carried out by individuals who, although at first glance, appear to be the justifiable wielders of power, may, in fact, be abusing this power.

What follows is an exploration of the power dynamics at play behind and within these traditional practices of acknowledgement and justice in Uganda. This work is part of an exploration of the importance and utility of customary law within a framework of transitional justice. It is driven, in large part, by irregularities I have encountered in my work in Uganda, and by a desire to think through just what these abuses might mean within a larger context of transitional justice.

Methodology

As part of a larger, on-going study, I have been engaged since 2004 in an examination and analysis of the use of traditional practices of acknowledgement and justice in Uganda. 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 the truth commission, have failed.³

This paper is based on seven "waves" of research that I have collected around the role of traditional practices of justice and acknowledgement in Uganda. Each is a qualitative survey of the manner in which customary practices could be and are being used, and focuses on a different aspect of these instruments, and particularly on the opinions of various stakeholder groups in their use. The data that supports the arguments made in this paper has been collected in more than 270 interviews conducted since 2004 with members of stakeholder groups, including conflict-affected women, government officials, traditional cultural institutions, urban educated youth, and religious leaders.

Background and History of Conflict in Uganda

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 300,000⁴ and 500,000⁵ Ugandans were killed during the time of Idi Amin, from

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³ See Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," (Ph.D. diss., McMaster University 2003).

⁴ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998), 23.

1971 to 1979. Under the rule of Obote, between 1980-1985, approximately 300,000⁶ to 500,000⁷ were killed. The current President, Yoweri Museveni, seized power by means of military force in 1986 with the National Resistance Army/Movement (NRA/M). 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.⁸

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.⁹ Two truth commissions have been appointed to deal, in turn, with the disappearances committed specifically under Idi Amin,¹⁰ and all of the abuses committed between 1962 and 1986.¹¹ Subsequently, an Amnesty Act was promulgated, under which 22,107 ex-combatants had received amnesty by July 2008.¹² And the International Criminal Court began an investigation into the crimes perpetrated by Kony and other senior LRA members in 2004.¹³ Aside from this, national courts and traditional practices of acknowledgement are also entitled to hear evidence in such cases.

Conflict has 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 gynaecological fistulae; many former abductees in Northern Uganda have only scar tissue where once there were noses and lips; and hospitals and schools are in a state of disrepair. Yet the emotional and social costs, though harder to spot at first glance, remain too. And these “scars” are more difficult to fix. I posit that customary practices of

⁵ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997), 41.

⁶ *Uganda* (Brooklyn: Interlink Books, 1998) 53; Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa*. (Boulder: Westview, 1996), 55.

⁷ Abdul Nadduli, LC5 District Chairman, interview with author, 17 Nov. 2004, Luweero Town, Uganda.

⁸ These include rebellions by the Action Restore Peace, Allied Democratic Forces, Apac rebellion, Citizen Army for Multiparty Politics, Force Obote Back, Former Uganda National Army, Holy Spirit Movement, the Lord's Army, 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. Compiled from Lucy Hovil and Zachary Lomo, *Working Paper 11: Behind the Violence: Causes, Consequences and the Search for Solutions to the War in Northern Uganda*, (Kampala: Refugee Law Project, Feb. 2004), 4; and Lucy Hovil and Zachary Lomo, *Working Paper 15: Whose Justice? Perceptions of Uganda's Amnesty Act 2000: The Potential for Conflict Resolution and Long-Term Reconciliation* (Kampala: Refugee Law Project, Feb. 2005), 6.

⁹ Joanna R. Quinn, “Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda” *International Journal of Peace Studies*, (2009) forthcoming.

¹⁰ See Richard Carver, “Called to Account: How African Governments Investigate Human Rights Violations,” *African Affairs* 89.356 (July 1990): 391-415.

¹¹ See Joanna R. Quinn, “The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti,” Ph.D. diss., McMaster University, 2003.

¹² Moses Draku, Principal Public Relations Officer, Amnesty Commission, interview by author, 07 July 2008, Kampala, Uganda.

¹³ Joanna R. Quinn, “Accountability and Reconciliation: Traditional Mechanisms of Acknowledgement and the Implications of the Juba Peace Process,” *Reconstructing Northern Uganda* (invited presenter), Nationalism and Ethnic Conflict Research Group, The University of Western Ontario, London, ON: April 5, 2008.

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

Traditional practices of acknowledgement

As I have written elsewhere, 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. 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.¹⁴ And 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.¹⁵ In Uganda, traditional¹⁶ practices were officially prohibited in 1962, at the time of Independence, in favour of a harmonized court system modeled on the British system.¹⁷

The 1967 Constitution, promulgated by Obote, outlawed the many Kingdoms and traditional cultural institutions across the country. Yet the kingdoms and other traditional cultural institutions remain, and traditional practices have continued to be used in different parts of the country.¹⁸ Traditional cultural institutions themselves have special status under Article 246 of the Constitution.¹⁹

Traditional practices are now legally provided for under legislation including Article 129 of the 1995 Constitution, which provides for Local Council Courts²⁰ to operate at the sub-county, parish and village levels;²¹ and the Children Statute 1996, which grants these courts the authority to mandate any number of things including reconciliation, compensation, restitution, and apology.²² And the Government of Uganda has subsequently included these practices in the recent Agreement on Accountability and Reconciliation and the subsequent Annexure, which emerged out of the Juba Peace Talks.²³ Although these mechanisms broadly fit within very

¹⁴ Joanna R. Quinn, “Tried and True: The Role of Informal Mechanisms in Transitional Justice,” a paper presented at the International Society of Political Psychology Annual Meeting, Toronto, 6 July 2005.

¹⁵ Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 109-110.

¹⁶ Zartman considers practices to be traditional “if they have been practiced for an extended period and have evolved within African societies rather than being the product of external importation.” See I. William Zartman, “Introduction: African Traditional Conflict ‘Medicine’,” in *Traditional Cures for Modern Conflicts: African Conflict ‘Medicine’*, ed. I. William Zartman (Boulder: Lynne Rienner Publishers, 2000), 7.

¹⁷ The British Colonial Office, *Report of the Uganda Relationship Committee*, 1961.

¹⁸ Briggs, *Uganda*, 22.

¹⁹ Government of Uganda, *Constitution*, 1995.

²⁰ 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.” See John Mary Waliggo, “The Human Right to Peace for Every Person and Every Society,” a paper presented at Public Dialogue organized by Faculty of Arts, Makerere University in conjunction with Uganda Human Rights Commission and NORAD, Kampala, Uganda, 4 Dec. 2003, author’s collection, 7.

²¹ “Uganda: Constitution, Government & Legislation,” [article on-line]; available from <http://jurist.law.pitt.edu/world/uganda.htm>, accessed 30 April 2005.

²² Government of Uganda, *The Children’s Statute*, 1996.

²³ These documents form one part of a five-part agreement that was signed in June 2007 and February 2008, respectively. Although the agreements were signed, at the time of writing, the final agreement has not been signed

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

These institutions are still widely used throughout the country by many of the 56 different ethnic groups.²⁴ Among the Karamojong, the *akiriket* councils of elders adjudicate disputes according to traditional custom²⁵ which include cultural teaching and ritual cleansing ceremonies.²⁶ The Acholi use a complex system of ceremonies in adjudicating everything from petty theft to murder;²⁷ in the current context, at least two ceremonies have been adapted to welcome ex-combatant child soldiers home after they have been decommissioned: *mato oput* (drinking the bitter herb), and *nyouo tong gweno* (a welcome ceremony in which an egg is stepped on over an *opobo* twig).²⁸ These ceremonies are similar to those used by the Langi, called *kayo cuk*, the Iteso, called *ailuc*, and the Madi, called *tonu ci koka*.²⁹ The Lugbara, in the northwest of the country, maintain a system of elder mediation in family, clan and inter-clan conflict.³⁰ And 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.”³¹ A similar ceremony, *amelokwit*, took place between the Iteso and the Karamojong in 2004.³²

In some areas, however, these practices are no longer used regularly. I posit that traditional practices are, in fact, used far less widely in the “greater south” and among Ugandans of Bantu origin.³³ From time to time, however, the Baganda use the traditional *kitewuliza*, a

and both parties have walked away from the talks. See Joanna R. Quinn, “Accountability and Reconciliation: Traditional Mechanisms of Acknowledgement and the Implications of the Juba Peace Process,” a paper presented at the conference, “Reconstructing Northern Uganda,” held by the Nationalism and Ethnic Conflict Research Group, The University of Western Ontario, London, ON: 9 April, 2008. The Government of Uganda, through its Justice, Law and Order Sector Transitional Justice Working Group, is, at the time of writing, trying to determine the modalities of the inclusion of these practices within the War Crimes Division of the High Court and elsewhere. Christopher Gashirabake, Ministry of Justice and Constitutional Affairs, interview by author, 04 July 2008, Kampala, Uganda and Hon. Jus. James Ogoola, Principal Justice, High Court and Chairman, Transitional Justice Working Group, interview by author, 25 Sep. 2008, Kampala, Uganda.

²⁴ For a more in-depth discussion of the use of traditional mechanisms in Uganda, see Joanna R. Quinn, “What of Reconciliation? Traditional Mechanisms of Acknowledgement in Uganda,” in *Reconciliation(s)*, ed. Joanna R. Quinn (Montreal: McGill-Queen’s University Press, 2009), forthcoming.

²⁵ Bruno Novelli, *Karimojong Traditional Religion* (Kampala: Comboni Missionaries, 1999), 169-172, 333-340.

²⁶ Peter Lokeris, Minister of State for Karamoja, interview by author, 18 Nov. 2004, Kampala, Uganda.

²⁷ See Thomas Harlacher, Francis Xavier Okot, Caroline Aloyo Obonyo, Mychelle Balthazard, and Ronald Atkinson, *Traditional Ways of Coping in Acholi: Cultural provisions for reconciliation and healing from war* (Kampala: Thomas Harlacher and Caritas Gulu Archdiocese, 2006).

²⁸ For an excellent description of *mato oput* see Sverker Finnström, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003), 297-299.

²⁹ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure to the Agreement on Accountability and Reconciliation” (Juba, 19 Feb. 2008), Art.21.1.

³⁰ Joseph Ndrua, “A Christian Study of the African Concept of Authority and the Administration of Justice among the Lugbari of North Western Uganda,” (M.A. diss., Catholic Higher Institute of Eastern Africa, 1988), 42-56.

³¹ Finnstrom, *Living With Bad Surroundings*, 299.

³² Iteso focus group, conducted by author, 31 Aug. 2006, Kampala, Uganda.

³³ See Joanna R. Quinn, “Here, Not There: Theorizing about why traditional mechanisms work in some communities, not others,” a paper presented at the Canadian Political Science Association Annual Meeting, 06 June, 2007.

juridical process with a strong element of reconciliation, to bring about justice.³⁴ Among the Bafumbira, land disputes, in particular, are settled through traditional practices, with Local Council officials adjudicating.³⁵ The “Annexure to the Agreement on Accountability and Reconciliation” also lists those mechanisms used by the Ankole, called *okurakaba*³⁶—although I have uncovered only weak anecdotal evidence of their continued use.³⁷

People from nearly every one of the 56 ethnic groups in Uganda have reported to me that “everyone respects these traditions,”³⁸ and that reconciliation continues to be an “essential and final part of peaceful settlement of conflict.”³⁹ But many, particularly young, educated Ugandans who live in the city, have also reported to me that they have never participated in such ceremonies.⁴⁰ Even still, a common understanding of these symbols, ceremonies, and institutions, and their meanings remains throughout Uganda—even in those areas where such practices are no longer carried out.

The Justifiable Wielders of Power

Outsiders to any particular culture naturally assume that those who occupy positions of power and prestige within a community do so legitimately. Yet, a look below the surface in many cultures often reveals that those who wield power are not always legitimately installed in their positions, and that the power they wield is fraught with illegitimacy. This understanding of the power dynamics at play within mechanisms like traditional justice practices is important, particularly to outside evaluators, as to how and why the use of customary law is or could be problematic.

In the precolonial era, “tribes were organized under the domination of elders... [who governed through] redistributive mechanisms that thwarted tendencies to reproduce inequalities in a cumulative fashion.”⁴¹ The elders were “under a kinship obligation to surrender power to juniors when the time came”⁴²—although certainly it was not the case that all junior members of society would move on to the status or responsibility of elders within their communities.⁴³ These elders were normally men who were seen to be people of great wisdom. They were the “legitimate bearers of the public confidence.”⁴⁴ “In kin-based societies... every person... depended on kith and kin to protect life and property—for there was no other rule to turn to.”⁴⁵

³⁴ Waliggo, “The Human Right to Peace for Every Person and Every Society,” 7. Also, idem, “On Kitewuliza in Buganda, 3 May 2005,” author’s collection, 1.

³⁵ Hon. Jus. Patrick Tabaro, High Court Justice, interview by author, 14 July 2008, Kampala, Uganda.

³⁶ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure to the Agreement on Accountability and Reconciliation” (Juba, 19 Feb. 2008),” Art.21.1.

³⁷ G. William Katatumba, *Enganzi* (Prime Minister), Ankole Kingdom, and Chairman, Nkore Cultural Trust, interview by author, 24 June 2008, Kampala, Uganda.

³⁸ Confidential interview by author with Sabiny man studying at Makerere University, 7 Nov. 2004, Kampala, Uganda.

³⁹ Waliggo, “The Human Right to Peace for Every Person and Every Society,” 9.

⁴⁰ Northern Uganda focus group, conducted by author, 23 Aug. 2006, Kampala, Uganda.

⁴¹ Mamdani, *Citizen and Subject*, 41.

⁴² Archie Mafeje, *The Theory and Ethnography of African Social Formation: The Case of the Intralucustrine Kingdoms* (Dakar, Senegal: CODESRIA, 1991) as cited in Mamdani, *Citizen and Subject*, chapter 2, footnote 9.

⁴³ Mamdani, *Citizen and Subject*, footnote 9.

⁴⁴ Joanna R. Quinn, “Spoiled Rotten? Outsiders and the use of traditional mechanisms in Uganda,” a paper presented at the Annual Convention of the International Studies Association, 17 Feb. 2010, New Orleans, USA.

⁴⁵ Ibid. For a discussion of the effects of horizontal and vertical stratification on customary practices of acknowledgement and justice, see Joanna R. Quinn, “Here, Not There: Theorizing about why traditional

In Acholi, for example, “chiefs were of aristocratic descent... When they were installed in their office, the chiefs were anointed with oil made from the shea-butter tree. Even today, those chiefs are called oiled chiefs.”⁴⁶ These traditional leaders were charged with “overseeing the general peace of their subjects.”⁴⁷ In Buganda, on the other hand, the *kitawuliza* courts, used mostly at the sub-sub-county level, were governed by the head of that particular political strata; he, in turn, reported to *muluka* chiefs, and so on, up to the *katikkiro*, and ultimately, the *kabakka*, or king, who had the power to reverse the decisions made.⁴⁸

The coming of the colonial powers caused all of that to change. “The tribal leadership was either selectively reconstituted as the hierarchy of the local state or freshly imposed where none had existed...”⁴⁹ “Often tribes were created on the basis of territorial contiguity as villages were brought together under a single administrative authority. Chiefship was similarly manufactured and [administrative] chiefs were imposed” for the first time.⁵⁰

The functionary of the local state apparatus was everywhere called the chief. One should not be misled by the nomenclature into thinking of this as a holdover from the precolonial era. Not only did the chief have the right to pass rules (bylaws) governing persons under his domain, he also executed all laws and was the administrator in “his” area, in which he settled all disputes. The authority of the chief thus fused in a single person all moments of power: judicial, legislative, executive, and administrative. This authority was like a clenched fist...⁵¹

For example, several Acholi clan chiefs struggled through the 1960s and 1970s to curry favour with the British. Today, the Payira clan “promote their chief as the paramount Acholi leader”⁵²—even as “agents of other clans, such as the Koch clan, claim paramount Acholi recognition.”⁵³ This reorientation had ripple effects throughout the community. Colonization rearranged the authority structures that had previously existed from the community level upward.

In Acholi, the British began appointing chiefs. “[T]he majority of the chiefs appointed by the British were commoners... A good number of local leaders and loosely organised intellectuals, as well as ordinary people I imagine, indeed did offer active resistance to what they regarded as the disruption of their indigenous modes.”⁵⁴ In myriad ways, these appointments affected the way the Acholi viewed those who were now sanctioned to hear their complaints and deal with the community’s problems. Even today, a disjuncture exists between government-appointed chiefs and traditional cultural leaders, the “shea-butter” chiefs.⁵⁵ “Traditional chiefs, those in office by right of descent, had been eclipsed by administratively appointed commoner

mechanisms work in some communities, not others,” a paper presented at the Canadian Political Science Association Annual Meeting, 6 June 2007, Saskatoon, SK.

⁴⁶ Sverker Finnström, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003), 66.

⁴⁷ Geresome Latim, Secretary to the Paramount Chief of Acholi, interview by author, 22 Nov. 2004, Gulu town, Uganda.

⁴⁸ Dr. Livingstone Walusimbe, Institute of Languages, Makerere University, interview by author, 16 May 2006, Kampala, Uganda.

⁴⁹ Mamdani, *Citizen and Subject*, 17.

⁵⁰ Mamdani, *Citizen and Subject*, 41.

⁵¹ Mamdani, *Citizen and Subject*, 23.

⁵² Finnström, *Living With Bad Surroundings*, 70.

⁵³ Finnström, *Living With Bad Surroundings*, 71.

⁵⁴ Finnström, *Living With Bad Surroundings*, 66-67.

⁵⁵ Finnström, *Living With Bad Surroundings*, 67.

chiefs.”⁵⁶ This is important because those who are today responsible for dispensing customary justice are, in fact, sometimes not the traditionally-authorized cultural leaders, whose function and rationale is entirely different from the administrators’.

And with that, the power dynamic shifted drastically. Traditionally, the clans acted as a “popular check on both the king and the appointed administration... These were the traditional institutions of traditional Africa through which village-based communities regulated their social and economic affairs.”⁵⁷ Over this was a system of “courts of chiefs and headmen.”⁵⁸ Once the new system of colonizer-appointed chiefs was put in place, however, the ability of the kin-based groups to provide checks and balances was taken away by the presence of a white commissioner—what Mamdani refers to as the “white chiefs of Africa”⁵⁹—whose job it was to in effect ‘backstop’ the decisions made by the administrative, appointed chiefs. “Customary local authority was reinforced and backed up by the central civil power.”⁶⁰

To the extent that they could claim a nineteenth-century precedent, the chiefship that the colonial powers created was built on the administrative variant, not the traditional. Even then, what is impressive is not the continuity in tradition, even if a nineteenth century one, but the break in continuity. To begin with, even if nineteenth-century administrative chiefs were the king’s appointees who could not stay in office without the king’s pleasure, their power was not just circumscribed by the will and capacity of the king. It was also constrained by tradition as embodied in the traditional chiefs alongside whom they functioned in tension. Besides this peer restraint, there was also a popular constraint, that of the people... This was the tension between state authority in all its forms (traditional and administrative) and clan organization. By undermining both popular (clan) checks on state authority and traditional constraints as embodied in traditional chiefs, the colonial state really liberated administrative chiefs from all institutionalized constraint, of peers or people...⁶¹

“Customary law consolidated the non-customary power of the chiefs in the colonial administration.”⁶²

Post-colonialization, after independence, Yoweri Museveni, Uganda’s current President, has also played havoc with the legitimization of those who claim responsibility for customary law. In 1967, Milton Obote abolished the kingdoms in an attempt to gain sole control of the country.⁶³ These were restored in 1993⁶⁴ but without any political powers.⁶⁵ By February 2009, 11 traditional cultural institutions had been restored.⁶⁶ Yet there has been some controversy

⁵⁶ Mamdani, *Citizen and Subject*, 42.

⁵⁷ Mamdani, *Citizen and Subject*, 42.

⁵⁸ Mamdani, *Citizen and Subject*, 115.

⁵⁹ Mamdani, *Citizen and Subject*, 115.

⁶⁰ Mamdani, *Citizen and Subject*, 22.

⁶¹ Mamdani, *Citizen and Subject*, 43.

⁶² Mamdani, *Citizen and Subject*, 110.

⁶³ Briggs, *Uganda*, 25.

⁶⁴ Government of Uganda, *The Traditional Rulers (Restitution of Assets and Properties) Statute*, 1993.

⁶⁵ *Uganda* (Brooklyn: Interlink Books, 1998) 298-299.

⁶⁶ Ministry of Gender, Labour and Social Development, “List of Recognized Traditional Cultural Leaders in Uganda 2008,” (Ministry of Gender, Labour and Social Development internal document, 25 June 2008), author’s collection.

about the reinstatement of others. Museveni himself has denied the reinstatement of some groups on purely political grounds, in that they might pose some challenge to his Presidency.⁶⁷

It is also the case that many of the traditional cultural institutions that have been recognized did not exist prior to the abolition of kingdoms in 1967. “In some communities, there is more than one claimant,” and the Ministry of Gender, Labour and Social Development has been granted the authority to “check... out [others] to see the authenticity of each.”⁶⁸

In other cases, there is blatant interference from Museveni. 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 a Council of Regents competed for influence with the young King’s mother and the guardianship of the King was shared with President Museveni.⁶⁹ Museveni’s insertion of himself into the process has meant that some people and groups have been legitimized by Museveni, but may not be those whom community members would choose to install at the head of their systems of customary justice and acknowledgement.

Adding even more complexity is the system of local councils that Museveni put in place when he assumed the President’s office in 1986.⁷⁰ He implemented a series of Resistance Councils, (named after the Resistance Movement that Museveni himself championed and renamed Local Councils or LCs once he had seized power), “local committees based within the population” as a mechanism for the translation of local ideas to the central government, and meant as a system of encouraging grassroots participation.⁷¹ However, the LCs act as a tool of the NRM to harmonize political opinions, and dissent is often not tolerated.⁷² And their presence effectively adds another synthetic layer of governance and justice to community structures. The traditional chiefs and the government-sanctioned chiefs must defer to the rule of the LC chiefs. A number of interviewees reported to me that, particularly with reference to traditional practices of acknowledgement, 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.”⁷³

The Impact of Illegitimate Power-Holders

The idea that there are somehow legitimate wielders of power, after decades of such extensive tumult and blatant social reconstruction, is maybe a non-starter. And yet it is, perhaps, worth thinking through just who might, in fact, be a legitimate wielder of power. As with the rules governing popularly elected officials in Uganda and elsewhere, this might, obviously, include some minimum or maximum kind of age limit; the Canadian Senate, for example, requires senators to be 30 years of age or older, and requires senators to retire at age 75.⁷⁴ Considerations

⁶⁷ Confidential interview by author with Mutooro man working for faith-based NGO, 24 June 2008, Kampala, Uganda.

⁶⁸ Bernard Bakaye Lubega, Principle Culture Officer, Ministry of Gender, Labour and Social Development, interview by author, 25 June 2008, Kampala, Uganda.

⁶⁹ The Batebe of Toro Foundation, “King Oyo Nyimba Kabamba Iguru Rukidi IV,” *Kingdom of Toro* [web-site]; available from <http://www.torokindom.org/Oyo.htm>; accessed 2 Feb. 2009.

⁷⁰ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997), 44.

⁷¹ *Ibid.*, 41.

⁷² Susan Dicklitch, “Uganda: A microcosm for crisis and hope in sub-Saharan Africa,” *International Journal* 51.1 (Winter 1995-1996): 112-114.

⁷³ Professor Edward Rugumayo, Chancellor, Mountains of the Moon University, interview by author, 10 July 2008, Fort Portal, Uganda.

⁷⁴ Government of Canada, *Constitution Act 1982*, Sec. 3.23.i.

of gendered representation might also be made, so as to represent both men and women within a community.⁷⁵ And representatives might also be considered based on levels of education attained, or their perceived wisdom regarding community affairs. Or they might simply be elected with regard to popular acclaim. Yet none of the traditional customary institutions, save perhaps the more democratic election of the *Tieng Adhola*, the leader of the Jopadhola in southeast Uganda, operates in anything close to this kind of model.

Instead, certain members of the community have come to be privileged over others, in structures of governance generally, and in the practice of traditional justice and acknowledgement, specifically. Education, particularly, allowed some community members to assume roles that they might not otherwise have held—because the ability to write made one an ideal candidate for administration. “As Acholi individuals were assigned to run the courts, some came to incorporate imperial attitudes, which were further disseminated and imposed on the subjects under colonial administration.”⁷⁶

The same has often been repeated, but for individuals with greater financial ability, in communities throughout Uganda. Particularly the diaspora population has been privileged in this way, as they are seen as being financially better-off, and having made a significant amount of money, whether or not this is actually the case.⁷⁷ This was certainly true in the negotiations between the Lord’s Resistance Movement and the Government of Uganda, as the diaspora played an influential role. The LRM is seen to be

drawn mainly from politically active Ugandan refugees exiled in Africa and Europe... who have lost touch with Uganda. Save for 2 members, the rest of the members of LRA delegation fled from Uganda during M7’s war of vengeance and reign of terror in eastern and northern Uganda. The common term used to describe them was and still is ‘the Diaspora Ugandans’ which to a larger extent is meant to make them sound like ‘the Diasporas are offspring of a generation that left Uganda before M7 grabbed power by the gun.’⁷⁸

“[They are accused of] putting forth all manner of issues, loading down the agenda with things that the Lord’s Resistance Army as an entity never fought for, and does not represent the people of Northern Uganda on it.”⁷⁹

⁷⁵ See Joanna R. Quinn, “Gender and Customary Mechanisms in Uganda,” in *Confronting Gender Justice: Women’s Lives, Human Rights*. Ed. Debra Bergoffen, Connie McNeely, Paula Ruth Gilbert, Tamara Harvey. New York: Routledge, 2010, *forthcoming*.

⁷⁶ Finnström, *Living With Bad Surroundings*, 68. See also Frank Knowles Girling, *The Acholi of Uganda* (London: Her Majesty’s Stationery Office, 1960), 198.

⁷⁷ See Martin Kilduff and Kevin G. Corley, “The Diaspora Effect: The Influence of Exiles on their Cultures of Origin,” *M@n@gement* 2.1 (1999): 1-12; and Phillip Kurata, “African Migrants Invest in Their Home Countries,” *America.gov: Engaging the world* [article on-line]; available from <http://www.america.gov/st/develop-english/2009/November/20091106173018cpataruk0.2806055.html&distid=ucs>; accessed 19 May 2010.

⁷⁸ *To Whom it May Concern: A Synopsis on Uganda Peace Talks*, [article on-line]; available from http://www.radiorhino.org/htm_material/archiv/text/press/monitor/A%20Synopsis%20on%20Uganda%20PeaceTalks%20070208.htm; accessed 16 May 2007.

⁷⁹ John A. Akec, “Why Naivasha success story could not be repeated in Uganda talks?” *Sudan Tribune*, 9 April 2007. Akec also argues that it is “neither correct nor fair to depict the Acholi Diaspora as those who caught the LRA bandwagon into Juba at the last minute to advance their personal agenda. They have every right to form the core of LRA/M negotiating team in Juba and are well equipped to speak on behalf on [sic] Northern Uganda. Liberation struggle is a voluntary thing and it does not require mandate from anyone. LRA/M was restricted and banned from establishing offices in the West as SPLM did. We must bear that in mind when comparing LRA/M lack of visibility in the West.”

Following from that, spoilers of all types are often falsely privileged. As I have written elsewhere, the use of traditional practices of acknowledgement in Uganda, as a means of bringing about the resolution of conflict and the rebuilding of society after conflict, is often complicated by the presence of “spoilers,” or parties from outside who undermine the process. These spoilers can come from within a particular community or from outside, and even as far as the international community.⁸⁰

Privilege could also come from one’s political affiliations. This was the case with the appointees to the Ugandan Commission of Inquiry into Violations of Human Rights (CIVHR), many of whom knew President Museveni personally, and had fought alongside him in the NRA/M struggle, including John Nagenda and Jack Luyombya. Their appointments served to complicate the activities of the commission, and compromised the work of the commission in the eyes of many.

Particularly in communities that have been the site of so much conflict and war, perceived bravery, too, might serve to privilege a person or group of people over his peers. Uganda has a strong tradition of this, honouring former soldiers on national holidays like Heroes’ Day.⁸¹ Ugandans often appear to conflate perceived bravery with honour and wisdom, and so former freedom fighters such as Yoweri Museveni and Walter Ochora sit in elected office, making decisions with limited knowledge and vision.

Lastly, privilege may also be derived from heredity. This is the case throughout most of the greater South of the country, where kingdoms predominate and one’s position within the kingdom is strictly determined by the position of one’s father, grandfather, and so on. Uganda is certainly not the only country to deal with questions of hereditary legitimacy; countries like Great Britain struggle with the issue of heredity in both the royal family and in the hereditary peerages that allow individuals from a selected family to serve in the House of Lords. The argument to be made here is that individuals may not be fairly or properly qualified simply on the basis of their lineage.

The price of placing this kind of misplaced worth or value on someone within a community is worth considering, since privilege itself can procure any number of things, whether legitimately or illegitimately. These might include, for example, the conferring of artificial authority. Indeed, this is precisely the argument that was made regarding the appointment of a new *kyabazinga*, or king, in the Kingdom of Busoga. The acting *kyabazinga*, Daudi Kawunhe Wakooli, was seen as illegitimate, and the process to sort out the details, by the kingdom clan heads from the 11 chiefdoms legitimately electing a new *kyabazinga*, took nearly two years to complete, with significant mediation along the way.⁸² Indeed, the persistent lobbying and recent lawsuit of Prince John Barigye Ntare and the Nkore Cultural Trust as the legitimate authority of the Ankole Kingdom reflect the complexity of privileging one person or group over another.⁸³

⁸⁰ See Quinn, “Spoiled Rotten.”

⁸¹ For the first time, in 2010, President Museveni awarded medals to his political opponents. See Patrick Kagenda, “Will Museveni’s medal politics win the north and east?” *The Independent* (9 February 2010) [article on-line]; available from <http://www.independent.co.ug/index.php/news/news-analysis/79-news-analysis/2479-will-musevenis-medal-politics-win-the-north-and-east>; accessed 19 May 2010.

⁸² Abubaker Kirunda, “Gabula elected new Kyabazinga,” *Daily Monitor*, 28 January 2010.

⁸³ G. William Katatumba, *Enganzi* (Prime Minister), Ankole Kingdom, and Chairman, Nkore Cultural Trust, interview by author, 24 June 2008, Kampala, Uganda. See also Lominda Afedraru, “Ankole Prince Sues Govt Over Kingdom,” *Daily Monitor*, 22 April 2010.

To be sure, the most difficult problem stemming from illegitimate privileging is the possibility of improper exemption from accountability—particularly through the mechanisms of customary law. That is, the person at the top of the chain of command and authority within a given community, especially if he (and in Uganda it is more than likely to be “he”, rather than “she”) is installed in that position in a dishonest or illegitimate manner, is unlikely to be held to account for his actions. One thinks immediately, in this instance, of President Museveni, who magnanimously appointed the CIVHR, but prevented it from looking into the many criminal acts perpetrated by his own NRA/M forces.⁸⁴ Or of international leaders like Augusto Pinochet of Chile who, instead of facing criminal prosecution, granted himself and his accomplices blanket immunity from prosecution.⁸⁵

Various individuals and groups have traditionally been left out of these traditional justice procedures. Women and girls, for example, were treated very differently—if they were considered at all—by processes of customary law in Uganda.⁸⁶ The same has been true for young people, as well as for the disabled. Customary mechanisms of justice were created to deal with the crimes of the enfranchised: able-bodied (and –minded) men. Likewise, customary law practices have tended to leave out the criminal wrong-doing of those who come from outside of the community. Leaving out whole groups, though, is a very different thing than the granting of exemptions to those who ought to be held responsible and are not.

It is the case, for example, that those who were seen to be above reproach have always been exempted from the possibility of being held accountable. The people of the royal Babiito clan in the Kingdom of Tooro, for example, in their role as advisors, were unlikely to be taken before the court.⁸⁷ Even when tensions erupted within the Kingdom and the Council of Regents deposed Professor Oswald Ndoleriire, one of the regents, little thought was given to subjecting any of the members to a process of accountability. Those powerful people making the decisions were the final arbiters of his fate.⁸⁸

It is also frequently the case that those who hold high positions elsewhere feel, themselves, exempt from processes of justice—or are not held accountable by others who are too scared to do so because of perceived ramifications. “[T]he President’s relatives were accused of overly benefiting from the privatization of parastatals in the 1990s, especially the President’s brother Salim Saleh and Museveni’s wife’s brother-in-law Sam Kutesa, who were both heavily implicated in the scandals surrounding the divestitures of various companies.”⁸⁹ Neither one was ever held to account for any of these allegations.

Implications of Abuses of Power within “Traditional” Courts

All of this means that the *de facto*⁹⁰ authority of customary processes must be called into question. For it seems that those who claim to speak with authority may not justifiably do so.

⁸⁴ Uganda, *The Report of the Commission of Inquiry into Violations of Human Rights* (Kampala: UPPC, 1994).

⁸⁵ Human Rights Watch, “The Pinochet Precedent,” [article on-line]; available from <http://www.hrw.org/campaigns/chile98/precedent.htm>; accessed 19 May 2010.

⁸⁶ See Quinn, “Gender and Customary Mechanisms in Uganda.”

⁸⁷ Mutooro NGO worker, interview with author, 24 June 2008, Kampala, Uganda.

⁸⁸ Professor Oswald Ndoleriire, interview with author, 25 June 2008, Kampala, Uganda.

⁸⁹ Elliott D. Green, “Working Paper 05-58 Ethnicity and the Politics of Land Tenure Reform in Central Uganda,” DESTIN Working Paper Series, London School of Economics, April 2005, 17.

⁹⁰ The *de jure* authority of such practices may also be questioned, but if the wielders of power are legally in place, then the requirements of jurisprudence may, in fact, be met. Likewise, the *de facto* authority of such practices may come from the fact that the people within a given community work within the parameters set by the customary practices and accept them as legitimate.

Or they may. But without a nuanced and detailed understanding of how and why those who claim authority in matters of customary law do so, it is difficult to tell one from the other. In any event, the authority of the process of traditional justice must be called into question. Rather than simply accepting wholesale the rationale(s) presented by those who appear to retain the vestiges of power, it is important to call into question the legitimacy they claim.

In no sense, however, does this change the meaning of justice as rightfulness or lawfulness, or the making right of a wrong. Rather, the concept of justice must be applied wholesale and universally. It must leave no-one out, for no-one is above the law. This means that those who exclude themselves from the process must be purposely included. And if customary legal processes do not do that, then their legitimacy deserves to be questioned.

Implications for Transitional Justice

The 2004 Report of the Secretary General, “The rule of law and transitional justice in conflict and post-conflict societies,” pointed out that “helping war-torn societies re-establish the rule of law and come to terms with large-scale past abuses... requires attention to myriad deficits...”⁹¹ While the report obviously envisions a broad mandate for transitional justice, it specifically highlights “a lack of political will for reform, a lack of institutional independence within the justice sector, a lack of domestic technical capacity, a lack of material and financial resources, a lack of public confidence in Government, a lack of official respect for human rights and, more generally, a lack of peace and security.”⁹²

Even if they are only envisioned as playing a very small part in the overall transitional justice strategy that is adopted, customary practices of law and justice must at their very least uphold human rights. Leaving groups wholesale out of a process is indefensible. But so, too, is the illegitimate meting out of justice by those who have no business doing so. Or the purposeful escaping of justice by those powerful enough to finagle it.

Mechanisms of justice adopted within larger strategies of transitional justice must be fair. They must be equal. They must be transparent. And they must be universal.

Any position or mechanism that abuses power—whether by unauthorized appointment or by reaping an undeserved privilege—is illegitimate. These abuses must not be allowed to persist. And the privileging of these mechanisms over others within a transitional context is simply wrong-headed.

⁹¹ United Nations Secretary General, *Report of the Secretary General: The rule of law and transitional justice in conflict and post-conflict situations*, 2004, S/2004/616, 3.

⁹² United Nations Secretary General, *Report of the Secretary General*, 3.