

**Spoiled Rotten?
Outsiders and the use of traditional mechanisms in Uganda¹**

Joanna R. Quinn²

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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. This paper considers the identity of these spoilers, and evaluates their role in the process.

This kind of examination of actors and agency in the use of traditional practices is critical because the use customary mechanisms is being urged as the appropriate mode of justice in the aftermath of conflict by individuals and agencies from inside Uganda and outside. Yet it is important to understand the power dynamics at play. It is also important to understand how and why options for justice and acknowledgement are presented the way they are. And not to privilege illegitimate agents of power within communities. In the end, as the Report of the Secretary-General in 2004³ noted, “local” solutions to issues of transitional justice must be sought. But so, too, must they be free from the imposition of ideas and the obligations of illegitimate sources of power.

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² Joanna R. Quinn is Assistant Professor of Political Science and Co-Director of the Centre for Transitional Justice and Post-Conflict Reconstruction at The University of Western Ontario.

³ United Nations Secretary General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, 23 Aug. 2004, S/2004/616.

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 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.⁴

This paper is based on a number of "waves" of research that have been collected around traditional practices of justice 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 300,000⁵ and 500,000⁶ Ugandans were killed during the time of Idi Amin, from 1971 to 1979. Under the rule of Obote, between 1980-1985, approximately 300,000⁷ to 500,000⁸

⁴ See Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," (Ph.D. diss., McMaster University 2003).

⁵ Philip Briggs, *Uganda* (Old Saybrook, CT: The Globe Pequot Press, 1998), 23.

⁶ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997), 41.

⁷ *Uganda* (Brooklyn: Interlink Books, 1998) 53; Thomas P. Ofcansky, *Uganda: Tarnished Pearl of Africa*. (Boulder: Westview, 1996), 55.

⁸ Abdul Nadduli, LC5 District Chairman, interview with author, 17 Nov. 2004, Luweero Town, Uganda.

were killed. The current President, Yoweri Museveni, seized power by means of military force in 1986. As with his predecessors, Museveni has faced considerable opposition from many of the 56 different ethnic groups throughout the country. Between 1986 and 2008, Museveni faced more than 27 armed insurgencies.⁹

Added to this is the complex web of transitional justice instruments that have been employed (often frivolously) to deal with the millions of criminal acts committed in Uganda.¹⁰ Two truth commissions have been appointed to deal, in turn, with the disappearances committed specifically under Idi Amin¹¹ and all of the abuses committed between 1962 and 1986.¹² Subsequently, an Amnesty Act was promulgated, under which 22,107 ex-combatants had received amnesty by July 2008.¹³ And the International Criminal Court began an investigation into the crimes perpetrated by Kony and other senior LRA members in 2004.¹⁴ Aside from this, national courts and traditional practices of acknowledgement are also entitled to hear evidence in such cases.

⁹ 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.

¹⁰ Joanna R. Quinn, "Chicken and Egg? Sequencing in Transitional Justice: The Case of Uganda" *International Journal of Peace Studies*, (2009) forthcoming.

¹¹ See Richard Carver, "Called to Account: How African Governments Investigate Human Rights Violations," *African Affairs* 89.356 (July 1990): 391-415.

¹² See Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," Ph.D. diss., McMaster University, 2003.

¹³ Moses Draku, Principal Public Relations Officer, Amnesty Commission, interview by author, 07 July 2008, Kampala, Uganda.

¹⁴ 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.

These conflicts have devastated the country. Throughout the country, and especially in the north, although also in Luweero Triangle and elsewhere, people continue to suffer the effects of conflict. The physical scars are easy to see: women in Luweero Triangle have been ostracized from their communities because of 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 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.¹⁵ 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.¹⁶ In Uganda, traditional practices were officially prohibited in 1962, at the time of Independence, in favour of a harmonized court

¹⁵ 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.

¹⁶ Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 109-110.

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 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

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 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.

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

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 Finnstrom, *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.

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 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

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.

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 Sabin 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.

institutions, and their meanings remains throughout Uganda—even in those areas where such practices are no longer carried out.

Spoilers

I use the term “spoiler” here to refer to those whose involvement undermines attempts to achieve acknowledgement and justice by means of traditional methods.⁴¹ By this, I mean to say that certain individuals and groups involved in the use of traditional justice and acknowledgement often work at ends counter to those intended by the process itself, and by others who participate in it. That is, some actors in traditional justice, and the debate surrounding it, “spoil” the process.

This is important in fragile societies, and particularly in the case of Uganda—and especially the “Greater North” in Uganda—where the use of these practices is tenuous, at best. And where their very legitimacy is held in question. This is of great importance. First, this matters because of the nature and number of crimes these mechanisms are being called upon to address. Second, it matters because of the modified methods and understandings that undergird these processes. Third, it is important because of the number of stakeholder groups that are completely left out of the process.

The use of traditional practices of acknowledgement in Uganda, as a means of bringing about the resolution of conflict and rebuilding of society, is often complicated by the presence of these spoilers. In this context, spoilers are considered to be outsiders for at least three reasons: first, if they are from within a particular ethnic group but not directly or justly involved in the

⁴¹ This definition draws upon a definition put forward in Stephen John Stedman, “Spoiler Problems in Peace Processes,” *International Security* 22.2 (Fall 1997): 5.

mediation; second, if they are from outside a particular ethnic group; or third, if they are international meddlers, of several varieties. Each of these is discussed below.

Spoilers from Within

Prior to colonization by the British,⁴² the area which is now Uganda was divided into a series of indigenous kingdoms and chieftaincies, each of which had its own ruler and leadership system. Justice was carried out within these communities in a formalized manner, with community-wide expectations about the manner in which justice would proceed. It is important to note that even though these expectations were not codified, in the sense of written legislation, they *were* arranged and systematized.

Among the expectations held by the community was the confidence that the people who would carry out justice within their community would be the legitimate bearers of the public confidence. They were normally community elders and clan leaders, people of great wisdom, and mostly all male. “In kin-based [horizontally-stratified] societies... every person... depended on kith and kin to protect life and property—for there was no other rule to turn to.”⁴³ In other instances, where societies were organized hierarchically, chiefs themselves had responsibility for decision-making in these courts.⁴⁴

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,

⁴² See Joanna R. Quinn, “Tradition!?: Traditional Cultural Institutions on Customary Practices of Acknowledgement,” a paper presented at the International Studies Association Convention, New York, NY: February 15, 2009.

⁴³ Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 119.

⁴⁴ *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 mechanisms work in some communities, not others,” a paper presented at the Canadian Political Science Association Annual Meeting, 06 June, 2007.

those chiefs are called oiled chiefs.”⁴⁵ These traditional leaders were charged with “overseeing the general peace of their subjects.”⁴⁶ In Buganda, on the other hand, the *kitawuliza* courts, used mostly at the sub-sub-county level, were headed 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.⁴⁷

The colonization of Uganda challenged and interrupted many of these expectations. As detailed above, customary practices were formally harmonized under the British system of law in 1962. In legislative terms, customary justice was to cease operation, and cases were to be heard instead by British and British-trained magistrates. In practice, however, customary courts continued to be used—albeit for different and often lesser crimes.

Colonialization also caused the re-orientation of the horizontally-stratified societies in Northern Uganda. 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”⁴⁸—even as “agents of other clans, such as the Koch clan, claim paramount Acholi recognition.”⁴⁹ This reorientation had ripple effects down through the community. But colonialization went even deeper, rearranging the authority structures that had previously existed from the community level upward. In Acholi, for example, 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

⁴⁵ 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.

⁴⁶ Geresome Latim, Secretary to the Paramount Chief of Acholi, interview by author, 22 Nov. 2004, Gulu town, Uganda.

⁴⁷ Dr. Livingstone Walusimbe, Institute of Languages, Makerere University, interview by author, 16 May 2006, Kampala, Uganda.

⁴⁸ Finnström, *Living With Bad Surroundings*, 70.

⁴⁹ Finnström, *Living With Bad Surroundings*, 71.

indigenous modes.”⁵⁰ 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.⁵¹ This is important because those who are responsible for dispensing customary justice are, in fact, almost never the traditionally-authorized cultural leaders, whose function and rationale is entirely different from the administrators’.

As a direct result of that colonization, modernization, too, brought about the privileging of certain community members 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.”⁵² The same has often been repeated, but for individuals with greater financial ability, in communities throughout Uganda.

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.⁵³ These were restored in 1993⁵⁴ but without any political powers.⁵⁵ By February 2009, 11 traditional cultural

⁵⁰ Finnström, *Living With Bad Surroundings*, 66-67.

⁵¹ Finnström, *Living With Bad Surroundings*, 67.

⁵² Finnström, *Living With Bad Surroundings*, 68. See also Frank Knowles Girling, *The Acholi of Uganda* (London: Her Majesty’s Stationery Office, 1960), 198.

⁵³ Briggs, *Uganda*, 25.

⁵⁴ Government of Uganda, *The Traditional Rulers (Restitution of Assets and Properties) Statute*, 1993.

⁵⁵ *Uganda* (Brooklyn: Interlink Books, 1998) 298-299.

institutions had been restored.⁵⁶ Yet there has been some controversy about the reinstatement of others. Museveni himself has denied their reinstatement on purely political grounds, in that they might pose some challenge to his Presidency.⁵⁷ 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.”⁵⁸ In other cases, too, 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.⁵⁹ Museveni’s insertion of himself into the process has meant that some groups have been legitimized by Museveni, but may not be those who 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 1986.⁶⁰ 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

⁵⁶ 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.

⁵⁷ Confidential interview by author with Mutooro man working for faith-based NGO, 24 June 2008, Kampala, Uganda.

⁵⁸ Bernard Bakaye Lubega, Principle Culture Officer, Ministry of Gender, Labour and Social Development, interview by author, 25 June 2008, Kampala, Uganda.

⁵⁹ The Batebe of Toro Foundation, “King Oyo Nyimba Kabamba Iguru Rukidi IV,” *Kingdom of Toro* [web-site]; available from <http://www.torokingdom.org/Oyo.htm>; accessed 2 Feb. 2009.

⁶⁰ Yoweri Kaguta Museveni, *Sowing the Mustard Seed* (London: Macmillan, 1997), 44.

meant as a system of encouraging grassroots participation.⁶¹ However, the LCs act as a tool of the NRM to harmonize political opinions, and dissent is often not tolerated.⁶² 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.”⁶³

Conflict, too, has played an enormous role in shaping the “spoilers from within”. The scope and scale of conflict in Uganda has been immense: including the present conflict, it is estimated that three million people have been killed, tens of thousands gravely injured, tens of thousands abducted and forcibly conscripted,⁶⁴ and close to two million forced to flee situations of conflict within their own country. Dozens of conflicts have affected different parts of the country since Independence in 1962, causing death and destruction. It is the case that the presence of protracted civil conflict in various parts of the country has altered the manner in which people are able to live, and, consequently, to deal with conflict.

⁶¹ Ibid., 41.

⁶² Susan Dicklitch, “Uganda: A microcosm for crisis and hope in sub-Saharan Africa,” *International Journal* 51.1 (Winter 1995-1996): 112-114.

⁶³ Professor Edward Rugumayo, Chancellor, Mountains of the Moon University, interview by author, 10 July 2008, Fort Portal, Uganda.

⁶⁴ The exact number of abductees in the present conflict is unknown. Pham, Vinck and Stover estimate that “the LRA abducted 54,000 to 75,000 people, including 25,000 to 38,000 children, into their ranks between 1986 and 2006.” Phong N. Pham, Patrick Vinck, and Eric Stover, “The Lord’s Resistance Army and Forced Conscription in Northern Uganda,” *Human Rights Quarterly* 30.2 (May 2008): 404. “The scale of abduction is a matter of speculation” due to insufficient monitoring. Allen, *War and Justice in Northern Uganda*, iii. Forced conscription has been reported in many of the conflicts that have taken place since 1962, into both Government of Uganda and rebel ranks. Dennis Pain, *The Bending of Spears: Producing consensus for peace and development in Northern Uganda* (London: International Alert, 1997), 29.

The effect has been that people have been forced to live apart from their *gemeinschaft* communities, in reconstituted and blended settings like camps for the internally displaced. The enforced “communities” that have sprung up within the IDP camps and elsewhere have in some ways taken the place of the *gemeinschaft* communities they left behind when herded into the camps. As such, the behavioural patterns of those forced to live in the camps have also changed. In part because of the dislocation of the community into IDP camps, and in part because the ceremonies themselves are being changed to some extent to deal with the present and formerly unknown circumstances, they feel that it is not proper to carry out these ceremonies. The *Rwot* (Chief) of Atiak reiterated these concerns:

[The performing of *mato oput* and other healing ceremonies] has to be done by the elders of each clan (*kaka*) [and not by government officials, as is being done now]. This thing they have been conducting in Gulu is not good. But what can I do? They accepted to do it there. They must do it separately [and not in groups as it is currently being done]. If they do it in the town it will make things worse. It will bring *cen* [evil spirits] there...⁶⁵

Spoilers from Without

All of the spoilers identified above are “within-group” spoilers. That is, they are from within the clan groups and ethnic groups where they carry out justice. Yet there are a number of spoilers whose influence permeates from outside of these boundaries. I identify these here as “spoilers from without”—that is, outsiders who meddle in the internal affairs of a particular clan group, community, or ethnic group.

Chief among these is President Museveni and the apparatus of the Government of Uganda. This bears itself out in three different ways: the Ministry of Gender, Labour and Social Development; the negotiated settlements originating from the peace talks in Juba, South Sudan;

⁶⁵ Cited in Tim Allen, *War and Justice in Northern Uganda: An Assessment of the International Criminal Court's Intervention* (London: Crisis States Research Centre, Development Studies Institute, London School of Economics, Feb. 2005), 79.

and the subsequent War Crimes Division of the High Court and the Working Group on Transitional Justice. Additionally, diaspora Ugandans have become involved in the customary justice process. These are discussed in turn below.

The Minister of State for Gender, Labour, and Social Development is the agency under which the traditional cultural institutions are regulated. And it has proved a spoiler in the customary judicial process. Far from being an arm's-length regulator, the Government of Uganda has actually inserted itself in the day-to-day workings of the traditional cultural institutions themselves. For example, Government officials rely on traditional cultural institutions to assist in implementing their policies. "Museveni knows the kings have a great deal of influence on people."⁶⁶ Indeed, traditional cultural institutions give authority to the Government of Uganda, which many see as having been somehow grafted on to traditional power structures. The former Minister of State for Karamoja, for example, emphasized that "must know how to call the elders... because they give government officers the authority to talk."⁶⁷ His successor reiterated that "as Minister, you have to go through the system of blessing and initiating you into their culture. The *akiriket* (council of elders) has to bless any project originating in the Office of the Prime Minister so it could be taken over. So now it is their own because you have the blessing of the elders."⁶⁸

Ministry officials and other Ministers working through their offices, therefore, have inserted themselves into the activities of the traditional cultural institutions—including the practice of customary justice. And while there is no evidence of tampering or influence-peddling, *per se*, there are many instances where GOU officials have every intention of

⁶⁶ Confidential interview by author with Mutooro man working for faith-based NGO, 24 June 2008, Kampala, Uganda.

⁶⁷ Hon. Peter Lokeris, Minister of State for Primary Education, interview by author, 02 July 2008, Kampala, Uganda.

⁶⁸ Hon. Aston P. Kajara, Minister of State for Karamoja, interview by author 30 June 2008, Kampala, Uganda.

remaining very involved in the activities that take place at the community level. This is problematic.

The Juba Agreements, too, have played an important role in “spoiling” customary justice. The Government of Uganda and the Lord’s Resistance Army were engaged in peace talks which began in August, 2006 and ended in April 2008, and were held in Juba, South Sudan. The GOU and LRA were able to come to some agreement on five agenda items: cessation of hostilities; comprehensive solutions to conflict; accountability and reconciliation; ceasefire; and demobilization, disarmament, reintegration, and resettlement. Most relevant here is the Agreement on Accountability and Reconciliation and the subsequent Annexure on Accountability and Reconciliation.

The involvement of “outsiders”—Ugandans from outside the communities in question—in the process was significant. Neither of the lead negotiators from either side was from northern Uganda. Even David Matsanga, the main LRA negotiator is an ethnic Mugisu from the southeast. The significance of having negotiators from outside of the region in question, each of whom no doubt comes with an outsider’s understanding of events,⁶⁹ along with an ingrained set of prejudices against the north,⁷⁰ cannot be underestimated. For example, Article 21.1 of the “Annexure to the Agreement on Accountability and Reconciliation” lists the traditional Ankole practice of *okukaraba*. This, despite the fact that Ankole is located in the extreme southwest of the country, far removed from the conflict in northern Uganda. And in spite of the fact that Article 1 of the “Agreement on Accountability and Reconciliation” clearly spells out the parameters of “the conflict” as being “between the Parties in Northern and North-eastern Uganda.”

⁶⁹ Scott Worden, *USIPeace Briefing: The Justice Dilemma in Uganda* (Washington: USIP, Feb. 2008), 7.

⁷⁰ CSOPNU, *The Need for National Reconciliation: Perceptions of Ugandans on National Identity* (Kampala: CSOPNU and JYAK, Dec. 2004), 11-12.

The “Agreement on Accountability and Reconciliation” and the “Annexure” lay out Governmental responsibility for bringing various aspects of the system of accountability and reconciliation to fruition. There is no question that this more deeply entrenches the Government in matters of customary justice, and as such has established a War Crimes Division in the High Court, which may include traditional modes of justice. Indeed, the Government is now obligated to make arrangements for all activities related to justice. This includes the determination of the appropriate roles for traditional mechanisms⁷¹ and their promotion.⁷²

One other organization to have developed out of the Juba process is the Transitional Justice Working Group. And it, too, has played and will continue to play a major role in “spoiling” customary justice. The group is composed primarily of Ugandan judges, lawyers, government officials and NGOs—most of whom come from the “greater South” of the country, and are far removed from the modalities of daily life in Northern Uganda, for example. The Group has worked to determine the modalities of the inclusion of these practices within the War Crimes Division of the High Court and elsewhere.⁷³

This group stands to wield enormous influence in the dispensation of justice throughout Uganda. Perhaps nowhere, however, will this influence be greater than in the sphere of customary law and justice. For the Transitional Justice Working Group will inform the establishment of judicial practice that will become further codified in the laws of the country. And this will have a direct effect on the manner in which justice will be practiced at the community level.

⁷¹ Government of Uganda and Lord’s Resistance Army/Movement, “Annexure,” Art.20.0.

⁷² Government of Uganda and Lord’s Resistance Army/Movement, “Agreement on Accountability and Reconciliation,” (Juba, 29 June 2007),” Art.3.1.

⁷³ 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.

This is important because community and local justice has developed in particular ways throughout Uganda. But understandings of “justice” in one area of the country are completely different in other areas. Basic ideas of punishment or rehabilitation find no commonality. And so this harmonization will have a much more significant effect, even, than the Relationships Committee which standardized the Ugandan justice system in 1962.

One final group deserves mention in the “spoilers from without” category, although their inclusion could be debated in favour of their placement in the “spoilers from within” category: members of the diaspora community. Throughout Uganda, many thousands have gone into exile as a result of conflict and instability. One thinks immediately of people like John Nagenda, who lived in exile in the U.K. for many years, where he worked as an author, and returned to Uganda as a “special advisor” to President Museveni and a commissioner in the truth commission which operated from 1986-1994.

The role of diaspora Ugandans is particularly salient in the case of Northern Uganda, where so many Acholi are still in exile in the U.S., U.K., and elsewhere. The diaspora Acholi were substantively involved in the Juba talks, and formed what they referred to as the Lord’s Resistance Movement (LRM), signifying the presence of an active “political” wing separated from the military arm of the Lord’s Resistance Army; the existence of the political wing dates to at least June 1998.⁷⁴ Many of those who have been involved in the LRM, and particularly those involved in the negotiations in Juba, are

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

⁷⁴ Statement by David Matsanga, LRM representative, Institute for African Alternatives, London, June 27, 1998, in Human Rights Watch, *Hostile to Democracy: The Movement System and Political Repression in Uganda* (London: Human Rights Watch, 1999), 92.

Diasporas are offspring of a generation that left Uganda before M7 grabbed power by the gun.[‘]⁷⁵

“Few of the 17-member LRA[M] delegation that arrived in Juba... have combat experience and many of them are based abroad.”⁷⁶ There is some doubt as to whether the LRM represent “the LRA proper, because they are from the Ugandan Diaspora... [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.”⁷⁷ Prior to the Juba talks, the LRA had never been known to have any clear political agenda.⁷⁸ In late 2006, a split occurred among the political wing of the LRM.⁷⁹

The relationship between the LRM and the LRA is curious. Kony and his top commanders were largely absent from the talks, and there is speculation that they had little to do with the talks at all, although it was Kony who led the delegation on rapprochement.⁸⁰ “As many of the LRA[M] delegation do not live in Uganda, it is debatable whether they have the influence to negotiate on behalf of the leadership in the bush.”⁸¹

⁷⁵ *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.

⁷⁶ “Ugandan rebel peace talks begin,” *BBC News Online*, 14 July 2006; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/2/hi/africa/5175602.stm>; accessed 14 July 2006.

⁷⁷ 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.”

⁷⁸ Will Ross, “Ugandans ask ICC to spare rebels,” *BBC News Online*, 16 March 2005; [article on-line]; available from <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/africa/4352901.stm>; accessed 16 March 2005.

⁷⁹ Emmy Allio, “LRA split on peace talks,” *New Vision (Uganda)*, 16 Nov. 2006.

⁸⁰ “Uganda: Give peace a chance, northern leaders tell ICC,” *IRINnews.org* (2 June 2006); available from www.irinnews.org/print..asp?ReportID=53685; accessed 13 June 2006.

⁸¹ “Ugandan rebel peace talks begin,” *BBC News Online*.

International Meddlers

Spoilers of the international variety tend to be different in kind than do those spoilers in the categories that I have termed above “spoilers from within” and “spoilers from without”. That is, these spoilers are internationals, rather than nationals. And so their involvement often stems from a different motivation than those who have a real and personal stake in Uganda’s development. John Hanning Speke is reported to have interpreted the word *mzungu* as “wise man”⁸²—and not “white person” or, simply, outsider. Particularly as Uganda scrambles to determine the appropriate justice mechanisms that will aid in resolving the long-running conflicts there, it seems appropriate to point out that the efforts of the *bazungu* do not always seem to have been so wise, and certainly not in the best interests of customary law and justice.

It is important to point out that individual internationals, international governments, and international organizations have made sound contributions in Uganda. The international donor community, for example, provided 36% of the budget of the Uganda Human Rights Commission in 2008, which was used to fund “core activities” of the UHRC.⁸³ And the role of international training is also important; the Government of Ontario, for example, routinely provides workshops and instruction for senior officials in Uganda’s Directorate for Ethics and Integrity.⁸⁴ Further, the Delegation of the European Union Commission to Uganda has funded meetings and dialogue between the leaders of the traditional cultural institutions to develop strategies for the use of traditional cultural practices, including traditional acknowledgement and justice.⁸⁵

⁸² Finnström, *Living With Bad Surroundings*, 23.

⁸³ Uganda Human Rights Commission, *11th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda* (Kampala: UHRC, 2008), 148-151.

⁸⁴ Alex Bwangamoi Okello, Secretary, Directorate for Ethics and Integrity, interview with author, 22 Aug. 2007, Toronto, Ontario.

⁸⁵ Terhi Lehtinen, Second Secretary, Head of Section, Delegation of the European Union Commission to the Republic of Uganda, interview with author 27 June 2008, Kampala, Uganda.

Yet sometimes the efforts of internationals in the sphere of customary justice disenfranchise and disempower members of the community who ought to be included. At other times, the international community promotes projects that, in fact, work against the efforts being carried out on the ground. In other cases, governments offer poor advice and insinuate themselves in processes for their own benefit, to the detriment of Uganda, in exchange for money or favour.

Academics and researchers, for example, often tend to privilege certain groups over others, and to misread political and social cues. A case in point is the study conducted by the Human Rights Center at the University of California at Berkeley and the International Center for Transitional Justice, *Forgotten Voices*.⁸⁶ Data for the study was collected within a 13-day period in Northern Uganda. One week earlier, a similar report, *Peace First, Justice Later* had been issued by the Ugandan Refugee Law Project.⁸⁷ Data for the study was collected over a period of five or more years. The two reports, however, differed significantly in their findings and recommended completely different courses of action. Analysis of the two reports by the Refugee Law Project revealed a misreading of the answers that people had given to the *Forgotten Voices* researchers in the final report, because the *Forgotten Voices* researchers did not have an in-depth, contextual understanding of the complex issues at play—something that had been obviated by the conducting of research and writing by Ugandans for the Refugee Law Project report.

Similar examples of this include work being done regularly with the Acholi by academic groups that advocate for particular approaches—all the while working with representatives that

⁸⁶International Center for Transitional Justice and Human Rights Center, *Forgotten Voices: A population-based survey on attitudes about peace and justice in northern Uganda* (New York and Berkeley: ICTJ and HRC, UC Berkeley, July 2005).

⁸⁷Lucy Hovel and Joanna R. Quinn, “Peace First. Justice Later: Traditional Justice in Northern Uganda,” (*Refugee Law Project Working Paper Series*, Working Paper No. 17, 8 July 2005).

many complain are power-hungry, illegitimate spokespeople for what the community actually wants and needs. In these cases, people hired as “fixers” from within the community spoil the justice process by promoting their own agenda, and by currying favour with international academics with the funding to privilege their ideas over the ideas of other legitimate stakeholders. International researchers may be unaware of the agenda being pursued, or of their own role in delegitimizing the community. This greatly skews the justice process.

Another way in which international meddlers “spoil” the customary justice process is by providing funding contingent upon the uptake of specific ideas and the carrying out of justice in a particular way. For example, the Justice Law and Order Sector in Uganda is made up of representatives from various diplomatic missions posted to Kampala. This group is actively engaged in shaping the justice process. Members of the group have, for example, provided training for lawyers and jurists about the International Criminal Court. Although the JLOS has provided technical and legal expertise, it also dispenses legal advice that privileges international justice—as opposed to customary practices. And while it is the case that the JLOS has the best intentions, and the interests of Ugandans in the fore-front, it is also the case that the JLOS pushes its own agenda. The same holds true for the international donors who contribute to the budget of the Uganda Human Rights Commission—in many cases the same actors. All of this also contributes to “spoiling” customary justice, although in a muted way.

The same cannot be said for other, more forceful international meddlers. And here one thinks of agencies like the World Bank. Recent research has demonstrated that the World Bank and other international agencies have privileged neo-liberal ideologies over made-in-country solutions, which has proven to be detrimental to those countries.⁸⁸ This is evident in the

⁸⁸ David Hoogenboom and Stéphanie Vieille, “Transitional Justice and the Neoliberal Discourse,” a paper presented at the Canadian Political Science Association Annual Meeting, 29 May 2009.

promotion of transitional justice ideas in the main, but also in the underprivileging of customary practices of acknowledgement and justice in policies and funded vehicles for transition. This is a clear case of “spoiling”.

Other powerful international meddlers, of course, can have significantly more deleterious effects. The influence of leaders like Muammar al-Gaddafi, for example, in the affairs of Uganda cannot be underestimated. Gaddafi is said to aspire to leadership of the whole of Africa and to a united continent without state borders, which would cause the loss of sovereignty.⁸⁹ He is intimately connected to Uganda, in that he remained until recently a strong ally of President Museveni and of traditional cultural institutions including the Kingdom of Tooro—he attended the anniversary of the coronation ceremony of King Oyo there in 2001, and was named “defender of the Kingdom.”⁹⁰ Gaddafi’s influence is clearly intended to force Uganda, and traditional cultural institutions like the Kingdom of Tooro, to promote Libya’s interests.⁹¹ It remains to be seen how this will spoil the traditional justice that is used throughout the Kingdom, and whether Gaddafi’s interest will become more widespread. The interests of other international leaders, as well, could become much more serious than mere meddling.

Conclusions

Spoilers of customary justice processes can and do exist at a number of different levels in Uganda, and in Northern Uganda in particular. They exist within groups, legitimized and privileged by complex forces including colonization, modernization, President Yoweri Museveni, and the conflict that has raged for more than 25 years. They exist outside of these

⁸⁹ Geoffrey York, “Gadhafi’s dream of united Africa suffers setback,” *The Globe and Mail* 1 Feb. 2010, A13.

⁹⁰ “Ugandan child king honours Gaddafi,” *BBC News*, 16 July 2001, available from <http://news.bbc.co.uk/2/hi/africa/1439624.stm>, accessed 1 February 2010.

⁹¹ Daniel Kalinaki, “Gaddafi Visits Uganda,” *AU Monitor*, available from <http://www.pambazuka.org/aumonitor/comments/1156/>, accessed 1 February 2010.

groups in the Ugandan national context, in the form of Government of Uganda-sponsored agencies and activities including the Ministry of Labour, Gender, and Social Development, which regulates cultural practices including customary justice; the Juba peace agreements, which promise to further regulate customary justice; and the War Crimes Division of the High Court and the Transitional Justice Working Group, which seek to codify customary justice. Diaspora actors are also external Ugandan spoilers. International spoilers include researchers and academics, funding donors through groups such as the JLOS, international organizations like the World Bank, and international leaders like Muammar al-Gaddafi.

What these spoilers have in common is influence on the practice of customary justice and acknowledgement in various regions of Uganda, and particularly in Northern Uganda. Whether legitimately or illegitimately, their actions have an effect on traditional law and justice. But their similarities end there.

It is, of course, argued throughout the literature that outside verification and a reliance on international norms and standards of justice must be upheld. And I fail to find fault with that argument. Indeed, as a universalist, it seems to me that each person should be able to access justice equally, and that each should be entitled to treatment as an equal before the law. But the modalities of that justice do not need to conform to a one-size-fits-all standard, as has by now been demonstrated by numerous scholars of transitional justice. And so determining how customary practices of justice and acknowledgement work, and under whose influence, is an important step in working through whether and how they should continue to be used.