



## The Making of the ‘Informal State’ in Uganda

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### Abstract

This article analyses the evolution, reproduction, and sustenance of what I refer to as the ‘informal state’ in Uganda – a distinct mode of organising and broadcasting power that simultaneously centralises and fragments the state system. The ‘informal state’ is manifest in the construction of structures parallel to the legal and constitutional ones. This article departs from other studies of stateness in Africa that accent colonial legacies, illicit economic activities, and social conflict in accounting for the so called ‘African state’ that supposedly fails to approximate to the model (modern) state. Instead I argue that Uganda’s ‘informal state’ is a consequence of three key factors: the country’s post-independence experience with wide-spread insecurity and political instability in the 1970s and 1980s, the belief in militarism as an ideology by the new (post-1986) group of rulers along with the imperatives of retention of political power, and foreign-aid flows as reward for embracing neoliberal economic reforms. The article also shows that the ‘informal state’ system reproduces its survival and legitimates its rule through maintaining aspects of legal-rational state structures, ceding power to varied constituencies as well as expanding the patronage network through the creation of numerous agencies.

### Résumé

Cet article analyse l’évolution, la reproduction et la subsistance de ce que j’appelle « l’État informel » en Ouganda – un mode distinct d’organisation et de diffusion de la puissance qui centralise et fragmente le système étatique simultanément. « L’État informel » est manifeste dans la construction de structures parallèles aux principes juridiques et constitutionnels. Cet article a comme point de départ d’autres études relatives à l’État en Afrique qui mettent l’accent sur les héritages coloniaux, les activités économiques illicites et les conflits sociaux dans la description du soi-disant « État africain » qui, prétendument, ne parvient pas se rapprocher de l’État modèle (moderne). Au contraire, je dirais que l’« État informel » de l’Ouganda est une conséquence de trois facteurs principaux: l’expérience post-indépendance du pays avec l’insécurité largement répandue et l’instabilité politique dans les années 1970 et 1980, la croyance au militarisme comme une idéologie du nouveau groupe de dirigeants (post- 1986) ainsi que les impératifs de la conservation du pouvoir politique et les flux d’aide

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étrangère comme récompense pour l'adoption de réformes économiques néolibérales. L'article montre aussi que le système de l'« État informel » reproduit sa survie et légitime son pouvoir à travers le maintien des aspects de structures étatiques légales-rationnelles, cédant le pouvoir à des groupes variés et propageant le réseau de patronage à travers la création de nombreux organismes.

## Introduction

Who today can escape the question of the State and Power? (Poulantzas 1980: 11).

Owing to myriad state crises in the global periphery Fukuyama (2005: 84-88) underscores the pertinence of 'stateness', arguing that 'before having a democracy, you must have a state...' To surmise thus, by a famous neoliberal triumphalist, captures the extent to which rethinking statehood has animated scholarly debate. In Africa, crises of the state are seen as the crisis of 'stateness'. Thinking about statehood in Africa, thus, has attracted analytical, descriptive, and normative categorizations. Some are loaded buzzwords while others capture what is at stake, to wit: the shadow state (Reno 1995 and Clapham 1996), personalized state (Joseph 1987; Jackson and Roseberg 1982), the criminalized state (Bayart, Ellis, and Hibou 1998; Chabal and Daloz 1999), the quasi-state (Jackson 1987), the veranda state (Terray 1986), among others. Then, there is the category adjudged to be on the precipice and sliding into statelessness (Reno 1998; Bates 2008), Somalia and DR Congo being the often cited examples. These concepts and phrases have assumed somewhat aphoristic status, the implicit presupposition being a certain malaise that deviates from the norm – the modern state. Thus abounds a strong current of opinion that there is a problem with the 'African state'.

It is in that respect that Doornbos (1990: 179-98) inquired into the generality of the 'African state', its nature, role, and position.<sup>1</sup> He delineates six features of the so called 'African state': its post-colonial status, and implications for civil society; an *a priori* problematic relationship as regards territorial jurisdiction; heavy involvement in a restricted resource base; relatively undifferentiated yet ethnically heterogeneous social infrastructure; salient processes of centralization and consolidation of power; and pervasive external dependency. But this putative homogenous entity – the 'African state' – available as an un-modulated, fixed object of inquiry is central to what Mamdani (1996: 9) calls 'history by analogy'. This analogy-seeking has led to totalizing analyses that search for approximations and deviations from the 'model (modern/European) state'.

Notwithstanding glaring socio-economic and demographic differentiations, disparate ideological and political trajectories, it still sounds plausible or acceptable to talk about the 'African State'. Not much attention is paid to

important cross-national variations in stateness. Thus, writes Kaarsholm (2006: 3), 'a dimension of Afro-pessimism and moralistic prejudice seems to have been as pervasive in scholarly writings on the dynamics involved in politics of African societies as in mass media and popular culture'. This Afro-pessimism and moralistic prejudice is best represented by the highly lurid work of Chabal and Daloz (1999), despite the authors' advance protestations to the contrary. One way to break with the totalizing trend is to seek out the historical specificity of a case and interrogate the interface of a dynamic internal historical process with the external forces of globality. It is after grasping historical specificities and contextual forces in individual cases that we can arrive at meaningful, sound cross-national comparative generalizations.

The basic starting point of this article then is that a particularly distinct system of broadcasting power has been systematically constructed and is discernible in today's Uganda. I have called this system an 'informal state'. By informal I neither mean the direct opposite of formal nor do I mean strictly informal institutions as 'unwritten rules that are created, communicated, and enforced outside officially sanctioned channels' (Helmke and Levitsky 2006: 5; Helmke and Levitsky 2004). Rather what I mean by 'informal state' is a technology of control that simultaneously centralizes and fragments power through building structures parallel to legal and constitutional public institutions.

This article proceeds as follows. First, I briefly review the key literature on the 'African state', followed by an analytical framework that simultaneously upholds but attempts to transcend the dominant neo-patrimonial model. Second, I advance and pursue three propositions that attempt to explain the 'informal state': the first proposition is about the *nexus* of interplay of internal forces that largely occasioned and enabled the making of the 'informal state'; second, the *form* in which it operates; and third, the international dimension that not only provided the financial resources crucial to oiling the process of entrenching the system but also contributed, immensely, to shaping what has become arguably Uganda's most ubiquitous problem – corruption. When I pursue, to some length, arguments that cohere with these three, I hope to convince the reader about something particularly novel in the exercise of state power in Uganda.

The third (and last) part shows how the 'informal state' augments its legitimacy and reproduces survival. I end with some concluding thoughts. In tracing the forging of the 'informal state' I pursue a *path dependency argument* by situating the quest for security and political stability in the

wake of near state collapse in the 1970s and 1980s. In sum, this article seeks to answer the following key questions:

- What is the historical context that helps account for the evolution, construction, reproduction and sustenance of the 'informal state' in Uganda?
- How does the 'informal state' function and broadcast power given shifts in the contours of local politics and societal forces?
- How does the 'informal state' strike a balance between maintaining an edifice of formal juridical statehood along with parallel structures? How has informalisation been enabled by maintaining the formal institutions of political modernity?
- What is the nature of state-society relations? How does society react to, negotiate with, and contest against a bifurcated 'informal state'?

### **The Literature on the 'African State'**

The idea of the 'African state' has spawned a plethora of literature. Jeffrey Herbst (2000: 4) argues against the 'almost universal assumption that colonialism changed everything...', noting that it was impossible to change 'everything' in the few decades that Europe colonized Africa. For Herbst, the fundamental problem facing state-builders in Africa was (and remains) one of projecting power over inhospitable and sparsely populated territories. Herbst's state-building analytical framework is three-pronged: the cost of expanding domestic power infrastructure; the nature of national boundaries; and the design of state systems. Thus, the state of the 'African state' has to be understood in the light of challenges posed by those three factors. Herbst's is a political-geography argument, accenting the challenge of projecting power over expansive lands. But this approach glosses over many cases of geographically small countries, with high population densities, but facing similar stateness challenges as the big sparsely populated ones. Herbst's geographical determinism falls short in accounting for observable shifts in state capacity and modes of rule in independent Africa.

By contrast, Achille Mbembe (2002, 2001) pursues a culturalist perspective accenting three historical forces that provide the point of departure for scholarship on Africa: the slave trade, colonialism and apartheid; and two resultant currents of thought: *Nativism* and *Afro-radicalism*. While acknowledging that the two adhere to no single theory of identity, politics or culture, he nevertheless roundly condemns both for obstructing the development of conceptions on African past, present and future: Afro-radicalism being instrumentalist while Nativism is faulted for espousing a

'metaphysics of difference', that is, claiming a unique African identity founded on membership to the black race.

Mbembe seeks to shed light on the current African imagination of the self by rejecting the standard tendency of equating identity with race. Does he succeed in charting a way out of the dead end of nativism and Afro-radicalism? Not quite. Mbembe (2001) attempts to blur the superfluous line between those who look out for an essentialist African-ness, on the one hand, and the external production of Africa (in this case the 'African state') under conditions of Western modernity. At a philosophical level, while the former searches for an internal unique feature in the African Self to account for social-political phenomena, the latter is bent on confronting Othering 'the African' through slavery, colonialism, apartheid and the contemporary imperial order. Beyond his spirited (and sometimes overly polemical) critique, Mbembe does not offer a persuasive theoretical alternative.

Somewhat straddling Herbst and Mbembe, Mamdani (1996) rejects 'analogy seeking', an approach that unites two otherwise divergent strands of thought: modernization and neo-Marxist dependency theories. He calls for the establishment of the legitimacy of Africa as an object of study, taking the historical specificity of the African experience as the point of departure. Mamdani's argument is that colonialism produced and reproduced a bifurcated state and power system, placing under its hegemonic authority, citizens and subjects; the former governed by civic authority and the latter ruled by customary power. The creation of a bifurcated state of citizens and subjects was occasioned by the native question that colonial rulers had to grapple with.

The native question was a euphemism for the dilemma of stabilizing and consolidating alien rule: 'how can a tiny and foreign minority rule over an indigenous majority?'. Mamdani lays bare 'the regime of differentiation (institutional segregation) as fashioned in colonial Africa – and reformed after independence – and the nature of resistance it bred' (1996: 7-10). This regime was variously called direct rule, indirect rule, association, apartheid (and assumed other labels in post-independence Africa), but all approximate to decentralized despotism.

Crawford Young arguably the most thoroughgoing scholar in underscoring the 'African state' as a colonial state or the postcolonial state as a colonial legacy, attributes Africa's present pathologies to the 'particularities of colonialism in Africa' (1994: 10). For Young, much like Mamdani, but unlike Herbst and Mbembe, colonial exploits in Africa created a system of boundaries and frontiers, new to Africa; introduced novel economic systems (based on the money economy); and entrenched religious and cultural practices that

fundamentally altered the socio-cultural milieu. Unlike the British West Indies and India where working democracies evolved, colonial regimes in Africa neither permitted the requisite politico-economic freedom nor laid the appropriate cultural foundation for a civil society with a competitive self-interest to foster accountability. When on their deathbed they attempted to repent, they could not reform productively because of the brutally exclusio-nary manner in which they had secured their state interests in the first place.

Young evokes the image of *Bula Matari* (crusher of rocks) – a nickname for Henry Morton Stanley who traversed the Congo on behalf of King Leopold of Belgium – to describe the colonial state in Africa that managed in a short time to assert a powerful hold on subject society and smash its resistance (Young 1994: 139-40).<sup>2</sup> Colonial African states, in Young's analysis, coerced more labour, raised proportionately more tax, co-opted fewer indigenous people into positions of power, and allowed less room for the emergence of civil societies (see also Lonsdale 1999: 540; Reno 1995).

Other major studies include Jean-François Bayart's (2009) focus on the historicity and *longue durée* of the 'State in Africa'; Zaki Ergas's edited volume, a seminal inquiry into the 'problematic of the African state', highlighting the embedded difficulties and casting doubt on the viability of the states themselves (Ergas 1987); Reno's (1995) study of the 'shadow state' and corruption in Sierra Leone; and Clapham's (1996) emphasis on the external underpinnings of the 'African state'. Chabal and Deloz (1999: 2) for their part see the state in sub-Saharan Africa as not institutionalized 'for historical reasons – the bureaucratization of the colonized state had been institutionally feeble – and partly for cultural reasons – the personalised nature of prestige and status in African societies'.<sup>3</sup> What do we make of this whole corpus of scholarship?

Although Mamdani draws on case studies of urban South Africa and rural Uganda to provide a comparativist analysis of the bifurcated state, much like Young, the thrust is to show that Africa's common historical (colonial) experience necessarily presents a problem of the 'state'. But a cursory snapshot of variations in this purported common history, and the presumed problematic present, is telling: Ethiopia staved off colonial conquest at the historic battle of Adwa in 1896 but is treated as just another postcolonial 'African state'; Sierra Leone and Liberia as homes of former slaves have a somewhat different history; South Africa remained under a nefarious apartheid rule till 1994 and differs greatly from other states; Mozambique surmounted a brutal guerrilla conflict to become a modestly democratic state; from the ashes of genocide, blamed on nativism/racialism, Rwanda is reckoned as a

model of a development-oriented state, perhaps only second to pace-setters like Botswana; the list goes on.

These variations – by no means exhaustive – challenge the uniformity of a discourse on the legacy buried in the three currents of slave trade, colonialism and apartheid. In foregrounding Africa's colonial past, some scholars elide confronting the intractable present seen from the prism of recent post-independence forces and dynamics of globality. In fact little has been done by way of systematic study of contemporary state formation processes on the continent (exceptions include Young 2012). By contrast, when the present is interrogated, it is seldom historicised; when it is historicised, the link between the distant past and the present is often blithely poor. What is more, some scholars are often caught between disavowing generalization about the 'African situation', while in fact continuing to speak of the 'African crisis' in generic terms moreover in a truncated way. Thus for Chabal and Deloz (1999: xix), 'all African states share a generalized system of patrimonialism and an acute degree of apparent disorder', yet for these two authors, curiously, North Africa, the Horn, and South Africa fall outside of their stylized sensational depictions of instrumentalised disorder!

### **Neo-patrimonial Postcoloniality: Towards an Analytical/Theoretical Framework**

The above review points to the so called 'African state' being neo-patrimonial in nature. Thus, politics and the state are understood to operate through rent seeking and personal rule (Kaarsholm 2006: 3-5; Reno 1995; see also Bates 2008, Young and Turner 1985; Callaghy 1984). From where is this state traced? Colonial states provided social welfare through distant paternalism and taught independent Africa's publics to see the state simply as the purveyor of a national cake (Young 1994). This system is taken to be so ubiquitous in Africa, a system of 'clientelism' with dyadic ties involving a larger instrumental friendship. Compliance is critical in this relationship: the patron expects compliance from the client in matters crucial to patronal interests and a patron reciprocates. Thus Reno (1995) employs the notion of the 'shadow state' to explain personalized rule in Sierra Leone where the 'real' state is constructed behind the facade of formal statehood. To run this state, ruling elites must undermine the evolution of formal statehood.

While this neo-patrimonial framework has been so pervasive in scholarship on African politics (Olukoshi 2007), its structuralist thrust means being inevitably ensnared in absolute binaries that assign analytical value to the lead term (patron), while relegating the other term (client) to residual status.<sup>4</sup> This binary can describe the power configurations but is incapable of

unravelling historical complexities, reconfigurations and various registers of contestations. Extricating from that structuralist binarism requires transcending the neo-patrimonial model. Thus I adopt from Mbembe (2001) two tropes, *commandment* and *entanglement*, that may help shed more light. Commandment refers to the reigning force of power and authority while entanglement denotes processes that are neither smooth nor unilinear but point in different directions with fluctuations and destabilizations. This gives way to a colonial rationality and its reproduction in postcolonial Africa, a kind of rationality used to rule through the provision of goods and services, and governing through extreme material scarcity and insecurity.

The interface of commandment and entanglement produces ‘an unprecedented privatization of public prerogatives, and the correlative socialization of arbitrariness. These became the cement of postcolonial African authoritarianism’ (Mbembe 2001: 46). The imperative of providing utilities explains the proliferation of public and semi-public bodies and policies concerned with recruitment and the allocation of benefits, salaries, and perks, thus ‘Private Indirect Government’ where three forces re-order society, culture, and identity: privatization of public violence, appropriation of means of livelihood, and imaginings of the self. The practices of those who command and the commanded are so entangled as to render both powerless. This powerlessness is violence par excellence. Such powerlessness impinges on the rationality for the mode and exercise of power. In sum, a strict neo-patrimonial approach, caught in structural binarism, fails to grasp the ambiguities and tensions between dominants and dominees, rulers and the ruled, control and resistance, and most important, state and society (Bayart 2009; Reno 1995).

## **Locating the Roots of Uganda’s ‘Informal State’**

### ***Overview of the Problem***

The Republic of Uganda is, in many ways, a quintessence of wide-ranging aspects, emblematic of African coloniality: a territory that formed part of the [in]famous East and Central African long-distance Slave Trade; a British colony whose geo-political strategic location attracted other colonial powers like France; a postcolonial state apparatus inherited en-masse from colonial rule; decades of political instability; years of civil strife and, until recently, home to the world’s most neglected humanitarian crisis (resulting from two decades of war in the northern part of the country); a ‘shining star’ of the 1990s neoliberal reforms; a recent resurgence in despondence, apprehension and uncertainty in politics; and a state apparatus that is at once coercively/

destructively strong but constructively weak – despotically strong but infrastructurally weak.

Conventional wisdom invariably looks at Uganda as just another African case where practice has deviated from Western modernity, or where reality has interfered with theory. It is as if some sort of 'African determinism' pops up to produce unexpected reality. At the dawn of the twenty-first century, debate on the state of Uganda spawned vigorous commentaries pointing on the one hand to despondence, decline, and decay; while on the other underscoring the irreversibility of a progressive politics and attainment of hitherto elusive stability. But the current public discourse no less than questions the competence of the state to legitimate its authority through constructive and productive arbitration, more so questions the probity of a highly personalized political system and the credibility of putative formal state structures.

Thus when the Ugandan president announced a cabinet reshuffle in early March 2009, naming his wife (also a Member of Parliament) to the cabinet, a newspaper commentator noted that:

... increasing family influence in government has gone hand in hand with the informalisation of power. Although formal authority is vested in official institutions, effective power is wielded by this informal clique of family and kin. The official structure presents a semblance of national ethno-regional and religious diversity to win the regime legitimacy. The informal but highly powerful structure of the closest of the president's family and kin is the 'real' government (*The Independent* March 11, 2009).

It is widely believed even among hitherto unwavering regime-financiers (the Western donor community and international financial institutions) that Uganda is sliding into deeper authoritarianism, and that the gains mustered over the years are being devoured by misuse and abuse of state power. 'We regret that we cannot be more positive about the present political situation in Uganda', concluded a World Bank commissioned report, 'especially given the country's admirable record through the late 1990s'. The report pressed on: 'the President and his remaining associates have failed to meet ... the establishment of an enduring set of political institutions that embraces all Ugandans' (Barkan, et al., 2004). In seemingly growing refrains of disapproval, a retired Supreme Court Judge and key architect of Uganda's current constitution observed: 'Today Parliament waits for the word of the Executive and when the President has spoken ... For goodness sake what has happened to this country?' (*Daily Monitor*, May 29, 2009).

A certain insidious malady seems to be eating up the Republic as unprecedented political criminality abounds such that sentiments of disillusionment can be heard even from unlikely quarters such as unabashed loyalists and regime insiders. Writing in the state-owned *Saturday Vision* newspaper, senior presidential advisor on media relations, John Nagenda, bemoaned the extant state of affairs:

Everything that has happened on this stretch of land has happened before our very eyes. What in the name of God is happening, or how can it be happening? Let the criminals responsible be brought to book ... The worst that can happen is what nearly always happens: a wall of silence! Parliament, do your duty this time (*Saturday Vision*, March 21, 2009).

Two pertinent issues are apparent from the above comment: first, unacceptable criminality has flourished with an inexcusable degree of impunity. Second, while things go wrong, institutions of state and government are either lethargic, thus unable to act, or their actions are inconsequential and therefore negligible. But this view assumes serendipitous shifts in the workings of the state. How did Uganda get to the present state of affairs? Why the wall of silence and why can't Parliament act? Little has been done to historicise this state of the current Ugandan state. Instead, driven by an exaggerated presentism many commentators tend to ignore, or downplay, antecedent events that supplied the building blocks and the confluence of forces that led to the present situation. This presentism is equally culpable for conflating, if confusing, normative aspirations with observable social-political realities.

By contrast, attempts to historicise tend to reduce the past to a one-dimensional reality; a historicist approach that assumes a unified past from which an equally unified present harmoniously emerges – 'reconstruction of the past as if the only thing that happened was laying the foundations of a present crisis' (Mamdani 1996: 287). Both presentism and historicism obfuscated an adequate grasp of the pathologies afflicting Uganda's body politic. To get around this problem this article attempts to link historical forces with the present political designs of power holders.

### ***Turbulent Post-Independence and Military Ideology***

The first proposition of this article then is that the 'informal state', in large measure but by no means exclusively, emerged from a series of negotiating forces and interests converging at the interstice of Uganda's turbulent post-independence politics coupled with the militaristic-ideological provenance of the ruling party, the National Resistance Movement (NRM). At this point

of converging interests is as much the quest to hold state power by the rulers as it is to partake of that power by varied constituencies of citizens. It is this convergence of interests, I argue, that helps explain the way state power has been organised and is exercised in today's Uganda. Perhaps I am moving ahead of myself. First, what is it about turbulent post-independent politics that supplied the antecedent to today's 'informal state'?

The quest to have a politically stable country with minimum guarantee of security (on the part of the ruled) and the belief in militaristic methods of managing society (by the rulers) opened up a domain of politics that shaped the nature of the state today. The clamour for security of person, coming against the backdrop of breakdown of law and order in the 1970s (the Idi Amin reign of terror) and early 1980s (the second Milton Obote rule)<sup>5</sup> produced a post-1986 widely romanticized mantra in Uganda: 'at least we can now sleep'.<sup>6</sup> This hackneyed refrain entered the popular domain and became a campaign slogan during successive national elections. The concrete quest for a secure Uganda dovetailed with a calculated strategy of justifying even outright diabolical actions by those holding state power through invoking the past juxtaposed with the present. In a sense, this meant that cases of use of brute force, criminality and repression could be explained away on account of the need to avoid lapsing into a past that was replayed in public memory as having been punctuated by sheer bloodletting.

But most important in the making of the 'informal state', especially in the early years, is that because of the pre-1986 instability and lawlessness, the NRM government enjoyed enormous goodwill, which goodwill engendered a modus operandi of state and government that played into the hands of a militaristic ideology (Rubongoya 2007; Kobusingye 2010). Thus, notes one observer, 'by the time we woke up to violently rigged elections, safe houses, corruption with impunity; things that make the NRM look exactly like the "bad governments" they replaced, Museveni and his followers had firmly set themselves in power with their influence spread all over all critical sectors of the state' (*Daily Monitor*, January 27, 2009).

While many studies of the 'African state' point to lawlessness and the lack of effective formal state control as the conditions under which informal networks weave a perverted regime of power, Uganda's 'informal state' took a different path. It was forged against the backdrop of a period of near state collapse, war-lordism and rule by gangs, reaching the precipice in the mid-1980s. Whereas near-state collapse in other cases (among others, Liberia,

Sierra Leone, Somalia, Nigeria; see Reno 1995, 1998 and 2006; Clapham 1996; Mbembe 2001; Bates 2008) formed the basis for fragmentation and informalised systems of control, in Uganda it was the antecedent.

The antecedent of turbulent post-independence politics produced a post-1986 political establishment whose ideological provenance is traceable to the proverbial Marxist-Leninist inspired belief in guerrilla armed struggle and militarism. The armed wing of the NRM, the National Resistance Army (NRA) gravitated from a paramilitary force – the Front for National Salvation (FRONASA), which fought alongside anti-colonial/apartheid movements in Southern Africa (especially in Mozambique) – to become Uganda's national army. Long before its formation, the eventual founder/leader of FRONASA, and current Ugandan President, presciently expressed his views on state formation in a article at the University of Dar es Salaam: 'Bismarck certainly despised Parliamentary and peaceful struggles ... we must not be oblivious of their limitations either ... I wish that some militaristic African could knock together Uganda, Kenya, Tanzania, Zambia, Rwanda, Burundi, etc., to form one state' (Museveni 1966: 11). More than four decades later, he reiterated his political inclinations: 'I am an extremist', the president told his audience. 'There is no doubt about that. I don't have two sides. You are not on our side politically – out' (*Sunday Vision*, January 4, 2009).

Thus recourse to military methods as the best option to resolving social-political questions has been fronted, albeit with limited success, in the realm of the Judiciary. Although the most thoroughgoing construction of the 'informal state' has taken place in the Executive and Legislative branches (see below), the Judiciary too has not been spared. The push for entrenching a parallel military quasi-judicial system is instructive. The military's court martial system is seen as better than the civil Courts of Judicature in delivering justice: 'Justice is done and seen to be done. And the court martial brings out this very well', President Museveni told a meeting of judges in 2008. He continued: 'We killed an officer in the bush who had killed people and everything changed. It [court martial] has worked in Karamoja ... and I want judges to learn from the way the court martial does its things' (*The Observer*, January 21, 2009). In that regard since the early 2000s, attempts have been made to build a parallel military court system, not for the exclusive trial of suspects involved in war-related acts or armed violence but as an alternative to the civil courts.

Realizing the tidal move to entrenching the military court-martial system, and the attendant implications for the rule of law in the country, a public interest litigation petition – Constitutional Petition No. 1 (2006) – was filed in the constitutional court on the role and place of the military court

system. The court's verdict was expected: that the military court system cannot be placed on the same footing with civil courts, and that the General Court Martial (GCM) was subordinate to the High Court, in the same way that the army was subordinate to civilian authority. But from the above quote by the President, the military system is not just an alternative to the civil courts; rather it is seen as the best way of delivering justice. Undeterred by the constitutional court ruling, the Executive continued to push through the military court system, creating a stand-off with the leadership of the Judiciary. Two unprecedented events worth noting occurred.

First, on November 16, 2005 a group of hooded gunmen, dressed in a mix of military fatigues and civilian wear invaded the High Court in Kampala. The group was later identified by the ominous name, Black Mamba, one of the many paramilitary forces. The gunmen, on a mission to re-arrest treason suspects as they left the court, after being granted bail, laid siege on the court, sending shock waves and inflicting a chilling impact on the state of the rule of law in Uganda. This court siege prompted the then Principal Judge (PJ) to refer to the incident as 'the most naked and grotesque violation of the twin doctrines of the rule of law and the independence of the Judiciary', and as amounting to 'defilement and desecration of our temple of justice' (*Sunday Monitor*, November 20, 2005). The incident was likened to the 1977 kidnapping of the then Chief Justice, from the same court premises. The PJ noted that 'not since the abduction of Chief Justice Ben Kiwanuka from the premises of Court during the diabolical days of Idi Amin has the High Court been subjected to such horrendous onslaught as witnessed last Wednesday'. But the Executive did not relent.

Another court siege was mounted more than a year later leading to the second event: Industrial Action by the Judiciary starting March 5, 2007. The stand-off that led to the first High Court military siege remained unresolved as treason suspects (granted bail) could not walk free. Being directly under the Executive (through the Ministry of Internal Affairs), the Uganda Police Force and Uganda Prisons had disregarded the court's verdict and instead heeded the directive from the GCM to continue detaining the suspects as they faced parallel trial in the military court. Thus on March 1, 2007, a second military siege was launched on the same High Court premises again to re-arrest the suspects. The leadership of the Judiciary came to the conclusion that they could not carry on with business as usual. Declaring a week-long strike, acting Chief Justice, Leticia Kikonyogo, cited the 'repeated violation of the sanctity of the court premises, disobedience of court orders with impunity and the constant threats and attacks on the safety and independence of the judiciary and judicial officers' as the reasons for the strike.

For now, the judiciary appears to be holding sway although tensions abound owing to the lurking parallel military court system: 'As the judiciary exists parallel with the military courts, disputes have risen over how justice is administered and dispensed by the two parallel systems', noted the country review report of the African Peer Review Mechanism (*Daily Monitor*, March 24 2009). Unlike in the Executive and Legislature where things have worked out (to which I turn shortly), the architects of Uganda's 'informal state' are still grumbling about the obstinacy of the Judiciary.

Three factors may account for the failure to upstage the judiciary. First, partly due to the conservative nature of judicial systems, anchored in the venerable and ancient ideals of the rule of law and separation of powers, the Ugandan Judiciary has proved a difficult customer in the 'informal state' project. Second, judicial independence is important for legitimacy purposes. But the Executive, whenever necessary and from time to time, swiftly reminds the Judiciary as to who holds real power as highlighted above in the case of treason suspects. Another case worth mentioning was the 2005 Constitutional Court ruling that the Movement (No-Party) System of government was null and void because Parliament had passed the 2000 Referendum Bill irregularly. The Bill formed the basis for the June 2000 national referendum that endorsed continuation of the No-Party (some say One-Party) system (Oloka-Onyango and Mugaju 2000). Consequent to the ruling, the President appeared on state television, clad in full military fatigues. He made it clear that he would not sit idly by as courts passed rulings that 'subvert the will of the people'. The next day government/state<sup>7</sup> operatives organized street protests, targeting court premises and judicial officers.

The third factor for the failure to whip the judiciary into line is that, beyond questions of legitimacy, to completely water down the independence and formal working of the Judiciary would be to undermine the strength and workings of the 'informal state'. How? If the Judiciary were completely informalised by, say, having the parallel military court system eclipse the civil courts, then the entire formal state system would become wholly 'informal'. In other words, if the mask of the formal separation of powers were to be completely removed by having judicial matters (handled by military court system) under the full control of the Executive, then the 'informal state' would lose the formal edifice that contributes to its reproduction, leading to the possible collapse of the entire system. The safety valve would have been removed.

### ***The Form of the 'Informal State': Workings of the Executive and Legislature***

The second proposition is that Uganda's 'informal state' takes the form of simultaneous centralisation and fragmentation of the centre of power, proliferation of quasi-state agencies and pseudo-governmental organisations. Simultaneous centralisation and fragmentation largely applies to the Presidency as the embodiment of Executive power and authority. This spawns myriad political mobilization groups, intelligence and paramilitary bodies, and the coercive institutions of statecraft, more generally. To legitimate activities of the 'informal state' and reproduce its survival, formal statehood expected of political modernity (in the form of functional bureaucratic institutions, constitutionally sanctioned state agencies and bodies) exists, but only to the extent that the 'informal parallel state' can hold sway. Whenever necessary the formal state structures must be undermined or rendered inconsequential. To strike such delicate balancing entails a ruse that enables a schema of a centralized state system and personalized ways of broadcasting power that operate through a fragmentary centre but with an internal monitoring and disciplining mechanism.

Fragmentation at the pinnacle of state power is parallel to, and constantly negotiates for space with, the traditional decentralized state system. Thus, it often transpires that State-House (the Presidency) based political groupings and quasi-intelligence agencies clash with local political leaders and security operatives in matters of ruling-party political mobilization, service delivery, and intelligence gathering.<sup>8</sup> If the localized state (at the district level and sub-county levels) is a formal and constitutional process of power devolution, the fragmentation taken from the centre downwards is subtle, complex and ultimately largely illegal. Yet, as an instrumental mode of broadcasting power, the latter is distinctively functional, thorough and effective.

Mamdani (1996: 291) underscores the seesaw of African politics with continual shifts from centralization to decentralization and vice-versa. While decentralized despotism is seen as exacerbating ethnic divisions, thus necessitating centralization, centralized despotism exacerbates the urban-rural division requiring the solution of decentralization. In that regard the innovative political dexterity of managing a highly centralized but fragmentary power-centre along with a parallel-decentralized system that we observe in the case of Uganda is particularly telling and novel. If the colonial and immediate postcolonial systems took the form of divide and rule by fragmenting the ruled along racial and tribal lines or creating a bifurcated state for citizens and subjects, the 'informal state', by contrast, broadcasts fragmentary power on a highly divided population. The added logic therefore has been to perfect a system that simultaneously pursues decentralization but also fragments the centre of power.

What leads rulers to undermine their state agencies intentionally, asks Reno (2006). There is an instructive instrumental rationale which I will quickly sketch here. One of the most recurrent developments that came to define post-independent Africa was the change of government through bloody or bloodless military coups. In conventional terms and acceptable norms of modern juridical statehood, legitimacy informs the way the state broadcasts power. Therefore, to augment legitimacy both locally and internationally, state power must necessarily be exercised through formal institutions that are not only legal but are also adjudged to be politically acceptable – legitimate. States like the Ugandan one face severe (internal) legitimacy crises.

Up until the 1990s African rulers faced a seventy-two percent risk of violent removal from office (Reno 2006: 28). In Uganda between 1962 (the year of independence) and 1986 (the year of take-over by the current regime), a period of twenty-four years, there were six different governments with five presidents (one having been president twice). Four of the six governments were either outright military coups (largely bloodless) or military backed civilian take-overs. This was pretty common across the African continent. This high risk of losing power at continental level declined to forty-five percent from the 1990s partly because of the abandonment of single-party regimes and the embrace of multiparty politics. But whether under military authoritarianism, or single-party authoritarian rule, or multiparty pretensions, the hard lesson from the days of military coups sunk in deeply: do not keep highly centralized formal political and military structures, instead, build a fragmentary security system, by creating ‘multiple anti-crime units, tax enforcement units, informal paramilitaries and palace guards’ (Ibid: 29). This fragmentary security system has the net impact of achieving two mutually reinforcing strategic goals.

First, the institutionalized and formally structured system that is prone to a high risk of overthrow is undermined or at best rendered dysfunctional. So the risk of losing power is reduced. Second, the multiple centres of power created by various security and defence forces become a handy network through which state patronage is dispensed. Construction and maintenance of an ‘informal state’ structure using patronage resources is made possible by these numerous security and defence agencies for one importantly procedural factor: unlike other governmental bodies and state agencies, those concerned with security and defence, whether ostensibly or actually, are not subject to the same (if any) public scrutiny and accountability. Most of their activities and operations, and ipso facto their expenditure details, are subsumed under the rubric of classified information, thus constituting a key source of patronage resources (Reno 2002; Tangri and Mwenda 2003; Mwenda and Tangri 2005).

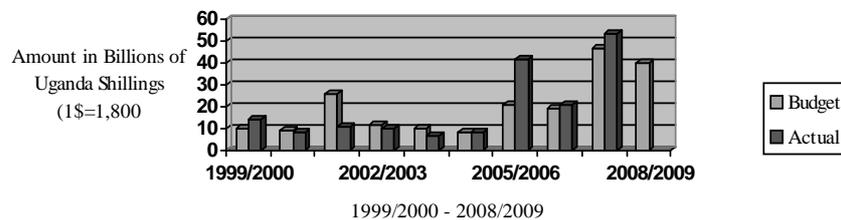
**Table 1:** Network of security and defence bodies

Security/Intelligence Agencies	Parallel Agencies	Auxiliary Forces
Uganda Peoples Defence Forces	Joint Anti-Terrorism Taskforce	Amuka Boys
Uganda Police Force	Chieftaincy of Military Intelligence	Arrow Boys
Internal Security Organization	Black Mamba Squad	Special Police Constables
External Security Organization	Rapid Response Unit	Kalangala Action Plan
Criminal Investigations Directorate	Anti-Stock Theft Unit	Kaladushica Action Plan
	Special Revenue Police Services	Local Defence Unit
	Popular Intelligence Unit	Kiboko Squad
	Special Investigations Bureau	Home Guards
	Civic Defence Unit	Land Protection Unit
	Special Forces Group	Paramilitary Police
	Crime Intelligence Unit	Oil Wells Protection Unit
	Counter Terrorism Unit	Child Counter-Trafficking Unit
	State House Counter Intelligence Unit	First Family Protection Unit

Consequently the patronage network is greatly widened. In addition to jobs in the parallel agencies, there are presidential representatives (Resident District Commissioners and their deputies) to more than one hundred districts;<sup>9</sup> more than eighty presidential advisors and special assistants, and more than forty presidential private secretaries and their deputies. All these constitute the fragmentary nature of managing the centre of power. As by law, the head of state is Commander-In-Chief of the armed forces. Also by law, security and intelligence agencies (including the auxiliaries in support of the armed forces) fall under the Ministry for Security in the Office of the President. But the parallel agencies (which according to Figure 1

above more than triple the constitutional ones) operate not from the Office of the President but from State House, the official presidential residence. This shift in the locale of the 'seat of power' from the official (Office of President) to the residential (State House) is further illuminated by the budgetary allocations as shown below:

**Figure 1: Budgeted and Actual Expenditure of President's Office**



This shift in budgetary allocation is seen by some observers as representing the shift from the official to the informal – from the state to the family: 'It is a manifestation of personal rule where usually there are competing centres of power outside the official ones', a political scientist at Makerere University told *The Independent* news magazine (April 1, 2009). State House, although a public institution, is the residence of the President and his family. It is supposed to play host to social and ceremonial activities of state and government but not serve as the chief administrative seat of the state. In practice, however, while the Office of the President employs a large staff, the 'real business' has shifted to State House. As one observer noted: 'state power has now been consolidated in State House and State House has become the executive, legislative, and judicial nerve centre of government; State House is the Central Bank, the national military headquarters, the Electoral Commission headquarters and in practically all ways, State House is the Uganda government' (*The Independent* January 7, 2009).

#### ***The Role of the Ruling Party Parliamentary Caucus***

If the most elaborate fragmentation of power at the centre has unfolded in the Executive branch of government in the form of multiple security and intelligence agencies, political mobilization groups, preponderance of State House, the most effective parallel power structure emerged in the legislative realm – the Parliament. The caucus of the ruling NRM party has assumed the status of the *de facto* 'Parliament' and eclipsed the official parliament. Caucusing is not a practice unique to Uganda. Although the idea of caucusing

is constitutional and legal, the practices and methods of the NRM caucus are anything but, making it a somewhat *sui generis* political praxis. It plays a kind of surrogate role for the Executive's control over Parliament.

Thus a retired Supreme Court Justice aptly captured what is at stake: 'If you look at the British Parliament, they go in the lobby when there is a controversial measure and people who spoke for it or against that measure are known that very evening. In Uganda we don't know how many members of the Movement [NRM] opposed or supported a particular proposal because they are told to keep silent' (*Daily Monitor*, May 29, 2009). This was confirmed by one ruling party MP: 'Some of us who come from a stringent party ... are not allowed to speak after the decision of the caucus ... and when you speak they label you a rebel and when you don't speak the scorecard will give you zero. We are trapped between a rock and a hard place' (*Daily Monitor*, June 2, 2009).

Although the NRM caucus has engineered several legislative decisions, including the 2005 constitutional amendment that deleted presidential term limits, the most widely appreciated case that underscored its power over the legislature came in November 2008. A parliamentary select committee investigated and found two Cabinet Ministers (one also NRM Secretary General) culpable for influence peddling and conflict of interest in a land transaction with the National Social Security Fund (NSSF). Before the tabling of the select committee's report in the house, a local media house contacted most MPs, asking how they would vote on the report, whose findings had been leaked to the public. To the majority MPs, as was with the wider public opinion, it was a foregone conclusion that Parliament would adopt the report, and the two ministers had to resign or face parliamentary censure. The president, who had earlier declined to get embroiled in the saga and vouched for the due process of parliament, stepped in at this point.

All party MPs were summoned to State House, Entebbe, purportedly to debate the report and adopt a position ahead of the scheduled session of Parliament. After daylong deliberations, a binding position was taken. Below is a summary of local newspaper reports on the matter:

On Monday, November 3, MPs of the ruling NRM were ferried to State House ... for the party' caucus meeting. President Museveni summoned the legislators to discuss two reports recently written by members of a committee of Parliament that investigated the controversial land deal between Security Minister Amama Mbabazi and the NSSF ... Museveni said there are different types of courts in the land. 'The legal court where High Court and others like that fall; the "quasi judicial court" where institutions such as the IGG belong, and the administrative court where "I am the chief justice". I am the one in charge and I will not allow anybody to destroy

the Movement...’ Museveni then ordered that every MP will strictly follow a written guideline to be circulated on Tuesday 10.<sup>9</sup> (*The Observer* November 5, 2008 and *Daily Monitor* November 8, 2008).

Prior to the above saga the President explained to a public gathering the roles of Parliament, on the one hand, and the NRM caucus on the other: ‘You are really missing out because whatever goes to Parliament goes through NRM caucus where your MP does not sit. So he is there to sit and wait for a finished product because in Parliament we just bring what is finished to put a stamp’, Mr Museveni told a rally in Mbale Municipality, represented by an opposition MP (*Daily Monitor*, August 11, 2008).

### ***The External Economic and Financial Dimension***

To construct parallel state structures invariably requires access to economic and financial resources to oil the system. The NRM took power in Uganda in 1986 at the height of the Reaganite and Thatcherite era, also at the time of the retreat of the Left. It was the time when neoliberal forces were mounting a concerted effort to strike a final blow at Communism. The NRM had a strong Leftist ideological leaning and came to power through a Marxist-Leninist inspired guerrilla armed struggle. Yet the new government faced a daunting task of resuscitating a collapsed economy, reconstructing a thin infrastructure eroded by years of war, and rebuilding a state apparatus necessary for establishing effective administration. These stupendous projects required huge financial and technological resources, which the new regime could not muster internally.

Although at the time of capturing power the new president was unwavering in his ‘non-aligned’ rhetoric, maintaining that he was neither pro-East nor pro-West but rather pro-Africa, by the end of the 1980s (and perhaps in a manner that stunned some Western capitals) the non-aligned rhetoric had assumed a backseat. A fundamental shift occurred: from ‘vociferous anti-imperialism’, writes Mazrui (2000: 131), ‘to abandonment of Westphalia – obsession with sovereignty – for Westphilia – embrace of the West’. Consequently, Uganda embraced neoliberal reforms through the Structural Adjustment Programmes (SAPs), and Museveni became a ‘poster child of structural adjustment’ (Young 2001: 207-10). This economic-ideological shift resulted in wholesome market liberalization, privatization of public prerogatives and utilities, deregulation of the economy, retrenchment to downsize the civil service, and rolling back the state generally.

The swift embrace of neoliberal reforms had two resultant developments worth noting, which in due course became critical to entrenching and sustaining the ‘informal state’. First, the regime secured much needed external recognition, gained legitimacy from Western capitals, and ipso facto,

unlocked aid and loan taps to Uganda. However, given that by the second half of the 'decade of hope' (the 1990s), it had emerged that most IMF/World Bank bankrolled reforms across Africa and the agenda of aid-to-Africa was coming to no avail, there was an urgent need to push harder for some success stories. Therefore (and this brings me to the third proposition), the desperate search for success stories of neoliberal reforms by international financial institutions, and the wider Western donor community, supplied the much needed financial inflows that economically oiled the process of entrenching Uganda's 'informal state' while contemporaneously insulating the government against civic scrutiny and accountability. The insulation against deeper scrutiny and thorough public accountability was enabled largely by the upsurge of Non-Governmental Organizations (NGOs) or what I may ungenerously call an NGO economy, which assumed the status of civil society but lacking in organisational autonomy and institutional strength to counter excesses of the state.

The NGO phenomenon percolated into all key domains of the polity, including government ministries/departments as well as traditionally autonomous institutions like Churches and the 'non-state sphere', generally.<sup>11</sup> It became commonplace for government departments to set up NGO-like project implementation units, much like Churches register subsidiary organizations that are fronted to secure donor funds to implement projects. Some NGOs get sub-contracted to implement government policies while some are patronized by elements with strong connections to the inner circle of the ruling elite. This fusing has prompted a cynical coinage of Governmental Non-Governmental Organizations (GONGO). To show the thoroughgoing extent of this phenomenon, even the department of political science at Uganda's premier university, Makerere, included in its Bachelor's degree curriculum a course on 'Administration of NGOs'.

Therefore, while studies of other neo-patrimonial states (that parallel Uganda's 'informal state') highlight the role of local informal markets, exploitation of precious minerals, illicit activities like drug trafficking, money laundering, etc., the Ugandan case derived much of its economic muscle and financial wherewithal from Western donor-aid inflows, debt relief, and long-term loans. This contrasts sharply with related findings in the literature. Reciprocal relations between a parallel economy and a parallel state played a critical role in forging Reno's (1995) shadow state in Sierra Leone. There, a shadow state leaned on a shadow economy based on illicit trade in diamonds in the 1990s. Similar cases include Liberia, Cameroon, and Nigeria (Reno 1998 and 2006; Mbembe 2001; Bayart 2009). For example, Reno (2006: 30) notes that stripped of state institutions and bureaucratic hierarchies used

to control associates and subordinates, African rulers manipulate markets to manage clients and punish and deny resources to others who otherwise might oppose them. 'This led to evolution of informal political and clandestine economy networks amidst collapsing state institutions, and creation of numerous informal linkages' (Ibid: 35).

Uganda presents an interesting departure from that trend. Although it had a shadow economy at the height of near state collapse in the late 1970s to early 1980s (Green 1981 and Kasfir 1984), to say the same about the 1990s and 2000s would be erroneous. Rather than a shadow economy, there emerged an NGO economy; instead of illicit trade, a different dynamic in Uganda's economy has been at play – donorisation. Perhaps with oil production imminent a new resource base will come into play. Suffice to note that by the end of the 1990s Uganda had emerged as a leading destination of Western aid and loans. By the mid-2000s the country was a leading beneficiary from the Highly Indebted Poor Countries Initiative, HIPC (Tangri and Mwenda 2006; Mwenda and Tangri 2005, 2003; Reno 2002).

What exact role does aid money play? 'Aid in Uganda performs a dual function', argues veteran journalist Charles Onyango-Obbo. 'It is a form of patronage that regime functionaries and the middle class are allowed to steal, in order to keep them vested in Museveni and NRM remaining in power; and the crumbs that are put to good use go toward mollifying Museveni's peasant base with things like UPE' (*The Independent*, January 28, 2008).<sup>12</sup> Although the country's aid dependence was greatly reduced, throughout the 1990s Uganda's recurrent expenditure was more than seventy percent donor-funded while development expenditure was paid for in full by the same source.

To argue as some scholars have done (see Muhumuza 2009; Makara 2009; Rubongoya 2007) that President Museveni hoodwinked donors to believe that his government was indeed seriously implementing democratic reforms is to gloss over the pragmatism of the Bretton Woods institutions. As long as the country implemented market reforms (assured a deregulated market system, ensured macro-economic stability, overhauled the public service, expedited privatization, however haphazard, and posted impressive economic growth rates, kept inflation under check), the IMF, the World Bank, and other external financiers were less bothered by internal political developments. Part of their apolitical position rested on a disingenuous claim that their home charters and international law norms prohibited them from involvement in political matters of a foreign country like Uganda (Bayart 2009: xliii-iv; Olukoshi 2007). Yet the very process through which, say, SAPs were negotiated was no less political.

The second major outcome of embracing neoliberal reforms (or at least the manner in which SAPs were implemented) had to do with the shaping of what is now considered Uganda's single most overarching malady – corruption and abuse of office. Pressured by the 'there is no alternative' (TINA) mantra (Olukoshi 2007), sweeping privatization of public parastatals and state run public utilities, wholesome market liberalization and deregulation of the economy and the haphazard downsizing of the state (which, in the first place required substantial reconstruction at least in welfare terms) opened up a channel through which corruption acted as a tool for mobilizing resources for the burgeoning 'informal state'. Not that corruption was being invented; rather the project of rolling back the state enabled the forging of a new form of politics that became the hotbed of unprecedented corruption and abuse of office. The mess in privatization reached inexcusable levels in 1997/8 culminating (for the first time and till now) in Parliamentary censure of two Cabinet Ministers, while a couple other ministers were forced into resignation.<sup>13</sup> But this had the unintended consequence of supplying a lesson that corruption and abuse of office had to be executed in the most sophisticated and subtle way possible.

As of this writing an inquest into two government ministries preliminarily reveals millions of dollars (of donor funds) swindled with speculation ripe that the situation could be worse in other ministries. In 2008, haemorrhage of public resources through corruption was estimated by the World Bank to be no less than a quarter billion dollars annually. What is more, a 2006 report commissioned by the Ministry of Public Service found that one in ten civil servants is a non-existent 'ghost worker', costing taxpayers as much as Shs1.6 billion (\$ One million as of 2006) per month. Out of 229,901 records verified, 26,473 were found to be invalid (ghost employees). Of these, some 20,590 were from education institutions and schools where the dead, sacked, transferred and those who left service were still being paid (*Daily Monitor*, February 9, 2009).

What is more, a 2009 survey by the Global Corruption Barometer of Transparency International ranked Uganda as the third most corrupt country in the world. Commenting on the role of the ruling party in abetting corruption and abuse of office, a 'historical member' noted: 'We find the NRM texture being strangely transformed. It is increasingly becoming an association mainly for princely fights over available spoils in the state. Our party is becoming a political asylum for those who are seeking offices to conduct themselves with impunity against our people' (*The Observer*, February 11, 2009).

### What Went Wrong?

The easy conclusion has been to blame it all on one man, the President (see Kazoora 2012; Kobusingye 2010; Makara 2009; Muhumuza 2009; Rubongoya 2007). What happened, asks Rubongoya (2007: 192), 'to the "peasant/warrior", war hero, champion of popular democracy, anti-sectarian crusader, and democratic populist – Museveni?'. Rubongoya concludes that 'he stayed too long!' Some say 'he is an African dictator of old'. 'He is hostage to the Stone Age', others retrospectively claimed. Thus, at the height of incandescent political activity (climaxing in deletion of presidential term limits from the constitution in 2005), the London *Telegraph* predictably noted: 'Once held up as part of a new breed of leaders who would lead Africa's renaissance, Mr. Museveni... is succumbing to the old temptation of the continent's presidents to cling on to power' (*The Telegraph* 2004).

That may be the case but such hurried conclusions failure to grasp the obtaining mode and technology of power in Uganda. Baffled by the 'passiveness' of Ugandans in the face of the abuse of state power, some commentators decry the weak civil society while others wonder as to why the citizenry can look on (perhaps helplessly) as things go wrong: where is civil society? How did a revolution seeking modernity turn into a corrupt neo-patrimonial order? A former regime insider notes that 'the country has ended up with a regime whose outstanding characteristics are arbitrariness, disrespect for the law and privatization of the state, a personalized state' (*Daily Monitor*, May 29, 2009). Perhaps comments by a prominent journalist sums up quite well the prevailing mood and general thinking: 'Uganda today is sliding backwards toward a system of one-man rule engineered by the recently re-elected President Museveni ... Perhaps more disturbingly still, the stakeholders whom one would naturally expect to rise to denounce Museveni's sapping ... Uganda's oppositionists, civil society groups, middle-class citizens, and foreign donors... have been virtual no-shows' (Mwenda 2007: 23-37).

There is something missing in these conclusions. The dearth of deeper theoretical analysis of the problem at hand is conspicuous. How come there is no resistance to the way state power has been shifting from the formal to the 'informal' realm? Could it be that the kind of resistance at play cannot be deciphered in orthodox fashion? Crucially, how does the 'informal state' reproduce its survival even when the wider public (or at least the Ugandan elite) construe it as undesirable? Is the 'informal state' necessarily antithetical to democratic practice? Are there some productive facets emanating from the 'informal state' that can augment democratic practices suitable to the local conditions? In the next part of this article I attempt to shed light on these questions.

## **Augmenting Legitimacy and Reproducing Survival**

### ***Understanding the Rationality***

In the foregoing paragraphs, I have attempted to thresh out the intricate yet thoroughgoing mode of exercise of power, which for all intents and purposes was forged in Uganda's recent political and military history, the post-1986 era. I have also accented the antecedent pre-1986 near state collapse that emboldened the primacy of security both on the part of the citizenry and the rulers. In that regard one Herculean task that I sought to unravel is the logic of maintaining the edifice of a formal state structure (or at least some semblance of it) and the contemporaneous construction of parallel structures on which the 'informal state' is anchored. This was captured in a recent study on decentralization in Uganda aptly noting: 'it is interesting that Museveni has not responded to challenges to his power by unilaterally overturning or openly working outside formal democratic institutions' (Cammack, et al. 2007: 47).

This raises an important puzzle: why not just do away with the formal state praxes that do not suit the plans of those exercising state power? Why must parallel state institutions and agencies be constructed behind the façade of formal juridical statehood? Why not unmask and embrace informality officially? To do so, as I noted earlier, would obviously defeat the logic given that what is at stake is holding a grip on state power. I have attempted to answer that question by reiterating the obvious and banal argument of legitimacy. But, more importantly, I have underscored the theoretical rationality that makes the formal structure indispensable to constructing parallel structures that are crucial for the functioning and survival of the 'informal state'.

The rationality underpinning the system in question is to maintain continuity and sustenance by striking a delicate balance between legality and illegality, legitimacy and illegitimacy, formal and informal, official and unofficial, etc. Such balancing in due course of time creates an internal mechanism that holds together the system while also giving justification for its *modus operandi*. Therefore, beyond the much-vaunted rationale of legitimacy, as the reason why formal state structures must be maintained, the thrust for striking a balance between formal and informal is that the latter would cease being what it is intended to be without the former. Other than this political (instrumental) rationality there is a normative, moral rationality too.

The consistent and continual bemoaning of personalisation and informalisation of state power mirrors a certain normative rationality. Even within the thinking of those who do not countenance a replication of Western

political modernity, the normative quest for a formally institutionalised system provides the lens through which the informalised exercise of power is viewed, judged and construed as being undesirable. On the other hand, the architects of the 'informal state' seem to be pushing toward the same normative goal by experimenting with parallel institutions. In fact, regime ideologues acknowledge the superior moral imperative of formal state structures and are willing to either maintain their functionality, not only as instruments of moral-political legitimation, but also as a measure on which parallel experimentations can be judged, weighed and effected. This, to my understanding, is how state formation has been taking shape in Uganda. Failure to take cognizance of these internal dynamics leads to hasty and superficial condemnations.

Uganda has experimented with several political systems including the so-called No-Party System, which was again another case of shifting from institutionalised (party) politics to individualism.<sup>14</sup> All experimentation has been anchored in the language of broader Western political modernity even when such experimentations seek to find local innovative approaches that suit local circumstances. Indeed, since 1986 the NRM has been consistent in its refrain of modernisation; all policy initiatives and governmental programmes are embellished with the language of modernising Uganda. So, here is an important converging point: those who push or advocate for formal state structures are driven by a normative rationality, which rationality is acknowledged and negotiated by architects of the 'informal state'. This presents infinite pull and push contestations. While on the whole real state power is shifted to the 'informal state', to construct an effective 'informal state' through parallel structures the formal remains indispensable. Such contestations are not about to end and what lies ahead is unpredictable, but suggestions of impending state failure are a little exaggerated.

### **Reproducing Survival: Creation of Districts and the Role of the Media**

How does the 'informal state' actually broadcast and distribute power in such a way as to reproduce its continuity and assure its survival? The standard argument is that the exercise of state power that does not approximate to formal-legal juridical statehood (or the Weberian idea of legal-rational) tends to be highly centralized and personalized under a potentate of one type or the other: a benevolent dictator, a military ruler, a monarchical despot, or an imperial president. Being neo-patrimonial, the argument goes, such states tend to be presidential: power is concentrated in one individual who dominates the state apparatus and stands above its laws.

Cammack et al., (2007: 31) note that 'intolerant of challenge and criticism and reluctant to delegate, Museveni fears alternative centres of power. This has led him to micro-manage policy and surround himself with weak "yes-men", both of which factors reinforce personalised power and decision-making and undermine effective policy-making'. This article takes a different tack: such centralism can only reproduce its survival by, ironically, fragmenting the centre itself, making it impracticable to maintain one unified centre of power. Thus, even though at face value the potentate appears to be the ultimate and indisputable embodiment of state power, in practice the system reproduces its survival by rendering even the most powerful, so to say, powerless.

The survival of this fragmented centre is underpinned by a kind of circular system that makes every actor involved to keep a watch on the other; mutuality of co-existence and the drive to work for continuity of the status quo compels even the seemingly most powerful to cede power to others around. Bayart (2009) calls it the 'politics of the belly'. Therefore, the obsession with the cliché 'Africa's strongmen' misses a fundamental rationality that coheres with the exercise of state power: for the centre to hold it has to necessarily be fragmented and for the potentate or benevolent dictator to survive, those closer and afar should feel sharing in the power carcass. In effect the president of Uganda, construed from various shades as an invincible revolutionary, an altruist and selfless leader, an autocrat, another of those African big men, is at different times dissimilarly the opposite of such power adornment: powerless, vulnerable and insecure.

To negotiate this paradox of powerful but powerless at the same time, power is exercised through commandment – the arbitrary force of power, which entails the conflation of state, government, ruling party and sections of both the private (business) sector and civil society. The state is projected as simultaneously indistinguishable from society, and as the upholder of the law and keeper of truth (Mbembe 2001: 105). This fusing of different registers of political authority and military power provide the cement of today's 'informal state' in Uganda. Thus opposition leader Augustine Ruzindana aptly notes that because the state is equated with society and since the ruling party is fused with the state, all activities of opposition parties aimed at state power are *ipso facto* acts against the state and thus treasonable (*Daily Monitor*, May 15, 2009). As the embodiment of commandment, President Museveni has wasted no time in declaring his God-like status; and since the days of the bush war tales are told of the mysterious ways of the man. Chiding his main political opponent, the president spoke of who he is, as

President: 'Besigye stood for presidency and he should not tell lies because the President is second to God and a President should not tell lies' (*New Vision*, October 13, 2008).<sup>15</sup>

So the President thinks of himself as 'God's Deputy'. He is not just another mortal being. And when he surmises thus, a large section of his listeners either believe him outright or are prompted to search for reinterpretations that conform to, and confirm, his immortality. His handlers craft puzzles that warrant beseeching the president to intervene and apply extra-ordinary wisdom, earning him ululations that set him aside as above ordinary mortals. Yet this same invincible and mysterious politico-military leader is well aware of his limits as a human being, his vulnerability, weaknesses, and his fallibility. He also recognizes that his fetishistic exercise of power is paralleled by a desire to share in the same by those he rules. Further, the ruled too go about despising the ruler for being a cheap and power-thirsty autocrat. This forms a convivial relationship that produces the forces of production that continually reproduce the extant system observed in Uganda. The ruler simultaneously projects an immortal self and a sense of vulnerability; the ruled are aware of such a duality. In effect there emerges a shift from the convivial to the fearful, which nevertheless holds the system. Two examples will help shed light: creation of districts as part of power devolution and the role of a relatively free media. I will take on one in turn.

First, as regards the creation of districts: while the centre of state power has taken on informal fragmentation, there have been contemporaneous formal processes of power devolution through creation of local government (district) units. While fragmentation at the centre is informal, unofficial, and in large measure both illegal and illegitimate, fragmentation by way of creation of local government units goes through formal processes of decision-making. A petition by the local community, or representatives, is sent to Cabinet and thereafter Parliament passes the final decision of granting district status. Much of the discussion here has focused on the 1990s and early 2000s as the period within which several processes coalesced in forging the 'informal state'. In 1990 Uganda had thirty-three districts, forty-four by 1997, seventy-eight in 2006, eighty in 2009, and close to 100 by 2010. It is difficult to pin down the exact number but over 100 have so far been created and the number is expected to reach 120 in the near future.

The creation of (what is viewed especially within elite circles) as unviable districts has put Uganda on a path of profligate public spending as the cost of public administration shot through the roof in the late 1990s reaching 980 billion shillings (500 million US dollars) as of 2008. This transforms into more than four percent of Uganda's GDP, estimated at about dollars US 12 billion (as of 2012). The standard argument is that such an irrational and

disingenuous populist practice, as creation of districts, is part of the workings of the neo-patrimonial state; a resort to a populist policy in order to win votes and fend off electoral challenges. Thus, Cammack et al., (2007) observe that the proliferation of districts has been driven by Museveni's personal political agenda and his need to generate elite and popular support in the face of democratic challenges to his authority. Although popular, such a policy is ill conceived, opportunistic and, in some instances, undertaken without due legal process.

To be sure, these 'local-state' units directly benefit only a few bureaucrats and elected officials in material terms, yet yearning for district status (and especially the locale of the headquarters) remains very popular. Why? By ceding power to the districts, regardless of how much and substantive it is, a certain placatory gesture is actualized. This creates a feeling of empowerment, however imaginary, sufficient in engendering a convivial relationship between the rulers and the ruled. If the ruler imagines himself as invincibly powerful yet in reality he rules with certain powerlessness, the ruled too celebrate enjoyment of the imaginary power that is realized whenever they demand for, and are granted, district status.

Second, as regards the issue of media freedom, Uganda has a relatively vibrant media sector (at least at face value and in quantitative terms), especially electronic media, with close to 200 radio stations spread across the country. All radio stations at dusk buzz with heated debates on politics, economics and society generally. There abounds a satisfying sense of ideas being left to contend and the citizenry being allowed the latitude to speak out, unfettered, on matters concerning their country. Both the urban dwellers and rural folks, through live studio appearances and telephone calls, debate spiritedly; they even stretch their freedom of expression to trading personal insults and uttering unfair comments. Privately owned newspapers, magazines and myriad small newsletters are relatively free to publish even damning reports about activities of government, the army, and key individual military and political players. Cartoonists too do their work, caricaturing the President, members of the First Family, and the political 'big fish'.

Paradoxically, while media vibrancy flourishes, Uganda for long kept on its law books colonial draconian media laws: the law of sedition, publication of false news, criminal defamation, sectarianism, etc., (with the constitutional court only recently declaring unconstitutional the law against publication of false news and of sedition). These laws play a critical self-censoring role; seldom are they invoked to successfully prosecute journalists or members of the public. Instead, from time to time journalists are summoned, interrogated and charged with various cases only for the state to lose interest

in the cases after years of court proceedings. But there is personal and official inconvenience, legal costs, and psychological torture: these serve the needful just well.

What is the relationship between the 'open and free media' and the workings of the 'informal state'? How come that abuse of power through the workings of the 'informal state' is exposed or unearthed largely through the same media over which the state subtly controls but which nevertheless promotes public debate, expert analyses and commentaries? Are free media a threat to the 'informal state'? Autocratic and quasi-democratic regimes may leverage a seemingly free and open media environment to continue holding onto power. But such regimes in the end may come down tumbling at the hands of media-instigated civic insurrection. The recent 'Arab Spring' is instructive.

However, the role of the media in the workings of the 'informal state' in Uganda is more nuanced: 'In exchange for a freehand to loot public resources and destroy public goods and services, the regime has given elites "freedom" to shout wolf in newspapers and radios, evade taxes, violate traffic rules, throw garbage on the streets and build in road reserves' (*The Independent*, May 12, 2009). In effect the media have been a handy avenue to assuage public outrage and neutralise civic discontent. But they also help in gauging public opinion and determining the necessary measures to be taken to avert potential and actual political crises.

### Conclusion

I have argued in this article that a distinct regime of power evolved in Museveni's Uganda under the auspices of a historical experience of near-state collapse coupled with the formative ideology of the rulers. This system of power fragments the centre and constructs parallel structures while maintaining important aspects of formal juridical statehood. For heuristic purposes I have called this system an 'informal state', although informal here should not be construed as the direct opposite of formal. Is this 'informal state' necessarily antithetical to desirable political development? If so, can we tease out some unintended consequences from its workings? The Ugandan 'informal' state takes a distinct outlook: it is neither the traditional sovereign power built on pure brute force, oppression and coercion nor is it a modern regime of power that works largely through surveillance, monitoring and disciplinary institutions, as Michel Foucault proposed. So, what is it?

The easy conclusion has been to say it is hybrid. That it combines formal power (legal-rational) with informality (personal and charismatic); coercion with persuasion; repression and brute force with disciplinary institutions, repressive and ideological apparatuses (à la Louis Althusser). This

presupposes a healthy relationship between formal and informal, oblivious of the contestations that inevitably lead to entanglements and displacements. Not persuaded by the idea of hybridity, I have underscored the logic of striking a delicate balance between formal and informal. But I have also emphasised that such a balance is geared toward enabling the functionality of the 'informal state'.

A cloud of uncertainty has engulfed Ugandan politics, and the 'informal state' is seen as inherently inimical to harnessing and propelling democracy. Policies pursued through the 'informal state', and the general fashioning of national politics are adjudged as populist (Laclau 2005). But to construe populist policies as necessarily democratically regressive is to wish away a whole dynamic domain of state-society engagement whose irreversibility is no small feat. Nobody can rule out for sure the eventuality of the same populist policies and criminality that hold together a seemingly undesirable system producing the forces that unleash a rapturous passage to a more desirable political system. The rhetoric of pro-poor policies, the resort to invoking the past in justifying otherwise indefensible actions of the 'informal state', the fragmentation of political power at the centre and ceding of the same to unviable local units, the creation of occasional fear and insecurity; all these and others constitute the crucible that can potentially lead to political transformation. Already, an archetypical case of informality, the oxymoron 'No-Party' system was abandoned after failed experimentation. Rather than cling on to the copy and paste of Western traditions of state, Uganda, no less other African countries, must subject state systems and praxes to internal tests and contestations if genuine and sustainable political development is to be realized.

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## Notes

1. This concern necessitated international organizations and consultants to help 'solve' the problem.
2. This position is in stark contrast to that of Herbst, discussed above, who arrives at an opposite conclusion about the impact of colonialism.
3. It is curious that these two authors stridently insist that 'what we discuss has already happened elsewhere in the world in earlier periods and could well happen again in those parts of the world which now view Africa with such distaste' (Chabal and Deloz 1999: xx), yet they go ahead to attribute informalisation of politics to 'the personalised nature of prestige and status in African societies' (Ibid: 2).
4. On 'analogy seeking', my debt to Mamdani (1996).
5. For discussions of post-independence but pre-1986 Ugandan politics and society see, for example, Karugire (1988), Mutibwa (1992), and Rubongoya (2007).
6. The point is that during the decades preceding seizure of power in 1986 by the current politico-military establishment, insecurity reached its zenith when 'peaceful sleep' at night was a kind of luxury for many Ugandans.
7. The fusing of government, state, party and presidency is a mark of the way the system of power under discussion works. I will elaborate on this later.
8. This clash was most pronounced during the 2001 and 2006 national elections pitting a paramilitary outfit, Kalangala Action Plan, headed by Major Roland Kakooza Mutale, a Presidential Adviser, and local leaders as well as members of parliament in different parts of the country.
9. The number now stands at over 100 and expected to reach 120 if new proposals are approved by parliament and especially as the country nears the next general elections.
10. The interesting twist to this saga was that the president's wife (a Member of Parliament who subsequently became a Minister) was among those who disagreed with the president. The local press quoted her saying: 'From what I have read, Mbabazi [one of the two culpable ministers] has one option; repossess his land and refund the Shs 11 billion or take responsibility and resign as a minister'. See *The Observer*, November 5, 2008.
11. I have deliberately avoided using the phrase civil society here, wary of the widely used conceptual misnomer of erroneously ascribing the status of civil society to all activities and organizations lying outside of the strict domain of the state. In Uganda, what I have called the NGO economy constitutes much of what is seen as civil society organizations. This NGO economy, I wish to argue, is neither civil society in theory nor in practice. For a similar critique, see Chatterjee (2004).
12. UPE, or Universal Primary Education, a government programme for free-universal primary education.

13. Similar corruption and abuse of office-related resignations happened in early 2012.
14. The 'individual-merit' principle under the so called 'No-party' system provided that competition for political office was by individual politicians, not political parties. This principle, as popularized by the NRM and included in the 1995 constitution, was later discredited as a ploy by the NRM, which continued to operate as a political party under the guise of being a 'political system' while maintaining a tight lid on activities of other political parties (see Mugaju and Oloka-Oyango 2000, Carbone 2008).
15. Kiiza Besigye, former leader of the main opposition party, the Forum for Democratic Change, thrice contested and lost against the incumbent Yoweri Museveni: in 2001, 2006, and 2011.

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