

Re-centering the citizen: Participation and accountability in the exercise of administrative power in Ugandan environmental regulation

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I.0 INTRODUCTION

Uganda has had a checkered history with regard to the exercise of administrative power. During the colonial period, this power, like most governmental authority, was virtually unrestrained and decidedly authoritarian in character. Although moderate reform followed independence, the institutional ethos that had been generated over a long period continued to manifest in practice.

The 1995 Constitution, sought to create a decisive break with this problematic past. Alongside a whole range of other normative and institutional guarantees of good governance, Article 42 of the Constitution affirmatively provided as follows: ‘Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.’ The simplicity of this provision greatly belied its significance. In the first place, the provision essentially establishes administrative law rights and remedies as falling within the realm of constitutional enquiry as opposed to mere creatures of statute or common law. Moreover, its inclusion within the bill of rights emphasizes its standing, on an equal basis with other rights of the individual, to be similarly generously interpreted and robustly enforced.

This paper seeks to assess the extent to which this constitutional promise has been realized in Uganda, using the field of environmental regulation as a case study. To this end, the study seeks to interrogate the following interrelated issues: i) the kinds of administrative agencies charged with environmental regulation in Uganda, and their functions; ii) the nature of local governance institutions relevant to environmental regulation in Uganda; iii) the principles and procedures, if any, that administrative agencies and local authorities use to make rules and regulations; iv) the extent to

which administrative agencies and local authorities adhere to the principles of administrative law in their rule-making; v) the principles and procedures administrative agencies and local authorities use to make decisions and resolve disputes; vi) whether the public participate in the decision-making processes of administrative agencies and local authorities and, if so, the nature and effectiveness of this participation; and finally, vii) whether judicial review facilitates the democratic exercise of power by administrative agencies and local authorities.

2.0 THE REGULATION OF ADMINISTRATIVE POWER UNDER THE UGANDAN CONSTITUTION

2.1 The centrality of the Citizen: Constitutionalization of Administrative Law Remedies under the 1995 Constitution

As noted above, the 1995 Constitution sought to foreground the sovereignty of the people, and to establish their will as the basis for the exercise of all governmental power. In terms of Article 1 of the Constitution, all power belongs to the people who must exercise their sovereignty in accordance with the Constitution;¹ and all power, and authority of government and its organs are derived from the Constitution, which in turn derives its authority who consent to be governed in accordance with the Constitution.²

The centrality of the citizen is further affirmed in the bill of rights, the first article of which proclaims that the fundamental rights and freedoms of the individual are inherent and not granted by the State;³ and further that these rights must be respected, upheld and promoted by all organs and agencies of government, as well as by all persons.⁴ What follows is an extensive enumeration of rights, included those to: equality and non-discrimination (Article 21); a fair hearing (Article 28); freedoms of conscience, expression, movement, religion, assembly and association (Article 29); affirmative action in favour of marginalized groups (Article 32); special protections for minorities, including their right to participate in decision-making processes (Article 36); participate in the affairs of government either individually or through one's representatives in accordance with law (Article 38); and to access to information in the possession of the State or any other organ or agency of the State (Article 41).

Therefore, as noted in the preceding Section, it is within this broad and elaborate framework for human rights protection that the right to just and fair treatment in administrative decisions is

¹ Article 1 (1), 1995 Constitution.

² Article 1 (3), 1995 Constitution.

³ Article 20 (1), 1995 Constitution.

⁴ Article 20 (2), 1995 Constitution.

established under Article 42 of the Constitution. In essence, administrative law has been *constitutionalized* by virtue of Article 42, a development which is extremely significant in terms of expanding both the scope of the substantive protections afforded to individuals subjected to administrative power, as well as to enhancing the remedies available to them for violations of their rights in this regard.⁵

2.2 Article 42 and the Courts: *Kaggwa* and beyond

One of the earliest considerations of the significance of Article 42 of the Constitution occurred in 2002 High Court decision in *Andrew Kaggwa & 5 Ors v The Honourable Minister of Internal Affairs*.⁶ The applicants in this case were members of a Non-Governmental Organization (NGO), known as Caring for Orphans, Widows and the Elderly (COWE), which had been registered under the NGO Statute of 1989. The organization's registration was revoked by the National NGO Board and, being aggrieved, the applicants appealed to the Minister of Internal Affairs, under whose docket NGO regulation fell. The Minister having upheld the Board's decision, the applicants sought redress from the High Court, based upon, both Section 38 of the Judicature Statute of 1996⁷ and Article 42 of the Constitution. Although Justice Egonda-Ntende felt that he was not obliged to answer the question as to whether Article 42 created a separate right from that established under Section 38 of the Judicature Statute, he observed that notwithstanding the overlap between the two provisions, 'the constitutional provision may be more extensive with regard to decisions of administrative officials and bodies both in its reach, effect and relief available, than under Section 38 of the Judicature Statute, where the remedies available are creatures of common law, developed in a different

⁵ See, for instance, *Charles Kabagambe v Uganda Electricity Board*, Constitutional Petition No.2 of 1999, in which the Constitutional Court, in *obiter*, indicated that an unfair dismissal occurring in violation of Article 42 could be redressed by a competent court as a violation of human rights (at page 5). That particular case was dismissed insofar as it essentially was a matter for the enforcement of human rights (which could be entertained by any competent court) rather than interpretation of the Constitution (falling within the remit of the Constitutional Court). The enforcement jurisdiction of the Constitutional Court could only be invoked in respect of a petition brought primarily for the interpretation of the Constitution (at page 6). Strangely, in *Alenyo George William v Attorney, Law Council and Juliet Nasuna*, Constitutional Petition No.5 of 2000, a case also touching on Article 42, the Constitutional Court found jurisdiction in a matter which seemed to be one brought primarily for enforcement rather than interpretation.

⁶ HCT-00-CV-MC-0105 OF 2002 (Unreported).

⁷ In terms of Section 38 of the Judicature Statute, 1996, as amended by Statute No. 3 of 2002, the Judicature (Amendment) Act, the High Court was empowered, upon application for judicial review, to grant orders for mandamus, prohibition, certiorari, injunction or a declaration.

constitutional framework than the one in place now in Uganda'.⁸ In the event, he found that 'both at common law and under Article 42 of the Constitution' COWE had been entitled to fair and just treatment in respect of the proceedings that led to its deregistration.⁹ In the premises the Judge allowed the application and granted a declaration declaring the decisions of the Board and Minister null and void.¹⁰ However, he went further. He observed that the right to fair and just treatment before an administrative official or body had been established as a fundamental right under Article 42 of the Constitution, infringement of which triggered Article 50 of the Constitution, which empowered the Court to provide redress to anyone whose fundamental rights had been or were about to be infringed.¹¹ In his view, redress meant *effective* redress, and Courts were thereby mandated to provide relief which provided redress to the injury caused.¹² In the circumstances of that case effective redress had to include a direction to the NGO Board to re-instate COWE as a duly registered NGO, and this was thereby ordered.¹³

Subsequent decisions, albeit mostly without express reference to the *Kaggwa* decision,¹⁴ have largely treated Article 42 as being in tandem with the common law basis for judicial review of administrative power.¹⁵ In the main, these decisions have turned on the *audi alteram partem* principle – that a person

⁸ At pages 2-3 of the Judgment.

⁹ At page 3 of the Judgment.

¹⁰ At page 4 of the Judgment.

¹¹ At page 4 of the Judgment.

¹² At page 4 of the Judgment.

¹³ At page 4 of the Judgment.

¹⁴ A rare example of a decision which expressly refers to *Kaggwa* is *United Reflexologists of Uganda & Anor v Hon Stephen Malinga, Minister of Health & Attorney General* HCT - 00 - CC - MC - 12 - 2011.

¹⁵ See, for instance, *John Ken Lukyamuzi v Attorney General & Electoral Commission*, Constitutional Petition No.19 of 2006 (Court of Appeal); *Maria Nansubuga & 3 Ors v Iganga Town Council* High Court Miscellaneous Application No.5 of 2008; *Rose Kauma Kagere v Namutumba District Local Government Council* High Court Miscellaneous Application No. 433 of 2008; *Nicholas Kisomose v The Academic Registrar Mbarara University of Science and Technology & Anor* HCT-05-CV-MA-089-2009; *Kamus & Sons Enterprises v Koboko District Local Government* HCCS No.10 of 2008; *Professor Mondo Kagonyera v Attorney General & National Social Security Fund* HCT - 00 - CC - MC - 010 - 2010; *Geoffrey Musinguzi v Kirubura District Local Administration*, HCT – 05 – CV – MA – 193 – 2011; *Paul Kihika v Attorney General & Inspector General of Government* High Court MISC. CAUSE NO. 120 OF 2012; *Hon. Fred Mukasa Mbidde & Anor v Law Development Centre*, HCT-00-CV-MA-No. 0002 OF 2013; *Prof. Isaiab Omolo Ndiege v Kyambogo University*, High Court MISCELLANEOUS CAUSE NO. 141 OF 2012; *Steven Nebye Rutaro & 4 Ors v Law Development Centre*, High Court Civil Application No.135 of 2009; *George Stephen Wanyama v Busia District Local Government*, HCT-04-CV-MA-0225-2011; *Cargoland International Ltd v Uganda Revenue Authority* HCCS No. 163 of 2012; *Simon Tendo Kabenge v Uganda Law Society & Ruth Sebatindira* High Court Miscellaneous Cause No. 254 of 2013; *Charles Akoyo v Kamuli District Local Council*, Civil Appeal No.8 of 2011 (Court of Appeal); *George William Batuli v Nakosongola District Local Council* HCCS No. 372 of 2007; *Bin-IT Services & 3 Ors v Ssabagabo Makindye Sub-County* High Court Miscellaneous Cause No. 6 of 2014; *Harold Bruce Lugolobi v Tororo District Local Government* HCT-04-CV-MC-0019-2014; *Isaiab Lwasa v The New Vision Printing and Publishing Corporation* HCT-00-CV-CS-0461 OF 2000; *Gosh Zein v Jinja District Land Board* High Court Miscellaneous Cause No. 3 of 2014; *Ibrahim Abigira v Independent Electoral*

in respect of whom an administrative decision is to be taken must, as a minimum, be granted an opportunity to hear the case against them and respond to it, prior to any such decision being taken.¹⁶

2.3 Administrative law Remedies without Article 42: Trends and possible pitfalls

That said, there are also an appreciable number of decisions, post 1995, in which administrative law remedies have been considered by the Courts without any reference to Article 42 of the Constitution.¹⁷ This is extremely problematic in so far as this chain of decisions introduces jurisprudential incoherence in this very important area of the law.

To some extent, the failure to consider the implications of Article 42 has been ameliorated by the reference to the requisite legal principles that might still have been at play had this provision been considered. In some cases, this has been through reference to other constitutional provisions,

Commission Election Petition No.2 of 2016 and Hon. Theodore Sekikubo & 2 Ors v Attorney General High Court Miscellaneous Cause No.92 of 2015.

¹⁶ See, for instance, *Abdul Isodo v Arua District Local Government*, Misc Appln No. 02-CV-MA-0058-2004 (Unreported);

¹⁷ See, in this regard, *Skyluck Kagoma & 4 Ors v Kabale District Local Government* HCT-05-CV-MA-0031-2005; *Charles Musoke Serunjogi v Godfrey Nyakana Amooti & Electoral Commission*, Election Petition No.29 of 2006; *Gladys Aserua Orochi v Kabale District Local Government Council* HCCS No.93 of 2002; *His Worship Aggrey Bwire v Attorney General & Judicial Service Commission*, Civil Appeal No.9 of 2009 (Court of Appeal); *Clear Channel Independent (U) Ltd v Public Procurement and Disposal of Public Assets Authority* High Court Miscellaneous Application No.380 of 2008; *The Commissioner General Uganda Revenue Authority v Meera Investments Ltd*, Civil Appeal No.22 of 2007 (Supreme Court); *John Tumwebaize v Uganda Land Commission & Attorney General*, HCT-05-CV-MA-0123-2008; *M/S Semwo Construction Company v Rukungiri District Local Government* High Court Miscellaneous Cause No. 30 of 2010; *Charles Alir v Kotido District Local Government* HCT-09-CV- MA. 001/2011; *Johnson Akol Omunyokol v Attorney General*, Civil Appeal No. 6 of 2012 (Supreme Court); *Rafiki Farmers Ltd v Kumi District Local Government & Public Procurement and Disposal of Public Assets Authority* HCT - 00 - CC - MC - 01 – 2010; *Uganda Revenue Authority v David Wanume Kitamirike*, Civil Appeal No. 43 of 2010 (Court of Appeal); *Nester Byamugisha & Anor v Law Development Centre* High Court Miscellaneous Application No. 205 of 2008; *Guma Wawa v Attorney General, Secretary Law Council & Law Development Centre* High Court Miscellaneous Cause No. 164 of 2012; *United Reflexologists of Uganda & Anor v Hon Stephen Malinga, Minister of Health & Attorney General* HCT - 00 - CC - MC - 12 – 2011; *Farida Katerega Zalwango & 2 Ors v Deputy Registrar High Court* High Court Miscellaneous Cause No. 141 of 2011; *Miter Investments Ltd v East African Portland Cement Company Ltd*, High Court Miscellaneous Application No. 534 of 2012; *Janet Kobusingye v Uganda Land Commission*, High Court Miscellaneous Cause No. 28 of 2013; *Edward Gatsinzi & Anor v Sam Kabanda Mbwana & 2 Ors*, High Court Revision Application No. 21 of 2012; *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014; *Moses Isamat & 13 Ors v The Governing Council of Uganda Institute of Allied and Management Sciences –Mulago (Formerly, Mulago Paramedical Training Schools)*, High Court Miscellaneous Cause No. 5 of 2013; *Edward Gatsinzi & Anor v Steven Lwanga*, HCCS No. 690 of 2004; *Adam Mustafa Mubiru & Anor v Law Development Centre*, High Court Miscellaneous Cause No. 279 of 2013; *Henry Sebugwano v Tropical Micro Entrepreneurs Savings & Credit Society Ltd*, High Court Revision Cause No. 14 of 2013; *Robinson Kasozi v Attorney General*, Constitutional Petition No. 37 of 2010 & *Legal Action for Persons with Disability v Attorney General, Electoral Commission and National Union of Disabled Persons of Uganda*, Constitutional Petition No. 40 of 2010 and *Moses Mauku & Anor v Attorney General* Constitutional Petition No. 48 of 2010 (Constitutional Court); and *Fred Kabagambe-Kaliisa v Attorney General*, High Court Miscellaneous Cause No. 68 of 2014.

particularly Articles 28, which provides for the right to a fair hearing;¹⁸ and 173, which is to the effect that a public officer may not be victimized or discriminated against for having performed their duties or dismissed or removed from office or reduced in rank or otherwise punished without just cause.¹⁹ In others, this has been through reference to progressive case law and scholarly texts in the area of administrative law. Decisions particularly referenced in this respect include older English authorities such as *Ridge v Baldwin*,²⁰ *Council of Civil Service Unions v Minister for the Civil Service*,²¹ and *R v Electricity Commissioners Ex parte London Electricity Joint Committee*,²² as well as leading domestic decisions such as *In Re Application by Bukoba Gymkhana Club*,²³ *Matovu and 2 Others v Sseveri and Another*,²⁴ *Charles Kamurasi v Accord Properties Ltd and Another*,²⁵ *Mpungu and Sons v Attorney General and Another*,²⁶ *John Jet Tumwebaize v. Makerere University Council and 3 Others*²⁷ and *Pius Nivagaba v Law Development Centre*.²⁸

¹⁸ See, for instance, *Charles Musoke Serunjogi v Godfrey Nyakana Amooti & Electoral Commission*, Election Petition No.29 of 2006 (Unreported) at pp. 43-44; *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014 (Unreported) at p.5 and *United Reflexologists of Uganda & Anor v Hon Stephen Malinga, Minister of Health & Attorney General* HCT - 00 - CC - MC - 12 – 2011 (Unreported) at p.7. Court in the *Reflexologists* case also made reference to the applicants' rights to freedom of thought, religion and association (Article 29 (1)), to culture (Article 37) as well as to practice their profession and to carry on any lawful trade, occupation or business (Article 40(2)).

¹⁹ See *Johnson Akol Omunyokol v Attorney General*, Civil Appeal No. 6 of 2012 (Supreme Court) (Unreported) at p.11; *Gladys Aserua Orochi v Kabale District Local Government Council* HCCS No.93 of 2002 (Unreported) at pp.4 and 9; *Charles Alir v Kotido District Local Government* HCT-09-CV- MA. 001/2011 (Unreported) at p.8 and *Adam Mustafa Mubiru & Anor v Law Development Centre*, High Court Miscellaneous Cause No. 279 of 2013 (Unreported) at p.13.

²⁰ [1963] 2 W.L.R. 935, [1964] AC 40. See, for instance, *Gladys Aserua Orochi v Kabale District Local Government Council* HCCS No.93 of 2002 (Unreported) at pp.9; *Rafiki Farmers Ltd v Kumi District Local Government & Public Procurement and Disposal of Public Assets Authority* HCT - 00 - CC - MC - 01 – 2010 (Unreported) at p.7 and *Fred Kabagambe-Kaliisa v Attorney General*, High Court Miscellaneous Cause No. 68 of 2014 (Unreported) at 6.

²¹ [1985] AC. 374, [1984] ALL ER 935. See, *His Worship Aggrey Bwire v Attorney General & Judicial Service Commission*, Civil Appeal No.9 of 2009 (Court of Appeal) (Unreported) at p.9; *United Reflexologists of Uganda & Anor v Hon Stephen Malinga, Minister of Health & Attorney General* HCT - 00 - CC - MC - 12 – 2011 (Unreported) at pp. 3-4, 21 and *Adam Mustafa Mubiru & Anor v Law Development Centre*, High Court Miscellaneous Cause No. 279 of 2013 (Unreported) at p.5.

²² [1924] 1 KB 171. See *Charles Alir v Kotido District Local Government* HCT-09-CV- MA. 001/2011 (Unreported) at p.6 and *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014 (Unreported) at p.4.

²³ [1963] EA 478. See *Skyluck Kagoma & 4 Ors v Kabale District Local Government* HCT-05-CV-MA-0031-2005 (Unreported) at p.5; *Farida Katerega Zalwango & 2 Ors v Deputy Registrar High Court* High Court Miscellaneous Cause No. 141 of 2011 (Unreported) at p.3 and *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014 (Unreported) at p.4.

²⁴ [1979] HCB 174. See *Charles Musoke Serunjogi v Godfrey Nyakana Amooti & Electoral Commission*, Election Petition No.29 of 2006 (Unreported) at p.44 and *Gladys Aserua Orochi v Kabale District Local Government Council* HCCS No.93 of 2002 (Unreported) at p.9.

²⁵ Supreme Court Civil Appeal No.3 of 1996 (Unreported). See *Charles Musoke Serunjogi v Godfrey Nyakana Amooti & Electoral Commission*, Election Petition No.29 of 2006 (Unreported) at p. 43 and *Gladys Aserua Orochi v Kabale District Local Government Council* HCCS No.93 of 2002 (Unreported) at p.9.

²⁶ Supreme Court Civil Appeal No. 17 of 2001 (Unreported). See *Rafiki Farmers Ltd v Kumi District Local Government & Public Procurement and Disposal of Public Assets Authority* HCT - 00 - CC - MC - 01 – 2010 (Unreported) at p.7 and *Henry Sebugwawo v Tropical Micro Entrepreneurs Savings & Credit Society Ltd*, High Court Revision Cause No. 14 of 2013 (unreported) at p.18.

The legal texts and scholarship, have however, been mainly, if not exclusively English. In this regard, references have been especially made to the Halsbury's Laws of England²⁹ as well as to the authors Wade³⁰ and Delany.³¹

These mitigating factors notwithstanding, there is substantial jurisprudential and practical risk in failure to take proper account of Article 42 in the adjudication of matters where discretionary power is implicated. A notable consequence of such failure has been the dismissal of certain matters as being out of the time stipulated for invoking statutory causes of action; which would not have been the case had the action been founded upon Article 42 – since much greater latitude is accorded to matters in which constitutional rights are at issue. In terms of Rule 5 (1) of the **Judicature (Judicial Review Rules)**,³² an application for judicial review must be made promptly and in any event within three months from the date when the grounds of the application first arose, unless the court considers that there is good reason for extending the period within which the application shall be made. Indeed, this Rule has been successfully invoked by respondents in a number of judicial review cases.³³ The point was particularly stressed in *Fred Kabagambe-Kaliisa v Attorney General*,³⁴ in which the learned judge observed as follows:

²⁷ High Court Civil Application No. 353 of 2005 (Unreported). See *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014 (Unreported) at p.2 and *Fred Kabagambe-Kaliisa v Attorney General*, High Court Miscellaneous Cause No. 68 of 2014 (Unreported) at p.4.

²⁸ Court of Appeal Civil Application No.18 of 2006 (Unreported). See *Uganda Revenue Authority v David Wanume Kitamirike*, Civil Appeal No. 43 of 2010 (Court of Appeal) (Unreported) at p.37 and *Adam Mustafa Mubiru & Anor v Law Development Centre*, High Court Miscellaneous Cause No. 279 of 2013 (Unreported) at p.5.

²⁹ Halsbury's Laws of England (2001), 4th Edition, Volume 1. See *Skyluck Kagoma & 4 Ors v Kabale District Local Government* HCT-05-CV-MA-0031-2005 (Unreported) at pp.4-5; *Clear Channel Independent (U) Ltd v Public Procurement and Disposal of Public Assets Authority* High Court Miscellaneous Application No.380 of 2008 (Unreported) at p.9; *Farida Katerega Zalwango & 2 Ors v Deputy Registrar High Court* High Court Miscellaneous Cause No. 141 of 2011 (Unreported) at p.3 and *Janet Kobusingye v Uganda Land Commission*, High Court Miscellaneous Cause No. 28 of 2013 at p.2.

³⁰ HRW Wade (1982) *Administrative Law*, Oxford University Press, 5th edition. See, for instance, *Skyluck Kagoma & 4 Ors v Kabale District Local Government* HCT-05-CV-MA-0031-2005 (Unreported) at p.5; *Charles Musoke Serunjogi v Godfrey Nyakana Amooti & Electoral Commission*, Election Petition No.29 of 2006 (Unreported) at p.42; *Farida Katerega Zalwango & 2 Ors v Deputy Registrar High Court* High Court Miscellaneous Cause No. 141 of 2011 (Unreported) at p.3 and *Janet Kobusingye v Uganda Land Commission*, High Court Miscellaneous Cause No. 28 of 2013 at p.4.

³¹ H Delany (2001) *Judicial Review of Administrative Action: A Comparative Analysis*, Sweet & Maxwell. See *Rafiki Farmers Ltd v Kumi District Local Government & Public Procurement and Disposal of Public Assets Authority* HCT - 00 - CC - MC - 01 – 2010 (Unreported) at p.5; *Godfrey Omalla v Butaleja District Local Government Council & 2 Ors*, HCT-04-CV-MA-0153/2014 (Unreported) at p.5 and *Joshua Kasibo v The Commissioner of Customs*, Uganda Revenue Authority, HCT - 00 - CC - MA - 44 – 2007 at pp.20-21.

³² Statutory Instrument No.11 of 2009.

³³ See, for instance, *Guma Wawa v Attorney General, Secretary Law Council & Law Development Centre* High Court Miscellaneous Cause No. 164 of 2012 and *Fred Kabagambe-Kaliisa v Attorney General*, High Court Miscellaneous Cause No. 68 of 2014.

According to the record, the debate on the impugned resolution was closed on 27th March 2014. This can be found on page 1132 of the record where the Clerk to Parliament states:-

“I certify that these resolutions were adopted by Parliament on Wednesday 26th and Thursday 27th March 2014.”

In my considered view therefore, the grounds of this application arose on Thursday 27th March 2014 when Parliament closed the debate and adopted the resolutions. Therefore by filing this application on 27th June 2014, a period of 92 days since the endorsement of the resolutions by the Clerk to the Parliament, was clearly outside the mandatory three months provided for under Rule 5 (1) of SI No. 11 of 2009. The law is very strict in that even an extra two days like in this case from the mandatory three months is not permitted in law ... Therefore, the applicant who filed the application outside the mandatory three months period of limitation should have applied for extension of time. Since no such application was made, the applicant cannot attempt to do so in these proceedings ... The purpose of the law of limitation is to put an end to litigation. This law is applied by courts strictly.

In the event, the learned judge found that the application was incompetent and bad in law as it was filed out of time. In his view, the proper should have been for the applicant to apply for extension of time within which to apply for judicial review under Rule 5 (2) of the Judicature (Judicial Review) Rules 2009 which had not been done in that case.³⁵

On the other hand, as the Constitutional Court has clarified, notably in the case of *Fox Odoi v Attorney General*, the essence of Article 3 (4), of the Constitution, under which the citizens of Uganda are enjoined to defend the Constitution *at all times*, is to place causes of action founded of the Constitution outside the reach of statutory time limitations. As such, strictly speaking, actions for judicial review which are based on Article 42 of the Constitution cannot be caught by the three-month time limit under Rule 5 (1) of the Judicature (Judicial Review) Rules.

There is, therefore, real value in taking full advantage of the full protection guaranteed under Article 42 of the Constitution, rather than continuing to perceive administrative rights – and remedies – using the limited prism of the statutory or common law.

³⁴ High Court Miscellaneous Cause No. 68 of 2014.

³⁵ For a different approach, see *Guma Wava v Attorney General, Secretary Law Council & Law Development Centre* High Court Miscellaneous Cause No. 164 of 2012 (in which the learned judge found that the application was out of time, but still went ahead to consider – and dismiss – the application on merits so as to stave further, fruitless litigation) and *Janet Kobusingye v Uganda Land Commission*, High Court Miscellaneous Cause No. 28 of 2013 (in which, upon the facts, the learned judge appears to have applied a more generous timeline under the Civil Procedure Act, rather than the three-month limitation under the Judicial Review Rules).

3.0 ENVIRONMENTAL AGENCIES IN UGANDA: POWERS, FUNCTIONS AND SCOPE FOR PUBLIC PARTICIPATION IN RULE-MAKING, DECISION-MAKING AND ADJUDICATION

3.1 Constitutional Framework for Environmental Regulation

The legal regime for the preservation of the environment, like the right to administrative justice, is founded first and foremost in the 1995 Constitution of Uganda.

In terms of Objective XXVII of the National Objectives and Directive Principles of State Policy (NODPSP), the State must promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.³⁶ In this regard, the utilization of the natural resources of Uganda must be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and, in particular, the State must take all possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes.³⁷ The State is similarly enjoined to promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.³⁸ In addition, the State, including local governments, must create and develop parks, reserves and recreation areas and ensure the conservation of natural resources;³⁹ and must also promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.⁴⁰

Further, under Objective XIII of the NODPSP, the State must protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. Similarly, under Article 237 (2) (b), the Government or a local government as determined by Parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest

³⁶ Objective XXVII (i), NODPSP, 1995 Constitution.

³⁷ Objective XXVII (ii), NODPSP, 1995 Constitution.

³⁸ Objective XXVII (iii), NODPSP, 1995 Constitution.

³⁹ Objective XXVII (iv)(a), NODPSP, 1995 Constitution.

⁴⁰ Objective XXVII (iv)(b), NODPSP, 1995 Constitution.

reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens.⁴¹

The protection of the environment is furthered by Article 17 (1)(j) of the Constitution, under which all citizens are obliged, among other things, to create and protect a clean and healthy environment; as well as by Article 39 of the Constitution, which provides that every Ugandan has a right to a clean and healthy environment.

Additionally, under Article 245 of the Constitution, Parliament was required to by law, provide for measures intended: to protect and preserve the environment from abuse, pollution and degradation;⁴² to manage the environment for sustainable development;⁴³ and to promote environmental awareness.⁴⁴

Further, in terms of the Sixth Schedule to the Constitution (read together with Article 189), the Central Government is responsible, among other things, for land, mines, mineral and water resources and the environment.

3.2 The National Environment Act

Parliament fulfilled the obligation under Article 245 of the Constitution by enacting, in 1995, the National Environment Act (NEA),⁴⁵ which is the primary law regulating environmental management and protection in Uganda.

3.2.1 General Provisions

The NEA establishes the National Environmental Management Authority (NEMA) as a body corporate, with the power to sue and be sued in its own name.⁴⁶ Under the Act, NEMA is the

⁴¹ See, in this regard, CE Akello 'Environmental Regulation in Uganda: Successes and Challenges' *Law, Environment and Development Journal* Vol 3, No.1, 2007, pp20-25, available at <http://www.lead-journal.org/content/07020.pdf> at p.23, to the effect that these provisions of the Constitution – Objective XIII and Article 237(2)(b) – establish the public trust doctrine with respect to natural resource ownership and use.

⁴² Article 245 (a), 1995 Constitution.

⁴³ Article 245 (b), 1995 Constitution.

⁴⁴ Article 245 (c), 1995 Constitution.

⁴⁵ Cap 153, Laws of Uganda.

principal agency in Uganda for the management of the environment and is mandated to coordinate, monitor and supervise all activities in the field of the environment.⁴⁷

Under Section 6 (1) of the Act, the functions of NEMA are: to coordinate the implementation of Government policy and the decisions of the policy committee;⁴⁸ to ensure the integration of environmental concerns in overall national planning through coordination with the relevant Ministries, departments and agencies of the Government;⁴⁹ to liaise with the private sector, intergovernmental organizations, nongovernmental agencies and governmental agencies of other States on issues relating to the environment;⁵⁰ to propose environmental policies and strategies to the policy committee;⁵¹ to initiate legislative proposals, standards and guidelines on the environment in accordance with the Act;⁵² to review and approve environmental impact assessments and environmental impact statements submitted in accordance with the Act or any other law;⁵³ to promote public awareness through formal, non-formal and informal education about environmental issues;⁵⁴ to undertake such studies and submit such reports and recommendations with respect to the environment as the Government or the policy committee may consider necessary;⁵⁵ to ensure observance of proper safeguards in the planning and execution of all development projects, including those already in existence that have or are likely to have significant impact on the environment determined in accordance with Part V of the Act;⁵⁶ to undertake research and disseminate information about the environment;⁵⁷ to prepare and disseminate a state of the environment report once in every two years;⁵⁸ to mobilize, expedite and monitor resources for environmental management;⁵⁹ and to perform such other functions as the Government may assign

⁴⁶ Section 4, National Environment Act.

⁴⁷ Section 5, National Environment Act.

⁴⁸ Section 6(1)(a), National Environment Act.

⁴⁹ Section 6(1)(b), National Environment Act.

⁵⁰ Section 6(1)(c), National Environment Act.

⁵¹ Section 6(1)(d), National Environment Act.

⁵² Section 6(1)(e), National Environment Act.

⁵³ Section 6(1)(f), National Environment Act.

⁵⁴ Section 6(1)(g), National Environment Act.

⁵⁵ Section 6(1)(h), National Environment Act.

⁵⁶ Section 6(1)(i), National Environment Act.

⁵⁷ Section 6(1)(j), National Environment Act.

⁵⁸ Section 6(1)(k), National Environment Act.

⁵⁹ Section 6(1)(l), National Environment Act.

to the authority or as are incidental or conducive to the exercise by the authority of any or all of the functions provided for under the Act.⁶⁰

In terms of Section 6(2) of the Act, NEMA is entitled, in the performance of its functions under that Act, to delegate, by statutory instrument, any of its functions to a lead agency, a technical committee, the executive director or any other public officer.

In addition, under Section 6 (3) of the Act, in the exercise by the authority of its coordinating, monitoring and supervisory function in the field of the environment, a lead agency is not released from performing its duties as prescribed by law. To this end, according to Section 6 (4) of the Act, every lead agency⁶¹ charged with the management of any segment of the environment under any law must submit to the authority: within two months after the expiry of every two years, a report on its operation during that period;⁶² and such other reports as may be prescribed by the policy committee and at such times as may be so prescribed, on the state of that segment of the environment and the measures taken by the lead agency to maintain or improve the environment.⁶³

3.2.2. Provisions for Public Participation in Rule-making, Decision-Making and Adjudication under the NEA

The NEA contains a number of provisions which allow for, and in some instances require, the involvement of the public in rule-making, decision-making and adjudication.

In the first place, under Section 2 (1) of the Act, NEMA must ensure that certain principles of environment management, set out under the Act, are observed. One of these principles, under Section 2 (c)(b) is ‘to encourage the *maximum participation* by the people of Uganda in the *development* of policies, plans and processes for the management of the environment’.

⁶⁰ Section 6(1)(m), National Environment Act.

⁶¹In terms of Section 1 (gg) of the Act, the term “lead agency” means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment.

⁶² Section 6 (4)(a), National Environment Act.

⁶³ Section 6(4)(b), National Environment Act.

Further, as noted earlier, under Section 6 of the Act, one of the functions of NEMA is stated as being to promote public awareness through formal, non-formal and informal education about environmental issues.⁶⁴

Additional scope for participation is provided under Section 14 (1) of the Act, under which NEMA must, *in consultation* with the district council provide guidelines for the establishment of a committee on the environment for each district, in the Act referred to as a district environment committee.

Further, under Section 15 (2) (d) of the Act, one of the functions of District Environment Officers (appointed for each district) is to promote environmental awareness through public educational campaigns. Similarly, according to Section 16 (2)(b) of the Act, one of the functions of local environment committees is to carry out public environmental education campaigns.

Mechanisms for public participation are also provided in the context of environmental planning at the national and district levels. Under Section 17 (1) of the Act, NEMA is required to prepare a national environment action plan to be reviewed after every five years or such other lesser period as may be considered necessary by the authority. In terms of Section 17 (2) of the Act, this plan must be subject to approval by the Cabinet and after approval must be laid before Parliament;⁶⁵ and must be disseminated to the public.⁶⁶ District Environment Committees are similarly required, in consultation with NEMA, to prepare district environment action plan to be revised every three years or such other lesser period as may be considered necessary by the authority.⁶⁷ These plans to, must be subject to approval by the district council⁶⁸ and must also be disseminated to the public.⁶⁹

In terms of Section 19 (1) of the Act, a developer of a project described in the Third Schedule to the Act must submit a project brief to the lead agency, in the prescribed form and giving the prescribed information. Under Section 19 (8), NEMA is required to, in consultation with a lead agency, adopt guidelines with respect to environmental impact reviews, environmental impact evaluations and

⁶⁴ Section 6(1)(g), National Environment Act.

⁶⁵ Section 17(2)(f), National Environment Act.

⁶⁶ Section 17(2)(g), National Environment Act.

⁶⁷ Section 18 (1), National Environment Act.

⁶⁸ Section 18(2)(d), National Environment Act.

⁶⁹ Section 18(2)(e), National Environment Act.

environmental impact studies on, among other things, *the participation of the public*, especially those most affected by the project in the assessment.

In similar vein under Section 20 (1) of the Act, where a project has been determined under section 19(7) as requiring an environmental impact study, the developer must, after completing the study, make an environmental impact statement in the prescribed form and in the prescribed manner. In terms of Section 20 (5), this environmental impact statement must be a public document and may be inspected at any reasonable hour by any person.

Under Section 65 (1), NEMA must maintain a register of all pollution licences issued under the Act in accordance with guidelines issued by the committee. In terms of Section 65 (2), this register must be a public document and may be inspected at any reasonable hour by any person on the payment of a prescribed fee.

The Act also has a number of sections dedicated to information, education and public awareness in environmental regulation. Under Section 85 (1) of the Act, for instance, every person must have freedom of access to any information relating to the implementation of the Act submitted to the authority or to a lead agency. Any person desiring the information is required to apply to NEMA or a lead agency and may be granted access on payment of a prescribed fee.⁷⁰

In the same vein, under Section 86 (1) of the Act, NEMA must, among other things: disseminate information to public and private users;⁷¹ carry out public information and education campaigns in the field of environment;⁷² exchange information with other Ugandan, foreign, international and nongovernmental agencies;⁷³ advise the Government on existing information gaps and needs;⁷⁴ in consultation with the lead agencies, establish guidelines and principles for the gathering, processing and dissemination of environment information;⁷⁵ and liaise with the district environment committees and district environment officers regarding environmental information.⁷⁶ NEMA is also required to

⁷⁰ Section 85 (2), National Environment Act.

⁷¹ Section 86 (1)(d), National Environment Act.

⁷² Section 86 (1)(e), National Environment Act.

⁷³ Section 86 (1)(f), National Environment Act.

⁷⁴ Section 86 (1)(h), National Environment Act.

⁷⁵ Section 86 (1)(i), National Environment Act.

⁷⁶ Section 86 (1)(j), National Environment Act.

publish a state of the environment report every two years,⁷⁷ which must, in addition to other matters as may be prescribed, specify the main activities of the authority and the lead agencies regarding the protection of the environment.⁷⁸ NEMA is also empowered to publish such other publications as it considers necessary for public education on the environment and other environmental issues.⁷⁹

In addition, under Section 87 of the Act, NEMA must, in collaboration with the Minister responsible for education, take all measures necessary for the integration into the school curriculum of education on the environment.

Public participation, through the Parliament, is also provided for with respect to the domestication of international treaties and conventions on the environment. Under Section 106 (1) of the Act, where Uganda is a party to any convention or treaty concerning the environment, after the convention or treaty has been ratified under Article 123 of the Constitution where such ratification is required, the Minister may, by statutory order, with the approval of Parliament by resolution: set out the provisions of the convention or treaty;⁸⁰ give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of law in Uganda;⁸¹ amend any enactment other than the Constitution for the purpose of giving effect to the convention or the treaty;⁸² make such other provision as may be necessary for giving effect to the convention or treaty in Uganda or for enabling Uganda to perform its obligations or exercise its rights under the convention or treaty.⁸³

The above provisions for public consultation, information and participation notwithstanding, it bears noting that the most robust mechanisms established under the Act for consultation are in respect to the lead agencies rather than members of the public.

⁷⁷ Section 86 (2), National Environment Act.

⁷⁸ Section 86 (3), National Environment Act.

⁷⁹ Section 86 (4), National Environment Act.

⁸⁰ Section 106 (1)(a), National Environment Act.

⁸¹ Section 106 (1)(b), National Environment Act.

⁸² Section 106 (1)(c), National Environment Act.

⁸³ Section 106 (1)(d), National Environment Act.

For instance, under the Act, NEMA is required to consult with the relevant lead agency in the exercise of its powers to: adopt guidelines with respect to environmental impact reviews, environmental impact evaluations and environmental impact studies;⁸⁴ consider and deal with environmental impact statements;⁸⁵ carry out an environmental audit of all activities that are likely to have significant effect on the environment;⁸⁶ environmental monitoring;⁸⁷ establishing air quality⁸⁸ and water quality⁸⁹ standards as well as standards for – the discharge of effluent into water,⁹⁰ the control of noxious smells,⁹¹ control of noise and vibration pollution,⁹² subsonic vibrations,⁹³ soil quality,⁹⁴ minimization of radiation,⁹⁵ as well as a range of other standards relating to buildings and other structures,⁹⁶ industrial products,⁹⁷ materials used in industry, agriculture and for domestic uses,⁹⁸ solid waste disposal,⁹⁹ and such other matters and activities that may affect the environment.¹⁰⁰

NEMA is also required to consult with the appropriate lead agency in respect of: waiving any prescribed limits on the use of particular lakes and rivers¹⁰¹ and issuing guidelines for the management of the environment of lakes and rivers;¹⁰² taking measures to protect the banks of rivers and the shores of lakes in Uganda from human activities that might adversely affect the rivers and the lakes;¹⁰³ enforcing restrictions on the use of wetlands;¹⁰⁴ the general and sustainable management of wetlands in Uganda;¹⁰⁵ issuing guidelines and prescribing measures for the sustainable use of

⁸⁴ Section 19 (8), National Environment Act.

⁸⁵ Section 21 (1), National Environment Act.

⁸⁶ Section 22 (1), National Environment Act.

⁸⁷ Section 23 (1)(a) and (b), National Environment Act.

⁸⁸ Section 24, National Environment Act.

⁸⁹ Section 25, National Environment Act.

⁹⁰ Section 26, National Environment Act.

⁹¹ Section 27, National Environment Act.

⁹² Section 28, National Environment Act.

⁹³ Section 29, National Environment Act.

⁹⁴ Section 30, National Environment Act.

⁹⁵ Section 31, National Environment Act.

⁹⁶ Section 32(1)(a), National Environment Act.

⁹⁷ Section 32(1)(b), National Environment Act.

⁹⁸ Section 32(1)(c), National Environment Act.

⁹⁹ Section 32(1)(d), National Environment Act.

¹⁰⁰ Section 32(1)(e), National Environment Act.

¹⁰¹ Section 34 (2), National Environment Act.

¹⁰² Section 34 (4), National Environment Act.

¹⁰³ Section 35 (1), National Environment Act.

¹⁰⁴ Section 36 (2) and (3), National Environment Act.

¹⁰⁵ Section 37, National Environment Act.

hillsides, hilltops and mountainous areas;¹⁰⁶ conservation of biological resources *in situ*¹⁰⁷ and *ex situ*;¹⁰⁸ issuing guidelines and prescribing measures for the sustainable management and utilization of the genetic resources of Uganda for the benefit of the people of Uganda;¹⁰⁹ issuing guidelines and prescribing measures for the management of all forests in Uganda,¹¹⁰ including expressly excluding human activities in any forest area by declaring a forest area a specially protected forest;¹¹¹ promoting the use of renewable sources of energy,¹¹² including through promoting research in appropriate renewable sources of energy¹¹³ and creating incentives for the promotion of renewable sources of energy;¹¹⁴ issuing guidelines and prescribing measures for the sustainable management and utilization of rangelands;¹¹⁵ issuing guidelines and prescribing measures for land use planning at the local, district and national levels¹¹⁶ as well as the preparing the national land use plan;¹¹⁷ protecting natural heritage sites¹¹⁸ and the ozone layer;¹¹⁹ as well as management of dangerous materials and processes,¹²⁰ hazardous waste,¹²¹ toxic and hazardous chemicals and materials,¹²² and prohibition of discharge of hazardous substances, chemicals, oil or any mixture containing oil in any waters or any other segment of the environment.¹²³

In addition, as noted earlier, NEMA is obligated, in in consultation with the lead agencies, to establish guidelines and principles for the gathering, processing and dissemination of environment information.¹²⁴

¹⁰⁶ Section 40 (1), National Environment Act.

¹⁰⁷ Section 42, National Environment Act.

¹⁰⁸ Section 43, National Environment Act.

¹⁰⁹ Section 44 (1), National Environment Act.

¹¹⁰ Section 45 (1), National Environment Act.

¹¹¹ Section 45 (6), National Environment Act.

¹¹² Section 46 (1), National Environment Act.

¹¹³ Section 46 (1)(a), National Environment Act.

¹¹⁴ Section 46 (1)(b), National Environment Act.

¹¹⁵ Section 47 (1), National Environment Act.

¹¹⁶ Section 48 (1), National Environment Act.

¹¹⁷ Section 48 (2), National Environment Act.

¹¹⁸ Section 49, National Environment Act.

¹¹⁹ Section 50, National Environment Act.

¹²⁰ Section 51, National Environment Act.

¹²¹ Section 53, National Environment Act.

¹²² Section 55, National Environment Act.

¹²³ Section 56 (1), National Environment Act.

¹²⁴ Section 86 (1)(i), National Environment Act.

3.3 The National Forestry and Tree Planting Act

In addition to the foundational National Environment Act, in 2003, Parliament enacted the National Forestry and Tree Planting Act (NFTPA),¹²⁵ which establishes an extra framework for environmental regulation and management in regard to this particular sector.

3.3.1 General Provisions

The NFTPA creates the National Forestry Authority (NFA) which, like NEMA, is a body corporate with the power to sue and be sued in its own name.¹²⁶

Under Section 54 (1) of the Act, the functions of the NFA are to: to develop and manage all central forest reserves;¹²⁷ to identify and recommend to the Minister, areas for declaration as central forest reserves, and the amendment of those declarations;¹²⁸ to promote innovative approaches for local community participation in the management of central forest reserves;¹²⁹ to prepare and implement management plans for central forest reserves and to prepare reports on the state of central forest reserves and such other reports as the Minister may require;¹³⁰ to establish procedures for the sustainable utilization of Uganda's forest resources by and for the benefit of the people of Uganda;¹³¹ to co-operate and co-ordinate with the National Environment Management Authority and other lead agencies in the management of Uganda's forest resources;¹³² in conjunction with other regulatory authorities, to control and monitor industrial and mining developments in central forest reserves;¹³³ in consultation with other lead agencies, to develop, or control the development of tourist facilities in central forest reserves;¹³⁴ to enter into an agreement or other arrangement with any person, for the provision of forestry services, subject to such charges as may be agreed upon;¹³⁵ to carry out or commission research for the purposes of conservation, development and utilization

¹²⁵ Act No.8 of 2003.

¹²⁶ Section 52, National Forestry and Tree Planting Act.

¹²⁷ Section 54 (1)(a), National Forestry and Tree Planting Act.

¹²⁸ Section 54 (1)(b), National Forestry and Tree Planting Act.

¹²⁹ Section 54 (1)(c), National Forestry and Tree Planting Act.

¹³⁰ Section 54 (1)(d), National Forestry and Tree Planting Act.

¹³¹ Section 54 (1)(e), National Forestry and Tree Planting Act.

¹³² Section 54 (1)(f), National Forestry and Tree Planting Act.

¹³³ Section 54 (1)(g), National Forestry and Tree Planting Act.

¹³⁴ Section 54 (1)(h), National Forestry and Tree Planting Act.

¹³⁵ Section 54 (1)(i), National Forestry and Tree Planting Act.

of forests, and for the conservation of biological diversity and genetic resources;¹³⁶ as well as to ensure the training of forestry officers and other public officers in the development ,and sustainable management of forests.¹³⁷

In addition to these functions, in terms of Section 54 (2) of the Act, NFA is entitled to perform any of the following functions in accordance with a contract entered into for the purpose, and subject to such charges as may be agreed upon: inspect, monitor and co-ordinate local governments in the management of their respective local forest reserves, and produce reports on the state of local forest reserves as the Minister may require;¹³⁸ provide technical support and guidance to District Forest Officers in their delivery of forestry advisory services relating to community forests, private forests, the promotion of tree planting, growing and forestry awareness;¹³⁹ supervise and train local governments in the, implementation of the provisions of the Act relating to the planting, protection and conservation of trees and forests;¹⁴⁰ advise on innovative approaches for local community participation in the management of local forest reserves;¹⁴¹ advise on, and support the preparation of management plans for local forest reserves, private forests and other forests on private land;¹⁴² in conjunction with other lead agencies, monitor and guide the development of tourist facilities in local forest reserves, private forests and other forests on private land;¹⁴³ as well as to liaise with the National Environment Authority in the protection of Uganda’s forest resources, and the evaluation of environmental impact assessments undertaken in accordance with the Act.¹⁴⁴

Furthermore, the NFA must perform such other functions as may be conferred on it under the Act or by the Minister in writing.¹⁴⁵

¹³⁶ Section 54 (1)(j), National Forestry and Tree Planting Act.

¹³⁷ Section 54 (1)(k), National Forestry and Tree Planting Act.

¹³⁸ Section 54 (2)(a), National Forestry and Tree Planting Act.

¹³⁹ Section 54 (2)(b), National Forestry and Tree Planting Act.

¹⁴⁰ Section 54 (2)(c), National Forestry and Tree Planting Act.

¹⁴¹ Section 54 (2)(d), National Forestry and Tree Planting Act.

¹⁴² Section 54 (2)(e), National Forestry and Tree Planting Act.

¹⁴³ Section 54 (2)(f), National Forestry and Tree Planting Act.

¹⁴⁴ Section 54 (2)(g), National Forestry and Tree Planting Act.

¹⁴⁵ Section 54 (3), National Forestry and Tree Planting Act.

3.3.2. Provisions for Public Participation in Rule-making, Decision-Making and Adjudication under the NFTP A

There are some avenues for public participation in rule-making, decision-making and adjudication under the NFTP A.

In the first place, under Section 2 of the NFTP A, the purposes of the Act are stated as being, among other things: to encourage public participation in the management and conservation of forests and trees¹⁴⁶ and to facilitate greater public awareness of the cultural, economic and social benefits of conserving and increasing sustainable forest cover.¹⁴⁷

Further, under Section 6 (1) of the Act, the Minister may only declare an area to be a central forest reserve after consultation with the local council and the local community in whose area the proposed forest reserve is to be located;¹⁴⁸ and with the approval of Parliament signified by its resolution.¹⁴⁹ In terms of Section 7 (1) of the Act, the Minister must, before making an order under section 6, give simultaneous notice of the proposed declaration in the Gazette, in an appropriate print media, and in any other media that is likely to draw the matter to the attention of all interested persons;¹⁵⁰ and consult with the local community through public meetings and other means that will offer the local community an effective opportunity to express their views concerning the declaration of the reserve.¹⁵¹ In addition, the notice issued must, among other things, specifically invite written comments and representations on the proposed declaration to be made within ninety days after the date of publication of the notice in the Gazette.¹⁵² This elaborate procedure for declaration of a central forest reserve must be followed before an order declaring such a reserve is amended.¹⁵³

Similarly, under Section 9 (1) of the Act, the Minister is only entitled to declare an area to be a local forest reserve at the request of the local council in whose area the proposed reserve is to be

¹⁴⁶ Section 2 (e), National Forestry and Tree Planting Act.

¹⁴⁷ Section 2 (f), National Forestry and Tree Planting Act.

¹⁴⁸ Section 6 (1)(a), National Forestry and Tree Planting Act.

¹⁴⁹ Section 6 (1)(b), National Forestry and Tree Planting Act.

¹⁵⁰ Section 7 (1)(a), National Forestry and Tree Planting Act.

¹⁵¹ Section 7 (1)(b), National Forestry and Tree Planting Act.

¹⁵² Section 7 (2)(c), National Forestry and Tree Planting Act.

¹⁵³ Section 8 (1), National Forestry and Tree Planting Act. In addition, under Section 8 (5), an amendment to an order declaring a central forest reserve must be approved by Parliament, signified by its resolution.

situated¹⁵⁴ and with the approval of Parliament signified by its resolution.¹⁵⁵ As is the case with the declaration of a central forest reserve, under Section 10 (1) of the NFTP, the Minister must, before making an order under section 9, give simultaneous notice of the proposed declaration in the Gazette, in an appropriate print media, and in any other media that is likely to draw the matter to the attention of all interested persons;¹⁵⁶ and consult with the local community through public meetings and other means that will offer the local community an effective opportunity to express their views concerning the declaration of the forest reserve.¹⁵⁷ In addition, the notice must, among other things, expressly invite written comments and representations on the proposed declaration to be made within ninety days after the date of publication of the notice in the Gazette.¹⁵⁸ As with the case with the amendment of an order declaring a central forest reserve, the amendment of an order declaring a local forest reserve must follow the same procedure laid down for its original declaration.¹⁵⁹

Public participation is also required prior to the declaration of a community forest. In terms of Section 17 of the Act, the Minister may only declare an area to be a community forest after consultation with the District Land Board and the local community;¹⁶⁰ and upon approval by resolution of the District Council.¹⁶¹ The Minister is required, in every order declaring a community forest under the Act, to specify a responsible body for the community forest, and with effect from the commencement of the order or from a date specified in the order, the management, maintenance and control of the community forest is the responsibility of that body.¹⁶² Further, the order declaring a community forest must be published by posting outside the office or other meeting place of the local government, a notice specifying the situation, duly surveyed extent and limits of the community forest.¹⁶³ An area declared for use as a community forest under the Act may

¹⁵⁴ Section 9 (1)(a), National Forestry and Tree Planting Act.

¹⁵⁵ Section 9 (1)(b), National Forestry and Tree Planting Act.

¹⁵⁶ Section 10 (1)(a), National Forestry and Tree Planting Act.

¹⁵⁷ Section 10 (1)(b), National Forestry and Tree Planting Act.

¹⁵⁸ Section 10 (2)(c), National Forestry and Tree Planting Act.

¹⁵⁹ Section 11 (1), National Forestry and Tree Planting Act. In terms of Section 11 (5) of the Act, an amendment to an order declaring a local forest reserve must be approved by Parliament, signified by its resolution.

¹⁶⁰ Section 17 (1)(a), National Forestry and Tree Planting Act.

¹⁶¹ Section 17 (1)(b), National Forestry and Tree Planting Act.

¹⁶² Section 17 (2), National Forestry and Tree Planting Act.

¹⁶³ Section 17 (3), National Forestry and Tree Planting Act.

not be used for any other purposes without the approval by resolution of the District Council and written consent of the Minister.¹⁶⁴

In addition, under Section 26 (1) of the Act, the Minister, the Authority or a local government may provide technical services to local communities, organizations, cultural or traditional institutions and other persons involved in the development of community forests and private forests and forestry activities in general, and may charge fees for those services. Such assistance may include the collection and dissemination of information, the provision of technical guidance and promotion of public awareness about forestry and the conservation and utilization of forestry resources.¹⁶⁵

In terms of Section 28 (1) of the NFTP, a responsible body must prepare a management plan and, in the case of a forest reserve or community forest, the plan must be prepared in consultation with the local community.

Public participation is also provided for with regard to preparation of the National Forest Plan. Under Section 49 (1) of the NFTP, the Minister must cause to be prepared a National Forest Plan, which must be a public document and which must be the framework for the implementation of the forestry policy and programmes by Government and stakeholders in the forest sector. In terms of Section 49 (2), in preparing this Plan, the views of persons and organizations involved in forestry in the public and private sector must be sought and taken into account, and in particular the views of persons whose livelihoods are dependent on the forest sector. The Minister must submit the National Forest Plan to Cabinet for approval.¹⁶⁶ The Plan must, after receiving Cabinet approval, be published in the Gazette.¹⁶⁷ It is noteworthy that there is no requirement for parliamentary consultation or approval in preparation of the National Forestry Plan, which is a serious gap in the law.

In addition, under Section 63 (1) of the Act, NFA is only permitted to establish Forestry Committees after consultation with the respective local governments.

¹⁶⁴ Section 17 (4), National Forestry and Tree Planting Act.

¹⁶⁵ Section 26 (2)(d), National Forestry and Tree Planting Act.

¹⁶⁶ Section 49 (3), National Forestry and Tree Planting Act.

¹⁶⁷ Section 49 (4), National Forestry and Tree Planting Act.

3.4 The Uganda Wildlife Act

The Uganda Wildlife Act¹⁶⁸ constitutes an additional layer of regulation in the environment sector which must be read together with the National Environment Act.

3.4.1 General Provisions

The Uganda Wildlife Act establishes the Uganda Wildlife Authority (UWA), as a body corporate with the power to sue and be sued in its own name.¹⁶⁹

In terms of Section 5 of the Act, the functions of the UWA are: to ensure the sustainable management of wildlife conservation areas;¹⁷⁰ to develop and recommend policies on wildlife management to the Government;¹⁷¹ to coordinate the implementation of Government policies in the field of wildlife management;¹⁷² to identify and recommend areas for declaration as wildlife conservation areas and for the revocation of such declaration;¹⁷³ to develop, implement and monitor collaborative arrangements for the management of wildlife;¹⁷⁴ to establish management plans for wildlife conservation areas and for wildlife populations outside wildlife conservation areas;¹⁷⁵ to establish policies and procedures for the sustainable utilization of wildlife by and for the benefit of the communities living in proximity to wildlife;¹⁷⁶ to control and monitor industrial and mining developments in wildlife protected areas;¹⁷⁷ to monitor and control problem animals and provide technical advice on the control of vermin;¹⁷⁸ to control internal and external trade in specimens of wildlife;¹⁷⁹ in consultation with other lead agencies, to control, develop or license the development of tourist facilities in wildlife protected areas;¹⁸⁰ to consider reports from district wildlife committees

¹⁶⁸ Cap 200, Laws of Uganda.

¹⁶⁹ Section 4, Uganda Wildlife Act.

¹⁷⁰ Section 5 (a), Uganda Wildlife Act.

¹⁷¹ Section 5 (b), Uganda Wildlife Act.

¹⁷² Section 5 (c), Uganda Wildlife Act.

¹⁷³ Section 5 (d), Uganda Wildlife Act.

¹⁷⁴ Section 5 (e), Uganda Wildlife Act.

¹⁷⁵ Section 5 (f), Uganda Wildlife Act.

¹⁷⁶ Section 5 (g), Uganda Wildlife Act.

¹⁷⁷ Section 5 (h), Uganda Wildlife Act.

¹⁷⁸ Section 5 (i), Uganda Wildlife Act.

¹⁷⁹ Section 5 (j), Uganda Wildlife Act.

¹⁸⁰ Section 5 (k), Uganda Wildlife Act.

and make necessary comments and decisions;¹⁸¹ to promote the conservation of biological diversity *ex situ* and to contribute to the establishment of standards and regulations for that purpose;¹⁸² to promote scientific research and knowledge of wildlife and wildlife conservation areas;¹⁸³ to disseminate information and promote public education and awareness of wildlife conservation and management;¹⁸⁴ to prepare an annual report on the state of wildlife and such other reports as may be prescribed;¹⁸⁵ to encourage training in wildlife management;¹⁸⁶ to charge fees for such services as it provides and for the licences, rights and other permission that it may grant;¹⁸⁷ as well as to perform such other functions as are specifically provided for in the Act or as may be delegated to it by the Government or by a local government.¹⁸⁸

3.4.2. Provisions for Public Participation in Rule-making, Decision-Making and Adjudication under the Uganda Wildlife Act

The Uganda Wildlife Act contains a number of provisions which allow for public participation in rule-making, decision-making and adjudication.

In the first place, as noted above, one of the functions of the UWA is stated as being to disseminate information and promote public education and awareness of wildlife conservation and management.¹⁸⁹ In the same vein, in terms of Section 8 (2) (h) of the Act, the UWA board is mandated, among other things, to encourage education, training and public awareness of wildlife and public participation in management.

Under Section 13 (1) of the Act, the executive director of UWA is required, with the approval of the board, as soon as practicable after the establishment of a wildlife protected area, to prepare or cause to be prepared a comprehensive management plan for each wildlife protected area. In terms of Section 13 (3), the executive director must publish in a daily newspaper and in any other appropriate

¹⁸¹ Section 5 (l), Uganda Wildlife Act.

¹⁸² Section 5 (m), Uganda Wildlife Act.

¹⁸³ Section 5 (n), Uganda Wildlife Act.

¹⁸⁴ Section 5 (o), Uganda Wildlife Act.

¹⁸⁵ Section 5 (p), Uganda Wildlife Act.

¹⁸⁶ Section 5 (q), Uganda Wildlife Act.

¹⁸⁷ Section 5 (r), Uganda Wildlife Act.

¹⁸⁸ Section 5 (s), Uganda Wildlife Act.

¹⁸⁹ Section 5 (o), Uganda Wildlife Act.

forms of media a notice of his or her intention to prepare a management plan and invite suggestions from all interested parties of what matters should be in the plan. In addition, the executive director must request the district council within whose area the wildlife protected area falls in whole or in part to forward to him or her within a reasonable time, which time must not be less than twenty-one days, any proposals for inclusion in the plan.¹⁹⁰ Furthermore, under Section 13 (5), in the performance of his or her duties under that section, the executive director is required to hold public meetings and attend meetings of the district council referred to in that section, so as to explain the proposals in the plan and to consider suggestions put forward by those attending the meeting. Under Section 13 (6), the executive director must take into account any proposals or suggestions received under that section, and must prepare the draft management plan on this basis.

In addition, under Section 17 (1) of the Act, the Minister may only declare an area of land or water to be a wildlife conservation area after consultation with the local government council in whose area a proposed wildlife conservation area falls and with the approval of Parliament signified by its resolution.

A unique mechanism for access to, as well as participation in, adjudication in the wildlife sector is represented by the wildlife appeal tribunal established under the Act. Under Section 86 (1) of the Act, an applicant for a grant of a wildlife use right who has been refused a grant or who is aggrieved by all or any conditions subject to which he or she has been granted a wildlife use right may appeal to the wildlife appeal tribunal against that refusal or those conditions. In terms of Section 86 (2), a right holder may, if he or she is aggrieved by a reconsidered decision, appeal to the tribunal against: a compliance order or any actions which he or she is required to take by a compliance order¹⁹¹ as well as a notice of revocation to which section 39(2) of the Act applies.¹⁹² A right holder is also entitled to the tribunal against a refusal to award or an award of compensation made by the authority under section 39(5)(b) of the Act.¹⁹³ In addition, under Section 86 (4), a transferor and a transferee may appeal to the tribunal against a refusal of the authority to grant a permitted transfer and against any of the terms and conditions subject to which the authority has granted a permitted transfer. Furthermore, an applicant for any licence or permit under the Act may appeal to the tribunal against

¹⁹⁰ Section 13 (4), Uganda Wildlife Act.

¹⁹¹ Section 86 (2)(a), Uganda Wildlife Act.

¹⁹² Section 86 (2)(a), Uganda Wildlife Act.

¹⁹³ Section 86 (3), Uganda Wildlife Act.

a refusal by the board to grant a licence or against any of the terms and conditions subject to which a licence has been granted.¹⁹⁴ In the same vein, a licensee or permit holder may appeal to the tribunal against any decision of the board or the executive director to revoke or suspend his or her licence.¹⁹⁵ Access to the tribunal is also extended, under Section 86 (7) of the Act, to any person: who has been refused a licence, permit or other grant of a permission to undertake any activity;¹⁹⁶ who objects to any condition subject to which the licence, permit or other grant of a permission to undertake any activity has been granted;¹⁹⁷ or whose licence, permit or other grant of a permission to undertake some activity has been revoked, suspended or varied to his or her disadvantage, by the Minister, the executive director or other staff of the authority in the exercise of any powers conferred upon him or her or it by the Act or regulations made under the Act.¹⁹⁸ Furthermore, in terms of Section 86 (8), where any regulations made under the Act empower or provide for the Minister, the executive director or the authority to grant any licence, permit or other permission to undertake any activity, an appeal lies to the tribunal against any decision to refuse, revoke, suspend or disadvantageously vary or against any conditions subject to which that licence, permit or other permission to undertake any activity has been granted.

Under Section 87 (1) of the Act, the Chief Justice must appoint up to seven persons to constitute the wildlife appeal tribunal. In terms of Section 87 (2), these persons must consist of: a person who has been or is qualified to be appointed to be a judge of the High Court who must be chairperson of the tribunal;¹⁹⁹ an advocate of not less than ten years' standing and of proven integrity, who must be appointed as deputy chairperson of the tribunal;²⁰⁰ as well as persons with knowledge of or experience in the management of wildlife or the operation and management of activities connected with wildlife, of which at least one person must be from the private sector.²⁰¹ A member of the tribunal must be appointed to serve for three years and must be eligible to be re-appointed for one further term of three years.²⁰²

¹⁹⁴ Section 86 (5), Uganda Wildlife Act.

¹⁹⁵ Section 86 (6), Uganda Wildlife Act.

¹⁹⁶ Section 86 (7)(a), Uganda Wildlife Act.

¹⁹⁷ Section 86 (7)(b), Uganda Wildlife Act.

¹⁹⁸ Section 86 (7)(c), Uganda Wildlife Act.

¹⁹⁹ Section 87 (2)(a), Uganda Wildlife Act.

²⁰⁰ Section 87 (2)(b), Uganda Wildlife Act.

²⁰¹ Section 87 (2)(c), Uganda Wildlife Act.

²⁰² Section 87 (3), Uganda Wildlife Act.

Under Section 88 (3) of the Act, any person wishing to appeal against a decision of the authority in respect of which an appeal may be made, must, within sixty days of that decision being made, submit a notice of appeal in the prescribed form, containing the prescribed information to the registrar. The tribunal is obliged, in consultation with the Chief Justice, to determine its own procedures for the hearing and determining an appeal and must at all times be guided by the 'highest and best principles of natural justice'.²⁰³ The parties to an appeal may appear in person or may be represented by persons of their choice.²⁰⁴ The Chief Justice is entitled, by regulations, to make further provision for procedures in connection with appeals to the tribunal.²⁰⁵ An appeal lies from a decision of the tribunal to the High Court, which must, in dealing with the appeal, hear the matter as if it were an appeal on a civil matter.²⁰⁶

The importance of public participation is also reflected in the provisions of Section 91 (1) of the Act which empowers the board to make regulations for carrying into effect the provisions of the Act, which regulations may, among other things, provide for the furtherance of public knowledge concerning the management of wildlife by such means as may be considered appropriate.²⁰⁷

²⁰³ Section 88 (4), Uganda Wildlife Act.

²⁰⁴ Section 88 (5), Uganda Wildlife Act.

²⁰⁵ Section 88 (6), Uganda Wildlife Act.

²⁰⁶ Section 88 (7), Uganda Wildlife Act.

²⁰⁷ Section 91 (1)(e), Uganda Wildlife Act.

4.0 ACTUAL EXERCISE OF ADMINISTRATIVE POWER IN ENVIRONMENTAL REGULATION: A DISCUSSION OF FINDINGS

4.1 Introduction

To assess the extent to which the broad framework for public participation in the exercise of administrative power actually works in practice, field research was carried out in four selected districts in Uganda, that is to say: Kampala, Jinja, Hoima and Nwoya. Interviews were conducted with several respondents; most notably district environmental officers, as well as NEMA, NFA and UWA officials. There were also extensive discussions with various other agencies and persons in these districts.

Kampala is the capital city of Uganda, and is the country's main administrative, commercial and political centre. The district is divided into five (5) administrative divisions, that is to say: Central Division, Kawempe Division, Nakawa Division, Makindye Division and Lubaga Division. Kampala was a natural choice given its central location, political and administrative importance as well as its cosmopolitan character. The main administrative agencies studied also have their headquarters in Kampala. Field research in Kampala was mainly conducted in November 2015.

Jinja District is located in the Southeastern part of Uganda. It is a small district found east of the Nile River and along the Northern shores of Lake Victoria. Jinja District has an area of 767.7 sq. Km of which 701.9 sq. km is land and the rest (65.8 Sq. km) is covered by water bodies. The district is subdivided into 3 counties namely, Butembe, Kagoma and Jinja Municipality. There are 11 Sub-Counties; 46 Parishes and 381 villages. Jinja Municipality has three sub-counties and 55 villages. Jinja District is bordered by Kamuli District to the North, Luuka District to the East, Mayuge District to the Southeast, Buvuma District to the South, Buikwe District to the West and Kayunga District to the Northwest. The district headquarters at Buwenge are located 96 kilometres (60 mi), by road, East of Kampala, Uganda's capital and largest city.²⁰⁸ In 2012, the population of Jinja District was estimated at approximately 501,300²⁰⁹ and the primary activity is agriculture. Jinja was picked for this research because it's environmentally sensitive since it has, among others, the source of the Nile

²⁰⁸<http://jinja.go.ug/about-us/history-location-size/>

²⁰⁹ <http://www.citypopulation.de/php/uganda-admin.php?adm2id=008>

River and we anticipated potential regulatory activities that would provide us with the basis of analysis. Field research in Jinja was mainly conducted in July 2014.

Hoima District is located in Western Uganda. It is bordered by Buliisa District to the North, Masindi District to the Northeast, Kyankwanzi District in the East, Kibaale District to the South, Ntoroko District to the Southwest and the Democratic Republic of Congo across Lake Albert to the West. The district Capital is Hoima, located approximately 230 kilometres (140 mi), by road, Northwest of Kampala.²¹⁰ In 2012, the mid-year district population was estimated at 548,800.²¹¹ Agriculture with emphasis on food crops is the backbone of the district economy. Fishing on Lake Albert likewise employs several hundred people. The recent discovery of petroleum in the district is increasingly attracting people from the district in the many activities that the industry entails. Field research in Hoima was mainly conducted in August 2014.

Nwoya District is located in Northern Uganda. It is bordered by Amuru District to the North, Gulu District to the Northeast, Oyam District to the East, Kiryandongo District to the Southeast, Masindi District to the South, Nebbi District to the West and Buliisa District to the Southwest. Nwoya was carved out of Amuru District in 2010 and forms part of the Acholi sub-region. As of 2014, the population of the district was estimated at 133,506.²¹² Traditionally, the main economic activities in the district have been subsistence agriculture and livestock husbandry. Since 2013, however, with the discovery of crude oil in the district, greater attention and activity around projected commercial extraction has increased. Field research in Nwoya was mainly conducted in October 2015.

4.2 Participation in Rule-making

As **Table 1** reveals, a majority of the respondents (67%) had not taken part in rule-making process. Moreover, as **Table 2** demonstrates, even for the limited number of respondents who had in fact ever participated in rule-making, most of them did not feel that their views had been sufficiently taken into account on those occasions.

The low figures with regard to public participation in rule-making may be due to the fact that, from the analysis of the legal framework in Section 3 above, a great degree of consultation with respect to

²¹⁰ 'Hoima' by the Directorate of Water Development, Ministry of Water & Environment, 2010

²¹¹ <http://www.citypopulation.de/php/uganda-admin.php?adm2id=008>

²¹² <http://www.citypopulation.de/php/uganda-admin.php?adm2id=110>

rule-making occurs either at district and local council levels. As such consultation appears to be carried out mainly through representatives rather than directly. Another explanation for this might be due to the fact that the limited provisions for direct consultation with the public usually take the form of Gazette notices or notification through print media – neither of which might be readily accessible to ordinary citizens.

It also appears that that limited scope for public involvement in rule-making has not been felt by the citizens to have had an impact on the outcome of those processes. This might be due to the emphasis on ‘horizontal consultation’ (particularly under the National Environment Act), where that consultation mainly occurs at inter-agency level, rather than vertical consultation, aimed at seriously ascertaining the views of affected communities and giving effect to them.

It is perhaps not surprising therefore that, as **Table 3** shows, a large majority (84%) of the respondents expressed dissatisfaction with the processes for rule-making as they had experienced them.

Table 1: Rule-Making Processes Participation

| | | Gender of Respondent | | Total |
|---|-----|----------------------|-------------|---------------|
| | | Male | Female | |
| Ever Participated in Rule Making Processes? | Yes | 15 15.0% | 18 18.0% | 33 33.0% |
| | No | 31 31.0% | 36 36.0% | 67 67.0% |
| Total | | 46 46.0% | 54 54.0% | 100 100.0% |

Table 2: Views taken into Account

| | | Gender of Respondent | | Total |
|---------------------------|-----|----------------------|-------------|--------------|
| | | Male | Female | |
| Views taken into Account? | Yes | 4 12.1% | 7 21.2% | 11 33.3% |
| | No | 11 33.3% | 11 33.3% | 22 66.7% |
| Total | | 15 45.5% | 18 54.5% | 33 100.0% |

Table 3: Rule-Making Processes Satisfaction

| | | Gender of Respondent | | Total |
|-------------------------------------|-----|----------------------|-------------|---------------|
| | | Male | Female | |
| Rule Making Processes Satisfactory? | Yes | 7 7.0% | 9 9.0% | 16 16.0% |
| | No | 39 39.0% | 45 45.0% | 84 84.0% |
| Total | | 46 46.0% | 54 54.0% | 100 100.0% |

4.3 Participation in Decision-making

A similar trend is evident with regard to participation by citizens in decision-making processes. As **Table 4** shows, a majority of the respondents surveyed (75%) had not been included in any decision-making processes by the relevant administrative agencies. This is consistent with the survey, in Section 3 above, which reveals that the scope for participation by citizens in decision-making is substantially less than that available for participation in rule-making by administrative agencies. In addition, that room for participation in decision-making that does exist, mostly takes the form of representative decision-making (through district and local councils) rather than through direct citizen engagement.

In addition, as **Table 5** reveals, a majority (56%) of those who in fact participated in some form of decision-making did not feel that their participation had had an appreciable impact on the outcome of the final decision.

As was the case with rule-making, as **Table 6** shows, a great majority of the respondents (83%) expressed dissatisfaction with the decision

Table 4: Decision-Making Processes Participation

| | | Gender of Respondent | | Total |
|---|-----|----------------------|-------------|---------------|
| | | Male | Female | |
| Ever Participated in Decision Making Processes? | Yes | 12 12.0% | 13 13.0% | 25 25.0% |
| | No | 34 34.0% | 41 41.0% | 75 75.0% |
| Total | | 46 46.0% | 54 54.0% | 100 100.0% |

Table 5: Views Shaping Final Outcomes

| | | Gender of Respondent | | Total |
|--|-----|----------------------|-------------|--------------|
| | | Male | Female | |
| You Think Views Shaped Final Outcomes? | Yes | 6 24.0% | 5 20.0% | 11 44.0% |
| | No | 6 24.0% | 8 32.0% | 14 56.0% |
| Total | | 12 48.0% | 13 52.0% | 25 100.0% |

Table 6: Satisfaction in the Decision-Making Processes

| | | Gender of Respondent | | Total |
|---|-----|----------------------|-------------|---------------|
| | | Male | Female | |
| Are Decision Making Processes Satisfactory? | Yes | 7 7.0% | 10 10.0% | 17 17.0% |
| | No | 39 39.0% | 44 44.0% | 83 83.0% |
| Total | | 46 46.0% | 54 54.0% | 100 100.0% |

4.4 Participation in Adjudication

As **Table 7** shows, a large majority of the respondents surveyed (86%) had never participated in the adjudication arm of administrative power as exercised in the environment sector. It appears that this is the least democratic and least participatory aspect of the exercise of administrative power, a finding which is consistent with the analysis in Section 3 (above).

As with participants in rule-making and decision-making, a majority (64%) of those who had taken part in adjudication processes did not feel that their views had had a substantial impact on the final outcomes of those processes, as **Table 8** shows.

Finally, again as with the rule-making and decision-making processes, most respondents (86%) – as **Table 9** shows – expressed dissatisfaction with adjudication processes.

Table 7: Participation in Adjudication Processes

| | | Gender of Respondent | | Total |
|--|-----|----------------------|-------------|---------------|
| | | Male | Female | |
| Ever Participated in Adjudication Processes? | Yes | 8 8.0% | 6 6.0% | 14 14.0% |
| | No | 38 38.0% | 48 48.0% | 86 86.0% |
| Total | | 46 46.0% | 54 54.0% | 100 100.0% |

Table 8: Views Shaping Final Outcomes

| | | Gender of Respondent | | Total |
|------------------------------|-----|----------------------|------------|--------------|
| | | Male | Female | |
| Views Shaped Final Outcomes? | Yes | 3 21.4% | 2 14.3% | 5 35.7% |
| | No | 5 35.7% | 4 28.6% | 9 64.3% |
| Total | | 8 57.1% | 6 42.9% | 14 100.0% |

Table 9: Adjudication Processes Satisfaction

| | | Gender of Respondent | | Total |
|--|-----|----------------------|-------------|--------------|
| | | Male | Female | |
| Are Adjudication Processes Satisfactory? | Yes | 9 9.1% | 4 4.0% | 13 13.1% |
| | No | 37 37.4% | 49 49.5% | 86 86.9% |
| Total | | 46 46.5% | 53 53.5% | 99 100.0% |

4.5 General Findings and Observations

A general trend that emerges from the findings above is that there is insufficient participation by citizens in rule-making, decision-making and adjudication in the environmental sector.

The analysis of the legal framework conducted in Section 3 (above) revealed that greater emphasis has been placed, under the principal laws, on inter-agency consultation rather than robust citizen engagement. However, even under the limited framework for citizen participation, particularly through structures of the local government system, it is evident that the principal agency – NEMA – exercises inordinate influence and control. Indeed, a refrain that came through interviews with environmental officers at the Districts was that consultation rarely happened, with most rules being received from the centre (NEMA) and applied at the District-level. This was also the general response received from local government environment officers who were surveyed. There is thus little direct or effective citizen participation which would have otherwise enhanced the quality of decisions by improving the information base of rules, thereby increasing the likelihood of successful implementation and providing important feedback on the rules' effects in practice.²¹³

²¹³As Kimani has noted, "... 'participation' is premised on a concern that citizens and non-governmental actors should obtain greater control and power over issues of concern to them." See Nicholas N. Kimani, 'Participatory Aspirations of Environmental Governance in East Africa', *6/2 Law, Environment and Development Journal* (2010), p. 200. He points out that the rationale for citizen inclusion is usually said to be the idea that an active citizenry is to be preferred over an inactive one. Ibid, citing R. Irvin and J. Stansbury, 'Citizen Participation in Decision-making: Is It Worth the Effort?', *64(1) Public Administration Review* 55, 61-62 (2004).

Another critical issue that emerged from the field work undertaken was the insufficient facilitation of administrative agencies in the environmental law sector. In Hoima, for instance, it was found that administrative agencies were forced to rely on private actors (including in some instances industry players) for transport and other facilitation in the conduct of their regulatory mandate. This has serious implications for the fair and unbiased application of rules and further demonstrates the complexities attendant in the notion of 'power' (whether administrative or otherwise).

5.0 CONCLUSIONS

It is evident, both from an analysis of the relevant laws governing the exercise of administrative power in environmental regulation in Uganda, as well as from a survey of the actual experiences of agencies, citizens and communities, that there has been an emphasis on inter-agency collaboration and consultation at the expense of citizen engagement and participation.

Even where citizens provisions have been made within the law for citizen participation, in fact this does not occur as often as envisaged and, in any case, it is evident from the study that even where this participation does occur, citizens do not get a sense that their views have been taken into account whether in terms of rule-making, decision-making or adjudication. The result is that great majority of the citizens feel satisfied with the current processes of rule-making, decision-making and adjudication in the environment sector in Uganda, which was the focus of this study.

Moreover, even the current emphasis on inter-agency collaboration under the overall coordination of NEMA, combined with linkages to local government structures, does not appear to be working as envisaged within the law, with NEMA appearing to exercise greater authority than is apparent within the law – especially in its interaction with local government structures.

This situation is compounded by a situation of under-funding of responsible agencies, including NEMA, which has significant implications for the capacity of these bodies to duly exercise that legitimate power which they have under the law. This is especially significant in the oil-rich districts, such as Hoima and Nwoya, where it appears that important private actors, out of necessity in some cases have to fund these public bodies in order for them to execute their mandates under the law. This evidently skews the power-dynamics in question, and by extension further imperils the agency of the citizens and local communities in their individual and collective interactions with the regulators. This is an important and developing phenomenon which requires further and more in-depth study and analysis.

Overall, the central issue for the exercise of administrative power in the environment sector is as to how to re-center the citizen in this process, who has somehow been lost in the web of inter-agency collaboration and coordination, both under the legal framework but also in practice. It is this central and immediate question that requires law reform, institutional reform and further conscientization both on the part of the relevant administrative agencies, but also on the part of the citizens who are so evidently disaffected by the current framework.