

WORKING PAPER SERIES

# ENVIRONMENTAL GOVERNANCE IN AFRICA

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**DECENTRALIZATION,  
POLITICS AND ENVIRONMENT  
IN UGANDA**

by

Nyangabyaki Bazaara  
January 2003



**WORLD RESOURCES INSTITUTE**

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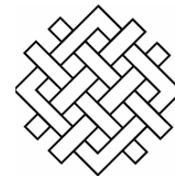
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WORKING PAPERS: WP #7**

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## ABSTRACT

The devolution of decision-making powers over natural resources to publicly accountable local authorities is frequently advocated as a means of achieving social development and enhancing environmental management. The experience of Uganda's current decentralization reforms, however, suggests that the extent to which such benefits occur depends on the character of the decentralization. Uganda's decentralization is renowned internationally for its local origins, participatory character and political commitment. However, an analysis of the reforms from an environmental perspective indicates three major problem areas. Firstly, there has not been an effective or consistent devolution of powers over natural resource management. In the case of forestry, for example, powers have been decentralized and re-centralized several times since the reforms began in 1993. The reason for this is that decentralization has been used primarily to resolve the government's financial and legitimacy problems, rather than as a means of achieving either public participation *per se* or improved environmental management. Secondly, local governments have failed to exercise the limited powers they do have, since control over the necessary financial and human resources have remained centralized. Case studies of three districts—Mukono, Mbale and Masind—reveal that they have only been able to exercise such powers when donor assistance has been available. Thirdly, when local governments have attempted to influence environmental matters, the social and environmental outcomes have not always been positive, due to conflicts of interest among the actors involved in natural resource utilization at the local level. The study suggests that there is a need for the central government to devolve effective environmental powers to local governments, for local governments to increase their revenue raising capacity in order to achieve greater financial autonomy, and for the introduction of checks and balances to prevent the misuse of powers to achieve personal gain.

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## ACRONYMS

<b>DC</b>	District Council
<b>MPWUA</b>	Masindi Pit-sawyers and Wood Users' Association
<b>NEMA</b>	National Environment Management Authority
<b>NRM</b>	National Resistance Movement
<b>RoU</b>	Republic of Uganda
<b>UWA</b>	Uganda Wildlife Authority

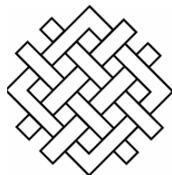
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This working paper is part of a set of papers in the Environmental Governance in Africa Series, and a product of WRI’s “Accountability, Decentralization and the Environment” policy research initiative (see “About the Series” at the end of this publication). This collaborative project, directed by Jesse C. Ribot, carried out comparative research in Mali, Cameroon, Uganda, Zimbabwe and South Africa. The initiative was guided by an international advisory group: Cheibane Coulibaly, Olivier Dubois, Cyprian Fisiy, Gerti Hesselning, Mahmood Mamdani, James Manor, Peter Geschiere, and Pauline Peters. The research was conducted by: Nyangabyaki Bazaara, Uganda; Thierno Diallo, Mali; Patrice Etoungou, Cameroon; Aaron de Grassi, Ghana; Bréhima Kassibo, Mali; Juliet Kanyesigye, Uganda; Naffet Keita, Mali; Patrice Bigombe Logo, Cameroon; Everisto Mapedza, Zimbabwe; Alois Mondondo, Zimbabwe; Frank Emmanuel Muhereza, Uganda; Agrippinah Namara, Uganda; Xavier Nsabagasani, Uganda; Lungisile Ntsebeza, South Africa; René Oyono, Cameroon. The initiative was generously funded by the Africa Bureau and the Mali and Uganda Missions of the U.S. Agency for International Development; the Dutch Government; and the Rockefeller Foundation.

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## INTRODUCTION

The focus of this paper is decision-making powers over natural resources that are being devolved to elected local governments in Uganda. Theorists claim that the devolution of decision-making powers over natural resources to locally accountable representative authorities is likely to improve social and environmental outcomes (Ribot 1999; Bangura 1999). This devolution, it is held, increases broad-based participation, which, in practice, can enhance the ability of local governments to identify and respond to local needs, improve access to information and hence accountability, increase economic and managerial efficiency, and reduce local inequalities (Ribot 2002; Banana, et al. 2001; Obua, et al. 1998; Manor 1999).

This paper's premise is that the outcomes of decentralization reforms differ, since power transfer, participation and accountability are in themselves political processes, which are moderated by social class, ethnic (tribal), race and gender elements, and are also dependent on the type of natural resources in question (Oyugi 2000; Marsden 1991: 29; Arnstein 1969; Ribot 2002). Thus, both the extent of decentralization and its outcomes will vary from one context to another and from one resource to another. The paper seeks to demonstrate the need for a more nuanced, dynamic and historical understanding of power and its application by examining the Ugandan decentralization experience.

Uganda is but one of more than 50 developing countries in which experiments in decentralization are being undertaken (Agrawal and Ribot 1999; Manor 1999). There are, however, at least three reasons why one would choose Uganda for a study of the likely impact of devolved environmental powers. Firstly, the Ugandan decentralization reform is renowned internationally, both as a homegrown experiment and as being more participatory in design than those of other countries (Saito 2000). Secondly, it is also claimed that Uganda, unlike many of the countries implementing decentralization reforms, has continued to show a strong commitment to decentralization (Saito 2002; Kullenberg and Porter 1998). This study will, therefore, contribute to the historical and comparative understanding of decentralization reforms in the Third World, and throw light on perennial issues of rural governance. Thirdly, the bulk of the studies on decentralization in Uganda to date have focused on the managerial and financial aspects of the decentralization reform (Muhereza 2002; RoU 1998). There are no significant studies that examine the practical social and environmental outcomes of the Ugandan variant of decentralization.<sup>1</sup> This study will help to fill that gap.

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<sup>1</sup> There is a growing literature on collaborative community management approaches to conservation of natural resources in Uganda as a form of decentralization (see Saito 2002; Kanyesigye and Muramira 2002; Namara and Nsabagasani 2002; Langoya 1999; Hincley, et al. 2000; Gombya-Ssembajjwe 2000; and Archbald and Naughton-Treves 2001). However, while collaborative community management schemes (CCMS) can be characterized as a form of decentralization, they differ from the decentralization we are dealing with here in many ways. First, the transfer of power in CCMS consists merely of the delegation of power by the central government to local committees; this power can be withdrawn anytime. The exercise of this power cannot therefore lead to the autonomy of the local committees. Secondly, the central government (through the forestry or wildlife authority) determines the terms of participation; communities do not have powers to veto or change those terms. The decentralization analyzed in this paper, on the other hand, involves the transfer of decision-making powers, which can lead to the autonomy of locally accountable local governments, enabling them to make binding decisions without reference to the central

The central argument in this paper is that, although the Ugandan variant of decentralization promises participation—understood in the broad sense of popular power sharing in decision-making—meaningful participation is limited because the conditions for such participation are not fully established. There are three main reasons for this. Firstly, the policy and legislation for environmental decentralization in Uganda have evolved in a “stop-go” manner and, therefore, the institutional arrangements and distribution of powers between central and local governments have sometimes been ambiguous, thereby undermining the ability of local governments to apply environmental powers for better outcomes. Secondly, little power over environmental decision-making has been devolved. And thirdly, the relationships between decentralization, participation and environmental outcomes are not straightforward; they are moderated by other factors, which in turn help determine social and environmental outcomes.

The paper seeks to establish the relationship between environmental powers, participation, accountability and outcomes by explaining the extent of participation that has been established and the degree to which participation is linked to social and environmental outcomes in Uganda. In order to do this, the paper is divided into two main parts. The first part provides an overview of decentralization and environmental powers in Uganda. We begin by examining the character of decentralization and the manner in which it is constituted. This is important in order to grasp whether or not local governments in Uganda are constituted through popular mandates and are downwardly accountable. We then proceed to analyze the kinds of powers devolved to local governments in the text of the law. We examine these powers under three categories, namely legislative (power to make bylaws), executive (power to make decisions regarding monitoring and implementing laws and bylaws) and judicial (power to arbitrate and to sanction). Then, since the actual application of those powers is dependent on other interest groups who wield counter-powers, we also analyze the whole array of actors with interests in environmental powers. These include external donors, the central state, civil society organizations, traditional authorities, private business, peasant farmers, elected representatives and non-governmental organizations.

The second part of the paper provides a case study of three districts, namely, Mukono, Mbale and Masindi. It begins with a brief overview of each district. We then examine the extent to which local governments are accountable, the accountability mechanisms and the social and environmental outcomes through a comparative study of the three districts. Information on the current environmental politics in these districts is based partly on research carried out by Emmanuel Frank Muhereza (Masindi District), Agrippinah Namara and Xavier Nsabagasani (Kisoro District) and Juliet Kanyesigye and Eugene Muramira (Mukono and Mbale districts) (see Muhereza 2002; Kanyesigye and Muramira 2002; Namara and Nsabagasani 2002). These studies were part of the same Environmental Governance Research Program as the current research. In addition, however, the author carried out independent research in Mukono, Mbale and Masindi districts. This involved interviewing officials, such as environmental officers, forest officers and district administrative officers; the reading of documents related to the

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government. This is *political* decentralization, while decentralization through CCMS is *administrative* decentralization.

respective district councils and their production and environmental committees; and attending an “environmental sensitization” seminar. The analysis also draws on documents from the National Archives at Entebbe and libraries in Kampala.

## **DECENTRALIZATION AND ENVIRONMENTAL POWERS: AN OVERVIEW**

In 1993, the Ugandan parliament passed a landmark piece of legislation, the Local Governments (Resistance Councils) Statute, which devolved a series of hitherto centrally wielded state powers to elected local authorities (RoU 1993). This statute provides for the “decentralization of functions and powers and services to Local Government (Resistance Councils) to increase local democratic control and participation in decision-making, and to mobilize support for development which is relevant to local needs.” The 1993 initiatives were consolidated by the 1995 Constitution, which provides for the devolution of functions and powers to “democratically elected councils on the basis of universal adult suffrage”(RoU 1995). The constitutional guarantee was very quickly followed by the Local Governments Act of 1997, whose objective is to:

Amend, consolidate and streamline the existing law on local governments in line with the constitution to give effect to the decentralization and devolution of functions, powers and services; and provide for decentralization at all levels of local government to ensure good governance and democratic participation in, and control of decision making by the people; and to provide for revenue and the political and administrative set-up of Local Governments; and to provide for election of Local Councils and any other matters connected to the above.<sup>2</sup>

There are two critically important issues for our analysis. The first is the nature of local government representation; that is, the way they are constituted and the extent to which they are downwardly accountable in the text of the law. This means that we must examine carefully the character of elections and their strengths and weaknesses as mechanisms of participation and accountability. The second issue is the extent of local government powers. There is a need to clearly demarcate the powers that local governments are supposed to wield in preparation for analyzing the consequences of the application or non-application of those powers. We begin by examining the character of local government in the Ugandan context.

### **Local Governments: Character and Constitution**

Each level of Uganda’s rural political-administrative structure has an elected local council—elected for a five-year mandate from independent candidates by universal suffrage. The lowest level is the Village, whose council is called LCI, above the village is the Ward or Parish council (LCII), the Sub-county or Town Council (LCIII), the County

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<sup>2</sup> The objectives of the Local Governments Act, 1997 are: (a) to give full effect to the decentralization of functions, powers, responsibilities and services at all levels of Local Governments; (b) to ensure democratic participation in, and control of, decision-making by the people concerned; (c) to establish a democratic, political and gender-sensitive, administrative set-up in Local Governments; (d) to establish sources of revenue and financial accountability; and (e) to provide for election of Local Councils. See article 2 of the Local Governments Act (RoU, 1997).

(LCIV) and the highest level of local government, the District Council (LCV)<sup>1</sup> In this system, although all councils are elected, LC I, II and IV are considered “Administrative Units, while III and V are considered “Local Governments..”

### **Electoral Mechanisms, Participation and Accountability**

To appreciate whether or not the current electoral mechanisms allow for popular participation and downward accountability, we begin by looking at past electoral practices. When the British colonized Uganda, they created a form of local state in the person of the chief, who was neither elected nor accountable to the local population (Mamdani 1996). He was accountable to his superiors and the possibilities of abusing power were ever present. Fred Burke observed that:

Backed by the power of the colonial government in the guise of the District Commissioner, the chief’s powers of arrest and seizure, and control over allocation and use of property were nearly unlimited...his powers in fact were limited only by his accountability to the District Commissioner... . Accountable only to a distant colonial official the newly recruited chiefs were relatively free to exploit their subjects. The chief could, for example, arrest one of his subjects for failing to obey “the lawful order of a chief” which he had arbitrarily issued by virtue of the “native law and custom” clause in the Native Authority Ordinance; he could try a prisoner in his own court, pass judgment and levy a sizable fine or imprisonment (Burke 1964: 34).

Because there was no downward accountability to the people, the chief could carry out programs unfriendly to local people and the environment. This form of local government was “decentralized despotism,” as Mamdani (1996) has characterized it.

The election mechanism was first introduced in Uganda towards the end of the colonial era, as part of local government reforms introduced in 1949. Claims of participation and downward accountability were used to justify those elections. According to Hailey (1951:6):

The conduct of self-government...demands experience in the practice of selecting representatives charged with giving expression to policies approved by the community, and its success depends on the public to hold them to account if they fail in their duties. It is perhaps only in those territories where a regular system of Local Councils, based wholly or partly on the use of election, has been introduced as part of the system of Native Administration, that there has been provision of Local Government institutions which can afford some preparation for the practice of political self-government.

In practice, however, the elections conducted during this period fell far short of achieving that objective. They were elections *by* and *for* state officials. The basic electoral college

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<sup>1</sup> In the urban areas the lowest level council is the Ward (LCII), then comes the Municipal Division (LCIII), the Municipality or City Division (LC4) and the highest levels is the City Council (LC5) (Bazaara 2002:4—working paper.

was the parish council, which was constituted, not of the population of the parish, but of non-elected government chiefs. These chiefs *elected* chiefs to serve on the county councils, whose members in turn *elected* from among themselves councilors who sat on the district council. Since these elections were not based on universal suffrage, they did not constitute a mechanism for participation or accountability. On the contrary, they cemented top-down control over the population, excluded women and youths and were not immune to manipulation and rigging. In his investigations, Fred Burke discovered in Busoga that chiefs manipulated or rigged the elections (Burke 1964). Furthermore, many of the members of the law-making district councils were appointed by the officials of the colonial government, to the point of rendering the election process meaningless.<sup>3</sup>

In the immediate post-independence period, before the centralization moves of 1967, local governments were constituted through elections based on secret ballot. However, these local government elections were organized around political parties. Candidates vying to be councilors stood on the tickets of political parties. The experience of that period reveals that the ruling party, the Uganda People's Congress, was always manipulating elections in its favor. Hon. Byanyima, Member of Parliament representing a Democratic Party (DP) constituency in Ankole, cited an instance in which the Minister interfered with the electoral processes:

Some two years ago, Mr. Speaker, when there were elections in Kampala City Council, Jinja Municipal Council and Kampala City Council, elections were won by the D.P., and since then, Mr. Speaker, the Government has stopped elections in City Councils. Now when the Kampala City Council was allowed to elect its Mayor more than twelve months ago, Mr. Kavuma who is not a U.P.C. defeated a U.P.C. candidate and since then until just recently *the Kampala City Council was refused permission to elect its own Mayor by the Minister*. He passed a law last year to say that he was going in future to appoint a Mayor... . *In the Kampala City Council now we have got 28 members nominated by the Minister and only 6 elected members of the Council*, and I think it was a bad thing on the part of the Minister and it has created a lot of discontent in the City Council... . Now I feel that this was wrong of the Minister to have so many people, 28 of them, nominated by him and only 6 elected. This was done so that a person favorable to him may be elected by the Council, and I think this is a sham election, you cannot call this an election. It would have been better for the Minister himself to say, "I want this person to be the Mayor, I want this person to be Deputy Mayor." But he wants it to appear as if that person has been elected, and then he fills the Council with 28 stooges so that they may elect a person he likes, and this is a bad thing. (Laughter) You may laugh but it is very bad. [Emphasis added] (Uganda Parliament 1965-66: 430)

The Minister could, in some instances, extend the life of a council if he knew that an election would bring in individuals from the opposition Democratic Party (DP). In 1967, the ruling party not only abolished local governments but also undermined elections as a mechanism for achieving participation and downward accountability. This situation

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<sup>3</sup> See for instance, Uganda Protectorate (UP) 1949.

remained until 1986, when the National Resistance Movement (NRM) captured state power.

The NRM government reintroduced local governments based on elections. It is important, however, to note that although the NRM reintroduced local governments and elections, it opposed the idea of individuals being elected on political party platforms. The NRM expressed its disappointment with political parties, accusing them of having been sectarian and divisive in the past and banned their activities. Elections under the NRM are based on “individual merit” rather than political party affiliations.

Elections under the “individual merit” system have themselves undergone modifications. The first such elections were carried out using the “lining up” system, in which voters lined up behind a preferred candidate in the open for all to see. The NRM justified the “lining up” system on the grounds that it was the best mechanism for dealing with rigging. Although this “lining up” system was initially welcomed, it soon became apparent that it compromised genuine participation and popular accountability. For example, although marginalized social groups, such as women and youth, were encouraged by the NRM to take part in politics, they could not express their true feelings using the “lining up” system, as this meant challenging the patriarchal system. Many women and youths were not ready to confront patriarchal power; indeed, some who tried to do so suffered the cruel hands of their husbands or parents. Moreover, the “lining up” system became undemocratic and susceptible to manipulation and bribery, particularly at the higher levels of the local council system. As a result, the NRM has changed the method to that of secret ballot based on universal adult suffrage, which enables broader participation. Two other important changes have also been made. Firstly, foreigners have been given the right to vote, although not to stand for elections. In previous elections, immigrant communities from Rwanda, Burundi, Congo and Kenya were not allowed to vote at all. Secondly, the NRM has made provisions whereby one third of council seats are reserved for women, in recognition of the fact that women as a category have always been marginalized or excluded from politics. Similar special provisions have also been made to include youths and the disabled into the electoral system.

Therefore, in the text of law, the NRM has provided what one could term a universally accepted mechanism for local government elections, namely that, councilors are elected by secret ballot on the basis of universal adult suffrage. This electoral system enables more social groups to participate, including foreigners, women, youth and the disabled. It also provides for downward accountability and the possibility of recall. Theoretically, councilors will be mindful of the fact that they will sooner or latter have to account to their electorate and, therefore, design laws, policies and programs that are environmentally sound. There is, of course, much debate as to whether “individual merit” or political-party-based elections can yield the best democratic outcomes. This is a very important debate, but one which we cannot pursue here. Moreover, irrespective of this issue, the fact remains that the present system allows for a higher degree of participation in local government than any previous system in Uganda.

## **Local Government Powers over Natural Resources**

In order to understand the nature of the environmental powers that have been devolved to these democratic local governments, we follow Agrawal and Ribot (1999) in dividing our analysis into three categories of powers: legislative (power to make bylaws), executive (power to make decisions regarding monitoring and implementing laws and bylaws) and judicial (power to arbitrate and mete out sanctions).

### *Legislative Powers*

Under the Local Government Act of 1997, district councils (DCs) and city councils are empowered to make bylaws without reference to, or seeking permission from, the center, provided those bylaws do not conflict with the national constitution or other laws. The lower units of local government (sub-county councils, town councils, city council division and municipal division councils) can similarly pass bylaws provided they are not inconsistent with any other laws.

The current distribution of law-making powers between the central and local government is radically different from that of previous decentralized systems. The current system is the first to give powers to make bylaws to local governments below the district level. Under the District Council Regulations of 1949, local government councils below the district level (the parish, sub-county and county councils) had neither powers to make bylaws nor powers to recall their representatives. Moreover, although district councils were empowered to make bylaws during this period, the scope of their powers was very limited. Section 17(1) of the 1949 Regulations provided that the district council “may from time to time make bylaws for the good rule and government of the District. Such bylaws shall only be made in respect of the matters set out in paragraphs A and B of section 7 of the Native Authorities Ordinance and the Native Authority Rules unless the Governor requests the Council to consider making a bye-law in relation to any other matter.” The Native Authorities Ordinance of 1919 determined, among other things, the areas over which chiefs could make bylaws.<sup>4</sup> In terms of natural resources, the critical

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<sup>4</sup> Paragraphs A and B of section 7 read as follows:

- Subject to the provisions of any law for the time being in force in the protectorate, any chief may from time to time issue orders to be obeyed by the Africans residing within the local limits of his jurisdiction as follows:
- A. Any order which such a chief may issue by virtue of any native law or custom in force for the time being in his area: provided that such a law or custom is not repugnant to morality or justice.
  - B. Any order for any of the following purposes: (1) restricting and regulating the manufacture, distillation, possession, sale or supply of any native intoxicating liquor and, in addition thereto, prohibiting any person from manufacturing, distilling, selling or supplying any such liquor except in pursuance of a permit issued subject to such conditions and on payment of such fees as the provincial commissioner may from time to time approve; (2) prohibiting or restricting the holding of drinking bouts; (3) prohibiting or restricting the cultivation of poisonous or noxious plants, and the manufacture of noxious drugs or poisons; (4) prohibiting or restricting the carrying of arms; (5) prohibiting any act or conduct which in the opinion of the chief might cause a riot or disturbance of a breach of peace; (6) preventing the pollution of the water in any stream,

provisions were those empowering the chief to prevent the pollution of the water and the obstruction of any stream or watercourse and to regulate the cutting of timber and prohibit the wasteful destruction of trees. In substance, the reform did not diminish the powers of chiefs nor transform district councils into organs that represented the wishes of the people. Furthermore, the district councils did not have the *autonomy* to make bylaws without reference to the center. According to Burke (1964:40):

The Colonial government severely hedged devolution of authority to the District Councils. For example, the councils were granted substantial financial powers, subject in minute detail to the approval of the central government. The power to borrow money was granted—subject to government approval. It could invest its surplus funds subject to government approval. The Council possessed the authority to levy on all African males on or above the apparent age of eighteen years residing within its jurisdiction; the rates necessitated the approval of government.

The present local governments, on the other hand, can make bylaws without reference to the center. They should, therefore, be able to make bylaws on environmental matters that take into account the needs of people at the local level.

After independence, the law-making powers of local governments gained after World War II were eroded. For example, the Administration (Western Kingdoms and Busoga) Act 1963 (amendments to the Bunyoro and Busoga Act) took away some of the powers of elected local governments to make bylaws and gave them to traditional rulers. Abu Mayanja pointed out this anomaly in the national parliament:

I have managed during the time I have been here to get hold of the Administration (Western Kingdoms and Busoga) Act, and I have found this is what Section 24 reads, and with your permission, Mr. Speaker, I shall read: “Without prejudice to anything contained in subsection (1) of section 75 of the constitution, a government may subject to the provisions of section 28 of this act, make laws in respect of: (a) any matter for which it is required or permitted to make laws; (b) public security; and (c) functions it is required or permitted to carry out.” Now this obviously escaped us during the previous time, but here we have an opportunity to correct it, because it is preposterous, Mr. Speaker, for us to speak of a Government making laws. I have looked over the definitions section. You will find, Mr. Speaker, in section 75 of the constitution, who has the power to make laws? Not the government, but the legislature (Uganda Parliament 1966-67: 597-598).

In the current local government system, it is clear that bylaws can only be made by councils, not by the executive or traditional rulers, although we shall see later that

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water course, or water hole, and preventing the obstruction of any stream or water course; (7) Regulating the cutting of timber and prohibiting the wasteful destruction of trees; (8) Requiring male Africans between the ages of eighteen and forty-five years, who are physically fit, to work in the making or maintaining of any work of a public nature constructed or maintained for the benefit of the community.

traditional rulers were allowed by the NRM government in 1993 to privatize what were formerly public forests.

However, although the present system appears to devolve more law-making powers than its predecessors, a general provision that local governments can make bylaws provided they are not inconsistent with the constitution and other laws does not actually tell us what kind of powers they really hold. When all is said and done, one may find that these “other laws” actually leave no powers at all for local governments. We need to extend the analysis a little bit further and ask what these other laws say and what space do they leave for local governments to make bylaws? In order to answer these questions, let us look more specifically at local governments’ powers to make laws related to the environment.

Section 15 of part 2 of the second schedule of the 1997 Local Government Act, provides that district councils are responsible for, among other things, assisting “government to preserve the environment through protection of forests, wetlands, lake shores, streams and prevention of environmental degradation” (RoU 1997). Elsewhere in the schedule, it is stated that district councils are responsible for vector control, environmental sanitation, entomological services and vermin control, and forests and wetlands. However, according to the same schedule, forests and game policy remain the preserve of the central government. Part 4 of the Local Government Act 1997, details functions and services that may be devolved by the district council to lower local government councils. Those relevant to this discussion include the provision for control of soil erosion and protection of wetlands (section 3), the control of vermin in consultation with the ministry responsible for tourism and wildlife and any other relevant ministry (section 4), the taking of measures for the prohibition, restriction, prevention, regulation or abatement of grass, forest or bush fires, including the requisition of able-bodied male persons to extinguish such fires and to cut firebreaks, and general local environment protection (section 5), and the control of local hunting and fishing (RoU 1997:124-125).<sup>5</sup> However, there are other laws that govern the utilization of each of the resources mentioned above and one cannot discern local governments’ actual law-making powers regarding the environment unless one examines these specific laws. Let us look in turn at the actual legal position regarding the following: forest reserves; forests or trees on public or privately owned land; wetlands; wildlife; and hilly or mountainous areas.

#### (a) Forest Reserves

Uganda has three types of forest reserves. The first type is forest reserves that are strictly for nature conservation, such as Mt. Elgon Forest Park and Bwindi Impenetrable Park (Kanyesigye and Muramira 2002; Namara and Nsabagasani 2002; Musali 1998; Archabald and Naughton-Treves 2001). The Uganda Wildlife Authority (UWA), a central government agency, manages these reserves and no commercial exploitation is legally permitted. The “communities” surrounding these reserves may access some resources, such as bamboo shoots, mushrooms or herbs, for their subsistence, provided they enter a *collaborative community management* agreement with UWA. Such agreements, on the one hand, specify which resources communities can harvest and, on

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<sup>5</sup> The environmental provisions in the 1997 Local Government Act have roots in the Ugandan Constitution. See articles 237 and 245 (RoU 1995).

the other hand, impose responsibility on the “communities” to carry out police functions of monitoring illegal encroachers (UWA 2000a, 2000b, 2000c; Langoya 1999).<sup>6</sup> Local governments’ power to make bylaws is limited to fine-tuning the enforcement rules developed by UWA.

The second type is forest reserves of more than 100 hectares in size where commercial harvesting of resources such as timber can be undertaken. Local governments do not have powers to make bylaws regarding who can access forest resources and in what quantities. They can only make bylaws related to the enforcement of central government laws or rules. However, the central government’s Forestry Department has discretionary powers to create mechanisms for protecting forest resources through, for example, collaborative community management schemes or the involvement of civil society organizations.

The third type is forest reserves where commercial harvesting of resources is permitted but which are less than 100 hectares in size. These are supposed to be under the management and control of local governments. It is presumed that here the local governments have substantial political power to make bylaws and to carry out policing, monitoring and arbitration functions. In fact, however, there are many “gray areas” in the legislation, resulting in a serious lack of clear mandates. This enables the forestry officials, who are employees of the central government, to usurp the political power of local governments, either under the guise of technical requirements or because local governments lack the resources to hire forestry officers who are directly accountable to them.

#### (b) Forests/Trees on Public and Private Land

Decision-making powers over the harvesting of commercial timber on public and private land are in the hands of central government, through the Forestry Department. Local governments can make bylaws that strengthen or fine-tune national laws, particularly in the area of enforcement, and bylaws related to non-commercially exploitable plant resources.

#### (c) Wetlands

According to guidelines issued by the Ministry of Water, Lands and Environment (RoU, 2001a), the “key institutions for performing wetland management responsibilities” at the district and sub-county levels include the office of district environmental officer, district and local environmental committees, and the district technical planning committee.

These institutions’ main responsibility is to uphold the national and local legislation regarding wetlands, and provide advice to those who are engaged in wetland use. The District Council, as the legislative and policy-making body, should set policy guidelines for wetland management in the district, and direct the technical staff in general terms to ensure that guidelines are followed. To strengthen the national legislation and fine-tune it to district circumstances the

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<sup>6</sup> The collaboration is usually one-sided as the research by Kanyesigye and Muramira (2002) and Namara and Nsabagasani (2002) around Mt. Elgon Forest Park and Bwindi Impenetrable Forest Park demonstrates.

District Council and sub-county Councils can enact ordinances and bylaws. Lastly both councils should allocate some of their resources to ensure that indeed the policy guidelines can be implemented (RoU 2001a: 4).

As can be discerned, the main role of the local governments is to assist central government to protect resources by implementing the laws and policies of central government or fine-tuning national laws by enacting bylaws; they cannot make their own bylaws regarding the use of wetlands.

#### (d) Wildlife

There are two categories of wildlife; those in reserves and those on public and private land. The management of wild game resources in the reserves is a central government responsibility. Neither local governments (either now or when they were established after World War II) nor the local communities have powers to decide who can or cannot access these resources. Historically, policies regarding wildlife came from the needs of the imperial countries, who exploited wildlife for tourism and hunting sports and expressed concern that some wildlife, especially animals, could become extinct. On 19 May 1900, a convention for the preservation of wild animals, birds and fish in Africa was signed by the Queen of England, the German Emperor, the King of Spain, the King of Belgium (for the Congo state), the French President, the King of Italy and the King of Portugal were signatories to the convention (Uganda Protectorate 1900a). The convention outlined the kinds of animals and birds that ought to be preserved, rules governing the access of wildlife (such as authorization through a license) and the imposition of duties on items such as ivory and skins. It required each imperial power to instruct its colonies to design regulations on wildlife based on the convention.<sup>7</sup>

Since the rights of natives to wildlife resources were thereby extinguished, the Governor of Uganda proceeded to design the necessary regulations. According to the East African Game Regulations of 1900, “the Commissioner, with the approval of the Secretary of State, may by proclamation declare any other portion of the protectorate to be a game reserve, and may define or alter the limits of the game reserve” (Uganda Protectorate 1900b). Names of animals that may not be killed without the express approval of the relevant government officials were listed in the schedule to the Regulations and the Commissioner had the power to add the names of any other species as and when, and in which areas, he saw fit.

Law-making powers were thus in the hands of the central government. Animals on both public and private lands belonged to the central government and, legally, one required permission to kill them. However, it was realized that the central government could not make all the necessary laws. This task was left to the chiefs, who could make “laws” according to custom provided they did not contradict other colonial laws. The biggest drawback in this arrangement was that chiefs were upwardly accountable to the Governor, through the district commissioners.

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<sup>7</sup> The actual wording was: “The contracting parties reserve for themselves the right to introduce, or to propose to the legislatures of their self-governing colonies, the necessary measures for currying out the stipulations of the present convention in their possessions and colonies...” (UP, 1900a).

The situation is fundamentally the same today. Animals in national reserves and parks fall under the Uganda Wildlife Authority (UWA). Local governments have no law-making powers regarding who should or should not access the resources of these protected areas. However, they can make bylaws that improve the monitoring and enforcement of rules or laws developed by UWA or the national parliament.

An aspect of wildlife management that warrants special mention is that of vermin control. The schedule in the Local Government Act of 1997 states that local governments are responsible for vermin control. This suggests that local governments have the power to decide what constitutes “vermin” and how to deal with them. However, the Uganda Wildlife Statute of 1996 qualifies this power. Article 58, section (1), stipulates that the Board may, on the advice of the Executive Director, declare any animal or class of animals to be vermin; section (2) provides that “the declaration under sub-section (1) may be effective for the whole of Uganda or for such part or parts of Uganda as may be specified in the notice”; and section (3) provides that “the declaration of vermin shall be published in the Gazette and local newspapers having wide circulation in the areas affected” (RoU 1997). In reality, therefore, vermin control by DCs means implementation of the decision of the UWA. Even when such animals are destroying peasants’ crops, the local government cannot legally kill them until the UWA so decides.

#### (e) Hilly and Mountainous Areas

In the year 2000, new legislative powers were bestowed on local governments with regard to mountainous areas (RoU 2000a). Article 6, section (1), is explicit that each district council shall make bylaws identifying mountainous and hilly areas within its jurisdiction that are at risk from environmental degradation. Once the district council has identified such an area, it is supposed to apply to the Executive Director of the National Environment Management Authority (NEMA) for its registration.

Let us sum up the position with regard to legislative powers. Local governments can make bylaws provided they do not conflict with national laws. The area where they can do this is in enforcement of already existing laws or improving on these. Local governments can make legislation regarding activities that enhance the environment, such as tree planting, soil conservation or prevention of burning of grass. However, when it comes to decisions regarding the harvesting of commercially lucrative resources, such as trees for timber and charcoal or brick making, the central government retains law-making power (Muhereza 2002).

#### *Executive Powers*

Every district council (DC) has an executive committee comprising the chairperson, the vice-chairperson and some secretaries, the number of which is decided by the DC. The executive committee is the executive arm of the local government. As stipulated in the 1997 Local Government Act, the committee initiates and formulates policy for approval by the DC, oversees the implementation of both government and council policies, monitors the implementation of the DC’s programs, and monitors and coordinates the activities of non-governmental organizations in the district. It also recommends to the DC

the people to be appointed members of various district boards, commissions or committees (including the district service commission, local government public accounts committee, district tender board and district land board), receives and solves problems or disputes forwarded from lower-level local government councils, considers and evaluates at the end of each financial year the performance of the council against the approved work plans and programs, and carries out any other duty as may be authorized by the DC or any law. The DC's executive powers also include powers to raise taxes and approve annual budgets and estimates. These are important powers in terms of the environment because they give the council some autonomy in allocating resources for environmental management. It also has powers to formulate development plans and raise loans and mortgages and to recruit, remunerate, discipline and fire civil service personnel.

Lower-level local governments also have executive committees. These lower-level local governments have a variety of executive functions. They are required by the Act to do the following: initiate, encourage, support and participate in self-help projects and mobilize people, material, and technical assistance in relation thereto; serve as a communication channel between the government, DC and people in the area; generally monitor the administration in their area and report thereon to the DC; generally monitor and supervise projects and other activities undertaken by central and local governments and non-governmental organizations in their areas; and carry out other functions which may be imposed by law or incidental to the above (RoU 1997:28).

Within the local council structures, there are elected representatives at all levels—LC1 to LC5—who serve as secretaries in charge of production and environment. These are supposed to:

[be contact persons] on behalf of the community on environment issues, organize public meetings to educate and mobilize residents on proper environment management, e.g. good sanitation, good farming practices, tree planting and proper use of wetlands; collect and disseminate information on environment; link communities with extension staff, NGOs/CBOs and other support agencies; act as an overseer and inform relevant authorities on activities that may be destructive to the environment and well being of the community and enforce government laws and bylaws to ensure that members of the community in his or her area follow such laws [e.g. cleaning wells or homesteads, and prevention of soil erosions]. (NEMA 1995: 22).

The law provides that districts, using guidelines provided by NEMA, appoint *district environmental officers* (DEOs). The DEOs have several functions; they are required to:

[advise] the District Environment Committee on matters relating to the environment; liaise with NEMA on matters relating to Environment, promote environmental awareness through public educational campaigns, assist Local Environmental Committees in the performance of their functions; gather and manage information on the environment and the utilization of natural resources in the District; serve as secretary to the District Environment Committee; assist the district to incorporate environmental and land-use concerns in district development plans; increase community participation in the design,

implementation, monitoring and evaluation of environmental activities; and assist the district and NEMA in gathering environmental information (NEMA 1995: 18).

Local governments are supposed to assist the Forestry Department to police forest reserves and they are required by law to police those who break the rules at the local level regarding the cutting of commercial timber and enforce environmentally related bylaws, such as those related to the prevention of grass burning, the proper use of hill-tops and mountainous areas, and grazing. These are, in effect, judicial powers, which are discussed in more detail in the next section; however, decisions on the part of local governments to take such action may be regarded as executive decisions. Local governments are also mandated to implement various environmental improvement programs, such as tree planting and terracing.

It is important to note that forestry officials operating at local government levels are employees of the central government. They are upwardly accountable and combine both *technical* and *political* power, a fusion that has fuelled corruption and abuse of office by forestry officials; hence the fast dwindling forests in Uganda. In districts with forest resources, local governments are locked in conflicts with the central government over who should wield the power to issue permits and what proportions of the resources generated from fees and taxes should go to local government.

With regard to environmental matters, there has, therefore, been no effective devolution of executive powers. Instead, another kind of administrative decentralization, a kind of de-concentration within line ministries in charge of particular resources, has been attempted as and when convenient to them. This administrative decentralization is implemented through *collaborative community management schemes*, such as those mentioned earlier in forest reserves administered by UWA.

### *Judicial Powers*

Local governments are, as already indicated, required to assist in the enforcement of various environment-related rules and laws. Local councils below the sub-county have powers to deal with those who break rules regarding wetlands, forests, hilltops, etc, and decide on the penalty. However, the aggrieved person is at liberty to appeal to higher authorities. Where the resources are controlled by the central government, local councils can refer cases to the forestry officer.

However, rules and procedures in the field of arbitration are not highly developed. This leads to confusion as to who should enforce what. Thus, at the local level, there are chiefs who should in theory implement laws, bylaws and decisions made by the district and sub-county executive committees. At the same time, there are central government officials (such as forestry officers and agricultural extension officers), the local governments' secretaries of production and environment, and finally the district environmental officers, all with similar responsibilities. We noted earlier, for instance, that the secretaries of production and environment are supposed to ensure that laws and bylaws are followed; but it is not clear how these secretaries are supposed to relate to the other actors,

including chiefs and the environmental officer. Accountability and reporting procedures are equally unclear. For example, for mountainous areas, the law says, “any local council within whose jurisdiction an activity likely to degrade the environment of a mountainous and hilly area is taking place, shall in writing inform the local agricultural extension officer” (RoU 2000a). However, it does not say what the agricultural extension officer is supposed to do about it. As we shall see, lack of clarity regarding the powers of sanction or arbitration has undermined good environmental practices.

### **Actors in Environmental Matters**

We began our analysis from the theoretical claims that positive social and environmental outcomes are possible when decision-making powers are devolved to locally elected authorities. However, we also know that the actual application of those powers is dependent on other interest groups wielding counter powers—donors, the central state, civil society organizations, private business, peasant farmers, elected representatives, non-governmental organizations or traditional authorities. In this section, we shall analyze the changing character of the various actors with an interest in natural resources.

We noted earlier that in the colonial period ultimate power over natural resources was vested in the crown, through the colonial governor. This power was executed through a range of colonial officials, such as the conservator of forests, game wardens, district commissioners and chiefs. At the local level, chiefs were empowered by the African (Native) Authority Ordinance of 1919 to carry out a series of responsibilities that included the maintenance of law and order using powers provided for in the ordinance and other “powers which he may otherwise enjoy by virtue of any law or native custom for the time being in force” (section 3), “provided that such a law or custom is not repugnant to morality and justice” (section 7). We noted earlier that, in the area of the environment, the chief was empowered to prevent the pollution of water or obstruction of a stream or watercourse, regulate the cutting of timber and prohibit the “wasteful destruction” of trees. In sum, in Uganda as elsewhere, the actors in the colonial period were the emperors or kings of the powerful European colonial countries, the colonial governors, the colonial civil servants in charge of forests and wild game departments, local kings, and peasants.

After independence, the main actors became the ministers in charge of forestry, game and tourism and the civil servants working for them and for other services of the central government. In the early years of independence, local governments also played a role in natural resources management; however, in 1967 local government control over natural resources was brought to an end, leaving natural resources in the hands of agents of the central government.

In the current epoch, there are many actors involved; we describe them below. Some of these actors have already been mentioned in previous sections and, in many cases, their roles will be described in more detail later. The purpose here is to give an overview of the number and type of individuals and organizations involved.

*Central government actors* include the president and cabinet, particularly when it comes to developing general environmental policies that NEMA operationalizes. Parliament has also been active in environmental issues; for example, a spirited fight against the possible negative effects arising from building a hydro-electric dam at Bujagali Water Falls on the River Nile. Other actors in central government include officials in NEMA and civil servants in the Ministries of Water, Lands and Environment and Tourism. Some of these officials use the state for their private gain or to enhance the legitimacy of the government.

Within *local government*, there are elected councilors, whose role is to legislate bylaws that fine-tune national ones and also make executive decisions. There are also civil servants (including the district environmental officer and redefined chiefly offices), secretaries for production and environment (who double up as implementers of environmental laws and monitors of the state of the environment), and the district and sub-county environmental committees.

Unlike in the past, in the current epoch there are *agencies of external governments* that are interested in the conservation of Ugandan resources for purposes of “carbon-sinking,” a mechanism for reducing global warming. Examples include the European Community (European Community 1998), NORAD (Kanyesigye and Muramira 2002), the Government of The Netherlands (National Wetlands Program 2000), the United States Agency for International Development (USAID) and the World Bank.

*Non-governmental organizations (NGOs)* are equally active actors in the area of natural resources and the environment. Both local and international NGOs are involved in programs designed to enhance the environment, such as the conservation or replanting of trees. The objectives of their programs vary from the prevention of global warming and preservation of biodiversity to poverty alleviation. Examples of international NGOs are CARE-International, Worldwide Fund for Nature (WWF) and Environment Protection and Economic Development (EPED). Local NGOs include Vision for Rural Initiatives (VIRUDI) in Masindi, which—among other things—encourages local people to plant a variety of trees and to adopt appropriate soil conservation works<sup>8</sup>, and Part-the-Child in Mukono, which is involved in tree planting.<sup>9</sup>

*Civil society organizations* are also involved in environmental matters. An example of such organizations is the Masindi Pitsawyers and Wood Users’ Association, which represents merchant interests and has a powerful lobbying capacity. Another important component of civil society are traditional authorities. We shall see that these have had tremendous effect on the ability of the local governments to apply environmental powers.

*Private business companies* of both local and international origin have interests in harvesting natural resources or implementing carbon-sinking projects. These, too,

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<sup>8</sup> Interview with Mary Mujumura, former member of the Masindi District Environmental Committee, and who is also vice chair of VIRUDI, at Masindi Town, 28, April 2002.

<sup>9</sup> Information obtained during a focus group discussion—involving members of the former Mukono District Environment Committee—Livingstone Zziwa, Claudia Kanya, Stephen Kazibwe, Rehma Mukalazi.

influence the manner in which the elected representatives wield powers over the environment.

Finally, there are the *peasant farmers and pastoralists*, many of whom are in need of land for agriculture or other resources (for example, medicinal herbs, game or meat, mushrooms, bamboo shoots, fuel-wood and grass) in protected areas. These peasants and pastoralists are differentiated in terms of ethnicity, class, gender and geographical location. In areas where such resources are scarce, voting decisions are based on the perceived ability of the aspiring politicians to help them access resources to increase their income.

### **Politics and the Application of Environmental Powers**

It is now almost ten years since the decentralization reform was launched.. A lot has been achieved, in terms of service delivery as well as general political participation and downward accountability. However, we shall see in the second part of the paper that, in terms of environmental matters, the achievements—including both the extent of participation and accountability and the social and environmental outcomes—are limited and vary across districts. We shall demonstrate this using data gathered from three districts, namely, Mukono, Mbale and Masindi. But, in order to understand the nature and implications of this data, it is necessary first to examine the weaknesses in the general legislative and policy framework and to see how they have affected both the powers that have been devolved and their application by local governments.

#### *Lack of Clarity and Stability in the Legal, Policy and Institutional Framework*

We noted earlier that policies and laws related to natural resources have been devolved in a disjointed manner. The Local Government Act of 1993 did not have a schedule of areas over which local governments had law-making powers. It took another four years for the Act to be revised to incorporate such a schedule. The reason for this is that, although the National Resistance Movement (NRM) government was committed to grassroots democracy it had developed during the period of guerrilla warfare (1981 to 1986), the main issues that compelled it to introduce a decentralization reform were the fiscal and legitimacy crises of the state.

The fiscal crisis revolved around the fact that, for years, the economic base of Uganda had been declining and the world market prices of export crops, especially coffee—the main foreign exchange earner, had also plummeted from about US \$400 million per year to an all time low of US \$100 million. Meanwhile, the liberalization of the export market resulted in the removal of the commodity tax on exports, which used to be one of the major sources of tax revenue, pressure from the World Bank and IMF forced the Uganda government to stop deficit financing by printing notes and domestic borrowing. Consequently, the only options available for financing social services were foreign loans and grants on the one hand, and cost-sharing and mobilizing people to raise their own resources through decentralization on the other. The NRM also assumed that enhanced participation of local people in local government affairs would lead to improved accountability and more responsible use of public resources.

Decentralization was also viewed as a mechanism to reduce the conflict that had torn apart the Ugandan societal fabric for years and to enhance the legitimacy of the NRM government. The NRM reasoned that one way of reducing conflicts based on tribalism and ethnicity was to devolve powers to local authorities based on the popular resistance council (RC) democracy (Regan 1997).<sup>10</sup> When decentralization was introduced in 1993, the NRM was also concerned about a group of “traditionalists” who posed a serious political danger, particularly for the election of those who would deliberate on the new Ugandan constitution in 1994. Its concern to woo as many people as possible resulted in the hurried enactment of the Traditional Rulers (Restitution of Assets and Properties) Statute of 1993, which restored considerable powers to the traditional kingdoms.

The point is that, in 1993, decentralization was seen not as a means of democratizing powers over natural resources or of conserving or improving the environment, but as a means of increasing revenue and improving the legitimacy of the state. Environmental issues appear to have entered the policy and legislative realm mainly as a result of pressures from donors, who made the implementation of certain environment-related programs a condition for the Uganda government to access grants or loans. Such was the case with the European Economic Community, which insisted that all encroachers in forest and game reserves be evicted before it could release funds to the Uganda government.

The government’s reasons for decentralizing are reflected in the manner in which powers over forest reserves were decentralized. The 1993 Traditional Rulers (Restitution of Assets and Properties) Statute handed over a chunk of what used to be public forests to non-elected kingdom rulers. In order to counteract critics of this neo-traditionalist move, the NRM also transferred the management of forests, including reserves, to local government. However, unlike the devolution to traditional rulers, the transfer of powers to local governments was not guaranteed in the law; it was an executive decision that was to be changed in 1995, when powers over forestry resources were re-centralized.

The re-centralization of powers over forestry resources in 1995 appears to have arisen from three forces. First, there were donors who were concerned that their previous investments in some Ugandan forests were being undermined by local governments over which they did not have control. Secondly, the central government realized that it very much needed the revenue from the forests to provide services as well as patronage. For example, a Select Committee of Parliament on the Forestry Department was told how the Minister of Water, Lands and Environment exerted pressure on the Commissioner of the Forestry Department to “award saw mills and pit sawing concessions and transfer of forest officers” (RoU 2000b: 47). In another instance, the Minister signed an instrument to de-gazette Kamusenene reserve to “benefit a private individual” (RoU 2000b: 82). The third reason for re-centralization was that civil servants were unhappy that the power they had hitherto enjoyed had been whittled away. Forestry officials have claimed, in a document on forestry policy, that the re-centralization was due to the fact that “many districts lacked both the technical expertise and the financial resources for effective

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<sup>10</sup> Before 1993, local institutions were called Resistance Councils (RCs). However, with the introduction of decentralization reform, they were renamed Local Councils (LCs).

management” (RoU 2001b: 9). Were this true, the solution could have been capacity building and financial empowerment. We shall see later that the main reason was that the Forestry Department was in an institutional, financial and human resources crisis and that forest officers were benefiting personally from the exploitation of forest resources. It should also be noted that the central government takes 60% of forest fees, leaving only 40% for local governments, and yet it continues to claim that powers over forestry cannot be devolved because of local financial incapacity.

We should add that parliamentarians are interested in increasing their local support and many are inclined to support legislation and programs that benefit them as individuals or improve their electoral chances come the next round of elections. For example, according to our research, members of parliament in Mbale and Kapchorwa have been promising their electorate the de-gazetting of parts of Mt. Elgon Forest Park to increase the amount of grazing and cultivation land at their disposal. Some of these politicians are said to be responsible for some of the encroachments into, and conflicts surrounding, Mt. Elgon National Park (Tenywa 2002; Mugisa 2002; Wambedde 2002; Etengu 1995 and 1996). As we shall see, this is a recurring theme with respect to local government politics as well, particularly in those areas where the demand for natural resources to sustain livelihoods is acute. It is possible that when the 1993 Local Government Act was enacted the interests of parliamentarians were directed at legislation that interfered less with their search for legitimacy and their private access to those resources. For example, some prominent politicians are reported to have been holding plots of land within the boundaries of Mt. Elgon National Park.

This is not the first time that decentralization has been used to meet the fiscal and legitimacy needs of the central government. Throughout the history of colonial and post-colonial rule, natural resources have been used both to beef up state treasuries and to reward political supporters. For this reason, central governments have always been reluctant to decentralize effective powers over such resources, using the argument of the financial and technical incapacity of local governments, setting up rival powers such as the kingdoms and devolving powers without the requisite finances to translate the power into reality.

In this case, however, local government pressure for control over forest resources eventually led to yet another decentralization of forests in 1998. The Forest Reserves (Declaration) Order of 1998 and Statutory Instrument no. 63 of 1998 transferred forest reserves of less than 100 hectares to local government. We shall explore whether or not local government was able to exercise these legislative, executive and judicial powers in the next section.

#### *Impact of Weaknesses in the Legal and Policy Framework*

The lack of clear legal provisions and disjointed development of the legal and policy framework has caused a lot of conflict and loss of forest-related resources. For example, forests transferred to traditional rulers (kingdoms) are supposed to be managed on scientific lines and both central and local governments have a role to play. Thus, central government forestry officials are supposed to issue permits for harvesting resources from

these forests and local governments are supposed to monitor the process. However, some kingdoms have barred forestry officials from having anything to do with their forests and have usurped the power to issue permits, resulting in trees being cut down without due regard to future needs. Not only is it illegal for the kingdoms to refuse forestry officials but also the environment (water catchments, soil cover, etc) is being put at risk. Moreover, the traditional authorities have undermined the power of local government to monitor and enforce rules for better environmental management and use.

The unstable nature of forestry legislation has also contributed to a series of crises within the Forestry Department that have in turn made it difficult for local governments to apply the environmental powers given to them by the law. When it was declared in 1993 that powers over forests had been devolved, the Forestry Department retrenched staff on the assumption that local governments would recruit their own staff as mandated by the law. And yet the local government did not have the resources to recruit forest guards and rangers to confront those illegally encroaching on forest resources. The Forestry Department's staffing crisis was exacerbated when more of its employees were retrenched during the civil service reform. This retrenchment mostly affected the cadres at the frontline of protecting forests. The Select Committee of Parliament on the Forestry Department was informed that "during the process of civil service reform and decentralization, all Patrolmen and Forest Guards were laid off. This left the Forestry Department with no personnel to protect the forests at the grassroots level. There is a vacuum of 154 Forest Rangers, 283 Forest Guards, 700 patrol persons and 25 Forests Officers" (RoU 2000b). Thereafter, investigations by the Inspectorate of Government into the Forestry Department led to the interdiction of senior forestry officers (RoU 1999). Between 1999 and 2000, more than ten senior officials of the Forestry Department were sacked after long periods under interdictions (Wily et al. 2001:199). The effect was to demoralize forestry officers and this, combined with the dwindling funds allocated by the government to run the Forestry Department, forced many forestry officials to adopt corrupt practices. One of those interdicted and eventually sacked over illegal pit sawing activities, Commissioner of Forestry E.D. Olet, argued in his defense:

I have felt that the material resources allocated by the Government over the later years have been completely inadequate for putting the Department in position to perform its duties. This leads to frustration among staff. They feel abandoned and deprived of their opportunity to perform... . With the resources under its charge in high demand, frustrated people easily get involved in illegal activity... It is not to hide that illegal pitsawing has been rampant, and that it has been helped by people of the department. This can certainly also be attributed to weakness among staff as well as lack of resources to control, investigate and take action.

A similar crisis emerged in the Game Department and National Parks. The legislative and policy changes and related financial problems undermined the capacity to monitor wildlife resources and put collaborative management schemes into disrepute. They created uncertainties among staff and, in some instances, officials would go without their monthly salaries or pay salaries using funds that should have been transferred to communities under the collaborative management schemes.

In summary, therefore, although local government elections continued to be held at regular intervals, popular participation was undermined by pendulum swings, haphazard and sometimes incomplete devolution of power. Due to these and other factors, the outcomes of decentralization have been less than those predicted by the theory of devolving decision-making powers to downwardly accountable representatives. We now examine data from the districts of Mukono, Mbale and Masindi. Our interest is to determine whether or not the powers described above were applied and with what consequences.

## CASE STUDIES OF MUKONO, MBALE AND MASINDI DISTRICTS

### Introduction to the Case Study Districts

#### *Mukono*

Mukono District is always paraded as a model district in terms of decentralization, having been one of the first 13 districts in which the decentralization reforms were pioneered.<sup>11</sup> The area of Mukono District is 14,309 square kilometers, of which 68% (9,747 square kilometers) is open water and swamps or wetlands (NEMA 1999). The district has 58 gazetted forest reserves covering a total of 570.14 square kilometers. Of these, 48 are what are termed central forest reserves and ten local forest reserves. Many of the local forest reserves are found on islands in Lake Victoria (NEMA 1999: 63). A significant number of small forests exist on public and private land in Mukono District. Private land consists mainly of *mailoland* created at the beginning of the 20<sup>th</sup> century. *Mailolands* were rewards to Baganda chiefs for assisting the British colonialists in extending the colonial frontier (Bazaara 1997).<sup>12</sup> Peasants who were found living on those lands were turned into tenants who had to give a portion of their produce to land owners as rent, known as *busulu* (ground rent) and *envujjo* (commodity rent). In addition, Baganda landlords attracted migrants from other parts of Uganda to settle on their land so that they could maximize rent income. This partly explains why Mukono has a high number of non-Baganda, some having migrated into the area in the colonial period. In the current situation, the 1998 Land Act protects the tenants living on the land through a legislated nominal fee of shs.1000 per year.

Mukono has many environmental problems. As we shall see, environmental issues arise around the utilization of the wetlands and river and lake shores for activities such as growing *mayuni* (yams), brick making and fishing. According to the Mukono District Profile:

Over exploitation and encroachment is on the increase, putting the rate of swamp destruction...at about 0.85 square kilometers (85 ha) per year. The main driving force is brick-making activity... Encroachment for agricultural land especially for horticultural crops is rampant in the counties of Mukono and Bwike. Communities around the wetlands reclaim them for agricultural purposes. These practices have led to loss of biological resources whose values are not yet well

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<sup>11</sup> Mukono has been divided into two to create the district of Kayunga. However, for purposes of our analysis Kayunga is included in Mukono.

<sup>12</sup> The word *mailo* is a corruption of the word "mile" because these lands were measured in miles.

studied/documentated. Estate (large-scale) farming, especially for growing of tea and sugar cane, has resulted in continuous expansion of farmland. Hence, there is considerable encroachment on the wetland ecosystems especially the swamp forests. (NEMA 1999: 24)

Farming near the banks of streams and rivers such as the Nile has “resulted in general land degradation and silting of rivers due to effects of soil erosion on the higher slopes,” the use of agricultural chemicals has polluted the soils and water, and overgrazing and bush-burning, especially in Mbale County, have exposed the soils to erosion elements. Another problem is the encroachment of forest reserves for agricultural purposes, fuel wood and charcoal, which has degraded them to the tune of 51.6% (534.3 square kilometers) (NEMA 1999: 32-33). Finally, the structural relationship between landlords and tenants on *mailoland* hampers the environmental improvement programs of both central and local governments. An example is tree planting; if a tenant plants a tree on the land, the landlord may claim it.

### *Mbale District*

Mbale District is approximately 27,546 square kilometers, with an estimated population of 826,000.<sup>13</sup> It is one of the most densely populated districts, where the demand for land is extremely acute. Land, more than anything else, determines the local politics of Mbale and this has a bearing on perceptions of the environment.

There are very few forest reserves in Mbale. In line with national forest policy, they are divided into three categories. The first category comprises the Mt. Elgon National Park, covering an area of 1,145 square kilometers, which is shared with Kapchorwa District. Mt. Elgon National Park is strictly a nature conservation park; however, people access it illegally (Hincley, et al. 2000:1; Kaboggoza 2000:55). The second category, that of central forest reserves, includes Namatale Forest Reserve (6.63 square kilometers) and Mbale Plantations (5.62 square kilometers). The third category is composed of local forest reserves (amounting to 1.88 square kilometers). Discounting the portion of Mt. Elgon Forest Park located in Kapachorwa district, Mbale has 13.33 square kilometers of forest reserves. This contrasts poorly with Mukono District’s 570.14 square kilometers. of central and local forest reserves, and also with Masindi District, which has 1,030.32 square kilometers.

The pressure on forests, whether public or reserves, is particularly acute and has influenced the way in which devolved environmental powers have been applied—or not applied. It is not a surprise that soil erosion, deforestation and declining soil fertility were ranked among the first four leading environmental issues in Mbale District in the Mbale District Environmental Action Plan 1999-2001 (MDPEPC 1999). Problems of overgrazing, degradation of riverbanks and wetlands were also identified.

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<sup>13</sup> <http://www.mbale.co.uk/>

### *Masindi District*

Masindi District is 8,087 square kilometers and has an estimated population of 479,000. Forty nine percent of the total land in Masindi District is under protected areas (MDLG/EPEDP 2002) These protected areas include Murchison Falls National Park (1,930 square kilometers), Bugungu Wildlife Reserve (748 square kilometers) Karuma Wildlife Reserve (713 square kilometers) and Karuma Communal Wildlife Area (241 square kilometers.). In addition, Masindi District has 15 central forest reserves, one local forest reserve and three kingdom forest reserves. Kingdom forest reserves are those forests that the central government gave the Bunyoro-Kitara kingdom when it restored kingdoms in 1993. In total, there are (as already indicated) 1,030.32 square kilometers of forest reserves in Masindi. There have been encroachments into both forest and wildlife reserves for farming, hunting and collection of a variety of resources. Of equal importance, on public land there is serious deforestation in parts of Kibanda and Buruli counties by those involved in the charcoal and fuel wood businesses.

Masindi District is surrounded by big lakes (Lakes Albert and Kyoga) and boasts many rivers and wetlands.<sup>14</sup> As we shall show, the use of rivers and wetlands also creates environmental problems in the district; examples include brickmaking and over-harvesting of papyrus. Other environmental issues include soil erosion because of poor husbandry techniques, overgrazing (particularly in Kijunjubwa and Kimengo parishes) and the annual burning of grass.

### **Application of Environmental Powers by Local Governments**

What powers have the local governments in the three case study districts applied and not applied to deal with the environmental issues noted above, and with what consequences? Our research has shown that Masindi is the only district that has been able to apply some of its powers to legislate on environmental issues. For example, it has succeeded in getting the central government to endorse its Production and Environmental Management Ordinance 2001. The capacity of local governments to apply their environmental powers has been limited by four factors: lack of concern about environmental issues, financial constraints, lack of clear institutional relationships, and conflicts of interest. These are discussed in turn below.

### *Lack of Concern about Environmental Issues*

The most important question that needs to be posed is whether or not local governments are aware of environmental issues and are committed to dealing with all issues related to the environment. It is significant to note that NEMA has been carrying out environmental sensitization programs for all local government technical staff and councilors. However, many councilors find it difficult to support environmental issues. An earlier study in Mukono noted that:

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<sup>14</sup> Rivers include Kafo and Victoria Nile, Kasokwa, Titi, Nyansonko, Sambuye, Sonso, Waiga, Waki and Waisoke. Equally there are many swamps such as Ibohe, Nyakafunjo, Lukema, Bubwe, Musoma, Ntoma, Kiha, Siba, Waiga and Kiyanja.

In the overall management of the Council affairs, environment issues do not attract high priority because people's awareness including the councilors is not very high. There is an executive committee within the LC in charge of production, marketing and environment. But it appears that the committee is generally more interested in development than environment. Consequently, any environmental activity, which needs financial support, cannot easily be carried out... . Within the administration, the positions of district environmental officer are newly created. They normally do not have means of transport to inspect environmental issues locally. At the service delivery level of LC3 administration unit, there is no specifically designated environmental officer. Thus, they often have to depend on other extension staff (for instance, veterinary doctor and agricultural extension officer) at LC3 who already face transport constraints (Saito 2002).

As the above quotation suggests, this apparent lack of concern about environmental issues is closely related to the other problems, namely financial constraints, institutional relationships and conflicts of interest.

### *Financial Constraints*

The Forestry Department is not the only one facing the predicament of inadequate funds. Local governments also lack the financial and human resources to effectively apply powers bestowed on them by the law. Statutory instrument no. 63 of the Forest Reserves Declaration Order of 1998 transferred powers of management over forest reserves of less than 100 hectares to local governments. However, this responsibility was bestowed on local governments without a concomitant transfer of funds. The local governments of Mukono, Mbale and Masindi were therefore all compelled to use the forestry officials employed by and accountable to the central government. The local governments had serious conflicts with these "designated" officials, many of whom refused to be supervised by them.

Designated forestry officials were supposed to be given financial resources to carry out extension work, such as tree planting. The Forestry Department was of the view that local governments should use their 40% share of the forest fees collected from those who are permitted to harvest resources in central government forests for this purpose. However, the local governments thought that, as long as the distribution of forest fees remained skewed in favor of the central government, the latter should finance the extension work of the forestry officials. For example, the minutes of a meeting of the Mbale District Production and Environmental Sectoral Committee held in June 1998 (Mbale District 1998) reported that:

It was... observed that forestry was allocated very little money for the financial year ending. But this was explained that it was because forestry was not fully decentralized. It was also observed that even when fully decentralized now, the revenue accruing from forestry, 60% is remitted to headquarters and the district gets only 40%. It was agreed that this anomaly be rectified.

What the councilors meant is that it was not fair for central government to transfer those responsibilities when the bulk of the revenue collected from those very resources was

taken by central government. It would have been appropriate, according to one official in Mbale, if the government took 40% and local government 60%. The councilors therefore refused to allocate money to the forestry department, thereby undermining the cause of improving the environment.

Even more controversial is the procedure for disposal of timber that has been impounded because it was harvested illegally. All three local governments were unhappy with the procedure of transporting such timber to Kampala for auctioning, arguing that they had to use their own resources (such as vehicles, fuel and personnel) to impound and transport the timber and yet they received nothing from its sale. They regarded this policy as another reason they could not carry out responsibilities such as environmental improvement because they did not have the resources.

Local governments are also supposed to use their own resources to put in place environmental institutions, such as district environment committees and sub-county environmental committees, as stipulated in the law, and to develop environmental plans. It is interesting to note that, of the three case study districts, Mbale and Masindi have succeeded in doing so, but Mukono has not. In Mukono, what is usually dubbed as an environment committee is (as an earlier quotation indicated) actually a production and extension committee, one of the standing committees of Mukono District Council, which converts itself into an environment committee when there is need to deal with environmental issues.

Why should Mukono, which is a pioneer district in terms of decentralization, lag behind in this respect? The answer is not that it is less concerned about environmental issues. In fact, as we have already seen, environmental issues are not a priority area for any of these local governments; they are merely forced onto the districts. Masindi and Mbale have made these advances because of donor funding. Mbale District has received World Bank project funds. These funds, which were channeled through NEMA, were used to purchase furniture, computers and a vehicle, and to pay the salary of the District Environment Officer. They were also used to fund the preparation of an environmental action plan, which is a participatory, “bottom up” process that requires a lot of money, and the implementation of micro-projects (in areas such as forestation and agro-forestry) identified through the planning process (Mbale District 1993; MDPEPC 1999). In Masindi District funds were provided through the USAID-funded Environmental Protection and Economic Development Project (EPEDP) (MDLG/EPEDP 2002). Without EPED, Masindi would have been like Mukono, which does not have a *bona fide* district environment committee. It was explained to the author that Mukono District does not have enough funds to pay allowances for members of a district environment committee.

The point is that where there has been no external financial support, districts have not established the institutions stipulated in the law. Some districts have employed environmental officers but do not have the budget to pay their salaries and even facilitate them to carry out their work. In all these districts the environment office is seldom more than a one or two-person department. Environmental activities are carried out using funds

from donors or from two government programs, namely the Plan for Modernizing Agriculture and the Poverty Action Fund. This puts into question the long-term sustainability of the various environmental sensitization exercises and programs for improving the environment currently being implemented using donor funds channeled through NEMA.

#### *Lack of Clear Institutional Relationships*

Lack of clear institutional relationships has been another reason why local governments have not effectively exercised their powers over the environment. The Select Committee of the Parliament on the Forestry Department observed that:

District Councils are responsible for assisting the Central Government to preserve the environment through the protection of forests. Given the implications this has on the human resources and finances, it is important that the concerned authorities set out the terms on which the local government are to be involved in the protection of forests to avoid clashes and blame-shifting (RoU 2000b).

There are two related problems. Firstly, there is no clear chain of command for forestry personnel (Banana, Gombya-Ssembajjwe and Bahati 2001). Because local governments lack the resources to fund environmental activities, they have had to rely on the government's forestry officials to manage local forest reserves, whereas they are supposed to be one hundred percent in control. At the time of the research, all three local governments were dependent on the central government forestry officials to apply executive powers in the area of forests. Yet these officials often do not want to be supervised by, or accountable to, local governments because they are not hired or paid by them. The situation is complicated when employees below the forestry officer level, notably forest rangers and guards, are employees of local governments. Should guards or rangers hired and paid by local governments report to the district forestry officer? The lines are not clear and conflicts abound, undermining the cause of good environmental practice. For example, the official procedures are as follows:

At the Sub-county level, the Forest Guard, working together with the Local Council Officials, enforce forest rules. Local Council Officials give graduated sanctions to the offenders. A verbal warning is given to first time offenders, while tools and illegally harvested products are confiscated on the second offense. When an individual violates forest rules several times, the case is referred to the District Forest Officer who prosecutes the offender at the District Magistrate's court (Banana, et al. 2001).

However, prosecution is rare and when it occurs the fines are minimal. This arises from the conflicting chains of commands as well as from the conflicts of interest that we shall trace later.

Secondly, there have been conflicts between central and local governments over which level of government has power to issue permits for timber trees on public land. The power to issue permits and to collect forest fees is wielded by the central government

through the forestry officers. A lot of confusion has reigned with the central government forestry department officials issuing permits and appropriating 60 percent of the fees to central government. Local governments have argued that they should have the power to issue permits and should have exclusive use of the money collected. In Masindi District, the local government appears to have succeeded in getting the central government to allow it to wield power to issue permits and to collect fees for charcoal production and harvesting of timber trees on public land. To effectively apply this power, Masindi local government intends to hire its own forestry officer. This forestry officer will be a servant of the local government and will be accountable to it.

### *Conflicts of Interest*

Local governments are supposed to take decisions that help improve the environment. In some instances, however, they have not been able to do so because of conflicts of interest and the lack of checks and balances to reduce the impact of such conflicts. Part of the problem is that councilors as individuals have their own social problems and view allowances as a source of income. Thus, when making budgets, their allowances come first and the environment later. Alternatively, they use their political power to access resources even if this may be dangerous. However, the main problem is that councilors want to remain in the good books of their electorate. Therefore, their main interest is in “development” or “poverty-alleviation” oriented projects that enhance their possibility of being re-elected come the next round of elections. We provide a number of examples from Mukono and Mbale.

The first example relates to a presidential directive issued in May 2001 to the effect that those who had cultivated on the banks of rivers and lakes should harvest their crops within one year and then leave for good.<sup>15</sup> The reason for this was that such cultivation introduces soil into the water, thereby silting lakes or rivers. The President issued this directive despite the fact that regulations governing the use of river and lake banks were already in place and local governments were not enforcing their implementation. When the directive was circulated, councilors in Mukono District refused to evict those concerned. The chairperson of Nyenga Sub-County Local Government lamented:

They have created problems for us politicians. The deadline for people to leave is April 25, 2002. That deadline has passed. People in Kalega, Bugoba, Kabize, Buzika, Namabu...are still living on the shores. As councilors we fight for our people. Our people have been living on that land for more than 150 years. They have their coffee, their yams, their houses. To tell people to leave is to create enmity for us.<sup>16</sup>

The sub-county chief in the same meeting lamented that “*Akalulu kaleta tabu; Akalulu kata emirimu*” (The vote brought problems; The vote killed work). There is conflict of interest and lack of clear demarcation of powers at the local level. Councilors cannot take

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<sup>15</sup> The directive related to cultivation within 50 meters of lakes and big rivers and 30 metres of smaller rivers and streams.

<sup>16</sup> Speech by Mr. Sammy Lwanga Moses during a seminar on Environmental Management in Respect to Organic Farming, Soil and Water Conservation and Proper Use of Agro-chemicals (PAF Programme), held at Namabu Health Center, Nyenga Sub-county on April 30, 2002.

decisions that may hurt their electoral fortunes; the political and economic costs of doing so are simply enormous.

In Mbale and neighboring Kapchorwa Districts, the land problem is particularly acute, with a growing number of landless people. Every election period, political candidates promise the electorate that, if they are elected, they will bring about the de-gazettal of Mt. Elgon Park. It is claimed that the current chairman of Mbale District promised those in need of a portion of land in the park and that explains his landslide victory. In Kapchorwa, a local Member of Parliament promised a two-mile strip inside the park once selected for grazing land. At one point this promise led to a riot, in which the rioters, who had homemade guns, even overrun the Mt. Elgon Park outpost.

In other instances, councilors have personal interests that would suffer if they made certain environmental decisions. In Mbale, local politicians were among those who had encroached on the land in Mt. Elgon Forest Park. At one point, the park authorities asked all those who claimed land in the park to stand on their plots of land to be photographed. The politicians did not turn up! Another example from Mbale relates to the cutting of mahogany trees that line the roads. Kakungulu, a Muganda general who helped the British to extend the colonial frontier to eastern Uganda, planted these trees at the beginning of the 20th century. Since they served a useful environmental function, the District Council's production and environment committee asked the Forestry Officer not to issue permits to cut those mahogany trees. Subsequently, however, the Council passed a resolution to the effect that 20,000 desks be supplied to primary schools in Mbale. Thereafter, people were seen cutting down mahogany trees during weekends and holidays. Those doing so were arrested and their saws confiscated. However, it was discovered that some of the councilors were involved in cutting the trees.

It is evident from the above examples that councilors have difficulty in enacting environment legislation or enforcing laws that would create electoral difficulties come the next elections, or that are not in their personal interest. Quite clearly, therefore, there is need to place checks and balances in local governments. It is too much to ask councilors to make laws and enforce them. Another example from Mbale, involving the same mahogany trees, shows how checks and balances can help to protect the environment. Our entry point in this case is the Ugandan government's effort to attract foreign investors. A Chinese company, Jin Yun Bo Yuan International Limited, was sent to Mbale with an introductory letter from the Uganda Investment Authority. Since the chairperson of the district local government was eager to attract revenue to his district, he was particularly pleased with the appearance of these Chinese because Mbale District could rent them some local government workshop buildings, which had for a long time been idle. Within a short period, the Chinese company had procured those buildings and installed a sawmill. However, it had not carried out a survey to ascertain whether or not Mbale had trees that could be harvested in commercial quantities. It was only after the company had installed the mill that they approached the forestry officials for permits to cut the mahogany trees alluded to above. The forestry officer indicated that they had not followed the right procedure and that in Mbale there were no trees for commercial harvesting. The councilors then came and put pressure on the forestry officer to issue

permits to cut the controversial mahogany trees. In response, the forestry officer indicated that local people were against those trees being cut and that if they wanted they should first consult the people. The councilors could not dare do anything because elections were looming on the horizon. The trees were saved because of elections.

### **Accountability Mechanisms**

Agrawal and Ribot (1999) argue that good environmental outcomes are more likely to result if decision-making authorities are downwardly accountable. The most obvious mechanism for downward accountability is the electoral system. We have already outlined how, in the current Ugandan legislation, the electoral system is well designed to allow for greater participation and downward accountability; there is even a provision for recall. Elections in Uganda have proved to be an effective means of accountability, in that they make representatives think twice about their actions in local government. We have demonstrated in the previous section on conflicts of interest that councilors are greatly concerned about the need to maintain the support of the electorate and that this has influenced their behavior regarding environmental issues. We have also seen that this may result in decisions that are either beneficial or harmful in terms of the environment, depending on the interests of the various parties concerned and on whether systems of checks and balances are in place.

However, elections are not the only mechanism for achieving accountability. There are other ways of holding the leadership accountable, including abrasive talk, deviance, use of wire nails, riots, and encroachments. We shall illustrate this with a few examples.

When the President issued his May 2001 directive that people should stop cultivating on the banks of rivers and lakes, the people refused to move. In Mukono, the author attended a seminar where the people voiced their displeasure. An elderly person informed the meeting that he had a title to land he purchased in 1960. He recollected that trucks ferrying sand to construct the Owen Falls Dam passed over his land and, over the years, the lake thus created had “eaten” a portion of his land amounting to five acres. “It is the lake that has invaded me,” he argued; “the government has to compensate me.” Similar comments by a number of other people at the seminar highlighted the inconsistencies in the government’s approach to environmental problems. One person quipped that the Kirinya Prisons Farm near Ripon Falls (on the River Nile) had cultivated to the water edge. If government was serious about clearing the shores, it should start with the prison farm. Another pointed out that many factories and businesses in Jinja town were built on the edge of the River Nile and yet nothing was being done about them. A third participant pointed out that all the wetlands in Bwaise and Banda in Kampala had been encroached upon by house construction. Why did the government not begin from there with its wetland restoration policy? Similar criticisms were made of the government’s tree planting policies. Participants noted that it was impossible to plant trees on land that one did not own. Government should first resolve the problem of land tenure in Mukono District before it compelled them to plant trees.

Around commercially lucrative forest reserves, many mechanisms have been used to hold state officials accountable. Some people simply threaten physical violence when they

meet forestry officials. Around Budongo Forest Reserve, illegal pit-sawyers threw witchcraft materials in the compound of the forestry officers to threaten them to be less strict. In other areas, illegal pit-sawyers put nails on the road to discourage officials of the forestry department and local government from carrying out their patrol functions. In some instances, they also use mobile phones and small children to warn people of the impending arrival of the authorities.

Another mechanism is that of alliances for political protests. The example here is that of the Masindi Pit-sawyers' and Wood Users' Association (MPWUA). After 1995, illegal entry into forest reserves escalated. In order to tackle this problem, the Forestry Department enlisted the help of civil society organizations, one of which was MPWUA. MPWUA was formed at the initiative of the Forest Department. One of its objectives, outlined in section six of article three of its constitution, is "to curb illegal activities in the forest reserves together with the forest department staff." Section 3 of Article 11 provides that "the executive members can initiate patrols on illegal activities into the forest reserve in conjunction with or without the forest staff." Quite clearly here the power of monitoring and apprehension of those breaking rules passed from the state to a civil society organization. In fact, MPWUA went as far as undertaking management functions, such as maintenance of roads in Budongo forest reserve.

Because it was doing what should have been the functions of the Forestry Department and Masindi Local Government, MPWUA began making demands on the Forestry Department, such as that it should be given preferential treatment in the award of concessions. Since some officials of the Forestry Department were benefiting from illegal activities, this demand threatened the well being of their private coffers. The forestry officials thus moved quickly to counteract the growing powers of MPWUA by setting up rival associations. They also demanded that MPWUA open its membership to whomever wanted to join it and establish branches at sub-county level. In the drama that followed, MPWUA appealed to important offices in the ministry under which the Forestry Department fell that the forestry officials in Masindi were fuelling illegal pit sawing. Masindi Local Government joined MPWUA in its struggle. It did so for two reasons. Firstly, MPWUA was doing what the cash-strapped Masindi Local Government had the legal mandate but not the resources to do, namely monitoring and policing the forest reserve. Secondly, it was equally against illegal pit sawing because this reduced the revenue collected from forest fees, 40% of which accrued to the Council. The end result was that the forestry officials were transferred from Masindi but were replaced by others wielding the same powers!

### **Social and Environmental Outcomes**

We began our analysis with the theoretical claim that when decision-making powers are devolved to elected, downwardly accountable representatives, social and environmental outcomes can be positive. In this section, we examine the social and environmental outcomes of the decentralization reform in the three case-study districts.

### *Social Outcomes*

Decentralization, like all reforms, has produced winners and losers. For example, the policy and legislative uncertainties and changes have resulted in many civil servants losing their jobs. However, some civil servants took advantage of the policy and legislative uncertainties to accumulate wealth through activities such as illegal pit sawing. Similarly, policies designed to improve the environment, such as prohibition of cultivation near riverbanks or controlling brick making and cultivation in wetlands, have diminished the resources upon which certain groups depend for survival. In some instances, these people have reacted with resistance and threats. As the chairman of Nyenga Local Council 3 said, if the authorities insist on expelling people from riverbanks, those affected will view them as enemies.

The system of allocating permits for charcoal production is also resulting in social differentiation. Permits are procured by people who are relatively well off. These people may use the permit in either of two ways. One way is to sub-contract to rural charcoal producers. The permit holders give the charcoal producers an advance payment to produce the charcoal and then pay the balance when the agreed amount has been produced. The important point to note here is that the permit holder pays the charcoal producer at low prices. The other way the permit holder can use the permit is to hire it out to anyone who wants to trade in charcoal. Since the permit does not specify the number of trees that may be felled or in which part of the district, it is possible for different traders to use the same permit at the same time. The permit holder in this case earns *permit rents*, the traders earn exorbitant profits, and the loser is still the rural charcoal producer.

The Masindi Local Government has woken up to the fact that the district loses lots of money through the current system of charcoal production and trade. According to a study by Environment Protection and Economic Development (EPED), Masindi District loses approximately a billion shillings per year from charcoal revenue to outside districts. The main beneficiaries of this trade are merchants, most of whom come from outside the district (Dissi and Ayongyera 2000). At the moment, a bag of charcoal costs shs. 4,000 in Masindi, while in Kampala, where charcoal is the main source of energy for cooking, it costs shs. 15,000. Masindi District Council has developed a plan that will not only improve the environment but also improve the income of charcoal producers. This plan involves organizing charcoal producers into co-operatives in order to reduce their exploitation. The Local Council hopes thereby to reduce the impoverishment of the district and social inequalities, while also boosting its income.

### *Environmental Outcomes*

The extent to which local government has contributed to positive environmental change has, as we have seen, been constrained by two types of factors. First, it has been constrained by the limited powers devolved to local government, the inadequate and sometimes unstable institutional and policy framework, and lack of resources. This means that the conditions for effective participation in environmental management are inadequate and, therefore, the outcomes are inevitably limited. Second, it has been

constrained by conflicts of interest between the various groups involved. In this case, the outcome depends on whether or not it is in the interests of the dominant groups to protect the environment and the existence of checks and balances.

However, there are a number of examples of good environmental outcomes arising from the actions of local governments, particularly in Masindi District. Masindi Local Government has made significant progress in fulfilling its legal responsibility of protecting wetlands and river banks. For example, it has succeeded in moving people off all the plots of land in wetlands that were allocated to individuals for house construction in the past. In another reported case, a cattle owner used to water his cattle in the wetland and in the process destroyed it. The problem was reported to the local councils and the Masindi Local Government intervened. The cattle owner was advised to create a channel that would take water to a point where the cattle could drink without destroying the wetland. Another case involves someone who had settled within the legally prohibited zone along River Kafo. The Masindi Local Government compensated the individual and reclaimed the shoreline and in the process has helped reduce silting of the river Kafo and Lake Kyoga. Similarly, individuals who had encroached on the river Titi were also stopped from further cultivation by the local government. Masindi Local Government officials also have plans to promote tree planting. They will use part of the revenue generated by the Council to develop and supply free tree seedlings, while people who cut trees for charcoal production will be required to plant five new trees for every tree cut.

Environmental concern, however, is still limited. This is reflected in the fact that many of the environmental programs in which local governments have been involved have been largely donor initiatives.

## CONCLUSIONS

The Ugandan decentralization may be well intentioned. However, the conditions necessary for effective participation have yet to be put in place. Government officials describe the decentralization reform as a process of learning and experimenting. As a contribution to this learning process, we draw some conclusions in this section on ways of increasing participation.

Firstly, local government powers need to be secure in the law, in order to avoid the kind of alternating decentralization and re-centralization of powers that occurred within the forestry department. This can create confusion and leads to the misuse or waste of resources.

Secondly, sufficient powers have to be devolved. At the moment, significant powers in terms of participation have not been devolved. Powers to issue permits and collect forest fees are examples. At the moment the forestry officials hold both *technical* and *political* power. These officials are not downwardly accountable and do not have to bear the brunt of the misuse of those powers. Like the colonial chief, they should be stripped of that political power. This power should go to those who are downwardly accountable and who will be compelled to take into account the different interests by virtue of the fact that they have to account to them for their actions.

Thirdly, finances must be sufficient for required local tasks. There are some powers (including lawmaking, monitoring and enforcement, and arbitration powers) that local governments are supposed to wield, but cannot because they lack the financial and human resources necessary to do so. Having no resources is tantamount to having no powers at all. At the moment environmental activities are being driven by donor funds. This brings into question the long-term sustainability of these programs. Local governments have to find a way of increasing local revenue and running their activities with “home-grown” resources. At present, there is a tendency for local governments to look to donors for grants or to try to cede their powers to civil society organizations. This is a dangerous erosion of their powers and can lead to serious social conflict. A few reforms in local government practices could generate more funds. Such reforms include fighting corruption through transparency, ensuring that local governments get value for money spent on any project, paying their civil servants reasonable wages so that they are not tempted to be corrupt, and expanding their sources of taxation.

Finally, it is clear that, at present, the need to access resources to alleviate poverty outweighs the desire to protect resources. In Mbale and Mukono, there is no way that local governments can evict people without compensating them—that is, giving them alternative sources of livelihoods. In Mbale, for example, no amount of preaching will make councilors respect Mt. Elgon Forest Park unless the issue of alternative source of income is resolved. And the same applies to peasants cultivating in wetlands in Mukono District. Consequently, there is a need for strong institutions that can withstand conflicts of interests. Those who wield environmental powers need to be checked. Local governments, therefore, should be able to check central government officials and, equally important, central government must check local government to ensure that they do not abuse their powers. It is not enough to rely on democratic accountability through elections. A lot of environmental damage can be done in the period between elections.

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## **ABOUT THE AUTHOR**

Dr. Nyangabyaki Bazaara was born in a small village in the Masindi District in Uganda. He pursued his studies in his home country through graduate school, receiving his Masters degree in Political Science from Makerere University, Kampala. In 1997 Dr. Bazaara completed his Ph.D. in political studies at Queen's University in Ontario, Canada. He has written and published numerous articles on land policy, food security, and the role of civil society in Uganda. In July 1999, Dr. Bazaara was appointed the first full-time Executive Director of Center for Basic Research, a non-government and non-profit research institution in Uganda, of which he was a founding member in 1987.

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EAA seeks to foster development of the essential legal and institutional infrastructure for effective, replicable and sustainable environmental governance. This overarching goal is supported by three specific objectives:

- To influence the character of ongoing World Bank, U.N. and other donor-driven African government decentralization efforts to ensure that rights, responsibilities, capacities, and accountabilities are consistent with sound environmental management;
- To promote national-level administrative, legislative, and judicial reforms necessary to accomplish environmentally sound decentralizations and to enable public interest groups to hold governments and private actors accountable for their environmental management performance; and
- To develop regional networks of independent policy research and advocacy groups that are effective in promoting and utilizing the above reforms in the interests of improved environmental management.

EAA achieves these objectives through three inter-related efforts: 1) Decentralization, Accountability, and the Environment, 2) Environmental Procedural Rights, and 3) Non-Governmental Organization Capacity-Building.

The Decentralization, Accountability and the Environment effort aims to identify and promote policies and laws essential for effective, efficient, and equitable decentralization, including those establishing accountable representative authorities for local communities in participatory natural resource management; laws specifying the distribution of decision-making powers over nature among state authorities, civil, and private bodies; laws assuring just recourse; and laws ensuring an enabling environment for civil action. Through informed analysis, the effort aims to influence national-level policy-makers to develop environmentally sound decentralization policies and an enabling environment for civic action concerning environmental policy and its implementation. It reaches this audience directly and through the international financial and donor organizations, environmental policy research institutions, and international and local non-governmental organizations involved in environmental policy matters. This effort supports research on

existing decentralization policies and on the enabling environment for civic action. To further these goals it conducts research jointly with independent policy-focused institutions, the preliminary results of which are presented in this series.

The Environmental Procedural Rights component of the EAA initiative is designed to establish and strengthen an enabling environment for citizens and advocacy organizations both to enforce their constitutional rights to a clean environment and to meet their constitutional responsibilities to ensure sound environmental management. This environment includes fundamental civil liberties, such as freedom of association and expression, and basic rights, including access to information, justice, and decision-making in environmental matters. This component works at three levels. At the national level in pilot countries, the initiative supports the work of local policy groups to improve the law and practice of environmental procedural rights. At the regional level, the initiative supports networks of local organizations to promote legally-binding regional environmental governance instruments, similar to the European Aarhus Convention, that provide for procedural rights irrespective of citizenship and place of residence. At the global level, this component supports African involvement in a coalition of organizations to collaborate on the establishment of international environmental governance norms and on ensuring compliance by governments and private corporations.

The Non-Governmental Organization Capacity-Building component of the EAA initiative aims to strengthen a select group of independent policy research and environmental advocacy groups and their networks. This group includes, for example, the Lawyers' Environmental Action Team (LEAT) in Tanzania, Green Watch, Advocates for Development and Environment (ACODE) and the Center for Basic Research in Uganda, and the African Centre for Technology Studies (ACTS) in Kenya. These environmental advocacy organizations seek to improve environmental management and justice by contributing to policy and legislative reform, and ensuring compliance to environmental laws and norms. The groups use a range of approaches and tools to influence policy formation, including policy research and outreach, workshops and conferences, public debates, press releases, and litigation. This EAA project component supports efforts in organizational development, capacity building in advocacy approaches and skills, and technical competence in specific environmental matters. Federations and networks of such NGOs, joint initiatives, and South-South collaborative efforts are also facilitated and supported.

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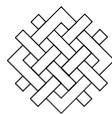
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