

**THE RIGHT TO PUBLIC PARTICIPATION IN  
ENVIRONMENTAL DECISION MAKING:  
A COMPARATIVE STUDY OF THE LEGAL REGIMES  
FOR THE PARTICIPATION OF INDIGENEOUS PEOPLE IN  
THE CONSERVATION AND MANAGEMENT OF  
PROTECTED AREAS IN AUSTRALIA AND UGANDA**

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A THESIS SUBMITTED IN FULFILMENT OF THE REQUIREMENTS  
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

**DIVISION OF LAW  
MACQUARIE UNIVERSITY**

**August 2006**



**Dedicated to my daughter Tessa Esther Kuteesa Kisakye  
and my mother Edith Nassuna Musisi.**

# **TABLE OF CONTENTS**

Abstract	8
Candidate's certification	13
Acknowledgements	14
Acronyms	16

## **CHAPTER ONE**

1.1 Background to the study	22
1.2 Justification for the study	25
1.3 Significance of the study	30
1.4 Rationale for the methodology	31
1.5 Methodology for the study	32
1.6 Synopsis of the study	33

## **CHAPTER TWO**

### **LINKING PUBLIC PARTICIPATION TO ENVIRONMENTAL DECISION MAKING AND NATURAL RESOURCES MANAGEMENT**

2.1 The right to public participation	36
2.2 Public participation, environmental decision making and natural resources management	39
2.3 The value of public participation in environmental decision making and natural resources management	44
2.4 Criticisms associated with public participation in environmental decision making and natural resources management	59

<b>2.5</b> The rationale underlying the rise in importance in public participation in environmental decision making: a dialectical exposition	67
<b>2.6</b> Theories of democracy and the role of public participation	84

## **CHAPTER THREE**

### **THE RIGHT TO PUBLIC PARTICIPATION**

<b>3.1</b> The international context within which the right to public participation has emerged	98
<b>3.2</b> The right to public participation at the regional level	116

## **CHAPTER FOUR**

### **IMPLEMENTING THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING: THE PARTICIPATION OF INDIGENOUS PEOPLES IN THE CONSERVATION AND MANAGEMENT OF PROTECTED AREAS**

<b>4.1</b> Introduction	134
<b>4.2</b> The concept of indigenous peoples	135
<b>4.3</b> The eclectic history of protected areas	141
<b>4.4</b> The classic model for protected area management	145
<b>4.5</b> The new paradigm for protected area management	146
<b>4.6</b> The rationale underlying the new paradigm for protected area management	151
<b>4.7</b> The international framework for the participation of indigenous people in the conservation and management of protected areas	165

## **CHAPTER FIVE**

### **THE LEGAL AND POLICY REGIME FOR THE PARTICIPATION OF INDIGENOUS PEOPLES IN THE CONSERVATION AND MANAGEMENT OF PROTECTED AREAS IN AUSTRALIA**

<b>5.1</b> The commonwealth level	188
<b>5.2</b> The participation of indigenous peoples in the conservation and management of protected areas in Western Australia	199
<b>5.3</b> Implementing the participation of indigenous peoples in the conservation and management of Purnululu National Park and Conservation Reserve	227
<b>5.4</b> The participation of Aboriginal people in the decision making process leading to the gazetting of Purnululu National Park: an analysis	237
<b>5.5</b> Strategies used by Aboriginal people to participate in the process of gazetting Purnululu National Park and Conservation Reserve	244
<b>5.6</b> Lessons learnt from the participation of indigenous peoples in the gazetting of Purnululu National Park and Conservation Reserve	248

## **CHAPTER SIX**

### **THE LEGAL AND POLICY REGIME FOR THE PARTICIPATION OF INDIGENOUS PEOPLES IN THE CONSERVATION AND MANAGEMENT OF PROTECTED AREAS IN UGANDA** ..

<b>6.1</b> The policy regime	253
<b>6.2</b> The legal regime	255
<b>6.3</b> Decentralisation in Uganda	258
<b>6.4</b> The historical context within which the right to public participation has emerged in Uganda	261

<b>6.5</b> The participation of the Batwa in the conservation and management of Bwindi Game Park	269
<b>6.6</b> Public participation in environmental decision making and management of Bwindi Impenetrable Game Park	282
<b>6.7</b> The participation of the Batwa in the gazetting of Bwindi Impenetrable Game Park: an analysis	291
<b>6.8</b> Lessons learnt from the participation of the Batwa in the conservation and management of Bwindi Impenetrable Game Park	299

## **CHAPTER SEVEN**

### **IMPLEMENTING PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING IN AUSTRALIA AND UGANDA: A COMPARATIVE ANALYSIS**

<b>7.1</b> Introduction	309
<b>7.2</b> The legal framework	310
<b>7.3</b> The institutional framework	314
<b>7.4</b> The level of implementation of international obligations	331

## **CHAPTER EIGHT**

### **THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING AND NATURAL RESOURCES MANAGEMENT: SUMMARY AND CONCLUSIONS**

<b>BIBLIOGRAPHY</b>	343
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## ABSTRACT

In recognition of the importance of public participation as a basis for good governance and democracy, Mr Kofi Annan, Secretary General to the United Nations, has noted that:

“Good governance demands the consent and participation of the governed and the full participation and lasting involvement of all citizens in the future of their nation. The will of the people must be the basis of governmental authority. That is the foundation of democracy. That is the foundation of good governance..... Good governance will give every citizen, young or old, man or woman, a real and lasting stake in the future of his or her society”.<sup>1</sup>

The above quotation encapsulates the essence of what this thesis has set out to do; to examine the concept of public participation and its application in environmental governance within the context of the participation of indigenous peoples in the conservation and management of protected areas in Australia and Uganda. The concept of public participation is of such intrinsic importance that it has emerged as one of the fundamental principles underpinning environmental governance and therefore forms the basis for this study.

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<sup>1</sup> Mr. Kofi Annan, inaugural address at the opening of the International Conference on Governance for Sustainable Growth and Equity ( United Nations, New York, 28-30<sup>th</sup> July 1997).

Environmental governance, as a concept that captures the ideal of public participation, is basically about decisions and the manner in which they are made. It is about who has 'a seat at the table' during deliberations and how the interests of affected communities and ecosystems are represented. It is also about how decision makers are held responsible for the integrity of the process and for the results of their decisions. It relates to business people, property owners, farmers and consumers. Environmental governance is also about the management of actions relating to the environment and sustainable development. It includes individual choices and actions like participating in public hearings or joining local watchdog groups or, as consumers, choosing to purchase environmentally friendly products.<sup>2</sup>

The basic principles behind good governance and good environmental decision making have been accepted for more than a decade. The 178 nations that attended the Rio Summit in 1992 all endorsed these environmental governance principles when they signed the *Rio Declaration on Environment and Development (Rio Declaration)* – a charter of 27 principles meant to guide the world community towards sustainable development. The international community re-emphasised the importance of these principles at the World Summit on Sustainable Development in 2002.<sup>3</sup>

The right to public participation in environmental decision making and natural resources management is one of the 27 principles endorsed by the nations of

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<sup>2</sup> World Resources 2002-2004, *Decisions for the Earth: Balance, Voice, and Power* World Resources Institute (2003) 6.

<sup>3</sup> *Ibid*, 19.

the world and is embodied in the provisions of *Principle 10 of the Rio Declaration*.

Environmental decisions occur in many contexts. They range from personal choices like whether to walk or drive to work, how much firewood to burn, or whether to have another child. They encompass the business decisions that communities or corporations make about where to locate their facilities, how much to emphasise eco-friendly product design and how much land to preserve. They include national laws enacted to conserve the environment, to regulate pollution, manage public land or regulate trade. They take into account international commitments made to regulate trade in endangered species or limit acid rain or CO<sub>2</sub> emissions.<sup>4</sup>

Environmental decisions also involve a wide range of actors: individuals; local, state and national governments; community and tribal authorities such as indigenous peoples; civic organisations; interested groups; labour unions; national and transactional corporations; scientists; and international bodies such as the United Nations, the European Union, and the World Trade Organisation.<sup>5</sup>

Each of the actors have different interests, different levels of authority and different information, making their actions complex and frequently putting

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<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

their decisions at odds with each other and with the ecological processes that sustain the natural systems we depend on.<sup>6</sup>

Accordingly, this thesis aims to examine public participation in environmental decision making in a way that demonstrates these complexities and interdependencies. It will explore the theoretical and conceptual basis for public participation and how it is incorporated into international and domestic environmental and natural resources law and policy.

It will examine public participation in the context of the legal and policy framework for the conservation and management of protected areas and will use case studies involving the participation of indigenous peoples in Australia and Uganda to provide the basis for a comparative analysis

The thesis will also focus on a comparative analysis of the effectiveness and meaningfulness of the *processes* for public participation in environmental decision making in Australia and Uganda. There is extensive literature on the purposes to which participation may be put; the stages in the project cycle at which it should be employed; the level and power with regard to the decision making process which should be afforded to the participants; the methods which may be appropriate under the different circumstances, as well as detailed descriptions of methods<sup>7</sup>; approaches and forms or typologies<sup>8</sup> of public participation; and the benefits and problems of such participation. However,

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<sup>6</sup> Ibid

<sup>7</sup> Some 30 participatory methods and approaches are listed by Pimbert, M P and J N Preety, *Parks, people and professionals: putting participation into protected area management, Social Change and Conservation, IDS* (1996).

<sup>8</sup> For detailed discussions on this see generally, Gujit (1996); Biggs (1989); Hart (1982); Stiefel and Wolfe (1994); and Cornwall (1996).

there is not much significant literature that examines and analyses the meaningfulness and effectiveness of the contextual processes of such participation.<sup>9</sup> This is despite the widespread belief in the importance and value of public participation, particularly by local and indigenous communities, even in the face of disillusionment caused by deceit, manipulation and tokenism. Accordingly, the thesis will use case studies to demonstrate the meaningfulness and effectiveness or otherwise of public participation in environmental decision making in protected area management.

Increasingly, the terminology of sustainable development is more appropriate to describe contemporary policy objectives in this area, with an emphasis on promoting local livelihood and poverty alleviation within the constraints of ecosystem management. However, the domestic legal frameworks, and institutional development, in Australia and Uganda tend to reflect earlier concepts of environmental and natural resources management (referred to as environmental management in this thesis). There are some significant differences between a North (developed) nation and a South (developing) nation, in terms of the emphasis on economic objectives, political stability, resources and legal and administrative capacity. The thesis intends to explore these differences for the comparative analysis and to draw on them to highlight the complexities and interdependencies of public participation by indigenous peoples in environmental decision making, natural resources and protected area management.

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<sup>9</sup> The Institute of Development Studies at the University of Sussex has carried out an extensive review of literature on public participation. See generally, Emma Jones and John Gaventa, *Concepts of Citizenship*, 19 IDS Development Bibliography (2002).

## **CANDIDATE CERTIFICATION**

This is to certify that I, Rose Mwebaza, have not submitted this research work for a higher degree to any other university or institution other than Macquarie University. This thesis, to the best of my knowledge and belief, contains no copy of work published by another person, except where duly acknowledged in the text.

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**Rose Mwebaza**

## ACKNOWLEDGEMENTS

The idea for this thesis started in Bonn, Germany, during my stay at the International Union for the Conservation of Nature (IUCN) Centre for Environmental Law as a Carl Duisberg Research Fellow working with the eminent environmentalist Dr Françoise Burhenne – Guilmin.

Accordingly, when at the launch of her book *Capacity Building for Environmental Law in the Asian and Pacific Region*, in Bonn, Professor Donna Craig presented me with an opportunity to pursue my PhD at Macquarie University; I very gratefully took up the offer. I would therefore like to start by thanking her for not only agreeing to be my supervisor and providing me with unparalleled guidance and support during the writing of this thesis but also for becoming my friend and confidant. I thank her for going beyond the call of duty to ensure that I was not only academically well supervised but also that my stay in Australia was an enjoyable and memorable one by extending some of her legendary kindness to me.

I am also grateful to Professor Michael Jeffery QC; the Director of the Centre for Environmental Law at Macquarie University, for his generosity and kindness and for exposing me to the largest concentration of the best environmental lawyers in the world through the IUCN Academy of Environmental Lawyers. I thank Ms Susan Shearing, Dr Shawkat Alam and Dr David Leary for all the help and advice they offered me during my time at the Centre for Environmental Law. Thanks must also go to Ms Jacquie Williams,

Postgraduate Administrator for the Division of Law, for her unwavering help and for always attending to my requests for assistance with a smile.

My stay at the Centre for Environmental Law was greatly enriched by my friend Anna Penteado whose kind spiritedness was always a breath of fresh air in the midst of our academic pursuits.

The successful completion of my PhD would not have been possible without the support of my family. I therefore want to thank my parents for taking care of my daughter, Tessa, and especially my mother who came all the way 'Downunder' to help with caring for her so that I could complete my thesis. I also extend thanks to my sister, Liz Sandra Kisakye, for her love and support and to my childhood friend, Namyalo Sauda, for her loyalty over the years. Lastly, I would like to thank Mr and Mrs Kalyango who are quite simply the most wonderful people that I know. My brother Esau, his wife Gertrude and Senga Wendi, thank you for the wonderful music that accompanied me during the long nights I spent working on my laptop.

Finally, I would like to thank Macquarie University, the Division of Law and the Centre for Environmental Law without whose financial support I would not have been able to complete this PhD.

## **ACRONYMS AND ABBREVIATIONS**

**AAPA**                      **Aboriginal Welfare Affairs Planning Authority**

**ABC**                        **Aboriginal Body Corporate**

**ACMC**                     **Aboriginal Cultural Materials Committee**

**OAS**                        **Organisation of American States**

**ASEM**                      **Asia Europe Meeting**

**ATSI**                       **Aboriginal and Torres Strait Islanders**

**AU**                         **African Union**

**CALM**                     **Conservation and Land Management Act**

**CBD**                       **Convention on Biological Diversity**

**CEC**                       **Commission for Environmental Cooperation**

**COP**                       **Conference of Parties**

<b>CSD</b>	<b>UN Commission on Sustainable Development</b>
<b>Cth</b>	<b>Commonwealth</b>
<b>CTRC</b>	<b>Conservation through Reserves Committee</b>
<b>EEC</b>	<b>European Economic Community</b>
<b>EIA</b>	<b>Environmental Impact Assessment</b>
<b>EPA</b>	<b>Environmental Protection Agency</b>
<b>EPBC</b>	<b>Environmental Protection and Biodiversity Conservation Act</b>
<b>ESD</b>	<b>Environmental Sustainable Development</b>
<b>EU</b>	<b>European Union</b>
<b>GEF</b>	<b>Global Environmental Facility</b>
<b>GFW</b>	<b>Global Forest Watch</b>
<b>ICCPR</b>	<b>International Covenant on Civil and Political Rights</b>

<b>ICERD</b>	<b>International Covenant for the Elimination of Racial Discrimination</b>
<b>ICESCR</b>	<b>International Covenant on Economic Social and Cultural Rights</b>
<b>ILO</b>	<b>International Labour Organisation</b>
<b>ITFC</b>	<b>Institute of Tropical Forests Conservation</b>
<b>IUCN</b>	<b>International Union for the Conservation of Nature (World Conservation Union)</b>
<b>KALT</b>	<b>Kakadu Aboriginal Land Trust</b>
<b>LC</b>	<b>Local Council</b>
<b>LFC</b>	<b>Land and Forest Commission</b>
<b>LG</b>	<b>Local Government</b>
<b>MOU</b>	<b>Memorandum of Understanding</b>
<b>MRG</b>	<b>Minority Rights Group International</b>

<b>NAAEC</b>	<b>North American Agreement on Environmental Protection</b>
<b>NAFTA</b>	<b>North American Free Trade Agreement</b>
<b>NEMA</b>	<b>National Environment Management Authority</b>
<b>NGOs</b>	<b>Non Governmental Organisations</b>
<b>NPNC</b>	<b>National Parks and Nature Conservation Authority</b>
<b>NPRPU</b>	<b>National Parks and Research and Policy Unit</b>
<b>NRM</b>	<b>National Resistance Movement</b>
<b>NTA</b>	<b>Native Title Act</b>
<b>OAU</b>	<b>Organisation of African Unity</b>
<b>OECD</b>	<b>Organisation for Economic Cooperation and Development</b>
<b>PAC</b>	<b>Purnululu Aboriginal Corporation</b>
<b>PMAC</b>	<b>Park Management Advisory Committee</b>

<b>SADAC</b>	<b>South African Development Community</b>
<b>UN</b>	<b>United Nations</b>
<b>UNCED</b>	<b>United Nations Conference on Environment and Development</b>
<b>UNECA</b>	<b>United Nations Economic Commission for Africa</b>
<b>UNECE</b>	<b>United Nations Economic Commission for Europe</b>
<b>UNEP</b>	<b>United Nations Environmental Program</b>
<b>UNESCO</b>	<b>United Nations Educational, Scientific and Cultural Organisation</b>
<b>UNHRC</b>	<b>United Nations Human Rights Commission</b>
<b>UWA</b>	<b>Uganda Wildlife Authority</b>
<b>WA</b>	<b>Western Australia</b>
<b>WB</b>	<b>World Bank</b>
<b>WCED</b>	<b>World Commission on Environment and Development</b>

<b>WCMC</b>	<b>World Conservation Monitoring Centre</b>
<b>WGIP</b>	<b>United Nations Working Group on Indigenous Peoples</b>
<b>WRI</b>	<b>World Resources Institute</b>
<b>WSSD</b>	<b>World Summit on Sustainable Development</b>
<b>WTO</b>	<b>World Trade Organisation</b>
<b>WWF</b>	<b>World Wide Fund for Nature</b>