

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

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

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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”.¹

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.

¹ Mr. Kofi Annan, inaugural address at the opening of the International Conference on Governance for Sustainable Growth and Equity (United Nations, New York, 28-30th 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.²

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 2002.³

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

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

³ *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 CO₂ emissions.⁴

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.⁵

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

⁴ Ibid.

⁵ Ibid.

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

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 methods⁷; approaches and forms or typologies⁸ of public participation; and the benefits and problems of such participation. However,

⁶ Ibid

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

⁸ 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.⁹ 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.

⁹ 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.

Rose Mwebaza

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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**

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

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

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

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

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