

**THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION  
MAKING PROCESSES IN UGANDA**

**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW, BISHOP STUART  
UNIVERSITY IN PARTIAL FULFILLMENT OF THE REQUIREMENTS LEADING  
TO THE AWARD OF MASTER OF LAWS**

**BY**

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DECLARATION

I, Nuwagaba Collins do hereby declare that this Dissertation is original and has not been submitted for award of a degree or any other qualification in any University.

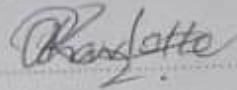
  
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**APPROVAL**

This research proposal titled **"The right of public participation in environmental decision making process in Uganda"** has been produced under my supervision and it is now submitted for defence.

Signed and dated this 12<sup>th</sup> day of October 2024



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## **DEDICATION**

I dedicate this work to God, my wife Nahurira Adrine and children, Nuwagaba Keith, Nuwagaba Prailah and Nuwagaba Kevin. Thank you for always standing me by my side, distracting me off whenever I was stressed up throughout this academic journey.

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In a special way I want to thank my classmates who kept on pushing me and morale boosting me whenever I felt I could not continue moving along this academic journey.

I would also wish to thank my LDC (Post graduate diploma in legal practice) classmates who already attained this qualification who listened to me, advised me, corrected and encouraged me as I pursued and did this research. I am forever grateful and indebted to your kind advise and encouragement.

Blessings always and to all of us.

## **ABBREVIATIONS AND ACRONYMS**

**ACHPR** – African Charter on Human and People’s Rights

**ACHPR** - The African Charter on Human and Peoples’ Rights

**CBD** – Convention of Biological Diversity

**COP** – Conferences of Parties

**CSO** – Civil Society Organizations

**EIA** – Environment Impact Assessments

**ICCPR** – International Convention on Civil and Political Rights

**IUCN** – International Union for Conservation of Nature

**NCCA** – National Climate Change Act

**NGO** – Non – Government Organizations

**NRM** – National Resistance Movement

**UDHR** – Universal Declaration of Human Rights

**UNCCD** – United Nations Convention to Combat Desertification

**UNECE** – United Nations Economic Commission for Europe

**UNFCCC** – United Nations Framework Convention on Climate Change

## **LEGAL INSTRUMENTS**

### **International instruments**

1. Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998.
2. Convention of Biological Diversity, 1993.
3. Kyoto Protocol, 1997
4. Paris Agreement, 2015
5. Rio Declaration on Environment and Development (1992).
5. Stockholm Declaration on the Human Environment, 1972
6. United Nations Framework Convention on Climate Change, 1992

## **Regional Instruments**

1. African Charter on Human and Peoples' Rights, 1981
2. Revised African Convention on the Conservation of Nature and Natural Resources of 2003
3. The East African Protocol on Environment and Natural Resources Management, 2006.



## **Domestic Statutes**

1. Constitution of the Republic of Uganda, 1995
2. National Climate Change Act, 2021
3. National Environment Act, 2019
4. National Environment Management Policy Uganda, 1994
5. National Forestry and Tree Planting Act, 2003
6. Uganda Wildlife Act, 2019

## **LIST OF CASES**

1. MC Mehta vs Union of India and others AIR 1988 Supreme Court 1037
2. Nyakaana vs National Environment Management Authority & others Constitutional Petition No. 5 of 2011
3. STC4360-2018 de la Corte Suprema de Justicia, Sala de Casacion Civil by the Supreme Court of India.
4. The Environment Shield LTD and another vs. Jinja City Council and another HCT-03-CV-MC-0021-2023.
5. Vellore Citizen's Welfare Forum vs Union of India & Others (1996)5 Supreme cases 647.

## **ABSTRACT**

The right to public participation when it comes to making environmental decisions in Uganda has taken different forms of approaches. Supported by several instruments, at the local, regional and international level, the public in the country has taken and continues to contribute to decision making processes, albeit with limited capacities. In this Dissertation, and guided by a set of objectives to wit: to examine the nature and role of public participation in environmental decision-making process in Uganda, to analyze the domestic, regional and international legal framework in advancing the right to public participation in environmental decision-making processes and to analyze the approaches, best practices and challenges to public participation in environmental decision – making process in Uganda. The researcher also set out to assess how the right to public participation has been exercised in the country. In the presence of several instruments, the right is not fully exploited owing to a number of challenges including a lack of operational mechanisms to ensure that public participation flourishes in the Ugandan environment. In order to resolve these challenges, the researcher made several recommendations, that he believes when adopted would go a long way in improving the exercise of environmental decision-making process in the country by the wider citizenry.

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# CHAPTER ONE

## INTRODUCTION AND BACKGROUND

### 1.1. Introduction

Public participation arises from the need to encourage interaction between governments and the community through the different mechanisms in order to design and implement development projects, programs<sup>1</sup> and policies on topical issues such as the environment. The principle is embedded within Uganda's Constitution which grants citizens in the country a constitutional right to participate in the governance affairs or rather public participation<sup>2</sup> which can be done directly or indirectly through intermediaries.

Benjamin J. Richardson and Jona Razzaque state that participation takes place in several forms including education, information dissemination, advisory or review boards, public advocacy, public hearings, submissions and litigation<sup>3</sup> or through what is known as *ekimeeza*<sup>4</sup> in Uganda to denote outdoor radio talk shows in the country. The authors add that the concept of public participation especially when it comes to environmental decision-making is "an indelible feature of many environmental regulatory systems world-wide"<sup>5</sup> and has continued to do so over the past few decades with individuals and organizations affected by environment impacting decisions that would ordinarily require greater consultations in the processes and "more transparent and accountable decisions".<sup>6</sup>

The processes of periodic general elections are insufficient to allow for public engagement in environmental decision making<sup>7</sup> particularly because the opinions of

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<sup>1</sup> Organization of American States, "Public Participation in OAS – Managed Basin Projects". <[www.oas.org/dsd/Water/Public%20Participation%20in%20basin%20projectspagweb.pdf](http://www.oas.org/dsd/Water/Public%20Participation%20in%20basin%20projectspagweb.pdf)> accessed 9 January 2024

<sup>2</sup> The Constitution of the Republic of Uganda, 1995 (as amended), Article 38

<sup>3</sup> Richardson, Benjamin and Rozzaque, Jona. (2006). "Public Participation in Environmental Decision - Making", ch-06.qxd pp. 165 – 194 <[https://www.researchgate.net/publication/228305864\\_Public\\_Participation\\_in\\_Environmental\\_Decision\\_Making](https://www.researchgate.net/publication/228305864_Public_Participation_in_Environmental_Decision_Making)> accessed 9 January 2024

<sup>4</sup> Florence Brisset – Foucault, (2019) "Talkative Policy: Radio, Domination, and Citizenship in Uganda", Cambridge Center of African Studies Series, Ohio University Press, Kampala

<sup>5</sup> Ibid page 14

<sup>6</sup> Ibid page 15

<sup>7</sup> Ibid page 14

the public are voiced through representatives who might not communicate the exact message that the voters intended. This has birthed what has been termed ‘surrogate political processes’<sup>8</sup> because the views of citizens are channeled through alternative administrative and judicial structures.

While Uganda does not have a specific law on public participation, the country has a number of instruments, regional and international including the ACHPR, UDHR and the ICCPR, supplementary to the Constitution that recognize and protect the right to public participation in national affairs.

It is important to highlight that public participation has the potential to guide decision makers come up with issues that are pertinent to the community or that are in the interests of the public while formulating policies on the environment. This Dissertation therefore seeks to study the frameworks in place, and to assess the exercise of the right of the public to participate in the environmental decision-making process in Uganda.

## **1.2. Background to the Study**

The background to the recognition of the right to public participation and public participation in environmental decision making in the legal regime of states can be traced back to the year 1960s and 1970s when the United States introduced provisions on planning and environmental regulations allowing for democratic governance and stronger environmental protection.<sup>9</sup> Benjamin J. Richardson and Jona Razzaque state that the need for public participation continued to grow and in the 1970s and early 1980s, commentators at the time continued to insist on a value of a ‘bottom-up’, people centered approach to economic development recognizing, just like in the case of Uganda (as reviewed in this Dissertation), the need for grass roots decision processes.<sup>10</sup> In the 1990s, the significance of consultation and public participation grew to the extent that it was always required for what they termed “successful

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<sup>8</sup> Ibid page 14

<sup>9</sup> Ibid page 16

<sup>10</sup> Stephen Stec and Susan Casey-Lefkowitz, ‘The Aarhus Convention: An Implementation Guide. United Nations Economic Commission for Europe’ (New York and Geneva 2000). [<unece.org/fileadmin/DAM/env/pp/acig.pdf>](https://unece.org/fileadmin/DAM/env/pp/acig.pdf) accessed 24 August 2024

environmental decision-making”, which fed into a wider debated on ‘good governance’, ‘environmental justice’ and ‘environmental citizenship’.<sup>11</sup>

Realities of public participation in the different countries differ. With developing nations, Donald Zillman argues that the agenda of public participation often manifests itself in calls for wider local community involvement in development planning and poverty alleviation projects.<sup>12</sup> Immediately after colonialism, postcolonial commentators advocated for reforms to states that had just attained independence asking them to increase the participation of the community in government in order to ensure that the primary needs of the people are addressed in the different social and economic policies. All the policies on development desired to decentralize the process of decision-making and to enhance the capacity of local institutions by strengthening local government and the NGOs (and now the wider community) to create more participatory avenues.<sup>13</sup>

The growth of public environmental participation is also evidenced in developed nations where it grew to achieve similar prominence, though taking more of a legal form than is the case in developing countries where it was largely associated with policy mechanisms. Today, they have likewise taken a legal form because countries like Uganda now have the National Environment Act, 2019 where provisions on public participation exist. In developed countries, eco-activists witnessed the best prospects for change in electoral contests for parliament with the establishment of political parties focused on preserving green energy. Many of the green parties were able to continue in many Western polities such as Germany and Australia, however they have not been able to significantly impact the electoral dominance of the mainstream parties. Whenever public participation occurred in many of those countries, it mostly did in administrative based consultation, information and review mechanisms that had been established pursuant to environmental and planning laws<sup>14</sup> but not directly through legislative fora.

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<sup>11</sup> Ibid. Ibid

<sup>12</sup> Donald Zillman, (2002) ‘Introduction to Public Participation in the 21st Century’ cited in Donald. Zillman et al, Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources, Oxford University Press

<sup>13</sup> Ibid. Ibid

<sup>14</sup> Maria Lee and Carolyn Abbot, x ‘The Usual Suspects? Public Participation under the Aarhus Convention’, 2013. 66 MLR 80, 82–85



Public participation continued to grow in many conflicts affecting the society over development related choices in the 1970s and 1980s. The conflicts led to growing demand for more participation in decision-making. In Australia for instance, the conflicts about continued logging in the World Heritage forests forced governments to find other methods to allow the citizenry involvement in resource management policy. In many urban areas for several countries, community groups mobilized for increased involvement in the decisions regarding the redevelopment of brownfield and urban amenity planning. Reforms for public participation started to grow in countries like New Zealand, Canada, the US and other countries where the minority groups had been influenced by the self determination of the Aboriginal movement which had made land claims and demands for self-governance. This resulted in an increased demand for legal reforms that were intended to enhance involvement of the community in decision making surrounding the environment. It has been argued that the empowerment of civil societies is one of the best means to promote good environmental governance<sup>15</sup> and internationally, the rhetoric of good governance has received considerable attention.

Within policy reform, major international environmental policy statements in the developed world started to emerge in the 1980s and 1990s Public formulation started to grow in the finance industry when international financial institutions, such as the World Bank and related regional banks which altered their lending procedures to demand for more information disclosure and consultation with affected parties. Through these initiatives, it was acknowledged that civil society had an important role to play in making the decision-making processes of international organizations more transparent.<sup>16</sup>

Frederick Golooba – Mutebi argues that the history of public participation in Uganda coincides with the rise to power of the National Resistance Movement government in 1986 that sought to democratize the country's politics, which stated with evolution of village councils and popular participation until 1996 that led to high levels of public

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<sup>15</sup> Nancy Perkins Spyke, 'Public Participation in Environmental Decision-making at the New Millennium: Structuring New Spheres of Public Influence' (1999) 26 *Boston College Env'tl Affairs* L Rev 263, 269–70

<sup>16</sup> Jurgen Habermas, *Communication and the Evolution of Society* (Beacon Press, 1991)

participation.<sup>17</sup> This public participation is also evident in the events leading to the passing of the country's constitution where an "extensive involvement of the general public" took place over a space of eight (8) years.<sup>18</sup>

It was following these constitutional deliberations that the Constitution was passed leading to the introduction of the foundation article 38 on the recognition of the right to public participation in the country. Laws including the National Environment Act cap 153 which was passed in 1995 as this study demonstrates highlight the need for public participation in environmental decision making. A number of laws impacting positively or negatively on the right to public participation including the Access to Information Act, 2003, Non – Government Organization Act, 2016, the Press and Journalism Act cap 105 have subsequently been passed by the country. Of particular relevance was be the National Environmental Policy, 1994 and regulations requiring for environment impact assessments (EIA) like the Environmental Impact Assessment Regulations, SI no. 13 of 1998 that was later repealed by the National Environment (Environmental and Social Assessment) Regulations, 2020 (S.I no. 143 of 2020) which require consultations from the communities where developments are established.

As a result of those laws, civil society is allowed a board sit on the National Planning Authority which coordinates the country's planning system or on the board of the National Sub – Committee on Evaluation in the Office of the Prime Minister whose mandate includes supervising and reviewing the performance of all government ministries, departments and agencies.<sup>19</sup> At the bedrock of the NRM manifesto is decentralization which allows for grass roots democracy is also supported where *baraazas* or community meetings and public hearings take place allowing for citizen participation.

The above notwithstanding, this study seeks to highlight that the country faces a number of challenges when it comes to awareness, capacity and resources among

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<sup>17</sup> Frederick Golooba – Muteebi, "Reassessing Popular Participation in Uganda". DOI 10.1002/pad.309 <[onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309](https://onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309)> accessed 10 January 2024

<sup>18</sup> Devra C. Moehler "Participation and Support for the Constitution in Uganda" (2006) *Journal. of Modern African Studies*, 44, 2 (2006), pp. 275-308. Cambridge University Press. Doi:10.1017/S0022278X06001637. United Kingdom

<sup>19</sup> US AID and Uganda Civil Society Strengthening Activity (CSSA), "Public Participation Mechanisms in Uganda and the Enabling Environment for Civil Society: A Baseline Study", July 2022. Available at <[ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20Public%20participation%20report%20final%20web.pdf](https://ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20Public%20participation%20report%20final%20web.pdf)> accessed 20 January 2024

others, that have collectively impacted on the enjoyment of the right to public participation in the country in respect to environment decision making processes.<sup>20</sup>

### 1.3 Problem Statement

Public participation in the environmental decision making process in most countries including in Uganda, is mostly an administrative procedure involving only a few officers and yet good environmental management and policy decision making requires a “systematic evaluation and consideration of the effects of management and policy on the affected public”<sup>21</sup> not a few. Seth Binder and Stephen Polasky highlight that it is of profound importance for current and future human well – being to make thoughtful decisions about environmental challenges that involve wide-ranging and potentially irreversible consequences.<sup>22</sup> While the country has a number of laws in place, some making reference to the exercise of the right to public participation in environmental decision-making process in the country, the right is not fully enjoyed or practiced by the citizens. The study demonstrated that a limited number of Ugandans enjoy the right, however, questions still arise about the quality and the substance of the participation or the information that resulted into the environmental decision making process and on which decisions were ultimately based. The citizens are deprived the opportunity to engage in environmental decision making a study problem that this study sought to explore. This deprivation continues to lead to inadequate environmental decisions that continue to compromise on environmental protection. The government and civil society have often failed to take systematic account of the environmental consequences in its actual decision making and instead follows standard operating procedures or existing legislative mandates, or simply muddles through.<sup>23</sup> It is against such a background that the current study investigated and analyze the law in respect to the enjoyment of the right of public participation in environmental decision-making process in Uganda and address the existing research

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<sup>20</sup> Charlotte Kabaseke (2020) “Women’s Right to Participation in Environmental Decision – Making in Uganda”, pp. 287 – 314 cited in Addanye, M, Oluborode Jegede, A. (eds). Human Rights and the Environment Under African Union Law. Palgrave Macmillan, Cham. [https://doi.org/10.1007/978-3-030-46523-0\\_12](https://doi.org/10.1007/978-3-030-46523-0_12)

<sup>21</sup> Seth Binder and Stephen Polasky, “Valuing the Environment for Decision Making”. Vol. XXVIII, No. 4, Summer 2012. Available at <[issues.org/polasky/](https://issues.org/polasky/)> accessed 10 January 2024

<sup>22</sup> Ibid.while relying on Laura Lake (ed), Environmental Mediation: The Search for Consensus (Westview Press, 1980)

<sup>23</sup> Donna Craig, ‘Social Impact Assessment: Politically Oriented Approaches and Applications’ (1999) 10 *Envtl Impact Assessment Review* 37

gaps in respect to the exercise of the right to environmental decision making. As a contribution to the scholarship, the research seeks to provide an updated review of the enforcement of the law on environmental protections in the country, however with lessons from previous observations over the past periods making it relevant to the country, even where regional or international instruments have been reviewed under the study. A limited assessment of the current legal framework has been made.

#### **1.4. Objectives**

##### **1.4.1. General Objective**

The general objective of the study is to analyze the right of public participation in environmental decision-making process in Uganda.

##### **1.4.2. Specific Objectives**

The study seeks to achieve the following specific objectives;

1. To examine the nature and role of public participation in environmental decision-making process in Uganda.
2. To analyze the domestic, regional and international legal framework in advancing the right to public participation in environmental decision-making processes.
3. To analyse the approaches and challenges to public participation in environmental decision – making process in Uganda.
4. To make recommendations for the future reform for public participation in environmental decision making process in Uganda.

##### **1.4.3 Research Questions**

The study seeks to answer the following questions;

1. What is the nature and role of public participation in environmental decision-making process in Uganda?
2. What is the efficacy of the domestic, regional and international legal framework in advancing the right to public participation in environmental decision-making processes?

3. What are the challenges and best practices on the practice of the right to public participation in environmental decision – making process in Uganda?
4. What recommendations can be made for the future reform for public participation in environmental decision – making process in Uganda?

## **1.5. Methodology**

In conducting this study, the study applied the doctrinal research method. This method involved a review of the letter of the law more than the law in action<sup>24</sup>, through which several laws and regulations were reviewed, and the documents that relate to those laws. This involved the review of documentary review and analysis.

### **1.5.1 Documentary Review and Analysis**

The researcher analyzed and assessed many documents. It was these documents reviewed that guided the entire process of development of the questions that were used to retrieve insights into the exercise and enjoyment of the right to public participation in environmental decision making process in Uganda. The choice of documents that were reviewed were entirely premised on their relevance to the study as guided by the research questions and the objectives of the study.

The documents broadly included a review of documents in form of reports, legal instruments and update releases in the print or online media in respect to environmental protection. Documentary review was regarded to be very critical when it comes to providing opinions that had been missed in the scholarly literature reviewed.

In conducting the document review, the researcher used document analysis where voices in the documents reviewed were identified. This involved analyzing the expression of language as deduced from the documents. It was this that informed the analysis of the context within the themes of the study. Document analysis also ensured that there was an enhanced empirical investigation on the right to public participation in environmental decision-making process in Uganda. The content from these

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<sup>24</sup> Jerome Hall Law Library, “Legal Dissertation: Research and Writing Guide” <[law.indiana.libguides.com/dissertationguide](http://law.indiana.libguides.com/dissertationguide)> accessed 27 January 2024

documents was used to close and strengthen any arguments that had been made by the participants. This allowed for a triangulation of experiences for the study considering that the data in the themes and content had been compared to what had been contained in publications and newspaper works.

### **1.5.2 Qualitative Data Analysis**

The researcher also applied qualitative data which had been conducted through the use of multiple readings and interpretations with raw data. After the use of multiple headings and interpretations, a range of approaches such as literature review was applied to guide in the analysis of the data. The analysis showed that there existed conflicting opinions and issues that had been unsolved particularly when it came to the meaning and use of concepts, procedures and interpretation. The analysis was extended by undertaking thematic and content analysis.

Here, the study also applied what it considered a systematic approach which was applied in analyzing data with the overall objective to understand the patterns that formed the common trends during the qualitative inquiry. Through this, the researcher extracted relevant material from the data that had been collected from conversations conducted with the respondents. This material provided a better understanding of the everyday experiences of the people and the reality in detail to understand the general phenomena under observation. This method particularly involved the identification, analyzing and the reporting of themes as patterns within data. The analysis was also largely concerned with aggregating responses according to themes that had been derived from research questions.<sup>25</sup>

This also involved a review of studies that had been associated with the exercise of the right to public participation decision making processes involving the environment in Uganda. As a result of these experiences, the study gathered the data that had been collected into themes through the identification of common words from statements.

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<sup>25</sup> Mario do Rosario and Riki Therivel Partidario (eds), (1996) *The Practice of Strategic Environmental Assessment* (Earthscan, 1996)

Through these actions, the study was able to not only extract common messages but to also get to the depth of the meaning of the identified common messages.<sup>26</sup>

While the study is focused on Uganda as a whole, material reviewed was not collected from every possible location within the country. The material reviewed including the legal instruments and literature review was generally documentation that was applicable to the country as a whole, providing a fair representation of the exercise of the right to public participation in the entire country. This did not however preclude the researcher from referring to material that was specific to particular localities. It did not affect the data gathered.

## **1.6. Ethical Considerations**

Ethical considerations were envisaged in undertaking this study which included ensuring that the data reviewed and the documents studied were relevant to the discussion under study.

## **1.7. Justification of the Study**

There is existence of several literature in relation to right of public participation in environmental decision-making process since the study has attracted wide attention of researchers and scholars in the academia. The study has therefore been widely researched. Nevertheless, there are knowledge gaps especially in nationalized contexts, especially when it comes to the legislative framework in place, and in this study, focus is placed on Uganda.

Secondly, different scholars had diverging opinions and conclusions in relation to right of public participation in environmental decision-making process which has created the need for further research in the area. Several studies have majorly looked at factors affecting environmental decision-making process with few attending to right of public participation in environmental decision-making process (in Uganda) hence leaving the concept under researched. The Ugandan perspective sought to show the

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<sup>26</sup> Lord Woolf, Jeffrey L. Jowell and Smith P. Le Sueur, et al (1999) Principles of Judicial Review (Sweet and Maxwell, 1999) part I

need to protect, respect and recognize the right to participate in decision making processes as a means to protect and safeguard the environment from depletion.

### **1.8 Significance of the Study**

First and foremost, the study is significant to the policy makers in Ministry of Water and Environment who are expected to benefit from the study findings and recommendations by taking a holistic integrated approach in relation to the realization of the constitutional right of public participation in environmental decision-making process in Uganda.

Secondly, the study is also significant to Civil Society Organizations, who will find the study findings valuable to executive management through adopting an integrated approach to create a memorable experience in which multidimensional value can be delivered in terms of effective environmental decision making. This was through adopting multiple and sequential stages of right of public participation especially in its environmental management.

Thirdly, the study is significant to the academia who are expected to find this study useful to other researchers on this topic by acknowledging the importance of excellent right of public participation in the contemporary environmental protection. Hence this study provided a compilation of literature on right of public participation in environmental decision-making process in Uganda thereby offering a foundation for advancing future research in the public sector organizations hence adding literature to body of knowledge in the field of environmental protection and management.

Lastly, the study was significant to legislators, judicial officers and lawyers who will find the findings relevant to policy, practice of the law and the implementation of the laws on the enjoyment of the right on environmental decision – making in Uganda.

### **1.9 Theoretical Approaches to Public Participation**

In respect to the theoretical approaches, the researcher found that there existed a large database of academic writings in respect to the virtues of public participation when it came to policy-making, particularly as regards environmental policy. It is not true that every environmentalist however has always championed democracy. This was not always the case, with examples as back as the 1970s showing cases where



commentators thought that the intensifying societal conflict over an ever decreasing pool of natural resources would be dampened only through enlightened despotism of an authoritarian state<sup>27</sup>. As a result of that, the complex and multi-faceted nature of sustainability today, which involves various social objectives flanking and supporting environmental protection suggested that there was no single institution that could be expected to hold all of the expertise and knowledge that was needed for good decision-making.<sup>28</sup>

Some scholars such as Lawrence Henry Tribe have argued<sup>29</sup> that popular involvement in environmental decision making was rationalized from two main perspectives, and in his assessment, this can be categorized as a process-perspective and a substantive-perspective. He argues that the substantive view primarily depends on claims that public participation enhances the quality of decision-making outcomes, while the procedural view strengthens the democratic legitimacy of those decisions. Between these two perspectives, various theories have emerged concerning the justification and function of public participation. One of the key approaches is the 'rational elitism' theory, which regards environmental policy as intricate and technical, necessitating the involvement of specialists with technical and administrative knowledge. This viewpoint advocates decision-making by experts and allows for limited public involvement when they possess information that could aid the experts.<sup>30</sup>

Igor Voinovic argues that governments often prioritize 'expert' involvement in technical environmental risk assessments and economic cost-benefit analyses of development proposals. However, he points out that this approach, which claims that science is 'objective' and 'apolitical,' obscures the crucial role social values play in decision-making. For instance, even if scientific data on a particular hazard and its likelihood is relatively straightforward, Voinovic suggests that determining the acceptable level of environmental risk is inherently a political issue. He also identifies another aspect of the rational elitism model, known as 'corporatism,' where corporatist forms of interest

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<sup>27</sup> David Wirth, 'Public Participation in International Processes: Environmental Case Studies at the National and International Levels' (1996) 7 *Colorado Journal of International Law & Policy* 1

<sup>28</sup> Ibid.Ibid.. David Wirth, 'Public Participation in International Processes: Environmental Case Studies at the National and International Levels' (1996) 7 *Colorado Journal of International Law & Policy* 1

<sup>29</sup> Laurence Henry Tribe, 'Technology Assessment and the Fourth Discontinuity: The Limits of Instrumental Rationality' (1972) 46 *Southern California L Rev* 617

<sup>30</sup> Laurence Henry Tribe, 'Technology Assessment and the Fourth Discontinuity: The Limits of Instrumental Rationality' (1972) 46 *Southern California L Rev* 617

group mediation have been widely applied in round-table economic policy discussions in countries like Scandinavia and Germany.<sup>31</sup> He further contends that corporatist approaches to participation have also been implemented in environmental policy discussions in Australia and Canada. However, corporatism provides only 'functional representation' to key groups, such as trade unions, industry and business councils, and occasionally prominent environmental NGOs.

Jonas Ebbesson identifies a second approach to participation, known as the 'liberal democratic' model, which emphasizes the procedural rights of individuals and NGOs to be consulted and have a voice in decision-making processes. In situations where electoral legitimacy is lacking, the importance of procedural legitimacy becomes even more pronounced.<sup>32</sup> Traditional polyarchal mechanisms, such as elections and political parties, within liberal-democratic systems have faced criticism for being inadequate in addressing the demands of competing interest groups in contemporary societies.<sup>33</sup> To Offer, the 'conflict-generating potential of the institutions of the democratic polity by far outweighs their conflict resolving capacity'. Consequently, most liberal-democratic states have sought to create supplementary public consultation and information processes in administrative and legislative decision-making. Thus, the propensity of modern environmental legislation is to identify the factors relevant to agency decision-making, one of which is the input made by the public consulted.<sup>34</sup>

Procedural reforms grant concerned individuals the right to access relevant information, submit opinions on environmental decisions, and seek legal enforcement of environmental laws. Beyond enhancing the legitimacy and public acceptance of policy decisions, these reforms in liberal-democratic systems can also influence substantive policy outcomes.<sup>35</sup> For instance, basic transparency requirements can reveal the uncertainties and value judgments within expert advice, enabling political

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<sup>31</sup> Igor Voinovic, 'Intergenerational and Intra-generational Equity Requirements for Sustainability' (1995) 22(3) *Envtl Conservation* 223

<sup>32</sup> Jonas Ebbesson, 'The Notion of Public Participation in International Environmental Law' (1997) 8 *Yearbook of International Environmental Law* 59

<sup>33</sup> Jenny Steele, 'Participation and Deliberation in Environmental Law: Exploring a Problem Solving Approach' (2001) 21 *Oxford Journal of Legal Studies* 426

<sup>34</sup> Brian Doherty and Marius de Geus, *Democracy and Green Political Thought: Sustainability, Rights and Citizenship* (Routledge, 1996)

<sup>35</sup> *Ibid*

decision-makers to base conclusions on a broader range of evidence. Additionally, public participation can promote community cooperation in carrying out environmental initiatives, such as anti-littering and recycling campaigns.<sup>36</sup>

The involvement in decision-making fosters a sense of ownership and responsibility, which can lead to more conscientious environmental behavior. Regulation theorists often view third-party participation and transparency as tools for holding regulators accountable, ultimately improving decision-making outcomes<sup>37</sup>. By opening up the process, the risk of regulatory agencies being 'captured' by their industry clients can be minimized. However, not all commentators are optimistic about participatory proceduralism. Some argue that liberal-democratic reforms rarely disrupt the power structure of governing elites; while citizens may be heard, their opinions only influence decisions if they align with the bureaucratic framework. Moreover, these methods offer little in terms of creating an institutional space for active citizen engagement, learning, or ethical development.<sup>38</sup>

These limitations have led to the emergence of a third model of participation, known as deliberative democracy, which aims to give citizens a direct role in decision-making and shift the focus of decision processes toward core ethical and social values. While it doesn't ensure sustainable development, broad participation in political debate is viewed as crucial for fostering and exchanging environmental values. Deliberative decision-making models align closely with deep and radical ecological philosophies, such as those advocated by 'eco-anarchists'.<sup>39</sup>

Murray Bookchin argues that the human exploitation of nature is largely a result of hierarchical social structures, reflecting the broader domination of humans over one another.<sup>40</sup> Consequently, deep ecologists often emphasize the importance of egalitarian, community-based decision-making processes. Whether citizen participation can be considered 'deliberative' depends on various factors, including

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<sup>36</sup> Barry Barton, 'Underlying Concepts and Theoretical Issues in Public Participation in Resource Development' in Zillman, above n 3, at 81–3

<sup>37</sup> Michael Pimbert and Tom Wakeford, 'Overview-Deliberative Democracy and Citizen Empowerment' (2001) PLA Notes <[www.iied.org/docs/pla/pla\\_fs\\_5.pdf](http://www.iied.org/docs/pla/pla_fs_5.pdf)>

<sup>38</sup> Ibid, 24–5 See also Andrew Dobson, *Justice and the Environment* (Oxford UP, 1998)

<sup>39</sup> Sherry Arnstein, 'A Ladder of Citizen Participation' (1969) 35(4) *Journal of the American Institute of Planning* 216. 17 Ibid, 217

<sup>40</sup> Ibid.Ibid

whether participants represent all community sectors.<sup>41</sup> Touraine has highlighted that popular social movements are a vital source of new norms that can revitalize dialogue within public institutions. However, due to the complexity of modern life, which makes it difficult to develop or agree on shared social values regarding many environmental and economic issues, some commentators suggest that our best hope is to agree on the institutional processes through which we can deliberate policy.<sup>42</sup>

Habermas has proposed the concept of an 'ideal speech situation,' which comprises a set of communication and discourse rules designed to foster rational decision-making. Dryzek contends that mediation and negotiation are institutional mechanisms that can facilitate such rational discourse within environmental policy contexts. Additionally, methods like social impact assessments and public environmental inquiries serve as other tools to achieve this objective.<sup>43</sup>

The aforementioned approaches to public participation are not necessarily incompatible, and aspects of each are reflected in the 'environmental citizenship' and 'environmental justice' movements.<sup>44</sup> Environmental citizenship views public participation as a way to cultivate a new sense of environmental responsibility, while environmental justice advocates for democratic decision-making to ensure fair distribution of environmental costs and benefits. Given the complex, normative, and political nature of environmental decisions, involving the public at various levels is essential.<sup>45</sup>

Active citizen engagement in environmental decisions would be significantly hindered without fundamental rights to access information and receive notifications about upcoming development proposals. The examples of public participation discussed in this chapter primarily reflect the liberal-democratic approach, which focuses on public access to environmental information, involvement in administrative decision-making (such as environmental assessments and development applications), and access to

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<sup>41</sup> Ibid

<sup>42</sup> Stuart Langton (ed), *Citizen Participation in America* (Lexington Books, 1978). 19

<sup>43</sup> Ibid note 39. Patricia Birnie and Allan Boyle, *International Law and the Environment* (Clarendon Press, 1992) 261

<sup>44</sup> For example, in the UK, in its planning legislation of the 1960s. The creation of the Royal Commission on Environmental Pollution (1969) and the Department of the Environment (1970) is the governmental response to these public pressures

<sup>45</sup> John McCormick, *The Global Environment Movement* (Wiley, 1995). In the USA, the National Environmental Policy Act of 1969 provided for participation by the general public

justice (such as standing in court to enforce regulations). Although these participatory reforms have enhanced the quality of many environmental decisions, they have not resulted in a substantial shift toward ecologically sustainable development. Most participatory methods used so far do not challenge existing political institutions, as they function within those frameworks and largely maintain existing power structures.<sup>46</sup> Beyond theoretical discussions on public participation in government, many commentators also advocate for increased transparency and public involvement in corporate governance.<sup>47</sup>

The ethical investment movement has long advocated for increased shareholder activism to ensure that corporate decisions consider social and environmental impacts. This can be achieved through corporate-shareholder dialogue and the submission of shareholder proposals. Additionally, many company law theorists support a 'stakeholder' approach to corporate management, which includes incorporating the interests of a broader range of social groups, such as workers, consumers, and local communities, alongside shareholders. The German corporate governance system, which mandates employee representation on company boards, is a leading example of this model. Beyond these significant structural changes, public participation in corporate governance can also be promoted through more modest measures, such as obligations for corporate social and environmental reporting.<sup>48</sup>

### **1.10 Literature Review**

There are several scholarly works on the subject of public participation in environmental management, however, it is limited when it comes to literature specific to Uganda and the participation of the public in environmental management. This study sought to contribute to this study, especially in light of the limited material in respect to data about Uganda. The material reviewed was relevant to the study.

The study sought to highlight that the right to public participation in Uganda is gendered. The significance of the gendered aspect demonstrates the need to ensure that public participation is widely embraced by recognizing the role that women play in

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<sup>46</sup> Scott Kuhn, 'Expanding Public Participation is Essential to Environmental Justice and the Democratic Decision Making Process' (1999) 25(4) *Ecology Law Quarterly* 647

<sup>47</sup> Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (Routledge, 1995) 12–13

<sup>48</sup> Albert Memmi, *The Colonizer and the Colonized* (Beacon Press, 1991); Gita Rajan and Radhika Mohanram (eds), *Postcolonial Discourse and Changing Cultural Contexts* (Greenwood Press, 1995)

the fight for environmental protection. Literature on the gendered aspect of the study is limited. These are some of the gaps that this study seeks to fill.

It is therefore incomplete to discuss the concept of public participation without highlighting the restrictions against certain genders to the study. Women for example do not enjoy equal participatory rights like the male counter parts do in respect to the management of the environment. To highlight this perspective, the study takes guidance from a number of authors including Charlotte Kabaseke<sup>49</sup> who opines that women are more vulnerable to climate change, and yet they have contributed more to the mitigation of climate change and contributed further to climate change adaptation<sup>50</sup> and the wider environment even when their contribution is often not recognized. This highlights the importance of widening the application of public participation to include the input of women who have largely been denied the opportunity to participate.

The gendered aspect of the study has been inspired by activism in the law and through practice, however, the practice has been largely influenced by the contents of the law as borrowed from several instruments at the local, regional and international levels.

The regulatory framework however exists, at a local, regional and international regions. Kabaseke argues that there is a host of international and regional instruments that have sought to respect the right to women to participate in policy decisions<sup>51</sup> many of which are adopted and applied in Uganda. While gendered provisions within these instruments are not specifically or entirely discussed in this study, the commonality in all domestic, regional and international human rights instruments is the fact that no body shall be discriminated, and as such, all genders are facilitated to take part in the management of the environment.

Provisions within the Constitution in respect to gender equality further foster this objective by requiring that popular participation and public education is all inclusive of both men and women. These provisions are pronounced in all the laws in the country in so far as they require nondiscriminatory practices.<sup>52</sup> Under the Policy, it is further

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<sup>49</sup> Charlotte Kabaseke, (2021) "Strengthening Women's Right to Participation in Climate Change and Adaptation in Africa". Springer Nature Switzerland AG. Handbook on Climate Change Management <doi.org/10.1007/978-3-030-22759-3\_256-1>

<sup>50</sup> Ibid.Ibid

<sup>51</sup> Ibid.Ibid

<sup>52</sup> The Constitution of the Republic of Uganda, 1995 (as amended), Articles 21, 33 and National Objective XV

provided that participation of both men and women in formal and informal education should be facilitated especially through the mechanisms of training, public awareness campaigns and decision making in environmental and natural resource management<sup>53</sup>.

Karl Popper argues that the actual practice of public participation in environmental decision-making often differs markedly from theoretical models<sup>54</sup>. This will be true especially in the context of Uganda where the theory and the practice are starkly contrasted. The state is incapacitated as the letter of the law does not match up to its enforcement or practical aspects, which is highlighted within fourth chapter of this Dissertation. This study demonstrates that while the law on public participation in Uganda may be extensive, the enforcement of the law largely varies, making the laws ineffective and in need of reform.

As a result of the theoretical component of the legal frameworks, Francisco Arenas Dolz argues that the legal provisions or the opportunities for participation in environmental decision-making do not themselves ensure that participation will occur or if it would be meaningful as it was intended within the letter of the law, especially because there are several barriers to effective public participation. For a start, the classical vision of an Aristotelian-style deliberative democracy<sup>55</sup> has been criticized for being unrealistic in contemporary mass societies as it may no longer be in tandem with the daily practices.

It has been argued that collective decisions resulting from public participation may reflect conformity rather than genuine unanimity. For Dan Gardner and Philip E. Tetlock, groups of people who deliberate together *'tend to maintain an 'esprit de corps' by unconsciously developing a number of shared illusions and related norms that interfere with critical thinking and reality testing'*.<sup>56</sup> This would be the ideal scenario however, individuals or groups do not usually have an equal chance to use participation reforms, and yet the object of public participation is that it should be able

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<sup>53</sup> The National Environment Management Policy Uganda, 1994

<sup>54</sup> Karl Popper: A Centenary Assessment. Volume 1: Life and Times, Values in a World of Facts, ed. Bylan Jarvie, Karl Milford and David Miller, chapter 11, Ashgate, London, pp. 177 – 190

<sup>55</sup> Francisco Arenas Dolz, "Deliberative Democracy, Active Citizenship and Critical Culture: From Aristotle's Rhetori to Contemporary Political Philosophy". *Deliberative Democracy. Issue 14, Volume 11* (1), page 163 – 193 <[www.redalyc.org/pdf/5525/552556578009.pdf](http://www.redalyc.org/pdf/5525/552556578009.pdf)> accessed 27 January 2024

<sup>56</sup> Dan Gardner and Philip E. Tetlock et al (2015), Super forecasting: The Art and Science of Prediction..

to encourage individuals or groups to exercise the same levels of participation because if the best arguments are to prevail, participants must have an equal ability to participate. However, it is rarely, if ever, true in light of the Marxist theory that posits that the ability to participate in policy-making is closely tied to one's economic and political power<sup>57</sup>, such that the absence of economic or political power deprives one the right to participate. Women are usually the unfortunate victims because they are not comparatively enabled like men are both economically and politically, however, as this study showed, opinions and the contribution of all people should be facilitated.

Agarwal argues that the exclusion of women from public institutions is a widespread problem in many countries<sup>58</sup> and Uganda is no exception. The environmental movement itself has been criticized for its social elitism which is supposedly dominated by the better educated and wealthier segments of society with little representation from blue-collar workers or the poorest. As a result of this position, this study argues that the people who do not have access to resources may find it challenging to exercise their right to public participation which would go against the whole principle of public participation that expects the involvement of all persons in society.

Speaking of the less economic empowerment, public participation is not realized in locations where the occupants are disadvantaged, and as highlighted in this study, one of the reasons would be the inability of the less privileged to afford the audience to present their views. Eileen Guana argues that it is no coincidence that many of the most polluted and unattractive places to live are occupied by the most disadvantaged groups of society, victims of the NIMBY ('not in my backyard') attitude and power of privileged classes.<sup>59</sup> As a result of these, many of the benefits from increased opportunities in environmental policymaking may, without additional corrective action, accrue to those who already enjoy considerable advantage in society. As a consequence, strategies to promote public participation should be linked to a broader strategy of social change. The notion that what is to be represented in decision-making has priority over who is to do the representing has been criticized by post-colonial theorists who ascribe pre-eminence to questions of identity such as race, gender and

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<sup>57</sup> Karl Popper, *The Open Society and Its Enemies* (Routledge, 1986)

<sup>58</sup> Agarwal Bina (1992), "The Gender and Environment Debate: Lessons from India". *Feminist Stud* 18 (1) 119 – 158

<sup>59</sup> Kristin Shrader-Frechette, *Environmental Justice: Creating Equality, Reclaiming Democracy* (Oxford UP, 2002)



ethnicity. Rationalist conceptions of discussion may distort and constrict both what is counted as legitimate speech and who is regarded as qualified to be a speaker.<sup>60</sup> The feminist perspective was particularly significant in this study especially for a country like Uganda that is majorly patriarchal and the views of women are ignored.

One of the authors Spivak asks, 'Can the subaltern speak?', raising the question as to whether oppressed minorities are able truly to represent and speak for themselves when they are constituted as subjects only through the positions that have been permitted by their colonizers.<sup>61</sup> The voice of the subjects, argues Spivak, is invariably modulated through some colonizing discourse or narrative.<sup>62</sup> There is also the enduring problem of how to give a voice to nature per se, a problem first raised by Stone in his polemic on 'Should Trees Have Standing?'. Since Western deliberative norms, argues Young, are dominant and agnostic, different 'voices' and styles of communication need to be recognized and accorded equal legitimacy in policy-making processes<sup>63</sup>, but the practice will always be different given that different groups that are not outspoken will always be left out. A true representation of public participation should allow for each and everyone to participate in the study.

Issues with cross-cultural dialogue and representation of minority interests are particularly evident in the context of Aboriginal peoples. The Berger Inquiry of the 1970s, which examined a proposed natural gas pipeline in Canada, stands out as an example of a participation process that addressed these concerns with sensitivity. The case for a politics of identity thus serves as an essential complement to the communicative politics of ideas.

Many shortcomings in public participation can be attributed to deficiencies in the legal and institutional frameworks that enable it. For instance, the terms of reference for an Environmental Impact Assessment (EIA) or environmental inquiry might be narrowly defined by authorities to exclude contentious issues.<sup>64</sup>

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<sup>60</sup> Eileen Gauna, 'The Environmental Justice Misfit: Public Participation and the Paradigm Paradox' (1998) 17 *Stanford Env'tl L J* 3

<sup>61</sup> Gayatri Chakravorty Spivak, "Can the Subaltern Speak". Northern Arizona University [jan.ucc.nau.edu/~sj6/Spivak%20CanTheSubalternSpeak.pdf](http://jan.ucc.nau.edu/~sj6/Spivak%20CanTheSubalternSpeak.pdf) accessed 27 January 2024

<sup>62</sup> Ibid. Ibid

<sup>63</sup> Russell Sparkes, *The Ethical Investor* (HarperCollins, 1995)

<sup>64</sup> Russell Sparkes, *Socially Responsible Investment. A Global Revolution* (John Wiley and Sons, 2002)

Moreover, participation efforts can sometimes be a mere facade, used to legitimize policies that have already been decided. For example, during the well-known environmental inquiry into the Ranger uranium mine in Australia, the federal government was covertly seeking buyers for the uranium from the proposed mine. When public input is not incorporated into final decisions, it can lead to widespread disillusionment with the process, negatively affecting both the quality of environmental decisions and the environment itself. Additionally, the complexity and bureaucracy of participation procedures can be significant obstacles to effective consultation.<sup>65</sup>

Complex and extensive Environmental Impact Assessment (EIA) reports often impede rather than promote public scrutiny of proposed developments. The lack of technical support and difficulties in accessing clear information can hinder the public's ability to contribute meaningfully to decision-making. Additionally, there are financial costs associated with expanding public participation. These include costs for participants—such as obtaining information, preparing submissions, attending hearings, and engaging in litigation—as well as costs for governments dealing with slower and more intricate decision-making processes, and costs for developers worried about delayed investments. The most costly participation mechanism is the public environmental inquiry, and accessing the courts can be prohibitively expensive for most individuals, making public interest litigation rare without substantial state legal aid and funding for intervenors<sup>66</sup>. These financial barriers also complicate the accessibility of public participation platforms, making it challenging for many people to get involved.

One way to address these barriers is to shift the responsibility from individuals to governments to initiate and facilitate participation. Agencies should be required to actively consult with individuals or organizations identified through fair methods as having a stake in a proposed decision. This practice is already partially implemented in some environmental legislation, including those in Uganda, as demonstrated in this study. Additionally, governments should establish public participation watchdogs to ensure that environmental decision-making processes are truly transparent, participatory, and accountable. The creation of environmental ombudsman-type

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<sup>65</sup> John Edward Parkinson, *Corporate Power and Responsibility: Issues in the Theory of Company Law* (Clarendon Press, 1995)

<sup>66</sup> David Campbell, "Towards a Less Irrelevant Socialism: Stake holding as a 'Reform' of the Capitalist Economy" (1997) 24 *Journal of Law & Society* 65

positions in Canada and New Zealand, which are accountable to parliament, exemplifies this approach. More widespread use of negotiation and real power-sharing processes, as seen in Canada's comprehensive land claims agreements with Aboriginal peoples, is also recommended. These are just a few examples of possible reforms.<sup>67</sup> Looking ahead, both the theory and practice of public participation in environmental law need to address the implications of the state's diminishing role, as public assets are increasingly privatized and policy functions are delegated to the market amidst global deregulation trends<sup>68</sup>.

Focusing on participation 'within the state' might become less relevant as market institutions increasingly dominate. It is essential to explore how corporate governance, financial institutions, and other aspects of modern markets can be made more transparent and open to civil society's participation and oversight. The values we hold as consumers in the market often differ significantly from those we express as citizens in political processes. The pervasive reach of capitalist market systems into nearly every aspect of life presents a serious challenge. Global capitalism has diminished the normative influence of civil society, leading to widespread apathy toward social values and public policy. In today's world, characterized by an abundance of information but a lack of meaningful context, Baudrillard describes this as 'hyperreality,' where a decentralized consumer society inundates us with images and data but offers little normative guidance. The moral ambiguity and nihilism of our so-called 'post-modern' consumer society may undermine efforts to engage citizens in public governance.<sup>69</sup>

Greater citizen input may promote environmental justice and help integrate ecological and social considerations in governmental decisions. Further, participation may enhance the accountability, and thus acceptability, of environmental decisions. This may lead to less litigation, fewer delays and generally better implementation of decisions. Thus, as Lawrence Tribe once warned, the way policy decisions are made has important implications for the outcomes of those decisions. Public participation is particularly significant in the context of sustainable development. Sustainability

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<sup>67</sup> David Charny, 'The German Corporate Governance System' [1998] *Columbia Business L Rev* 145

<sup>68</sup> Mandatory environmental reporting has been introduced in Australia, Britain, France and the US, among many countries: see KPMG Environmental Consulting, *International Survey of Environmental Reporting* (KPMG, 1999). 71 (1999) 38 *ILM* 515

<sup>69</sup> For example Convention on Environmental Impact Assessment in a Transboundary Context (1991)

depends largely on the way economic, social and environmental considerations have been integrated in decision-making.

Increased citizen input can foster environmental justice and integrate both ecological and social considerations into governmental decisions. Enhanced participation may also improve the accountability and acceptability of environmental decisions, potentially leading to reduced litigation, fewer delays, and more effective implementation. As Lawrence Tribe noted, the manner in which policy decisions are made significantly affects their outcomes. Public participation is crucial for sustainable development, as sustainability hinges on how economic, social, and environmental factors are incorporated into decision-making. The principles of inter- and intra-generational equity in sustainable development emphasize the importance of public involvement and social justice. Additionally, the precautionary principle, a key element of sustainability discourse, relies on public input to assess acceptable risks. Environmental threats like climate change or genetically modified organisms often involve scientific and technical uncertainties, with varying and competing public preferences. Participation can aid in evaluating these uncertainties and risks, balancing them against perceived benefits.<sup>70</sup> Many interrelated factors have also fueled the growth of participatory processes in decision-making.

First, there is a growing public awareness and concern regarding the connections between ecological health and human well-being. Second, the expansion of human rights within legal and political systems has raised expectations for greater participation in policy-making.<sup>71</sup> Third, the international emphasis on 'good governance' and the enhancement of civil societies has led to increased interest in participatory methods. Additionally, diminishing state legitimacy and a lack of trust in governments have driven calls for more grassroots and direct involvement in decision-making.<sup>72</sup>

Various models have been proposed to analyze different forms of public participation. One such model, known as Arnstein's 'ladder', illustrates a range of participation

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<sup>70</sup> North American Agreement on Environmental Cooperation (1993)

<sup>71</sup> Proposal for a Council Decision on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice regarding environmental matters, COM (2003)625 final

<sup>72</sup> Directive 2003/4/EC on public access to environmental information and repealing Council Directive 90/313/EEC [2003] OJ L/41/26

levels, starting with simple notification and progressing through consultation to shared decision-making power. Arnstein suggests that the lowest levels of participation may essentially equate to non-participation<sup>73</sup>, while the highest level involves the public having the authority to negotiate with decision-makers and veto decisions. Another model differentiates between ‘top-down’ approaches, where the government initiates participation, and ‘bottom-up’ approaches, where communities drive the process. Additionally, some experts make a distinction between the substantive and procedural aspects of participation.<sup>74</sup>

Participatory rights can stem from fundamental human rights, such as the right to live in a clean and healthy environment, and may be enshrined in constitutions or statutory bills of rights.<sup>75</sup> In contrast, procedural rights pertain to decision-making processes, including public consultation, information access, and the right to seek judicial review. These substantive and procedural rights are often interconnected: for example, the right to a healthy environment typically necessitates procedural rights that ensure public input into decisions affecting those environmental rights. Law plays a vital role in these areas. Informal discursive practices based on customs or contemporary debates may be too unstable to drive meaningful policy and political change.<sup>76</sup> Law plays a crucial role in all these approaches. Open-ended discursive experiences based on custom or current controversy may be too fragile and insufficient to sustain the desired policy and political transformation.<sup>77</sup> Law can offer two key functions in this context: first, by establishing decision rules and procedures, it facilitates the expression of democratic will; second, by codifying norms and structuring institutions, it channels political power throughout society, promoting social coordination.

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<sup>73</sup> Balogun B Ajibola, ‘Individual Human Rights in African Context’ in Antoine Anghie and Garry Sturgess (eds), *Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry* (Kluwer, 1998); Lawrence W. Beer (ed), *Constitutionalism in Asia* (U California P, 1979)

<sup>74</sup> The proposed Regulation of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to EC institutions and bodies, COM (2003) 622 final

<sup>75</sup> Jona Razzaque, *Public Interest Environmental Litigation in India, Pakistan and Bangladesh* (Kluwer, 2004) ch 2

<sup>76</sup> Elizabeth F. Brown, ‘In Defense of Environmental Rights in East European Constitutions’ (1993) *University of Chicago Law School Roundtable* 191

<sup>77</sup> Donald P Kommers, John E. Finn and Garry J. Jacobson, *American Constitutional Law* (2nd edn, Rowman, 2004) 425, 432–5. 98 (1950) ETS 5/213, UNTS 222

Essentially, law creates a framework for participation that supports and safeguards society's environmental objectives.<sup>78</sup>

The study also incorporates a feminist perspective, highlighting that participation is closely linked to gender issues. Agarwal, for example, points out the widespread exclusion of women from public institutions in many countries. Additionally, the environmental movement has faced criticism for its perceived social elitism, often dominated by wealthier and better-educated individuals, with insufficient representation from blue-collar workers or the economically disadvantaged. It is notable that the most polluted and undesirable living areas frequently house society's most disadvantaged groups, who are often victims of the NIMBY ('not in my backyard') mentality and the influence of privileged classes. Post-colonial theorists argue that focusing on who is represented in decision-making is as crucial as the content of representation, emphasizing the importance of identity factors such as race, gender, and ethnicity. Rationalist approaches to discussion may skew and limit both the definition of legitimate speech and the qualifications of who is considered an appropriate speaker.

### **1.11 Synopsis to the study**

In conducting this study, it was structured into five chapters as below:- Chapter one was a general introduction to the study, while chapter two was a discussion of the non legal aspects of the study. Chapter Three was a discussion of the legal regime governing the right to public participation in environmental matters and Chapter Four was a discussion of the best approaches to public participation in environmental processes, while Chapter Five was contain a summary of findings, conclusions and recommendations to improve environmental decision making in Uganda.

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<sup>78</sup> Jonas Ebbesson, 'Comparative Introduction' in Jonas Ebbesson (ed), *Access to Justice in the Environmental Matters in the EU* (Kluwer, 2002) 20, 23

## CHAPTER TWO

### THE NATURE AND ROLE OF PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING IN UGANDA

#### 2.0 Introduction

In making this legal analysis, it is important to conceptualize, from a theoretical perspective the key concepts of the study. While the subsequent chapter discusses the position of the law on the key aspects of the study, this chapter focuses briefly on the non-legal aspects as the researcher from the perspective of scholars by expanding on the literature review in Chapter One. It discusses the key components of the topic including the understanding of the application of public participation, management of the environment, and environment in general.

#### 2.1 Environment

Certainly, there is no agreed definition of environment. Several scholars have attempted to define the term, however, every definition has been critiqued by another, demonstrating the complexity of the concept itself. In understanding the concept of public participation and its place in respect to environmental decision making, the researcher deems it necessary to present an acceptable definition.

Laurence Menhinick borrows his definition from regulatory instruments. He states that because the term cannot be defined in one singular definition, understanding its meaning will need a review of the numerous agreements, treaties, convention and protocols that make up international environmental law, notwithstanding that none offers a singular agreed definition.<sup>79</sup> The concept he says is fluid and continues to evolve in line with scientific understanding arguing that the term has acquired definitions depending on the dimension in consideration, which may include cultural, socio-economic and geographic<sup>80</sup>. Under the Environment Policy, context to the term environment to encompass further soil degradation, deforestation, biodiversity,

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<sup>79</sup> Laurence Menhinick, 'We Need to Define 'the Environment' to Protect it From Armed Conflict' (Conflict and Environment Observatory, 11 November 2009). <[ceobs.org/we-need-to-define-the-environment-to-protect-it-from-armed-conflict/](https://ceobs.org/we-need-to-define-the-environment-to-protect-it-from-armed-conflict/)> accessed 18 February 2024

<sup>80</sup> Ibid

wetlands, fish populations, rangelands, fuel food, air and water, environmentally related diseases and environmental legislation.<sup>81</sup> The addition of environment related diseases extends the definition of the term to include effects brought about by the environment.

Under the UNEP the word environment is understood to encompass the natural and built environment, socioecological and economic aspects of environmental issues, and<sup>82</sup>the political dimension of environmental protection.

Johan. G Nel and Louis. J. Kotze<sup>83</sup> retraces the meaning of the word environment to the French language adaptation. He argues that the term environment arises from the French words 'environ' or 'environner' that means "around" or "round about" or "to surround" or "to encompass" respectively<sup>84</sup>. While this offers guidance and contextualization to the lexicological origins of the word, it is still not sufficient to define the term. The complexity of the definition is evident from authors like Dr. Jhuma Mukhopadhyay who agree that the term environment is complex, but insists that the term extends to physical, geographical, biological, social, cultural and political conditions that surround an individual or organism.<sup>85</sup>

While relying on Rabie<sup>86</sup>, Johan G Nel and Louis. J. Kotze<sup>87</sup> explore the meaning of the term environment. They state that there is no singular or general agreement as to the definition of environment, but it is a concept that especially in terms of management should be considered from both a legal and scientific point of view. This in his assessment should guide any formulated definition of the term environment, even in

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<sup>81</sup> The National Environment Management Policy for Uganda, 1994, Background, page 7

<sup>82</sup> <https://www.unep.org>

<sup>83</sup>ennie Johan. G. Nel and Louis. J. Kotze, "Environmental Management: An Introduction". Chapter 1 of Nicholas King, Ha Strydom & Francoise Rretief (EDS) (2018). Environmental Management in South Africa. 3<sup>rd</sup> Edition. <[www.researchgate.net/profile/Louis-Kotze/publication/296319743\\_Environmental\\_management\\_An\\_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf](http://www.researchgate.net/profile/Louis-Kotze/publication/296319743_Environmental_management_An_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf)> accessed 11 February 2024

<sup>84</sup> Ibid.

<sup>85</sup> Dr. Jhuma Mukhopadhyay, (2016) "Environment in Context: A Perspective from Environment Behavior Relation". *International Journal of Humanities and Social Science Invention*. Volume 5 Issue 3, pp. 37 -43

<sup>86</sup> Rabi, "Nature and Scope of Environmental Law" in Fuggle & Rabie (eds). *Environmental Management in South Africa (1992)* 83.ich

<sup>87</sup> Johan G. Nel and Louis. J. Kotze, "Environmental Management: An Introduction". Chapter 1 of Nicholas D King, Hennie Strydom & Francoise Retief (EDS) (2018). Environmental Management in South Africa. 3<sup>rd</sup> Edition <[www.researchgate.net/profile/Louis-Kotze/publication/296319743\\_Environmental\\_management\\_An\\_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf](http://www.researchgate.net/profile/Louis-Kotze/publication/296319743_Environmental_management_An_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf)> accessed 11 February 2024



legislation. He argues that a definition should be able to include green perspectives that cover the biotic, living nature and abiotic for the non-living. It should also cover environmental degradation, protection of species and ecosystems that have been threatened, vulnerable habitats, biodiversity, eradication of alien, invasive species and the maintenance of ecosystem services.<sup>88</sup>

Dr. Sjyla Prasad argues that environment is anything that surrounds or affects an organism during its life time or everything that surrounds a living organism like places or things, and can be natural or man – made<sup>89</sup>. The definition therefore varies from author to author. The acceptable definition would be formulated from the above texts, and to borrow the influence of several scholars, the researcher therefore defines the environment to mean the surroundings of an organism, whether living or non-living, but majorly encompasses ecosystems, species and the inanimate things, with every environment generating what has been understood to be an environmental right.

## 2.2. Environmental rights

The discussion on human rights in this Dissertation in respect to the environment requires an assessment of whether or not human rights and the environment have a correlation, or if indeed the concept of environmental rights or environmental human rights exist. To resolve this rhetoric, requires an examination of writings of a number of scholars including Phillipe Cullet who specifically opines that “*environmental law and human rights law have intertwined objectives...*” and that the two concepts are different yet complementary<sup>90</sup>. Whenever a human rights approach has been adopted in cases, including cases of the environment, it allows for an integrated environmental decision making.<sup>91</sup>

For Maria Adebawale, discussing environmental rights encompasses a discussion of the right to a clean and safe environment, the right to act to protect the environment

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<sup>88</sup> Ibid note 2

<sup>89</sup> Dr. Sjyla Prasad, “Environmental Geography”. Mukherjee University. Available at [www.dspmuranchi.ac.in/pdf/Blog/satyapriya52dspmucomS12.pdf](http://www.dspmuranchi.ac.in/pdf/Blog/satyapriya52dspmucomS12.pdf) accessed 10 February 2024

<sup>90</sup> Phillipe Cullet, (1995) “Definition of an Environmental Right in a Human Rights Context”. 13 *Netherlands Quarterly of Human Rights*, p. 25. International Environmental Law Research Centre. Geneva Switzerland <[ielrc.org/content/a9502.pdf](http://ielrc.org/content/a9502.pdf)> accessed on the 7 February 2024

<sup>91</sup> Maria Adebawale, Chris Church et al., (2001) “Environment and Human Rights: A New Approach to Sustainable Development”. World Summit on Sustainable Development and International Institute for Environmental and Development. <[www.iiied.org/sites/default/files/pdfs/migrate/11016IIED.pdf](http://www.iiied.org/sites/default/files/pdfs/migrate/11016IIED.pdf)> accessed 18 February 2024

and the right to information to participate in decision – making or public participation that this study seeks to demonstrate.<sup>92</sup>

In examining this linkage, he states that the preservation, conservation and the restoration of the environment are necessary and are an integral part for the enjoyment of human rights, relatedly, the rights to health, to food and to life.<sup>93</sup> It also extends to the right to fresh water and food supplies<sup>94</sup> or the right to religion, property, health and culture.<sup>95</sup> They have also been described to mean any form of human rights that is related to natural resources and include the substantive rights to clean air and access to safe water, adequate sanitation and a healthy environment.<sup>96</sup> The enjoyment of these rights is complemented by several other rights including information, participation and access to justice and the freedom from discrimination.<sup>97</sup>

### 2.3. Who is the Public?

In understanding the exercise of the right to public participation, I delve into the discussion of what amounts to “public”, “public participation” and consequently what the right to public participation is. Public has been described to mean one or more natural or legal persons, and extends to their associations, organizations or groups.<sup>98</sup>

Dan Gardner and Philip E. Tetlock argue that the public refers to groups of people who deliberate together and such groups *‘tend to maintain an esprit de corps by unconsciously developing a number of shared illusions and related norms that interfere with critical thinking and reality testing’*.<sup>99</sup> They argue that collective decisions will always reflect conformity as opposed to genuine unanimity. They go on to caution that that individuals or groups may not have the same opportunity to use participation

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<sup>92</sup> Ibid..

<sup>93</sup> Ibid..

<sup>94</sup> Ibid..

<sup>95</sup> United Nations Development Group, (2017). Guidance Note on Human Rights for Resident Coordinators and UN Country Teams [unsdg.un.org/sites/default/files/UNDG-Guidance-Note-on-Human-Rights-for-RCs-and-UNCTs-final.pdf](https://unsdg.un.org/sites/default/files/UNDG-Guidance-Note-on-Human-Rights-for-RCs-and-UNCTs-final.pdf) accessed 7 February 2024

<sup>96</sup> The Access Initiative, “The Road to Realizing Environmental Rights in Africa: Moving from Principles to Practice” [accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf) accessed 21 April 2024

<sup>97</sup> Ibid.

<sup>98</sup> Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters, 1998, Paragraph 1, 2, 8 and 9 of the Preamble, Article 2

<sup>99</sup> Dan Gardner and Philip E. Tetlock et al (2015), *Superforecasting: The Art and Science of Prediction*

reforms. If the best arguments are to prevail, participants must have an equal ability to participate.

It has also been argued that greater citizen input of citizens has the potential to promote environmental justice and also assist in the integration of ecological and social considerations in governmental decisions this is because participation may enhance the accountability, and thus acceptability, of environmental decisions, hence leading to less litigation, fewer delays and generally better implementation of decisions. Lawrence Tribe warns<sup>100</sup>, the way policy decisions are made has important implications for the outcomes of those decisions.

The public, therefore becomes the collective word to refer to ordinary or the greater citizenry, groups of people or individuals, and participation on the other hand becoming the involvement of the public in governance processes. It may include individuals, citizen initiatives, representative of lobbies and environment organizations, youth clubs, professional associations in a process of participation and the wider public.

#### **2.4. What is Public Participation?**

From the above highlights, it therefore follows that public participation may be understood as the involvement of the public. It is any process that directly engages the public in decision – making and gives full consideration to public input in making that decision.<sup>101</sup> It is also the opportunity for the public to influence the decision or the outcome.<sup>102</sup> Kerstin Arbter, Martina Handler Ogut et al argue that ordinary citizens, entrepreneurs and lobbyist always want to be informed in detail before political decisions that affect them are taken, by requiring a say in the developments.<sup>103</sup>

Public participation is particularly significant in the context of sustainable development. Sustainability depends largely on the way economic, social and environmental considerations have been integrated in decision-making. As highlighted in the

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<sup>100</sup> Lawrence H. Tribe, "Lawrence V. Texaz: The 'Fundamental Right' That Dare Not Speak its Name.". *Harvard Law Review*, Vol. 117. No. 6 (Apr. 2004), pp. 1893-1955

<sup>101</sup> Environmental Protection Agency, "Introduction: Public Participation" <[www.epa.gov/sites/default/files/2014-03/documents/chile2013-introduction.pdf](http://www.epa.gov/sites/default/files/2014-03/documents/chile2013-introduction.pdf)> accessed February 2024

<sup>102</sup> Ibid.

<sup>103</sup> Kerstin Arbter, Martina Handler Ogut et al, (2007) "The Public Participation Manual: Shaping the Future Together". Austrian Society for Environment and Technology, Vienna. <[www.iirsa.org/admin\\_iirsa\\_web/Uploads/Documents/ease\\_taller08\\_m6\\_anexo1.pdf](http://www.iirsa.org/admin_iirsa_web/Uploads/Documents/ease_taller08_m6_anexo1.pdf)> accessed 10<sup>th</sup> February 2024

discussion above, the concept of public participation arises from the need to encourage interaction between governments and the community through the different mechanisms in order to design and implement development projects, programs<sup>104</sup> and policies on topical issues such as the environment. The concept of public participation is entrenched within the country's frameworks including the constitution as the discussion on the legislative framework below shows. Summarily, the country's constitution grants its citizens a right to participate in the governance affairs or rather public participation<sup>105</sup> which can be done directly or indirectly through intermediaries.

Public Participation occurs when where various groups of stakeholders including individuals, citizen initiatives, representative of lobbies and environment organizations, youth clubs, professional associations in a process of participation and the wider public<sup>106</sup>. It is a process by which public concerns, needs and values are incorporated into general and corporate decision making, with the intention so ensure that better decisions are made and supported by the public.<sup>107</sup>

In defining public participation, James L. Creighton argues that these definitions exclude electoral processes, lawsuits, strikes and extra-legal protests that is a legitimate component of a democratic society<sup>108</sup>, even when other scholars may argue that the same amount to public participation. He argues that the authority eventually maintains the "ultimate decision-making authority".<sup>109</sup> It is also a form of participation to allow for electoral democracy as the processes of periodic general elections. However, some have argued that elections are not sufficient to allow for public engagement in environmental decision making.<sup>110</sup> This they fear is because the opinions of the public are usually communicated through elected representatives who

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<sup>104</sup> Organization of American States, "Public Participation in OAS – Managed Basin Projects". [www.oas.org/dsd/Water/Public%20Participation%20in%20basin%20projectspagweb.pdf](http://www.oas.org/dsd/Water/Public%20Participation%20in%20basin%20projectspagweb.pdf) accessed on 9 January 2024

<sup>105</sup> The Constitution of the Republic of Uganda, 1995 (as amended), Article 38

<sup>106</sup> Ibid note 102.

<sup>107</sup> James L. Creighton, (2005) "The Public Participation Handbook: Making Better Decisions Through Citizen Involvement". Jossey – Pass. A Wiley Imprint [smartnet.niua.org/sites/default/files/resources/Public%20Participation%20Handbook.pdf](http://smartnet.niua.org/sites/default/files/resources/Public%20Participation%20Handbook.pdf) accessed 10 February 2024

<sup>108</sup> Ibid.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid.

will not usually have the interests of the electorate at heart like James L. Creighton categorizing these processes as ‘surrogate political processes’.<sup>111</sup>

## 2.5. The right to public participation

The significance of the right to public participation is that it will offer guidance to decision makers to come up with issues that are pertinent to the community or that are in the interests of the public while formulating policies on the environment. This has been demonstrated in several public participation activities in Uganda including the famed *ekimeeza*<sup>112</sup> where Ugandans held outdoor radio talk shows. Public participation is “an indelible feature of many environmental regulatory systems worldwide”<sup>113</sup> and has continued to do so over the past few decades with individuals and organizations affected by environment impacting decisions that would ordinarily require greater consultations in the processes and “more transparent and accountable decisions”.<sup>114</sup>

The exercise of the right to public participation can be achieved in the forms of education, information dissemination, advisory or review boards, public advocacy, public hearings, submissions and litigation.<sup>115</sup>

The concept of public participation or its realities differ from nation to nation. Donald Zillman argues that the concept of public participation agenda in developing nations is often manifested in calls for greater local community involvement in development planning and poverty alleviation projects.<sup>116</sup> Uganda for instance attributes the introduction of the right to public participation in the country to colonialism and the efforts to rid the country of colonialism. Public participation can also be understood

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<sup>111</sup> Ibid.

<sup>112</sup> Florence Brisset – Foucault, (2019) “Talkative Policy: Radio, Domination, and Citizenship in Uganda”, *Cambridge Center of African Studies Series*, Ohio University Press, Kampala.

<sup>113</sup> Richardson, Benjamin and Rozzaque, Jona. (2006). “Public Participation in Environmental Decision Making”, ch-06.qxd pp. 165 – 194. Available at [www.researchgate.net/publication/228305864\\_Public\\_Participation\\_in\\_Environmental\\_Decision\\_Making](http://www.researchgate.net/publication/228305864_Public_Participation_in_Environmental_Decision_Making) accessed 9 January 2024

<sup>114</sup> Ibid.

<sup>115</sup> Richardson, Benjamin and Rozzaque, Jona. (2006). “Public Participation in Environmental Decision Making”, ch-06.qxd pp. 165 – 194. [www.researchgate.net/publication/228305864\\_Public\\_Participation\\_in\\_Environmental\\_Decision\\_Making](http://www.researchgate.net/publication/228305864_Public_Participation_in_Environmental_Decision_Making) accessed 9 January 2024

<sup>116</sup> Donald N Zillman, (2002) ‘Introduction to Public Participation in the 21st Century’ in Donald. Zillman et al, *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources*, Oxford University Press

from the concepts of colonialism. Post – colonial commentators have advocated for reforms to recently-independent states to widen community participation in government to ensure social and economic policies addressed people’s primary needs. All the development policies were intended to decentralize decision-making and enhance local institutional capacities in order to create a more participatory avenue.<sup>117</sup>

For Frederick Golooba – Mutebi, the history of public participation in Uganda coincides with the rise to power of the National Resistance Movement government in 1986 that sought to democratize the country’s politics, which started with evolution of village councils and popular participation until 1996 that led to high levels of public participation.<sup>118</sup> He argues that this also coincided with the events leading to the passing of the country’s constitution where an “extensive involvement of the general public” took place over a space of eight (8) years.<sup>119</sup>

The Constitution of Uganda was passed following these discussions and it led to the introduction of Article 38, the foundation on the recognition of the right to public participation in the country. All the country’s laws including the National Environment Act of 2019 which repealed the version of 1995, as this study demonstrates highlight the need for public participation in environmental decision making. A number of laws impacting positively or negatively on the right to public participation including the Access to Information Act, 2003, Non – Government Organization Act, 2016, the Press and Journalism Act cap 105 have subsequently been passed by the country. Of particular relevance will be the National Environmental Policy, 1994 and regulations requiring for environment impact assessments (EIA) like the National Environment (Environmental and Social Assessment) Regulations, 2020 (SI No. 143 of 2020) which require consultations from the communities where developments will be established before an environmentally impactful activity is conducted.

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<sup>117</sup> Ibid.

<sup>118</sup> Frederick Golooba – Mutebi, “Reassessing Popular Participation in Uganda”. DOI 10.1002/pad.309. Available at [onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309](https://onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309) accessed 10 January 2024

<sup>119</sup> Devra C. Moehler “Participation and Support for the Constitution in Uganda”. *J. of Modern African Studies*, 44, 2 (2006), pp. 275-308. Cambridge University Press. Doi:10.1017/S0022278X06001637. United Kingdom

As a result of these laws, civil society organizations have been allowed positions on the National Planning Authority which coordinates the country's planning system or on the board of the National Sub – Committee on Evaluation in the Office of the Prime Minister. The mandate of the Committee includes supervising and reviewing the performance of all government ministries, departments and agencies.<sup>120</sup> At the bedrock of the NRM manifesto is decentralization which allows for grass roots democracy is also supported where *baraazas* or community meetings and public hearings take place because they involve citizen participation.

The enjoyment of the right to public participation has not been without challenges ranging from awareness issues, capacity and resources among others. These impact the enjoyment of the right to public participation in the country.<sup>121</sup>

The legal provisions of opportunities for participation in environmental decision-making do not themselves ensure that participation will occur or be meaningful as intended within the letter of the law, especially because there are numerous barriers to effective public participation.

## **2.6. Relevance of Participation in Environmental Decision-Making Process**

From the discussion above, it follows that public participation in environmental decision making is significant. As Sander Beci highlights<sup>122</sup>, management of the environment requires concerted efforts of other states and parties within these states especially if states are to manage the effects of global warming and climate change on the environment.

Uganda equally recognizes the significance of public participation as demonstrated by the efforts to hold events like *ekimeeza*. The country has been on a long quest to effect

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<sup>120</sup> US AID and Uganda Civil Society Strengthening Activity (CSSA), "Public Participation Mechanisms in Uganda and the Enabling Environment for Civil Society: A Baseline Study", July 2022 <[ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20Public%20participation%20report%20final%20web.pdf](http://ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20Public%20participation%20report%20final%20web.pdf)> accessed on 20 January 2024

<sup>121</sup> Charlotte Kabaseke, (2020) "Women's Right to Participation in Environmental Decision – Making in Uganda", pp. 287 – 314. In: Addanye, M, Oluborode Jegede, A. (eds). *Human Rights and the Environment Under African Union Law*. Palgrave Macmillan, Cham. <[doi.org/10.1007/978-3-030-46523-0\\_12](https://doi.org/10.1007/978-3-030-46523-0_12)>

<sup>122</sup> Sander Beci, "Environmental Protection in the Framework of International Law: Development and Perspectives" (2012). *European Scientific Journal*, pg. 31 – 42. <[eujournal.org/index.php/esj/article/view/4658/4453](http://eujournal.org/index.php/esj/article/view/4658/4453)> accessed 20 April 2024. He also relies on the position of authors like Stefanie. Bariatti, Sergio. Carbone, et al. (2003) *di diritto internazionale* (Institutions of international law), 2nd edition, Torino, G. Giappichelli Editore

public participation and the processes date as early as the 1980's where the government takes efforts to adopt provisions on public participation in environmental decision making. This is evidenced with the rise of the NRM government in 1986 and the role of public participation that sought to democratize the country's politics, starting with the evolution of village councils and popular participation until 1996 which led to high levels of public participation.<sup>123</sup> This is also evident in the events leading to the passing of the country's constitution where an "extensive involvement of the general public" took place over a space of eight (8) years.<sup>124</sup>

The repealed National Environment Act cap 153 also considered that history and made references to public participation in environmental decision making. A number of laws impacting positively or negatively on the right to public participation in environmental decisions have also come up including the Access to Information Act, 2003, Non – Government Organization Act, 2016, the Press and Journalism Act cap 105 have subsequently been passed by the country. The National Environmental Policy, 1994 and regulations like the Environmental Impact Assessment Regulations, SI no. 13 of 1998 which require environment impact assessments (EIA) from the communities where developments would be established. These regulations have however since been repealed by the National Environment (Environmental and Social Assessment) Regulations, 2020 (S.I no. 143 of 2020). The provisions and the requirements are reintroduced in the regulations.

These have inspired the current form that the National Environment Act, 2019 takes and the respective regulations, as it attempts to strengthen the resolve, and to improve on the weaknesses of the previous dated regimes. The law lays down the principles governing the management of the environment in Uganda some of which encourage the participation of the public in the management of the environment.<sup>125</sup> The principles specifically provide that participation of the people of Uganda (*or rather the public*) should be encouraged when it comes to the development of policies, plans and programmes for the management of the environment.<sup>126</sup> This may require that the

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<sup>123</sup> Frederick Golooba – Muteebi, "Reassessing Popular Participation in Uganda". DOI 10.1002/pad.309 <[onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309](https://onlinelibrary.wiley.com/doi/epdf/10.1002/pad.309)> accessed 10 January 2024

<sup>124</sup> Devra C. Moehler "Participation and Support for the Constitution in Uganda". J. of Modern African Studies, (2006) 44, 2, pp. 275-308. Cambridge University Press. Doi:10.1017/S0022278X06001637. United Kingdom

<sup>125</sup> The National Environment Act, 2019, Section 5

<sup>126</sup> The National Environment Act, 2019, Section 5



public debates the policies before they are introduced or widely applied. Collectively, the principles below set a foundation for the enjoyment of rights to public participation in environmental decision making processes.

The principles also provide that there should be equitable, gender responsive and sustainable uses of the environment and natural resources for the benefit of both the present and future generations.<sup>127</sup> The natural resources envisaged also include the cultural and natural heritages within these surroundings<sup>128</sup>. Gendered principles would ensure that the interests of men and women are all considered in the deliberations. Any form of public environment management is required to ensure that there are stable functioning relations between the living and non-living parts of the environment are maintained.<sup>129</sup> This, the Act guides would be through the conservation of biological diversity and the use of prudent environment management measures.<sup>130</sup>

In restoring lost or damaged eco-systems, the principles require that there is optimum sustainable yield in the use of renewable natural resources as they require that the activities relating to extractive processes of renewable and non-renewable natural resources are carried out in a sustainable manner.<sup>131</sup> The principles guide that any protection mechanisms should be able to reverse the degradation of the environment and natural resources.<sup>132</sup> This would ensure that any degradation is undone, and may be possible through activities like tree planting and other similar mechanisms. The protection mechanisms should also be able to ensure that there are no threats of irreversible harm or damage to human health or the environment. They should also provide scientific certainty that would not be used as the reason for postponing cost-effective measures to prevent the harm or damage.<sup>133</sup>

The principles also provide that environmental management actions should ensure that adequate environmental protection standards are established.<sup>134</sup> While adequate is not defined, it should imply that a basis standard is agreed or ensure that there is

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<sup>127</sup> Ibid., Section 5 (2) b

<sup>128</sup> Ibid.

<sup>129</sup> Ibid., Section 5 (2) c

<sup>130</sup> Ibid.

<sup>131</sup> Ibid., Section 5 d, e and f

<sup>132</sup> Ibid.

<sup>133</sup> Ibid., Section 5 (d) g

<sup>134</sup> Ibid., Section 5 (2) h

effective monitoring in the changes in environmental quality, which would include the publication of relevant data on environmental quality and resource use.<sup>135</sup>

Any practices for the management of the environment should require prior environmental and social impact assessments of proposed projects, particularly in cases where these projects would significantly affect the environment or use of natural resources.<sup>136</sup> They should also require that there is an application of the mitigation hierarchy in environmental and social impact assessments.<sup>137</sup> These should include efforts to avoid and minimize impacts, achieve restoration targets and for residual impacts, deliver biodiversity offsets.<sup>138</sup> This would ensure that before any environmental exploitation is committed, the potential impact of these projects is assessed. Where the projects will impact the environment in anyway, mitigation is done or the activities are not permitted to proceed.

The principles also require that environmental awareness and literacy should form an integral part of education and governance at all levels to ensure that the public is aware of the impacts and how to mitigate climate change or influence policy<sup>139</sup>, require that any costs of pollution are borne by the polluter<sup>140</sup> as a form of accountability for the actions committed and that they should ensure that the environmental costs connected with the actual or potential deterioration of natural assets are factored into economic activities<sup>141</sup> especially to ensure that there is restoration of the environment following the exploitation

Environment management efforts should promote the use of economic instruments and compensatory measures in environmental management<sup>142</sup>, promote green growth in environmental planning and implementation of sustainable development goals in all sectors<sup>143</sup> and should also promote circular economy by maximizing production

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<sup>135</sup> Ibid.

<sup>136</sup> Ibid., Section 5 (2) i. This is also contained within the requirements of the National Environment (Environmental and Social Assessment) Regulations, 2020 (S.I no. 143 of 2020) that is specifically dedicated to regulating assessments

<sup>137</sup> Ibid., Section 5 (2) j

<sup>138</sup> Ibid.

<sup>139</sup> Ibid., Section 5 (2) k

<sup>140</sup> Ibid., Section 5 (2) l

<sup>141</sup> Ibid., Section 5 (2) m

<sup>142</sup> Ibid., Section 5 (2) n

<sup>143</sup> Ibid., Section 5 (2) o

efficiency to conserve the use of the environment and natural resources and to control the generation of waste to the greatest extent possible.<sup>144</sup> These would ensure that any degradations of the environment are countered as required by the law. In order to achieve this, the Act proposes that there should be steps taken to prevent or reduce the generation of waste from production processes or products and consumption patterns, promote proper cyclical use of products in the production processes as circulative resources, ensure proper disposal of circulative resources not put into cyclical use and promote a multi and inter-sectoral approach to the management of the environment.<sup>145</sup>

The principles also require the promotion of cooperation between the country and the other states in the field of the environment, support and the promotion of the implementation of applicable international environmental obligations and principles<sup>146</sup>, demonstrating the fact that issues of the environment are best resolved through the consideration of the international perspective or by participating with other countries. The principles should also ensure that the processes of environmental management and human development have due regard to international human rights standards<sup>147</sup>, ensure that in the implementation of public and private projects, approaches that increase both the environment and people's resilience to impacts of climate change are prioritized.<sup>148</sup> The principles should also ensure that in case of an environmental emergency such as a disaster of any magnitude, the lead agencies are commanded to promptly notify other relevant agencies and departments so as to guarantee the availability of support.<sup>149</sup>

Within the Policy, further guidance is provided offering principles that cover land and resource tenures<sup>150</sup>, land use policy and planning<sup>151</sup>, environmental information<sup>152</sup>, conservation of biological diversity<sup>153</sup>, water resource conservation and

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<sup>144</sup> Ibid., Section 5 (2) p

<sup>145</sup> Ibid., Section 5 (2) p

<sup>146</sup> Ibid., Section 5 (2) q

<sup>147</sup> Ibid., Section 5 (2) r

<sup>148</sup> Ibid., Section 5 (2) s

<sup>149</sup> Ibid., Section 5 (2) t

<sup>150</sup> The National Environment Management Policy, 1994, Paragraph 3.1

<sup>151</sup> Ibid., Paragraph 3.2

<sup>152</sup> Ibid., Paragraph 3.3

<sup>153</sup> Ibid., Paragraph 3.4

management<sup>154</sup>, wetlands conservation and management<sup>155</sup>, environmental economics and macro – economic policy<sup>156</sup>, environmental impact assessments<sup>157</sup>, control of pollution and management of domestic and industrial waste and hazardous materials<sup>158</sup>, climate, population, health and human settlements<sup>159</sup> that all collectively address the issues of environmental protection and encourage public participation.

The policy also offers guidance on several issues including gender integration<sup>160</sup>, environmental education, human resource development and research<sup>161</sup>, public participation in environmental management<sup>162</sup>, agricultural and farming systems<sup>163</sup>, forest conservation and management<sup>164</sup>, wildlife conservation and management<sup>165</sup>, livestock and rangelands management<sup>166</sup> and energy among others.

To implement these guidelines, the Policy specifically provides a specific implementation section with the expectation that it will involve the successive detailing of policy from the level of intent, it will provide for a structuring of actions required to achieve intended policy outputs and impacts and through environmental legislation.<sup>167</sup>

## **2.7. Environment management**

The United Nations Development Programme reports that environmental management combines science, policy and socioeconomic applications to help find solutions to practical problems that people face in cohabitation with nature, resource exploitation and waster production.<sup>168</sup> It is a response to human actions resulting from

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<sup>154</sup> Ibid., Paragraph 3.5

<sup>155</sup> Ibid., Paragraph 3.6

<sup>156</sup> Ibid., Paragraph 3.7

<sup>157</sup> Ibid., Paragraph 3.8

<sup>158</sup> Ibid., Paragraph 3.9

<sup>159</sup> Ibid., Paragraph 3.10

<sup>160</sup> Ibid., Paragraph 3.11

<sup>161</sup> Ibid., Paragraph 3.12

<sup>162</sup> Ibid., Paragraph 3.13

<sup>163</sup> Ibid., Paragraph 4.1

<sup>164</sup> Ibid., Paragraph 4.2

<sup>165</sup> Ibid., Paragraph 4.3

<sup>166</sup> Ibid., Paragraph 4.4

<sup>167</sup> Ibid., Chapter V

<sup>168</sup> United Nations Development Programme and the Global Environmental Facility, (2011) "Environmental Management Tools and Techniques: A Learning Material". Thimphu, Page 9 <[info.undp.org/docs/pdc/Documents/BTN/Env%20mgt%20tools%20and%20techniques.pdf](http://info.undp.org/docs/pdc/Documents/BTN/Env%20mgt%20tools%20and%20techniques.pdf)> accessed 10 February 2024

the serious seriousness and significance of today's disastrous human impact on natural eco systems.<sup>169</sup>

For Johan. G Nel and Louis J. Kotze, environmental management is an elusive concept that is subject to frequent and imprecise use, but is a term that has evolved rapidly.<sup>170</sup> It means different things to different people depending on the context, however, to them, it is not the management of the environment but instead is a management or a governance strategy that derives its authority from well-established legal mandates and the objective to regulate the effects of peoples' activities, products and services on the environment.<sup>171</sup>

## **2.8. Public participation and gender**

In an effort to encourage public participation, a gendered aspect has arisen and this study sought to further highlight and contribute to this gendered perspective the study, which is one of the issues Uganda struggles even when the concept is embedded in the country's laws. The concept is intended to ensure that all forms of participation are recognized and protected, both in the law and in practice. It cannot therefore be justified for a discussion to be conducted on public participation without the need to review the extent of participation by both male and female genders. The exercise of the right to public participation is therefore gendered to the extent that only the participation of men is significant or has been given primacy. The discussion now highlights that the voice of women should also be had in the conversation or what is being termed as the feminist theory of public participation.

This particular view is evident in the findings of Charlotte Kabaseke<sup>172</sup> who in her Dissertation argues that women are more vulnerable to climate change. Because of this, she argues that it becomes pertinent to require their collective involvement in the discourse on public participation in the country, in respect to environmental

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<sup>169</sup> Ibid.

<sup>170</sup> Johan G. Nel and Louis J. Kotze, "Environmental Management: An Introduction". Chapter 1 of Nicholas D King, Ha Strydom & Francoise P Retief (EDS) (2018). *Environmental Management in South Africa*. 3<sup>rd</sup> Edition, . [https://www.researchgate.net/profile/Louis-Kotze/publication/296319743\\_Environmental\\_management\\_An\\_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf](https://www.researchgate.net/profile/Louis-Kotze/publication/296319743_Environmental_management_An_introduction/links/570783fb08ae04e9708ee4c3/Environmental-management-An-introduction.pdf) accessed 11 February 2024

<sup>171</sup> Ibid.

<sup>172</sup> Charlotte Kabaseke, (2021) "Strengthening Women's Right to Participation in Climate Change and Adaptation in Africa". Springer Nature Switzerland AG. Handbook on Climate Change Management. <doi.org/10.1007/978-3-030-22759-3\_256-1>

management. Women she says, have contributed more to the mitigation of climate change and contributed further to climate change adaptation<sup>173</sup> and the wider environment.

Charlotte Kabaseke further supports her argument by relying on several authorities as discussed in this Dissertation including a host of international and regional instruments that have sought to respect the right to women to participate in policy decisions.<sup>174</sup>

Agarwal Prerna argues that the exclusion of women from public institutions is a widespread problem in many countries.<sup>175</sup> To her, the environmental movement should be criticized for its social elitism which is dominated by the better educated and wealthier segments of society with little representation from blue-collar workers or the poorest.

## **2.9. Conclusion**

The right to participate in environment decision making is critical for assurance of the public that they participate and have the views taken to consideration before decisions that widely impact on the environment are made. From the discussion above, it is quite clear that efforts have been placed on the concept of public participation yet the right itself has not been widely explored. It therefore becomes imperative to mention that this study seeks to critically analyze some of the issues faced in management of the environment and will add to the existing body of knowledge especially in the context of the right to participate and why it must be protected and respected.

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Agarwal Prerna, (2009), Indian Higher Education, Envisioning the Future, Sage Publishers, New Delhi

## **CHAPTER THREE**

### **THE LEGAL AND REGULATORY FRAMEWORK ON ADVANCING THE RIGHT TO PUBLIC PARTICIPATION IN ENVIRONMENTAL DECISION MAKING IN UGANDA.**

#### **3.0 Introduction**

Under this chapter, I review the legislative framework on the management of the environment and the role of the public participation in that management. The legal framework presents binding national obligations to encourage public obligations, in contrast with the persuasive regional and international instruments whose applicability was subjected to national laws. The regional and international frameworks provide widely accept views and principals on public participation in environmental management, while at the same time highlighting the influence of these instruments on national laws in Uganda today.

#### **3.1. Legislative framework for environmental management and public participation**

No singular law or legislative framework exists in Uganda to government the management of the environment or the extent to which the public is allowed to engage in the processes of environmental management in the country or at the international level. Several scattered pieces of legal and regulatory frameworks however do exist in the country, which when viewed together provide the collective frameworks for the

management of the environment and the right to public participation in the country and across the globe. The domestic instruments on the topic derive their influence from several regional and international instruments, many of which are reviewed under this discussion below.

### **3.1.1. International legal and regulatory instruments on the right to participation in environmental decision making**

International law at the international level majorly exists within treaties and in the application of customary international law. According to Sander Beci<sup>176</sup>, the recognition of the protections for the environment at the international level arises because of the fact that effects of climate level in one state will ultimately affect other states too and that the most serious environmental problems cannot be resolved by a state unilaterally but through the concerted efforts of other states. This also aligns with the argument that the world is a global village such that consequences on global warming from one state will spill to impact the other states. Borrowing from other scholars, Sander Beci argues that some of the most serious issues include global warming, biodiversity, land, the need to safeguard the quality of air, water, earth and oceans and the need to protect the thinning of the ozone layer.<sup>177</sup> Global warming and climate change are the key issues impacting the environment, and the participation of the public is relevant in managing the damage on the climate as a result of human processes.

### **3.1.2. International Law on Management of the Environment Management and Public Participation**

Public participation plays a fundamental role in environmental governance under international environmental law. According to Nichola Sharman, environmental governance had been predominantly focused on domestic contexts because at the international level, it had “remained normatively less clear and practically more

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<sup>176</sup> Sander Beci, “Environmental Protection in the Framework of International Law: Development and Perspectives”. European Scientific Journal, pg. 31 – 42. [eujournal.org/index.php/esj/article/view/4658/4453](http://eujournal.org/index.php/esj/article/view/4658/4453) accessed 20 April 2024. He also relies on the position of authors like S. Bariatti, S.M. Carbone, et al. (2003) di diritto internazionale (Institutions of international law), 2nd edition, Torino, G. Giappichelli Editore

<sup>177</sup> Ibid.



challenging”.<sup>178</sup> This is similar to the position that it is challenging to enforce international law while also questioning whether or not international law truly exists.<sup>179</sup> However, to disagree with the author, environmental protection and public participation is at the center stage of global politics as a result of the rising effects of global warming and climate change as is evidenced by the international efforts to hold international events like annual Conferences of Parties (COP) where states engage on the world stage to debate climate issues<sup>180</sup>. The investigational context is now widely significant. International instruments on environmental management and public participation are discussed below.

### **3.1.2.1. The Stockholm Declaration on the Human Environment, 1972**

Among the key instruments for international environmental protection are the Stockholm Declaration<sup>181</sup> on the Human Environment and the Action Plan for the Human Environment of 1972 which have been described as “the basic declaration and the detailed resolution on institutional and financial measures”<sup>182</sup> as they speak to the nature and the need for international cooperation on environmental protection. These instruments are the foundations for global cooperation on climate. Within the Declaration, the authors also highlight that these two instruments produced a total of 109 recommendations to improve the enjoyment of basic environmental human rights and which went on to influence key environmental laws in several countries on the globe. The action plan that followed the Stockholm Declaration led to the passing of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter in 1972 and the corresponding protocol and the International Convention for

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<sup>178</sup> Nichola Sharman, “Objectives of Public Participation in International in International Environmental Decision – Making”. *International and Comparative Law Quarterly*, [ICLQ vol. 72, April 2023 pp 333-360]. Doi:10.1017/S0020589323000088

<sup>179</sup> Fajri Matahati Muhammadin, “Can International Law be Enforced Towards its Subjects Within the International Legal Order?” *Jurnal Hukum US QUIA IUSTUM NO. 2 VOL 2. 21 APRIL 2014*: 175 – 202.

<sup>180</sup> UNFCCC, “Conference of the Parties (COP)”. [unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop](https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop) accessed 24<sup>th</sup> April 2024

<sup>181</sup> The Stockholm Declaration was approved by the United Nations General Assembly on December 14, 1972 following the passing of resolution no. 29951. See Aldona Kipane and Andrejs Vilks, “Legal Framework for Environmental Protection in the Context of Sustainable Development”. *European Journal of Sustainable Development* (2022), 11, 4, 169 – 179. Doi: 10.14207/ejsd.2022.v11n4p169.

<sup>182</sup> Ibid.

the Prevention of Pollution from Ships (MARPOL)<sup>183</sup>, all of which highlight the global significance of the environment.

The other international instrument is the Rio Declaration on Environment and Development that was adopted in 1992 which the authors say<sup>184</sup> brought about a significant change in the understanding of environmental protection becoming a major milestone in the further development of environmental law. The Rio Declaration brought about 27 key principles on environmental protection.<sup>185</sup> The influence of some of these principles is present in Ugandan legislation as this study highlights.

In respect to environmental protection and management, other key instruments include the United Nations Framework Convention on Climate Change (UNFCCC), and the United Nations Convention to Combat Desertification (UNCCD), the Paris Agreement and the UNECE Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998 and several others which constitute international law in respect to public participation in environmental management and are discussed below. A case is made that without these instruments, public participation would not have been made possible.

### **3.1.2.2. The Rio Declaration on Environment and Development (1992)**

The Rio Declaration was the immediate international instrument on environmental protection following the concluded Stockholm Declaration a few years earlier. It is premised on the need to establish “a new and equitable global partnership” between states, sectors and people.<sup>186</sup> It was hoped that environmental protection would be created through levels of cooperation.

The foundational principle within the Rio Declaration is that humans are at the center of concern for sustainable development, and as such, they are entitled to a healthy and productive life in harmony with nature.<sup>187</sup> In confirming its commitments to environmental protection, Uganda signed the convention, becoming bound by its

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<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid.

<sup>186</sup> The Rio Declaration on Environment and Development (1992), the Preamble

<sup>187</sup> The Rio Declaration on Environment and Development (1992), Principle 1

texts<sup>188</sup> as several provisions on Uganda’s legislative framework will demonstrate that influence.

Key principles on environmental protection are respected under the Rio Declaration. Specifically, the declaration reemphasizes that environmental issues are best handled when all concerned citizens at the relevant level are involved.<sup>189</sup> Nichola Sharman recognizes the significance of this article retracing it to the 1970s when the discussion started to receive political attention<sup>190</sup>, and would later lead to the passing of the UNECE Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998 where the principle has been laid down in “legally binding terms”<sup>191</sup> because it characterizes public participation in environmental matters as a human right.

In order to achieve this, the Declaration binds states to allow individual access to information held by public authorities concerning the environment.<sup>192</sup> The states are also required to ensure that public awareness and participation is conducted by ensuring that information is widely available, and through the allowance of effective access to judicial and administrative proceedings with redress and remedy.<sup>193</sup> The Declaration does not however provide guidelines on how that public awareness is to be executed by the state or state parties.

It should be pointed out that from the wording of this provision, which evidently plays a part in several legislation at the regional and domestic level, the principle uses the qualifier “concerned citizens” as the foundation to grant access to public participation. To qualify which citizens are entitled to public participation, worse still without defining what amounts to “concerned citizens” has been abused. Practically, not every person in Uganda is granted access to public information, as such the context of “concerned

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<sup>188</sup> The Republic of Uganda, Draft National Report on Progress on the Implementation of the RIO Commitment on Sustainable Development in Uganda. Presented at the RIO+20 United Nations Conference on Sustainable Development, Rio De Janeiro, Brazil, 15 – 22, June 2012. The report was authored on the 7<sup>th</sup> June 2012. [sustainabledevelopment.un.org/content/documents/974uganda.pdf](https://sustainabledevelopment.un.org/content/documents/974uganda.pdf) accessed 20 April 2024

<sup>189</sup> The Rio Declaration on Environment and Development (1992), Principle 10

<sup>190</sup> Nichola Sharman, “Objectives of Public Participation in International in International Environmental Decision – Making”. *International and Comparative Law Quarterly*, [ICLQ vol. 72, April 2023 pp 333-360]. Doi:10.1017/S0020589323000088

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

<sup>193</sup> Ibid.

citizens” may limit the involvement of the public. The right to require the publication of environmental information should be unqualified allowing for open involvement.

The Declaration imposes upon states an obligation to pass legislation on environmental law and protection.<sup>194</sup> and in compliance, Uganda a few years later passed the National Environment Act cap 153 that has since been replaced by the National Environment Act 2019.<sup>195</sup> The principle however requires that the legislation is effective. This cannot be said about environmental laws in the country today.

### **3.1.2.3. United Nations Framework Convention on Climate Change, 1992**

The Rio Summit in 1992 further resulted into United Nations Framework Convention on Climate Change (UNFCCC) which lays down five key principles that would guide the implementation of the Convention in protecting the climate system or minimizing the cause of climate change and mitigate its effects<sup>196</sup>, particularly principle 10 encourages the involvement of all citizens at the domestic level, and this could be achieved through access to information, transparency in decision making and improved access to information and public participation<sup>197</sup> While it may be to review these instruments, its contents, its contents, together with the Kyoto Protocol and the Paris Agreement are what constitute the bulk of the National Climate Change Act, 2021 (NCCA).

The Convention further encourages the state parties to promote education, training and public awareness to ensure that the public is widely involved in the protection of the climate.<sup>198</sup> The awareness will be in the forms of developing and implementing educational and public awareness programmes, providing public access to information, training managerial personnel and fundamentally, public participation in addressing climate change<sup>199</sup>. While this is at the national level, the convention further

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<sup>194</sup> Ibid. Principle 11

<sup>195</sup> The National Environment Act cap 153 was repealed under Section 182 of the National Environment Act 2019

<sup>196</sup> The United Nations Framework Convention on Climate Change (UNFCCC), Article 3

<sup>197</sup> Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters, 1998, Paragraph 1, 2, 8 and 9 of the Preamble

<sup>198</sup> The United Nations Framework Convention on Climate Change, Article 6

<sup>199</sup> Ibid., Article 6 a

encourages cooperation with the international community in the protection for the climate.<sup>200</sup>

That public participation would be practiced through implementing principles of governance, ensuring transparency of policies, creating constructive feedback, engaging all stakeholders and encouraging debate and partnership and through education, training, public awareness, public access to information, and international cooperation.<sup>201</sup> In ensuring that the Convention is followed within the country, Uganda passed the National Climate Change Act, 2021 within which the Convention is domesticated to ensure that the international instrument is binding on the country.

#### **3.1.2.4. United Nations Convention to Combat Desertification (UNCCD)**

The United Nations Convention to Combat Desertification (UNCCD) or widely the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and or Desertification, Particularly, in Africa is equally fundamental when it comes to the protection of the environment or the climate or to protect land from the degradation in arid, semi-arid and dry sub humid areas that result from various factors like climatic variations and human activities.<sup>202</sup> The Convention is in place to combat diversification. The convention provides a number of provisions on promoting public participation which will be through national action programmes with activities like capacity building, education and public awareness that are geared to promoting public participation.<sup>203</sup>

The Convention also encourages the promotion of capacity building, education and public awareness to ensure that local and national capacities are built in order to combat desertification and mitigate the effects of drought.<sup>204</sup> The Convention encourages the participation of people at all levels of local people, at the local level, including women and children, youth and the cooperation of non – governmental and

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<sup>200</sup> Ibid 6 b.

<sup>201</sup> UNFCCC, (2006) “United Nations Framework Convention on Climate Change Handbook”. Bonn, Germany <[unfccc.int/resource/docs/publications/handbook.pdf](https://unfccc.int/resource/docs/publications/handbook.pdf)> accessed 23 July 2024

<sup>202</sup> United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and or Desertification, Particularly, in Africa, Article 1

<sup>203</sup> United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and or Desertification, Particularly, in Africa, Article 10 (4)

<sup>204</sup> Ibid., Article 19 and Ibid. 19 (3)

local organizations, through training and research, use of technology and use of innovative means.<sup>205</sup>

### 3.1.2.5 The Convention of Biological Diversity

The understanding of the environment extends to biological diversity, and there is no more protection for biological diversity globally than the protection afforded under the Convention of Biological Diversity (CBD). The Convention has been described as an internationally legally binding treaty that was introduced with three main goals being the conservation of biodiversity, the promotion of sustainable use of biodiversity and encouragement of fair and equitable sharing of the benefits that would arise from the use of genetic resources.<sup>206</sup> The overall objective is to encourage the resort to actions that will lead to sustainable future.

In respect to public participation, the Convention sees itself as a significant instrument allowing for the full participation of persons, including women at all levels of policy and making implementation for biological diversity conservations.<sup>207</sup> Supported by a number of instruments including the Nagoya Protocol and the Cartagena Protocol on Biodiversity, the convention enjoins contracting parties to cooperate where appropriate with other states and international organizations especially when it comes to the development of educational and public awareness programmes with respect to conservation and sustainable use of biological diversity.<sup>208</sup>

States parties are further required to introduce appropriate procedures that would require environmental impact assessment of any proposed projects that are likely to have significant adverse effects on biological diversity.<sup>209</sup> The meaning of appropriate is however not defined highlighting the challenges that are continuously being faced in being able to produce responses that are appropriate or sufficient to encourage public participation. The purpose of the measures being proposed by the Convention

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<sup>205</sup> Ibid., Article 19 (1)

<sup>206</sup> United Nations Environment Programme, "Convention on Biological Diversity". Available at [www.cbd.int/undb/media/factsheets/undb-factsheets-en-web.pdf](http://www.cbd.int/undb/media/factsheets/undb-factsheets-en-web.pdf) accessed 1 July 2024

<sup>207</sup> Convention on Biodiversity, the Preamble

<sup>208</sup> Ibid., Article 13 (b)

<sup>209</sup> Ibid., Article 14 (1) a

is to ensure that effects are avoided and that public participation is allowed in such procedures.

### **3.1.2.6. The Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998**

This Convention also described as the Aarhus Convention and just like the rest of the other international instruments on environmental protection derive their foundation in the Stockholm Declaration of 1972. The Convention specifically stipulates that the objective of the Convention is to each state party must guarantee the rights of access to information, public participation in decision making and access to justice in environmental matters.<sup>210</sup> While Uganda has not signed or ratified this Convention, it is significance as it recognizes the right to public participation and sees that the wider public has a part to play in environment management decisions.<sup>211</sup> In fact, no other country on the African continent has signed the Convention because it only applied to only State members of the Economic Commission of Europe.

The corresponding version for which Uganda is persuaded to follow is contained within the texts of the Universal Declaration of Human Rights, 1998 which stipulate that everyone has the right to take part in the government of his or her country, whether the participation is done directly or indirectly through democratically elected representatives.<sup>212</sup>

In order to ensure that this right is realized, the Declaration urges states to ensure that all persons within their borders have equal access to public service within the country, and that the will of the people always becomes the basis on which the authority of the government will be exercised (which is to be done through periodic and genuine elections by persons of adult suffrage and through a secret vote).<sup>213</sup>

As highlighted above, public within the Convention is understood to mean one or more natural or legal persons, and extends to their associations, organizations or groups.<sup>214</sup>

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<sup>210</sup> Ibid., Article 1

<sup>211</sup> United Nations, “United Nations Treaty Collection: Chapter XXVII: Environment”

<sup>212</sup> Universal Declaration of Human Rights, 1948, Article 21 (1)

<sup>213</sup> Ibid., Clause 2 and 3

<sup>214</sup> Convention on Access to Information, Public Participation in Decision – Making and Access to Justice in Environmental Matters, 1998, Paragraph 1, 2, 8 and 9 of the Preamble, Article 2

This definition is wide enough to cover all forms of persons who may be involved in public participation covering civil society organizations and corporate entities and natural persons.

The Convention requires that public authorities within member states must respond to requests for environmental information within the framework of national legislation<sup>215</sup> immediately within a period of 1 (one) month after the request has been made except where the volume and complexity demands it.<sup>216</sup> The Convention circumstances when the request may be rejected, in cases where the authority does not have the information, or the request is unreasonable or is general or where there is an exemption in national legislation.<sup>217</sup> The Convention is placed within the confines of national law, which reinstates the position of international law in the context of international law. The ultimate decision to determine how environmental management is to be exercised will depend on national legislative frameworks.

The purpose of the disclosure is to ensure that public participation in environmental affairs is allowed. Where a decision is to be made in respect to the environment, the Convention requires that the public is informed of the decisions in their draft form, with the opportunity for the public to participate in those decisions<sup>218</sup> before these decisions are finalized. The convention further provides that each state party shall put in place practical steps to participate in plans relating to the environment.<sup>219</sup>

### **3.1.2.7. The Paris Agreement of 2015**

The Paris Agreement of 2015 is one other significant instrument on environmental protection. Described as a “landmark agreement”<sup>220</sup>, the UNFCCC agrees that the Paris Agreement is a very key instrument when it comes to climate change and to accelerate and intensify actions against climate change. Its provisions are equally presented and annexed to the National Climate Change Act as highlighted in the subsequent section. Under its provisions, the Agreement mandates member states to submit nationally

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<sup>215</sup> Ibid., Article 4 (1)

<sup>216</sup> Ibid., Article 4 (2)

<sup>217</sup> Ibid., Article 4 (3) and 4 (4)

<sup>218</sup> Ibid., Article 6 (2)

<sup>219</sup> Ibid., Article 7 and 8

<sup>220</sup> UNFCCC, “Key Aspects of the Paris Agreement” [unfccc.int/most-requested/key-aspects-of-the-paris-agreement](https://unfccc.int/most-requested/key-aspects-of-the-paris-agreement) accessed 24 April 2024



determined contributions after every 5 years to highlight their efforts to protect the environment.<sup>221</sup>

In respect to public participation in environmental management, the instrument enjoins all state parties, a responsibility that is now binding Uganda, to take appropriate measures to enhance climate change education, ensure enhanced transparency, provide for public participation and public access to information, to enable to enforcement of the key provisions of the Agreement.<sup>222</sup> The Preamble of the Agreement reiterates the importance of the public participation and adds that education, training, public awareness, public participation, public access to information and corporation shall be preserved at all levels.<sup>223</sup>

These provisions, among other similar provision with the Paris Agreement and several international instruments highlighted above provide the international regulatory framework for the protection of environment and the involvement of the public through public participation mechanisms.

### **3.2. Regional legal and regulatory framework**

The above international frameworks are supplemented by regional frameworks including those discussed below. The African Charter on Human and Peoples' Rights (ACHPRs) and the Revised African Convention on the Conservation of Nature and Natural Resources of 2003 which have been described as the main environmental framework conventions for the member states of the African Union guided by the blueprint of Goal 11 of Agenda 2063.<sup>224</sup> Within the East African region, the most fundamental of these instruments is the East African Protocol on Environment and Natural Resources Management whose texts have been reviewed below.

#### **3.2.1. The African Charter on Human and Peoples' Rights, 1981**

Environment rights are protected under Article 24 of the African Charter on Human and People's Rights, 1981 which stipulates that all people within a particular state shall

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<sup>221</sup> Julia Nahm, "Failures and Successes of the Paris Agreement" [<ace-usa.org/blog/research/research-foreignpolicy/failures-and-successes-of-the-paris-agreement/>](https://ace-usa.org/blog/research/research-foreignpolicy/failures-and-successes-of-the-paris-agreement/) accessed 15 August 2024

<sup>222</sup> Paris Agreement, 2025, Article 12, United Nations

<sup>223</sup> Ibid., the Preamble, Paragraph 14

<sup>224</sup> The Access Initiative, "The Road to Realizing Environmental Rights in Africa: Moving from Principles to Practice". [accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf) accessed on the 21 April 2024

have the right to a general satisfactory environment that is favourable to their development.<sup>225</sup> While the provision does not speak to public participation, the right has been described as a “collective peoples right”<sup>226</sup> because it impacts the economic, social and cultural spheres for the majority of African communities that heavily rely on the environment and natural resources for their physical and economic security.<sup>227</sup> Significantly, it provides for the possibility of public participation in the exercise of environmental rights

The right to participate in environmental process is protected under Article 13 which stipulates that all citizens within the member states shall have the right to participate in the government of their country, directly or indirectly. This provision is also similar to the right as is recognized under the Universal Declaration of Human Rights<sup>228</sup> highlighted above. This Charter similarly to the Universal Declaration of Human Rights inspired some of the provisions in Uganda’s laws on environmental protection, especially through the recognition of the existence of environmental rights.

### **3.2.2. The Revised African Convention on the Conservation of Nature and Natural Resources of 2003**

Further recognition or inferences to the recognition of the rights to the public to participate in the management of the environment are highlighted within the Revised African Convention on the Conservation of Nature and Natural Resources of 2003. While the revised convention does not speak to the involvement of the public in its management, the objectives within the convention which include the enhancement of environmental protection, fostering the conservation and sustainable use of natural resources and the harmonization and coordination of policies<sup>229</sup> create a foundation for public participation in the management of the environment.

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<sup>225</sup> African Charter on Human and People’s Rights, Article 24

<sup>226</sup> Elinor Buys and Bridget Lewis, “Environmental Protection Through European and African Human Rights Frameworks”. *The International Journal of Human Rights*, 2022, VOL. 26, NO. 6, 949-977. [www.tandfonline.com/doi/epdf/10.1080/13642987.2021.1986011?needAccess=true](http://www.tandfonline.com/doi/epdf/10.1080/13642987.2021.1986011?needAccess=true) accessed 21 April 2024

<sup>227</sup> Ibid.

<sup>228</sup> Ibid., Article 13 (1)

<sup>229</sup> The Revised African Convention on the Conservation of Nature and Natural Resources of 2003, Article II

Public participation is specifically recognized within the Convention when it comes to the exercise of procedural rights. The Convention provides that state parties should adopt legislation and regulatory measures that would ensure that the public has access to environmental information, and that the participation of the public is respected when it comes to decision making especially for matters that have significant environmental impact.<sup>230</sup>

In recognizing the significance of these provisions, the IUCN stipulates<sup>231</sup> that the empowerment of people and the strengthening of institutions are key elements in the steps towards sustainable development. To the author, this stipulation within the Convention re-echoes the enactments of the Rio Declaration under Principle 10 as highlighted above which provide for the need to allow individuals to access public information. This public information would in effect allow the public to participate in the decision-making processes. It also recognizes that these principles have also been addressed by the Aarhus Convention (or alternatively, The Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998).

### **3.2.3. The East African Protocol on Environment and Natural Resources Management**

The East African Protocol on Environment and Natural Resources Management(Protocol) signed<sup>232</sup> by Kenya, Uganda and Tanzania in April 2006 offers additional recognition for the protection of the right to take part in the environmental decision making process. Specifically, the Protocol expressly protects the right of the public to participate in environmental processes as it urges states to adopt common policies, laws and programmes that relate to access to information, justice the participation of the public in environmental and natural resource management.<sup>233</sup>

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<sup>230</sup> Ibid., Article XVI (1), IUCN Environmental Policy and Law Paper No. 56 (2004). Gland, Switzerland and Cambridge, UK. xii + 60 pp [portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf](http://portals.iucn.org/library/sites/library/files/documents/EPLP-056.pdf) accessed 21 April 2024

<sup>231</sup> IUCN, “An Introduction to the African Convention on the Conservation of Nature and Natural Resources”

<sup>232</sup> East African Community, “Protocol on Environment and Natural Resource Management”. [www.eac.int/customs/112-sector/environment-natural-resources-management/natural-resources-management/128-150-429-protocol-on-environment-and-natural-resource-management/](http://www.eac.int/customs/112-sector/environment-natural-resources-management/natural-resources-management/128-150-429-protocol-on-environment-and-natural-resource-management/) accessed on 28th June 2024

<sup>233</sup> Protocol on Environment and Natural Resources Management, Article 3, 4 and Article 34 (1)

Public in the context of the convention is extended to cover the participation of civil society and non – governmental organizations, the public, local communities and the private sector.<sup>234</sup> Public participation is recognizable as a principle within the Convention and states are urged to ensure that public participation is involved in the development of policies, plans, processes and activities.<sup>235</sup>

### **3.3. National Legislation on Environmental Management and Public Participation**

Out of the several laws in Uganda, the key laws related to the management of the environment and public participation includes the Constitution of the Republic of Uganda, 1995 (as amended), which creates the foundational basis for the protection of the environment or for the recognition of the right to public participation in environmental decision making. The other laws are the National Environment Act, 2019 and the National Environment Management Policy Uganda, 1994 (the “**Policy**”), including its most recent draft of 2020, among instruments that are reviewed under this Chapter.

Prior to passing the Constitution and consequently the National Environment Act, 2019 the country had in place, the policy that sought to substitute the absence of what it describes as “comprehensive and coordinated environmental policies and inadequate environmental legislation”. It is was immediately after this policy was made, that the repealed<sup>236</sup> National Environment Act cap 153 was passed into law in May 1995. The policy set the foundation for the passing of the law on the environment.

The summation of these instruments contains provisions particularly making reference to the management of the environment and the exercise of the right to public participation, all the subject of this Dissertation. To monitor the administration of these instruments also lies several institutions including the National Environment and Management Authority, the Judiciary and the Police or security personnel which play key instrumental roles in the management of the environment. The study also presents a review of instruments at a regional and international level as highlighted below.

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<sup>234</sup> Ibid. Article 34 (2)

<sup>235</sup> Ibid., Article 4

<sup>236</sup> The National Environment Act cap 153 was repealed by the National Environment Act, 2019 following the introduction of the Section 182, the Repeal and Savings clause

### **3.3.1 Constitution of the Republic of Uganda, 1995.**

The Constitution specifically provides that the government of the state;-

*“... shall be based on democratic principles which empower the active participation of all citizens at all levels in their governance”.*

This provision is complemented by the recognition of the fundamental right to public participation. The Constitution recognizes that every citizen of the country “... has the right to participate in the affairs of the government”<sup>237</sup> whether individually or in his or her representative capacity. Representative capacity participation has been mostly achieved through the representation by the members of parliament or other elected officials at national and local government levels. Appointments in public offices are also made indirectly by members through appointments and approvals made by the elected offices. Individual or collective group participation on the other hand can be achieved through the civil society organizations or civic participation groups as discussed in the previous chapter. The Constitution goes on to qualify public participation arguing that it must be peaceful for it to influence policy.<sup>238</sup> Conversely however, public should be able to participate in processes whether peacefully or violently. The qualify the participation as peaceful is subject to abuse especially in cases where the public wants to take part in demonstrations to ensure that their participation is embraced. Any forms of demonstrations in the country at the moment may be politicized considering that the people that may want to advocate for public participation belong to the population that is not in the government.

Notwithstanding, these provisions within the constitution enables decentralization to thrive in the country allowing for participatory democracy, including in the grass roots to engage in public participation.

### **3.3.2 The National Environment Act, 2019**

Within the National Environment Act, 2019, the spirit of the above provisions are further reiterated as the Act makes specific references to public participation. The Act is the principal law on environmental protection, and it expressly speaks to the participation of the public in the management of environment in a number of its

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<sup>237</sup> Article 48 of the Constitution of the Republic of Uganda, 1995

<sup>238</sup> Article 38 (2)

provisions including expressly providing that the management of the environment should encourage the participation by all people in Uganda when it comes to the development of policies, plans and programmes for the management of the environment<sup>239</sup>, which in my assessment is the cornerstone of public participation in environmental management in the country. This is the most pronounced provision making it possible for the public to engage in the management of the environment. That notwithstanding, the enforcement of the provision is questionable as the involvement of the public in the country in environmental processes is very minimal, if not non – existent.

It also encourages the coordination for environmental emergencies, and disasters that are extended to require the support of organizations that provide healthcare, whether governmental or nongovernmental and any relevant lead agency or organization.<sup>240</sup>

The Act specifically enjoins every person to endeavor to participate in events which support the spirit and objectives of the national environment day<sup>241</sup>, and to this end mechanisms should be provided to facilitate just that, one of which includes through the role played by NGOs and civil society organizations in the country.

These provisions within the Constitution, the National Environment Act and other regulatory frameworks in the country on participation in environmental affairs are largely influenced by the National Environment Management Policy for Uganda, 1994 (the “**Policy**”).

### **3.3.3. The National Climate Change Act, 2021**

To protect the environment through public participation, Uganda has further adopted the National Climate Change Act, 2021 (NCCA), a law which codifies the provisions of key international instruments including the United Nations Framework on Climate Change (UNFCCC), the Kyoto Protocol to the UNFCCC and the Paris Agreement and at the same time providing different provisions unique to the Ugandan setting, all intended to ensure that the public takes part in decision making processes affecting the climate. The UNFCCC has been described as the “principal platform for citizen

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<sup>239</sup> Section 5 (2) a

<sup>240</sup> Section 95 (3) f

<sup>241</sup> Section 149 (2)

engagement”.<sup>242</sup> Parts of the Act<sup>243</sup> are in fact Appendices with those three international instruments. The purpose of the law is to give the instruments the force of law in Uganda<sup>244</sup> and importantly for participation, provide the institutional framework that would help supervise and manage activities related to climate change.<sup>245</sup>

The Act empowers a department within the Ministry responsible for climate change to tackle issues related to climate change. This department is further empowered to develop a strategy on climate change that should take into consideration among others gender and human rights issues and provide for the education of the public, awareness and training.<sup>246</sup> In strengthening institutional frameworks, the Act requires that the department responsible for climate change must pass frameworks to promote multi stakeholder participation and public participation in developing adequate responses to climate changes issues<sup>247</sup>, especially through the conduct of public consultations.<sup>248</sup> The Act requires that the department publishes a biennial report and ensures that it is disseminated with the public as a demonstration of the role that the public plays in environmental protection.<sup>249</sup>

Member states agreed to a set of commitments to ensure sustainable management of the climate, and in doing this, the Act requires that state parties provide access to information on climate change and its change and ensure that public participation is involved in addressing climate change and its effects and develop adequate responses.<sup>250</sup> The entire article is dedicated to education, training and public awareness in effect promoting the participation of the public in decision making around the climate.

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<sup>242</sup> Transparency International, “Guaranteeing Public Participation in Climate Governance” [images.transparencycdn.org/images/2011\\_1\\_PP\\_PublicParticipationClimate\\_EN.pdf](https://images.transparencycdn.org/images/2011_1_PP_PublicParticipationClimate_EN.pdf) accessed 30 June 2024

<sup>243</sup> The National Climate Change Act, 2021, Schedule 2

<sup>244</sup> The National Climate Change Act, 2021, Section 3 (a)

<sup>245</sup> Ibid., Section 3 (d)

<sup>246</sup> Ibid., Section 5

<sup>247</sup> Ibid., Section 14 (2) d

<sup>248</sup> Ibid., Section 17 (5)

<sup>249</sup> Ibid., Section 27 (5)

<sup>250</sup> United Nations Framework Convention on Climate Change, 1992, Article 6

A conference of the parties to the convention is established to ensure that the terms of the convention are followed by the States and that they are effectively implemented.<sup>251</sup> The Kyoto protocol further requires member states to cooperate and promote at the international level to ensure that there is public awareness and public access to information on climate change to enable the public to be actively involved in the efforts to protect the environment.<sup>252</sup>

The Act also refers to the Paris Agreement under the Fourth Schedule to the NCCA. In order to achieve an integrated, holistic and balanced approach to sustainable development and climate protection, and to do this, the Agreement recommends that member states must enhance public and private sector participation<sup>253</sup>. State parties have been required to cooperate in order to enhance climate education, training, public awareness, public participation and public access to information.<sup>254</sup>

Both the Kyoto Protocol, UNFCCC and the Paris Agreement as codified within Act allow for public participation within Uganda, however, they fail to provide an enabling framework through which the participation may be exercised. The country does not in fact have rules or regulations for the operation of the NCCA, and such, most of the provisions of the Act, the UNFCCC, the Kyoto protocol and the Paris Agreement only stop on Dissertation.

#### **3.3.4. The Uganda Wildlife Act, 2019**

As highlighted in the Dissertation, the understanding of the environment is extensive, and as such includes references to wildlife. The Wildlife Act particularly governs the protection of wildlife in the country with references on how public participation may be exercised. The Act provides for the preservation and sustainable management of wildfire and to strengthen its conservation and management.<sup>255</sup> Similarly, to the other laws, the purpose of the Act is defined as one that is in place to provide for the public participation in wildlife management.<sup>256</sup>

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<sup>251</sup> Ibid., Article 7

<sup>252</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Article 10 (e)

<sup>253</sup> The Paris Agreement, Article 6 (29)

<sup>254</sup> Ibid., Article 12

<sup>255</sup> The Uganda Wildlife Act, 2019, the Long Title

<sup>256</sup> The Uganda Wildlife Act, 2019, section 2 (1) (h)



To further achieve this, the Act empowers the Wildlife Authority and its Board to disseminate information and to promote public education to ensure that there is awareness of wildlife conservation and management, all with the sole purpose of ensuring that the public is actively involved in the conservation processes.<sup>257</sup>

### **3.3.5. The National Forestry and Tree Planting Act, 2003**

To encourage the participation of the public in forestry and tree planting, the Act provides that the purpose of the Act is to encourage public participation in the management and conservation of forests and trees.<sup>258</sup> This is also possible through the facilitation of greater public awareness.<sup>259</sup>

Even when it comes to declaration of a central or local forest reserve, the Act requires that the minister must consult with the local community through the holding of public meetings and other possible means to ensure that the public and the local community is given the opportunity to take part and express their views.<sup>260</sup>

In order to ensure that the public offers a contribution to the engagements in respect to forests, the Act requires local communities, organizations, and institutions are given technical services, even for a cost where necessary.<sup>261</sup> This form of assistance may also include the collection and dissemination of information, provision of public awareness about forestry and the conservation and the utilization of forestry resources.<sup>262</sup>

### **3.3.5 The National Environment Management Policy for Uganda, 1994**

The over-arching objective of the policy is sustainable social and economic development, the kind that maintains or enhances quality and resource productivity on a long-term basis. This should be able to meet the needs of the present generations without comprising the ability of future generations to meet their own needs.

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<sup>257</sup> Ibid., Section 6 (1) (o) and 9 (1) h

<sup>258</sup> Ibid., Section 2 (e)

<sup>259</sup> Ibid., Section 2 (f)

<sup>260</sup> Ibid., Section 7 (1) b and Section 10 (1) a

<sup>261</sup> Ibid., Section 26 (1)

<sup>262</sup> Ibid., Section 26 (2) d

While this is a dated policy, attempts are underway to pass a newer version as evidenced by the most recent draft of 2014. The older version of the policy is still relevant to the discussion on environmental protection.

Under Chapter III of the Policy, in express terms, the Policy provides for the need for public participation, and presenting the motivation behind its inclusion in the country's law. According to the policy states<sup>263</sup> participation of the people in resource management and environment protection is intended to enlist their support for environmental protection and to influence change in behavior and attitudes and at the same time act as an incentive for sustainable resource use. These provisions are more express and comprehensive in respect to the exercise of public participation.

### **3.3.6. Objectives for public participation under the policy**

Under the policy, three objectives for public participation are introduced to ensure that the intention of the drafters is not lost in translation throughout the implementation of the policy. These include; -

- 1) *to involve land and resource users in environmental planning, implementation, to monitor and evaluate land users at all levels and empower them to manage their natural resources,*
- 2) *to bring resource management decisions and accountability close to the land and resource users and,*
- 3) *to vest resource ownership rights in resource stakeholders who are the individual users and the communities in general.*

These objectives may be described as a “bottom – level approach”<sup>264</sup> to environmental management because they require the direct and indirect participation of the public to environmental processes.

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<sup>263</sup> Paragraph 3.13

<sup>264</sup> A bottom – up approach is the kind that integrates people at all levels, both in the central offices of administration to the lower local communities, and has also been synonymized as “participatory”, “local democracy” or “concerted management”, variations of “*local concertation approach and or a collective process whereby a local community can take charge of the future of its own area*”. The European Commission, “Chapter IV: The Bottom – up Approach”, Available at [ec.europa.eu/enrd/sites/default/files/leaderii\\_teaching-kit\\_booklet-chap4.pdf](http://ec.europa.eu/enrd/sites/default/files/leaderii_teaching-kit_booklet-chap4.pdf) accessed 5 April 2024. See also the discussion on the use of “*ekimeeza*” in civic dialogues practiced in Ugandan communities

To further ensure that the participatory democracy is encouraged in environment management, the policy goes on to provide guiding principles to ensure that the spirit of the different frameworks are facilitated. These include that resource user cooperation and participation should be sought for in all phases of environment planning, implementation, monitoring and evaluation, there should be a local approach implemented to the management of resources is crucial, and that the uses of resources should be assisted in identifying untapped resources and mobilized to utilize them.

Other objectives include the strengthening of administrative and political skills relevant to environmental natural resource management, making of deliberate efforts to efforts should be made to involve women and the youth in environmental planning and decision-making (*the gender angle of the discussion*). Existing local institutional mechanisms, skills and knowledge should also be built upon where possible as opposed to replacing them with new ones. The other guidelines provides that benefits from protected areas should be shared with local communities to provide an incentive for the local communities to conserve the resource in question.

### **3.3.7. Strategies to ensure public participation**

In order to implement these objectives and the guiding principles, the Policy also recommends several that should be implemented. These strategies include the development of guidelines on public participation especially in environment/natural resource management that would be applied by resource managers in their development programs and projects.

The other strategies include the strengthening of extension programs in natural resource management while at the same time enlisting the assistance of local NGOs wherever possible, designing programs that involve and benefit the most disadvantaged groups, particularly women, children and disabled, widening experience and opportunities for public participation in natural resource management, including co-management and benefit sharing in protected areas management, decentralizing environment management to enhance public participation and lastly bridging the information gap between the central government and the local communities/resource users through the development of a two-way mechanism for information collection and dissemination.

### **3.3.8 Conclusion**

The above discussion shows that there are several legislative frameworks in place sufficient enough to ensure that the public makes a say in environmental decision making process. It is unfortunate however that even when this is so, public participation is not practiced as anticipated such that even when contributions are made, they are not considered or followed by the political leaders who always make the final decision on things. From the above discussion, it is evident that what is a recurrent theme in several of the above legislative frameworks is that provision is made for the exercise of the right to public participation. That notwithstanding, there are not mechanisms to enjoy the right, making its enjoyment almost impossible for the citizenry. There are no systems in place on how such right will be exercise or how the government would be held to account.

## CHAPTER FOUR

### APPROACHES AND CHALLENGES TO PUBLIC PARTICIPATION IN THE ENVIRONMENTAL DECISION – MAKING PROCESS IN UGANDA

#### 4.0. Introduction

The chapter discusses different practices to public participation to understand all the forms it may take, and to assess how they are actually practiced. I also discussed public participation as it is applied in Uganda, highlighting similarities with the globalized approach. To conclude this section, I highlight the challenges that make it difficult for the citizenry to be fully involved in decision processes.

#### 4.1. Approaches to Public Participation

Different forms of participation exist in Uganda, as is elsewhere in the world. Independently, one form is not as effective as the other, and yet each makes a distinct contribution, even when it is possible to conclude that all citizens in the country cannot participate in governance processes<sup>265</sup>. Their choices cannot all be factored when making decisions<sup>266</sup>. That notwithstanding, participation requires that the approaches adopted allow for a contribution from the public to ensure that environmental decisions are made with wider views in mind.

It has been argued that no participatory process are independent of their social context<sup>267</sup> demonstrating the importance attached to participatory approaches.

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<sup>265</sup> ISER, “Are they Effective? An Audit of Social Accountability Mechanisms in Local Government Processes in Uganda” <[iser-uganda.org/wp-content/uploads/2022/07/Are\\_They\\_Effective\\_An\\_Audit\\_of\\_Social\\_Accountability\\_Mechanisms\\_in\\_Local\\_Government\\_Processes\\_in\\_Uganda.pdf](https://iser-uganda.org/wp-content/uploads/2022/07/Are_They_Effective_An_Audit_of_Social_Accountability_Mechanisms_in_Local_Government_Processes_in_Uganda.pdf)> accessed 8 August 2024

<sup>266</sup> Ibid.

<sup>267</sup> Laura H. Berry, Jessica Kovski et al, “Making Space: How Public Participation Shapes Environmental Decision – Making”. January 2019. Stockholm Environment Institute (SEI) Discussion Brief, citing Coenen, F. H. J. M. (2009). Introduction. In Public Participation and Better Environmental Decisions: The Promise and Limits of Participatory Processes for the Quality of Environmentally Related Decision-

Nino Gokhelashvili confirms and argues<sup>268</sup> that there are different approaches to the public participation in environmental processes, however “there is a common interest that all we need it a healthy environment”<sup>269</sup> irrespective how it is achieved. The author argues that environmental issues should be resolved with the participation of all concerned citizens<sup>270</sup> without ruling out the role of the government in the process.

The argument for public participation is that the responsibility for decision making should not and cannot be left to the governments alone as it requires the involvement of other persons including political elites, NGOs, scientists, the private sector and individual citizens<sup>271</sup> or groups of citizens. Participation in its decentralized forms has the potential to ensure that every body takes part in the decision-making processes with the net effect of increasing the commitment among stakeholders and at the same time strengthen the enforcement of environmental laws.<sup>272</sup>

According to Laura H. Berry, the wide call to expand public participation has led to a rapid proliferation of public meetings of advisory committees and other government initiatives specifically that are designed to facilitate engagement in the decision-making process.<sup>273</sup> The intended outcome of these meetings, just like, this Dissertation propounds is that the wider citizenry is allowed the opportunity to take part in government processes.

UNESCAP argues that participatory approaches may be practiced at all levels of planning however, the extent or nature of participation varies from the beneficiaries or citizens, public officials elected by the people, professionals and civil servants and other stakeholders.<sup>274</sup> Populations at the grass roots level enjoy the least level of participation. Considering their merits associated with it, participatory approaches

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Making. Coenen, F. H. J. M. (ed.). Springer, Dordrecht, Netherlands and London, UK. 1–10. <http://link.springer.com/10.1007/978-1-4020-9325-8>

<sup>268</sup> Nino Gokhelashvili. The Role of the Public in Environmental Decision-Making. *American Journal of Environmental Protection*. Special Issue: Applied Ecology: Problems, Innovations. Vol. 4, No. 3-1, 2015, pp. 1-7. doi: 10.11648/j.ajep.s.2015040301.11

<sup>269</sup> Ibid..

<sup>270</sup> Ibid.

<sup>271</sup> Ibid..

<sup>272</sup> Ibid..

<sup>273</sup> Laura H. Berry, Jessica Kovski et al, “Making Space: How Public Participation Shapes Environmental Decision – Making”. January 2019. Stockholm Environment Institute (SEI) Discussion Brief.

<sup>274</sup> UNESCAP, “Part I: Public Participation” [www.unescap.org/sites/default/files/pub\\_2308\\_part1.pdf](http://www.unescap.org/sites/default/files/pub_2308_part1.pdf) accessed 9 June 2024

have been identified as the means or process through which many of the objectives of sustainable development could be achieved.<sup>275</sup>

The various forms of participation may be categorized into two major groupings: - either as formal or informal. Formal processes are mandatory as they are usually laid down by laws regulations and provide how rights of participation are exercised or how the process is structured. Richard Wike and Alexandra Castillo<sup>276</sup> argue that most people participate through voting while other forms of participation are much less common”.

Nino Gokhelashvili argues<sup>277</sup> that voting fits within democratic principles that are applied in many countries in the world as it allows several stakeholders to be involved in the decision-making process, with the public being the main players. Yunyue Peng agrees that there are associated benefits in voting processes and argues that there is a rapid rise in formal approaches to public participation<sup>278</sup> especially because of the perceived benefits. Informal approaches on the other hand are not imposed on the populations and mostly include community forums, workshops and events<sup>279</sup>, however, these processes do not however directly affect the final decision resulting from their contribution<sup>280</sup> and have been crudely described as tokenism. Their involvement simply empowers citizens in decision – making<sup>281</sup> even when they do not affect the outcome. Other incidences of informal process to public participation exist through brainstorming, educational programmes, public meetings, citizen’s juries and focus groups among other alternatives.<sup>282</sup> Additional but non exhaustive informal

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<sup>275</sup> Ibid.

<sup>276</sup> Richard Wike and Alexandra Castillo, “Many Around the World are Disengaged From Politics”. Pew Research Center, October 2018. <https://www.pewresearch.org/global/wp-content/uploads/sites/2/2018/10/Pew-Research-Center-International-Political-Engagement-Report-2018-10-17.pdf> accessed 9 June 2024

<sup>277</sup> Nino Gokhelashvili. The Role of the Public in Environmental Decision-Making. American Journal of Environmental Protection. Special Issue: Applied Ecology: Problems, Innovations. Vol. 4, No. 3-1, 2015, pp. 1-7. doi: 10.11648/j.ajep.s.2015040301.11

<sup>278</sup> Yunyue Peng, “Public Participation in Environment Decision – Making”. <https://wesolve.app/public-participation-in-environmental-decision-making/> accessed 26 April 2024

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid.

<sup>282</sup> Wilcox D, (2003). “The Guide to Effective Participation”. <https://www.partnerships.org.uk/guide/index.htm> cited in Caspian Richards, Kirsty Blackstock et al, (2007) “Practical Approaches to Participation”. SERG Policy Brief, Number 1. The Macaulay Institute

approaches such as competitions, local events, questionnaires, and games<sup>283</sup> still exist.

The existence of different approaches to public participation in environmental decision making therefore requires multilevel governance approaches to be able to address the growing number of environmental issues, international law and policy on public participation.

Nicholas Sharman however worries<sup>284</sup> that many approaches to public participation in place have predominantly been focused on domestic contexts. Approaches to public participation he suggests should also be viewed from an international perspective<sup>285</sup> or regional perspective. This however does not necessarily mean the domestic perspective should be done away with. All approaches, local, regional or international, formal or informal are complementary.

Citing Goetz Anne Marie and John Gaventa<sup>286</sup>, Caspian Richards, Kirsty Blackstock et al state<sup>287</sup> that public participation may take three forms including; a) consultation where information flows between agencies and citizens, b) presence where citizens are enabled to access the decision-making process or c) where citizens are given the ability to affect the outcome of the process. He supplements these approaches by referring to approaches proposed by Michener Victoria who categorizes<sup>288</sup> his approaches between planner centered approaches that focus on the outcomes and people centered approaches that are applied to build capacity and empower local people to define and meet their own needs. These are not far different from the two formal and informal categorizations.

To determine which approaches works, Wilcox D states that different approaches will suit different personalities.<sup>289</sup> What works for the youth, may not work for the older

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<sup>283</sup> Ibid.

<sup>284</sup> Nichola Sharman, (2023) "Objectives of Public Participation in International Environmental Decision – Making". Cambridge University Press and the British Institute of International and Comparative Law. [ICLQ vol 72, April 2023 pp 333–360]. doi:10.1017/S0020589323000088

<sup>285</sup> Ibid.

<sup>286</sup> Goetz Anne and Gaventa John, (2001) "Bringing Citizen Voice and Client Focus into Service Delivery". *IDS Working Paper 138, Brighton: Institute of Development Studies*

<sup>287</sup> Caspian Richards, Kirsty Blackstock et al, (2007) "Practical Approaches to Participation". *SERG Policy Brief, Number 1. The Macaulay Institute*

<sup>288</sup> Michener Victoria (1998) "The Participatory Approach: Contradiction and Co – Option in Burkina Faso", *World Development* 26 (12): 2105-2118

<sup>289</sup> Ibid. note 251



groups. Because of this, the author argues that it is another reason of preferring a combination of methods in order to capture a broad range of participants, which should allow enough time to build a consensus.<sup>290</sup> Young people are engaged, aware and highly informed of the issues that affect their lives and the driving force is the widespread use and influence of technology, rising nationalism and populism and lack of trust in formal political structures.<sup>291</sup> As a demonstration of their participation, many citizens will usually take part in volunteer organizations, post comments on political issues online, participate in organized protests or donate money to a social or political organization. This is the one way the youth can make up for the fact that young people do not usually participate in formal processes like voting but they are more likely to participate online where they are free to participate even without fear of reprimand for their views.

Anne Crowley and Dan Moxon report<sup>292</sup> that emerging ways of participation (which may also be considered the most widely considered forms of participation) are characterized by informality, issue-based goals, horizontal organization and intermittent and micro – level engagement.<sup>293</sup> They are associated with social or civil and informal settings.<sup>294</sup> While emerging ways of participation can be enhanced by technology, they do not also exist exclusively online.

As the world continuously changes, becomes globalized, connected and more connected, fragmented and unequal, it has been argued that it is not possible to move towards the goal of public participation without new forms of participation.<sup>295</sup> With the existing level of globalization, participatory practices have now grown to include citizen panels, polls, surveys and consultation events.<sup>296</sup>

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<sup>290</sup> Ibid.

<sup>291</sup> Salto Participation and Information, “Alternative Forms of Participation”. [<participationpool.eu/resource-category/participation-in-democratic-life/alternative-forms-of-participation/>](https://participationpool.eu/resource-category/participation-in-democratic-life/alternative-forms-of-participation/) accessed 9 June 2024

<sup>292</sup> Anne Crowley & Dan Moxon (2017) “New and Innovative Forms of Youth Participation in Decision – Making Processes”. Council of Europe. [ecpat.de/wp-content/uploads/2018/09/178717GBR\\_Forms-youth-participation.pdf](https://ecpat.de/wp-content/uploads/2018/09/178717GBR_Forms-youth-participation.pdf) accessed 16 June 2024

<sup>293</sup> Ibid.

<sup>294</sup> Ibid.

<sup>295</sup> Science, Society and Sustainability, “Insight 4: We Need New Forms of Participation”. Available at [3sresearch.org/3s-key-insights/insight-4-we-need-new-forms-of-participation/](https://3sresearch.org/3s-key-insights/insight-4-we-need-new-forms-of-participation/) accessed 9 June 2024

<sup>296</sup> Ibid.

As a result of emerging ways, public participation especially from the perspective of the youth now includes focusing on a single issue like the environment or gun control or non – hierarchical grassroots movements like climate. Whenever this occurs, citizens have always participated on the use of online tools like WhatsApp, Telegram, Twitter (now X) and several other similar platforms. There has also been a recurrence of protests<sup>297</sup> that demonstrate the desire for participants to engage in public participation.

These approaches signify that the introduction of wide participation of all stakeholders including the community and all sections of the people is needed to bring about qualitative improvement in planning and decision making.<sup>298</sup> This is because without the participation of all concerned actors, it may not be possible to explore all available options and implement hard policy choices like demand management measures.<sup>299</sup>

#### **4.2. Approaches to Public participation in Uganda**

Ugandans equally take part in governance processes through public participation, similar to the approaches highlighted above. Chapter Three discussed above demonstrates the legislative frameworks applicable to Uganda from the local, regional and international contexts demonstrating the country's commitment to comply with international standards. All these frameworks are founded within the constitutional provision on the exercise of the right to participation in public affairs.<sup>300</sup> However, no specific law exists on public participation. These same laws also create restrictions on the exercise of public participation.<sup>301</sup>

Public participation as is practiced in Uganda is both formal and informal, and at the same time direct and indirect. Participation in Uganda has been indirectly practiced through representative democracy where the citizens are represented through their leaders who may or may not share their views on topical discussions.

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<sup>297</sup> Ibid.

<sup>298</sup> UNESCAP, "Part I: Public Participation". Available at [www.unescap.org/sites/default/files/pub\\_2308\\_part1.pdf](http://www.unescap.org/sites/default/files/pub_2308_part1.pdf) accessed 9 June 2024

<sup>299</sup> Ibid.

<sup>300</sup> The Constitution of the Republic of Uganda, 1995, Article 38

<sup>301</sup> Ibid., Article 43

Ugandans also engage in public talk shows or what has been commonly known as *ebimeeza* or roundtable discussions that ceased in the early 2000s.<sup>302</sup> Newer versions of the engagement however exist. Other forms of public participation in Uganda are practiced at both national and local levels through civil society organizations, sector working groups, Government Citizen Interaction Centre (GCIC) and other online participation mechanisms that are being practiced to promote citizen participation.

USAID and Civil Society Strengthening Activity fear that public awareness and ability to use platforms or mechanisms in place is limited.<sup>303</sup> As such, it is not sufficient to provide these platforms if they will not yield any contribution of the governance or to meaningful input to any decisions about the government of the environment.

The country's legislative body also allows CSOs and citizens to engage and debate national issues through committees and petitions, allowing them to contribute to the legislative processes. In extending these discussions, CSOs involve the private sector actors to occasionally contribute to topical discussions that are curated and later presented before parliamentary committees and used within the laws.

Beyond the national level, the country also follows a decentralized system of governance where the grassroots populations are given the opportunity to engage with local council meetings, local committees, barazas or community meetings and public hearings which give them an opportunity for citizen participation.<sup>304</sup> However, lack of access to information, illiteracy and high levels of poverty are feared to hinder public involvement in these mechanisms.

Public participation in Uganda has however been described as “tokenism”<sup>305</sup> which is also viewed differently as counterfeit power<sup>306</sup> because citizens are not allowed actual influence on decision making even when they make their contributions known.

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<sup>302</sup> USAID and Civil Society Strengthening Activity, “Public Participation Mechanisms in Uganda: And the Enabling Environment for Civil Society Organizations”. July 2022 [ewmi.org/sites/default/files/docs/Uganda%20public%20participation%20report%20final%20web.pdf](http://ewmi.org/sites/default/files/docs/Uganda%20public%20participation%20report%20final%20web.pdf) accessed 18 June 2024

<sup>303</sup> Ibid.

<sup>304</sup> Ibid.

<sup>305</sup> Ibid.

<sup>306</sup> Organizing Engagement, “Ladder of Citizen Participation”. Available at [organizingengagement.org/models/ladder-of-citizen-participation/?print=pdf](http://organizingengagement.org/models/ladder-of-citizen-participation/?print=pdf) accessed 18 June 2024

In Uganda, public participation around policy formulation, implementation and accountability is limited and many local level participatory platforms are inactive or ineffective.<sup>307</sup> Low levels of participation in Uganda exist mostly as a result of inadequate funding for public participatory mechanisms and a political environment that is characterized by polarization, criminalization of dissent and low political efficacy.<sup>308</sup> Public participation in the country is further complicated by a lack of access to information, low levels of civic competence and a result of inadequate civic education and because of this, civic space is continuously shrinking and has undermined citizen agency, civil society autonomy and participation in governance.<sup>309</sup> It has also been feared that there is a lack of formal public consultative platforms within state ministries, departments and agencies (MDAs).<sup>310</sup>

Citizens in the country also participate through traditional news media and new media, including social media, offer opportunities for citizens and civil society to participate in the conduct of public affairs. There is especially a growing proliferation of social media use in the country today and has total been effective in causing change in government policy and actions.<sup>311</sup>

Radio is the main source of information on public affairs for most Ugandan particular because it is affordable to access in the country, compared to other platforms like social media, television and newspapers or magazines. However, as these platforms are utilized, they are not reliable as the country suffers from low ethical standards, and the flouting of basic journalistic that impacts the principles of accuracy, balance and fairness, context and perspective, completeness, depth and follow up.<sup>312</sup> Radio and television talk shows are complimented to offer direct opportunities for policy makers to engage with the public, but the government still sabotages these popular platforms. Any forms of participatory approaches that antagonize the government may be sabotaged.

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<sup>307</sup> Ibid. note 266

<sup>308</sup> Ibid.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Recent civic participation in Uganda through social media has been viewed controversial engagements on social media topical discussions under hashtags like #UgandaParliamentExhibition on Twitter allowing Ugandans to critic parliamentary engagements

<sup>312</sup> Ibid.

The other opportunity for public participation in the country is through litigation. This has allowed Ugandans especially through civil society organizations to hold governments accountable and insist that particular courses of action are taken in respect to the environment. Case in point are the case of the ***Environment Shield LTD and anor v. Jinja City Council*** and another<sup>313</sup> where the court litigated upon the constitutional right to participation under article 38 and several rights on the environment highlighted under the third chapter above. Justice Winifred N. Nabisinde stressed that in as much as the role to protect the environment and make environmental decisions, that decision also rested with the wider public who have an important role in protecting the environment.<sup>314</sup> The court succeeded in protecting an endangered tree species against destruction.

In the case of ***Nyakaana Vs National Environment Management Authority & Others***<sup>315</sup>, the constitutional court of Uganda upheld the fact that government is mandated to protect important natural resources, including land, water, wetland, minerals, oil, fauna and flora on behalf of all Ugandans.

In another jurisdiction of India in the case of *Vellore Citizen's welfare Forum vs Union of India & others*<sup>316</sup>, the Supreme court of India considered the principle of sustainable development equivalent with the Ugandan objective No. XXVI which promotes sustainable development and public awareness of the need to manage land, air, and water sources in a balanced and sustainable manner. For the present and the future.

These demonstrate the forms of participatory processes practiced in Uganda and how they are practiced alongside formal and informal processes

#### **4.3. Challenges to implementing participatory decision making**

While a case has been made for enhanced public participation in environmental decision-making processes, it is close to impossible to ensure that all citizens in the country participate in these processes, and even when it was possible, scholars have argued that there is a risk of public participation disrupting decision making processes. As a result of this, the process may not be preferable for some.

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<sup>313</sup> HCT-03-CV-MC-0021-2023

<sup>314</sup> Ibid.

<sup>315</sup> Constitutional Petition No. 5of 2011

<sup>316</sup> (1996) 5 Supreme court cases 647, India.

Laura H. Berry, Jessica Kovski et al for instance highlight that expanding public participation in decision making may lead to policies that reflect poorly on the needs and demands of impacted communities and marginalized groups like women.<sup>317</sup> To them, public participation in all their forms have the tendency to recreate and deepen existing inequalities in ways that were not intended because all they do is to reinforce the status quo.<sup>318</sup>

It is even difficult to have all or many members of the public take part in decision making processes. This is especially because participation is usually exercised by members of the public who are more privileged and have more resources than the others. For instance, not all members of the public vote except those that meet the test for adult suffrage.<sup>319</sup> Even the informal processes like social media or protests are available for those persons who can afford the devices to communicate their feels online, or those who have the courage to engage in protests. It is therefore challenging that not many in the public have access to the resources.

It is also feared that while public participation may be desirable, it is not always easy to implement because requests for public participation are usually associated with limited or overly technical information which can be a huge stumbling block to any meaningful engagement by the public.<sup>320</sup> This is further compounded by the fact that there is a lack of understanding and transparency in how participation will influence decision making. As a result of this, even attempts to invite participation from the public might not result into the intended outcome but can lead to “participation fatigue”.<sup>321</sup> A certain degree of opaqueness seems inevitable<sup>322</sup> in the attempts to secure the input of the public.

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<sup>317</sup> Ibid. note 231, citing Newig, J. (2007). Does public participation in environmental decisions lead to improved environmental quality? Towards an analytical framework. *Communication, Cooperation, Participation (International Journal of Sustainability Communication)*, 1(1). 51–71. [nbnresolving.org/urn:nbn:de:0168-ssoar-431965](http://nbnresolving.org/urn:nbn:de:0168-ssoar-431965)

<sup>318</sup> Ibid. note 231, citing Agarwal, B. (1997). Editorial: Re-sounding the alert—gender, resources and community action. *World Development*, 25(9). 1373–80. DOI: 10.1016/S0305-750X(97)00062-4

<sup>319</sup> Ibid. note 30

<sup>320</sup> Ibid. note 231, citing Diduck, A. and Sinclair, A. J. (2002). Public involvement in environmental assessment: the case of the nonparticipant. *Environmental Management*, 29(4). 578–88. DOI: 10.1007/s00267-001-0028-9

<sup>321</sup> Ibid. note 231

<sup>322</sup> Ibid.

Even when cases have been made for public participation, several authors have disagreed with the role public participation plays in the decision-making processes considering that it is not a replacement of representative democracy.<sup>323</sup> The public may make a public contribution but it still rests with the representatives to make the final decision regarding issues for which public participation may have been sought. It is in fact challenging to translate ideal public participation into practice<sup>324</sup>, and yet there is still no widely accept concept of what would amount to “ideal public participation”.

Those opposed to public participation in decision – making also have cause constant criticism to the concept that it may not be desirable for some. Critics argue that there are many administrative problems that will arise from public interaction and generally there exist plenty of problems with participation programs from the public’s perspective.<sup>325</sup>

Nino Gokhelashvili in fact makes the conclusion that participatory approaches to environmental decision – making are controversial.<sup>326</sup> She argues that it is very difficult to reach consensus when there are very many participants or stakeholders who hold divergent views and values.<sup>327</sup> According to the opinion of some experts, participatory democracy could not guarantee substantive environmental benefits if there are competing views of what the environment should be like and what it is valuable for.<sup>328</sup>

Many aspects of public participation are questionable as they are no mechanisms for effective public participation. Public participation as applied in Uganda does not in fact have mechanisms for public participation or who has to take part in the decision – making process. The policies for public participation if any do not provide for how final decisions are made, the purpose, to what extent public participation improves final

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<sup>323</sup> Ibid.

<sup>324</sup> Ibid.

<sup>325</sup> Nino Gokhelashvili. The Role of the Public in Environmental Decision-Making. *American Journal of Environmental Protection. Special Issue: Applied Ecology: Problems, Innovations*. Vol. 4, No. 3-1, 2015, pp. 1-7. doi: 10.11648/j.ajep.s.2015040301.11. Citing Nancy Perkins Spyke Public Participation in Environmental Decision – Making at the New Millennium: Structuring New Spheres of Public Influence. *Boston College Environmental Affairs Law Review*. Volume 26 | Issue 2 Article 2. 12 – 1 – 1999

<sup>326</sup> Ibid.

<sup>327</sup> Ibid.

<sup>328</sup> Ibid.

decision or whether or not public participation always contributes to the better decision or on the contrary.<sup>329</sup>

Public participation does not also provide mechanisms for managing expectations especially because creating an open and flexible discussion leads to raised expectations and 'wish -listing' by participants even when their contributions may not be followed.<sup>330</sup> Whenever public contributions are sought, failing to deliver will likely bring about challenges and fuel negative cycle of mistrust between the government and citizens.

It is in fact difficult to identify non – negotiable positions especially because where environmental problems or their consequences are complex, large scale and irreversible, it is not be possible to give free rein to participants to determine environmental decisions. Environmental policy makers have statutory and some argue ethical duties to protect the environment.

The success of participatory approaches sometimes depends on people whose influence may be difficult for the initiator to detect. Participatory approaches do not always empower but may unwittingly serve to legitimize and support the status quo.

Participatory process can be time and resource hungry. Failures are frequently attributed to a lack of resources being devoted to engaging with stakeholders or implementing outcomes. It is often difficult to determine a budget fully in advance, as the iterative and potentially open-ended nature of a process requires sufficient time and support until a natural end point is reached.

While there are obvious benefits to reaching a consensus, there are also many risks in making this a specific aim of the process. Too much emphasis on consensus may prevent contentious but important issues from being aired or gloss over them without engaging with the real sources of contention. Building consensus is not always possible particularly where participants hold opposing values or fail to respect alternative views.

Maintaining meaningful participation and discourse within both invited and created spaces requires both time and money; the expanded conception of public participation

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<sup>329</sup> Ibid.

<sup>330</sup> Ibid.



also shifts attention to the actual practice of participation and its broader socio-political context; and thus pushes us to examine deeper and more intractable obstacles that impact who speaks; and who is heard.<sup>331</sup>

#### **4.4. Conclusion**

Public participation has been exercised differently throughout the world, with similarities in the mode in which it is exercised in the country. That notwithstanding, the enjoyment of the right in the country is not fully exploited especially because the different forms are ineffective to ensure the full exploitation of the right to public participation in the country. While it may be possible to secure the participation of all citizens in the country, not all persons enjoy the same means of access and resources available to them and because of this, different forms like social media, voting, public engagements are exercised. The full exploitation is however not possible as the reality as has been highlighted that this is not always the case owing to the challenges that plague the practice.

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<sup>331</sup> Ibid. note 231

## **CHAPTER FIVE: SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS**

### **5.0. Introduction**

Under this chapter, the researcher presents a summary of findings for the study and a set of recommendations to improve the exercise of environmental decision-making processes through public participation.

### **5.1. Summary of findings**

In conducting this study, the researcher was guided by four sets of objectives, and in resolving them, the researcher made the following findings.

Chapter Two, sought to examine the nature and role of public participation in environmental decision-making process in Uganda.

In assessing the nature and the role of public participation in environmental decision – making process in Uganda, the researcher decided to break the parts of the objective into small bits and reviewed several documents in respect to each aspect. The researcher specifically sought to establish the definition of the term “environment”, which was widely associated with our surrounding. This was the stepping stone to understanding what environmental rights were. I also sought to understand what public participation was, its relevance in environmental processes and how all that falls into the decision-making process for environment management. A correlation was also found to exist between the environmental decision making and the aspect of gender.

In conclusion the researcher noted that, the right to participate in environment decision making is critical for assurance of the public that they participate and have their views taken to consideration before decisions that widely impact on the environment are made. From the discussion above, it is quite clear that efforts have been placed on the concept of public participation yet the right itself has not been widely explored. It therefore becomes imperative to mention that this study seeks to critically analyze some of the issues faced in management of the environment and will add to the existing body of knowledge especially in the context of the right to participate and why it must be protected and respected.

Chapter three sought to analyze the domestic, regional and international legal framework on the right to public participation in environmental decision-making processes.

In studying the legislative framework for environmental decision-making process through public participation, I reviewed a number of legal instruments from the local, regional and international settings to understand the wider concept through which public participation was practiced. To that end, I reviewed the following laws, each playing a distinct part in respect to the wider discussion on environmental decision-making processes. The instruments included;- internationally and on the regional levels, I reviewed, the Stockholm Declaration on the Human Environment, 1972, the Rio Declaration on Environment and Development (1992), United Nations Framework Convention on Climate Change, 1992, the Convention on Access to Information, Public Participation in Decision – making and Access to Justice in Environmental Matters, 1998, the Paris Agreement of 2015, the African Charter on Human and Peoples’ Rights, 1986, the Revised African Convention on the Conservation of Nature and Natural Resources of 2003, Protocol on Environment and Natural Resources Management. At the national level, the laws reviewed included the country’s constitution, the National Environment Act, 2019 including its repealed version of Cap 153, supporting instruments, and the National Environment Management Policy for Uganda, 1994 in respect to public participation. While these may need room for improvement, the study found that there is a comprehensive and substantive legal framework for the exercise of public participation in decision making processes in the country.

In conclusion, the discussion shows that there are several legislative frameworks in place sufficient enough to ensure that the public makes a say in environmental decision making process. It is unfortunate however that even when this is so, public participation is not practiced as anticipated such that even when contributions are made, they are not considered or followed by the political leaders who always make the final decision on things. From the above discussion, it is evident that what is a recurrent theme in several of the above legislative frameworks is that provision is made for the exercise of the right to public participation. That notwithstanding, there are not mechanisms to enjoy the right, making its enjoyment almost impossible for the

citizenry. There are no systems in place on how such right will be exercised or how the government would be held to account

Chapter Four: To analyse the approaches, the best practices and challenges to public participation in environmental decision – making process in Uganda.

I also reviewed several approaches being adopted all over the world to understand which approach worked for which group of persons. In respect to approaches, the study specifically found that approaches do not work the same way for all forms of people. The forms applicable to the youth are not the same ones being used by the elderly or younger communities. These were categorized into formal, informal, direct and indirect and other forms. The different approaches however include widely practiced voting, ebimeeza; brainstorming, educational programmes, public meetings, citizen's juries and focus groups, competitions, local events, questionnaires, and games. They also include use of social media platforms like WhatsApp, Telegram, and Twitter.

This also required me to look into the challenges that made the exercise of public participation difficult. These included among others the fact that public participation runs a risk of disrupting decision making processes, it could lead to policies that reflect poorly on the needs and demands of impacted communities and marginalized groups, it is difficult to have all or many members of the public take part in decision making processes, participation is usually exercised by members of the public who are more privileged and have more resources than the others. Other challenges included that it was not always easy to implement because requests for public participation are usually associated with limited or overly technical information, that it was not a replacement of representative democracy and is always a second position, it may not be desirable for some and that it was difficult to obtain consensus from the crowd. It also does not provide mechanisms for managing expectations especially because creating an open and flexible discussion leads to raised expectations and 'wish - listing'. They are also time-consuming processes.

It's important to note that, Public participation has been exercised differently throughout the world, with similarities in the mode in which it is exercised in the country. That notwithstanding, the enjoyment of the right in the country is not fully exploited especially because the different forms are ineffective to ensure the full

exploitation of the right to public participation in the country. While it may be possible to secure the participation of all citizens in the country, not all persons enjoy the same means of access and resources available to them and because of this, different forms like social media, voting, public engagements are exercised. The full exploitation is however not possible as the reality as has been highlighted that this is not always the case owing to the challenges that plague the practice.

Objective four was on the recommendations and these are highlighted in the subsequent section.

## **5.2. Conclusion**

The findings show that public participation in the country takes place, particularly in Uganda, in different forms as highlighted above. The exercise of public participation is facilitated by several legislative frameworks that that allow different categories of people to take part in the processes to protect the environment.

## **5.3. General Conclusion**

It is possible to imagine an ideal situation where the right to public participation is exercised as is hoped by the author. This is especially true owing to the fact that the right to participate in environment decision making is critical when it comes to assuring the public that they should participate and have their views taken to consideration before decisions that widely impact on the environment are made. While efforts have been placed on the concept of public participation in the country, the right itself has not been widely explored.

Several laws have however been passed to this effect to ensure that the right is sufficiently exercised and that the public is enabled to make decision in environmental decision making process even when the reality, especially in the context of Uganda is far from commendable. It is unfortunate that even when several instruments offer the needed guidance, public participation is not practiced as anticipated such that even when contributions are made, they are not considered or followed by the political leaders who always make the final decision on things. This is notwithstanding that as a continuous theme, all the above discussed laws make reference to public participation, and each independently hopes to improve the exercise of the right to

public participation even when there are not enough mechanisms in place to ensure the realization of the right, making its enjoyment almost impossible for the citizenry.

The exercise has taken several forms, and in the modes adopted by Uganda, it is still not sufficient to warrant a conclusion that the exercise is ideal. As a result of this, the enjoyment of the right in the country is not fully exploited especially because the different forms are ineffective to ensure the full exploitation of the right to public participation in the country. This is because not all persons enjoy the same means of access and resources available to them and because of this, different forms like social media, voting, public engagements are exercised and even when they are allowed full participation, there are no means of enforcement or realization to ensure that the public students enjoy this right to the fullest.

#### **5.4. Recommendations**

To address the challenges associated with public participation in decision-making processes, I make the following recommendations;-

##### **5.4.1. Enhancement of the enjoyment of the right through legislative reform**

One of the key observations made above is that several laws encourage the enjoyment of the right to public participation in the country, however, without mechanisms to ensure that this is fully exercised. As key to this study, I make the observation that the legal system especially when it comes to the exercise of public participation needs reform in general. Reform should therefore be hard to ensure that the right is fully exercised. This will evidently require that the wider public is consulted on how they expect the right to public participation should be enjoyed.

##### **5.4.2. Structured engagement frameworks**

While several of the laws may not be amended, specific laws or regulatory frameworks can be introduced by the relevant authorities to ensure that public participation as is intended by the spirit of the different laws is fully exploited. This may particularly for mechanisms that ensure that no decisions are allowed to stand without the engagement of the public. The government may however need to develop clear, structured frameworks for public participation in which the scope is defined, including the objectives, and processes to manage expectations and ensure that contributions by the public are relevant and constructive.

#### **5.4.3. Inclusivity and Equity Measures**

The mechanisms being introduced should be inclusive and equal allowing for several marginalized groups to constructively share their opinions. This would ensure that persons with disabilities, children or women are not intentionally left out of the decision-making processes. Government should therefore implement measures to actively include marginalized groups by providing support such as transportation, childcare, or translation services, ensuring that all voices are heard and considered. This would also help that the voices of women are heard.

#### **5.4.4. Encourage more public interest litigation**

I recommend support for more public interest litigation from the public and civil society organizations to ensure that governments are held accountable and that they are compelled to act on the decisions arising from the litigation. This would ensure that the government follows and obeys the very laws that they passed and ensure that the wider public is engaged in environmental decision making processes.

#### **5.4.5. Capacity Building and Education**

In order to ensure that the public is widely involved in environmental processes, I would encourage that there are capacity building activities and sensitization processes to ensure that the public is knowledgeable in the laws, and how best they can participate in the process.

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