

# CONSTITUTIONAL REFORM AND ENVIRONMENTAL LEGISLATIVE REPRESENTATION IN UGANDA

**A** CASE STUDY OF BUTAMIRA FOREST RESERVE IN UGANDA



Godber W. Tumushabe  
Arthur Bainomugisha



**CONSTITUTIONAL REFORM AND ENVIRONMENTAL  
LEGISLATIVE REPRESENTATION IN UGANDA**

**A CASE STUDY OF BUTAMIRA FOREST RESERVE  
IN UGANDA**

Godber W. Tumushabe  
Arthur Bainomugisha

*ACODE Policy Research Series, No. 10, 2004*

<b>Table of Contents</b>	<b>Page</b>
List of Acronyms.....	ii
Acknowledgement.....	iii
<b>1. Introduction.....</b>	<b>1</b>
<b>2. Background.....</b>	<b>2</b>
2.1. The Context.....	2
2.2. The Methodology and Hypothesis.....	3
2.3. The Concept of Representation.....	3
2.4. The Political History of Legislative Representation in Uganda.....	6
2.5. The National Resistance Movement Government.....	9
<b>3. A Case Study of Butamira Forest Reserve in Kagoma Constituency, Jinja District.....</b>	<b>10</b>
3.1. Background.....	10
3.2. Butamira Forest Reserve in the 7th Parliament of Uganda.....	13
<b>4. Representation, Incentives and Disincentives: An Examination of the Legal Framework in Uganda.....</b>	<b>16</b>
4.1. Accountability.....	17
4.1.1. Voting Procedure of Parliament.....	17
4.1.2. Regularity of elections and term lengths of Members of Parliament.....	20
4.2. Autonomy.....	23
4.2.1. Powers of Parliamentary Committees.....	23
4.2.2. Method of elections of Members of Parliament.....	24
4.3. Authority.....	24
4.3.1. Private Members Bills.....	25
4.3.2. Parliamentary Immunity and Privileges.....	25
4.4. Personal Attributes.....	25
<b>5. The Constitutional Reform and Political Transition Process: Challenges for Effective Representation.....</b>	<b>27</b>
<b>6. Strategic Interventions and Policy Recommendations.....</b>	<b>28</b>
6.1. Establish a Policy Forum on Environmental Representation.....	28
6.2. Strengthen the Relevant Committees of Parliament.....	29
6.3. Establish a transparent and accountable voting system in Parliament.....	29
6.4. Strengthen legislator-Civil Society Partnership.....	29
6.5. Operationalize constitutional provisions on recall of legislators.....	29
6.6. Strengthen Regional Parliamentary Bodies.....	30
<b>7. Conclusion.....</b>	<b>30</b>
<b>8. References.....</b>	<b>31</b>
<b>9. Publications in these Series.....</b>	<b>33</b>

## List of Acronyms

<b>ACODE</b>	Advocates Coalition for Development and Environment
<b>BEPG</b>	Butamira Environment Pressure Group
<b>CRC</b>	Constitutional Review Commission
<b>EAC</b>	East African Community
<b>EALA</b>	East African Legislative Assembly
<b>EIA</b>	Environmental Impact Assessment
<b>IGAD</b>	Inter-Governmental Authority on Development
<b>JA</b>	Justice of Appeal
<b>KSW</b>	Kakira Sugar Works
<b>LEGCO</b>	Legislative Council
<b>MP</b>	Member of Parliament
<b>NGOs</b>	Non-Governmental Organizations
<b>NRA</b>	National Resistance Army
<b>NRC</b>	National Resistance Council
<b>NRM</b>	National Resistance Movement
<b>PAFO</b>	Parliamentary Advocacy Forum
<b>RDC</b>	Resident District Commissioner
<b>UNCED</b>	United Nations Conference on Environment and Development
<b>USAID</b>	United States Agency for International Development
<b>UWS</b>	Uganda Wildlife Society
<b>UYPA</b>	Uganda Young Parliamentarians Association

## Acknowledgement

In many Africa countries, the environment and natural resources are the engine of economic growth of various sectors of the national economy. They provide the basis for agriculture development, industrial development and serve as an important source of materials for scientific research and progress. Most importantly, the environment provides critical livelihood support systems that sustain the majority of poor people both in rural and urban areas. Addressing the problems of poverty and vulnerability can therefore never be achieved without continuous improvements in the governance of the environment and natural resources.

Consequently, communities whose livelihoods and basic survival is directly dependent on natural resources have a high stake in the way the environment is governed. It is also of critical importance to such communities that their interests are clearly articulated at the highest levels of policy and decision-making. For this reason, we consider the peoples' elected representatives in the legislature to be such an important link between these communities and decision-making authorities in Government. It is for these reasons that several studies have been undertaken in a number of African countries to try to understand factors that influence legislators to effectively and proactively articulate the environmental interests of their constituencies.

We are grateful to the USAID Africa Bureau and the World Resources Institute (WRI) for the financial support that made this study possible. In the same way, we extend our sincere appreciation to Dr. Peter Veit and Catherine Benson at WRI who have provided intellectual guidance during the conduct of the study. This report could not have come out at any better time. The Parliament of Uganda is currently considering Government proposals for a comprehensive amendment of the Constitution. As we have noted in the concluding section of the report, many of these proposals have potential implications on the autonomy and authority of Parliament. If the proposals from Government were to be adopted in their present form, they could adversely undermine effective representation of constituency interests.

Special thanks go to Frank Nabwiso, Member of Parliament for Kagoma Constituency for providing very invaluable information that has enriched our analysis. MPs Ken Lukyamuzi, Loice Bwambale and all the Members of the Parliamentary Committee on Environment and Natural Resources whom we are unable to name individually due to space constraint are acknowledged for their support during the study. Finally, Sophie Kutegeka and Annet Nuwagaba are acknowledged for providing research and logistical support for the study.



## 1. Introduction

In their final report to the Minister of Justice and Constitutional Affairs in May 1993, the Uganda Constitutional Commissioner noted as follows:

There is a relationship between democracy and the protection of the environment. In Uganda, the worst abuses against the environment, including large-scale poaching, encroachment on forest reserves and game parks, draining of swamps, have all occurred under dictatorial regimes<sup>1</sup>.

Since the submission of this Report to Government and the subsequent debates during the Constituent Assembly, the debate on the relationship between the form of Government and sound ecological stewardship has been growing both in Uganda and elsewhere. Today, questions still remain as to whether a particular form of government may motivate legislators to effectively represent the environmental interests of their constituencies. This is particularly relevant since parliamentarians are often torn between supporting their sponsoring political parties or affiliations and their constituents when the interests of the two are irreconcilable.

The validity of the Odoki Commission observation may still be subject to inquiry especially in as far as it tries to point out the linkages between bad governance and environmental abuses. This is mainly because the relationship between different forms of government and “responsible” environmental management has not been explored in specific detail. Consequently, the Odoki Commission’s observation remains a hypothesis and demands critical inquiry navigating through the different forms of Government that Uganda has had in the pre-colonial and post-independence periods.

The relationship between the forms of government and good environmental stewardship also ought to be analysed with respect to effectiveness in representation. In countries like Uganda, environmental resources form the critical mass of assets for the poor people especially in rural areas. Recent studies on the relationship between poverty and environment have demonstrated the intricate relationship between local livelihoods security and the health and integrity of key ecological systems such as water, forests, wetlands and wildlife habitats.<sup>2</sup>

Yet, in many cases, well-connected politicians and private investors some of whom are supported by extensive political patronage deprive poor people in rural areas of these core assets. This happens even in systems of government where there is parliamentary representation and yet, the concerns of these deprived communities never get to the various institutions supposed to enforce accountability in government.

<sup>1</sup> Report of the Uganda Constitutional Commission: Analysis and Recommendations, 1993

<sup>2</sup> Republic of Uganda: Environment and Development: Listening to and Learning from the Poor. Policy Briefing Paper No.5. Ministry of Finance, Planning and Economic Development/Oxfam GB in Uganda. Kampala. (Undated).

The overall objective of this study is to analyze cases where Members of Parliament have taken the concerns of their electorates to Parliament. The Butamira Forest Reserve has been selected as the case study. The Forest Reserve which is located in Kagoma Constituency in Jinja District of Uganda has been a subject of controversy for many years. The local authorities and later the local tree farmers were pitted against a corporate company engaged in sugarcane plantation development. The controversy reached its apex in 2001 when the Company obtained a permit allowing it to destroy the trees planted by local tree farmers and replace them with a sugarcane plantation. The area MP Hon. Frank Nabwiso became the torch bearer of the poor tree farmers as they were faced with hostility from government officials and a manipulative private company.

## 2. Background

### 2.1. The Context

In many natural resources dependent economies such as those in sub-saharan Africa, the livelihoods of many rural communities depend on the natural resource assets. Natural resources provide the back-bone for national economic growth and are the basis for the livelihoods of poor people especially in rural constituencies. They are the basis for household food security, the major source of energy, construction materials, income generating business enterprises and provide the major coping mechanism in times of environmental stress and scarcity. However, in spite of this direct relationship between the electorate and natural resources, rarely do we see members of parliament actively promoting the environmental interests and agendas of their constituencies in the policy arena. Quite often, decisions over these resources are often taken at higher levels of government or in the national legislature.

Over the last 10 years since the United Nations Conference on Environment and Development (UNCED),<sup>3</sup> there has been growing emphasis on promoting public participation in decision making concerning the environment.<sup>4</sup> Yet, it is evident that in many cases, rural voters often do not have the capacity, the knowledge and the “sophistication” to participate meaningfully in any decision or policy making processes. In such circumstances, effective representation becomes an important tool and mechanism for poor resource users to have their voices at the policy and decision making table. In Uganda, like in many other countries in sub-saharan Africa, members of the legislature are the elected representatives of the voters and the legislature is the supreme legislative organ of Government. Therefore, creating appropriate mechanisms that allow legislators to effectively represent the environmental interests of their constituencies is one way of linking the poor to institutions that make decisions, which affect their livelihoods.

<sup>3</sup> Rio de Janeiro, 1992

<sup>4</sup> The commitments to promote public participation in environmental decision making are contained in Principle 10 of the Rio Declaration. For a detailed discussion on this principle 10, see Tumushabe G.W., et al (2002). Consolidating Environmental Democracy in Uganda Through Access to Justice, information and Participation. ACODE Policy Research Series, No.5,2002. Kampala.



## 2.2. The Methodology and Hypothesis

This study largely employed two methods for data analysis. The bulk of the work was undertaken through literature review. The researchers undertook a comprehensive review of the literature on legislative representation but what turned out to be most valuable was the review of the hansards of the Parliament of Uganda. While the general literature provided the theoretical discourse upon which this study is premised, the hansards provided us the practical insights of the debates in Parliament where Butamira Forest Reserve has had its fair share. The hansards therefore provided a very useful source of information on the positions taken by different MPs on issues of environmental representation. However, quantitative analysis was limited by the fact that in most cases, voting is by way of acclamation and no voting records for individual MPs are available.

Secondly, the research team held a series of interviews with selected legislators and voters in Kagoma Constituency where Butamira Forest Reserve is located. A series of focus group discussions were organized with members of Butamira Pressure Group. Particular emphasis was also put on the involvement of women both in the meetings and the discussions.

In the absence of quantitative data in most cases, we employed largely qualitative analysis to reach certain conclusions. For example, while we organized focused group discussions comprised of men and women voters, it was difficult to arrive at quantitative responses when it came to administering the questionnaires because the majority of our respondents did not know how to read or write. Even those who opted to respond to written questionnaires, the answers given were at times unrelated to the questions or just difficult to understand, later on interpret.

The study set out to prove or disprove two important hypotheses. The first hypothesis is that because of the low levels of literacy among Uganda rural voters, members of parliament are an important bridge between rural poor voters and government structures of policy and decision making. Secondly, we hypothesized that strengthening the capacity of individual legislators to represent the environmental issues of their constituencies achieves multiple objectives of enfranchisement, good governance and sustainable natural resources management.

## 2.3. The Concept of Representation

The concept of representation may be traced in the writings of early scholars from the 15<sup>th</sup> Century who expounded some of the ideals such as liberty and the social contract that have shaped the relationship between government and the governed to date. From the time of the Magna Carta in 1215, religious and legal scholars sought to establish the limits of government by expounding on the notions of “liberty” and “the social contract.” For example, early religious scholars such as St. Augustine, St. Thomas Aquinas and later Hugo Grotius made references to “divine authority” as the source of law and the leaders as merely possessing delegated authority to fulfill the will of God.

It was not until the 17<sup>th</sup> and the 18<sup>th</sup> century that scholars such as John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778) sought to interpret government-citizen relationship as built on a Social Contract. John Locke argued that Government should exercise the authority delegated to it in the service of the people. In his view, a Government based on

this social contract meant that the people must be dominant and if this were the case, then Government should be subservient. Rousseau on the other hand presented a new concept of social contract based on an awareness of common interests that creates a bond between people.

Most national constitutions that govern government-citizen relationships today are based on this early understanding of the notions of liberty, authority and the social contract. Our analysis of legislative representation therefore ought to take into account the fact that legislators are not simply providing a service, but rather, they are discharging a function that is founded both in natural law and theologian thinking.

Today, systems of government are essentially based on different systems of "representation." Representation now entails the relationship between the interests and views of the person or group of persons being represented and the actions of the representative. At one level, this relationship is dependent on the interactions between the legislator and the electorate. At another level, the relationship is often reflected along public policy issues such as the views of the electorate on education, health, governance or environment. Establishing the nature of the relationship between the representative and the constituency that he represents would therefore depend on a detailed analysis of how the views of representatives relate or are informed by the views and interests of the voters.

In any discourse on legislative representation, the legislator represents the primary unit of analysis and it is by examining the things that the legislator does or does not do that we are able to make intellectual judgments on the status of representation. Suffice to say therefore is that an even sample of individual legislators and an analysis of how they interact with their electorate can give us a fair picture of legislative representation in any country. The secondary unit of analysis could be based on the committees of the legislature, their operational mandates and powers and transparent nature with which they operate. Questions of inquiry should also focus on whether the individual citizens have opportunity to attend committee proceedings and present their positions. The entire legislature can then be classified as the tertiary unit of inquiry when dealing with the question of representation. We ought to ask ourselves whether the Parliament has sufficient autonomy and independence, whether individual voters can lodge complaints through petitions, etc.

Consequently, taking the legislator, the legislative committees and the legislature as the units of analysis, legislative representation can then be considered by focusing on the following: behaviour of individual legislators outside the legislature; the conduct of the individual legislator inside the legislature; the effect of the legislative structure on individual legislator's behavior; and the overall performance of the legislature as an institution of government.

Literature is awash with ideas on how the representation responsibilities can be discharged. Rosenthal A, writing in *The Decline of Representative Democracy: Process, Participation, and Powers in State Legislatures* identifies at least four ways in which "faithful" representation can be demonstrated: *being one of them; providing service to them; acquiring services for them, and expressing their policy views and interests*<sup>5</sup>.

<sup>5</sup> Alan Rosenthal, "The Doctrine of Representative Democracy: Process, Participation and Power in State Legislators". Washington, DC: CQ Press, 1998.

Representation in poor constituencies can best be expressed in form of “being one of them.” Voters feel very strongly represented if they physically associate with their representative. The fact that voters have talked to their representative and communicated their problems often acts as a form of “therapy” even when those problems have not been solved. In Uganda for example, the most common complaints expressed by voters often expressed through writing to newspapers is the failure of the representatives to visit their constituents. And this directly relates to the other two ways that Rosenthal suggests. In actual fact, voters will feel very strongly represented about a particular representative if he can help address constituency grievances relating to access to education, healthcare, unemployment, etc including attending to very personal problems such as school fees and payment of medical bills.

Perhaps also related is the issue of acquiring resources for the constituency. Legislators around the world focus a lot of attention in trying to influence the allocation of state resources and projects to their constituencies and questioning the allocation formulae and criteria for major projects. However, this can be distinguished from what happens in many African countries where it is common for parliamentary candidates to promise voters provision of key public services such as piped water, construction of roads and bridges, health centres, etc. The relationship between the legislator and the voters could then be analytically determined by looking at whether a particular legislator was able to follow through on these promises. In practice, this is sometimes difficult especially where the contending candidates have no campaign manifestos where they can articulate these promises to be able to constitute a “social contract” between themselves and the voters.

Representation entails voicing the concerns and interests of the voters at the highest levels of policy and administrative decision making. Voters expect their legislators to articulate some of their problems on policies and other debates that come up in the legislature. The real challenge facing legislators in this regard is the difficulty of having “common” views from the constituencies. In Uganda for example, the composition of the voters often varies within and from one constituency to another. The interests of the voters may vary according to demographic factors, political interests, gender differences, etc.<sup>6</sup> Even where the constituency is comprised of special interest groups, the interests are still not uniform. Even in the case of environmental issues, because of the nature of constituencies, the composition of the voters and their geopolitical set up make common positions very hard to articulate.

Finally, legislative representation is influenced by the mere perceptions of the electorate. In this country for example, there is considerable unanimity that because of their elected status, legislators are obliged to be responsive to the demands and needs of those who elected them. There seems to be no clear categorization of the demands that are made on legislators. At the individual level, voters may make demands ranging from personal assistance for payment of school fees, payment of medical bills, securing jobs or sometimes settlement of retirement benefits.

<sup>6</sup> Personal conversation with Hon. Loice Bwambale –Woman Member of Parliament, Kasese District.

In addition, there have also been organized demands especially coming from groups of voters who are threatened with evictions from the land they occupy or in other cases from protected areas. During the 7<sup>th</sup> Parliament, a new dimension of demands coming from civil society organizations has also increased. Examples of common demands from civil society include, demands to increase budgets for social sector spending such as in education and health, increased public expenditure to support the agriculture sector, or as in the case of Butamira Forest Reserve, demands for the preservation of tree farming rights of the voters, etc.

However, the above exposition is correct as far as the theory on legislative representation is concerned. In the following sections, we examine the practice of legislative representation in Uganda seen through the lenses of the political history of Uganda's legislature.

#### 2.4. The Political History of Legislative Representation in Uganda

In order to understand the incentives and disincentives for legislators to effectively represent the environmental interests of their constituencies, it is important to briefly map out the history of representation on environmental issues in Uganda. This section therefore briefly examines the different forms of government that Uganda has had and if there are any experiences on legislative representation of their constituent's environmental concerns in Parliament. Taking a historical approach, we trace the issue of legislative representation and the environment through the different forms of Government Uganda has had since the 1900. We analyse any cases where MPs have effectively brought environmental concerns of their electorate to the legislature. The section spans the legislative representation history of Uganda with a particular focus on the post 1986 era when the current Government came to power promising to rule by the will of the people and building strong democratic and participatory institutions.<sup>7</sup>

Until 1920 when Uganda got its first legislative assembly called the Legislative Council (LEGCO), Uganda was under the rule of one man under the title of Commissioner. According to Kanyeihamba G., the Commissioner was the head of the Protectorate, the executive officer and the law maker.<sup>8</sup> Kanyeihamba further asserts that the 1920 Consolidating Order-in-Council made it possible for the establishment of the Legislative Council for the first time. The Royal Instructions of 1921 made provisions for the membership of the Council, which excluded representation by Ugandans. And it is not until 1945 that Africans set their feet in the LEGCO<sup>9</sup>.

It should be noted that throughout the colonial period, there was less legislative activity including in the area of environment and natural resources. In practice, most of the laws were received verbatim from the English Statutes. The various sectoral laws covering wildlife, forestry, fisheries, etc. often referred to as ordinances were a direct replica of the English law covering similar sectors.

<sup>7</sup> See, Ten Point Programme of the National Resistance Movement. Kampala.

<sup>8</sup> Kanyeihamba G.W., 2002, "Constitutional and Political History of Uganda: From 1894 to the Present". Centenary Publishing House Ltd. June 2002. Kampala. Pg 13. Kanyeihamba argues that the period between 1902 and 1920 in the political history of Uganda can best be described as dictatorial and despotic, if not in practice, at least in law. Pg 13.

<sup>9</sup> The three members were: M.E. Kawalya-Kagwa; P. Nyangabyaki; and Y. Zirabamuzale.



From the time the first Ugandan Africans walked into the LEGCO in 1945, Uganda has gone through a series of historical episodes that have been characterized by different forms of legislative representation or non-representation at all. In 1962, Uganda gained independence and got its first fully-fledged parliament. At this time, Dr. Apollo Milton Obote became the 1<sup>st</sup> prime minister of Uganda while Sir Edward Mutesa II became the the 1<sup>st</sup> president.

The 1966 crisis that ensued between the prime minister and the president resulted into the abrogation of the 1962 Constitution leading to the introduction of the 1967 constitution commonly referred to as the Pigeon Hall Constitution under which Obote became the president. Dr. Obote ruled Uganda until 1971 when he was overthrown by Idi Amin, his army commander.

During this period often referred to as Obote 1 regime<sup>10</sup>, two particular events or concerns of an environmental nature may be pointed out.

The first event relates to the two lost counties of Buyaga and Bugangaizi. The two counties were captured from Bunyoro Kingdom by the British colonialists in alliance with the Buganda Kingdom forces. These counties were subsequently given to Buganda by the British colonial government as a reward for Buganda's collaboration. After independence, the demand for the "lost counties" by Bunyoro and the inhabitants of these counties became a heated issue in both Government and Parliament. In 1964, a referendum was held in the two counties and the electorate voted to be part of Bunyoro rather than Buganda.

The second case which was brought to the floor of Parliament relates to the gold scandal allegations on senior government and military officials. It was then alleged that Idi Amin, the Deputy Army Commander, the Prime Minister and two of his Cabinet colleagues had looted gold, ivory, coffee and money from the Congo (now the Democratic Republic of Congo). In a parliamentary motion moved by Daudi Ochieng, it was alleged that while Idi Amin gained personally from this loot and was promised to become Army Commander, the main beneficiaries were Prime Minister Milton Obote and the two Cabinet Ministers. In moving the motion on the floor of Parliament, Ochieng stated that;

"If I live a hundred years, or for a hundred hours only, this motion shall always be my greatest contribution to my country."<sup>11</sup>

In challenging the allegations, Sam Odaka who was against this motion countered,

"I challenge him to repeat these charges outside this House where libel is a subject of court action and damages. ...I am willing to resign from the ministerial post on one condition alone, that Ochieng, or one of you repeats the accusations anywhere outside the House."<sup>12</sup>

The gold scandal allegations had far reaching consequences for governance and constitutional development in Uganda. On April 15, 1966, Obote abrogated the 1962 independence constitution and replaced it with what has often been dubbed the "Pigeon Hole" Constitution of 1966 which vested significant executive powers in the person of the President. Uganda was to be ruled under this constitutional arrangement until Obote's Government was overthrown in 1971.

<sup>10</sup> This is because Obote was again to become president from 1980 to 1985 (Obote II regime)

<sup>11</sup> Cited in Kanyeihamba, supra. Pg 98.

<sup>12</sup> Ibid

It is nevertheless tenable to argue that the gold scandal allegations were not in actual fact inspired by the desire to protect the environment nor were the allegations raised by any particular constituency since the allegations arose with respect to gold looted from Congo. Kanyeihamba has rightly argued that these allegations were largely a reflection of the power struggle between the then Prime Minister and the President, the republicans and monarchists and between socialists and capitalists within the Obote Government.

In 1971, the Obote I Government was overthrown by Idi Amin. On his assumption of power, General Idi Amin Dada vested all legislative powers in the presidency and the powers were to be exercised by decrees.<sup>13</sup> The most remarkable legislative development with respect to environmental management was the Land Reform Decree which was decreed in 1975. The overall effect of the Decree was to vest all land in the hands of the State and the transformation of all freehold land holdings into statutory leases of 99 years or 199 years.

To the extent that the Land Reform Decree gave the State powers over all land and natural resources, it significantly altered existing relationships over land and had far reaching consequences on the ownership, access and appropriation of land in Uganda. It is also important to note that the Decree was never implemented in totality and this created long standing uncertainty as far as the nature of interests in land were concerned. This uncertainty had serious implications for long-term investments in sound ecological stewardship. Finally, one may wish to observe that in the absence of Parliament, Amin exercised all legislative powers. Consequently, the notion of environmental representation did not arise during his era.

Amin's regime was overthrown in 1979. Between 1979 and 1980 when presidential and parliamentary elections were finally held, Uganda was governed by a series of short-lived successive regimes with different forms of legislative representation or no representation at all. Because of the reigning political circumstances at the time, all these regimes were largely pre-occupied with the reorganization of State power. In any event, they had no clearly identified constituency since they were not even elected representatives.

In December 1980, Uganda got its first elected president since the military coup in 1971. For the next five years (1980-1985), Uganda was to be ruled under a parliamentary democracy with an Executive President. The most remarkable environmental issue that arose during this period is related to Lake Mburo National Park. The then Lake Mburo Game Reserve was upgraded to a national park, its borders increased to include some of the traditional grazing grounds for the local people mainly the pastoral Bahima community of the Banyankole. It is often argued though that the up grading of the Game Reserve to National Park status was motivated not by environmental considerations but rather by the need to punish the Bahima Pastoralists who were believed to be supporters of the insurgency by the Museveni's National Resistance Army (NRA) at the time.

All in all, it is tenable to argue that from the creation of the first legislature in Uganda in 1920 up to 1985 when the Obote II Government was overthrown, there exists no clear cases that demonstrate how legislators have championed the environmental interests of their constituencies. The scattered examples referred to in the above analysis were largely by political, personal and other considerations rather than being driven by constituency environmental demands or interests.

<sup>13</sup> For example, comprehensive policy statements on forestry were spelt out in the Achievements of the Government of Uganda During the first year of the Second Republic (Undated).



## 2.5. The National Resistance Movement Government

The Obote II Government was eventually overthrown in January 1986 and replaced by the National Resistance Movement (NRM) administration. The NRM established a legislative body called the National Resistance Council (NRC). The NRC was a “collection” of individuals that had mainly participated in the war against the Obote II regime. During the period 1986-1995, the National Resistance Council as the legislative arm of Government underwent a complete metamorphosis. New members were brought into the NRC either as direct nominees or through elections.<sup>14</sup>

In 1989, the composition of the National Resistance Council changed drastically on account of an increase in the proportion of non-elected members as well as special representation of “marginalized” groups. In addition to the original historical members, the Council was expanded by members elected directly and those representing special interest groups as shown in table 1 below. By 1992, the total membership of the NRC stood at 277. The total number of appointed NRC members comprised of the historical members, NRA representatives and presidential nominees were 68 constituting at least 25% of the total Council membership. It is equally important to note that even those categories of the NRC designated as elected were not elected directly but were often elected by special electoral colleges. Consequently, one could argue that this impacted on the representative nature of the Council itself.

Category	No. of Representatives	% of total membership
Historical (Original members of NRM/NRA)	38	13.7%
Elected county representatives	151	54.5%
Elected representatives of Kampala City Council	5	1.8%
Elected representatives of municipalities	14	5.0%
Representatives of the National Resistance Army	10	3.6%
Elected Women representatives	38	13.7%
Members nominated by the President	20	7.2%
President	1	0.3%
Total	277	100%

From the table above, we can see that by 1992, the National Resistance Council was dominated by members who were largely elected through electoral colleges totaling 75% of the entire legislature. This means that special interest group representation comprised of the original members of the NRM/NRA, representatives of the NRA, Presidential nominees and the presidency accounted for 25% of the entire membership of the legislature. Nevertheless, it is important to note that the non-elected members of the NRC remained all too powerful and could direct the course of events in the legislature. The influence of this group of legislators was further strengthened by the nature of the political system in power, where every legislator was considered to be a member of the NRM.

During the period 1986 to 1995 when a new constitution was promulgated to usher in new governance arrangements, issues of representation were largely determined by what would be considered “appropriate” by the NRM leadership. For example, the decision to degazette Namanve Forest Reserve was made in a closed session of the NRC. Even cases which directly affected the electorate such as the eviction of communities in Mpokya, did not get much attention in the NRC.

<sup>14</sup> For a detailed discussion on the environmental reforms ushered in by the NRM Government, see Okoth-Ogendo, H.W.O and Tumushabe, G.W., 1991, “Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa”. ACTS Press, Nairobi.

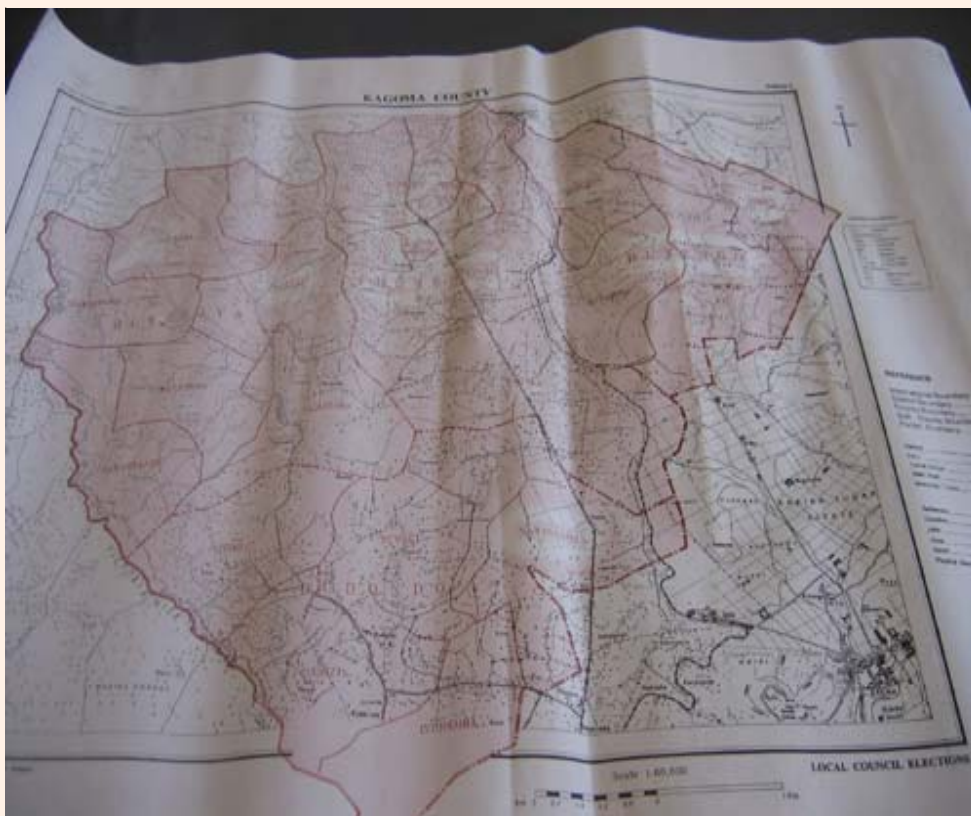
When the new constitution was eventually promulgated in 1995, it marked the end of the transition government under the National Resistance Movement Government. However, in actual sense, this was a transition from the National Resistance Movement to a constitutionalized Movement political system. This is mainly because, other than having a full-fledged parliament with well articulated powers the practices and behavior continue to reflect the same tendencies as the National Resistance Council. It is during this period that we see more parliamentary activity related to environmental interests of the poor people and members of parliament many times voicing the direct concerns of their constituencies. And perhaps this is best demonstrated in the case of Hon. Frank Nabwiso, the Member of Parliament for Kagoma Constituency, Jinja District relating to proposals by Government to extinguish the tree farming rights of his voters in Butamira Forest Reserve, degazette the Reserve and allocate the land to Kakira Sugar Works to expand its sugarcane plantation.

### 3. A Case Study of Butamira Forest Reserve in Kagoma Constituency, Jinja District

#### 3.1. Background

Kagoma constituency is situated in Jinja District in Eastern Uganda. The MP of the area is called Hon. Frank Nabwiso. This case study revolves around Butamira Forest Reserve which is located in this constituency and the efforts by the local people through their Member of Parliament to save the Reserve from being degazetted for sugar cane growing and protecting their tree farming interests.

**Figure 1: The political map of Kagoma Constituency where Butamira forest Reserve is found/Located.**



The controversy over Butamira Forest Reserve<sup>15</sup> dates back to 1929, when the then Busoga Kingdom Government established a forest reserve in Butamira. In 1939, the Kingdom government leased Butamira Forest Reserve to Kakira Sugar Works (KSW) Ltd for 49 years. To date, Butamira Forest Reserve is known to be the single largest forest reserve in Jinja District accounting for approximately 20% of the entire forest estate in Busoga.<sup>16</sup>

Elsewhere, we have observed that all through the 1950s and beyond, Kakira Sugar Works made attempts to acquire Butamira Forest Reserve for sugar cane growing. In 1954, the Company managed to excise approximately 50 ha from the Reserve.<sup>17</sup> In 1956 Kakira Sugar Works made attempts to acquire part of the Forest Reserve in the name of a donation of a farm school to the Busoga Kingdom Government. The forestry officials at the time resisted this attempt. During the same period, the Company rejected any offers of land elsewhere in Busoga arguing that the location of the school in Butamira Forest Reserve was essential for advertising the donation. Rejecting this argument, the then Provincial Forest Officer for the Eastern Region observed as follows:

Though I am certain that the District Commissioner and Agricultural Officer have tried very hard to meet the wishes of the donor of the gift, it has not just been possible to fill them with the exacting conditions which he has laid down. Likewise, it would be foolish not to realize very clearly the implications of the present position, that we are being asked to alienate 300 acres of a small and hard-worn forest estate, with land available elsewhere to satisfy the self advertisement of one individual.<sup>18</sup>

In 1966, Uganda became a republic, Kingdoms were abolished and all their properties hitherto were vested in the Central Government. This included the lease that had been granted to KSW by the Busoga Kingdom. In 1993,<sup>19</sup> the traditional institutions were reinstated through a Constitutional amendment and the central government committed itself to return all the properties that were confiscated in 1966.<sup>20</sup> These legislative developments did not affect the legal status of Butamira Forest Reserve since the debates between the central government and the reinstated Busoga Kingdom have not been able to resolve the extent of the proprietary interest of the Kingdom.

It is important to note that between 1966 and the mid-1990s, very little is documented about the controversy surrounding the Butamira Forest Reserve. This could be accounted for by the fact that in 1972, the Asians were expelled from Uganda, their properties expropriated and those who remained as exceptions generally took a very low profile. It is not until 1997 when as the lease to Kakira Sugar Works was about to expire that Butamira Forest Reserve came back into the limelight. During this year, the company<sup>21</sup> applied to the Forestry Department to utilize Butamira Forest Reserve for its operations.<sup>22</sup>

<sup>15</sup> The Reserve measuring approximately 5.4 sq. miles is located in Kagoma county in Jinja District.

<sup>16</sup> This information is obtained from an undated Forestry Department Memo attached to an April 19 letter from the Permanent Secretary, Ministry of Water, Lands and Environment to the Principle Private Secretary to His Excellency the President of the Republic of Uganda. (Ref.DLE/168/229/01)

<sup>17</sup> According to a June 9, 1955 letter written to the Chief Conservator of Forests by the Provincial Forest Officer for the Eastern Region, this excision was because of an error in the survey of the sugar estate.

<sup>18</sup> See letter of 9<sup>th</sup> June 1955 with reference KP/65. Also cited in Tumushabe G. W., et al (2001). *Sustainably Utilizing our Natural Heritage: Legal Implications of the Proposed Degazettment of Butamira Forest Reserve*. ACODE Policy Research Series, No.4, 2001. ACODE. Kampala.

<sup>19</sup> This followed an April 3, 1992 decision of the then National Resistance Army which sat in Gulu and pursuant to an April 30, 1993 resolution of the National Resistance Council.

<sup>20</sup> Statute No 8 of 1993

<sup>21</sup> Now incorporated as Kakira Sugar Works (1985) Ltd (KSW).

<sup>22</sup> Throughout this research, efforts to get access to the actual application lodged with the Forestry Department was unsuccessful.

### Box 1: Summary recommendations of the first Parliamentary investigation regarding Butamira Forest Reserve.

“The Committee is of the view that no amount of political and/or economic pressures should make the Forestry Department give away Butamira to Madhvani because:

- The 49 year permit to Madhvani to plant trees in Butamira expired 3 years ago and he had never shown indication and interest to renew it.
- He turned Butamira Forest Reserve into a sugar cane plantation contrary to the provisions of the Forest Act, 1964.
- He had started clearing the forest reserve before getting alternative land as had been agreed on with the Forestry Department. One can conclude that he did this with intent to cheat the Forestry Department and the Government in general.
- Madhavani has up to now failed to get alternative equivalent land in exchange for Butamira Forest Reserve.
- **The area Madhvani had cleared has already been allocated to the community and the decision cannot be reversed (Emphasis ours).**
- The irregularity exhibited in the permit to Madhvani to change the land use is one of the reasons why this Committee recommended that the then Deputy Commissioner, be relieved of his duties for misuse and abuse of office. This therefore follows that the only logical thing to do is to leave the reserve where it belongs.
- The local government, the population and the Busoga Kingdom is up in arms against Madhvani taking up Butamira Forest Reserve and changing the land use....
- There is need for Parliament to show proper and positive signals towards protecting the forests in particular and the environment in general more so given the level of forest depletion which has been witnessed in this country for the last three decades and the environmental concerns that has become a global issue.”

Kakira Sugar Works was granted permission and a new permit was issued effective July 28, 1998.<sup>23</sup> Unlike the previous permit, the new one gave the Company the rights to put the entire Reserve under use for general purposes and the original conditions were ignored. We have observed elsewhere that on the basis of the new permit, KSW embarked on a scheme to clear the existing forest reserve and replace it with a sugar cane plantation.<sup>24</sup>



*Members of Butamira Environment Pressure Group at a consultative meeting with ACODE*

<sup>23</sup> See correspondence between the Commissioner for Forestry and the Managing Director, KSW ref.3/39 dated July 7, 1997.

<sup>24</sup> Tumushabe G. W., et al. supra



Immediately KSW moved in to clear the reserve for sugar cane growing, the local community was concerned and complained about the destruction caused by KSW. They formed themselves into a pressure group- Butamira Pressure Group- to galvanize their positions and interventions in fighting against the company. Following the outcry of the local people, the Parliament of Uganda instituted a probe to investigate the issues surrounding the issuance of the permit to KSW. The probe found that the permit was issued fraudulently renewed and recommended that it be cancelled.

Although the Parliamentary Committee report was never debated and adopted by the full House, the Forestry Department went ahead and cancelled the permit to KSW. Sometime in 2002, the Department also went further to allocate new permits to over 148 community groups and 30 individual tree farmers.<sup>25</sup> In their final report, the Select Committee on Forest Affairs addressing the issue of Butamira Forest Reserve came out with 8 recommendations. Because of their relevance to this research, those recommendations are set out in Box 1 above:

### 3.2. Butamira Forest Reserve in the 7<sup>th</sup> Parliament of Uganda

The plight of Butamira Forest Reserve and the tree farmers in Kagoma sub-county did not stop at the work of the Parliamentary Select Committee referred to above. For the next two years, the Butamira Forest Reserve controversy was to dominate the business of Government and the 7<sup>th</sup> Parliament of Uganda.

On November 7, 2001, the Hon. Frank Nabwiso presented a Petition to the Parliament of the Republic Uganda. The petition was presented on behalf of three organizations:<sup>26</sup> ACODE, UWS and BEPG (the first and second petitioners respectively) are non-governmental organizations (NGOs) engaged in policy research, advocacy and lobbying. They were described in the petition as “public interest non-governmental organizations committed to promoting the rule of law, protecting the environment and defending the public interest in the management of Uganda’s natural resources.” Butamira Pressure Group, the third petitioner, was described in the petition as a “local pressure group representing the interests of the community groups who are permit holders” in the said Butamira Forest Reserve.<sup>27</sup>

The Petition was referred to the Sessional Committee on Natural Resources. The Committee conducted a series of hearings during which it interviewed a broad range of stakeholders. The Committee met with the Busoga Kingdom representatives, the representatives of the Advocates Coalition for Development and Development (ACODE) and Uganda Wildlife Society (UWS) as co-petitioners. It talked to tree farmers and students from the area as well as a broad range of officials of the Uganda Government.

The Committee presented its report to Parliament on March 12, 2003. In their report, the Committee observed that they had received press reports that the Resident District Commissioner (RDC) for Jinja working with the Chief Government Valuer had started a process to value the permits of the tree farmers for subsequent compensation.

<sup>25</sup> See Republic of Uganda, 2001. Final Report of the Parliamentary Select Committee on Forestry Affairs. May 2001. Kampala. Pg 8.

<sup>26</sup> The Advocates Coalition for Development and Environment (ACODE); Butamira Environment Pressure Group (BEPG) representing the local tree farmers; and Uganda Wildlife Society (UWS).

<sup>27</sup> See Petition dated October 18, 2001 File Copy at ACODE).

This information was collaborated by the testimonies of the Chief Government Valuer in the subsequent hearings.<sup>28</sup> With respect to the interest of the tree farmers, the Committee recommended as follows:

The present Forest Reserve in Butamira is a rare occurrence and should be protected. The Committee has noted a number of contradictory statements from Government on the Reserve. The Constitution of Uganda protects Forest Reserves from all aspects of encroachment. The Government's view that it will not degazette the Reserve, but would like to withdraw the permits issued to the farmers in support of KSW sugar growing, makes things even worse. Butamira Forest Reserve is protected by law and one may not change its land use focus without amending that law. One also has to carry out an EIA programme on the Reserve.

Throughout this period, individual members of Butamira Pressure Group were constantly harassed by Government leaders in Jinja district.<sup>29</sup> The Member of Parliament continued to represent the voiceless views of his constituency as they were subjected to this form of harassment. On February 20, 2002, the MP raised questions regarding the role of the Resident District Commissioner who had by this time taken full charge of mobilizing the tree farmers to surrender their permits.<sup>30</sup>

On March 21, 2002, Minister Ruhaka-Rugunda presented the position of the Government of Uganda. He assured Parliament that Government had shelved the idea of degazetting the Forest Reserve. However, he requested Parliament to pass a motion allowing Government to issue a permit to Kakira Sugar Works allowing it to grow sugar cane. While restating the three prayers of the petitioners, the Minister requested Parliament,

to reject the request of another select committee, as there are no pending issues to probe. I also request Parliament to support the Government position in the handling of Butamira issue as it is in line with Government policy on poverty eradication and sustainable development.

Over 30 Members of Parliament contributed to the debate of the report. In his submission, MP Frank Nabwiso reciting the third prayer in the petition observed:

I want to go back to the question of the prayer contained in our petition on 7<sup>th</sup> November. Allow me Mr. Speaker, to quote the third part of the prayer. It says..... Mr. Speaker that was the prayer. But before this was implemented, the Rt. Hon. Prime Minister started undermining this very resolution of Parliament, and the Prime Minister is also leader of Government business in Parliament. If you were operating in more transparent parliamentary systems, this would be condemned.

The debate on the report was so heated to the extent that for the first time in the history of the 7<sup>th</sup> Parliament, the matter had to be decided through a division lobby.<sup>31</sup> When the matter was put to vote, 32 Members of Parliament opposed the motion; 86 supported it while 5 members abstained.<sup>32</sup>

<sup>28</sup> In ordinary circumstances, once the issue had been put before Parliament, all the parties ought to have restrained themselves for their servants and employees from interfering with the subject matter of the inquiry. Under Article 90(4)(c) of the Constitution, Committees of Parliament have the full powers of the High Court including enforcing attendance of witnesses, compelling production of documents and issuing a commission or request to examine witnesses abroad.<sup>27</sup> See Petition dated October 18, 2001 File Copy at ACODE).

<sup>29</sup> There are a number of press reports that implicated the Resident District Commissioner Deo Kayongo as the leading culprit in this harassment. In one incident, his agents were accused of having kidnapped a one Siraji Waiswa and forced him to withdraw from a court case in which he was representing his group members. Also see Siraji Waiswa Versus Kakira Sugar Works (1985) Ltd. HCCS No. 0069 of 2001. See also Report of the Sessional Committee on the Petition dated December 2002. pg 11

<sup>30</sup> Republic of Uganda, 2002. 2<sup>nd</sup> Sitting of the 2<sup>nd</sup> Meeting of the 1<sup>st</sup> Session of the 7<sup>th</sup> Parliament of Uganda. Order Paper.

<sup>31</sup> For more details on the manner of voting of Parliament, see Rules of Procedure of Parliament. cf. rule 77.

<sup>32</sup> Abstentions included: Byenkya Nyakaisiki Beatrice (Women Representative, Hoima), Mwendha Patrick John (Bukooli County North, Bugiri), Olum Zachary (Nwoya County, Gulu), Okumu Ronald Reagan (Aswa County, Gulu) and Okulo Epak Yafesi (Oyam County South, Apac).





*Ugandan Parliament in Session  
Photo: Courtesy of the Public Relations Office*

A number of observations may be drawn from the discussion of this case study above. First, for the first time in the history of legislative Uganda, we see a Member of Parliament championing the environmental interests of his voters from beginning to the “end.” v The MP did not only assist the local tree farmers by presenting their petition to Parliament, he also assisted them as they went through constant harassment and intimidation from some Government officials. Secondly, as the debate on the petition progressed, the MP became increasingly dissented by several of his peers particular from the Busoga Kingdom area. However, this did not deter him from remaining steadfast in representing the petitioners in which his voters were the majority.

The third observation to be made here relates to the manner in which the Sessional Committee on Natural Resources presented its report and findings. The Committee presented its report on March 12, 2002. The debate on the report was postponed upon the request by Minister Ruhakana-Ruganda who wanted to prepare an appropriate Government response. On March 20, 2002, the Committee met again under the Chairmanship of the substantive Chairperson. From those proceedings, the substantive Chairman presented an addendum to the Main Report which sought to overturn the recommendations of the main report. Ultimately, when the issue was put to vote, the position presented in the addendum carried the majority votes.

Two observations are worth making here. First, the manner in which the addendum to the main report invites a lot of suspicion and it seems to have been a result of “political engineering.” Second, it is not known in the entire history of the Parliament of Uganda where an addendum has had the effect of overturning the recommendations of the main report. In ordinary circumstances, such a report would have been presented as a minority report annexed to the main report. However, the manner in which the Committee changed its opinions one day before the debate in Parliament and the acceptance of that report by Parliament remains legally suspect.

In conclusion, the main question to ask is what are the factors that motivated MP Frank Nabwiso to carry the burner of his electorate even in the face of considerable Government hostility? In the next section, we examine Uganda's current legal framework that impacts on effective environmental representation and MP Frank Nabwiso's personal attributes that could have motivated him to champion the interests of his voters.

#### 4. Representation, Incentives and Disincentives: An Examination of the Legal Framework in Uganda.

The general legal framework for the functions and operations of the legislature are set out in Chapter Six of the Constitution of Uganda, 1995. Article 79 spells out the functions of Parliament and provides that "subject to the provisions of this Constitution, Parliament shall have power to make laws on any matter for the peace, order, development and good governance of Uganda." Parliament is therefore the only body mandated to make laws that can have the force of law in the country. In addition, Parliament is charged with the responsibility to "protect the Constitution and promote democratic governance of Uganda."

Generally, the Ugandan legislature by the nature of these enabling constitutional provisions and based on its operational performance over the last nine years of its existence under the current constitution, plays at least three important functions: making laws and approving policies of Government; representing the electorate or citizens in general; and providing oversight on the performance of the executive branch of government. This section of the paper analyzes the current legal framework and examines the nature of the incentives or disincentives that the current framework provides to enable legislators discharge their representative function.

Based on the case study documented above and the ever growing literature on legislative representation, there are at least four major elements around which one can discuss the motivations or de-motivations for a legislator to actively bring environmental issues affecting voters on to the floor of the House and other policy fora. These incentives and disincentives can be grouped into the following categories: accountability, autonomy, authority and personal attributes.

Box 2: Who is accountable to whom? Composition of the Ugandan Legislature		
Category	No. of Representatives	% total
Directly elected constituency representative	214	70.1
District Women Representatives	56	18.3
Youth	5	1.6
Persons with disabilities	5	1.6
Workers	5	1.6
UPDF	10	3.2
Ex officio	10	3.2
Total	305	100

In this section, we examine in detail the existing laws relating to these four incentive or disincentive categories and how they affect effective environmental representation by legislators. It is argued that strengthening environmental representation by legislators is largely dependent on the existing legal framework and whether such legal framework promotes accountability to the electorate, secures the autonomy of Members of the Parliament or gives adequate authority to individual members of Parliament to use the legislature to promote the environmental interests of their voters. To some measure, available evidence including from the case study of the Kagoma Constituency MP, effective legislative representation is also dependent on the personal attributes of the individual legislators.

## 4.1. Accountability

One of the major factors that influence whether legislators proactively bring environmental issues affecting their constituencies to the floor of Parliament is dependent on whether the legal framework requires them to be downwardly accountable to their electorate. There are a number of factors that determine whether legislators are accountable to their voters or not. Key among these factors include: the system of voting in Parliament and accessibility of voting records by the electorate, regularity of the elections and competitiveness of the electoral process, provisions for recall and factors relating to the legislator-voter interactions.

### 4.1.1. Voting Procedure of Parliament

**Box 3: Circumstances Requiring a Secret Vote under rule 74 of the Rules of Procedure of Parliament:**

- A Bill for an Act of Parliament to amend any provision of the Constitution;
- The election or removal of a person holding office under the Constitution or under a law made under the Constitution;
- The election or removal of a Parliamentary Commissioner;
- The censure of a Minister or the Vice President;
- Any other matter if the House so decides upon a motion.

**Source:** Interim Rules of Procedure for the 7<sup>th</sup> Parliament. June 2001.

The availability of a systematic voting record of legislators on motions and laws relating to the environment is one of the key useful instruments for the electorate to hold their representatives in Parliament accountable. The existence of such records enables voters to determine whether their representative voted in support of a motion on environmental matters of interest to them or not. The principal law relating to voting in the Parliament of Uganda is provided for under Article 89 of the Constitution. Article 89(1) provides that “Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting.” Article 89(2) further provides among other things that “..... If on any question before Parliament the votes are equally divided, the motion shall be lost.”

The substantive procedure for voting upon motions is provided for under rule 73 of the Interim Rules of Procedure of Parliament which allows “voice voting.”<sup>33</sup> In practice and in accordance with rule 73, the votes on any question put to vote by the Speaker are taken by voices of “ayes” or “Noes” and the result declared immediately by the Speaker. This voting procedure does not allow for the recording of individual members’ votes. Consequently, although there is no prohibition on access to voting records of legislators, the fact that they are not recorded renders it impossible for voters to know how their legislators voted on any matter that required voting.

There are only two exceptions to voice voting. Rule 74 provides for secret ballot and this method has been employed by Parliament on a number of occasions. Examples of cases where secret ballots have been used in the recent history of Uganda’s legislature are shown in table 2 below. The common feature about these cases is that they were either considered to be highly political issues involving individual legislators or cabinet ministers. Indeed, in the history of the 6<sup>th</sup> and 7<sup>th</sup> Parliament, there have been clear tendencies to vote by secret ballot on all such issues that are of a political nature.

<sup>33</sup> See Interim Rules of Procedure for the 7<sup>th</sup> Parliament. 25<sup>th</sup> June 2001. (Unpublished).

Rule 75 on the other hand, provides for voting by way of division often referred to as “division lobby.” Voting by way of division lobby may be ordered by the Speaker where forty or more members disapprove the outcomes of a vote under rule 73, expressed by their standing up in their positions or by the Speaker using his discretion under rule 76. In the case of Butamira Forest Reserve, the Speaker used his discretion under rule 77 to order for a division lobby.<sup>34</sup>

The voting procedure in Parliament as provided for in the Interim Rules of Procedure has two main implications. First, where there is voice voting or voting by secret ballot, it does not give voters an opportunity to know the voting record of their legislators including on environmental matters of interest to them. In the case of Paul Kawanga Semogerere and Zachary Olum versus Attorney General<sup>35</sup> the Constitutional Court had an opportunity to address itself to the voting methods provided for in the rules of procedure of Parliament. In that case, the petitioners challenged the Referendum and Other Provisions Act<sup>36</sup> on the grounds, inter alia, that the Act was void because it did not obtain the constitutional majority at the stages of its final deliberations and of its passing as required under Article 98 of the Constitution. Article 89(1) provides that “Except as otherwise prescribed by this Constitution or any law consistent with this Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting.”

In an unanimous decision nullifying the Referendum and Other Provisions Act, Twinomujuni, J.A, held that the provisions of Article 89(1) were mandatory and did not “...give the Speaker any discretion at all. For the House to take a decision he must be satisfied that more than half of the members present and voting have supported the decision. How can this be reflected through the “Ayes” and “Nos” vote?” Justice Twinomujuni further observed that “In my humble opinion, nothing short of physical counting can comply with [the requirement of Article 89(1)]. The records should be able to show, the number of members who supported the decision, the number of those who opposed it, the number of those who abstained.” In his concurring judgement, Kato, J.A declared voice voting “totally archaic” and observed that it did “..... not take into account the fact that some ladies have small voices which may be swallowed up by the strong and loud voices of a few vocal men; it does not also take into account that some members of Parliament may be impaired in their vocal systems or organs.”

It should be noted though that the Constitutional Court only based its decision on the mandatory nature of Article 89(1) as it relates to ascertaining the quorum of Parliament and the passage of legislation. The issue of accountability of legislators through the existence of a coherent voting record was neither raised by Counsel for the petitioner nor by Counsel for the Respondent. This observation is borne by the fact that after the judgment of court in this case, Parliament enacted further legislation validating the rules relating to voice voting. Yet, by going against the court decision, Parliament denied the citizens a legitimate instrument to hold their representatives accountable based on the existence of systematic voting records.

Secondly, it is only when voting by division lobby is used that each legislator is recorded on whether he voted yes or no like in the case of Butamira Forest Reserve. The table below shows the issues that required secret voting or voting by division lobby during the 6<sup>th</sup> Parliament and the 7<sup>th</sup> Parliament to date.

<sup>34</sup> Rule 77 reads the same as 76 of the Interim Rules of Procedure of the 7<sup>th</sup> Parliament of June 2001.

<sup>35</sup> Constitutional Petition No. 3 of 1999.

<sup>36</sup> Act No. 2 of 1999

Table 2: Matrix of selected Motions passed during the 6<sup>th</sup> and 7<sup>th</sup> Parliament of Uganda

Date	Motion	Voting	No of Votes	In support	Against	Result
2 <sup>nd</sup> of March 1999 (issue 25) -5 <sup>th</sup> April 1999).	Motion for a resolution to censure Hon. Sam kutesa was moved by Hon. Dombó (Bunyole county).	On 4 <sup>th</sup> March a vote of censure was passed and the voting was done by secret ballot.	247	152	94	Positive
18 <sup>th</sup> Feb 1998 (issue 17)	<ul style="list-style-type: none"> <li>Motion on the debate to vote by secret ballot for the censure of Jim Muhwezi.</li> <li>The motion for the resolution of parliament seeking to pass a vote of censure against Hon. Jim Katugugo Muhwezi Minister of State for Primary Education. The mover of this motion was Hon. Nathan Byanyima</li> </ul>	<ul style="list-style-type: none"> <li>On 3<sup>rd</sup> March 1998 voting was done by division lobby. The Ayes'' were in support of the secret ballot and the Nays were opposed.</li> <li>Voting was done by secret ballot.</li> </ul>	233	165	65	Positive
(Issue 17) 3 <sup>rd</sup> March 1998-30 <sup>th</sup> April 1998)	This motion was passed on 28 <sup>th</sup> April 1998. Resolution of Parliament to vary the number of ministers under article 113(2) and 114(3) of the constitution This motion was moved by H.E Dr. Specioza Wandira Kazibwe. The resolution was seeking to increase the number of cabinet ministers	Division lobby.	157	69	79	Negative
1 <sup>st</sup> November 2001	Selecting a team of nine Ugandans to represent Uganda in the East African legislative Assembly at Arusha	Secret ballot				
1 <sup>st</sup> Nov 2001	Motion for a resolution of parliament under article 179(1) (a) of the constitution, providing for the alteration of boundaries of the districts.					
9 <sup>th</sup> July 2001	Consideration and approval of the presidential nominee for the post of Vice president. This motion was moved by Hon. James Wapakhabulo (Mbale Municipality) concerning the approval of the appointment of the vice President. According to Article 108(2) of the constitution, this house approved the appointment of Dr. Specioza Wandira Kazibwe to the office of the vice president and was seconded by the woman representative for Kitgum district	Secret ballot.	262	229	30	Positive
4 <sup>th</sup> April 2002	Reading of the National Planning Authority Bill 2002. According to clause 8(2) The Decentralised Planning System shall be regulated by statutory instrument issued by the minister. The motion was moved by Hon. Aggrey Awori that "The secretariat shall be headed by the Executive Director, who shall be appointed by the president with approval of parliament. This led to voting.	Show of hands.		40	47	Negative
21 <sup>st</sup> March 2002	Report of the committee on Natural Resources on the petition presented by Hon. Frank Nabwiso (Mp. Kagoma) on Butamira Forest Reserve.	Division Lobby	293	Ayes 86	Noes 32	Positive (with abstentions)
11 <sup>th</sup> Dec.2003	Rules for the Election of members to the Pan-African parliament were passed on 11 <sup>th</sup> Dec. 2003 and voting was done on 18 <sup>th</sup> Dec. 2003	Secret ballot				



Thirdly, parliamentary records clearly show a direct relationship between voting procedure and parliamentary authority and independence. The analysis of the voting record presented in table 2 above shows that in cases where the issues to be voted on are highly politically controversial, Members prefer voting by secret ballot. There is also a consistent pattern characterised by preferences to vote by secret ballot when a particular issue is one where the Office of the President is involved or where the issue involves voting on legislators themselves. In such cases, MPs seem to fear to stand up to be counted. This was the case with the motion to increase the number of cabinet ministers, the motions to censure Minister Jim Muhwezi Katugugu, Minister Sam Kutesa and election of representatives to the East African Legislative Assembly (EALA), and the legislative body established under the Treaty Establishing the East African Community (EAC).<sup>37</sup>

The above pattern of voting by secret ballot is also becoming evident in the ongoing discussions of the Government White Paper<sup>38</sup> containing proposals to amend the 1995 Constitution. There are already strong expressions from various legislators

that voting on certain proposals to amend the Constitution should be done by secret ballot. All this points to the fact that the current Parliament of Uganda is not adequately independent, and that legislators are more influenced by the circumstances within which they discharge their representation roles rather than being largely influenced by the views and interests of their electorate.

#### 4.1.2. Regularity of elections and term lengths of Members of Parliament

The requirement for regular elections for legislators is one of the important mechanisms for ensuring that legislators are accountable to the electorate. In principle, after every five years,<sup>39</sup> voters have a choice to determine whether MPs should be re-elected or not based on their performance record. The Constitution and The Parliamentary Elections Act<sup>40</sup> provides additional mechanisms for voters to hold their legislators accountable. First, the Constitution and the Parliamentary Act enumerates circumstances where the tenure of office of a legislator can lapse before the expiry of term of office.

**Box 4: 83.** (1) A member of parliament shall vacate his or her seat in parliament—

- (a) If he or she resigns his or her office in writing signed by him or her and addressed to the speaker;
- (b) If such circumstances arise that if that person were not a member of parliament would cause that person to be disqualified for election as a member of parliament under article 80 of this constitution;
- (c) Subject to provisions of this constitution, upon dissolution of parliament;
- (d) If that person is absent from fifteen sittings of parliament without permission in writing of the speaker during any period when parliament is continuously meeting and is unable to offer satisfactory explanation to the relevant parliamentary committee for his or her absence;
- (e) If that person is found guilty by the appropriate tribunal of violation of the leadership Code of Conduct and the punishment imposed is or includes the vacation of the office of a member of parliament;
- (f) If recalled by the electorate in his or her constituency in accordance with this constitution;
- (g) If that person leaves the political party for which he or she stood as a candidate for election to parliament to join another party or to remain in parliament as an independent Member;
- (h) If, having been elected to parliament as an independent candidate, that person joins a political party;
- (i) if that person is appointed a public officer.

<sup>37</sup> See Treaty Establishing the East African Community, Arusha, 1999. Chapter 9.

<sup>38</sup> Republic of Uganda, 2004. Government White Paper on the Report of the Commission of Inquiry (Constitutional Review) and Government Proposals not Addressed by the Report of the Commission of Inquiry (Constitutional Review).

<sup>39</sup> Article 78 provides for the representation of the following interest groups: women, army, youths, workers, persons with disabilities and other groups as parliament may determine.

<sup>40</sup> Act No. 8 of 2001. Section (6).



It should however be noted that while the provisions of Article 83 of the Constitution and section (6) of the Act do not specifically deal with issues of environmental representation, they provide avenues for the voters to demand effective representation from their elected representatives. One of such avenues is the right of recall as enshrined in Articles 84 and 83(1)(f).

Article 84(i) provides that:

“Subject to the provisions of this article, the electorate of any constituency and of any interest group referred to in Article 78 of this Constitution<sup>41</sup> have the right to recall their Member of Parliament before the expiry of the term of Parliament.”

The Constitution sets out three grounds upon which a Member of Parliament can be recalled by the constituency. First, such a person could be removed on the grounds of physical or mental incapacity rendering that member incapable of performing the functions of the office. Secondly, a Member of Parliament can be removed by the electorate on the grounds of misconduct or misbehaviour likely to bring hatred, ridicule, contempt or disrepute to the office. Finally, a person may be recalled on the grounds that such person has persistently deserted the electorate without reasonable cause.

A number of observations may be made as to the implications of the above provisions with respect to effective representation of environmental issues in Uganda. First, the grounds set out in the constitutional have more to do with personality of character rather than effectiveness of representation on any particular matters. Even where the Constitution refers to incapacity to perform the functions of a Member of Parliament, such incapacity should be as a result of physical or mental incapacity. It therefore follows that in cases of lack of representation of particular interests such as environmental interests, the constituency does not have an effective remedy as may be grounded in the foregoing constitutional provisions.

Secondly, Article 84(6) enjoins Parliament to enact a law prescribing the procedure to be followed for the recall of a Member of Parliament.<sup>42</sup> This procedure has now been provided for under section (7) of the Parliamentary Elections Act. The recall of a member of Parliament is to be “initiated by a petition in writing setting out the grounds relied on and signed by at least two-thirds of the registered voters of the constituency or of the special interest group referred to in sub-section (1) of this section and shall be delivered to the Speaker. Although there haven’t been any cases of recall, it is clear that the requirement for two-thirds of registered voters in support of the petition may be out of reach for poor rural voters who may want to invoke their right of recall. This is partly because the Act does not provide for any financial or other forms of assistance to the electorate who may want to invoke the recall provisions.

<sup>41</sup> Article 78 provides for the representation of the following interest groups: women, army, youth, workers, persons with disabilities and other groups as Parliament may determine.

<sup>42</sup> See also Rule 85 of the Rules of Procedure of the Parliament of Uganda (Undated).

Finally, there are several other factors relating to legislator-voter interactions that may affect the level and nature of accountability by legislators to their electorate. Most of these factors relate to whether legislators are required to have offices in their constituencies, whether they are given funds to service their constituencies and the forms of communication mechanisms available to enable regular communication between voters and their legislators.

Legislators who have physical offices in their constituencies are often considered more likely to interact with their constituency members than those who may not have such offices. Ugandan legislators are not required to have such offices and a sample of a cross-section of various MPs showed that many of them did not have such offices. In fact, even MP Frank Nabwiso meets his electorate from his residence. The voter respondents who were interviewed during this study indicated that this is one of the reasons they like the MP.

More important still is the fact that the funds received by the MPs are not sufficient to enable them rent office space, later on hire staff for the office. Table 3 shows the distribution of funds available to the legislators of the 7<sup>th</sup> Parliament of Uganda at the time of writing this paper.<sup>43</sup>

Table 3: Emoluments of Members of Parliament as at September, 2002.		
Item	Amount in Uganda Shillings	Equivalent in USD
Monthly Salary	1,461,000	\$849
Gratuity	30% of annual salary	
Mileage	1,042/km on murrum & 868/km on tarmac	\$0.6/km or \$0.5
Subsistence allowance	104,000/day when Parliament is sitting	\$60/day
Constituency mobilization allowance (MPs other than Members of special interest groups)	150,000/month	\$87/month
Members representing special interest groups	200,000/month	\$116/month
Sitting allowance for committee meetings	10,000 per sitting	\$5.8/sitting
Government contribution towards each member's transport facilitation scheme	20,000,000	\$11,628
Medical allowance	2,400,000 per year	\$1395

**Source:** Motion for a Resolution of Parliament to Determine the Emoluments to be paid to the Speaker, Deputy Speaker and Members of Parliament, 7<sup>th</sup> Parliament of Uganda, October 30, 2001; Resolution of Parliament on Determination of Members' Emoluments Made in Accordance with Clause (8) of Article 82 and Clause (1) of Article 85 of the Constitution, 7<sup>th</sup> Parliament of Uganda, September 4, 2002

<sup>43</sup> See article 85 of the Constitution; Motion for a Resolution of Parliament to Determine the Emoluments to be paid to the Speaker, Deputy Speaker and Members of Parliament, 7<sup>th</sup> Parliament of Uganda, October 30, 2001; Resolution of Parliament on Determination of Members' Emoluments Made in Accordance with Clause (8) of Article 82 and Clause (1) of Article 85 of the Constitution, 7<sup>th</sup> Parliament of Uganda, September 4, 2002.

## 4.2. Autonomy

The second factor affecting legislative representation including representation of environmental interests of voters relates to autonomy. Autonomy can be considered in two ways; first, is the autonomy of individual legislators; second is the autonomy of the legislature as a collective entity responsible for law making and checking on the excesses of the Executive branch of government. However, since environmental issues relate directly to the voters in a given constituency, it is the autonomy of the individual legislators that often will determine the extent to which they will voice out the concerns of their voters both in the House and other policy fora. In this section we examine the exiting laws and analyse how they promote or undermine the autonomy of members of Parliament and the entire legislature and the implications of these laws for effective representation of environmental interests of voters.

The starting point is to examine the laws relating to the autonomy of the legislature. Key legal issues relating to the legislature include the power of parliamentary standing committees or sessional committees, the method of elections to Parliament, legislative powers of parliament, powers relating to presentation of bills and the laws relating to dissolution of Parliament, etc.

### 4.2.1. Powers of parliamentary committees

Effective legislative representation with respect to the environment or any other matter that directly affect voters in each constituency is dependent on the autonomy of committees of Parliament. The critical question is whether Parliamentary Committees have adequate powers to address concerns addressed to them by voters either as individuals or as groups. And perhaps, powerful committee structures are one of the defining features of the Ugandan Legislature. The powers of the legislature to appoint standing committees are derived from Article 90 of the Constitution.

The Constitution gives committees of Parliament extensive powers to enable them discharge their functions. Article 90(4) in relevant parts provides that in the exercise of their functions under this article, committees of Parliament:

- ✦✧ May call any Minister or any person holding public office and private individuals to submit memoranda or appear before them to give evidence;
- ✦✧ Shall have the powers of the High Court for (i) enforcing the attendance of witnesses; (ii) compelling the production of documents; and (iii) issuing a commission or request to examine witnesses abroad”.

Committee records for the 6<sup>th</sup> and 7<sup>th</sup> Parliament attest to the fact that the committees have used their powers under this Article to compel senior government officials to appear before them and give evidence on matters under consideration in the respective committees. Indeed, in the instant case, the Parliamentary Committee on Natural Resources played a leading role in the handling of the petition lodged in parliament on behalf of the tree farmers in Butamira Forest Reserve. All the interested parties including the farmers themselves were given an audience to present their case to the Committee. The Committee invoked its powers to summon the Minister of Water, Lands and Environment, the Executive Director of the National Environment Management Authority and other senior officers from relevant Government Departments.

#### 4.2.2. Method of election of Members of Parliament

One of the key factors that may affect the autonomy of a legislature is the way legislators are chosen or elected to join the House. This is important because it affects the way some legislators may vote or debate on particular issues. In the case of Uganda, it is important to observe that at the moment, the legislature is a complex web of different interests and ideologies. While the majority of the MPs are directly elected, in practice, under the principle of individual merit as enshrined in the Constitution, many of them profess the movement ideology while others portray themselves as political party sympathisers. There are special interest groups of women, youth, workers, the army and the disabled – all of them representing competing ideological interests.

The challenge with the current composition of Uganda's legislature is that it is dominated by special interest groups who owe their election to parliament to the current government because of its affirmative action on representation. Such Members of Parliament find it difficult to vote against an issue where the executive has vested interests because by doing so, they would appear ungrateful. The emergency of "caucuses" in the 6<sup>th</sup> and 7<sup>th</sup> Parliament and the continuous reference of contentious matters to the Movement Caucus by the Executive is one of the indications that the structure of the legislature can be used to undermine its autonomy. Even in the instant case, Government made attempts to mobilize support against the recommendations of the Parliamentary Committee based on ideological inclination. Members of Parliament who were considered to be ideologically leaning to the Movement system were expected to support the Government position.

Consequently, although the representation of special interest groups was designed to enfranchise disadvantaged members of the Ugandan society, the same groups can be used to disenfranchise some sections of the electorate as happened in the case of Butamira Forest Pressure Group. It is therefore tenable to argue that the Kagoma Sub-County Member of Parliament represents an exceptional case. Hon. Nabwiso is a "confessed" member of the National Resistance Movement, the precursor to the Movement system currently in power. Yet, in his struggle to represent the case of his electorate, many of his Parliament colleagues turned against him, and the Government machinery started viewing him as an opposition element simply because he did not align himself to the Government position.

#### 4.3. Authority

The concept of authority has its origins in theology and has been elaborated through biblical writings. In its theological context, authority means the delegated right to rule or lead and this delegation is by God's commands.<sup>44</sup> Leading scholars in the 17<sup>th</sup> and 18<sup>th</sup> century including John Locke (1632-1704) and Jean Jacques Rousseau (1712-1778) argued that the basis of government was the social contract that gave rulers the power to enact laws to govern society while the people had the liberty to participate in the affairs of Government. In his Second Treatise on Government, Locke elaborated on representation as a system through which citizens and civil society could be linked to the law making authorities.

However, in modern governments, the authority of the legislature to provide such a linkage can be severely impaired by a number of factors. This section identifies the relevant constitutional legal provisions that secure the authority of the legislature and the legislators to effectively represent the concerns of their voters.

<sup>44</sup> See for example Deuteronomy, Chapter 6, verse 7-9.

### 4.3.1. Private Members Bills

The legal authority of legislators to present private members bills is implicit in Article 94(4)(i) of the Constitution. Among other things, the article provides that the rules of procedure of Parliament shall include the provision of a right of a Member of Parliament to move a private member's bill. This right is enshrined in rule 88 of the Rules of Procedure of Parliament. Rule 88 guarantees the right of a member to present a private member's bill, the obligation on the relevant Government Department to facilitate such a member and an obligation on the Attorney General to provide such a member the necessary professional assistance in drafting the bill.

During the 6<sup>th</sup> and 7<sup>th</sup> Parliament, there have been attempts by individuals or groups of MPs to introduce private members bills. For example, during 2001 to 2004, attempts were made by individual or groups of legislators to introduce private member's bills for legislation on the budget, minimum wage and access to information. In all these cases, there have been deliberate government efforts to take over these legislative initiatives than allow the process of private member's bill to proceed. In addition to the Government attitudes over this process, individual legislators are also constrained by lack of practical skills in legislative drafting as well as the resources needed to invest in drafting legislation.

### 4.3.2. Parliamentary Immunity and Privileges

The Constitution enjoins Parliament to enact legislation granting immunities and privileges to Members of Parliament and any other person participating or assisting in or acting in connection with or reporting the proceedings of Parliament or any of its committees.<sup>45</sup> The Parliament (Powers and Privileges) Act<sup>46</sup> was enacted in 1995 to implement the provisions of Article 97. The Act provides that "no civil or criminal proceedings may be instituted against any member for words spoken before, or written in a report to, Parliament or to a committee, or by reason of any matter or thing brought by the member in Parliament or a committee by a petition, bill, motion or otherwise."<sup>47</sup> The Act further provides for the immunity of Members of Parliament from arrest for civil debt or from being served in respect of any judicial process during parliamentary sessions.<sup>48</sup>

## 4.4. Personal Attributes

The personal convictions and attributes of the legislator are important determinants of the roles that legislators can play in ensuring effective representation. It is often relevant to establish whether the legislator is motivated by the "job" or some personal motivations of excellence, ambition and responsibility.

The Member of Parliament for Kagoma Sub-County Frank Nabwiso traces his personal interest in environmental matters to his work in family planning and population programmes in Africa during the late 1970s and the early 1980s. During the period 1977-1986, he participated in the preparation of Kenya's Sessional Paper No. 10 which was launched as Kenya's blue print for social economic development. The sessional paper among other things underscored the importance of balancing population growth and Kenya's environment and natural resources base.

<sup>45</sup> Article 97.

<sup>46</sup> Cap 258, Laws of Uganda.

<sup>47</sup> Ibid, section 2.

<sup>48</sup> Ibid, sections 3 & 4.



In 1980, Frank Nabwiso was tasked together with a team of Kenyan Government officials to prepare the then President Moi's speech on family planning to be delivered to Africa's Presidents of the Organization of Islamic Conference. Accordingly, he utilized the same opportunity to ensure that the speech highlighted the relationship between population growth and environmental sustainability.

MP Frank Nabwiso prides himself as a man who has a long memory. When he returned to Uganda in 1986 after the National Resistance Movement took over power, he settled in his area of Kagoma. Apparently, he was quickly struck by the extent of the environmental problems in the sub-county largely on the account of the fact that the forest cover on the undulating hills which are the main physical features of the area had been completely depleted. Indeed, a cross-section of voter respondents who were interviewed during this study attested to MP Nabwiso's interest in environmental issues. They were always able to point out the stark differences between MP Nabwiso and his predecessor whom they argued had no particular commitment to environmental issues.

MP Nabwiso further attributes his strong personal motivations in environment issues to his education background. He holds a Doctorate Degree (PhD) in Rural Development. He contends that "the moment you start discussing rural development [in Africa], you can't miss out talking about the environment." He therefore sees his mission as the MP for Kagoma Constituency as that of creating civic consciousness among his electorate about sustainable development. He approvingly cites the work of Paul Freiri in the *Pedagogue of the Oppressed* where he states that "*unless the fellow you want to change is adequately conscientized, you will not introduce significant social change.*" Admittedly, MP Nabwiso's personal convictions are evident both in his actions as well as in his words. He talks passionately of the legacy he wants to leave behind as a Member of Parliament and at one point he declared "I am dead serious about building the capacity of my electorate and helping people understand the importance of the environment."<sup>49</sup>

But did the issue of the environment provide any campaign platform for his election in 2001. MP Nabwiso has no doubt that it was his pledge to assist the Members of Butamira Pressure Group in securing their tree farming rights in Butamira Forest that gave him victory. This view was supported by the Kagoma Constituency voter respondents who were interviewed during this study. The respondents were emphatic that the previous MP had not assisted them in their struggles over Butamira Forest Reserve and they were convinced by the campaign agenda of MP Nabwiso.<sup>50</sup>

MP Nabwiso singles out two specific factors that largely define and shape the personal attributes of a Member of Parliament. First, the legislator has to make a choice between adhering to the "*knowledge of scientific truthfulness principle or whether he should follow political royalties.*" He argues that the challenge for many legislators is whether they can make that determination that their representation mandates must be guided by what is correct for country and the constituency rather than what suits their "political godfathers."

Indeed, it is tenable to argue that when the issue of Butamira Forest Reserve came up, legislators kept on shifting positions.

<sup>49</sup> Personal conversation between the MP and the authors.

<sup>50</sup> Personal notes from the meeting with selected voters in Kagoma Constituency held on May 15, 2004.

Judging from this practice, it becomes clear that the final decision was based on where one had political royalty rather than what was truthful and equitable. This argument could be borne by the fact that ever since the green light was given to award a land use permit to Kakira Sugar Works, none of the commitments that were made by the Government [save the compensation one] has ever been fulfilled. The second fact that defines the personal attributes of a legislator is whether the particular legislator has role models. Nabwiso argues that in a number of cases, MPs attributes are defined and shaped by the role models that they chose.

However, experiences of various legislators both in the 6<sup>th</sup> and 7<sup>th</sup> Parliament show that the attributes of legislators are shaped and influenced by many other factors. In particular, the nature of the political environment characterized by a strong Executive, a weak quasi opposition and political patronage nursed through political rewards make it difficult to determine the actual attributes of individual legislators. In any case, effective representation must also depend on the level of civic competence possessed by the voters. Civil competence and consciousness is essential for the electorate to demand accountability and effective performance of their legislators.

## **5. The Constitutional Reform Process and Political Transition: Challenges for Effective Representation**

Since the coming into force of the 1995 Constitution, we have seen a progressive transformation and growth of the Ugandan Parliament and Ugandan legislators. Continuously, Parliament has made every attempt to assert its authority. For example, the formation of the Uganda Young Parliamentarians Association (UYPA) in the Sixth Parliament and the Parliamentary Advocacy Forum (PAFO) in the 7<sup>th</sup> Parliament were all attempts by legislators to insulate themselves from the domination of the executive arm of government. The biggest challenge facing the legislature in Uganda at the moment is the potential implications of the ongoing political transition and constitutional review processes.<sup>51</sup> A number of proposals have been made by the Executive that could significantly undermine the authority and autonomy of the legislature which in turn would affect the representation roles of Members of Parliament.

The first and perhaps important of these proposals is granting of powers to the President to dissolve Parliament in case of a deadlock. Article 96 of the Constitution provides that "Parliament shall stand dissolved upon the expiration of its term as prescribed by Article 77 of this Constitution."<sup>52</sup> In its proposals to amend the 1995 Constitution, Government proposes that the President should have powers to dissolve Parliament in the case of a deadlock.<sup>53</sup> According to the proposal, "where the President and Parliament disagree on any matter which has been declared to be an issue of confidence under clause (1) and the matter cannot be resolved, the President may, by proclamation, dissolve Parliament."

<sup>51</sup> See also Republic of Uganda, 2003. Report of the Commission of Inquiry (Constitutional Review): Findings and Recommendations. December 2003. Kampala. Also referred to as Report of the Constitutional Review Commission (CRC).

<sup>52</sup> Article 77 establishes the Parliament of Uganda and provides for the duration of its term and the circumstances in which that term can be extended.

<sup>53</sup> See Chapter 4 of the Government White Paper. *Supra*, note.

Although by dissolving the Parliament, the Office of the President is also deemed vacant, the President and Cabinet shall continue in existence until a new president assumes office after elections. Under the proposal, the President and the Cabinet remain in office as a caretaker Government during the period when elections are being organized.

The implication of these proposals is that the President will exercise undue influence on the conduct of the legislature and the individual legislators. The proposal gives the President advantage over the legislature and undermines the legislature's role in exercising oversight over executive functions. Increasingly, environmental issues are becoming politically controversial. For example, the Butamira case and many others including the proposed degazettement of Pian Upe Game Reserve in Karamoja have significant political overtones. The consequence of a potential dissolution of Parliament based on such politically contentious environmental issues could adversely affect the autonomy and authority of Parliamentarians to bring such issues to Parliament even when they directly affect their constituencies.

Another proposal that will significantly affect the autonomy of the legislator and individual legislators is the appointment of Ministers from Members of Parliament. The Constitutional Review Commission proposed in its report that a Member of Parliament who accepts the office of Minister should vacate his or her seat in Parliament. Government has rejected this proposal and proposed that the status quo remains. In the past, the performance of individual legislators has been influenced by the likelihood of their appointment to ministerial positions by the executive. Retaining this position could potentially impair the ability of legislators to champion the environmental interests of their electorate if the issues in question are deemed politically controversial by the Executive.

Finally, the Government proposal to vest "limited legislative powers" in the President will further undermine the representation roles of the legislature. As we have argued, the power to legislate is one of the key instruments used by the legislature and legislators to bring issues of interest of their constituencies into the public policy arena. The potential usurpation of legislative role of the legislature by the executive being proposed by Government is a major onslaught on the independence of the legislature and the principle of separation of powers.

## **6. Strategic Interventions and Policy Recommendations**

### **6.1. Establish a Policy Forum on Environmental Representation**

Effective representation of constituency environmental issues is determined by the degree of autonomy, authority and systems of accountability of any legislature. The ongoing constitutional reform process and the proposals submitted by Government have potential implications on effectiveness of the legislature as a whole and individual legislators in particular. In order to take advantage of the ongoing processes to consolidate and strengthen the environmental representation roles of legislators, there is need to establish a policy forum to engage Members of Parliament in a continuous dialogue on the potential implications of the proposals being debated on the floor of Parliament.

## **6.2. Strengthen the Relevant Committees of Parliament**

The structure of parliamentary committees is one of the key institutions that create the mechanism for effective voter representation. As demonstrated in the case of Butamira Forest Reserve, the Environment and Natural Resources Committee provided an invaluable avenue for the electorate in Kagoma Constituency to raise their concerns relating to their livelihoods and environmental conservation. In spite of their exemplary performance in handling the Butamira, the Committee was constrained by lack of more analytical information and financial resources to enable them undertake thorough investigations. These committees need to be strengthened by provision of analytical information, adequate financial resources and a continuous appraisal of their performance through regular independent audits.

## **6.3. Establish a transparent and accountable voting system in Parliament**

The existence of a clear record of voting by any legislator is a paramount pre-requisite for legislator accountability. The current multiple voting systems in Uganda's Parliament does not give the electorate an opportunity to determine how their representative voted on a particular environmental issue. The ongoing debate on whether voting on the proposals to amend the constitution should be done by secret ballot or open voting would provide an opportunity to address this issue with the purpose of strengthening legislator accountability. It is recommended that Parliament adopts an opening voting system, where legislators are recorded on which side of any environmental issue they voted and the voting record should be accessible to the electorate.

## **6.4. Strengthen legislator-Civil Society Partnership**

Environmental issues are best presented in Parliament if there is a strong partnership between legislators and civil society. The partnership between civil society and the Kogoma County MP in the case of Butamira Forest Reserve demonstrates what such partnership can achieve for voiceless voters. Activities to strengthen this partnership may range from joint policy dialogues, provision of research and analytical information, joint public hearings on contentious environmental issues and a civil society managed reward system for best performing legislators.

## **6.5. Operationalize constitutional provisions on recall of legislators**

The constitutional provisions on recall of legislators provide an important accountability mechanism for environmental representation. However, the current provisions are tedious and involve a complicated process that makes it difficult to be utilized by the electorate. Operationalizing these provisions entails at least two specific actions. First, the legislature should streamline the recall procedure including making provision for financial and technical assistance to constituencies that would like to recall their legislators on account of poor representation. Secondly, there is need to invest in building the demand for legislator accountability by focusing on civic education programmes to cover environmental issues and to building civic competence and civic consciousness among the electorate.

## 6.6. Strengthen Regional Parliamentary Bodies

Environmental issues that affect rural constituencies in Uganda are not only becoming politically contentious, but most of them are also of a transboundary nature. Issues such as water utilization, movement of wild animal species, environmental crime, application of chemicals and pollution from industrial projects could have significant transboundary impacts. Tackling these issues could therefore benefit from regional parliamentary initiatives and legislator solidarity. Parliamentary bodies such as the East African Legislative Assembly, the IGAD Parliamentary Union and the African Parliament would provide important avenues for supporting individual legislators who may be isolated because of their stand and particular environmental issues that affect their electorate. Civil society organizations working in the field of environment should take the lead by organizing regional parliamentary forums on critical environmental issues to keep the issue of environmental representation on the agenda of these bodies.

## 7. Conclusion

In this paper, we have analyzed the history of legislative representation in Uganda, with respect to the environmental interests of voters. We have noted that throughout the 4 decades of independence, there have not been cases where legislators have coherently articulated the environmental interests of their voters, save in the recent case of Butamira Forest Reserve. This is in spite of the fact that environmental resources form the basic foundation for the livelihoods of many communities in Uganda.

The study has comprehensively reviewed the existing legal framework and identified key incentives and disincentives for members of Parliament to discharge their representation responsibilities with respect to environmental issues that affect their electorate. In conclusion, it is important to emphasize that the intricate relationship between rural livelihoods and the integrity of ecological systems should be an important factor in legislative representation. However, achieving effective representation requires specific interventions to strengthen both legislative bodies as well as individual legislators. Such interventions should include specific legislative and programmatic actions to secure the autonomy and authority of the legislature, strengthen accountability mechanisms and inspire individual legislators to look at environmental representation as a calling.



## 8. References:

1. Ake Claude (1991), "Rethinking African Democracy", in, *Journal of Democracy*, Winter 1991, Volume 2, Number 1.
2. Alan Rosenthal (1998), *The Doctrine of Representative Democracy: Process, Participation and Power in State Legislators*. Washington, DC: CQ Press, 1998.
3. Dahl A. Robert, (1998), "On Democracy", Yale University Press, New Haven and London
4. Horowitz Donald. , et al, "Presidents vs. Parliaments", in, *Journal of Democracy*, Fall 1990, Volume 1, Number 4.
5. Makara Sabiti. , et al (eds.) (2003), "Voting for Democracy in Uganda: Issues in recent elections", LDC Publishers Printing Press, Kampala, Uganda.
6. Republic of Uganda, *Interim Rules of Procedure for the 7<sup>th</sup> Parliament*. 25<sup>th</sup> June 2001. (Unpublished).
7. Kanyeihamba G.W., (2002), *Constitutional and Political History of Uganda: From 1894 to the Present*. Centenary Publishing House Ltd. June 2002. Kampala.
8. Okoth-Ogendo, H.W.O and Tumushabe, G.W., (eds.), (1991), *Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa*. ACTS Press, Nairobi.
9. Republic of Uganda, (1993), *Report of the Uganda Constitutional Commission: Analysis and Recommendations*.
10. Republic of Uganda, (2001), *Final Report of the Parliamentary Select Committee on Forestry Affairs*. May 2001. Kampala.
11. Republic of Uganda, (2002), *2<sup>nd</sup> Sitting of the 2<sup>nd</sup> Meeting of the 1<sup>st</sup> Session of the 7<sup>th</sup> Parliament of Uganda*. Order Paper.
12. Republic of Uganda, (2003), *Report of the Commission of Inquiry (Constitutional Review): Findings and Recommendations*. December 2003. Kampala. Also referred to as Report of the Constitutional Review Commission (CRC).
13. Republic of Uganda, (2004), *Government White Paper on the Report of the Commission of Inquiry (Constitutional Review) and Government Proposals not Addressed by the Report of the Commission of Inquiry (Constitutional Review)*.
14. Republic of Uganda: *Environment and Development: Listening to and Learning from the Poor*. Policy Briefing Paper No.5. Ministry of Finance, Planning and Economic Development / Oxfam GB in Uganda. Kampala. (Undated).

15. Treaty Establishing the East African Community, Arusha, 1999.
16. Tumushabe G. W., et al (2001). Sustainably Utilizing our Natural Heritage: Legal Implications of the Proposed Degazettment of Butamira Forest Reserve. ACODE Policy Research Series, No.4, 2001. ACODE. Kampala.
17. Tumushabe G.W., et al (2002). Consolidating Environmental Democracy in Uganda Through Access to Justice, information and Participation. ACODE Policy Research Series, No.5, 2002. Kampala.

## 9. Publications in these series

- **Tumushabe G.W., Bainomugisha A., and Muhwezi W., (2000)**, *Towards Strategic Engagement: Government NGO Relations and the Quest for NGO Law Reform in Uganda*, ACODE Policy Research Series, No. 1, 2000.
- **Kameri-Mbote P., (2000)**, *The Operation Environment and Constraints for NGOs in Kenya: Strategies for Good Policy and Practice*, ACODE Policy Research Series, No.2, 2000.
- **Tumushabe G.W., (2001)**, *The precautionary Principle, Biotechnology and Environmental Litigation: Complexities in Litigating New and Emerging Environmental problems*, ACODE Policy Research Series, No.3, 2001.
- **Tumushabe G.W., Mwebaza R., and Naluwairo R., (2001)**, *Sustainably Utilizing our National Heritage: Legal Implications of the proposed Degazement of Butamira Forest Reserve*, ACODE Policy Research Series, No 4,2001
- **Tumushabe G.W., Bainomugisha A., et al: (2003)**, *Sustainable Development Beyond Rio + 10- Consolidating Environmental Democracy in Uganda Through Access to Justice, Information and Participation*. ACODE Policy Research Series, No. 5,2003
- **Mugenyi O., Naluwairo. R., (2003)**, *Uganda's Access to the European Union Agricultural Market: Challenges and Opportunities*, ACODE policy Research Series, No.6, 2003.
- **Mugenyi O., Nuwamanya D., (2003)**, *Democratizing EPA Negotiations: Challenges for Enhancing the role of Non State Actors*, ACODE Policy Research Series, No 7. 2003.
- **Patricia Kameri-Mbote., (2004)**, *Towards a Liability and Redress System under the Cartagena Protocol on Biosafety: A Review of the Kenya National Legal System*, ACODE Policy Research Series, No 8, 2004.
- **Kabudi P.J., (2004)**, *Liability and Redress for Damage Caused by the Transboundary Movement of Living Modified Organisms (LMOs) under the Cartagena Protocol on Biosafety: A Review of Tanzania Legal System*, ACODE Policy Research Series No. 9, 2004. ACODE - Kampala

How to access ACODE Publications:

Write to Library Assistant  
 ACODE Library of Law and Public Policy  
 Plot 96, Kanjokya Street, Kamwokya  
 P.O.Box 29836, Kampala  
 Email: [library@acode-u-org](mailto:library@acode-u-org)

©ACODE

### Citation:

**Tumushabe G. W., Bainomugisha A., (2004)**, *Constitutional Reform and Environmental Legislative Representation in Uganda: A Case Study of Butamira Forest Reserve in Uganda*, ACODE Policy Research Series, No.10, 2004. ACODE-Kampala.



## ABOUT THE AUTHORS:

**Godber W. Tumushabe** is currently Executive Director and full-time public policy analyst with ACODE. He formerly worked with African Centre for Technology (ACTS) in Nairobi-Kenya as a Senior Research Fellow and Head of the Environmental Governance Programme. He has undertaken policy research and analysis in environmental governance in Eastern and Southern Africa and has significant understanding of global trade and environmental agreements and policy processes. He is co-editor (with Prof. Okoth-Ogendo) of "Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa" ACTS, 1999 and several other publications. Tumushabe holds a Masters Degree in Law (LLM) from Makerere University, Uganda.

**Arthur Bainomugisha** is a Research Fellow and Head of the Peace and Conflict Programme at the Advocates Coalition for Development and Environment (ACODE). Before joining ACODE, he worked as a Civil Society Fellow with the International Peace Academy (IPA), a New York based public policy research think tank. He has also worked with the Planning, Development and Rehabilitation Programme, Church of Uganda as a Management Information Systems Officer and Trainer in Peace building and Conflict Resolution. He has carried out several researches and contributed articles in a number of publications on peace, security and environmental governance. Bainomugisha holds a Masters Degree in Peace Studies from the University of Bradford (United Kingdom) and a Bachelor's Degree in Mass Communication from Makerere University, Uganda.



Advocates Coalition for Development and Environment  
Plot 96 Kanjokya street, Kamwokya.  
P.O. Box 29836, Kampala  
Tel: 256-41-530798

E-mail: [library@acode-u.org](mailto:library@acode-u.org), [acode@acode-u.org](mailto:acode@acode-u.org)  
Website: <http://www.acode-u.org>