

SAIIA OCCASIONAL PAPERS SERIES

Analysing key policy and governance issues
in Africa and beyond



LESSONS FROM CITIZEN ACTIVISM IN UGANDA: SAVING MABIRA FOREST

Bashir Twesigye

Number 7, July 2008

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The Governance and APRM Programme thanks Shaun de Waal, Dianna Games, John Gaunt, Rex Gibson, Barbara Ludman, Richard Steyn and Pat Tucker for editorial assistance on these papers.

SAIIA gratefully acknowledges the Royal Netherlands Embassy in South Africa, which has generously supported the Governance and APRM Programme and this series.

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Cover design and layout by Claire Waters

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Abstract

In August 2006, the Ugandan Cabinet proposed to give away 7,100 of the 30,000 hectares of Mabira forest to the Mehta group of companies – producers of sugar – to expand their sugar plantation acreage. This free land offer was expected to boost sugar production and increase government tax revenue and foreign exchange from exports. Mabira is the largest remaining natural forest in the vicinity of the capital, Kampala, and the major towns of Mukono and Jinja.

Government should not have been surprised at the forcefulness of the public outcry against the proposal. Developments in recent years had sensitised the country to environmental issues. New laws and new sentiments had generated a greater public awareness of the value of Uganda's eco-systems, particularly its forests. The Mabira issue became the right cause at the right time. Civil society organisations joined with religious and cultural institutions to stop a government that seemed defiantly determined to put commercial interests first. Public demonstrations and other campaigns gained wide support. Newspapers and other media became standard-bearers. It was seen as a galvanising civil cause, perhaps the largest ever in the history of independent Uganda.

Armed with law and policy put in place by the ruling National Resistance Movement (NRM) itself, encouraged by several years of sensitisation on conservation, and assisted by the able and organised stewardship of civil society, the citizenry successfully blocked the government. This successful campaign presents lessons and tactics in approaching the broader issue of governance through an environmental lens.

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Introduction

For more than a decade now, Uganda has embraced sustainable development as its overarching national policy goal.¹ The Environment and Natural Resources (ENR) sector – consisting of ministries and institutions responsible for water, wetlands, forestry, wildlife, fisheries and meteorology – has revitalised efforts to recover the environmental damage incurred during Uganda's turbulent post-independence history.² By 1986, when political calm began to return, much had been lost in the way of institutional and physical infrastructure in almost all sub-sectors of ENR. Efforts have since been made to rehabilitate environmental resources by introducing laws, policies and action plans to sensitise citizens to the conservation agenda.

This paper highlights the role played by citizens who, fighting for the right to a clean and healthy environment, launched a campaign to prevent Uganda's celebrated natural forest, the Mabira Central Forest Reserve, from being donated to a private sugar-growing and processing company. The term to describe the process of changing the legal status of a portion of land (usually from protected status to commercial use) is 'degazettement.' Land use is often 'gazetted' by publishing a notice in the Government Gazette; it is 'degazetted' when this status is altered.

The government's attempt to degazette a part of Mabira forest by donating it to companies within the Mehta Group raised fundamental issues of governance and accountability. Under question were the country's adherence to international commitments; its compliance with the Constitution, policy and legislation; its accountability to citizens; its respect for the rule of law; and the ability of national institutions to restrain the power of the executive.

To understand the Mabira campaign, it is essential to understand the economic and environmental context in Uganda, the growing body of environmental law and policy, and the practice of environmental litigation. All these factors combined to make Mabira a touchstone for the rights of citizens.

Forests, poverty and livelihoods

Uganda covers 236,040 km², of which about 15% is water, mainly in Lake Victoria. Forests cover 24% of the land area – having dwindled from 50% at independence in 1962. Natural forests constitute 30% and forest plantations 70%. Afforested land is currently disappearing at a rate of 70,000 – 200,000 ha a year, largely because of unlawful occupation.³ Population growth may hasten the process. By July 2005, the population of Uganda was estimated at 27,269,000 and growing at a rate of 3.3% a year.

Agriculture has long been the mainstay of the economy. Uganda straddles the equator and enjoys two rainy seasons, in March and September, when most cultivation takes place. Some 88% of the people live in rural areas and are subsistence producers.⁴ Major crops are bananas, beans, maize and cassava, mostly locally consumed. Farmers depend on good soils and favourable climate, and have made little or no adaptation to modern farming methods. Over the last decade, unpredictable weather patterns and climate change have taken a toll on production.⁵ Drought and floods, predominantly in the east and north respectively, have raised concerns of hunger and vulnerability especially in poor local households.

Industry and manufacturing are also declining after a power crisis in the country.⁶ This crisis is attributed to decreasing water levels in Lake Victoria, which feeds the Owen Falls Dam – the biggest hydropower station in Uganda at the source of the River Nile. Two main reasons are offered for Lake Victoria's declining water levels. First, it is alleged that Egypt, which has riparian rights, received additional water from Owen Falls. Second, an escalating environmental crisis has emerged after the destruction of catchment forest and the drying up of streams and smaller rivers feeding the lake.

Local communities are particularly affected by the destruction of forests and other natural resources, from which they derive food, energy, medicine and climate modification for agriculture. Consequently, the income gap between the rich and the poor remains high despite average GDP growth of 5% and a general decline in poverty levels. Notably, Ugandans living in absolute poverty decreased from 56% in 1992 to 35% in 2000, with a slight rise to 38% in 2004. Recent figures from the Uganda Bureau of Statistics show that absolute poverty levels have now reduced to 31%.

There is no doubt that Uganda's economy depends on its rich natural resources, including forests, to provide a social safety net for the poor and vulnerable, especially in times of scarcity. But according to the *State of Environment Report 2004/05*,⁷ there has for many years been a general decline in the well being of almost all sub-sectors of the environment. Forests continue to dwindle largely because of policy failures,⁸ weaknesses in implementing laws and regulations, and politically induced forest degazettement. A number of protected forests have been illegally depleted. This is likely to entrench poverty and vulnerability among forest-dependent communities.

The legal and policy framework for environmental conservation

In 1995, Uganda passed a new Constitution, widely hailed in the country and beyond as progressive. It defined a clean, healthy environment as a fundamental human right, making Uganda one of the first African countries to elevate environmental management to a constitutional plane.⁹ Policies have been set out or are in the making dealing with Uganda's approach to water, soils, bio-safety, forestry, wildlife, wetlands and land-use. Laws have been enacted in some instances.

All are evolving in terms of a conceptually agreed environmental framework under the National Environment Act. The Act outlines principles which include: ensuring an environment adequate for the health and well-being of the people; public participation in policy and legal development; cross-generational equity;¹⁰ preserving biological diversity; ensuring optimal benefits without undermining the ability of the natural resource to reproduce; and requiring prior environmental assessments of projects which may affect the environment or natural resources.¹¹ Other principles are to promote environmental awareness; ensure that the polluter bears the true costs of pollution; and encourage international cooperation in environmental matters.

Institutions such as the Uganda Wildlife Authority, National Forestry Authority, Wetlands Inspection Division and the Fisheries Resources Departments were set up to manage specific environmental resources. The National Environment Management Authority (NEMA) oversees it all, setting standards and ensuring coordination.

Despite these interventions at policy, legislative and institutional levels, escalating degradation of the environment has not been halted. National State of Environment reports, produced by NEMA and released after two years, consistently report increasing levels of degradation in almost all sub-sectors. This is generally attributed to lack of political will to observe existing laws and policies, and to poor funding for conservation-related functions. Government institutions therefore perform patchily, depending on resources and political support.

Growing environmental awareness

An underlying principle in the National Environment Act is that all people shall have access to environmental information. The Act encourages maximum public participation in formulating policies, plans and legislation. The public has a right to data on environmental quality and resource use.¹² This right derives from the Rio Declaration of 1992, which Uganda signed. Consequently, NEMA is mandated to promote public awareness, a mandate that has been fairly discharged, leaving urban and rural Ugandans well informed.

Uganda is also a member of The Access Initiative (TAI), a global network that brings together governments and national civil society organisations to promote public access to information, participation and justice in decision-making affecting the environment. The Advocates Coalition for Development and Environment (ACODE), a member of TAI, undertakes initiatives to promote access rights in Uganda. A remarkable achievement to which TAI Uganda contributed is the enactment of the Access to Information Act (2005).

A track-record of environmental litigation

Legislative reforms and the public's growing awareness of its environmental rights are increasingly resulting in action in the courts. Although lawyers were once wary of environmental suits, the rising number of environmental cases point to a positive trend. Legal and procedural hurdles are gradually being swept away by the forces of

environmental activism and judicial awareness in the country. The three most daunting challenges remaining relate largely to admissibility, procedure and costs.

Admissibility is the legal premise upon which an environmental action is based. Although the Constitution and the National Environment Act provide legal grounds for a group or individual to act on behalf of another, courts used to be reluctant to admit this type of environmental suit. In many cases, the defence team would only need to turn up and plead 'no cause of action'. Many suits instituted by NGOs and public interest lawyers were thrown out on this ground. However, since the case of *The Environmental Action Network (TEAN) V. AG & NEMA, 1997*, a precedent was set whereby individuals and organisations can successfully institute proceedings on behalf of others, even if the applicant does not share the plight of the aggrieved.

Two other developments have helped. Environmental law is new in Uganda's legal jurisprudence. By their nature, ordinary rules of procedure may make it difficult to administer substantive justice. For example, where a document is tendered as evidence, its author is usually required to appear physically to verify it. This causes complication and delays and makes it expensive to sustain an environmental case where, say, the author of a scientific report lives far away. In some cases, courts are moving away from strict procedural requirements, as in *Charles Harry Twagira V. AG and Others, 2002*. Here the court dispensed with the procedural requirement of a notice of motion and allowed an action to be filed by plaint.

Cost orders used to have the effect of discouraging environmental suits. Awarded against an organisation serving the public interest, it often proved crippling. In *British American Tobacco V. The Environmental Action Network (TEAN), 2003*, for example, the respondents were faced with taxed costs of 41,450,000 Ugandan Shillings (approximately US\$25,000, at 2008 exchange rates) and were practically wound up. Today, all that remains of TEAN is a website. However, courts are increasingly awarding no costs in public interest cases. They declined to award costs in the cases of *Dr. Besigye Kizza V. Yoweri Kaguta Museveni, 2001*; and *ACODE and Another V. AG and NEMA, 2004*. In the case of *Edward Fredrick Sempebwa V. AG, 1987*, the court even held that a public interest litigant who appears bona fide, at great expense and for no personal gain, should be entitled to costs.

Previous attempts to degazette for private investment

In 1997, government successfully degazetted Namanve Forest Reserve to create a modern industrial park – two years after approving a new Constitution that vested natural resources like forests in the people of Uganda, in whose interest government had to act as trustee. A year later, in 1998, parliament passed the Land Act specifically prohibiting any form of alienation of public trust resources. Despite this, the degazettement of Namanve was never challenged. Environmental law advocacy was just beginning to evolve, and there were cost limitations.

In 2001, government issued a permit to Kakira Sugar Works to convert Butamira Forest for sugar cane growing. Butamira was a natural forest in Jinja district, about 100 km northeast of Kampala, on the northern shores of Lake Victoria. This time the degazettement was contested by civil society. Scores of people voiced their opposition – through memoranda and in the print and electronic media – at what they saw as a blatant violation of the very law that government had created. The degazettement was finally sanctioned by parliament with the support of the powerful parliamentary caucus of the ruling National Resistance Movement. The natural forest was cut down in a matter of months to make way for sugar plantations.

ACODE challenged the degazettement in the High Court (Miscellaneous Cause No. 0100 of 2004), arguing that it contravened the provisions of Article 273(2)(b) of the Constitution and Article 44(5) of the Land Act, both of which provide for the doctrine of public trust; that is, that natural resources like forests vested in the people and were managed by the state as trustee. The applicants argued that the action was illegal, local people had not been consulted and no impact assessment had been carried out. The High Court upheld the application, ruling the degazettement illegal and therefore null and void. But Government continued to ignore the ruling.

In 2003, government proposed to degazette Pian Upe Game Reserve in the Karamoja region of northeastern Uganda. The objective was to allocate the land to a Libyan investor for flower growing. The reserve is one of Uganda's largest, with a total area of 2,304 km². It is largely wetland with important wildlife species like topi, hartebeest,

eland, zebra, leopard, lion, buffalo, giraffe, Bright's gazelle and the last populations of roan antelopes and ostriches – threatened by extinction in Uganda. In addition, Karimojong pastoral communities need access to the reserve for water and pastures during dry seasons.

The proposal was contested by civil society and the districts of Moroto and Nakapiripit, where the reserve is situated. ACODE worked with the districts to prepare an agreement with government to secure community benefits and investor obligations should the degazettement prevail. While this was happening, it was discovered that the Libyan firm did not exist in the company registry. Under pressure from civil society and the local governments of Moroto and Nakapiripit, the fictitious 'investor' reportedly pulled out of the project, leaving the matter to rest.

This episode was instructive for civil society. It was observed that poor governance constituted a fault line for conservation in Uganda and that it could be confronted through an environment lens. The 2006 campaign to save Mabira and other threatened forest reserves was therefore initially conceived as an attempt to expose governance shortfalls in the administrative structure – a uniting factor for civil society operating in diverse areas such as anticorruption, governance, social security and environment.

The Mabira Forest advocacy campaign

Mabira Forest is one of the remaining 65 forest reserves in Uganda categorised as a strict nature reserve – an area to be maintained in its natural state without any exploitation for silviculture. Mabira was gazetted in 1932 and covers 29,974 ha, of which 518 ha is strict nature reserve (or no-go area). It is the most expansive forest in the Lake Victoria region and a major catchment area for the lake and the Nile. Proximity to Uganda's capital Kampala and two other major towns makes it the closest recreational and relaxation site for many urban Ugandans and it is a magnet for road travellers to the east. It is also a major source of tourism revenue.

Like many other forests, Mabira was profoundly encroached upon and degraded during Uganda's turbulent history (1966-1986). In 1993, government launched a major campaign to dislodge all encroachers, who fought back, leading to loss of lives. The area was nonetheless freed of encroachments and the natural forest quickly regenerated. Today it is one of the most prominent ecological jewels in the country, a habitat for around 312 tree and shrub species, 287 bird species, 199 species of butterfly and 97 large moth species among many others.¹³ Its watershed feeds streams flowing into Lake Victoria and the Sezibwa River, and is a major source of water for neighbouring communities. It is a carbon sink for the Kampala-Jinja industrial area and a climate modifier for the central region.

Attempts were made to calculate Mabira's real worth. Mabira has high eco-tourism value. It has a modern eco-tourism centre providing accommodation and education that generates revenue for government and neighbouring communities. A five-star eco-lodge has been recently built in the forest at a cost of more than US\$2-million.¹⁴ In addition, the National Forest Authority – the government agency that oversees forest reserves – plans to invest US\$20-million in a tourism route connecting Mabira to the Kalagala Falls and the source of the Nile River. This investment is expected to yield a return of more than 200-million Uganda shillings (approximately US\$120,000) a year in license fees alone.¹⁵

By contrast, the Mehta Group, if its bid were successful, expected to improve sugar production by 50,000 tonnes a year, which would earn the company about US\$20-million a year and save the country foreign exchange of US\$20-25-million. The company also promised to supply 10-12 megawatts of electricity to the national grid, create 3,500 jobs and invest in infrastructure (schools, houses, dispensaries) worth 3.5-billion Uganda shillings. It would spend 2-billion Uganda shillings on developing 300km of road.

However according to civil society research published in the government-run newspaper *New Vision*, giving away Mabira would cost the public US\$890-million. The land alone was worth US\$5-million and the timber US\$568-million. Other assets included biodiversity, medicinal value, fuel for local communities, carbon absorbing value, ecotourism, climate moderation, watershed services, social security and recreational value. Environmental Alert – the local non-governmental organisation that did the study – concluded that giving the land away made no economic sense.

But this research did not end the debate. Counter-information from Cabinet, government institutions, civil society and Mehta Company was published, inciting public debate and exposing misinformation. Intriguingly, claims from Cabinet sources sometimes contradicted information from the official National Forestry Authority (NFA). Cabinet suggested the contradiction was 'ideological'. The NFA said it opposed degazetting for ecological, social economic, legal and environmental reasons.¹⁶ First, the NFA's executive director and other high-ranking officials resigned. Then the whole board quit, citing political interference.

Civil society organisations launched the 'Save Mabira Crusade'. Religious and cultural institutions, donor groups, environmental lawyers, bankers and journalists joined in. At one of the regular weekly meetings it was agreed to use Mabira as a case to highlight governance deficits generally. Individual organisations led specific strategies to avoid duplication.

Agreed strategies included investigating the corporate character of the proposed developer, Mehta's Lugazi Sugar Works Ltd; taking legal action against government and developer; mobilising a range of stakeholders; generating public resistance through media, rallies and other activities; and encouraging a nationwide boycott of the developer's products.

International support was sought through the Forest Governance Learning Group (which advocated good governance in the forest sector and operated in Africa, Asia, Europe and Latin America). The UK-based International Institute for Environment and Development (IIED) enlisted media support from the BBC and Voice of America.

At home, demonstrations in Kampala and elsewhere increased political pressure. The Anti-Corruption Coalition and Greenwatch advised the public not to consume Lugazi sugar. Environmental Alert produced car stickers talking about the Mabira 'give-away'. A company seeking land in the Bugala Island Forest Reserves withdrew its request. A looming meeting of Commonwealth Heads of Government may have influenced a previously intransigent government.

The campaign became profoundly political. Government tried to curb the demonstrations by arresting protesters, including members of parliament. At one stage, demonstrators turned on people of Indian origin to demonstrate their disapproval of the Indian owners of Mehta. The racial overtones were widely condemned, and the Indian community publicly condemned the proposed degazettement, helping to heal souring race relations.

Opportunities and tactics

The special place that Mabira enjoyed among Ugandans helped to fuel the campaign. Besides the forest's natural beauty, it is also a celebrated cultural and spiritual centre for the Baganda and Basoga ethnic groups. School curricula feature it as the most expansive forest resource in central Uganda. Putting it at the centre of a campaign about governance won people's hearts.

Empirical research helped too: Factual assessments of the legal implications and the social, economic, cultural and political implications of the proposed degazettement reinforced emotional responses.

Media joins the fray: Newspapers and electronic media – even when government-owned – provided overwhelming support. Most media houses included environmental conservation in their 'social responsibility' programmes, and environmental journalists worked closely with environmental NGOs to feed information to the public.

Encouraging donors: The weekly strategy meetings – attended by church-based organisations, civil society, cultural institutions and the private sector – demonstrated that the objectors were serious and determined. This encouraged donors to commit funds. A fund managed by ACODE on behalf of civil society organisations helped finance immediate priorities – like SMS messages, ridiculing cartoons, car hooting and court cases. Messages were often satirical and revealing and were circulated widely to give the campaign a national character.

Beating government to the punch: Petitions and memoranda were submitted to parliament to pre-empt government's own submission. Although the degazettement proposal had not yet been tabled, these documents initiated discussion and helped inform MPs. Meanwhile, the proposal was challenged in the constitutional court. No ruling has yet been made.

Focus on the investor: A feature of the court action was that it targeted the ‘investor’ rather than the government. The ‘investor’, it was claimed, was asking the government to perform an unlawful act. The campaign logic was that the ‘investor’ was an easier target. In addition, the action would send a chilling message to other prospective investors who sought forest or other protected area land.

Fighting on several fronts: In a related case, a group of NGOs – ACODE, Environmental Alert, Greenwatch, The Environmental Action Network and the Anti-Corruption Coalition of Uganda – challenged an attempt by BIDCO (U) Ltd to be allocated nine forest reserves on the Bugala Islands in Lake Victoria to convert to palm oil production. At the same time, civil society organisations petitioned an international network of palm-oil producers, claiming that BIDCO (U) was flouting the network’s rule against cutting down natural forests. Amidst this pressure, the company announced that it was withdrawing its bid for the land.

Preparing for new battles: The Mehta group has not completely withdrawn its bid for Mabira, despite the loss of sales occasioned by the boycott of its goods. And government’s announcement that it has decided against giving part of the Mabira Forest away has been received with scepticism. But civil society sees the ‘truce’ as an opportunity to re-strategise for action if government reneges.

Conclusion

The Mabira campaign underlined the effectiveness of partnerships in civil society advocacy. By coordinating strategy and speaking with a collective voice, the civil society network was able to build momentum. It succeeded in discrediting the proposed donation of Mabira Forest, by challenging the legal, social, economic and moral grounds on which the proposal was premised. Its strategies kept government in disarray by engaging it on several fronts. Timely initiatives were calculated to thwart government’s counter-strategies.

A defining success factor was that the campaign had access to sensitive official information, including Cabinet documents. Without that, government might well have succeeded in degazetting the forest, forcing the campaign to oppose a *fait accompli*. History suggests that this is difficult. When Butamira was degazetted, the developer cleared the forest swiftly, despite a court order. The lost ecosystem could not be restored.

In the dozen years that environmental conservation has been grounded in the legal and policy framework in Uganda, there has been a heartening response by national conservation bodies, civil society groups, community-based organisations, public-interest lawyers and the general public, all of whom are becoming more responsive to the need for environmental conservation. The Mabira advocacy campaign highlights increasing levels of activism, and the determination of the people of Uganda to conserve the environment. The campaign also demonstrated the galvanising force of environmental matters in streamlining governance in the country.

Endnotes

- 1 In 1995, Uganda approved a new Constitution, which gears all development efforts to realising the ideal of sustainable development.
- 2 Since 1962 when Uganda gained independence, the country has been grappling with politically induced rivalry and instability, occasionally culminating in armed confrontations between rival political groups. From 1971–7, the country experienced the dictatorship of President Idi Amin, further weakening its institutional capacities and physical infrastructure for environmental conservation and management. By 1986, when the country began to enjoy political calm and stability, a sizeable stretch of Uganda’s ecological systems had been lost.
- 3 Mugenyi O *et al*, ‘Balancing Nature Conservation and Livelihoods: A Legal Analysis of Forest Evictions by the National Forestry Authority’, ACODE, 2005.
- 4 Uganda Bureau of Statistics, *Population and Housing Census*, 2002.
- 5 Agricultural production has consistently declined over the last ten years. For instance, the agriculture sector’s contribution to GDP has declined from 68% in 1985 to 31.8% in 2006 (Budget Speech, 2006).

- 6 Uganda depends almost solely on hydropower production. Over the last couple of years, the water levels in Lake Victoria have been declining. This has had an effect on the River Nile's flow, and has affected power generation along the river.
- 7 *The State of the Environment Report* is produced every two years; it highlights the changes in the environment and attributes causes and effects.
- 8 *Ibid.*, p. xi.
- 9 *The Constitution of the Republic of Uganda*, 1995, Article 39.
- 10 This principle entails that the environment and natural resources be managed equitably and for the benefit of both the present and future generations.
- 11 *The National Environment Act*, Cap 153, Laws of Uganda 2000 Edition, section 2.
- 12 *Ibid.*
- 13 Environmental Alert, Facts on *Mabira*, March 2007.
- 14 Cabinet Secret, Cabinet Memorandum NO.CT (2007) 69, Proposed Change of Land Use of Part of Mabira Central Forest Reserve.
- 15 *Ibid.*
- 16 The National Forest Authority, Report on Environmental and Economic Implications of Changing Land Use of Part of Mabira CFR to Sugarcane Plantations, July 2006; NFA sources.



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