

Routes to justice: institutionalising participation in forest law enforcement in Uganda

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Introduction

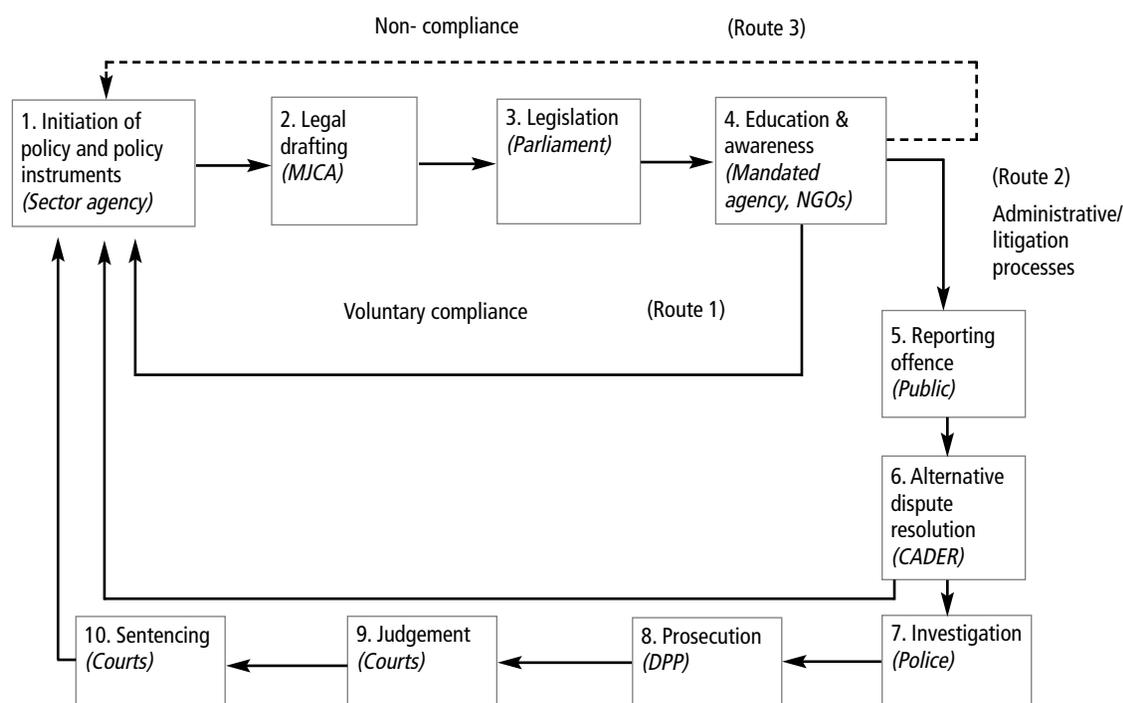
Forestry is a balancing act between production and conservation. Historically, government policy to achieve this balance has been a 'command and control' approach: high levels of regulation, and exclusion of ordinary people from using forests and forest products. Forests are associated with guards and arrests. But in recent decades a number of countries have begun to change forestry practice, and are beginning to share ownership of forests and forest management with local communities. These emerging participatory approaches in forestry are hardly cutting-edge by the standards of experienced practitioners in participatory learning and action. However, for the highly conservative forest sector, the involvement of citizens in shaping and implementing forest policy – especially in the sensitive area of law enforcement – is a radical step forward.

This article describes how Uganda has successfully instituted changes towards participatory processes for law enforcement in forestry. We authors are practitioners not in participation but in public policy. Here we share the story of the Ugandan government's turnabout in understanding forest law compliance and its first forays in engaging ordinary people to make sure that forest law leads to just outcomes.

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It is one thing to formulate a law and another to enforce it effectively so that the offended, including poor and marginalised people, obtain redress. In this article, we argue that good forest law enforcement starts early, with processes for legal enactment, and takes advantage of innovative approaches from society's behaviour during implementation. Ultimately, the lessons in enforcement should inform future revision of not only the overall forest law, but also policies, plans and regulations – leading to a legal climate that delivers fair outcomes. We also look at the government's response to its own failures in administering justice, and how over time

Figure 1: Routes to the administration of forestry justice in Uganda



MJCA: Ministry of Justice and Constitutional Affairs
 CADER: Center for Arbitration and Dispute Resolution
 DPP: Directorate of Public Prosecutions

it is addressing them to create an inclusive environment for open and transparent participation.

A framework for understanding how forest justice is secured

In 2004, we carried out a study to trace six years of participation in and outside the sector to explore how to ensure justice for all in forestry, through curbing illegality and corruption in timber-related transactions (Kazoora and Carvalho, 2004). We analysed the institutional framework for administration of justice to identify barriers to participation in securing justice and how they could be addressed (Figure 1). The figure provides the framework for the routes to justice and the assessment of innovations, processes, lessons and impacts of participation – particularly for poor forest dependent communities.

From a practical point of view, a good pro-active starting

point in law enforcement is the initiation of policy formulation by sector agencies. A policy that is based on a thorough situational analysis and a participatory process is likely to bring out the issues better than one where such a process is driven from the top. The policy, once approved by Cabinet, can serve as a basis for the Ministry of Justice and Constitutional Affairs to draft the supportive law (Step 2 in Figure 1). Thereafter, parliament debates the law and will pass it if there are no objections from the public (Step 3 in Figure 1). Usually, objections arise when consultations have not been participatory. When the law comes into effect, the public is educated and sensitised about it by the National Forest Authority (NFA) and non-governmental organisations (Step 4 in Figure 1). Access to information is central to sustaining participation. Government has enacted the Access to Information Act 2005, which should strengthen citizen participation.

Once the law is implemented, individuals may react in any

Village furniture makers in Uganda



Photo: James Mayers

of three ways, given as routes in Figure 1. Under Route 1, a person voluntarily complies with the law because of information and knowledge acquired, plus incentives and disincentives. Under Route 2, the illegality or offence is handled reactively through the administrative process by the mandated institution (NFA) or litigation process by the justice, law and order institutions. Route 3 is a situation of persistent illegality and committing of offences, whether the offender is knowledgeable about the forestry law or not.

We chose this framework because other countries follow more or less similar formal systems, and lessons from Uganda can therefore be transferable. Secondly, it was imperative to analyse participation in the context of existing structures and procedures for securing and administering justice. Participation is and can be very complex, particularly when one considers the whole array of enforcement agencies, natural resource agencies and their interface at national, local

government and community levels. At these levels, access to information, capacity, mandate and instruments for participation differ.

Experiences with participation in securing and administering forestry justice

Our study gave us an opportunity to ask a range of forest-using communities in Uganda their opinions and perceptions about alternative measures to curb illegality in forestry and to ensure justice. These communities included small-scale timber growers and managers, owners of natural forest, forest associations, big construction companies and furniture workers. We wanted to use the study to establish broader scope for public participation in forest justice, so it was more of an exchange of ideas than a data-collecting exercise. In this section we share the emerging lessons and potential tools for better, more just law enforcement (published as a

Pitsawyers
in Uganda

Photo: James Mayers

toolkit in Kazoora and Carvalho, 2005).

Reporting

The responsibility for reporting forestry offences to the police lies with the entire public (Step 5 in Figure 1). We asked members of the various communities for their perceptions of the efficacy of the police in handling reported cases. The majority had little regard for the police in its role of recording offences from the public. Two national integrity surveys conducted in 1998 and 2000 had revealed the police as the most corrupt institution in Uganda. People said that the process of making reports to the police was long and tedious. Having to disclose one's name was a disincentive to report to the police. People feared being confronted by those they had mentioned to the authorities, who in many cases were in very powerful positions. People also argued that the police were not very conversant with forestry law.

In fact, most people preferred the alternative of reporting

to the National Forestry Authority (NFA) staff, whom they considered more knowledgeable. However, people strongly advocated for the strengthening of the Forest Produce Monitoring Unit in the NFA. The Minister of Water, Lands and Environment strengthened the unit in December 2004, giving it powers to cooperate with other statutory agencies in forestry enforcement, such as the police.

Telephone hotline

Among other alternatives, we asked people for their opinion on whether a telephone hotline specifically to register forestry-related crimes and offences would be appealing to them. We were motivated to explore it because the police told us that people sometimes use the emergency line, 999, to report vehicles that transport illegally obtained timber.

The rapid growth and expansion of the mobile phone industry in Uganda favoured the use of a hotline as an instrument of participation in reporting crime. Hotlines already existed to report tax evaders to the Uganda Revenue Authority (URA) and those making illegal power connections to the Uganda Electricity Distribution Company Ltd.

People were in favour of a hotline because of its expediency, cost-effectiveness and protection to the reporter. But they observed that it would only be very effective if a well-facilitated rapid response were put in place by the NFA. Luckily, the NFA was keen to play its part and a hotline is now used to receive public complaints. The NFA maintains the anonymity of reporters of illegality and alerts the police immediately when reports come in.

Incentives for reporting

The other approach we looked into was whether the NFA could give incentives to people reporting forestry offences, particularly trade in illegal timber. People were in favour of this incentive. In fact, some of them referred to a similar incentive scheme run by the URA, which gives a commission on the value of goods confiscated from tax evaders.

However, they also cautioned against a potential risk. Those involved in the illegal forestry trade might pay those likely to report them more than what the NFA would be willing to offer. People observed that such a practice existed among tax evaders. The NFA now provides some token of appreciation to those reporting offences, but it is not yet standardised. Through this approach, those participating in giving information are offsetting their costs and developing the motivation to look out for more cases. Previously, the public did not have any incentives for reporting illegality. Yet they would have to incur some cost to do so. One can argue

Box 1: Pooling resources to obtain justice

In 1996, parliament gazetted 1,006 hectares of Namanve Forest Reserve, which contained among others, eucalyptus trees. These had been planted by several farmers through a forest permit issued under the Forest Act of 1964. Whereas the farmers wanted to be compensated for trees that would have a life-cycle of sixteen years, the government wanted to compensate them for only five years, the initial period of their permits. Negotiations between the farmers and the Uganda Investment Authority, which sought the gazetted land for investors, broke down. The farmers formed the Uganda Woodfarmers Association (UWFA) and elected leaders who represented them in court in a case – Kabbs Twizukye and others versus UIA, No.761 of 1998. Justice Richard O. Okumu Wengi eventually ruled in favour of the farmers giving them compensation for trees that would have four rotations (sixteen years). This case shows that in order to obtain justice, the farmers had to form an association to enhance their collective voice, and to pool resources together to hire a lawyer. They were able to do that because, first, they had a private interest in the trees they had planted, and second, they were well-to-do farmers.

Source: Kazoora, 2003

that expectation of a win-win situation is critical to sustaining participation.

Dispute resolution

Once a case has been reported, both the plaintiff and defendant may choose to settle their differences through an alternative dispute resolution mechanism under the Arbitration and Conciliation Act 2000 at the Centre for Alternative Dispute Resolution (CADER; Step 6 in Figure 1). Though CADER works well, it does not have branches to reach out to the rural areas where the poor live, plus it is relatively new and still being popularised to the public. If there is no agreement at CADER, people go through the whole chain of litigation, including being investigated by police, prosecuted by the Department for Public Prosecution (DPP) and sentenced by judges and magistrates in courts (Steps 7-10 in Figure 1).

Timber tracking and auction

The NFA has guidelines for various approaches to reduce illegal logging, such as marking timber and confiscating undocumented forest produce. Our study showed that as the public became aware of particular approaches, offenders devised new strategies to defeat them. People cited cases where offenders covered timber with other commodities like sand to conceal it during transportation. They also cited cases of collusion between the offenders and the police, with the latter escorting lorries carrying illegal timber.

Based on this revelation, we strongly recommend that confiscated timber be auctioned. The NFA has institutionalised this approach. It retains all the revenue from the entire auction, which it reinvests in fighting illegality. Before the establishment of the NFA in 2004, the then Forest Department could not reinvest the revenue from auction sales because structurally, it had to bank it in a consolidated government bank account. Overcoming institutional structural barriers can thus improve the climate for investing in the participation and administration of justice.

Competitive bidding

The NFA has also replaced standard administratively set prices for timber with competitive bidding for pitsawyers and sawmillers who obtain timber from NFA land. Now the timber licences are sold for well above the reserve prices. There are two positive impacts: more revenue for the NFA and the elimination of inefficient operators.

Associations and networks

Another weakness we discovered during the study was that forestry users and enterprises had weak networks among themselves. This undermined their potential for a collective voice. Accordingly, we recommended the formation and strengthening of forest-user associations. In fact, the NFA is working with some of them, such as in Tororo on collaborative forest management. Further, it has held several consultative fora for pitsawyers, sawmillers and timber dealers, particularly in Kampala, to discuss changes taking place in forestry management in Uganda. Out of that initiative, the pitsawyers, sawmillers and timber traders have formed an interim committee of a potential future umbrella association. We recommended forming an all-embracing association based on a legal case study whereby the pooling of resources through an association was instrumental in ensuring justice for tree farmers (Box 1). In other words, it may be more viable to participate with government as a group rather than on one's own.

Partnerships with third parties

In a similar manner, to secure justice, it may be of strategic importance to develop partnerships with third parties, such as civil society organisations knowledgeable in forestry law and litigation processes. This is particularly relevant where poor farmers do not understand legal terms, procedures and institutions on their own. It is also relevant where the institutions that have the mandate to protect citizen's rights are seen to be acting contrary to those mandates and therefore undermining

Box 2: Defending the marginalised

The Constitution of Uganda requires that 'the state shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda'. But in practice, conflict arises between public and private interests. The de-gazettement of Butamira Forest Reserve in 2001 was a good case in point. In that reserve, 148 community groups and 30 individuals held plots of land that they planted with trees as permitted by the allocation permits from the Forest Department (now NFA). In 2001, the government opted to de-gazette the reserve so as to lease it to Kakira Sugar Works to clear the forest estate and replace it with sugar cane plantations. The communities around Butamira Forest Reserve complained against the decimation of the forest reserve. To seek justice, several advocacy NGOs came forward to defend their case, one of them being Advocates Coalition for Development and Environment (ACODE). The government went ahead and de-gazetted the reserve, with some compensation to community members. This was regarded as an unsatisfactory result by the community, but it is unlikely that they would have received compensation without the intermediary NGOs arguing on their behalf.

Source: Tumushabe *et al.*, 2001

justice (Box 2). This particular case illustrates that the assessment of potential benefits from participation must be done in the wider context of institutional capacity to secure justice. That capacity may not necessarily be held by the aggrieved party, and has to be sought from third parties. Making reference to already-decided case law has the value of transferability across courts and countries because in legal practice, lawyers and judges use precedents to guide judgement.

Local councils

The government has also come to recognise that the institutions for the administration of justice were not within reach of the poor. Often, they are located in urban areas. Yet almost all forestry related offences occur in rural areas. To address that anomaly, it enacted the Local Council Courts Act 2003. The government had introduced the Local Council system as far back as 1986 as a first step towards the decentralisation of power to the grassroots. The Act defines the

offences that Local Council Courts may handle and how they relate to other courts. Some of these courts have handled cases related to illegal forest transactions.

To strengthen their capacity, the Ministry of Local Government has produced 'Guides for Local Council Courts'. This example underscores the importance of the subsidiarity principle – which affirms that environmental decision-making should be taken at the lowest possible level of public authority – in participation for sustainable forest management.

Capacity building

Capacity building in justice, law and order institutions through training and the compilation of case law is another tool we recommended. People observed that despite the country enacting several laws on environment and natural resources, the staff in enforcement agencies were not well informed about them. Awareness creation and training across enforcement and natural reserve agencies is fundamental to changing mindsets and improving access to information. It is only then that public participation can be sustained.

Conclusion

Although many institutions formally embrace the principle of participation, putting ideas into practice is far more difficult. First, participation must be analysed in the context of the problem to be addressed, taking into account individual and institutional capacities, and the general policy and legal environment. It has become apparent in Uganda that to secure participation for forestry justice, it is not only the disadvantaged or offended that have to be supported. It is also those that have to listen to them, such as the police and the magistrates in courts.

Equally, the government has to create an enabling policy and legal framework, including the establishment of relevant structures (e.g. Local Council Courts) under which formal processes for securing forestry justice take place. However, it may not do that unless there are champions among indi-

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