



Decentralising Natural Resource Management and the Politics of Institutional Resource Management in Uganda's Forest Sub-Sector

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Abstract

Since launching decentralisation in December 1992, Uganda has implemented wide-ranging public sector reforms as a part of broader democratisation, designed to ensure that powers over the management of public affairs are held by representative and downwardly accountable local authorities. This article explores how these reforms have been implemented in Uganda's forest sub-sector. The forest-tenure regimes introduced under the 2003 National Forestry and Tree Planting Act have entrusted to various responsible bodies with the power to maintain, manage and control the different categories of forests. In actual practice, however, only limited powers have been effectively transferred away from the centre. Continued central control makes it extremely difficult to insulate decision making over the allocation of licences from higher-level political pressures, since the ostensibly decentralised powers are exercised by actors who are upwardly accountable to these central forces. Forest sub-sector reform outcomes reveal that this upward accountability risks undermining popular participation and weakening democratic decision making. It also fetters the equity and efficiency potential of government poverty eradication programmes in the short and long term.

Résumé

Depuis que l'Ouganda s'est engagé dans la décentralisation en 1992, de dures réformes ont été lancées dans le secteur public dans le sillage de la démocratisation, pour s'assurer que les affaires publiques sont tenues par des autorités locales réellement représentatives et responsables. Cet article explore la façon dont ces réformes ont été appliquées au sous-secteur forestier. Il soutient que les pouvoirs pour gérer et contrôler les différentes forêts concernées par les nouveaux régimes introduits par la Loi nationale sur les forêts n'ont été confiés

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à des organes décentralisés et à des acteurs périphériques responsables à cet effet que sur le papier. Dans la pratique des pouvoirs très limités font l'objet d'un transfert effectif du gouvernement central à des acteurs périphériques. Ceci ne met pas par exemple la prise de décision locale à l'abri des pressions politiques, étant donné que ceux qui détiennent localement les pouvoirs ne rendent pas compte vers le bas mais vers le haut. Il s'ensuit que les résultats des réformes du sous-secteur forestier sapent le principe d'augmentation de la participation populaire et de prise de décision démocratique, d'une part, et la capacité du gouvernement d'atteindre les objectifs équitables de ses programmes d'éradication de la pauvreté à court- et à moyen- terme, d'autre part.

Introduction

Uganda is widely cited as a model of decentralisation in Africa (Bazaara 2002a; 2002b; Saito 2003). Since 1992, the guiding principle for the state has been the decentralisation of government functions and powers intended to ensure people's participation and democratic control in decision-making (Muhereza 2003a). These reforms have involved the transfer of limited decision-making powers to a variety of lower level actors (devolution), including state appointees (de-concentration). Some powers have been devolved to popularly accountable actors or institutions (political decentralisation) or to state appointees (delegation). In some instances, the reforms have entailed privatisation where central state assets and powers have been devolved to non-state bodies including Non-Governmental Organisations (NGOs) or other private groups and individuals (Nsibambi 1997; Republic of Uganda 1998; Agrawal and Ribot 1999; Ribot 1999).

In conforming to new constitutional order, National Forestry and Tree Planting Act (assented to on 17 June 2003 and commenced on 8 August 2003) replaced the Forest Act of 1964 (Cap. 264) and the Timber (Export) Act of 1964 (Cap. 247). The new Act has been enacted to consolidate the laws relating to the forest sub-sector in order to promote conservation, sustainable management and utilisation of forests and forest produce for the benefit of Ugandans. However, our research indicates that this new policy risks undermining equity objectives of government's poverty eradication programmes as well as compromising some aspects of decentralisation intended to increase people's participation and democratic control in decision making.

This article examines the extent to which decentralisation reforms in the public affairs sector have translated into improved public accountability and management of natural resources in Uganda, with specific reference to the forestry sub-sector.¹ The period between June 1998 and January 2004 has

been characterised by massive unlicensed timber harvesting through saw milling and pit-sawing as well as through illegal timber dealings. Although this over-exploitation is blamed on state withdrawal during the long period of transition from the Forest Department (FD) to the National Forestry Authority (NFA), the situation epitomises the challenges that lie ahead for the NFA, the new lead agency in forestry matters. The crux of the challenge is not just the implementation of forest management regulations. The NFA will have to wrestle with the beneficiaries of forest exploitation, who are largely the rich, powerful, and politically well-connected.

The main argument in this article is that while powers to maintain, manage, and control the different categories of forests under their respective forest-tenure regimes have been entrusted by law to various local institutions, in practice only limited powers had been effectively transferred away from the centre. With the new Forestry and Tree Planting Act in force, the pervasive authority of the Ministry for Water, Lands and Environment continues to dominate the management of the forest estate, and this central management is being consolidated under the transition from the FD to the NFA.

Using an 'actors, powers and accountability framework' (Agrawal and Ribot 1999; Ribot 1999)² for the analysis of decentralisation, this article shows that the 2003 National Forestry and Tree Planting Act delegated management, maintenance, and controlling functions over specific categories of forests, without a commensurate transfer of effective decision-making powers. This failure to transfer powers is attributed to political pressures. Further transfers to local institutions, it appears, will depend on how well the new lead agency is insulated from political pressures emanating from highly placed political, government, and military persons with interest in continued exploitation. Because decentralisation is not a politically neutral process, the more the reforms privileged non-downwardly accountable actors in the disposition of decentralised powers, the more they are likely to be subject to the dominant forces in the society at a given point in time, irrespective of the level of decentralisation or whether or not the law, policies and institutional framework are functionally relevant and operationally coherent.

Because the NFA controls scarce and highly sought-after resources, the success of the NFA in implementing forest sub-sector reforms will eventually depend on how effectively the NFA 'sanitises' the decision-making process at the central and local government levels, relating to licensing and enforcement of sanctions for offences committed under the National Forestry and Tree Planting Act of 2003. By transferring critical decision-making powers to non-democratically accountable actors (those downwardly accountable to the people), the reforms are missing the opportunity effectively to democratise

the management of natural resources in general and forests in particular—and to support the democratisation process more broadly.

This article is divided into seven sections, including the Introduction. The actors in the decentralisation of forest sub-sector are mapped out in Section Two, while the powers they hold are examined in Section Three. Section Four explores decentralised forest management in Masindi District, Uganda—the district with the largest central forest reserve in the country and the only district where all five forest classifications specified in the 2003 National Forestry and Tree planting Act can be found. Section Five assesses accountability in decentralised forest management under the new Forestry and Tree Planting Act. Section Six reflects on the implications of the forest sub-sector reforms, while Section Seven concludes.

Mapping the actors

The 1993 Local Government (Resistance Councils) Statute,³ is the centrepiece of Uganda's decentralisation reforms, and was intended to '... increase local democratic control and participation in decision-making, and to mobilise support for development which is relevant to local needs' (Republic of Uganda 1993). The Local Government Act of 1997 created a five-tier hierarchy of local councils (LCs). Each council is elected for a four-year mandate from independent candidates by universal suffrage.⁴ Uganda currently has fifty-five Districts (LC level 5, or LC5). Each District is divided into Counties (LC4, called Municipal councils in the urban setting), of which there are over 150; Sub-counties (LC3, called Town Councils where urban) totaling close to 1000; Parishes (LC2, also called Wards in urban settings) totaling roughly 4000; and villages (LC1), upwards of 43,000 (PMA Grant Study 2001:27). In this system, although all councils are elected, LC 1, 2 and 4 are considered 'Administrative Units'. Administrative units officially provide technical and administrative support; they carry out functions for and advise local governments. LC 3 and 5, Sub-counties and Districts, are considered corporate 'Local Governments'. Local Governments have legislative powers—they are able to make and implement bye-laws.

While decentralisation has established representative institutions across Uganda, the local actors and institutions at play in natural resource management in general, and the forest sector in particular, differ among the management regimes applicable to different forest-tenure types as well as land-use categories. Under the National Forestry and Tree Planting Act, 2003, forests in Uganda are classified into the following five categories, managed, maintained and controlled by various responsible bodies, namely: (i) central forest reserves under central government; (ii) local forest reserves under local governments; (iii) community forests under local community; (iv) private

forests under an individual, group or institution, including cultural or traditional institutions or leaders, and; (v) forests with wildlife conservation areas declared under the Uganda Wildlife Statute of 1996.

The new National Forestry and Tree Planting Act also provides for the creation of community forests by statutory order of the Minister after consulting with the District Land Board and local community, upon approval by resolution of the district council [section 17(1)(a)(b)]. One district council in Uganda (that of Masindi), has so far approved the creation of a community forest, which is awaiting a ministerial order. The Act also stipulates that traditional or cultural institution or leaders can hold, own or manage forests subject to such directions as the minister prescribes and article 246 of the constitution [section 25]. A person can also register with the District Land Board a natural or plantation forest on privately owned land [section 21(1); 22(1)]. The largest part of Uganda's forest estate is constituted by forests that fall outside the protected areas system, and these account for about 70 percent of Uganda's forested area, and are held by private persons as private forests. Most of these are not registered with the DLB. There are also forest patches, which are on land that is unregistered, such as, for example, former public lands now under customary tenure. These forests fall under the category of 'public domain forests' controlled mainly by local councils. In areas where these exist, they are under pressure for conversion into arable land.

The National Forestry and Tree Planting Act of 2003 also provides for collaborative forest management. In central and local forest reserves, in working circles where commercial activities are permitted, forest user groups such as the private sector and civil society organisations can enter into co-management or collaborative management arrangements in accordance with regulations or guidelines issued by the Minister [section 15]. A local government can enter into a similar arrangement for the purpose of managing a central forest reserve. Regarding private forests, the Act states that any person may enter into a contractual or other arrangement with the owner or holder of an interest in a private forest for the right to harvest, purchase or sell or arrange for the management, harvesting, purchase or sale of all or any part of the forest produce in the private forest [section 23(1)].

Around the perimeter of parks, co-management institutions are created. For example, the Local Community Steering Committee (a sub-committee) of Mgahinga and Bwindi Impenetrable Forest Conservation Trust, which is a private group, has been delegated the authority to manage the forest for conservation purposes. The Forest Management Committee is sponsored by the district local government and chaired by the resident district administrator. It is a committee of local authorities working with the Central Government

agents. The communities are represented on the committee by the Sub-county Local Council (LC3) Chairman. The people who sit on the Production and Environment Committees are likely to be the same people on the Forest Management Committees. While no formal relationship exists between the two structures, they have forged an organic linkage as a result of operating in the same area over the same issues.

In 1998, the government launched reforms in forest sector management in a bid to halt departmental mismanagement that had led to the depletion of the forest estate. These reforms were preceded by a number of reforms in the public sector that affected the forest department as well. Under the civil service restructuring, which was implemented alongside decentralisation starting in 1993, government departments cut down staff to reduce running costs. All patrolmen and forest guards in central forest reserves were laid off, and recruitment of new staff frozen. By July 2000, 154 forest rangers, 283 forest guards, 700 patrol persons and 25 forest officers had been laid off.⁵ This reduced the department's ability to manage the forest estate. Field operations of the Forest Department, the then lead agency in forestry, were affected by reduced funding to the sector. This led to neglect by a downsized staff, with no extension workers to advise farming communities and other users.⁶ This created a vacuum that led to an increase in illegal activities in and outside protected forests. To reduce the burden of managing its large estate, starting in 1989, the Forest Department devised approaches in which it transferred management functions to organised groups in districts. Apart from collaborative forest management arrangements referred to above, the FD supported the creation of district saw millers and pit-sawyers associations.⁷

In the country's biggest central forest reserve of Budongo in Masindi, on advice of the Commissioner for Forestry,⁸ pit sawyers formed an association in July 1994 called Masindi Pit-sawyers and Wood-users Association (MAPWUA).⁹ Concessions were awarded to MAPWUA in specific parts of Budongo CFR. MAPWUA monitored activities of its members who also reported illegal pit-sawing in their operational areas. Using MAPWUA, the Forest Department was assured of revenue, timber supply, policing and monitoring of illegal activities and more effective use of forest resources without actually investing its own resources and manpower. According to the Forest Department, it was also better to deal with an association of several pit-sawyers because of economies of scale since harvesting and sale of timber was done by organised groups.¹⁰ Apart from monitoring illegal activities, in return for support from Forest Department, MAPWUA would also undertake minimal road repairs involving installing culverts, opening of canopies and drainage systems of the forest roads in their areas of operation.¹¹ In other words, MAPWUA would not only 'police' the forest against illegal users. It

would also invest in infrastructure maintenance inside the forest. While the central government would deal with its inadequacy of fiscal resources by allowing a private actor to undertake some of responsibilities, the latter increased its stakes in forest management.

The National Environment Statute 87 of 1995 created other local institutions to take on environmental management responsibilities in the local arena. It also established the National Environmental Management Authority (NEMA) to coordinate and monitor sustainable management of the environment among various national and local agencies (Muhereza 2001:7). NEMA is responsible for monitoring, planning and coordination of environmental matters throughout the country. It coordinates the activities of various governmental agencies charged with specific environmental and natural resources management functions such as the UWA, in charge of conservation areas, and the NFA, which will oversee the national forest estate.

Section 15 of the National Environment Statute of 1995 provides for the establishment of District Environment Committees (DECs), and Section 16 for the appointment of District Environment Officers (DEOs) in all districts of Uganda. The functions of the DECs are to coordinate the activities of the district relating to the management of the environment and natural resources, assist in the development and formulation of bye-laws relating to the management of the environment, and to ensure that environmental concerns are integrated in all plans and projects approved by the council. Under this statute, it is the responsibility of the DECs to identify hilly and mountainous areas, which were at risk from environmental degradation (section 39). It is the responsibility of the DECs to undertake re-forestation and aforestation of such degraded areas (section 40), and to determine the extent to which use of such areas was sustainable. In other words, these structures advise local governments on environmental impacts of their development programmes. The Parish Council (LC2) representatives elect a Parish Production and Environment Committee (PPEC). A County Production and Environment Committee (CPEC of LC4) is composed of members from a Sub-County (LC3) Environment Committee and the District Environment Committee.

The exercise of decentralised powers

Re-centralisation and delegation in the management of forest reserves

In Uganda, there are a number of large forest areas, which following donor (mainly USAID) pressures, were in 1991 turned into Forest National Parks. These include such as Mt. Elgon National Park, Ruenzori National Park, Kibale National Park, Mgahinga Gorilla National Park, Bwindi Impenetrable

Forest National Park, which serve as nature conservation reserves in which commercial logging, and pit-sawing activities are forbidden.

When the 1993 Local Government (Resistance Councils) Statute decentralised natural resources management to districts, they started depleting forests without basing their harvest volumes, techniques, location, etc., on any management plan or scientific approach.¹² The worst cases were reported in Kalinzu and Maramagambo forests in Bushenyi district. The Forest Department complained to the Minister in charge of the Forest Sector, who approached his colleague in Local Government. In 1995, the second schedule of the Local Government (Resistance Councils) Instrument of 1995 was amended by Statutory Instrument No. 2 of 1995, in which all Forest Reserves, land, mines, minerals and water resources were defined as central government resources.¹³ This instrument in effect brought the management of these resources, including all forest reserves, without any exception, under central government control. In other words, it re-centralised the management of all forest reserves.

Under the 1995 Constitution, the state assumed a broad duty of protecting natural resources on behalf of the people (objective xiii), and also took on the duty to promote sustainable development and to make the public aware of a need for rational management and use of natural resources. Further, the State took all possible measures to prevent or minimise damage and destruction of land resources (objective xxvii, and article 245). The government (national or local) holds forest reserves (among other listed natural resources) in trust for the common good of the citizens (article 237).

Following the passing of the Local Government Act of 1997 on the basis of which wide-ranging (fiscal, administrative and legislative) powers were transferred to districts and Lower Councils, a number of initiatives were undertaken in forest management resulting in the delegation and devolution of certain forest estate management functions. These included among others, the issuance, in 1998, of Statutory Instrument No. 63 called the Forest Reserves (Declaration) Order, which revoked the Forest Reserves (Declaration) Order of 1968, otherwise referred to as Statutory Instrument No. 176 of 1968. It differentiated between Central Forest Reserves, the control of which was retained by the central government and Local Forest Reserves whose control was passed to local governments. Forest Reserves covering 100 hectares and above were defined as Central Forest Reserves.¹⁴

Local forest reserves were defined by article 237 of the Constitution and section 9(3) of the National Forestry and Tree Planting Act, 2003 as areas that were to be held in trust by respective local governments for the common good of all citizens. Central Forest Reserves have management plans in which working circles of conservation, production, community, recreation and

research are designated. These working circles are further divided into blocks in which activities are implemented according to prescriptions for each working circle. In areas zoned as a Strict Nature Reserve on account of their unique bio-diversity characteristics, requiring special conservation measures to be preserved or area set aside for the protection of water catchments, the felling of trees for any purpose at any time is prohibited. There are also areas earmarked as Buffer zones to provide an interface between people and the protected nature reserves. In this zone, limited harvesting may be allowed, but is restricted to using low impact technologies in order to minimise the impact of harvesting operations on the environment. The following are permitted: collection of firewood (for domestic use), medicinal plants, mushrooms etc. Certain zones are earmarked as production zones, where controlled tree harvesting for timber is permitted. Some forest reserves have areas zoned for recreational purposes to promote eco-tourism mainly through collaboration with local communities.

All Central Forest Reserves are considered as 'protected' forests, in which commercial activities are not permitted, except in production zones. The powers of local governments are limited to management functions in Local Forest Reserves only, while the Central Forest Reserves are controlled and managed by central government through the Forest Department.¹⁵ In dual management areas, where a forest reserve is located in a (forest) national park, co-management or collaborative management is possible. The co-management or collaborative management arrangements around Uganda's protected areas (wildlife and forest parks) do not constitute devolution because, as Bazaara (2002a) notes: 'our research... reveals that the resource user committees have no decision-making powers. It is the line ministry and central government agencies such as UWA and the NFA, which design the collaborative projects and invite communities to participate in them. Representatives of the committees cannot veto or change decisions already made by these agencies'. Communities are simply consulted, but the government has no obligation to follow their advice.

Generation and collection of forestry resource revenues

Article 176 of the 1995 constitution provides for decentralisation and delegation of state duties to local governments. Article 176, section 2(b) specifies that decentralisation shall be a principle applying to all levels of local government, from higher to local government units to ensure people's participation and democratic control in decision making. Article 191, section (1) and (2) give powers to local government to levy, charge, collect and appropriate fees and taxes, in accordance with laws enacted by parliament, and shall consist of rents, rates, royalties, stamp duties, personal graduated tax,

fees on registration and licensing, and any other fees and taxes that parliament may prescribe. In conformity with article 191 of the constitution, the 1997 Local Government Act was enacted by parliament, and conveyed to local government the power to levy and collect taxes, and receive payments from the centre to undertake decentralised services (unconditional grant) and for specific programmes (conditional grant). The 1997 Local Government Act further increased the scope of service responsibility for lower-level local government and councils (including sub-counties and municipal divisions). Under the Act, control of substantial amounts of public resources was devolved to districts, sub-counties/Divisions and Municipal Local Governments, which are corporate bodies within the Local Government system. Article 176 lays down several principles regarding the system of devolution and transfer of functions, powers, and responsibilities to local governments. It especially stipulates that in order for the local governments to operate, sound sources of revenue would be established for it by the centre. Nevertheless, in practice, in taking on decentralised functions, the powers of local government were immensely curtailed.

One of the key sources from which local government obtains significant amounts of local revenue has remained natural resources exploitation and trade related activities. The Forest Produce and License Order of 2000, Statutory Instruments No. 16 of 2000, defined the fees and taxes charged on forest products. It defines fees for all the different types of forest produce including timber, poles (plantation and natural forest bush), faggots, and fencing posts (treated and untreated). The rights that individuals can exercise over forest produce are circumscribed by pervasive fees charged on forest produce, previously by government, and now by the various bodies responsible for the management, maintenance of control of the various forest categories, to which revenue-raising powers have been given. There is virtually no forest produce on which fees have not been decreed. Forest revenue refers to income accruing from the direct sale of forest produce. A fee is payable for obtaining a license to process forest produce. Taxes are charged by tax authorities as government revenues on commercial transactions.

When the 1993 Local Government (Resistance Councils) Statute transferred natural resource management functions and powers to District Local Governments, soon after the law was enacted, the Forest Department re-classified the most lucrative forests in order to re-centralise these powers, on the 'unsubstantiated' grounds that the local authorities were abusing their new powers and depleting the forests to generate significant local revenue in the shortest time possible. Powers to levy, charge, collect, and appropriate fees and taxes from forest resources in central forest reserves have been retained by the centre. Powers to collect revenue from LFR, private forests,

forests controlled by traditional or cultural institutions and leaders, as well as community forests, have been passed onto to bodies responsible for the maintenance, management, and control of these various categories of forests.

While government or a local government has no ownership over trees or forest produce situated on private land [section 27(1)], District Forest Officers issue directions to the owners of trees or forest produce situated on private land, requiring them to manage the trees or forest produce in a professional or sustainable manner. Licenses for harvesting forest produce on such lands are issued by the respective bodies responsible for the management of the different categories of forests, but are subject to the respective forest management plans [section 41(1)] approved by the Minister or a person designated by the Minister for that purpose [section 28(3)]. The terms, conditions, rights and fees for licenses prescribed by the responsible body are subject to regulation prescribed under section 92 of the Act [section 41(2)]. Those to whom powers to license are devolved should also have powers to sanction and enforce compliance. Practically, this necessitates a mechanism for collaboration between the various responsible bodies, in the absence of which the centre will assume the responsibility, and in essence function like no power has been transferred downwards, other than maintenance and management functions.

Revenue derived from the management of a community forest belongs to and forms part of accountable funds of the responsible body, specified by the Minister, and shall be devoted to sustainable management of the community forest and the welfare of the local community [section 19(1)]. The Minister can transfer protection, control and management of a community forest to a local government, if considered necessary [section 20(1)]. While all forest produce from a private natural forest on privately owned land or plantation forest on privately owned land belongs to the owner of the forest, and may be used in a manner that the owner may determine, the forest produce shall be harvested in accordance with the management plan and regulation made under the Forestry and Tree Planting Act [section 21(2); section 22(2)]. Traditional or cultural institution or leaders hold, own or manage forests, subject to such directions as the Minister may prescribe [section 25].

The DFO is still responsible for collecting fees and issuing licenses for felling trees, saw milling and pit-sawing in the more lucrative central forest reserves. Trees on private and non-gazetted lands can be harvested only with a permit from the District Forest Officer, especially if these are destined for the market. The DFO issues the owner of the trees with a movement permit. This is intended to check illegal activities in restricted areas (Muhereza 2003b). Under Forest Produce and License Order of 2000, the responsibility for charging license fees for trade in produce from outside gazetted forest

reserves is that of the District Local Governments. Such licenses are issued on a monthly basis, and include licenses for petty trade, large-scale wood-cutting, firewood transportation, charcoal production, and transportation. Fees are also charged on bamboo, pine/cypress, and seeds and seedlings of forest tree species. There are also casual trade licenses for petty trade in forest-related produce such as beds and chairs, walking sticks, stools, wood curving, wooden stools, tool handles, mortars and pestles, and forest-based food products such as bamboo shoots, palm oil, and other forest fruit trees. Licenses are charged on wild coffee, gum arabica, resins and forest minerals (bricks, sand, stones, and murrum). Districts also have the right to issue licenses for cutting, taking, and removing forest products from outside of central forest reserves (section 12ii). The local authorities can issue licenses and collect fees for exploitation within local forest reserves and village forests (section 12ii) (Muhereza 2003a).

Local government legislative powers and functions

The Local Government Act of 1997 empowered Districts and Sub-Counties (LC5 and LC3) to make bye-laws to improve the management of the forest estate outside central forest reserves and to help the District Forest Department in policing illegal activities in Central Forest Reserves. The Local Government is empowered to make bye-laws that do not contradict the constitution or other existing laws (Bazaara 2002a:7-8).¹⁶ The 1997 Act stipulates that district councils are responsible for assisting 'government to preserve the environment through protection of forests, wetlands, lake shores, streams and prevention of environmental degradation' (Republic of Uganda 1977 in Bazaara 2002a:9), and that district councils are responsible for vector control, environmental sanitation, insect and vermin control, and forests and wetlands. The Act also allows district councils to devolve control of soil erosion, protection of wetlands, vermin control, prevention of grass, bush or forest fires, and general environmental protection and the control of hunting and fishing to lower levels of local government (Bazaara 2002a:9-10). These 'powers' have been given to the districts. The powers of lower level councils depend on the discretion of the District Councils, which may choose to retain powers at the District level.

The latitude of powers held by local governments, however, cannot be discerned from the 1995 Constitution or the 1997 Local Government Act. The laws and authorities (such as UWA and the Forest Department) that govern each land-use zone determine the discretionary powers that remain for local authorities to exercise. Via the forestry laws (the 2003 Act and various statutory instruments issued thereafter), decentralisation gave District Councils significant powers to issue licenses to cut or remove forest produce

from local forest reserves). But, in practice, the Forest Service has selectively retained the right to allocate some kinds of licenses and permits by controlling the issuance of movement permits for and forest produce harvested in the district.

Recently in order to promote afforestation and re-forestation in government-reserved forest lands, government permitted commercial tree-growing by the private sector, especially in peri-urban reserved forest lands. An individual, company, association, or non-governmental organisation gains access to forest reserved lands by applying to the Forest Commissioner. Permits of 25-50 are issued for growing trees for timber if the investor has a management plan approved by the Commissioner. The local government is informed and the district forestry officers are consulted before permits are issued. Concerns raised about this private sector commercial tree-growing scheme provide a pointer to the nature of constraints likely to undermine the enforcement of compulsory tree planting. This is due to the fact that the former is an individual profit-oriented undertaking, as a result of which its beneficiaries have been mainly politicians and high-ranking government officials; while the latter is not, and yet compulsion is likely to target the less privileged in society, implying that its long-term sustainability is in doubt. Apart from the long period that trees take to mature, poor community members are usually discouraged from tree planting because of tenure insecurity.

The National Forestry and Tree Planting Act makes it compulsory for all Ugandans to plant trees. The Cabinet was to advise the President that a day to be designated as a National Tree Planting day.¹⁷ Local governments have been called upon to make tough bye-laws to punish those found guilty of destroying natural resources.¹⁸ Local governments have no powers to make bye-laws concerning access to or use of resources within central forest reserves. However, the National Forestry and Tree Planting Act, 2003, in effect empowers the District Council with the responsibility of issuing directions for planting and growing trees in Local Forest reserved lands, which specify areas where trees are to be planted, of who is to undertake the tree planting, how often, the types of trees to be planted, and on which day it is mandatory [section 39(1)]. The local governments have been mandated with legislative powers to formulate bye-laws to enforce compulsory tree planting while the responsibility for doing so with regard to central forest reserves is that of the Minister.

A few local governments (for example, Masindi) have formulated bye-laws to deter the degradation of the environment and natural resources. The restoration of degraded bare hills is the responsibility of local governments. There is no district in Uganda that has hills where this has been successfully

enforced. In a few districts, initiatives undertaken to reforest bare hills have been spearheaded by NGOs, for instance in Kisoro and Bushenyi districts (see Sowers, Kapiriri & Muhereza 2002). Compulsory tree-planting endeavours are common mainly with regard to schools and churches.¹⁹ Even after the passing of the National Forestry and Tree Planting Act, no local government had heeded calls to enforce compulsory tree planting to re-forest degraded bare hills. The reality on the ground seems different for now. The question, however, remains: how will trees planted on government land be managed if compulsory tree planting does at all take off? Suffice it to mention that the Minister retained powers to make inventories of all forests in Uganda [section 37(1)]; determining areas that require forest cover through afforestation and reforestation [section 37(2)(b)]; and appointing the body that will manage the Tree Fund, for promoting and supporting tree planting at the national level and by local governments [section 40(2)].

Decentralised forest management practices: Insights from Masindi District

‘The statutory description of powers and responsibilities may be a poor guide to how things actually work on the ground. Moreover, practice itself evolves over time’. (PMA Grant Study 2001:28). The case of Masindi District²⁰ illustrates the complexities and ambiguities with which these laws are translated into practice. Following the differentiation of the forest estate into central forest reserves and local forest reserves in 1995, and a subsequent re-centralisation of all those forests designated as Central Forest Reserves, several districts such as Masindi, whose local revenue could have been boosted by forestry resources, became apprehensive about the loss revenues from licenses, fees, fines and other royalties generated from central reserves. Following a submission from the Parent Ministry (then Natural Resources), on 31 October 1996, Cabinet decided that revenue from CFRs and public land be shared between the central government and districts where such revenue is collected in a ratio of 60/40 percent, effective from 1 December 1996.²¹ The 1997 Local Government Act then transferred management functions over local forest reserves to the District and Sub-county councils (Muhereza 2003b:6). These functions were later restricted by reducing local government jurisdiction and by Forest Department allocation of and control over permits and licenses.

In Masindi, the jurisdiction of local governments was severely restricted by re-classification of forests under the 1998 Forest Reserves Order, which placed central reserves under direct central government control and limited district management to the local forest reserves. The Order affected the

management of seventeen forests in Masindi that were re-classified as central forest reserves.²² The Order designated eight forests as local forest reserves. Only two of these, Kirebe (49 hectares) and Masindi Port (18 hectares) remained under district council jurisdiction after the others were returned to the Kingdom of Bunyoro-Kitara. In August 2000, government, in accordance with the Traditional Rulers (Restitution of Assets and Properties) Statute of 1993 and a Memorandum of Understanding between the government and the Bunyoro Kingdom signed on 19 May 2000, returned to the Kingdom several forests which, had under the Forest Reserves (Declaration) Order of 1998, been transferred to the Masindi District Local Government as LFRs, and a few others that had been re-centralised.²³ In 2001, the Kingdom was also given the Masindi Port eucalyptus plantation, leaving only the Kirebe Forest to the Masindi District Council.

A community forest was established in July 1999 in Alimugonza village with the help of a USAID-funded conservation and development project. This community forest was declared by resolution of, first, a local community in four resettlement villages in Pakanyi Sub-county, and then the Sub-county local government, supported by Masindi district council. Plans are underway to have it legally gazetted as a community forest by the Minister. The Minister is yet to issue a statutory order declaring Alimugonza forest to be a community forest after consulting the District Land Board and the local community, upon approval by resolution of a district council, in accordance with section 17(1)(a)(b) of the National Forestry and Tree Planting Act of 2003.

Budongo forest reserve, located in Masindi District, is the biggest in the country, covering 825 square kilometres, and is ranked third in overall biodiversity value, in terms of relative species richness and average species rarity (Republic of Uganda 2002). However, the changes described above left Masindi district local government with significant powers, but over very limited areas and almost over no forests. Yet it would have been expected that, through decentralisation, significant powers would be devolved to popularly elected local officials, who are considered to be more accessible to their constituents, and to have the incentive to respond to local conditions and needs, and hence more downwardly accountable for their performance (Muhereza 2003b:22-3). This is because licenses for harvesting forest produce are issued by the respective bodies responsible for the management of the different categories of forests [41(1)]. The responsible body also prescribes the terms, conditions, rights and fees for a license [41(2)]. Powers given by the decentralisation texts were cut by the diminishing of local government

jurisdiction—through centralising some forests and privatising others to commercial interests and customary authorities.²⁴

An August 2000 Memorandum of Understanding between the Prime Minister, as a representative of the central government, and the Bunyoro-Kitara Kingdom, gave the King the powers to control and manage forests within the Kingdom that had been retained by the District under the 1998 Forest Reserves Order. After the Kingdom's forests were handed over to Bunyoro Kitara Kingdom, the Commissioner Forest Department issued guidelines to govern management of the returned forests. In these guidelines, the DFO, Masindi, was directed to let the Kingdom have access to the forests to monitor revenue from them.²⁵ The Commissioner in FD directed the District Forestry Officer, Masindi, to direct revenues from the reserves to the Kingdom and to allow the Kingdom to monitor revenue collection. The Forest Department still monitors marketing and the transport fees that are earmarked for the District—although no provisions were made to assure that the district would receive them. (Muhereza 2003b:9).

Under the rubric of decentralisation, management regimes for charcoal and pit-sawing were established in Masindi District. Within the areas under local government jurisdiction, the District Council devolved the power to issue charcoal production licenses to the Sub-counties, as well as environmental health and sanitation, including monitoring the conversion of wetlands and use of hilly and mountainous areas located in Sub-counties. The central government, however, retained the power to issue more lucrative licenses for saw milling, pit-sawing, and timber movement permits (Muhereza 2003b:20). Within Budongo Central Forest Reserve, which has some of the country's most valued timber, the Forest Department transferred pit-sawing rights to private commercial interests along with powers to manage and monitor the forests. In this manner, the FD reserved discretionary control over commercial production and therefore, transfer of these powers to local government was simply a form of delegation, rather than new decentralised rights (Muhereza 2003b:8). For areas privatised to the Bunyoro-Kitara Kingdom, the King appointed the 'Bunyoro-Kitara Cultural Trust' from his trusted loyalists to manage the forests (Muhereza 2003b:10).

In a bid to have more say in the management affairs of the Budongo Central Forest Reserve, the Masindi District local government is part of the Budongo Forest Management Committee, which has established bye-laws for forest access and use, and monitors whether people who are exploiting timber in the central forest reserve have licenses and ensures that all saw millers and pit-sawyers in the forest reserve have permits (Muhereza 2003a:21). In addition to retaining some license and allocation powers for

the Forest Department, the Forest Department regulations governing all of these areas set strict limits on what local councils can do with regard to harvesting forestry resources. For example, there are nine tree species protected in all forest lands, which the LCs are supposed to enforce by ensuring that no one has illegally harvested any such species. In other words, they are supposed to hold the forestry service responsible to enforce its regulations to the letter. In addition, by requiring and controlling allocation of licenses for all commercial use of forest resources, the forestry service effectively retains control over all commercial forest products throughout the forested domain (Muhereza 2003a:19-21).

The effectiveness of the exercise of decentralised powers is also affected significantly by the limited funding that accrues to local governments from revenue collected by the centre from central forests reserves. In August 2001, after negotiating with the Forest Department, Rakai District gained a precedent—setting 40 percent of the revenues from the auction of impounded timber—previously entirely retained by the Forest Department—from Masindi District (Muhereza 2003b:22). The additional revenue, however, remained insufficient to enable the district effectively to execute its role regarding forestry services. In 2000/01, the forest department collected approximately Ushs. 172 million from Budongo forest reserve, out of which Masindi district local government received only Ushs. 25 million, and yet the district had budgeted Ushs. 50 million for planned activities in the forest department. As a result, no funds were allocated for field activities, which were financed by an European Union project including paying for 28 patrolmen.²⁶ In Uganda, while the statutes do establish new powers for local authorities, they are limited by jurisdictional restrictions and by Forest Service selective retention of the most lucrative opportunities. This, however, is at least challenged by the expectations that decentralisation has generated for local authorities.

Within the constraints of limited decentralised powers, Masindi is one of the few districts in Uganda that had exercised their legislative powers effectively, in line with section 10 of the 1997 Local Government Act. The District Executive Committee, in line with sections 18, 39 and 41 of the 1997 Local Government Act, initiated and facilitated the formulation and approval of the Masindi District Production and Environment Management Ordinance of 2002. The ordinance, among other things, ‘ensures that trees are not cut anyhow’, and will enable the district to ‘generate more revenue from charcoal business’.²⁷ The Ordinance requires every land owner/user to plant a sizeable area of at least 10 percent of his/her land under wood cover. Any land owner/user who fails to plant/maintain his/her land under wood is to be subjected to appropriate community work. The Ordinance,

which empowers the council to make bye-laws regulating charcoal production to ensure sustainability and increased revenue generated from the trade, has been forwarded to the Attorney General for approval.²⁸

Accountability issues in decentralised forest management

The discussion in this section shows how downward accountability has changed the spectrum of decentralised natural resource management, and the extent to which it can be exercised in practical terms.

Assessment of extent of public accountability

The public can exercise some forms of accountability to check the exercise of decentralised powers held by those to whom these powers have been bestowed in the following ways. Before a Minister issues an order declaring an area as a central forest reserve, the local councils and local community in whose area the proposed forest reserve is to be located have to be consulted and parliamentary approval obtained [section 6(1)(a)(b)]. In order to declare an area as a community forest, the Minister is required to consult with the District Land Board, local community and obtain approval by resolution of a district council [section 17(1)(a)(b)]. Before a Minister issues an order transferring the management of a local forest reserve to the NFA, a 90 day notice is issued in writing to a local government, within which the local government takes remedial measures or makes representations as to why the responsibility for the local forest reserve should not be transferred to the centre [section 12 (2)]. A local community, a local council in an area in which a local forest reserve is situated, or an interested person can request the Minister in writing to review the status of a central or local forest reserve with the object of seeking a reclassification as a local forest reserve or central forest reserve respectively [section 16(1)].

However, sometimes the direction of accountability is upwards. For example, all the different categories of forests are supposed to be managed in accordance with generally accepted principles of forest management as may be prescribed in guidelines issued by the Minister [section 13(3)], and in accordance with its management plan, approved by the Minister or by a person designated by the Minister for that purpose [section 28(3)]. The Ministry is the lead agency for regulating access to forest genetic resources [section 29(3)]. The power to arrest a person suspected of committing an offence under the National Forestry and Tree Planting Act, 2003, rests with an authorised person [section 88(1)], namely a forestry officer, honorary forestry officer, wildlife protection officer, or any person designated by the Minister (section 51). If there is no working relationship between owners of community forests and private forests with authorised persons, the latter may

not help stop illegal activities in forests belonging to the former where the former may not be aware of this, although they can bring an action against anyone whose actions/omissions cause or are likely to cause significant impact on the forest and for the protection of a forest [section 5(2)(a)(b)].

By retaining significant controlling and supervisory roles, accountability has remained essentially upwards to the responsible Minister, as the vanguard of 'public domain'. For example, while all forest produce from a private natural forest on privately owned land or from a plantation forest on privately owned land belongs to the owner of the forest and may be used in a manner that the owner may determine, the forest produce has to be harvested in accordance with a management plan approved by the Minister or an officer appointed by the Minister for that purpose. Owners also have to comply with regulations made under the Forestry and Tree Planting Act [section 21(2); 22(2)]. The Minister also retained powers of appointing a licensing authority for issuing timber export licenses [section 44(1)] and has powers to issue an order prohibiting or restricting the movement by any person of forest produce for such periods, in such areas and on such terms, as specified in the order [section 45]. This, in turn, gives the centre sweeping controlling powers over generating revenue from harvesting different types of forest produce.

Muhereza (2003b:11) points out that many of the meaningful powers in commercial forestry were privatised or given to customary authorities—reducing the scope for public accountability, which would have been possible if similar powers were held by popularly constituted local governments. In the Bunyoro Kitara Kingdom, the King appointed his loyal elders to a 'Cultural Trust' to manage the forests. The Trust was accountable to the King. In practice it ignored the needs of people living around the forests in question. Forest villagers expressed resentment for not being consulted and even went as far as burning trees in protest against the Trust limiting their access to the forests. Bazaara (2002a:20) reports that privatising forests to traditional authorities has undermined the ability of local governments to monitor and enforce rules for better environmental management.²⁹

Forest management function may have been privatised away from the public domain to private persons, communities, or traditional/cultural institutions; however, by allowing them to manage, maintain, and control forests, the Minister, the NFA, but more fundamentally the more popularly constituted local governments, are empowered to provide technical services to local communities, organisations, cultural, or traditional institutions and other persons involved in the development of community forests and private forests and forestry activities in general, and to charge fees for these services

[section 26(1)]. This, in essence, broadens the scope of public accountability in decentralised forest management.

The above notwithstanding, an attempt has also been made to subject these powers to downward accountability in the following limited sense. District Forest Officers issue directions to the owners of natural forests or plantation forests, requiring them to manage the forests in a professional and sustainable manner [section 21(3); section 22(3)]. Under the 2003 National Forestry and Tree Planting Act, district forest offices are to be established by district councils, but funded by the central government [section 48(1)]. The District Forestry Officers (DFOs) will be appointed by the District Councils [section 48(2)] and will be charged with the duty of advising the district councils on all matters relating to forestry [section 48(3)(a), and performing any such function as the district councils will prescribe [section 48(3)(i). While the DFO is still largely answerable to the NFA [section 48(3)(b)], the above implies that significant controlling functions over the district forestry office or officers had been transferred to the districts.

Constraints on public accountability

Besides the overarching policy formulation, planning and implementation functions related to forestry policy, the National Forest Plan and National Forestry and Tree Planting Act that emanated from the centre [section 46(a)(b)] and the NFA established under the Act as the lead agency in forestry matters in Uganda, remain under the general supervision of the Minister [section 52(3)]. The Minister is still responsible for ensuring adherence by local governments to performance standards required to implement national policies in the forest sector [section 47].

The ability of the forest service to ensure compliance to forestry regulation and to protect the forest estate has been greatly undermined by the limited nature of powers devolved away from the centre, which has increased the locus of political interference in the operation of the forest department. Residual powers over forest management at the centre have undermined the degree and extent of public accountability. The depletion of forest estate in Uganda has a bearing on decentralisation reforms in the forest sub-sector. Official reports from the FD show that indiscriminate logging and charcoal burning, which has destroyed hundreds of square miles of forest land, is orchestrated by government officials, Members of Parliament, senior army and police officers, in connivance with some FD employees. Others involved include district local government leaders, the ruling Movement government leaders and Internal Security Organisation (ISO) personnel.³⁰ Trade in forest produce, especially timber, is a very lucrative. Illegal activities have involved harvesting of timber using banned power (chain) saws, tax evasion on

imported timber smuggled from neighbouring countries, mainly the Democratic Republic of Congo, and the exceeding of stated quotas by those who were licensed.

Since 1998, timber harvesting is monitored and controlled using Timber Declaration Forms and Forest Produce Movement Permits. There is a database at NFA headquarters in Nakawa on produce harvested and revenue collected. A Timber Monitoring Unit (TMU), working closely with Uganda Revenue Authority (URA), the Police, and Internal Security Organisation (ISO), was established to crack down illegal timber dealings.³¹ This followed public outcry around the fact that most vehicles carrying timber had army or police escorts. Illegal timber dealings had become difficult to contain because they were being perpetuated by top government officials and military officers.³² In October 2003, the head of the Timber Monitoring Unit, who had been deployed in the Forestry Department by State House,³³ was sacked by the Minister and thereafter detained, questioned, and subsequently remanded on allegation of extorting money from the public, illegally selling impounded timber and impersonation.³⁴ In return, the sacked TMU head accused senior politicians and army officers of being involved in illegal timber trade and tax evasion, claiming that he had been victimised by the Minister after he arrested trucks of assorted timber belonging to the Minister,³⁵ a claim that was dismissed by the Commissioner³⁶ and denied by the Minister in a public statement.³⁷ Earlier in August 2003, there had been some correspondences originating from the Commissioner's Office requesting the release of impounded trucks carrying illegal timber, allegedly belonging to the Minister. In one such official correspondence, the Commissioner Forest Department wrote to the Permanent Secretary, Ministry of Water, Lands and Environment:

Following our telephone discussion this morning 11 August 2003, it was agreed that I discuss with Capt. Okello and have the following trucks impounded with illegal timber (mahogany assorted sizes) belonging to Hon. Col. Kahinda Otafiire released... Apparently, Captain Okello has refused the whole idea. He said that the Hon. Minister forfeit the timber to the state and pay fines for each (of the five) trucks. Please can you talk to him on this matter.³⁸

Following the sacking of the TMU head, both the Minister and the Commissioner claimed the said correspondence was a forgery.³⁹ The Minister replaced the sacked TMU head with two of his bodyguards, one of whom was believed to have a nephew of the Minister's.⁴⁰ Reports from the Forest Department indicated that between June and September 2003, six cabinet ministers, and among them a Deputy Prime Minister, lost illegally acquired timber to the Timber Monitoring Unit. The Unit had also impounded timber

belonging to six colonels, two majors, seven captains and four lieutenants.⁴¹ Justice Minister Hon Janat Mukwaya denied engaging in illegal timber dealings and told parliament that what she had been arrested by the TMU for was firewood from her father's farm in Mukono.⁴² The Inspector General of Government (IGG) launched an investigation (September 2003) of 28 high-ranking government officials and military officers said to be involved in illegal timber deals.⁴³

When illegal timber is impounded, it is forfeited to the state, and the lorry owners pay fines ranging from Ushs. 0.5 million to Ushs. 1 million, as provided for in the Forest Produce Fees and Licenses Order, 2000. Situational reports in Forestry Department indicated that the TMU had generated significant amounts of revenue from public auction sales of impounded timber, which in four months (between May and August 2003) amounted to Ushs. 180 million. Is it therefore possible that the Forestry Department officials were the victims of a very elaborate machination involving high powered illegal timber dealings? Three SRPS personnel who impounded one of the Minister Otafiire's alleged lorries recorded a statement at Jinja Road Police Station that on 9 September 2003 they were allegedly beaten up on orders of a lieutenant in the Military Police.⁴⁴

Decentralised outcomes in the forest sub-sector

It is very difficult to attribute outcomes uniquely to decentralisation in natural resource management given the many other public sector decentralisation reforms that have been taking place at the same time (also see Muhereza 2003b:18). Specifically, forest sub-sector reforms, which started in 1998, only culminated in the establishment of the National Forestry Authority that was constituted by February 2004, following the recruitment of an Executive Director as well as other four key Directors.⁴⁵ The actual impact of these reforms on the management of the forest estate will take some time to be clearly visible. However, current practices described in this article may indicate what to expect.

Institutional loopholes: The transition to the National Forestry Authority (NFA)

The NFA has replaced the Forest Department as the lead agency in forestry matters. It is a more a focussed organisation, which will provide oversight and technical support to local governments, communities, private landowners, and traditional or cultural institutions that own forests. The Authority has a Board of Directors, directly reporting to the Minister. Its Chief Executive has been given defined powers to operate the Authority, which will become the lead agency in the forestry sector. However, the run-up to the formation

of the NFA has been characterised by massive dismissals of senior staff in the Forestry Department.

The last Commissioner of the Forest Department was sacked in December 2003, barely two months after assuming office after another Commissioner had been sacked in October 2003, bringing to six the number of Commissioners fired since 1998, when reforms in the Forest Sector were launched. All six Forestry Commissioners were fired for almost the same set of reasons—running down the Forestry Department, conniving with saw millers to destroy forests, lacking a vision, etc. When the fifth Commissioner was sacked in October 2003, the executive authority of the Commissioner for Forestry was transferred to a four-man technical committee at the Ministry, chaired by the Minister.⁴⁶ The Commissioner who assumed office between October and December 2003 virtually had no authority, although among the reasons given for his sacking was ‘failure to handle complaints from Uganda Revenue Authority about the importation of timber from DR Congo without paying taxes’.⁴⁷

Between 1998 and January 2004, the forestry sector was plagued with serious management problems that undermined effective resource management. First and foremost, the power to issue licenses was being exercised by the substantive Minister of Lands, Water and Environment and the State Ministers for Environment, even after the National Forestry and Tree Planting Act came into force on 8 August 2003. In October 2003, a ban was instituted on logging in all government forest plantations. A ban was also imposed on the renewal and issuing of licences. Saw millers with running licenses were given up to 31 December 2003 to operate.⁴⁸ The Commissioner and his deputy, sacked in October 2003, were accused of issuing and renewing licences unlawfully, following the Minister’s October 2003 ban on logging in government forest plantations.⁴⁹ However, between November 2003 and January 2004, the Minister allocated logging concessions to twenty companies in other government-run forest plantations to ‘forestall’ the possibility of being dragged to court for breach of contract by companies that had invested heavily in saw milling, especially those which already had been issued with logging licenses. The State Minister issued a logging license in a government forest plantation to Kara saw mills, which belongs to an MP, three weeks after the same minister announced suspension of logging, in a bid to control excessive harvesting of timber from forest plantations.⁵⁰ A number of saw millers who were not issued with these temporary licences accused the Minister of issuing illegal ‘logging chits’. In a statement, the Minister clarified that the temporary licences were formal authority letters, and were effective until the NFA became operational. The people who received temporary licences were those who had paid logging fees before the ban on logging

was instituted. The Minister further clarified that it was never the fault of the saw millers that they were not issued authority letters in time for them to operate. Current law gives the Minister power to approve the issuance of permits, on the advice of a Technical Licence Committee.⁵¹ However, by the time the temporary licences (authority letters) were issued, the Technical Licensing Committee was not in place, so the Minister single-handedly took the initiative.⁵² This Committee was instituted on 6 January 2004, and one of its functions is to review these temporary licences.⁵³

Secondly, before a license is issued, all individual trees available for harvesting in a forest reserve or plantation have to be identified, assessed, and mapped with details of forest growth and its condition. Such information is recorded on fully computerised databases under a system known as Integrated Stock Surveys and management Inventory (ISSMI), first used in Budongo Central Forest Reserve. The plantations are divided into blocks and every individual tree allocated a reference number, which the forest staff use for monitoring and controlling tree harvesting. In awarding licenses to saw-millers, the Minister took over powers of the Forest Department, which was supposed to know the exact volume of sawn timber licensed for a saw miller to produce. This is based on accurate allocation of specific trees, whose details have been recorded. At any one time, all trees felled are supposed to be measured for volume and every licensed person's off-take on the market is required to correspond to his/her measured quota.

Most of the saw millers who benefited from the temporary licences were taking maximum advantage of the transition from the Forest Department to the National Forestry Authority.⁵⁴ It was not immediately clear why the Minister could not request the saw millers to wait for a few more months for the NFA to be constituted (since it was expected to be in operation by February 2004) in order to issue them with proper licences. By the time the temporary permits were issued by the Minister, no formal intent to sue the government had been issued by any of the affected logging companies. The legality of 'temporary authority' aside, genuine concerns were raised that the temporary authority issued by the Minister was accelerating the excessive harvesting of plantations. The saw millers were not bound by any conditions, hence wantonly harvested timber from the government plantations, as quickly as they could, before government announced new rules.

When Technical Timber Licensing Committee, instituted on 6 January 2004 by the Minister, swung into action to review the allocation of licences for saw milling in government plantations, it 'blacklisted most of the companies that held concessions allegedly allocated by the Environment Minister using "logging chits" because this created confusion with some forest officials and saw millers allegedly felling trees using fake letters'.⁵⁵ In

March 2004, the Minister dissolved the Committee,⁵⁶ which not only left observers wondering whether or not the Minister, in exercising his powers over the goings-on in the forest sub-sector, was ‘protecting’ some interests, which the committee had moved against, but also the extent to which there was genuine devolution in the management of the forest sub-sector.

Commercial groups gained significant power through privatisation. One pit-sawing organisation managed to use its increased power to influence forest management policy, which contributed to the interdiction of a Forestry Department Commissioner from office. This was an unintended effect of privatisation. While their motive was to gain a monopoly and reduce illegal competition, the private interests in pit-sawing fought corruption within the Forest Department, but they did not succeed in making major changes (Muhereza 2003b).

Even when the laws and the forest service do not give local councils clear rights, decentralisation has emboldened local government to contest policy. In forestry, Bazaara (2002a:15; also see his article, 2006) describes local governments as being ‘locked in conflicts with the central government over who should wield the power to issue permits and what proportions of the resources generated from fees and taxes should go to local government’. Local governments, however, have gained little discretion over these powers, as much of the state powers have largely remained on paper, or have been undermined through other forms of legislation. District councils in areas that have large forest estates also contested the Forest Department’s practice of auctioning confiscated illegally harvested timber and keeping the revenues. In August 2001, the Rakai District reached a precedent-setting agreement with the Forest Department in which the district council would auction off impounded illegal timber and keep forty percent of the revenue. These changes reflect the effective powers that district councils began gaining and exercising.

Environmental outcomes

The limited nature of powers devolved to local governments do not provide any opportunity for checking illegal harvesting of timber, especially in central forest reserves and those forest categories which are not under the control of the district local government. In central forest reserves, harvesting is still above the quotas specified on licenses; unlicensed saw milling and pit-sawing still occurs in and near strict nature reserves; charcoal production continues; illegal grazing continues in forest reserves; and subsistence farmers, sugarcane and tobacco growers, still encroach on forests. Tree resources from non-protected forests have been extensively depleted, as well as public (or ‘customary’) land forests—forests on non-gazetted lands that ‘belong to the

people'. The status of non-gazetted forests and forests on non-titled lands is still ambiguous in the sense that currently the majority of these forested lands are effectively 'public domain', although there is no such category of land-use.⁵⁷ The National Forestry and Tree Planting Act (2003) recognised this loophole, as it includes private natural or plantation forests on land owned in accordance with the 1998 Land Act (which can be under customary, mailo, leasehold or freehold) as one of the forms of forest tenure [see section 21(1)].

The magnitude of deforestation is captured by many recent reports. For example, NEMA sources indicate that Uganda's forest cover has drastically reduced from 45 percent to 20 percent. Figures from the National Biomass study indicate that 65 percent of the forests on private land have become degraded, while only 35 percent of the natural forest in conservation areas has been affected. Trees on private land have been wantonly destroyed because of the lack of regulations.⁵⁸

Socio-economic outcomes

Several public officials have lost their employment as a result of the recent reforms in the forest sector, and many more jobs are likely to be lost as the NFA takes root. In the meantime, the politically-connected and rich have made a fortune from illegal timber trade, depleting the country's forest estate at the expense of posterity.

The experience of Masindi district however, reveals that there is always a limit to compliance by those affected by the exercise of decentralised powers. Under the former forestry regime, in Masindi, the license fee cost charcoal producers over sixty percent of the producer price for each bag of charcoal they produced. Charcoal makers cut more trees to compensate for the high tax. The transporters paid only eleven percent of the urban price for charcoal for their licensing fees. Because of this inequity and hardship, 'many charcoal producers grew hostile toward the local and central government authorities, in some case refusing to pay licensing fees and failing to cooperate with government in other areas' (Muhereza 2003 b:8). Because of these problems, the district revenue from charcoal fees was only Ushs. 995 million out of a total expected income of 3.4 billion (about two million US dollars).

To resolve these problems and increase the revenues, the District Executive Committee resolved to change the fee from Ushs. 36,000 per producer (averaging Ushs. 1,800 per bag) to Ushs. 400 per bag. The loading fee was increased from Ushs. 700 to 1,000. To further raise revenues, the District Executive Committee formulated and facilitated the passing of the Masindi District Production and Environment Ordinance of 2002 designed to generate more revenues from charcoal production. The Ordinance requires landowners to set aside at least ten percent of their land for tree planting and enabled the

council to penalise delinquent landowners. The Ordinance also empowered the district council to make bye-laws to ensure sustainable use and increased revenue from the charcoal trade (Muhereza 2003b:8-9.) Income from licensing and taxing of charcoal production in Misindi District is used by Sub-county councils to subsidise their struggle to deliver services (Muhereza 2003b:8).

The forests that were transferred by the Forest Service to the Bunyoro-Kitara Kingdom, on the other hand, were poorly managed. The management Trust set up to by the King was accused of mismanagement, primarily through increased pit-sawing, which the Kingdom allowed in order to increase forest revenues. Masindi District Forest Officer, a centrally appointed official observed: ‘The Kingdom was selling trees like cows. They sold standing trees without undertaking an inventory to establish the volume of wood. This had partly contributed to the current over-exploitation of trees in Kingdom forests. The Kingdom officials refused to allow field extension staff to access their forests, and even issued their own licenses for harvested timber, which created a lot of confusion in the department’ (in Muhereza 2003b:10).

Conclusion

The transition from Forest Department to NFA has greatly hurt the forestry sector. Forests were depleted at a very alarming rate, as unscrupulous business persons took advantage of the confusion to reap maximum profits. It has been argued in various circles that Uganda will face a serious timber crisis within a decade if the current rate of forest depletion continues. Saw millers backed by politicians force their way into plantations and harvest trees without paying royalties. Trees are felled without being replaced.⁵⁹

The depletion of the forest estate between 1998 and 2004 has been attributed to the fact that those who managed the forestry department were uncertain about their future when the NFA finally took off.⁶⁰ The new NFA staff face a daunting task of reversing decades of mismanagement, and only time will tell whether the NFA will manage to deal with structural constraints that have bedevilled the management of the forest sub-sector. As long as the central state still retains the prerogative power of licensing, and a modicum of residual but critical powers retained by the Minister, the new NFA will find it difficult to function independently, and there will always be a temptation to encroach on these powers by the powers that be. This raises the more fundamental question of how powers over forests can be effectively transferred away from the centre where there is greater temptation to usurp them for private gain by those who hold public office or by their associates.

While laudable, the central state’s assumption of broad but difficult-to-achieve duties, some of which have been passed on to local government, opened the door to failure, charges of malfeasance, and an unwarranted

perception of incompetence on the part of forest management service. The broad duties of management, control, and protection of the forest estate may have become unachievable in the near-term because of the degree of fragmentation of the limited powers (which remain subject to the prerogative of the Minister) to various responsible bodies. Further, a precedent has been set for an imperious supervisory control over forests, for which the centre will always find justification for taking over control.

The central government or a local government holds land in trusts for the people and protects (central and local) forest reserves for ecological, forestry and tourism purposes for the common good of citizens of Uganda [section 5(1)]. Meanwhile, ownership of natural forests on privately owned land or plantation forests on privately owned land rests with the registered land owners (as private property). In keeping with the law of trusts, the role of trustee does not carry ownership. In the case of Uganda's central forest reserves, the trustee has simply 'held' onto the corpus of the trust and exercises significant fiduciary duties while relinquishing a large amount of maintenance and management functions. The trustees (the Ugandan people) are beneficiaries of the trust to a very insignificant extent. In the case of central and local forest reserves, the trustees (central government and local government respectively) are also the owners, making it difficult effectively to establish appropriate checks and balances.

It appears that the maintenance and management of the different categories of forests will become more realistic and achievable only when the requisite resources become available (funding, personnel, and others), which will probably not occur until there is a clear possibility of unmitigated harm elsewhere. It will become difficult for the new forest management structures to gain institutional credibility when governmental objectives are unachievable from the outset. For example, malpractice related to timber dealings is orchestrated by powerful people in government and in the army, who may also be license holders or owners of some category of forests. There appears to be no express mechanism set out to provide for the noted sources of local government financial support, even after private actors have assumed significant forest management, maintenance and controlling functions, previously the responsibility of the centre.

Forest produce has to be harvested in accordance with the management plan and regulations prepared under the Forestry and Tree Planting Act [section 21(2); 22(2)]. Funding for local governments of decentralised forest management services must be authorised by parliament, while the authority to tax forest produce through licensing is subject to conditions stipulated in forest management plans and regulation prepared under the Forestry and Tree Planting Act [section 21(2); section 22(2)]. Imminent shortfalls in funding

by local government and those responsible for managing (private and community) forests will undermine the possibility of professionally and sustainably managing these forests, and could easily tempt responsible bodies to take less seriously the performance of devolved duties. Again, some realistic expression of how this is to be achieved should be set out, or at least indicated in further legislation. Notably, the Local Government Act needs to recognise the role of management of private forests, and financial obligations from the centre, with regard to such responsibility.

Notes

1. The initial research for this paper was funded through a USAID grant to a research collaboration between the World Resources Institute (WRI) and Centre for Basic Research (CBR) on 'Accountability and Power in Environmental Decentralisation in Africa (2000-2002)'. Additional fieldwork has been carried between 2003 and 2004 for this paper. It is intended as a 'whistle-blower', as critics will argue that it is too early to determine the outcomes of the forest sub-sector reforms, since the NFA has only been constituted. However, the latter does not diminish the relevance of the arguments made regarding the substance of the reforms and reform process. The usual disclaimer applies.
2. Its shortcomings notwithstanding (see for example, Muhereza 2003a; 2003b), we find this framework relevant in the sense that in order to locate the possible loopholes and contradictions in decentralisation reforms in the forest sub-sector, one has to identify the powers affected by the reforms, the repositories of decentralised powers, and how they are subsequently played out in order to locate relations, directions and nature of accountability, on the basis of which the substance of the decentralisation reforms can be judged.
3. The Local Government (Resistance Councils) Statute, 1993, *Uganda Gazette* No. 55 Vol. LXXXVI December 31, 1993.
4. Article 171 of the Local Government Act, 1997 stipulates that 'the Chairperson, Local Government Councils and Administrative Councils shall be elected every four years' (see Republic of Uganda, 1997). To redress social inequities, one third of the council seats are reserved for women (Bazaara 2002a:7).
5. See Republic of Uganda. 2000. The Parliament of Uganda: Interim Report on the select Committee on Forestry Department. The Parliament of Uganda, Parliamentary Buildings, Kampala, July 2000, pp. 36.
6. World Forest Day supplement, *New Vision*, 21 March 2003, p. 28.
7. The creation of district saw millers and pit-sawyers associations was an ad-hoc administrative intervention. The 2003 Forestry and Tree Planting Act is silent on this matter, although such an arrangement would still be possible under section 15 of the Act on collaborative forest management arrangements.

8. See Min 2/99: Communication from the Chair, in Minutes of Masindi Pit-sawyers' and Wood Users' Association meeting on improvement of pit-sawing in Masindi District held on 18 February 1999.
9. See correspondence from Mr. G.W. Asaba, Chairman MAPWUA, of 17 April 2001 to Members of Parliament on the Sectoral Committee on Natural Resources, and correspondence from A.K. Nyendwoha, Chairman MAPWUA, of 20 May 2000, to the Chairman, Parliamentary Select Committee on Forestry.
10. See Min 5/99: Commissioner for Forestry Representative, in Minutes of Masindi Pit-sawyers' and Wood Users' Association meeting on improvement of pit-sawing in Masindi District held on 18 February 1999.
11. See Budongo MPA, August 2001 Monthly report, p.3.
12. There is great doubt, however, as to whether there is any evidence of over-exploitation. An official of Conservation and Development project funded by USAID in Masindi District in Uganda at the time 'did not see any evidence of this deforestation', although he admitted that there had been widespread claims of increased timber harvesting by districts that wished to raise local revenues to finance local development priorities (Personal communication, March 2003). These kinds of narratives of over-exploitation without forest service oversight are a frequently used means for forest departments to recapture control (as in the Mali Case, Ribot 1999).
13. This Statutory Instrument No. 2 of 1995 was an amendment of the second schedule (No. 2) of the Local Government (Resistance Councils) Instrument of 1995. This instrument, the Local Government (Resistance Councils) (Amendment of Second Schedule) (No. 2) Instrument of 1995, included forest reserves, land, mines, minerals and water resources on Schedule 2 of the Resistance Councils Statute, (see correspondence from Mr. E.D. Olet, Commissioner for Forestry, of 26 April 1995 to all District Forestry Officers on the subject: Statutory Instrument 1995, No. 2).
14. The Forest Reserves (Declaration) Order of 1998 (Statutory Instrument No.63), Statutory Instruments Supplement No. 23 of 11 September 1998.
15. In central forest reserves, local governments made very few gains under decentralisation. The centre retained control over the larger and financially more lucrative central forest reserves. The Act recognises the existence of forests in conservation areas controlled by UWA. However, it is not clear in the Act as to which body maintenance, management and controlling functions of these areas has been mandated. The local governments still have no powers to make bye-laws regarding the management of such areas. They can only enter into co-management agreements with UWA to access forest-based resources. In this manner, the privatisation of public lands and forests thereon has reduced the forest management jurisdiction of democratically accountable local governments. In centrally controlled protected areas, Bazaara (2002a:15) describes '... a kind of de-concentration within the line ministries in charge of particular resources... implemented through collaborative community management schemes...'

16. Under the 1949 District Council Regulations, in force until 1977, local governments below the District had no powers to make by laws (Bazaara 2002a:8). Even the powers of the elected District councils to make bye-laws was diminished by a 1963 law that transferred some powers to customary authorities in the Western Kingdoms and Busoga (Bazaara 2002a:9).
17. See 'Tree planting a must—Isoke', *New Vision*, 22 October 2003, p. 4.
18. See 'Otafiire promises tough rules on environment degradation', *New Vision*, 10 June 2003, p. 6.
19. Some schools compel their students to participate in tree planting in school gardens as part of practical work, while churches make it compulsory to access services offered nowhere else other than from the church. For example, Bunyoro Kitara diocese had started compulsory tree planting by parents of every child baptised or confirmed, and between by April 2003 had planted 4,000 pine trees at churches and parishes throughout the diocese as an income-generating project for the church (see 'Plant pine trees to fight poverty, says Bishop', *The Monitor*, 23 April 2003, p. 6)
20. Masindi District does not represent Uganda as a whole. Practices and outcomes seem to vary greatly across the country (Bazaara 2003; Namara and Nsabagasani 2003; Kanyesigye and Muramira 2001). The findings on practices and outcomes from other zones in Uganda are discussed throughout this document. While many of the dynamics found in this district are reported elsewhere, the case only should be generalised with great caution.
21. See Correspondence from E.D. Olet, Commissioner Forestry, to all District Forest Officers of 31 October 1996, reference 10/15, on the subject: 'Sharing revenue from forest resources, between Central Government and Local Administration, Ministry of Natural Resources, Forest Department, Kampala'. It is important to note that while the new Act talks about collaborative forest management, it is dead silent on the issues of CFR revenue sharing such as the 40/60, which has been operational.
22. The Forest Department has provided for arrangements between the central government and local populations involving some forest uses and revenue-sharing arrangements for local populations under arrangements for piloting collaborative Forest management. In Masindi, collaborative forest management is being piloted in communities around the Budongo Central Forest Reserve.
23. See correspondence from D.N. Byarugaba, Ag. Commissioner for Forestry, Ministry of Water, Lands and Environment, Forest Department, of 14 August 2000 to District Forest Officers of Hoima, Masindi and Kibaale, referenced 3/2. Subject: 'Return of Bunyoro-Kitara Kingdom Forests interim Guidelines'.
24. Similarly, Mali's government gave new powers to local authorities but have given them no domain over which to exercise these powers—cf. Ribot 1999.
25. See correspondence from Mr. Martin Eriagu Alomu, District Forest Officer, Masindi to the Minister for Environment, Bunyoro-Kitara Kingdom, referenced MSD., 3/1 of 29 October 2000.

26. See Forest sector coordination Secretariat, 'Voices from the field. Review of Forestry Initiatives in Uganda', April 2001, Volume 1, Synthesis Report, p. 63, quoted in Makumbi (2003).
27. See Nkunzingoma, R.D., 'Consultancy report on Masindi District (Production and Environment) Ordinance', prepared for ACDI/VOCA-EPED project, 22 December 2000. See also Min 3/99: Remarks of District Chairman, in Minutes of Masindi Pit-sawyers' and Wood Users' Association meeting on improvement of pit-sawing in Masindi District held on 18 February 1999.
28. See 'Ordinance out to boost production', *New Vision*, 25 September 2003, p. 32.
29. While we may seem to agonise over the failure to devolve decision-making powers to local governments, the traditional authorities themselves have started loudly bemoaning their apparent 'powerlessness'. The King of Buganda said in a statement issued in February 2003 that: '... kabaka ayogera obwogezi oba obwakabaka obuliwo mu linnya ng'abagezigezi bwe bagamba nti "in name" kumbe ssi bwakabaka. Tugenda netulambula abantu ne bakubuulira ebizizibu byabwe naye nga tolina ky'osobola kubakolera. Tewali kintu kyonna ky'osobola kukola kukuuma bibira byaffe wano mu Buganda...' (Translation: '... a king who cannot act, an institution which exists only in name is not worth it. People tell you their problems when you visit, and can do nothing about them. There is nothing we can do to protect our forests in Buganda...'). (See 'Bino Kabaka bye yayogedde', *Bukedde*, 17 February 2004, p. 1.) The reforms in forest sector and the Forestry and Tree planting Act of 2003 give traditional authorities/institutions or leaders maintenance, management and controlling function over kingdom/private forests. But Buganda's King feels he does not have control over Buganda kingdom forests as a result of decentralisation and other public sector reforms.
30. See 'Ministers, army bosses named in timber scam', *New Vision*, 25 August 2003, p. 3.
31. See correspondence from E.D. Olet, Commissioner for Forestry of 17 February 1998, to the Permanent Secretary, Ministry of Natural Resources, subject: 'Mismanagement of Forestry Sector', referenced C.1., in response to letter referenced CPF.2347 of 16 February 1998.
32. Among top government officials and military officers whose vehicles or employee were cited in timber/firewood deals were the Energy and Mineral Development Minister Syda Bumba and Justice and Constitutional Affairs Minister, Janat Mukwaya, Col Sam Kawagga, and Reserve Force Commander Lt. Gen, Salim Saleh's aide, Lt. Col. Kagezi (see *World Rain Forest Movement, Bulletin*, No. 74, September 2003).
33. See 'State House deployed "Capt" Okello', *New Vision*, 21 September 2003, p. 1.
34. See 'Otafiire sacks timber detective', *New Vision*, 17 September 2003, p. 1. See also: 'Police arrest Captain Okello', *New Vision*, 19 September

- 2003, p. 1; 'Captain Okello impostor says UPDF', *New Vision*, 20 September 2003, p. 1.
35. See 'Okello hits back at Col. Otafiire', *New Vision*, 22 September 2003, p. 1.
36. See 'Commissioner defends Otafiire', *New Vision*, 23 September 2003, p. 1.
37. See 'Otafiire denies timber business', *New Vision*, 18 September 2003, p. 1. See also 'Otafiire: I am ready to resign', *The Monitor*, 19 September 2003, p. 1.
38. See correspondence dated 11 August 2003, referenced 7/1 (subject: 'Captain Okello James Fred'), addressed to the permanent secretary, Ministry of Water, Lands and Environment, signed by the Ag. Commissioner for Forestry, Deo N. Byarugaba.
39. See 'Otafiire named in illicit timber trade', *New Vision*, 17 September 2003, p. 3.
40. Ibid.
41. See 'Ministers, army bosses named in timber scam', *New Vision*, 25 August 2003, p. 3.
42. See 'Otafiire: I am ready to resign', *The Monitor*, 19 September 2003, pp. 1-2.
43. See 'IGG probes Col. Otafiire', *New Vision*, 19 September 2003, p. 1.
44. See 'Otafiire named in illicit timber trade', *New Vision*, 17 September 2003, p. 3.
45. Government appointed Mr Olav Bjella, a Norwegian expert, to head the NFA on a two-year non-renewable contract. Four top officials had also been contracted to work with the Norwegian expert on a three-year renewable contract, namely: Jones Kamugisha, Isaac Kapalaga, Maxwell Akora and Hope Rwaguma (see 'Norwegian expat to head forestry dept', *New Vision*, 11 February 2004, p. 6).
46. The committee comprised the Minister, the Permanent Secretary, the Minister of State for Environment and the head of the Forestry Inspection Division (see also 'Forestry bosses sacked', *New Vision*, 5 October 2003, pp. 1-2.) In justifying the takeover of executive functions of the Commissioner by the Ministry, Minister of State for Environment, Mr Baguma Isoke said: 'The Minister (Otafiire) has recognized the need to secure and protect the forestry resources and asset base and notes that the rate at which these are being eroded and stripped is a serious threat' (see 'Otafiire fires Forests Chief', *New Vision*, 22 December 2003, pp. 1-2).
47. See 'Otafiire fires Forests Chief', *New Vision*, 22 December 2003, p. 1.
48. See Press statement issued by the Minister of State for Lands, Mr Baguma Isoke, dated 4 October 2003. While addressing the Press on 20 December 2003, the Minister (Otafiire) said that most saw millers were not following the proper procedures in extracting timber from the forest plantations, and that the ministry would not cancel the licenses because of legal repercussions, but would also not renew most of the timber licenses after they expired (see 'Otafiire fires forests chief', *New Vision*, 22 December 2003, pp. 1-2).
49. See 'Forestry bosses sacked', *New Vision*, 5 October 2003, pp. 1-2.

50. See 'State Minister Jeje Odongo issues logging chits', *New Vision*, 26 January 2004, p.1.
51. See para 5 (2) of legal notice supplement No. 6 of August 2003.
52. See Statement by Col. Kahinda Otafire, Minister of Water, Lands and Environment, in *New Vision*, 30 January 2004, p.26.
53. See provision of section 51 of the National Forestry and Tree Planting Act 2003 and the National Forestry and Tree Planting (Designation of Authorized Persons) Notice No. 6 of August 2003 para 5 (a). See Press release by Minister of Water, *Lands and Environment* of 7 January 2004.
54. See Statement by Minister of State for Lands and Environment, Mr Baguma Isoke of 4 October 2003.
55. See 'Otafire dissolves committee', *New Vision*, 9 March 2004, p. 5.
56. Ibid.
57. See 'World Forest Day supplement', *New Vision*, 21 March 2003, p. 28.
58. Ibid. See also 'Timber Crisis here', *New Vision*, 18 January 2004, p. 3.
59. See 'Otafire fires forests chief', *New Vision*, 22 December 2003, p. 1.
60. See 'Probe Forestry Department', *New Vision*, 6 October 2003, p. 12.

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