

ISRG Journal of Arts, Humanities and Social Sciences (ISRGJAHSS)



ISRG PUBLISHERS

Abbreviated Key Title: ISRG J Arts Humanit Soc Sci

ISSN: 2583-7672 (Online)

Journal homepage: <https://isrgpublishers.com/isrgjahss>

Volume – II Issue-VI (November-December) 2024

Frequency: Bimonthly



Administrative Discretion in Uganda: The Role, Impact, and Legal Boundaries

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| **Received:** 07.12.2024 | **Accepted:** 11.12.2024 | **Published:** 14.12.2024

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Abstract

This study was conducted to investigate the nature of administrative discretion in Uganda, examining its scope, legal framework, impact on governance, and its role in ensuring efficient public administration. Administrative discretion refers to the authority granted to public officials, especially in administrative agencies, to make decisions within the scope of their powers and in line with legal provisions. In Uganda, administrative discretion is crucial for the implementation of policies and the execution of public functions. However, while it enables flexibility in decision-making, it also raises concerns about accountability, fairness, and potential abuse. Through in-depth interviews, doctrinal research and empirical analysis, this study involving 60 respondents (public officials, legal experts, and citizens) evaluated how administrative discretion is exercised in Uganda, its legal boundaries, and the mechanisms in place to prevent abuse and ensure accountability. The study findings suggested that, while administrative discretion is essential for effective governance, its unchecked use poses significant risks to fairness, justice, and the protection of human rights. This research consequently offers recommendations for legal and institutional reforms to ensure that administrative decisions are made in accordance with the rule of law and respect for fundamental rights.

Keywords: Administrative Discretion, Public Administration, Legal Boundaries, Governance, Rule of Law, Public Policy.

INTRODUCTION

Administrative discretion refers to the authority granted to public officials and agencies to make decisions based on their judgment and expertise within the framework of the law [1]. In Uganda, as in many countries, administrative discretion is essential for the effective implementation of government policies, laws, and regulations. This discretion allows public administrators the

flexibility to address the unique and often complex situations they encounter, ensuring decisions are made in a timely and contextually appropriate manner [2]. However, the use of administrative discretion is not without its challenges. Without proper constraints and oversight, discretionary powers can lead to abuses, undermining fairness, transparency, and accountability. In

the case of Uganda, these concerns are especially pertinent given the existing governance challenges, such as corruption, political interference, and bureaucratic inefficiency [3].

This article examines the role of administrative discretion in Uganda, its impact on public administration, and the legal boundaries intended to ensure that this discretion is exercised in a manner that promotes justice, fairness, and respect for human rights. The paper will also explore the challenges and limitations of administrative discretion in Uganda's legal and political environment.

Problem Statement

In Uganda, administrative discretion is vital for the implementation of government policies and the management of public services, enabling flexibility in decisions related to land allocation, health, and law enforcement [4]. However, when exercised without sufficient oversight, it can lead to arbitrary decisions, corruption, and human rights violations. Despite legal frameworks, such as the Constitution and laws like the Public Service Act, aimed at safeguarding fundamental rights, there is a lack of clarity and effective enforcement mechanisms. This allows for biased and unfair decision-making, undermining public trust, equality, and justice. Citizens often face difficulty in holding administrative bodies accountable due to limited access to justice and lack of awareness of their rights [5].

Efforts by legal bodies like the Uganda Human Rights Commission and the Inspectorate of Government have attempted to address these issues, but challenges remain [6]. If these problems are not addressed, there is a risk of perpetuating inefficiency, corruption, and injustice, leading to increased inequality and human rights abuses. This could also foster political instability and undermine public trust in government institutions. The study aims to assess the impact of administrative discretion on human rights, evaluate the effectiveness of current legal safeguards, and recommend reforms to improve accountability, fairness, and transparency in administrative decision-making, thereby ensuring better protection of citizens' rights.

Purpose of the Study

The purpose of this study is to examine the nature and scope of administrative discretion in Uganda, understand its legal framework, and assess how it impacts governance and public administration.

Research Objectives

- i. To investigate the scope and nature of administrative discretion in Uganda.
- ii. To examine the legal framework governing administrative discretion in Uganda.
- iii. To assess the impact of administrative discretion on governance and public administration.
- iv. To evaluate the mechanisms for ensuring accountability and preventing abuse of discretion in Uganda.
- v. To propose recommendations for improving the exercise of administrative discretion in Uganda.

Research Questions

- i. What is the scope and nature of administrative discretion in Uganda?
- ii. How is administrative discretion legally regulated in Uganda?
- iii. What are the challenges associated with the exercise of administrative discretion in Uganda?

- iv. How do mechanisms such as judicial review, oversight bodies, and administrative procedures help ensure accountability in the use of discretion?
- v. What reforms are necessary to enhance the responsible use of administrative discretion in Uganda?

LITERATURE REVIEW

Concept of Administrative Discretion

Administrative discretion is the power granted to administrative agencies or officials to make decisions based on their judgment and expertise, within the framework of the law [7]. This concept allows administrators to apply general legal standards to specific situations where the law may be vague or incomplete. In modern administrative systems, discretion is seen as an essential tool for efficient public administration, enabling officials to adapt their decisions to the complexities and nuances of individual cases. At the same time, the exercise of discretion must be guided by principles of fairness, equality, and transparency to ensure that it does not violate human rights or lead to injustice.

Theoretical Framework

This study is grounded in Max Weber's theory of bureaucracy developed in the 1910s, which posits that administrative agencies should operate according to established rules and regulations to ensure efficiency, fairness, and accountability [8] and [24]. The study also draws on James M. Buchanan's public choice theory developed in the 1950s, which argues that discretionary powers can lead to inefficiency and corruption if not properly managed [9]. These theoretical frameworks help to analyze how administrative discretion functions in Uganda's governance system, the impact it has on public administration, and how it can be regulated to prevent abuse.

Legal Framework of Administrative Discretion in Uganda

In Uganda, administrative discretion is guided by several legislative provisions, including the Constitution of Uganda (1995) which serves as the supreme law of the land, establishing fundamental rights and freedoms that must guide the exercise of administrative powers, the Public Service Act (2008) which details the roles, responsibilities, and powers of public servants, the Local Governments (Amendment) Act (2005) which governs the exercise of administrative discretion at the local government level, and various sector-specific laws. However, the legal framework remains insufficient in providing detailed guidelines for the exercise of discretion, leading to inconsistency and potential misuse [10].

Challenges in the Exercise of Administrative Discretion

[11] opines that the challenges in the exercise of administrative discretion in Uganda are multifaceted and require urgent attention. The lack of clarity in legal frameworks, insufficient training of public officials, weak accountability structures, and the abuse of discretion in key areas such as public procurement, resource allocation, and law enforcement have significant implications for governance and human rights. Addressing these challenges is essential to ensuring that administrative discretion is used fairly, efficiently, and transparently, thereby enhancing the legitimacy of government institutions and the protection of citizens' rights. Reforming the legal framework, strengthening accountability mechanisms, and investing in capacity building for public officials are critical steps toward improving the exercise of administrative discretion in Uganda [12].

METHODOLOGY

Research Design

This study employed a qualitative research design, utilizing doctrinal research and case studies to examine the scope, impact, and legal boundaries of administrative discretion in Uganda. It analysed existing literature, legal documents, and court cases related to administrative discretion [13].

Data Collection

Primary data was collected through interviews with 60 key stakeholders selected using a purposive sampling technique who included government officials, legal experts, and civil society representatives. Secondary data was drawn from legal texts, academic articles, government reports, and previous research on administrative law and governance in Uganda.

Data Analysis

Data analysis involved thematic analysis of qualitative responses from interviews, as well as a doctrinal analysis of legal materials. The study also evaluated relevant case law to understand how courts have addressed issues related to administrative discretion.

RESULTS AND DISCUSSION

Scope and Nature of Administrative Discretion in Uganda

The scope and nature of administrative discretion in Uganda is a critical issue in the study, as the findings reveal significant concerns about how discretion is exercised and its broader implications for governance, fairness, and human rights. The study reveals that administrative discretion in Uganda is both broad and ambiguous, often exercised without clear legal guidelines, creating uncertainty in decision-making.

Consistent with study findings by [1], one of the key issues identified by the study findings is that the lack of clear legal frameworks for administrative discretion leads to inconsistent decision-making. This inconsistency arises because administrators have considerable latitude to interpret and apply the law to specific situations. However, without established guidelines, their decisions can be influenced by personal biases, political factors, or subjective interpretations, rather than by objective legal standards. This inconsistency can result in unfair or discriminatory outcomes, particularly for marginalized groups who may lack the means to challenge decisions they perceive as unjust.

For example, licensing and public procurement were highlighted as areas where the broad exercise of discretion can lead to significant problems. The study findings emphasized the need for transparency and clear standards in these areas to avoid corruption and inefficiency. In these critical sectors, arbitrary or politically motivated decisions may result in unfair access to resources or opportunities, undermining public trust in government institutions. Public procurement, for instance, can be prone to favouritism, where decisions may be based on political connections or bribes rather than merit or public interest [3].

In the area of taxation, the study findings expressed concerns about the dual nature of administrative discretion. This is consistent with [14]. On one hand, discretion allows tax authorities to adapt decisions to the specific circumstances of businesses or individuals, providing tailored solutions in cases of financial difficulty. On the other hand, without clear rules, discretion can be abused, leading to unfair treatment of taxpayers. This can foster a climate of distrust between the government and citizens,

particularly when decisions are perceived as biased or based on personal interests.

The study also highlighted challenges in the context of law enforcement, where discretionary practices can result in biased or discriminatory outcomes. For instance, police officers or judicial bodies may have the discretion to decide how laws are applied in certain situations, which can sometimes lead to decisions influenced by racial, social, or political factors. This is a significant concern as it undermines the rule of law and can result in violations of human rights [5].

Throughout the study, there was an emphasis on the need for reforms to improve legal clarity and provide clear guidelines on how discretion should be exercised. The study findings suggest that, while administrative discretion is necessary for effective governance, its current application in Uganda can lead to inequitable outcomes, corruption, and human rights violations if not properly regulated. Just like [1], the findings call for reforms that would establish clearer rules, increase accountability, and promote consistency in decision-making, ensuring that discretion is exercised in a way that serves the public interest and respects the principles of justice and fairness.

Legal Framework Governing Administrative Discretion

The study findings highlight significant concerns regarding the legal framework governing administrative discretion in Uganda. While the country has established laws intended to guide administrative discretion, such as provisions in the Constitution and various legislative acts, these legal guidelines remain vague and insufficiently detailed [15]. This lack of specificity creates ambiguity about the exact scope and limitations of discretionary powers, leading to inconsistent interpretations of the law by administrative agencies. The broad discretionary powers granted to public officials, without clear boundaries, leave room for potential misuse, and often result in arbitrary decision-making, undermining the principle of equality before the law [16].

The findings further suggest that this vagueness in the legal framework has serious implications for the protection of citizens' rights. Administrative agencies, operating with significant autonomy, may sometimes act beyond the established rules, making decisions that violate constitutional protections or fundamental rights [1]. The absence of clearly defined boundaries for discretionary powers allows agencies to interpret laws and regulations in ways that may serve personal or political interests, rather than adhering to principles of justice and fairness. Additionally, the lack of effective checks and balances makes it difficult to hold agencies accountable for unjust or discriminatory decisions, leaving citizens with limited recourse. The study emphasizes the urgent need for legislative reforms to provide more detailed guidelines for the exercise of administrative discretion. Such reforms would clarify the limits of discretionary powers, improve accountability mechanisms, and better safeguard citizens' rights, ensuring that administrative decisions align with the rule of law and constitutional protections.

Challenges of Administrative Discretion

The study findings identified several key challenges in the exercise of administrative discretion in Uganda, which significantly affect fairness, effectiveness, and the integrity of public administration.

In agreement with the findings of [14], study findings highlighted that administrative discretion often leads to the inconsistent application of rules, where decisions are not uniformly applied,

creating disparities in how individuals or groups are treated. This inconsistency results in unfairness and discrimination, especially in areas like land allocation, permits, and public service delivery. Vulnerable groups are particularly at risk as they lack the resources or knowledge to challenge such decisions.

Further still, [17] agrees with the study findings that corruption is a major issue with public officials frequently abusing their discretion for personal or political gain. The study findings included instances where decisions in sectors such as public procurement, taxation, and land allocation were influenced by bribes or political connections. This not only undermines public trust in government institutions but also perpetuates inefficiency and erodes the fairness of administrative processes.

Similar to the findings by [18] in Tanzania, the study findings showed that the lack of effective oversight was also a key concern, as it allows public officials to exercise discretion without accountability. The absence of robust checks and balances makes it difficult for citizens to challenge unjust or discriminatory decisions, fostering a culture of impunity and deepening the disconnect between government agencies and the public they serve.

Political interference in the exercise of administrative discretion was another issue raised, with decisions often made to serve political goals rather than the public interest. Furthermore, the study found that Uganda's legal framework for guiding administrative discretion is vague and unclear, leaving room for arbitrary decisions and political manipulation, which results in uneven application of the law. This is consistent with [7] and [8].

Concerns were also raised about how administrative discretion, when exercised without proper oversight, often leads to violations of citizens' rights, particularly in areas like land rights, access to public services, and discrimination. The findings in agreement with [10] emphasized that poorly regulated discretion undermines the rule of law and human rights, contributing to social injustice and inequality.

The study in agreement with [12], strongly emphasizes the need for reforms to address these challenges, including the establishment of clearer legal frameworks to limit the scope of discretion, the introduction of stronger accountability mechanisms like independent oversight bodies, and the implementation of anti-corruption measures. Additionally, the findings called for better training for public sector employees to ensure that discretion is exercised fairly and transparently.

In conclusion, the study findings indicate that while administrative discretion is essential for effective governance, its current exercise in Uganda is undermined by inconsistency, corruption, lack of oversight, political influence, and inadequate legal frameworks. There is a clear call for reforms to improve accountability, fairness, and transparency, ensuring that administrative decisions align with constitutional principles and human rights protections.

CONCLUSION

Administrative discretion in Uganda is a critical component of public administration but also poses challenges regarding accountability and fairness. The study reveals that while discretion is necessary for efficient governance, there is a need for clearer legal frameworks and stronger accountability mechanisms to prevent abuse.

RECOMMENDATIONS

Based on the results, the following recommendations are made:

- **Clearer Legal Guidelines:** Legislative bodies should create more detailed and specific laws to guide the exercise of administrative discretion, reducing the potential for abuse [19].
- **Enhanced Training and Capacity Building:** Public officials should be regularly trained on the legal boundaries of their discretion to ensure that decisions are made within the law [14].
- **Strengthened Oversight Mechanisms:** Independent oversight bodies, including anti-corruption agencies and parliamentary committees, should be given more authority and resources to monitor the use of administrative discretion [3].
- **Judicial Review:** Courts should continue to play an active role in reviewing administrative actions to ensure that discretion is exercised within the bounds of the law and with respect to citizens' rights [13].

ACKNOWLEDGEMENTS

The author appreciates the tremendous contribution of his respondents especially the students and lecturers at the Law Development Centre, Kampala-Uganda towards this research.

REFERENCES

1. Rosenbloom, D. H. (2022). *Administrative law for public managers*. Routledge.
2. Ahmed, L. K. F. N. (2024). *Public Administration*. Prachi Digital Publication.
3. Asea, W. B. (2018). Combating political and bureaucratic corruption in Uganda: Colossal challenges for the church and the citizens. *HTS Theologiese Studies/Theological Studies*, 74(2).
4. Begumya, M. D. (2020). *Central-Local Governmental Relations and Securing Land Rights in Selected Districts of Western Uganda* (Doctoral dissertation, Kampala International University, College of Humanities and Social Sciences).
5. Ramasamy, R. (2020). Quality of government, public service delivery and institutional impartiality in ethnically polarised societies: evidence for policy makers. *Asia Pacific Journal of Public Administration*, 42(1), 46-60.
6. Balarabe, K., Mbeli, V. T., & Azeez, A. (2022). Assessing the effectiveness of the Uganda Human Rights Commission vis-à-vis the Paris principles relating to the status of National Human Rights Institutions. *African Journal of International and Comparative Law*, 30(3), 424-448.
7. Cooper, R. M. (1938). Administrative justice and the role of discretion. *The Yale Law Journal*, 47(4), 577-602.
8. Steffek, J. (2021). *International organization as technocratic utopia*. Oxford University Press.
9. Ahola-Olli, E. (2023). *William Niskanen: public choice and policy* (Master's thesis, E. Ahola-Olli).
10. Mujuzi, J. D. (2021). The Ugandan Human Rights (Enforcement) Act of 2019: Addressing Some of the Likely Challenges to its Implementation. *Journal of Human Rights Practice*, 13(3), 585-605.

11. Gumisiriza, P. (2023). Human Rights Practices in Uganda. In *Global Encyclopedia of Public Administration, Public Policy, and Governance* (pp. 6407-6416). Cham: Springer International Publishing.
12. Katusiimeh, M. W., Oketch, C., & Mucunguzi, A. (2024). Ethical Dilemmas and Their Impact on Accountability in Local Governments: A Study of the Greater Kigezi Sub-Region in Uganda. *East African Journal of Arts and Social Sciences*, 7(2), 256-268.
13. Taekema, S., & van der Burg, W. (2024). Using interdisciplinary doctrinal research: Research for law reform. In *Contextualising Legal Research* (pp. 259-279). Edward Elgar Publishing.
14. Otenyo, E. E. (2023). Administrative discretion. In *Global encyclopedia of public administration, public policy, and governance* (pp. 277-282). Cham: Springer International Publishing.
15. Kessler, J., & Sabel, C. (2021). The uncertain future of administrative law. *Daedalus*, 150(3), 188-207.
16. Mensah, R. O. (2022). Should Discretionary Power be Controlled Politically Through the Democratic Process or it Should be Controlled Through the Courts?. *Mediterranean Journal os Social Sciences*, 13.
17. Teichmann, F., Falker, M. C., Boticiu, S., & Sergi, B. S. (2023). Business to government (B2G) corruption and resource misallocation. The case of China at the municipal level. *Journal of Economic Criminology*, 1, 100005.
18. Kessy, A. T. (2023). Decentralization and administrative discretion in Tanzania: An analysis of administrative discretion on human resources, finance and service delivery. *Social Sciences & Humanities Open*, 8(1), 100684.
19. Cass, R. A., Diver, C. S., Beermann, J. M., & Mascott, J. L. (2024). *Administrative law: cases and materials*. Aspen Publishing.
20. Constitution of Uganda, 1995.
21. Public Service Act, 2008.
22. Local Government Act, 1997.
23. Administrative Law and Governance in Uganda: An Overview, (2017), *Journal of Ugandan Public Administration Studies*.
24. Weber, M. (1947). *The Theory of Social and Economic Organization*.