Collaboration between civil society and government in the formulation of a National Land Policy

This case study reports the constructive collaboration between the Government and Civil Society Organisations in the formulation of the Uganda National Land Policy between 2001 and 2013. The Policy, eventually adopted in 2013, incorporates to a large extent the views of the Civil Society Organisations involved in the formulation process and, as a result, addresses the needs of poor and vulnerable land users. The case study describes, first, the actions taken to make the collaboration possible and effective; second, how the collaboration contributed to improve land governance in Uganda; and third, the lessons that can be learned from this.

PRINCIPAL ORGANISATIONS INVOLVED
Government of Uganda, ULA (Uganda Land Alliance), IFAD (International Fund for Agricultural Development)

Location
Uganda

Timeline of the case
2001-2013

TARGET AUDIENCE
Civil society, policy makers, ministries

KEYWORDS
Advocacy, governance, policies and laws, land rights, property regulation
Case description

Background and issues
Until recently, land governance in Uganda was chiefly based on the 1995 Constitution and the 1998 Land Act. These two legal frameworks were considered as relatively progressive (LANDac, 2012): they vested the radical ownership of land in the Ugandan citizens, i.e. the Ugandan state; they recognised five types of land tenure, including customary tenure; they set out the principles for the decentralisation of land administration and the creation of District Land Tribunals; and they granted formal property rights to all lawful and bona fide users of land.

Nevertheless, the land governance system remained weak, in the first place because the implementation of the two legal frameworks faltered:

» The decentralisation of land administration was weakened by limited resources and personnel, and low transparency and accountability. This perpetuated the inaccuracy and incompleteness of land records.

» Very few customary land certificates have been issued, although 80% of all land in Uganda is held under customary tenure.

» The District Land Tribunals, specifically designed as land dispute resolution institutes, were contended between the Ministry of Lands and the Ministry of Justice and eventually suspended. Their competences were assumed by the general local courts, yet the articulation of competences between the general local courts and the traditional dispute resolution organs remained unclear.

1 The 1995 Constitution recognises the following five tenure types: (i) freehold; (ii) leasehold; (iii) mailo, or the holding of land in perpetuity by traditional kings, pursuant to the 1900 Uganda Agreement; (iv) customary, or the tenure of land regulated by customary rules; (v) state land, or all land not included in one of the previous categories.
Therefore, land disputes persisted, most frequently about land boundaries, overlapping tenure systems, the rights of women to inherit land, the rights of land tenants on mailo land, the rights of internally displaced peoples and conflicts between farmers and pastoralists.

Second, the 1998 Land Act had been developed with barely any participation of the civil society. As a result, land governance paid insufficient attention to the particular needs of the most vulnerable land users, including smallholder farmers, women, pastoralists, indigenous peoples, and internally displaced peoples. Tenure security remained disproportionately low for these groups.

Solution

Around the turn of the millennium, thanks to a growing openness of the Government of Uganda towards the civil society and vice versa, the Government and the civil society engaged in a collaborative effort to formulate a National Land Policy (NLP) to address the unresolved land issues described above. The collaborative formulation of the NLP started in 2001 and the Policy was eventually approved in Cabinet in 2013. The Policy incorporates to a large extent the views of the Civil Society Organisations (CSOs) involved in the formulation process and, as a result, addresses the needs of the most vulnerable land users.

Activities

It took the Government and civil society more than a decade to evolve from low to high collaboration on land issues and to formulate the NLP. Roughly five phases can be identified.

1998-2001: embryonic collaboration

Initial collaboration between the government and the civil society emerged in the framework of the Land Act Sensitisation Working Group, an initiative of the Ministry of Lands to disseminate information on the 1998 Land Act. Later on, in 2001, the Ministry of Lands created a National Land Policy Working Group (NLPWG) to steer the development of a NLP, given that the 1998 Land Act had been passed without a supporting Land Policy. The NLPWG was not only composed of representatives of different ministries, but also representatives of six invited CSOs, including ULA, that are active in the domains of land, environment, gender and agriculture. This way, the civil society could directly make contributions to the policy formulation process, emphasising the need to make the Policy pro-poor.

The six CSOs nevertheless formed their own CSO National Land Policy Working Group (CSO-NLPWG). This Working Group served two purposes: (a) to ensure that the CSO voice would be one on issues of common agreement, and (b) to ensure that all CSO activities would be harmonised.

2001-2007: first collaborative steps towards the NLP

The NLPWG steered the development of the NLP but the actual writing was done by external consultants, whose first task was to write an issues paper. In order to kick-start this process, ULA presented in 2002 its own issues paper that was based on grassroots consultations and on a comparative study of other national land policies in the area. ULA’s paper laid the basis for the NLPWG issues paper that was eventually adopted by the NLPWG in 2003 and that would guide the further drafting of the NLP.

2 The civil war in Northern Uganda (1986-2006) displaced an estimated 1.7-1.8 million people, many of which claim access to land either in the area of resettlement or in their homeland.

3 Six civil society organisations were involved in the formulation of the NLP as of 2001, including the Uganda Land Alliance (ULA). Moreover, ULA in itself represents another 16 civil society organisations. The present case study reflects the perspective of the civil society organisations involved in the process in general and that of ULA in particular.
Between 2006 and 2007, with the support of ILC and IFAD, the civil society also commissioned independent studies on specific topics in order to inform the NLP development process. Each of the studies was synthesized into a policy brief, highlighting relevant policy concerns and proposing recommendations to the NLPWG and the consultants drafting the NLP.

2007-2009: wide stakeholder consultations

In the first five years of process, the consultants presented three drafts of the Policy to the NLPWG. Under growing political pressure, the third draft of the NLP, presented in 2007, was subjected to wider stakeholder consultations. From February 2007 to October 2009 the NLPWG organised ten regional workshops throughout Uganda, to consult local political leaders and Local Council chairpersons, district administrations, local CSOs, religious leaders, and traditional leaders.

Simultaneously, and still with the support of ILC and IFAD, the civil society organised thematic dialogues that brought together ministry technocrats, Members of Parliament, donors, private sector, academia and civil society. The dialogues took the form of monthly breakfast colloquia and were held over a period of two years (2008-2009). Each colloquium was dedicated to one specific theme and was informed by the earlier mentioned commissioned studies. Themes of the colloquia included: the customary land tenure dynamics, the power of eminent domain, police power of the state, the radical title to land, trusteeship over natural resources, layering of rights over the same parcel, land for investments, and women’s land rights. The outcomes of the breakfast colloquia were usually shared by all participants and fed directly into the NLP formulation process. Particularly complex problems, which had not adequately been covered by the breakfast dialogues (e.g. gender and customary land tenure), were further explored in larger conferences.

2009-2010: a shadow draft of the NLP

All the output generated by the commissioned studies, regional consultations, breakfast colloquia and conferences was not adequately absorbed by the consultant team in charge of drafting the NLP. Therefore the CSO-NLPWG constituted a Drafting Working Group and a Lobby Committee. The Drafting Working Group was composed of five representatives from academia, civil society, the private sector, and the Ministry of Lands. It produced a shadow NLP draft based on all the collected inputs and presented it to the NLPWG. The Lobby Committee, instead, included representatives of CSOs only and was mandated to lobby policy makers for the integration of the CSOs’ proposals in the NLP. Most of the recommendations made in the shadow draft were incorporated in the fourth draft of the Policy (see also section 3.3 on evidence).

The fourth draft was presented at a National Land Policy Conference in May 2010, where 900 regional and national delegates debated and validated the final document, before sending it to Cabinet for approval.

2010-2013: mounting pressure to approve the NLP

The final version of the NLP was expected to be passed in Parliament in 2010, prior to the national general elections, yet this did not happen. In 2011, after a change at the top in the Ministry of Lands, the Ministry communicated that the text was being studied for approval in Cabinet. After another year’s wait ULA undertook a media campaign in 2012-2013 to increase the pressure on the government. The policy was eventually passed in February 2013 and gazetted in August 2013.

Importance of the case for people-centred land governance (PCLG)

The case is a textbook example of constructive collaboration between the civil society and the government in the formulation of a people-centred land policy. The sustainability of this collaboration is deemed very high, first because of the high degree of inclusiveness of the various activities, and second because of the extent to which CSO views were eventually included in the 2013 NLP.
Achievements

Baseline
At the start of the case study, the land governance system in Uganda was relatively weak, owing to the crippled implementation of the 1995 Constitution and the 1998 Land Act, the unclear land conflict resolution mechanisms, and the small space available for the civil society to participate in the land governance. Land disputes were rife and they disproportionally affected vulnerable land users – especially women, smallholder farmers, pastoralists, indigenous peoples and internally displaced peoples.

Changes observed
The activities described above resulted in positive changes in two areas: (i) land governance as inclusive process, (ii) the legal framework on which the land governance is based.

In terms of inclusiveness, the formulation of the NLP is considered a success. Both the Government and the civil society showed openness and engaged in a constructive collaboration. The working groups, regional consultations and thematic colloquia could count on the participation of civil society, grassroots organisations, private sector, academia, ministry technocrats and policy makers. The civil society informed the formulation of the NLP with commissioned research and with views from the ground. In fact, the civil society managed to voice the concerns of up to 300 grassroots organisations, not only related to land but also gender, agriculture, and the environment.

Regarding the legal framework, the 2013 NLP significantly reinforces land governance in Uganda. While the 1998 Land Act was limited to setting out the principles of decentralised land administration and land dispute resolution, the NLP approaches land governance in much broader terms, seeking to solve historical injustices, to address the specific needs of poor and vulnerable land users, and to consider land as production factor rather than property.

Indeed, the 2013 NLP stipulates women’s rights in land ownership and inheritance; it proposes reforms to recognise co-ownership of family land, especially on customary land; it considers land rights of special groups such as pastoralists, ethnic minorities, dwellers in informal settlements and slums, and internally displaced persons; it resolves the power of eminent domain; it clarifies the concept of residual sovereignty over land; it elaborates on the public regulation of land use and development, in part set out by the 1995 Constitution and the 2010 Physical Planning Act; it resolves the issue of land taxation; it articulates the management of Government Land and Public Land; it touches upon benefit sharing from mineral and petroleum concessions, not articulated under any law; and it commits to domesticating all regional and international land policy instruments.

Evidence
The NLP itself is proof of the increased inclusiveness of land governance in Uganda. The final text of the Policy incorporates most of the proposals advanced by the collaborating CSOs: 70% of the proposals according to ULA, 85% according to Ministry officials.

While it is too early to evaluate the impact of the 2013 NLP on the actual tenure security of land users, a large-scale independent survey showed that in 2013 most of the Ugandan smallholder farmers perceived their land tenure as relatively secure (DIIS, 2013). This perception may be a first indicator that the collaborative climate between the Government and civil society in land governance has started trickling down to the level of the land users themselves.
Lessons learned

The experience of more than ten years of constructive collaboration on land-issues in Uganda can be summarised in the following lessons.

**Lessons for policy makers**

*Stakeholder participation pays off*

Space needs to be created for stakeholder participation at all stages of the process, from design through implementation to evaluation. This ensures acceptability and ownership of the results. The case study shows that the collaboration of the Ugandan Government and CSOs in all working groups, regional consultations and colloquia led to the following results:

» a Policy that addresses the needs of the poorest and most vulnerable land users, thanks to the flow of information from grassroots level to ministerial level;

» a joint ownership of the Policy by both the civil society and the government;

» high credibility and wide acceptance of the Policy;

» increased capacities of CSOs and ministry experts on land tenure.

**Lessons for civil society**

*Constructive engagement starts with identifying some common ground*

When space for stakeholder participation has been created, it is a good practice to first find areas of agreement between the civil society and the government rather than areas of disagreement, as this will lay a basis for mutual trust and further collaboration.

*Evidenced based advocacy is always a winning card*

It is particularly constructive when CSOs back their claims with credible research. In the presented case, the CSO working group commissioned studies from credible and independent researchers. This provided the CSOs with powerful armoury to discuss complex issues with the government. Moreover, the government did not invest any further in similar studies and the findings were considered conclusive by all parties.

*A cohesive civil society has more chances to succeed*

Civil society needs to speak, as much as possible, with a one voice. Cohesion within civil society is achieved by exploiting complementarities between organisations and creating synergies, by distributing roles and responsibilities according to these complementarities, and by ensuring that all members act according the agreements. This way all organisations can claim the success in equal measure.

*Multistakeholder platforms work*

A multistakeholder platform (the NLPWG) provided an effective structure for allowing different stakeholders to work together constructively and overcome differences. This worked particularly well because it was complemented by a CSO platform, which ensured that CSOs in the multistakeholder platform had a strong voice.

*A collaborative arrangement requires transparency and accountability*

The funding base, distribution of responsibilities, work plans, and reports need to be made public. This removes mutual suspicion and builds confidence in the process.
Perseverence pays off
It took a decade of hard work by civil society, together with contacts in the government, to achieve their first objective of a good land policy. This was at times a difficult process, including very public disagreements and criticism. Nevertheless, the process was robust enough to withstand such challenges and eventually reach the desired outcome.

Policy-oriented colloquia are effective when short, well-targeted, and inclusive
The CSOs, Members of Parliament and ministry experts all recognise the fundamental importance of the breakfast colloquia in the formulation of the NLP. They were inclusive (people from different backgrounds and experiences attended and contributed to the debates), short (only 2 hours per colloquium), and targeted (only one theme per colloquium). The outcomes were synthesized in policy briefs and widely disseminated.

Capacities of organisations can be built through collaboration
An unintended yet welcome side effect of the inclusive consultation and formulation process was that it built the capacity of grassroots organisations to articulate a vision on land issues. In a certain sense the process created a community of land advocates.

Challenges
For the civil society it was challenging to keep separate the political and technical dimensions of land governance. In this case study, the civil society was successful thanks to a steady, technical collaboration with the ministry, rather than a political confrontation in the public domain. This technical, collaborative process was slow—it took more than 10 years in Uganda— but paid off.

Follow-up
There is no follow up yet, as the NLP was only approved in February 2013. It remains to be seen if the implementation of the 2013 NLP will encounter similar problems as the actuation of the 1998 Land Act. This will depend on the political will to actuate and finance the full implementation of the Policy.

Supporting material

References and further reading


Blog posts
ILC (International Land Coalition) (2013a). Guest Blog: Face the fire when it comes, but also drink the cool drink when it flows. Available at: http://www.landcoalition.org/blog/guest-blog-face-fire-when-it-comes-also-drink-cool-drink-when-it-flows


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The International Land Coalition (ILC) is a global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue and capacity building.

The opinions expressed in this brief are those of the authors and do not necessarily constitute an official position of the International Land Coalition, nor of its members or donors.

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