

Developing a National Land Policy in Uganda: A Learning Process¹

Margaret Rugadya and Elisa Scalise²

1. Introduction

Land is a vital resource for individual survival and economic development in Uganda. Yet, Uganda has never had a consolidated policy to guide land ownership, management, development, and governance. Beginning in 2005, the Republic of Uganda embarked on developing a National Land Policy, employing a consultative and inclusive process. The policy, which provides a framework for sustainable and optimal use of land resources for Ugandan society and the Ugandan economy, was ultimately approved for presentation to Parliament in 2010, was adopted and then gazetted in August 2013.

This paper details and assesses National Land Policy development process in Uganda, and in so doing, examines its potential to be the source of lessons for other countries developing politically sensitive policy reforms. The first section describes the background to the National Land Policy in Uganda, followed by a section describing the policy development process. Recognizing the value of sharing best practices, the paper then describes a few illustrative pragmatic lessons learned in the process, citing examples from the text.

2. Background to the National Land Policy in Uganda

Land tenure discourse in Uganda is politically volatile and historically complex. It is subject to competition between the interests of commercialization and sustainable development, the desire for economic growth, and the reality that most Ugandans rely on land for survival as subsistence farmers.³ In addition, the State has an interest in ensuring most efficient and productive use of such an important asset.⁴ Multiple tenure regimes operate throughout Uganda, based in part on a preference-based colonial legacy which deprived some communities of their ancestral land and granted and registered formal rights to land for others. The ensuing overlap of rights and interests has led to a history of forced evictions, dispossession, land disputes, and sometimes violent conflict. In addition, the legal framework is yet to find the appropriate compromise between formal and customary laws governing land rights, and land rights of vulnerable groups and land resource-dependent communities are either inadequately protected or poorly enforced.

¹ The authors would like to thank Naome Kabanda and Eddie Nsamba-Gayiiya for their time, patience and input; without the countless hours of interviews with them, this paper would not have been possible.

² Margaret Rugadya is currently Natural Assets Program Officer for Ford Foundation, East Africa. Elisa Scalise is an attorney and Director of Landesa's Center for Women's Land Rights.

³ The majority of land owners in rural areas have focused more on land as their fundamental source of livelihood, Page 161 NATIONAL DEVELOPMENT PLAN (2010/11 - 2014/15)

⁴ Uganda will undertake policy reforms to ensure that land facilities, land use regulation and land development enhance economic productivity and commercial competitiveness for wealth creation and overall social economic development in an integrated and sustainable manner, page 54, UGANDA VISION 2040

Other pressures on land and its governance in Northern Uganda also point to the need for a National Land Policy. A rapidly growing population and the discovery of mineral wealth in some regions is stretching the existing legal and policy framework and highlighting the importance of tenure security. Furthermore, the formal land governance institutions which do exist are in dire need of overhaul; corruption in the already under-resourced land administration agencies is rife, land dispute resolution mechanisms have broken down, and there is no clear policy on government management of public lands.

Notwithstanding the aforementioned, Uganda began the process for developing a National Land Policy in 2001. The vision of that policy is to permit “a transformed Ugandan society through optimal use and management of land resources for a prosperous and industrialized economy with a developed services sector”.⁵ The goal of the National Land Policy is “to ensure efficient, equitable and optimal utilization and management of Uganda’s land resources for poverty reduction, wealth creation and overall socio-economic development”⁶

The process for developing the National Land Policy was inclusive and consultative. It intentionally involved national, regional, and district level stakeholders amongst them, government, traditional leaders, landowners, and NGOs representing minority and other groups. A final version of the policy was approved during a National Land Policy Conference. After more than a decade of ferocious debates, haggling and consensus building, the potential for advancing all the anticipated reforms were at a halt for two years during which an election took place. In February 2013 the National Land Policy was finally adopted by Cabinet and then in August 2013 it was gazetted.

3. Process

In summary terms, Uganda’s National Land Policy was developed in a number of key steps. First, creating the National Land Policy Working Group. Second, drafting an issues paper and drafting versions of the National Land Policy. Third, a period of consultation with regional and national stakeholders. Fourth, revision of the draft policy and presentation to cabinet for approval. The next steps are for the policy implementation to be planned and budgeted, and then final submission to cabinet for adoption. For the most part the policy development process was funded by the Ministry of Lands. Each of these steps is explained in more detail below.

i. National Land Policy Working Group

The National Land Policy Working Group was made up of members of Ministries and key civil society organizations. The lead Ministry was the Ministry of Lands, and members of the Ministries of Agriculture, Environment, Tourism, and Finance were involved. Civil Society organizations include Associates Research Uganda, Uganda Land Alliance, FIDA (The Uganda Association of Women Lawyers), ACODE (Advocates Coalition for Development and Environment), ActionAid and the Uganda Law Society. The objective of the National Land Policy Working Group was to steer the development of the policy and to provide

⁵ Republic of Uganda, Ministry of Lands, Housing and Urban Development, The Uganda National Land Policy (hereinafter “the National Land Policy,” February 2013, p.2.

⁶ *Id.*

input and technical expertise from their perspectives. Policy drafting was outsourced to a Kenyan consulting firm, lead mostly by a senior land policy expert.

A strength of the National Land Policy Working Group was that it involved civil society from the very beginning. However, over the course of the development of the National Land Policy the role of civil society swung between almost token involvement, to a role where members of civil society became *de facto* consultants leading drafting and regional consultations (all the while being reminded by the Ministry that they did not “own” the policy). This shifting of roles left its mark on final draft of the policy, and was not without its drawbacks, as described more detail in Section 4.

ii. Issues Paper and Early Versions of the National Land Policy

Almost two years after the National Land Policy Working Group was created, the consultants presented them with a Policy Issues Paper. Having identified deficiencies in the Issues Paper, the Working Group created a sub-committee, consisting of a member of the Ministry and two members of civil society, to revise the paper. After a two week retreat, the Working Group sub-committee produced a revised Issues Paper which it believed better captured to nuances of the land sector in Uganda. The revised Issue Paper then guided drafting of the Policy.

The first, second, and third drafts of the Policy were completed during the subsequent five year period. Draft Three was completed in 2007 and was the first draft to be presented to the public. Though there was general agreement amongst Working Group members that Draft Three needed more attention, political pressure compelled the Working Group to begin the regional consultations.

iii. Consultation with stakeholders and special interest groups

Public consultations were divided by region, each region representing six to eight districts. There were eleven consultations in all. Attendees included political leaders, including Local Council Chairpersons level five (LC5) to level 1 (LC1). Also invited were district administration of departments and agencies that touch on land (natural resources, land use planning, agriculture, tourism and the like), local NGOs, religious leaders, and traditional leaders. Special consultations were held with religious leaders, traditional and cultural leaders and women’s groups because it was determined they may need additional explanation on policy development or because the issues that concerned them had the potential to be more politically contentious. In addition, the Ministry engaged in a nation-wide media campaign announcing the consultations, and some of the key issues that the Policy addressed.

The regional consultations lasted four days each. Because many of the attendees did not have experience in developing a policy or with some of the issues that the policy addressed, two of the four days were spent largely as a “training” of attendees. The final two days were then spent on discussion, and verbal submissions to the consultation organizers. All verbal submissions were recorded. Each attendee left the consultation charged with taking the Draft policy back to their constituents or staff, and then writing submissions to the Working Group. The response from these written submissions was overwhelming.

It became apparent during this time that the consultant charged with leading the drafting of the development process, had the technical but not the human resource capacity to deliver

each of the regional consultations, and so members of the Working Group became involved. Sadly, after the third regional consultation, the lead consultant passed away, and so the Working Group was required to lead the remaining eight.

iv. Revisions of the Policy

There were two main types of revisions of Draft Three of the National Land Policy that came out of the regional consultations. First, the format of the document changed significantly, and second, a number of new provisions were added. The format in Draft Three had been based on the format of land policies from other nations; it stated the problem and then provided policy strategies for dealing with those problems. Drafters, who at this time were a sub-committee of the Working Group, decided that the format should reflect the needs of the Ugandan people rather than reflect the policies of other nations, and change the format. Draft Four was formatted with a definition of the problem, the policy issues that must be resolved, a statement of what had been attempted in the past to address those issues, the policy principles that would be applied to those issues, statements of policy, and finally a number of strategies – often grouped as potential phases – to address the policy issues.

In addition, a number of provisions were significantly amended or newly added based on input from regional consultations.

v. National Level Political Buy-in and National Land Policy Conference

Draft Four was then presented to cabinet and to the president for their review, comment and buy-in. Also, those provisions which were new or had been significantly changed were re-worked with those groups who had stake in those provisions. On the basis of these steps, Draft Four (revised) was completed and presented at a National Land Policy Conference, where all regional stakeholders were invited to attend and make a final reading of the document which would be sent to Cabinet for approval.

4. How process can affect substance: Lessons learned

To describe the development of the National Land Policy as a series of steps, only tells part of the story. Such a description hides the intricate details of consensus building, negotiation, challenges, and successes associated with attempting to draft a policy that adequately met its complex goal of ensuring “efficient, equitable and sustainable utilization and management of Uganda’s land and land-based resources for poverty reduction, wealth creation and overall socio-economic cultural development.”⁷ The remainder of the story is provided below, via a few illustrative, practical lessons gained throughout the process of developing the national land policy, as relayed by key members of the National Land Policy Working Group.

This list is not exhaustive, however, it begins to demonstrate the importance of planning, the challenging trade-offs, and reality of compromises which must be made by all involved to arrive at a Land Policy which can truly be thought of as reflecting the needs of Uganda as

⁷ See Republic of Uganda, Ministry of Lands, Housing and Urban Planning, National Land Policy Draft Four revised (on file with author).

whole. These lessons also highlight a few important considerations for others who seek to engage in a similar policy-making exercise.

i. Start with a statement of vision, goals, objectives and policy principles
Beginning the land policy development process with a statement of the vision, goals, conceptual framework and principles is a critical first step. These initial statements should be vetted with key political and social stakeholders and special interest groups; then they can be used to focus and guide all subsequent activities and help ensure that influential political and other stakeholders remain invested in the final result.

In Uganda, creating the National Land Policy Working Group was the first step in the development of the policy. For a range of reasons, related to time and timing, and a lack of clarity around its role, the Working Group did not begin with a vision statement. Later, during the public consultations of Draft Three, the Working Group were faced with the challenge of moving the Land Policy forward in way that all the various stakeholders felt invested in its contents and would help ensure its adoption. Interestingly, in a meeting with President Museveni aimed at gaining his buy-in, the President noted that a lack of a statement of vision would prohibit the Policy from moving forward. At a rather late date, the Working Group formulated a vision, goals and objectives for the Policy and then shared them in major news outlets, to government departments and to CSOs for comment and approval. Though done late in the game, the formulation and sharing of the vision statement helped solidify support for the Policy and also helped it gain some momentum among the key political players.

ii. Ensure initial conception of issues is thorough, methodical and comprehensive
A clear description of the issues that a National Land Policy is trying to address provides a rationale for policy statements, and helps drafters remain focused. A well researched issue paper should identify land related issues around the country and among different groups, it should identify and analyze the attempts that have been made to address those issues in the past. It should identify the stakes associated with each issue and also who the core constituents are.

The Uganda National Land Policy began with an issues paper created by the consulting group. However, the first iteration of the paper was largely regarded as insufficient, and lacking in depth. For that reason, the drafters and eventually the Working Group, spent much time later in the process, clarifying and re-conceiving issues, often during the public consultations. This meant that time which might be have spent focusing on policy strategies and solutions, was instead spent correcting the statement of the problem. On the other hand, given budget and other resource constraints, the extent of review and debate that occurred at the regional consultations, could probably not have taken place more than once per region. In that sense, discussing the issues in a public forum permitted the Working Group a broader and more nuanced perspective on the policy issues than they might otherwise have had.

For example, section 3.14⁸ of the final Policy covering the Kibaale Land Question was not included in Draft Three. All drafters and reviewers believed that the underlying causes of

⁸ The National Land Policy, s. 3.14.

the land issues in Kibaale could be addressed by other policy solutions, related to *mailo* land tenure reform and the role of traditional leaders. Only after significant debate and discussion at the regional consultation, did the Working Group understand that there were other, hitherto unreported, grievances which needed to be addressed in the area. Had the Working Group glossed over the issues at the regional consultation in an effort to discuss solutions, it may not have had the opportunity to glean the nuances of the land problems in Kibaale. On the other hand, if the original description of the issues had been more thorough, time in consultations could have been spent on discussing policy solutions to the Kibaale land question.

iii. Develop a multi-faceted strategy for political buy-in

Though seemingly obvious, the importance of political buy-in – from all political players – cannot be overstated. Issues surrounding land can often be politically sensitive, and a land policy, which attempts to reform the *status quo* may threaten the wealth or privilege of powerful people. While there may be tacit recognition of the need to address historical inequities via land sector reform, policy drafters must have some degree of certainty that when called on to vote, that influential political players will be supportive of the policy. Also, striking a balance between neutrality and the need for political support can be challenging. Whatever the case, developing a strategy for gaining political buy-in and retaining political will to move the policy forward is critical.

In Uganda, the working group created a number of strategies with different powerful groups to help gain and retain their support for the policy. With politicians, the Working Group adopted three tactics; first, it ensured that each policy issue was written clearly and accurately so that the facts were not contested. Second, by the time politicians reviewed the draft, each policy issue had a suite of reform strategies, usually packaged in groups ranging from light reform, medium reform to drastic reform. This was done to ensure that politicians realized that there were options for reform each with differing costs, impacts, and benefits. Third, the Working Group cultivated the political space for politicians to learn about the policy in detail and to comment on it. This tactic proved especially important to garner the support of the President, whose influence could spell the success or failure of the policy adoption.

Another powerful group for which the Working Group took specific steps to gain support from were traditional leaders and cultural leaders; kings and clan chiefs. For these groups, the Working Group held special meetings, in addition to the regional consultations.

iv. Consider a flexible approach to public consultation, and allow time for training on the basics

Extensive public consultation is critical to ensuring that a policy reflects realities of all those with a stake in the result, suggests feasible policy solutions, and increases the likelihood that the policy will be adopted and implemented. At the same time, public consultations can be costly, unwieldy, time consuming, and as much time may be spent on addressing speculation and rumor as on substance. Because consultations cannot be done with each individual, they necessarily rely on a presumption that representatives of a group speak for their constituents, that all groups have some form of representation, and that representatives have the skills to engage in policy-level debate.

In the formation of the Ugandan National Land Policy, four-day long public consultations were held around the country. While every attempt was made to be inclusive of minorities, special interest groups, and those who may be less powerful, the Working Group found itself confronted with the question of how “low” they should go, that is, what balance should be struck between the interests of the those less powerful and the constraints of budget and time and the importance of visible “high-level” support. The Working Group erred on the side of broad rather than deep coverage and suffered some criticism for this.

In an attempt to address the criticism, the Working Group conducted a few special substantive consultations, where it specifically sought feedback from historically marginalized groups, for example a special request for input from women’s rights groups. The response in this case was helpful for articulating issues, but less so for providing policy solutions. The Working Group determined that for special interest groups to engage meaningfully, they would need additional skills-training, something which was not planned or budgeted for.

- v. Plan, set expectations, monitor and evaluate.

A working group, comprised of technical experts and government, can play a positive role in the process of developing a policy. Like any other group it should have clear terms of reference, goals and objectives, and expectations should be clear.

In Uganda, the Working Group began playing an advisory role in steering the course of the National Land Policy. For many reasons, the Working Group wavered from its original purpose and became invested in the final result, by taking on regional consultations and revisions. If they had not done so, the Policy may have languished unfinished for some time. On the other hand, in so doing, there was no other group responsible for steering the development of the policy. Preparing for this risk by setting clear terms of reference for the Working Group and developing and implementing a monitoring and evaluation plan may have ensured that mid-course adjustments were done with consideration of their broader impact on the process.

5. Conclusion

It is hoped, in describing a few pragmatic lessons, that others similarly engaged in policy development will benefit from the process of developing a National Land Policy in Uganda. At first glance, these lessons are simple: (1) set a clear vision, goal and objectives, (2) ensure a thorough and vetted explanation of issues that need to be addressed, (3) develop a multi-pronged approach to gaining political support, (4) consider flexibility in public consultations, and (5) spend time in planning and managing expectations and risks. Yet, their impact on the final result can be powerful.

National policies, no matter their subject matter, are often developed at the nexus of theory, research, economy, politics and power. Generalized best practices with regard to substance can ring hollow in the face of the realities of budget and resource constraints and the socio-political context. However there is much to be gained for the practitioner on the value of process. And, as the Ugandan experience shows, process can, and often does, affect substance.