

CASE STUDY

Nairobi, Kenya

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Vigilant civil society enforces implementation of National Land Commission

This case illustrates how non-state actors collaborated with citizens to compel the Kenyan State to appoint a Land Commission, an institution provided for by the law. The objective of a decentralised and autonomous Land Commission was to improve land governance in Kenya and increase the accountability of executives. However, the Kenyan Executive was delaying the creation of this institution. Diverse and complementary strategies were put in place by non-state actors and communities, which mobilised to ensure that the Government complied with a Constitutional provision aimed at improving land governance in Kenya.

PRINCIPAL ORGANISATIONS INVOLVED

Kenya Land Alliance (KLA), Land Sector Non State Actors (LSNSA), Ford Foundation, Kenya Private Sector Alliance

LOCATION

Nairobi, Kenya

TIMELINE

2012 - 2013

TARGET AUDIENCE

Civil society, policy makers, communities

KEYWORDS

Governance, community, mobilisation, advocacy, multi-stakeholder cooperation

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GOOD PRACTICES

towards making land governance more people-centred

This case study is part of the ILC's Database of Good Practices, an initiative that documents and systematises ILC members and partners' experience in promoting people-centred land governance, as defined in the Antigua Declaration of the ILC Assembly of Members.

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This case study supports people-centred land governance as it contributes to:

- Commitment 1** Respect, protect and strengthen the land rights of women and men living in poverty
- Commitment 7** Ensure that processes of decision-making over land are inclusive
- Commitment 8** Ensure transparency and accountability

Case description

Background issues

Kenya has a history of land related conflict. Land tenure is either public, private or held in community trust. The land categories were created by the colonial occupants of Kenya. The community land trust is relatively the least secure and subject to ethnic conflict. Public land is vulnerable to land grabbing. Competition among land users render land a volatile and politically sensitive issue. Over the years Kenya initiated land programmes aimed at enhancing tenure security, increasing equality and reducing conflict. By 2008, there were at least 76 legislations on land. In 2009 a New Land Policy aimed at reconciling existing land laws was passed. The consolidation also paved the way for the formulation of general land policy guidelines as, since independence, Kenya had not had a land policy. Article 67 of the 2010 Kenyan Constitution set out a framework for improved land governance. The Constitution called for the reform of land management institutions, increased public participation and the establishment of the National Land Commission, District Land Boards, and Community Land Boards (Rutten, 2012).

The National Land Commission Act n.5, 2012, was passed to facilitate the establishment of the National Land Commission (NLC) and other decentralised structures for governing land. The NLC was set up to decentralise land administration; manage and administer all public land; advise the government on the comprehensive land registration system and land use development (LSNSA, 2012). The aim was to reduce politicisation of land and promote transparency in the land sector.

Although the legal structure for the establishment of the NLC was in place, there was a two-year delay in the appointment of the Commission. The Executive missed the

Constitutional deadline and ignored petitions, campaigns and calls by non-state actors to enforce the appointment of the NLC.

Solution

Since 2012 the Kenya Land Alliance and its partners have worked to improve land governance in the country. They used a variety of strategies, including the formation of a non-state actors' coalition and the mobilising of communities to put pressure on the President to respect the Constitution. Other strategies included an extensive use of media to publicise land issues and expose the failed appointment of the Commission, a petition and legal action. A set of activities employed by civil society to put pressure on the President through legal action and public pressure, in a peaceful non-violent way, is what resulted in a successful intervention. After non-state actors took legal action the Commission was finally appointed in 2013.

Activities

The activities implemented by KLA and its partners to operationalise the appointment of the NLC, were carried out through consistent pressure and peaceful engagement within the provisions of the Kenyan Constitution.

Coalition of Civil Society Organisations and Non-State Land Actors

KLA formed a partnership with other Civil Society Organisations working in the land sector in Kenya. The Land Sector Non State Actors (LSNSA) partnership includes twelve active and up to thirty periodic members drawn from non-governmental, professional land related institutions and private sector institutions. LSNSA mobilised technical and financial resources, and pooled their expertise towards a single cause. KLA was the host institution. The formation of a coalition enabled LSNSA to achieve wider coverage of the country and also more effective community mobilisation.

Community Mobilisation

In December 2012, LSNSA mobilised communities to petition the President to appoint commissioners to the NLC. LSNSA raised public awareness of the issue through community forums. They explained the issue to the communities that were getting organised to start the petitioning process. A campaign was launched to mobilise stakeholders at the national level. The campaign engaged with the media strongly and relied on the use of media statements, media briefings, television and radio debates and round tables with development partners, government officials and civil society. LSNSA also distributed small booklets with the land laws. This aimed to lobby various stakeholders to exert pressure on the government.

Legal Action

- **At the courts**

In January 2013, after exhausting the non-legal efforts to have the NLC appointed, LSNSA instituted legal action against the office of the Kenyan President. LSNSA supported coastal and north-eastern communities to approach the courts and secure orders compelling the President to appoint the NLC. These communities were selected because they were relatively more affected by long-standing land issues and historical injustice, which the NLC could address. LSNSA mobilised the communities to hand the

petitions over, as this would make the Government more receptive of communities' concerns than the LSNSA.

First, on 9th December 2012, KLA brought together land dependent communities in Nairobi to petition the President to fast track the appointment of Commissioners to the Commission but this did not produce any result. Because of the continued refusal and failure by the President to appoint the Commissioners, in January 2013, KLA and a partner organisation supported two community members to seek court orders to compel the President to appoint the Commissioners. KLA mobilised communities to attend court sessions while its partner organisation offered legal support. On 4th February 2013, the Court ruled in favour of the community members and gave the President 7 days to appoint the Commissioners. The President, however, ignored the Court order and the 7 days lapsed.

- **Constitutional Commission Appeal**

As a last resort, LSNSA approached the Commission for Implementation of the Constitution to demand that the President respect the Court order. This finally led to the Commission being appointed.

Importance of the case for people-centred land governance

The way in which CSOs worked together to mobilise communities to ensure the operationalisation of the National Land Commission in Kenya using peaceful strategies is important for people centred land governance. The manner in which civil society simultaneously applied pressure on the President through legal action and public pressure proved to be an effective mechanism for ensuring that processes of decision-making over land became more inclusive. The sustainability of this collaboration is very high, firstly because of the high degree of cooperation among non-state actors, and secondly because the Kenyan Government yielded to the pressure of civil society and the broader community and appointed the Land Commission in February 2013.

Changes

Baseline

At the start of this initiative land governance in Kenya was a very volatile subject. Land governance was centralised and the majority of the population marginalised from decision-making related to land. The public officials in charge of land governance were neither transparent nor accountable. This lack of transparency rendered land governance vulnerable to corruption. The land rights of the majority of Kenyans were insecure. As a result, there was a lot of ethnic land-related conflict. The majority of Kenyans, whose tenure was insecure, were vulnerable. Pastoralists, internally displaced people, women, and smallholder farmers were the most affected.

Prior to this intervention, civil society in Kenya was fragmented and characterised by significant duplication of functions. A fragmented civil society was easily side-lined by the

“Land Governance plays a critical role in making the government accountable” **Odenda Lumumba, KLA National Coordinator**

“There is no longer justification for any bloody conflict or prolonged dispute over land if we adhere to the prescribed legal instruments” **Dr. Muhammad. A. Swazuri, NLC Chairman**

Government and deregistered if it became too vocal. The professional representatives of the surveyors, lawyers, and land use planners aimed at maintaining their identity but engaged the Government on the land issues. Some private sector institutions wished to engage the Government too, but on specific land issues only and without necessarily joining a coalition. LNSA provided a flexible inclusive platform for the various stakeholders for them to work together and approach the Government in collaboration on the basis of their particular interests.

Achievements

On 27 February 2013, the Kenyan National Land Commission was sworn into office. The responsibility for land governance was decentralised from central government to the NLC. The NLC started working as a transparent and accountable entity. The decentralisation of the NLC enabled more people to access this institution to resolve long-standing land disputes. The setting up of the NLC reduced the extent of political interference and corruption in land governance. As a result community members and Kenyan citizens have increasingly approached the Commission with their land cases. The removal of the Executive from direct involvement in land governance provided Kenyans with an opportunity to seek mediation on cases where the Executive violated their land rights. As a consequence of more accountable and transparent land governance, conflict has decreased and tenure security increased for citizens and marginalised communities in Kenya.

LNSA provided a platform for mobilising stakeholders in the land sector. This enabled non-state actors to pool their expertise, resources, and interests to speak with one voice. LNSA speaks consistently and enables stakeholders to reduce duplication of efforts. This allows for successful fundraising.

Evidence

The Kenyan NLC has offices and a website, which details all its achievements <http://www.landcommission.go.ke/>.

A Progress Report was produced after the Commission started working. It provides information on:

- Public consultations on land tenure;
- Forums with land sector professionals who facilitated the acquisition of land and the compensation for the people who lost land to road construction;
- Addressing public complaints on land issues;
- Tours in several counties to attend to perennial land issues;
- Verification and streamlining of records (NLC, 2013).

Lessons learned

Lessons for civil society

Civil society organisations working to promote transparent land governance should be prepared to engage with policy makers throughout the whole policymaking process. They should work to secure good governance in land so that citizens can benefit from the policies and statutes in place. Civil society organisations should also:

- Be willing to collaborate around a single goal and pool their resources and expertise.
- Leverage on opportunities created through policy revision to mobilise constituencies and gain momentum in advocating for improved land governance.
- Participate in the whole policymaking process and follow through to implementation.
- Maintain consistent pressure on policy makers by working closely with affected communities.
- Have capacity to engage the policy makers in both the public and private domain.
- Mobilise resources to facilitate the process of supporting policy formulation and implementation. This includes mobilising communities, transporting them and providing legal support.
- Deploy communities to engage with government through petitions and litigation as an effective strategy, as government finds it difficult to ignore a legitimate constituency like a community.
- Agree on the overall objective and principles and that can accommodate the various concerns to reduce conflict.

Lessons for policy makers

Policy makers that include not only the central but also the local governments working on land governance, and are mandated to govern land and natural resources, should:

- Recognise that they are bound by constitutional provisions and respect their national constitutions' implementation of land governance policy.
- Recognise and work with non-state actors who have a vested interest in policy as a vehicle for securing land rights and promoting good governance.
- Recognise that civil society and other non-state land sector actors are potential partners in improving land governance.

Challenges

The lack of political will by Kenyan policy makers and their mistrust of non-state land actors undermined the LANSAs coalition. In addition, the setting up of and maintenance of the LANSAs platform was financially demanding.

It was challenging for various stakeholders to straddle their organisational straitjackets to meet the conditions of setting up an effective LANSAs platform. As a result, it took time

for LANSAs to agree on strategies to implement. There were unresolved conflicts of interest, which undermined LANSAs efforts to get representatives on the NLC. As a result, no non-state actors' representatives were appointed to the NLC.

The petition was filed during the elections period and most people including the media, the Government and the citizens were focused on relevant matters. It was hard to get land reforms into the political agenda and the ongoing debates. KLA ensured a wide community representation was there as part of its strategies, such as court attendance, petitioning the President and keeping the case live in media. This attracted public interest.

Finally, it was challenging for KLA to mobilise resources to file the case and ferry communities from all over the country to attend the case in Nairobi.

Follow-up

The NLC is currently operational with established department and directories in charge of the management of public land. However, funding remains an issue and there still are disputes over the NLC's mandate.

The LANSAs initiative was successful because of the following contextual factors: the relationship between civil society and the Government of Kenya; the recognition of LANSAs as a legitimate interlocutor by the Kenyan Government and by non-state actors; the existence of a Court which commanded respect for the Government; willingness by development partners to fund the initiative.

Supporting material

References and further reading

Daily Nation (2014) *We've powers to probe title deeds, lands team insists.*

<http://www.nation.co.ke/news/powers-to-probe-title-deeds-lands-team-insists-/-/1056/2410946/-/j6uy57/-/index.html>

Kameri-Mbote, P. (2009) *The Land Question in Kenya: Legal and Ethical Dimension.*

International Environmental Law Research Centre

<http://www.ielrc.org/content/a0910.pdf>

LANDac (2012) *Kenya: Food Security and Land Governance Factsheet.* IS Land Academy.

LANSAs (2012) Petition to Parliament under Articles 119 and 37 of the Constitution; Petition to Parliament (Procedure) Act of 2012; and Standing Orders n. 219 and 223 of the National Assembly on the Land Laws (Amendment) Bill, 2015 and the Community Land Bill, 2015 <http://www.kenyalandalliance.or.ke/wp-content/uploads/2014/08/Petition-to-National-Assembly-11-12-15-FINAL-002.pdf>

NLC (2013) *Progress Report - March 2013 - January 2014*

<http://www.landcommission.go.ke/>

RIPOCA (Human rights, power and civic action in developing societies: comparative analyses) (2010) *The Kenya Land Alliance Case Study*

http://www.jus.uio.no/smr/english/research/projects/ripoca/workshop-april-2010/Kenya_Org_study_Kenya_Land_Alliance_Feb%202010.pdf

Rutten, M. (2012) *Kenya food Security and Land Governance Fact Sheet*. IS Academie for Equitable and Sustainable Development. Royal Tropical Institute.

Photos, videos

Communities hold placards outside court after a hearing of the petition



Photo: KLA

Members of the National Land Commission with the Chief Justice after being sworn in at the Supreme Court



Photo: NLC

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