



Brief: Community feedback on the Community Land Act and public participation in county planning and budgeting, December 2016

Introduction:

DLCI was funded from July to December 2016 by USAID/AHADI to promote information provision on critical policy and practice issues to remote communities in Turkana, Marsabit and Isiolo counties. Following an initial assessment it was decided to disseminate information on the new Community Land Act and requirements for public participation in county budgeting and planning.

DLCI developed a poster on public participation in county planning and budgeting in English and a brief in Kiswahili to explain it. It also developed a leaflet on the Community Land Act 2016 in English. To disseminate the information:

- Six community barazas were carried out in Merti and Kinna, Isiolo; Lochichar and Kakuma, Turkana and Ola Dub Goba and Bubisa, Marsabit.
- In each county at least 4 radio shows were aired in at least two languages. Seven live shows and 4 recorded programmes were made in 4 languages, Kiswahili, Borana, Turkana and Samburu, with listener call-in and answer sessions.
- 11 county level workshops were carried out in the three Counties (Isiolo 4, Marsabit 4 and Turkana 3) for County and National Government, CSOs, media and community leaders.

Key findings:

There is huge need for community information in all three counties on these and other policy and practice issues. The communities expressed a lack of trust in County governments and particularly their attempts at public participation. They felt that the government were the biggest violators of their own laws and that government officers were the only ones who knew the laws and used them for their own self-interest. They also said that county government officials often claim to represent communities, but do not consult them and decisions are not always in their interest.

A major deterrent to genuine participation is the expectations of per diems by communities and governments for any workshop or meeting and the practice of carrying out workshops in towns, which attracts professional workshopppers. In Turkana, the county government staff in the wards and sub county offices insisted that is policy of county government to pay even community members for attending meetings, but senior county government officials in Lodwar denied knowledge of such policy.

Public participation in county budgeting and planning

The communities said that public participation was carried out purely to fulfill auditors' requirements and the government manipulated it to ensure that their input had no impact on final plans. People were invited off the streets to participate in workshops, get their photos taken and sign the attendance sheets. The meetings on planning were never carried out in the same villages as those on budgeting so there was never any linkage.

Communities in all three counties said they had never seen any material published by CEC Finance on the approved budget in a form that was easily understood and accessible to the members of public as required by law. In Turkana no one even knew the total county budget and the County administrator became anxious when it was shared at the meeting, even though this is public information. When the participants were told, they expressed incredulity. It is felt that there was the need for an independent mediator to bring county government and communities together and to develop a process of trust building and a system for genuine participation.

Community Land Act

The communities were happy to hear that first community land law has been passed after 50 years of independence. Many people said this was the first time that they had heard that the Community Land Act was passed.

The Community Land Act was found to be a positive piece of legislation to protect community interests, however has serious gaps for effective implementation. The regulations that are due to be developed by the Cabinet Secretary for Lands have potential to close some of these gaps and people hope and look forward to participate in the community land regulations development. However, the communities were very concerned about many aspects including the likely hidden control of the process by both national and county governments, the misuse of the County government role regarding unregistered land as well as how the community land registrar may use their ability to reference to other land laws which are contradictory e.g. the Land Registration Act, the Physical Planning and Adjudication Acts, to change how the Act is implemented.

In Lokichar, Turkana county, the community expressed concern about the land that had been taken for a government irrigation scheme that had previously been used by pastoralists. In Kakuma there were concerns about the land that had been given to the refugees. The Isiolo participants said that their land extends to other counties (Garissa and Meru) and those from Turkana said that their land extended into West Pokot and Samburu Counties, and beyond into Uganda and South Sudan.

The Kakuma Deputy Administrator said that the Lamu-South Sudan- Ethiopia (LAPSSET) development corridor is allocated up to 100 kms of community land (50km on both sides). This was also reported by CSOs in Lodwar. DLCI contacted the director of LAPSSET who said that only 500m either side of the road will be required. There is a an investment corridor for 25km each side of the road (total of 50km) earmarked for potential investments, although land will only be taken if required with the consent of communities and compensation. People in Isiolo County and Turkana said that the land along the corridor has already being allocated and documentation has been back dated to 1990s so that it cannot be challenged.

In Marsabit, the participants complained about the ruling in the community court case against the windfarms. The High court in Meru referred the case to the Community Assembly (which is envisaged by the Community Land Act) for that area, although clearly the community assembly ca not be formed until the regulations for registration of community land are developed and gazetted. The people felt that the judgement was intentionally delaying justice and was politically motivated.

All communities expressed concern over county boundaries and the definition of community. During the live radio shows in Isiolo County it was suggested that communities should register their land in the county that it is currently in. Local politicians then accused the program presenters of giving community land to another county, and the recorded programme had to be aired once again to clear the confusion.

The people in Turkana and Isiolo Counties expressed concern about conservancies and reserves that were gazetted before the Constitution. It was explained that only changes in community land since the Constitution could be challenged under this law. However people said that they would never give up their fight to reclaim their community land including land that was taken away before independence.

Concern was expressed about the purely nomadic communities, especially in Turkana (communities from Lokichar moving up to Kakuma and Uganda for more than 3 years before they return) and how they could assert their claims on land during registration while they are on migration. There was also concern that administrative boundaries often contradicted clan boundaries.

In Turkana it was explained that there are 26 sub-tribes split into 6 geographical areas and the elders and county government said they would have a separate meeting to decide on whether to use sub-tribe or geographical area for community land registration. In Isiolo there are five major tribes (Boran, Meru, Somali, Samburu and Turkana), these communities said they know their distinct customary/traditional boundaries but they mostly overlap with both administrative boundary and other clan lands that cause conflict among the pastoralist communities. The county governments were concerned about how to mobilise communities, and how to define community for registration of communities.

People were particularly concerned that the Community Land Act enables the community land registrar to use any other legal provision in the implementation of the Act including the Land Registration Act, the Land Adjudication Act, the Physical Planning Act and the Land institutions legislation and this could potentially undermine the intent of the Community Land Act.

Recommendations

Remote communities require much more information on these and other issues. There is a serious distrust between communities and government which needs to be urgently addressed. Both the Community Land Act 2016 and public participation in county planning and budgeting are sensitive and contentious issues and require careful handling. Illiteracy and the culture of per diems are major obstacles to public participation and information dissemination that should be urgently addressed.

It is strongly recommended that:

- There is a third party mediation process to bring reconciliation between communities and county government and support constructive models of engagement. This is a long term process that needs to be carried out by a skilled and sensitive individuals and organisations.
- There is an urgent need for community interests to be protected in the development of the regulations on the registration of community land and in depth consultations. Coordinated and technically competent support for communities to understand the content of the Act and productively support the process of community land registration is required.
- Per diems should be banned by NGOs, UN and Government for meetings in the community interest and for government to carry out their jobs. Workshops and meetings should be carried out in communities under trees rather than in towns to avoid professional workshoppers.

- With female literacy as low as 6%¹ in some ASAL counties and primary school enrolment around 40%, adult literacy and improved education should be urgently addressed in these areas to enable people to access information and understand critical policy and practice issues.

¹ The percentage for Mandera, based on the UNICEF literacy survey, 2009.