



Drylands Learning and Capacity Building Initiative for Improved Policy and Practice in the Horn of Africa

Pastoralist Parliamentary Group-PPG
Pastoralism: Our Pride and Our Life!

DISCUSSION BRIEF:
Public participation in the ASALs: It is just ticking the box?
Jarso Guyo Mokku, January 2018

Introduction

Public participation is a process, by which the government consults with interested or affected individuals, organizations and government entities before making a decision. It involves two-way communication and is a collaborative problem-solving mechanism with the goal of achieving a better and more acceptable decisions in the public’s interest. It can also be used to prevent or minimize disputes by creating a process for resolving issues before they emerge as conflicts, facilitating sustained productivity and robust change.

Public participation is often used interchangeably with the concept or practice of the stakeholder engagement, popular participation, public involvement, citizen participation and community consultation. It implies a “people first” paradigm shift that challenges the logic of centralized decision making and advancing of the concept of “more heads are better than one”.

In Kenya, public participation is a critical pillar of the Constitution. It was a key promise of the national reform agenda and is now a new reality and vital part of democratic governance in Kenya. Public participation is an explicit way of acknowledging the sovereignty of the people and of recognizing and empowering marginalized communities. It is expected to instil the national values and principles of participatory governance as stipulated in Article 10 of the Constitution.

Public participation in Kenya is a compulsory requirement

The Constitution of Kenya compels all state organs, officers and public servants, as well as citizens to observe the key national values: democracy; participation of the people; inclusiveness; good governance; integrity; transparency and accountability of individual and public actions. The Constitution outlines key principles and opportunities for citizens to participate in government decision-making, especially in the planning and budgeting processes and policy making. The Public Finance Management Act, section 35(2) obliges the Cabinet Secretary of the National Treasury to ensure public participation in the budget process and section 125(2) instructs the County Executive Committee (CEC) member for finance to ensure that there is a public participation in the county planning and budgeting process. To promote effective public participation, non-state actors operating in the areas shall be incorporated in the planning processes by all Government authorities undertaking planning exercises. Participation in the county governance is open to all members of the public, either individually or in a self-organised form that is legally recognized. No one can be barred from participating on any grounds such as age, ethnicity, race, colour, gender or political affiliation.

Public participation by citizens and stakeholders in the county planning processes is mandatory and should be facilitated through (a) mechanisms provided for in Part VIII of the County Government Act; and (b) provision to the public of clear and unambiguous information on any matter under consideration in the planning process, including (i) clear strategic environmental assessments; (ii) clear environmental impact assessment reports; (iii) expected



levels. The County Governments is obliged to plan and provide resources for establishment of decentralized structures, local level engagement mechanisms, and clear guidelines for the citizen participation in the governance¹.

The devolution process in Kenya is regarded as one of the most ambitious decentralization efforts in the world.² The Ministry of Devolution and Planning in conjunction with the Council of Governors published guidelines for how to improve the public participation in governance in 2016. Though the Constitution provided for public participation in all matters, the Council of Governors noted that there didn't exist any national guidelines on how to do this effectively. This left the county governments to engage their citizens in a piecemeal, tokenistic way to comply with public audit requirements, which *"deprived the public the ability to engage with trust the county government at every stage of developing sound county policies and quality legislation, that includes effective planning and budgeting and efficient service delivery"*.³

Public participation in the ASALs

The ASAL counties have particular challenges in public participation due to their vast geographical areas, and under-development in terms of infrastructure, literacy and history of citizen engagement. They also have the highest benefit to gain from devolution and decentralization of governance structures, not only due to increased resources, but also the opportunity to ensure development is appropriate to their unique environmental and social contexts.

DLCI has promoted public participation in Isiolo, Marsabit and Turkana counties among communities and government and has found that there is huge concern by communities about the way the public participation is carried out. This includes the lack of commitment and understanding by county governments on how to promote real public participation. Participation is often rushed and seen largely to fulfil statutory audit and public investment requirements rather than promoting genuine engagement. This approach has created enormous distrust by the communities of the county government, as well as apathy or frustration. Urgent measures are required to improve both the trust and process of/for public participation.

There is huge need for civic education in ASAL counties on devolved structures and public participation requirements. Yet in all three counties, there is no comprehensive strategy on public information provision and sharing of appropriate information with the communities. There is no coordinated public participation framework and processes for the government to engage with the communities and any other CSOs operating in the counties.

The role of legislators in the national and county assemblies is to represent the people, provide oversight to the executive and make legislation (including amending laws). To respond to such huge needs to improve public participation and activate response from the respective arm of governments, in its annual conference, 2016, the Pastoralist Parliamentary Group⁴ members decided on the theme of the Pastoralist Leadership Summit to "A call for more effective public participation and political action in the pastoralist areas". The members of the PPG realized that much of the basic policy information needed by their communities was not easily accessible, and was often highly politicized. The conference called for more focussed consultation with the pastoralists communities and resolved to ensure that *'no pastoralists is left behind'* in the implementation of the Constitution. It resolved that: the rule of law, devolved self-governance units, delivery of basic service, development and gender mainstreaming were the core pillars of the success for ASAL that is ultimately the Kenya's success (PLS conference 2016 Report).

¹ World Bank and COG, 2016

² Building Public Participation in Kenya's Devolved Government, Kenya School of Government and Centre for Devolution Studies Working paper overview note, February, 2015
<https://openknowledge.worldbank.org/bitstream/handle/10986/21663/94497.pdf?sequence=1>

³ County public participation guidelines, 2016, Ministry of Devolution and Planning, <http://www.devolutionplanning.go.ke/wp-content/uploads/2016/04/County-Public-Participation.pdf>

⁴ Made up of all MPs, Women reps and Senators from 14 ASAL counties.



Several CSOs who have carried out civic education on specific policy issues lack a comprehensive and consistent approach of disseminating information across counties, and also their approaches are rarely evaluated.

There is huge need for civic education in the ASALs including to communities' institutions, county governments and CSOs using appropriate forms and mechanisms. In July 2017, most of the county government websites had not being updated since they it was launched in early 2013. The public had very little information; on the community land bill or aware of any legal requirements for public participation in the county budgeting and planning processes. In Isiolo even though the public participation bill was passed, the civic education department that is custodian of implementing this law did not have a copy. Similarly, in Marsabit many people had not seen the public participation bill and it had not yet been passed, despite being finalized almost 2 years previously by September 2016.

Gender issues in public participation

Despite major efforts over the past two decades to create equal opportunities for women to participate in governance and to increase female representation in government leadership, women's inclusion continues to be a major challenge and women's interest and commitment in the public participation remain a problematic issue for the rural women. Women involved in public discussions face more interruptions and negative responses than men, and information dissemination mechanisms in rural areas, including written material, barazas, radio dissemination largely target men.

The major challenges faced by women that hinders their participation in governance and leadership matters are their family responsibilities, violence and insecurity, lack of confidence in their abilities, lack of awareness of opportunities that includes positions available to them, lack of resources and cultural norms that discourage women from seeking leadership opportunities.

County Women Representatives are primarily elected to address the gender imbalance through affirmative action. However, their roles and responsibilities are far wider including promoting the interests of women and girls and developing policies and strategies to promote women's participation and voice. Women representatives are supposed to advocate and formulate legislative policies that will uplift the social, economic and political status of women and girls in the country. However, participation of women in public policy formulation is critical policy and practice issue that need to be considered by the women legislators in Kenya. The experience from the 11th Parliament, was that the PPG gender sub group despite all efforts of encouragement were unable to identify any gaps to 'strengthen the pastoralist women's voice' and were unable to initiate a public policy change or propose amendment to any legislation that hinder women participation in governance matters. The empowerment of the ASAL women requires continuous capacity building of their representatives, analysis and monitoring of the pastoralists women situation, identifying gaps and make changes in the critical sectors of education, economic empowerment, application or violation of the rule of law and leadership practices.

Citizens' complaints mechanisms

In the event that any member of the public feels aggrieved, the law of Kenya provides for a procedures for citizen to file a complaint and have it resolved and responded to. A citizen complaint is defined as the action taken by a citizen to bring to the attention of the public or relevant authorities of any action or inaction that the citizen considers to be contrary to the law, contravention of a laid down proper procedure like public participation, good order, or any manner-action that is prejudicial to the peoples' sovereignty. This can include distrust of their county government and lack of participation.

Most complaints are directed to elected representatives at county or national level or the Office of the Ombudsman – the Commission on Administrative Justice that has legal mandate to deal with citizen complaints and grievances.



The Commission of Administrative Justice was established to deal with maladministration in the public sector in such issues as unreasonable delays, administrative injustice, discourtesy or misconduct, incompetence or ineptitude, misbehaviour in public administration, improper or prejudicial conduct, abuse of power, unlawful, oppressive, unfair treatment or unresponsive official conduct and failure to adhere to the constitutional principles. In performing this function, the Commission provides oversight across the entire public sector, acting as a check on processes, systems and procedures. The mandate of the Commission is to ensure that the sovereign authority of the state is drawn from the people while also ensuring observance by state organs of fair administrative action, democratic values and principles on which the Constitution is based.

There is growing information and documented case studies of CSO-led established citizen complaint mechanisms. Transparency International (TI) in particular developed a community-based complaint mechanism⁵ for reporting corruption cases and deficiencies in service provision, which is perceived to increase accountability of development aid, although has been challenged by a lack of commitment from government institutions.

TI asserts that there is no blue-print for setting up a complaints mechanism, and for a complaints mechanism to be effective it needs to be adapted to the local context, taking into account the issues such as cultural norms and values, level of literacy, phone coverage, and social patterns, among others. However, there is a broad consensus that the communities should be consulted in the design of a complaints mechanism that is appropriate and culturally sensitive, which generates context-specific responses and identify various barriers to feed back. Irrespective of the forms, procedures and channels for handling complaints, the mechanism should be transparent, independent, accountable, accessible, safe, and easy to use.

Key recommendations

The reason and rationale of public participation is clearly based on the Constitutional in Kenya which places the sovereign power of the nation on the people of Kenya. This sovereignty must be respected and institutionalized in all processes of governance. As such, in interpreting the importance of public participation, the High Court Judge has pronounced by stating the following:

'Public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates. It is my view that it behoves the County Assemblies in enacting legislation to ensure that the spirit of public participation is attained both quantitatively and qualitatively. It is not just enough in my view to simply "tweet" messages as it were and leave it to those who care to scavenge for it. The County Assemblies ought to do whatever is reasonable to ensure that as many of their constituents in particular and the Kenyans in general are aware of the intention to pass legislation and where the legislation in question involves such important aspects as payment of taxes and levies, the duty is even more onerous. I hold that it is the duty of the County Assembly in such circumstances to exhort its constituents to participate in the process of the enactment of such legislation by making use of as many fora as possible such as churches, mosques, temples, public barazas, national and vernacular radio broadcasting stations and other avenues where the public are known to converge to disseminate information with respect to the intended action⁶.'

In order to enhance public participation in the ASALs:

1. The county governments must develop comprehensive civic education and public engagement strategies in conjunction with the CSOs and other partners operating in the counties. There is an acute need for critical public information on public policy and practice especially in the remote communities as well as the CSOs and county

⁵So far TI's *Uwajibikaji Pamoja* mechanism has been established in Turkana, Marsabit, Wajir and West Pokot in the ASALs.

⁶ <http://kenyalaw.org/caselaw/cases/view/115073/>



governments' new officials. Accurate, trusted and comprehensive information is essential for promoting public participation.

2. There is an urgent need for donors to provide comprehensive and long term support for trusted CSOs and non-state actors for public information provision and dissemination. Strategies should be coordinated, appropriate and regularly evaluated and improved based on lessons learnt.

3. A combination of different communication methods are needed to reinforce messaging and reach different types of people in diverse locations. A combination of pictorial information with barazas, dramas, as well as texting and social media from trusted sources as well a use of FM radio where it reaches the target group.

4. More attention should be paid to remote communities and disadvantaged groups including women who may have limited time and literacy. Women representatives should be active in this area as well as in leading in public policy formulation that will uplift the social, economic and political status of women and girls in the ASALs.

5. Public participation is both a social and political right of citizens in Kenya. Where it is not being observed, citizens should raise complaints to promote accountability. The National Cohesion and Integration Commission-NCIC should review continued contravention of a laid down proper procedure like public participation and build capacities in the community institutions to raise complaints and public grievances and develop skills and work with elected representatives both in the counties and at national level to petition the actions of the executives.

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