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The Global Support Initiative to Indigenous Peoples and Community-Conserved Territories and Areas (ICCA-GSI)

Title of Workshop:
Towards a critical mass for social justice in community territorial governance in Kenya

Level: National
Place: Nairobi, KENYA
Date: 28 March 2017



Background:

As the Global Support Initiative to Indigenous Peoples and Community-Conserved Territories and Areas (ICCA-GSI) gears to implement projects in Kenya, it organized a national workshop to bring indigenous community representatives together with international and national actors and collaboratively examine the current struggles of Kenya's Indigenous Peoples (IPs)¹ towards collective efforts to secure their customary land rights and the sustainable use of their lands.

Kenya is a multi-ethnic state, hosting over 70 different ethnic groups. Colonialism (late 1800's to mid-1900s) led to the dispossession of customary lands from the African natives and to its appropriation to European settlers. Upon its independence in 1963, customary lands started to be reclaimed. Land reforms began in 1993 and some of the dispossessed customary lands were retrieved and allocated to dominant social groups. However, the ancestral lands of marginalized communities were not returned as they were already alienated to the state as public forests and to the local authorities as trust land.

In addition to the inequitable land distribution, the colonial regime set a precedent to several social inequalities. New social classes were created as communities were displaced and resettled from forced eviction, forced labor and forced taxation. As some social groups became dominant, the marginalized communities were further excluded from the broader socio-economic development of Kenya. Moreover, post-colonial government regimes failed to address the historical injustices and customary land tenure issues faced by marginalized communities.

In the recent years, positive signals of change in the situation of Kenya's IPs have been emerging. In 2010, the promulgated Constitution included the protection of the rights of minorities and marginalized groups by addressing historical injustices with affirmative actions for their inclusion in governance, development and political processes. In 2011, the Whakatane Mechanism, an initiative by the International Union for Nature and Conservation (IUCN), was created as a response to a resolution (Res. 4.052) from the 2008 World Conservation Congress (WCC). The objective of the Whakatane Mechanism is to ensure that conservation policies and practices

¹ The Kenyan constitution refers to Indigenous Peoples as minority and marginalized communities.

respect the rights of indigenous peoples and local communities including those under UN Declaration of Rights of Indigenous People (UNDRIP). In 2014, the Convention of Biological Diversity (CBD) changed its terminology for all future decisions from “indigenous and local communities” to “indigenous peoples and local communities”. Unlike “communities”, “Indigenous Peoples” are entitled to collective rights under international human rights law.

Workshop Participation and Activities:

The 1-day workshop was co-organized by ICCA-GSI partners; the GEF Small Grants Programme (SGP) and ICCA Consortium, and their national partners, the Forest Indigenous Peoples Network (FIPN), the Forest People’s Programme (FPP) and Natural Justice (NJ). Participants included UNDP REDD+ team, donors, partner civil society organizations and community support groups with background in advocacy, legal and policy issues, media and research for public engagement, conservation, human rights and environmental rights. Most notably, the communities of Lake Turkana, Ogiek of Mt. Elgon, Lamu and Malindi were represented by their IP leaders. The Sengwer community representatives had a planned meeting with the EU Human Rights and thus, were represented by FIPN.

The objective of the workshop was to have a small focused group to examine the current situation of communities seeking to retain or regain their territorial governance (including forest-dependent and forest-dwelling marginalized communities, coastal and pastoral communities). Presentations with pragmatic examples were aimed at (i.) sharing experiences of communities’ struggles for customary rights and how conservation and development agenda have impacted them; (ii.) exchange of best practices from Kenya’s ICCAs and those from other countries on similar efforts; and (iii.) assess the available options to address the challenges faced by indigenous peoples in reclaiming rights to their customary land.

Workshop Discussion Points

In order to provide a better basis on which to advance discussions and formulate recommendations, the workshop commenced with presentations from indigenous communities from Mt Elgon, Lamu, Malindi, and Lake Turkana on challenges they have faced and actions they have taken in reclaiming or defending their customary lands. Subsequently, the ICCA-GSI partners along with FIPN, FPP and NJ guided the discussions along the following themes: (i) importance of ICCAs and the role of IPs and local communities as environment caretakers; (ii.) assessment of current national laws and identification of policy and legal gaps that undermine the recognition of IPs and local communities; (iii.) exploration of available support mechanisms including the various options to influence policy changes.

The following are key highlights from aforementioned presentations:

I. The Ogiek from Mt. Elgon

Their challenges include (i) eviction from their ancestral land in Chepkitale; (ii) protracted and lengthy legal cases in the national court to secure their lands; and (iii.) lack of political representation at the devolved government level. With support from Forest Peoples Programme and the International Union for Conservation of Nature (IUCN), the Ogiek applied the Whakatane Mechanism leading to constructive dialogue with government institutions including Kenya Forest Service (KFS) and Kenya Wildlife Service (KWS). To date, the outcomes include (i.) on-going discussions with the Bungoma County for an out-of-court settlement option to tackle the Ogiek customary land tenure issue; (ii) the Ogiek have formulated by-laws, adopted from the Community Land Act of 2016², to govern their ancestral land in Chepkitale; (iii) the KWS has trained Ogiek community scouts to undertake surveillance and address illegal charcoal producers and wildlife poachers who especially target elephants.

II. Lamu, Lake Turkana, Malindi indigenous communities - threats from extractive industries

² The Act gives effect to Article 63 of 2010 Constitution on ‘community land shall vest in and be held by communities’. The Act provides for (i.) recognition, protection and registration of community land rights; (ii.) management and administration of community land; and (iii.) the role of county governments in relation to unregistered community land and related matters.

The Lamu people are among the first Internally Displaced People (IDP) in the early independent era. Since 1971, they have faced multiple land dispossession episodes, with the current threat posed by Lamu Port-South Sudan-Ethiopia Transport (LAPSETT). The LAPSETT project covers over 70,000 hectares which consist of land, mangroves and community fishing grounds, and coral reef areas. This negatively impacts on the community's livelihood including sources of food and tourism. Additionally, the ongoing LAPSETT project has led to the degradation of mangrove forests with the dredging activities adversely impacting on the local waterways between the islands and fishing activities. As a response, "Save Lamu" commenced advocacy initiatives including mapping of marine resources with financial support from SGP-GEF and technical support from ERMIS Africa. The information will be utilized to advocate for due social and environmental diligence in undertaking the whole project and its activities. In addition, Save Lamu has partnered with other like-minded actors like Muslims for Human Rights (MUHURI) to pursue a litigation process aimed at making the government more accountable on its actions.

Similarly, the recent discovery of oil in the southern part of Lake Turkana is a huge threat to Turkana's communal lands as companies come in to explore the lake. Lake Turkana is an important ecosystem that supports biodiversity and rangeland functions as well as the fisheries that the local communities depend on for their livelihoods. As a response, Friends of Lake Turkana, a community support group is pursuing environmental justice processes and community resource governance initiatives. These efforts are aimed at strengthening the community advocacy to resist any risk of exploitation from companies engaged in oil and gas exploration. The risks include potential concession of community land; potential expropriation of communal land that asks for community approval for land access. Recently, the community members are trained to engage with media, feed comments to the national Environmental Impact Assessment (EIA) processes and to be involved in the legal process including lobbying with Members of Parliament (MP) and Members of County Assembly (MCA). They have also worked with Natural Justice on paralegal processes including an understanding on the current laws and any gaps adversely affect them.

Likewise, the communities in Malindi are struggling to address the danger caused by salt farms established by large commercial investors. These are negatively affecting quality of drinking water, destroying the mangroves, and blocking community access routes to the beach and ocean, thus interfering with adjacent coastal ecosystem. The community is initiating a network to address this challenge. .

III. Sengwer

The Sengwer community, located in Rift Valley region have suffered multiple evictions from their ancestral domains within the forests of Cherangany Hills. Government resettlement efforts included compensation of KES 400,000 (USD 3922) to relocate from the forest. But the communities state that the compensation amount is insufficient to resettle them outside their ancestral domains and as some community members returned to the forest, they have been facing sustained evictions from the Kenya Forest Service (KFS). The community has engaged the government in advocacy and legal battles with an aim to regain and retain their claimed ancestral lands.

IV. Current ICCAs in Kenya – a support system

Since 2012, ICCA Kenya has undertaken several initiatives to strengthen the community representatives from sacred national sites, pastoralists and conservancies. Through financial and technical support from SGP, a national secretariat has been formed with a core steering team that includes several NGOs such as ERMIS Africa, RECONCILE Africa, Institute for Culture and Ecology (ICE), Kilabe Environment Volunteers (KENVO), World Wildlife Fund (WWF) in Kenya and the Endorois Welfare Council.

V. Current status of IPs in other countries

Australia's policies recognize the collective ownership and governance of Aboriginal traditional owners and have designated Indigenous Protected Areas (IPAs). Today, nearly 50% of Australia's protected areas are under IPAs. However, since this is a policy, and not a law, it could be easily changed by any incoming government.

In Colombia, more than 34 million hectares are under the collective ownership of IPs. This accounts for more than 30% of Colombia's land and 80% of its forests. However, the recognition of ICCAs is absent. While IPs are allowed to use natural resources, they do not have rights to the subsoil. The government can bring oil and mining companies and are only forbidden from underground exploration on nationally-recognized protected areas. Despite their hesitance for shared governance of their lands with state agencies, IPs are forced to do so to escape the mining, oil drilling and gas legislations. As a response, several organizations are working towards the recognition of ICCAs and provide IPs and local communities full rights and governance of their lands.

In the Philippines, communities can claim land rights to their ancestral land if they can prove the bones of their ancestors, rules and so forth. But like Colombia, the government has the right to subsoil. An IP alliance is pushing for a new law against underground exploration.

In Senegal, communities are taking advantage of the decentralization law that empowers a municipality to declare conserved areas locally.

Outcomes:

The Nairobi ICCA workshop created an awareness and shared understanding among the attendees on the following advocacy areas: (i.) the importance of being recognized as an ICCA; (ii.) the strategies to defend ICCAs including internal organization, information dissemination, diplomatic action, legal action and demonstrations; (iii.) community monitoring of extractive industry activities and its alignment to environmental management plans required by law; and report back to the EIA on non-compliance to or non-development of such plans; and finally, (iv) the establishment of an alliance for action-oriented and advocacy towards the recognition of ICCAs.

All agreements and lessons learned from this workshop will be moved forward by a team led by ERMIS Africa towards strengthening the operations of the nascent emblematic ICCA initiative in Kenya.

The [ICCA-GSI](#) is a multi-partnership initiative that is delivered by the UNDP-implemented Small Grants Programme ([SGP](#)) and funded by the Government of Germany, through its Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety ([BMUB](#)). Key partners include the United Nations Environment Programme's World Conservation Monitoring Centre ([UNEP WCMC](#)), the International Union for the Conservation of Nature's Global Programme on Protected Areas ([IUCN GPAP](#)), the [ICCA Consortium](#) and the Secretariat of the Convention of Biological Diversity ([CBD](#)).

