A REALITY CHECK FOR THE RIGHT TO DEVELOPMENT - CASE STUDIES AND COMMENTS ON IMPLEMENTATION

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Right to Development: A brief analysis of Kenyan pastoralists' health and land rights through the right to development prism

(Pastoralist Development Network of Kenya)

Background

Pastoralists in Kenya generally experience high poverty levels of more than 60 per cent, and in some instances up to 75 per cent. The right to development is the right of peoples and individuals to the constant improvement of their well-being and to a national and global enabling environment conducive to just, equitable, participatory and human-centred development respectful of all human rights.[1] This is against the reality that Arid and Semi-Arid Lands (ASALs) in Kenya, and which are inhabited predominantly by pastoralists, constitute about 80 per cent of the country's land mass, host about 10 million people and approximately 70 per cent of the national livestock herd.[2] Today, over 50 per cent of Kenya's population lives below the poverty line; In ASALs, home to the poorest of the poor, over 60 per cent of the population lives below the poverty line.[3]

Article 3 of the Declaration on the Right to Development provides that "States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development." Further, Article 2 of the Declaration makes it clear that "States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom." Thus the creation of national conditions relates to policies and programmes at the national level affecting persons within a State's jurisdiction.
While there have been existences Millennium Development Goals (MDGs), there have been no indicators to measure achievement, and especially for minorities and indigenous communities. For instance, by 2015, the MDG for health is to reduce by two-thirds, between 1990 and 2015, the under-five mortality rate, reduce by three quarters, between 1990 and 2015, the maternal mortality ratio and achieve, by 2015, universal access to reproductive health. While there are no explicit MDGs on land and natural resources, only on environmental sustainability, it is important to mention that to pastoralists in Kenya, who identify as indigenous peoples, land and natural resources are critical for their own survival; access to land and natural resources dictate the very pace of their lives, and is the primary cause for their poverty and consequent health

[1] Report of the high-level task force on the implementation of the right to development on its sixth session. Human Rights Council (HRC) Fifteenth session, Working Group on the Right to Development, High-level task force on the implementation of the right to development Sixth session (Geneva, 14–22 January 2010)
[2] Government of Kenya (2005). Draft National Policy on Arid and Semi-Arid Lands (ASALs) for the Sustainable Development of Arid and Semi-Arid Lands of Kenya
[3] Government of Kenya (2005) Draft National Policy on Arid and Semi-Arid Lands (ASALs) Unpublished.

problems. As government's admission clearly demonstrates, what has been lacking for years is adequate attention to the ASALs, a proper understanding of the needs and potential of ASAL communities coupled with lack of a deliberate political commitment to invest in these areas.[4]

Right to development criteria and operational sub-criteria (Health and Land Rights)

It is against the foregoing backdrop that the United Nations effort to develop criteria for assessing the right to development must be analysed. The attributes, criteria, sub-criteria and indicators … are designed to assess the extent to which States are individually and collectively taking steps to establish, promote and sustain national and international arrangements that create an enabling environment for the realisation of the right to development. For pastoralists in Kenya, this is a welcome move to assist them measure government efforts against their aspirations, especially since there have rarely been indicators to show how progressive government efforts and initiatives are towards pastoralists' development.

A read through the indicators set out, however, still show some gaps for indigenous communities like pastoralists in Kenya. Noticeable is the fact that most of the indicators have been set to have a general nature, in which case, indigenous communities, often marginalised will be left out of the tool. For instance, under Attribute 1: Comprehensive and human-centred development policy under Criteria 1 (a) to promote constant improvement in socio-economic well-being, the sub criteria on health, the indicators provided include Public expenditures on primary health; life expectancy at birth; access to essential drugs; low birth weight babies; child mortality; HIV prevalence; and births attended by skilled personnel. These are problems that afflict many pastoralist communities, and due to marginalisation either by design or default owing to their distance from the centre of power, they have rarely benefited by direct government expenditure. For instance, increased government expenditure could easily increase but concentrated in certain regions leaving out others, hence making it important that the indicators show clearly show the spread of this spend by government, by explicitly pointing out that minorities and indigenous peoples will need affirmative action and indicators that demonstrate this. On the same attribute under criteria 1 (b) which is to maintain stable national and global economic and financial systems food production volatility, especially amongst pastoralists through the effects of climate change, and hence unprecedented droughts and famine is an ever present phenomenon. It would thus be imperative that livestock production be given some attention here.

Under attribute 1 (d) to establish an economic regulatory and oversight system to manage risk and encourage competition, the set criteria under (i) is System of property rights and contract enforcement with the indicator being the rule of law governance measures. The ancestral lands, historical injustices and marginalisation from benefits accrued from investments on their lands and natural resources are of critical importance for pastoralists here. Kenya has had a regime that over the years has disposed the pastoralists of their rights to land, and owing to their pastoralist lifestyle that depends a lot on land and natural resources; they have involuntarily been pushed into poverty. One of the indicators, here, would thus be looking at how constitutional dispensations recognise the ancestral land rights and other rights to natural resources by indigenous peoples, who include pastoralists. Under attribute 1 (g), to promote and ensure access to the benefits of science and technology, under criteria on agricultural technology, it is important to include indigenous (traditional) knowledge as one technological aspects that need to be recognised and supported through deliberate allocation of resources, after recognition of course by States.

[4] Ibid

Linked to attribute 1 (d) is the attribute 1 (i) which addresses peace and security. Superficially, it seeks to contribute to an environment of peace and security. Over the years, Kenya has experienced intermittent conflicts with various causes and triggers. In Early 2008 the country experienced a national unprecedented conflict triggered by the allegedly 'stolen' presidential election of December 2007. This saw communities pitted against each other, with mostly members of the Kikuyu community, as well as those who were perceived to have sided with them during the poll, being targeted for attacks and displaced by the 'aggrieved' communities who 'lost' the election through the alleged 'theft'. It is important to note, however, that even though the election was a trigger, a lot of underlying discontent was evident in the country, owing to historical injustices that especially pastoralists have undergone since independence. It therefore means that while looking at criteria (iii) on Post-conflict peace building and development, addressing of historical injustices and affirmative action measure, especially for communities like pastoralists who have suffered underdevelopment needs to be focussed on. Many of these communities have complained that their lands were forcibly acquired with consultation and due compensation, and during the post-election violence, land became one of the most serious grievances that was used to justify the conflict.

Conclusion

Generally, the criteria and sub criteria are a positive way forward. However, as Kenyan experience of pastoralists indicates, there is need for a deliberate effort to ensure that minorities and indigenous peoples are clearly identified in the indicators to ensure that they are not overlooked when trying to ascertain the achievement of the indicators. Generalisations of the indicators, even in MDGs has always meant that general populations are basically measured without disaggregation, meaning that marginalised and discriminated communities have always been left out of the mainstream thinking and action.