

The Rights Based Approach using the law for the environment and the poor



Why a Rights Based Approach?

Despite many setbacks, democracy and respect for human rights have spread across the world. Citizens have bravely stood up to their own governments demanding that they respect the basic ground rules for governance, which include democracy, respect for the rule of law and the protection and furtherance of human rights. These ideas are also important in the sphere of natural resource management, as each person has the basic right to a livelihood and this requires the sustainable and equitable management of natural resources. The Rights Based Approach (RBA) can help citizens and communities in developing countries to define, claim and defend their rights to natural resources and human rights. The RBA is about communities working to advance social and ecological justice through legal means.

The legal enforceability of poverty alleviation and environmental conservation

Instead of being dependent on governments and private companies to voluntarily adhere to social and environmental guidelines, local communities in developing countries can use (inter)national legislation to hold their governments and companies operating in their country to account over issues such as access to water, food or encroachment upon their territories. Applying the RBA to sustainable development implies nothing less than a complete restructuring of development assistance along lines that have already been defined in human rights treaties.

The self-empowerment of local communities in developing countries

In response to ad hoc interventions by governments and donors, the RBA creates political space for civil society organisations and local communities. It does so by calling for the articulation of clear, specific, legally enforceable and long term commitments that are backed up by procedural mechanisms for access to justice. At the same time it

empowers civil society actors involved in monitoring the implementation of these commitments to obtain access to information and to mechanisms for participation in public decision making, as well as to modes of redress should rights nevertheless be infringed. Although rights are encoded in law, strong citizen action is often required to ensure that just laws are put into place and that governments meet their obligations to ensure the realisation of these rights.

Lowering the obstacles to claiming rights

Training in basic rights is one of the first steps in increasing the resilience of local communities to outside interventions. Tailor-made training programmes can be developed and implemented to train communities on their rights of access to land and other natural resources, their process rights in relation to government decision making, the contents of government laws relating to natural resources, etc. Apart from training, access to information is also vital. Communities need information to strengthen their case, but they also need to know when they are able to make legal interventions.

How is the Rights Based Approach applied?

The Rights Based Approach uses a range of instruments, some of which are highlighted here. The first is the interpretation of international and national law. To take an example, Both ENDS and local partners conducted a study in Indonesia to investigate the commitments that the Indonesian government has made towards providing universal access to water and sanitation in the country. This formed the basis for further joint action to begin to enforce these. A second instrument is legal and policy advocacy. In Uganda Both ENDS is supporting local organisations advocating for transparency, environmental protection and rules for sharing the benefits, and governing the management, of Uganda's newly discovered oil resources. The oil is located in an area that contains five national parks and represents

some 39% of Africa's plant biodiversity. This biodiversity and the livelihoods of local communities are threatened by the discovery. A third instrument is seeking legal clarity through, for example, legal action. For instance in the Indian state of Andhra Pradesh, there are plans to construct a dam across the Godavari River whose waters would displace over 250,000 people in three states. Communities in the states of Chhattisgarh and Orissa, whose lands would be submerged by the dam, have filed legal suits against the planned construction. Both ENDS became involved with the campaign and has supported it throughout, by funding the cost of lawyers and providing expert assessments of the surveys of the social and environmental effects of the dam. In 2010 these efforts resulted in a number of Supreme Court rulings which led to the suspension of the construction of the dam. Other examples of applying the RBA are community training on rights (e.g. a training on the right to water in Benin) and participatory land use planning to define rights of access to resources (as is being done in Kalimantan, Indonesia).

Both ENDS and the Rights Based Approach

Both ENDS can introduce CSOs to the ideas behind the RBA, so they can use it to achieve their goals

The RBA is also about awareness-raising at community level and building networks and lobbying. These are essential factors in strengthening rights that are already in place (implementation). Without a strong civil society and organised communities these rights are seldom realised and remain theoretical. Both ENDS can introduce CSOs to the ideas underlying the RBA and tailor it for an individual CSO or situation.

Both ENDS informs CSOs on the existence of human and environmental laws and how to make use of them

Both ENDS has a wide international network of experts that can inform CSOs about human rights and environmental law. They can help to translate the lofty principles of international declarations and conventions into practice. In this way the RBA is transformed into a hands-on method that can be used by local communities.

Both ENDS works on advocacy towards donors, companies and governments, to increase their commitment to poverty alleviation and environmental conservation

Both ENDS argues the case for replacing ad hoc decision making with structured and reliable actions to which decision makers can be held to account. It does so by supporting decision makers to adopt visions and policies that incorporate a solid and long term commitment on social and environmental issues.

Why Both ENDS?

Because of its international network function, Both ENDS often has an overview of successful and less successful processes, and has a 'radar' for ideas and approaches that have a potential for success. This knowledge base is a valuable resource to tap into. Both ENDS has considerable experience in applying the RBA in some areas, such as forestry and water management, and in assisting NGO's to 'make their case'.

For more information on the Rights Based Approach

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