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**Research Report**

## Human rights perspectives on climate change adaptation: Civil society experiences in Cambodia and Kenya

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# HUMAN RIGHTS PERSPECTIVES ON CLIMATE CHANGE ADAPTATION

Civil society experiences in Cambodia and Kenya

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## **Abbreviations**

CBO	Community Based Organisation
CCCN	Cambodia Climate Change Network
CSO	Civil Society Organisation
GDP	Gross Domestic Product
GOK	Government of Kenya
HRBA	Human Rights Based Approach
MP	Member of Parliament
NAPA	National Adaptation Programme of Action on Climate Change
NGO	Non Governmental Organisation
REDD+	Reduced Emissions from Deforestation and Degradation
UNFCCC	United Nations Framework Convention on Climate Change

# INTRODUCTION

Climate change is bringing to fore critical issues about the linkages between human rights and the environment. With intensified natural hazards and increasingly uncertain weather conditions, more effort will be needed to safeguard the rights of vulnerable populations to be protected from hazards and to retain their capabilities to undertake their own adaptation strategies. In many countries, civil society organisations are positioning themselves as representatives of these vulnerable rights-holders, and engaging in two ways. First, advocacy is being used to raise awareness of threats to human security and put pressure on local and national governments to address risks related to climate change. These risks may be aggravated due to development policies and investment trends that can lead to maladaptation, i.e., interventions that exacerbate the adverse effects of climate change or limit the adaptive capacities of affected people. Second, many are engaged directly in field-level programming to enable affected populations and local authorities to act (often together) to reduce vulnerability and strengthen human security. These efforts focus on the capacities of both rights-holders and duty-bearers, as well as the challenges in ensuring that the new investment flows coming from climate change and decentralisation efforts reflect the factors that generate vulnerability and risk. These efforts can generate tensions, since development policies reflect a broad range of concerns, many of which are not related to either climate risks or the perspectives and vulnerabilities of rights-holders. Indeed, development policies and programmes may actually exacerbate climate risk, for example when natural resources are expropriated and/or exploited without considering adverse social or environmental impacts.

Many international non-governmental organisations (NGOs) and an increasing number of national civil society organisations (CSOs) are claiming to use human rights-based approaches (HRBA), building on participation, transparency, accountability and non-discrimination, as a way to increase the power and voice of these vulnerable populations, and to highlight how development policies may lead to maladaptation. As a result, climate change adaptation and mitigation are becoming politicised. This challenges a dominant policy discourse which depoliticises climate change adaptation through sweeping claims about ‘win-win’ technical solutions which coincide with elite interests and sidestep questions of power, vulnerability, inequality, and responsibility. But how do these organisations frame their understandings of the rights of rights-holders and the responsibilities of duty-bearers in practice? What happens when they enhance the voice of rights-holders where local duty-bearers lack capacity, resources, mandate or political commitments to sufficiently address climate risk and vulnerability? How do CSOs’ human rights efforts influence natural resource extraction and use by a powerful private sector where the commitments of the state to protect rights over these resources are weak or compromised? Although there is growing awareness and discourse about the interface between climate change and human rights, there has been little systematic investigation of what a human rights-based approach to climate change efforts actually entails in practice. This study explores these issues by mapping out what a human rights-based approach to climate change adaptation and mitigation means, including:

- (i) What it practically consists of (activities and arrangements)
- (ii) How the distribution of responsibilities among different actors is conceptualised
- (iii) How approaches can become viable in real-world settings, given prevailing constraints and opportunities

The study explores these issues by examining how international, national and local civil society organisations are addressing and implementing human rights-based approaches to climate change adaptation and mitigation, and what the experiences and implications are from these efforts.

# METHODOLOGY

The authors utilised qualitative methods to approach this study. The research question is ultimately an exploratory one, and the authors sought to illuminate how stakeholders understood and expressed the linkages between climate change adaptation and human rights – both of which are broad terms supported by diverse (and, indeed, contested) programmes and policies. Qualitative methods are especially suited to explore and interpret phenomena and experience in a nuanced and complex way.

**Research design:** The data for this study was drawn from a series of in-depth, open-ended interviews conducted in Cambodia and Kenya in 2014. The interview approach prompted participants to reflect on their own understandings of the concepts in question, and whether or how they directly applied them within their own work, and/or in Cambodia or Kenya generally. Throughout the fieldwork, the co-authors engaged in an iterative process of building and testing explanatory hypotheses. Working hypotheses were developed through interview feedback or documents, for instance, and then explored in further interviews and literature review. This ongoing process continued through to the analytical phase of the research.

**Research sample and site:** Sample size and variability in qualitative research vary considerably (Sobal, 2001), and data were collected until the point of saturation, that is, when new conversations became repetitive rather than revelatory. A total of twenty-five separate interviews were conducted in Phnom Penh, as well as nineteen in Nairobi and Kajiado County over a two-week period in August and September 2014. Sampling for the interviews was purposive, and based on both judgment and theoretical considerations. Most were with representatives of NGOs engaged in



climate change adaptation related issues; the remainder included individuals drawn from government agencies, multilateral organisations, knowledgeable consultants and academics, and other relevant institutions. Interviews were usually with a single representative, however some included a small group from a single agency. Relevant agencies were identified through their profile in climate change and/or human rights, as well as through 'snowball' techniques. Nearly every individual or agency that was approached granted an interview. Apart from these interviews, the researchers involved have been able to draw on other, prior studies, evaluations and practical work related to CSO involvement in climate change projects at national and local level.

Data collection, analysis, and synthesis: In-depth interviews are "guided conversations" (Gubrium & Holstein, 2002) designed to elicit individuals' experiences, and the meanings they attribute to the event (or process) and its outcomes. Open-ended questions invited interviewees to present their work on climate change adaptation (and/or human rights), and reflect on the themes of the study. Probes were utilised to bring out certain themes in more detail, for example, whether and how a Human Rights Based Approach had been applied to advocacy strategies. Detailed notes were taken of each interview by the two co-authors in each country; these were reviewed, verified, and referred to throughout data analysis and report writing. It should be noted that direct quotes that appear in this paper are reconstructed from the authors' written notes and may include paraphrases. The authors collaborated closely in identifying key themes that emerged from the interviews.

Limitations of the data: The authors are confident in the integrity of the data and that it represents a valid representation of the experiences and opinions from across a spectrum of professional stakeholders. Nevertheless, there are important limitations. This study was conducted under time and resource constraints, which limited the scope of data collection. The authors did not, for example, conduct a systematic review of all project portfolios, and extensive field visits could not be undertaken due to time limitations. Data consists entirely of interviews, supported by review of critical literature. It did not include independent analysis of NGO or government policies and programmes, nor input from community representatives themselves. The perspectives presented in this paper are drawn almost solely from conversations with development, environmental conservation, and human rights agency staff, together with relevant government representatives. However, these necessarily represent an elite group. All but one of the interviewees spoke English, for example.

A second limitation is social response bias, i.e., presenting the 'right answer' rather than frank viewpoint. Some interviewees were careful to only focus on what their agency was achieving or to promote their institution's official positions.



# THE NATIONAL CONTEXTS OF CAMBODIA AND KENYA

## CAMBODIA

Cambodia is highly vulnerable to climate change, due both to high levels of poverty and frequency of disasters. It has the world's highest exposure to flooding, for example: 12.2% of the population is affected annually (PreventionWeb n.d.), and more than 70% of Cambodia's rice production loss between 2004 and 2008 was attributed to floods (Heng & Pech 2009). Vulnerability to climate change is exacerbated by high levels of poverty, inequality, and stress on existent ecosystems. Despite impressive economic growth surpassing 7% per year since 2011, per capita GDP hovers around US\$1,000 per year and the poorest 10% hold only 4% of the nation's income while the top 10% accounts for 27%. As of 2011, 43% of the population subsisted on less than \$2 per day (PPP). Eighty per cent of the population remains rural (World Bank 2014), and 65% works primarily in agriculture (FAO 2014). The negative effects of climate change are being compounded by more immediate threats to the integrity of Cambodia's natural environment, which are seen by communities as the most urgent concerns (CCCN 2014). Cambodia has the third-highest deforestation rate in the world: over 7% of its forest cover was lost from 2002 to 2012 (Hansen et al. 2013, as cited by Milne & Mahanty 2015). This alarming loss, coupled with threats to aquatic ecosystems (e.g., unsustainable fishing, upstream hydropower dams, etc.) is further compromising rural livelihoods and capacities to adapt to climate change. In 2014, Standard and Poor's ranked Cambodia's economy as the single most vulnerable to the effects of climate change worldwide (Kraemer & Negrila 2014).

Cambodia is often pointed to as an example of a Least Developed Country that has successfully mainstreamed climate change into public policy. It has been described as “the ‘star’ of the Clean Development Mechanism among Least Developed Countries” (Käkönen et al. 2014, p. 367), for example. Cambodia ratified the United Nations Framework Convention on Climate Change (UNFCCC) in 1995, and it formulated one of the first LDC National Adaptation Programmes of Action to Climate Change in 1996 (CCCN 2014). Today, it actively partners with a number of international climate change initiatives, including the UNFCCC and the Pilot Program for Climate Resilience. Funding to support these endeavours is significant; the PPCR’s budget for Cambodia, originally US\$105 million, had climbed to US\$240 million in grants and soft loans by 2013 (CCCN 2014). Other major donors include the governments of Denmark, European Union, Japan, Sweden, and USA. An inter-agency National Climate Change Committee, chaired by the Ministry of Environment, has been in place since 2006, and there is both an overall Climate Change Strategic Plan together with sectoral plans for nine line ministries, and official mainstreaming of climate change into the National Strategic Development plan. Meanwhile, the Cambodia Climate Change Alliance includes non-government actors while remaining “anchored in the government” (Climate Change Department 2014: para. 1)<sup>1</sup> and, with international donor support, it serves to strengthen the capacity of line ministries, local government, and non-governmental actors to address climate change mitigation and adaptation.

Käkönen et al. (2014) assert, however, that climate change policy in Cambodia is “not principally grounded on country-level realities... [but] internationally driven and dependent on the existing international incentives and structures developed to support low-carbon development” (p. 369). Our evidence concurs with this statement. Most interviewees (including some government representatives) described a nonchalance among policymakers in Cambodia. They asserted that climate change policy and programming has been top-down, with serious implications for the extent to which duty-bearers perceive their core duties as encompassing climate change adaptation and mitigation. Considerable cynicism was expressed by most of those working in the non-government sector. As one explained, “the government talks about climate change because there’s money, but it’s not meaningful”.

One of the opportunities of climate change policy and programming is that there is considerable overlap between it and overall sustainable development objectives. Nevertheless, as Spearman and McGray (2011) have asserted, “not all development is adaptation and not all adaptation leads to development” (p. 11). Käkönen et al.

(2014) demonstrate that climate and development objectives should also include analysis of conflicts, tensions, and trade-offs. However, the Cambodian state has cherry-picked those elements that advance its economic development goals, and omitted those that do not, however essential they may be from a climate change perspective. For example, climate change is expected to bring about more unpredictable and extreme weather, and therefore greater need for disaster risk reduction and humanitarian efforts. Nonetheless, the duty to protect populations from disasters appears to be poorly understood and recognised in Cambodia. While there are exceptions, disaster management is primarily seen in terms of emergency relief rather than disaster risk reduction tied to climate change adaptation. The National Committee for Disaster Management is not even a member of the government's interagency climate change committee. Although there is awareness of the links between climate change adaptation and disaster risk reduction among many stakeholders, these perspectives are not reflected by others. The higher levels of government have adopted a 'green growth' model that focuses entirely on harnessing economic opportunities (and which implicitly downplays disaster risks or the priorities of the most vulnerable). Actors who are more concerned with climate risk factors appear to be largely excluded from mainstream climate change efforts.

Cambodian agriculture policy gives priority to increasing rice production and integrated water resource management (Nang 2013). Critics charge that government policies and representatives are largely insensitive to the particularities of smallholder farming in a changing climate. As a recent report by the Cambodia Climate Change Network (2014) asserted:

"The shift toward commercial farming, requiring intensive inputs but more vulnerable to climate and market fluctuation is very pronounced in rice producing areas and is not being accompanied by measures and policies aimed at supporting smallholders and favoring a fairer distribution of wealth [...] Not surprisingly inequalities are increasing." (CCCN 2014, p. xiii).

This sentiment was echoed throughout our interviews; as one summed up, "They are all missing the smallholders. All of them". Issues related to adaptation in crop and livestock production systems are largely seen by government and agriculturally oriented NGOs as technical problems to be addressed through the introduction of new varieties, husbandry methods, and a shift to 'modern' (implying large-scale and commercial) production methods. State actors perceive promoting agro-industry to be their responsibility, including through issuing economic land concessions to

establish plantations, as well as large infrastructure projects (e.g., irrigation) which especially benefit commercial farming. Ironside (2015), for example, argues that “in the drive to develop large-scale monocultures, there is little consideration by government planners or agribusiness interests of the social and environmental costs of their activities” (p. 218), and he demonstrates that smallholders are not only being left out of the technical support that large plantations have benefited from, but that their vulnerability may be exacerbated by dominant strategies. Government plans reflect little awareness regarding ‘winners’ and ‘losers’ of policies; instead economic growth is seen to be universally beneficial, and plantations are expected to provide a welcome source of jobs in the countryside. Moreover, there is little in-depth discussion on ‘climate smart’ agriculture in Cambodia (Nang 2013).

There is incomplete evidence to either support or disprove the assumptions underpinning government policies, but outside of central government the government’s land and agricultural policies are vociferously disputed. NGOs are especially critical of the economic land sessions, which are seen to dispossess family farmers and degrade the environment, further undermining rural livelihoods. However, NGO programmes focused on smallholders are viewed by some as being out of touch in a different way. As one commented, “people don’t want to be subsistence farmers anymore, and nobody wants that for their kids, but NGOs are still often stuck in a yeoman farmer fallacy”. Massive migration from rural areas is attributed in part to a failure of rural development in Cambodia, with climate change as a contributing factor.

Concerns about climate justice (i.e., measures which seek to rectify the “inverse relationship between climate risk and responsibility” [Barrett, 2014, p. 130]) are seen to indicate the need for action in the countries with large-scale emissions. In Cambodia this discourse, ironically, has been co-opted to serve elite interests. Several interviewees indicated that there is a tendency to label more immediate problems (e.g., the impact of deforestation) as climate change in order to shift the blame to developed countries and exonerate those actors within Cambodia who are responsible for environmental destruction. One senior government official even indicated that unless donor countries were prepared to ‘up the ante’ and compensate for the (short-term) profits that can be reaped from exploitation of the forests, there is no reason for Cambodia to slow the current pace of destruction. “We look at mitigation from the perspective of a Least Developed Country, which is that we implement mitigation as long it supports sustainable development and the rich countries fund it”, he explained. “Why would countries like us [protect forests]? We need development. Under the current market

model there is no other way". Given the importance of these resources for smallholders in particular, this version of the climate justice discourse in Cambodia excludes the climate risks and vulnerabilities of the poor.

In terms of human rights, Cambodian law largely meets international standards but falls considerably short in practice. The US State Department's most recent (2013) human rights report for Cambodia, for example, documents widespread transgressions and official impunity. In particular, it singles out four particularly egregious issues: flawed electoral processes; a politicised and ineffective judiciary; constraints on freedom of press and assembly; and abuse of prison detainees. Meanwhile land conflicts and widespread dispossession of both rural and urban Cambodians for economic land concessions have emerged as an explosive political issue, and the processes behind the granting of these concessions are widely regarded as contravening both Cambodian law and international standards (McGinn 2013).

## **KENYA**

Climate change and human security are closely intertwined in Kenya. Climate change impacts are already experienced on the ground and is aggravating existing livelihood challenges (Camco, 2013; Parry et. al, 2012). A majority of Kenya's population (about 75%) is dependent on natural resources, water and land. The main productive sectors such as agriculture, livestock, horticulture wildlife based tourism, forestry, are or will be directly and negatively affected by climate change (UNDP & GOK, 2013; AFIDEP & PAI, 2012). Climate change has tangible effects on food security and the economy (IIED 2013, Mulema 2013) and is likely to aggravate existing conflicts over water, land and resources in parts of the country, where such resources are already subject to intense competition (Perry et al 2012). An effort to quantify this impact by the Stockholm Environmental Institute (2009) estimates that the country will lose almost 3% of annual GDP from climate change by 2030, showing the significance of climate change and its potential to erode gains in development so far.

The pastoralist and farming communities occupying the Arid and Semi-Arid Lands of southern and northern Kenya are currently considered the most vulnerable to climate change, largely because of water scarcity, poor infrastructure and limited economic and institutional frameworks in these regions. However, such generalisations must be treated with care (Huho et al 2009, 2010). There is currently a widespread perception among many government staff and among some NGOs



that the Arid and Semi-Arid Lands are 'lost causes' in Kenya and that the only way forward in adaptation and food security is to enhance production outside of these areas, and through non-pastoralist production systems. However, a key feature of climate change is weather unpredictability, and recent research now indicates that climate change may also have severe effects on sedentary farming in the wetter regions of Kenya. A 2013 report by the International Food Policy Research Institute (and the Association for Strengthening Agricultural Research in Eastern and Central Africa, for example, shows that the country's staple crop (maize) will be significantly affected by changing weather patterns. Indeed, some sources claim that areas where maize has traditionally thrived – such as the Rift Valley – will experience declining yields while some parts of the Arid and Semi Arid Lands actually have potential for adapted pastoralism and/or increased crop yields (Waithaka et al. 2013).

In recent years a fairly comprehensive – though not always harmonised – framework of policies, strategies and institutional mechanisms related to environment and climate change has emerged in Kenya (Ochieng & Makoolo 2009, Funder & Marani 2013, Nzau 2013, Schilling & Remling (no date). Of particular importance is the Climate Change bill, in which civil society has played an important part: The initial idea and proposal for it was developed by NGOs and donors, and NGOs have actively and strategically lobbied for its approval by parliament. NGOs have also played a key role in facilitating stakeholder engagement during drafting and review of the bill. An initial version of the bill was rejected at the last minute by the President in 2012, on the grounds that there had been insufficient stakeholder participation in its preparation. Some critics claim that this was a reference to the private sector, which harboured concerns that the bill would lead to restrictions and taxes on carbon emissions. Following this, a nationwide programme of stakeholder consultations was carried out. NGOs and associated networks (e.g., the Kenya Climate Change Working Group) were key facilitators in involving stakeholders at all levels and across sectors.

A new draft bill was gazetted in June 2014, and is currently awaiting introduction to the National Assembly. The draft provides the legal and institutional framework for mitigation and adaptation to the effects of climate change; facilitates an enhanced response to climate change; and provides guidance and measures to achieve low carbon, climate resilient development. The bill proposes two features of particular significance. Firstly, it establishes an independent and autonomous body to coordinate all climate change activities, advise the government(s), and enhance

public awareness on climate change. Its responsibilities will include a new national registry for appropriate mitigation actions by public and private entities. Secondly, the bill seeks to establish a climate change fund to facilitate climate change mitigation and adaptation efforts.

Until this policy is enacted, major climate change initiatives are guided by the 2010 Kenya constitution, the 2010 National Climate Change Response Strategy, the 2010 National Action Plan and several other sectoral policies under the overall Vision 2030 development plan. The new constitution recognises and provides for the right to a clean and healthy environment for every Kenyan. In this, it regards environmental and developmental concerns and issues as human rights concerns. The state also commits (under chapter five on Land and Environment) to ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and to encourage public participation in the same.

In addition, other sectoral policies e.g. on environmental conservation, forestry, energy, natural resources, are of relevance. Key here is the Environmental Management and Coordination Act No. 8 of 1999. Although it does not explicitly deal with climate change, it recognises that current and future generations have a 'right to benefit equally from the exploitation of the environment, and that they have an equal entitlement to a clean and healthy environment'. Other relevant policies include Kenya's draft National Disaster Management Policy and its revised policy on the sustainable development of arid and semi-arid lands and the National Policy for the Sustainable Development of Northern Kenya and other Arid Lands.

Until the Climate Change Bill is enacted and the council constituted, the institutional framework for climate related issues largely falls under the Ministry of Environment and Mineral Resources (MEMR) and its related institutions such as the National Climate Change Secretariat and National Environment Management Authority (GOK 2013). The ministry is mandated to handle environmental issues and currently acts as the focal point for the United Nations Framework Convention on Climate Change (UNFCCC) (Ibid).

In terms of human rights, the main provision is the constitution and largely its chapter four on the bill of rights. This provides for various social, political, economic and cultural rights, their enforcement, implementation and opportunities for legal redress in case of violations. This includes the setting up of the Kenya National Human Rights and Equality Commission to promote the respect, protection,

observance and monitoring of human rights in the country. Kenya has also ratified the two main Covenants considered as part of the International Bill of Human Rights, committing itself to several rights including the right to life. These are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both ratified in 1972. It also ratified the regional African Charter on Human and Peoples' Rights for Africa of 1981 in 1992, aimed at promoting and protecting human rights and basic freedoms in the African continent.

Much of the government's funding for climate change is through the United Nations Framework Convention on Climate Change (UNFCCC). The UK's International Climate Fund also funds a range of activities including the implementation of the National Climate Change Action Plan. Other donors include UNDP, FAO, Rockefeller Foundation, JICA, USAID, DANIDA, the European Union, UNDP, FAO, IDRC, UNEP & the World Bank (Norrington-Davies & Thornton 2011, Maina et al. 2013). The national climate change strategy was funded by Danida and Sida (Camco, 2013, UNEP supported the preparation and coordination of the National Action Plan (Camco, 2013) while UNDP funded the establishment of the climate change secretariat (Interviews 2014). USAID also supported the Climate Change Secretariat to meet critical gaps in Kenya's ability to meet its commitments under the UN Framework Convention on Climate Change for establishing baseline emissions and country-specific emissions factors. Many of these donors also support various government institutions/parastatals and NGOs on wildlife, forests and land management.

## CIVIL SOCIETY CATEGORIES

The concept of 'civil society' encompasses diverse bodies and contested meanings; it is both broad ranging and ambiguous. Zartman (1995, as cited by PCSG 2001) has described it as "the social, economic, and political groupings that structure the demographic tissue; distinct and independent of the state but potentially under state control, performing demand and support functions in order to influence, legitimise, and/or even replace some of the activities of the state" (p. 13–14). Civil society includes innumerable groupings, both organised and informal. Even the more bounded spheres (e.g., 'human rights advocates' or 'climate change stakeholders') include disparate individuals and arrangements, and while synergies sometimes exist, there may also be gaps and weak coherence. Among the plethora of possible civil society organisations (CSOs), non-governmental organisations (NGOs) and community-based organisations (CBOs) are of particular significance in this paper. NGOs are "private, non-profit, professional organisations with a distinctive legal character, concerned with public welfare goals" (Clarke 1998, as cited by Ou & Kim 2013: 2). CBOs, by contrast, may be much more informal. Often conflated with 'grassroots organisations', CBOs have been defined as "voluntary associations of community members that reflect the interests of a broader constituency" (Kaplan, Msoki & Soal, 1994, as cited by Lentfer & Yachkaschi 2009: 2). They often consist entirely of volunteers and activists, tend to be located in villages rather than cities, and may not be registered with or recognised by the state. They are often key partners for NGOs – and may be created by them (e.g., village savings groups). However, they are often regarded as 'country cousins' by more 'professional' NGOs.

In order to be able to assess the different entry points of how NGOs approach climate change, this section presents what is an admittedly somewhat simplified categorisation of NGOs, and how they adopt or avoid HRBA for their work.

## **CAMBODIA**

In Cambodia there are specialised NGOs, those with a broad portfolio of programmes, and also a considerable proliferation of networks and coordination fora. International NGOs with a broad portfolio have often adopted global policies which embrace human rights-based perspectives; climate change is often a cross-cutting theme as well. There are also many international and national NGOs with narrower mandates. In Cambodia, NGOs tend to fall into one of several specific categories, each with a distinct philosophy and approach. Below, we present a brief typology of those that address climate change and related issues in Cambodia.

### **Conservation and natural resource management**

Some interviewees noted that Cambodia has become a 'brand' for some conservation NGOs. It has been relatively easy for these organisations to raise money to preserve biodiversity and protect specific species in Cambodia due to the existence of significant – but shrinking – natural forests and biodiversity. Rapid loss of natural habitat may make it difficult for these agencies to continue over the long term unless this trajectory is reversed as their 'target groups' may become extinct. Most of these NGOs generally do not claim to apply HRBA. Some NGOs that emphasise conservation-related goals also include a focus on the poverty and vulnerability of those rights-holders who are using the natural resources (especially non-timber forest products). They generally encourage more sustainable local practices and seek to enhance the capacity of local government, but tend to avoid political confrontation, even where there is poor enforcement of environmental safeguards and protection of user rights. Indeed, despite considerable calls for valuation of ecosystem services (Turner, Morse-Jones & Fisher 2010), there may even be some implicit goal conflicts (at least in the short term) between efforts to conserve the environment and defence of the rights of local populations to use those environmental resources. Conservation and human rights may not go hand-in-hand where populations are increasing and forests are shrinking.

A few conservation NGOs have indeed taken more confrontational approaches, including 'naming and shaming' the Cambodian elite. The best-known example is Global Witness, which was forced out of the country following the 2007 publication of a damning report entitled *Cambodia's Family Trees: Illegal Logging and the Stripping of Public Assets*.

## Development

Most 'development' NGOs in Cambodia undertake a range of development programming, and sometimes this carries with it a variety of entry points regarding human rights. A dichotomy in the work of these organisations can be found in their approaches to agriculture and livelihoods, on the one hand, and governance on the other (even though these organisations sometimes see these as different aspects of the same programmes).

With a few notable exceptions, NGOs (and even some divisions within larger NGOs) that work with agriculture, fisheries, and other aspects of rural livelihoods tend to perceive technical assistance as their *raison d'être*. These NGOs sometimes have a relatively explicit and science-based approach to climate change wherein technology transfer takes precedence. Human security, where it is analysed, is primarily linked to an analysis of obstacles to technological adoption rather than the vulnerability of rights-holders *per se*. As a result, their climate change adaptation initiatives tend to be narrow in scope and it is hard to discern a coherent theory of change about whether and how the technological changes being promoted actually impact on the relations between rights-holders and duty-bearers in managing risk.

Some NGOs perceive that they have little choice but to take a rather technical approach to climate change and report that government agencies are not willing to enter a dialogue regarding economic land concessions, which closes the door to efforts to hold them to account for the impacts of the prevailing development model. There are some major exceptions to this technical assistance focus among organisations that concern themselves with common property resources and the conflicts that inevitably arise over control of these resources. There has been more political 'space' for NGOs to address conflicts over water resources and fish stocks (in comparison to agricultural land and forests), and there are examples of agencies connecting some rather bold dots between local and global issues, in recognition that policy in the absence of effective law enforcement is fruitless. As one interviewee explained, "About law enforcement, it is very bad. There is conflict of interest and corruption is also very bad. This is very important for fishing, and also climate change". He went on to describe various efforts to alternatively partner with or confront state agents depending on the situation at hand, and commented that, "some are hiding behind climate change as the blame instead of illegal logging or whatever, because it's a global issue" rather than a local responsibility. Although some development-oriented NGOs were characterised as 'brave and genuine', others were avoided. He also made thoughtful observations that it was possible to challenge the state on water and fish in part because "forestry issues are so

corrupted up to the highest ranks in government. For fishing, yes there is corruption but the investors are not at the very top. Land and forests is explosive. We are more under the radar”.

Many NGOs have major governance programmes, in some cases integrated and in some cases in parallel with their natural resource-related efforts. These agencies seek to strengthen the capacities of sub-national government and/or national structures to implement programmes. There is often an emphasis on more inclusive participation in policymaking and decision-making, but there is also a recognition that the power issues and (in some instances) the fear of confronting political leaders weakens the impact of improved governance at local levels. At the sub-national level, the opportunities for engagement are reliant on individual political leaders willingness to engage with civil society, whereas at the national level it appears that ministries and departments have different levels of willingness to collaborate.

### **Human rights and legal services**

Cambodia’s tragic history has meant that there are a large number of well-established and experienced organisations devoted to defending human rights. Land and property rights are perhaps the most explosive legal issue in Cambodia today. Human rights organisations are actively contesting the legality of the economic land concessions and other ‘land grabs’, but rarely address this as part of an analysis and argumentation on how the economic land concessions impact upon a population’s rights to access these natural resources as part of their capacities to cope with and adapt to climate uncertainty and variability.

There is some criticism that human rights efforts in Cambodia are dominated by a set of concerns defined by urban elite lawyers, and that as a result the human rights agencies fail to adopt a broad approach to either human rights concepts or to empowerment of the marginalised. Although they take bold and brave stances in the legal sphere, human rights oriented NGOs tend to be narrowly focused on legal matters, with limited engagement on broader issues of participation and empowerment beyond that sphere. In addition to their primary focus on legal services for individuals, households, and communities affected by natural resource conflicts, these organisations also provide input into drafting new legislation (e.g., a new draft law requiring environmental impact assessments) and have initiatives to help rural people and commune-level politicians better understand existing laws.

## **Humanitarian**

Surprisingly, in Cambodia some agencies with a humanitarian mandate do not fully link disaster relief to climate change programming, despite the fact that most disasters are at least partially caused by extreme climate events, which are expected to increase in severity and frequency. Even disaster risk reduction efforts appear to be focused on a narrow range of preparedness measures (as opposed to a broader, risk reduction perspective). Cambodia remains heavily dependent on international humanitarian assistance, even for annual flooding. Disaster risk reduction is poorly integrated into even the government's climate change adaptation work. The official disaster management agency is not a member of the government's inter-departmental network on climate change. One interviewee expressed concern that the government's focus is on the 'green growth' aspects of climate change adaptation rather than climate vulnerability. That this has become the case is perhaps precisely because of the willingness of international donors to step in with humanitarian assistance when necessary, leaving the government to shirk such responsibilities.

## **CSO networks**

Development-oriented NGOs in Cambodia often engage in advocacy efforts within various coalitions and networks. There are numerous independent NGO networks. Most concern specific issues or constituencies, and there is also one major independent coordination body which nearly all the national and international 'professional' development NGOs are members of. In addition to general coordination functions, these networks aim to build the capacity of their members and present a 'united voice' for advocacy (largely towards government, but also towards donors and the international community when dealing with key issues including climate justice). This is especially critical for agencies with a technical orientation, which might not otherwise fully engage on policy and advocacy issues.

Interviewees voiced a wide range of opinions about the effectiveness of NGO networks' advocacy efforts. Many rely on them to take stronger advocacy positions that would not be prudent for an individual agency to adopt. While most were satisfied, criticisms were also expressed. Perhaps the most important is that, in one participant's words, "too much is expected of an umbrella, and everyone hides behind it. Everything difficult goes to it, but it doesn't have enough support. They pass the buck, and [the network] has too much on its plate and everyone vanishes... It just gets left holding the ball". A few also lamented that the NGO networks were too soft, prioritising good government relations over hard-hitting advocacy. Indeed, 'hard advocacy' is understood by many in Cambodia as delivering strong statements



to the government and media, but rarely anything beyond that. These networks can be seen as extensions of smaller agencies' soft advocacy efforts, rather than the channel for hard advocacy that they are sometimes presented as. It is also notable that both individual agencies and coalitions which do take strong, hard advocacy stances may be excluded or unwelcome within the larger more formal network structures. As a representative of one such coalition commented, "No, we don't get invited to meetings, but we don't care. We have enough meetings!... Our strategy is to change people, not change NGOs. So we don't care about [getting invited to] NGO or government meetings".

## **KENYA**

Most CSO climate change programmes in Kenya combine elements of:

- Livelihood diversification/agriculture/food security (supply of drought resistance technologies, introduction of farming in pastoralist areas, beekeeping, fish farming)
- Ecosystem/environmental management (tree planting, water conservation, conservation agriculture, pasture conservation, rehabilitation of degraded lands)
- Energy activities linking adaptation and mitigation (provision of energy efficient technologies like cooking stoves)
- CBO development to organise and implement activities

Many of the issues addressed in adaptation projects are thus not limited to climate change specifically, but also address broader natural resource management concerns. In contrast to Cambodia, some NGOs approach climate change work from a disaster risk reduction perspective, e.g., strengthening early warning systems and building community adaptation plans. A number of NGOs tend to have a fairly technical emphasis in their work, although there has been some work on bottom-up local governance adaptation planning at the county level.

A few of the larger programmes are part of international adaptation programmes such as Partners for Resilience by the Red Cross and Cordaid, or regional programmes implemented in Eastern and Southern Africa such as CARE's Adaptation Learning Programme for Africa.

NGO programme and project activities on climate change adaptation tend to be focused on the arid and semi-arid areas i.e., Laikipia, Isiolo, Machakos, Turkana, Makueni, Kajiado counties and the coastal region. A few initiatives are found in other disaster prone areas in the western region and central parts of Kenya, but generally there is little focus on western Kenya and central parts of the country.

### **Development**

Kenya has a strong presence of international and regional NGOs, which are often registered as national NGOs. Many of these have a development focus, with an ultimate aim to alleviate poverty and enhance local livelihoods. Some of the larger INGOs have an HRBA, although this is typically less explicitly articulated or absent among national NGOs. Some deliberately avoid the term 'human rights' in their work as being too sensitive; these agencies instead take more oblique approaches towards 'public participation', 'community-based approaches', etc. Climate-related work undertaken by development NGOs typically evolves around local-level adaptation activities in agriculture, pastoralism, water management, food security and disaster mitigation/management. Land rights issues have usually been handled more indirectly, due to their sensitive nature in Kenyan politics. Some INGOs have, however, taken up the issue of foreign (more than domestic) investments and associated 'land grabbing', which because of its emphasis on foreign influences provides a less risky approach than confronting domestic land factors head-on. The new constitution and associated Land Commission has also opened a space for a greater public discourse on land issues, although the actual effects of this on the ground remain to be seen.

### **Conservation**

Due to its rich biodiversity and wildlife, Kenya has a relatively abundant landscape of conservation-oriented CSOs. This includes major INGOs, national NGOs and – in some areas – a significant number of CBOs as well. The distinction between development and environment CSOs is fluid along a continuum, and most environmental NGOs take a community-based approach and also work with livelihood issues. Several of the conservation-oriented NGOs are engaged in climate change activities, based on the logic that climate change may further upset imbalances between the human and natural environment. Climate change adaptation activities, in turn, can address stress on both human and ecological systems. However, conservation NGOs have primarily addressed rights issues discreetly and indirectly. The emphasis on environmental protection also means that in some instances conservation NGOs argue for state-centred approaches rather than devolved ones.

## **Human rights**

Human rights NGOs in Kenya work on a topic that is both controversial and sensitive. Most recently, the indictment of the President and Vice-President at the International Criminal Court has prompted a certain backlash against international conventions in some quarters, making the issue even more precarious to address. The climate change agenda has so far not been adopted directly by human rights agencies. However, several organisations have worked indirectly with climate change through a focus on land and water issues. For example, the Kenya Human Rights Commission (an NGO) and the local CBOs in the Human Rights Network have developed a “People’s manifesto and scorecard” process in some Counties. In this approach, communities present MPs, County governors and ministerial line agencies with their demands and expectations, and then employ scorecards to monitor accountability against this. There has also recently been some movement on the issue of water: For example, the Kenya National Human Rights Commission (the formal national human rights commission) recently produced a report stating that Kenya’s national water policy is in breach of the human rights to food, water and shelter, in that it favours water development in better-off areas and discriminates against pastoralists, inhabitants of informal settlements, and refugees. The commission has also worked with international and national NGOs to conduct impact assessments on some major investments projects to assess their implications vis-à-vis local land and water rights. Such efforts may be an impetus for other human rights NGOs to follow suit in the future, although it remains to be seen whether this will include climate change adaptation efforts as a particular emphasis.

## **CSO networks**

A number of the development and environment NGOs are grouped together in civil society networks with a coordinating facility. These include the Kenya Climate Change Working Group, the Africa Climate Change Resilience Alliance, the Kenyan Conservation Agriculture Hub and the Climate Change Network of Kenya. Apart from coordination and pooling of resources, this approach gives more clout and – importantly – it reduces the exposure of any individual organisation when dealing with controversial issues.

# CIVIL SOCIETY PERCEPTIONS OF THE LINKS BETWEEN CLIMATE CHANGE AND HRBA

## CAMBODIA

Cambodia is undergoing rapid social, economic, political, and environmental change. Milne and Mahanty (2015) assert that, “the social and environmental dimensions of change are dynamic, inter-linked, multi-scalar and power laden. The major actors in this drama – government officials, conservation organizations, villagers, local NGOs, armed forces, elites and private interests – are caught in an interplay which, at a fundamental level, involves struggles over resources such as land, forests, fisheries and floodplains” (p.p. 1–2). Nevertheless, most of the development organisations interviewed sidestep these tensions. Many do not have explicit policies for HRBA, and some of the representatives had never considered linkages between human rights and climate change adaptation. This partly reflects the ‘siloed’ nature of programming in Cambodia and the conceptual conflation of human rights with the law and justice sectors, and of climate change with the environment. Despite nascent but growing awareness of linkages between them, in Cambodia there are notably few efforts that explicitly ‘join the dots’ in their operations or strategic plans. There is, for example, a clear recognition that widespread deforestation is both contributing to climate change and reducing the adaptive capacities of the populations living in the (often formerly) forested areas. There is also considerable hesitation in determining how this understanding should influence courses of action. This may reflect, in part, the government’s persistent downplaying of the scale and effect of deforestation in Cambodia (Milne & Mahanty, 2015) and reluctance to risk government partnerships by openly challenging that.

The different types of organisations described in the preceding section have different principles and points of departure. In general though, large international NGOs can refer to global HRBA policies, but acknowledge that they rarely steer actual in-country decisions. Overall, the clearest links are seen to be in how ELCs and other forms of human rights violations related to 'resource grabs' and conflicts over common property resources are reducing the adaptive capacity of the most vulnerable populations. As will be discussed further below, this has generated strong commitments to advocacy in various forms. Links are significantly less explicit (if they are drawn at all) with regard to so-called livelihoods and disaster risk reduction programming. While climate change and human rights may be recognised as 'cross-cutting issues', programming decisions largely remain within a given agencies' longstanding modus operandi, wherein cross-cutting issues are less imperative than donor priorities and financial flows. Interviews clearly revealed that organisational inertia is compounded by resignation and fear about political repercussions of challenging elite interests.

Human rights defenders in Cambodia focus on the formal accountability of duty-bearers to follow the law, but this sets limits on how to address issues beyond the judicial sector. There is confusion, for example, as to what the human rights implications might be regarding natural resource management. There is some understanding of how, in principle, these accountabilities extend to issues related to adaptive capacities. But this is not regarded as justiciable, and the focus of these organisations is on legal rights and judicial process. Moreover, climate change is a comparatively abstract and long-term issue without an obvious legal claim. Interviews suggested that the outcome of reduced vulnerability to climate change from protection of farmland and forests is seen as a 'positive externality' rather than as a justification for the efforts of these organisations' engagements in defending access to these resources.

There is widespread acknowledgement by both government and NGOs that the duty-bearers have severe capacity deficiencies. Even though NGOs are widely perceived as leaning towards the political opposition, there is nonetheless often a pragmatic readiness within government agencies to partner and collaborate with NGOs and development partners that bring resources to the table. Overall, NGOs report that most government officials are eager to improve governance and even to adopt a more inclusive stance towards their constituencies, but only insofar as higher-ups and elite economic interests are not challenged, and norms of patronage are maintained. There appears to be little progress towards instituting checks and balances or removing conflicts of interest. Indeed, many of the interviewees voiced concern that Cambodia may be backsliding in this respect.

## KENYA

As an explicit and articulated agenda, the link between climate change and human rights is still quite new among NGOs in Kenya. Documents and project activities that explicitly combine climate change and human rights agendas are virtually non-existent. Some NGO staff indicated that there is an interest in HRBA and that the discussion is slowly picking up in the country. However, they also stated that there is not much effort to directly integrate the two, and where there is any integration it is rather ad hoc. One interviewee held the opinion that an HRBA is more easily integrated in other sectors, for example by addressing female genital mutilation as a health issue.

International NGOs were most able to elaborate on human rights issues, pointing to an underlying HRBA which frames their policies and project portfolios. Among human rights NGOs we found no activities addressing climate change as such. Others saw themselves as being influenced by HRBA, but activity tended to focus on teaching local people about their rights and expecting them to demand the same from the government. Other NGO staff expressed that the HRBA agenda was completely new to them, and were unsure what it entailed. This was especially prevalent among environmentally oriented and/or national NGOs. When asked for examples of specific human rights activities in their project activities, staff members in some NGOs said that they did not have any. A direct and explicit agenda of linking climate change and human rights is thus nascent at best in Kenya. However, an important point here is that many NGOs do work indirectly on human rights issues in climate change.

First, some NGOs intentionally avoid explicit human rights work, but address the issues indirectly through various project activities. This approach can be seen as a response to the sensitive nature of human rights issues in Kenya, and the resulting choice of many NGOs to apply a 'soft advocacy' strategy, whereby they seek to achieve influence through collaboration with government and other stakeholders, rather than through confrontational means. This approach should be understood in a context where CSOs are coming under increasing scrutiny from government, including a recently proposed bill to put a cap on the extent of funding that can flow to CSOs from abroad. Although the bill was rejected in the first instance, it reflects an environment where CSOs cannot assume that they are free to act without consequences. In such a setting, climate change provides a good platform because it is less 'political' and is an area where the government needs and appreciates external assistance and resources. Kenyan NGOs thereby emulate similar

approaches taken on by counterparts elsewhere – i.e., the use of ‘new’ and ‘safe’ topics as a means to indirectly address more fundamental and contested issues. For some NGOs, the inclusion of a human rights perspective within climate change may therefore in fact not be desirable, and even counter-productive, if it leads to politicisation of the topic.

Second, even if NGOs do not recognise an underlying human rights aim per se, their work invariably touches on human rights issues. For example, several of the NGO projects on climate change have (soft) advocacy components aimed at directing political attention to the plight of climate-impacted populations. Some also focus on governance issues, such as ensuring accountability and grassroots inclusion in local government policy, planning and funding for adaptation. Some were active in promoting the Climate Change Bill, and facilitating inclusion of marginalised groups in the process. An example of an implicit HRBA is the emphasis among many NGOs in giving voice and inclusion to particular groups in climate change activities – e.g., women, youths, elderly, and/or disabled. Gender issues are particularly high on the agenda, and a key element in many NGO-led climate change adaptation activities. Typically these involve both specific training activities for women on, for example, farming adaptation practices, and also efforts to ensure inclusion of women in local decision-making fora such as water management committees.

# CIVIL SOCIETY POLICIES AND PRACTICE IN RELATION TO THE FOUR PRINCIPLES OF HRBA

In order to assess how HRBA is applied to climate change adaptation in Cambodia and Kenya, it is essential to look at its four specific principles (UN 2011): Meaningful participation and opportunity; transparency; accountability of duty-bearers; and non-discrimination respectively. Given that the majority of de facto HRBA programming does not explicitly refer to human rights per se, it is within these aspects of programming that a human rights perspective can be found. In interviews stakeholders were asked specifically about these four principles.

## **CAMBODIA**

### **Participation and opportunity**

The Cambodian government's climate change adaptation policies are grounded in a 'trickle down' logic which posits that economic growth inevitably leads to greater employment opportunities, which will facilitate an exit from undesirable subsistence and smallholder agriculture. Traditional agriculture is seen to have negative characteristics in relation to both mitigation (carbon emissions associated with swidden agriculture) and adaptation (inability to invest in technologies that are deemed 'resilient' and 'climate smart'). Moreover, this trend is seen as consistent with the aspirations of the younger generation who are assumed to prefer urban and/or 'modern' livelihoods. Many in civil society dispute these policy assumptions about desirable 'opportunities'. Some however emphasise the need for alignment with government policies and planning.



With regard to the meaningful participation of rights-holders, the international NGOs and national NGOs have begun to acknowledge that grassroots actors – including CBOs and constituency groups – were until very recently excluded from genuine influence on NGO programming. The belated introduction of this seemingly self-evident aspect of a human rights-based approach is attributed to two major factors: the somewhat artificial character of civil society in Cambodia, and patronising attitudes among the educated about the rural poor. Each of these points is discussed in turn below.

International donors created a large NGO sector by generously funding them when Cambodia opened up for international cooperation in the early 1990s. At that time, the government was extremely weak and the international community created a significant market for a select group of NGOs that were able to prepare professional proposals and implement projects, effectively stepping in as duty-bearers in what was then an exceptionally fragile state. Concerns with developing a more genuine Cambodian civil society were seen as being of secondary importance in the push to provide basic services to the population. Today, although Cambodia has a large NGO sector, there are criticisms from some quarters that too many NGOs are 'out of touch' and focused on delivery of services over empowerment.

Patronising attitudes regarding the rural population persist among educated Cambodians, including many NGO staff. The rural poor have been seen as ignorant, incapable and in need of 'champions' to speak on their behalf. These attitudes continue to exist in some quarters, particularly regarding ethnic minorities, and NGO staff often echo Cambodia's longstanding norms of patronage. Some see their role as speaking for the people. As one interviewee commented,

For a long time, NGOs here felt they had to advise villagers because they are uneducated. This has changed some... NGOs don't quite understand the concept of duty-bearers. Only now do we have real CBOs. In the 90s it was all NGOs with international money and they became charities, not NGOs. Service delivery, overwhelmingly. They didn't really ask communities what they wanted or needed. They were responsive to donors but not villagers. Only now is that starting to change. But NGOs are kinda still here to 'save the day'... and they don't get capacity building beyond one-off trainings.

CBOs in Cambodia, however, have become increasingly difficult to ignore. This may reflect subtle changes in the political space in Cambodia but also, very importantly, the increasingly precarious state of rural livelihoods in a context of widespread

dispossession and deteriorating farming and fishing conditions. As a result, “farmers, fishers and forest-dependent villagers have become increasingly vocal and determined in Cambodia; now representing a major force for social change that the ruling party cannot ignore” (Milne & Mahanty 2015: 9). This, together with recent financial pressures on NGOs, and perhaps growing awareness of international HRBA norms, have meant that emergent CBOs are now largely acknowledged as central to participation in advocacy efforts to demand accountability from those responsible for environmental destruction and loss of livelihoods. CBOs and resource-user associations (especially in fisheries) are finally being seen as having a central role in setting locally-adapted ground rules and demanding effective enforcement of existing regulations and norms for managing common property resources.

### **Transparency**

The principle of transparency is most apparent in relation to increasing the visibility at national and international levels of the processes that are simultaneously dispossessing farmers and destroying Cambodia's forests, i.e., official economic land concessions coupled with rampant illegal logging. Attention is beginning to be drawn to how these issues are compounding rural Cambodians' vulnerability to climate change. Transparency is an important aspect of both ‘hard advocacy’ (influencing public and international opinion to put pressure on government) and ‘soft advocacy’ (gently persuading duty-bearers through increasing their understanding of the implications of prevailing processes).

Many note, however, that transparency may be created within specific contexts for addressing a particular issue, but without challenging the widespread impunity of those with political and/or economic power. This observation is consistent with other aspects of the Cambodian discourse: there is open discussion of narrower issues (e.g., worsening frequency and severity of floods), but an absence of public discourse which challenges prevailing policies and ideologies which exacerbate these conditions. Similarly, there is lively discussion about a proposed economic impact assessment requirement, but not about the conflicts of interest that will likely undermine the integrity of these efforts.

### **Non-discrimination**

In interviews it was found that, with few exceptions, discrimination receives strikingly little attention in Cambodia. Ethnicity is not addressed explicitly apart from where it coincides with locality, i.e., the concentration of indigenous people in the northeast highlands. There seems to be no consideration of differences or discrimination

affecting ethnic minorities in the lowlands at all (primarily Vietnamese and Chams). Livelihood programming tends to focus on those practicing a particular livelihood rather than the ethnicity of that population. While interviewees emphasised that Cambodian lowlanders share common livelihood strategies (i.e., Cham fishers do not have distinctive practices that set them apart from their Khmer counterparts), it is notable how little consideration there has been of particular patterns of either social or economic discrimination. The Vietnamese speakers are widely discriminated against, but as non-citizens, they are not seen to be rights-holders. The criteria for membership in officially recognised community fisheries, for example, include Cambodian citizenship (Vuthy et al. 2009), which effectively excludes innumerable families of Vietnamese origin. Insensitivity about discrimination is rather surprising among organisations that would be expected to be more aware of international norms. The gendered dimensions of environmental change and destruction receive some, but limited, attention. Such changes include lack of wage labour opportunities for young men compared to young women (who have more access to employment – albeit at low wages and difficult conditions) in garment factories.

### **Accountability**

Accountability has a number of dimensions at national and local levels, and in the relations between the state as duty-bearer and rights-holders (including but not exclusively citizens). It also relates to how the state perceives its accountability for creating an enabling environment for the private sector as well as in relation to accountability towards rights-holders more generally. As noted above, Cambodian government representatives who were interviewed primarily saw themselves as accountable for providing economic opportunities through growth and thereby the creation of formal employment. There is no perceived distinction between the interests of the economic elite and those of the population in general. Those aspects of climate change adaptation and mitigation that are consistent with these accountabilities for joining with the business elite to create economic opportunities are embraced. ‘Green growth’ is welcome, together with agro-industry, which is seen as reducing poor people’s dependence on variable and uncertain agro-ecological conditions. These assumptions are seen as self-evident and not requiring empirical verification. NGOs actively question these assumptions.

Some argue that the growing strength and confidence of the affected communities – and the escalating strength of political opposition to the ruling party – have meant that local authorities are starting to recognise the dangers of ignoring their

'downward' accountability to constituencies that are not benefiting from the prevailing economic development model. The varying integrity of local leadership is often mentioned as a significant factor in this regard.

## **KENYA**

### **Participation and opportunity**

Public participation and community-based approaches have long been at the centre of NGO activities and discourses in Kenya, especially in the fields of community development and natural resource management. This is also the case in climate change efforts. Although the agenda has attracted its share of 'briefcase NGOs', virtually all the bona fide NGOs in Kenya have activities on the ground that engage communities in one way or another. This applies across the spectrum of both conservation- and livelihood-oriented NGOs.

Traditionally, community-based approaches have been driven by NGOs and donor-funded programmes and projects, employing more or less pre-packaged participatory methods, and with CBOs developed as modalities for organisation and implementation on the ground. A range of 'development' and 'natural resource management' CBOs therefore exist in most areas, either with a broad remit or with specific aims within, for example, water, agriculture, forestry, etc. With the advent of climate change adaptation programming, some existing CBOs have embraced these new objectives, while specific new 'climate change' or 'disaster management' CBOs have also emerged.

However, the specific approaches to participation and inclusion in climate change adaptation vary, and can be categorised as follows:

In project implementation, grassroots actors are engaged in carrying out specific adaptation or mitigation projects, typically designed and funded through donors, government institutions or the NGOs themselves. The main emphasis here is on enhancing capacity and awareness in technical aspects of adaptation or mitigation, and thus invokes the classic instrumental approach to participation. In community organisation, the emphasis is on developing organisational capacities, institutional structures and 'social capital' within communities, which can provide autonomous adaptive capacity to address climate change challenges independently and enhance general community resilience against natural hazards. Finally, there are broader participation efforts that seek to empower grassroots actors and enhance systems

that provide opportunities for climate vulnerable populations to influence the broader climate change planning and implementation process at meso- (local government) and national levels.

While these approaches do obviously overlap in the work of some NGOs, it is noticeable that most focus on project implementation and community organisation. Examples that seek to enhance inclusion more broadly at local government and national level planning include the activities of the Climate Change Working Group in developing the Climate Change Bill, and CARE's work on linking community adaptation needs into county planning systems.

Most NGOs are, however, focused on simple instrumental participation in technical adaptation activities, and development of community organisation – and some only on the former. This tendency to work mostly on technical aspects of climate change and narrow 'intra-community' organisation and resilience can be seen partly as a result of the 'project' nature of much NGO funding, and partly as a reluctance to explicitly challenge the government – either because of disillusion with the governance system, a 'soft-paw' approach to advocacy (see below), or simply a wish to avoid being 'political' (a common concern among the conservation-oriented NGOs). It is thus no coincidence that those NGOs that do engage in broader climate change governance issues are either international agencies which are less vulnerable to political backlash than national organisations, or the work is carried out by networks, which lessens risk to individual NGOs.

NGOs in Kenya are key players in advancing grassroots interests and needs in addressing climate change, but many activities focus on technical and organisational capacity development in individual communities. This means that development of grassroots inclusion in broader climate change governance – and thereby the ability to claim and defend rights – has been fairly limited so far. On a positive note, recent efforts under the Climate Change Working Group and some other programmes appear to be addressing this issue. This has included the various public and grassroots hearings held around the country as part of the development of the new climate change policy, and the posting of 'go-betweens' at county level, i.e., individuals who work to feed grassroots adaptation interests into local government policies.

### **Transparency**

Natural resources governance in Kenya has, for several decades, been characterised by a distinct lack of transparency. There has been a tradition of highly centralised approaches in natural resource management – especially in revenue-generating

areas such as forestry and wildlife where authority is vested in parastatals, and where inclusive/joint management approaches have been introduced later than in many other African countries. There have, furthermore, been frequent cases of corruption, both in the productive and regulative government institutions. Land access and ownership is a highly sensitive and conflict-ridden area, with considerable inequalities and little transparency in de facto implementation and practices. The constitutional reform process, which strongly emphasises devolution and checks and balances, has created hope that this situation will improve in the future. For example, land administration is now formally delinked from central political control and there has been some progress in devolving water governance. Nevertheless, there is general agreement among NGOs and observers that there is a long way to go in terms of transparency.

These factors affect climate change planning and policy in Kenya. There is hope among some NGOs that climate change offers new opportunities for addressing otherwise sensitive and opaque natural resource governance issues because it provides a less controversial inroad and should lead to more transparency. NGO efforts to address transparency in addressing climate change have generally taken the following overall forms:

In one (rare) direct initiative to address transparency, the Climate Governance and Integrity Programme coordinated by Transparency International, seeks to address corruption in climate financing and enhance civil society and public involvement in climate change planning and policy. So far the main activity has been to establish a network of CSOs, media and academics with the aim of monitoring and reviewing climate policy development and financing, including the development of the new climate bill.

The participatory activities discussed above are seen by some NGOs as a means of also enhancing transparency through broad stakeholder inclusion in preparing plans and policies as options and possible impacts are openly and publically discussed. The Climate Change Working Group's public consultations for the Climate Change Bill are one example of this.

There is relatively little advocacy on or investigation into specific situations where government and/or company activities are thought to be illegitimate. Examples of such hard advocacy have been fairly limited in relation to climate change issues, but prominent examples include the work of various NGOs in the Tana River Delta, and the campaign of the 'No REDD in Africa' network against the evictions of forest

peoples under REDD+. Of these, direct NGO activities to address transparency in climate change governance have so far been relatively limited, although the above-mentioned programme appears promising. The transparency effects of broad stakeholder inclusion in, for example, the Climate Change Bill appear to have been positive, although it is also clear that civil society inclusion does not in itself ensure transparency. The initial Climate Change Bill promoted by NGOs in 2012 was ostensibly influenced by corporate interests and subsequently rejected by the former president. The campaigns against 'climate friendly' agrofuels in the Tana River Delta (Schade 2011) have had some results in exposing alleged corruption in Environmental Impact Assessment approvals, and succeeded in stalling the schemes temporarily. However, there have been relatively few such efforts at hard advocacy by Kenyan NGOs so far, and they are by nature reactive rather than proactive, and carried out on a case-by-case basis.

In extension of this, some NGO staff and academics express concerns over whether the significant climate financing funds currently in the pipeline for Kenya will be transparently managed. The current jockeying for position by various government agencies over these funds certainly highlights the risk of climate financing becoming a highly politicised arena, where the emphasis is more on securing funds and cornering a niche and its associated authority than on sound planning and division of labour.

### **Non-discrimination**

NGO-led climate change activities in Kenya generally have a strong gender focus, and attention to women's rights and representation are one of the few areas where HRBA is articulated fairly explicitly in NGO climate change work. Some NGOs have played an important role as frontrunners in introducing climate change adaptation activities to some of the more marginal Arid and Semi-Arid (ASAL) areas of the north. Pastoralist areas have traditionally received relatively little attention from the government in terms of public infrastructure, economic development and support for the pastoral production system. Failure to address root causes of conflict has, furthermore, led to a problematic situation in the north in particular, where local violence and conflict is labelled and addressed by the government as unmotivated security issues, rather than as historically-rooted conflicts over resource control – and rights in the context of resource scarcity and deprivation. Behind this lies a general political marginalisation of pastoralist groups in broader national politics, and a prevalence of prejudices towards pastoralism as archaic and resistance to change (which is inconsistent with the long history of adaptation inherent among Kenya's pastoralist groups). Some of the CSO programmes here activities appear to have influenced the developing government practices in the area.

Other NGOs, however, have been criticised for indirectly contributing to discrimination against pastoralists. While food security is a target in the National Climate Change Strategy, this is understood as sedentary crop production in most government efforts, leading variously to ignoring pastoralism altogether or seeking to steer their livelihoods towards crop production. This bias is also witnessed in the work of some NGOs, either because they are tied into funding by donors keen on alignment with national strategies, or because they simply feel that crop production is the only realistic adaptation strategy for pastoralists. Meanwhile, some pastoralists are in fact shifting towards a more mixed livelihood on their own account, which suggests that in order to avoid discrimination in climate change adaptation, a nuanced understanding of the dynamics of local livelihoods is required.

It is notable that few of the NGOs working on climate change have engaged visibly in the controversy over REDD+ driven evictions of the indigenous Ogiek and Sengwer communities in the Mau and Embotut forests. NGO campaigns against these evictions have thus far come largely from international indigenous people's organisations and the regional 'No REDD in Africa' network facilitated by Friends of the Earth. These evictions have raised important dilemmas in both REDD+ and the government's so-called 'Water Tower' policy, which entails a hardline conservation approach in the Mau forest in order to regenerate the much-degraded catchment areas to ensure Nairobi's water supply. Many Kenyan climate change NGOs appear to have sidestepped the debate. Critical observers claim that this is due to some NGOs having too much vested in REDD+ and the Water Tower policy to engage in critical dialogue, or that they harbour a conservation bias, or find the political costs of engaging in the controversy too high. Again, it must be pointed out that these forest evictions are highly complex conflicts, which also include many non-indigenous communities and complex settlement histories. It is therefore no easy task for NGOs to navigate in the debate without the risk of being misunderstood or raising public antagonism.

Nevertheless, it seems clear that there has so far been only limited articulation by Kenyan NGOs against the negative impacts of climate change interventions (and not just climate change as such), and the negative impacts they may have on marginalised groups. The Tana River campaign and some other activities can be seen as exceptions to this in that they target 'green grabbing' by investors (Schade 2011), as can the example of the efforts of the CCWG to place greater emphasis on understanding and articulating the changing dynamics of pastoralist livelihoods in the context of climate change.



## **Accountability**

Critical observers have noted the lack of government efforts to follow through on climate change strategies and discourses in Kenya – including failure to allocate resources to actual implementation and regulation, and ignoring climate policies when they collide with economic interests and policies in other sectors.

NGO efforts to ensure accountability in compliance with government policies on climate change have primarily taken the form of soft advocacy, i.e., working with government authorities – and more recently also local government – to provide them with awareness, capacity, experiences and pilot projects. This approach is intended to help ensure that government actors understand the benefits of climate change adaptation (in general and at the grassroots specifically), and that they have the means to sustain these interventions. Recently efforts have also been made to enhance the awareness of climate change among senators, who play an important role in financial allocations to counties where considerable power and discretion have been devolved.

More explicit approaches to addressing accountability in climate governance have been rare among NGOs in Kenya. One factor here is that much effort is required to establish and maintain climate change on the agenda in the first place. This is still a focus for NGOs, who find it a priority to develop a good legal, institutional and policy framework for climate change first. Addressing the extent to which these frameworks are then implemented and sustained is assumed, by necessity, to come later.

In the broader arena of environmental management, the past two decades have seen the gradual development of a legal and institutional framework for environmental management in Kenya, which on paper at least is relatively progressive, and provides opportunities for expressing grievances and complaints where environmental rights and laws have been breached. Most recently, this framework includes the establishment of the Land and Environment Court, which so far has been devolved to 13 of the 47 counties. During interviews, some NGO staff expressed a hope that this or a similar framework under the new climate bill can be used as a means to raise grievances when the state overrides its own policies and laws. There are precedents that suggest some optimism: outside of the climate change field, there have been cases where NGOs have successfully supported communities in resisting the development of industrial sites and pollution on environmental grounds and/or because principles of public consultation in Environmental Impact Assessments had not been followed.

It must be said, however, that these cases have been relatively few in number and tend to be directed at the private proponents of projects (i.e., commercial enterprises such as cement factories), rather than at the government itself. It should furthermore be noted that the institutional structures for environmental management remain relatively understaffed and in many cases lack the capacity to deal with climate change issues – especially at the county level. The prospects for addressing state accountability in climate change via legal means therefore appear limited for the foreseeable future.



# WHO IS REALLY THE DUTY-BEARER?

## CAMBODIA

### **The post-war legacy and a state without duties**

As described above, the role of international and national NGOs was forged in the post-war period, when the international community embarked on an ambitious effort to put Humpty Dumpty back together again, so to speak. The United Nations assumed, for the first time, direct administrative control of a closed and collapsed state, accompanied by a massive influx of foreign aid money. After the government resumed control of the country, pipeline problems in this very fragile state quickly arose and the international community responded by directing enormous levels of funding and responsibilities to NGOs. As is often the case in fragile states, the exit strategy whereby the government would reassume these responsibilities was not very explicit. Although there were international commitments to ushering in a vibrant and strong civil society, those agencies which received funds were, necessarily, also those which could meet donor expectations and criteria. In this sense, civil society in Cambodia was very much birthed by the international community. The paradox, of course, was that Cambodia became home to one of the highest concentrations of NGOs in the world, but they were highly dependent and adopted a service-delivery orientation which lacked “basic civil society features” (Ou & Kim 2013: v).

Today the government is making significant progress in developing capacities and is taking strong steps towards reassuming its role as duty-bearer. But our interviews highlight that the duties it is ready to bear are highly selective and reflect a general view that the market will respond to most needs. Climate change policies are being developed, but the apparent lack of ownership of these donor-driven documents

has meant that the government does not assume a leading role. Instead, arguments are put forth about how climate justice places these responsibilities in the hand of the carbon-emitting countries, or expectations that the market will encourage a shift to more 'modern' technologies that will hopefully be more 'climate smart'. Indeed, Käkönen et al. (2014) demonstrate how effectively climate change has been depoliticised in Cambodia by adopting 'expert' technologies and policy narratives, "rendering it more easily governable through existing bureaucratic planning processes and without challenging the current structures of political economy" (p. 351).

### **Decentralisation of duties**

In contrast with the relatively radical devolution underway in Kenya, a significant factor which constrains the accountability of Cambodian duty-bearers is the incomplete devolution of power to local government, compounded by poor capacity, and weak implementation of stated policies. Milne and Mahanty (2015) have asserted that "the most profound challenge for Cambodia's conservation movement... is a dissonance or disconnect between what government counterparts say they will do, and what they actually do" (p. 14). Virtually all respondents echoed this concern: although Cambodia has "beautiful policies", there is little capacity and motivation to implement them. Although there have been numerous programmes in Cambodia to shift power to local government, to date this does not appear to have been effective in relation to natural resource management. Probably the most glaring gap is in law enforcement. Local government is universally seen as powerless to enforce laws which safeguard either the environment or environmental defenders. As one interviewee explained, "subnational government officials do what they are told... local government is often responsive but it has limited power... in reality, decentralisation of power is only on paper". For example, local government is consistently unable to take effective action against illegal logging within their own jurisdictions. Even where decentralisation is underway, four factors emerged from our interviews which stymie efforts to hold local duty-bearers to account for protecting the environment and the rights of the people who depend on it.

- Decisions about land are made in Phnom Penh. Local officials are powerless in regard to land grabs, and fear retribution if they act to protect their constituencies from the effects of concessions granted at central levels. The granting of an economic land concession tacitly goes hand in hand with a certain level of impunity regarding effects on both the local population and natural environment. NGOs indicate that local government has no power or authority regarding these issues, which makes holding them to account a futile exercise.

- Local government has extremely little capacity to provide essential services. Poor agricultural extension services exemplify this issue. Cambodia's publicly financed agricultural extension services are nearly non-existent, and smallholders also lack access to rural roads and banking services. Nang (2013) argues, "farmers will accept and benefit from extension services if their views are heard and local traditional/indigenous knowledge is integrated... Yet the under-resourcing... means that training and extension development, agricultural extension programmes and service provision do not meet the needs of local farmers, particularly women farmers" (p. 25). To some extent NGOs provide extension services, but these are reliant on donor resources and are limited to time-bound projects. Duty-bearers cannot be held to account if they are absent, and this is not a dilemma that can be addressed by NGOs alone. Indeed, NGOs may accept this state of affairs rather passively as it provides a *raison d'être* for their continued service-provision niche. Some interviewees did recognise the importance of more coherent extension services, and donors are acting accordingly (i.e., projects are being planned by IFAD and USAID/HARVEST), but levels of national ownership and readiness to shoulder the role as duty-bearers is uncertain.
  
- Superficial understanding and approach to climate change adaptation. Commune Investment Funds have been extended to commune-level government. Interviewees noted a very strong tendency to use these funds for infrastructure (primarily roads and irrigation), which are highly visible, tangible investments that can be quickly implemented and yield political benefits. The environmental impacts of these investments, either positive or negative, are generally poorly assessed. When these investments are earmarked for climate change adaptation, there is a tendency to justify them in terms of climate proofing (e.g., additional costs for building to a standard reflecting future flooding scenarios), which is difficult to associate with specific responsibilities of duty-bearers. Potential maladaptation is rarely assessed and there are reports of new roads increasing or shifting flooding risks due to blocked run-off. One legal firm is working to strengthen broad Environmental Impact Assessment legislation,<sup>2</sup> but the primary focus seems to be on applying this new law for private rather than public investments. Given the fact that conflicts of interest are rife within Cambodian government agencies and enforcement is spotty at best, there is scepticism from many quarters about the extent to which improved Environmental Impact Assessment legislation will translate into concrete changes.

- Decentralisation processes are not being complemented by outreach to and empowerment of rights-bearers at the local level. Support extended to build the capacity of local government does not include empowering local citizens. As one interviewee argued, “their process is more about empowering the government and authorities than the people... How come we work with a commune chief who logs and threatens? They say [rights-based approach] but they are not empowering people, they are empowering a government which violates rights”. Others emphasised that it is clear that local government is expected to do what it is told by senior authorities – including delivering votes to the ruling party.

## **KENYA**

Who has the responsibility to protect citizens from climate change? As with Cambodia, an assumption that the state is the ultimate duty-bearer is far from universally acknowledged in Kenya. NGOs expressed varying perceptions of this, seeing different responsibilities and roles ranging right from the global community to the individual.

### **The global community**

Some NGOs emphasise that since climate change is a global phenomenon, it would be unfair and unrealistic to expect individual governments to be the sole duty-bearers with regard to climate change. Climate justice arguments in particular are used to claim that because wealthy countries are responsible for the bulk of carbon emissions, they also have specific direct duties towards poorer countries, and in particular African countries where the impacts of climate change are among the worst.

This responsibility of the global community is seen not only as an abstract moral/ethical issue, but also as a very tangible and practical one: it is argued that wealthy countries have a clear and direct obligation to finance adaptation in the South. The erratic and tardy nature of the global climate funds pledged by wealthy countries is thus criticised as a failure on a par with – or worse than – that of national African governments themselves. Accordingly, it is deemed necessary for both national and international NGOs to continuously pressure and lobby for climate change funds from the international community. The fact that virtually all climate change activities in Kenya are funded by international aid grants is thus seen as being only fair and natural.

Other (mainly international) NGOs argue that although the duties of the global community are unquestionable, there is a risk that too much emphasis on this aspect will let national governments too easily 'off the hook' and that it could confine the climate change agenda to being an elitist, donor-driven issue that is not taken seriously by the national government.

### **Central government**

The central government is seen by virtually all NGOs as having a key role in climate change adaptation, although differences exist over whether it bears the main responsibility or shares it with others. Lofty principles such as social contracts between state and citizen are rarely mentioned by Kenyan NGOs engaged in climate change issues. Likewise, international conventions on climate change and human rights are considered necessary but of limited practical importance at this point, as they are easily sidestepped or disregarded by the state in everyday practices.

Instead, the focus is on what counts in Kenyan politics. A common argument is that the key point of reference for the central government's duties is the new constitution and – if approved – the new Climate Change Bill. The constitution and the revised institutional frameworks it has spawned are seen as being subject to so much political (and voter) attention that this provides the 'least poor' basis for defining overall government duties and keeping it accountable – notwithstanding political struggles between different branches of the new government structure to weaken or even revise the constitution.

During interviews NGO staff often expressed the notion that as CSOs, they are better equipped and more capable of supporting adaptation than the state. For international NGOs, this is seen as a temporary situation until the government acquires capacity and is moved to take on its responsibilities in supporting local adaptation. National NGOs typically expressed a slightly different sentiment, claiming that it might be best for NGOs to continue actual implementation indefinitely, with the state providing the supporting frameworks and funding. Such arguments also help provide NGO efforts with claims to legitimacy in their own climate change activities.

Local government

With Kenya's new constitution, local government structures have been entirely reorganised and provided with a greater degree of de facto powers and financing. Although the extent and nature of these powers and finances are the subject of an ongoing political struggle, it seems clear that local governments have gone from being a tier of government with very little real influence to becoming a significant



player in local and (through the newly-formed senate) national politics. Interestingly, however, NGOs working on climate change in Kenya express differing opinions on whether local government structures should be expected to bear any major responsibility towards rights-holders for climate change adaptation. Some NGOs – typically those with an emphasis on technical adaptation measures and community organisation – point to the still very limited capacity of county governments and their so-called ministries (i.e., sector departments), and find it unrealistic and unfair that counties should be expected to take on any major responsibility in this respect. Instead, they point to deconcentrated central state agencies and indeed NGOs themselves as more realistic duty-bearers at this level. These views reflect a well established and somewhat patronising perception of local governments that harks back to the days before the new constitution. There is indeed a very real concern over the extent to which local governments would be committed to actually deliver on such responsibilities even if they had the capacity, as there is growing evidence that at least some counties are turning into local fiefdoms led by autocratic governors, local elites and business alliances, with little real interest in and opportunity for an inclusive governance process.

Other NGOs share some of these concerns but choose to engage directly with local governments to help develop their capacity, for example through developing county climate change plans or raising awareness among county government officials and technical staff. This approach is founded on a belief that local governments should indeed bear responsibilities for climate change adaptation, but also more pragmatically that they can serve as a means of putting pressure on central government to actually act on (and fund) climate change locally and nationally. Critical observers have commented that both these two approaches reflect an effort by NGOs to maintain their role as key actors in local-level climate change adaptation, in a situation where devolution threatens their function as technical experts and/or facilitators in local climate change action. This somewhat harsh analysis does not appear entirely justified, but does highlight uncertainties about where the devolution leaves the NGOs themselves, in terms of role and responsibilities in climate change efforts.

### **CBOs**

CBOs working on climate change activities and environment more broadly are numerous and widespread in most counties. In Taita Taveta county alone, for example, there are 52 registered CBOs working on environmental issues. CBOs working on climate change vary widely in nature. Many have developed as modalities for service delivery and funding channels for donors, national and international

NGOs and government departments, but also serve a variety of purposes for community actors themselves. Some are merely platforms for access to funding, while others are driven by more genuine grievances and needs in the face of climate change.

Whether representing full communities or particular stakeholder groups, CBOs are invariably the main vehicle through which NGOs engage communities in climate change activities. As such, NGO staff generally refer to CBOs as rights-holders and even 'victims' of climate change, rather than duty-bearers. However, beneath this overall perception lies a more complex picture. Firstly, NGOs in Kenya are well aware of issues of elite capture in CBOs, and typically emphasise that CBO members must be held accountable to their communities in terms of decision making and financing of climate change activities. As such, CBOs are effectively seen not only as rights-holders but also as having responsibilities towards their communities. This introduces a layer of duty-bearers that does not fit well with human rights principles and is rarely articulated in NGO discourses on climate change, but is nevertheless part of the practices on the ground.

Secondly, the notion that community members are trained to adapt to climate change also carries an inherent expectation that the community and its individuals should ultimately be responsible for their own adaptation and resilience. This notion is not only academic but is often expressed quite explicitly by many NGOs, e.g., that communities "must take charge of their own destiny", "learn to help themselves" and should not be dependent on handouts from the state. Such sentiments echo broader discourses in adaptation and disaster risk reduction which imply that it is ultimately the individual who is responsible for adapting to climate change (Duffield 2010). This implies a responsibility by the individual to engage actively in adaptation activities. Some NGO staff thus express frustration at 'uncooperative' individuals or communities who prefer to continue in their old ways.

### **NGOs themselves**

Where does this leave the NGOs themselves? Clearly, NGOs have no formal role as duty-bearers, and yet NGO staff typically express a moral and ethical responsibility to address and represent the needs of the poor and serve as watchdogs vis-à-vis the government and private sector interests. A less obvious and more practical responsibility expressed by NGO staff is their moral obligation to use their capacity and access to funding to help build the climate governance framework in Kenya. Behind this lies a fairly widespread perception among NGO staff that without their knowhow, funds and determination, such a framework has little chance of being realised in Kenya.

Nevertheless, critics argue that such claims to moral responsibility by NGOs merely reflect efforts to justify and even glorify their role in climate change. A more balanced assessment is probably to see it as part of the soft advocacy approach, whereby NGOs position themselves as resourceful and cooperative partners in development. These are not empty words: It is noticeable that not only the Climate Change Bill but also several other bills developed recently in Kenya have been actively promoted by NGOs and civil society more broadly.

The 'soft-paw' approach to advocacy and influence does however also come at a price: the common role of NGOs as vociferous critics of government has been relatively limited among climate-oriented NGOs in Kenya. This, interestingly, is in contrast to county governments, which tend to be a good deal more vocal in their critique of and demands to the central government than NGOs. This is not necessarily a democratic problem where counties are interested in pressuring central government on their duties in climate change, but where this is not the case, climate change may be ignored. The response to this from some NGOs has been to work with CBOs to help them put pressure on county governments. The extent to which this approach is effective remains to be seen as the outcomes of the current devolution process gradually become clearer.

Conclusions:

## WHAT ROLE FOR CIVIL SOCIETY?

### HARD, SOFT, AND COMPLACENT ADVOCACY

There is a degree of continuum between the different approaches to advocacy. But what works best in relation to different goals and opportunities to promote adaptation? It is notable that only a few respondents described how they adapted their choice of how to engage with duty-bearers according to circumstances. Instead, most organisations tend to identify with one approach or the other. An imperfect generalisation is that those organisations which base their work on human rights as defined by legal structures and norms tend to use hard advocacy, whereas those coming from a sustainable development orientation lean towards soft advocacy. Some agricultural and conservation NGOs focus entirely on field-level activities and undertake little or no advocacy at all. This division has important implications for climate change adaptation advocacy, insofar as human rights organisations address issues like property rights and formal aspects of control over natural resources, but not the explicit drivers of vulnerability to climate change. Meanwhile, those engaged in climate change adaptation programming avoid direct challenges to the state or its policies – again avoiding the drivers of climate risk and vulnerability.

Most NGOs clearly align themselves with either ‘hard’ or ‘soft’ advocacy, and this in turn both determines and is determined by their role. In other words, tactics are predetermined by how the agency wishes to situate itself within the political landscape, rather than by underlying analysis of what is needed to address a particular issue. Indeed, there were criticisms that CSOs tend to adopt a ‘knee-jerk’ response regardless of the issue they are dealing with. While there are very notable exceptions, a general observation is that, as a whole, NGOs in both Kenya and

Cambodia are quite cautious, with a tendency to quietly seek to influence the government policy, and avoid thornier questions of whether and how such policies are implemented. Some of the 'hard advocacy' organisations criticised other NGOs in Cambodia for actively discouraging communities or constituencies from confrontations with the state. However, in both Kenya and Cambodia some have also criticised the other end of the spectrum, charging some NGOs and donors of recklessly endangering the people or interests they purport to represent by taking a confrontational stance and stoking conflict, and then leaving communities at the mercy of local powerful people after the project ends. At both ends of the spectrum, courses of action are not always determined through critical reflection on what is needed and what is likely to be most effective in the long term.

In Cambodia, some of those interviewed were concerned that soft advocacy provides a smokescreen for officials to continue to act with impunity, and that these efforts had a negative impact. One interviewee in Cambodia described the following situation: "For example, in Kampong Thom, the commune chief is involved in illegal logging. An NGO mobilised people for community patrolling. But the problem is the authorities. The NGO would say they need to have good relations with the government, and insist on soft advocacy, lobbying. The local community is very disempowered. They see the big NGO always talking, having nice meals with the chief who is also the violator. This is totally alienating and disappointing and disempowering".

In Kenya, a similar critique was offered by academic observers who pointed out that in some cases the new local government structures and local MPs have been more outspoken than NGOs in their critique of central government on issues of natural resource rights and revenues. One example mentioned is the developing oil exploration in northern Kenya, where county governments and MPs have been vocal in calling for a greater local share of oil revenues and a need to balance oil investments with water development and securing local land rights, while NGOs have kept a fairly low profile in the public debate. During our interviews, other observers and some CSO staff argued that this is as it should be, i.e., that it is the job of elected political bodies to secure the interests and rights of their constituencies. The job for CSOs, it was argued, is then to monitor, lobby and work with these actors to ensure accountability and transparency. This will certainly be required in Kenya's developing oil scene, which for the most part plays out in areas where water and food scarcity are severe.

It is not possible to generalise regarding which approach to advocacy is most effective. In both countries a number of interviewees argue that in the current political climates, hard advocacy is futile. Others note that there are nonetheless some issues that are more 'challengeable' than others. For example, there is broad agreement in Cambodia that it is easier to confront illegal fishing than illegal logging. Most interviewees in Cambodia were pessimistic regarding the future of the country's forests and smallholder farms. In an atmosphere where the prospects for adaptation are clearly deteriorating, there is no healthy debate about effective advocacy strategies, only complacency or anger.

In Kenya, there is still some optimism following the 2010 constitution and associated devolution process, which is still ongoing. In principle, the new institutional framework for addressing land issues has now been de-linked from central political control, raising hopes in some quarters that land rights will become a less sensitive and more approachable issue. However, there are also growing concerns that the new county governments will become hotbeds of corruption and patronage, and that it will take more than legal and organisational changes to make an impact on land grievances

It is also apparent that in both countries self-censorship is widespread. Given the political economy in Cambodia and Kenya, it would be expected that agencies which apply HRBA principles to climate change efforts would be led into controversial territory concerning market dynamics, power, ideology, and politics of the environment. With regard to climate change adaptation in particular, these would especially collide around the interrelated issues of poor natural resource management, ineffective law enforcement (i.e., against illegal logging, fishing, and other harmful commercial practices), and widespread 'land grabbing' (green or otherwise). Together, these current challenges exacerbate climate risks and vulnerabilities among rural populations. In practice, NGOs have adopted a range of strategies to engage, manage, or avoid these issues that, to a large extent, avoid direct public confrontation.

In Cambodia, interviewees echoed each other with comments like, "We collaborate with the government at the local level so we can't do hard advocacy". Large numbers of informants at all levels (including government and multilateral agencies) indicated that they felt unable to address the 'real' issues, as that would compromise their government relationships. Some accepted this state of affairs and expressed satisfaction with achievements like input into draft environmental impact assessment legislation. Others sounded cynical or defeated, making comments

such as “land cases are hopeless”. It is evident that, by and large, CSOs avoid rushing in where angels fear to tread, so to speak. Instead they focus on non-controversial technical projects, such as improved management of community ponds. However, this raises the question of what meaningfully constitutes an HRBA.

In Kenya, there is less despondency, and self-censorship is at least in some cases the result of a deliberate strategic approach. Because climate change is a relatively less politicised issue than political and natural resource rights, it provides an opportunity for working indirectly with such issues on the ground, for example by calling attention to the need for water development and livestock services in the name of climate change adaptation.

Some would argue that a HRBA would necessitate addressing the land and natural resource conflicts more openly and explicitly, insofar as immediate environmental problems exacerbate those posed by global climate change and undercut opportunities for adaptation. This would lead directly into confrontations with the state regarding transparency, accountability, conflicts of interest, and impunity. It could even be claimed that HRBA would demand efforts to ‘name and shame’ those who are not respecting the rights of populations whose climate vulnerability is being increased.

An alternative argument, used by many in Cambodia and Kenya, is that such confrontations would not only be ineffective, but also dangerous. Bold action may endanger vulnerable populations and place both activist leaders and communities at risk of violence or more subtle retribution. In Kenya, some NGOs and academic observers questioned whether it is wise to bring human rights into the climate change agenda at all, as this may politicise it and bring CSO work under even closer state scrutiny than is already the case. During our interviews, some Kenyan NGO staff indicated that in their eyes, a human rights-based approach to climate change was a typical Western agenda that disregarded the political realities on the ground and could bring undue attention to CSOs and their adaptation work if approached in the wrong way. It was pointed out that the approach might thereby do more harm than good to the ‘real’ empowerment work being done discretely on the ground. In extension of this, some Kenyan NGO staff emphasised the need to avoid HRBA becoming a means for Western countries and China to deflect their responsibilities in climate change action, by moving the focus of attention to the individual African states.

Such alternative perspectives encourage soft advocacy strategies to engage in official dialogue on how resources can be managed in a more equitable and 'climate smart' manner. Those who embrace this strategy generally acknowledge that their efforts may be only partially effective in bringing about meaningful change. However, they assert that this is all that can be achieved under current circumstances where weak governance leads to impunity.

## **HRBA AND ATTITUDINAL CHANGE**

Although some agencies adopt HRBA language (more in Cambodia than in Kenya), it is clear that most national and international NGOs in both countries have (until recently) adopted a charity rather than rights-based model of programming, or have treated local groups in an instrumental manner rather than as 'rights-holders'. NGOs have historically situated themselves as service providers and representatives of the people, but with little downward accountability to them. There are some signs that this could be changing, and apparently some NGOs as well as the government have been surprised by the emergence of CBOs that demand accountability and transparency both from the state and from the international and national NGOs. The emergence of vocal dissent from the grassroots towards both government and NGOs has contributed to questioning by some in the NGO communities about the nature of their partnerships with the communities they support. In some cases, they have been challenged directly by communities.

The main underlying challenge to a genuine human rights-based approach is that climate change is often and easily framed as a challenge of technology transfer (Käkönen et al. 2014). Guidelines and training programmes to promote various forms of 'climate smart agriculture' tend to downplay the social, political, and economic drivers of risk and resilience, and also to omit legal frameworks regarding land and services that largely determine 'whose adaptation counts'. While technological strategies to improve agricultural production or access to water are welcome and valuable, climate change adaptation encompasses more than that. As Bours, McGinn, and Pringle (2014) have written,

It must also be understood that vulnerability and resilience to climate change are profoundly shaped by social structures and institutions. Adaptation strategies should reflect a nuanced analysis that captures how distinct groups within the population are affected differently... The most vulnerable groups may be uniquely or differently vulnerable from the community at large – and from each other. The



poorest and most marginalised often have weakest access to resources with which to effectively cope, and their needs may be missed in general 'community' interventions (p. 12).

Such underlying analysis of poverty and vulnerability is notably absent from rural development policy and practice in both countries, and even NGOs which are committed to HRBA tend to also pursue technical fixes rather than transformational change. One reason for this is that the technical fixes produce the easily quantified 'results' that are demanded by their donors (Christoplos 2014). One interviewee noted how this locks NGOs into relations with authorities in order to smooth the path towards steady results: "NGOs prioritize authorities above all, and if they don't, they can't meet their targets". Human rights, by contrast, are regarded as profoundly political – but somehow not 'environmental'. Even here, however, there is a tendency towards framing human rights as a technical (i.e., legal) matter. There are few linkages between the climate change and the human rights communities, although some recognise common interests surrounding land tenure.

## **HRBA AND CLIMATE: AN AGENDA FOR THE FUTURE**

In practice, then, human rights-based approaches to climate change in Cambodia and Kenya are constrained by the difficult conditions under which CSOs operate, and the sensitive nature of the political and economic issues that they inevitably bring out. Most CSOs have responded by either focusing on technical aspects of adaptation, or applying 'soft advocacy approaches'. Whether or not such an approach is effective in the long run remains to be seen. What does seem clear is that human rights issues are going to be harder to ignore in the future given the extent to which rights abuses are reducing vulnerable people's adaptive capacities and leading to maladaptation. Furthermore, some climate change mitigation efforts may be undermining these adaptive capacities as well, and attention to human rights could be a way to avoid these dangers or at least call into question simple assumptions and 'win-win' approaches to adaptation and mitigation. If and when climate change financing begins to flow in earnest, some hard choices will need to be made, and HRBA can provide important, locally relevant, normative and principled guidance for making such choices.

There are many agencies with HRBA mandates that have yet to apply their approaches in fields impinging on climate change due to misfits between their agendas and modus operandi and the practicalities of adaptation and mitigation efforts. In as far as future climate change financing expands, these coherence and

implementation gaps will come into focus. Particularly as countries such as Kenya and Cambodia approach middle-income status and development aid subsequently declines; climate change may be a key source of financing for NGOs. It will have to take centre stage, and the transparency that accompanies this will create pressures for more coherence and greater efforts to 'join the dots' between the different sets of programming and sectors. These dots may be primarily linked by addressing the current widespread and serious human rights violations in maladaptive development, particularly in relation to dispossessing people of the resources they need to manage climate uncertainty and variability.



# IMPLICATIONS FOR POLICIES AND PROGRAMMING

## **JOINING THE DOTS IN ADVOCACY, CAPACITY AND POLICY IMPLEMENTATION**

Further efforts are needed to narrow the gap between hard and soft advocacy by finding synergies between outside pressure on duty-bearers and inside support for them to strengthen their capacities to shoulder their responsibilities. Those pursuing soft efforts may also need to consider more explicitly when their efforts are futile or when they inadvertently built the legitimacy of powerful actors who are driving maladaptation. Sometimes it is essential to take a harder line and at least promote greater transparency about the factors that are reinforcing vulnerability.

These recommendations imply that CSOs should develop and articulate more coherent theories of change, and pay more attention to the 'big picture' and consider incisive analysis of the factors that can contribute to capacities of climate vulnerable people to protect themselves from extreme events. This would involve perspectives that transcend narrow technical roles and interventions. A major aspect of this should be a focus on transparency by confronting the lack of policy implementation. Both Cambodia and Kenya have or are in the process of developing good climate policies, but it is very uncertain how well these policies will be applied, largely due to uncertain government ownership and weak capacities. The international climate discourse has, at times, been unbalanced in terms of paying more attention to developing appropriate policies than to developing ways to bolster the accountability of those with a duty to implement these policies. This suggests a need to develop capacities to challenge impunity, pervasive conflicts of interest, and lack of law enforcement. Weak rule of law is in many respects the most pressing climate change issue, and an HRBA can draw attention to what is needed after laws are passed.

A link between climate change and human rights thus requires anchoring efforts in both explicit climate governance and also in broader governance efforts that promote the participation of vulnerable populations in national development, in pressure for greater transparency and accountability of duty-bearers and in spotlighting discriminatory governance practices. If this broader view of climate governance is applied it could contribute to breaking down the silos that treat climate risk as a technical or sectoral concern, for example by working towards disaster risk reduction within climate change portfolios and leveraging prevailing fears about disaster risks to highlight where duty-bearers have broad responsibilities for protecting populations at risk.

Part of these changes could be led by human rights organisations that should expand their vision beyond legal perspectives and consider the implications of trends in control of resources that will determine adaptive capacity. Human rights groups should also think outside the 'legal' box and consider broader issues of participation, mobilisation and empowerment, thereby breaking out of a sole emphasis on technical legal interventions.

- 1 <http://www.camclimate.org.kh/en/activities/cambodian-climate-change-alliance/21-activities/cccc/ccca-core/46-cccc-background-and-approach.html>
- 2 Currently, Environmental Impact Assessment is recommended by a sub-decree, but with no legal penalty.

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