



People's law: ideas for resource rights campaigners

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Summary

People's Law describes how natural resource rights campaigners can better understand and use the legal systems in their campaigns. We propose how campaigners can:

- Empower themselves by demystifying the legal system;
- Develop an understanding of the laws that affect natural resources; and
- Integrate law-focused action into campaign strategy

People's Law reflects in part the experiences of organisations who joined hands to campaign for forestry governance reforms in Ghana as “Forest Watch Ghana” in 2004².

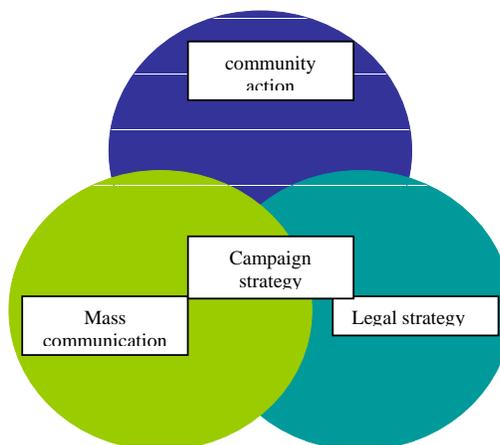
What is People's Law?

All over the world, indigenous communities and civil society organisations are campaigning to improve governance of natural resources. Communities seek to assert management rights, user rights, and benefits sharing rights (from extractive exploitation by others). An effective rights campaign strategy typically includes:

- a. Direct community action;
- b. Mass communication to mobilise broad public support; and
- c. Legal action to change the law or the way it works

Fig 1 illustrates how these elements combine to make effective strategy.

Figure 1: Constructing an Effective Strategy



² Forest Watch Ghana (FWG) members come from different backgrounds including forestry research, rural livelihoods support, environmental protection, socio-economic rights advocacy, governance and public interest law. FWG participates in the *Forest Governance Learning Group*, facilitated by IIED. FGLG has become a forum within which civil society, industry and government stakeholders have engaged around governance issues. FWG has used some of the research funded by FGLG to challenge Government and other stakeholders to re-negotiate some of the fundamentals of forestry governance in Ghana.

Many resource rights campaigners are experts in community mobilisation but are less comfortable managing media and legal strategies. In particular, we are uncomfortable confronting the complexity and mystique of the legal system. We tend to respect the legal system as natural, or even divine. The legal system is “just the way things are”. We assume that the laws and instruments that allow corporate interests to extract and use natural resources are valid and beyond reproach. We assume that it is beyond our means to question or change the law, at least not without becoming dependent on lawyers – trading one form of disempowerment for another.

These assumptions are usually wrong. In countries with even a weak democracy, campaigners can turn the legal system from a major obstacle to a powerful campaign tool. *People’s Law* assists this process. It combines:

- a. Ideas about legal systems in general;
- b. Approaches to acquiring managerial knowledge about substantive laws (e.g. “forestry law”); and
- c. A framework for integrating legal strategies into an overall campaign strategy

Who can use People’s Law?

We wrote *People’s Law* mainly for campaign leaders who make strategic decisions and manage professional advisors. We hope that others in community-based organisations, local enterprises and their supporters will also find these ideas useful.

When and where is People’s Law useful?

Campaigners think that *People’s Law* is useful for campaigners in countries like Ghana where:

- a. Formal democratic institutions exist;
- b. Corporate interests backed by the state exploit natural resources largely to the exclusion of resource dependent communities and with little return to the national economy; and
- c. There is already a civil society effort to change the status-quo or strong evidence of preparedness for such a campaign.

How can campaigners use People’s Law?

We see two ways of using *People’s Law*:

- a. Campaigners can use *People’s Law* to build confidence in their cause. *People’s Law* projects public values that challenge the “entitlement” of corporate interests and government bureaucracies and validates the campaign agenda.
- b. Campaigners can use *People’s Law* organisationally to integrate legal strategies into resource rights campaigns without unduly ceding control to legal professionals who campaigners use or employ.

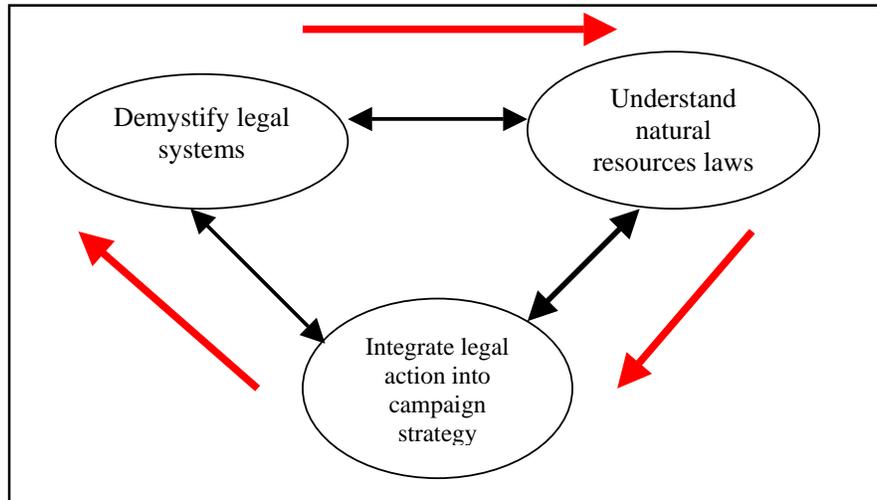
Steps for using People’s Law

1. Empower ourselves by demystifying the legal system, exposing its social bias and the forces behind it and considering how we can use the system in our favour. We can communicate these ideas through a process that is participatory and illustrative.
2. Develop our managerial understanding of the substantive laws that affect natural resources. These are the laws that govern owning, managing and using natural resources – and the sharing of costs and benefits.

3. Develop our understanding of what legal strategy is and how we can manage it. Collectively develop or re-engineer a legal component to campaign strategy in consultation with legal advisors.

Though presented here in a logical flow, *People's Law* is not a one-off event. Each step reinforces the others and leads to higher levels of practice and better results over time. Fig 2 illustrates both the "virtuous cycle" of *People's Law* and the interplay between the different "steps". We discuss each of these steps in further detail below.

Figure 2: People's Law Process



Step 1: Five ideas that help demystify law

Basic ideas about what legal systems are, or are not, and how they work can be deeply empowering for campaigners and advocates.

Box 1: Communicating empowering ideas

The point of these ideas is to expose the social forces at work in the legal system and build campaigners' confidence. This requires that campaigners communicate them through a process that is:

- a. *Participatory* – involving all the main interested parties;
 - b. *Well-paced* – not rushed, allowing people time to absorb often emotionally difficult concepts; and
 - c. *Locally-relevant* - employing historical / cultural illustrations that draw on their experiences and folklore
- (see Box 2);

There are several well-tested participatory learning tools. Some of these are listed in the reference section. Different advocacy and campaign organisations have their own preferences. As long as campaigners observe the above points, it is not necessary to insist on any particular tools.

Idea 1: The legal system is a social institution. The legal system develops in the context of, and in response to, social contests (mainly) over resources. It is not divine or natural or separate from competing social interests. It is not neutral. It roughly reflects and sustains, but does not create, the social balance of power. The more powerful interest groups manage the legal system and use it to legitimise and maintain the status quo.

Idea 2: Though biased towards the powerful, the legal system is not a crude instrument of power. It is not like armed force. It functions subtly through consensus and popular legitimacy or acquiescence. It expresses itself as serving the interests of society as a whole and not just the powerful. To preside over competing social interests it must exhibit some balance. It must place limits on the powerful as powerful as on the marginalised.

Idea 3: Human beings run the legal system. The police, lawyers, judges, jurors etc. who operate the legal system are generally committed to the rule of law since it guarantees their own independence and social status. They may identify with the powerful but will often put the integrity of the legal system above the interests of individual “big men”.

Idea 4: The legal system is hierarchical. Lower level rules and practices derive their legitimacy from higher-level norms. At the core of any legal system is a set of fundamental norms. To remain legitimate the legal system must ensure some consistency with these norms and bring wayward aspects of the law into line.

Idea 5: Fundamental laws are typically philosophical or ideological statements about society and its ideals. They typically project the primacy of communal over private interests and majority rule tempered by minority rights. They are powerful ideals and should place a check on the extent to which the powerful can use the legal system to impose their wishes. This means that demonstrations of public opinion are legally significant. Law is politics.

Box 2: Idea’s about law in Ghana

- a. Colonial rulers introduced laws to regularise dispossession of traditional elites, after they defeated them in military and political contests - not before.
- b. Agricultural landlords and moneylenders get away with their manipulation of the terms of tenancies and loan agreements only where they can rely on rural police to enforce their version of the “law”.
- c. Government enforces laws restricting community access to forests but not laws regulating timber companies except under extreme community pressure.
- d. National independence required campaigners to claim the legal high ground and champion (for example) community natural resources rights in opposition to the claims of the big companies that enjoyed colonial government support.
- e. Most communities have strong oral traditions suggesting that private control of land and elite institutions such as chieftaincy are actually quite recent inventions.

Instructive tales about how to confront power with argument and skill run through all our folklore e.g. in Kwaku Ananse stories from southern Ghana. Ananse (the crafty spider) is the analogue of the ordinary man or community in heroic and villainous roles. He consistently defeats stronger and faster animals with cunning, then greedily overreaches, and loses out to even more humble members of the animal kingdom.

Step 2: Managing substantive law

As we develop general ideas about the legal system, we must also develop their understanding of the specific laws that govern owning, managing, using and benefiting from natural resources. These will differ from country to country and generalisations on content are not useful. Ideas about what to look for may be worthwhile.

1. How much substantive law do we need to know?

We need a managerial understanding of the legal system. Our aim is not to become lawyers. On the other hand, we must know enough to recognise important opportunities and threats and take actions that lead to favourable outcomes. This will differ from situation to situation. Certainly, we

should be interested in all laws that directly affect owning, managing, using and benefiting from natural resources. This would include some principles of environment, business organisation, investment and tax law.

2. How can we acquire substantive law?

The simplest approach is to ask a lawyer to prepare a brief for you. This may be expensive where campaigns do not already have lawyers in campaign membership or access to a legal aid scheme. It is important to have clear terms of reference or “instructions” for your lawyers. For example, you might ask your advisor to:

- a. Analyse the fundamental law and its statements about community rights and natural resources;
- b. Compile and summarise all current statute, customary, judicial and treaty law relevant to the resource in question;
- c. Analyse this legislation against the constitutional or fundamental law standard;
- d. Analyse legislation in the historical context and for internal and systemic consistency;
- e. Identify elements of the analysis that support or undermine campaign objectives;
- f. Identify possible legal strategies for advancing campaign objectives; and
- g. Present a written report in non-technical language and run a workshop for campaign members.

Step 3: Managing legal strategy

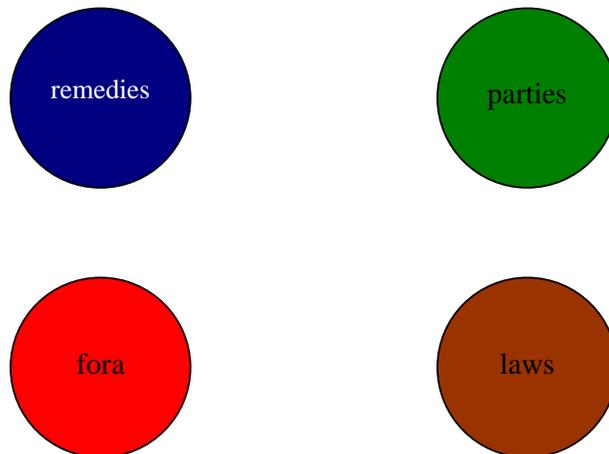
Doing is more empowering than listening and talking. Once we understand that the law can serve us we can develop or re-engineer a legal component of campaign strategy. Sympathetic professional support is important and there are often legal aid organisations with activist lawyers willing to assist and work as part of the campaign. If not, we must raise the resources to pay for professional support.

We must not however disengage and cede complete control to our advisors. The legal component of campaigns should also serve to empower campaigners and their constituencies. We must maintain overall control over legal strategy and be able to monitor tactics.

Strategy Components

We must know a little about substantive laws, remedies, parties and fora. Each of these components has its own internal logic. These are the elements campaigners must fit together to create a legal strategy. Figure 3 illustrates these factors.

Figure 3: Legal Strategy Components



We discuss each of these below.

a. Laws

We discussed the process of analysing relevant sector laws in the previous section.

b. Remedies.

Campaigners will probably have carried out a strategic analysis and developed a hierarchy of campaign objectives. This analysis is relevant to legal strategy. However, there are technical limitations to what different legal processes can deliver in different tribunals. Campaigners should understand these limitations. It will seldom be the case that a single legal action, even if successful, will achieve all campaigners' strategic goals. Campaigners must understand broadly how the system works. Possible remedies include:

- A *declaration* – where the tribunal states what the law on a particular issue is without requiring that either party conduct themselves in any particular way. This can be very useful in marshalling public opinion and compelling publicity-conscious parties to behave lawfully.
- An *Injunction* – where the court orders a party to behave in some particular way or other.
- *Damages* – where the court orders the offending party to pay compensation to the wronged party.
- *Specific Performance* – where a court orders a party to a contract to perform that contract e.g. to honour commitments made to affected communities.
- *State sponsored litigation or even prosecution* - where, for example, an ombudsman upholds a petition and decides to take up litigation on behalf of the injured party.
- A *fine* – where a court imposes a penalty for wrongdoing.
- A *custodial sentence* where a court imprisons someone for criminal wrongdoing such as tax evasion or breach of statutory duty.

c. Parties

In our strategic planning, we would also have carried out a stakeholders' analysis and grouped stakeholders as allies and opponents of our campaign. Allies could include land "owners"³; land users, communities, citizens generally, public sector employees or even companies suffering unfair competition. Opponents could include a government department, individual public officials,

³ In Ghana land and forests belongs to communities and not to the state.

traditional rulers or land-owners, individual chiefs of landowning communities and investing companies.

The legal system also recognises specific “interests” in contests. We must discuss with our lawyers which constituent or ally to put forward as the campaign’s protagonist (“plaintiff” or “applicant”) and which particular opponent (“defendant” or “respondent”) to go after as the target of legal action.

d. Fora

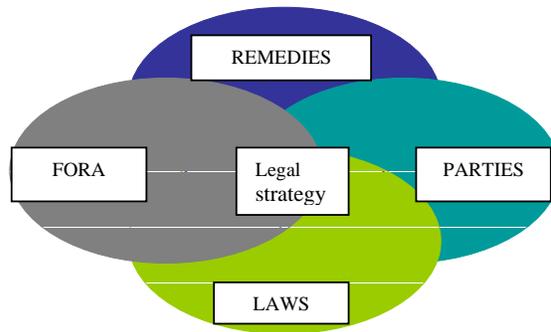
We can pursue legal actions in a number of different fora, which offer different kinds, and levels of remedies. The particular structure of dispute resolution fora will differ from country to country. Some examples (from Ghana) include:

- Circuit Courts – simple disputes involving small amounts of money or offences with low penalties and “rapid” decisions.
- High Courts – more complicated disputes involving larger sums and stiffer penalties.
- Supreme Court – disputes requiring interpretation of the constitution (fundamental law).
- Commission on Human Rights and Administrative Justice – investigations into complaints about human rights abuse involving less formal procedure but without the power to enforce rulings.
- Parliament Select Committees – wide powers of enquiry, informal processes and powers to influence legislation.
- Commissions of Enquiry – Investigative bodies set up by the State.
- Sub-regional Human Rights Tribunal – investigative body, set up under the Economic Community of West African States (ECOWAS), which because it is international is in theory more independent of the state.
- Africa Human Rights Court – regional human rights court available after exhausting all national options.

Strategy Construction

We then assemble these components into a strategy (Figure 4). We must remain engaged with our lawyers to ensure that strategy is both internally coherent and consistent with overall campaign strategy. We should avoid the danger of the tail wagging the dog. For example, from a broad campaign perspective, a particular legal action may serve only to strengthen mass mobilisation and publicise an issue such that winning or losing in the selected forum is a secondary consideration.

Figure 4: Constructing Legal Strategy



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