

LAND CONVERSION, SOCIAL IMPACTS AND LEGAL REMEDIES IN INDIA: WHAT'S WORKING?

LESSONS FROM CPR-NAMATI ENVIRONMENTAL JUSTICE PROGRAM IN INDIA



September 2020

Citation: Centre for Policy Research (CPR)–Namati Environmental Justice Program (2020). Land Conversion, Social Impacts And Legal Remedies In India: What's Working? Lessons from CPR-Namati Environmental Justice Program in India

Acknowledgement: This work has been carried out with the aid of a grant from the International Development Research Centre, Ottawa, Canada.

Photo credits: Sampada Nayak, Kanchi Kohli, Bharat Patel, Vimal Kalvadiya, Vinod Patgar, Santosh Dora, Vasant Gonda, Prakash Korram and Deepak Shyam

Design and Layout: Yashwant Rawat

India Contact Information: CPR–Namati Environmental Justice Program
Centre for Policy Research
Dharma Marg, Chanakyapuri
New Delhi-110021

Disclaimer: There is no copyright on this publication. You are free to share, translate and distribute this material. We request that the source be acknowledged and a copy/link of your reprint, report or translation be sent to the CPR–Namati Environmental Justice Program.



LAND CONVERSION, SOCIAL IMPACTS AND LEGAL REMEDIES IN INDIA: WHAT'S WORKING?

Lessons from
CPR-Namati Environmental
Justice Program in India

Contents

Abbreviations	3
1. Introduction.....	4
2. Legal Empowerment and Environment Regulation.....	6
a. Paralegal case work	6
b. Case work analysis.....	8
c. Community Action and Regulatory Response.....	10
d. Case Results.....	12
e. Community participation	14
3. Legal Empowerment and Capacity Building of Affected Communities	15
a. Community partners and their Cases	15
b. Indicator 1: Staying invested in this approach.....	19
c. Indicator 2: Increased legal awareness and knowledge about institutions	22
d. Indicator 3: Agency-building of community partners	24
e. Indicator 4: Critical reflection on laws, remedies and our approach.....	26
f. Ripple effects of legal empowerment	28
4. Community Paralegal Resource Kit	30

Abbreviations

ANM	Auxiliary Nurse Midwife
CAG	Comptroller and Auditor General
CPR	Centre for Policy Research
CP	Community Partner
CRZ	Coastal Regulation Zone
CSC	Common Service Centre
CZMA	Coastal Zone Management Authority
DLCC	District Level Coastal Committee
EJ	Environmental Justice
ELC	Enviro-Legal Coordinators
MoEFCC	Ministry of Environment, Forests and Climate Change
MSW	Municipal Solid Waste
PCB	Pollution Control Board
RTI	Right to Information

Introduction

India promulgated a series of environmental regulations between 1980 to 2005 both at the Central and State level including the Air (Prevention and Control of Pollution) Act, 1981, the Water (Prevention and Control of Pollution) Act, 1974, the Environment Protection Act, 1986, and the Forest Conservation Act, 1980, to regulate industrial activities, infrastructural development and mining projects. These regulations establish detailed procedures for assessing the environmental impacts of the proposed projects that are likely to cause land use change. They also involve the laying of conditions that are attached to the approvals granted to these projects. These legal conditions are meant to mandate social and environmental safeguards for the projects which are designed to minimise their impacts on the environment and the communities and ensure timely mitigation.

While the laws regulating the process leading up to project approvals garners the maximum interest from multiple actors including State, project proponents and environmental activists, the regulatory efforts ensuring post-approval compliance does not receive the attention it deserves. Regulatory practices around monitoring and compliance have seen the least revisions or reforms in spite of damning evidence illustrating the pervasiveness and persistence of environmental non-compliance and failures of environmental regulatory efforts¹. The regulations meant to enforce compliance and improve environmental conditions remain in the books, while harmful projects continue operations for years in gross violation of these laws. Many of these regulations are often crafted far away from the affected people and their stated purpose or extent of implementation is known only to policy makers, the projects and few experts.

Poor enforcement or non-compliance to regulations has profound implications, leaving a large section of vulnerable communities to bear the disproportional burden of project's ecological costs. The affected communities grapple on a daily basis with environmental impacts which exposes them to toxic contamination, adversely affect their livelihoods and impose restrictions on their access to common resources and mobility. These problems severely affect their ability to live a life of dignity and safety. Communities usually strive to overturn these issues with whatever available resources and avenues, but the gap in public knowledge of relevant legal and project information hinders the ability of affected communities to uphold their rights and attain meaningful remedies or relief from these adverse situations.

In this background, Namati and the Centre for Policy Research (CPR) co-designed an applied research program to understand the gaps in conditional compliance, institutional monitoring and enforcement of environmental regulations to address the impacts faced by communities living around industrial and infrastructure projects. The CPR-Namati Environmental Justice Program

¹CAG report, showed that percentage of non-compliance by sampled projects to general condition of environmental clearances, went as high as 56%. Source: https://cag.gov.in/sites/default/files/audit_report_files/Union_Government_Report_39_of_2016_PA.pdf

In an independent study conducted by Kalpavriksh, an environmental group, research found instances of non-compliance in sampled projects was upwards of 90% of the mandated legal conditions: Source: <http://iced.cag.gov.in/wp-content/uploads/Calling-the-Bluff-final-PDF.pdf>

supports communities to understand and shape the implementation of environmental laws in order to promote environmental protection and local resource based livelihoods.

The objectives of the program are:

1. Improved environmental compliance
2. Effective remedies for affected communities
3. Robust institutional support for the conservation of critical ecosystems

Over the last 8 years, the program has created a network of 27 grassroots legal professionals trained in using law and legal principles, along with skills like mediation and community training. The program's trained grassroots community paralegals are known as Enviro-Legal Coordinators (ELCs). They are equipped with knowledge of basic law, relevant regulatory institutions, administrative processes and skills such as mediation, training and community organisation. They work with affected communities to identify the enabling legal provisions, safeguards or clauses applicable to a given situation, and to draft evidence-based complaints to the concerned regulatory agencies. When required, these grassroots legal professionals also mediate the interactions between these expert institutions and affected citizens with the goal of crafting creative remedies.

By developing a network of grassroots community paralegals, the program aims to address, reduce or remove negative impacts from industrial and infrastructure related projects, improving living and working conditions as well as protecting local livelihoods directly dependent on the environment. The program is currently working in 11 districts across the four states of Gujarat, Karnataka, Odisha and Chhattisgarh. Grassroots legal professionals across these field sites assist affected communities in seeking administrative remedies relating to toxic contamination of land, water and air, over-extraction of ground or surface water, and blocking of access to common resources such as land, which arise out of gross violation of regulations by the operational projects in their neighbourhood.

This report is an attempt to outline the Environmental Justice (EJ) Program and its outcomes both at the institutional and community level. This report specifically outlines the program's learnings in effective community legal empowerment and securing remedies for environmental and social harms from activities involving high impact land-use change. The program learnings are also organised in a series of handouts or learning materials that can be used by those working on environmental justice through legal empowerment and legal aid programs.

SECTION 1

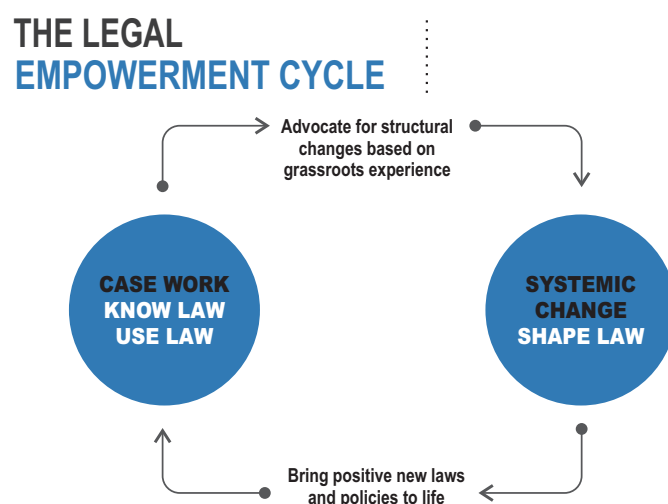
Legal Empowerment and Environment Regulation

Traditionally, advocacy for environmental justice has often been led by experts and are highly focussed on technical channels such as litigation. The legal empowerment approach to environment justice offers an equally effective pathway i.e. to equip affected people with the knowledge of law so that they advocate for themselves. Community paralegals form a dynamic frontline of leaders who can advance legal empowerment. Analogous to community health workers, community paralegals demystify law and help people secure concrete remedies to environmental harm: enforce clean air regulations against a polluting factory, or reverse an illegal land grab.

a. Paralegal case work

To conduct casework, paralegals work with affected Community Partners (CPs) using a groundtruthing methodology. This methodology broadly involves comparing facts stated in official documents and maps with the ground realities at a site or in a place. As a method of physical verification of statements made on paper, groundtruthing can act as an effective tool to create evidence by collecting easily observable facts about operations that might be illegal, prohibited or causing harm. The evidence can be used in complaints directed to the relevant regulatory authority, appellate mechanism or judicial body. This method is useful for one-time investigations or for the ongoing monitoring of impacts. The paralegals work intensively with the communities to understand the problem, identify relevant legal hooks, collect evidence and approach the right regulatory body using administrative channels. These steps are carefully crafted to ensure affected communities understand the law and use it to advocate for their rights and remedies. The methodology used by EJ paralegals has been explained in detail in our [paralegal practice guide](#).

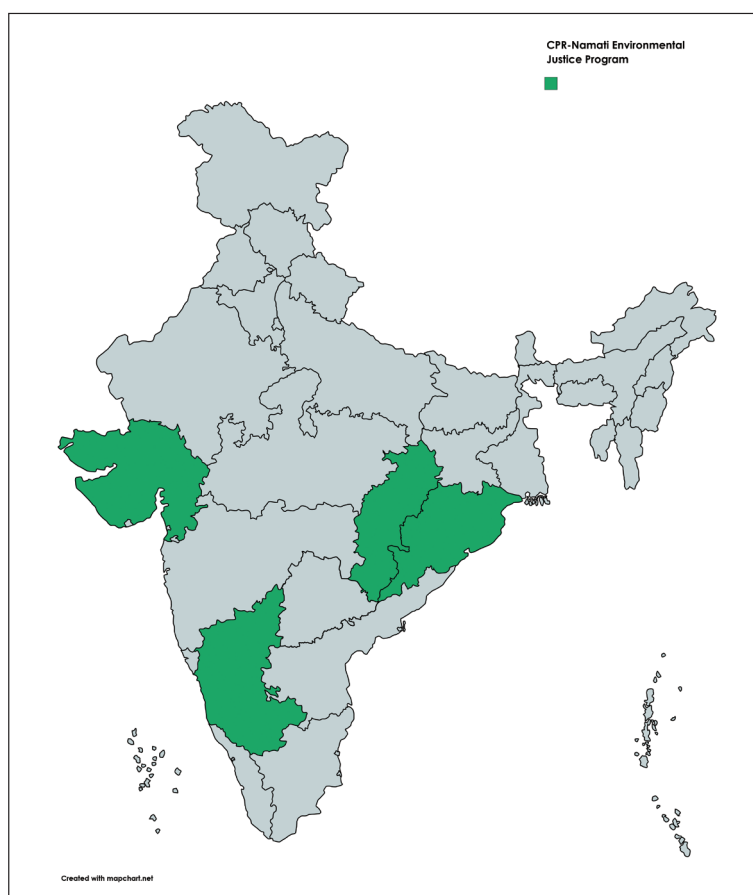
This casework can provide concrete solutions to daily injustices and also help to build a powerful basis for systems change. ELCs rigorously collect data on every case, generating a map of how current laws function in practice. They track aspects like the origin and nature of the violation, evidence gathered, steps taken to seek a remedy, and how industrial and infrastructure projects and regulatory institutions respond to grievances raised by the communities. The case data is collected, aggregated and analysed to identify breakdowns in policy implementation. By directly engaging with the affected communities and helping them to address instances of project non-compliance, our program has been able to understand the ground level impacts of legislation and institutional action. Thus, the ELCs efforts are not only instrumental in solving specific problems but in building citizens' empowerment, shaping institutional accountability and establishing rule of law for a better environment for all, in a non-adversarial manner. Once positive



changes are adopted, grassroots legal professionals continue to work with communities to bring those new commitments to life. This is what we call the Legal Empowerment Cycle.

In the last eight years, the program team together with the affected communities, has worked on 266 cases of air, soil and water pollution, dumping of waste and landfills, loss of access to livelihood areas, encroachment of common lands by industrial estates and other such violations of law and legal conditions for project operations. These 266 instances of non-compliance are situated in 11 districts across four states including Gujarat, Karnataka, Odisha and Chhattisgarh and have been systematically documented by the community paralegals.

States where CPR-Namati Environmental Justice Program works with affected communities:

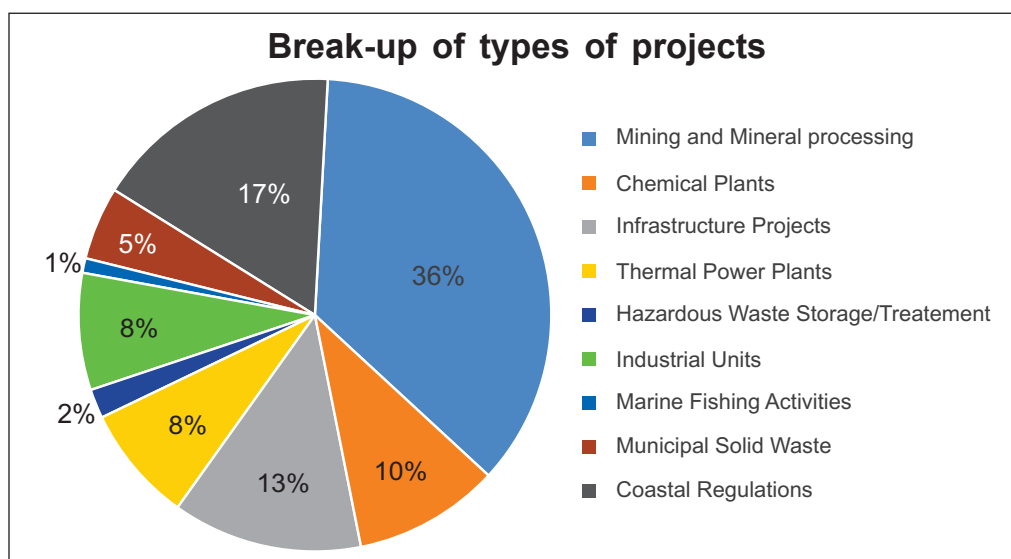


Across these four field sites, ELCs and communities have worked on non-compliant projects in mining, infrastructural development, industrial sector and few municipal solid wastes sites managed by the local municipalities. Apart from working directly on non-compliant projects, they have also worked on pushing for regulatory compliance of coastal regulations across two states. The team in Gujarat activated 10 District Level Coastal Committees (DLCC) across the state and pushed for nomination of community representation in them through regular follow-ups with district administration. DLCC is a regulatory body under Coastal Zone Management Authority (CZMA) at

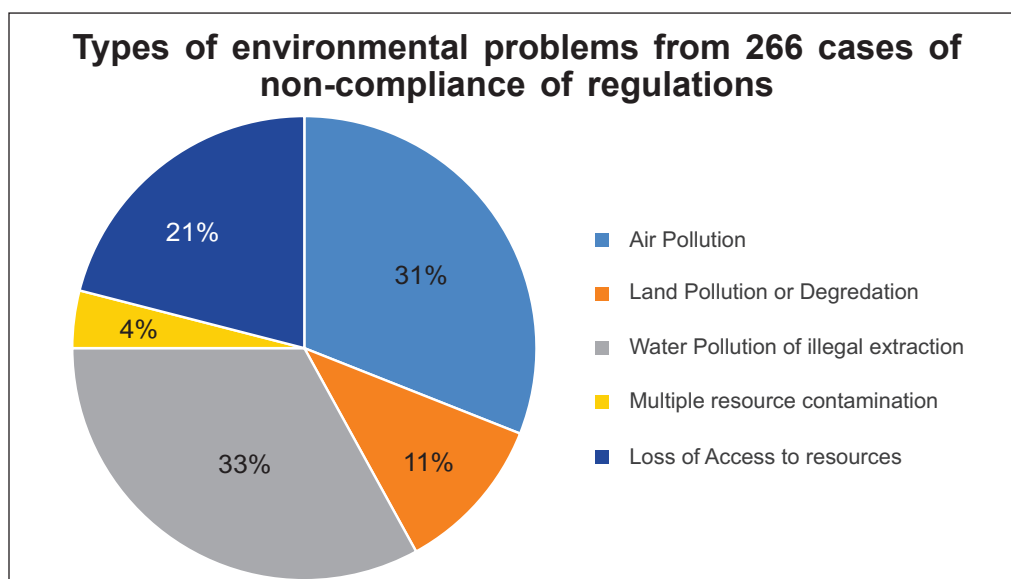
district level which is responsible to implement Coastal Regulation Zone (CRZ) Rules, 2011 and regulate the commercial and non-commercial activities on the coast. Similarly, in Karnataka ELCs worked with coastal communities to help them understand the then newly implemented CRZ Rules, 2011, to safeguarding their housing rights on the coast and improve its enforcement on the ground. With these concerted efforts, both teams along with coastal communities have been able to work actively with the regulatory bodies for the better protection of coastal ecosystems. For more detailed information on these cases around coastal regulations please refer to our publication [Caring for the Coast: Building Regulatory Compliance through Community Action](#).

b. Case work analysis

Below is the break-up of all the types of cases the ELCs have worked on along with the project affected communities:



A major portion of our cases dealt with the impacts of air pollution and water pollution, and sometimes multiple resource contamination from one project. Lack of mandated physical safeguards, illegitimate disposal of toxic wastes, non-adherence to environmental protocols or inadequate mitigative measures mandated by the regulatory bodies are some of the common reasons leading to these environmental breakdowns.



These environmental problems also have economic and social impacts on the communities, who are dependent on these natural resources for their survival. While these are mostly common resources, such as a river or common grazing land, which are highly vulnerable to misuse and pollution but in several cases, non-compliant projects also contaminate private property of the communities including their land and homestead. Be it private or common resource, their degradation translates into life-altering consequences for communities, from loss of income due to loss of standing crops affected by excessive dusting or increased public health risks for entire village from the toxic contamination of the only local water body in its vicinity or an entire community losing access to common burial ground because of illegal encroachment. Non-compliance to regulations by projects not only puts pressure on ecosystems but also transforms the ecological relationships between the landscape and the communities at multiple levels.

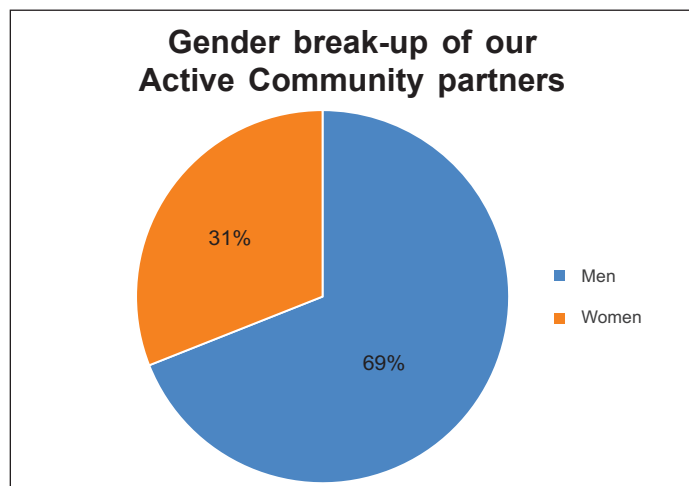


Agriculture land with fly ash dumping.



Bauxite Dust inside the house of community partners.

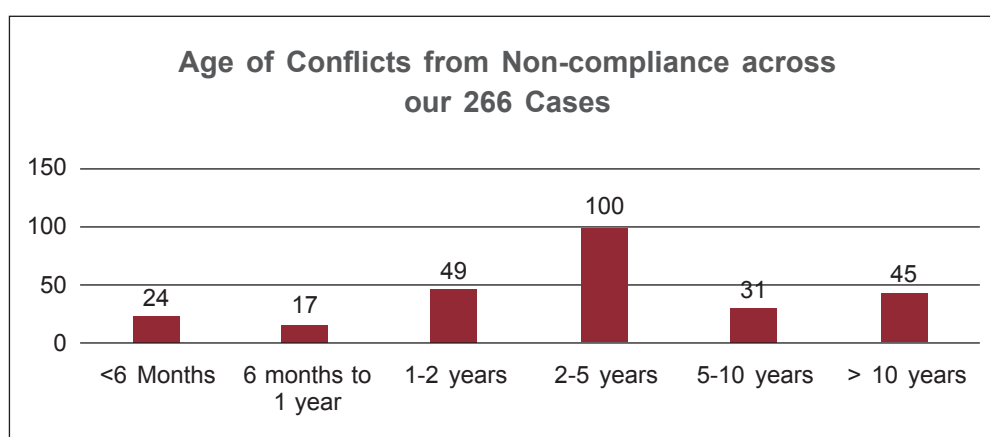
So far more than 2,000 community partners have been actively engaged in these cases as a process of getting remedies for their problems as well as their legal understanding of the issues involved in their cases. These cases when resolved would directly benefit or reduce negative impacts on a total of 4,37,474 people. This is a conservative estimate of beneficiaries as it is difficult to enumerate beneficiaries in environmental cases due to complexity in assessing impacts.



c. Community action and regulatory response

Each case is evaluated before it is formally undertaken, using a case selection criteria which helps ELCs prioritise and rationalise their case load². After an ELC picks up a case, they organise multiple legal trainings and informative community meetings to familiarise everyone with the issue from a legal lens. Once communities and ELCs are able to identify clear legal hooks, they collect evidence and draft a legally-informed letter to the responsible regulatory institutions seeking remedial action. However, this straightforward process is tempered with multiple community level strategies which enables the activation of otherwise dormant administrative channels of grievance redressal.

In more than 60% of the cases where ELCs have been working with CPs, the problem had existed for more than 2-5 years, this figure itself highlights the lack of engagement and action from the regulatory bodies in enforcing the rules on the ground level.



In this background, ELCs and communities work together first to identify the relevant institution and evoke institutional response from them using this methodology. For each case, ELCs and CPs map all the relevant organisations and reach out to most of them. While each case of non-compliance comes with its unique issues and challenges, most of them can be traced back to the lack of enforcement of a few major environmental regulations in place. ELCs and communities aim to find multiple legal hooks to highlight the extent of illegality of such environmental harms. On an average in each case, communities approach 2-3 institutions using multiple laws, this helps in persuading multiple regulatory bodies and evoke effective remedial action.

²CHILL is an acronym for parameters which aids our paralegals in prioritisation exercise during case selection process.

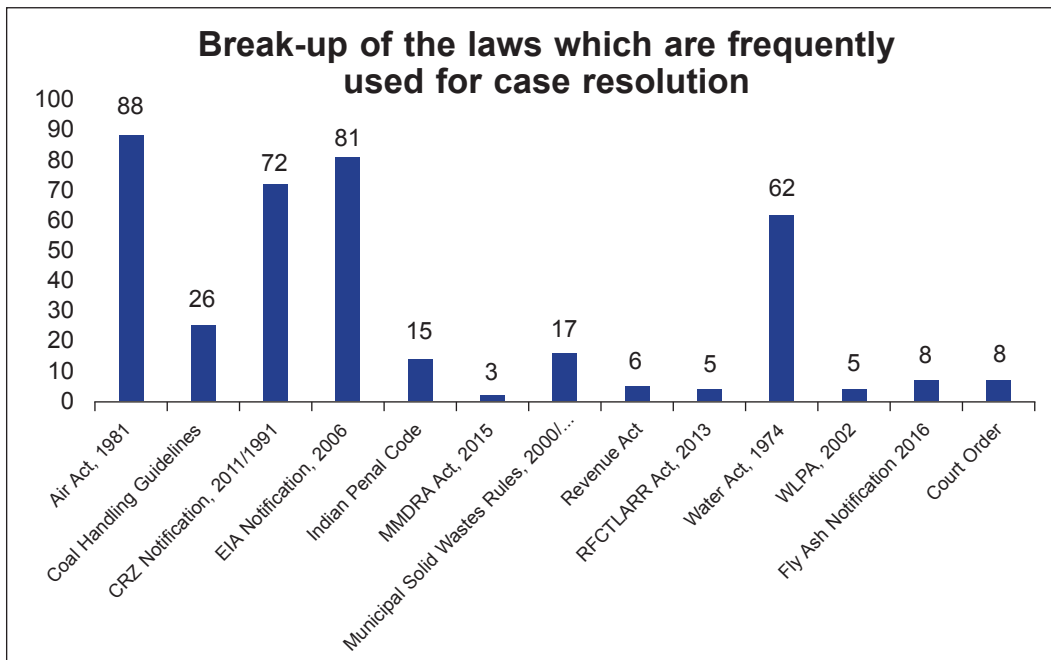
C-Community Partners/ Clients: The case has CPs or clients. These are usually a group of affected people aggrieved by a common problem. This group is committed to solving the problem jointly with the paralegal.

H- History: Primarily those cases are chosen where the affected communities have sought some kind(s) of resolution by themselves. This could have been through a Non Governmental Organisation (NGO), using courts or any other means. Exceptions to this may be in situations of emergencies, disasters or particularly complex or exceptional cases.

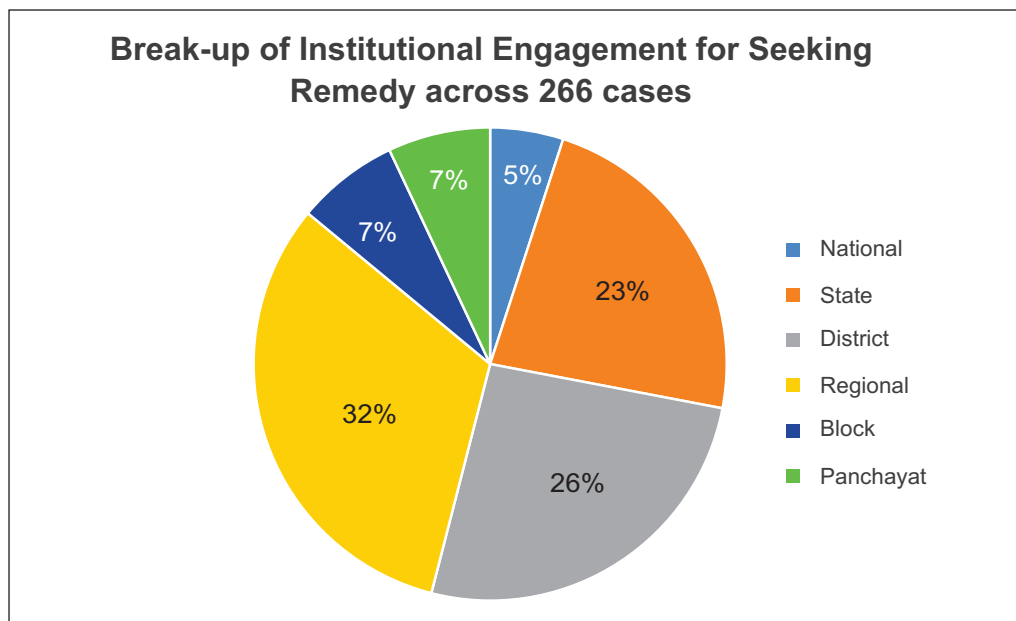
I-Impacts: Cases that have a large impact in terms of the number of people affected or the number of people likely to be benefited are prioritised.

L-Location: The cases chosen are in the paralegal's vicinity or local area so that s/he can maintain contact with the affected communities through regular site visits and follow up meetings.

L-Legal Hook: Cases that have a clear legal hook (such as those resulting from a violation of, or non-compliance with laws, administrative practice or judicial orders) to resolve the impact are prioritised over ones that do not have a direct legal clause supporting them.



Even though ELCs constantly try to increase the range of legal hooks which can be used by the communities to safeguard their rights as a strategy, the methodology still focuses on activating the institutions closest to the point of impacts. This is key to create a sustainable and collaborative interface between local communities and local regulatory bodies for better enforcement of rules on the ground. Below is a break-up of our focus on evoking institutional response at various levels:



In the environmental regulatory landscape in India, one will find some environmental regulatory institutions are situated at the district level such as the DLCCs, District Environmental Impact Assessment Authority (DEIAA); or at regional levels (one office for multiple districts) such as the regional Pollution Control Boards (PCBs) or the regional office the Ministry of Environment, Forests and Climate Change (MoEFCC). The program has tried to engage with these institutions as they are situated closer to communities than the offices of the State or National level. At the block and Panchayat level we usually engage with generic administrative bodies such as local panchayats. This strategy has helped us increase the interaction between institutions and local communities on environmental issues, which was not the case earlier.

As mentioned above, communities also employ a variety of additional strategies to engage institutions. These community strategies depend on multiple factors such as the socio-political context of each issue, power dynamics between the actors, and the severity of the issue at hand. Some popular strategies undertaken by affected communities include media reporting, collective community representations or submissions, using multiple legal tools for grievance redressal such as Right to Information (RTI) and community mobilisations. These decisions are taken mutually after ELCs and CPs carefully evaluate each strategy's pros and cons in detail.



Community Deliberation in Gujarat



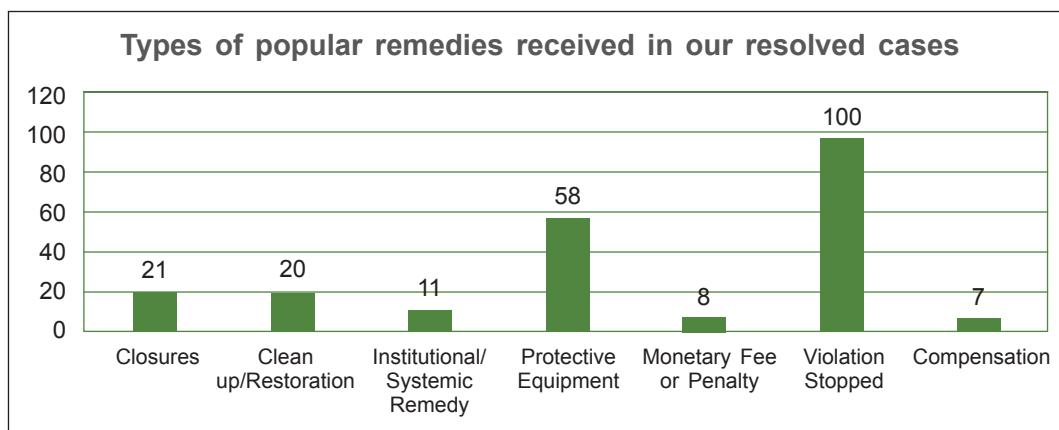
Community Deliberation in Odisha

d. Case result

Based on this methodology, so far we have received positive institutional response in over 164 cases out of 266 recorded instances. These results mean that violating projects have started to comply with conditions or rules that provide relief to local communities who had been reeling under the impacts of non-compliance for so long. These resolved cases show that compliance cannot be left only to government regulators and projects; affected communities and ELCs can play a huge role in this process as an interested “third party”. The 61% resolution rate also goes to show that local institutions, when activated, do take action. Hence there is a huge opportunity to improve compliance through community legal empowerment interventions for environment justice.

Communities were able to push for a range of remedies in their cases, which included immediate stoppage of violating activity such as illegal dumping of waste or following proper protocols to reduce impacts from the operations, building protective infrastructure to mitigate the impacts

such as green belts, retaining wall or installing treatment facilities, restoration of the contaminated sites, paying compensation/monetary penalties for violations and permanent/temporary closure or shifting of units from the location as well. In some cases, we have also received some systemic remedies at institutional level, it includes activation of regulatory institutions or reforms in the state rules to provide better protection to the environment³.



*Some case have received more than one kind of remedy to their problems, hence the total remedies are more than number of resolved cases.

These remedies have brought relief to communities after years of suffering from harmful social and environmental outcomes of the non-compliance. On an average, communities received positive institutional response along with remedial action from the violating unit within 2 years of them approaching the regulatory body, using this methodology. This figure when seen with the average age of the conflicts mentioned above, illustrates the strategic value of building a constituency of legally empowered communities in improving environmental compliance across the country. With almost 70% of these remedies coming from regional institutions, this approach shows that the local regulatory institutions are more than capable of bringing relief to the communities.



Toxic Coal Water getting released from Power Plant into a local stream in Chhattisgarh



Municipal Solid Waste (MSW) site clean-up in Karnataka

³Bull trawling conflicts in the Uttara Kannada coast: an opportunity for a bottom-up review of the Karnataka Marine Fisheries Law, Current Conservation, Mahabaleshwar Hegde and Manju Menon
Caring for the Coast: Building Regulatory Compliance through Community Action by CPR-Namati Environmental Justice Program, 2018

“We had been reeling under the impacts from last 15 years, and in just 1.5 years of using this approach, we started getting relief from pollution”

–Community Partner in Odisha

e. Community participation

In the initial days of the program, the regulatory institutions would not even meet with members of the affected communities. However, with time and constant persuasion, the affected communities have been able to turn this situation around. In a bid to democratise environmental regulation, communities have advocated for their own participation in the monitoring efforts of regional PCBs. While the law is silent about this aspect of community involvement, community members and ELCs have advocated for it in their case work using the principles of natural justice. Due to their efforts, the regulatory institutions have involved affected communities in their monitoring efforts in almost 60% of the cases.

Community involvement lends transparency to the official inspection or monitoring processes and creates a stronger interface between the communities and the regulatory officials. Community participation also helps officials not to reduce the complaints or problems to technical glitches or mere slips in regulation but understand the social and economic impacts of environmental non-compliance on the communities. This understanding further informs the remedial action ordered by the bodies and creates the scope to institutionalise these case experiences into official practices.



◀ Community Partners interacting with PCB officials in Karnataka

Community Partners interacting with PCB officials in Chhattisgarh ▼



“Our participation in site visits helps regulatory officials understand our problems much better, it also brings transparency”

–Community Partner in Gujarat

The legal empowerment approach for environmental justice not only facilitates environmental protection and institutional reform, it also builds capacities of affected communities to play a bigger role in the overall environmental governance for better social and environmental outcomes. In the next section, we elaborate the experiences of a few active CPs to understand the value of this methodology from their perspective.

SECTION 2

Legal Empowerment and Capacity Building of Affected Communities

For the purpose of understanding the impact of our work through the lens of legal empowerment of communities, we conducted one to one semi-structured qualitative interviews with 17 CPs who have been closely working with our team. These CPs have worked on the cases of non-compliance from two of our field sites i.e. Gujarat and Odisha. All of these CPs have been actively involved in the case resolution process or are still actively pursuing their cases with the paralegal's support. These 17 CPs have been adversely affected due to violation or non-compliance of environmental regulations in their areas. These impact includes livelihood loss, risk to health, and threat to access or eviction.

Most of the CPs who we interviewed have been reeling under the impacts from a long time. In Odisha, one of the peculiar issue that we faced while working in this area is the presence of informal mechanisms of company sponsored allowances. These industrial units have not only alienated people from the natural resources, they were once highly dependent on but also created a precarious informal system of meagre monetary compensation just enough for them to survive but not enough for them to rebuild their lives. These systems have normalised the people to live with the impacts and view them as an inevitable cost of development. With these layers of complexities, it was a challenge to train these CPs on law and motivate them to work towards safeguarding their rights.

So far, we have been able to build capacity of many community members both from tribal and non tribal communities to recognise these impacts as an infringement of their rights and laws being a tool to restore them. Most of our interviewees held some form of community leadership position in their villages. The community leaders are well placed in the community to raise these issues and garner more support from the community. However, the paralegals while working with community leaders ensure that through these leaders they constantly are in touch with other community members and are able to build trust and rapport.

a. Community partners and their cases

In Gujarat, the interviews were taken across Veraval, Vapi and Daman regions where three of our paralegals are actively working with the communities to resolve environmental violations or non-compliance. A total of 10 CPs were interviewed in the first pilot of our study. While in Keonjhar in Odisha, 7 CPs were interviewed.

A brief profile of all the participants:

Name	Profile	Problem	Impact
Gujarat			
Kanji	Runs an NGO, has a well-established network of fisher folks	Dust Pollution: Polluted air emission by the Industrial unit	Office right in front of chemical plant, risk to health and public nuisance
Bharat	Master of Social Work graduate	Dust Pollution: Polluted air emission by the Industrial unit	Impact on livelihood agriculture and health (breathing problem)
Lalji	65 year old fisherman and Patel in the village (can't read or write)	Coal dust pollution by a Jetty	Impact on livelihood (fish catch), health and public nuisance
Mukesh	Son of the Patel in the Village	Coal dust pollution by a Jetty	Impact on livelihood (dried fish), health and public nuisance
Kamaliya	School teacher by profession and a local environmental activist	Illegal landfill dump near the farmland	Risk to health and impact on livelihood (farming and cattle)
Kishore	Informal local youth leader-same caste community	Illegal poultry in the neighbourhood	Air and water pollution
Ramesh	Ex panchayat member, a prominent community leader	CETP- water pollution, effluent discharge in Damanganga and Kolak Rivers	Loss of livelihood (stopped traditional fishing in estuaries)
Kamlesh	A farmer in the community	Treatment, Storage and Disposal Facilities (TSDF) for hazardous waste leak on farmland	Loss of livelihood (lost 15 acres of land and standing crops due to the spill)- Loss of Livelihood
Dhanesh	Farmer and economically relatively better in the community, who is also a local youth leader	Underground the Industrial unit	Risk to health and secondary impact on agricultural livelihood
Lalu	A small shopkeeper. A small shopkeeper and only complainant	Underground water pollution the nearby company	Risk to health as the borewell of his house was polluted
Odisha			
Daitari	Runs a Common Services Centre (CSC) community leader	Dust from loading and offloading activities at the railway siding	Dust settling on agriculture land (livelihood loss), dust settled in local water bodies (health risks)
Jagannath	Transportation business and grocery shop	Dust from mining transportation and mine overflows polluting nearby river	Dust in house and agriculture land and polluted water for consumption (livelihood loss, risks to health public nuisance)

Mangal	Village Council Leader	Dust from the plant and toxic effluents released in river used by villagers	Toxic Water has made the only source of water unfit for consumption from domestic and for agriculture (livelihood and health risks)
Nirupama	Ward Sabha Leader	Toxic effluents released in the river	Toxic Water has made the only source of water unfit for consumption (health risks)
Gopinath	Ex- Ward Member, Farmer	Toxic waste from mines released on agricultural land and water bodies	Agricultural land unfit for cultivation, water body unfit for consumption (livelihood and health risks)
Mayurika	Asha Worker*	Excessive toxic air emissions from the plant, untreated water release in the river, illegal dumping of waste on the common land	Dust pollution at home and causing nuisance and health issues. Untreated water has polluted the river and made it unfit for drinking. Illegal encroachment of common land of the village.
Samul	Unemployed	Toxic waste from mines released on agricultural land and water bodies	Agricultural land unfit for cultivation, water body unfit for consumption (livelihood and health risks)

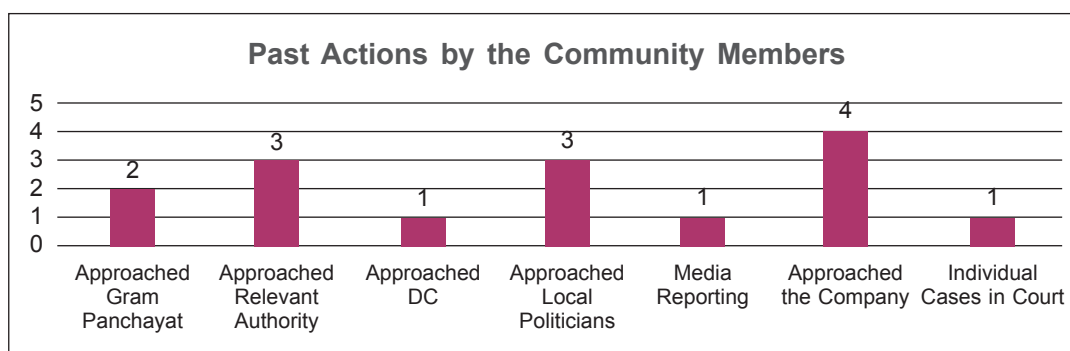
We also had an opportunity to interview women and understand their perspective on this approach along with how different is the manifestation of agency for women gained from this approach. Both the interviewees held leadership position in their communities and had a hold on the community partners and could effectively lead them. Both emphasised on how women could be a sustainable resource group for this work as they are less likely to get swayed away with money and because they live with the impacts and bear its brunt more closely than men, hence are more motivated. For Mayurika it was more of a personal struggle which pushed her to address this problem, the burden of keeping the house clean and the struggle to keep everyone healthy has been a biggest worry for her, however while working on the case she could see how this is a public health issue and as a Asha Worker she felt her community should not be subjected to such health hazards. For Nirupama a tribal woman ward member, the push was both personal and related to her leadership role, she felt that the tribal community in her village were being taken for granted and their resources were getting appropriated by these powerful corporates leaving them resource less, this infringements on their rights made her feel the need to work through this process to encourage her community members to start speaking up!

For us, owing to the usual gender power dynamics in the community, lack of gender inclusivity has been an issue. However, with our women community paralegals we are devising ways to overcome this problem. Our women community paralegals have played a critical role in

*Asha worker is an accredited social health activist is a community health worker instituted by the government of India's Ministry of Health and Family Welfare as a part of the National Rural Health Mission.

organising women who would usually face difficulties in participating in collective community efforts or activities that are often dominated by men. For them, it is even more difficult to step out of their house and go to the regulatory institutions on their own, owing to social restrictions imposed on their movements. To counter this, women community paralegals strategically first organised a few women in leadership roles in the community, and tapping into their individual networks and social capital, tried to build direct relationship with the other women from affected communities. With local women leaders taking the lead in the case work, we could see a large group of women rallying behind them, which has been very useful strategy to organise more women around these issues. Engaging with women on these issues highlighted the gendered inequality between men and women which deeply reflects in the impacts of these environmental harms on them, from higher exposure to contamination at household levels to bigger burden of managing these impacts at their family level. This gendered understanding of the impacts of environmental pollution to the economic and social well-being of women has not only enriched the overall understanding of impacts from noncompliance but also has informed the efforts towards its remedial action. Hence to ensure that these problems are viewed from a multiple perspective which gives us a fuller understanding of the actual contours of impacts, participation of women becomes very critical.

Most of the CPs who were interviewed shared their experiences of working on environmental issues affecting their communities before they were introduced to the program through the ELC. In Gujarat, CPs shared that they relied on their local authorities or local politicians the most, while some organised community action such as protests or media reporting and in some cases the CPs contacted companies for a remedial measure.



In most of the cases the CPs took multiple actions to resolve their problems, hence the above graphs represents the instances where these actions were taken by the CPs. Many CPs before working along with the paralegals had approached either the company or the relevant authority, but in their experience lack of legal hooks in their compliant letters or even verbal exchanges had been a the prime reason for no success.

Kishor a CP shares *"Kanooni Kalam bhot important hota hai, kanooni kalam se likhega na toh uska bhaari asar hota normally likega toh who dhyaan bhi nahi dega"* (Using legal language is very important, when you use legal language it has an impact, if you normally write nobody pays attention)

For most of our CPs in Keonjhar, it was for the very first time that they had formally addressed this concern. Many CPs confessed about not being able to see this problem as something they could fix, before speaking with paralegals.

Mayurika shares *"We did not know any thing about this issue in the sense that it is an illegal act, we did not know there is a law against this issue. And we used to feel that its fine given my husband used to work in the plant. If there is a steel plant, there will be dust"*

In this backdrop, only those CPs who were committed to challenge the project non-compliance inspite of such complex relationships with them, adopted this approach. They continued working on their cases inspite of many push back factors such threats or risk of loss of job, and worked for legal compliance by these violating units. For many the motivation was more than just legal compliance, they wanted to demonstrate the power of law before their family and community members. Nirupama shares that her motivation behind working on this approach was to encourage her children to start asking the right questions which she could not. She said *“Our generation must ensure that the next generation knows the laws so that they can fight early in their lives for their rights on resources (land).”*

One of the major reasons for the CPs to adopt this approach is rooted in the failure of their past actions to wrest solutions from the institutional systems. Most of these CPs had either given up on finding a solution or were actively seeking a different approach to find a remedy to their problems.

Using the legal evidence-based administrative approach, few of the CPs have been able to achieve legal remedies to their problems which they were unaware of, while the remaining are still in the process of case resolution. Out of the 17 CPs who were interviewed, each one of them was in a distinct stage of case resolution and played a specific role in the process, hence their perception of this route also looks distinct from one another. In addition to this, each individual's socio-economic or political realities are few factors which have bearing on this process of legal empowerment, hence the findings below do not intend to assess any individual's legal empowerment against set benchmarks. Rather it aims at understanding the nuanced ways in which people give meaning to legal empowerment efforts and how this process goes beyond solving their case issues and bolsters their agency to seek justice.

For the purpose of this study, we created a basic set of process indicators which will help us understand the ways legal empowerment gets manifested through our work. These indicators will essentially inform us about the process of legal empowerment through a more nuanced understanding of specific experiences, perceptions or actions by the CPs. These indicators are:

Indicator 1: Staying Invested in this Approach

Indicator 2: Increased Legal Awareness and Knowledge about Institutions

Indicator 3: Agency-building of CPs

Indicator 4: Critical Reflection on Laws, Remedies and our Approach

b. Indicator 1: Staying invested in this approach

The above section laid down the past actions through which the community members were unable to get remedies towards the environmental harms caused by the industrial projects and mining operations in their neighbourhood. However, when the paralegals contacted a few motivated individuals in this community who were wanting to work but were unable to find a sustainable way, the support and engagement in this approach gradually grew and now they are staunch advocates of this method to achieve just outcomes from the regulatory authority.

They have continued following this approach in spite of various challenges including unresponsive institutions, counter actions such as threats and police complaints by the violating parties or offers of money to take back the complaints. The CPs have navigated through all these

challenges to wrest justice out of the systems and this could be understood by the unwavering engagement of these CPs in the case resolution process. Even the opaque and laggard administrative procedures which are quite known to wear citizens out, could not dissuade them. The CPs tenaciously kept working towards getting a response from the regulatory institutions.

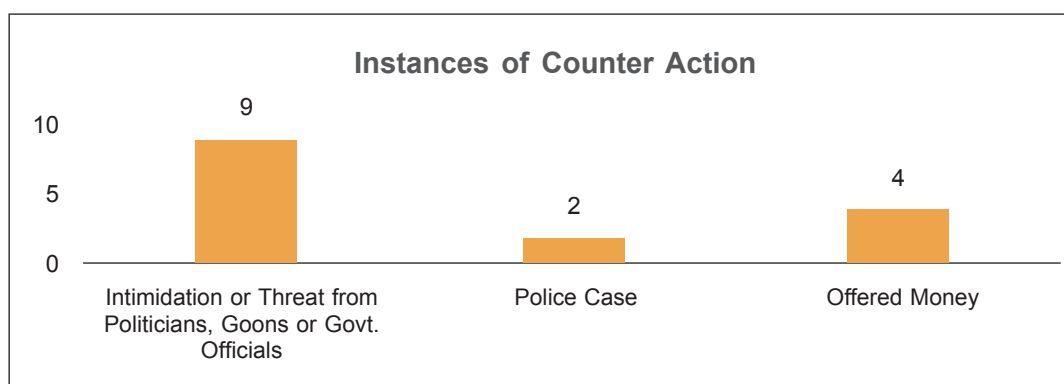
For most of the cases, on an average 4-5 complaint letters and corresponding RTIs are written, 2-3 institutions are approached, 4-5 official visits are made to the relevant authorities to push them into action. Each of these cases have been going on for more than 1-2 years and these CPs have been a part of the case since its beginning. Many a times, they have found this approach to be rigorous given the average gestation period before the institutions starts responding. Yet all the 17 CPs did not step back but continued pursuing the legal remedies they had sought for.

Samul is an active CP who has been working on a well-known government owned mining company to stop its decade long violations. The regulatory institutions i.e. the regional PCB quashed his community's complaints citing lack of evidence, in spite of following a rigorous process. This instance did not demotivate him, rather he shares *"We gathered stronger evidence, earlier we just submitted a photo to which they said this won't work, so then we captured a video and sent it."*

Sometimes, unresponsiveness of regulatory institutions have pushed some of these community partners to plan new strategies. Jagannath who is yet to see some action on his complaint thinks he needs to approach a higher authority now, he says *"We should approach the State level PCB or any office above them as the regional office is not responding well to our complaints"*

While for Daitari, just getting positive response is not enough as he feels communities must ensure the remedies are implemented in proper manner, he says *"I'm regularly monitoring the progress, I will again go to the office in case they do not ensure that compliance conditions are fulfilled"*

In addition to the bottlenecks in the administrative route, the CPs also navigate through various challenging situations to continue pursuing legal remedies with the ELCs. In interviews, CPs shared various instances of threats from local goons, politicians and government officials, fake police charges and money being offered to take back the complaints.



The CPs face backlash not only from the companies but also from local political leaders in their area. These risks are often faced by the CPs during the case resolution process, but irrespective of such situations the CPs have continued to pursue the cases.

One CP in Gujarat shares *"Mujhe ek din kuch log aake bole, ye company ke peechey mat jao itna, complaint waapis le lo aur 4-5 lakh rupay mil jayenge (one day few people came to me and told me to stop going after the company, and told me that I must take back my complaint for which I'll be given 4-5 lakhs Rupees)".* These men came on motorcycles without any number plates on them.

Few CPs reported that sometimes government officials also intimidate them with consequences and discourage them from filing cases against the companies.

Dhanesh, a community partner in Vapi shares that PCB officials never take them (complainants) inside the factory premises during inspection, they say *"Company wale apko andar maar sakte hain isliye bahar hi raho (company officials can beat you guys inside the premises)"* They even try to frighten us by warning us of legal action which can be taken against us for complaining by saying: *"Apko logon ko bhari pad jayega ye kayda hai woh kayda hai, company waalon se panga mat lo"*

In 2 cases, the CPs were falsely framed in a police case to stymie the case resolution process and intimidate the CPs from pursuing the case. In both the cases, the community partners are fighting against the false charges and did not step back from pursuing their case.

Such counter actions have not deterred any of these CPs, while it has made the CPs more cautious about their strategies and action, few CPs strategically organise people to write multiple complaints under various names so that nobody in particular gets targeted and sometimes they use the same tactic to visit the government offices too.

Bharat, shares *"I don't go to PCB office because I don't want to be identified by the company people, as they will then try to stop me using political pressure, and I really want to continue working on this issue"*

Irrespective of these instances the CPs have not backed out and have kept pursuing environmental compliance by projects. When asked about what kept them motivated in this work, many said that this was the only strategic way they could resist the companies since it was frugal yet an effective method to correct the power imbalance they have been facing since decades. Mangal, a young sarpanch and our active community partner says *"Ye tareeka slow hai par theek hai (this method is slow but it's effective)",* he comes from a village where many villagers have been involved in court battles with the violating company. He further shares *"Litigation is expensive process but this process is economical, people can afford to keep fighting through this approach."*

While Mayurika, our women community partner finds this approach more sustainable and effective than other methods, she says *"Likha patri se jo kaam humne kiya woh right kaam hai, bolna naare baasi se pata nahi chalta, na uska koi proof rehta hai aage jake, koi aake poochega ki tumne kya kiya hai toh hum dikha sakta hai na compliant isliye kanooni kagaz patri wala kaam hi right hai (this systematic method of documenting issues is better than just voicing our concerns verbally, atleast we have all the records of what we have done and how many officials we have approached)"*

Reiterating Mangal's view, Kamaliya, a community partner on a MSW dump case in Gujarat, also feels this approach is a non-adversarial way to fight for one's problem, he shares *"I guess this (legal evidence based approach) is the only way to address such issues since protests and approaching a politician doesn't help here. And the government must just follow the rules available. Legal route is slow but it is sustainable. Andolan (Protests) are a good way to get justice but in my area political pressures won't let it happen"*

c. Indicator 2: Increased legal awareness and knowledge about institutions

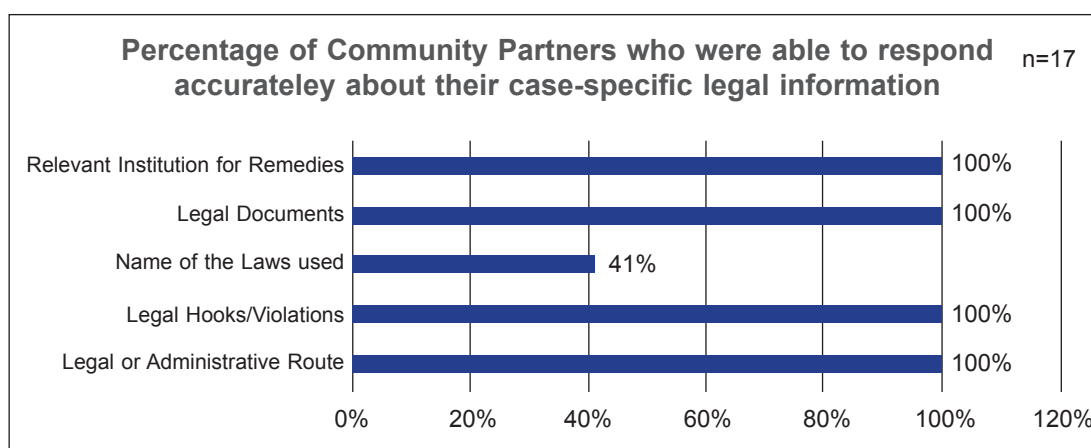
Understanding the law or gaining legal knowledge is one of the core objectives of legal empowerment process. The gap in this public knowledge of law severely hinders the ability and motivation of affected communities to uphold their rights and gain meaningful remedies or relief from the adverse situations. More than often not, these laws are also intentionally made inaccessible for certain communities, in order to normalise them against the instances of injustice and breach of their rights and well-being. Hence, the purpose of legal empowerment is not only to demystify the law but evoke the sense of injustice in the affected community members and help them understand the power of law, when it is on their side.

The community education sessions, regular community meetings and hands-on learning through case resolution process are few of the ways of raising legal awareness amongst the affected community members. With this augmented knowledge and awareness, the community members were able to see the illegality in the problems affecting their lives, which geared them towards seeking justice and pushing the otherwise unresponsive regulatory institutions. Gaining legal knowledge is a precursor to agency-building amongst communities, the sense of injustice through the legal lens is what pushes communities to take action against it. This approach not only aims to remedy the environmental harms but also demystify laws so that it is no more an abstraction or a source of abuse but becomes a tool for the communities to protect their rights and restore justice.

For the purpose of this study, we have tried to capture various aspects in which increased legal knowledge can be manifested. This could be testified by the increasing instances of people speaking language of law, using the rule of law to wrest their rights from the system or their ability to communicate about legal hooks, legal mechanisms and administrative systems that they have used to resolve the issue. For our approach to be sustainable it is quite critical that the CPs understand the whole process and gain confidence in the process to take it forward on their own, in future.

Below is the graph on how many interviewees were able to easily communicate about:

- Laws which were used for case resolution
- Legal hooks or specific violation used in their cases
- Legal documents which they read and used in their complaint letters
- Legal or Administrative route that they took to get the institution act on their complaints
- Relevant Government institutions which are responsible for providing remedies to their problems



Through the interviews, the CPs were easily able to describe various stages of case resolution process or the route starting from identifying the illegality, evidence collection, and identifying the right institution, using their grievance redressal mechanisms, follow-up visits and application process with institutions. *76% of the respondents mentioned that they were not aware of the right institution, and it was for the first time that they heard about Regional PCB as the responsible institutions to address all the pollution related issues faced by them.* They appreciated this clarity on institutional channels that they gained through this process and recognise just the knowledge of the right institutions have been quite instrumental in getting remedies for their problems. Kanji, a NGO worker and our community partner says *“people generally go to collectorate or nagarpalika for every problem and hence their issues remain unaddressed since they are approaching the wrong authority. This case helped me identify the actual agency responsible for such violations and cases. Earlier, I didn’t know that Gujarat Pollution Control Board (GPCB) is responsible for giving permission to these polluting industries.”* Mangal, the young sarpanch, on the other hand feels, this information came a bit too late, he says *“if we had known about these institutions and laws earlier these companies would have faced problem in setting themselves up near our villages. We would have used the conditions and discussed this in Gram Sabha.”*

However, only 40% of our respondents could name the technical law or the subordinate legislation which was being used to find legal remedies to their problems. This gap could be attributed to multiple factors such as programmatic focus on imparting working knowledge of the law instead of technical knowledge, variation of socio-economic realities of our community partners such as literacy levels, receptivity levels etc. Most of the interviewees who could not name the law did emphasise on organising more legal trainings in their area for better understanding of the law, as a suggestion for the team.

In spite of this, the CPs were able to describe the whole process of the case resolution with minute details. They were able to cite the conditions which were violated by the respective industrial units or mining operations, and the institutional channels that they had approached for remedial action. Most of them shared that the close coordination between the ELC and CPs in writing up complaints or follow up submissions, has helped them to get better at this approach. Lalji a 65 year old, unlettered community partner could easily list all the conditions which were violated by the company from the Coal Handling Guidelines. He says *“Now that I know that there are conditions in legal documents (read environmental clearance) which the company must abide by, I will be able to participate much better in any public hearing which happens in the future, when the company’s public hearing had happened we were clueless as to what was our role in the meeting”*

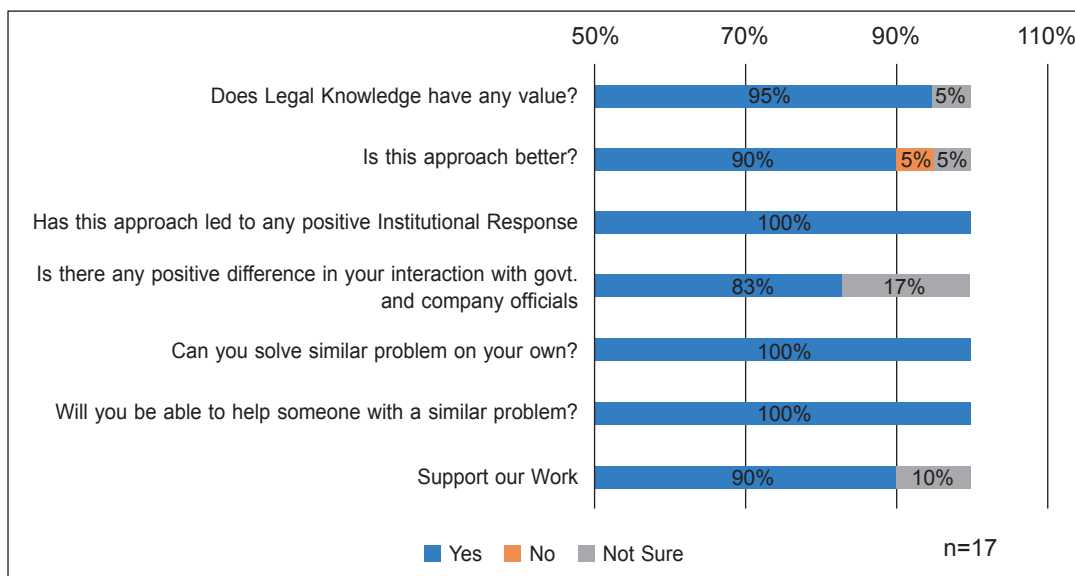
While for some, this working knowledge of the law and the issue got them really interested to grasp more technical aspects of their problem. Dhanesh, a CP who has been fighting against ground water pollution in his village could state the technical parameters used in the law to define pollution of water, he shared *“Since the company has come to our village, the problem has increased, TDS in the drinking water was earlier close to 250 but now it has risen to 350 because of the company. It should ideally be under 100 but we use filter machine to handle the rest of impurities”.* He uses this technical knowledge in his complaint letters to strengthen his claims.

This increased legal knowledge has improved their chances at invoking accountability of the responsible institutions to remediate the violations along with enhanced levels of overall confidence and resolve of the CPs to seek justice out of these biased and unresponsive systems. We will discuss the intangible yet profound impacts of this approach on the interactions between CPs and violating units or regulatory authorities, in the next section.

d. Indicator 3: Agency-building of community partners

Since legal empowerment is a multidimensional concept, the third indicator highlights how legal empowerment as a process enhances the CPs agency. A major objective of this exercise has been to assess levels of empowerment it has brought about in the communities we work in, how it has augmented their capacities to challenge the status quo and push for enforcement of laws leading to equality and justice. This work has not only bridged the gap between laws and communities rather it has led to a growth in individual's self-value leading to greater levels of confidence in one's own ability to take action and bring about a change in his/her circumstances. We approached our CPs with a set of questions to understand the development of individual and community agency.

These questions were helpful in gauging how community partners view this method against other traditional or non-traditional ways to fight for justice. They were also geared to understand community partner's proclivity to take this method forward or advocate about it to other community members or in similar situations in future. The response to these set of questions helped us understand their "willingness to act". Additionally, these questions also helped us identify those potential agents of change who could be our allies and play an important role in crystallising this method as a route to advance environmental justice.



Enhanced Confidence in Law: 95% of CPs who were interviewed expressed that they find value in using legal knowledge and it has also set a strong precedent before communities who had lost faith in the power of laws and regulations and their own agency to trigger change. Daitari shares *"It (paralegals approach) helps bring change in people and their perspective, we get to know what our right is. And this understanding helps us to fight with confidence."*

Through this work, many community members shared how they have learnt more about the existing legal mechanisms and institutions available for grievance redressal, which earlier were not known to the common public. Kanji bhai, a CP from Veraval shares how inspite of being a social activist from last 10 years, he was unaware of so many legal routes envisaged in legal books for resolving his problems related to industrial pollution. With the augmented knowledge of laws and regulatory institutions, this approach has helped many community partner reimagine the idea of development and justice.

Tool to alter power relations and invoke accountability: For many, this approach has altered their power relations with formal institutions. 100% of the CPs reported gaining a positive institutional

response from the otherwise unresponsive or intimidating institution. Most of these CPs now have more confidence to visit a government office and put forth their grievances. The understanding of the legal and administrative route and few initial success such as institutional response or changing attitude of companies towards the CPs have bolstered their confidence.

This approach has played a major role in altering the local power dynamics. From being dismissed by both government and company officials in the past, this new approach has pushed these two actors to engage with the communities as equals. Mayurika shares how women in her community who were earlier scared of the company officials can now walk into the factory and question the authorities. She says, whenever the company starts releasing toxic waste to the river, they all promptly gather and go to the company to question them. She shared that once she questioned the officer about the toxic discharge in the river, he had told her to adjust for one day to which she replied *"Ki aap ek glass yahi pani abhi peekey dikhaiye fir hum ek din adjust kar lenge (why don't you drink a glass of this filthy water, if you do, then we will adjust for one day)"*.

While most community partners reported that through this approach the government and company has complied with the regulations, remaining shared that the institutions have at least acknowledged the problem and have undertaken site visits or issued show cause notices. Dhanesh says *"After our 4 application the officials atleast came for a site visit earlier they would not even talk to us"*. Similarly, Mangal, feels that this approach has a lot of scope in invoking accountability of responsible institutions and companies. He says, *"The Company has been violating since 15 years, our complaint from last 1.5 years has changed the situation"*. For him, this approach has helped him in locating the responsibility within the regulatory systems for environmental problems. He feels with this legal knowledge, communities must come forward and start posing right questions to right institutions, he further adds *"Agar officers so rahein hain toh koi jagane waala hona chahiya na (if the officials are sleeping there should be someone to wake them up)"*.

Willingness to take this approach forward: Another strong parameter highlighting the enhanced agency of the CPs through this approach, is their willingness to use this approach in future. When asked about their comfort in using this approach further, 100% of CPs shared that they are confident about solving similar problems on their own (with some support from ELCs), they even expressed enthusiasm about helping others with similar problems.

Both Samul and Gopinath in Keonjhar, shared that they would guide the affected communities to the right institution, be it the regional office of the PCB at Keonjhar or the head office at Bhubaneswar and provide them the same booklets and legal material that they read for their case. While Mayurika expressed her willingness to closely work with community members reeling under similar impacts, she said *"I'll first go and see their site and understand what is wrong and then will tell them about the law, institutions and the process."*

Apart from this, most of the community partners had referred our work to other communities who were facing similar situations, where they could not help on their own. Paucity of time was the primary concern owing to which CPs shared their inability to actively engage in solving issues for somebody else, but other than that they were confident and interested in helping others.

These affirmative responses reflect well on the carefully curated efforts that ELCs put forth in terms of informing community partners about the laws and speaking and approaching formal institutions. Owing to their efforts, there is a considerable change in the way communities now engage with the law and institutions. These narratives not only testify the CPs willingness to advocate this approach but also highlights an opportunity for the program to use their leadership skills in expanding the use of this methodology.

e. Indicator 4: Critical reflection on laws, remedies and our approach

Building critical consciousness is an important element of empowerment, it essentially means enabling CPs to reimagine a broader vision of justice that is beyond their individual problem or a case or specific laws they used. In our work, most of the everyday justice issues that we are striving against are not one-off events, rather they are symptomatic of a broken governance system, which requires structural and systemic reforms.

Our methodology facilitates the process of developing critical consciousness in community partners through their engagement in the life of law, where paralegals helps the communities to use a legal lens to first see the gap between the reality and law and eventually recognise the gap between law and justice, while working towards bridging it. This transition was illustrated in the narratives of few of the CPs who were interviewed for this study. These respondents shared that while using the laws, they realised that they needed more than just compliance to the laws in place. They talked about deeper change in systems and bigger commitment from the regulatory authorities to address the root cause of their problems. Their vision of justice was beyond what existing legal provisions could provide them.

Through the interviews, a few CPs who had worked on this approach for a longer period or who had worked on complex issues, could critically review the laws and discuss the ways to make them more effective. For most of them, the existing conditions or regulations for abatement and prevention of pollution or other impacts from industrial noncompliance, clearly fell short of safeguarding their rights. They also felt an unresponsive or a partial regulatory authorities further deepens the enforcement gap on the ground. In spite of these structural bottlenecks, the affected communities, acknowledged that they have been able to navigate these barriers using the legal empowerment approach, however it certainly left them wanting more. Some of them, also shared how their engagement with administrative bodies, which either they were not aware of or only existed on papers, are steadily becoming more meaningful. They are using these interactions to seek an inclusive environmental governance along with interim relief in their cases.

Shaping regulatory practice: One of the most valuable achievement of the program is the shift in regulatory practice around site visits, most of the CPs are quite vocal about their participation in the site visit after the complaints, which as per the laws is to be done by the official in the presence of the violating unit. This lopsided legal mandate has been challenged by the CPs on the principle of natural justice, which necessitates the requirement of giving an equal opportunity to both parties to present their case. While site visits are a critical moment for the authorities to verify the claims made by the CPs, it has often been seen as an opaque process where the CPs are deliberately kept out, to let the institutions and violating units come to a mutual compromise on non-compliance. In most of our cases, the CPs along with the paralegals have put forth concerted efforts, by requesting their participation in the site visits. This has been useful in many cases where the CPs have been invited to the site visit where they were able to ensure that the site visit report recorded facts and actual evidence of violations and mentioned their lived impacts.

However, in cases where the authorities failed to invite community partners, the latter have been critical about this lapse. Daitari shares that when in his case the authorities did not invite him for the site visit organised on his complaint, he raised this with the authorities when he met them next. After this interaction, when the PCB authorities conducted another site visit to his railway siding case, he received a call well in advance to participate in the site visit process. He feels, sometimes, even the putting forth the right questions is all you need to set the systems to act in a responsible manner.

When it comes to critical review of legal mechanisms, the CPs agree that there is a need for stronger and stricter regulatory bodies which are accountable and pro-active in their job of regulating these industries. Secondly, few of them have specific suggestions related to their case which they feel could meaningfully arrest the impacts.

Dhanesh a CP fighting ground water pollution due to discharge of untreated water into the water source, says *"The government must make its compulsory for each and every chemical company to install their own treatment plants irrespective of scale of the company"* He further adds that PCBs must be accountable for all the complaints they receive and there should be time-bound action from them once they receive a complaint, which currently doesn't happen.

In few cases the CPs are even able to critique the legal remedies, which are in place and have shared how these remedies are myopic and ill-conceived. Ramesh bhai from Vapi shares *"The proposal under Vapi action plan of installing a deep sea pipeline is bogus, spending 55 crores on this is not required, by doing this we will be simply displacing the impact deep in the sea, where it will be much more difficult to monitor and catch the violation by companies"*

While offering these critiques, many CPs maintain that they don't want to shut down these development projects, rather what they are asking for is an effective way for both the projects and community members to co-exist without any conflict of interest. Lalji puts this argument in very simple words and says *"Company waale company ka kaam kare par humara toh koi nuksaan nahi hona, aisa bolna hai unko"* (Company should continue working but they should ensure their operations must not affect us adversely).

However for few CPs, it is no longer about co-exist in the present, rather they want to use this approach to secure their future and equip the younger generations with the right kind of knowledge. This process has raised the alertness of community partners towards other such projects coming in their areas. Nirupama, the Adivasi ward member shared *"The region of Nayagarh is very rich in resources but the people of Nayagarh have not benefited from any of it. There is a new company coming up nearby, it has already cleared up trees to start its construction. I want the next generation to use the law and protect the resources which we as a tribe failed to protect"*. Hence for many this is just the beginning of a long fight, to undo the wrongs of the past and secure their future.

Out of the 17 interviewees, 4 CPs have started working with the regulatory bodies to shape the regulations through submissions and personal interactions with the authorities. Deeper understanding of the problem and the remedies and well developed critiques of the regulatory system is a clear indicator of legal empowerment amongst these community partners.

Community networks: With CPs being able to see the bigger picture or drawing patterns on how their individual problems are not a standalone issue, they increasingly are emphasising the need to create a network of community members who are struggling against similar instances of environmental injustice. In addition to sharing critical views about the regulatory landscape, the community partners also suggested ways in which this approach could be widely shared in their areas. Most of them felt, that more and more community members needs to get legally empowered, so that more possibilities for collective action could be invoked to address these large scale structural problems.

While all of them shared their strong conviction in the process and the approach, most of them highlighted the need to hold more legal trainings on various laws and RTIs. The CPs also felt that the community legal trainings can be one of the ways that will ensure more people will come forward and get involved in cases, as they will understand more

about the problem and the available solutions with them. They shared that the amount of efforts which is required for the process becomes taxing for few individuals to keep up with and unnecessarily expose few to the risks. Hence expanding the CPs base would not only help in dividing the work but will also help in showing the strength of numbers before the unresponsive institutions and violating companies. Mayurika had an interesting idea to get more people involved. She shares how talking about cost and benefit from this process could be a good starting point for discussion, *“Logon ko pehli baari mein kanoon ke baare mein nahi samjhega par laabh aur ghata samajh mein aayega”* (people are interested in direct gains and losses, this perspective could be used to explain the utility of legal knowledge for them). Similarly, there are few other interesting suggestions to expand the base of legally empowered communities, which are as follows e.g. sensitisation session on environmental impacts of these development projects must be taken so that people don't feel that pollution is the necessary cost of having development in their areas. Community meetings must be held where CPs from neighbouring villages can come and share their success stories to give others the confidence to stand up and fight for their rights. They also shared that CPs across various cases must come together and form an association, this will not only help in pushing the institutions at state level but will also be an opportunity to understand the problems faced by our counterparts in other districts.

f. Ripple effects of legal empowerment

The above have been the reflections of our CPs from their experience of working on environmental violation cases around their vicinity, where few of them are already reimagining justice for themselves. However, the learning has not been restricted to the cases or issues they dealt with. CPs have also carried over this case work method of evidence based complaints to other kinds of issues they face in their lives.

Equipped with legal knowledge and practical experience of using the law, CPs are using these skills to evoke accountability across governmental institutions in their respective areas. Many CPs are actively using RTIs and laws for various entitlements with the local government bodies, e.g. Kishor has been using Panchayat regulations during Gram Sabhas to evoke accountability of the Gram Panchayat officials on various issues. While Mayurika shares, she has been using RTI on behalf of her women community members to inquire about delay in Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) wages, or delay in the appointment of the teacher at a local primary school.

The CPs who have achieved remedies in their case have developed a greater understanding of the problems and injustice around them. Working with a specific case has sensitised them towards the various environmental conflicts that non-compliance tends to create, which has pushed them to take up other environmental issues around their neighbourhood. Eight community partners who were interviewed have either started or are contemplating on working on few more cases of environmental non-compliance in their neighbourhood along with their original case.

For Nirupama, who belongs to Munda tribe, this process has not only helped in understanding laws and but has helped her build her own capacities as a ward member, she shares how compliance in her water contamination case has been motivating for her, *“I am very happy to have achieved this, I wish the tribal population of my ward to stay healthy and disease free. Even if my term is for five years, I would still like to make their lives better in this duration using law. I have knowledge about environmental laws and regulations now and I am interested to further learn about other laws.”* Similarly for Mangal, he feels as a young Sarpanch this legal knowledge is very critical to deliver his responsibilities and support his community.

For many of our community partners, the knowledge of law has contributed to their development as leaders in the community. The otherwise demotivated communities feel inspired by the success of the constant persuasion of few CPs and their longstanding faith in the legal process. In the initial phase, it is always difficult to motivate CPs to take up the legal route given the existing power structures and its bearing on the regulatory systems. Similarly, there have been cases where the CP who started the case had minimal support from the community but then over the course of time with partial remedies coming in, people started supporting the claims and the community support base grew for those respective cases. The individuals who braved the initial efforts now encourage more community partners to engage with regulatory institutions. Through the process of resolving their cases, they become interested in seeking systemic changes in the regulatory process.

In the next section, synthesizing from these learnings, we have outlined a community paralegal resource kit.

SECTION 3

Community Paralegal Resource Kit

Based on the regular feedback from ELCs and interaction with affected communities, we have developed materials that provide conceptual and practical support for the day to day case work and legal empowerment efforts. These materials will be used by ELCs and community partners in the next phase of work to deepen our work on environment justice for affected communities and build more effective regulatory systems.

We have designed five informative handouts on the following aspects of our legal empowerment approach:

- **Handouts on Socio-Legal Remedies:** Drawing from both conceptual theories and practical experiences of receiving these socio-legal remedies on ground, these handouts highlight the critical aspects that need consideration while communities seek meaningful and useful remedies from regulatory institutions. Under this section, we have covered two critical socio-legal remedies to environmental harms.
 - *Environmental Restoration as socio-legal remedy*- It provides basic conceptual information on what restoration is, while outlining some simple steps to pursue restoration, not only as an ecological task, but also as a social exercise for it to be useful, stable and successful for communities.
 - *Environmental compensation as a legal remedy in India*- It provides various prominent case examples and legal frameworks under which compensation has been granted as legal remedy, with a view to inform the ongoing and future dialogues between the communities and regulatory institutions on crafting effective and meaningful remedies to environmental harms.
- **Good practices for community trainings:** Building awareness and training of community members on how to engage with the law (know, use shape the law) are core aspects of the legal empowerment cycle. Hence in order to facilitate these critical learning and capacity building processes amongst community members, we have identified few best practices for community paralegals or organisers to work with. These best practices have been built upon our collective learning from organising a variety of training, capacity building and awareness building sessions amongst affected communities across multiple geographies and contexts.
- **Benchmarks for designing effective remedies to address environmental impacts:** Using years of experience of seeking and receiving remedial action to mitigate and prevent environmental harms from the noncompliant projects and industrial units, this handout outlines the four basic benchmarks every effective environmental remedy must follow. While environmental remedies are core to establishing environmental justice, it is equally important to lay down some broad benchmarks which inform these critical

socio-legal remedies. These benchmarks can serve as bright lines for any decision making process around environmental remedial actions to ensure that they are both effective and fair.

- **Deliberative decision making:** Our methodology aims to build a constituency of legally empowered community who are well-equipped to play a bigger role in the environmental decision-making process in the country. However if these decision making processes remain technocratic, one-sided and ridden with power dynamics, communities will achieve very little inspite of having a participatory space for themselves. In this light, we have outlined a deliberative approach to decision-making process which will not only make these key processes more democratic but also lend more transparency and effectiveness to it in achieving better environmental and social outcomes.

These handouts have been designed with a vision a create an easy-to-use resource kit for local communities and civil society groups, to support their efforts in advancing environmental justice across various regions.



HOW TO RESTORE LIVELIHOOD LANDSCAPES.

Communities that depend on forests, agricultural farms, rivers and other natural resources for their livelihoods suffer the problems of pollution and environmental degradation the most. Even after the source of the problem is controlled, and they regain control or access to their resources, communities face difficulties in resuming their livelihoods. In several instances, restoration is proposed and pursued as a possible remedy, but restoration is a challenging task for various reasons.

Restoration projects are taken up by courts, government departments, projects/industries, scientists and communities themselves. This handout provides basic information on what restoration is. It also outlines some simple steps to pursue restoration, not only as an ecological task, but also as a social exercise for it to be useful, stable and successful.



This handout is a part of Community Paralegal Resource Kit, a customised easy-to-use resource for local communities and civil society organisations working on the issues of environmental justice in any region.



RESTORATION. WHAT IT IS.	RESTORATION. WHAT IT IS NOT.
Restoration is a social process of arriving at and working towards a commonly accepted condition of a site (outcome).	Restoration is a highly scientific, purely ecological and technical process
Communities affected by degradation of the resource are central to restoration projects.	Restoration has no role for communities affected by degradation of a resource.
For cases of degradation, restoration and compensation are two possible remedies which can occur independently of each other.	Restoration is a way to use the money received as compensation.
Restoration is about restoring a site's relationship with the people dependent on it.	Restoration is about making a site look beautiful or converting the site into a recreation area.
It is an intentional activity that has to be undertaken after deciding the outcome. Restoration is best achieved after the activity that led to degradation is discontinued. The next best solution is to let the activity continue with measures to control further degradation.	Often, agencies initiate restoration of a site without knowing what outcome to pursue. Restoration is often initiated without stopping the activity that led to degradation of a resource.
Restoration of a site should serve those who got affected by its degradation.	Usually, restoration serves a group of people different from those who got affected by degradation of a site.
Process of restoration as important as the end result/outcome.	Outcome of a restoration exercise is all that matters.
Outcomes of a restoration exercises can vary from site to site.	Outcomes of all restoration exercises are accurate and look the same.

WHAT IS GOOD RESTORATION?

Restoration is defined as an intentional activity that helps to recover a degraded, damaged, or destroyed ecosystem. It is an attempt to revert an ecosystem to its earlier state.

Good Ecological Restoration is one that targets the most realistic possible outcome for a specific site based on ecological knowledge, and the diverse perspectives and needs of interested stakeholders.



HOW TO ACHIEVE RESTORATION?

- Deliberation is required to arrive at a restoration outcome that exhibits the above features.
- Since ecosystems are difficult to manage completely, achieving accurate results at the end of the process is not possible.

STEPS FOR PREPARING A SUCCESSFUL RESTORATION PLAN

1. **Gather information on the status of the site based on:**
 - a. Status of the activity that caused harm- has it stopped/is continuing/is continuing with safeguards?
 - b. Status of the resource to be restored- has the clean-up taken place? Are there any dependents on the site in its current damaged state? Is there any future risk of damage to the resource?
 - c. Earlier state of the site- what was the use of the site before the damage occurred?
2. **Identify the interest group.** Is it the same as the community partners? Are there earlier users/new dependents/both? It is okay if the interest group grows bigger or gains in diversity.
3. **Present the group with the gathered information** on the status of the site.
4. **Also collect and present information on laws and rules** for restoration, available resources (e.g. any restoration fund or conservation fund)
5. Discuss urgency of the situation (daily loss of livelihood/risk to life/deterioration of health if the resource is not restored). It may require striking a balance between efficiency (how soon the resource should be restored) and efficacy (how well the resource should be restored). In emergency situations, such as toxic leak, oil spill, etc. efficiency may take priority to ward off the immediate danger.
6. Based on 3, 4 and 5, deliberate with the interest group to agree on a realistic restoration outcome.
7. Develop a practical plan for achieving the outcome: identify roles, responsibilities and timelines for implementation.
 - a. Actors could be the community members, technical experts, administrative officials, government departments, project owner, etc.
 - b. Responsibilities could be financing, training, release of funds, overseeing, monitoring, protection, chemical/biological treatment, plantation, etc.
 - c. Timelines would depend on costs of delaying restoration, available resources, governance hurdles, etc.



Jindal Keonjhar dust pollution during Lockdown-2, Orissa. May 2020

RESTORATION IS A SUCCESS, IF THE SITE DEMONSTRATES:*

COMPOSITION	The components it used to have in the past. E.g. plants, insects, micro-organisms, animals, chemicals and minerals available in soil, water or atmosphere.
FUNCTION	Functions it used to perform before degradation. E.g. decomposition, photosynthesis, mineral and water cycles. Easily measurable indicators for these could be agricultural production/yield, fish catch, water quality, ground water table, etc.
DURABILITY	The restoration outcome is sustained over a significant period of time.

**These features can occur in varying degrees in different restoration outcomes.*

WHAT ARE THE POSSIBLE OUTCOMES THROUGH RESTORATION?

1. RECOVERY

The process by which an ecosystem regains its health to a certain level observed in the past is called recovery. A resource is considered recovered when it can sustain itself structurally and functionally.

2. REGENERATION

The process of bringing back the ability of an ecosystem to recover is called regeneration.

3. REJUVENATION

The process of reverting an ecosystem to a condition that is characteristic of its younger state is called rejuvenation.

4. REFORESTATION

The process of planting trees in a landscape is called reforestation.

5. REWILDING

The process of restoring a wilderness area is called rewilding. This can include reforestation, reintroduction of certain predators or keystone species and rejuvenation of soil.

6. RECLAMATION

The process of putting a degraded resource to a productive use is called reclamation. It can involve reverting to a former use or achieving a new use. Reclamation is commonly used in the context of mined lands.

7. REHABILITATION

The process of repairing the condition of a damaged ecosystem (including its structure and function) is called rehabilitation. It is not linked to a pre-existing state of that ecosystem.

8. REMEDIATION

The process of stopping or reducing the activity that damaged the resource is called remediation. In pollution cases, it means removal of the polluting activity and the contaminants from a site.



IMPORTANT QUESTIONS FOR DELIBERATING RESTORATION PROCESS AND GOALS

- **What to pursue:** regeneration, reclamation or rehabilitation?
- **Does it require a reference** to an earlier state or only improving the resource is enough?
- **To which pre-existing state** should the site be restored?
- **What/who is this restoration for?** Who gains, who loses?
- **Which function is to be restored?** How is it different from the earlier function(s)?
- **Is/Are aesthetics important?**
- Are there any negative impacts associated with the restoration exercise?
- **In case of certain irreversible damages, what kind of compromises** should to be made? Would compensation be an acceptable alternative then?
- **What time frame** are we looking for it to sustain for?
- **Should the process be active** (to regenerate using modern or traditional methods and techniques) or passive (to leave the land to restore naturally), or a combination?



ENVIRONMENTAL COMPENSATION AS A LEGAL REMEDY IN INDIA.

WHAT IS ENVIRONMENTAL COMPENSATION?

Mining, industrial and infrastructural projects have the potential to cause damage to individuals, their property, livelihood and the environment around them. Environmental compensation is the payment of damages for the harm caused to individuals and/or the environment. Payment of compensation is one form of remedy among others such as injunction against the violating act, punishment and/or penalties. Environmental compensation is an important remedy for environmental justice as it focuses on those who have faced the impacts while the other remedies are directed at the violator or wrong doer.

However, compensation by itself may not be a wholesome remedy. To achieve a meaningful resolution of environmental harm, compensation needs to be considered with temporary or permanent injunctions to stop the activity causing the damage and mechanisms to ensure that such harms do not take place again.



This handout is a part of Community Paralegal Resource Kit, a customised easy-to-use resource for local communities and civil society organisations working on the issues of environmental justice in any region.



WHAT ARE THE SPECIFIC LEGISLATIONS ON ENVIRONMENTAL COMPENSATION?

The two main legislations guiding environmental compensation are:

1. Public Liability Insurance Act, 1991: This law was enacted in the aftermath of the Bhopal gas leak case and the Oleum gas leak case (M.C Mehta vs Union of India), to create a mechanism by which victims of an industrial accident involving a hazardous substances could obtain timely relief. The Act imposes a 'no-fault liability' on the owner of the hazardous substance which means that the owner has to compensate the victims irrespective of any neglect or default on their part. According to this law, all owners of projects dealing with hazardous substances are expected to obtain insurance against the death and property damage that may be caused by accidents in the project. Accident is defined here as a sudden unintended occurrence while handling any hazardous substance resulting in continuous or repeated exposure of the same leading to death or injury of a person/damage to property/environment. The Act creates an Environment Restoration Fund (ERF) to be established by the central government where every owner must make a contribution. This fund is to provide relief to the victims of an accident. The Schedule of the Act provides for the amount of compensation to be paid in different situations.

2. National Green Tribunal Act, 2010: This Act established a specialised body called the National Green Tribunal (NGT) to deal with cases related to the protection of the environment, enforcement of any legal right relating to the environment and providing relief and compensation to victims of pollution, environment damage or accidents while handling hazardous substances. Providing compensation is one of the main objectives of the Act under Section 15 (1) of the NGT Act, 2010 allows the NGT to pass orders for restitution, restoration and compensation. This has to be read with Schedule II of the NGT Act, 2010 which divides the compensation payable under certain heads such as death, temporary/permanent disability, payment of medical expenses, damage to private or other property, expenses incurred the government or a local authority in providing relief, air and rehabilitation to the affected persons, or compensation for environmental degradation and restoration of the quality of the environment, loss of business or employment, claims arising from the cost of restoration on account of any harm or damage to the environment, including pollution of soil, air, water, land and ecosystems or on account of on account of any harm, damage or destruction to fauna and aquatic fauna and flora, crops, vegetables, trees and orchards or handling of hazardous substances.

WHAT ARE THE JUDICIAL PROCESSES THROUGH WHICH ENVIRONMENTAL COMPENSATION CAN BE GRANTED?

In case of harm caused due to environmental degradation and pollution, environmental compensation as a remedy can be granted under:

- Common law tort action against the polluter under the categories of nuisance, negligence, strict or absolute liability
- Application for compensation under specific legislations

HOW HAS ENVIRONMENTAL COMPENSATION BEEN CALCULATED BY THE INDIAN COURTS?

A perusal of orders and judgements of the Supreme Court, High Courts and the different benches of NGT show that there are several methods which have been used in order to calculate environmental compensation. While some cases have drawn upon existing precedents to proceed with the calculation, in other cases different methods have been used. Thus, while it is largely calculated on a case to case basis, the following table summarises some of the methods which have been used in order to calculate environmental compensation:

CASE DETAILS	BRIEF FACTUAL SUMMARY	METHOD OF CALCULATING COMPENSATION
<p>1.</p> <p>Sterlite Industries v. Union of India (Civil Appeal Nos. 2776-2783 of 2013 (Arising out of Special Leave Petition (Civil) Nos. 28116-28123 of 2010 before the Supreme Court of India)</p>	<ul style="list-style-type: none"> This case was filed as an appeal to the judgment of the Madras High Court by way of which, a copper smelter plant in Tuticorin, Tamil Nadu was ordered to be shut down. The order came in light of numerous accidents and repeated pollution by the plant since it began production in 1997. 	<ul style="list-style-type: none"> An amount of 100 crores was imposed as compensation as the industry was operating without consent and causing pollution. The interests that accrued from this amount was to be used for 'improving the environment in the vicinity of the company', while the principal amount was to be spent as decided by the Tamil Nadu Pollution Control Board in consultation with the Secretary of State. The court in this case said that the amount was decided by looking at the 'magnitude, capacity and prosperity of the company'. It was said that 'any less amount would not have the desired deterrent effect'.
<p>2.</p> <p>Ramdas Janardan Koli v. Ministry of Environment, Forests and Climate Change (MoEFCC) (Application No. 19 of 2013 before the Western Bench of the NGT)</p>	<ul style="list-style-type: none"> The applicants were traditional fisherfolk who had filed a case before the NGT on account of their livelihoods being impacted as a result of the construction of the 4th berth of the Jawaharlal Nehru Port Trust in Mumbai. The claim was that the extension of the berth was affecting the fisherfolk's right to access the sea through their traditional boats and that the widespread land reclamation had led to the destruction of mangroves which affected the fish catch in the area. 	<ul style="list-style-type: none"> The compensation in this case was calculated by taking two thirds of the estimated annual income of one family through fishing. An assumption was made by the Tribunal that three years is a realistic time to assume to switch over to some other livelihood, and therefore the loss for three years was accounted for. The NGT awarded a total of Rs.95,19,20,000 to 1630 families based on the above calculation method.

CASE DETAILS

BRIEF FACTUAL SUMMARY

METHOD OF CALCULATING COMPENSATION

3.

Him Pravesh Environment Protection Agency v. State of Himachal and Ors

(CWPII No. 15 of 2009
alongwith CWP No. 586
of 2010 of the Himachal
Pradesh High Court)

- This case was initiated by the Court on its own motion based on a letter sent in by representatives of 7 Panchayats in the Solan district of Himachal Pradesh.
- A cement plant had been set up by Jai Prakash Associates Ltd (JAL) in violation of the Environmental Impact Assessment Notifications of 1994 and 2006 and that the village common land had been wrongly transferred by the State of Himachal Pradesh from the common pool to the allottable pool and illegally handed over to JAL.

- The quantum of penalty levied was calculated as 25 percent of the total cost of the company. The court said that the damages should not bring the Company to a halt but at the same time the Company should feel the pinch of the damages and that these damages act as a deterrent in future to each and every person.
- The State was allowed to use Rs.10 crores of the penalty awarded to compensate the villagers for the mis-utilisation of their village common land.
- The villagers were to be compensated by creating common facilities which could be used by all the villagers such as schools, community halls, tube wells etc.

4.

Pravinbhai Jashbhai Patel v. State of Gujarat and Ors

(1995 GLR 1210 before the
High Court of Gujarat)

- Industries which had been set up in the Kheda district in Gujarat were releasing effluents into the Khari cut canal which in turn made its way to the Khari River.
- The Khari River was the only source of water for 11 villages in the district and the pollution from the industries had destroyed agricultural fields and affected water consumption for the villagers as well.

- In this case, 1 percent of the gross turnover of the company was imposed as the compensation amount.
- The amount collected was to be used for the socio-economic upliftment of the 11 villages and for improving educational, medical and veterinary facilities, agriculture and livestock in the said villages.
- In Deepak Nitrite Ltd. Vs. State of Gujarat & Ors (Civil Appeal No. 1521 of 2001), the Supreme Court (SC) was of the opinion, that while in Pravinbhai Jashbhai Patel's case there was direct evidence of damage having taken place and the Gujarat High Court had applied a standard of 1% of turnover to be paid by way of damages, but that cannot be a principle which can be uniformly applied.



5.

(Road Development) National Highway Authority of India v. Aam Aadmi Lokmanch

(Civil Appeal No. 6932 of
2015 before the SC)

- Illegal mining coupled with hill-cutting in Katraj district, Pune had degraded the environment of the area. As a result, an accident took place which led to the death of a mother and her child.
- The National Highway Authority of India and the private parties engaged in illegal mining were ordered by the NGT to collectively compensate the representatives of the deceased and deposit penalties in order to restore the damage caused to the area. The order of the NGT was challenged before the SC.

- The SC held that the NGT was well within its jurisdiction to award compensation based on a conjoint reading of Section 15(1) and Schedule II of the NGT Act, 2010.
- The NGT had awarded compensation in the following manner:
 - A sum of Rs. 50 lakhs to be paid as penalty for causing environmental damage. The amount would be deposited with the Collector and was to be used for hill protection and conservation in the district.
 - A sum of Rs. 15 lakhs to the legal representatives of the deceased.
 - A sum of Rs. 10 lakhs to be deposited in the office of the Collector for the plantation of trees to remediate the damage caused to the environment.


WHAT ROLE HAVE VARIOUS COMMITTEES PLAYED IN CALCULATING ENVIRONMENTAL COMPENSATION?

The courts have been assisted by expert committees to calculate compensation amounts and identify how they are to be distributed. The following table mentions few case examples where committees have been formed by the court to arrive at a quantum of compensation.

CASE DETAILS	BRIEF FACTUAL SUMMARY	DETAILS OF THE COMMITTEE FORMED	METHOD OF CALCULATING COMPENSATION
<p>1.</p> <p>Janardhan Kundalikrao Pharande & Ors v MoEFCC & Ors</p> 	<p>The plaintiffs in this case claimed that their fundamental right to good quality water for human consumption, animal consumption and agricultural use was being violated due to the pollution that was being caused by Jubilant Industries. They contended that the project caused contamination of the water of River Nira which has further caused deterioration of the groundwater quality in the nearby area and that the agricultural lands have been damaged due to the pollution of the river water. The NGT found the project in violation in its order dated 16.5.2014.</p>	<p>The NGT acknowledged that there had been loss of fertility of the agricultural lands of the villagers but there was no mechanism present to assess this loss. The NGT formed a committee to calculate this loss to be paid by the project. This committee was constituted by the District Collector (DC) of Pune consisting of an additional collector, regional officer of the Maharashtra Pollution Control Board, a nominee of Krishi Vidyapeeth Pune and a nominee of Central Ground Water Board. The committee was tasked to inspect the area, conduct soil testing, examine past revenue assessment and any other relevant factors to identify & quantify the losses. The NGT also ordered the project to deposit a tentative amount of Rs 25 Lakhs with the District Collector and also held it liable to pay a further amount if required as per the report of the committee.</p>	<p>In this case the committee was unable to calculate the loss to the crops. In a further order dated 20.02.2019 the tribunal constituted another committee to ensure the implementation of the order dated 16.05.2014. This committee formulated a 5 step methodology for assessment of compensation using various formulas:</p> <ul style="list-style-type: none"> • First step was collection of data of the village and its tabulation • Then collection of victim/ farmer data and determination of the actual yield of the farm • Next step was calculation of difference in agriculture productivity • Then the calculation of cumulative loss in productivity • Then calculation of cumulative compensation <p>The District Collector of Pune was directed to use this formula to assess the compensation amount. This committee also used the Central Pollution Control Board's (CPCB) method for calculating compensation to arrive at the amount of Rs 5,47,50,000 to be paid as environmental compensation.</p>



The Art of Living event site on the Yamuna Riverbank, March 2016.
 Photo credit: <https://bit.ly/2JLtt1h>

CASE DETAILS	BRIEF FACTUAL SUMMARY	DETAILS OF THE COMMITTEE FORMED	METHOD OF CALCULATING COMPENSATION
<p data-bbox="134 1122 252 1227">2.</p> <p data-bbox="134 1261 352 1429">Manoj Mishra v Delhi Development Authority Case (The Art of Living Foundation Case)</p> 	<p data-bbox="403 1137 724 1547">The Art of Living Foundation organised a 3 day world cultural festival in March 2016 along the banks of River Yamuna. The event damaged the flood plains of the river which was contended in this case in front of the NGT. The tribunal found the respondent to have caused damage and environmental degradation of the floodplains of Yamuna.</p>	<p data-bbox="759 1137 1054 1547">The tribunal constituted a High Powered Expert Committee to investigate the damage caused, if any and the environmental compensation payable for the restoration of the floodplains. The committee consisted of seven members who individually or in groups visited the site and submitted reports.</p>	<ul data-bbox="1106 1137 1458 2085" style="list-style-type: none"> • The reports submitted by the committee showed that there had been damage to the floodplains of the river. However here the committee reflected that estimating the cost of damages here is a very complex task and the Delhi Development Authority (DDA) is better suited to calculate the damages. The committee presented a restoration plan before the tribunal. • The tribunal directed the DDA to carry out restoration and restitution of the flood plains and to assess the quantum of damage and cost of restoration in line with the reports of the committee. • The tribunal directed the foundation to deposit a sum of Rs 5 Crores for the purpose of restoration. If the cost of actual restoration exceeded this amount the DDA could recover this from the foundation.



Jindal Keonjhar dust pollution during Lockdown-1, Orissa. April 2020

ARE THERE ANY GUIDELINES ON CALCULATION OF ENVIRONMENTAL COMPENSATION?

NAME OF THE GUIDELINE	BACKGROUND	METHOD OF CALCULATION
<p>1.</p> <p>Guidelines on Implementing Liabilities for Environment Damages due to Handling and Disposal of Hazardous Waste and Penalty (CPCB)</p>	<p>This document was put together in compliance with the orders of the NGT, Western Zone Bench in the Ramubhai Kariyabhai Patel and others vs Union of India and others (Application No 87/2013). The document is meant to help State Pollution Control Boards (SPCB) in the scientific handling of accidents especially in the enforcement of Hazardous Waste Rules clauses that impose liability on the occupier, importer, transporter and operator of a facility handling hazardous wastes.</p> <p>This document outlines various liabilities and describes approaches and methodology for valuation and levying of financial penalties that are to be imposed on a responsible party for causing environmental damages arising from improper handling/disposal of hazardous waste.</p>	<ul style="list-style-type: none"> • The guidelines describe the potential impacts of facilities handling hazardous substances on soil, groundwater, surface water, human health, flora and fauna (biodiversity), crops and public/private property like buildings. • The guidelines state the following categories of liabilities: <ul style="list-style-type: none"> • For immediate measures • For assessment of contamination • For remediation of contaminated sites • For payment towards damages (environmental loss, personal injury, property damage and economic loss)

NAME OF THE GUIDELINE	BACKGROUND	METHOD OF CALCULATION
<p>2. Methodology for assessing environmental compensation for non-compliance by industrial units (In-House Committee of the CPCB)</p>	<p>As per the directions of Honourable Tribunal in the matter of O.A. No. 593 of 2017 (WP (CIVIL) No. 375/2012), CPCB had developed a methodology for assessing environmental compensation for non-compliance by industrial units, which was derived based on pollution potential with respect to air/water/hazardous waste, scale of operations, days of violation and location factor.</p>	<p>The formula for the calculation of environmental compensation is: $EC = PI \text{ (Pollution Index based on the category of the industry such as Red, Green, Orange)} \times N \text{ (Number of days for which the violation took place)} \times R \text{ (A factor in rupees which can be between 100 and 500)} \times S \text{ (The scale of operation, i.e., micro, small, medium or large industries)} \times LF \text{ (A location factor based on the population of city/town).}$</p>
<p>3. Environmental Compensation charges against healthcare facilities and Common Biomedical Waste Treatment Facilities (Maharashtra Pollution Control Board)</p>	<p>This was done to comply with the order dated 12. 3.2019 of the Principal Bench of the NGT in O.A No 710 of 2017. In this order, the NGT stated that “the scale of compensation must be a deterrent rendering violation of Rules to be non-profitable and which should be adequate to remedy this situation.”</p>	<p>In these guidelines, compensation payable by the facilities was calculated based on “health risk factor, type of healthcare facility, size of operations collection, handling, storage, transportation and disposal of biomedical waste. For the waste treatment facilities, a pollution index was calculated based on compliance to emission norms, effluent discharge, sterilisation process and compliance with other processes under Bio-Medical Waste Management Rules, 2016.</p>



GOOD PRACTICES FOR COMMUNITY TRAININGS

ASPECTS OF TRAINING

TOPIC FOR THE TRAINING



GOOD PRACTICE

While choosing the topic for the legal training one can consider:

Broader issues specific to the group of participants. E.g. training on coastal laws for the coastal communities

Seasonal or time-sensitive issues faced by the participants.

E.g. legal training on water pollution laws during monsoon as the incidences of water pollutions are high during monsoons.

THINGS TO CONSIDER

Carry out a general recce of the village to see if there are any clear legal violations or any proposal for any upcoming project that could cause problems.

Scan media reports related to a village to make note of any high-impact cases of violations.

Interact with the local village community 2-3 times before organizing a training to get familiar with the context of the problem. Sometimes, the demand/expression of need for a training can emerge from the community in these informal meetings.

This handout is a part of Community Paralegal Resource Kit, a customised easy-to-use resource for local communities and civil society organisations working on the issues of environmental justice in any region.

ASPECTS OF TRAINING

DATE, TIME AND VENUE



GOOD PRACTICE

Let the participants decide the date, time and venue for the training as per their convenience.

THINGS TO CONSIDER

For deciding the venue, consider a neutral and a safe space, which is easily accessible and conducive to weather conditions.

Consider festivals, weather conditions, communities' occupational schedules, holidays, any recent successes in ongoing cases, etc. while deciding the date and time for trainings.

DURATION



GOOD PRACTICE

These trainings could be as short as 3-4 hours or a day long conversation with the participants, depending on the nature and purpose of the training and availability of community members.

THINGS TO CONSIDER

Duration of the training could be decided on two aspects:

- a. the availability of the community members,
- b. the receptivity of the community members.

For generic legal trainings, the duration could range from 3-4 hours, accommodating the timings within the routine of the community members.

For focused and intensive legal trainings, community members can be requested to take out time for training spread across a day or two.



ASPECTS OF TRAINING

SEATING ARRANGEMENT



GOOD PRACTICE

Participants should be seated in a manner so that everyone is visible and audible to each other. A circular or semi-circular seating arrangement serves this purpose, depending on the size of the group.

THINGS TO CONSIDER

If the participant group is new to the paralegal, it is better not to disrupt the manner in which the participants decide to sit. The seating arrangement may be governed by social and cultural beliefs of the group, which should not be challenged by the paralegal in the initial days of interacting with the community.

SIZE OF THE GROUP



GOOD PRACTICE

The size of the group can be decided as per the focus of the training and other external factors. An ideal size is between 20-25 participants. However, for intensive legal trainings a smaller group of participants with 10 or less members can also be trained.

THINGS TO CONSIDER

Trainings on issues that concern a large number of people, or are urgent may get more participants. In such cases, try to ensure that everyone participates and few do not dominate the discussions.

A number larger than 25 impedes meaningful participation of all and a smaller number is not the best use of paralegal's time and efforts.

However, in sensitive areas, keeping the size of the group small is a way to avoid risks such as unwanted attention.

LANGUAGE OF THE TRAINING



GOOD PRACTICE

Participants must be comfortable in understanding and communicating in the language used for the training.

THINGS TO CONSIDER

Sometimes certain languages are used by a small community and may or may not have a script. In such situations, the paralegal may have to decide between having the training material in local script with illustrations (in case of languages that do not have a script), and having the training material in the official language of the state.

Reading and writing in the official language could prepare the community members to communicate with the government agencies.

ASPECTS OF TRAINING

TEACHING AIDS



GOOD PRACTICE

To make trainings effective, it is better to use teaching aids such as pamphlets, charts, simplified versions of laws, bare acts, etc.

THINGS TO CONSIDER

If community members have faced problems pertaining to the topic of the training, they may focus even without pamphlets.

Visual aids are useful in trainings where community members have difficulty following the official language of the law

Teaching aids can be replaced with a brief visit to the site of the problem where the legal mandates on paper can be compared with the on-ground situation.

NATURE OF PARTICIPANTS



GOOD PRACTICE

Besides the community members, the trainings can also have panchayat members or government officials as participants. This is useful when trainings are held with a clear aim taking certain collaborative decisions or actions.

THINGS TO CONSIDER

Brief the government officials/panchayat members beforehand of the impending decisions to be taken. For instance, in Kumta, Uttara Kannada, a district in Karnataka, forest department officials attended the training on Solid Waste Management and decided to ally with communities on removal of garbage from community land.

ICE-BREAKERS



GOOD PRACTICE

Use street plays for non-controversial, universally accepted messages such as 'Save the Ocean'. Interactive Games can be used to get the participants to speak up and get comfortable in the group.

THINGS TO CONSIDER

Games can be effective icebreakers; however, keep the age, gender, socio-economic background, and education level of participants in mind.



ASPECTS OF TRAINING

TRAINING APPROACH



GOOD PRACTICE

It is better to take an inductive approach for training. Moving from discussing a problem and linking it to the law has been found more effective.

THINGS TO CONSIDER

Accommodate audience's opinions and need. For instance, they may share that they are familiar with the problems and want to discuss the law directly.

If using this approach, ensure to connect the problems of participants. This will help to invoke their collective interest.

GROUP DYNAMICS



GOOD PRACTICE

If a difference of opinion is observed among the training participants, avoid taking sides.

THINGS TO CONSIDER

If it is necessary to take a stand, for instance, while discussing next steps on a problem case, try to approach the difference in a logical manner, providing facts, past experiences, etc.

ASPECTS OF TRAINING

TRAINING CONTENT



GOOD PRACTICE

Design the content based on the profile of our participants

THINGS TO CONSIDER

Be flexible with the content. Observe the participants. Sometimes, for them, the issue is more important than the legal details; then, give more time to the issue and gently weave in the law.

TRAINING METHOD



GOOD PRACTICE

Spend less time on teaching and more time on discussion.

THINGS TO CONSIDER

Try to gauge participants' interest level and design the training sessions accordingly.

CONCLUSION OF TRAININGS



GOOD PRACTICE

End the trainings with some concrete decisions or commitments.

THINGS TO CONSIDER

It is better to decide 'next steps' such as focused follow-up trainings, identification of 2-3 problems to pursue, division of responsibilities, etc.



BENCHMARKS FOR DESIGNING EFFECTIVE REMEDIES TO ADDRESS ENVIRONMENTAL IMPACTS.

Development and infrastructure projects such as dams, mines, highways, landfills and industries put our environment under great stress. At the landscape level they cause impacts such as loss of biodiversity, contamination of land, air and water, fall in groundwater levels and depletion of forests and tree cover. These impacts also have direct consequences for communities living in these areas and dependent on these functioning ecosystems for their survival. Project location and operations can cause loss of land or access to resources, livelihoods and occupations. They can lead to drop in land productivity. Contaminated land, water and air can cause ill-health and disease in the neighbouring communities and workers.

Environmentally harmful activities and projects are mostly regulated by environmental bodies which impose legal conditions or safeguards and monitor their implementation by the projects. These conditions are seen to help mitigate or prevent harm to the ecology and society. However, the control or management of environmental impacts by projects have been mostly unsuccessful for a number of reasons. Most important among them is that the safeguards are not designed with the affected communities or ecologies in mind.



This handout is a part of Community Paralegal Resource Kit, a customised easy-to-use resource for local communities and civil society organisations working on the issues of environmental justice in any region.



As a result, affected communities have directly and indirectly engaged governments, regulatory bodies and the judiciary in obtaining effective remedies for their long standing problems. Even in these processes for remedies, the actions obtained by communities at the end of long drawn legal cases or governmental attention may not be practical and meaningful for them. Community voices are largely missing in the legal and regulatory processes to craft conditions, safeguards and remedies and so even when implemented, they may not address the needs of the communities at risk from environmental impacts of regulated projects.

This note offers four standards or benchmarks for communities to assess the usefulness of environmental conditions, safeguards or remedies involved in the regulation of environmentally harmful projects. These principles or standards are important to design mechanisms to make regulation of projects more meaningful and helpful to affected communities.

DOES IT OFFER A COMPLETE RESOLUTION OF THE PROBLEM ?

1. Conditions, safeguards or remedies must ideally be designed to provide a full resolution for an intended or existing problem. This principle is the most basic yet an overlooked aspect of how conditions and remedies are crafted within the legal framework. For a remedy to embody this principle, it is very important to ensure that the problem or issue to be addressed is defined and mapped adequately. This helps to design a condition or remedy that is commensurate in nature, degree and scale. The aim in designing the condition, safeguard or remedy should be to choose those which offer complete resolution of the problem rather than ones that are vague, short sighted and impossible to implement.

For e.g. A mining project in Keonjhar, Odisha, held stacks of iron ore ready for transportation by wagons, next to a village. In the monsoons, water from the stacks used to run into the agricultural land and rendered many farm lands uncultivable. Upon a complaint by the village community members, the company constructed a 1.2 metre high retaining wall. This was also legally mandated as a condition of the mine's, Consent to Operate. However, this wall construction was not a suitable solution to the problem and during one monsoon, when the stored stack overshot the built wall, once again the farm land was contaminated.





IS IT A LASTING SOLUTION?

- 2** ■ **If a complete resolution to the problem is of paramount importance, so is its sustainability.** Non-sustainable solutions or those that do not last could lead to re-occurrence of the environmental harm, they seek to address. Many a times, these problems come back in greater scale and intensity, pushing communities into a worse situation. These unsustainable remedies are also a drain on the resources of communities, project proponents and regulatory institutions. Money and efforts invested in them are wasted. Hence, the sustainability of safeguards and of remedies is central for effective protection against environmental impacts.

For e.g. In Uttara Kannada, a district in Karnataka, a stone crushing unit had been causing massive fugitive dust emission, affecting farmlands and a village nearby its facility. The stone crusher unit was operating in violation of The Karnataka Regulation of Stone Crushers Act, 2011. The Act had mandated the facility to be set up at minimum distance of 500 meters from any kind of habitation but it was almost adjacent to an anganwadi*. The community members pursued this problem with the state pollution control board, which directed the unit to address the problem. The project instantly offered some funds to all the villagers for livelihood damages because of dust problem. This remedy provided interim relief to community members but failed to give a sustainable solution to their problems, as the unit kept operating at the same spot.

DOES IT CREATE NEW OR ADDITIONAL PROBLEMS?

- 3** ■ **Environmental impacts are inextricably connected with the specific geographies in which they occur.** So all aspects of the environment must be factored into while deciding safeguards or remedies. A good remedy or safeguard should ideally not trade off environmental resources in order to solve environmental impacts. If not carefully designed, sometimes a remedy to a specific problem could raise a new issue that leads to its own environmental impacts. For e.g. Korba is a district in Chhattisgarh that has a number of coal mines and thermal power plants. Owing to the presence of these industrial and mining operations, the problem of air pollution is a major one. Coal dust from the transportation or handling of coal is a major issue for the residents of this region. Projects are expected to implement a number of protective measures to contain the dust from coal handling. But one popular remedial measure to address coal dust problem is water sprinkling. Water sprinkling is mandated to be done wherever coal is handled or transported. This measure may be an effective way to contain dust, but strains the already stressed groundwater resource in the region. This remedial action creates water scarcity for the local people during the summer season, when the water table is usually at its lowest.

* Anganwadi is a rural child care centre in India

4

DOES IT DISPLACE THE PROBLEM ON TO OTHERS?

A common practice by regulatory bodies and project proponents in addressing environmental impacts is to shift or displace the problematic or harmful aspects of the project operations to some other region or on to some other community where it is less likely to be noticed or contested. Such remedial actions must be avoided at all cost, as they expand the footprint of impacts rather than containing it. These actions also transfer the burden of impacts to those communities or areas who are unlikely to benefit in any way from the project operations. This leads to creating project beneficiaries and project affected people in different areas.

For e.g. Vapi, a district in Gujarat, known to be Asia’s largest chemical hub housing some major pharmaceutical and chemical manufacturing units in the country, toxic untreated effluents have been illegally polluting the rivers (Kolak and Damanganga) in this region for decades. The traditional fishing community of Vapi, affected most by the river pollution have made several complaints to the authorities at the district and state level. In response, the state government has come up with remedial actions. Rather than pushing the companies to treat their waste at the source, the authorities proposed to lay a deep sea pipeline which will transport the toxic waste from the companies and dump it in the deep sea. This remedial action has received a lot of criticism, because it merely displaces the problem into the sea, which would make it more difficult to monitor, will affect marine life and the fisher communities who operate in these areas. The State Government of Gujarat has also promoted deep sea pipelines as a policy directive across the industrialised coastal areas of Gujarat. This policy systematically transfers land based industrial pollution into the sea rather than prevent and regulate pollution.

CHARACTERISTICS OF A GOOD REMEDY	QUESTIONS TO CONSIDER WHILE DECIDING ON REMEDIES
Meaningful	Does this remedy fully resolve the problem?
Lasting	Does this remedy provide a long-term solution to the problem, and prevent its re-occurrence?
No trade-off	Does this remedy create any other problem for the community or for the ecology?
Non transferable	Does this remedy displace the impact to some other region or on other community?

WHO CAN USE THESE BENCHMARKS?

These benchmarks for approval conditions, safeguards and remedies for environmental impacts can be applied to a wide range of cases and issues. They help to guide any discussion or decision-making process on identifying conditions or remedial actions to address environmental harms from projects or activities. These could be used by communities as a basic checklist when they deliberate on what to seek as remedies for environmental impacts around them. These could form a part of the guidelines used by regulatory institutions in their decision-making process on approval conditions. They could also be used to inform judicial procedures to design legal remedies in environmental cases.



DELIBERATIVE DECISION MAKING.

WHAT. WHY. HOW.

WHAT IS DELIBERATION?

Deliberation is an approach to decision-making in which people

- Consider *relevant facts from multiple points of view*
- Converse with each other to *think critically* about options before them
- And, *enlarge their perspectives, opinions, and understandings* before arriving at a collective decision

Deliberation is one of the ways to communicate in order to arrive at a collective decision, whereby, participants do not merely represent their view; rather, they consider relevant information, discuss the issues at depth, and evolve their thinking before forming a final opinion about the issue.

It facilitates the *changes of views* of the participants in the light of new information, which contributes towards better understanding of the issue and better decisions.



This handout is a part of Community Paralegal Resource Kit, a customised easy-to-use resource for local communities and civil society organisations working on the issues of environmental justice in any region.



KEY FEATURES OF A DELIBERATIVE DECISION-MAKING PROCESS

- **Balanced Information:** The participants are provided unbiased and rational information in order to help them form opinions objectively. Information should be made both comprehensive and easily understandable for all participants.
- **Diversity:** The process must include varied opinions, views and arguments of participants.
- **Reasoned:** Participants are encouraged to take decisions based on carefully weighed reasons from the information and interactive discussions or rational argumentation.
- **Unconstrained Exchange and Open Mindedness:** Participants are free to express their opinion without any threat, risk, pressure or biased notions and listen to others, before arriving at decisions.
- **Equality and Respect:** Participants are respectful towards each other, and all opinions are treated equally. Power dynamics have no place in deliberative interactions.



While these are ideal features of deliberative processes and are difficult to achieve, it is useful to strive to achieve these standards.

WHY DO WE NEED DELIBERATION?

Existing models of participatory decision-making have either become tokenistic, or a platform where groupism influences decisions rather than information. These methods do not strictly rely on factual information and leave few participants with very limited or lack of influence on the final decisions. For instance, consultation processes followed for receiving comments on drafts of legal amendments or the process of conducting a public hearing as a part of Environmental Impact Assessments do not give communities sufficient relevant information, or space for discussions to fully understand issues. In such a state, we need a deliberative approach which will ensure that decisions are:

- **Rational:** Not intuitive or wishful, but reasoned and based on the best available information.
- **Inclusive:** Include diverse opinions, views and arguments of participants without the fear of differences.
- **Consensual:** Participants of the decision-making group agree to support the decision. It may not be the 'favourite' of each participant, but it is the 'acceptable resolution' for a set of known reasons.
- **Fair Process:** The decisions taken via deliberation may or may not be fair to all, but have been arrived at through a fair process.



HOW IS DELIBERATIVE DECISION-MAKING PROCESS RELEVANT FOR OUR WORK?

The deliberative decision-making process can aid the process of bringing communities together, and enable them to collectively craft remedies and regulations that directly or indirectly govern their lives, with a sense of partnership. This method of participation is not only more inclusive and meaningful, but it also results in the best group decisions.

THINGS TO REMEMBER TO FACILITATE A DELIBERATIVE DISCUSSION

- **Clear Objectives:** Participants must have a shared priority or common ground to discuss.
- **Discussions should be conducted in a neutral space** which is accessible to every caste, gender, physical abilities and religion.
- **Involve participants with diverse views** on the issue.
- **Balanced information** should be provided, and participants should be encouraged to present views which speaks to the information presented. Plain "commonsensical" views are not useful.
- **Despite different views,** everyone comes to a collective decision. The decision of the group is upheld as the best, and over individual choice at all times.
- **Facilitate open-minded, equal and active participation** from participants.





Deliberation is a shift from majority opinion because it aims to build consensus in a rational way through argumentation, but sometimes, the decision taken through deliberation can be a majority view based on information rather than groupism.

WHAT ARE THE CHALLENGES OF DELIBERATIVE DECISION-MAKING PROCESS?

While the deliberative process might sound a fair process of participatory decision making, it also poses certain challenges which are as follows:

- *It is difficult to achieve a neutral or safe space* for all participants to speak openly.
- *Deliberative processes can be slow* in achieving specific decisions. The diversity of views takes time to understand and process.
- *If views are not dealt with carefully*, it can lead to conflict and result in a deadlock.
- *Deliberative processes may be cost-intensive* because of several meetings and information needed in the short run.
- *The preparation for the deliberative process is more rigorous*. It should provide comprehensive and neutral information in simple language.

About Centre for Policy Research (CPR)

The CPR has been one of India's leading public policy think tanks since 1973. The centre is a nonprofit, independent institution dedicated to conducting research that contributes to a more robust public discourse about the structures and processes that shape life in India.

www.cprindia.org

About Namati

In a world where billions live outside the protection of the law, Namati is dedicated to putting the law in people's hands. It is building a global movement of grassroots legal advocates who work with communities to advance justice. These advocates are fighting on the front lines to ensure that people can protect their land, access essential services, and take part in the decisions that govern their lives.

www.namati.org

