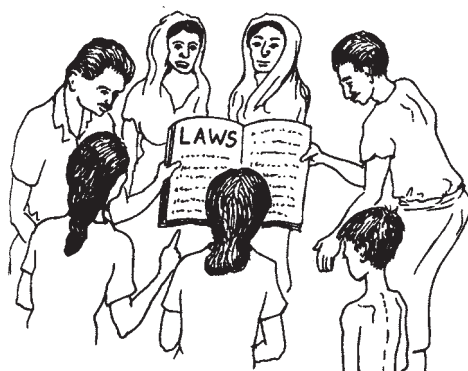


Appendix B:

Using Laws to Fight for Environmental Rights



Human rights, and sometimes environmental rights (the right to a safe, healthy environment) are protected by the laws of many countries. This book includes many stories about how people have worked together to make new laws to protect their communities, or have demanded protection under laws that already exist.

This section of the book includes information on how to use an **Environmental Impact Assessment** or a lawsuit to fight for your environmental rights. It also contains information about where to seek international help if your local and national courts and government do not protect you.

Communities struggling to protect their environment and health often face opposition and violence from corporations or governments that want to take their natural resources or pursue development projects, regardless of the harm they will cause. These projects may displace people from their lands, create terrible pollution, endanger public safety, or produce toxics that cause serious health problems. These are all violations of human rights and environmental rights.

Large corporations sometimes have so much money and power they are able to prevent governments from recognizing or enforcing laws that should protect you. When local and national laws are not effective, there are some international laws that may offer protections to you and your community.

The idea that people have environmental rights is a relatively new area of law, so the definitions of what those rights are and how they apply are still being determined. This makes every legal battle for environmental rights very important.

Environmental Impact Assessments (EIAs)

Because industry and development projects have caused so much environmental destruction, many governments, industries, and development agencies are now required by law to evaluate the effects of their projects before starting them. One common decision-making and planning tool is called an environmental impact assessment, or EIA.

An EIA describes how a project, such as building roads, mines, airports, or other industrial development will affect the people, animals, land, water, and air quality in an area. It may also look at social problems such as displacement of people and loss of cultural resources, such as traditional livelihoods, places of historic or spiritual importance, etc. An EIA must also suggest less harmful ways for the work to be done if a project is to go ahead.

An EIA may be done by a corporation alone, or it may be done by a corporation together with communities and government officials. (For stories about how 2 communities used an EIA, see pages 466 and 561.) But it is the responsibility of the government to decide if a project can begin.

How EIAs work

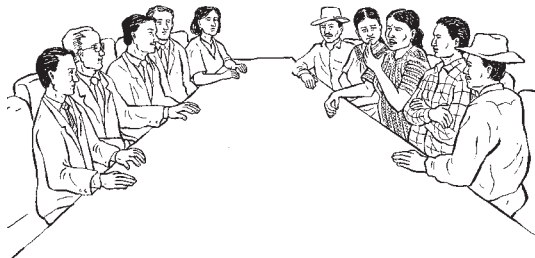
EIAs should involve 2 basic activities:

1. A study of the project's impacts and a written report describing these impacts. This is usually the responsibility of the company managing the project and may or may not involve community participation.
2. Public meetings to allow affected communities to evaluate the project before it begins.

An EIA works best when it is guided by the precautionary principle (see page 32). If an EIA shows harm may result from a project, the plan should be stopped or changed. But often EIAs are used to make a project appear harmless even though it will cause serious harm to people and the environment, now or in the future. It can sometimes help community members to ask a university or organization to explain the EIA and the impacts it describes.

Many companies write the EIA report before inviting community participation, rather than writing it with community participation. Sometimes companies do not publicize meetings about the EIA or they make the meetings difficult for people to attend. When an unfair

EIA process is rushed through by a company or government agency, it often leads to a situation where the project begins while the community campaigns to stop it. Nevertheless, EIAs can be an important tool for communities and governments to evaluate and improve proposed development projects.



How communities can influence an EIA

Getting lots of information from different sources (not just from the company) and taking the time you need to understand all the potential impacts, are important parts of exercising your right to participate in an EIA. Usually, many decisions are already made by the time the people who are most affected have any say.

Participating in an EIA process can help educate and organize your community to better protect its health and resources in the long term. Even if it is not always possible to stop a harmful project, educating and organizing around an EIA can help protect your community.



Demand to participate

Communities can demand a voice in an EIA. Sometimes a court, government, or development agency will allow community representatives to take part in the EIA process. People from the community may participate, or can ask an ally, such as an NGO or a lawyer, to represent them. If community representatives take part in the EIA process, they can then report back at community meetings about what the company is planning and doing. Participation can also help build an understanding about the community's rights and responsibilities, and the ways they may prevent harm from a project or prevent the project altogether.

Get the entire EIA report

Communities have a right to see the entire EIA document, not just a summary or a partial version. EIA reports often include sections called "Security Risks," "Social Risks," "Health Risks," and "Clean-up Costs." These sections may describe problems the company would rather not share, especially at public meetings. Communities and their allies can also identify errors in the EIA or important missing information.

The problems described in an EIA, as well as the problems ignored by the EIA, can be shared with media, government officials, and the public to help build broader resistance to harmful projects. You can also share them with national or international bodies, such as the United Nations, which may result in pressure being placed on corporations or governments to respond to community concerns.

Communities resist mining

The small farming community of Junín lies in a beautiful area of cloud forest on the slopes of the Andes Mountains in Ecuador. People here are poor but they have earned a living from the earth for hundreds of years. Recently, the people of Junín faced the biggest challenge in their history: a company planned to build one of South America's largest open-pit copper mines in their region.

When a Japanese mining company came to explore the area, people in Junín knew that mining could bring pollution. But the mining company promised to bring jobs and “progress” in the form of new roads and schools, so the people let them explore for minerals anyway. Before long, the company found a large deposit of copper, and the people of Junín soon found their water supply polluted with mine waste. People were soon suffering from skin rashes and other health problems.

The community asked the mining company to stop polluting. The company didn't stop, so the people of Junín took action. When the miners were away on holiday, hundreds of villagers entered the mining camp, removed tools, furniture, and other items of value, and left them with the authorities. Then they burned down the camp. The company got the message and pulled out, but later sold the mine to a company from Canada.

The Canadian company worked to divide the community. They offered people from Junín large amounts of money to sell their land. Some people did sell, but others refused. The company knew this would cause conflicts. The company also sent a doctor to provide health care, but only to people who signed a paper saying they were in favor of the mine. After making this injustice known, local organizations raised funds to open a community health clinic.

We continued organizing. Some villagers started a newspaper and community radio to keep us all informed.



The law in Ecuador requires an EIA before any development project can begin. The villagers knew that if an EIA was not done properly, the government would not allow the mine to be built. They also knew an honest EIA would show how copper mining would force people to move away, cause air pollution, erosion and silting of waterways, and contaminate the water with raw sewage, heavy metals, and other toxic waste.

(story continues on next page)

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The people of Junín had learned to use the law to their advantage. After the company claimed it had done the EIA, the government rejected it as incomplete.

People in Junín also used direct actions, such as refusing to let the company enter the area by blocking roads. Community leaders declared the entire municipality a non-mining zone. By using a variety of tactics, the people of Junín have prevented this open-pit copper mine from destroying their homes, their rich forests, and their water sources.



Community-based EIAs

A community-based EIA can help people in a village, town, or region come to a common understanding of the ways they use, protect, and depend on resources such as air, food, water, animals, forest products, plant medicines, sacred places, and so on. This can create a process for resolving conflicts and misunderstandings within communities about the use of resources. This can help build the unity needed to challenge corporations or governments. It can also help mobilize people to oppose industries which take advantage of divisions among people to exploit their water, timber, land, or other resources.

A community-based EIA can be as simple as discussing what resources the community uses and coming to agreements about how to best protect them from exploitation. A more complicated community-based EIA can include making detailed maps, conducting surveys, and building alliances with neighboring communities and supportive organizations.

A community-based EIA is different from an EIA carried out by corporations or governments. It may not meet the legal requirements of an “official” EIA, because it puts more importance on what communities think and the health of people and their culture than on exploiting resources. A community-based EIA recognizes that the difficult to understand structure and “scientific” language required in EIAs is not only confusing to most people, but purposely designed to exclude them. A community-based EIA is a way of saying “Another way to assess environmental impact is possible.”

Many of the activities throughout this book, such as mapping (page 15), sociodramas (page 18), health surveys (see page 500), watershed protection activities (page 164), trash walks (page 391), or other activities developed by your community can contribute to a community-based EIA.

Lawsuits

One way that environmental rights and justice can be won is by going to court to sue companies that violate national or international laws. A successful lawsuit against a polluting industry or company not only protects the people immediately affected, it also protects people in other places and future generations.

Will a lawsuit help your community?

Lawsuits have been used successfully in many struggles for environmental justice. But lawsuits are very expensive and they often take many years. If the lawsuit is against a corporation outside of your country, some international organizations may be able to help you find free lawyers (see Resources).

Even when a country has laws to protect health and the environment, it can be difficult to win a lawsuit in court. If the laws are not often used, judges and lawyers may not be aware of them. And in many countries, especially where corporations are very powerful, corruption among judges and politicians makes it difficult for poor communities to claim their rights. Unfortunately, there are many more unsuccessful lawsuits than successful lawsuits.

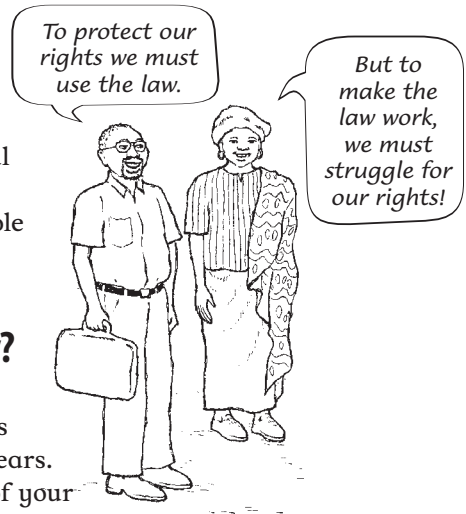
Before beginning a lawsuit against a corporation, industry, or government, think about whether it is the best use of your community resources. These are some things to consider.

Think about your goals

It is important to know exactly what you want a lawsuit to achieve. Then decide if a lawsuit is the best way to reach that goal. Do you want a company or the government to:

- clean up an oil spill or other toxic pollution?
- pay people for damages to their health, land, or resources?
- shut down and leave the region or country?
- avoid the pollution in the first place?

A legal battle can mobilize and educate the community. But actions such as boycotts, sit-ins, strikes, or public information campaigns may lead to negotiations or political settlements more quickly and easily than a long legal battle. Consider if these kinds of actions will be easier and more effective for your community to undertake than a lawsuit. Also consider if using both legal action and direct action will help your community to win.



Will a lawsuit be useful even if it does not succeed in court?

Of course you want to win your lawsuit. But if you are unsure whether your lawsuit can win, consider whether it will help or harm your cause if it does not win. A lawsuit can bring public attention to a community's problems and can bring diverse environmental groups together even if it does not win in court. If a lawsuit involving environmental damage and human rights abuse is unsuccessful in your country's courts, you may be able to take the complaint to an international body such as the Inter-American Human Rights Commission or the United Nations (see page 567). This still may not resolve the problem, but it can bring more attention to your issues; however, it also takes more time and resources.

Sometimes an unsuccessful lawsuit can make things worse. A bad result can lead judges and lawyers to think that future lawsuits should not win either. Negative publicity can cause people to think a community is unjustly demanding money or other rewards. And like any failed organizing effort, unsuccessful lawsuits can demoralize and divide a community.

Who will take the lawsuit to court?

The victim of harm, whether it is a person, a person's family, or an entire community, must be willing to take on the work and the risks of a lawsuit. Usually an organization cannot bring a lawsuit against a company on behalf of someone who was harmed but who is not willing to join the lawsuit.

Is there proof of harm?

For a lawsuit to succeed, you must be able to prove:

- The victims suffered physical or economic harm.
- The corporation caused or is responsible for the harm.

If there is not enough evidence to prove this, the lawsuit may do more harm than good. Even when it is clear a company has violated the law, without proof that they caused harm you may not be allowed to bring a case to court, and if you do, you may not win.

Is the proof available?

Only proof that can be brought to court is useful in court. People who bring a lawsuit because they have suffered harm must be willing and able to speak in court, and they must have witnesses who are willing to speak as well. They must be able to show through pictures, studies, medical records, or some other evidence that harm was done to them by the corporation being sued. Harm can be very hard to prove. For example, a company may hire a doctor to say that it was not the chemicals it used that caused cancer among its workers, but instead it was workers bad habits such as smoking tobacco, eating an unhealthy diet, or just bad luck. It can be very hard to legally prove "cause and effect" even if it seems obvious based on common sense.

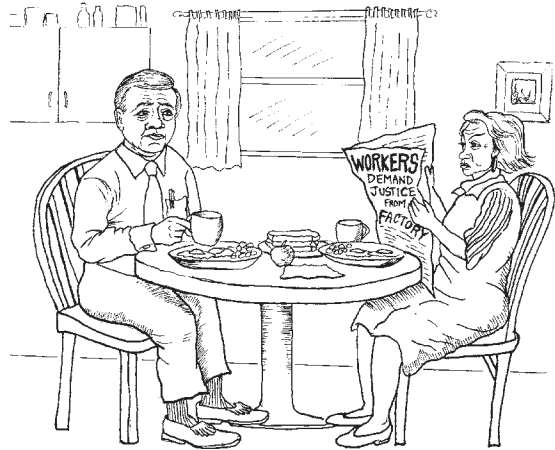
Who or what caused the harm?

Lawsuits can be brought against people, corporations, and in many countries against the government for causing environmental damage.

Is the lawsuit against a multinational corporation?

Multinational corporations often have offices in many countries. To successfully sue a multinational corporation it is necessary to work both in the country where the damage was done and in the corporation's home country. This can be costly and difficult, but it can be done (see the stories on pages 494 and 522).

Multinational companies often have branches in the countries where they work, called subsidiaries. It may be easier to sue the subsidiary of a company than to sue the foreign owner. For example, when the U.S. oil company Chevron polluted the Niger Delta in Nigeria, rather than suing the American company, local activists sued Chevron's Nigerian subsidiary. At the same time, international activists launched a campaign to educate people around the world about Chevron's human rights abuses, to pressure the company to change its practices.



Other things to consider

- Was the harm or abuse committed recently? A lawsuit must be filed within a certain number of years after the harm was done (usually no more than 10 years). This makes it difficult to win a case about illnesses that may take many years to develop, like cancers, even though these can be the most severe illnesses.
- Are the people bringing the lawsuit, their witnesses, and their lawyers willing to risk their safety? Many corporations and governments will stop at nothing to retain their power, including physical violence and murder. Those who challenge this power may put their lives at risk.
- Is there money to pay for the lawsuit? Court fees, lawyers' fees, international travel, phone calls, gathering proof, and other costs add up quickly.
- Are you able to work many years on a lawsuit? A lawsuit can take from 3 to 10 years or more. Sometimes the victims have already died by the time their cases are resolved.

Using the International Legal System

When national laws fail to protect health and well-being, a community can use the international processes and agreements explained in this section to pressure their government, bring attention to their struggle, or strengthen a lawsuit.

Many agreements signed by countries who are members of the United Nations (nearly every country in the world) protect human rights for all people. Some agreements also protect the environment. For example, see page 467 for a description of some of the agreements on toxics.



These agreements between different countries are sometimes called “conventions,” “treaties,” or “covenants,” but all the words mean the same thing. The agreements can only be enforced against governments, not multinational corporations.

In many countries, international agreements can be used in the national courts, although there may be restrictions. International agreements can also support and inspire our national campaigns to protect human rights and the environment.

Human rights agreements of the United Nations

According to the Universal Declaration of Human Rights, human rights belong to every person and cannot be taken away. Today there are 9 international agreements that protect human rights, which include the right to health and dignity. To find the text of the agreements and information about how they are used, visit the United Nations human rights website, www.ohchr.org, and click on “Human rights bodies.”

- International Covenant on Civil and Political Rights (CCPR)
- International Covenant on Economic, Social and Cultural Rights (CESCR)
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (CRC)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW)
- Convention on the Rights of Persons with Disabilities (CRPD)
- International Convention for the Protection of All Persons from Enforced Disappearance (CED)

Until recently, the only human rights agreement that mentioned the environment was the Convention on the Rights of the Child, which says that all children have the right to a safe and healthy environment. (All governments except for the United States and Somalia have signed the Convention on the Rights of the Child.)

In 2010, the United Nations also declared that the right to safe and clean drinking water and sanitation is a human right. This declaration could be very important for the protection of the environment. Even though the environment itself does not have rights, when governments violate people’s right to water and sanitation, we can now hold them accountable.

When a country violates an agreement

When a country violates a certain agreement, another country that has signed the agreement can bring a lawsuit to the “International Court of Justice.” But this rarely happens. A second possibility is that a person or group can send a written complaint to a United Nations committee when their country has violated specific human rights such as the right to live without discrimination or torture and the right to freedom of belief or expression. It is worth finding out whether your country allows people to send written complaints and under what circumstances. For more information, see the United Nations human rights website: www2.ohchr.org/english/bodies/petitions/index.htm.

Governments that sign an agreement must present “Periodic Reports” about the human rights situation in the country to a United Nations committee. In their reports, the governments almost never mention human rights abuses. Instead they may say “yes, there are problems, but things are getting better.” For this reason it is important for communities and NGOs to submit “Shadow Reports” that explain the real situation. Every 4 years, NGOs can also submit reports that are part of the “Universal Periodic Review” of their country by the United Nations.

These reports are the only way for the United Nations committee to recognize that abuses are happening, and if you publicize the reports they can help bring international attention. Whether the committee pays attention to the NGO reports often depends on the interests of the person in charge of the committee and the amount of public outcry.

Other United Nations declarations

Other United Nations decisions are not official agreements but declarations of moral obligation for all countries in the world. Moral obligation does not count for much in most governments, but talking about these declarations can sometimes strengthen our struggles and help protect our rights.

- United Nations Declaration on the Rights of Indigenous People (<http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>)
- Declaration on the Right to Development (<http://www.ohchr.org/EN/Issues/Development/Pages/DevelopmentIndex.aspx>)
- Declaration on Social Progress and Development (<http://www2.ohchr.org/english/law/progress.htm>)
- Dublin Statement on Water and Sustainable Development (<http://www.wmo.int/pages/prog/hwrrp/documents/english/icwedece.html>)
- Johannesburg Declaration on Sustainable Development (http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POI_PD.htm)

Special procedures

The United Nations has also established “special procedures” to address human rights abuses. Groups and individuals can use these special procedures by contacting human rights experts called “Special Rapporteurs.” They investigate human rights abuses that happen within their area of work (called their “mandate”), such as the right to food, the right to health, and the dumping of toxic wastes.

These Special Rapporteurs can be contacted with a simple letter, along with any news reports, documents, or other written information about the problem. The Rapporteurs then present a report to the United Nations with their recommendation. As with the Committees, the success often depends on the interests of the Rapporteur.

Sometimes a Rapporteur will visit the community, which can bring media attention and give credibility to the community’s demands. If you think that a visit would help your struggle for human rights, all of your communication with the Rapporteur should include an urgent invitation to visit the site of the abuses.

The names of the Rapporteurs, their mandates, and their contact information can be found on the United Nations Human Rights website (www.ohchr.org) under “Human Rights by Issue.”

Other regional legal forums exist, such as the Inter-American Human Rights Commission and the African Commission on Human and Peoples’ Rights. They have their own human rights agreements and procedures that are sometimes easier for people and communities to use. For more information on human rights procedures for countries in the Americas and the Caribbean, see www.oas.org/en/iachr/default.asp and for more information for African countries, see www.achpr.org.

