A legal guide for communities seeking environmental justice

How can Environmental Justice Organisations (EJOs), local communities or citizens make justice happen? What are the rules, tools and opportunities to fight back against environmental injustice?

The manual “A legal guide for communities seeking environmental justice” looks at a wide range of legal avenues that can work. It's made for those defending a worldwide frontline, a struggle against attacks to Mother Earth, the public goods and communities.

As this global struggle goes on and impunity becomes standard practice, the need for procedural justice is growing. Tapping into the competences and knowledge brought together in EJOLT’s program on Law and Institutions, this manual is written on which legal tools EJOs from all over the world use and how to expand them.

Tendencies in processual justice

Famous environmental lawsuits are explained in the manual to discuss tendencies and tips to obtain justice. In the last 20 years new practices like transnational trials and new dynamics among stakeholders have taken place. While some processual justice cases were successful, remediation, precautionary measure and non-recurrence still lack. Among the major trends, we can notice the fundamental role of collective or class action, where bottom-up processes have been implemented, like in the case of Shell in the Netherlands. Winning judgements are often based on the non-application of norms, of risk and security measures, or on the respect of duty.

A reason for hope is that the role of communities and EJOs role in such trials is increasing. They have brought innovative approaches to legal strategy, supported processual justice with fundamental information and proof collection and implemented communities’ participative processes for the development of claims and requests.

Another common asset is the visibility such cases have given to environmental injustice situations, which is fundamental to exercise pressure for example on a defendant company's image, as media attention brought on those trials reinforces the circulation information and awareness.

About the manual

The manual provides information on who can fill a lawsuit/action before a Court or institutional bodies, how it needs to be done and links to contacts and models of demands. It is composed of 3 main parts. In the first part you will find information regarding civil law tools at international, regional and transnational levels. The second part is about international, regional and national criminal tools and bodies. The last part provides information on the defence of environment defenders and other instruments and strategic views based on good practices.

- The manual also provides information on key concepts, guidance and practical examples on lessons learned from past legal experiences.
- The manual translates information that is often considered as ‘too difficult’ into a language that is easy to understand. It also wants to provide basic information for EJOs on how to defend criminalised or threatened environmental justice defenders.
- It aspires to be an easily accessible “online library”. The annex provides hyperlinks to further documentations and technical information and contacts of legal institutions and EJOs who work in this field.

While it is not exhaustive, the manual does cover ample information, including court cases, cross-countries legal instruments, etc.

Conventions and regulations

European level

- The European Convention for Human Rights
- The Aarhus Convention (UNECE)
- Environment Liability Directive 2004/35/EC

International level

- UN Special rapporteur on Human Rights Defenders allegation procedure
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Principles and concepts
- The polluter pays principle
- The precautionary principle
- The prevention principle
- Crime against humanity
- Endangerment crime
- Intentionality
- Serious negligence
- Economic, social and cultural determination
- Human rights defenders
- Responsibility to protect human rights
- Arrest and prosecution
- Victim of crime

Tips on
- Building environmental justice legal defense strategies
- Methodological approach to community involvement in legal actions

For more information
A legal guide for communities seeking environmental justice
EJOLT Report No. 17, available at: www.ejolt.org/reports
Or please contact the report coordinator: Lucie Greyi, A Sud luciegreyi@asud.net info@cdca.it

Court & Cases
From Europe
European Court of Human Rights
Case of Ms Fadeyeva v. Russia: Environmental pollution regulation in Russia
Court of Justice of the European Union
Commission of the European Community vs Italian Republic on waste crises in Campania (Case C-297/08)
Stichting Natuur en Milieu & Pesticide Action Network Europe v. European Commission on pesticide regulation Case T-338/08

From the Americas
Inter-American Court for Human Rights
Case Yanomami v. Brazil on mining and infrastructure projects in Yanomami indigenous land
Case Kichwa Peoples of Sarayaku community and its members v. Ecuador on non-prior consultation and oil impacts in indigenous land

From Africa
African Court for Human and People’s Rights
The African Commission on Human and People’s Rights v. Kenya on human rights violations of the people regarding forced displacement related to large scale logging

Economic Community of West African States Court
Social and Economic Rights Action Center v. Nigeria on Nigerian government responsibilities in Human rights violations related to oil extraction in the Niger Delta Judgment N° ECWCJ/JUD/18/12

From international levels
The International Criminal Court
The demand against Chevron Texaco CEO for Ecuadorian Amazon forest contamination (23/10/2014)

Cross Countries Legal Instruments
Alien Tort Claim Act - ACTA
DYNCORP case: Aguasanta-Arias et al. v. DynCorp and Arroyo-Quinteros et al. v. DynCorP regarding financial reparation of population impacted by fumigation of DynCorp within the Plan Colombia
Rio-Tinto Papua New Guine case regarding liabilities of the Rio Tinto corporation in crimes committed by the Papua New Guinea army and for the environmental impacts related to the Panguna mine
Chevron - Texaco case: Aguinda vs. Texaco case and Ecuador vs. Chevron Texaco regarding the liabilities of the Chevron Texaco oil activities in the Ecuadorian amzon and its impacts on local population

Ecuadorian Court of Lago Agrio
Dutch Court of The Hague
Friday Alfred Akpan vs. Royal Dutch Shell Plc regarding the impacts of Shell oil activities in Ikot Ada Udo communities in Nigeria

Other institutional and legal tools
In Europe
European Commission Infringement procedure and citizens complaint form
European Parliament petition procedure

In the Americas
Inter-American Commission petition procedure

In Africa
African Commission for Human and People’s Rights complaint procedure