

Increasing Access to Environmental Justice









A Resource Book for Advocacy and Legal Literacy in South Asia

J. Mijin Cha



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International Centre for Integrated Mountain Development

The International Centre for Integrated Mountain Development (ICIMOD) is an independent 'Mountain Learning and Knowledge Centre' serving the eight countries of the Hindu Kush-Himalayas – Afghanistan , Bangladesh , Bhutan , China , India , Myanmar , Nepal , and Pakistan  – and the global mountain community. Founded in 1983, ICIMOD is based in Kathmandu, Nepal, and brings together a partnership of regional member countries, partner institutions, and donors with a commitment for development action to secure a better future for the people and environment of the extended Himalayan region. ICIMOD's activities are supported by its core programme donors: the governments of Austria, Denmark, Germany, Netherlands, Norway, Switzerland, and its regional member countries, along with over thirty project co-financing donors. The primary objective of the Centre is to promote the development of an economically and environmentally sound mountain ecosystem and to improve the living standards of mountain populations.

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in South Asia**

J. Mijin Cha

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FOREWORD

For local communities in the Himalayan region, issues of environmental justice are an integral component of daily existence. With most mountain livelihoods traditionally dependent on access to land, tenure and use rights are fundamental to people's ability to feed their families. Tenure and use rights are also the most critical factor in motivating mountain people to either invest in and conserve their environment, or use it to satisfy short term needs. The injustice of many arrangements is all too common, and all too commonly a source of unrest and even violent conflict.

Today, new issues of environmental justice are also confronting mountain communities. A typical example of the basis for current environmental struggles in the mountains of the region is that the environmental burdens of hydropower generation (such as dams, changes in water flow, and resettlements) are carried by the mountain people, while the benefits (such as a safe and environmentally friendly supply of irrigation and electricity) are mostly enjoyed in the cities and the plains.

The basic idea of environmental justice is to explore the sharing mechanisms of environmental burdens and ensure that these burdens are not only laid on the shoulders of the weaker sections of the society. It is based on the larger ideal of the fundamental right of each individual to live in a clean and healthy environment. ICIMOD, with its long experience in mountain development, recognises that any environmental burden should be shared in an equitable way to improve the sustainability of development interventions, provide better motivations for conservation, and reduce social and economic inequities.

Most of ICIMOD's regional member countries have a good legal basis for ensuring environmental justice. However, knowledge about the legal options and processes is not widespread. With this resource book on advocacy and legal literacy in South Asia, we attempt to close a part of this knowledge gap and thus facilitate access to environmental justice opportunities. The knowledge provided by this book with its examples from Bangladesh, India, and Nepal should help users to become familiar with the basic legal concepts and practices related to the environment in these countries. It also provides a basis for training courses on this emerging and vitally important topic.

This resource book is an outcome of the 'Minority Rights and Environmental Justice' project initiated in 2004 by the Ford Foundation and ICIMOD. I hope that it will be of use to many people and organisations trying to decrease the environmental burdens of marginalised people and contribute to more socially inclusive and environmentally sustainable societies.

J. Gabriel Campbell, Ph.D.
Director General, ICIMOD
March 2007

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This manual is the product of an ICIMOD project on 'Advancing Minority Rights to Environmental Justice in the Hindu Kush-Himalayas'. The project is financially supported by the Ford Foundation and is part of a shared vision to increase understanding of, and access to, environmental justice. The struggle for livelihood security and access to and use of natural resources is an integral part of environmental justice, or injustice, as the case may be. As such, I dedicate this manual to those individuals who face this struggle and so bravely fight to assert their rights, even against seemingly insurmountable odds. It is my hope that this manual will provide tools that can be used in their struggle.

I would like to thank the Ford Foundation, ICIMOD, and ICIMOD's Director General Dr. J. Gabriel Campbell for providing me with the opportunity to work in the Himalaya and create this manual. In particular, I would like to thank Dr. Michael Kollmair and all my colleagues in the Culture, Equity, Gender and Governance programme. Special thanks to Ms. Radhika Gupta for all her help and support. The support of Susan Sellars-Shrestha (editing) and Dharma R. Maharjan (layout) ensured that this manual could be published in its current form. The review of Narayan Belbase (IUCN Nepal) provided additional value and insights to the content, as well as an update on the Nepal Interim Constitution.

Very special thanks to our friends and colleagues in the field who provided invaluable support and input in helping to shape the content and form of this manual. A special thanks to all our friends in the Chittagong Hill Tracts at Green Hill and Trinamool Unnayan Sangstha, and the participants who took part in our Environmental Justice workshop in Khagrachari district.

Finally, on a personal note, many thanks to my parents for their love and support, and to my friends in Nepal who helped make it a home for me.

Dr. J. Mijin Cha

ACRONYMS AND ABBREVIATIONS

ADR	alternative dispute resolution
BELA	Bangladesh Environmental Lawyers Association
CEQA	California Environmental Quality Act
CHT	Chittagong Hill Tracts
EIR	environmental impact report
NEPAP	Nepal Environmental Policy and Action Plan
NGO	non-government organisation
PIEL	public interest environmental litigation
PIL	public interest litigation
Rs	rupees
US	United States

INTRODUCTION

Environmental justice is a newly emerging idea in South Asia. While local communities have been fighting environmental struggles for years, environmental justice aims to look at the issues from a new angle. As part of a larger ideal of the fundamental right of each individual to live in a clean and healthy environment, environmental justice aims to ensure that marginalised and weaker members of a community are not forced to bear the main burden of environmental hazards or harm. There is an explicit recognition of the increased burden that marginalised communities face.

While the concept originally arose in the 1980s in the United States, the issues surrounding environmental justice have a different focus in South Asia. In particular, in the Himalayan region, access to and use of natural resources contributes significantly to the determination of what is, or is not, an environmental burden. For instance, the ability to access land for agricultural purposes affects those who rely on subsistence farming to a far greater degree than it affects those with other sources of livelihood.

ABOUT THIS RESOURCE BOOK

This book aims to provide a resource to community-based organisation (CBO) and non-government organisation (NGO) workers to increase local-level awareness of environmental justice, both as a reference book and, to a smaller degree, as a training resource. The theme of the resource book is how to increase 'legal literacy' (familiarity with basic legal concepts and practices) in relation to environmental justice. While there are several ways to access justice, this resource book focuses on legal ways because a basic awareness and understanding of the law is arguably the first step to accessing justice.

Often the idea of law and legal systems alienates individuals who have no experience with such matters. The purpose of this resource book is to provide information on law and legal systems generally and environmental justice specifically. Once familiar with the basics of law, individuals can then understand their rights and how to enforce them. This resource book also gives examples of situations where certain laws have been used to protect the environmental rights of a community or individual.

The resource book is divided into two main parts: Part 1 is generic and Part 2 is country specific. Part 1 is dedicated to increasing legal literacy, in other words, familiarity with the idea of law and the difference between customary and formal laws. It also defines environmental justice and introduces the idea of 'legal gateways' — ways in which the legal system and law-making systems can be accessed.

Part 2 sets out the relevant basic constitutional provisions and environmental legislation in Bangladesh, India, and Nepal. Rather than including every environmental statute, the resource book focuses on laws that directly affect rural communities in the Himalayas. For example, while laws regulating industrial pollution are not included, laws on forest use and conservation are included. Industrial pollution is more likely to affect urban populations than rural populations. Forest use and conservation, on the other hand, greatly affects the lives of rural citizens in the Himalayas.

Part 2 provides individual country environmental legislation to facilitate cross-learning between countries. For instance, advocates in Nepal can see how environmental legislation has evolved in India or Bangladesh and keep a few examples of successes in mind when creating or advocating for new environmental legislation within their own countries.

To further legal literacy and familiarity, two annexes are included in the resource book. Annex 1 provides a glossary of commonly used legal terms and expressions. Annex 2 provides a detailed discussion of public interest litigation. Public interest litigation (PIL) has been used frequently to enforce environmental rights since the 1980s, especially in India where the judiciary has developed an extensive body of PIL jurisprudence.

HOW TO USE THIS RESOURCE BOOK

This resource book can be used in two ways. Firstly, it can be used as a reference book for issues of environmental justice, as well as the basics of environmental law and legal systems. Secondly, it can be used as training material for advocates, civil society and community-based organisations to educate them on issues of environmental justice.

Suggested workshop format

The two-day training below is designed to assist organisations (NGO or CBO) working in environmental justice (or related fields) to increase legal literacy and the range of strategies and tools available to them.

Objectives: At the end of the training, participants will be able to examine and explore the concepts, strategies and tools of environmental justice and to reflect upon and assess their own environmental justice issues/context.

Suggested modules:

Day 1	Introductory Session:	Getting to know each other Expectations Training overview
	<i>break</i>	
	Session 1:	Conceptual and historical overview of environmental justice in general and in the South Asia context (lecture and discussion of Chapter 1).
	<i>lunch</i>	
	Session 2:	Environmental justice strategies and tools: the Kettleman City Case and the Adivasi Struggle (Chapter 1). Group exercise: Participants may break into at least two groups. Each group is given one of the above case studies to discuss and come up with a list of the strategies and tools used. Each group then presents their case and strategies/tools to the rest of the participants. The facilitator may also give participants a hand out of the strategies and tools listed after the case studies at the end of Chapter 1.
	<i>break</i>	
	Session 3:	Orientation to country specific environmental legislation in Bangladesh, India or Nepal (lecture and handout Chapter 4, 5 or 6). The focus could be tailored to one or more countries depending on the needs of the participants.
Day 2	Session 4:	Case study analysis to reflect upon the applicability of environmental justice laws in a particular context (Chapter 4, 5 or 6). Group exercise: Participants discuss, reflect upon and analyze relevant landmark cases, for example: <ul style="list-style-type: none">• Bangladesh the BELA Writ from Chapter 4• India the Delhi Air Pollution Cases from Chapter 5• Nepal the Godawari Marble Case and/or Thapa v. The District Forest and Morang from Chapter 6
	<i>break</i>	
	Session 5:	Action planning: The application of environmental justice concepts, strategies and tools to environmental justice advocacy in own community/country. This session could be supplemented by a hand out of Table 1: Legal gateways (Chapter 2).
	Closing Session:	Wrap-up Evaluation Closing