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Achieving Environment Justice Through Legal Empowerment

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Achieving Environment Justice Through Legal Empowerment

Manju Menon and Kanchi Kohli[1]

Introduction

India promulgated a series of environmental legislations between 1980 and 2005 to ensure that environmental and social impacts of land use change, infrastructure development and industrialisation are kept in check and timely mitigation is undertaken. Many of these laws and related notifications are regulatory in nature which lay down procedures and provide for setting up of bodies to study impacts before approving land use change by industrial or infrastructure projects in an area.

These laws also provide for the administrative steps that a government department or a project proponent needs to undertake before any application under aforesaid laws are processed. Carrying out Environment Impact Assessment (EIA), cost-benefit analysis for forest diversions, seeking 'consent to operate' certificates from the Pollution Control Boards (PCBs) and holding of public consultations are key features of various environmental laws implemented by the Ministry of Environment, Forests and Climate Change and respective PCBs.

Every approval or clearance that may be granted at the end of these legal procedures comes with a set of conditions, which needs to be followed during the construction and/or execution of the projects. These conditions are laid out by expert or advisory committees appraising project reports which range from general ones of following standards and stipulations prescribed by

[1] Authors are with the Centre for Policy Research-Namati Environment Justice Program. The authors would like to acknowledge the work of the entire program team, including the paralegals, managers and research associates without whom this applied research project would not have been possible. Authors can be contacted at manjumenon@namati.org and kanchikohli@namati.org, respectively.

[2] There are numerous examples of heads of governments laying the foundation stone of projects well

environment laws to more specific ones based on the nature of the projects and the regions where they are likely to be set up. For instance, clearance conditions for hydroelectric projects include extra care in dumping of debris generated during construction and controlled blasting. In the case of industrial projects, clearance conditions include the establishment of effluent treatment plants and continuous monitoring of various parameters including air, noise and water pollution levels.

In countries such as India, even before projects go through the approval process, there is political justification for them that the country needs investments, manufacturing and industrial growth[2]. This justification and the resulting compromised process of regulation hinges on the idea that the impacts of these nationally important projects will be minimized and mitigated through the implementation of stringent conditions. Therefore, the compliance of these regulatory conditions has a critical bearing on environment justice. Even if local communities and environments are given secondary importance over national progress and higher gross domestic product, compliance could reduce the local project impact and recreate healthy environment and opportunities for local people to live with dignity. Therefore compliance of environmental regulations is a *necessary but not sufficient* condition for sustainable development.

Non-compliance by industry is not merely an illegal act, it has real time impact on the environment as well as livelihoods of local people. For instance, in the Kutch district of Gujarat, the non-compliance of conditions related to mangrove protection during a port construction had an impact. First, the indiscriminate cutting of mangroves disrupted the flow of water in the ecologically fragile inter-tidal area used for grazing, fishing and salt production. The camel breeds that fed on these mangroves could not graze there anymore. Livelihoods of pastoral and settled grazing communities dependent on that

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before they are assessed for environmental and social impacts. Some of them are the Dibang Multipurpose Project (Arunachal Pradesh), Sardar Patel Statue (Gujarat), Gundia hydroelectric plant (Karnataka); Jyotika Sood, 'Sardar Patel statue project has no green clearance: activists', Down to Earth (7th November 2013), < http://www.downtoearth.org.in/news/sardar-patel-statue-project-has-no-green-clearance-activists—42645 > accessed on 31 July 2015; Dutt, Bahar, '*Green Wars: Dispatches from a Vanishing World*' (Harper Collins Publishers India, 2014).

[3] Mundra Hit Rakshak Manch, 'Violations of the Environment Clearance Conditions of the Water-

large tract of mangroves were adversely impacted. They had to approach courts for remedies.[3] In places like Mundra, good regulation of the environment is a *double insurance*; it is a medium of justice against abuse of spaces of the poor or marginalized people but also restricts the damage to the environment in general by pushing for better decisions for environmental sustainability.

I. The Extent of Non-Compliance

Research on the practice of environmental regulations indicates that though all approvals and clearances are granted with conditions, they rarely matter in regulatory action.[4] Project clearance letters state emphatically that if these conditions are not followed, the approval could be revoked, permission cancelled or consent to operate not renewed. While some of these conditions are procedural in nature, many of them are ones that can substantially alter the environmental impacts of an industrial or infrastructure project. For instance, conditions regarding the prevention of encroachment into forest areas by a project authority have clear purpose of restricting impacts. Similarly, conditions such as assuring compensatory afforestation following forest diversion would ideally help to recreate forest cover.

Such conditions need close range monitoring and enforcement by key departments. But within the legal framework, the responsibilities delegated to ensure compliance are highly fragmented. While one department may grant clearance, another monitors its compliance, a third one may issue a legal notice in the case of non-compliance and yet another agency may hold powers to penalize the violator. A recent study on Coastal Zone Management Authorities

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front Development Project of the MPSEZ Ltd, Mundra, Kutch (Gujarat) Findings of a community-led ground truthing process', (October 2012); Kanchi Kohli, 'Envisioning Environmental Futures: Conversations around Socio-ecological Struggles and Industrialisation in Mundra, India' in Khayaat Fakier and Ellen Ehmke (eds), *Socio-Economic Insecurity in Emerging Economies* (Routledge 2014).

[4] An empirical 2009 study by Kalpavriksh Environment Action Group on of non-compliance of environmental regulations in India revealed that the rate of non-compliance is above 90% for critical conditions that regulate mangrove destruction, ground water extraction, water pollution and encroachments. More details on this is can be accessed at OECD (The Organisation for Economic Co-operation and Development), 'Environmental Compliance and Enforcement in India: Rapid Assessment' (2006), OECD Programme of Environmental Co-operation with Asia; Kanchi Kohli and Manju Menon, '*Calling the Bluff: Revealing the state of Monitoring and Compliance of Environmental Clearance Conditions*' (Kalpavriksh, 2009).

[5] Manju Menon, Meenakshi Kapoor, Preeti Venkatram, Kanchi Kohli, and Satnam Kaur, *'CZMAs and*

(CZMA)[5] shows that even though rates of approval of industrial and infrastructure projects in Coastal Regulation Zones (CRZ) is 80% of the applications received, the monitoring of the clearance conditions of these projects is extremely weak. Post-clearance monitoring of approved projects is challenged by ambiguity in clearance conditions, inadequate manpower and funds and undefined roles for local bodies and local communities.

The legal clauses for official monitoring and reporting of compliance are vague, perfunctory and not easy to enforce by the regulatory agency. Drafting of conditions with the use of words like "adequate" and "as far as possible" in these conditions mean that compliance is assessed based on the relationship between the regulatory body and the industry or company[6]. Though recent studies have shown that third party monitoring can help make regulation and compliance performance stronger, this is very far from being incorporated into law[7].Due to these reasons, the non-compliance of environment laws is extremely high and in comparison, enforcement actions are slow or non-existent.

The Ministry of Environment and Forests did not maintain a centralized record of the show-cause notices issued for violations. The officers of the regional office were able to monitor a project every 3-4 years on an average, and that too not necessarily accompanied by a site inspection.[8] The options of revocation of clearance and suspension of activity are not exercised in spite of violations.

This has created an environment of impunity enjoyed by project developers who routinely and habitually engage in false reporting and non-compliance. In some cases, habitual violators have even been awarded expansions and

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Coastal Environments: Two decades of regulating land use change on India's coastline', (CPR-Namati Environmental Justice Program, 2015).

[6] Environmental regulation has earned the title of *license raj* due to such ad hoc, arbitrary and corrupt practices.

[7] Esther Duflo, Michael Greenstone, Rohini Pande, Nicholas Ryan, 'Truth Telling by Third Party Auditors and the Response of Polluting Firms: Experimental Evidence from India', (2013) NBER Working Paper No 19259 < http://qje.oxfordjournals.org/content/128/4/1499.full.pdf > accessed on 31 July 2015.

[8] Kohli and Menon (n 4); Menon et al (n 5).

extensions of their projects.[9] Lack of action on such cases means that land use change continues to cause long-term environmental and social impact. These practices leave large numbers of people vulnerable to the everyday effects of pollution, loss of access to community resources, restrictions on mobility and fear of loss of property and livelihoods. High levels of persistent non-compliance of mandatory legal conditions are a significant part of the challenge of sustainable development and environmental governance.

While successive governments have spent time on the issue of 'simplifying clearance procedures' for land use change to infrastructure projects to aid economic growth[10] there has been almost no attention given to ensuring that the chasm between environmental regulations and enforcement is closed and communities are protected from the impact of land use conversions and loss of livelihoods. Due to the low priority demonstrated by government in tackling the problem of non compliance, the only hope of remedy for project affected people lie with the judiciary. Notwithstanding the importance of the role of the judiciary, for many common people affected by environmental problems, it remains an expensive and time-consuming route to seek environmental remedies[11]. They are dependent for long periods of time on expert legal practitioners, court schedules and distant platforms of justice[12]. Even if orders and judgments offer justice to affected people, it remains a one-time event

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[9] Kohli and Menon (n 1); MoEF (Ministry of Environment and Forests), *Report of the Committee for Inspection of M/s Adani Port & SEZ Ltd, Mundra, Gujarat*, (Government of India, 2013).

[10] Priyadarshi Siddhanta, 'Govt mulls single-window system to boost steel, mining sectors', *Indian Express*, 24th June 2014 < http://indianexpress.com/article/business/business-others/govt-mulls-single-window-system-to-boost-steel-mining-sectors/ > accessed on 31 July 2015; Anonymous, 'Environment Ministry is no longer a 'speed-breaker', says Javadekar', *Hindu Business Line*, 2nd September 2014 < http://www.thehindubusinessline.com/industry-and-economy/environment-ministry-is-no-longer-a-speedbreaker-says-javadekar/article6373742.ece > accessed on 31 July 2015.

[11] According to UNDP's report of its 2012 conference titled Equitable Access to Justice: Legal Aid and Legal Empowerment, India has 1.3 million lawyers mostly engaged in private practice and India has over 30 million cases pending before courts (United Nations Development Program, 'Conference Report: Equitable Access to Justice: Legal Empowerment, Legal Aid and Making it work for the Poor and Marginalised, 17th - 18th November 2012' (UNDP 2012)).

[12] The National Green Tribunal (NGT), a specialized Green Court is located in four New Delhi, Pune, Chennai and Kolkata with circuit benches in Shimla and Jodhpur. Other environmental cases can be taken to courts at state, district and national level invoking their Public Interest Litigation (PIL) jurisdiction and raising larger ground such as constitutional safeguards apart from invoking environmental laws, which for which remedies lie before the NGT.

and does little to alter the situation of routine non-compliance by industrial and infrastructure projects after the case has been disposed off.

II. Community Paralegals and Environment Justice

Who are Community Paralegals?

For many people around the world—the UN has estimated 4 billion— the law is an abstraction, or a threat, but not something they can use to exercise their basic rights. In contexts where lawyers are costly, and often focused on formal court channels that are impractical for most people, the role of grassroot legal advocates, or "community paralegals" becomes an important one for bridging the gap between the law and real life.[13] Community paralegals can be simply understood as self-motivated representatives from an area or existing community organisers, who are trained in basic law and in skills like mediation, organizing, education, and advocacy. With these skills they are able to engage formal and traditional institutions alike to address problems arising out lack of basic services, citizenship rights, environment justice, health and security of community land tenure.[14]

This approach relies on the principle of client agency. Community paralegals do not treat their clients as victims requiring an expert service. They instead focus on legal empowerment— "We will solve this together, and when we're done you will be in a stronger position to tackle problems like these in the future." Community paralegals are different from conventional paralegals in countries like the United States. Their primary role is not to assist lawyers or act as field workers of law firms, but rather to work directly with the communities they serve. However, just as primary health workers are connected to doctors and hospitals, community paralegals can be connected to lawyers or other legal empowerment networks to exercise the possibility of litigation if frontline methods fail.

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[13] Vivek Maru and Varun Gauri," Bringing Law to Life: Community Paralegals and the Pursuit of Justice". This is the comparative chapter of a forthcoming book on community paralegal movements in six countries.

[14] Building a movement of grassroots legal advocates, note by Namati prepared in October 2014 and available on http://namati.org/wp-content/uploads/2014/12/Namati-who-we-are-how-we-work-where-were-going-2015.pdf.

These community paralegals use several strategies to advance justice. These include public education to increase awareness of the law; advising clients on legal process, and options for pursuing remedies; assisting clients to navigate authorities and institutions; mediating disputes; organizing collective action; advocacy; fact finding, investigations, and monitoring. In exceptionally difficult or serious cases, a paralegal can seek the assistance of a lawyer, who in turn may resort to litigation or higher-level advocacy. Often, the credible threat of litigation can lead more powerful parties to participate in mediation or negotiation.

Principles of Paralegals for Environmental Justice

Paralegal programs have been taken up for a wide range of justice issues. However, they have not been tested for regulatory non-compliance and public participation, which have a real time bearing on environmental justice. Bearing this in mind the Centre for Policy Research in partnership with Namati, a US based legal empowerment organization initiated an applied research pilot project to assess the possibility of obtaining remedies at district and state levels for environmental non-compliance through a community paralegal program. Between April 2014 to May 2015, a team of 9 Environment Justice Paralegals in the coastal areas of Gujarat and North Karnataka pursued 73 cases of non-compliance of legal clauses and regulatory conditions imposed on projects at the time of clearance.

As part of this applied research effort, the paralegals worked with clients who live in areas affected by environmental problems such as water pollution, restriction of access to fishing areas or grazing lands, ground water depletion, encroachment and lack of availability of mandatory local institutional mechanisms meant to address instances of non compliance. They identified the difficulties faced by clients with instances of non-compliance and specific legal remedies. This framing would then help identify the institutions responsible for the remedy as well as present the kind of evidence required to establish the claims of the affected people. They jointly worked with their

clients on translating lived experiences of environmental impact into legal evidence on non-compliance[15].

As part of their methodology they engaged a wide range of administrative institutions, including *gram panchayats* (village bodies), district governments, specialized legal authorities, and environmental departments. Cases were discussed with technical and legal experts for support and supervision on a weekly basis. All the cases were closely monitored by case tracking forms that was used for every case to record the nature of the problem, the goals of the case, the steps taken to achieve remedies and the reasons for closure of the case. The data from each case tracking form was also fed into a database. These data gathering tools help to systematically understand the role of Environment Justice Paralegals in the cases and the challenges they face in the creation of evidence and achieving remedies. Tracking data on every case allows for rigorous follow up, supervision, and also creates an empirical basis from which to argue for structural, policy improvements.

The following are the key principles that are at the centre of the work done by Environment Justice paralegals.

a. Selection of cases: There is no dearth of environmental problems or communities affected by them in India. In order to achieve maximum community benefits from their involvement in cases the paralegals selected cases with larger impacts on greater numbers of people and for longer duration of time over others. They also selected those problems to solve where there may have been a clear legal hook and so remedies appeared possible. Paralegals prioritised those cases where clients have already tried out some ways of seeking remedies rather than fresh cases as that may lead to creating a dependency on them. However, paralegals also tried out fresh cases, as they were critical for the environment or the community.

b. Selection of strategies: The strategies and institutions engaged were such that remedies could be achieved in the quickest and more comprehensive way

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[15] Mundra Hitrakshak Manch (Forum for the Protection of Rights in Mundra), Machimar Adhikar Sangharsh Sangathan (MASS), Ujjas Mahila Sangathan, and Namati-Centre for Policy Research Environment Justice Program, *'Closing the Enforcement Gap: Findings of a Community led Ground truthing of Environmental Violations in Mundra, Kutch'* (CPR-Namati Environment Justice Program, 2013).

as well as at locations closest to the clients rather than distant places. The paralegals were also committed to trying all possible strategies *between protest and litigation*, the two most common methods of dealing with land use and environmental injustices. However, in cases where clients had already tried out certain options before they approached the paralegal, the paralegals did not repeat those strategies unless they were seen as very valuable or critical for the remedy.

c. Documentation is Key: All good paralegals are aware of the importance of documentation. When done systematically, valuable lessons were learned from each case. Which is the best legal clauses to use, which agencies respond the quickest, what documents are needed for specific kinds of cases and other such details can be drawn from the case documentation maintained by paralegals. The cumulative data of all cases were useful to understand in which kinds of cases the paralegals were most effective, which kinds of cases needed the assistance of referral services and the extent to which paralegals helped to close the enforcement gap through the participation of affected communities.

d. Measure the legal empowerment effect: One of the critical aspects of the community paralegal approach is to rigorously test the principles of legal empowerment and joint problem solving of cases by the paralegals and the clients. When a case was closed, the community paralegal responded to three specific questions in the case tracking form: (a) Does the client think he/she can resolve a similar problem in future on your own? (b) If somebody else is facing a similar problem, will the client be able to guide him towards resolution? (c) Does the client know what to do if a similar problem arises in future? The answers were recorded in as "yes, no or partially." Responses to this would help evaluate the method for its '*legal empowerment effect*'. This was seen as critical for the long-term success of such an initiative as it creates a large number of empowered citizens who draw in the government on the issue of compliance not because it is merely a regulatory requirement but because it affects their lives. Legal empowerment breathes life into law (Namati 2014).[16]

[16] Namati. 2014. Case Tracking form, CPR-Namati Environment Justice Program, New Delhi.

III. Key Findings of the Pilot Phase of the Applied Research (March 2014 to May 2015)

The main findings of this pilot phase give us critical insights into environmental justice problems arising out of non-compliance of laws. It also presents some interesting data on the efficacy of this method to achieve legal empowerment as well as obtain remedies for specific problems. As of end of May 2015, the total number of cases that were pursued by five Environment Justice Paralegals for remedies on the Gujarat and North Karnataka coast was 73.43 cases covering 13 districts and 30 by four of them in North Karnataka covering 1 district. Out of these cases 20 of them were fully resolved and in 2 cases there were partial remedies and potential full remedies[17]. This gives an approximate 30% success rate. As per the method, in most of the 73 cases, the community environmental paralegals approached a government institution to seek resolution, thus activating the agency with legal jurisdiction to solve such problems rather than seeking justice elsewhere.

Kinds of problems for which remedies were demonstrated

The applied research project was implemented in two states in the west coast of India. While some issues were similar, all the sites that the Environment Justice Paralegals worked in had their own unique set of problems, attracting the provisions of different environment laws. It was only through the invocation of specific clauses in these laws that the community environmental paralegals were able to define the problem as a result of non-compliance of the law and seek specific remedies from concerned government departments.

In 73 cases, clauses of different laws were invoked. In the first year of the pilot study the laws that were invoked the maximum number of times by the paralegals, was the Coastal Regulation Zone (CRZ) Notification, 2011 (34) the EIA Notification, 2006 (6) both issued under the Environment Protection Act, 1986. The other legal provision which was substantially invoked in these was the implementation of the Coal Handling Guidelines (6) issued by the

[17] In these assurance is given or direction passed by a particular government authority but the remedy had still to be realized.

Gujarat Pollution Control Board drawing upon to the Air (Prevention and Control of Pollution)Act, 1981. In 4 cases, instead of a law community environmental paralegals relied on judgments of the Supreme Court or a High Court to seek remedies for the protection of common grazing lands or implementation of regulatory directions related to mining.

10 cases were such which did not involve any clear legal violation but the paralegals used mediation and legal education related strategies to draw upon the administration to seek remedies. E.g. one case involved the securing of boat parking for small boat fishermen in Dwarka district of Gujarat and another where the paralegal worked with a bivalve collectors group towards being able to access the remedies available for a recognized fishing community. Both these cases have been discussed in detail further in this paper.

The total cases include 32 cases of chemical plants and pipelines (11), ports and jetties (6), mining (4), commercial buildings and hotels (3), commercial salt production (4), power plants (2) and railway/road construction (2). The non compliance or violations by them relate to initiating construction without due regulatory approval or violating conditions of ground water extraction, dumping of effluent into rivers, encroaching beyond the land area as stipulated by clearance conditions.

In 9 cases related to pollution, the paralegals invoked particular clauses or guidelines issued under either Air (Prevention and Control of Pollution) Act which was enacted in 1981 and/or Water (Prevention and Control of Pollution) Act, 1974. One such case relates to dumping of effluent into the Kolak river estuary in Valsad district of Gujarat, through illegally constructed pipelines. The Environment Justice Paralegal involved in this case used the Right to Information route to ascertain responses from five different government departments, including the PCB on whether they had granted permission to any of the industries located around the estuary to construct pipelines along the estuary for discharging industrial effluent. When it was ascertained in writing that none of the departments had granted such permission, the affected fishing community along with the community environmental paralegal collected photographic evidence and filed a complaint with the PCB invoking the clauses of the Water Act. The remedy in this case

is yet to be given. However, the clients with whom the Environment Justice Paralegal has worked are now aware of the legal violations and have also managed to directly follow up with the concerned authority seeking action.

In 4 cases, the paralegals sought remedies to problems by seeking compliance to directions of either the Supreme Court or the High Court of the particular state. For instance, the Government of Gujarat had granted leases to carry out black trap mining in Mundra *taluka* of Kutch district Gujarat. These leases were granted on common lands used for grazing by the affected villagers. Several of them agreed to be clients in a case and worked with the paralegal in seeking remedy. They first approached the block and district level revenue officials with the directions of the SC in Civil Appeal No. 1132/2011 @ SLP(C) No. 3109/2011, which is popularly known as the "commons case".[18]As per orders dated 28th January 2011 all state governments were directed to prepare schemes and immediately evict all unauthorized occupants from common lands and nullify existing leases. The clients and paralegal also referred to a circular issued on 4th March 2011 by the Development Commissioner of Gujarat specifically for the protection of grazing lands and giving powers to the *panchayats* to do away with encroachments from such common grazing lands.

When no response was received from the district officials, the Development Commissioner's office had been approached for action. While the cancellation of the leases, which is the remedy sought in this case is pending, the submissions in this case have ensured that no work has been initiated on the grazing land despite the leases being granted in 2012.

In 7 cases, there were specific violations of the EIA Notification, 2006 or the conditions that were laid down under clearances issued to project authorities. In at least two of the 7 cases the villagers have complained that there is illegal withdrawal of ground water despite there being a clear condition in the approval letter prohibiting the project authority from doing so. This is crucial remedy for places like Kutch, which have been declared 'the dark zone' due to over-

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[18] Shalini Bhutani and Kanchi Kohli (eds), *A Case for the Commons (bimonthly newsletter)*, April 2014 (1), (Foundation for Ecological Security, 2014).

extraction of ground water and drought. Similarly, in at least 3 cases there have been complaints related to indiscriminate dumping of fly ash that is generated out of an industry or a power plant utilizing coal. In one such case in Gir Somnath district in Gujarat, a complaint to the Regional office of the PCBled to a show cause notice being issued to the company. This case is currently being monitored by the community paralegal and the affected community.

Level of government at which remedies are demonstrated

Depending on the nature of the case or where the concerned authority was located, institutions were approached at different levels. For instance, in 10 cases remedies were first sought at either the *panchayat* or block level mainly with either a particular *gram panchayat* or a block level revenue officer; in 20 cases remedies were sought at the district level. This was either with the District Collector, District Fisheries Officer and in some cases complaints were made to all the members of a District Level Coastal Committee (DLCC) chaired by the DC. These locations for remedies are closest to the affected people, thus eliminating time, cost and other resource burdens caused by distance.

In 21 cases the first level remedies were sought from a regional level body. In Gujarat, this was the main Regional Office of the PCBand in Uttara Kannada, it was the Regional Director in charge of the implementation of the CRZNotification, 2011. One of the important factors for many complaints being filed before the Regional Director in Uttara Kannada, is his responsiveness and collaborative approach to the initiative taken by the Environment Justice Paralegals. Empowered with the knowledge of the CRZ notification, affected clients, community paralegals and the Regional Director were able to address several cases of permissions for construction or repair of housing. Due to the work of paralegals, clients no longer fear this law, engage in distress sale of their property in CRZ or hesitate to approach the government for permissions.

In 16 cases, the Environment Justice Paralegals directly approached a state level authority like the Coastal Zone Management Authority (CZMA) or the State Pollution Control Board (SPCB). However, this does not mean that the first institution approached is the institution whose officials directed the

concerned remedy. In many cases community paralegals had to write to two to three institutions before one of them finally took responsibility. For instance in 39 of the 73 case, at least a second level institution had to be approached. This implied that either the case was reverted to a *panchayat* after having written to a district authority, or seeking remedy at the state level after a block or district level official was not responsive. In 9 cases the second level institution approached was a *Gram Panchayat*, in 2 cases a block level officer and in 7 cases a district authority. Eight cases were taken up at the regional level and 13 at the state level in order to seek remedies.

In the 22 cases the remedy was given (successfully or partially) which was through the response of concerned government institutions at different levels. In 12 cases it was the district level institutions, which gave the remedy. This was primarily because many of these cases were related to the setting up of the DLCC mandated under the CRZ Notification, 2011. Even though the directions can be issued by the CZMA, the final call has to be taken by the District Collector (DC). For all DLCC cases, it was the DC who was the first institution, which had also been approached by the Environment Justice Paralegals. In 7 instances remedies were at the regional level, either through the regional office of a PCB or the regional director (CRZ) related to housing regularization cases in Uttara Kannada. Three case remedies were received with the intervention of the state level PCBas all these cases relate to the compliance of the Coal Handling Guidelines.

Speed of remedies demonstrated

What factors help to resolve cases sooner? The database so far does not clearly reveal that some kinds of cases would secure quicker remedies than the others. It is often assumed that where an impact is directly linked with a clear legal violation and the redressal institution is available not too far away from the place of impact, the remedy can be faster. This hypothesis is yet to be proven in the present applied research, as relevant institutions might not respond to complaints even if they are meant to. Further, it has also required consistent follow up to receive responses, even if unfavourable ones.

However, it has already begun to emerge that there are some cases where it takes much longer to *first,* define "what is the problem" than to take steps to

secure remedies. One such case relates to the protection of livelihoods of bivalve collectors dependent on the ecologically fragile Aghanashini estuary in Uttara Kannada district of Karnataka. Bivalve and other Non-fish Marine Products collection is one of major source of income in Aghanashini Estuary. It is estimated at 22,006 tons, valued at Rs.57.8 million per annum. Most of the bivalves harvested belong to *Paphia malabarica*, although six other edible species are also gathered in lesser quantities.[19]

There were two inter-linked issues related to this case, which needed resolution. First, related to the fact that the Bivalve collectors were not recognized as a fishing community, and so they did not have any life or livelihood security as they carried out their occupation. They could not access any government scheme and have a stake in protecting the estuary in case of contested claims over it. Second, the estuary has been under threat from proposals for the construction of a port and a power plant.[20]

An Environment Justice Paralegal of this pilot project, who is also a bivalve collector himself, worked with the research team to try and secure remedies both for seeking recognition as a fishing group and also working together as a collective to ensure the conservation of the estuary. Even though these two processes went ahead as two cases handled by the community paralegal and a conservation researcher; they drew upon collective discussions and steps to seek remedies. The case of seeking recognition as a fishing community took 11 months starting from September 2013. In August 2014, the community paralegal received a letter from the Fisheries Department recognizing the bivalve collectors as fisher-folk. However, to receive schemes and benefits extended to fisher people, they needed to either become a part of an existing fishing union or register their own group. At the time of writing this paper, they were in the process of setting up their own union and the closest fisheries union

[19] Bivalve Collector's Group. Sahyadri Trust and Namati-Centre for Policy Research Environment Justice Program. 2014. Proposal for declaration of Aghanashini Estuary as Critically Vulnerable Coastal Area (CVCA) under CRZ Notification, 2011, submitted to Principal Secretary (Forests), Karnataka.
[20] Times News Network, 'Kumta fishermen oppose Tadri port expansion' *Times of India*, 21st March 2001 < http://timesofindia.indiatimes.com/city/bengaluru/Kumta-fishermen-oppose-Tadri-port-expansion/articleshow/34959968.cms > accessed on 31 July 2015; Manju Menon and Kanchi Kohli, 'A strange proposal to build Karnataka's largest port raises serious (and awkward) questions' 22nd March 2015, < http://scroll.in >accessed on 31 July 2015.

refused to extend membership to them on the pretext that they were now their competitors for government benefits.

The second case relates to declaring Aghanashini as a Critically Vulnerable Coastal Area (CVCA) under the CRZ notification, 2011. Although a collective proposal by the Bivalve Collector's Group, Sahyadri Trust and Namati-Centre for Policy Research Environment Justice Program was submitted to the relevant state government department in first in August 2014 at the regional level and in September 2014 to the State Coastal Zone Management Authority (SCZMA), it is yet to move ahead. One of the main reasons for this is that the Government of India (GoI) along with the National Centre for Sustainable Coastal Zone Management (NCSCZM) initiated a process of developing scientific criteria for CVCA and prioritise areas for such conservation measures.[21] This has caused confusion in the minds of the state level Coastal Zone Management Authority (CZMA) on whether they can declare the CVCAs outside of this process initiated by the central government. This is despite the fact that the specific clause in CRZ Notification, 2011 does not restrict any CZMA from declaring CVCAs if they would find it appropriate to do so.

Another case that took very long to be completed is the one to ensure the compliance of the CRZ Notification, 2011 and set up DLCC to be chaired by District Collectors. This was one of the most significant changes brought in by the 2011 CRZ notification. DLCCs were introduced by the new notification in order to support the huge burden of work and realize the lofty objectives of the CRZ notification. Without these DLCCs, this burden was placed upon a wafer thin and distant institution such as the CZMA in the state capitals (Menon et al, 2015). The introduction of DLCC members as mandated by the notification takes the number of people directly engaged in coastal governance from a mere 119 CZMA members to a minimum of 671. From initial notifications issued by various state governments, DLCCs are expected to add 585 members to the implementation structure of the notification. In Gujarat an order was issued on 14th October 2013 directing

[21] Details available on < http://www.ncscm.org/ cms/cmr/pdf/ research/Delineation %20and%20Mapping%20of %20Ecologically%20Sensitive%20Areas.pdf > as accessed on 25th June 2015.

the setting up of DLCCs. This order, G.R.No.ENV-10·2011-800-·E, also laid down the powers and functions of DLCCs in Gujarat, which included powers to verify complaints, assist in enforcement and also take measures to protect the coast. Despite this direction, there was no follow up in the nine districts where four Environment Justice Paralegals pursued cases along with community representatives as clients. Their objective was not just to ensure that DLCCs are constituted but also have the representation of three proactive community members as mandated by law. While discussing this legal clause with the community, the Environment Justice Paralegals had explained that this could be an important institutional mechanism through which remedies for environmental problems on the coast can be addressed.

However, there were a variety of challenges that the paralegals encountered. In a letter dated 24th August 2014, they collectively wrote to the Gujarat CZMA and pointed that there were key roadblocks due to which the DLCCs are not being formed. First, there was confusion regarding who had the final responsibility for the constitution of DLCCs as DCs assumed that PCB officers would initiate this process. As a result, DLCCs had not been constituted. Second, several DCs were unaware of the CRZ notification and the legal requirement to set up the DLCC and therefore did not prioritize the same. Third, it was difficult to get updates from the regional office of the PCB after the DCs referred the paralegals to them for follow up of setting up of the DLCCs.

It took the paralegals and clients almost an entire year from when they filed their first applications seeking information to ensure that at least nine DLCCs were set up on the Gujarat coast,. While this case ended in a success, their next challenge is to ensure that these bodies are functional and perform their role towards securing environmental justice.

Factors that are critical for effective remedies

There are several cases, which highlight the importance of legal knowledge, evidence-based data collection, and regular follow up in expediting the process of seeking remedy and thus ensuring that justice is achieved as soon as possible for clients affected by environmental problems. While the analysis of the cases is yet to be fully completed, the following cases help to illustrate the point.

In the case of the violation of the Coastal Regulation Zone (CRZ) Notification, 2011 by a tourist resort in Kumta *taluka* (block), Uttara Kannada district of Gujarat, the remedy was pending despite the problem being first identified by clients since the project construction started. Following the methodology, the Environment Justice Paralegals collected photographic evidence and found out whether the hotel had violated statutory provisions. He alongside also interacted with the villagers to find out the relationship between non-compliance of the law and impacts on the local area and people. He found that the encroachment of public land by the hotel complex had caused problems such as access to common lands, shortage of drinking water and displacement of the creation ground. Rather than presenting the impacts alone, the list of violations were identified and submitted to the Regional Director (Environment), Forest and Ecology & Environment Department, Karwar. The Regional Director did a site inspection after being persuaded and assured the villagers that action will be taken within a week. Two show cause notices were issued. Meanwhile, one of the affected the *Gram Panchayat* also served two notices. They questioned compound wall being constructed in an area ascertained as No Development Zone as per law. Although no remedy has arrived from these forums, it is significant that the paralegal's consistent role in the case has resulted in legal notices being served and now these official documents will be the basis of seeking remedy.

While the data on all the 73 cases as part of the applied research are being analysed to ascertained the value addition of the paralegal approach to environment justice problems; some specific examples and experiences of the Environment Justice Paralegals to address long standing environment justice disputes provide insightful lessons.

One such case refers to an Environment Justice Paralegal's efforts to secure additional parking space for small fishing boats near Dadla Bander in Devbhoomi Dwarka district of Gujarat. About 450 local fishermen used the existing parking place to park their boats. However, there was pressure on the area, both due to fishermen from faraway places such as Billimora, Valsad and

Navsari also visiting the coast for seasonal fishing, and parking their boats in the same space, which has reportedly increased since year 2012. The affected community had taken a few steps like creating maps and speaking to local government officials. A community paralegal, also part of the Machimar Adhikar Sangharsh Sangathan and the local fishing union started working on this case in April 2014. Since then, through systematic follow up and armed with the knowledge of law and administrative procedures, the community has themselves been able navigate the case towards resolution. They first ascertained that the area proposed for boat parking was outside the boundary of a marine national park (MNP) by persuading the wildlife department officials to come for a site inspection and clarify the matter. Until then, the assumption by all parties was that this area was within the boundary of the Marine National Park.

Once it was confirmed that the proposed boat parking area was 100 metres away from the MNP, both the Gujarat Maritime Board and revenue officials also confirmed that there was no objection in securing land for boat parking and the matter could be decided by the Fisheries Commissioner. The case is now pending final resolution, a year after the applied paralegal method was initiated. Even though this case has taken a year to reach a point of clarity, this is crucial for the possibility of remedy. The Environment Justice Paralegal and the people he worked with are now in a clear position to assist any other fishing union/association or interested group on what steps need to be taken. With them being legally empowered, other such cases are likely not to face such roadblocks. As the community paralegal himself remarked, "The difference the paralegal approach has is that it has shown us the importance of trying multiple avenues at the same time to address an issue and not get stuck to one. This had been the case earlier, which we had been doing. Regular follow up has also meant that the issue is kept alive and there is pressure on an institution to respond. Weekly follow up through the research project ensured that the case moves rapidly towards resolution. This pace would have been difficult to maintain if communities were left to resolve this case by themselves, as they have their own time constraints and livelihood demands."

Conclusion

Improving environmental regulation: what can these cases teach us?

Some preliminary lessons for policy and regulatory reform that the paralegal practice towards seeking environment justice brings out are:

Assessing Performance of Environment Laws: The cases taken up by Environment Justice Paralegals are illustrative of the kinds of environmental impacts caused by non-compliance of environmental laws. The data generated by paralegals on non-compliance could be a valuable source of information to the government on the performance of environmental law. They show that environment regulation cannot be an end in itself but a means to reducing negative environmental and social consequences of industrialization and development.

Building a case for outcome based legislations: Lessons for every case that paralegals work on and resolve, benefits large numbers of people in the local area and if the remedies are replicated in other areas facing similar impacts, the benefits of the remedy can help large number of citizens even across boundaries. Policy lessons drawn from paralegal cases could also help recommend more effective outcome based regulatory procedures and enforcement in case of violations.

Public Participation in compliance and Third Party Monitoring: The paralegal approach to compliance brings government and people closer. It demonstrates the benefits of public participation in achieving compliance rather than viewing affected communities as antagonistic to government's efforts for development. The documentation and evidence of non-compliance produced by affected communities could be treated as third party audit reports, based on which action could be taken by regulatory authorities.

Legal Aid for Environment Justice: The processes, time and cost factors involved in solving environmental problems by approaching the nearest government office/agency with jurisdiction helps to design effective grievance redressal institutions for communities affected by such problems. The Legal Aid system presently has no provision for communities specifically impacted by environmental problems. The experience of paralegals for environment justice could also open the possibility of such institutions outside of the court system.