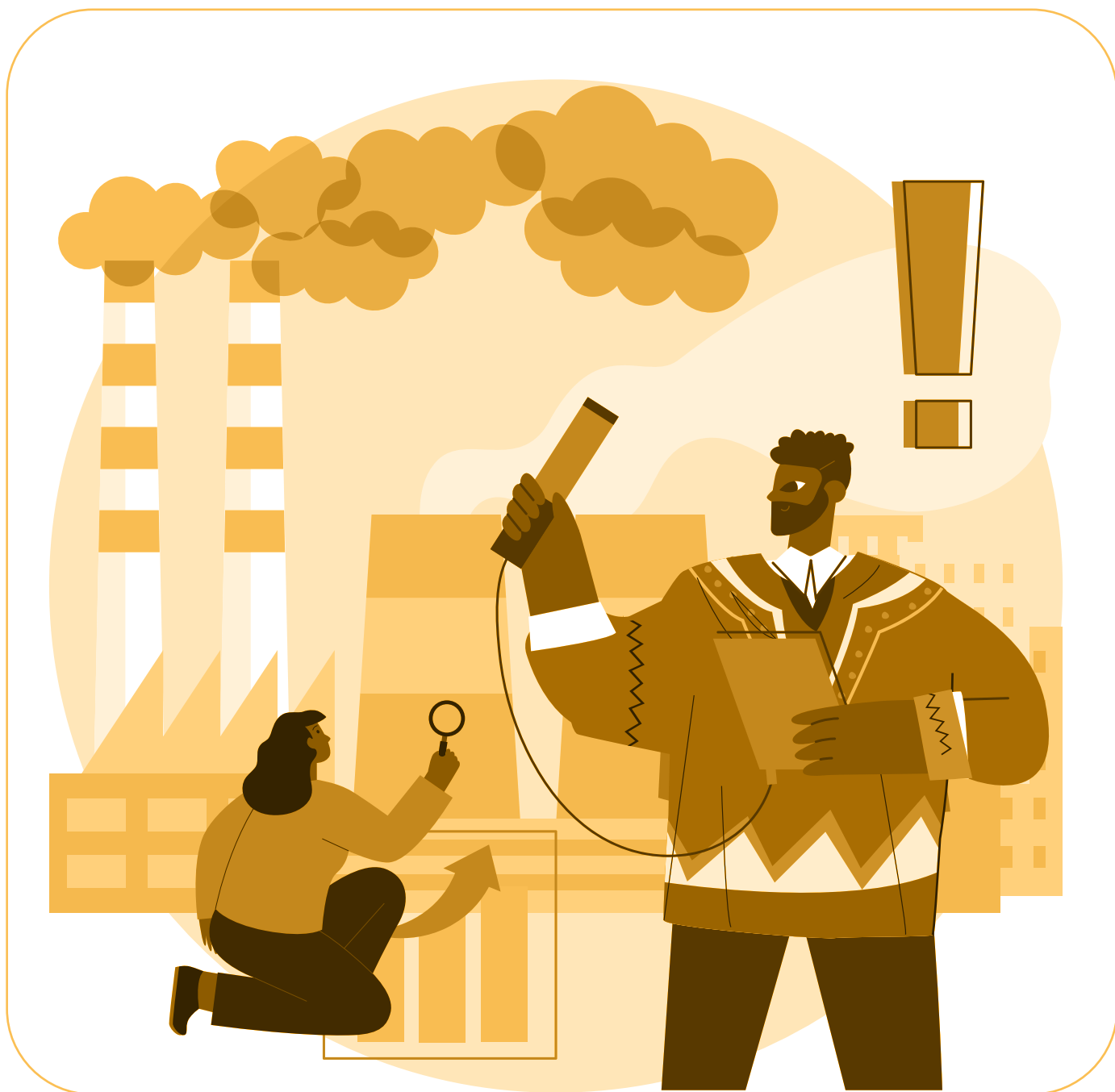


HEALTH OF MOTHER EARTH FOUNDATION

Toolkit for Evidence Gathering



(Community Guide)



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Introduction

Industries such as oil, gas, and manufacturing often harm the land, water, air, and ecosystems in the communities where they operate. Sometimes this damage is obvious, but other times it happens slowly or secretly. Because of this, it is very important for community members to pay attention to changes in their environment and collect evidence when something seems wrong.

Polluting companies often escape responsibility, not because the harm didn't happen, but because there was no strong evidence presented in court. Courts make decisions based on proof not emotions, complaints, or suffering. For example, even if fisherwomen lose their nets to an oil spill, this alone is not considered evidence. And a lawyer, no matter how brilliant, cannot win a case without physical proof.

While companies try to show that their operations are safe, it is usually the community and the environment that suffer the real consequences. This is why people in affected areas must learn to monitor their surroundings and gather solid evidence such as photos, videos, witness statements, and samples of polluted water or soil. This kind of evidence is what helps communities demand cleanup, compensation, and justice.

Environmental monitoring and evidence gathering work hand in hand. Monitoring helps people notice when something is wrong, and evidence gathering helps them prove it. Together, they create the pressure needed to make polluters stop harmful practices and take responsibility for the damage they cause.

NOTE: Before we start the training, everyone needs to understand why we are doing it. The activity belongs to the community, not outsiders. The questions and ideas shared are only guides nothing is forced. Community members are the key people in this process. They should know that what they learn and produce here will help them protect their land, water, and other natural blessings in the future.

MODULE 1:

Environmental Monitoring

A. What is Monitoring?

Environmental Monitoring is defined as the *intentional* observation of the physical environment, and this encompasses the land, air and waterbodies around for harmful factors such as toxins, bacteria, chemicals and other pollutants in a specific location.

B. Why Monitor?

The importance of Community environmental vigilance cannot be overstated. It is through monitoring that the harm being done to the environment and our ways of life can be discovered. Monitoring enables communities to examine and know what changes or impacts exploitation, and related activities bring to the environment.

If environmental monitoring is not done, the environment and the lives of the people in it will be left at the mercy of extractive companies and other external bodies who are only interested in exploiting the environment without a sense of responsibility and regard for consequences and impacts on communities, their health, spirituality, socio-cultural, traditional livelihoods and their wellbeing.

When community folks monitor the environment, they demand the strictest adherence to standards-encouraging or forcing operating companies to avoid bad environmental behaviours. They also enforce their inalienable right to a healthy environment, a right to live in dignity and pass same to the next generation.

C. Who Will Monitor

Now that we know why we must monitor the environment, those who will suffer most if it were not done, i.e. community folks must do environmental monitoring. The community folks must continually keep an eye on the goings on in their surroundings

D. What to Monitor?

It will be good to know the difference in the state of **the community environment, and socio-cultural and economic wellbeing.**

Some of the parameters to probe are:

- a. Water, land and air
- b. Terrestrial and aquatic animal species

- c. Coastal vegetation
- d. Livelihoods
- e. Prevalent sickness
- f. Social norms
- g. Communal interaction and shared wisdom
- h. Industrial presence: logging

Several questions need to be asked:

- a. Is this natural?
- b. Was this always the case?
- c. When did the problem start and why?
- d. Who caused it and how?
- e. Who is affected?
- f. Who is profiting?
- g. What has been done?
- h. What needs to be done?
- i. What institutional frameworks (national or international) kick against the problem?
- j. What Act(s), Regulations or Law(s) can serve as a platform to buttress your point?

Questions

1. In your own words, what does it mean to “watch” or “observe” your environment?
2. Looking at your community today, what are THREE things you think are most important to monitor or keep an eye on?
3. What are some bad things that can harm our water, land, or air?
4. What could happen to your community if nobody pays attention to changes in the environment?
5. Can you remember a time when something changed in your environment (like the river becoming dirty or fish disappearing)? Who noticed it first?
6. If a company comes to work in your community, why is it important for you to watch what they are doing?

MODULE 2:

Types Of Incidents

An environmental incident is anything that causes the environment to stop being normal or natural. This can include pollution of air, water, land, or noise, and any harm that has happened, is happening, or may happen soon. This harm can affect plants, animals, cultural or heritage sites, and the wellbeing of the community.¹

A. Historical Incidents

These are old, ongoing, or repeatedly occurring problems in the environment. They may also be incidents that happened long ago but were not properly cleaned up by the company or government. Examples include old oil spills where pollution is still found in the soil or water. Historical incidents need constant follow-up, evidence gathering, and reporting to remind authorities and companies that the damage is still present.

B. Recent Incidents

These are **new** events that happened recently, such as a fresh oil spill or sudden pollution. Sometimes an incident can be both historical and recent like in the Niger Delta, where old spills remain while new ones continue to happen.

Questions

1. In your own words, what is an “environmental incident”? Can you give an example of something that is *not* normal or natural in your environment?
2. Can you remember an old problem in your community that started many years ago but is still causing harm today? What is it, and has anyone tried to fix it?
3. Why do you think it’s important to keep reminding authorities and companies about OLD problems that were never cleaned up, even if they happened long ago?
4. Do you have any incidents in your community that are *both* old and new; meaning the old problem was never solved and new problems keep happening? How does this affect your daily life?

MODULE 3:

Evidence Gathering

Interwoven with the monitoring process is **evidence gathering**, which, ultimately, is to see that justice is achieved.

A. What is Evidence?

In the simplest terms, evidence means proof. Judicial evidence is the means by which *facts in issue* in a case are proved or disproved but excluding inferences and arguments.

Facts in issue constitute the dispute before the court. Usually in court cases, both parties are telling the court their version of the story that is favourable to them. And since the judge was not there when the said facts occurred, he needs to be convinced by way of proof evidence.

Usually, the person who wants the court to believe his story must prove his story by leading evidence. This is called the *burden of proof*. In civil cases the burden of proof is not static throughout, it shifts when one party must have discharged it i.e., when he must have led sufficient evidence such that, if no other evidence were to be given, the court would believe him. Then the burden will rest on the other party.

B. What Evidence to Gather

Some relevant classifications of judicial evidence are:

1. DOCUMENTARY OR ORAL

Documentary evidence is anything written or recorded, like maps, photos, videos, letters, or certificates.

Oral evidence is what a person says in court or in an affidavit. It must come from someone who saw or heard the event directly.

Both types of evidence are important, but when they talk about the same thing, the written document is usually stronger. Communities should gather both documents and witnesses to make their case stronger in court.

2. ELECTRONIC EVIDENCE

Electronic or digital evidence is any information stored or sent using a device. This includes emails, text messages, social media posts, audio or video files, GPS data, computer files, and information from devices like phones, laptops, game consoles, smart watches, or home automation systems. When using digital evidence, you must record details of the device used such as its name, model, or any identifying features. A short certificate must also confirm that the device was working properly at the time. This helps the court trust that the evidence is real and reliable.ⁱⁱ

3. DIRECT OR HEARSAY

Direct evidence comes from someone who personally saw, heard, smelled, touched, or felt what happened. If it is an opinion, it must come from the person who formed that opinion based on what they observed themselves.

Hearsay evidence is information a person did not experience directly but heard from someone else. Courts usually do **not** accept hearsay unless the source and reason for believing it are clearly stated.

The important question under this categorization is, **did you PERSONALLY see, hear, and perceive the thing or you were told?**

4. REAL

Real evidence refers to concrete things, such as samples of air, land, water, crude oil, fallen pieces of cracked walls, oil-festered fishnets, dead fish, boats etc. taken for inspection by the court. In other words, it is evidence of physical objects and things.

Independent Expert Evidence

Proving what caused environmental damage can be technical. Sometimes you need experts', people with special skills or experience in that area, even if they don't have formal degrees.

Some issues can only be explained through an expert's opinion. To know if someone is an expert, you ask: Do they have the skills?, Do they have enough knowledge or experience in this field?

Hence, when a case involves technical or scientific facts that ordinary people or the court may not understand, an expert is needed to explain and prove those facts.

Community folks must be able to gather evidence under the above classifications, including expert evidence where necessary, in order to induce the court to believe their story.

NOTE: Whether a piece of evidence will be accepted in court depends on several things: how relevant it is, how it was collected, the condition it is in when presented, and the person presenting it. All of this must follow the rules in Nigeria's Evidence Act (2011) and principles of fair hearing. This is why lawyers are needed to make sure the evidence meets these legal requirements.

Tools for Evidence Gathering.



1. Canoes/Boats

This is especially relevant for navigating through coastal and riverine areas which cannot be accessed by foot for the purpose of gathering evidence.



2. Notebook/biros/pen/pencils

These are much needed to be able to write down details that may easily elude the human memory. As the saying goes, the faintest of ink is better than the most retentive memory.



3. Camera

Cameras, including smart phones, are needed to capture images and make videos of incidents of pollution and environmental assault. Cameras are so important because they are able to capture details that words may be unable to capture.



4. Audio Recorder

This can be used to record testimonies from eye witnesses.



5. GPS Equipment

The Global Positioning System is a satellite-based navigation system made up of a network of satellites orbiting the earth all the times. Since there is only one set of geographical coordinates for any point/location on Earth, with this technology, one is able to record and tell the precise location of a particular event or the geographical source of particular electronic evidence.



6. Gloves

Gloves are needed to prevent contamination while collecting/gathering clues/evidence in the field. They help to keep the evidence as original, “clean” and pristine as when it was collected.



7. Safety/Gas Mask

A gas mask is a mask used to protect the wearer from inhaling airborne pollutants and toxic gases. The mask forms a sealed cover over the nose and mouth but may also cover the eyes and other vulnerable soft tissues of the face. They are used when a monitor needs to access an area that is polluted with gaseous or particulate materials like soot.



8. Evidence bag

As the name implies, this is used to place a piece of physical evidence gathered during the monitoring process to protect it from contamination. They are typically sealable and made of (clear) plastic or paper. Wet evidence goes into paper bags while dried evidence goes into plastic bags. Items that could be cross contaminated should be bagged separately.

Techniques for Evidence Gathering

1. Interviews:

This involves person-person interviews with eyewitness and affected persons.

2. Site visits:

A monitor may need to go to the site to take first-hand information and evidence

3. Questionnaires:

A questionnaire is a list of questions or items used to gather data from respondents about their attitudes, experiences, or opinions.

Questions

1. What does “evidence” or “proof” mean to you? If something bad happened in your community, what would you show or tell people to make them believe you?
2. Imagine you saw a company pollute your river yesterday. What are THREE different types of proof you could gather to show what happened?
3. Why is it important to write down what you see immediately, instead of trying to remember everything later?
4. What is the difference between you seeing something happen with your own eyes versus someone else telling you what happened? Which one is stronger proof in court?
5. Do you think all the tools for gathering evidence are equally important? Which THREE tools do you think your community needs most urgently, and why?

MODULE 4: Sampling And Documentation

As seen above, the purpose of environmental monitoring is to observe changes or impacts on the environment, and it involves the collection of evidence which may be presented before a court of law. An important aspect of this process is the taking of samples and the documentation of the samples collected.

Samples

Samples are a small part (solid) or quantity (liquid), or a combination of both, that is intended to represent the composition of the whole. The terms “sample” and “specimen” can be used interchangeably. Samples in this context will include portions of land, or water, dead fishes, and destroyed plants collected for testing.

The samples collected must be sent for testing in a laboratory to ascertain the level of contamination or toxicity.

Documentation:

A permanent record of something serves as evidence of it; something that recalls, commemorates past events; a body of known facts regarding something or someone. All evidence collected from and regarding the monitored environment must be properly documented and identified.

All evidence must be stored securely, preferably in a locked room. The evidence collector must date and sign receipts, including the date and to whom the evidence might have been transferred to in the chain of custody. A chain of custody means a clear record of the movement of evidence from one person to another.

Records may also be kept as software on a computer or on a compact disk as backup in case something happens to the computer. In keeping records, it is safe to have both soft and hard copies.

Samples and Documentation must be treated as legal evidence and as such must be subject to strict chain of custody to avoid contamination or alterations.

Questions

1. What is a “sample”? If you wanted to prove that your river water is polluted, what would you collect and how much would you take?
2. After you collect a sample like polluted water or soil, what should you do with it?
3. Why is it important to write down exactly when and where you collected each sample? What information should you record?
4. What does “chain of custody” mean?
5. Imagine you collected samples of polluted water from three different spots in your river. How would you make sure these samples don’t get mixed up or damaged before they reach the laboratory for testing?

MODULE 5: Networking And Advocacy

When the environmental monitor must have gathered all the necessary evidence, the next step will be to engage in networking and advocacy.

NETWORKING:

Networking can help to overcome any sense of isolation and provide useful means for learning skills, developing strategies and exchanging techniques on the issues.

Networking could be:

1. Information Sharing (Passive) –Sharing of information helps to disseminate information to a wider audience and aids sharing of experiences and best practices. It is aimed at creating a pool of resources (information and expertise) that various groups and organizations can tap into or benefit from and promotes a better understanding of what different groups and organizations are doing and, it is effective for gaining solidarity from environmental NGOs and other CSOs..

2. Information Sharing (Proactive): This is aimed at convincing individuals or groups receiving the information to react to the content of the information shared. The information shared is expected to impact on what the person is doing or about to do.

3. Joint Implementation of activities – This is a more complex form of networking where individuals, groups or organizations decide to plan and implement programmes or activities together. Joint efforts is a more effective way to meet a wider audience or confront strong opposition.ⁱⁱⁱ

In networking you must have a strategy:

- 1. Identify your purpose:** the purpose of networking in our case will be to protect and improve the environment and to achieve justice for environmental violations.
- 2. Identify your goal:** why are you sharing your information? What do you want to achieve? Goal setting helps you organize your time and your resources effectively. It helps you identify who you need to contact, when to contact them and for what.
- 3. Determine the most appropriate network:** The most appropriate network to use is determined by your goals.
- 4. Method of contact:** Once the networking goals have been determined, the next step is to decide how to contact the prospects within the chosen network. This usually means determining the most appropriate communication device to use (e.g. letter, face-to-face meeting, email, or telephone call to name a few).

5. Choose your approach: Your approach is how you ask individuals or groups to join your campaign. The most appropriate approach will depend on the networking situation, method of contact (telephone or email) and the desired outcomes (goals). If it is an emergency, you might want to call a face-to-face meeting raising the issues that require tackling and requesting groups and individuals to collaborate with you on the way forward.

Your Allies could be:

- a. Community-based Organizations (CBOs)
- b. Civil Society Organizations (CSOs)
- c. Academic Institutions or Academicians/scientists
- d. Like-minded community persons
- e. Faith-based Organizations
- f. Human Rights Lawyers

ADVOCACY:

Advocacy involves the propagation of ideas and/or interests by a person or group of people to influence decisions and achieve a result. It is noteworthy that effective, focused, and consistent advocacy creates the change sought after, however, not without resistance.

Advocacy affords people the opportunity to bring to the fore and to redefine public debates on important social, economic and wellbeing issues and ensure that underserved communities have a voice in the policies that impact their lives, and this may include instituting actions in court.

While anyone can speak up on environmental issues, advocacy is always more effective when it involves a group of people with similar issues getting together and acting as a group.

It can also be systematic advocacy provided by associations with a specific interest who represent the rights and interests of a group of people with similar concerns and issues, in this case the environment.

This form of advocacy is primarily concerned with influencing and changing the system (legislation, policy, and practices) in ways that will benefit people within society. Systemic advocates will encourage changes to the law, government and service policies and community attitudes. Systemic advocacy influences social and political systems to bring about changes for the benefit of groups of people.

Planning Advocacy:

For there to be effective advocacy, there needs to be clarity about what is to be achieved. There is also the need to outline what is to be done afterwards...with the facts and evidence you have gathered.

At this point, there should be precise target(s) stated in clear, unambiguous, and determined terms. For example, the goal could be "To Unite Fishers (in Nigeria and by extension, Africa - through

outreaches) Against Pollution in Coastal Communities”; “To Mobilize Action (non-violent) for Peoples Power – Through Freedom Information Act”. These are statements of intents that if well-coordinated with the right mix of consistency, commitments, resources (intellectual, human ...) and networking could yield unimaginable result(s) that may supersede expectation(s).

Several questions need to be asked:

- a. When did the problem start and why?
- b. Who caused it and how?
- c. Who is affected?
- d. Who is profiting?
- e. What has been done?
- f. What needs to be done?
- g. What institutional frameworks (national or international) kick against the problem?
- h. What Act(s), Regulations or Law(s) can serve as a platform to buttress your point?

An environmental advocate also needs to know his rights.

What are your rights?

1. Right to life and livelihood,
2. Right to dignity of human person
3. Right to a healthy and pollution-free environment
4. Traditional fishing rights.
5. Right to information
6. Right to assemble peaceably
7. Right to freedom of speech and expression, etc.

Where can they be found?

These rights are contained in several local and international instruments which can serve as tools, such as:

1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended) (CFRN).
2. Freedom of Information Act.
3. The African Charter on Human and Peoples Rights, 1981 (ACHPR).
4. The Universal Declaration of Human Rights 1948 (UDHR).
5. The Convention on Biological Diversity 1992 (CBD).
6. The International Covenant on Civil and Political Rights 1976 (CCPR).
7. The International Covenant on Economic, Social and Cultural Rights 1985 (CESCR)
8. United Nations Convention on the Law of the Sea (UNCLOS) and its associated treaties.

9. International Convention for the Prevention of Pollution from Ships of 1973, as modified by a 1978 Protocol (MARPOL).
10. As well as customary international law.

What to do with them?

An effective advocacy is one that is backed up with law and facts. When you have your facts (evidence), you must also back them up with the law. For example, an advocate should be heard saying, “The pollution in the coast of Bayelsa is a threat and violation of the rights to life, dignity and a healthy and pollution-free environment”. Facts and evidence embolden, the law legitimize the struggle!

These will be the bases of your action or defense if you end up in court.

Questions

1. What is the difference between just telling people about a problem versus asking them to *join you* to take action together? Which one is stronger and why?
2. “Advocacy” means speaking up and fighting for your rights. Can you name THREE rights you have that are being violated when companies pollute your water, land, or air?
3. If you want to advocate (fight) for your polluted river to be cleaned up, what is your *goal*? Who needs to hear your message: the company, the government, or both? What do you want them to *do*?
4. Why is it more powerful when a *group* of people with the same problem speak up together, instead of just one person complaining alone? Can you think of an example from your own experience?

Conclusion

This guide set out to equip community folks with basic knowledge on the tenets of evidence as used in environmental litigation, as well as the requisite equipment, safe techniques for collecting evidence, types of incidents where evidence is necessary, how to take samples, and testing of samples as well as networking and advocacy.

We have also not disregarded emphasizing the need for concerted effort in the form of Networking and Advocacy to for environmental protection and improvement.

Acknowledging that one of the likely outcomes of the process of environmental monitoring and evidence gathering, we have made the point that the court of law and evidence and not a court of emotions. He who asserts a fact must prove it by evidence! We have demonstrated this point through several illustrations and a role play in this guide.

Victory is in sight!

About HOMEF

HOMEF is an environmental/ecological think tank and advocacy organization rooted in solidarity and in the building and protection of human and collective dignity.

We believe that neoliberal agendas driven by globalization of exploitation of the weak, despoliation of ecosystems and lack of respect for Mother Earth thrive mostly because of the ascendancy of enforced creed of might is right. This ethic permits the powerful to pollute, grab resources, and degrade/destroy the rest simply because they can do so. HOMEF recognizes that this reign of (t) error can best be tackled through a conscious examination of the circumstances by which the trend crept in and got entrenched. HOMEF's work track is continuous political education that examines the roots of exploitation of resources, labor, people, territories, nations, and regions. Through this HOMEF contributes to the building of movements for recovery of memory, dignity, and harmonious living with full respect of natural cycles of Mother Earth.

Three key areas of focus are fossil politics, hunger politics, and creating spaces for knowledge generation and sharing such as Sustain-Ability Academy, School of Ecology, Dialogue/Conversations, etc.

HOMEF's Vision

An ecologically just world where all beings live in harmony with Mother Earth

Our Mission

To build ecological knowledge, propagate re-source democracy and support wholesome socio-ecologically cohesive communities where people live in solidarity and dignity.

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References & Endnotes

[Toolkit for Oceans and Human Rights Defenders.](#)

Community Dialogue Fishnet

Community Dialogue Oil/Gas

Community Dialogue Forest

[Community Guide to Environmental Monitoring and Reporting](#)

[A Barefoot Guide to Coping with Floods](#)

[A Guide for Dialogue on Climate and Power Alternatives](#)

[A Guide to Aquatic Ecosystem Monitoring, Reporting, Organising & Advocacy](#)

[Fishnet Alliance](#)

[Community Dialogue on Food and Farming Systems](#)

ⁱ [Environmental Incident Classification and Reporting NSW Government](#)

ⁱⁱ See generally, section 84 (2) and (4) of the Evidence Act, 2011.

ⁱⁱⁱ [Paralegal Training in Nigeria](#)



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