

META MORPHOSIS



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THE JUSTICE DEFICIT

JEREMY WATES
EEB SECRETARY GENERAL



Editorial

"Even if I knew that tomorrow the world would go to pieces, I would still plant my apple tree," said Martin Luther, the founder of Protestantism. More than five centuries later, we face many more uncertainties about what the future will bring and whether the conditions supporting the growth of 'apple trees' will prevail in the years to come. But the basic principle that, irrespective of those uncertainties, we will go ahead and plant our apple trees, at least as a statement of hope, is more relevant now than ever.

The EEB's mission may be seen as being about creating the conditions in which anyone may plant an apple tree and know that it will thrive. There is clearly a scientific dimension to this, both in relation to understanding the problems and identifying the solutions. We ignore the science at our peril. But there is also a moral dimension, reflected in the EEB's statutory commitment to promote environmental justice and global equity and to create a world in which "all people of present and future generations are able to enjoy a rich, clean and healthy environment, where prosperity and peace are secured for all."

In this issue of Meta, we focus on the theme of environmental justice, which is closely linked with that of environmental rights. These include both substantive and procedural rights. The overarching right of present and future generations to live in a healthy environment has been recognised in international law through its inclusion in the Aarhus Convention. Recognition of this right implies the need for a wide range of policies securing a stable climate, clean air and water, fertile soil, safe chemicals, wholesome food, and so on.

A large part of the EEB's work over the past 40 years has involved campaigning for such policies. We have been able to witness and to some extent influence the evolution of an impressive body of EU environmental policy and law. One of those who have tracked this evolution since its early days is former EEB Vice President Nigel Haigh, whose latest book, reviewed on [page 6](#), makes a convincing argument that in many cases the most effective level of policymaking is the EU level. This is an important message in particular for the UK voters to take note of as they approach their 'leave/remain' referendum.

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Addressing environmental justice also means taking a hard look at global equity issues. While Europe's role is sometimes positive in setting ambitious environmental standards, the high levels of consumption in Europe increase the global pressure on resources which is behind many of the environmental conflicts taking place around the world. Many of these conflicts have been mapped in the [Environmental Justice Atlas](#), which we feature in [Meta on page 5](#). Tragically, in some of these conflicts, people have paid even with their lives in their efforts to defend environmental rights, as with the recent brutal murder of Berta Cáceres, the Honduran campaigner who in March was assassinated in her home by armed intruders after years of threats against her life for protecting the health of local water sources.

When it comes to procedural rights, the Aarhus Convention, with its triple

objectives of securing access to information, public participation and access to justice in environmental matters, provides an important framework for Europe. These rights are correctly recognised as being crucial in altering the 'rules of the game' so that the public can play a more effective role in relation to substantive environmental issues. It might be assumed that it would be easy for the EU to comply with an environmental democracy instrument to which the countries of Eastern Europe and Central Asia also could sign up. However, in reality, the EU and some Member States have taken such a minimalist approach to implementing some aspects of the Convention that, in many cases, they fail to comply with it. Fortunately the Convention has an innovative, participatory compliance mechanism, described in the article below, which at least means that allegations of non-compliance are examined by an independent committee.

Last year's adoption of a comprehensive set of sustainable development goals (SDGs), while non-binding, can provide further impetus towards delivery on environmental (and social) justice. Many of the goals, once implemented, will contribute to realising the substantive right to a healthy environment whereas SDG 16, which seeks among other things effective, accountable and inclusive institutions at all levels, addresses procedural rights. Establishing an effective framework to implement the SDGs at EU and Member State level must be given high priority in the coming months.

What all this shows is that while some progress has been made, all in all, we still have a long way to go before we can consider that environmental justice is in a healthy state.

AARHUS MADE EASY

It is impossible to talk about environmental justice without referencing the Aarhus Convention and the global influence of this landmark tool in environmental democracy.

The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was signed on June 25, 1998 in the Danish city of Aarhus. As of today, the Aarhus Convention has 47 Parties, including the EU, stretching from Iceland to Kazakhstan.

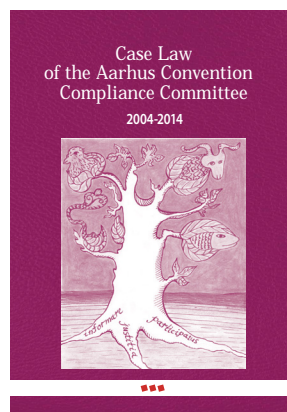
In addition to its international importance, the Aarhus Convention stands out among multilateral environmental agreements in terms of its robust compliance mechanism. Established in October 2002, the Compliance Committee (ACCC) is charged with reviewing how Parties to the Convention comply with their obligations under the Convention. Cases can be initiated by Parties, the Secretariat and, most significantly, by the public.

The ACCC's findings on compliance are obviously important for the specific case in question, but they also have a wider significance as, after endorsement by

the Meeting of the Parties (MOP), they become a vital source for interpreting the Convention. This is evidenced by citations by national, European and international courts, and in a number of Advocate General Opinions in cases before the Court of Justice of the European Union (CJEU). ACCC case law has also figured prominently in a growing body of discourse among policy-makers and the academic community at large.

It is therefore critical for those interested in environmental human rights to have some familiarity with ACCC case law. This is, however, no easy task given the complex and diverse subject matter, not to mention the great speed at which the case law is growing. To provide both an entry-point for those entirely unfamiliar with the compliance mechanism and as a guide for the experienced practitioner through some of its more nuanced aspects, two members of the European ECO Forum have developed the 3rd edition of a compilation of the

findings of the Committee, *Case Law of the Aarhus Convention Compliance Committee 2004-2014*.



This publication was produced under a long-term project run by the European Environmental Bureau (EEB) and supported by the Sigrid Rausing Trust and the Norwegian Government. It benefits from the experience of a legal team that has been actively involved with the Aarhus Convention and its compliance mechanism for many years.

The latest edition reflects all cases up to the most recent session of the MOP, and includes sections on the ACCC's interpretations of the Convention's provisions and on their decisions regarding procedural matters. It has also been expanded to include a section on MOP decisions to give readers an idea of the sort of measures the MOP takes regarding Parties that are not in compliance. Case summaries are also provided so that readers can better

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ENFORCEMENT MATTERS: CITIZENS AND NGOS HAVE A ROLE TO PLAY



A recent plan from the Polish government to allow more logging in the pristine Bialowieza forest in Poland would be catastrophic for local biodiversity. But it also highlights both the lax implementation of the EU Habitats Directive and a serious lack of legal remedies that citizens and NGOs can use to challenge breaches of EU law at the national level.

On 19 April 2016, the EEB and other NGOs submitted a complaint to the European Commission, urging it to ensure adequate protection of the forest, a part of the Natura 2000 network. It may seem odd that NGOs had to turn to Brussels, but there is no legal route to challenge the Polish government in a national court.

The Bialowieza case is just the latest example highlighting the barriers that citizens and NGOs face when they want to challenge environmental decisions or omissions by public authorities at the national level. This problem directly contradicts the EU Charter of Fundamental Rights, which calls for effective judicial protection (Article 47) and the UNECE Aarhus Convention, to which the EU is party, which demands wide access to justice for

environmental matters. Indeed, the Court of Justice of the European Union (CJEU) continues to find discrepancies between the rules established by Member States and the Aarhus Convention (and EU law based on the Convention).

It is therefore not surprising that the current Seventh Environmental Action Programme (7EAP) commits EU institutions to ensuring that citizens and NGOs have effective access to justice in environmental matters and effective legal protection, in line with the Aarhus Convention and CJEU case-law. What is surprising, however, is the persistent lack of horizontal EU legislation on access to justice that would enable this commitment to be met. Although a draft of such a directive was tabled in 2003, it was later withdrawn and no new draft has been published since.

In the light of this, the EEB, its members and partners are continuing to push for harmonised rules. As we communicated to the European Commission in a recent proposal for an action plan of better enforcement of EU environmental law, a directive on access to justice would not just be the right thing to do, it would also have practical benefits. If the EU granted

its citizens and NGOs better access to national courts, it would give a significant boost to the enforcement of EU rules on the environment which in turn would have tangible benefits for the environment and the well-being of people.

However, while ensuring access to national courts to challenge decisions and omissions is important, we should not forget that similar legal remedies are needed at the EU level. Here, the deficit may be even greater as the CJEU has taken a very restrictive approach to which activities and omissions of the EU institutions citizens and NGOs may challenge in the form of an administrative review (i.e. by asking for the decision to be reconsidered by the institutions).

The Aarhus Convention Compliance Committee, a quasi-judicial monitoring body for the Convention, is currently examining whether EU rules and this case law are in line with the Convention or not. Draft findings of the Committee are expected this spring. And whatever the outcome, the EEB will continue to call on the EU to review the so-called Aarhus Regulation to ensure effective judicial protection for its citizens.

Siim Vahtrus,
Chair of the EEB
member organisation
Justice & Environment



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REFORMING BUDGETS

As many EU Member States struggle with multiple challenges – from budget deficits and unemployment, to pollution and climate change – environmental fiscal reform can help.

Environmental taxes are used by governments both as a way of raising revenue and to achieve environmental objectives. Progressive policy-makers and economists identify green taxes as one of the best forms of taxation, particularly if the revenue is used to finance a reduction in the tax burden on labour.

The most recent country to make some progress in terms of tax shift is Belgium, which is known to be one of the worst performing countries in Europe in terms of green taxes.

The reform is expected to cut labour taxes by €7.2bn by 2018 and unlock an additional €4bn in purchasing power in addition to €3 billion in enhanced competitiveness. The single largest change is €2.7bn of additional tax with environmental and health benefits (e.g. higher diesel taxes, a sugary drink tax). There is a further €2.4bn in capital taxes, and the remaining €2.1bn comes from

anti-fraud measures, federal administrative changes and other reforms.

While there is still a long way to go for Belgium in terms of increasing green taxes, this reform is a step in the right direction and proves that there is an appetite to redesign tax systems.

Previously, between 1999 and 2003, Germany completed the most successful environmental fiscal reform in Europe to date. Berlin increased energy taxes in five stages, with 88% of the revenue used to reduce pension contributions. Over this period, the tax take from energy increased by 55%, rising from €34bn in 1998 to €53bn in 2003. Public transport use experienced annual increases of 3 – 5%. Sales of transport fuel for private vehicles declined, dropping by around 17% over the 10 years after 1998.

In 2002, Germany's Federal Environmental Bureau concluded that the reform prompted 60,000 new jobs and emissions cuts of seven million tonnes between 1999 and 2003.

When the fiscal crisis struck, increasing the need for revenues in 2011, several additional elements were implemented in Germany. These included a nuclear fuels tax, an air ticket tax, and the reduction of industry subsidies.

Support for ecological tax reform is also a substantial driver for the Energiewende – the transition process to clean energy in Germany – which is currently also one of the most successful in the world.

But the key point is this: it is not just Germany and Belgium that can realise the benefits of the environmental fiscal reform. The share of environmental taxes in total revenues from taxes and social contributions is an indicator under "A resource-efficient Europe", a flagship initiative of the Europe 2020 Strategy. The objective is to reach at least 10% across the EU by 2020.

However, according to Eurostat, the share of environment taxes in total revenues from taxes and social contributions decreased from 6.9% in 2003 to 6.3% in 2013 – despite increasing, in monetary terms, from €272.1bn to €330.1bn over this 10-year period.

Germany proved - and Belgium may prove - that green taxes can be a progressive tool in the hands of policy-makers, easing labour taxes, boosting employment, encouraging investment in the green economy, and, most importantly, showing that these reforms can be delivered in a socially equitable way. The next question is whether it will be "next stop Europe."

**Mauro Anastasio, Policy and Communications
Assistant, Green Budget Europe**



© photo: Arne List

FIGHTING FOR ENVIRONMENTAL JUSTICE IN TURKEY



photo: Kerem Barut

Turkey has witnessed a growing number of environmental conflicts since the 1990s as its economy and population have expanded: GDP has more than doubled in the past two decades, the population has increased by 32% and the number of people living in urban areas has jumped from 60-75%. This is not necessarily bad news, but all these factors are putting pressure on Turkey's rich environment.

Indeed, increasing demand for resources and energy has been accompanied by a substantial local backlash. According to the Turkish Map of Environmental Justice (compiled by the EJOLT Team in Boğaziçi University), there are 178 ongoing environmental justice conflicts in the country. Complaints against current or potential impacts from natural resource extraction, land use change, energy production and pollution have increased, and local communities at grassroots levels as well as national and international civil society organisations have become more and more involved.

Lacking the opportunity to participate in decision-making processes and denied the right to a livelihood and clean environment, people in Turkey have been actively resisting construction and energy companies for years. More recently, a number of mega-projects have been heavily contested by civil society.

These include a third bridge over the Bosphorus Strait, a third airport in Istanbul, and the opening up of a huge canal to connect the Black and Marmara Seas, which will destroy Istanbul's last remaining forests, as well as important water resources, agricultural areas, and bird migration routes.

Other cases where local communities are fighting back include opening protected areas to dam construction and energy

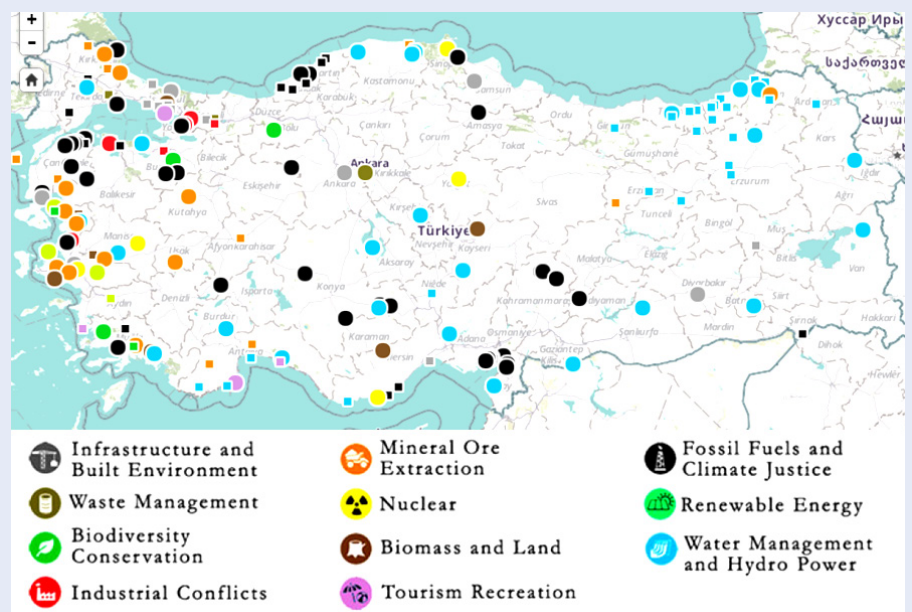
projects, waiving obligatory environmental impact assessments for mega projects, allowing mining exploration in nature conservation areas, and weakening control mechanisms concerning the use of forest and coastal areas.

A key underlying source of these problems is Turkey's 'growth at all costs' approach to development. Such a vision, when coupled with a tradition of top-down decision-making, considers methods such as displacing people for building dams, or destroying forests to extract copper, as natural and inevitable to achieve growth.

These conflicts indicate an immediate need in the country to follow participatory decision making processes, which would help take into account not only economic priorities, but also ecological and social criteria. However, the ultimate solution would perhaps come from thinking about "alternatives to development" instead of "development alternatives".

Cem Iskender Aydın, Climate Policy Officer,
TEMA Foundation

Figure 1: Map of Environmental Justice in Turkey, accessible in Turkish, at www.direncevre.org

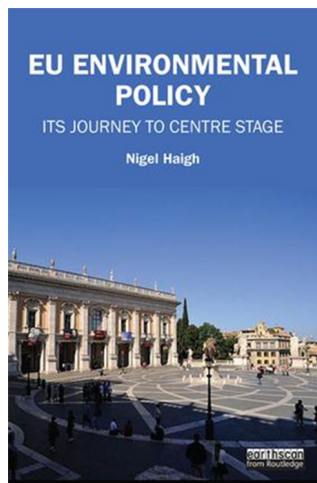


A JOURNEY THROUGH TIME

As some in the UK question what the EU has ever done for anyone, former EEB Vice President and leading European environmental law expert Nigel Haigh makes a clear case in his recently published book **EU Environmental Policy: Its Journey to Centre Stage** for the importance of EU environmental legislation for all member states. While talk of a referendum in the UK on EU membership sparked his decision to put fingers to keyboard, Haigh hopes readers across Europe and beyond will pick up his “personal view” of EU environmental policy, which he affirms is written neither from the point of view of an EU Institution, nor of any one Member State.

Haigh was involved in the birth of the EEB in 1974 and served as its vice president from 1975-1979 before moving to become director of the Institute for European Environmental Policy (IEEP)’s London office. His book is split into 12 readable chapters, which span the development of EU policy on a range of environmental issues, including sustainable development, air and acid rain, water, waste, chemicals and climate change. In many cases, he links the development of policies to wider political issues such as the fall of the Berlin Wall and the effect this had in shifting Germany’s waste disposal policies to resource recovery. A final chapter by David Baldock, his successor at the IEEP, takes stock of where we are now and looks ahead.

“Different readers will take away different messages,” says Haigh, when asked about the key themes of his book. However, he acknowledges that he would like all readers to grasp that “environmental problems cannot be handled by national states alone,” hence the importance of EU mechanisms.



He underlines that the general public across the EU shares this view, with “Eurobarometer surveys showing that environmental policies are some of the most popular EU policies”.

Haigh is also keen to highlight the evolutionary nature of the EU. He shows that, despite the implication by some such as UK Prime Minister David Cameron with his call for reform that

the Union is largely static, in reality it is constantly changing and has “adapted itself to take on entirely new subject matter”. Further, Haigh underlines how other countries look to the EU for leadership on tackling environmental problems and describes how Europe has helped shape innovative tools to deal with these issues that are now employed at the global level.

One example of this is the idea of “burden sharing,” says Haigh. Today most often used in the context of climate change, he explains how this concept was first raised by the Netherlands in the (ultimately successful) attempt to get an agreement on cutting sulphur emissions to reduce acid

rain. Haigh also praises the EU’s leading role in the negotiations leading up to the Kyoto Protocol and other debates on the international stage. And despite the EU’s current difficulties, Haigh still sees the bloc as a global leader on environmental policies, ahead of the US, China, Russia or Brazil. Furthermore, he insists that individual European countries on their own cannot have a comparable influence in international debates.

As to the future, Haigh says he is “nervous” about EU environmental policies, but retains the belief that “public opinion will ensure that it remains a central issue”. It remains to be seen whether the UK public will conform to this logic in the “in or out” EU referendum on 23 June, and obviously there are other issues besides the environment that voters will want to take into account, but from the evidence presented in this book, it would seem wise for people to take note and not endanger all that has been achieved in the field of environmental protection during the last 40 years.

Philippa Nuttall Jones,
EEB Communications
Manager



UNHEALTHY EU FOOD AND FARMING SYSTEM NEEDS A FITNESS CHECK



Europe's agriculture policy is clearly in bad shape: not only is our natural world suffering irreversible effects as a result of the intensification of production, but farmers too are losing out from the constant state of crisis in agricultural markets and poor welfare standards condemn many farm animals to a miserable existence.

Rather than helping to solve these problems, Europe's Common Agricultural Policy (CAP) is unfortunately only exacerbating them.

The Commission has in recent years carried out in-depth reviews of numerous EU policies through its 'Fitness Check' process, including many pieces of environmental legislation such as laws concerning freshwater and waste, as well as the Birds and Habitats Directives, the review of which is ongoing. By contrast, the CAP has not yet been identified for such an evaluation.

Given that the policy represents almost 40% of the total EU budget it seems only right that at least the same level of scrutiny is applied to it. With the current Multi Annual Financial Framework (MFF) mid-term review

discussions underway, the numerous crises hitting the farming sector, the depletion of our natural resources and the EU budget facing substantial pressure from elsewhere, it is the right time to ask:

- Is the CAP effective in achieving its objectives?
- Is the CAP efficient in achieving its objectives?
- Is the CAP coherent with other agreed EU political objectives and policies?
- Is the CAP still a relevant policy?
- What added value does the CAP provide to EU citizens?

To this end, the EEB is one of 113 leading environmental, health and social NGOs calling on European Commission President Jean-Claude Juncker to initiate an in-depth review of food production and consumption in Europe through a CAP Fitness Check.

Answering the above Fitness Check questions is the first step on a journey towards a policy

which truly rewards farmers for protecting the environment and gives EU citizens access to healthy food, water, air and soil – rather than subsidising the increasing use of toxic chemicals on our land to the detriment of public health and nature.

While policymakers continue to claim that EU farming policies are greener and fairer than ever, research shows that this is not the case. One recent study from the Institute for European Environmental Policy (IEEP) revealed that most EU Member States use implementation flexibilities to carry on with business as usual. This generally means finding ways to continue using pesticides in areas on farms that have been set specifically aside to protect nature and wildlife – so-called 'Ecological Focus Areas'.

In short, we need a farming system that works in harmony with nature, not against it.

Faustine Defossez,
EEB Senior Policy
Officer Agriculture



COMING AND GOING

LEGAL ADVICE

Siim Vahtrus, Chair of the EEB member organisation Justice & Environment and member of the EEB board, will take a break from his native Estonia to spend a three-month secondment advising the EEB on legal issues including the Aarhus Convention.

COMMUNICATIONS CHANGES

Paul Hallows, our Air Quality and Resource Efficiency Communications Officer, left the EEB at the end of April to return to Friends of the Earth Europe. We will announce his successor in due course.

Emmeline Everaert joined the EEB last month as our Digital Communications Assistant. She has previously worked for WWF in Belgium and Hungary. #welcome

INTERN NEWS

In March, we welcomed Antonin Hameury as the biodiversity and ecosystems intern. Originally from La Rochelle, he has studied political sciences in Bordeaux, Vienna, Strasbourg and Frankfurt (Oder) and previously interned at Die Linke political party in Lübeck.

After her six month internship in the agriculture policy team, Jessica Greenstein is returning home to Hong Kong, where she plans to launch a start-up aimed at raising awareness about environmental and biodiversity issues in schools.



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appreciate the factual context of each case. New to this version are also keywords in the margins to aid readers in identifying key and often repeat issues.

In short, this updated and expanded edition aims to enhance the understanding of ACCC case law and ensure that the Convention and its compliance mechanism are applied in an informed and effective way.

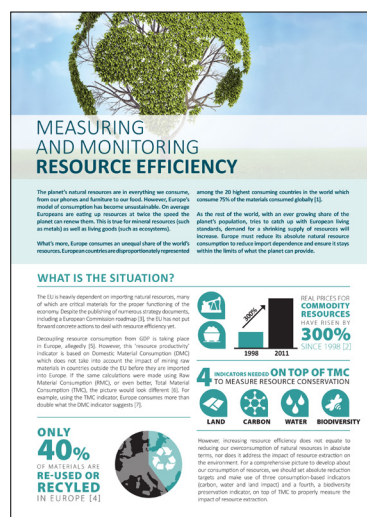
Thomas Alge and Summer Kern,
OEKOBUERO Alliance of the Environmental
Movement (Austria)

SAVE THE DATE!

This year the EEB's Annual Conference will be hosted by our Austrian member Umweltdachverband in Vienna, on Monday **26 September 2016**. It will be followed by our Annual General Meeting (members only) on Tuesday 27 and Wednesday 28 September (half-day). The meetings will be organised in close cooperation with our Slovak member the Society for Sustainable Living. More information about the Annual Conference will follow on our conference website www.eebconference.eu in the coming months.

FEATURED PUBLICATION

The EEB has published **eight factsheets** on how the EU can make the most of December's relaunched circular economy package. Providing easily-digestible recommendations from waste prevention and disposal to product design and everything in between, they have been downloaded hundreds of times and are a featured publication on the EU report hub thewonk.eu.



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