

# Building the road to Environmental Justice

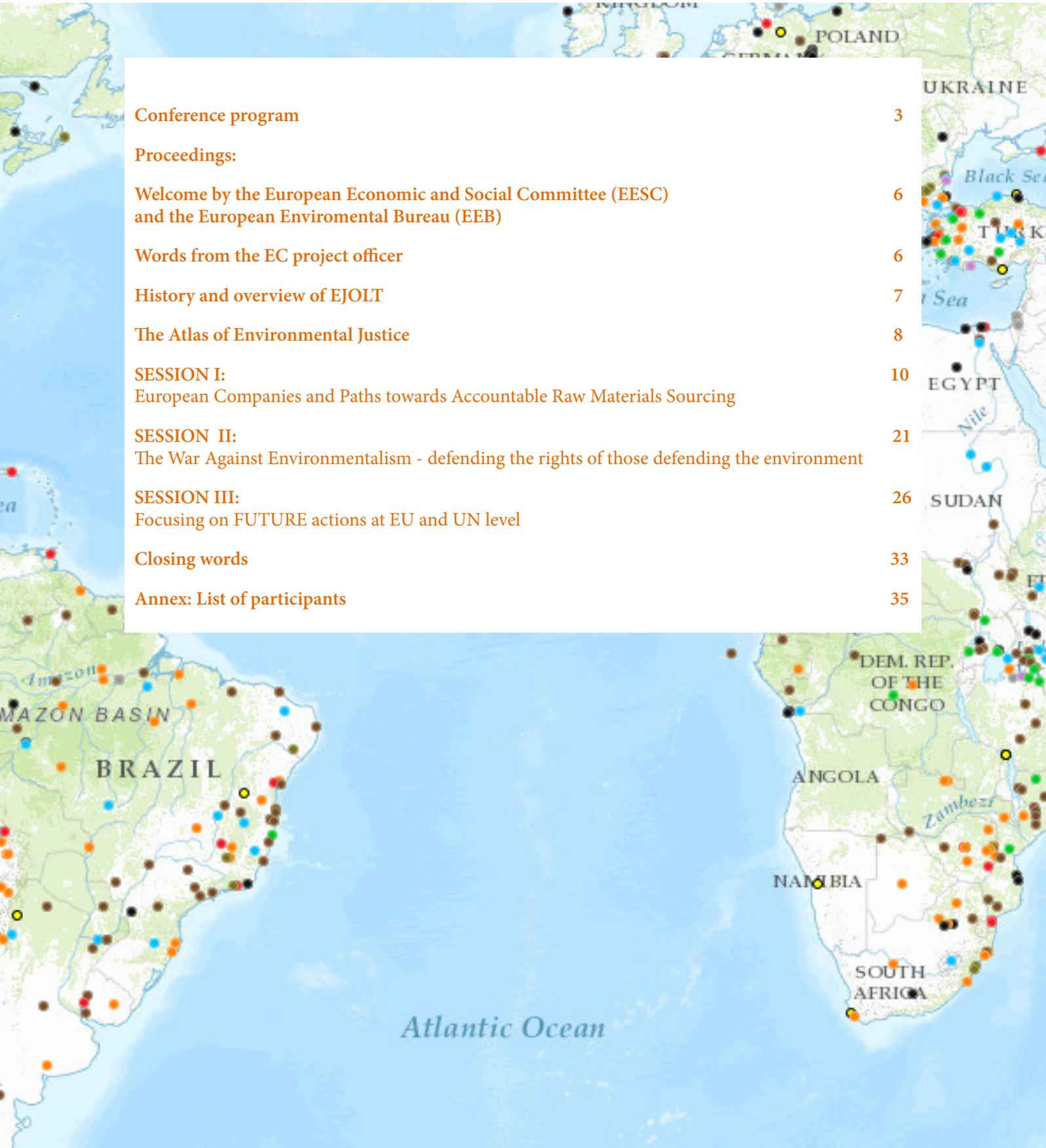
## Conference report



Brussels, 3 March 2015  
Venue: European Economic Social Committee (EESC)

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# Conference program



## Opportunities for European policy makers towards Environmental Justice Building the Road to Environmental Justice

3 March 2015, 9:30-17:00

**Venue: European Economic Social Committee (EESC)**

Room VM3 (2nd floor), Van Maerlant Building, 2 rue Van Maerlant, 1040 Bruxelles/Brussels

After 4 years of work by around 100 people in over 30 countries participants heard what the international project on Environmental Justice Organisations, Liabilities and Trade (EJOLT) delivered to the world.

8:45 - 9:30 REGISTRATION and welcome coffee

9:30 - 9:35 Welcome by EESC and EEB

**Brenda KING**, Member of the Sustainable Development Observatory, European Economic and Social Committee (EESC)

**Leida RIJNHOUT**, Director Global Policies and Sustainability at European Environmental Bureau (EEB)

9:35 - 9:40 Words from the EC project officer

**Antonio SCARAFINO**, Directorate General Research and Innovation (DG-RTD) at the European Commission (EC)

9:40 - 09:55 OPENING: History and overview of EJOLT

**Prof. Joan MARTÍNEZ ALIER**, EJOLT coordinator, Professor of Economics and Economic History, and researcher at the Institute of Environmental Science and Technology (ICTA) at the Autonomous University of Barcelona (UAB)

9:55 - 10:10 OPENING: The Atlas of Environmental Justice

**Dr. Leah TEMPER**, EJOLT Atlas coordinator, ICTA - UAB

10:10 - 12:00 SESSION I: European Companies and Paths towards Accountable Raw Materials Sourcing

Chaired by **Dr. Beatriz RODRÍGUEZ-LABAJOS**, EJOLT report coordinator, ICTA-UAB

*This panel shared insights from the EJOLT reports and discussed the environmental record of European companies in the EU & abroad. Panelists will discuss and propose what policy steps Europe can take to make its resource supply chain sustainable.*



**Bruno CHAREYRON**, Engineer in nuclear physics and uranium expert at CRIIRAD, France

“Uranium mining activities of AREVA in Niger”

**Dr. Godwin OJO**, Executive Director of Environmental Rights Action/Friends of the Earth, Nigeria

“Oil extraction from Shell in Nigeria”

**Prof. Begum ÖZKAYNAK**, Professor of Economics and mining expert at Boğaziçi University, Turkey

“Towards EJ Success in Mining Resistances – An empirical investigation”

**Mauricio LAZALA**, Lawyer & International Deputy Director at Business and Human Rights, UK

“European companies’ responses to concerns raised by civil society about their negative social & environmental impacts”

**12:00 - 13:15 LUNCH BREAK**

**13:15 - 14:45 SESSION II: The War Against Environmentalism - defending the rights of those defending the environment**

Chaired by **Jan VAN DE VENIS**, WaterLex Legal Desk Director and founder of Grrrowd

*The recent death of an environmentalist in France has called into question the disproportionate use of force against activists agitating against industrial interests. As conflicts over the environment and land use increase and competition for resources heats up, persecution and criminalization of activists is increasing in step. This panel surveyed the current context in Europe and in Latin America and shared the personal testimonies of activists whose lives are at risk.*

**Mariel VILELLA**, Associate Director & Climate Policy Campaigner, Zero Waste Europe/ GAIA

“Stories of resistance against industry threats: the case in the waste sector”

**Billy KYTE**, UK and Author of ‘Deadly Environment’, Global Witness

“Deadly Environment: the global rise in killings of environmental and land rights activists”

**Susana BORRÀS**, Expert in legal avenues for environmentalists, University Rovira i Virgili, Spain

“Legal avenues to protect the environmental defenders”

**14:45 - 15:00 Coffee break**

**15:00 - 16:45 SESSION III: Focusing on FUTURE actions at EU and UN level**

Chaired by **Leida Rijnhout**, EEB

**Ana BARREIRA**, Lawyer at the International Institute for Law and the Environment

“Does the rule of law rule the EU?”

**Dr. Barbara RUIS**, Specialist in international environmental law, UNEP

“UNEP’s activities on human rights and environment”

**Patrick DIETZ**, Policy officer on access to justice in environmental matters, European Commission

“Challenges of access to justice in environmental matters”

**Angèle MINGUET**, CDCA, Researcher on environmental conflicts

“Improving the understanding of the victim’s point of view”

**Dr. Csaba KISS**, CEO of EMLA and coordinator Justice and Environment

“One door closing, another one opening: access to justice opportunities changing at the EU and the UN”

#### 16:45 - 17:00 CLOSING WORDS

**Leida RIJNHOUT**, Director Global Policies and Sustainability at the EEB

**Prof. Joan MARTÍNEZ ALIER**, EJOLT coordinator, Professor of Economics and Economic History, and researcher at the ICTA-UAB



# Proceedings

## WELCOME by EESC



**Brenda King, member of the EESC and Sustainable Development Observatory (SDO)**

Brenda King welcomed the organisers and congratulated them on the success of the project. Finding the map of Environmental Justice produced by EJOLT impressive, she recalled once seeing a video about how ships were rammed onto a beach in a developing country where it was clear they lacked the tools and resources to dismantle ships due to the number of rusting ships sitting on the seabed. This was a clear example of an imbalance in environmental burden.

Like the EEB, the EESC sees the improvement of the livelihood of citizens through civil society as its mission. The Committee has over 350 members from all member states spanning the spectrum of civil society: workers, farmers, industry, NGOs, etc. The EESC is not always as radical as environmental justice organisations, although the Committee understands the need for organisations such as yours to be radical. The EESC aims for an exchange of views and finding a common position between different groups. An active civil society is needed to tackle the challenges of our society. An enabling governance framework is also needed to make that happen. Within the EESC the SDO aims to raise awareness on environmental justice, for example in relation with the post2015 Agenda.

## WELCOME by EEB



**Leida Rijnhout, Director of the Global Policies and Sustainability (GPS) Unit at the EEB**

Chair of the day, Leida Rijnhout, firstly thanked the EESC for hosting the final conference of EJOLT, an amazing network of activists and researchers and policy experts. She announced that today the main results of the 4 year program would be presented and there would be some in-depth debates on ideas for realising environmental justice in the panels.

## Words from the EC project officer



**Antonio Scarafino, Directorate General Research and Innovation (DG-RTD) at the European Commission**

*'...the Rome Declaration on Responsible Research and Innovation... supports the need to have an integrated approach to science respecting the social values and principles on which the EU is funded. The Rome Declaration also calls on all stakeholders to work together for inclusive and sustainable solutions to our societal challenges.'* Antonio Scarafino

## History and overview of EJOLT

Antonio Scarafino thanked the EEB and the EESC. For him this was a relevant and timely discussion. Juncker (President of the EC) has given clear priorities: jobs and growth, underpinning the well-being and democratic way of life of European Citizens.

The European Commission has to be politically active in dialogues with citizens, by presenting and communicating its common agenda, listening to ideas and engaging with stakeholders.

The role of DG-RTD is to ensure that the right conditions are put in place for all society actors to explore and share ideas in the context of research and innovation. This means experimenting with new ways for policy makers to work together with scientists, innovators and social actors, in order to reinforce Europe's capacity to tackle societal challenges.

In November 2014, under the Italian Presidency, a high level conference took place, entitled "Science, innovation and society: Achieving responsible research and innovation." This conference brought together nearly 1000 research and innovation stakeholders and led to the adoption of the **Rome Declaration** on Responsible Research and Innovation. The document supports the need to have an integrated approach to science respecting the social values and principles on which the EU is funded. It also calls on all stakeholders to work together for inclusive and sustainable solutions to our societal challenges.

The participation of civil society in the design and delivery of research has to be increased in order to align research and innovation to the values, needs and expectations of society.

Antonio applauded the work done in EJOLT to engage civil society in research, and to support the work of environmental justice organisations. EJOLT is a very good example of public engagement in research and dialogue. The challenge now is to come up with more striking examples of good practice and indicators to measure the impact of public engagement.



**Joan Martinez Alier, Professor at the ICTA-UAB, EJOLT Coordinator**

When EJOLT started 4 years ago it was just after the Fukushima accident took place, in March 2011. In the work program there was a question about research on a possible nuclear renaissance. But if you look at the uranium price, it went down to 35/37 dollars and has remained at this level. So there was no renaissance although there have been countries building new nuclear plants. In our results, conflicts around them appear. Bruno Chareyron will talk more about it. It reminds us that we should not only think of keeping *unburnable* fuels in the ground, but also uranium in the ground.

Half of our first report is about the ship breaking problem that Brenda King briefly mentioned. There was a debate about this here in Europe and although the exact influence of the EJOLT report on ship breaking can't be measured, it served as input for stakeholders in that debate.

Our economy is not a circular economy, no matter how often this word is used here in Europe. Energy cannot be recycled, it dissipates. Material can be recycled but only 20% or 30%. There is no dematerialisation of the world economy. Even an industrial economy that would not grow needs fresh sources for energy and also biomass. We are depending on these fresh supplies. Therefore, extraction pushes the commodity frontiers always further in more problematic territory. Look at the doubling of the capacity of going through the Panama Canal and the possibility that another canal will be built in Nicaragua: apparently, the forecast is an even further increase of the quantity of goods travelling around the globe.

Sometimes there is temporary oversupply, lowering the prices and this is creating problems in the balance of payment in, for example, Latin America. They cannot even pay for their imports anymore. But from a physical point of view, the metabolism of the economy keeps increasing and waste is also becoming a big issue. Carbon dioxide emissions keep increasing as well.

In EJOLT, causal relations between the extraction of materials and social conflicts were researched. Social metabolism and ecological distribution conflicts are linked. The more tonnes of materials, the more conflicts there are. EJOLT now has figures on that and many cases of these conflicts are now in the atlas, which was built on activist knowledge.

This makes a contribution to the global Environmental Justice (EJ) movements, which introduced keywords like: climate justice, water justice, land grabbing, tree plantations are not forests, food sovereignty etc. EJOLT used these words and we wrote scientific articles based on EJ concepts, as well as reports, documentaries and more.

EJOLT contributed to the study and the practice of EJ. The movement is still growing and is a reaction to a pattern that EJOLT helped to explain. The same pattern is visible in the numbers of environmentalists killed. But solving conflicts and the resistance to injustice can also be a force for sustainability. In the atlas, around 20% of cases are called a success. Sometimes the people fighting for justice win, at least for some time.

*In EJOLT, causal relations between the extraction of materials and social conflicts were researched. Social metabolism and ecological distribution conflicts are linked. The more tonnes of materials, the more conflicts there are.' Joan Martínez Alier*

## The Atlas of Environmental Justice



**Dr. Leah Temper, ICTA-UAB, EJOLT Atlas Coordinator**

The EJ Atlas has been accessible to the public for about a year now. It was one of the main outputs of the EJOLT project, designed with the idea of aggregating the activist knowledge of our network through a single instrument. The Atlas provides a visual answer to the key question of from where our main global demands are fed, and to where are the impacts distributed. Over 1000 people visit the Atlas daily, and a quarter of a million people have visited the Atlas in total, opening approximately 800.000 pages.

Sometimes however, the sight of so many points is overwhelming. People also need to understand the context of what they are seeing. The new features of the Atlas provide such necessary context. There is now a feed with the cases that have recently been added and commented upon, and an improved search and filter function. There is also a logical box system with “AND”, “OR” and “NOT” filter functions. One can filter for example all projects where the European Commission or the European Investment Bank has had a role. You can also filter by company or by the home country of involved companies.

Leah showed the featured map “fracking frenzy” – made with Friends of the Earth. That map uses data on shale basins, showing estimated reserves. It shows where companies are actively fracking and where twenty conflicts are located, providing details on each case. The final layer of the Atlas shows groundwater stress. The correlation is pretty clear. For now, 3 featured maps have been launched. After **Fracking Frenzy** other maps on **Mining in Latin America** and **climate debt** were presented. There are also country maps – on Madagascar and Colombia. Other featured maps are in the making. We also want to fill in the existing blind spots. For some areas it is hard to find information but the goal is to target these difficult areas in the coming years.

## Questions and Answers

**Question 1:** How about the problem of slow internet? Is there a lower resolution version?

**Answer:** Lower resolution: we need to look into that, indeed. Language is another access issue. For that reason we are making an Italian platform and Spanish should also be possible.

**Question 2:** I see there is the possibility to make comments. Is there a way to give updates that become part of the official information about the conflict?

**Answer:** About updating or correcting: If you point out errors in the discussion section we can fact check and correct. We moderate the cases. If it is just a difference of opinion then it is a different process – then it stays in the discussion. If there is doubt we sometimes take the case down, double check and then put it on again. We document the claims making process – we cannot always establish the science behind it.

**Question 3:** Are there other maps in the pipeline already?

**Answer:** There are other featured maps in the making but you need to wait. In the next weeks there will be 2 or 3 new maps. We also invite organisations to suggest new featured maps.



## SESSION I: European Companies and Paths towards Accountable Raw Materials Sourcing



**Dr. Beatriz Rodríguez-Labajos, from the Autonomous University of Barcelona, is the coordinator of over 20 EJOLT reports.** She chairs the first session, where some of the EJOLT reports are discussed, as well as what has been done with them.

EJOLT created a global community on environmental justice, through virtual meetings, and a series of workshops and activities where project members struggles experienced by environmental justice organisations (EJOs) around the world. Some injustices were denounced, and some achievements celebrated. All of these different cases were synthesised through the creation of a “resource library” available online, with various types of materials: fact sheets, policy briefs, glossary, videos, scientific papers and more. EJOLT also created a series of reports where researchers and activists worked together, providing specific policy messages on specific topics. This panel will share a small part of that work. It reflects on how European companies and the EU economy take resources that it needs for its functioning.



**Bruno Chareyron is engineer in nuclear physics and uranium expert at CRIIRAD in France.** He is known for raising awareness around uranium issues, for example after Fukushima. CRIIRAD provides support to different communities around the world.

Bruno Chareyron presented the impact in Niger of uranium extraction by subsidiaries of the French mining company AREVA ([PDF of his presentation](#)). The last uranium mine in France was closed in 2001. Now, all uranium comes from overseas: Niger, Canada, etc. By 2009, Niger had already produced more than 100 000 tons of uranium. CRIIRAD was asked to go to Niger by a local NGO called Aguiriman. Bruno Chareyron: “The cooperation between us (scientists) and the local NGO was very efficient”.

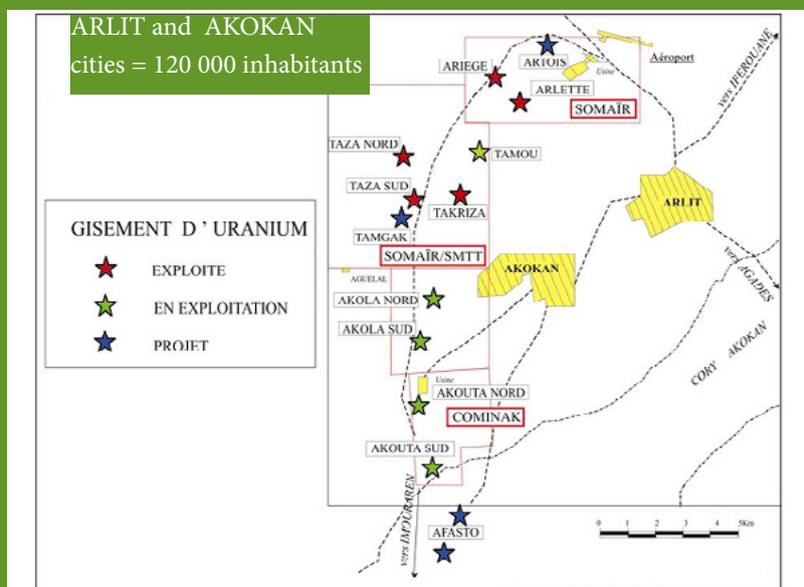
The mining area Arlit is about 900 km from the capital city, connected by the “uranium road”. Over 120.000 people live in the area of the mine, which has an underground and an open pit mine. Many workers are sick and dying. Field research was hard. First, the monitoring equipment was confiscated by the police, on request of AREVA. Fortunately however a small piece of radiation equipment that looked like a phone was left in the luggage. This was used to monitor the mines.

*‘EJOLT also created a series of reports where researchers and activists worked together, providing specific policy messages on specific topics.’ [www.ejolt.org/resources/](http://www.ejolt.org/resources/)  
Dr. Beatriz Rodríguez-Labajos*

What was important was the cooperation: CRIIRAD shared knowledge about radiation and monitoring while locals showed the more problematic locations. Some findings were:

1. Radioactive scrap from mines and mills is sold on the market, which is dangerous.
2. A second big problem with uranium mining is the waste rocks. Some of these rocks are stacked in big piles, but in some cases the rocks have been used for construction and roads. On the soil of the company hospital, radiation was 100 times above normal levels because waste rock material was used. The local NGO is still fighting to identify and decontaminate these kinds of buildings.
3. A third problem is water. Radiation was detected in water that was reported by the company as not being contaminated. This shows that it is very important to have independent control and it is best to do it with the local people.
4. A fourth issue is radioactive tailings: mud contains radioactive substances originally present in the uranium ore like Radium 226, Polonium 210, Radon 222. When the material is milled and uranium is concentrated into yellow cake, the tailings remain. The problem in the case of Niger is that they have already produced 50 million tons of tailings and nobody knows how to confine such huge amounts of reactive mud. In Niger there are two tailings hills exposed to open air. Radiation is thus in the open air, which means that wind can disperse it, because radon is a gas. AREVA can cover these radioactive tailings, but how long will it last in the very long term?

Bruno Chareyron summed up what is needed in order to have good cooperation between scientists and local NGOs: “You need sincerity and professionalism, continuity and mutual trust. Key ingredients of success are: commitment, listening to each other, intercultural communication skills and lots of courage, especially from the local people working for the local NGO.”



Niger : is one of the poorest country in the world (IDH PNUD : 174 sur 177)

Uranium = one third of exports u = 190 millions Euro in 2007 = 5 % GDP

Source : AREVA 2005

CRIIRAD /  
B. Chareyron

*“The mining area Arlit is about 900 km from the capital city, connected by the “uranium road”. Over 120.000 people live in the area of the mine, which has an underground and an open pit mine. Many workers are sick and dying. Field research was hard.” Bruno Chareyron*



**Godwin Ojo, Executive Director of Environmental Rights Action/Friends of the Earth, Nigeria,** presented the background of violence, kidnapping and deprivation since oil extraction in the Niger Delta began ([PDF of his presentation](#)).

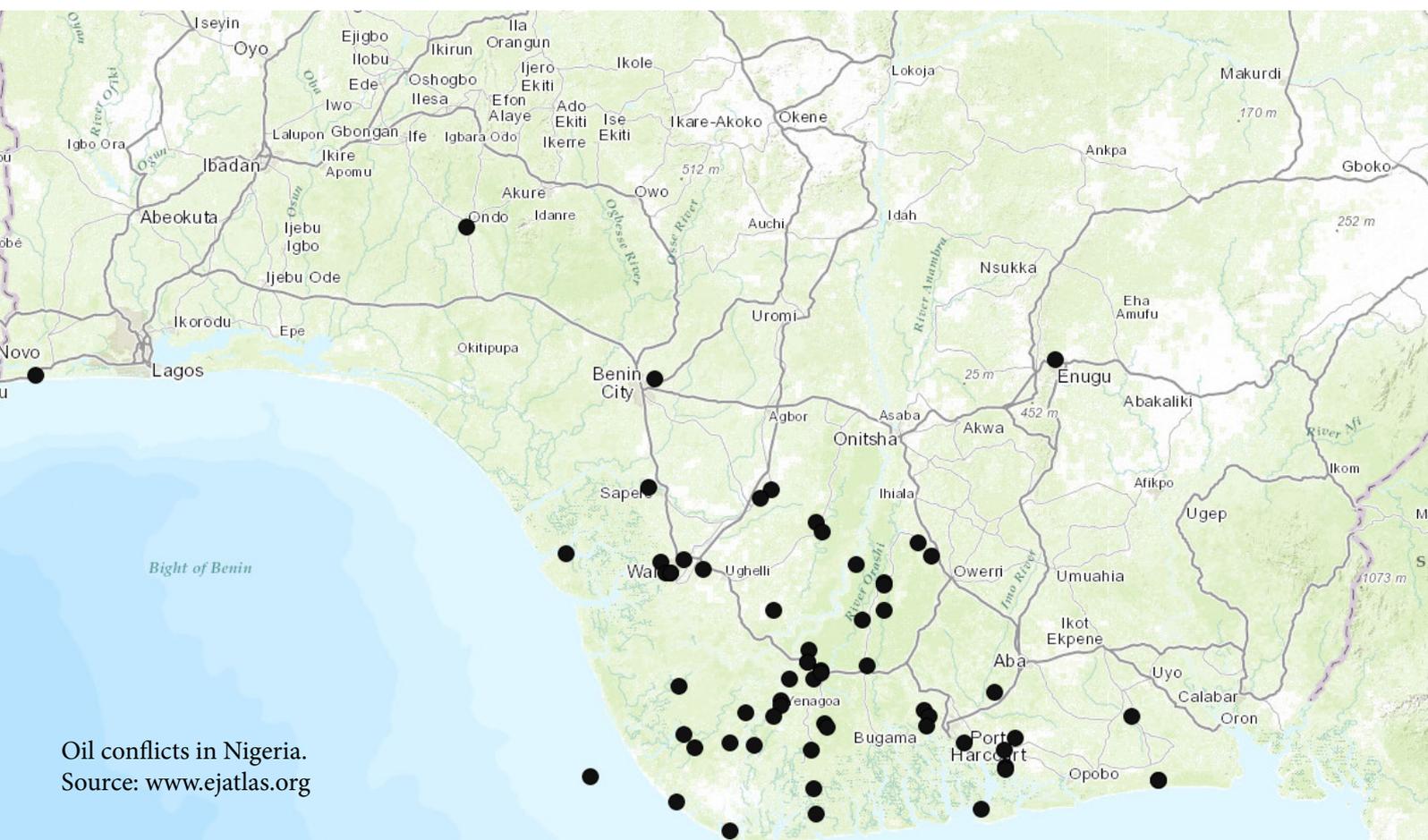
There have been more than 10,000 oil spills in the Niger Delta and none of them have been effectively cleaned. Gas flares burn non-stop. Soil is contaminated and water polluted, leading to poor farm yields and less fish. For the north, in Europe, energy security means constant flow, whether or not pipelines are militarized or people are killed. Local people suffer a lot. In the south, energy security is taking these resources to international markets in the name of income for the state. Why do environ-

mental injustices persist? One of the reasons is that the state is working with Shell against the communities each time they rise to protest. Too many activist colleagues have been killed in Nigeria in the last 20 years.

International NGOs came together and supported the Budu-court case in which 11,500 people filed a case against Shell in London. In this case Shell offered the amount of 5,000 dollars to the Budu community in 2010. Now this amount is offered to each individual. Godwin Ojo thanks EJOLT in the name of the Budu people, because without this international support it could not have been successful.

Godwin Ojo concluded by reflecting on the legal system: "The legal system is not sufficient inside the country, so the victims have looked for justice abroad. In my country, a big company can distort the justice system. As a result, there is a situation of perpetual violence, with people taking justice into their own hands. After 50 years of injustice the community is reacting with the kidnapping of oil workers and the sabotage of pipelines. The global political economy needs to move towards post-extractivism."

*'There are more than 10,000 oil spills in the Niger delta and none of them have been effectively cleaned. Gas flares are burning permanently. Soil is contaminated and water polluted leading to poor farm yields and less fish.' Godwin Ojo*



Oil conflicts in Nigeria.  
Source: [www.ejAtlas.org](http://www.ejAtlas.org)



**Begum Özkaynak is Professor of Economics and mining expert at Boğaziç University, Turkey.**

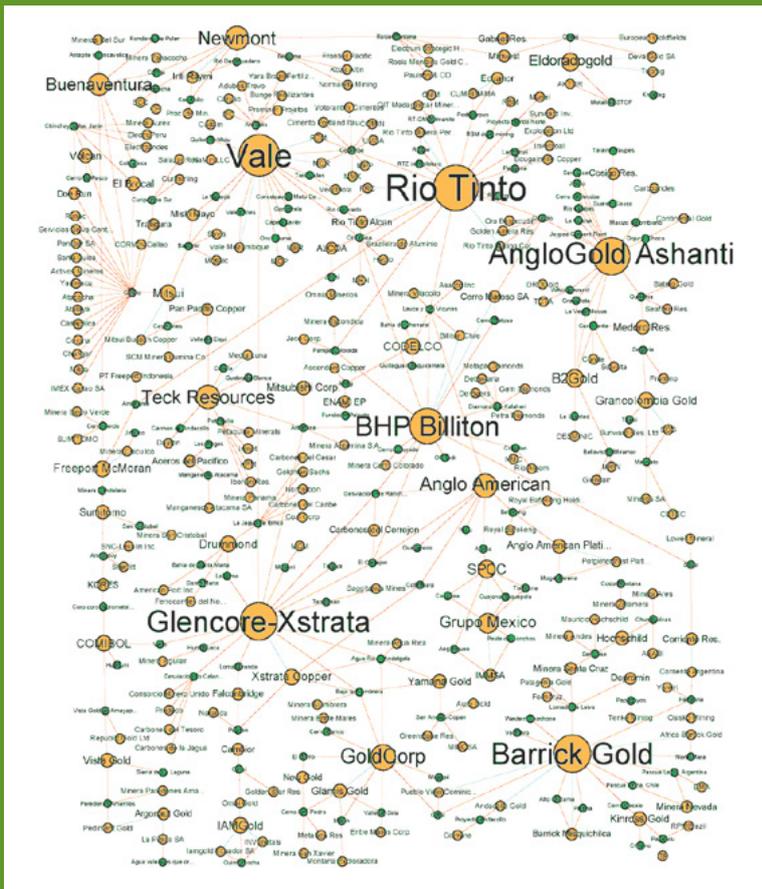
Her presentation focused on mining conflicts, how communities resist and how they define environmental justice and environmental justice success. Begum used the EJOLT database ([PDF of her presentation](#)).

Mining movements she said are interesting because conflicts occur at all stages of the mineral life time. Using EJOLT data and applying filters it was possible to characterise mining conflicts with regards to intensity, by income groups and impacts

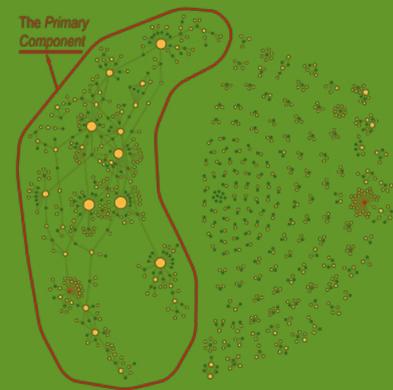
on short and long term. Also the type of resistance/ activist and whether they are classified as having a positive or negative outcome was registered. The data coverage is not complete or representative for all mining conflicts around the world, but there is good coverage for Africa, Europe and in particular for South America. Begum’s research pool contains 360 companies and 600 conflicts reported. From these, she made info-graphics on the mining network where orange dots are companies and green dots are conflicts. The bigger the dot, the bigger the conflict.

What is observed is that the big dots are mostly large well-known companies. They are also well-connected among themselves and to companies at the national level. For example AREVA is seen as having its own network and sphere of influence and connections to local subsidiaries like Chinese firms and French utility companies. Also companies are often involved in more than one geographically distant conflict. For example Alamos gold is involved in a conflict in Turkey and also in Mexico.

*‘It was interesting that the main research questions came from the activists. We now have information on what makes a conflict more intense, when the disruptive project is stopped and what defines environmental justice.’ Begum Özkaynak*



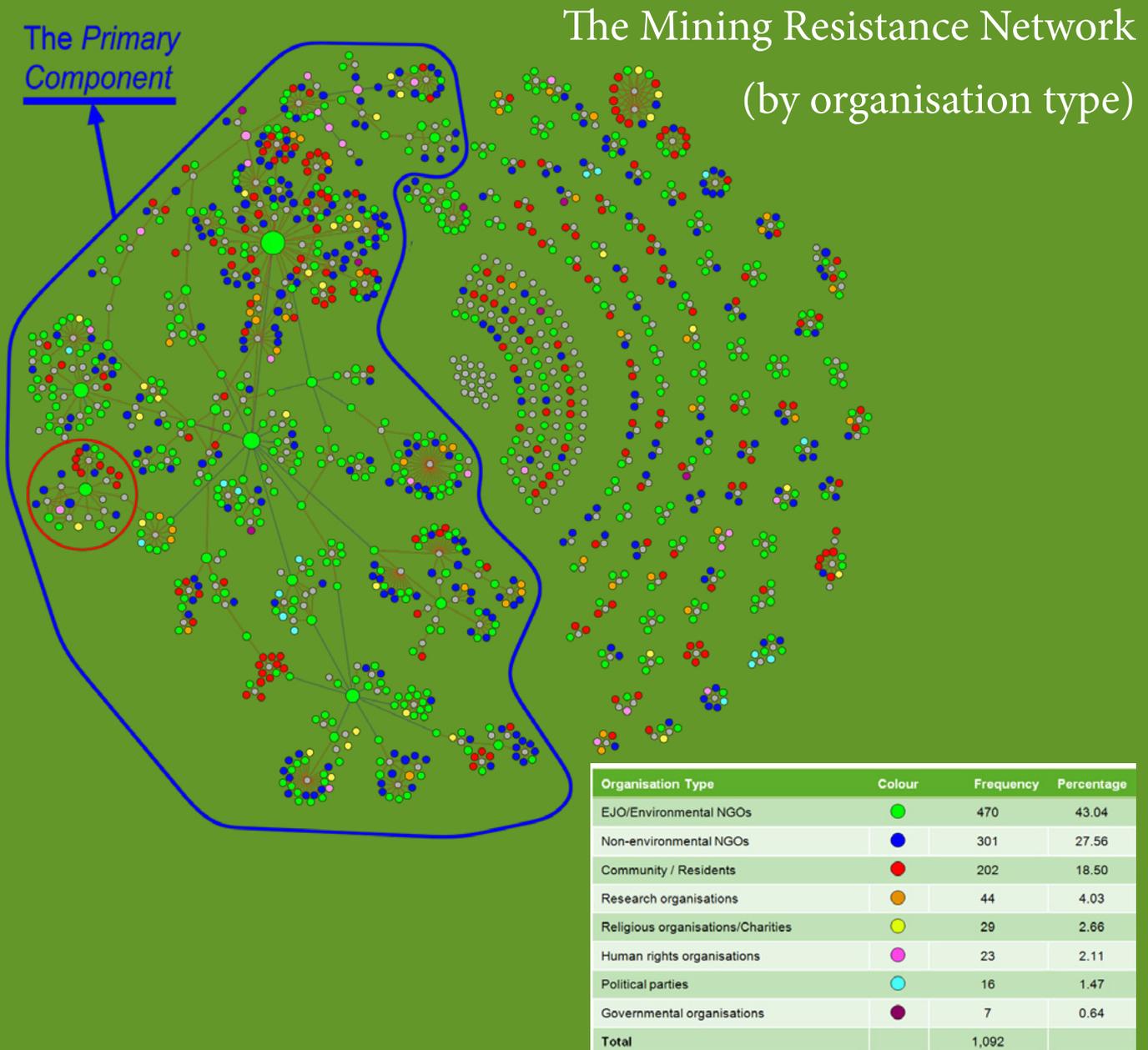
Mining Company network:  
Primary component in detail



- Mining company
- Conflict
- Company to conflict link
- Company to subsidiary link

A similar info-graphic was made to map resistance. The information is organised around the organisation type and scale of operation. Resistance turned out to be less connected to each other than to companies – so there is scope for more collaboration. Some good examples of collaboration do exist but one possible weakness has been observed: national hubs are not very well connected.

There are connections between national and local organisations and national to international, but not many national to national links. One of the most important indicators of success in environmental justice is the disappearance of the source of the conflict, often meaning that a destructive project is halted. Sometimes success means that an improvement has implemented.





**Mauricio Lazala is an international lawyer and Deputy Director at Business & Human Rights Resource Centre (BHR), in the UK.** This NGO is an independent organisation dedicated to making the impact of companies on human rights worldwide more transparent & accountable. They cover 6000 companies; have a website in 8 different languages and researchers all around the world.

Mauricio shared his thoughts on responses that companies give on environmental issues – more specifically around accountability ([PDF of his presentation](#)). There is something called the company response mechanism. When a NGO makes an allegation of abuses by a particular company, BHR looks online to check if the company has a response to the allegation. If they haven't they invite the company publicly to respond to the allegations. When the company sends a response it is posted on the Business & Human Rights website and sent to

those who made the allegation (non-responses are also highlighted on the website and newsletter). In some instances this mechanisms have led to a dialogue between the offender and the organisation, and in some cases, that has led to the resolution of the conflict.

Mauricio Lazala: “We have made 2336 invitations to respond to companies and the response ratio is about 70%. The companies often respond because they appreciate to have the space to bring their response in full and they are afraid of the consequences of not responding. Journalists and other opinion leaders might pay a lot of attention to that.”

From a deeper analysis of invitations to UK-headquartered companies, it was observed that they respond at a higher rate when the problems are situated outside of Europe. In the case of Shell in Nigeria, Shell responded (to an EJOLT report) that the company had complied with high standards and transparency where possible. At this point it is easier for organisations to hold the company accountable to what they say. This information can be used by lawyers, as was the case with Shell in Nigeria. The extractive sector is the target of the most complaints, however, the financial, food and beverage, security and retail sectors also feature. Impacts are mostly in Africa, Asia, Latin America and the Middle East.

Mauricio finished with observations about obstacles to corporate legal accountability:

1. There is an increase in the use of national and domestic law but there are many obstacles to hold companies accountable in “host” countries such as Peru, Nigeria, Zambia, Indonesia, Thailand or Bolivia, due to lack of effectiveness of the judiciary, harassment, criminalization, corporate capture of government, etc.
2. The options in the few countries which allow for extraterritorial jurisdiction, like the US and the UK, have been narrowed after the *Kiobel v. Shell* decision in the US and the Legal Aid Bill in the UK.
3. Gaps in accountability involve cost, complexity and length of the cases, conflict of interest (many times the lawyer represent the company in other cases), intimidation, corruption. And there's the corporate veil of a head company versus actions by its subsidiaries.
4. Lack of collective action procedures, mainly in common law countries but not possible in civil law countries.

### Beatriz Rodriguez-Labajos asked the panellists about their experience of working in EJOLT.

**Bruno Chareyron** summed up actions that were directly connected to the EJOLT project:

- the cooperation in Bulgaria about the old uranium mine in Buhovo;
- the cooperation in Brazil, regarding one uranium mine there;
- the cooperation with EarthLife Namibia, regarding the operation of various mines, especially the one from Rio Tinto in Namibia;
- and last week in Malawi together with people from citizens for justice.

EJOLT was an extremely good opportunity to share experience of monitoring uranium mines.

**Godwin Ojo** said that some things would have happened anyway. For instance the court cases could have continued. But it is very important to understand how the documentation made in EJOLT became a resource for the lawyers and activist in trying to interrogate the issues. “We could not have written that report without EJOLT. And from the analysis of the Bodu court case in London, we see a window opening in Europe to redress environmental injustices that are being perpetrated in Nigeria.”

Friends of the Earth Nigeria contributed to hundreds of cases of environmental injustices. That also helped to analyze the type of resistance. Godwin Ojo thinks there is recognition now within EJOLT that the activists are co-producers of knowledge, in team with researchers. “EJOLT has been able to create a fusion where the researcher became an activist and the activist a researcher.”

**Mauricio Lazala** claimed that two very concrete things would not have happened without EJOLT. His organisation followed and invited 10 companies to respond to allegations based on EJOLT research. Another important thing was an access to justice event in London last year. There was a lawyer from Ecuador, who spoke about the case of Chevron, a person from Friends of the Earth in the UK and a person representing the mining industries. The event had more than 200 participants, it was recorded and the recording is [available on the website](#).

**Begum Özkaynak** was very grateful to have a huge inventory of mining cases. It was interesting that the main research questions came from the activists. We now have information on what makes a conflict more intense, when the disruptive project is stopped and what defines environmental justice. This can be important for companies as well, because they might now redefine what is important for their operations in communities.

### Beatriz Rodriguez-Labajos then asked the panellists what needs to happen next.

**Begum Özkaynak** said that one of the key findings is in relation to impacts. Conflicts become more intense when they have immediate social impacts. These could be potential impacts, not only observed, and this is very much related to people’s livelihood. It is very important that the immediate social impacts are addressed. When the response from companies is observed they say ‘we have been paying farmers this amount’ but this is not the solution in general to the conflict itself. On the other hand there are long term impacts that cause environmental social injustices. These impacts are observed more often in low income countries. It is important that companies adopt the EU standards also in non-EU countries.

**Mauricio Lazala** said that there is a big push to implement the UN Guiding Principles on business and human rights at different levels. Four years after the adoption of the Guiding Principles by the Human Rights Council only 4 countries have published national action plans on business and human rights: the UK, Netherlands, Denmark and Finland, while more countries are working on the action plans.

Much more has to be done on the third pillar of the guidelines which is access to remedy. But access to remedy is not one thing which only governments can do through the judicial system.

*‘...from the analysis of the Bodu court case in London, we see a window opening in Europe to redress environmental injustices that are being perpetrated in Nigeria.’ Godwin Ojo*

Access to remedy according to the UN guiding principles also refers to company-level grievance mechanisms and there is a series of criteria with which this mechanism needs to comply with in order to be UN compatible. It is not just putting an officer and accepting complains.

With regard to the climate change COP in Paris later this year, Business & Human Rights will focus on climate change and adaptation and seek company responses on what they are doing in terms of reducing their climate change contribution and increasing their adaptation efforts.

**Godwin Ojo** made three points.

- Policy recommendations in EJOLT were also addressed to Shell and to the Nigerian government, which is to implement the UNEP report from 2011 that calls for the creation of a restoration fund of 1 billion dollar. That UNEP report was endorsed by EJOLT.
- An improved mechanism for redressing environmental injustices is needed. The rising momentum on 'end ecocide' as a way to end environmental racism is good. The standards used in Europe should be the same standards that are used in Africa.
- Through EJOLT a possible energy future was researched. The present system of energy generation is monopolistic, capital intensive and environmentally unfriendly. EJOLT has brought more attention to our slogans to leave the oil in the soil, coal in the hole and tar-sand in the sand.

**Bruno Chareyron** Chareyron said that the first achievement was to make the invisible visible. Radiation is invisible but in uranium mines you have radiation everywhere: in air, soil, water and food. The first achievement is to make the radiation visible to the community through monitoring.

For example in the case of Namibia we were able to show the impact of nuclear waste on underground water.

In the case of Malawi we were very happy to be able to visit the mine with the company. There was a guard sitting in a place where radiation was 10 times above normal. Which showed that the company information was wrong, so it is important to give the people some tools and let them monitor and this also gives trust and empowers the local NGOs because they see that they might find some support to show what they think is wrong at the mine.

What is really needed is to improve training of the people on communication, videos, booklets, training courses so that the communities, the workers, the unions have more and more material available.

Beatriz Rodriguez-Labajos thanked the members of the panel and opened the floor for questions.

*'We have finished a negotiation of free trade agreement between EU and Ecuador. It would be good to have in the future a featured map with all the conflicts that are generated by this free trade agreement in Ecuador and in Europe and Colombia and Peru.'*  
Ivonne Yanez

## Questions and Answers

Mihaela Popescu, from Agora for Life, invited Mr. Antonio Scarafino from the DG-RTD to explain the gap between his beautiful speech about how to tackle climate change and the facts. “In fact the EC is a kind of an official sponsor for the fracking industry as your department is sponsoring oil and gas industry with 130 million Euros under the project Horizon 2020. And I would like to mention also the latest project of the EC: the network on unconventional hydrocarbons, which is again allocating a lot of money. The EC is pushing this damaging industry in Europe. And we all know what fracking means and what is the impact in USA and in Canada and in Australia; so how come the EC makes such a lobby for this technology?”

Mr. Antonio Scarafino: “Thank you for the question, I think it is very contentious what you brought to the discussion, but it is also very relevant. I do not work for the energy services, I work for a unit of science and society. So what we do is to foster, to promote the debate between science and society around value laden issues. You have mentioned one project, I am happy to get more information about it. At the same time there are other projects fostering the subject, and also the controversial aspects of fracking. One of these is a project funded under science and society FP7 work program which is called “iron dialogue”. And it is looking at issues, not only fracking, but other technologies such as carbon capture and storage. It is our responsibility to not only support industry and support technology development, innovation, but also provide space for dialogue, space for controversial issues to be explored.”



**Ivonne Yanez, Action Ecologica Ecuador:** “I would like to make a short comment about one of the letters of the EJOLT project, because EJOLT is environmental justice organisations liability and trade and I am going to refer to trade. We have finished a negotiation of free trade agreement between EU and Ecuador. It would be good to have in the future a featured map with all the conflicts that are generated by this free trade agreement in Ecuador and in Europe and Colombia and Peru. I think it would be good to make a reflection on what this free trade agreement means to increase the conflicts and not only in extracting industries in land grabbing and of course in human rights violations. Maybe there are functionaries from the EU here, so it is timely to mention that it will not be only a question of respecting human rights as a part of the agreement, but to recognise that there was a complete lack of democracy in this

negotiation. Probably most of the people in our countries do not want this free trade agreement ratified by the parliament, not in Europe and nor in Ecuador.”

**Participant from Slovakia:** “I have a question on your definition of environmental justice (EJ): My point is that in your approach it is diluted. The original definition comes from the USA where it is affiliated to human rights movements for Afro-American for equity etc. It was defined in a way that the class makes the difference. Studies showed that 60% of hazardous waste sites are located in afro American or Hispanic communities. There was a research by Friend of the Earth - Scotland defining that people living next to installations are mostly the poor. Other research showed that in the UK if you are poor you have a higher probability to be exposed to flood, etc.



Then there is a second approach to defining EJ which refers more to North-South, which is extensively covered in the room. But when you mix all these things together in a way you are losing class and race, or social and ethnic aspects, which was very clearly in the centre of the discussion of EJ.

Because now everything is EJ, any kind of conflict, all the data you put on the atlas is EJ and there are some attempts to show that some of these cases have also social aspects. Social and ethnical aspects are hidden or lost in your approach, just like one aspect. In this perspective I am not very sure if this was the best approach.”

**Godwin Ojo:** “This question should be answered by Professor Joan Martinez-Alier but I have a few comments. The observation is correct to some extent. But within EJ we have also introduced other themes. One is political ecology, another is about economics. These models provide the base of the analysis. But if one analyses what EJ is trying to do in relation to social and ethnic issues, you will see it also deals with power relationship. If you look at the Nigerian example, it is all about class, race, power relations between the majority tribes against the minority.”

**Beatriz Rodriguez-Labajos:** “In EJOLT we had the privilege to discuss this question with Prof. Paul Mohai which was one of the pioneers on environmental justice. I would say that class and race is present, but together with many others, the EJ is multidimensional and we have tried to discuss this more or less in depth both from the more analytical and action oriented perspective.”

**Joan Martinez-Alier:** “You have mentioned Paul Mohai. His students have selected cases for our atlas by asking environmental justice experts which cases they thought should be in the atlas.

What does political ecology mean in class terms? This is an open question. For example, in Latin America, in about half the cases we have indigenous people who are affected – a much higher proportion than their overall percentage of the population. In political ecology nobody was able to answer that question in a more empirical way but we are now able through the atlas to do so.”

**Ana Barreira,** environmental lawyer from IID-MA, an Environmental law organisation in Spain has a question for Mauricio Lazala: “In my experience, you have the companies but you have also the administrations, which in many cases are corrupt, but sometimes they are not, they simply have interests; They are the ones which authorize these projects. Do you also contact the administrations that authorize the project and supervise the projects?”

**Mauricio Lazala:** “When my organisation was created 15 years ago, there was no other NGO in the world exclusively covering business and human rights issues. The traditional organisations Amnesty, Human Watch, etc. were all mainly focusing on governments. We were created in order to fill the gap that companies did not feel that human rights had anything to do with them. CEO’s 15 years ago would say, “human rights is not a topic for us”, please go to the government. Since 15 years ago, there has been a huge improvement. Most large companies now recognise that they have a direct impact on human rights. This is explained partly by organisations like ours, environmental organizations focusing on companies, trade unions, we focus only on the companies. There are other organisations that focus on what governments should be doing. However, in our analysis and briefings we always introduce recommendations for the governments as well.”



## SESSION II: The War against Environmentalism and defending the rights of those defending the environment



**Mr. Jan van de Venis chairs the session; he is WaterLex Legal Desk Director (Geneva) and a founder of Grrrowd.** Grrrowd is a global crowd-funding platform to support legal action against serious violations of economic, social and environmental rights. There are 3 speakers in this panel: Susana Borràs, Billy Kyte and Mariel Vilella.

There is an urgent need to defend the rights of those who defend the environment for the future and our future generations. Jan van de Venis made this point clear by opening the session with a story. A woman who worked in a factory that polluted water resources investigated impacts and started to put pressure on the company to do the necessary and legally required waste water treatment. She was immediately threatened with persecutions and also on a personal level. In many cases, such stories have an even worse ending. Those killed have names and have stories behind themselves. A key lesson is that many of them were not really environmental defenders at the beginning; they became so after experiencing injustices, after connecting the dots and becoming aware of cause-effect relations that can be avoided. We need to protect the pioneers.

One sector where connecting the dots is an important but dangerous activity is the waste sector.



**Mariel Vilella, associate director and campaigner from ZeroWaste Europe/GAIA,** explained how they work in the transformation of an economic model based on over-extraction of resources. She used the cement industry as an example ([PDF of her presentation](#)). Nowadays, cement companies are burning alternative fuels such as industrial waste, municipal solid waste and biomass. There are profits to be made from burning waste: local governments pay for waste burning services. It also serves their PR strategy of green-washing an essential dirty business, which is needed now that the negative consequences of the cement industry activities are more visible around the world. Usually the most impacted communities are the more vulnerable ones – for example in the poorer Moncada area around Barcelona, Spain.

Fortunately, some researchers are also studying the injustices and some academic papers have recently been published on these matters. And there is more than independent research. November 2013 was the first European gathering of groups fighting waste incineration in cement. That event made the companies very uncomfortable. Threats of court cases were made. But the resistance is even more dangerous in Mexico.

The plan to build a waste incinerator in Huichapan caused resistance from the local population. After much public pressure and complaints of resulting health problems in the community, the government recognised that the practices of incineration and disposal of the waste in the CEMEX plant were illegal. But by that time activists involved had received terrible threats. The activists made a call to international organisations to get some support and cover. A network in Mexico was created to react against the incineration plant and protect its activists. In 2013, the Government in Mexico approved the law “mecanismo de protección para personas defensores de derechos humanos y periodistas”. Since then, 117 people have requested protection.

Mariel Vilella concluded that “We need to really honour the people in the front lines. Those are the first defenders of our environment and they are the most vulnerable. We need to recognise their work, protect them and show that they are not alone.”



**Billy Kyte co-authored the ground breaking “Deadly Environment” report from Global Witness**, an international NGO that investigates human right abuses and tries to change policies. The report shows that 908 people were killed from 2002-2013. The number of murders has been raised in the past years; in 2012 there were 147 deaths while in 2002 it was 51: from 1 to 3 killings per week.

Latin America is the region with most killings. It’s a region with many extraction activities, corrupted practices and the existence of many marginalized groups. Only 34 out of 908 cases of killings were taken to court, and only about

1% of those ended with convicted people. Key drivers for the increase on killings and threats are mainly the increasing pressure on land resources and lack of information for communities and affected people. One of the main problems is that many activists are not aware of their rights.

Billy Kyte gave the following broad recommendations to states and international institutions:

- Ensure investigations and allegations of activists are followed
- The secrets agreements on land resources between government and companies must end
- Create and implement better Court systems and protection programs in all regions, to protect human rights defenders.

Billy Kyte concluded that killings have dramatically increased in the last decade and with much impunity. Defenders are at risk because they are not aware of their rights. The most vulnerable are ordinary people in the front line and indigenous communities.

*‘Key drivers for the increase on killings and threats are mainly the increasing pressure on land resources and lack of information for communities and affected people. One of the main problems is that many activists are not aware of their rights.’ Billy Kyte*





**Susana Borràs, a researcher at the University Rovira I Virgili and involved in the EJOLT project,** then talked about the legal avenues to protect environmental defenders ([PDF of her presentation](#)). Her aim was to overview the different strategies used (not only judicial) to support the protection of people who defend the rights of different communities around the world. Not only to protect them from injustices, but also to prevent them from occurring. Two fundamental rights support them:

- The right to protect other people rights: already recognised in Universal Declaration of Human Rights. The most relevant: Human Rights Declaration of Human Rights Defenders.
- The right to be protected: also at national/regional level.

How to define people who defend other people's rights? This is one of the most difficult question to be defined when defending cases. Usually defenders are not really aware that they are working as protectors. The rights below are also used to complement the two main ones:

- Meet or assemble peacefully.
- Form, join and participate in NGOs, associa-

tions or groups.

- Communicate with NGOs.
- Participate in peaceful activities against violations of human rights.
- Access to the mechanisms of justice.
- The primarily duty to protect human rights lies with the state, who has the obligation to create the conditions needed to ensure human rights. Too often, defenders are replacing the role of the states, who should be the ones that should protect our environment and us.

There are 3 main strategies to protect people who protect other people rights:

- National Mechanisms: Judicial Mechanisms and Quasi-Judicial Mechanism like the Ombudsperson (advisory role) and special programs.
- International Mechanisms: Special reporters on the situation of Human Rights, the ICHR International Commission on Human Rights, Inter-American System.
- International Criminal Court.

Something has to change at the international level to require corporations to be also responsible for their actions, and not only the states, regarding the legal point of view.

Susana Borràs concluded by stressing that several guides for environmental defenders exist on how to protect themselves and to bring cases to national courts. At the same time, she said that "It is necessary to develop a capacity building for our judges, administrations and state bodies."

*'The primarily duty to protect human rights lies with the state, who has the obligation to create the conditions needed to ensure human rights.' Susana Borràs*

*'Those killed have names and have stories behind themselves. A key lesson is that many of them were not really environmental defenders at the beginning; they became so after experiencing injustices, after connecting the dots and becoming aware of cause-effect relations that can be avoided. We need to protect the pioneers.' Jan van de Venis*

**Jan van de Venis opened the panel discussion: we can document and witness violence and threats against activists, but what do you expect from policy makers that they do?**

**Billy Kyte** pointed out that in land conflicts, there is a need to implement some changes in the legal frameworks, like how land is traded. It has to be legal, documented and enforced. Member states should support treaties against human rights violations.

**Mariel Vilella** said we need to ask policy makers to prevent these atrocities to happen in the first place. We need them to be willing to stop corporations to abuse our common land, food, minerals,... there are so many fronts that should be protected. We need states to work as protectors of the common good and make cases together with activists.

**Susana Borràs** asserted that some states are acting in complicity with those who commit atrocities.

**Jan van de Venis** said that the right to a healthy environment is not recognised in many countries, especially in the Northern countries. There is often a debate, should we defend this right? Why would it help in Europe to have this right included in the treaties/constitution?

**Mariel Vilella** agreed that this right should be recognised. It would help in raising awareness

of its importance. We see people having illnesses caused from those activities, so recognising this right would be a place to start. But this is not the only issue needed. We have to work on the capacity of people, for them to be aware that they have the right. Only then the politicians take this right seriously and then we can stop corporations to implement activities that provoke those unhealthy situations.

**Susana Borràs** stated that as a lawyer she was not sure we have any right to the state of the environment. Perhaps we have to change our mind and leave the opinion that we have the right to a “healthy environment”. Maybe we should change our perspective, and don’t consider that environment belongs to us. Maybe we need to look more at how some in Latin America see that issue. In some places, the environment has rights on its own, not in function of how healthy it is for us, humans.

Jan van de Venis has been a human rights lawyer for many years and resources are most often a big issue. Why don’t we do crowd funding for concrete legal cases to give them support? That is now possible with **Grrrowd**. This is a call not only to donate, but to spread the word so people can find it. A **video** on a particular case is screened, from the Grrrowd platform.

The role of human rights defenders is critical for the success of sustainable development.



## Questions and Answers

**Question 1:** About Brazilian killings: the activists are poor. There are connections between corporations, economic activities and “mafia”. Corporations have connections with “mafia” and we want to understand these connections better. How can we do that? Brazilian scientists are not killed yet, but we see that corporations are going to the Court against environmental health scientists. In our university, there are four cases that involve researchers being sued by corporations. Maybe it will become a pattern and it makes our work difficult.

**Billy Kyte:** on the first question, it is better to cope with concrete issues on specific cases. There seem to be many links with corporations, mafias and the killing of activists. This is something that we cope with when doing our studies, but you are right that more work should be done on this.

**Mariel Vilella:** in some cases it is not possible to prove those links and we only have suspicions. We should consider which resources are needed to follow up those cases to understand the links.

**Question 2:** Which should be the researcher’s role? Which role do researchers play within the communities?

**Mariel Vilella:** researchers should report and explain threats but remain independent. There is also the need to protect universities in order to protect the generation of knowledge, otherwise these conflicts will remain invisible and generate more injustice again and again. Most of the affected communities are very local and most of them have not had any political experience before. It makes a massive difference when local groups can share their experiences, what is happening to each other, get contacts and experts (lawyers,...), share resources, express solidarity to strength and build up their capacity. That gives them cover, courage, new insights and more.

**Question 3:** Include as human right the right to the environment in laws is not the solution according to Susana Borràs speech. However, as there is the right to enterprise, isn’t it better to have the right to the environment recognised,

and be able to use it as a defence tool?

**Susana Borràs:** from a philosophical point of view, you have a problem if you consider the environment as a property. Susana doesn’t see the legal problem if we defend “nature” as a “legal personality” itself. It should be protected, but not as our property.

**Jan van de Venis:** The right to a healthy and clean environment has been recognised through case law by European Courts (ECHR and Comm. ESC), in several regional human rights convention and the Aarhus Convention preamble, but has not yet been codified in the European Convention on Human Rights or another internationally binding treaty.

**Question 4:** How can we find immediate protection for defenders, given the fact that legal mechanisms are very slow? When the threat is urgent, but also when it is more in a long term.

Lots of threats come from corporate actions. How can we be more effective against that?

**Billy Kyte:** useful tools include the use of technology (encrypted emails), mobile phone tools (alarm contacts with locations). Other tools include training courses on security, which are offered by international organisations. As regards to the second question, the state is the ultimate responsible entity; legal frameworks in the state level need to be improved.

**Jan van de Venis:** when activists are threatened and they use a random UN accreditation card that sometimes helps, it proves that being connected with an UN institutions can give some protection.

**Question 5:** **Godwin Ojo** explains a case where an activist was arrested; afterwards the lawyer went to the police office and he was arrested too. When we talk about protection issues we talk about survival, and this has to do with resources. The EC has funds, but the practical aspects of going to the field need to be improved, some concrete strategies should be planned and implemented. Many times defenders and local communities are left alone, and practical issues should be more stressed.

## SESSION III: Future actions at EU and UN level



**Leida Rijnhout opened the panel by pointing to a trend:** “In my field of work, related to UN negotiations on Sustainable Development and Environment, I notice an increasing focus towards rule of law and implementation of legal frameworks.” Maybe this is a reflection of the growing power inequality: the whole political and economic system is getting more and more in favour of the powerful (private sector), which is disguised by the discourse of creating economic growth and jobs. According to the mainstream decision makers this is delivered by big companies, so we need to “enable the environment” for them, so they can freely do their business, with no real considerations of the social and environmental costs. Most of the decision makers are more interested, or even contracted, to save the economy instead of the planet. But as the Trade Unions at Rio+20 Summit said: “There are no green jobs on a dead planet”.

It is unfortunate to see that governments do not rule the world anymore. Their political power and decision making is often replaced by big companies. For these reasons, accountability mechanisms, the courts and the laws are getting more important. But are the courts, or more broadly the existing legal frameworks, ready for this? Is environmental law sufficiently developed to deal properly with those environmental conflicts? Because “commons”, “ecosystems” and “nature” do not have a “legal identity” and the same is true for local communities or neighbourhoods. Earlier today Godwin Ojo referred to the fact that even in courts you see that, in their case, the court tends to defend more the company (Shell) than the victims in Niger Delta. The victory of the court case went to a local business man, as he could proof that the oil spills were damaging the profit of his business. No problem with that of course, but what happened with the families that lost the health of their kids? Was it just bad luck for them? So: “is access to the court the same as access to justice?”

### Questions to the panel:

What is the role here of the EU and the UN? What is the role of citizens? Is the law made for defending the rights of the citizens or more to defend the interests of companies? What are the windows of opportunities? What are the possibilities and the barriers?



### Ana Barreira started with a provocative presentation titled “does the rule of law rule the EU?”

She stresses that law is not mathematics and it can be discussed: having access to courts is having access to the administration of justice, not to justice ([PDF of her presentation](#)). One problem is that even at the UN negotiations on sustainable development, the planetary boundaries are not reflected. Sovereignty of national states represents a big challenge for the future. Another weak point is the citizens complaints mechanism: if an EU member state is not transposing the necessary EU legislation or applying the regulations properly, citizens are in theory able to use the compliance procedure and notify the Commission that this is happening. However, when the complaint procedure is started, citizens often do not receive a rule of law. They should have access to the file, to review the procedure – but this is not the case in the complaint procedure: normally the commission has 12 months, but there is no communication with the commission, you cannot request administrative review, you cannot access the file. In several instances the case took 4 years, and even then there was only an answer after complaining to the ombudsman.

There is a big gap between EU institutions and citizens, which is undermining the values of the EU. However, the new commission has put the rule of law in her mandate, so hopefully this will improve the situation.

*“There is a big gap between EU institutions and citizens, which is undermining the values of the EU.” Ana Barreira*



**Barbara Ruis from UNEP pointed to the progress made at UN level through Resolution 19/10 (2012):** Decision to appoint an Independent Expert on Human Rights and the Environment, with obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment ([PDF of her presentation](#)).

He (John Knox) has a 3 year mandate and presented a Scoping Report (2013), a mapping Report (2014) and a Compilation of Good Practices Report (2015). To inform citizens about their rights the website <http://environmentalrightsdatabase.org> was created.

There's also a Special Rapporteur on the situation of Human Rights Defenders. At UNEP the question was: what are the particular challenges faced by Environmental Human Rights Defenders, how might the international community best support them? The UNEP Compendium on Human Rights and the Environment is one answer to that. There was a lot of positive feedback on the compendium and it also contains a lot of cases.

There was a decision in UNEP to establish environmental rule of law. However, no one knows what it will entail; the issue will be promoted in the years to come. It is important that the right to a clean and healthy environment stays on the agenda. UNEP cannot protect the environment without all the allies and partners. This Atlas of Environmental Justice shows the nations that they can be allies.

Barbara Ruis concluded with the sustainable development goals, which will be the basis of the agenda for the years to come. These open many opportunities, such as goal 16 on access to justice. She considers the EJOLT atlas an important tool to work on environmental justice.



**Patrick Dietz from the European Commission stated that he understood Ana Barrera's frustration.** He said that the EC is trying to shift responsibility from the EC to Member States because the complaints are better dealt with at the Member States level, where the process can be faster and better. The environment is a public good and this is why access to justice is important; most courts are based on infringement on individual's rights, this is why it is important to have specific rights for the environment. The starting point is the Aarhus convention on access to justice: it allows to public concerned to ask for review of administrative or court procedure. The Aarhus Convention is passed into secondary law, especially in the Environmental Impact Assessment (EIA) and the Industrial Emissions Directive (IED). Member States that did not implement it entirely are taken to the European Court of Justice. Some weaknesses still exist. For example: hunting derogations cannot be challenged in many Member States. And there are small projects that are too small for the scope of the EIA directive, such as a small hydropower plant. In these cases many Member States don't allow the case to be brought to the court. Another example: air quality plans. The EU tried to have a general instrument on access to justice for such cases in 2003, but the Member States were not happy, so discussion ended in 2005 and the proposal was withdrawn in 2014. However, DG Environment was asked to explore possibilities. So an impact assessment has been done but it is not public yet.

The European Court of Justice was asked by many Member States courts for explanation of the rules and many national courts are still expanding the rights of NGOs under Aarhus Convention regulations. Many Member States are also still expanding the Aarhus Convention in their own national law, such as in Germany and Sweden. We see a trend to increase access to court for NGOs.

The current European Commission has 10 priorities, but environment is not one of them. Environmental justice is included in the rule of law mandate. We also have the 7th Environmental Action Program but it doesn't say how to ensure access to justice. There are various possibilities to enlarge access to justice: general instrument, guidelines... at the moment discussions are still ongoing how to tackle the problem. Consultations were carried out in the last 6 months internally and with external experts (Member States, judges, academics... - workshops were very good); there will soon be consultations with the NGOs. We do that anyway informally. One day we will also hear the voice of the industry.

The key considerations of the European Commission are:

- Material scope of the initiative: it should be environmental law in strict sense;
- Establishment of minimum criteria, create a level playing field in the Member States;
- Respect the legal systems and traditions as much as possible;
- Incorporate the case law which the courts have delivered, if necessary amended.
- Go beyond the Aarhus Convention requirements to establish and require access to courts, with also an administrative review;
- Respect the principles of European Court of Justice
- Propose an alternative dispute settlement mechanism for parties that do not want to go to court.

The objective is to broaden access to justice and create a level playing field. Enforcement has to be improved while the Member States law needs to be respected.

*'...the EC is trying to shift responsibility from the EC to member states because the complaints are better dealt with at the member states level, where the process can be faster and better. The environment is a public good and this is why access to justice is important; most courts are based on infringement on individual's rights, this is why it is important to have specific rights for the environment.'*

*Patrick Dietz*

*'It is unfortunate to see that governments do not rule the world anymore. Their political power and decision making is often replaced by big companies. For these reasons, accountability mechanisms, the courts and the laws are getting more important. But are the courts, or more broadly the existing legal frameworks, ready for this?'*

*Leida Rijnhout*

*'....is access to the court the same as access to justice?'. Leida Rijnhout*



**Angèle Minguet presented a report written for victims of environmental crimes, to give them information on the legal tools they can use.**

Many legal cases were analysed - mostly based on the UNEP Compendium. Most of the cases did not deliver environmental justice. Often, pollution is done by corporations that have headquarters in developed countries and subsidiaries in developing countries. You have to go to the national courts in these developing countries first and these courts are often hesitant to punish international players. And when there was a sentence the implementation was often lacking. Courts in developing countries are reluctant to prosecute multinationals that bring economic benefit. So the question is: how can we improve liability in the home countries of the corporations. Recently, a series of cases about damage to Nigerians through Shell's activities in Nigeria were brought to a Dutch court. In one of the four cases brought to court, the Dutch court recognised the accountability of Shell in Nigeria.

Another important precedent was the Chevron Texaco case in Ecuador, where the victims won - although they are still waiting for the implementation of the court order.

However more work is needed on criminal law, to create personal accountability on environmental crimes. The Ecuadorean lawyers want to do that with the Chevron CEO, so they filed a case in The Hague at the ICC.

A lot of victims are discouraged to bring cases to the courts, so what we need is awareness raising, training and some helpful precedents. Victims don't know how to bring evidence of crimes of corporations, so they need to know how legal experts can help them. There is also the gap between the time that courts take and the urgent needs that victims have. European Court of Human Rights takes too much time - you always need to go through the whole range of national procedures first. What we need is an International Environmental Crime Court where we can sue directly, without waiting for national procedures.

**Leida Rijnhout** stressed again the importance of **the legal guide for communities seeking environmental justice**, which Angèle co-authored. Coming back to the Atlas, it is not just for mapping conflicts but also for exchanging information among affected communities.

*'Often, pollution is done by corporations that have headquarters in developed countries and subsidiaries in developing countries. You have to go to the national courts in these developing countries first and these courts are often hesitant to punish international players.' Angèle Minguet*



**Csaba Kiss is CEO of a public interest environmental law office in Hungary (called EMLA) and coordinator of a network of environmental law organizations (called Justice and Environment).**

Instead of working alone they created a network with similar offices in 10 other EU countries. They do cases on national and EU level and are using the Aarhus Convention as the key legal instrument, including its Article 9.3 which says that challenges are possible on both the administrative and the judicial level.

The Member States have transposed the Aarhus Convention more or less well and then there is also - for the EU level, for the EU institutions - the so-called Aarhus Regulation, which is apparently not transposing the Convention. Paradoxically, the EU Court just ruled that the Aarhus Regulation is not transposing the Aarhus Convention.

The ECJ receives cases in three different ways: a) from the national level via the preliminary ruling procedure from national courts; b) because the Aarhus Regulation gives possibility for an internal review of EU administrative acts, and c) because in the EU anyone can go to the Court. At least that is the theory.

Article 263 of the Treaty can also be used: anyone can go to the EU Court against any regulatory measure which is of direct concern. In practice, the ECJ is tough on Member States and is broadening the legal standing - such as in a Swedish case (the Djurgarden case). The Court said that the NGOs cannot be limited in going to court by the number of members they have. They also said (in the Djurgarden case again) that the prior participation principle cannot be applied, which would require that one cannot go to court if that person or organization did not participate in the preceding decision-making. Then, 2011 was the “Woodstock Year” for access to justice in the EU. There were three judgments in a row, where the Court broadened access to environmental justice. These were the Slovak Brown Bear, the Trianel (in Germany) and the Boxus cases. At the Trianel case the Court said that even if the national law does not give NGOs legal standing, there must be a place for it. In 2013, in a Slovak case (the Krizan case) the court said that the public should be able to effectively participate in environmental decision making.

Does the Court apply the same standards for the EU institutions? The answer is no. This January started with bad news for the access to justice

movement. A Dutch case reached a good positive decision at the General Court which ultimately ended at the Court of Justice negatively; it said that EU regulatory acts cannot be challenged at the Court, and only a very limited number of acts can be taken through the remedy procedure: these are mostly GMO and chemical cases.

To the astonishment of many, the ECJ said that the EU’s Aarhus Regulation did not intend to implement the Aarhus Convention. This leaves lawyers with no other option than to submit a “complaint” at the Aarhus Convention Compliance Committee, where the EU was already subject to a complaint before. Csaba Kiss: “We will try to use direct actions to the Court and prove that we have legal standing against decisions and other types of measures of the EU institutions. This is a fight that is backed up by the AC Compliance Committee. There are principles. The practice of not granting legal standing should be compensated by adequate administrative remedies. We believe that such adequate and effective remedies do not exist. We can promise tears, sweat and blood, or at least every legal ways that are open.”

Leida Rijnhout said there was a lot of reference made to the Aarhus Convention but it covers only the UNECE region. It came out of Principle 10 of the Agenda21, an outcome of the first Rio Summit (1992). In Rio+20 there was talking about making it a global convention, or at least have several regional ones. Our colleagues at the EEB just published **"People Power for the Planet"**: a kind of toolkit for how to use the Aarhus Convention.



## Discussion

**Barbara Ruis** repeated that the Aarhus Convention only covers the UNECE region, not the whole world. The globalization of the Aarhus Convention is a good idea and the Aarhus Convention is actually open for global accession, but no states have expressed serious interest yet. UNEP was asked to look at how to do it at a global level and we did that. UNEP developed the Bali Guidelines on access to justice if the countries wish to develop national legislation on access to justice. A global treaty is beyond the current possibilities. In Chile they started a process for Latin America. They want a regional convention on Principle 10. That is promising.

**Sebastian Bechtel** from the EEB asked Patrick Dietz about the EC work on the access to justice. “Of our concern is the choice of the measure: will it be legislative or not? A roadmap from DG Environment from 2013 clearly said that there should be a legislative measure. So what has changed since 2013?”

**Patrick Dietz:** “the major change is the new Commission and the new approach. The Aarhus Convention is part of aquis, but it is not always specific enough and it needs specifications, the discussion is ongoing. We might just give recommendations to Member States. I can’t say where we are now, it is currently under discussion.”

**Yvonne Yanez** from Accion Ecologica: “What is the meaning of rights if we have no warranties associated with them? Without warranty there is no right. There is no right for reparation for people and for nature, for environmental injustice, there’s also no warranty for non repetition of the crime. If there is no warranty there is flexibilisation of environmental law. My second point: there is also indigenous justice – indigenous people have the right of their own type of justice, there are other types of justice, e.g. ethical tribunals. Finally, in the case of Texaco the CEO is now in the international court and this is an example how the ICC can be used to judge environmental crime.”

**Barbara Ruis:** “On the question if there is something in place in the UN to recognise the different type of rights: International environmental law does not have a system of sanctions, even under treaties the sanctions are not used, the international environmental law is based on consensus

and it is therefore not strong on sanctioning. On reparation: it exists but on the national level, there is a strong regime that reparation is part of environmental liability outside the EU although it is weaker, but this is not the case worldwide. Every country has a legal system and indigenous people have different standing in different countries.”

**Ana Barreira** commented on the question about rights vs warranty: “It is not only about rights, but also about how the environment is protected by law – there is no warranty. A lot of resources are invested into developing new legal texts, but not enough resources are given to the warranty that the texts are applied, enforced. This is also for the EU Commission. In the EU, citizens have rights to complaints in the competition field and there is political will to enforce them, but in the environment field this is not the case. The staff for implementation in the environment field is very low. On the right to reparation: in Europe the environmental liability instrument exists, but it is hard to enforce it as there is a high threshold to enforce it. It also doesn’t cover everything. This makes citizens question the credibility of institutions.”

**Patrick Dietz:** “Many rights are there. Citizens are informed why a case is closed. Many mechanisms exist, you can check the registration and so on. The EC cannot be forced to take Member States to court and there are political reasons to not do it. The treaty has a clear division of tasks: the Member States must implement justice, not the European Commission. Only if a member state does not follow its laws, then EC intervenes, but in principle they cannot monitor all cases as they are short on staff. You can also go to the Ombudsman or if you wish to the petition committee.”

**Csaba Kiss:** “Getting information on EU infringement cases is not easy at all, often they fail to get information on why a Member State is not doing it right. We (Justice and Environment), Client Earth and the EEB: we all have a history of not getting information from the EU. We were often told that releasing the communication between MS and EC could jeopardize the relation between MS and EC, but we need to have an open relationship on this, to be able to name and shame.”

**Godwin Ojo:** “The UNEP report on the Ogoni was very welcome, but now we don’t hear from UNEP anymore. You recommended compensa-

tion and reparation but it was just left there. The report is put aside, there are no steps done. Second question: transboundary legal jurisdiction is a problem in Europe. The reason why the case in London existed is that in the UK this was not a problem. In the case of Shell in the Netherlands it is a problem, while in the UK this works better. Thirdly: ecocide is a huge issue and should be put on the agenda of the UN Human Rights Council. Here in Europe many civil society organisations are pushing for that. Can we start to look at that?”

**Mauricio Lazala:** “the EJOLT map has plenty of cases where a multinational corporation is involved and many recommendations are made. We need a mandate for due diligence at the corporate level; access to evidence; access to redress. Soon there will be discussion on an international treaty on business and human rights.”

**Anaïs Berbier,** from Client Earth. “About transparency: the EC does not provide information on how Member States transpose EU environmental law, whether it is correct or not. People do not have this information. On access to justice: what about article 17 of the Treaty that says that the EC must ensure the correct implementation of environmental law, not just delegating implementation to Member States. These Member States are breaching the law; in many of them citizens do not have access to courts, so if the EC delegates

supervision to Member States, no one will be able to monitor.”

**Barbara Ruis:** “I’m happy to hear you are happy with the UNEP report. How this goes? UNEP only does a report if a government asks for it. The report is from 2011 and UNEP did follow it up. In 2013 UNEP went to Nigeria to talk about implementation of the environmental remediation proposals of the report. In November 2014 there was a meeting in Geneva facilitated by UNEP. The Nigerian Minister who is still taking ownership of the report was chairing the meeting. You do your part and we play our part and we hope we will succeed. So it is still on the table and being used.”

**Patrick Dietz:** “The EC can only make proposals; what national courts pick up is the issue of national courts, so the EC cannot make rules on that, it is not in their domain. We cannot tell a Dutch court that they should pick up a case from Shell in Nigeria. About the proposals for corporate accountability: they also go beyond what DG Environment can do, these are broader concepts, so this is out of their portfolio. For that, DG Justice is the address. The role of the EC is not to reassess each single project in Member States, hence the EC should focus on systemic issues; Member States must ensure the EU law is implemented properly.”





## Closing words

**Leida Rijnhout thanked the panel and said that the conference has been very interesting and new things were discussed.**

It was great to see that during this conference people in the frontline were put in the forefront. There are a lot of heroes, not only in the South but also in Europe. This day is sadly also the end of the EJOLT program. First of all we need to thank the UAB for coordinating this project.

And special thanks should go to the spider in the web: Joan Martínez-Alier. He was always able to connect all people all around the world who is engaged with environmental justice, being professors or activists in the field. This capacity made this program so rich in activities and analyses.

This has been a milestone for Joan (and the whole EJOLT team) and in good old Buddhist tradition, people put a thread of little flags when they reach a milestone in their journey.

On the flags the EJOLT people have put their good wishes. It can be hung at the UAB offices, in the wind so that each flap of a flag is like a prayer for that wish to become true. But this milestone is not the last part of Joan's journey. In the same old Buddhist tradition they also give a khata (a scarf) when people start a new journey. And as we all wish that Joan may continue his journey we're giving him this khata, which was accepted under loud applause of the audience.



**Joan Martínez-Alier thanked the EEB for organizing this conference and everybody from his own team.**

The EC, in their calls, always says that they work with “evidence based science and evidence based policy”. Today evidence from Global Witness for example was presented, but also from our own map. The different outcomes are in the map, for example all conflicts with deaths. The names of these people are not always known but this is a reality. Another reality is the relevant science around a different economy. Some call it Prosperity without growth, others Post-Wachstum and so on. More than 3000 people gathered in Leipzig in September and said they don’t want the economy to grow anymore. There could be an alliance between Environmental Justice in the world, and Degrowth or “Prosperity without Growth” in Europe. Another lesson learned in EJOLT is that the application of civil law to claim environmental liabilities is sometimes too slow, and the application of criminal law is needed. On another note, we have not talked

about ILO 169 and indigenous peoples enough.

“But to sum up, we want to continue. We must disseminate further the excellent reports as articles or books, and to continue with this inventory of environmental conflicts taking place every day. We must keep this archive, the EJAtlas, alive and expand it to at least 2000 conflicts. We need better regional coverage. There are so many cases from India and so few from Pakistan, for instance. We need to catch up in specific areas. The facts, interpreted by the activists, are there. We hope to have an impact on the science of Political Ecology, on public opinion, on policy makers including the United Nations and, if necessary, to convince the courts”.

ECJ – European court of justice

ICJ – International court of justice

EJ – Environmental Justice

# Annex

## Participants lists

Nr	Last Name	First Name	Organisation
1	Almirall	Adam	Edelman
2	Altiero	Salvatore	A Sud ONLUS
3	Antal	Attila	Energiaklub Public Policy Institute
4	Arguelles	Lucia	ICTA, Autonomus University of Barcelona
5	Aydın	Cem İskender	Bogazici University
6	Barczak	Piotr	European Environmental Bureau
7	Barreira	Ana	IIDMA
8	Bechtel	Sebastian	European Environmental Bureau
9	Bellina	Leonie	Leuphana University, Germany
10	Benidio	Sandro	Incentiva Consultadoria
11	Berger	Mauricio	CONICET- Universidad Nacional de Córdoba, Argentina
12	Bizjak	Darko	Central European University
13	Bond	Patrick	University of KwaZulu-Natal Centre for Civil Society
14	Börner	Susanne	Goethe-University Frankfurt
15	Borras	Susana	CEDAT-URV
16	Brigle	Ionut	CEE Bankwatch Network
17	Bublies	Gina	Sustainable Europe Research Institute
18	Camisani	Paola Bianca	Centro Studi Sereno Regis
19	Cardesa-Salzmann	Antonio	Universitat Rovira i Virgili
20	Carl	Florian	Lund University
21	Caruana	Joseph	DG MARE
22	Cases i Sampere	Nuria	EEB
23	Chareyron	Bruno	CRIIRAD
24	Cisneros	Jose	King's College London
25	Del Bene	Daniela	ICTA, UAB
26	Delangues	Violaine	European Coalition for Corporate Justice
27	Deleye	Lien	University of Antwerp
28	Devuyst	Emmanuelle	JESC
29	Dietz	Patrick	EU Commission
30	Dilworth	alison	Friends of the Earth
31	Drca	Maja	ACE
32	Ertor	Pinar	Bogazici University
33	Ertor Akyazi	Pinar	Bogazici University
34	Ester	Judit	Judit Ester
35	Fels	Mirko	DIHK
36	Filcak	Richard	Foresight Studies Institute
37	Firpo Porto	Marcelo	National School of Public Health (ENSP/FIOCRUZ)
38	Froger	Alexa	United Nations Environment Programme
39	Goicoechea	Sonia	EEB
40	Haas	Willi	Institute of Social Ecology/IFF AAU
41	Healy	Hali	ICTA UAB
42	Heiden	Laura	SERI

43	Hendry	Kathryn	Brahma Kumaris Environmental Initiative
44	Jaria i Manzano	Jordi	CEDAT (URV.Tarragona)
45	Jenssen	Ingvild	NGO Shipbreaking Platform
46	Johnson	Mary	Fair Play Human Rights Consulting
47	Jumpertz	Elke	German Environmental Aid (Deutsche Umwelthilfe - DUH)
48	Kiss	Csaba	Justice and Environment
49	Kohrs	Bertchen	Earthlife Namibia Trust
50	Kontaxi	Christina	MedSOS Network NGO
51	Kouessieu womo	Paulin	Fair Trade and Advocacy Office & Global Law In
52	Kyte	Billy	Global Witness
53	Langanki	Ramona	CATAPA
54	Lazala	Mauricio	Business & Human Rights Resource Centre
55	Lerche	Signe	UNEP
56	Lorek	Sylvia	Sustainable Europe Research Institute Germany
57	Malache	Jacques	International PRESS Agency
58	Marin-Burgos	Victoria	Independent researcher
59	Martinez-Alier	Joan	ICTA-UAB
60	Mayer	Andreas	Institute of Social Ecology, Alpen-Adria University
61	Meynen	Nick	EEB
62	Mindlin	Nicole	EEB
63	Minguet	Angele	A Sud Onlus
64	Morgado	Maria	UNEP
65	Mowat	Hannah	FERN
66	Mulinaris	Nicola	NGO Shipbreaking Platform
67	Müller	Mathias	Maastricht University
68	Ojo	Godwin	Environmental Rights Action/Friends of the Earth Nigeria
69	O'Neill	John	University of Manchester
70	Oulu	Martin	Lund University
71	Overbeek	Winnie	WRM
72	Ozkaynak Ortakoyluoglu	Begum	Bogazici University
73	Pasqual	Elisa	EJOLT training course
74	Pedrini	Camilla	ENI
75	Pelenc	Jerome	Université libre de Bruxelles/FNRS
76	Pelisson	Elizabeth	University of Coimbra
77	Pigrau	Antoni	Universitat Rovira i Virgili
78	Pirvu	Daria	CEFOC
79	Popescu	Mihaela	Civil society
80	Rijnhout	Leida	EEB
81	Rodríguez-Labajos	Beatriz	ICTA-UAB
82	Roman-Escobar	Yblin	EEB
83	Ruis	Barbara	United Nations Environment Programme
84	Ruiz Rico	Manuel	Self-employed
85	Saelen	Jonathan	University of Ghent
86	Sanchez	Shenna	Federation of Young European Greens
87	Sasaki	Yuki	Unemployed
88	Savoska	Bisera	Creative Director
89	Scarafino	Antonio	European Commission
90	Scheele	Fleur	SOMO

91	Schneider	Regina	European Environmental Bureau
92	Silina	Mara	European Environmental Bureau
93	Slavov	Todor	Za Zemiata
94	Stoczkiewicz	Magda	FoE Europe
95	Stori	Marianna	Centro di Documentazione sui Conflitti Ambientali
96	Taddei	Ugo	ClientEarth
97	Tasheva	Anna	Student club "Eco Pro"- Bulgarian University, Sofia, Bulgaria
98	Teheux	Léa	Nature Code / Carbon Market Watch
99	Tekin	Aslihan	Law firm in Istanbul
100	Temper	Leah	ejolt
101	Utgés	Marina	Universitat Autònoma de Barcelona
102	Vallado	Esther	Biodiversa
103	van de Venis	Jan	WaterLex
104	van den Berge	Jerry	EPSU
105	Vanslambrouck	Kris	11.11.11
106	Vestrini	Chiara	LU DEN
107	Vilella	Mariel	Zero Waste Europe/GAIA
108	Vysna	Edita	European Commission
109	Warlenius	Rikard	Lund University
110	Warmenbol	Koen	Coalition of the Flemish North-South Movement - 11.11.11
111	Wates	Jeremy	European Environmental Bureau
112	Willems	Wies	Broederlijk Delen
113	Yanez	Ivonne	Accion Ecologica
114	Zivcic	Lidija	Focus



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Leida RIJ