

Ecocide Law: the duty to care for our Common Home

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Law's failure to protect our Common Home

- More than 90 nations have the right to a clean & healthy environment in their constitution
- More than 1000 international agreements, declarations, covenants and treaties to protect the environment
- However, Environmental Law has **not** been able to stop overexploitation of natural resources nor did it prevent (human-caused) climate change, mass extinction of species, environmental disasters.

Why?

Main driver: the commodification of Nature

- Our legal system sees nature as property. This is an inheritance of the Enlightenment.
- (Over-)exploitation of natural resources is facilitated by law
- In many legislations it is the duty of companies to put the (short term) interests of shareholders first
- This leads to Profit overruling People & Planet, which means that natural resources are exploited in an unsustainable way
- Environmental Law carves out pockets of protection but mitigates rather than stops pollution of the environment

Treating nature as a commodity leads to violations of human rights

When nature is exploited, humans suffer as a consequence:

- Unbridled extraction of natural resources & fossil fuels leads to environmental destruction and climate change
- Environmental destruction and climate change result in the violation of human rights to life, to health, to a clean and safe environment, to food, to family life, to employment
- Environmental Defenders, who stand up against the exploitation of nature, are under attack: 3 are murdered every week (Global Witness: *On Dangerous Ground*, 2016)

Moving from the Right to Exploit to a Duty of Care

Developments toward a legal duty of care for Nature :

- The developing duty of care for corporations with regards to (environmental) human rights in tort law
- The developing duty of care for States with regards to climate policy: Urgenda Case, Our Children's Trust (USA), Belgian, French, Indian & Pakistani Climate Case
- Giving rights to nature: Ecuadorian Constitution (2008), Bolivia national laws (2010), Indian 2017 rulings regarding the Ganges & Yamuna-rivers and Himalayan glaciers & rivers
- Duty of care towards nature as a matter of criminal justice: Ecocide Law

Origins of Ecocide

- Agent Orange in Vietnam-war causing large scale environmental destruction and human suffering
- Yale Biologist Arthur Galston: this is an '**Ecocide**' (lit.: *caedere* killing; *oikos*; our home)
- Olof Palme at 1972 Stockholm Conference: 'Vietnam war is an outrage, sometimes described as Ecocide'
- Article 26 of the 1991 draft of the Code of Offences Against the Peace and Security of Mankind: 'An individual who wilfully causes or orders the causing of widespread, long-term and severe damage to the natural environment shall be sentenced'.
- Ecocide as an international crime *almost* made it into the 1996 Rome Statute of the ICC...
- Now the only trace in the Rome Statute is the prohibition of ecocide in times of war in article 8(2)(b) ; never invoked due to high thresholds

Resurgence of Ecocide Law

- 2010: **Polly Higgins** proposes to UN International Law Commission to include Ecocide in Rome Statute
- “Ecocide”: *‘extensive damage to, destruction of- or loss of ecosystem(s) to such an extent that peaceful enjoyment by the inhabitants of that territory is severely diminished’*
- Inhabitants: humans or non-humans → ecocentric focus
- Damage/loss must be widespread, long-lasting or severe (1977 *ENMOD Convention*)
- Crime of recklessness: disregarding available information on potential harm resulting from dangerous industrial activity
- But emphasis is on *prevention*
- E.g: Oilspill Niger Delta, deforestation Amazon, Alberta Tar Sands, Rio Dolce pollution by mineral waste (Brasil)

Resurgence of Ecocide Law II

- End Ecocide on Earth created its own Ecocide amendment, which it handed over to Ban Ki-moon at COP21
- Defines Ecocide as extensive damage or destruction of the Earth's **ecological systems** in such a way that exceeds its natural **planetary boundaries** of resilience which lead to a significant and durable alteration of the **global commons**.
- **Global commons:** ocean & seas beyond ter. waters, Arctic, Antarctica, atmosphere, migratory species, genetic heritage
- Destruction of **ecological systems** is also an ecocide, and is equal to a crime against humanity and future generations since it threatens their vital living conditions.

What does it take?

- 83 heads of State agree to amend the Rome Statute (2/3rd majority)
- Higgins and End Ecocide on Earth lobby heads of States
- Small Island Developing States (SIDs), endangered by rising sea levels, would be good candidates to support the amendment

Support for the movement

- The prosecutor of the ICC has **already** prioritized prosecution of existing Rome Statute crimes that take place in context of environmental destruction (Summer '16)
- **European Greens in April adopted Ecocide Resolution**
- **Monsanto Tribunal** ruled on Wednesday that if ecocide were to be added to the Rome Statute, Monsanto's aggressive commercialisation of GMO seeds and its pesticide glyphosate **could constitute an ecocide**. Also, the Tribunal ruled that **the time has come for ecocide to become a crime and for it to be added to the ICC**.

ECOCIDE LAW:

AN IDEA WHOSE TIME HAS COME?

More information:

WWW.STOPECOCIDE.NL

WWW.ENDECOCIDE.ORG