

EUROPEAN CITIZENS' INITIATIVE

End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights

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TITLE

End Ecocide in Europe: A Citizen's Initiative to give the Earth Rights

SUBJECT MATTER

We, European citizens deeply concerned about the future of our planet, invite the European Commission to adopt legislation to prohibit, prevent and pre-empt Ecocide, the extensive damage, destruction to or loss of ecosystems of a given territory¹.

- An international crime of Ecocide has been proposed as the 5th Crime Against Peace. An amendment to the Rome Statute has been submitted to the UN law Commission.
- A draft Ecocide Act has been published². The Ecocide Act sets out the primary national legislation.
- The draft Ecocide Directive (attached) echoes the wording of the proposed Ecocide Act, thereby providing the regional framework for its adoption.
- The draft Ecocide Directive sets out all the relevant provisions to criminalise mass damage, destruction to or loss of ecosystems of a given territory.
- The research paper *Ecocide is the Missing 5th Crime Against Peace* (attached) published by the Human Rights Consortium, School of Advanced Studies, University of London³, demonstrates that an international crime of Ecocide had been within the minds of the international community for over a decade and builds on existing EU and international treaties, statutes and directives.

¹ Ecocide has been defined by Polly Higgins as the extensive damage, destruction to or loss of ecosystems of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished. Submitted to the UN law Commission March 2010 (Proposed amendment to the Rome Statute).

² Higgins, P., (2012). *Earth is our Business*. Shephard Walwyn (London).

³ Short, D. et al. (2012). *Ecocide is the Missing 5th Crime Against Peace*. The Human Rights Consortium, School of Advanced Studies, University of London (London).

OBJECTIVES

- 1. Criminalise Ecocide and ensure that natural and legal persons can be held responsible for committing Ecocide according to the principle of superior responsibility.**
 - 1.1 Criminalise mass damage, destruction to or loss of ecosystems of a given territory⁴.
 - 1.2 Ensure that natural or legal persons will be held responsible for the crime of Ecocide according to the principle of superior responsibility.
 - 1.3 Create a legal duty of accountability for any natural or legal persons found to have caused Ecocide in a given territory.
 - 1.4 Hold natural or legal persons to public account for the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).
 - 1.5 Ensure the principle of superior responsibility is adhered to by any person(s) who exercise rights, implicit or explicit, over a given territory, as per international criminal law principles.

- 2. Prohibit and prevent any Ecocide on European territories or maritime territories falling under EU legislation, as well as acts outside the EU committed by EU registered legal persons or EU nationals.**
 - 2.1 Bind all Member States and EU listed natural persons, regardless of where their activities take place.
 - 2.2 Impose an EU-wide and trans-boundary duty of care, in either private or public capacity to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).
 - 2.3 Prohibit any natural or legal person from committing or aiding and abetting ecocide, through the imposition of criminal sanctions.
 - 2.4 Prohibit natural or legal persons to invest in, or otherwise support activities causing Ecocide.
 - 2.5 Conduct a risk assessment of potential consequences of Ecocide.
 - 2.6 Encourage research on renewable energies and innovative technologies that facilitate the sustainable utilisation of resources.

- 3. Provide for a period of transition to facilitate a sustainable economy**
 - 3.1 Foster innovation by redirecting investments towards the green economy.
 - 3.2 Adopt fiscal policies to incentivise sustainable behaviour and business practices of natural or legal persons.
 - 3.3 Discourage subsidies for unsustainable patterns of production and consumption and encourage new subsidies facilitating the transition to the green economy.
 - 3.4 The proposed time frame for this transition is 5 years⁵.

⁴ Ecocide can be caused by either (1) human action or (2) naturally occurring ecocide. The resulting damage has to be widespread, long-lasting or severe in order to be extensive which has been defined as follows: “widespread”: encompassing an area on the scale of several hundred square kilometres; “long-lasting”: lasting for a period of months, or approximately a season; “severe”: involving serious or significant disruption or harm to human life, natural and economic resources or other assets. Please find more information at www.eradicatingecocide.com See also: Higgins, P., (2010). *Eradicating Ecocide: laws and Governance to prevent the Destruction of our Planet*. Shephard Walwyn (London) and Higgins, P., (2012). *Earth is our Business*. Shephard Walwyn (London)

BACKGROUND

Currently we are seeing mass damage and destruction to people and planet on a scale never seen before in history. On the 15th of March 2012 the OECD⁶ issued a stark warning; carbon dioxide emissions from energy use are expected to grow by 70 percent in the next 38 years because of our dependence on fossil fuels. As a result, by 2100 the global average temperature will have increased to between three and six degrees Celsius. In addition, evidence shows that Earth has reached a 'tipping point'; scientists are warning that population growth, widespread destruction of natural ecosystems, as well as climate change may be driving Earth towards an irreversible change of its biosphere, implicating consequences for which we lack adequate preparation and mitigation to deal with⁷.

Law has played a critical part in creating a system where we do not look to the consequences of our actions because it is law that emphasises the importance of profit making. Presently, in some countries corporations are duty bound by law to maximise profit for their shareholders, regardless of the consequences, even mass damage and destruction to the Earth. Moreover, to date there is a lack of legislation that effectively implements environmental law. A first effort was made on European level in 2008 with the *Directive on the protection of the environment through criminal law*. Moreover, the *EU Biodiversity Strategy 2020* emphasises the importance of coordinating efforts with other EU policies⁸.

The preamble of the Charter of Fundamental Rights of the European Union states that 'enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community, and to future generations' and seeks to promote a balanced and sustainable development. There is an urgent need for new laws that protect people and planet, allow businesses to develop new business models incorporating the potential of the green economy and the impacts of resource scarcity, as well as ensure that the right of life of current and future generations is protected.

⁵ See: Higgins, P., (2012). *Government Concept Paper - Closing the door to dangerous industrial activity*

⁶ OECD (2012). *OECD Environmental Outlook to 2050*. Available at

<http://www.oecdbookshop.org/oecd/display.asp?sf1=identifiers&st1=972012011P1>

⁷ University of California - Berkeley (2012, June 6). *Evidence of impending tipping point for Earth*.

ScienceDaily. Retrieved August 1, 2012, from

<http://www.sciencedaily.com/-/releases/2012/06/120606132308.htm>

⁸ Common Agricultural Policy, the Common Fisheries Policy, the Cohesion Policy. EC (2012). *EU Biodiversity Strategy to 2020 - towards implementation*. European Commission. Retrieved July 28, 2012, from <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

BENEFITS OF AN ECOCIDE DIRECTIVE

A successfully implemented Ecocide Directive can bring the following benefits to Europe and its citizens:

- (a) Ensure the peaceful enjoyment of the planet not only by current but also future generations
- (b) Contribute to a shift in values where emphasis is placed on respect and responsibility for our environment and the sustainability of our modern world
- (c) Assume our role as stewards of the environment, taking on a long term perspective by adopting the precautionary principle
- (d) Engage the public into a campaign against Ecocide in order to raise their awareness for sustainability
- (e) Encourage Europeans to contribute to shaping EU policies by signing the European Citizens' Initiative, fostering European identity
- (f) Decrease the EU's carbon dioxide and greenhouse gas emissions from fossil fuel
- (g) Increase the quality of life and the standard of living inside the EU by improving the quality of air, drinking water, and the utilisation of natural resources
- (h) Improve health conditions of the citizens
- (i) Incentivise the development of a greener European economy
- (j) Foster innovation and new technological solutions thereby creating new markets and employment which will in turn decrease current unemployment levels, especially among youth
- (k) Improve the competitiveness of European businesses in the long-run

RELEVANT TREATY PROVISIONS

There are a number of treaty provisions which support the criminalisation of ecocide. In addition, there are two *non-ratified treaties* which are also relevant due to their overall subject-matter. They are evidence that the European countries have, on previous occasions, gone to great lengths to address damage to the environment resulting from dangerous activities and have identified the need to protect the environment through criminal law.

These non-ratified treaties include the *Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment*, CETS No.150⁹. In addition, there is the *Convention on the Protection of Environment through Criminal Law*, CETS No.: 172, by the Council of Europe which, however, has only been ratified by Estonia.

⁹ See in particular Article 27, Functions of the Standing Committee: 'The Standing Committee shall keep under review problems relating to this Convention.' What was identified was the need to develop this area of law

Treaties that are currently in force that are sought as justification for this ECI are the following.

❖ **Treaty on the Functioning of the European Union**

Article 83

1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.

2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonization measures in question, without prejudice to Article 76.

Article 191

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- (a) Preserving, protecting and improving the quality of the environment,
- (b) Protecting human health,
- (c) Prudent and rational utilization of natural resources,
- (d) Promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay. In this context, harmonization measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

Article 194

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit

of solidarity between Member States, to:

- (a) Ensure the functioning of the energy market;
- (b) Ensure security of energy supply in the Union;
- (c) Promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) Promote the interconnection of energy networks.

EU DIRECTIVES

❖ **Directive on environmental liability with regard to the prevention and remedying of environmental damage (2004/35/EC)**

This Directive establishes a framework for environmental liability based on the "polluter pays" principle, with a view to preventing and remedying environmental damage.

10. [...] This Directive should not apply to activities the main purpose of which is to serve national defense or international security.

11. This Directive aims at preventing and remedying environmental damage, and does not affect rights of compensation for traditional damage granted under any relevant international agreement regulating civil liability

20. [...] Member States may allow that operators who are not at fault or negligent shall not bear the cost of remedial measures, in situations where the damage in question is the result of emissions or events explicitly authorized or where the potential for damage could not have been known when the event or emission took place

31. Member States should report to the Commission on the experience gained in the application of this Directive so as to enable the Commission to consider, taking into account the impact on sustainable development and future risks to the environment, whether any review of this Directive is appropriate

Article 5 - Preventive action

Where environmental damage has not yet occurred but there is an imminent threat of such damage occurring, the operator shall, without delay, take the necessary preventive measures.

Article 16 - Relationship with national law

This Directive shall not prevent Member States from maintaining or adopting more stringent provisions in relation to the prevention and remedying of environmental damage, including the identification of additional activities to be subject to the prevention and remediation requirements of this Directive and the identification of additional responsible parties.

Article 19 - Implementation

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007.

❖ **Directive on the protection of the environment through criminal law (2008/99/EC)**

Article 3 - Offences

Member States shall ensure that the following conduct constitutes a criminal offence, when unlawful and committed intentionally or with at least serious negligence:

- (a) The discharge, emission or introduction of a quantity of materials or ionising radiation into air, soil or water, which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (b) The collection, transport, recovery or disposal of waste, including the supervision of such operations and the after-care of disposal sites, and including action taken as a dealer or a broker (waste management), which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (c) The shipment of waste, where this activity falls within the scope of Article 2(35) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste [6] and is undertaken in a non-negligible quantity, whether executed in a single shipment or in several shipments which appear to be linked;
- (d) The operation of a plant in which a dangerous activity is carried out or in which dangerous substances or preparations are stored or used and which, outside the plant, causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (e) The production, processing, handling, use, holding, storage, transport, import, export or disposal of nuclear materials or other hazardous radioactive substances which causes or is likely to cause death or serious injury to any person or substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants;
- (f) The killing, destruction, possession or taking of specimens of protected wild fauna or flora species, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (g) Trading in specimens of protected wild fauna or flora species or parts or derivatives thereof, except for cases where the conduct concerns a negligible quantity of such specimens and has a negligible impact on the conservation status of the species;
- (h) Any conduct which causes the significant deterioration of a habitat within a protected site;
- (i) The production, importation, exportation, placing on the market or use of ozone-depleting substances.

Article 4 - Inciting, aiding and abetting

Member States shall ensure that inciting, aiding and abetting the intentional conduct referred to in Article 3 is punishable as a criminal offence.

Article 5 - Penalties

Member States shall take the necessary measures to ensure that the offences referred to in Articles 3 and 4 are punishable by effective, proportionate and dissuasive criminal penalties.

Article 6 - Liability of legal persons

1. Member States shall ensure that legal persons can be held liable for offences referred to in Articles 3 and 4 where such offences have been committed for their benefit by any person who has a leading position within the legal person, acting either individually or as part of an organ of the legal person, based on:

- (a) A power of representation of the legal person;
- (b) An authority to take decisions on behalf of the legal person; or
- (c) An authority to exercise control within the legal person.

2. Member States shall also ensure that legal persons can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of an offence referred to in Articles 3 and 4 for the benefit of the legal person by a person under its authority.

3. Liability of legal persons under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 3 and 4.

Article 7 - Penalties for legal persons

Member States shall take the necessary measures to ensure that legal persons held liable pursuant to Article 6 are punishable by effective, proportionate and dissuasive penalties.

INTERNATIONAL TREATIES

❖ **Aarhus Convention: Access to justice**

Article 1

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.'

❖ **European Convention of Human Rights**

Article 2: Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

It is already established law¹⁰ in Europe that where human right to life has been put at risk, dangerous industrial activity must be closed down.

❖ **Copenhagen Accord**

1. We underline that climate change is one of the greatest challenges of our time. We emphasise our strong political will to urgently combat climate change in accordance with the principle of common but differentiated responsibilities and respective capabilities. To achieve the ultimate objective of the Convention to stabilize greenhouse gas concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system, we shall, recognizing the scientific view that the increase in global temperature should be below two degrees Celsius, on the basis of equity and in the context of sustainable development, enhance our long-term cooperative action to combat climate change. We recognize the critical impacts of climate change and the potential impacts of response measures on countries particularly vulnerable to its adverse effects and stress the need to establish a comprehensive adaptation programme including international support.

4. Annex I - Parties commit to implement individually or jointly the quantified economy wide emissions targets for 2020, to be submitted in the format given in Appendix I by Annex I Parties to the secretariat by 31 January 2010 for compilation in an INF document. Annex I Parties that are Party to the Kyoto Protocol will thereby further strengthen the emissions reductions initiated by the Kyoto Protocol.

¹⁰ Oneryildiz v Turkey [2004] ECHR 657

❖ **Kyoto Protocol**

The European Union as well as all individual member states have ratified the Kyoto protocol. The European Community adopted a reduction target of 92% of the base year emissions (Annex B).

Article 2

1. Each Party included in Annex I, in achieving its quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, shall:

(a) Implement and/or further elaborate policies and measures in accordance with its national circumstances, such as:

(i) Enhancement of energy efficiency in relevant sectors of the national economy;

(ii) Protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation;

(iii) Promotion of sustainable forms of agriculture in light of climate change considerations;

(iv) Research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies;

(v) Progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments;

(vi) Encouragement of appropriate reforms in relevant sectors aimed at promoting policies and measures which limit or reduce emissions of greenhouse gases not controlled by the Montreal Protocol;

(vii) Measures to limit and/or reduce emissions of greenhouse gases not controlled by the Montreal Protocol in the transport sector;

(viii) Limitation and/or reduction of methane emissions through recovery and use in waste management, as well as in the production, transport and distribution of energy;

Article 3

1. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by at least 5 per cent below 1990 levels in the commitment period 2008 to 2012.

Article 10

All parties [...] shall

(b) Formulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change and measures to facilitate adequate adaptation to climate change:

❖ **Convention on the conservation of migratory species of wild animals (Bonn Convention)**

The objective of the Bonn Convention is the conservation of migratory species worldwide. In particular parties to the Convention will endeavour to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the migratory species included in the Appendix.

Article II - Fundamental Principles

1. The parties acknowledge the importance of migratory species being conserved and of Range States agreeing to take action to this end whenever possible and appropriate, paying special attention to migratory species the conservation status of which is unfavourable, and taking individually or in co-operation appropriate and necessary steps to conserve such species and their habitat.
2. The parties acknowledge the need to take action to avoid any migratory species becoming endangered.
3. In particular, the parties:
 - (a) Should promote, co-operate in and support research relating to migratory species;
 - (b) Shall endeavour to provide immediate protection for migratory species included in Appendix I; and
 - (c) Shall endeavour to conclude Agreements covering the conservation and management of migratory species included in Appendix II.

Article III - Endangered Migratory Species

4. Parties that are Range States of a migratory species listed in Appendix I shall endeavour:
 - (a) To conserve and, where feasible and appropriate, restore those habitats of the species which are of importance in removing the species from danger of extinction;
 - (b) To prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities or obstacles that seriously impede or prevent the migration of the species; and
 - (c) To the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species.