

• STOP ECOCIDE FOUNDATION •

Position paper with regard to the revised EU Directive on Protection of the Environment through Criminal Law

Strengthening the international and European legal framework in the context of crimes that affect the environment: recognising “ecocide” to provide an essential guardrail against the worst harms

“If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means.” Kofi Annan, foreword to the UN Convention on Transnational Organised Crime (2000).

Ecocide /i:kəʊsaɪd/ noun, etymology: Greek *oikos* (home) and Latin *caedere* (to kill)

In the context of protection of the environment through criminal law, the international community, including the EU, is faced with two very serious challenges.

The first of these is the challenge of adequately responding to the rapid rise in crimes affecting the environment, a rise that according to Eurojust¹ makes environmental crime the fourth largest criminal sector in the world, as lucrative as drug-trafficking. Indeed, investigative teams on the ground² have found that existing environmental crime networks are often the same networks involved in serious crimes such as drug- and human-trafficking, money-laundering and serious corruption.

Law enforcement in this sector, however, remains pitifully - and extremely disproportionately - low, for a number of reasons, including the fact that many environmental crimes are not deemed “serious” and that law enforcement agencies are often inadequately trained to investigate and prosecute these crimes.

The second challenge is the absence of criminal law provision addressing the many and varied instances of **severe** and either **widespread** or **long-term harm** to the environment (increasingly referred to as “**ecocide**”), harm which can often arise as a side effect of industrial practices which, while dangerous, are nonetheless permitted by law; or via all too common breaches of environmental regulation; or via negligence with regard to safety protocols.

¹ [Eurojust, Report on Eurojust’s Casework on Environmental Crime, January 2021](#)

² <https://earthleagueinternational.org/environmental-crime/>

In many cases such harms are transnational in exactly the sense set out for transnational offences in the UN Convention on Transnational Organised Crime³, article 3.2 (a) (b) and (d) i.e they may be:

- committed in more than one State;
- committed in one State but a substantial part of preparation, planning, direction or control takes place in another State;
- committed in one State but have substantial effects in another State.

Both of these challenges arise in the deeply worrying context of the interlinked global crises of climate change, pollution and nature (biodiversity) loss, which recent international reports⁴ tell us must be addressed with immediate urgency if we are to maintain the ability to support human civilisation without severe, even irreversible loss and damage, mass migration and food crises.

Moreover, both of these challenges relate directly and causally to the context of global crisis, since the destruction or removal of carbon sinks and keystone species (eg via deforestation, poaching and trafficking), as well as severe soil, water and atmospheric pollution all directly exacerbate ecosystem collapse and climate change.

In the light of the above, the imperative to strengthen international and European legal frameworks could not be clearer, and the circumstance of the revision of the EU 2008 Directive provides a timely opportunity for the European Union to lead on this. Criminal law has a crucial part to play in drawing and enforcing the legal and moral red lines upon which our very ability to thrive on our planetary home may depend.

The European Commission's proposal of December 2021 makes some important improvements to the 2008 Directive. However, the means to firmly deter and sanction the very **worst** actual and threatened harms - "ecocide" - remains absent from the operative text thus far. This omission risks becoming a grave missed opportunity. Recognizing ecocide as a crime in the directive could create an essential "outer boundary" safety rail for economic activity, enabling environmental protection to be taken much more seriously while simultaneously empowering strategic innovation and change.

It is important to acknowledge that, historically, new crimes have come into being in response to situations of sufficient gravity, extending proscribed behaviour and criminal sanctions into new areas. The international crimes of **genocide** and **crimes against humanity** were born of just such circumstances in the 1940s in the face of atrocities that were witnessed and condemned with horror by the international community. Today we face a similar urgency with respect to destruction of the natural living world upon which we, as a species along with many millions of others, completely depend. With ecocide, the evil

³ [UNCTOC Article 2 \(b\)](#)

⁴ [IPCC WGII & WGIII, 2022](#)

intent involved may not be that defined under genocide, but the **consequences** are at least as damaging and dangerous, not only to a people but to human civilisation as we know it, as well as many of the Earth's vital ecosystems.

The European Parliament, EU agencies, the Presidency, relevant working groups and member state representatives, especially any still sceptical as to the level of civil society concern on this issue, would do well to take note of calls emerging from a number of directions:

1. the EU's own consultation process on the directive, in which 38% of respondents mentioned recognition of ecocide;⁵
2. the consistent demand of youth⁶ and faith⁷ voices as well as citizens' assemblies⁸ in recent years for recognition of a crime of ecocide;
3. the statement to COP26 of the [International Corporate Governance Network](#), a global investor-led network whose members control over half the world's assets under management (\$59 trillion), which called on governments to "collaborate internationally to criminalise ecocide"⁹.
4. UN documents and processes:
 - a. a recent statement submitted by 42 ECOSOC member NGOs to the UNODC's Commission on Crime Prevention and Criminal Justice calls for recognition of ecocide¹⁰
 - b. a joint global statement to the UN Environment Assembly from the Global Major Groups & Stakeholders noted that "adding ecocide as the fifth crime to the Rome Statute of the International Criminal Court would have a strong preventive effect on destructive actions".

⁵https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12779-Environmental-crime-improving-EU-rules-on-environmental-protection-through-criminal-law/public-consultation_en

⁶ [Open letter to world leaders](#), Greta Thunberg et al 2020; [Mock COP](#) 2021; [Conference of Youth](#), COP26 Glasgow 2021 (see Politics & Policy Making); Youth Environment Assembly, Nairobi 2022, Stockholm+50 Youth Task Force [Global Policy Paper](#) 2022

⁷ [Pope Francis](#) 2019, [Patriarch Bartholomew](#) 2021, Alliance of Mother Nature's Guardians [Declaration](#) 2015. Faith for Earth Initiative (UN) [Interfaith Statement](#), Stockholm 2022

⁸ [Citizens Climate Assembly](#), France 2020; [Global Citizens Assembly](#), Glasgow 2022, [Citizens Climate Assembly](#), Spain 2022

⁹<https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/6220bced48f46148800c6901/1646312686146/ICGN+Statement+on+COP+26.pdf>

¹⁰https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_31/NGO_papers/ECN15202_2_NGO5_V2202671.pdf

- c. Regional consultations prior to the Stockholm+50 international environmental meeting noted ecocide a number of times and recommended its recognition.
- d. Recent public comment from UNEP Executive Director Inger Andersen stated she believes ecocide will “walk its way into the UN vocabulary”¹¹.

An Independent Expert Panel convened by the Stop Ecocide Foundation arrived at a consensus legal definition of ecocide in 2021¹² which is gaining significant political traction around the world: *“unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.”*

Discussion of criminalising ecocide is now on public record at parliamentary and/or government level in at least 23 countries¹³ via motions, resolutions, parliamentary questions, petitions, white papers or full proposals of law: Bangladesh, Brazil, Bolivia, Belgium, Canada, Chile, Cyprus, Denmark, Finland, France, Iceland, Ireland, Luxembourg, Kenya, the Maldives, Mexico, the Netherlands, Portugal, Samoa, Spain, Sweden, the UK and Vanuatu. The EU parliament has supported recognition of ecocide in a number of resolutions¹⁴ and the European Law Institute is working on a related EU-specific definition¹⁵.

The Belgian government, following a pledge in its 4-year programme¹⁶ and a strong majority vote in its parliament¹⁷, convened a group of experts to look at the possibility of including ecocide in the Belgian penal code (currently under revision for the first time since 1867), and this panel has now concluded¹⁸ that it will be desirable to include ecocide in that code, with a definition based closely upon that of the Independent Expert Panel.

Like Belgium, the EU also has a unique opportunity right now, engaged as it is with revision of this environmental crime directive. While individual EU member states recognise a range of environmental (eg pollution) crimes, there are currently none specifically addressing **severe** and either **widespread** or **long-term damage** to the environment. Unless and until this legal and moral gap with regard to the worst harms is filled, it will remain an uphill struggle to adequately address even those harms which are already sanctioned. Specific

¹¹ <https://youtu.be/GPEkrgDpFo>

¹² <https://ecocidelaw.com/legal-definition-and-commentary-2021/>

¹³ <https://www.stopecocide.earth/leading-states>

¹⁴ <https://docs.google.com/document/d/1Fqs-4Jz28F6y0VKFLduDiShoj0QfP4XamDtHAqgreNU/edit?usp=sharing>

¹⁵ <https://www.europeanlawinstitute.eu/projects-publications/current-projects/current-projects/ecocide/>

¹⁶ <https://www.stopecocide.earth/press-releases-summary/belgium-pledges-diplomatic-action-to-halt-ecocide-crime>

¹⁷ <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/61a9f38c9313dc3f9a424125/1638527885152/9e4a8167f6e6cafcd7192603e5d13754ce85030.pdf>

¹⁸ https://jt.larcier.be/publications/jt_2022-fr/jt_2022_18-fr/jt2022_18p297

recognition of ecocide and harmonisation at EU level will thus support existing laws - and how well they are observed - in all member states.

It will also demonstrate strong leadership and commitment on the international stage. The world's most climate-vulnerable states¹⁹ are interested to progress recognition of ecocide at the international level, and the EU has a moral duty to support them by leading from the front; after all, our extractive, competition-oriented economic model has a direct bearing on their plight. This is not a time to sit back and watch what happens elsewhere. It is a moment to seize, to take responsibility, and if necessary, a moment to break new legal ground with the support of the European Parliament.

To conclude: the urgency of taking action commensurate with the global crisis we face has been spelled out to the international community in no uncertain terms. **Recognition of a crime of ecocide in the context of the revised 2008 Directive** will reinforce existing laws, providing a foundational piece which is currently lacking. It will show both leadership and compassion, help to establish a moral as well as legal "red line" and create a timely steer for industry leaders and policy-makers in this crucial period, since economic and governance decisions taken now will affect not only ourselves and our loved ones but millions of species and many, many generations to come.

We therefore invite the European Union to approach this strategic legislative opportunity as the most powerful - indeed perhaps the defining - legacy issue of our time.



www.stopecocide.earth

The **Stop Ecocide Foundation** is a Netherlands charitable foundation with ANBI status.

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¹⁹ Vanuatu, Samoa, Bangladesh: <https://youtu.be/JHYf89GH2d0>