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LEGAL PACT FOR THE FUTURE

A united call for judicially enforceable human and environmental rights in all countries.

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More courts, fewer reports!

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LEGAL PACT FOR THE FUTURE

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STATEMENT OF INTENTION

To whom it may concern,

In preparation for the Summit of the Future in 2024, The Secretary General has prepared "The Common Agenda Report" (CAR). Along with issuing this Report, the Secretary General has created a High-Level Advisory Group (HLAB). The HLAB has been tasked with reviewing CAR and holding consultations with member states and civil society so that a written "Pact for the Future" can be prepared. This Pact will be the guideline for goals and discussions at the Summit of the Future.

In order to make a meaningful contribution in their collaboration with the HLAB, civil society is preparing its own "People's Pact for the Future." The idea is that the People's Pact will fill gaps in the Pact for the Future. HLAB has specifically requested in writing, and in digital consultations, guidance not only for the identification of gaps in their report, but also specific language that might be incorporated in the Pact for the Future document.

The HLAB has delivered its report to the Secretary General and member states in preparation of the Pact for the Future. **There is a major gap in the HLAB report:** It fails to follow the Secretary General's call in the CAR for "*A renewed social contract anchored in human rights.*" (CAR page 22, hereafter CAR p.____). Specifically, even though the Secretary General states in CAR that "*international human rights law, underpins approximately 90 per cent of the Sustainable Development Goals* (CAR p.63) (*emphasis supplied*), the HLAB report fails to address the strengthening of law and courts to make rights, including both environmental and human rights, enforceable.

Environmental and human rights are an integrated core of humanity's social contract with those who govern. They must be judicially enforceable: **we need more courts and fewer reports.** To this end, it is with great honour that we present this People's "Legal Pact for the Future" as a supplement to the "People's Pact of the Future". Our goal is that this Legal Pact will lead to a greater focus on judicial enforcement of rights in the Pact of the Future, and ultimately, help focus discussion at the Summit of the Future on judicially enforceable rights. We also hope that the Legal Pact can thereafter be used to guide other international processes.

Two specific gaps with respect to judicial enforcement in the HLAB report are discussed here: Regional Courts and Ecocide. These two have been selected because they are at the core of a renewed social contract, and they provide concrete focus. They are also explicit recommendations in the People's Pact itself, and thus our contribution with this Legal Pact aims to "continue to contribute legal content and perspectives" as described in the environmental governance recommendations (page 10). This selection is not comprehensive; other suggestions for judicial enforcement of rights are welcome.

As well as express an ambition for the future of our legal world, we hope to present some realism. Thus, our analysis expressly builds upon a conception of law working with, rather than against, its existing elements, and we thus hope to evidence the complementary nature of the measures posed, serving as a tool for policymakers.

We hope that what follows can provide a starting point for further evolution of this Legal Pact for the Future and that you will link with others on the Legal Pact for the Future website: www.legalpact.org.

Yours sincerely,

Dr. John Kirk Boyd, Anna Maddrick and Lauren Banham

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SUMMARY OF AIMS

Ensuring a live conversation around judicially enforceable law amongst People, NGOs, Businesses and Governments

1. People's Pact and the Summit of the Future

- **Ensuring recommendations posed as part of both the People's Pact and the Summit of the Future of the United Nations are grounded in the importance of the rule of law**
- Recognition of the complexities that underlie international goals, existing and future, and their necessary dependence on **judicially enforceable environmental and human rights**
- Recognition that a "*renewal of the social contract*" requires meaningful collaboration amongst people, NGOs, businesses and governments, reflected by the social contract's root: the rule of law

2. Taking this conversation forward

- **Ensuring international linkages**
- Recognition that the international community needs to unite over fundamental legal principles such as **fairness, proportionality and equality before the law**
- Recognition that realisation of the rule of law depends on judicially enforceable rights, thus **enforcement**, in national, regional and international courts according to **the principle of complementarity**

LEGAL PACT FOR THE FUTURE

THE ROLE OF THE LEGAL PACT FOR THE FUTURE

By Anna Maddrick

The three of us are fond of the Legal Pact for the Future's birthplace and story. Having known one another only for a few days, Lauren, Kirk and I met on a rainy day at the turtle-pond in Central Park, New York, to review our week's work at the Global Futures Forum. We reflected on how the Global Futures Forum had emphasised the power and potential of civil society advocacy to come together to devise actionable aims for delivering greater social, environmental and economic justice,¹ and we wanted to expand upon this framework.

Not only do civil society organisations provide ideas and forums for global cooperation as both issue experts and key stakeholders, they also represent a fundamental element of our international legal order - *linkage*. Effective international governance hinges on effective linkages between the public and private, citizen and state, policy and issue, and effective civil society advocacy is central to this. Our motivating experiences and exchanges with the Coalition for the UN We Need (C4UN)² have emphasised this to us personally. As another practical example, were it not for the advocacy and work of the Coalition of the International Criminal Court³, key provisions of the Rome Statute would never have made it into the legislation.

The recommendations inscribed in the People's Pact were the result of deliberative, cooperative and diverse discussions amongst relevant civil society stakeholders, collectively led and organised between committed individuals from all over the world. With a host of backgrounds, expertise and motivations, this dynamic and inclusive fora allowed extensive debate and thus the opportunity to reach a broad consensus on the People's Pact's recommendations fairly and concretely. Lauren, Kirk and I were and remain immensely grateful to be involved in this evolving process. We hope our work with the Legal Pact for the Future can help draw attention to the relevance of the Summit of the Future⁴, as well as the essential role of civil society advocacy more generally.

Despite being individuals with comparably different backgrounds, the three of us found ourselves similarly ambitious to take the People's Pact one step further. A central theme we independently reflected upon over the week was: how could there be a renewal of the social contract, as the Summit of the Future and attached processes refer to, without an explicit focus on the rule of law? Law itself is at the heart of the social contract. Standing in Central Park, we collectively understood that what we needed was a **LEGAL** Pact for the Future. An explicit call for judicially enforceable environmental and human rights across the world. A shared narrative around our inalienable rights and the unequivocal importance of their real, *enforced* protection.

The work of the Legal Pact has now evolved beyond what we imagined that day in Central Park. While we intend this document to complement the evolving People's Pact, it is also our ambition that the wider project can feed into a variety of other international processes and discussions.

We therefore seek contributions from and collaborations with other interested stakeholders, with the sole caveat that arguments and ambitions reflect the importance of the rule of law. We are open to diverse viewpoints, as we are not calling for a host of legal solutions in particular, but rather aim to elevate the importance of robust dialogue around effective judicial enforcement itself. Like the People's Pact, our Legal Pact is evolving and therefore we would be grateful for any writing, advice, or endorsements on any of the key tracks referenced. We look forward to receiving responses. **It is our explicit aim that a Legal Pact for the Future is written by and belongs to all of us.**

¹ See the Interim People's Pact 2023.

² <https://c4unwn.org>

³ <https://www.coalitionfortheicc.org>

⁴ <https://www.un.org/en/common-agenda/summit-of-the-future>

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PEOPLE'S PACT FOR THE FUTURE

Recommendations from Legal Pact for the Future

In addition to our Statement of Intent, Aims, and the Role we foresee for the Legal Pact, and in accord with them, we submit the following edits to the existing language of the interim People's Pact. As with the Statement and the Role, these are not offered as absolutes, but as points for discussion as we all work to make the People's Pact even stronger, so that it will have a significant impact on the planning for the Summit of the Future.

The Interim People's Pact provides seven thematic areas that civil society chose for deliberation. These areas stem from a combination of the United Nations' pillars and from tracks identified in Our Common Agenda, namely:

1. Development and the SDGs
2. Environmental governance
3. Human rights and participation
4. The Global Digital Compact
5. The global economic and financial architecture
6. Peace and security
7. UN and global governance innovation

As a central part of the Legal Pact for the Future, we consider that judicially enforceable environmental and human rights are central to all of the above tracks. We therefore highlight that enforcement should be considered alongside all of these thematic areas as both a 'normative overlay' (a linkage between the elements, as the Sustainable Development Goals envisions) and also as an independently important consideration. This conception is fundamental to implementation of the Common Agenda Report, as well as proposals for the Summit of the Future.

The Interim People's Pact for the Future outlines recommendations under these themes and presents concrete "next steps." These are underpinned by a selection of cross-cutting issues, such as trust, inclusion, future generations, gender equality, children, intergenerational co-leadership, subsidiarity, and justice & equity. **It is our opinion and objective to highlight that enforceable law is central to all of these themes.**

The recommendations introduced by People's Pact are informed by five overarching objectives, detailed below. Replies from the Legal Pact for the Future perspective are detailed after each point.

- ▶ "First, a longer-term future orientation, based on the human rights of present and future generations, is required as we consider specific reform innovations." **The first overarching objective of the People's Pact reiterates the central mission of the Legal Pact. We aim to implement this objective.**
- ▶ "Second, while retaining this long-term view, global institutions must be reformed in a manner that is commensurate with the scale of our urgent challenges, threats, and opportunities." **In order to**

ensure global institutional changes are grounded in constitutional, legal and moral norms, a “whole of society” approach to discussing the rule of law is also fundamental.

- ▶ “Third, a whole-of-society approach, that includes local, national and regional engagement, represents both a practical and moral imperative for reaching and building consensus around the best ideas on the future of the UN, with governments serving the public as the ultimate decision-makers.” **Flexible and cooperative governance is only possible if facilitated by appropriate enforceability.**
- ▶ “Fourth, past UN and Member State commitments made must be met, including by delivering on earlier resource allocation decisions.” **Voluntary standards equate to voluntary compliance. In order to implement this aim, it is fundamental we reflect on what “equality before the law” really means, funding institutions appropriately as a result.**
- ▶ “Finally, all of these objectives are in service to building trust, commitment, and ownership among and between member states, civil servants, and citizens worldwide.” **In building trust, we must find common standards that can guide us in an increasingly polarised world. Equality before the law is essential to building trust amongst different areas of society.**

We further propose the following suggestions. [All page references are to the Interim People's Pact as of November 1, 2023.]

Page 2 The paragraph beneath the seven thematic areas listed discusses "crosscutting issues." We suggest that law, and specifically the strengthening and expansion of courts to make rights enforceable, should be one of these cross-cutting issues. So, at the end of the paragraph, after "equity", "and law, including the strengthening and expansion of national, regional and international courts." might be added.

Page 3 **Development and the SDGs.** The Secretary General states in Common Agenda Report that "international human rights law, underpins approximately 90 per cent of the Sustainable Development Goals (p.63) Despite the guidance of the Secretary General, the HLAB report fails to address the strengthening of law and courts to make rights, including both environmental and human rights, enforceable.

Beginning with Development and the SDGs, and carrying into each of the seven thematic areas, this err by HLAB should be corrected with a brief inclusion of law, or a reference to the strengthening and expansion of regional and international courts.

Specifically, within Development and the SDGs, language might be added to point 4, so it would read: "Reinforce the SDGs, including with law through the strengthening and expansion of courts."

Environmental Governance. Language might be added to point 2, so it would read: "Upgrade existing global governance structures, including regional and international courts."

Human Rights and Participation. Language might be added to point 1, so it would read: "Launch a full spectrum human rights implementation and enforcement mechanism, including funding of the regional courts."

Global Digital Compact. A new point 5: "Declare space as a legal common area with a neural net providing internet free for all."

Peace and Security. Point 1, add at end: ", including encouraging states to accept jurisdiction of the ICJ".

UN & Global Governance Innovation. Language might be added to point 1, so it would read: "Review and strengthen civil society involvement in the UN, and rule of law."

Page 4 **Introduction**

In the fourth paragraph, after "offers a rare opportunity to launch a process to create a renewed multilateral system" add "within a renewed social contract."

Further down in the fourth paragraph, after "its purpose is to reform the institutions..." add "such as the International Criminal Court and the Regional Courts," ...which have thus far been too slow in delivering what is necessary." So, it would read: "We envision that the Summit of the Future is complementary to the review of the SDGs - its purpose is to improve the institutions, such as the International Criminal Court and the Regional Courts, which have thus far been too slow in delivering what is necessary."

Page 5 Towards the end of the second paragraph, after "characterized by justice and equality" add ", and embedded in the rule of law."

Then add "time" after "this" at the end of the last sentence.

Page 6 **[additional language to the Recommendations has been provided above]**

Page 7 **4. Reinforce the SDGs.** Penultimate bullet point: After "Expand international law". add ", including the strengthening and expansion of the Regional Courts,"

Page 9 **2. Upgrade existing global governance structures.** Change the first full sentence to read: "Strengthening the role of regional and international courts to apply law in regional Bills and Conventions on Rights, and law emerging from international policy considerations. Taking steps needed to enable their jurisdiction across countries is indispensable in tackling the climate crisis."

Page 11 **Human Rights and Participation**

After "...did not exist" in the first paragraph, add "The original intent was that the rights in the UDHR would become enforceable in Regional Courts, but this intent has insufficiently materialized. The global north has made progress with the European Court of Human Rights, and now it is time for the global south, with the African Court of Human and People's Rights and the Inter-American Court of Human Rights, to have similar stature and facilities. Two new courthouses in Tanzania and Costa Rica should be built with a fund of 100 million a piece, raised through philanthropy and by governments."

The next sentence beginning with "Ultimately" can be a new paragraph and at the end the following could be added. "These brave defenders need better courts to defend them in all regions."

1. Launch a full spectrum human rights implementation and enforcement mechanism:
In the first sentence, after "...and in courts," add "including regional and international courts."

In the first bullet point after "anchored in human rights..." add "and embodied in an International Bill of Rights, to be agreed by all stakeholders, and enforceable in domestic and regional courts."

Page 12 **Protect Human Rights Defenders and strengthen civic space:**

In bullet point 1, change it to read: "Put in place judicial mechanisms, including regional courts, to protect those who speak up against human rights violations, including environmental and socio-economic defenders;"

Strengthen UN Human Rights Bodies, including by doubling the financial resources of the OHCHR:

Second bullet point: after the end of the sentence, add ",including funding the construction of new African and Inter-American Courts, so that the infrastructure for the Courts in the global south is comparable to the infrastructure of the Courts in the global north."

Page 14 **Global Digital Compact**

Close the digital divide within and between countries:

Add bullet point 4: "Make space a legally common area, like international seas, but with a requirement that all digital development must be for the use and benefit of all on Earth."

Add bullet point 5: "Require low Earth satellite internet installations to be consolidated to reduce space debris and make internet access to this neural net free for all on Earth as a key way to realize the SDGs for health, education, civil rights and a number of other areas."

Page 16

Global Economic and Financial Architecture

Increase transparency in World Trade Organization decision-making and include new stakeholders in national committees on trade facilitation:

Next Steps, at the end of the first sentence, add "Require nations to accept regional Bill of Rights or Conventions of Rights to be enforceable in their domestic courts, with review by regional courts, as a requirement for their participation in the WTO."

Page 17 **Peace and Security**

1. Preventing war (including nuclear war), and strengthening international mechanisms through UN Charter Chapter VI for the peaceful resolution of disputes

Under Next Steps, add this paragraph:

"The intent of the UDHR was that there would only be peace and security if there was a list of rights for all, and regional courts to enforce them. Otherwise, despots, then, as now, would always seize power and violate human rights, which belong to us all, regardless of

country. The civil regional courts and the criminal international court are complementary. Both should be strengthened and expanded as mechanisms for peace and security."

Page 19 UN & Global Governance Innovation

1. Review and strengthen civil society involvement

Under Next Steps, add this paragraph:

"Another way to strengthen civil society involvement is through the rule of law. If the rights in the UDHR, or the recent recognition of the right to a clean and healthy environment, are being violated, it is valuable for civil society to have courts to enforce these rights, both for human interests and those of other species and life. We need more courts and fewer reports. Regional and international courts provide an innovative, genuine way for civil society involvement. They should be strengthened and expanded."

Page 22 Cross-Cutting Themes

Justice and Equity - add "Law" = Justice, Equity and Law

Replace the existing paragraph with this one:

Whether the proposals listed stand the test of time, so long as our efforts are guided by justice, equity and law, we will be able to find solutions to the crises we face and make sure those solutions are carried out with judicial enforcement. In a world where there are sufficient resources to feed, cloth and house all, the challenge is one of equity. When it comes to different power dynamics, from gender equality to Security Council membership the matter is equity. And when policies are being crafted, justice must be the guiding light to ensure historic and present inequities are taken into consideration and principles such as common but differentiated responsibilities and do no harm find their full expression. As this year is also the 75th anniversary of the UDHR, we must ensure that justice and equity are supported and implemented with law. Courts do this. They should receive the attention they deserve, and courts in the global south should be as well staffed and funded as those in the global north. Renewal of our social contract depends on Justice, Equity and Law.

Page 23 Next Steps & Conclusion

Fourth paragraph, listed points, number 4. Add the following: ", and people in all countries must have access to domestic courts, with independent, impartial Judges to enforce their rights - along with regional and international courts to also provide a remedy, when needed."

These recommendations are not conclusive and may expand as the People's Pact for the Future develops.

LEGAL PACT FOR THE FUTURE

REGIONAL COURTS

By John Kirk Boyd

The Common Agenda Report (CAR) is an excellent guidepost for discussion in preparation for the Summit of the Future. It is wise when the Secretary General states: "I will therefore mobilize the whole United Nations system to assist countries in support of a renewed social contract, anchored in human rights." (CAR p.22).

Social contract dates back to 1762 with Jean Jacques Rousseau's "Contrac Social" and more recently, John Rawls in "A Theory of Justice." Its essence is that people have the power to write a list of rights as part of their social contract with each other and those who govern. As Rousseau wrote: "The people invent the machine; the Prince merely operates it."

Law is central to social contract theory. Courts are the means by which a list of rights, our social contract, is enforced. A fundamental flaw that the Summit of the Future must address is that our existing social contract, as enunciated in the UN Charter, the Universal Declaration of Human Rights, and other documents, is being inadequately enforced in courts.

The Secretary General in CAR is quite explicit about his intent to strengthen and expand judicial systems as part of a renewed social contract. In CAR he states:

"In support of efforts to put people at the centre of justice systems, I will promote a new vision for the rule of law, building on Sustainable Development Goal 16 and the 2012 Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels. We will examine how our rule of law assistance can support States, communities, and people in rebuilding their social contract as a foundation for sustaining peace." (CAR p.25)

The timing of this call for a focus on the rule of law to renew our social contract is particularly important given that 2023 is the 75th Anniversary of the Universal Declaration of Human Rights. In 1945, in the Herbst Theatre, War Memorial Building, in San Francisco - at the closing ceremony of the United Nations, President Truman told the packed theatre "The first thing we will do is prepare an International Bill of Rights". He then appointed Eleanor Roosevelt to the United Nations delegation where she worked, with others, to carry out this plan.

Eleanor said from the beginning that the task before the drafters was "to prepare an International Bill of Rights." In Article 28 of the UDHR, she, with others, wrote in their expectations that future documents would come that will turn the UDHR from an unenforceable document into an enforceable one.

The Secretary General recognizes the importance of the 75th anniversary of the UDHR in the CAR. He states:

"In 2023, we will commemorate the seventy-fifth anniversary of the Universal Declaration of Human Rights and 30 years since the adoption of the Vienna Declaration and Programme of Action on human rights. As this milestone nears, the time has come to take stock, rejuvenate our shared values and update our thinking on human rights."

As part of this 75th Anniversary commemoration, and looking ahead to the Summit of the Future, the Secretary General put forth 12 commitments. Number 4 is "Abide by international law and ensure justice." Specifically, as part of commitment 4, the Secretary General calls for a "Global Roadmap for the development and effective implementation of international law." (CAR p.6, p.64). The HLAB should be focusing attention on the development of this "roadmap", but it does not.

A key question for the People's Pact for the Future, so that it may be included in the Pact for the Future, and seriously discussed at the Summit of the Future, is what will this global roadmap be?

The answer is for us to look back to see our way forward. At the time the UDHR was written, it was expected that there would be *future courts* to make the rights in the UDHR enforceable. Rene Cassin who wrote the UDHR with Eleanor Roosevelt, John Humphrey, and others, is the personification of this linkage between the UDHR and Regional Courts.

Rene Cassin was awarded the Nobel Peace Prize not just for his work on the UDHR, but for his work as a Judge, including as the Chief Judge, on the European Court of Human Rights. When he was awarded the Nobel prize in Oslo, Cassin made this simple two-word statement about the linkage between the rights in the UDHR and the European Court: "It works."

And it does work! Today Regional Courts, including the European Court of Human Rights, the African Court on Human and Peoples' Rights, and the Inter-American Court of Human Rights, are issuing decisions that cover more than half of the countries on Earth. They provide the best protection for human rights in the world today - not the UN. The UN issues reports; the Courts issue orders. Both are needed, but there has been undue focus on reports of UN Committees and not enough attention or funding for the strengthening and expansion of the Regional Courts.

Specifically, existing inadequate Regional Courts in Tanzania and Costa Rica should be updated. \$100 million should be provided for each Court. \$50 million for each Court can be provided through philanthropy, and \$50 million from governments internationally. It's not right that the North has the European Court and the rule of law, and the South does not have similar Courts. The South is as much in the need of strong Regional Courts as the North, and should have similar staffing and facilities.

The new African and Inter-American courthouses and staff can be linked with the European Court so that all three Courts can complement each other in operations and efficiencies. Calling for the strengthening and expansion of the Regional Courts should be part of the Pact for the Future, and a piece of the discussion during the Summit of the Future.

Given that the Secretary General is open to regional institutions such as Regional Courts, a color-coded map of Regional Courts, both existing and as they might be expanded is provided here:



This map provides the type of "global roadmap" that can and should be discussed at the Summit of the Future.

John Humphrey, the Canadian law professor who led the team who did most of the research and writing for the UDHR, had this to say about Regional Courts. "If the international community ever becomes really serious about human rights, the time will come when the European example [the European Court] will be followed on a universal scale."

This John Humphrey quote was presented to the HLAB zoom consultation, and a response was given by the convenors that yes "others have brought up the Regional Courts," yet the most recent HLAB report does not even mention the Regional Courts. Prospects for these Courts to be strengthened and expanded is either being overlooked, or intentionally disregarded. It's unclear which of these two things is happening.

The International Law Commission (ILC) should work on the strengthening and expansion of the Regional Courts. The People's Pact should specifically encourage the ILC to do this as part of a "global roadmap" for law and courts.

As part of this roadmap discussion, one of the best institutional reforms would be for the High Commissioner for Human Rights to create a liaison office with the Regional Courts. The office should be staffed with at least two people from the High Commissioner's office for each of the existing three Regional Courts.

As part of this reform, the High Commissioner's office could use its expertise bringing together regional and international bodies in a cooperative effort, and to harmonize the operations of the Regional Courts. For instance, a process can be set up so that the Human Rights Council could make referral of cases to the Regional Courts.

Asking the Pact for the Future to support funding for Regional Courts is likely to be well received by the Secretary General, who sees a connection between rule of law assistance and human rights. He calls this "inclusive multilateralism" (CAR p.68), and states "Civil society needs to remain part and parcel of our work across sectors and in multilateral forums." *Id.* With consideration of this Legal Pact for the Future, the People's Pact for the Future can both support the CAR, and lead to make the global roadmap successful.

LEGAL PACT FOR THE FUTURE

ENVIRONMENTAL GOVERNANCE

By Anna Maddrick

Introduction

Addressing the root causes of environmental damage and climate change are widely recognised as the greatest “collective action” problems of history, requiring effective cooperation across all people, sectors and borders as a matter of principle. With a call from all sectors of society for more effective environmental protection, the Summit of the Future offers a real opportunity to ensure judicially enforceable law for environmental protection efforts. Until relatively recently, legal systems all over the world have been positioned against the environment’s conservation. Adapting our existing law is therefore undoubtedly challenging, requiring a difficult preservation of values and a balance between new and existing principles. While it is impossible to prevent ecological imprint of some form, and environmental conservation must always be balanced with the right to human development, the consequences of unabated exploitation of ecosystems has corrupted the life sources upon which we all depend. Without effective governance mechanisms in place, ensuring cooperation across people, NGOs, businesses and governments, the situation will almost certainly worsen dramatically.

Recent reports suggest we have passed six of nine planetary boundaries, and statistics of biodiversity devastation are astounding. Pollution or detriment of the forests, oceans, air and even outer space are having far-reaching effects on all facets of life. With inadequately regulated environmental destruction, intentional and unintentional, significant threats are posed to not only the natural world itself, but also the natural living of humankind. It is therefore essential to propose governance frameworks that can reflect this reality and complexity, offering effective action at a variety of levels. With the increasing urgency of this task, and law’s role as the guarantor of society according to the social contract theory, it is essential we find means to effectively enforce the law. In this contribution it is proposed that ecocide law should represent an essential part to this.

In civil society e-consultations, in preparation for and during the Global Future’s Forum (GFF) in New York, ecocide law consistently emerged as a primary recommendation of the participants. There are sound reasons to incorporate ecocide law into the Pact for the Future and in discussions surrounding the Summit of the Future, especially with a view to enhancing the rule of law and our renewed social contract.

Ecocide Law - Overview

Ecocide is not a new concept in law – domestic or international. The crime is already typified as a war crime under Article 8 (2)(b)(iv) of the Rome Statute, which provides for the crime of “*intentionally launching an attack in the knowledge that such attack will cause...widespread, long- term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.*” It almost became a crime in peace time too, being included in early drafts of the Rome Statute. The crime has been promoted at various high-level conferences such as the UN Stockholm Conference on the Human Environment in 1972⁵, been subject to various juridical formulations, such as Professor Richard Anderson Falk’s draft Convention, published by the competent UN Sub-Commission on

⁵ Statement by Prime Minister Olof Palme in the Plenary Meeting (UN Conference on the Environment, Stockholm (1972).) He stated that ‘[t]he air we breathe is not the property of any one nation – we share it. The big oceans are not divided by national frontiers – they are our common property In the field of human environment there is no individual future, neither for humans nor for nations. Our future is common. We must share it together. We must shape it together. ... The immense destruction brought about by indiscriminate bombing, by large scale use of bulldozers and pesticides is an outrage sometimes described as ecocide, which requires urgent international attention. It is shocking that only preliminary discussions of this matter have been possible so far in the United Nations and at the conferences of the International Committee of the Red Cross, where it has been taken up by my country and others. We fear that the active use of these methods is coupled by a passive resistance to discuss them’.

the prevention and punishment of genocide⁶, and has been debated amongst the International Law Commission regarding the “*Draft Code of Crimes Against the Peace and Security of Mankind*”.⁷

The International momentum gained by the ecocide law movement increases with people, NGOs, businesses and governments. At the Assembly of States Parties of the International Criminal Court (2019), the Republic of Vanuatu suggested that all Member States seriously consider the adoption of ecocide as the fifth crime against peace in the Rome Statute. Since then, the topic of ecocide law has been gaining traction worldwide, with discussion now on public record at parliamentary and/or government level in at least 35 countries⁸ (time of writing, November 2023) via motions, resolutions, parliamentary questions, petitions, white papers or full proposals of law in countries all over the world. The Inter-Parliamentary Union⁹ has supported recognition of ecocide, as has EU parliament (in a number of resolutions¹⁰), the Council of Europe¹¹, and the Organisation for Security and Co-operation in Europe¹²; the European Law Institute has provided a related EU-specific definition.¹³ Ecocide law is also seeing support amongst different sectors, such as faith groups,¹⁴ youth groups¹⁵ and business/investment networks.¹⁶

The crime is gaining traction for its potential to regulate the worst forms of environmental damage while remaining mindful that we do not want to punish or in fact restrict the ordinary actions of millions of people. Ecocide law’s “unlawful” standard has the possibility to invoke existing laws, therefore strengthening national, regional and international legal frameworks in their applications. A new tool for governing environmental protection is proposed by the standard of “wanton”. Wanton reflects environmental damage that is clearly excessive to the social or economic benefits realised, therefore providing some adaptability for different legal systems. It is essential to address the root causes of severe destruction of ecosystems, and it is appropriate the criminal law provides new regulation given the increasing severity of infractions. Arguably, we must move from a system of “polluter pays” (with a fine, or perhaps reparations of another form) to polluter does not pollute: I.e. we all come under an individual responsibility to not cause severe damage to the environment.

Ecocide Law and Environmental Protection

Unlike human rights, the environment doesn’t have a foundational piece reflecting the fact that the most serious harms committed against it are strictly prohibited. In absence of this foundation, environmental offences are not only perceived as less serious than other crimes, but their regulation also tends to fall within a legal framework largely rooted in civil law – the inadequacies of which may be said evident by the continued escalation of the climate and environmental crises. Arguably, effective future governance hinges on a collective affirmation and understanding of this reality. Ecocide law offers one solution, which can provide a degree of enforceability to rights and duties existing within environmental law. Clear legal standards can be of benefit in all sectors, and an ecocide crime is therefore increasingly attractive to a diverse number of stakeholders for such reasons.

Globalisation is understood as a key driver of environmental and biodiversity damage due to increased consumption, production, movement of goods and associated GHG emissions.¹⁷ As a result, legal measures proposed for governing the climate and ecological crises must be aware of these implications, in conjunction with the more specific local and national elements to environmental problems. Arguably, we should strive for

⁶ N. Ruhashyankiko, ‘Study of the Question of the Prevention and Punishment of the Crime of Genocide’ (31st Session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, UN Doc E/CN.4/Sub.2/416 (1978).

⁷ C. Bassiouni, ‘The History of the Draft Code of Crimes Against the Peace and Security of Mankind’, *Israel Law Review*, Vol. 27, No. 1-2 (1993).

⁸ <https://www.stopecocide.earth/leading-states>

⁹ <https://www.stopecocide.earth/press-releases-summary/-led-by-belgium-parliamentarians-worldwide-support-ecocide-law>

¹⁰ <https://docs.google.com/document/d/1Fqs-4Jz28F6y0VKFLduDiShoj0QfP4XamDtHAqgreNU/edit>

¹¹ Parliamentary Assembly, ‘The Council of Europe should take the lead on preventing environmental damage during armed conflict’, (2023), (online), available at: <https://pace.coe.int/en/news/8959/the-council-of-europe-should-take-the-lead-on-preventing-environmental-damage-during-armed-conflict>

¹² <https://www.stopecocide.earth/breaking-news-2023/worlds-largest-intergovernmental-security-organisation-calls-for-international-ecocide-law>

¹³ <https://www.europeanlawinstitute.eu/projects-publications/current-projects/current-projects/ecocide/>

¹⁴ <https://www.faithforecoidelaw.earth>

¹⁵ <https://www.stopecocide.earth/youth>

¹⁶ See the ICGN Statement of Shared Climate Change Responsibilities to the UN Climate Change Conference of the Parties 27 (2022), available at: [5.+ICGN+Statement+of+Shared+Climate+Change+ResponsibilitiesCOP27,+November+2022_0.p df](https://www.squarespace.com) (squarespace.com), where p.4 promotes an international ecocide law for governments and standard-setters

¹⁷ J – Y. Huwart,, L. Verdier, ‘Economic Globalisation: Origins and Consequences’, OECD Publishing: Paris, France, (2013).

an acceptance amongst international, regional and national courts that damage to commons constitutes a criminal offence: by amending the Rome Statute of the International Criminal Court to include ecocide law. This amendment would reflect the imposition of a universal, individually applicable standard for environmental protection efforts, rooted in politically transcendent values such as justice, equality before the law and fairness.

In practical terms, by levying responsibility on individuals, not legal entities, the cycle of destruction is targeted at origin: instead of “*polluter pays*” (if caught), the new governing principle becomes “*the polluter does not pollute*”.¹⁸ If expected sanctions rise with the harm caused by the offence, then it can in principle encourage individuals to commit less harmful rather than more harmful acts,¹⁹ therefore reflecting a pre-emptive approach to environmental destruction. Criminalising severely environmentally destructive actions *at source* has the potential to deter harmful environmental acts generally, also thereby leaving greater finances and resources for repairing existing environmental damage. This standard would also impose a legal duty of care for industries to redirect their attention to cleaner technologies and practices.²⁰

Ecocide law can also fit well into a wider context of environmental governance that properly reflects the principles and procedures of the “*global commons*”. The global commons, or “*common heritages of humankind*” were consistently discussed throughout the Global Futures Forum - the idea that certain natural resources cannot be privatised and ultimately should serve the benefit of humankind in totality.

There are both symbolic and procedural elements to discussing the “*Common Heritage of Humankind*” principle in the context of future global environmental governance. Symbolically, a ‘natural commons’ approach sees the environment and its regulation as a relational and dynamic system, composed of a web of interdependent relationships between humans, non-humans and the planet. The things or resources classified as natural commons thus form part of a whole called “*common heritage*”. By including them in this heritage they can be collectively managed with the purpose of preserving them.²¹ Procedurally, in order for the ‘Common Heritage of Humankind’ principle to operate effectively as a legal concept, it must be strengthened and grounded in greater enforcement. The GFF participants considered that ecocide law, with its definition expressly predicated upon these aforementioned concepts and rooted in the criminal law, represents an integral element to this discussion.

From the perspective of indigenous communities all around the world, community connection to the management of environmental resources is integral. Western private property standards may be different to commons but they are not mutually exclusive regimes. It is well acknowledged that the privatisation of global environmental resources has accelerated their exploitation and thus depletion, and with indigenous populations, and therefore their governance of environmental resources, constituting 80% of biodiversity protection efforts worldwide, we are well placed to pay attention. Consequently, an international understanding is required as to how to translate effective common property management principles at the local scale to the global in identifying, adjudicating and remedying the transboundary problems of environmental degradation and climate change. The management of global commons poses similar challenges to managing local commons, and literature and increasing practice evidences these links.

For example, the concept of “*polycentric governance*” is often used to describe a governance regime appropriate of managing environmental resources, in both local and global situations.²² This style of governance envisages networked relationships in power dynamics according to principles of trust, transparency, cooperation and systems of adaptive management - that can respond to environmental problems at the most appropriate level, working in accordance with a holistic international scheme, where mutual learning and support can take place.²³ While not neglecting international governance, this conceptual framework can ensure more appropriate governance of the interconnected complexities of traditional, state-based and top-down governance: which is often abstract from environmental problems themselves and

¹⁸ Ibid, pp.261-262.

¹⁹ Ibid.

²⁰ P. Higgins, D. Short, N. South, ‘Protecting the Planet: A Proposal for a Law of Ecocide’ (2013).

²¹ M-P. Camproux Duffrène, V. Jaworski, ‘Legal Paradigm Shifts for a New Environmental Law’, Report to the Greens / European Free Alliance (2021), available at: [7036 \(greens-efa.eu\)](https://www.greens-efa.eu), p.25.

²² See, for example: D. H. Cole, ‘Advantages of a Polycentric Approach to Climate Change Policy’, *Nature Climate Change*, Vol. 5. No. 2 (2015); E. Ostrom, ‘Beyond Markets and States: Polycentric Governance of Complex Economic Systems’, *American Economic Review*, Vol. 100, No. 3 (2010).

²³ See generally the work of Elinor Ostrom and colleagues.

their effects.²⁴ Thus, instead of a thoroughly top-down global regime, in which lower levels of government carry out mandates from above, a polycentric order provides for greater experimentation, learning, and cross-influence among different levels of government, which operate both independently and interdependently,²⁵ with a stress on *'thinking locally but acting at whatever level makes sense'*. Polycentric governance as a concept was frequently referred to over the GFF as a useful analytical and legal tool for conceptualising the new forms of governance the GFF and the SOTF intend to embody: **ensuring international standards, but real national enforceability, according to the principle of complementarity.**

Ecocide Law and Enforcement

There have been many different legal and economic theories attempting to explain the need for criminal enforcement of environmental law. For example, the failure of the civil / administrative law to adequately deter violations;²⁶ the significance to the international community in terms of moral outrage by describing a course of conduct as a crime; and by economic analysis of crime - in the sense that an effectively enforced criminal statute raises the cost of certain types of conduct and therefore encourages compliance with laws and regulations that would largely otherwise be ignored.²⁷ Given that the criminal law offers the potentially strongest deterrent against eco-criminals, it greater ensures the effectiveness of enforcement.²⁸

According to the welfare principle of criminal law, the main basis for criminalisation of environmental regulation would be to protect collective interests belonging to the whole community (*res communis*).²⁹ International criminal law's spirit is establishing a consensus around a value that is presumed universal,³⁰ and thus inclusion of an ecocide crime requires consolidating values which are or should be shared. Common features are that the crimes have great gravity, have impacts that cross-boundaries, or *"shock the conscience"* of humanity.³¹ In considering ecocide law's suitability for international criminal law, we may say that there is an increasing recognition that some serious types of transnational environmental offences impact on the peace and security of mankind and violate customary rules and universal values. Hence these crimes could satisfy the first three criteria.³² Significantly, the UN Security Council recognised in 2007 that climate change poses a threat to peace and security of mankind.³³

Given the severe and often irreversible nature of acts of ecocide, it can be suggested that the retributive theory of criminal law should play a lesser role in justifying punishment than the role of deterrence which views the use of criminal sanctions as means to prevent environmental damage from occurring in the first place. The ICC Statute itself recognises a role of deterrence in ICL,³⁴ and such deterrence plays an important role in international penal responsibility, such as the prevention of further violations of the same norm, as well as reprobation and retribution.³⁵ In simple terms: a large function of crimes is to deter behaviour in the first place. Moreover, irrespective of their effectiveness or otherwise, arguments linked to deterrence have been raised as a justification for the adoption of civil liability regimes under numerous international agreements aimed at the reparation and compensation of environmental damage, as they increase the

²⁴ See for example: A. Rosen, *The Wrong Solution at the Right Time: The Failure of the Kyoto Protocol on Climate Change, Politics and Policy*, Vol. 43, No. 1 (2015).

²⁵ D. H. Cole, 'Advantages of a Polycentric Approach to Climate Change Policy', *Nature Climate Change*, Vol. 5, No. 2 (2015), p.395.

²⁶ T. Schofield, 'The Environment as an Ideological Weapon: A Proposal to Criminalise Environmental Terrorism', *Boston College Environmental Affairs Law Review*, Vol. 26 (1999), p. 642.

²⁷ B.S. Cho, 'Emergence of an International Environmental Criminal Law?', *UCLA Journal of Environmental Law and Policy*, Vol. 19, No.1 (2000), p.13.

²⁸ R. Pereira, 'The Internationalisation of Environmental Criminal Law: Rationales, Basis and Prospects', in R. Perira, 'Environmental Criminal Liability and Enforcement in European and International Law' (2015), p.97.

²⁹ *Ibid.*, p.60.

³⁰ R. Schuerch, 'The Application of Universal Values in the Field of International Criminal Law' in 'The International Criminal Court at the Mercy of Powerful States'. *International Criminal Justice Series*, Vol. 13, T.M.C. Asser Press, The Hague (2017). Available at: https://doi.org/10.1007/978-94-6265-192-0_7

³¹ See e.g., Preamble and Articles 1 and 5-8 of the Rome Statute; M.M. de Guzman, 'Shocking the Conscience of Humanity: Gravity and the Legitimacy of International Criminal Law', Oxford University Press (2020).

³² R. Pereira, 'The Internationalisation of Environmental Criminal Law' (2015), p.114.

³³ Following the Security Council meeting on 'Energy, Security and Climate' held on 17 April 2007. See Security Council Holds First-Ever Debate On Impact Of Climate Change On Peace, Security, Hearing Over 50 Speakers, 5663rd Meeting, SC/9000, 17 April 2007. Resolution adopted by the General Assembly [without reference to a Main Committee (A/63/L.8/ Rev.1 and Add.1)] 63/281.

³⁴ See Preambluar para. 5 of the Statute which states that parties are "[d]etermined to put an end impunity for the perpetrators of these crimes and thus contribute to prevention of such crimes".

³⁵ See Security Council Resolution 827 of 25 May 1993 UN Doc. S/Res/827 (1993).

likelihood of accountability.³⁶ Not only has criminal law been historically relied upon as an initial and highly effective way to deal with social problems,³⁷ if the wrongdoing is serious or harmful enough then there may be an important symbolic or moral reason for declaring a particular conduct as criminal, remaining cognisant of the significant role the declaratory function of criminal law plays in providing both reassurance and deterrence.³⁸

Ecocide law's promise to provide a uniform and binding sanction, tailored through multiple levels of criminal governance that are reflective of the interlinkages between localities and international effects, could well reflect this "polycentric" approach to governance of environmental issues.³⁹ It has been argued that complementarity, as a general principle of (international) law, should not prematurely be reduced to the issues of admissibility raised in Article 17(1)(a) and (b) of the Rome Statute; its contents should not be confused with the limited definitions of unwillingness and inability in Article 17(2) and (3). Rather, complementarity tells a "*tale of many notions*",⁴⁰ be it historically⁴¹, conceptually, ideologically or analytically.⁴² It is well argued that

"The ICC in general, and the complementarity principle in particular, are part of a more comprehensive, multileveled, polycentric and actor-open enforcement regime of international criminal law. This enforcement regime results from aggregate and complex interactions in networks of state and non-state actors across all geopolitical levels, which can be, but do not necessarily have to be, ordered hierarchically."

Complementarity as global governance thus aligns the various actors operating in and between these centres of activity towards a common goal: to end impunity by solving the various deficiencies in the polycentric and multi-levelled international atrocities regime. From the perspective of international processes such as implementation of the Sustainable Development Goals, and any proceeding agreements, explicit interlinkages between local and global processes is essential. From the perspective of protection of local and global collective heritages, destruction of which may well invoke numerous overlapping environmental issues, a robust and comprehensive framework rooted in adequate transparency, and enforcement is similarly vital. **Such processes necessarily imply a grounding in the rule of law and judicially enforceable rights. This should apply for people and nature.**

Ecocide Law and Human Rights

Making ecocide an international crime also promotes a narrative which pushes the protection of human rights. If adopted, the ICC would be permitted to convict and punish offenders of ecocide with the explicit intention to punish the worst forms of human rights abuse.⁴³ The link between ecocide and human rights originates with the origin of the ecocide concept,⁴⁴ and continues to present discussions, with particular relevance to the United Nations' recent admittance of a right to a healthy environment,⁴⁵ as well as increasing climate litigation efforts worldwide.⁴⁶ Crucially, the importance of environmental protection to international human rights is now recognised in international environmental and human rights Conventions.⁴⁷ Increasingly,

³⁶ R. Pereira, 'The Internationalisation of Environmental Criminal Law' (2015), p.98.

³⁷ A.N. Vercher, 'The Use of Criminal Law for the Protection of the Environment in Europe: Council of Europe Resolution', *Northwestern Journal of International Law & Business*, Vol. 77, No. 28 (1990).

³⁸ R. Pereira, 'The Role of the Criminal Law for the Protection of the Environment' in R.Pereira, 'Environmental Criminal Liability and Enforcement in European and International Law' (2015), pp,70-71.

³⁹ Complementarity as global governance aligns the various actors operating in and between these centres of activity towards a common goal: to end impunity by solving the various deficiencies in the polycentric and multi-levelled international atrocities regime.

⁴⁰ C. Stahn, 'Complementarity: A Tale of Two Notions', *Criminal Law Forum*, Vol. 19 (2007).

⁴¹ See M. M. El Zeidy, 'The Principle of Complementarity in International Criminal Law: Origins, Developments and Practice' (2008).

⁴² C. Burchard, 'Complementarity as Global Governance' (2011), In C. Stahn & M. El Zeidy (Eds.), 'The International Criminal Court and Complementarity: From Theory to Practice' (pp. 167-196). Cambridge: Cambridge University Press, p.168.

⁴³ R. K. Robinson, 'Addressing Climate Change: Comparing the Paris Agreement to the Addition of Ecocide to the Rome Statute' (2021), p.6; P. Higgins, D. Short, N. South, 'Protecting the planet: A proposal for a law of ecocide', *Crime, Law and Social Change* (2013).

⁴⁴ R.A. Falk, 'Environmental Warfare and Ecocide' – Facts, Appraisals and Proposals', *Bulletin of Peace Proposals*, Vol. 4, No. 1 (1973).

⁴⁵ United Nations News, 'UN General Assembly declares access to clean and healthy environment a universal human right' (2022) (online), available at: <https://news.un.org/en/story/2022/07/1123482>

⁴⁶ United Nations Environment Programme, 'Global Litigation Report: 2023 Status Review', available at: <https://www.unep.org/resources/report/global-climate-litigation-report-2023-status-review>

⁴⁷ Some regional agreements have incorporated a human right to a healthy environment. See e.g., Article 11 of the Additional Protocol to the American Convention of Human Rights ('Protocol of San Salvador' (1988), adopted on November 17, 1988, not yet in force); Article 24 of the African Charter on Human and People's Rights, 1520 U.N.T.S. 217, (1981); in force on 21 October 1986; and Article 37 of the Charter on Fundamental Rights of the European Union (2010).

the international community is recognising that environmental damage invokes numerous human rights concerns.

Environmental crime specifically is a lucrative industry, invoking numerous human rights concerns. With a “*combination of huge profits, low risk of detection and ineffective penalties, environmental crime is extremely lucrative*”,⁴⁸ however, perceived as victimless and low priority, such crimes often fail to prompt the required response from governments and the enforcement of the community when, in reality, the impacts affect all of society.

Significant global challenges are connected to, and exacerbated by environmental crime, affecting development, peace, security and human rights.⁴⁹ For example, analysis from the Global Initiative Against Transnational Organized Crime⁵⁰ indicated that all contributing factors to climate change identified by IPBES have direct and indirect relevance to criminal networks and transnational criminal flows. The authors argue that issues in response to this phenomena largely arises from the fact that there is no universally accepted definition of environmental crime, and the substance of discussions tends to centre around crimes seen as global problems, such as those that damage ecosystems or species that are seen as part of the global environmental heritage. They note that, in practice the boundaries of what is considered a global problem are contested and contestable, and these debates reflect the fragmented and often inadequate international legal framing of these issues.⁵¹

Failure to respond to environmental crimes is leading to serious human rights breaches in the form of onslaught against environmental defenders. In a report issued on data from 2019-2021, the Global Assassination Monitor drew attention to killings happening at the community level, and their strong connection to environmental crime and other environmental issues.⁵² Despite the fact that this database also records political assassinations, and “*illicit market*” killings directly targeting organised crime figures, local community killings constituted the largest target group. They accounted for 28% of all cases globally, followed by politics and governance at 24%.⁵³ Human rights standards are therefore essential to this discussion, and implementation of an international crime of ecocide would represent an important step in providing greater legal protection for those whose human rights have been breached as a result of environmental problems – either from environmental degradation itself or in reporting and remediation actions. Criminal law provides a fair and clear standard, and thus can be highly relevant in ensuring access to environmental justice.

The growing conversation connecting the environment with our human rights stresses the fundamental importance of effective environmental protection from both anthropocentric and ecocentric perspectives. There is always scope for argument about specific legal measures for dealing with climate change and environmental destruction, but the wilful and reckless destruction of the ecosystems upon which we all depend to realise our rights can no longer be justifiable by any standards. The accelerating damage to our global environment and climate - with causes, severity and effects manifesting from any sources and actors - stresses the need for effective multilateral governance that can tackle such multi-faceted problems in adequate ways. International and therefore national ecocide law is one part of the equation, but realisation of environmental and human rights hinges on a continuum of laws, and therefore enforceability.

Conclusion

The repercussions of environmental crimes and harms are transboundary and trans-generational, and thus the challenge for legal reform is inter-spatial, at a global level and inter-temporal all at once, for current and

⁴⁸ Environmental Investigation Agency, ‘Environmental Crime: A threat to our future’ (2008), p.2.

⁴⁹ Ibid.

⁵⁰ S. Haysome, M. Shaw, ‘An analytic review of past responses to environmental crime and programming recommendations’ (2022).

⁵¹ Ibid.

⁵² There are difficulties associated with definition of environmental defenders. The United Nations defines them as “*individuals and groups who, in their personal professional capacity and in a peaceful manner, strive to protect and promote human rights related to the environment, including water, air, land, flora and fauna.*” See United Nations General Assembly, Situation of human rights defenders, A/71/281 (2016). See also: Report of the United Nations Special Rapporteur on the situation of human rights defenders, ‘Final warning: death threats and killings of human rights defenders, A/HRC/46/35 (2020).

⁵³ A.P. Oliveira, N. Kaysser, ‘Killing in Silence: Monitoring the Role of Organized Crime in Contract Killings’, (2021) (online), available at: <https://assassination.globalinitiative.net/wp-content/themes/assassination/downloads/MonitorReport.pdf>

future generations.⁵⁴ Therefore, in environmental regulation, it is essential to pose measures that can both reflect and remain adaptive to our current reality. The first challenge for effective environmental law is to invigorate a view from its existing anthropocentrism to an ecocentric view based on an understanding of ecological systems and a gearing towards a common global objective: the continued viability of the planet, the balance of the biosphere and the survival of humanity.⁵⁵ Regardless of one's take on specific climate regulation measures, it is beyond doubt that protecting planetary boundaries is essential to sustaining humankind and the environment.⁵⁶ Given the scale of the crises, it is essential to pose effective inclusive offences that can adequately deter and punish the worst forms of environmental harm. Such offences must be able to reflect both the complexity and severity of environmental harm, as well as be potentially applicable in a variety of interconnecting contexts.

There is also a critical necessity to protect the global commons as common goods of humanity for present and future generations and enhance the role of courts at national, regional and international levels to apply environmental standards emerging from international policy considerations. Signatories to the Rome Statute are expected to enact laws at the national level, so enacting an Ecocide amendment would at least create political pressure for domestic instantiation,⁵⁷ and likely promote a ripple effect of new environmental protection across states. Perhaps more pertinently, the symbolic value of an amendment to the Rome Statute would be significant. Prohibiting conduct under international criminal law indicates that the international community considers such conduct to be sufficiently serious to justify the elevation of proceedings to the international level,⁵⁸ and the inscription of ecocide as an international crime would therefore affirm the seriousness of environmental crimes and harms at international, regional and national levels.

Judicially enforceable human and environmental rights go hand in hand.

⁵⁴ M-P Camproux Duffrène, V. Jaworski, 'Legal Paradigm Shifts for a New Environmental Law' (2021), pp. 29-30.

⁵⁵ M-P. Camproux Duffrène, V. Jaworski, 'Legal Paradigm Shifts for a New Environmental Law', (2021), pp. 24-25.

⁵⁶ Recent estimates suggest we have passed six of nine planetary boundaries.

⁵⁷ Article 88 of the Rome Statute provides that national laws shall be enacted to ensure there are procedures that are available under their national law for all forms of cooperation specified in the Statute.

⁵⁸ M. Gillett, 'Prosecuting Environmental Harm before the International Criminal Court', *Studies on International Courts and Tribunals*, Cambridge, Cambridge University Press (2022), p.234.

LEGAL PACT FOR THE FUTURE

LAW AND DEVELOPMENT

By Lauren Banham & Anna Maddrick

Introduction - Themes

While we call for legislative and judicial enforceability, it is our opinion that the application of such laws must be guided by shifting social contexts, at national and international levels. These two realities are not only complementary, but mutually reinforcing. The law is absolutely fundamental to shifting social and development norms, while social and development norms necessarily must guide legal reform. It is therefore important to maintain a broad, multi-citizen and multidisciplinary approach to any “renewal” of our social charter, allowing for inclusive, cooperative and transparent legal processes, reflective of fundamental principles such as citizen participation and equality before the law.

In regard to international problems such as the planetary crisis and overt, multi-faceted structural inequalities, there is enough information to be fully aware we are facing serious issues, with implications for all of humankind. We have the data, the course we are on is existentially dangerous. We need to alter patterns. However, the social, economic and environmental inequalities we are seeing today are largely structural, reflective of specifically national and international politics. This therefore implies multiple conversations on optimal governance, but such processes must necessarily be guided by values of equity and fairness, and grounded in law.

Ensuring real equality before the law is not possible without a recognition of the historical marginalisation which moulded systems, and the most pressing inequalities. We hope to emphasise that as national and international politics face extremities of change, it is essential to have judicially enforceable human and environmental rights that exist outside of political opinion. We can debate semantics but we can all agree on human values, and as the social contract theory initially envisaged, this is what law should reflect. We aim to encourage citizens, organisations, businesses and states themselves that in international cooperation, we can also respect regional differences. **Uniting around common values and rights is one way to ensure we can transcend the limitations of difference.**

Those not motivated to change their actions will not without the force of law that is fundamentally in line with where we are heading. We therefore need law that can both back up and enforce the international social, environmental, economic and cultural protections we so desperately need. **We have a right to law’s effective operation.** It is in this respect that we argue it is time governance mechanisms adequately reflect our current realities, with an ignition of action at a multitude of levels. Central to this ambition is fair rules and adequate enforcement, therefore judicially enforceable human and environmental rights across the world.

In the wake of intensifying social and planetary breakdowns, now is the time to do something. We therefore call for **more courts and fewer reports**, for substantive, actionable procedure and enforcement, providing a continuum of adequate enforcement from local to international level.

Previous Social Shifts - The Role of Law

Law is, necessarily, both guiding and reactionary. Politics and law straddle a paradoxical relationship, where the former must necessarily inform the latter’s operation, while law must also be careful to maintain its reflection of objectivity, a standard of reasonableness. While the law provides our parameters, there are also numerous examples in history of social movements guiding legal change, such as the end to apartheid in South Africa through a series of changes to the legal and political system.

Therefore, from prosecuting dictators throughout history, to shaping civil entitlements such as education, employment rights and healthcare, law and social movements are often mutually reinforcing, or “chicken and the egg”. We cannot disentangle social realities from the law’s application, and neither can the law operate in a vacuum. All of the gradual shifts that occur add up. We are not asking for a radical reform of law which

changes societies and legislation overnight. Instead we look to historic examples of cultural evolution as proof that many small shifts contribute to an eventual change. **Ultimately, the global community is currently experiencing many changes. It is essential the law keeps up.**

People's Pact Recommendations - Development (Interim People's Pact, pages 6-7).

The People's Pact, as a representation of a broad civil society perspective, has potential to impact future development targets through the Summit of the Future. Based on the recommendations provided in the People's Pact on development, we have provided some further analysis to emphasise the legal perspective. As the above section discusses, law is not only central to development, but integral.

1 SDG Coherence - clarify implementation responsibilities

The Interim People's Pact first aim for development relates to increasing coherence and clarity in the implementation of the SDGs.

From the Legal Pact perspective, examples such as increasing strategic litigation in human and environmental rights contexts, as well as the recent request for an Advisory Opinion on the responsibilities of states around climate change to the International Court of Justice, show that both citizens and states are looking for a greater articulation of their responsibilities around fundamental social issues. In ensuring coherence, law can and should guide implementation responsibilities. The heart of the social contract is that law is our agreement to live together.

2 Enhance quality analysis and tracking, and ensure accountability regarding SDG implementation

The second aim of the development track of the People's Pact relates to clear implementation responsibilities and effective cooperation between international and local institutions, and everything in between.

The Legal Pact perspective agrees, as we reiterate the importance of cooperation at multiple levels. However, we emphasise that to ensure accountability in implementing the SDGs and any future development targets, we must have adequate legal standards for all public offices overseeing SDG responsibilities, including local authorities. We should also have clear, widespread and actionable mechanisms of justice for citizens, particularly at the local level, for enforcing human and environmental rights necessarily covered by the SDGs' very existence.

3 Articulate and act on alternatives to GDP

The third aim of the People's Pact development track relates to rethinking the international economic system's GDP-centric approach towards unsustainable practice.

From the Legal Pact perspective, we agree, but highlight that considering alternatives to GDP, such as the well-being economy model, is well supported by the greater introduction of clear legal indicators and standards, such as a greater understanding of the rights of future generations, for example.

4 Reinforce the SDGS

The fourth aim of the People's Pact development track relates to strengthening the SDGs between the goals themselves as well as reinforcing links with the global commons and human rights, peace and security.

The Legal Pact perspective agrees, but reinforces that such matters are necessarily legal questions. We therefore recommend that reinforcing the SDGs, particularly in the areas of sustainable development in AI use and outer space, requires legally enforceable standards. Law can and should provide a linkage between the different SDGs, uniting us all around common and fair standards to ensure real, enforced sustainability efforts going forward.

5 Establish a Global Resilience Council

The fifth aim of the development track relates to the creation of a Global Council to deal with multi-dimensional challenges and conflicts.

It is the Legal Pact perspective that while greater cooperation is undoubtedly necessary in SDG implementation, as well as future targets, if there is to be a greater use of international organisations and institutions, it is fundamental that their duties are strictly limited and regulated by appropriate and enforceable law to prevent misuses of power or an increase in democratic deficit. Any action towards strengthening international institutions should be paralleled by appropriate investments at local, national and regional levels.

The SDGs have been heavily criticised, partly due to their perceived inability to be properly enforced. This has resulted in a lack of cohesive implementation and clear division of responsibilities, as well as a certain level of disconnect from the problems they are intended to govern. Looking forward to the agendas which will shape the next decade of development, we must ensure they are grounded in enforceable human and environmental rights. This is important in itself but particularly to ensure shortcomings of the SDGS are not repeated.

In concluding this section, we also highlight the relevance of horizontal and vertical implementation of the SDGs, which necessarily hinges on enforceability at multiple levels. It is our perspective that ensuring real implementation of present and future commitments in development, including the SDGs, depends on the realisation of rights, at local as well as international levels, in a court of law. Not only do courts at all levels need to be able to apply emerging policy standards in the context of adequate protection of human, environmental, social and economic rights, but individuals must be able to realise such rights' enforcement. The multi-levelled calls to action depend on multi-levelled enforceability.

Development and enforceable rights go hand in hand.

LEGAL PACT FOR THE FUTURE

NEXT STEPS

Interested in getting involved?

It is our explicit aim that a Legal Pact for the Future is written by and belongs to all of us.

We seek contributions from and collaborations with other interested stakeholders, with the sole caveat that arguments and ambitions reflect the importance of the rule of law. We are open to diverse viewpoints, as we are not calling for a host of legal solutions in particular, but rather aim to elevate the importance of robust dialogue around effective judicial enforcement itself. *While we retain editing rights, we will appropriately credit all selected or sampled contributions.*

The Legal Pact is looking for contributing authors on the themes of:

- ▶ Development and the SDGs
- ▶ Environmental Governance
- ▶ Human Rights & Participation
- ▶ Global Digital Compact
- ▶ Global Economic and Financial Architecture
- ▶ Peace and Security
- ▶ UN & Global Governance Innovation



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Sign up to be a supporter of the Legal Pact - and the idea of judicially enforceable environmental and human rights - and we will display a link to your website or organisation on the Legal Pact website.

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More courts, fewer reports!