

Introduction

My name is Louise Kulbicki. As a member of the public I would like to present the idea for an international crime of Ecocide to Oxford Council, in order for them to support this and trigger more political support on a UK and global level.

The problem

Twenty years ago world leaders met at the Historic 1992 Rio Earth Summit, a landmark conference aimed at creating a sustainable future. Sustainable development goals were put in place, even legally binding environmental agreements were signed. But now, we're twenty years on and it is clear that we have failed to create a harmonious balance between the economy, environment and society. The planet's economic output has more than doubled. Yet a billion people are starving from hunger. The gap between rich and poor is widening.

The Earth system on which all people and all beings depend on for survival is being massively over stressed. We have learnt that the planet has nine boundaries, which if we cross could lead to irreversible environmental change, effectively moving Earth out of the stable state of the past 10,000 years – known as the Holocene – which has been so beneficial to humankind. The consequences for all life would be devastating.

At least three of these planetary boundaries have already been crossed - climate change, biodiversity loss, and nitrogen use and we are moving rapidly towards crossing others.

We are seeing mass damage and destruction to people and the planet on a scale never seen before in history. Arguably one of the most destructive projects in the world is happening is the Athabasca tar sands oil extraction in Canada. Biggest energy project in the world, the tar sands deposits are located in an area larger than England under vast tracts of boreal forest and muskeg peat bogs which are incredibly important for biodiversity and act as a massive carbon sink. Millions of barrels of tar sands oil have been extracted in a non conventional way producing three to five times as many greenhouse gas emissions as conventional oil extraction. Nasa Climate Scientist James Hansen has said that if the project is fully developed it is game over for the climate. But this isn't just about destruction to the environment it is also about destruction to people, peoples' lives are ruined due to this. In Canada massive cultural destruction is happening. Indigenous peoples lives are being ruined their culture and heritage ripped apart. The toxic tailings ponds caused by the tar sands operations are so huge they are visible from space, which leak poisons into the local water supply causing disturbingly high rates of rare forms of cancer and other diseases. Killing off populations slowly.

And closer to home, we have bee colony collapse disorder due to the use of pesticides. If bees become extinct, when we have colony collapse disorder we lose 70% of our food stuffs overnight. There's an old Native American proverb which states "When the Last Tree Is Cut Down, the Last Fish Eaten, and the Last Stream Poisoned, You Will Realize That You Cannot Eat Money."

We need to wake up and realise this before it is too late. But we do know all this, we knew it twenty years in Rio and we know it today. So, why, when we know these things, when we are all striving for the future we all want have we failed to achieve it? The main problem I believe is simple. At the moment, the number one rule that governs our world is that corporations must maximise profit to shareholders, they can make profit out of virtually anything, even mass damage and destruction to people and planet. This economy is destroying the ultimate thing we want to sustain; Life. This is a gross miscarriage of justice.

Mass damage and destruction to the Earth, is a moral crime against humanity, against current and future generations and against all life, but in fact in reality, it is not a crime enshrined in law.

Our human right to life, means nothing unless there is some form of criminality for that person taking it away from you. This is why it's so important that our right to life correlates with the crime of murder, of genocide. However, when human life is being killed off slowly through diseases because we are destroying the very Earth we live on, we are polluting the air we breathe, the water we drink, there is no corresponding crime. The right to life of the planet and of other beings is not protected. Our human right is not protected if we do not have a correlating right to protect our planet. This is a moral issue. And this problem has a simple solution.

To achieve true sustainable development and ensure our right to life is truly protected, we need to do the right thing. Just because mass damage and destruction has been normalised does not make it right. It does not mean we should not stand up to say that it is wrong, and ensure that changes are made to bring about justice.

The solution

Attempts to regulate this destruction, to pollute a little less, to cut down a bit less rain forest aren't working. To achieve true sustainable development we need to address the root of the problem, we cannot continue with business as usual this hasn't worked. We need to outlaw destructive business practices once and for all and create laws that prioritise green, clean, and life-enhancing business. One law that does just that is critically acclaimed environmental lawyer Polly Higgins' proposal to make Ecocide a crime.

An international crime of Ecocide would put an end full stop to mass damage and destruction to people and planet.

In April 2010 Polly Higgins proposed to the United Nations that a law of Ecocide be classed as a fifth crime against peace. The idea was further developed in her book *Eradicating Ecocide*.

Ecocide is defined as *the extensive destruction, damage to or loss of ecosystems of a given territory by human agency or other causes to such an extent that peaceful enjoyment of the inhabitants of that territory has been severely diminished.*

So there are two types:

- 1) manmade ecocide = damage destruction by a human agency, this would include ecocides caused by corporations.
- 2) naturally occurring ecocides such as climate change. Which I will explain later.

The wording of this definition is carefully chosen and each word legally weighted. The word Inhabitants means that ecocide can affect all beings not just humans. So if there was no one living a territory but there was mass damage to the environment a case could still be brought. This is really important because often environmental cases aren't brought because it is difficult to establish that the damage has affected humans.

Man made ecocide often occurs at the hands of a corporation due to dangerous industrial activity. We cannot hold a company criminally liable for its activity as at the end of the day = just a piece of paper. Therefore the law of Ecocide will hold those in a position of superior responsibility personally liable. These are the people who make the decisions. Be that the CEO of a company operating in the tar sands, or the head of state who permits these damaging activities to go ahead. It is also a crime of strict liability, meaning that intent does not need to be proved. It is enough for the crime to just happen. This will make prosecution easier.

Naturally occurring ecocides are different, examples include climate change and flooding.

At the moment we don't have a legal duty of care on states to give assistance to the global south facing climate change, one which is sanctionable in a court of law. We've tried climate negotiations for 17 years and they have failed.

At the moment there are 54 small island states looking at naturally occurring Ecocides, rising sea levels hitting them within the next 15-20 years.

We obviously can't hold a CEO liable for causing climate change it would be too difficult to prove in a court of law, but an international crime of Ecocide means that the global south will have the legal right to call upon the United Nations for assistance. By creating an international law of Ecocide and imposing a legal duty of care on all states we will all have to come together round the table and start working out these emergency plans and giving assistance.

Now the two types of ecocide are not entirely separate as manmade ecocide can lead to natural ecocide. Massively destructive industrial activity such as the Athabasca tar sand extraction, the logging of the Amazon will give rise to climate change. So by putting an end to these we will reduce the number of naturally occurring ecocides and help prevent runaway climate change.

The crime of Ecocide was tested in practice in a mock trial at the UK Supreme Court in September 2011. Michael Mansfield QC, arguably the UK's most prominent and high profile defence lawyer represented the defence in this mock trial. The trial received international press coverage from the Financial Times, Le Monde, Al-Jazeera and Time Magazine amongst others. It demonstrated the transformative potential of this law to change global corporate practices in favour of protecting the environment and human life.

Polly Higgins has now mounted a global campaign to have Ecocide recognised as the 5th Crime Against Peace at the 2012 Earth Summit. She will be attending the Summit.

In March 2012 a concept paper and summary, laying out the necessity for a law of Ecocide and the road map for its implementation was sent out to all Governments worldwide in addition to Ministers and Ambassadors.

Aim of law

The aim of this law isn't about prosecuting, this is aimed as a preventative mechanism and a transformative law which will change the course of business from being destructive to being truly sustainable.

It is about stopping these activities from happening in first place as shareholders won't invest and banks won't loan if could face criminal prosecution. Investment will be redirected to cleaner energies and create green jobs.

Also worth noting is that a transition period would be permitted of five to ten years for business to turn around. Businesses have shown their ability to adapt countless times despite arguing that there would be economic meltdown.

It happened with the abolition of slavery, (can go into more detail here if time permits) it happened when cfc's were banned. So it is possible.

We have seen with the abolition of slavery, the civil rights movement, the prohibition of apartheid, that, eventually justice will always prevail. All these movements had one common thread: it was the recognition of the wrongness in and of itself that won the day. Ecocide is morally wrong and must be made a crime. The moral imperative will allow eventually trump the economic imperative.

The head of the UN EP Achim Steiner recently said. Executive director of the United Nations Environment Programme Achim Steiner says (on sustainability) " we actually have a choice, the means, the technology, to change course. That's the motto of our era. We are able, and we must change course." A law of Ecocide is the means.

This is not about empty rhetoric, empty words, empty visions, goals. This is about changing our trajectory onto a path which is truly sustainable which we can all look back on and feel proud that we were the generation who stood up against all odds and changed history. For the better.

How can we make this a crime?

Mass damage and destruction to people and planet is a crime, it is a moral issue, I'm sure we would all agree that it is wrong. Now actually, during war any widespread, long-term and severe damage to the natural environment is deemed to be criminal severe damage and destruction to the environment is already a crime in law, but in peace time it is not. = serious anomaly.

This means that to put in place an international crime of Ecocide is actually not as difficult as one might first think. Existing law can be used and extended to outlaw mass destruction during peacetime, rather than having to create a brand new international law. The definitions are already in place.

The 1977 United Nations Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (ENMOD) convention specifies the terms:

- (a) "widespread": encompassing an area on the scale of several hundred square kilometres;
- (b) "long-lasting": lasting for a period of months, or approximately a season;
- (c) "severe": involving serious or significant disruption or harm to human life, natural and economic resources or other assets.

We also have the criminal court in place which would be a court of last resort but would ensure that the law was enforced.

More on details of putting it in place – only takes 1 member state calling for an amendment to the Rome Statute and then 2/3rds majority. The UK coming on board and voting in favour of a law of Ecocide is critical

Oxford Council can play a significant role in making this happen. Oxford City stands out in history for being a city which stands up and instigates ideas which have global repercussions. If Oxford Council stands up and demonstrates bold moral, courageous leadership through supporting an international law of Ecocide it can trigger the political process which can make this crime a reality. It can reach out to local MPs, to the UK Government and ensure that the UK votes in favour of making Ecocide a crime.

The earth summit is the time when our governments can make that decision to make law which affirms life rather than destroys it. It is important to put people and planet first over and above profit. We only have one window of opportunity here. We don't know when there'll be another window opportunity to do this in our life time. This is about standing bold, standing strong, standing bravely, this is about bold moral courageous leadership coming from our leaders including Oxford Council to do the right thing for our planet, to do the right thing this year.