

ECOCIDE AS CRIME AGAINST HUMANITY: A PARADIGM SHIFT IN ENVIRONMENTAL CRIME*

Abstract

This article discusses the effect of Ecocide on the environment. The human activities have led to the destruction of the ecosystem. As a result of this destruction, the vegetation that plays a vital role in supporting the healthy and peaceful existence of human in their natural habitat has been greatly affected by the pollutant arising from these human activities. These activities arise from nuclear warfare exploitations of resources, dumping of harmful chemicals and other human activities that negatively impact on the ecosystem. This paper is of the opinion that the globe should come out with enabling law to persecute individuals and nations. Currently, there is only one provision in the Rome Statute which mentions environmental damage. It is Article 8 (2) (b) (iv). Article 8 is concerned with war crime. Ecocide is part of several domestic criminal codes, but it has not yet been accepted as an international crime by the UN. Stop Ecocide foundation strives to make ecocide an international crime by recommending amendments to the Rome Statute of international criminal court. Ecocide should be made the fifth crime against humanity. There should be an award of fine and penalties against defaulters as this will go a long way in protecting the environment.

Keywords: Ecocide, Crime against Humanity, Environmental Crime, Paradigm Shift

1. Introduction

Ecocide is the damage caused by individuals, co-operate organizations and States. It also includes environmental destructions from other causes that is, harm that is not necessarily caused by human activities. The purpose was to create a duty of care to mitigate or prevent disasters as well as creating criminal responsibilities on human caused ecocide.¹ The dangers affect the air, water, people, plants and land. As human and animals, the importance of healthy environment to plants, animals and other living organisms cannot be over emphasized². The dangers it posed to our environment will not enable humans and aforementioned living organisms to enjoy the quality atmosphere for survival in the natural habitat as everything we eat and drink comes from the same environment. Once the environment is polluted the consequences of the effect of the pollution will be borne by every other thing that depends on it. As we all know, from the creation of the world, the planet earth is the only planet, amongst other planets that can support life for the existence of every living things including human beings. The big question is, if proper legislation is not put in place globally and the environment is allowed to be degraded to the point where it will no longer be habitable. If that happens what will be the fate of man existence, substance on earth. This is the major reason why there should be an urgent global attention to put a stop to the activities of ecocide.

2. Definition of Key Words

Stop Ecocide international has defined 'ecocide' as the unlawful or wanton act committed with knowledge that there is a substantial likelihood of severe widespread or long term damage being caused by those acts. In other words, it's any kind of activity which knowingly causes significant environmental harm burning large quantities of fossil fuel, cutting down swathes of climate critical forest, etc. 'Wanton' means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated. 'Widespread' means damage which extends beyond a limited geographic area, crosses state boundaries, suffered by the entire ecosystem or species or a reasonable number of human population. 'Long-term' means damage which is indelible or which cannot be corrected through natural recovery within a reasonable period of time. 'Environment' means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space which sustain human existence.³ 'Crime against Humanity' is 'A brutal crime that is not an isolated incident but that involves large and systematic actions often cloaked with official authority and that affects the conscience of humankind'.⁴ The term 'human' from which 'humanity' is derived is often used to denote humankind and its essence or what it actually means to be human. It is a concept that states the fundamental disposition, thinking, feeling, acting and character of human beings.

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¹E Trigt, 'A Legal Definition of Ecocide' Peace Palace Library (2021) <<https://peacepalacelibrary.nl/blog/2021/legal-definition-ecocide>> Accessed 20 August 2022.

²KO Mrabure, , 'contentious issues on the United Nations framework on climate change convention, Kyoto protocol and its aftermath' *Delsu Law Review Journal* [2016] (3) (1) 110.

³KJ Heller, 'Skeptical Thoughts on the Proposed Crime of Ecocide'. *Opinio Juris* [2021] (1) <<http://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>> accessed 25 May 2022

⁴ BA Garner, 'Black's Law Dictionary- Eighth Edition' [2004] <<https://www.amazon.com/Blacks-Dictionary-BLACKS-DICTIONARY-STANDARD/dp/0314151990>> Accessed 21 August 2022

The word, 'environment' refers to those surroundings that surrounds living beings from all sides and affects their lives. It consists of atmosphere, hydrosphere, lithosphere and biosphere. Its chief components are soil, water, air, organisms and solar energy. It has provided us all the resources for leaving a comfortable life. It is pertinent to note that the supreme court of Nigeria also gave judicial approval and recognition to Black's Law Dictionary definition of the environment in the case of *Attorney General Lagos State v. Attorney General Federation and 35 ors.* Section 20 of 1999 constitution of Federation Republic of Nigeria also provides for sources of environment which are, water, air, land, forest, and wildlife, all layers of the atmosphere, all organic and inorganic matters and living organisms.⁵ In Nigeria, NESREA is the government agency responsible for the regulation of the activities of the various industries and assess the effectiveness of measures taken to mitigate the adverse environmental effects of their activities.⁶ 'Crime' is defined as the violation of law in which there is injury to the public or a member of the public and a term in jail or prison and/or a fine as possible penalties. There is some sentiment for excluding from the 'crime' category crimes without victims, such as consensual acts or violations in which only the perpetrators is hurt or involved such as personal use of illegal drugs. 'Paradigm shift' is a situation when the usual and accepted way of doing or thinking about something changes completely. This means that the present situation has no resemblance with what it used to be.

3. Causes of Ecocide

The causes of ecocide include natural events but nowadays, frequent natural disasters are happening due to human-induced climate change. Human actions or indirectly human greed for power and wealth has led to ecocide. The following are the causes of ecocide:

Fossil Fuel Exploitation: Nearly all sector of the globe somehow relies on fossil fuels. The need for fossil fuel reserves and capitalism are correlated in contributing to ecocide. The destruction of oil pipelines across the globe has also contributed immensely to the cause of ecocide.

Capitalism: It is often thought of as a major cause of ecocide. The private ownership regarding the production of commodities, livestock etc. the capitalist interest in profit maximization to the detriment of human lives is a big threat to the ecosystem.

Industrialization: The growth of industries with the excuse of meeting the needs and demands of the growing population has also led to ecocide. The second major industry contributing to environmental pollution is the fashion industry as a result of the technological advancement in that industry.

Grain Farming: Global grain farming is one of the causes responsible for ecocide. Perennial crops are favored while annual crops can lessen the burden on natural reserves and these crops are being destroyed by human activities. The negative consequences of grain farming are visible such as the application of chemicals, pest and disease control, invasive species, etc. Most of these chemicals are harmful to human health and it has negative effects on the ecosystem.

Economic Stability: Natural reserves are being overly exploited for economic stability and sustenance of the manufacturing sector which relies on such raw materials for their plants and industries. The mining of precious metals is causing extreme damages to the environment.

Warfare Tactics: One of the causes of ecocide is warfare tactics. There is expansion in nuclear weapons despite the fact that nuclear war is nothing but a disaster. The example of Agent Orange Vietnam war, the bombing of Iraq during the reign of Saddam Hussein by United States of America and the recent attack of Ukraine by Russia should never be forgotten.⁷

4. Effects of Ecocide

Human actions have negative effects on every aspect of the ecosystem. The effects of ecocide are numerous. Below are some of the effects.

Climate Change: Fossil fuel combustion and industrialization have led to climate change. Human activities are responsible for releasing greenhouse gases in the atmosphere that is presently responsible for the rise in the temperature of the Earth – global warming. So, many communities are now under water as nature is fighting back the human race for their activities against the environment.

Biodiversity Decline: The destruction of wildfire due to human error, hunting, and poaching, illegal trade, climate change, the introduction of invasive species, all these and other factors are resulting in biodiversity decline in our natural habitat.

⁵MOI Nwabuoku, 'Kaleidoscopic Assessment of the Effectiveness of Environmental Law Claims and Enforcement in Nigeria and other Jurisdictions', *Delsu Law Review Journal* [2016] (3) (1) 34.

⁶E Sodipo 'environmental law and practice in Nigeria', [2017] <[https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitionType=Default&contextData=\(sc.Default\)](https://uk.practicallaw.thomsonreuters.com/w-006-3572?transitionType=Default&contextData=(sc.Default))> Accessed on 21 August 2022

⁷Ajweh, 'What is Ecocide? Causes, Effects, and Solutions' (2021) <<https://www.envpk.com/what-is-ecocide-causes-effects-and-solutions/#:~:text=The%20causes%20of%20ecocide%20include,wealth%20has%20led%20to%20ecocide>> accessed 25 May 2022.

Environmental Pollution: The discharge of chemicals from industries into water bodies, air, the soil is causing land pollution, air pollution and water pollution etc. Plastic waste production is on the increase and this is threatening aquatic life. Deforestation for agriculture, land use purpose is playing negative role in environmental degradation in no small measure.

Depleting Natural Reserves: The continuous exploitation of natural reserves without adequate replacement for industrial purposes, human population use, and economic growth has resulted in depletion of our ecosystem.

Human Diseases: In recent years, highly dangerous and resistant diseases are present in the world due to human activities on our environment. The ongoing example is corona virus pandemic – wildlife-human interaction amongst others are the responsible factors for it.

Frequent Natural Disasters: The ecocide by human actions has led to frequent events of natural disasters. This is as a result of the destruction of our environment. God created the environment as a shield to protect the human race and other living things from outright exposures to unwarranted harms to them

5. Views of Scholars

Throughout the second half of the 20th century and the early 21st century it was few academicians that were interested in the concept of ecocide. The devastating human and environmental effects of the Vietnam War marked the beginning of a limited field of literature focused on the need for the international community to address and prevent future cases of ecocide. Richard Falk was the first scholar to properly deal with the concept of ecocide, publishing in 1973 a proposed international convention on the crime of ecocide. Later, in 1996, Mark Allan Gray published his analysis of 'The International Crime of Ecocide' attempting to show the existence of the notion of ecocide in international law and examining the chances of establishing ecocide as an international crime. As the world is yet to recognize it as such⁸ David Whyte avert that it is impossible to stop ecocide as long as corporations remains in control of the industrial processes that are wrecking the world⁹ In 2010, the world peoples conference, is of the opinion that the aim to protect the ecology of the world is timely.¹⁰

Undoubtedly, for the world to change from the consistent abuse of the environment, it will require lots of efforts and enabling law. In the words of E.D. Bamgboye, learning is a change in an individual behavior that arises from prior behavior in a similar situation.¹¹The world should learn how to change from their old ways of managing the environment. With the turn of the century, an increasing number of academics became interested in ecocide. In the early 2000s, Christopher Lytton and Franz Broswimmer, for instance, offered two different accounts of ecocide. While Lytton focused on examining existing human rights and environmental legal documents in order to examine any emerging trends in international law and ecocide,¹² Broswimmer dealt with the historical background of ecocide, showing how homo sapiens have throughout history impacted the environment in devastating ways which can be termed as acts of ecocide.¹³ With the increasing awareness of the critical state of the environment and the international legal loopholes to address such devastating effects, the 21st century has also given birth to a number of academicians looking at the possibility of international criminal law in addressing ecocide. Authors such as Mark Drumbl, Steven Freeland, Peter Stoett, Frederic Megret, Tara Smith, Polly Higgins, Damien Short and Nigel South, have published articles examining the possibility of using international criminal law as a mechanism to offer more legal protection against ecocide.

Despite an increasing interest among the academic sphere regarding the emerging concepts of ecocide, there is still a clear lack of critical analysis of the current international legal framework potentially addressing cases of ecocide, as well as a lack of critical scrutiny of the feasibility of establishing ecocide as an international crime. It should be noted first and foremost that the 'making of policy' is not the same as the 'implementation of the policy'.¹⁴Various countries seem to be considering the economic benefits of the human activities to the wellbeing of the ecosystem. Some authors mentioned above have indeed offered their views on how to establish such a crime at the international level but the literature is not abundant which I sincerely believe is a huge challenge. The emerging concept of ecocide and its potential development into an international crime is without any doubt an area which is still unknown for many and I doubt if it will change soon.

⁸MA Gray, 'The International Crime of Ecocide' *The International Crime of Ecocide*, *California Western International Law Journal* [1996] (26) (2) 215 <<https://scholarlycommons.law.cwsl.edu/cwilj/vol26/iss2/3/>> Accessed 21 August 2022

⁹Whyte D, *Kill the corporation before it kills us* (Manchester university press (2020) 3

¹⁰ Martin Crook and Damien Short, 'Consequences for indigenous people and global ecosystems environment, ecocide, genocide, capitalism and colonialism environment'. *Sage Journals* [2018] (22) (3) <<http://doi.org/10.1177/1362480618787176>> Accessed 21 August 2022

¹¹ED Bamgboye, *Marketing basic concepts and decisions* (Delbe publishers) 72

¹²CH Lytton, 'Environmental Human Rights: Emerging Trends in International Law and Ecocide' *Environmental Claims Journal* [2000] (13) (1) 73-91

¹³FJ Broswimmer, *Ecocide: A Short History of the Mass Extinction of Species* (Pluto Press 2002)

¹⁴ CU Mac Ogonor, *Power of the republic: Strategic policies and international relations* (Springfield Publishers Ltd) 64

6. Law Governing Ecocide

Arthur W Galston, biology professor, was the first to propose in the 1970s during the Vietnam War law on ecocide when he was protesting against the US military using the herbicide and defoliant chemical Agent Orange to destroy the foliage cover and crops of enemy troops. Since then, many civil society organizations and lawyers have supported need for the criminalization of ecocide in international law. In putting a proposal to the UN Law Commission designed to amend the Rome Statute of the International Criminal Court (ICC) to include 'ecocide' as a fifth crime against peace, the late Polly Higgins defined ecocide as 'the extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been or will be severely diminished'. The latest development is that Philippe Sands QC and Dior Fall Sow are co-chairing an Independent Expert Panel for the Legal Definition of Ecocide as a potential international crime. At present ecocide is only considered a war crime under Article 8(2)(b)(iv) of the Rome Statute. However, no charges have ever been filed, possibly on account of the very high threshold of injury required under the article – there must be an intentional attack that causes 'widespread, long-term and severe damage to the environment which would be clearly excessive.' Corporate and State criminal responsibility is also excluded under the Rome Statute. Thus, corporations and States which cause water and air pollution or participate in illegal deforestation and cause oil spills, which would constitute a crime in times of war, in peacetime, cannot be prosecuted for their environmental damage.

The 2018 UN Report 'Gaps in international environmental law and environment-related instruments: towards a Global Pact for the Environment' (UN SG Report A/73/419) found the existing environmental law regime to be fragmented, piecemeal, unclear and reactive. With no single legal framework or institution and largely voluntary and non-binding obligations, international environmental law cannot be used to prosecute ecocide. Although at least two environmental treaties – the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal – require States to create domestic criminal laws on specific subjects, they are 'episodic and limited in scope', only applying within State boundaries, and do not extend to ecocide more generally. If ecocide law is not given international recognition and the world continues to leave the implementation at the discretion, of the individual nation, there might not be earth for future generation yet unborn to inhabit.

Since laws emanating from several authorities are likely to come into conflict, it follows that there can be no determinate law of the land unless there is within that land, a supreme law making authority whose decisions are final.¹⁵ The lack of national legislation goes hand-in-hand with a lack of harmonization of the criteria for identifying the crime of ecocide. This is true both internationally and at the EU level.¹⁶

Incidents of dumped plastics, tropical deforestation, exploitation of wildlife, and oil spill regularly destroy the ecosystem. This is the reason why countries like Tajikistan, Armenia, Vietnam, Kazakhstan, Ecuador, Belarus, Ukraine and Russia have all enacted ecocide laws. These countries have codified laws on ecocide. In Belarus, Article 131 provides that intentional mass destruction of flora or fauna, or poisoning of atmospheric air or water resources, or committing other deliberate actions capable of causing an ecological disaster (ecocide) are punished with imprisonment for a term of ten to fifteen years. In Russia, Article 358 provides that; massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources and also commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for a term of 12 to 20 years. In Ukraine, Article 441 provides that, mass destruction of flora and fauna, poisoning of air or water resources, and also any other actions that may cause an environmental disaster shall be punishable by imprisonment for a term of eight to fifteen years.

7. Lessons for Nigeria

In Nigeria, unlike what is obtainable in Russia, Belarus and Ukraine, Nigeria is yet to enact law on ecocide. The closest that Nigeria has is case law which was the judgment of court. A class action lawsuit originating in London forced the Dutch oil giant to accept full responsibility for the 2008 ruptures of the Bodo-Bonny trans-Niger pipeline. Also affected is the Ivorian community and a London law firm have forced the energy company to take responsibility for its action. It is suggested that Nigeria should emulate countries like Belarus, Ukraine and Russia to enact an enabling law that will sanction perpetrators of ecocide in Nigeria. If such law is enacted in Nigeria as well as other states who are yet to criminalize ecocide, it can be a potent and effective measure to

¹⁵HE Alapiki, Politics and Governance in Nigeria, (Amethyst and colleagues publishers) 25

¹⁶B.Robert and Fausto 'Model Law Procedure: Regular Conditionally Adopted' (2021) <<https://www.europeanlawinstitute.eu/projects-publications/current-projects/current-projects/ecocide/>> accessed 25 May 2022.

address the life threatening condition of environmental pollution especially in the Niger Delta region of Nigeria.¹⁷ Despite the urgent need to safeguard the natural environment to mitigate the worst impact of global heating, governments have been remarkably reluctant to sign environmental protection into law. Whilst these defending the environment often find laws used against them through criminalization of peaceful protest. This was the case of Ogoni Nine, which led to the hanging of international environmentalist Ken Saro Wiwa. Their rights were ignored when illegal acts were committed against them by companies and local authorities. It has been very difficult to hold those destroying the environment responsible for their acts.

8. Conclusion

It is the writer's opinion that the issue of Ecocide should be viewed as a global issue, that if not handled with the urgent attention required, in no distant time, the world at large will face another global threat to the life of human beings, animals, plants and the entire ecosystem. It is suggested that ecocide should be treated as the fifth international crime in the world as already been suggested by other scholars. There should be an urgent stop to massive deforestation. Also there should be a stop in reclaiming of swamps which is a natural safety gap for water for other developmental projects. In the course of writing this paper, the writer observed that there seems to be no strong political will from various countries of the world in taking bold and urgent steps that it requires to criminalize ecocide activities in the world. Reasons being that all the commercial activities giving rise to issues of Ecocide, has some financial gains or returns, to the various countries that are involved. The financial benefit consideration seems to have overwhelmed the interest of the various countries as against the future damage that this activity is going to cause the ecosystem, as they say a stitch in time saves nine. So, there can never be a better time than this period when the globe is experiencing an adverse climate change. If the world is still interested to have a healthy environment for the future generation, the time to act is now.

¹⁷ GE Okwezuzu, 'Revivification of Efforts to Criminalize Ecocide in International Law Emerging Trend' National Law School Journal, National Law School of India University (NLSIU), Bangalore (2015-2016) (13) 52-76. <https://www.researchgate.net/publication/358s380090_REVIVIFICATION_OF_EFFORTS_TO_CRIMINALIZE_ECOCIDE_IN_INTERNATIONAL_LAW_EMERGING_TREND_Okwezuzu_G_E_Revivification_of_Legal_Efforts_to_Criminalize_Ecocide_in_International_Law_Emerging_Trend_2015-2016_N> Accessed 21 August 2022