

# Ecocide Act

## Preamble

### *Ecocide as the 5th international Crime Against Peace*

*Ecocide is 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 objective and principles governing the creation of the offence of ecocide as the 5th international Crime Against Peace —

1. To stop the extensive damage to, destruction of or loss of ecosystems which is preventing peaceful enjoyment of all beings of the Earth and to prevent such extensive damage to, destruction of or loss of ecosystems from ever happening again.
2. Ecocide is a crime against peace because the potential consequences arising from the actual and/or future extensive damage to, destruction of or loss of ecosystem(s) can lead to —
  - (i) loss of life, injury to life and severe diminution of enjoyment of life of all inhabitants;
  - (ii) the heightened risk of conflict arising from impact upon human and non-human life which has occurred as a result of the above;
  - (iii) adverse impact upon future generations and their ability to survive;
  - (iv) the diminution of health and well being of inhabitants of a given territory and those who live further afield;
  - (v) loss of cultural life.
3. The aim of establishing the crime of ecocide is to —
  - (i) prevent war;
  - (ii) prevent loss and injury to life;
  - (iii) prevent dangerous industrial activity;
  - (iv) prevent pollution to all beings;
  - (v) prevent loss of traditional cultures, hunting grounds and food.
4. The crime of ecocide creates an international and trans-boundary duty of care to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).
5. All Heads of state, Ministers, CEO's, Directors and any person(s) who exercise rights, implicit or explicit, over a given territory have an explicit responsibility under the principle of superior responsibility that applies to the whole of this Act.
6. This Act places upon all Heads of state, Ministers, CEO's, Directors and/or any person who exercises jurisdiction over a given territory a pre-emptive legal obligation to ensure their actions do not give rise to the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).
7. The burden of responsibility to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s) rests jointly with any person or persons, government or government department, corporation or organisation exercising a position of superior responsibility in respect of any activity which poses the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s).

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8. The primary purpose of imposing an international and trans-boundary duty of care is to —
- (i) hold persons to public account for the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s);
  - (ii) enforce the prevention of risk of or actual extensive damage to or destruction of or loss of ecosystem(s);
  - (iii) evaluate consequence of risk of or actual extensive damage to or destruction of or loss of ecosystem(s).
9. The offences created under this Act are strict liability; sentence will be determined by the culpability of the person(s) and organisation found guilty as per the provisions of this Act.
10. This Act shifts the primary focus away from evaluation of risk to evaluation of the consequences whereby risk of ecocide gives rise to the potential for and/or actual extensive damage to or destruction of or loss of ecosystem(s).
11. This Act creates a legal duty of accountability and restorative justice obligations for a given territory upon persons as well as governments, corporations and or any other agency found to have caused the ecocide.

## PART I

### *Definition of ecocide*

#### **1. Ecocide.**

Ecocide is 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 —

- (1) peaceful enjoyment by the inhabitants has been severely diminished; and or
- (2) peaceful enjoyment by the inhabitants of another territory has been severely diminished

#### **2. Risk of ecocide.**

Ecocide is where there is a potential consequence to any activity whereby extensive damage to, destruction of or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, may occur to such an extent that —

- (1) peaceful enjoyment by the inhabitants of that territory or any other territory will be severely diminished; and or
- (2) peaceful enjoyment by the inhabitants of that territory or any other territory may be severely diminished; and or
- (3) injury to life will be caused; and or
- (4) injury to life may be caused.

### *Breaches of rights and offences arising*

#### **3. Crime against humanity.**

A person, company, organisation, partnership, or any other legal entity who causes ecocide under section 1 of this Act and has breached a collective human right to life is also guilty of a crime against humanity.

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## 4. Crime against nature.

A person, company, organisation, partnership, or any other legal entity who causes ecocide under section 1 of this Act and has breached a collective non-human right to life is guilty of a crime against nature.

## 5. Crime against future generations.

A person, company, organisation, partnership, or any other legal entity who causes a risk or probability of ecocide under sections 1 or 2 of this Act and a breach of future collective human or non-human right to life is guilty of a crime against future generations.

## 6. Crime of ecocide.

The right to life is a universal right and where a person, company, organisation, partnership, or any other legal entity causes or fails to prevent extensive damage to, destruction of or loss of human and or non-human life of the inhabitants of a territory under sections 1 - 5 of this Act is guilty of the crime of ecocide.

## 7. Crime of cultural ecocide.

Where the right to cultural life by indigenous communities has been severely diminished by the acts of a person, company, organisation, partnership, or any other legal entity that causes or fails to prevent extensive damage to, destruction of or loss of cultural life of the inhabitants of a territory under sections 1 - 6 of this Act is guilty of the crime of cultural ecocide.

## 8. Offences relating to sections 1 - 8.

It will be an offence of ecocide where a person, company, organisation, partnership, or any other legal entity is found to be in breach of sections 1 - 7 of this Act.

## 9. Sentence.

- (1) Any person who —
  - (a) pleads guilty or is found guilty of ecocide under any sections of this Act; or
  - (b) pleads guilty or is found guilty of aiding and abetting, counselling or procuring the offence of ecocide, under any section(s) of this Act;shall be liable to be sentenced to a term of imprisonment.
- (2) Either in addition to or substitution of imprisonment, any person convicted of Ecocide and who accepts responsibility can exercise the option of entering into a restorative justice process.

## 10. Size, duration, impact of ecocide.

The test for determining whether ecocide is established is determined on either one or more of the following factors, which have impact on the severity of diminution of peaceful enjoyment by the inhabitants, namely —

- (1) size of the extensive damage to, destruction of or loss of ecosystem(s); or
- (2) duration of the extensive damage to, destruction of or loss of ecosystem(s); or
- (3) impact of the extensive damage to, destruction of or loss of ecosystem(s).

## PART II

## 11. Proceeds of crime.

The court may order possession of, manage or otherwise deal with the property, land, business and or profit of any person and or business accruing from any benefit arising conviction from his/ their criminal conduct pursuant to this Act.

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## *Extent*

### **12. Strict liability.**

Ecocide is a crime of strict liability committed by natural and fictional persons.

### **13. Superior responsibility.**

- (1) Any director, partner, leader and or any other person in a position of superior responsibility is responsible for offences committed by members of staff under his authority, and is responsible as a result of his authority over such staff, where he fails to take all necessary measures within his power to prevent or to stop all steps that lead to the commission of the crime of ecocide.
- (2) Any member of government, prime minister or minister in a position of superior responsibility is responsible for offences committed by members of staff under his authority, and is responsible as a result of his authority over such staff, where he fails to take all necessary measures within his power to prevent or to stop all steps that lead to the commission of the crime of ecocide.
- (3) With respect to superior and subordinate relationships not described in subsection (1) and (2), a superior is responsible for offences committed by staff under his effective authority, as a result of his failure to exercise authority properly over such staff where he failed to take all necessary measures within his power to prevent or repress their commission or to submit the matter to the competent authorities for investigation.
- (4) Any person who has issued a permit or license on behalf of (1), (2) or (3) shall be regarded as aiding, abetting, counselling or procuring the commission of the offence.
- (5) A person responsible under this section for an offence is regarded as aiding, abetting, counselling or procuring the commission of the offence.
- (6) In interpreting and applying the provisions of this section the court shall take into account any relevant judgment or decision of the ICC.
- (7) Nothing in this section shall be read as restricting or excluding—
  - (a) the liability of any superior, or
  - (b) the liability of persons other than the superior.

### **14. Knowledge.**

- (1) Any director, partner, leader and or any other person in a position of superior responsibility is responsible for offences committed by him where his actions result in ecocide, regardless of his knowledge or intent;
- (2) Any member of government, prime minister or minister in a position of superior responsibility is responsible for offences committed by him where his actions result in ecocide, regardless of his knowledge or intent.

### **15. Withdrawal of immunity of government officials and other superiors.**

Where any government official and other superior or their members of staff are in breach of Article 2 of the Universal Declaration of Human Rights, after the commencement of this Act, the prosecution may be enforced as of right by proceedings taken for that purpose in accordance with the provisions of this Act.

### **16. Unlawful use of land.**

Where any land has been destroyed, damaged or depleted as a result of ecocide or any offences in this Act, any person who exercises authority over and/or responsibility for the land shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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## **17. Culpability of a company, organisation, partnership, or any other legal entity.**

- (1) Where an offence under any provision of this Act is committed by a company, organisation, partnership, or any other legal entity is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or a person who was purporting to act in any such capacity, he as well as the company, organisation, partnership, or any other legal entity shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where a person of superior responsibility is convicted of an offence under this Act by reason of his position as CEO, director, manager, secretary or a person who was purporting to act in any such capacity for a company, organisation, partnership, or any other legal entity, as a consequence of the conviction the company shall be held jointly responsible for the actions of its servant.

## **PART III**

### *Orders*

## **18. Power to order restoration and costs.**

Where any person, company, organisation, partnership, or any other legal entity has committed an offence under this Act —

- (1) a restoration order shall be made; and
- (2) a costs order shall be made; and
- (3) the named person, company, organisation, partnership, or any other legal entity that had business in the given territory shall be deemed responsible for the clean-up operations to the extent that the territory be restored to the level it was before the ecocide occurred.

## **19. Restorative justice.**

- (1) Subject to subsection (2), where a defendant pleads or is found guilty, the court must remand the case in order that the victim(s) shall be offered the opportunity to participate in a process of restorative justice involving contact between the offender and any representatives of those affected by the offence.
- (2) The court need not remand the case for the purpose specified in subsection (1) where it is of the opinion that the offence was so serious that this would be inappropriate.
- (3) The court has the power to order heads of agreement.
- (4) Heads of agreement pursuant to a restorative justice process can include the following —
  - (a) Restoration order.
  - (b) Cost order.
  - (c) Environment protection order.
  - (d) Suspension of operations.
  - (e) Environment Investigation Agency order.
  - (f) Publicity order.
  - (g) Enforcement notice.
  - (h) Earth health and well-being report.

## **20. Environmental protection order (EPO).**

Where any person, company, organisation, partnership, or any other legal entity has on the balance of probabilities caused or is likely to cause extensive destruction, damage to or loss of ecosystems of a given territory; an EPO shall be made for the duration of any related proceedings and shall only be extinguished by either an acquittal or by an imposition of a restoration order.

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## **21. Suspension of operations order.**

Where any person, company, organisation, partnership, or any other legal entity has on the balance of probabilities caused or is likely to cause extensive destruction, damage to or loss of ecosystems of a given territory; their permit or license shall be revoked or suspended until the territory has been restored to a level that is acceptable to an independent audit undertaken by the Environmental Investigation Agency.

## **22. Determination by the Environmental Investigation Agency.**

The Environmental Investigation Agency shall determine whether appropriate remediation has been undertaken within the timescale set by the court, whether additional steps (such as the imposition or discharge of an EPO) are to be applied to identify the nature of remediation outstanding and how best to implement.

## **23. Publicity order.**

Where any person, company, organisation, partnership, or any other legal entity has committed an offence under this Act a publicity order may be ordered by the Court setting out —

- (1) the fact of the conviction;
- (2) the terms of any restorative justice, remedial and/or commercial prohibition order(s);
- (3) the amount of any financial order;
- (4) specified particulars of the offence.

A publicity order can be renewed at any review hearing following a plea of guilty or conviction.

## **24. Prohibition notice.**

- (1) Where a person, organisation or government agency can demonstrate on the balance of probabilities that activities that fall within the definition of ecocide within this Act are at risk of commencing, or have commenced, or are continuing and involve an imminent risk of ecocide, the court shall issue a notice (a “prohibition notice”) on the person(s) and/or the company(s) carrying on the process.
- (2) Where a person, organisation or government agency can demonstrate on the balance of probabilities that a failure to take steps by any company, organisation, partnership, government department or any other legal entity can lead to an imminent risk of ecocide, the court shall issue a notice (a “prohibition notice”) on the person(s) and the company(s) carrying on the process.
- (3) A prohibition notice shall direct that the authorisation shall, until the notice is withdrawn, wholly or to the extent specified in the notice cease to have effect to authorise the carrying on of the process; and where the direction applies to part only of the process it may impose conditions to be observed in carrying on the part which is so authorised.

## **25. Enforcement notice.**

- (1) Any person, company, organisation, partnership, or any other legal entity or government agency that is at risk of being prosecuted for ecocide may be issued with an enforcement notice giving an order made by the court to cease all activities that may give rise to ecocide.
- (2) Any person, company, organisation, partnership, or any other legal entity or government agency that has been found guilty of ecocide shall be issued with an enforcement notice giving an order made by the court to cease all activities that may give rise to ecocide and pay any consequential losses.
- (3) Where an enforcement notice has been ordered by a court, an enforcement notice shall be issued by the Environment Investigation Agency setting out the steps to be taken and specify the period within which those steps must be taken.

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## **26. Earth health and well-being report.**

Where a territory has been identified as an area at risk of ecocide or has been named as a territory for the purposes of section 20, an Earth health and wellbeing report and hazard analysis shall be ordered by the court.

## **27. False written statements tendered in evidence.**

Where any person tenders a written statement in any proceedings under this Act which he knows to be false or does not believe to be true, he shall be liable to be imprisoned.

## **28. False oral statements given in evidence.**

Where any person gives evidence in any proceedings under this Act which he knows to be false or does not believe to be true, he shall be liable to be imprisoned.

## **29. Committing obstruction or perjury.**

- (1) Where any person —
  - (a) intentionally obstructs an investigation into an offence alleged to have been committed under this Act; or
  - (b) without reasonable excuse, does not comply with a court order or prevents another person from complying with such an order; or
  - (c) makes a statement or signs a declaration which he knows is false, or recklessly makes a statement;
- (2) Where any person gives evidence which he knows or believes to be untrue, shall be committing perjury and shall be liable to be sentenced to a term of imprisonment.

## **30. Disclosure of finances.**

Any person, company, organisation, partnership, or any other legal entity who is charged with an offence under this Act must provide full disclosure of their finances to the court and failure to disclose by any person ordered by the court for the purposes of this Part shall be liable to be sentenced to a term of imprisonment.

## **31. Jurisdiction.**

- (1) Where a person commits ecocide in a different jurisdiction then, notwithstanding that he does so outside the accused's jurisdiction, he shall be guilty of committing or attempting to commit the offence against this Act as if he had done so in his jurisdiction, and he shall accordingly be liable to be prosecuted, tried and punished in his jurisdiction without proof that the offence was committed there.
- (2) Where a person is in a different jurisdiction from his habitual residence, and who is charged with, or found guilty of in absentia, any sections under this Act, a warrant for his arrest shall be issued.
- (3) Where there is more than one person, in different jurisdictions and who are charged with, or found guilty of in absentia, any sections under this Act, multiple warrants may be issued at the same time.

### *Restoration and consequential loss costs*

## **32. Restoration and consequential loss costs.**

Where any person, company, organisation, partnership, or any other legal entity has been convicted of ecocide, he and/or it shall be held responsible for any restoration costs that have

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arisen from causing ecocide and any consequential losses arising from injury, loss of life, diminution of health or well being of the inhabitants of the given territory.

### 33. Balance of probabilities.

No costs shall accrue to any person, organisation or government agency when seeking an order, interim order or prosecution pursuant to the provisions of this Act; costs shall only apply when the person, organisation or government agency fails to establish on the balance of probabilities that there exists a prima facie case pursuant to the provisions of this Act.

### 34. Costs assessment.

Where ecocide has occurred —

- (1) the health and well-being of the community shall be restored as far as possible to the condition as it existed before the ecocide occurred; and
- (2) such costs of cultural ecocide shall be accorded equal priority with restoration of any ecological ecocide; and
- (3) any costs shall be assessed at a separate cost hearing and shall be enforceable under an enforcement notice.

### *Extent*

### 35. Inclusion of the international crime of ecocide

Signatory state law shall now read —

- (1) It is an offence against the law of [name of jurisdiction] for a person to commit genocide, a crime against humanity and nature, crime of aggression, a war crime or ecocide.
- (2) This section applies to acts committed —
  - (a) in [name of jurisdiction], or
  - (b) outside the [name of jurisdiction]

by a [name of jurisdiction] national, a [name of jurisdiction] resident or a person subject to [name of jurisdiction] service jurisdiction.

### 36. Short title, application and extent.

This Act —

- (1) may be cited as the Ecocide Act [insert year];
- (2) extends to the whole of [name of jurisdiction];
- (3) may be subject to additions and shall prevail over all other legislation;

No exemptions shall be made subsequent to this Act being enacted.

### 37. Interpretation.

In this Act: —

“ecosystem” means a biological community of interdependent living organisms and their physical environment.

“territory” means any domain, community or area of land, including the people, water and or air that is affected by or at risk or possible risk of ecocide.

“other causes” means naturally occurring events such as but not limited to; tsunamis, earthquakes, acts of god, floods, hurricanes and volcanoes.

“peaceful enjoyment” means the right to peace, health and well-being of all life.

“inhabitants” means any living species dwelling in a particular place.

“Earth health and well-being report ” means a report which shall include a hazard analysis of human, cultural and non-human health and well being impact from damage, destruction to or loss of ecosystem(s) of the immediate and or any other territories affected or at risk of being affected.

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“restorative justice” means a process applied as an alternative to conventional sentencing. Where guilt has been accepted or a defendant has been found guilty, he may choose to enter into a restorative justice process where he shall engage with representatives of parties injured to agree terms of restoration.

“cultural ecocide” means the damage, destruction to or loss of a community’s way of life.

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