

NON C'È PACE SENZA GIUSTIZIA NO PEACE WITHOUT JUSTICE

Via di Torre Argentina 76; I-00186 Roma
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www.npwj.org

3 May 2021

No Peace Without Justice Submission to the European Commission: revision of the Directive 99/2008/EC on the Protection of the Environment Through Criminal Law.

No Peace Without Justice (NPWJ) welcomes the initiative of the European Commission to revise and update the Directive 99/2008/EC on environmental crimes and welcomes the opportunity to provide comments with the aim to improve EU environmental protection through criminal law.

NPWJ is an international non-profit organisation that works for the promotion of human rights, democracy, the rule of law and international justice. NPWJ currently operates to seek accountability, raise awareness and effect behavioural change in respect of deforestation and other environmental and human rights violations taking place in Amazonia and whose effects extend beyond the region.

I. Overview

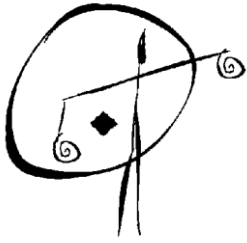
Human rights and the environment are undeniably intertwined. The current environmental problems humanity is facing have shown to have a direct impact on human rights overall. A safe, clean, healthy, and sustainable environment is necessary for the full enjoyment of human rights, including the rights to the highest possible level of physical and mental health, an adequate standard of living, food, water, and participation in cultural life and development. At the same time, the exercise of human rights is essential for protecting the environment. Justice for our planet is also justice for humanity.

Environmental devastation must be addressed through the lens of fighting impunity. It is vital to pursue justice and place responsibility in the lap of those who commit environmental crimes. Fighting impunity raises awareness and makes those who would otherwise commit violations pause and reconsider and - in the context of environmental crimes - it is also an effort to break the wheel of climate change and the human rights violations that come with it.

We believe that criminal law is a substantial actor in the path to prevent, deter and to seek justice by holding the perpetrators of environmental crimes accountable. Adjusting the legislation at the EU and domestic level is therefore of paramount importance to provide adequate responses to current and future challenges as well as to preserve the ecosystem. A review of the Directive is essential to increase its effectiveness and capacity to prevent, deter and provide justice for environmental-related crimes. While the Directive has many positive aspects, such as a less anthropocentric perspective, some parts are obsolete and more elements should be incorporated, particularly regarding its geographical scope, the transboundary effects and the supply chain, the interlinkage with human rights, along with reparations and different ways of addressing the crimes beyond criminal liability.

II. Geographical scope of the directive

A revision of the Directive should address its geographical scope with further clarity, explicitly expanding it. Since the creation of the Directive, transboundary trade and environmental



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devastation have increased significantly. The European Commission should reflect on the current context, as, for instance, in the case of companies from outside the EU that operate within the EU territory and European companies that cause environmental harm abroad.

Regarding this, we believe that it is essential that the revised Directive includes responsibility for environmental crimes that are committed outside the EU by European companies or legal entities. Alongside, responsibility should be considered in the case of crimes related to products that are sourced abroad for the EU market or harmful actions carried out in the land, seas or air.

Recent discussions at the EU level have shown an increasing interest in these issues, particularly underlining the interconnection between the environment and human rights violations, as in the case of mandatory due diligence¹ as a means to prevent and deter harmful actions. The European Commission should incorporate these evolutions in the Directive.

The effects of environmental crimes may have repercussions beyond the directly affected area where they are committed. Supply chains are an emblematic example of the transboundary effect of environmental crimes, with interconnected repercussions on human rights.

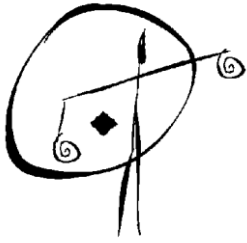
III. Supply chain and interlinkages with human rights

One of the most urgent concerns regarding environmental protection worldwide is the deforestation of tropical forests, such as Amazonia. The crippling of the Amazon for crops and wood is part of a wave of trade-driven deforestation that has led to violent displacements, loss of biodiversity, and massive greenhouse gas emissions, making deforestation a cross-border issue. Ending deforestation is vital to avoid the gravest effects of environmental devastation and global climate change, and yet it continues at an alarming rate. Aside from the evident environmental impacts that deforestation entails, there is a wide range of human rights violations associated with it. The production of commonly traded goods often involves human rights abuses. Child labour, forced labour, poor working conditions, gender inequality, and the violation of indigenous land rights are embedded in many supply chains. Global traders, financial institutions, importing companies, governments, and international organisations have a significant role in the worryingly increasing deforestation rate of the Amazon, which is why this problem should be analysed in connection with supply chains.

We urge the European Commission to consider the connection between European companies/businesses and governments with the destruction of the environment through supply chains. Several European firms and companies are complicit in the growing destruction of Amazonia and its forest communities and indigenous peoples since they are connected to illegal logging, mainly through importing products such as beef, leather, soy, and timber.

We welcome the focus of the Directive on the protection of the environment through a less anthropocentric approach, and not merely viewing the natural environment as a human

¹ 2020/2129(INL) Corporate due diligence and corporate accountability, European Parliament.



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commodity.² However, the effectiveness of this protection depends on what is meant by “substantial damage to the quality of air, the quality of soil or the quality of water, or to animals or plants” and “significant deterioration of a habitat within a protected site.” We suggest that the European Commission makes explicit that this substantial damage or significant deterioration is not necessarily immediately tangible and that it includes harm that can appear in the long term or might not always be evident and therefore should be qualitatively, quantitatively and proportionally analysed. This analysis should bear in mind the specific context of the damage, considering that environmental harm can have consequences of different dimensions, whether direct or indirect, short term or long term, for local or global communities and present or future generations.

In Article 3 of the Directive, a conduct constitutes an offence when it “causes or is likely to cause death or serious injury to a person”. However, we must bear in mind that, as mentioned before, environmental destruction often causes indirect harms to peoples that go beyond their physical integrity. Indeed, the destruction of the environment can have an impact on other economic, social and cultural rights, as a person’s access to water and food, for example, can be severely limited by environmental damage. Indigenous peoples in Amazonia are a good example of the different forms of indirect harm that can be caused to a person through environmental devastation. Not only is their culture inseparable from the environment, but their access to food, to water and to housing is severely limited by any damage caused to the environment they inhabit.

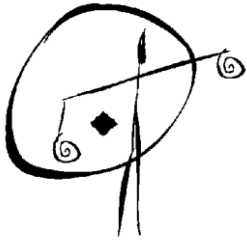
IV. Concluding remarks

The link between conducts that are destructive to the environment and human rights has other dimensions that the Directive ignores. As mentioned before, human rights are a critical concern in supply management around the world. Additionally, people who work for the protection of the environment are facing increasing threats, with the number of environmental activists murdered reaching a high record in 2019, among them indigenous leaders, according to Global Witness³. These violations of human rights are connected to the need, mentioned before, of expanding the territorial scope of the environmental crimes beyond the EU. We urge the European Commission to address the indirect human harm and human rights violations mentioned above in the offences listed in the Directive.

As expressed before, it is of utmost importance that the Directive addresses the impact of supply chains on human rights abuses, degradation of ecosystems and animal welfare, and it can do so by expanding the scope of its actions and opening stricter and broader avenues for

² We invite the European Commission to consider the current discussions on ecocentrism in law.

³ ‘Global Witness records the highest number of land and environmental activists murdered in one year – with the link to accelerating climate change of increasing concern’ (Global Witness, 29 July 2020) <https://www.globalwitness.org/en/press-releases/global-witness-records-the-highest-number-of-land-and-environmental-activists-murdered-in-one-year-with-the-link-to-accelerating-climate-change-of-increasing-concern/>



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pursuing accountability for direct and indirect environmental crimes committed by European companies and governments throughout the different stages of the supply chain process, deforestation in the Amazonia being an example requiring special attention.

We would finally like to observe that the penalties of the Directive should consider the different dimensions of the impact of environmental crimes, including ways of addressing them that go beyond criminal liability, such as reparations. It would be particularly useful if a revision of the Directive encouraged Member States to address reparations for criminal offences related to the environment.