

Reviving India's River Goddesses: Ecocide, the Right to Healthy Environment & Rights of Nature

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A new legal framework for our times?

As an environmental lawyer, I am often asked whether the current legal framework is fit to address the scale and severity of the multiple planetary-scale crises we face. After years of bringing cases at the UK domestic level and advocacy at multilateral environmental negotiations, I can only reply that existing laws are often too weak and/or poorly enforced for the task. If the existing legal framework does not sufficiently value the well-being of humans, our fellow species and the planet, what needs to change? Three emerging legal doctrines: an international human right to a healthy environment; the international crime of Ecocide; and giving legal rights to nature, may be part of the answer. Between them, they could play a crucial role in orienting legal systems to truly address the monumental environmental and existential challenges of our time. After providing a brief introduction to each and discussing their interplay, I go on to examine their (actual and potential) application to the ongoing pollution of the Ganges and Yamuna rivers in India and consider what difference a crime of Ecocide might make to the position. This article is not intended as an exhaustive or definitive presentation of the matters discussed; the hope instead is to introduce avenues for further and future exploration.

Ecocide

The term 'Ecocide' was first recorded at the Conference on War and National Responsibility in Washington, and has more recently been brought back into focus through the efforts of the late Polly Higgins, Jojo Mehta and the Stop Ecocide International, amongst others.² The crime of Ecocide has been adopted into national law in a number of countries and a group of states have proposed that Ecocide become the 5th crime under the statute of the International Criminal Court. As noted by Robinson, the aims behind the crime include providing a greater level of stigmatisation and stronger sanctions in relation to the most serious environmental crimes.³ Harm falling within the definition of Ecocide would be accorded a similar level of gravity to the existing international crimes of genocide, crimes against humanity, war crimes and

² At the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972 (Stockholm Conference) the then Swedish Prime Minister, Olof Palme, used the term to describe US military action in Vietnam. Polly Higgins introduced a proposal to the UN law commission relating to the amendment of the ICC statute to include the crime of Ecocide. The website of the Stop Ecocide International campaign is: <https://www.stopecocide.earth/>

³ Darryl Robinson, 'Ecocide- puzzles and possibilities', *Journal of International Criminal Justice*: 313-347, (2022) 317

aggression. In 2021, an International Expert Panel (IEP) proposed a definition of Ecocide which covers 'unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.'⁴ According to this definition, 'severe' damage 'involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources.' 'Widespread' is defined as 'damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings.' 'Long-term' refers to damage that is 'irreversible or which cannot be redressed through natural recovery within a reasonable period of time.'

The Human Right to a Healthy Environment

50 years ago, the Stockholm Declaration made the connection between the environment and human rights.⁵ Since then, environmental concerns have multiplied and deepened into what the UN describes as a planetary crisis of climate change, pollution and biodiversity loss. Simultaneously, the connections between human rights and the environment have developed shape. More than 150 countries recognise the right to a safe, clean, healthy and sustainable environment and it appears in over 100 constitutions, the national legislation of over 100 nations and in regional treaties covering over 120 nations. In addition, courts have also incorporated environmental concerns into the interpretation of other human rights and human rights jurisprudence has developed to acknowledge the importance of environmental principles. In June 2022, the UN General Assembly recognised the right to a clean, healthy, sustainable environment as a human right and noted its importance for the enjoyment of other human rights, following a similar resolution passed by the UN Human Rights Council the previous year.⁶ While 'soft law', the resolutions reflect agreement on the links between sustainable development, the protection of the environment, including ecosystems, and the promotion of human wellbeing and full enjoyment of all human rights for present and future generations. The Global Biodiversity Framework (GBF) also acknowledges the right to a clean,

⁴ Independent Expert Panel for the Legal Definition of Ecocide, 'Commentary and Core Text' (Stop Ecocide Foundation, June 2021) <https://www.stopecocide.earth/legal-definition> (accessed 30 December 2022)

⁵ Declaration of the United Nations conference on the human environment, *Report of the UN Conference on the Human Environment*, UN Doc A/CONF.48/14, p3-5

⁶ UN General Assembly resolution 76/300, 'The human right to a clean, healthy and sustainable environment', 1 August 2022, A/RES/76/300; UN Human Rights Council resolution 48/13, 'The Human Right to a Clean, Healthy and sustainable environment', 8 October 2021, A/HRC/RES/48/13

healthy and sustainable environment.⁷ A key question at this juncture relates to how the right will be implemented in practice.⁸ It is hoped that the adoption of the UN resolutions and the GBF will be a catalyst for action in this area.

Rights of Nature

Rights of Nature challenge western legal paradigms in which nature is seen as a resource to be managed and used by humans, an approach also reflected in environmental law norms.⁹ Within a Rights of Nature framework, nature and/or its components have their own legal rights to exist and thrive. Rights of nature feature in the constitutions of Ecuador and Bolivia and in the case law of a number of jurisdictions, including India, Bangladesh, Ecuador, Bolivia, Columbia and New Zealand.¹⁰ Common to many of these countries is the presence of indigenous peoples or other tradition-holders, who see the natural environment as having personhood. However, Rights of Nature initiatives are not restricted to particular geographies and 409 rights of nature initiatives have been identified in 39 countries, covering every continent except Antarctica.¹¹ At the international level, the UN General Assembly has proclaimed 22 April as International Mother Earth Day and has adopted a number of resolutions on Harmony With Nature since 2009.¹² The Rio + 20 Outcome document referred to the recognition by some countries of nature rights, the preamble to the Paris agreement describes biodiversity as 'recognized by some cultures as mother earth' and the Global Biodiversity Framework recognises the rights of nature and rights of mother earth as being 'an integral part of its successful implementation' in countries where they are recognised.¹³ Like Ecocide, nature rights are a relatively novel development in mainstream legal thought, where issues of definition and application need to be resolved. Concerns about the practicalities of giving rights to nature can be countered by the example of corporations, amongst others, which are non-human entities able to claim

⁷ Kunming-Montreal Global Biodiversity Framework agreed at COP15 of the UN Convention on Biological Diversity (CBD), Section C paragraph 14

<https://www.cbd.int/article/cop15-final-text-kunming-montreal-gbf-221222>

⁸ See: UNEP, 2020, *Right to a Healthy Environment: Good practices*, p. 12

⁹ Valérie Cabanes, 'A Legal Revolution for the Rights of Nature', Green European Journal, March 2020 <https://www.greeneuropeanjournal.eu/a-legal-revolution-for-the-rights-of-nature/> (accessed December 30 2022)

¹⁰ Eco Jurisprudence Monitor website <https://ecojurisprudence.org/dashboard/>

¹¹ Alex Putzer, Tineke Lambooy, Ronald Jeurissen & Eunsu Kim, 'Putting the rights of nature on the map. A quantitative analysis of rights of nature initiatives across the world', Journal of Maps, 18:1 (2022) 89-96, <https://www.tandfonline.com/doi/full/10.1080/17445647.2022.2079432> (accessed 30 December 2022)

¹² <http://www.harmonywithnatureun.org/>

¹³ See footnote 6 above at Section C, paragraph 9

infringement of rights in law. As rights of nature have not of themselves been sufficient to overcome corporate interests, it has been argued that a crime of Ecocide is necessary for the enforcement of Rights of Nature through responding to the most extreme violations of nature's rights.¹⁴

Future possibilities for mutually supportive development

Incorporation of international environmental and human rights principles into a crime of Ecocide

As Robinson highlights, developing a crime of Ecocide requires reconciliation of the concrete prohibitions of international criminal law with the balancing test often applied in international environmental law.¹⁵ Similar considerations have also applied when integrating aspects of human rights and international environmental law. Like criminal law, international human rights law predominantly focusses on individual-state relationships, whereas international environmental law largely focuses at the inter-state level, incorporating recognition of differing levels of responsibility for environmental harm among countries, as well as differential impacts.¹⁶ Nevertheless, human rights concerns in the environmental context are regularly presented in a manner that reflects environmental concepts of equity and climate justice, with the acknowledgement that those dealing with the greatest impacts of climate change often have little to no responsibility for causing it and are already dealing with a history of colonialism and extractivism.¹⁷ Human rights case law has also incorporated environmental leanings.¹⁸ The fact that international human rights law has found a way to incorporate

¹⁴ Anastacia Greene 'Symposium Exploring the Crime of Ecocide: Rights of Nature and Ecocide' <http://opiniojuris.org/2020/09/24/symposium-exploring-the-crime-of-ecocide-rights-of-nature-and-ecocide/> (accessed 30 December 2022)

¹⁵ See note 2 above, p 315

¹⁶ See Parihar & Dooley, 'Human Rights, differentiated responsibilities? Advancing Equity and Human Rights in the climate change regime' in *Routledge Handbook of Human Rights and Climate Governance*, Ed. Sebastian Duyck, Sebastian Jodoin, Alyssa Johl (London and New York:Routledge, 2018) pp 266-280

¹⁷ For example, the Special Rapporteur on Human Rights and Climate Change referred to the link between funding for loss and damage and the responsibilities of developed countries, as well as the duty of international cooperation in thematic report A/77/226: 'Promotion and protection of human rights in the context of climate change' <https://www.ohchr.org/en/documents/thematic-reports/a77226-promotion-and-protection-human-rights-context-climate-change>

¹⁸ See Maria L. Banda, 'Inter-American Court of Human Rights' Advisory Opinion on the Environment and Human Rights' in *ASIL Insights* 22:6 (2018) <https://www.asil.org/insights/volume/22/issue/6/inter-american-court-human-rights-advisory-opinion-environment-and-human> (accessed 30 December 2022)

environmental approaches within its field of operation points the way for international criminal law to do the same.

Additionally, as noted by Oldring and Mackintosh, shaping a crime of Ecocide through the lens of human rights allows for the identification of differential impacts of environmental harm, including on marginalised communities.¹⁹ In this vein, Oldring and Mackintosh propose the UN Guiding Principles on Business and Human rights (UNGP) as a framework for the proportionality test in the proposed crime of Ecocide.²⁰ The test could also incorporate considerations concerning the application of the UNGP and human rights-based duties of due diligence in environmental contexts, for example the continued investment in fossil fuels by public and private finance companies.²¹ Notably, like human rights, the crime of Ecocide could become relevant when considering proposed solutions to environmental harm that themselves risk damaging consequences.²²

Humans versus Nature?

Adopting a human rights approach to environmental matters can raise concerns about the limitations of taking an anthropocentric perspective to a planet-sized problem. Human rights are inevitably geared towards humans- references to human well-being in the Human Rights Council resolution on the right to a healthy environment are echoed in the General Assembly resolution. However, it is also fair to say that the General Assembly recognises the role of human rights in protection of the environment, rather than simply the instrumental use of the environment for the preservation of human rights. The importance of procedural rights of information, participation and access to justice are highlighted in this regard. Some commentators have described nature rights as a 'further side of the coin' in protecting human rights, arguing that adding nature rights into regulatory systems allows for 'optimal balancing of rights (and competing rights) more fully.'²³ The question of whether human rights and rights

¹⁹ Lisa Oldring and Kate Mackintosh 'Ecocide Through Human Rights: A New Tool for Climate Justice', ICD brief 7, May 2022 <https://www.internationalcrimesdatabase.org/upload/documents/20220531T164956-The%20Crime%20of%20Ecocide%20Through%20Human%20Rights.pdf> (accessed 30 December 2022)

²⁰ See note 18 above, p12

²¹ See for example a public legal opinion prepared for the NGO Oil Change International, <https://priceofoil.org/2021/05/04/eca-legal-opinion/> (accessed 30 December 2022)

²² See for example documents available at: <https://www.genevaenvironmentnetwork.org/events/hrc51-side-event-geoengineering-human-rights/> (accessed 30 December 2022)

²³ Living Law Policy Briefing 'Giving Nature a Voice- Legal Rights and Personhood for Nature' (2018) p34 <https://www.livinglaw.co.uk/single-post/2018/07/06/giving-nature-a-voice-granting-nature-legal-rights-a-progressive-path-to-balance-between> (accessed 30 December 2022)

of nature inevitably conflict is also subject to cultural perspectives. Respecting, protecting and promoting the rights of indigenous people in particular brings in ecocentric dimensions to the exercise of human rights, as indigenous traditions and laws often view humans as intrinsic to and interwoven with nature and nature as having rights. As we will see in the context of the Yamuna and Ganga, religious perspectives and non-indigenous cultural rights can also bring in ecocentric values. The references to a human right to a healthy environment and rights of nature, alongside the rights of Indigenous Peoples, in the Global Biodiversity Framework also point to the relationship between these rights.²⁴ As noted by Mackintosh and Oldring, the IEP definition of Ecocide tends towards the dissolution of anthropocentric and ecocentric approaches, recognising that both people and planet have intrinsic and interrelated value.²⁵ As such, it could provide a litmus test for the most extreme cases of harm to both. An example of how this might work is discussed below, in the context of the pollution of the Ganga and Yamuna rivers in India.

River Rights: The Case of the Ganga and Yamuna

Springing from the icy Gangotri glacier in the Himalayas, the river Ganga flows for 2,500 kilometres to join the sea at the Bay of Bengal. Ringed by thermal springs, the Yamuna also has a Himalayan beginning to its 1,376 km journey to its confluence with the Ganga. Both rivers make an 'essential contribution to the livelihood of around 40 percent of the Indian population.'²⁶ 1 out of 12 of the global population lives on the Gangetic basin, which includes the river Yamuna.²⁷ Additionally, the Ganga and Yamuna rivers are held sacred in a number of Indian traditions and have been worshipped as river Goddesses by Hindus for millennia. High in the mountains, both rivers flow clear and interrupted, as in ancient times. However, by the time it reaches the sea, the Ganga has become one of the worlds most polluted rivers, contaminated by sewage, industrial wastes and pesticides.²⁸ Likewise, the Yamuna suffers extreme pollution from a range of sources and over-abstraction. When it enters the plains, the majority of the river is removed from the bed by way of a huge barrage and canalised, partially

²⁴ See note 6 above

²⁵ See note 18 above

²⁶ C. Clark, N. Emmanouil, J. Page, & A. Pelizzon, 'Can You Hear the Rivers Sing? Legal Personhood, Ontology, and the Nitty-Gritty of Governance', *Ecology Law Quarterly*, 45:4 (2018), p812

²⁷ Haberman, D.L., *River of Love in an Age of Pollution: The Yamuna River of Northern India* (University of California Press, 2006) p4

²⁸ Rai, Yeshith and Smith, 'Life aquatic: the amazing self-purifying properties of the Ganges River', *WURJ: Health and Natural Sciences*, 7: 1 (2017) pp1-3, <https://doi.org/10.5206/wurjhs.2016-17.19>, p.2

to irrigate rice crops for foreign export. According to Clark et al, the Yamuna provides around 70% of Delhi's water supplies, however it also receives an enormous influx of pollution and sewage from the city, being regarded as biologically dead by the time it flows past Delhi due to the lack of freshwater flow.²⁹ Unsurprisingly, the human health impact of the pollution of the rivers is huge and includes reduced growth and development, cancer, nervous system and organ damage, typhoid and cholera. Impacts on wildlife, including the endangered Ganges River Dolphin are also severe. As if this were not enough to contend with, climate change is causing the glaciers from which both rivers flow to recede. The pollution of both the Ganga and Yamuna has been the subject of ongoing high profile public campaigns, protest and litigation. Cases have been brought on the basis of the right to a healthy environment, including clean air and water.³⁰ The Indian constitution protects this right through the Right to Life, alongside a corresponding duty 'to protect the environment and show compassion towards all living creatures.'³¹ The Indian judiciary has ordered the executive to take action on a number of occasions, including to restore a minimum level of flow to the Yamuna, however, this has not happened.

Rivers, particularly those regarded as sacred, are often the subject of rights of nature cases.³² In 2018, following litigation inspired by the grant of legal personhood to the Wahanganui river in New Zealand, the Indian High Court in the Himalayan region of Uttarkhand declared the Yamuna and Ganga to be legal persons. However, the State Government of Uttarakhand appealed on the basis that the High Court decision was unsustainable in law.³³ The Indian Supreme Court upheld the appeal on the basis of potential interference in rights with other Indian provinces and the uncertain identification of responsibility for compensation in case of disastrous natural events. Despite this outcome, Indian courts are increasingly taking an ecocentric approach, although 'not without contention.'³⁴ The Supreme Court went on to extend protection to glaciers from where the holy rivers originate and other bodies of natural water, springs, air, forests, wetlands and grasslands—seeking a viable remedy in law for the

²⁹ See footnotes 25 and 26 above

³⁰ Alongside litigation, campaigning has included local clean ups and innovation, protest and even fasting until death <https://geographical.co.uk/culture/the-ganges-river-of-life-religion-and-pollution#:~:text=The%20river's%20waters%20are%20so,dumped%2C%20untreated%2C%20into%20it>.

³¹ Article 51A(g) in The Constitution Of India 1949: 'To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures'

³² See note 22 above

³³ See https://naturaljustice.org/wp-content/uploads/2020/07/Environmental-Court-Case-Series_Ganges-Case-Summary_Natural-Justice-2020.pdf for a summary of the cases

³⁴ R. Brara, 'Courting Nature: Advances in Indian Jurisprudence' *RCC Perspectives No. 6* (2017) pp31-36, p.36

depletion of natural resources. In 2022, the Madras High Court recognized Mother Nature as a person with rights, duties, and liabilities to protect, preserve and conserve the environment.³⁵

Crucially however, these innovations have not yet prevented environmental harm or stopped the high levels of contamination of the rivers.³⁶ As Alley points out, without any government action to implement the judgements, rights of nature developments remain purely conceptual.³⁷ In response, commentators highlight the need for consolidation of an approach to applying nature rights, involving connection to an environmental protection framework including Rivers Basin Catchment planning, regulation, monitoring and so on.³⁸ There are other gaps: for example, while the Federal Court emphasised the importance of community involvement in the governance of the rivers, there was very little involvement of such communities in the ruling.

Ecocide of the River Goddess?

As far as a crime of Ecocide is concerned, the level of harm to the rivers (and those who rely on them) described above would certainly seem to fit the IEP's definition of 'widespread' and 'severe.' It covers a wide geographic area, affects entire river ecosystems and affects large numbers of humans and other species, to the extent that both rivers are considered biologically dead in places. The 'End Ecocide on Earth' website gives as an example of Ecocide the construction of huge and/or complex systems of dams on rivers and the existence of such dams and resulting lack of flow due to over-abstraction is also a significant factor in the condition of the rivers.³⁹ The definition of 'severe' by the IEP also includes grave impacts on cultural resources. In the context of the Ganga and Yamuna, this would include the consequences of the loss or 'death' of the rivers on those who see them as sacred and the resultant damage to, or loss of, the related river culture. Goyes et al highlight that destruction of ways of living and

³⁵ <https://insideclimatenews.org/news/04052022/india-rights-of-nature/> (Accessed 30 December 2022)

³⁶ See Living Law Policy Briefing at note 22 above, p.5

³⁷ Kelly D. Alley, 'River Goddesses, personhood and rights of nature: Implications for Spiritual Ecology' Alley KD. *Religions*, 10(9):502 (2019); <https://doi.org/10.3390/rel10090502> (Accessed 30 December 2022) p13

³⁸ See Living Law Policy briefing at note 22 above, p.5

³⁹ <https://www.endecocide.org/en/examples-of-ecocide/> (Last accessed 30 December 2022)

thinking and cultural symbols is central to Lemkin's conception of genocide; it is also relevant to the concept of Ecocide.⁴⁰ They add:

'The over-exploitation of land, water and wildlife...and the desecration of connections between people, their cultures and their lands...can all have ecocidal and genocidal consequences for vulnerable Indigenous peoples who are materially and spiritually dependent upon endangered environments.'

Although they are not Indigenous Peoples, communities who worship and are reliant on the Ganga and Yamuna, also face Ecocidal consequences relating to cultural destruction. For example, forms of river worship such as bathing in holy rivers are increasingly inadvisable due to the level of pollution and even the practice of offering flowers into the rivers has become environmentally questionable due to the use of chemicals and pesticides to grow these flowers. Increasing pollution-related limitations on river bathing may have the short to mid-term benefit of removing certain types of pollution (for example from the volume of pilgrims). However, they are ultimately likely to lead to the erosion and potential destruction of river cultures and ontologies maintained since ancient times and sourced in a relationship with the natural world that is very different to that of mainstream western environmental activism. As has been noted, if connection to the rivers is vital to the feelings that promote environmental activism on their behalf, then reduced contact with the rivers will reduce such activism.⁴¹ Goyes et al highlight that connection to nature and tradition amongst younger Indigenous Peoples in Columbia is being replaced by a 'connection to consumerism and commodification.'⁴² In India, concerns have also been expressed that younger people are abandoning values oriented towards nature connection in favour of western values.⁴³

In the Indian context it is crucial to bear in mind that a human rights-based approach to the question of 'cultural resources' requires balancing the views and needs of the communities who regard the rivers as sacred goddesses with those who do not. As Clark et al have noted, 'cultural or religious differences may muddy the waters of a river's legal personality as much as clarify them' and the Uttarkhand judgment was criticised for its reliance on the sacrality of the rivers

⁴⁰ David R Goyes, Nigel South, Mireya Astroina Abaibira, Pablo Baicué, Angie Cuchimba, Deisy Tatiana Ramos Ñeñetofe, 'Genocide and ecocide in four Colombian Indigenous Communities: the Erosion of a way of life and memory', *The British Journal of Criminology*, 61: 4 (2021), pp 965–984, <https://doi.org/10.1093/bjc/azaa109> (accessed 30 December 2022) p968

⁴¹ See note 26 above at p171

⁴² See note 38 above at p979

⁴³ Bruce M. Sullivan, 'Theology and Ecology at the Birthplace of Krsna' in Nelson, L. (ed). *Purifying the Earthly Body of God: Religion and Ecology in Hindu India* (New York: SUNY Press, 1998) p261

to the Hindu population.⁴⁴ However it is important to bear in mind that the legal challenges relating to the Yamuna and Ganga were brought by a Muslim claimant for whom the sacrality of the rivers would not have held paramount relevance. As is true for rights of nature in general, in the context of Ecocide, beliefs relating to the sacrality of nature will need to be applied sensitively in accordance with (in the case of India) a secular society and legal system. However, such beliefs could intertwine with scientific concerns, such as those relating to climate change, a human rights-based approach and legal developments such as nature rights, to bolster environmental protection.

Reviving the Rivers

While the sources of pollution and harm to the Ganga and Yamuna are many and multifaceted, the potential of the recovery of the rivers is evident in the improvement of their condition during India's Covid-19 lockdown, with migratory birds returning to the Yamuna.⁴⁵ If a crime of Ecocide were to be identified, who might be responsible for their pollution? Ghosh raises the question of whether culpability might apply to domestic users of water, pilgrims, government entities or industry.⁴⁶ Like international criminal law more broadly, a crime of Ecocide would likely focus on the individual responsibility of the most serious offenders at the highest levels of the executive and industry. As discussed above, incorporation of human rights-based duties of due diligence and proportionality into the crime would provide a standard against which to assess decisions, whether at corporate or governmental level, that continued to allow for pollution of the rivers despite knowledge of the dire consequences of their ongoing pollution. A crime of Ecocide could be brought to bear in India through inclusion within domestic legislation, case-law (bearing in mind that the High Court of the Southern Indian state of Kerala has already made a note of the concept of ecocide in the context of marine biodiversity) or through the adoption by India of an amended Rome Statute including the crime.⁴⁷

This raises the question of what incorporation of the crime of Ecocide might achieve for the condition of the rivers in practical terms. As in other contexts where a crime of Ecocide is likely to apply, what is at stake is accountability for and cessation of the most serious harm to humans and nature. As Robinson points out, Ecocide 'need not and should not attempt to

⁴⁴ See eg Clark et al, note 25 and natural justice briefing at note 32 above

⁴⁵ See for example <https://www.ndtv.com/india-news/coronavirus-lockdown-yamuna-cleanest-in-30-years-as-industrial-dumping-halts-2234790> and <https://link.springer.com/article/10.1007/s13762-021-03245-x#Sec4>

⁴⁶ Shibani Gosh, 'The River as Being', *The Hindu*, March 27 2017 <https://www.thehindu.com/opinion/op-ed/the-river-as-being/article17668210.ece> (accessed 30 December 2022)

⁴⁷Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 U.N.T.S. 90

encompass and compel every necessary transformation of current modes of production and consumption' and 'many reforms must be addressed through negotiation, social change and other legal fields.'⁴⁸ However, Wijdekop proposes restorative justice as a complementary approach in the rights of nature context as it 'allows a wide range of values, including spiritual and emotional values, and needs to be expressed and culturally appropriate procedures to be followed.'⁴⁹ She argues that, in an ideal case, this may bring an offender to confront the harmful effects of his or her actions on the natural world and prompt a shift in values. Bringing in restorative justice approaches could therefore go some way to bring about the deeper, more transformative shifts that Robinson identifies as lacking in the punitive approach taken by criminal law. A further relevant consideration, noted by Killean in a separate paper in this collection, is that the ICC's mandate encompasses the possibility of environmentally reparative measures which can include restitution, compensation and rehabilitation prior to any judgment being issued.⁵⁰ Killean adds that in the case of Ecocide this would include resolving structural inequalities to enable marginalised groups to be able to access and protect the natural environment, for example through environmentally regenerative projects. In the context of the Ganga and Yamuna, symbolic reparations such as acceptance of responsibility for harm, as well as support for maintenance/restoration of relationships with the rivers, could play an important role. Reparative measures should be targeted towards enabling deeper discussion of the value and status of the rivers, ensuring that the communities that live by them and depend on them, whether or not they hold them to be sacred, play a key role in their restitution and ultimately, their enhancement.

Back to The Future

A saying often misattributed to Einstein is that it is impossible to solve a problem with the same thinking that created it. This could not be more relevant for the resolution of modern environmental issues. Our current ecological crisis provokes battles relating to specific companies, countries, modes of production, pollutants and geographical locations. However, it at its most fundamental level, it is a struggle relating to what is of value and how we as humans understand our place alongside our fellow inhabitants on Earth, whose lives and futures are

⁴⁸ See Robinson, note 22 above, p322

⁴⁹ Advancing Rights of Nature through Restorative Justice, Femke Wijdekop, p7 Retrieved from <http://files.harmonywithnatureun.org/uploads/upload744.pdf> (Last accessed 30 December 2022)

⁵⁰ Rachel Killean 'Reparation in the Aftermath of Ecocide' in this symposium.

being put in jeopardy alongside our own. Crook et al argue that: 'Law may serve humans, but history shows it does not serve the planet, nor does it serve all humans equally. The challenge for laws against ecocide and genocide must be to do better.'⁵¹

Developments relating to a human right to a healthy environment, rights of nature and Ecocide speak directly to the question of what we value as societies at the community, domestic and international level. As such, they could play a powerful role in reorienting our legal systems towards an approach that promotes the restoration and ultimate flourishing of our planet and all who call it home. It is evident that there are clear areas of commonality and good potential for reinforcement between the three approaches. In many ways they could be seen as complementary leverage points, which, if appropriately combined, could prompt a fundamental shift in our legal systems. Some proponents of rights of nature and human rights see them as 'a complementary part of the future legal structures needed to address key planetary challenges.'⁵² As is evident from the discussion relating to the Ganga and Yamuna above, Ecocide could play a vital role as the 'hard edge' that gives weight to the enforcement of rights of nature and the human right to a healthy environment, while also solidifying the bridges between them.

⁵¹ Martin Crook, Damien Short and Nigel South, 'Ecocide, genocide, capitalism and colonialism: Consequences for indigenous peoples and glocal ecosystems Environments' *Theoretical Criminology* 2018, Vol. 22(3) 298–317, p311

⁵² Living Law policy briefing p5