

PRESS RELEASE: 6th December 2018



ECOLOGICAL
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Dutch Minister & top Shell bosses to be investigated for climate ecocide, “the missing international crime of our time”

Dutch Minister of Economic Affairs and Climate Policy Eric Wiebes, the CEO of Royal Dutch Shell Ben van Beurden and the CEO of Shell Netherlands Marjan van Loon were today identified as principal suspects in an independent preliminary examination into the potential crime of climate [ecocide](#) (1).

At a special event in the Hague accompanying the annual Assembly of States Parties to the International Criminal Court, UK barrister and internationally renowned ecocide law expert, [Polly Higgins](#) (2), announced that independent investigative work has already commenced.

“The examination shall scrutinise evidence suggesting that Shell, [a Carbon Major](#) and one of the largest investor owned carbon producers in the world (3), knew that significant adverse impacts arise from their activities. Crucially, evidence has come to light to suggest that [the public has been misled](#) over a lengthy period of 30+ years, and such evidence could amount to a crime (4).”

Ms Higgins said: “The fact that ecocide occurs during peacetime does not make it any less of an atrocity, or any less of a crime. We live in an age where the consequences of dangerous industrial activity are long-term, transboundary and can be felt on the other side of the world.”

“Climate negotiations are silent on the potential criminality of state and corporate activity. This is despite the fact that the most recent IPCC report asserts that [‘limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes’](#) to prevent climate catastrophe (5). With climate crime, what has to be established is whether there is a dereliction of a duty of care as well as a missing state responsibility to protect the public from dangerous industrial activity and its consequences. Hurricanes will not wait whilst we endlessly vacillate over unenforceable pledges.”

The International Criminal Court (ICC) [welcomes communications filed by individuals](#) (6). The present examination goes beyond the threshold ICC requirements, to determine additionally whether there is sufficient evidence to satisfy the elements of a crime of ecocide (7) and if so whether, on the evidence, there are grounds to trigger the rapid establishment of ecocide as an atrocity crime. Findings shall be subject to the same [stringent conditions and rigorous scrutiny as required by official ICC procedures](#) (8).

“I look forward to publicly reporting our findings,” said Ms Higgins. “If the evidence shows that industrial activity known to exacerbate climate breakdown has been permitted to continue, then both the Dutch government minister and Shell’s senior officers could be held responsible for pervasive impacts on the world’s population at large, including the systemic and widespread collapse of ecosystems.”

Shell has repeatedly been put on notice. A high-profile [shareholder challenge](#) was raised in May 2018 (9). A [legal notice of intent to sue, for failing to act on climate change](#), has been served by Friends of the Earth Netherlands (10). [The Philippine Commission on Human Rights are currently holding an international climate enquiry into the responsibility of Carbon Majors, including Shell](#) (11). The Dutch Urgenda Foundation filed a successful climate suit against the [Dutch Government, who now seek to challenge the legality of the ruling](#) (12).

“Ecocide crime is an idea whose time has come. It is the missing international crime of our time,” said Ms Higgins. “For frontline states suffering the devastating effects of severe weather and rising sea levels, COP24 is the wrong forum. You can’t negotiate with a typhoon. But here at the International Criminal Court there is another route, one based on justice, [for some of the smallest states in the world](#) (13) who can advance ecocide crime as an urgent amendment to the Rome Statute.”

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NOTES TO EDITOR

For more information or interview with Polly Higgins please contact **Dana Amma Day PR**

T: +44 7742 449395 E: danaammadaypr@gmail.com

18:30 CET (17:30 GMT) 6/12/18: Livestream <https://www.facebook.com/pollyhigginsearthlawyer/>

19:00 CET (18:00 GMT) 6/12/18: Full details at www.earth-law.org/climatecrime_pr

The ongoing Preliminary Investigation can then be viewed online at www.earth-law.org/climatecrime

- (1) [Ecocide](#) is “loss or damage to, or destruction of ecosystem(s) of a given territory(ies), such that peaceful enjoyment by the inhabitants has been or will be severely diminished.” Climate ecocide is one variant of ecocide crime.
- (2) [Polly Higgins](#), former practising barrister and international ecocide law expert, is the founding co-director of Ecological Defence Integrity, providers of support & legal expertise for climate vulnerable States. Author of 3 books, her first *Eradicating Ecocide* won the Peoples Book Prize in 2011. VPRO (Dutch BBC) featured a documentary about her work, called Advocate for the Earth.
- (3) The Carbon Majors are the 91 major oil, gas, and cement companies whose activities have been studied as the largest contributors of CO2 methane emissions since the industrial revolution. [The Carbon Majors Report](#) (Heede 2013) ranked Shell as number 4. The [2nd Carbon Majors Report](#) (CDP 2017), identifies Shell as one of the highest emitting investor-owned companies since 1988. Global average temperatures could reach 4C by the end of the century if extraction of fossil fuels continues on the same trajectory as the past 30 years, says the report. This is likely to have catastrophic consequences including substantial species extinction and global food scarcity risks.
- (4) [Smoke & Fumes Report](#) (Centre for international Environmental Law 2017) sets out the growing body of evidence revealing the funding of climate disinformation strategies by the fossil fuel Carbon Majors and their extensive knowledge of climate science dating from the 1980s. The research builds on the work of a number of organisations, including Exxon Secrets, UCS Dossiers, Climate Investigation Centre, Inside Climate News and Los Angeles Times.
- (5) [IPCC Report Summary](#)
- (6) [Pursuant to Article 15 of the Rome Statute](#), any individual, group, or organisation seeking a prosecution of a potential ICC crime can submit evidence to the Office of the Prosecutor (OTP) of the ICC. Before an investigation can be opened, the ICC prosecutor is responsible for determining whether a situation meets the legal criteria laid out by the Rome Statute.
- (7) elements of crime include: the act, the state of mind, the context, the consequence.
- (8) [Preliminary Examinations](#)
- (9) [Shell shareholder challenge](#) (May 2018) investors challenge oil and gas firm on transparency and action on carbon emissions.
- (10) [Friends of the Earth Netherlands](#) legal notice to Shell (April 2018)
- (11) [Philippines Petition](#)
- (12) Economic and Climate Minister Eric Wiebes announced that the [Dutch government will file for a Supreme Court review to challenge the legality of the ruling](#) by the Dutch Court of Appeal, who held: emissions to be cut by minimum 25 percent from the 1990 levels by 2020 for the Netherlands to meet its international climate commitments.
- (13) Frontline states include many of the Smallest islands in the world. Vanuatu’s foreign minister, Ralph Regenvanu, recently announced that fossil fuel industry “and the States that sponsor it [are put] on notice that the [climate loss and damages ravaging Vanuatu will not go unchallenged](#). My government is now exploring all avenues to utilise the judicial system in various jurisdictions – including under international law.”

History of ecocide crime: Ecocide existed in earlier drafts of the Rome Statute as a stand-alone crime. In 1996 all aspects of ecocide/environmental crime were removed from the Draft Code of Crimes Against the Peace and Security of Mankind (subsequently renamed the Rome Statute). In 1996, Article 19, ‘International Crimes of State’, of the draft Articles on the Responsibility of States for Internationally Wrongful Acts was also removed. In 2010 Polly Higgins submitted a fully worked legal proposal of ecocide law into the United Nations Law Commission.

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Commentators

Lammert van Raan, Party for the Animals, Member of Dutch Parliament says:

"I welcome today's initiative of the Preliminary Examination into Climate Crime wholeheartedly. It is imperative that we extend our legal instruments to prevent further wholesale destruction of our living environment. The careful way in which this initiative closely follows the well established procedures of the ICC gives great confidence in the validity of the outcome, whatever the outcome may be."

Wouter Veening, President of the Institute for Environmental Security says:

"A safe and secure world requires the abatement of ecocide. Climate ecocide has tremendous consequences for security. In the form of drought it provokes violent conflicts between cattle-herding communities in Africa. In the form of melting glaciers it affects the water provision of the Indus River Basin on which Pakistan and large parts of India, two nuclear powers with a conflict-ridden past, depend."

Matthew Pawa, Founder CIEL, Centre for International Environmental Crime
(to add)

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