

Keywords

- > Environmental Justice
- > Ecological Debt
- > Climate Debt
- > Global social metabolism
- > Social Movements
- > International law
- > Global Constitutionalism
- > Human Rights

Concretising the Human Rights Approach in relation to Ecological and Climate Debt

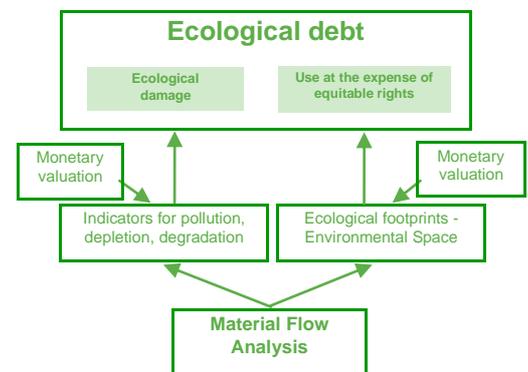
The universality of human rights has been clear from the outset, but governments have tended to limit recognition of their obligations to their own territory. This reductionism has led to a vacuum of regulation, and a paucity of protection of extraterritorial victims of national policies, in particular in the field of economic, social, cultural and collective rights. Bottom-up concepts, like **Ecological - and Climate Debt** are means to illustrate and operationalize these so far grossly ignored obligations, and emphasise the importance of collective rights.

In the European Union (EU), the **Charter of Fundamental Rights** has been legally binding since 2009 and an Action Plan on Human Rights and Democracy was adopted in 2012. However, political projects tending to stabilise **access to raw materials in third countries**, such as the **Raw Materials Initiative**, raise concerns on the consequences from an ecological debt perspective.

Why is there an Ecological and Climate Debt?

Ecological debt is constituted by economic and trade relations based on the **indiscriminate exploitation of resources and its ecological impacts**, including local and global environmental deterioration, most of which is the responsibility of the North. **Climate debt** is a branch of ecological debt that refers specifically to **greenhouse gases output**.

Both concepts stress the fact that **unequal ecological exchange impoverishes people and countries and destroys territories and livelihoods in the Global South by plundering their resources and affecting territories and livelihoods—** while at the same time enriching its



Ecological debt graphic – By Erik Paredis

beneficiaries—which reflects that external costs of consumption and production in affluent countries are mostly being born by people far from their jurisdiction. This includes not only the social and **environmental damage** of natural resource exploitation but also the **often negative social and environmental impacts** of huge private and public investments realised without local consultation.

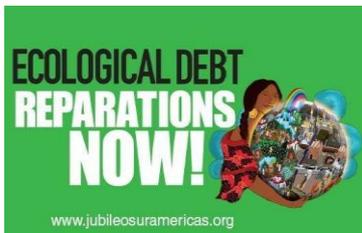
‘Polluter Liability and Accountability’ requests holding the culprits accountable for paying restoration, compensation and clean-up costs (the ‘Polluter Pays Principle’), and criminal responsibility.

This can also be considered as a paying back the ecological debt, albeit in a different currency, accumulated by the **unjust occupation of ‘environmental space’**. Upholding human rights means ending this pattern of unequal exchange.

Furthermore, the key challenge is to avoid further accumulation of ecological and climate debt – a guarantee of non-repetition- **by changing production and consumption patterns (a demand since the 1992 Rio UNCED conference)**.

The political perspective

Under the paradigm of **sustainable development**, and in contrast to multiple non-binding declarations since Rio 1992, contemporary international law has not been able to shape an effective, nor an equitable, answer to the global ecological and social crises.



Ecological Debt campaign poster

Photo: Jubileo Sur Americas



The world, a perspective from the Resource Cap Coalition

Photo: www.polyp.uk.org

Policy recommendations

End the accumulation of ecological debt through coherent public policymaking.

- Ensure **transparency**, **accountability** and liability for, environmental implications of **economic and sectorial policies** with European monitoring, including:
 - yearly **policy coherence** checks of EU policies affecting global sustainability;
 - a **revision of the EU trade policy** (multilateral and bilateral trade agreements) **and investment strategies** in order to more insistently restrict unjust exchanges, the undercutting of social and environmental standards and the erosion of democratic decision-making by investment protection agreements, including binding investor-to-state dispute settlements outside the legislative system;
 - a **review of the European Sustainable Development Strategy (EUSDS)** to emphasise Europe's global responsibility;
 - a **revision of the Common Agricultural Policy** to strengthen food sovereignty, promote shorter production chains, support fair trade and small scale farmers, as well as to increase organic and permaculture practices;

End the accumulation of ecological debt.

- Establish procedures to **control operations of European companies** abroad by:
 - holding them liable and accountable for violations of economic, social, cultural and collective rights, and obliging them to respect national laws and international norms, regarding environmental protection and biodiversity conservation and human rights protection.
 - improving liability and accountability regarding the predatory actions of European companies in relation to host countries' environment by establishing universally applicable mechanisms, facilitating access to justice in Europe to affected individuals and communities, and promoting action on the ground through procedures such as enforcement and mediation, and
 - making damage to global commons an offense under European and international law.

*“Reparation of ecological debt must include **restitution** if possible (restore the victim to the original situation before the violation occurred, in terms of human rights and environment); and **compensation** in proportion to the damage done. This integral reparation (social and environmental) must be done through democratic and participatory mechanisms with the victims.”*

Acción Ecológica, Ecuador

Rio Principle 2 says:

“States have [...] the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction”,

which has been **almost completely ignored**.

Operationalizing the extraterritorial obligations particular to economic, social, cultural and collective rights, formal or informal, by **introducing the ecological debt into international law would be a major step forward**. Such initiatives could be considered methods of reparation or payment of the ecological debt. They are essentially an operationalization of **Rio Principle 13**:

“States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also cooperate in an expeditious and more

determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction.”

As a side effect, the liability and compensation obligations of Rio Principle 13 would ex ante provide incentives for reducing pressure on resources and human beings, for administrative policies as well as for corporations. In any case, **liability and compensation of ecological debt must not be confused with damage licencing**, the rather perverse **“Payer Pollutes Principle”**.

The legal challenge

From a legal point of view, **the main problematic element in building a useful legal framework for ecological debt is defining its subjects**.

Policy recommendations

Integral reparations for the accumulated ecological debt:

- Establish **programs of restoration of and compensation** for environmental damage caused by the activities of EU and Member State jurisdiction, in democratic and participatory processes with local communities as the main beneficiaries.
- Increase the **financial commitment of the EU in global sustainability policies**, especially by supporting the Climate Adaptation Fund, and similar initiatives, based on a participatory process with the victims.
- Initiate innovative **new funding mechanisms** like the **Financial Transaction Tax** or a **Footprint Tax**, and ban tax havens.
- Set up a specific **“Green Revolving Fund”** that will use the money for implementation of outreach projects that eliminate ecological debt on local levels.

Stop ecological debt through recognising it in legal and political terms:

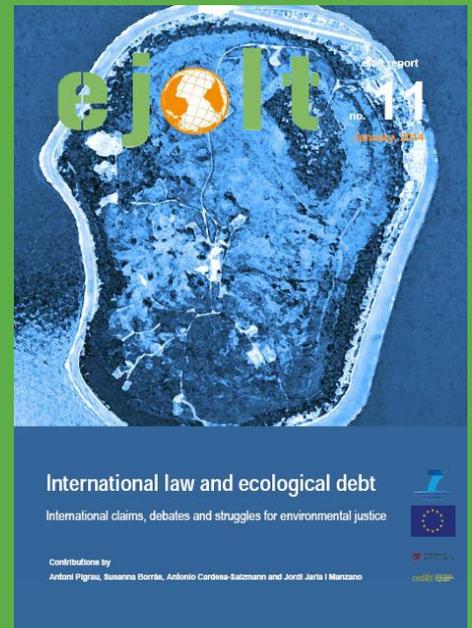
- **Strong implementation of Principle 10 of Agenda 21 Agenda** (Cfr: Aarhus Convention).
- **Establish an International court** on environmental crimes.
- Recognise, punish and end **ecocide**.
- Capping the use of resources, absolute decoupling and achieve fair distribution of wealth within the limits of the planets carrying capacity.

- (1) A methodical calculation of the damage caused and
- (2) the disproportionate enrichment gained by a few at the expense of dispossession of the big majority, in conjunction with
- (3) a determination of exactly who is deemed a creditor and debtor are essential, though challenging, legal pieces.
- (4) Create legal and jurisdictional mechanisms to avoid impunity. Recognising these challenges, the EJOLT 11 report *‘International law and ecological debt’* emphasises the potential of current international law to deal with the needs of intragenerational and intergenerational **environmental justice** and outlines some ideas that go beyond the elements already present in current regulations.

In particular, building on previous works about the concept of ecological debt, the following working legal definition follows: the ecological debt of country A consists of:

- (1) The **ecological damage** caused over time by country A **in other countries or in areas** under jurisdiction of other countries through its production and consumption patterns, and/or
- (2) The **ecological damage** caused over time by country A to ecosystems **beyond national jurisdiction** through its consumption and production patterns, and/or
- (3) The exploitation over time of ecosystems and the appropriation of the benefits they provide by country A **at the expense of the equitable rights** to these ecosystems and benefits by other countries, communities or individuals.

The report new EJOLT report starts from conceptual introduction that puts in context concepts emerging from the academic or social movements, such as ecological and climate debt, against the backdrop of the legal narratives that underpin the hegemonic model of development. After that, it follows a critique of the notion of sustainable development as a supposed paradigm for reconciling the needs of present and future generations with the preservation of the Earth's ecosystems. The third part emphasizes the potential of current international law to deal with the needs of intragenerational and intergenerational justice in relation to sustainability. In that chapter, which echoes a growing academic debate, the authors argue that a reinterpretation and reconstruction of the current international order in terms of global constitutionalism and an enhanced human rights approach, offers a way to mitigate the present biases in international law. Based on this ideas, the report outlines some framing guidelines to advance beyond the elements already present in current international law.



This policy brief was developed as a part of the project *Environmental Justice Organisations, Liabilities and Trade* (EJOLT, 2011-2015) (FP7-Science in Society-2010-1).

The project supports the work of Environmental Justice Organisations, uniting scientists, well known activist organisations, think-tanks and policy-makers from the fields of environmental law, environmental health, political ecology, ecological economics, to talk about issues related to Ecological Distribution. EJOLT aims to improve policy responses to and support collaborative research and action on environmental conflicts through capacity building of environmental justice groups around the world. Visit our free resource library and database at www.ejolt.org and follow twitter.com/envjustice or www.facebook.com/ejolt to stay current on latest news and events.

In many cases it is obvious who is the creditor or debtor, or in legal terms: who is the aggressor, who is the victim. Though sometimes difficult to define criminal vs. victim in ecological debt, it is possible to use this concept in court. When coalitions of local, national and international environmental and justice organisations confront corporations like Texaco, Shell, Dow Chemical and Eternit in court, these can be seen as examples of partial compensation for ecological debt.

Debt accumulates over time. A fair global burden-sharing agreement for the cost of the restoration and preservation of the planet's ecosystems needs to take into account historical and present responsibilities of industrialised economies, to the extent that they have contributed to the current ecological crisis and the damage to the common good. In doing so, governments and international institutions must explore more inclusive global decision-making procedures.

Such procedures should also be employed to develop **an agreed notion of the common good** as a basis for its legal institutionalisation. With these premises, a profoundly revised global legal order with constitutional features could be established,

based on a framework that fosters more equitable, sustainable societies. Of course, global patterns of ecologically unequal exchange and other injustices will not be corrected just by minor adaptations of the existing overall paradigm.

Rather, corrections will require a **profound reconceptualisation of global governance, legal institutions and our economic system to achieve environmental and social justice** – the measures suggested here are a first step in a long journey.

For more information

International law and ecological debt.
International claims, debates and struggles for environmental justice

EJOLT Report No. 11, available at:
www.ejolt.org/reports

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