

# Q&A

## ON ECOCIDE LAW

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## What is ecocide?

Ecocide is mass damage and destruction of ecosystems – harm to nature which is widespread, severe or systematic. The working definition of ecocide, suggested by the late barrister Polly Higgins as a proposed amendment to the Rome Statute 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.*

‘Eco’ derives from the Greek oikos meaning house or home and ‘cide’ - from the Latin caedere meaning strike down, demolish, kill. It literally translates as “killing our home”. The term ‘ecocide’ can hence be understood as ‘extensive destruction of ecosystems’.

## In what framework should ecocide as a crime sit?

The Rome Statute of the International Criminal Court (ICC) in The Hague is where the most serious crimes, of concern to the whole international community, are being addressed. It has been in operation since 2002 and currently lists four crimes: Genocide, Crimes Against Humanity, War Crimes, and Crimes of Aggression (recently added). The Statute can be amended to add a fifth crime: ecocide.

## What counts as ecocide?

Anything that causes extensive damage, destruction to or loss of ecosystems. Extensive can be defined as either widespread, long lasting or severe. During war, damage and destruction of the environment is taken very seriously and is considered a crime under the Rome Statute. Among other things, this has prevented the escalation of the use of chemicals for warfare. The prohibition of such damage should not be merely confined to wartime, but extend also to times of peace. The definitions in the existing laws of war can be extended to apply to peacetime activities. The 1977 United Nations Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques (ENMOD) specifies the terms ‘widespread’, ‘long-lasting’ and ‘severe’ as:

- (a) widespread: encompassing an area on the scale of several hundred square kilometres;
- (b) long-lasting: lasting for a period of months, or approximately a season;
- (c) severe: involving serious or significant disruption or harm to human life, natural and economic resources or other assets.

## Why should ecocide be an international crime?

Such a law is needed for many reasons. Despite decades of conferences and hundreds of conventions and treaties, ecosystems and the climate are systematically impacted on a scale which threatens life as we know it.

Criminalizing ecocide is likely to **reduce the incidence of ecocide**. From the would-be perpetrator’s point of view, it is one thing to risk a fine for harming the environment; it is a completely different thing to lose public regard, be seen as a criminal, and risk going to jail.

There is need for **an umbrella law that lays out binding rules**. Current international environmental governance and legislation are fragmented, lack coherence and are spread over a wide range of sectors, each with their own framework. Many environmental principles are unclear both in terms of content and status (UN, 2018). International courts and tribunals often stress the lack of international consensus concerning environmental principles (UN, 2018).

**Access to justice** is limited. It is currently difficult and often prohibitively expensive for citizens and NGOs to gain access to the judicial system to bring to court those who destroy nature on a large scale.

It is difficult **to ensure that international business activity is environmentally safe**. Many developing countries depend on income from extractive industries, but lack laws, legal systems and social structures to ensure sustainability. This places responsibility on international companies, investors and supply chains to ensure that production takes place in an appropriate manner (Miranda et al., 2003). Such responsibility is hard to uphold in practice, as companies compete in international markets where buyers do not see the real environmental costs and where legal frameworks that should safeguard the environment are missing (Breitholtz et al., 2019).

Ecocide law would **create limits for the strain we are putting on nature**. As consumers, we are not aware of our true environmental footprint. Direct material consumption is a key indicator in national statistics, also frequently used by the OECD, the EU and the UN, to track resource use related to economic activity (measured as GDP). However, this key indicator is limited to the materials used within the economy (raw materials extracted, minus exports, plus import). The full resource consumption is not always monitored. Through the Extraction Industries Transparency Initiative, environmental impact for participating countries is sometimes monitored, but in many places neither mining waste nor the indirect resource withdrawals required for extraction and processing are taken into account. For metals that we import, the difference can be one million tonnes of natural rock mined for one kilo of metal (for instance silver or gold) that is reported as import in the EU, OECD and UN statistics. We do not measure – hence do not see – the environmental and climate burden we generate (Breitholtz et al., 2019).

## Isn't ecocide covered under other laws?

There is some provision for environmental damage in law on war crimes and there may be some, as yet untested, potential to include some aspects of ecocide under crimes against humanity, but most ecosystem destruction happens in peacetime and does not always affect humans directly. Therefore, a law specifically addressing ecocide is needed.

## Why criminal law?

Criminal law has a strong relationship with our values and norms, **society's sense of right and wrong**. Making ecocide a crime creates a new moral baseline whereby anything causing mass damage or destruction of natural ecosystems will become visible and thus unacceptable.

By criminalising ecocide, we acknowledge the intrinsic value of ecosystems and our responsibility towards them. Damage to ecosystems may still take place, but it will no longer be an accepted norm. As a simple parallel, theft still occurs but we would not think of decriminalising it.

By criminalising a moral wrong, we also provide tools for lawyers to act and speak on behalf of those harmed.

## Is ecocide already happening?

Examples of ecocide occurring today are:

1. Large-scale land use change that causes the direct destruction of habitats – as is the case with deforestation in most tropical rainforests;
2. Significant pollution, whether deliberate or incidental – such as oil dumping and spills;
3. Open cast mining where entire landscapes are removed – as is the case with oil sands and some coal and gold mining.

There is wide scientific agreement that the scale of these changes is not sustainable, and that continued interference with natural environments will have significant consequences. Humanity has stepped out of what has been called a 'safe operating space' and has exceeded at least four defined planetary boundaries (Steffen et al., 2015).

The United Nations Global Environmental Outlook Report (UN, 2019) summarises the impact made by humans on natural environments, reiterating that they are unprecedented. “The health of ecosystems on which we and all other species depend is deteriorating more rapidly than ever. **We are eroding the very foundations of our economies, livelihoods, food security, health and quality of life worldwide.**” (IPBES Chair, Sir Robert Watson.) If we continue to damage and destroy ecosystems, societies and individuals all over the world will suffer.

## What will a law of ecocide achieve?

A law of ecocide aims at **preventing human caused ecocide** from occurring in the first place. It will hold those who are in a position of superior responsibility criminally liable if they commit ecocide.

It will provide the legal governance to **shift companies from the “polluter pays” principle to “the polluter doesn’t pollute”**. Ecocide law will encourage companies to “think before you act”. Thus, the flow of money into damaging practices will be halted in its tracks. Ecocide law will **drive clean business investment** and stimulate economies overnight. This is about development in the right direction.

Business leaders and government officials are unlikely to support or continue activities that are giving rise to ecocide if they could be held personally liable and face criminal prosecution. When ecocide is a crime, financial institutions will refrain from investing in activities that may lead to prosecution on criminal charges.

Most decision makers behind ecocide crimes do not commit ecocide intentionally; it is simply a consequence of destructive practices. If a decision maker knew, or should have known, that their decision might result in ecocide, they would be liable.

The law will eliminate from most global supply chains the products and services that cause the greatest environmental destruction. As a result, **companies working sustainably are likely to be more profitable and there will be more, and healthier, jobs**. By providing a guard rail around a safe operating space, the law is likely to unleash **innovation for green development**.

If we put a stop at source to ecocides such as the Athabasca tar sands oil extraction and the logging of the Amazon, projects that are destroying our carbon sinks and causing escalating greenhouse gas emissions, this will also **help prevent further aggravation of climate change** and encourage investment and subsidies to be redirected to cleaner energies and green jobs.

### Ecocide law addresses the causes of many environmental issues directly.

- It will end the most extreme forms of environmental destruction.
- It will give business and government organisations a clear and long-term framework to act within.
- It will impact public views on right and wrong regarding mass damage and destruction of nature.
- It will support rapid transition to a green, circular economy by making reuse of materials a better option than extraction of new materials.
- It will reduce risks of armed conflicts related to ecological degradation, both within and between nation states.
- It will create more jobs, and jobs will be healthier.

## Which countries would be covered by the law?

Once 2/3 of the States Parties have agreed to add the crime of ecocide to the Rome Statute, it becomes enforceable for ratifying states one year after they submit their ratification.

Furthermore, making ecocide a crime within the Rome Statute will have global effects, reaching far beyond the nations that have signed the Rome Statute and/or the principles of Universal Jurisdiction, as all trade and capital involved in ecocide crime that involve any of these nations would be affected by the law.

## What about countries (e.g. USA, China) who are not members of the ICC?

As the economy is increasingly global, there is a powerful effect even in countries that are not ICC members or haven't ratified. Importantly, **transnational corporations would not be able to operate ecocidal practices in any jurisdiction signed up to the law.**

## How do the Principles of Universal Jurisdiction apply when ecocide is part of the Rome Statute?

Any countries subscribing to the principles of universal jurisdiction may also prosecute non-nationals if a perpetrator sets foot in their territory, or in another country that has signed the principles of universal jurisdiction.

## Who will be prosecutable?

In international crime, the principle of 'superior responsibility' takes those who are in a position of superior responsibility to task. It imposes a duty of care on people who make decisions that affect humanity as a whole.

Ecocide law is intended for the prosecution of persons of superior responsibility – the directing minds in a given situation where the crime of ecocide has been committed. These persons may be public officials, officers of corporations or other bodies responsible for ecocide. The vast majority of business and government leaders are already moving away from these destructive practices, but the few remaining serious offenders are causing grave damage to us all.

The main purpose of ecocide law is not to prosecute offenders, but to stop ecocide from occurring in the first place.

## Aren't we all contributing to ecocide?

We may be, but often not by choice. Ecocide law is not intended to punish end users but decision makers at the top level.

## How will the law be enforced?

Once a country ratifies ecocide as a crime at the international level, it must incorporate it into domestic legislation.

The International Criminal Court is a court of last resort, it comes into play only if nation states cannot or will not prosecute.

## Is ecocide as an international crime a new idea?

No. The term 'ecocide' has been discussed since the 1970s as a potential international crime against peace. It was first recorded at the Conference on War and National Responsibility in Washington in February 1970. The crime of ecocide was mentioned by Swedish Prime Minister Olof Palme in 1972, at the first UN conference on the environment, in commenting on the environmental damages caused by the use of Agent Orange by United States forces in the Vietnam War. From the 1970s onwards, many academics and legal scholars argued for the criminalisation of ecocide and debated the elements required for such an international crime.

## Why is ecocide not already part of the Rome Statute?

During the 1970s, 80s and 90s making ecocide an international crime was considered by the United Nations International Law Commission (ILC) for inclusion in the Code of Crimes Against the Peace and Security of Mankind, which later became the Rome Statute (ICC, 1998), and by the Sub-Commission on Prevention of Discrimination and Protection of Minorities for inclusion in the extension of the Convention on Genocide (UN, 1951). A number of questions kept arising: Should ecocide be a crime in peacetime and wartime? Does the offender's intent to commit the crime matter or are the consequences of extensive destruction of ecosystems severe enough to warrant ecocide being a crime of strict liability regardless of the offender's intent? Ecocide as a concept was familiar and supported by many as one that should be enshrined in international law, however it was dropped by the ILC in 1996 (Gauger et al., 2012). An international crime of ecocide was included into the drafting of the Rome Statute and had the support of many countries, but was removed at a late stage, despite objections.

## Why is ecocide referred to as a Crime against Peace?

The crimes prosecutable by the ICC are often referred to as the crimes against peace. Damage, destruction or loss of ecosystems leads to resource depletion, which in turn leads to conflict and ultimately war. Sir David King, ex-chief scientific advisor to the UK government, warns that **the 21st century could be a century of resource wars**, where we will be fighting for the last remaining resources, in particular water and oil.

## What is the connection between genocide and ecocide?

Genocide is a crime that protects the human right to life and ecocide is a crime that protects the Earth and all inhabitants' right to life.

Tragically, millions of people have lost their lives because of genocide. What is less well understood is that damage and destruction of nature (ecocide) brings not only death to ecosystems, biodiversity and species habitat, but is ultimately also a threat to human life.

Humans are a part of nature and totally dependent on nature for survival. **Large-scale destruction of nature causes large-scale death among humans.**

## Is ecocide a climate change law?

By putting a stop to manmade ecocide which is destroying the living systems, which are also carbon sinks, we can **prevent parts of runaway climate change at source.**

In addition, although the final wording of the law will not be known until it has been adopted by the States Parties, the panel of top-level lawyers currently engaged in drafting a legally robust definition of ecocide is working to include acts which exacerbate climate change.

# THE INTERNATIONAL CRIMINAL COURT

## What is the International Criminal Court?

The International Criminal Court (ICC) is a permanent institution established by Article 1 of the Rome Statute. It is based in The Hague in the Netherlands, and can prosecute people for the crimes set out under Article 5 of the Rome Statute.

## What is the connection between the International Criminal Court (ICC) and the UN?

The ICC is an independent institution but there are some links with the UN. For example, the UN Security Council can refer cases to the ICC, and when an amendment to the Rome Statute is proposed, it must in the first instance be notified to the UN Secretary-General who then notifies the ICC member states.

## The International Criminal Court has its flaws and prosecutions are slow, could this undermine the law of ecocide?

Though the system is not perfect, there have been many prosecutions by the International Criminal Court. Similarly, murder is a crime and many murderers are prosecuted, but that does not mean that all murderers are prosecuted and convicted. We do not have a perfect system in place. However, making something a crime does three things: it acts to prevent, prohibit and restore the damage caused.

Furthermore, the International Criminal Court was intended to be a court of last resort, to come into play when national courts could not or would not prosecute.

When it comes to war crimes and genocide, very often national courts are unwilling or unable to prosecute, but this is much less likely to be true for ecocide, because it is largely a corporate crime and can generally be prosecuted in national courts. **Adding ecocide to the Rome Statute will open up for the ICC to resume the role it was intended for:** a court of last resort. This will add relevance and strength to the Rome Statute and the ICC.

# WHAT ALTERNATIVES ARE THERE TO ECOCIDE LAW AS PART OF THE ROME STATUTE?

## Universal Jurisdiction (UJ)

Ecocide would currently not be prosecutable under Universal Jurisdiction (UJ), and is therefore not really an alternative but a complement to the Rome Statute. When ecocide is included in the Rome Statute, UJ would be applicable, providing a powerful complement to the Rome Statute as UJ does not have the limitation that the UN Security Council could defer or veto court referrals.

Universal Jurisdiction means that a national court may prosecute individuals for serious crimes against international law — such as crimes against humanity, war crimes, genocide, and torture — based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect. Generally, Universal Jurisdiction is invoked

when other, traditional grounds for criminal jurisdiction are not available, for example: the defendant is not a national of the State, the defendant did not commit a crime in that State's territory or against its nationals, or the State's own national interests are not adversely affected (Paulet, 2018).

The landmark arrest of Pinochet in 1998 set a precedent that withdrew the immunity of heads of state or ex-heads of state for human rights violations (Paulet, 2018). Since then, there has been a sharp increase in the number of cases brought to court based on the principle of universal jurisdiction (Paulet, 2018).

Fundación FIBGAR, Foundation for Human Rights organization and universal jurisdiction, chaired by Baltasar Garzón, the judge who had Pinochet arrested in 1998, is advancing to get ecocide law included under the Universal Jurisdiction (Garzón, B).

Amnesty International reports that 163 of the 193 UN Member States "can exercise universal jurisdiction over one or more crimes under international law, either as such crimes or as ordinary crimes under national law." (Amnesty International, 2012). While many of the national definitions do not fully align with the requirements of international law, which may create a gap of impunity, universal jurisdiction would broaden the reach of ecocide law in the Rome Statute, making it more powerful.

## Stricter national laws

**In a global economy, national laws are insufficient** to create a level, predictable 'playing field'.

Several nations have weak justice systems. This is taken advantage of by international companies, who reduce costs for the (often oblivious) customers by moving environmentally damaging activities to nations with weaker environmental laws and/or weaker legal systems.

Not all heads of state will willingly act to improve their legal systems (for instance President Bolsonaro of Brazil) and might, like some business sectors, need an international umbrella law to be able to make green investments without eroding their economy.

## Ecocide laws at the EU level

In January 2021, the European Parliament voted to urge "the EU and the Member States to promote the recognition of ecocide as an international crime under the Rome Statute of the International Criminal Court (ICC)".

An Ecocide Directive at the EU level that echoes the wording of the proposed ecocide article in the Rome Statute could provide a framework for its regional adoption.

If the EU were to adopt ecocide legislation prior to the UN, it would speed up prevention and pre-empting of ecocide – and also the transition to a green economy.

The European Union is on its third program on Circular Economy, aiming to be the first climate neutral continent, with very ambitious programs to shift investments, public procurement and business practices to a greener economy. Ecocide law at the EU level would speed up this transition.

## Global Pact for the Environment

The draft Global Pact for the Environment (GPE) was launched on 24 June 2017 in Paris. French President Emmanuel Macron vowed to personally act, to lay the foundations for its adoption as a new global covenant for the conservation of the environment by the United Nations General Assembly.

A Global Pact for the Environment hopes to expand the rights of those suffering from environmental harms, allow and stimulate states and civil society to better hold polluters accountable, and lay the foundation for the incorporation of environmental concerns in all international governance, as is done for other human rights.

The GPE aims to accomplish this by:

Establishing the universal right to an ecologically sound environment as a human right at the international level, possible to invoke in international, regional, and national courts of law.

Unifying the guiding principles of international environmental law in one internally coherent legal document, thereby clarifying points of tension in international environmental law that have arisen given the existing sectorial approach to governance.

Empowering citizens to hold governments accountable for their environmental policies.

*In short:*

*The Global Pact for the Environment:*

- *will not have the pre-emptive effect of criminal law*
- *will not create an international, predictable and level playing field*
- *establishes principles for international justice in environmental law*
- *may speed up revision of international and national legislation and complement ecocide law.*

# ECOCIDE LAW AND THE ECONOMY

## How will ecocide law affect resource use?

Many current practices for extraction of natural resources – both renewable and non-renewable – are hugely destructive of the natural world. We are also fast approaching the point when we will run out of many non-renewable resources. Furthermore, ore grades will be of decreasing quality, resulting in greater energy need and larger impacts on natural systems to extract the same quantity of the desired material (Ragnarsdottir, 2008; Sverdrup and Ragnarsdottir, 2014; Ragnarsdottir et al., 2015).

By preventing large-scale destruction of nature, ecocide law will make reuse of materials more attractive. This will **slow down the depletion of natural resources**, encouraging a circular, green economy.

## How would ecocide law affect nations which currently rely on potentially ecocidal industries for their economic and social stability?

A **managed period of transition** will be important, to allow such countries to redirect their economic activity. Part of the process of establishing the drafting and consequent functioning of the new law will be involving international bodies that can advise and assist.

## Does ecocide law create stranded assets?

Yes, but this is nothing new. Ecocide law will speed up the transition to a greener and more sustainable economy. This will have positive effects on some assets and investments, negative effects on others. This is nothing unique to ecocide law or to a shift to a sustainable economy. This phenomenon is as old as trade.

Stranded assets do not necessarily mean that industry suffers. For some assets the negative effects are obvious, for instance unconventional oil resources (oil shales, oil sands) and open cast mines. It is less certain that the effects will be negative for industry as a whole. With a level, green playing field across the globe, investments in sustainable practices become profitable, and prices can be raised.

The predictable and level market conditions of ecocide law will be positive for investments. Businesses and governments are currently faced with highly uncertain outcomes from climate negotiations, and the highly questionable effectiveness of existing legal frameworks. With clear laws (and an amnesty period before ecocide law comes into effect) there will be room to plan and adapt. Investments are likely to shift as soon as it is clear that such legislation will be agreed upon.

## Why should industry spearhead ecocide law?

A relatively small number of people are jeopardizing the future of humanity by destroying the natural world (Carbon Majors Database, 2017). The profitability of such activities is a barrier to innovation towards a green and regenerative economy. As long as a small number of decision makers are allowed to destroy and destabilise vital ecosystems on an industrial scale, a green transition will not succeed.

Ecocide law in the Rome Statute provides a stable and long-term framework that will enable bold investments and innovation in line with a green, sustainable, economy. Many of these investments are at present risky or impossible.

Since the current economic system is quite literally unsustainable, the question is not whether the world will change to a green and sustainable economy, but simply how soon and how this transition is achieved. Companies that are at the forefront of this change, taking initiatives to manage the change, are more likely to succeed in the future.

**By spearheading ecocide law you show that sustainability matters to you and your organisation.** It is a statement that goes beyond simply abiding by existing laws or targets.

The young people of today will live with the consequences of our present-day decisions. By supporting ecocide legislation, you will help to create a legacy for future generations.

This is a piece of legislation that will work now, during the transition, and in a future green and sustainable economy. It gives the international community **real leverage to speed up the transition.**

Standing up for and promoting ecocide law is an **ethical choice.**

# QUESTIONS REGARDING CONFLICT OF INTEREST

## Does a crime of ecocide put nature's needs above people's needs?

**No. Mass environmental destruction is as much a human rights issue as an environmental one.** There are nine planetary boundaries which have kept the Earth System functioning in a way that supports life for the past 10,000 years, which if crossed will have devastating consequences for all life on Earth. We have crossed four out of nine and are rapidly moving towards crossing others. We are polluting our waters, our air, our food, which causes cancers and diseases. We are wiping out species which provide vital contributions to humans.

Our human right to life means nothing without corresponding legislation to deal with those who violate these rights. This is why we define murder and genocide as crimes. When we allow the destruction of the Earth System on which we all rely, we are ultimately violating our right to life. A law of ecocide places people and planet over and above short-term profit.

## Is ecocide law opposed to capitalism?

**No.** Profit per se is not a problem, but profit that leads to death or injury to life of people and the environment cannot be justified.

Currently a rule governing our world is that corporations must maximise profit to their shareholders, even if this means making profit out of mass damage and destruction to people and planet. There are certain things that are illegal for businesses to make profit from, things that are morally wrong, for example murder, genocide, or corruption. It is high time also to recognize the moral wrong of profiting from mass destruction of ecosystems. Such legislation would not hinder profit or development, it would simply change the rules of the game, setting a guard rail to ensure sustainable production of goods and services.

By making ecocide-related activities criminal, corporations will be under pressure to prevent such activity from taking place. Owners and managers will not wish to make decisions that will render them at risk of conviction. Heads of banks will no longer want to sanction the funding of criminal activity. Governments will not want to be seen to be making policy decisions which promote such criminal activity. Innovation, finance and governmental support will by necessity flow in the other direction. It will make sense to invest in sustainable business practices. **This is about corporations turning rapidly from being the problem to being part of the solution.**

## Wouldn't a crime of ecocide damage economies and cause people to lose their jobs?

Ecocide law looks set to **increase the number of jobs.**

"The transition to a green economy will inevitably cause job losses in certain sectors as carbon- and resource-intensive industries are scaled down, but they will be more than offset by new job opportunities", concludes the International Labour Organization (ILO) 2018 World Employment Social Outlook report *Greening the Economy*. "Measures taken in the production and use of energy, for example, will lead to job losses of around 6 million as well as the creation of some 24 million jobs."

"The net increase of approximately 18 million jobs across the world will be the result of the adoption of sustainable practices, including changes in the energy mix, the projected growth in the use of electric vehicles, and increases in energy efficiency in existing and future buildings." (ILO, 2018).

# EARTH LAW AND RIGHTS OF NATURE

## What are Rights of Nature?

Rights of Nature is a response to a growing recognition that we must fundamentally change the relationship between humankind and nature. Making this fundamental shift means acknowledging that we are part of a living whole, and respecting our need to live in harmony with nature. It means securing the highest legal protection and the highest societal value for nature through the recognition that nature has rights to exist and thrive, independent of its potential use to humans. Acknowledging the rights of nature means a new legal philosophy, an Earth Jurisprudence, shifting the fundamental principles of our legal system. Since the assumption that humans are separated from, and superior to, the natural world, is so ingrained in western culture, this is nothing short of a paradigm shift.

Expanding the body of legal rights to include nature has been an idea brewing for generations. Indeed, more than a century ago, environmentalist John Muir wrote that we must respect “the rights of all the rest of creation.” In 1972, law professor Christopher Stone wrote the seminal text: *Should trees have standing?* In 2015, Pope Francis stated that, “A true ‘right of the environment’ does exist...”

Rights of Nature is a rapidly growing field of legal evolution since Ecuador became the first country in the world to include it in the Constitution of 2008. In 2010, a Declaration of the Rights of Mother Earth was proposed to the UN to complement the Declaration on Human Rights. There are decisions for the Rights of Nature on different levels in over 25 countries.

## How does ecocide law relate to the Rights of Nature?

Ecocide can be acknowledged as a crime without making the paradigm shift to acknowledge the rights of nature. We can consider it a crime for purely anthropocentric reasons: since people need nature, destroying nature should be a crime. And if we acknowledge the rights of nature, ecocide has to be a crime. Rights are only protected when there is corresponding law to deal with violations of those rights. Just as our human right to life is protected by the law against murder (and on a mass scale, the law against genocide), so too does the Earth’s right to life require that ecocide is a crime. Rights in isolation do not ensure governance of breaches – the right has to be named and given legal protection before violations can be brought to justice. By giving mass damage, destruction and loss of ecosystems a legal definition, we create a framework for respecting and protecting the rights of nature.

# MAKING IT HAPPEN

## What is the legal process for making ecocide an international atrocity crime?

A Head of State (or more than one) must propose an ecocide amendment to the Rome Statute, which is the governing document of the International Criminal Court. This amendment must be submitted at least three months before a meeting of the States Parties to the Rome Statute (usually the Assembly, held every December in The Hague, Netherlands). A simple majority at that meeting enables the amendment to enter into consideration. A Crime Review Conference is then likely to be convened.

With the agreement of 2/3 of member states (currently 82 out of 123) the amendment is adopted into the Statute and ratification and enforcement can proceed. Any country ratifying must enforce the law in its own domestic legislation after one year.

## Can ecocide law come into effect immediately?

No. A transition period is necessary – in part because the adoption procedure takes time, and importantly, because corporations and states need time to change practices in order to reduce risk of growth collapse and human suffering. However, such transitions can be effected in a limited time when required – and our current global ecological crisis is rapidly creating a time limit for us.

The proposal of an ecocide amendment of the Rome Statute is the key moment which makes it visible on the horizon, enabling change to begin. But before a single state even ratifies this amendment to international law, it will begin to change the entire global conversation.

## Can the law be applied retroactively?

No. It will apply to acts committed after the law is introduced.

## Can this law work in practice?

Yes, that has been established by the International Law Commission's Working group 1996 (ILC(XLVIII)/DC/CRD.3), after more than a decade of analysis, in the work with the "Code of Crimes Against the Peace and Security of Mankind" that led up to the creation of the Rome Statute. Furthermore, when the Code morphed into the more narrowly scoped Rome Statute, some states transferred the draft Crimes Against Peace, including ecocide, into their own national penal codes (Gauger et.al., 2012).

In 2011 a mock trial was held in the Supreme Court of England and Wales. Two fictional CEOs were put on trial for causing ecocide due to destructive practices in the Athabasca tar sands and found guilty. Leading human rights barrister Michael Mansfield QC acted as the prosecution. This garnered international media coverage including the Financial Times, Le Monde, Time magazine, Deutsche Welle and Canada's CBC, and was broadcast worldwide online by Sky News. In 2012 the sentencing of the CEOs took place and restorative justice was dispensed to ensure the damage caused was addressed. These events indicate that a crime of ecocide can be a transformative law for sustainable business and can work in practice.

In 2016, a tribunal at the Institute of Social Studies (ISS) in The Hague reviewed the activities of the multinational corporation Monsanto (now Bayer). Five internationally renowned judges heard 30 witnesses and experts from five continents regarding possible crimes including ecocide.

The basis for the charges was that Monsanto had violated human rights and committed crimes against the planet by aggressively promoting its products, lobbying politicians and attacking independent scientists (International Monsanto Tribunal, 2017). Based on testimonies from witnesses

from all over the world, and considering both existing international law and on-going legal initiatives aiming to improve the protection of human rights and the environment, the judges concluded that Monsanto has indeed infringed on the public's rights to food, health, a healthy environment, and the freedom indispensable for independent scientific research.

The Tribunal was also of the opinion that "international law should now precisely and clearly assert the protection of the environment and the crime of ecocide". If such a crime of ecocide were to be recognized in international criminal law, "the activities of Monsanto could possibly constitute a crime of ecocide", the judges stated.

In their final conclusion, the judges highlighted the current imbalance in the international system, which offers much better protection to corporations and their financial interests (through trade and investment law including ISDS courts) than it does to human rights and the environment (Corporate Europe Observatory, 2017).

## How long will it take to make ecocide a crime?

Specific time frames cannot be guaranteed, but interest is growing rapidly. We have been working with ecocide-vulnerable states for some years now and in December 2019, two sovereign states (Vanuatu and the Maldives) called for serious consideration of an ecocide amendment to the Rome Statute. Since then, Pope Francis has stated that ecocide law is needed, French President Emmanuel Macron has declared that in discussions with international organisations he will support the creation of a crime of ecocide, and the Belgian government has pledged diplomatic action to halt ecocide crime. In the summer of 2020, Greta Thunberg and other Fridays for Future climate strike activists called on EU leaders to spearhead ecocide law, representatives of foreign affairs in Spain and Finland have voiced their interest, and the European Parliament urges support for making ecocide an international crime.

Interest in ecocide law is fuelled by the failure of 25 years of climate negotiations to put any meaningful legislative and political change in place, and by the grassroots mobilisation across the world recognising the need for a concrete enforceable solution.

## Who is promoting a law of ecocide?

Several organisations are engaged in making ecocide an international crime.

The idea of a law to protect the Earth was launched in the UK by barrister Polly Higgins and although she sadly passed away in 2019, Stop Ecocide, the organisation she founded together with Jojo Mehta, is hard at work and growing. <https://www.stopecocide.earth/>.

End Ecocide Sweden was founded in 2016 and is run by a growing number of engaged volunteers. <https://endecocide.se/>.

Another sister organisation is End Ecocide on Earth, whose team includes a number of lawyers. <https://www.endecocide.org/en/who-we-are-2/>.

There are people in France, Belgium, the Netherlands, Canada, Portugal and Finland working hard to make ecocide law a reality, and more countries are joining in.

We all collaborate for our common goal: to end ecocide on Earth.

## What State representatives advocate for ecocide law?

The government of **Belgium** pledges to "research and take diplomatic initiatives aimed at halting the crime of ecocide, which is to say the conscious destruction of ecosystems." (Magnette et al., 2020).

President Emmanuel Macron of **France** promises to fight for international ecocide law: "As for ecocide, I think I was the first leader to use that term when the Amazon was burning", said the President. "So I completely share the ambition that you defend ... the mother of all battles is

international: to ensure that this term is enshrined in international law so that leaders ... are accountable before the International Criminal Court.” (Macron, 2020 b.)

The Republic of **Vanuatu**. "...an amendment of the Rome Statute could criminalize acts that amount to ecocide. We believe this radical idea merits serious discussion in the face of recent scientific evidence showing that climate change poses an existential threat to civilizations.” (Vanuatu, 2019).

The Republic of **Maldives**. "We believe the time is ripe to consider an amendment to the Rome Statute that would criminalise acts that amount to Ecocide.” (Maldives, 2019).

**Finland’s Minister of Foreign Affairs**: “It is important to ensure that such new international law would have strong preventive effect ... we follow this work with interest and look forward to the report of the international group of experts established by the Stop Ecocide Foundation.”

**Spain’s Foreign Affairs Parliamentary Committee** has passed a resolution calling on the government to study the possibility of criminalising ecocide at national and international levels.

**The European Parliament has voted to urge** “the EU and the Member States to promote the recognition of ecocide as an international crime under the Rome Statute of the International Criminal Court (ICC)”.

**Luxembourg’s** Minister of Foreign and European Affairs “is ready to support the recognition of ecocide in European and international law when the time comes.”

## What can I do to help?

Sign a **petition** urging governments to work for ecocide to be an international crime.  
<https://www.stopecocide.earth/become>

Write an **open letter** to your government urging them to work for ecocide to be an international crime. <https://www.stopecocide.earth/letter-to-elected-representative>.

Give your time, energy and money to **support us**.  
<https://www.stopecocide.earth/take-action-summary>

**Engage your organisation** in promoting ecocide law, in whatever way you think will be effective. A first step may be to analyse how endorsing ecocide law might benefit your organisation, also looking at any attached risks.

Please visit our website (Swedish <https://endecocide.se/>; English [/https://endecocide.se/english/](https://endecocide.se/english/)) for inspiration on how you or your organisation can assist, or **contact us**.

## Who supports the campaign?

In his address on November 15 2019, Pope Francis declared: ‘ “ecocide” ... is a fifth category of crimes against peace, which should be recognised as such by the international community.’ (Vatican, 2019).

Many more people and organisations support the campaign including former President of Finland Tarja Halonen; Princeton Professor Emeritus of International Law Richard Falk; Greta Thunberg (whose foundation has donated €100,000 euros to support Stop Ecocide work); Dr Jane Goodall DBE (primatologist, anthropologist, UN messenger of peace); Human rights lawyer Michael Mansfield QC; European Parliament MP Marie Toussaint; Maude Barlow (co-founder of Council of Canadians); Nnimmo Bassey (Director of the Health of Mother Earth Foundation); as well as Princess Esmeralda of Belgium and Paul McCartney, who in addition to being a singer and songwriter is co-founder of Meat Free Monday.

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