

**Comment for the consultation from The Office of the Prosecutor of the International Criminal Court on the use of the existing crimes in the Rome Statute to prosecute environmental crimes:**



**End Ecocide on Earth** (formerly End Ecocide in Europe), is a grassroots environmental campaign started in 2012 to campaign for the inclusion of ecocide law into the European Environmental Crime Directive and for the inclusion of the crime of ecocide into the Rome Statute - [www.endecocide.org](http://www.endecocide.org).

We welcome the intention to explore the use of the existing crimes in the Rome Statute to prosecute the most serious forms of environmental destruction which are often closely linked to impacts on human populations, impacting on basic human needs, affecting human health and well-being and livelihoods, and causing mass migration and human suffering.

As the existing Statute mostly focuses on provisions for the prevention of deliberate and systematic harm to humans, increasing the use of the existing crimes to prosecute environmental destruction, should help to emphasize the role of a healthy natural world in protecting human rights, including the rights and freedoms of environmental defenders and indigenous groups by providing a deterrent to prevent harm and a mechanism to protect the UN Right to a Healthy Environment. The UN Special Rapporteur on Environmental Defenders under the Aarhus convention issued a position paper in February of this year that documents the repression of environmental defenders. End Ecocide on Earth (EEE) suggests that the position paper informs the work of the prosecutor's office.

It is possible to see that the existing Rome Statute crimes could be used where environmental harm is used directly as a tool to violate human rights under crimes against humanity, where there is deliberate destruction of farmland or seizure of land for example, targeted at a specific group of people.

However, it is not clear how the use of the existing crimes would prevent serious destruction of the environment that doesn't have a direct impact on a targeted group of humans and how the existing crimes could be used to prosecute serious environmental destruction of the environment in its own right, which will still ultimately impact humanity, if not in the immediate short term it will impact upon the rights of future generations.

The Statute as it stands only provides explicit protection of the environment in Article 8.2.b.iv which only applies during wartime and has an extremely high threshold. This provision has not

to date been used to prosecute ecocide occurring during wartime despite there being existing examples of where an ecocide crime during wartime could be said to have been committed, where lasting environmental damage beyond the immediate gains of warfare has occurred. It would be important for the policy paper to address the reasons why this provision has not been used so far and to consider if the use of the other existing crimes to prosecute serious environmental destruction can be achieved in a way that will result in convictions.

The current statute does not address the serious destruction of the environment (ecocide) that happens during peacetime.

It is hard to see how the existing crimes would prevent the serious environmental destruction that is a by-product arising out of the pursuit of economic profit. It is not clear how the existing provisions could be used to tackle the level of environmental destruction which we see in all parts of the globe, that threatens the broader peace and security of all humankind. The level of environmental destruction reached is evidenced by the number of planetary boundaries that have been crossed as detailed by the Stockholm Resilience Centre: [Planetary boundaries - Stockholm Resilience Centre](#).

We ask that the policy paper acknowledges the limitations of the existing Statute with respect to the reality of the severe environmental destruction that impacts humanity as a whole, and that the policy paper should recommend the establishment of a 5th crime of ecocide in the Rome Statute.

Furthermore, it is important that the use of the existing crimes in the Statute does not delay or deter the creation of a 5th standalone crime of ecocide, because the existing Statute crimes could only cover a fraction of the most serious types of environmental destruction. A standalone crime of ecocide is needed urgently because of the accelerating deterioration of the global environment at a level the consequences of which, should shock the conscience of humanity, and in recognition that international agreements to protect the environment that are without a legally enforceable deterrent are not delivering the urgent protections needed.

It would be important that any ecocide law definition not be restricted to particular types of environmental damage but linked to the scale and duration of likely impact. This would ensure that the law could respond to changing technologies, industries and evolving human understanding of environmental systems and the consequences of damage. In 2021 the Stop Ecocide International foundation convened an international panel of experts who developed a potential ecocide law definition that could fit within the framework of the Rome Statute: <https://www.stopecocide.earth/legal-definition>