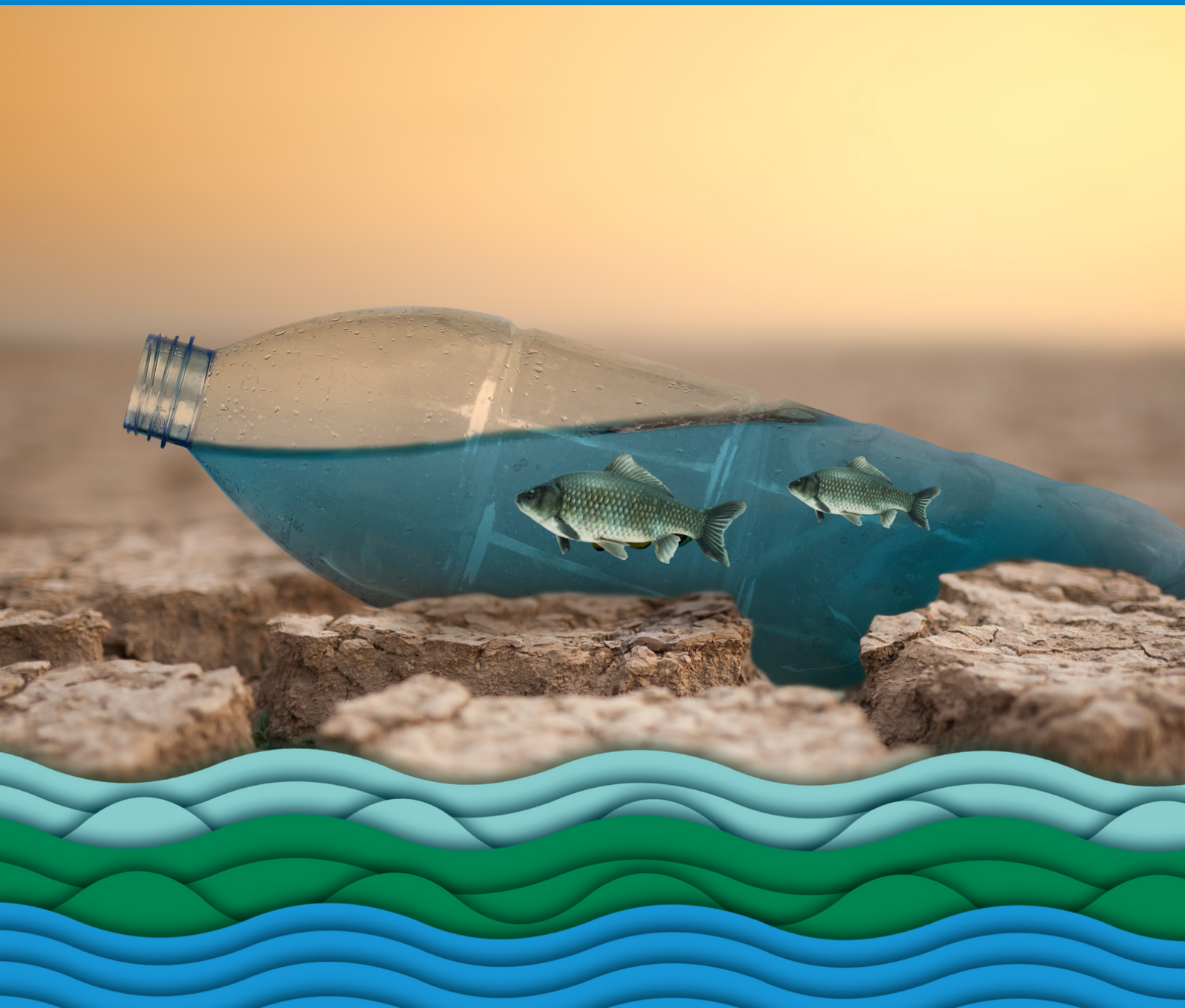




**ENVIRONMENT
PEOPLE LAW**

The rule of law for the protection of the environment

ADVANTAGES, CHALLENGES AND LIMITATIONS OF THE CRIMINALIZATION OF ECOCIDE AT THE INTERNATIONAL LEVEL



Advantages, challenges and limitations of the criminalization of ecocide at the international level

Since the first use of the term "ecocide" to describe the impact of "[Agent Orange](#)" on the environment [during the Vietnam War](#), the term has been applied to describe various instances of environmental damage around the world. Among such cases, in particular: [Russia's attacks on nuclear facilities in Ukraine](#), illegal [oil extraction in Canada](#) and extraction of [minerals in Venezuela](#). Unfortunately, some use this term to describe [actions common to mankind](#), such as release of microplastics into the ocean, greenhouse gas emissions, and overuse of pesticides.

The campaign to introduce the new international crime of "ecocide" into [The Rome Statute of the International Criminal Court](#) has been active for a long time, but has gained more support in the past few years. One of the most important events was [formulation of a new definition of ecocide by Independent Expert Panel convened by the Stop Ecocide Foundation](#).

The growing support for the introduction of the crime of ecocide can be seen as part of a general increase in awareness of the seriousness of climate change, environmental pollution and the destruction of biodiversity faced by our planet.

Possible benefits of criminalizing ecocide

The most obvious advantage of the new crime "ecocide" is the expansion of international responsibility for environmental damage. The proposed crime expands the scope of prosecutions for environmental damage outside the context of war, theoretically allowing prosecution of those responsible for such damage as oil spills, deforestation, soil and air pollution on a colossal scale.

The International Criminal Court is a court built on the principle of individual criminal responsibility, which means that individuals holding leadership positions in various industries, financial institutions, and governments would be tried, rather than organizations or states.

Often from experts you can hear references to "[preventive effect](#)" caused by introduction of the crime of ecocide for business owners and financiers who do not want to be prosecuted in the same row as war criminals.

Consideration of such cases in the ICC opens up opportunities for providing compensation to victims of ecocide. After successfully prosecuting the perpetrators of ecocide, the victims could receive compensation for what they lost.

According to the [norms on universal jurisdiction](#), ICC member states that have ratified the crime of ecocide may decide to investigate and resolve ecocide cases in their own legal systems. This potentially expands the possibility of accountability, as universal jurisdiction allows individuals to be prosecuted regardless of their origin or the place where the crime was committed.

After all, criminalization of ecocide can play an important symbolic role, signaling that the international community considers environmental destruction to be one of the "most serious crimes that pose a threat." Thus, the criminalization of ecocide at the international level will contribute to the growing awareness of the need to prevent and really solve the issue of environmental damage.

Challenges related to the criminalization of ecocide

The campaign to criminalize ecocide has certainly been gaining momentum over the past few years. However, campaigners have several hurdles to overcome before ecocide is added to the ICC statute.

First of all, it should be emphasized that an amendment to the ICC statute must be proposed by an ICC member state, in accordance with Article 121 of the Rome Statute. Any such proposal must be approved for negotiation by a majority of those States voting. A proposed amendment may go through several "rounds" of negotiations before returning to member states for a further vote. In order to approve an amendment, it needs the support of at least two-thirds of the participating states, which demonstrates the necessary political support for the amendment to be approved.

If the amendment is approved, states may still decide not to ratify it, limiting the ICC's ability to extend jurisdiction over their territories and their nationals over the crime of ecocide. States that are not parties to the Rome Statute would be [excluded from the scope of application of the new crime](#), which also creates difficulties for effective law enforcement.

After the launch of the work of the Stop Ecocide Foundation Expert Panel, the definition of ecocide formulated by such a panel provoked several critical remarks by international jurists in the field of international criminal law. One of the most powerful was the following remark: [the requirement that the perpetrator be aware that an attack will cause harm to the environment is likely to become a serious challenge to any prosecutor trying to prove such a person's liability](#).

Another issue that worries some experts is that the proposed composition of the international crime of ecocide introduces a subjective "cost analysis", in which prosecutors will have to prove that the ecocide acts caused much more serious damage to the environment compared to the expected social and economic benefits.

Another problematic issue is the lack of jurisdiction of the ICC over legal entities (i.e. corporations), which limits applicability of the new crime.

Criminalization as a method of achieving environmental and climate justice

Proponents of the international criminalization of the crime of ecocide emphasize its potential for further environmental justice. The introduction of the criminal offense is described as a [proof that the international community "takes the issue of environmental justice seriously"](#) or as ["one of the tools available in the fight against environmental injustice"](#). A significant number of experts consider such criminalization to be "an important step in the direction of establishing interspecies justice."

Among the most active proponents of the new crime are states facing the harmful effects of climate change, including small island states such as the [Republic of Vanuatu](#) and the [Republic of Maldives](#). Both of these states link the criminalization of ecocide and the need to achieve climate justice as a mechanism and a goal that is achieved through the use of such a mechanism.

Conclusion

The introduction of ecocide can play an important role in increasing liability and access to compensation for environmental damage. There are challenges related to both the introduction of ecocide as a crime in the international criminal law field, and its prosecution when such a crime is already established. However, bringing the ICC into the fight for environmental justice can allow affected citizens, governments and the international

community to view ecocide as a crime that is life-changing, extremely destructive and critically dangerous. Facing the climate crisis and the era of mass biodiversity extinction, we need to use every tool in our arsenal, including the law, to achieve major systemic change to protect and restore the natural world.