

Ecocide and Emergent Risks for Businesses under Environmental Criminal Law

On 9 September 2024, a group of Pacific Island states led by Vanuatu formally submitted a proposal to amend the Rome Statute of the International Criminal Court (the “**ICC**”) to include a fifth international crime of ecocide.¹ Defined as “*unlawful or wanton acts committed with knowledge that there is substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts*”, the proposed crime of ecocide is premised on the preamble that “*the environment is daily threatened by severe destruction and deterioration, gravely endangering natural and human systems worldwide*”.²

Described as the “*defining issue of our time*”,³ the climate emergency (and associated impact on human life) has engendered unprecedented support for the movement to criminalize ecocide at both national and international levels. While it likely will be years before Vanuatu’s proposed amendment to bring ecocide within the remit of international criminal law is debated (much less adopted), it marks an important shift forward in long-standing efforts to recognize severe environmental damage on par with more traditionally anthropocentric atrocity crimes, such as genocide, crimes against humanity and war crimes.

This shift towards improved climate accountability is closely linked to trends at other levels of governance, law and policy globally.⁴ Fifteen countries have now adopted national ecocide legislation (or comparable criminal laws for severe, widespread or long-term environmental damage)⁵ and it is presently under review in at least 10 other jurisdictions.⁶ At the supranational level, a new EU Directive on the protection of the environment through criminal law (the “**Environmental Crime Directive**”) entered into force on 20 May 2024 with the stated aim of effectively preventing and combatting environmental crime. While the Environmental Crime Directive does not criminalize ecocide in terms, it is express that its qualified criminal offences “*can encompass conduct comparable to ecocide*” in the manner already covered by the laws of some Member States (which include Belgium and France) and as “*discussed in international fora*”.⁷

These developments have significant implications for businesses. Earlier this year, we [wrote](#) about current litigation trends arising from climate change and how businesses can reduce their exposure to climate litigation risk. Ecocide under international criminal law (and equivalent national legislation) is unique to those trends as it contemplates more nebulous exposure to individual criminal liability, particularly for business

¹ The proposal was submitted by Vanuatu and co-sponsored by Fiji and Samoa.

² This definition was originally proposed by the Independent Expert Panel for the Legal Definition of Ecocide (convened by the Stop Ecocide Foundation) in 2021 and remains the subject of much debate in international criminal law circles – see, e.g., Heller, Kevin Jon. (2021) "Skeptical Thoughts on the Proposed Crime of “Ecocide” (That Isn’t)” *Opinio Juris*. Available at: <<https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/>>. Notwithstanding, as Vanuatu notes in its proposed amendment, ecocide laws enacted or proposed in various jurisdictions have been modelled on this definition.

³ UN Security Council Press Release, [SC/14445](#), 23 February 2021.

⁴ Following the 2015 UN Climate Change Conference (COP 21), 195 State parties adopted the Paris Agreement – a legally binding international treaty which not only sets long term goals guiding its signatories to reduce greenhouse gas emissions, but also commits financing to strengthen climate resilience and adaptations in developing countries. The Paris Agreement entered into force on 4 November 2016. The plan for the effective implementation of the Paris Agreement was developed further at the 2023 UN Climate Change Conference (COP 28) and remains the subject of international climate summits.

⁵ Ecocide (or comparably severe environmental damage) is presently criminalized in Belgium, France, Ukraine, Moldova, Russia, Belarus, Georgia, Armenia, Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, Vietnam, Ecuador and Chile.

⁶ See, e.g., legislative proposals under review in the Netherlands, Italy, Scotland, Spain (Catalonia), Mexico, Brazil, Azerbaijan, Peru and Iceland.

⁷ Section 21, Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC.

leaders and their employees. In this article, we explore the developments in ecocide legislation globally and the associated legal implications for businesses and their personnel.

I. Global Trends in Criminalizing Ecocide

I. Multilevel Advocacy

The movement to criminalize ecocide under international law dates back to the early 1970s, prompted by the widespread military usage of defoliants during the Vietnam War which reportedly destroyed nearly 5 million acres of forests in South Vietnam and contaminated tens of thousands of acres of cultivable land.⁸ The wholesale destruction of the environment and consequential damage to local ecosystems through herbicidal warfare came to be referred to as ecocide (intermittently referred to as biocide), sparking early efforts to recognize ecocide as a crime against peace under international law (including in early iterations of the Rome Statute). While ecocide did not ultimately find its home in any international legal instruments, the concept has remained a recurring feature of international law discourse on environmental crimes and climate change.

In recent years, that discourse has been renewed by a new wave of advocacy for ecocide legislation motivated in part by increasingly severe climate events worldwide.⁹ The climate exposure of critical infrastructures such as agriculture and energy alongside the inequitable distribution of climate risk in regions with pre-existing social, economic and political vulnerabilities create substantial (and arguably foreseeable) risk that even discrete environmental damage could trigger much larger risk cascades. It is in this context that the campaign to criminalize ecocide seeks to prosecute not only intentional or reckless acts of severe environmental damage, but also the associated downstream impact on vulnerable environments and communities (including, for example, food insecurity, resource scarcity, disease proliferation, conflict and climate migration).

Corporate actors are also lending their support to the movement – on 2 October 2024, Patagonia, Oatly, Natura, Triodos Bank, Ecosia and Tony’s Chocolonely penned an open letter to the President of the European Commission emphasizing, among other things, that the Environmental Crime Directive should criminalize “*widespread environmental damage comparable to ecocide*”. This approach may feature more prominently in corporate social responsibility and related environmental, social and governance (ESG) practices as calls for improved climate accountability continue to grow louder – in a recent Global Commons survey conducted by Ipsos, 72% of those surveyed in G20 countries agreed that “*it should be a criminal offence for leaders of large businesses or senior government officials to approve or permit actions they know are likely to cause damage to nature and climate that is widespread, long term or cannot be reversed*”.¹⁰

II. Proposed Amendments to the Rome Statute

The Rome Statute presently has relatively limited jurisdiction over environmental crimes, confined to (a) widespread, long-term and severe damage to the natural environment that occurs in the context of

⁸ See, e.g., Zierler, D. (2011). The invention of ecocide: Agent Orange, Vietnam, and the scientists who changed the way we think about the environment, Chapter 1.

⁹ The Stop Ecocide Foundation and Stop Ecocide International are clear front-runners in the advocacy for an international crime of ecocide, having convened the Independent Expert Panel which in 2021 drafted a legal definition of ecocide as well as the core text of a proposed amendment to the Rome Statute. The Panel’s proposals appear to form the basis of Vanuatu’s recent proposed amendment to the Rome Statute, and ecocide legislation recently introduced in national jurisdictions appear to be modelled on that same definition.

¹⁰ See Global Commons Survey, G20 and Global Report: attitudes to planetary stewardship and segmentation. Earth4all and the Global Commons Alliance. 2024.

international armed conflict and which is disproportionate relative to the “*concrete and direct overall military advantage anticipated [by the attack]*” (which constitutes a war crime under article 8(2)(b)(iv)) of the Rome Statute, and (b) environmental damage which occurs in the context of armed conflict and which may rise to the level of a war crime or crime against humanity relative to the associated impact on human life (e.g., torture, pillaging, destruction or seizure of property, attacks against civilian objects, and even genocide).

The proposed addition of an independent international crime of ecocide under the Rome Statute (and in particular one which requires no nexus to armed conflict) is the first of its kind since the statute entered into force on 1 July 2002.¹¹ The order of affairs for the proposed amendment is summarized as follows:

1. The Assembly of State Parties (ASP), the governing body of the ICC comprised of its member states, will need to consider the proposed amendment and negotiate its text – a process which may well take years.
2. The core text of the proposed amendment must be approved by two-thirds of the ASP.
3. If the amendment is approved, state parties must then formally ratify the amendment in order to be subject to the jurisdiction of the ICC in connection with the amendment. State parties who decline to ratify the amendment will not be subject to its terms.

While it is possible (some may say likely) that offending states will simply decline to ratify the ecocide amendment, thereby limiting the utility of the amendment (as has been observed with the crime of aggression amendment which has not been ratified by a number of states), there are at least two reasons to believe the proposed addition of a fifth international crime of ecocide is not merely symbolic.

First, the patchwork of international treaties and climate summits aimed at addressing climate change have placed increasing pressure on states to cooperate on “*well-aligned multilevel governance, institutional frameworks, laws, policies, and strategies*”¹² to combat the climate emergency. The growing number of states introducing or considering national ecocide legislation (or comparable environmental crimes) is an extension of that approach, indicating that criminal justice is seen not only as a measure of effective deterrence against environmental damage, but also as a key part of effective climate action.

Second, if adopted, the ecocide amendment would allow ratifying states to prosecute ecocide as a matter of international criminal law under the principle of universal jurisdiction, which permits states to prosecute international crimes in national courts irrespective of the nationality of the alleged perpetrator or the jurisdiction in which the crime was committed.

Taken together, these developments suggest that while it may take some time (indeed the wheels of international justice turn exceptionally slowly), ecocide may well be the next frontier of climate accountability under international criminal law.

III. National Ecocide Laws

Alongside calls for an international crime of ecocide, the movement to criminalize ecocide has also taken root in national jurisdictions. Vietnam was the first to codify national ecocide legislation in 1990 (in light of the continuing impacts of herbicidal warfare deployed during the Vietnam War), shortly followed by a

¹¹ While the Rome Statute was amended in 2010 to define the scope of the Court’s jurisdiction over the crime of aggression, the crime of aggression was itself one of the four international crimes under the Rome Statute at the time of its adoption and entry into force.

¹² [Intergovernmental Panel on Climate Change. \(2023\) Synthesis Report: Summary for Policymakers](#), para. C.6.

number of countries in the Caucasus and Central Asia (including Russia, Kazakhstan, Kyrgyz Republic, Tajikistan, Georgia, Belarus and Ukraine) who, in the aftermath of the Chernobyl disaster, codified national ecocide legislation over the course of the nineties.

Recent years have seen a dramatic surge in national ecocide laws across the globe, all of which appear to be modelled on roughly the same definition of ecocide as proposed by the Independent Expert Panel in 2021. In the European context:

- France adopted ecocide legislation in 2021, imposing criminal sanctions on those who commit offences which cause “serious and lasting damage” to health and the environment, and later also recognized ecocide as a crime capable of being tried under international criminal law.
- Belgium recently passed a new penal code in 2024 which recognizes ecocide as crime under both national and international law, applicable both to corporations (in the way of extensive fines) and individuals “in the highest positions of decision-making power” (in the way of imprisonment and other criminal sanctions).
- The Environmental Crime Directive makes the European Union the first supranational organization to criminalize conduct comparable to ecocide as a “*qualified criminal offence*” which, depending on the severity of the crime, may attract up to 10 years’ imprisonment for offending individuals and severe sanctions for offending organizations (including corporations), including extensive fines, license withdrawal, and mandated closure.
- Ukraine, which codified ecocide in 2001, is actively seeking to prosecute ecocide and other environmental crimes under its domestic laws in connection with the conduct of the Russian military in the invasion of Ukraine, including the destruction of the Nova Kakhovka Dam in June 2023. This case is expected to set a critical precedent for ecocide litigation in the context of armed conflict.
- The United Kingdom, which is not subject to the Environmental Crime Directive, has no comparable ecocide legislation. While an Ecocide Bill was introduced at the House of Lords in November 2023 as a Private Members’ Bill, it did not ultimately make it through to a reading before Parliament was dissolved in May 2024. It remains to be seen whether these efforts are renewed.

Elsewhere, environmental destruction comparable to ecocide was recently criminalized in Chile, and remains under parliamentary consideration in Mexico, Brazil and Peru.

II. Key Considerations for Businesses

While the proposed ecocide amendment under the Rome Statute is still in its nascency, the implications of global developments in ecocide legislation for businesses are immediate.

In the international law context, the Rome Statute operates with fairly extensive jurisdiction and is premised on principles of complementarity which require some level of cooperation with domestic courts.

1. First, the temporal jurisdiction of the ICC is robust: (i) it has jurisdiction only over events which have taken place after the Rome Statute entered into force – i.e., 1 July 2002 – subject to ratification by state

parties; (ii) state parties to the Rome Statute may accept the jurisdiction of the ICC retroactively to the date of its entry into force, while non-state parties may accept the jurisdiction of the ICC in connection with specific situations; and (iii) there is no statute of limitations in respect of any crime under the Rome Statute.

2. Second, the ICC may exercise its jurisdiction over any situation which is either referred by the UN Security Council or in which a crime under the Rome Statute is perpetrated by a national of a state party or is committed on the territory of a state party (or in a state which has accepted the jurisdiction of the court).
3. Third, though the jurisdiction of the ICC is limited to natural persons such that businesses cannot be charged under the Rome Statute, it contemplates individual liability broad enough to charge those who actively commit a crime and those who are indirectly involved in its commission (i.e., ordering, soliciting, inducing, facilitating, aiding, abetting, assisting or contributing to the commission of the crime).¹³ It also expressly contemplates command responsibility for “superiors” for the conduct of their “subordinates”.

For businesses, this means that management and employees alike could be exposed to criminal liability under the Rome Statute, irrespective of their proximity to the environmental damage at issue, provided that they were directly or indirectly involved in its commission. This provides yet another hook for personal liability for business leaders under international criminal law not only before the ICC, but also in domestic courts. The landmark prosecution of former executives of Lundin Energy in Sweden is a key precedent for this – marking the first application of universal jurisdiction under Swedish law in connection with war crimes.

4. Finally, the ICC has robust admissibility and evidentiary standards, which involve, among other things, thorough preliminary examinations, extensive evidence collection, and close coordination with civil society organizations to access relevant information and expertise. Irrespective of whether the court ultimately finds it has jurisdiction over a particular crime or situation, it is well suited to cooperate with local law enforcement for enforcement under domestic laws (which, unlike the Rome Statute, may permit corporate criminal liability).

Together with these broad jurisdictional powers, the prospect of a fifth international crime of ecocide would enable the ICC to bridge existing gaps in the transnational enforceability of environmental crimes, exposing businesses and their personnel to greater risk of prosecution for the environmental impact of their business operations in other states, including through their supply chains.

In the national context (including within the EU), businesses are increasingly exposed to potential criminal liability for ecocide and comparable environmental damage for which they are directly and indirectly responsible. The Environmental Crime Directive alone contemplates fixed fines between 24 and 40 million euros or fixed percentages of the total annual worldwide turnover of the offending organization, in addition to imprisonment for individuals found liable for the same damage within those organizations.

It is apparent that ecocide is the next frontier of climate litigation at all levels of law and governance. Businesses must take care to ensure they are adequately guarding against downstream risks to the environment arising from their business operations, including within their supply chains. Fortunately, climate accountability enjoys a fairly symbiotic relationship with existing ESG trends, such that compliance with existing and developing environmental regulations at the national level is likely to help businesses limit their exposure to

¹³ See articles 25 and 28 of the Rome Statute.

liability for environmental crimes, including ecocide. For example, the Directive on corporate sustainability due diligence in the EU, which entered into force on 25 July 2024, is well placed to alert organizations to risks or deficiencies in their present operations which may expose them to criminal liability under ecocide legislation. For businesses which operate outside of the EU and/or which do not presently have comparable environmental regulations in place, developments in climate accountability elsewhere may well serve as the benchmark against which their practices should be measured. Indeed, as international cooperation on climate action continues to improve, it can be expected that states will soon seek to align their laws, policies and strategies on effective climate action.

As set out in our prior analysis on general business readiness for mounting climate litigation, businesses should proactively monitor developments in environmental criminal law in the jurisdictions in which they and their proxies operate and obtain local advice as appropriate.

If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

Julianne Hughes-Jennett

Email: jhughesjennett@quinnemanuel.com

Phone: +44 20 7653 2220

Muzhgan Wahaj

Email: muzhganwahaj@quinnemanuel.com

Phone: +44 0 20 7653 2084

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