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Environmental Crimes Should Be Treated as Crimes Against Humanity to Ensure Global Environmental Justice

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Abstract

International law has long regulated pollution, biodiversity loss, hazardous waste and wartime environmental damage, but it has rarely named deliberate environmental devastation for what it may become: a mode of mass victimisation. This paper defends a qualified thesis. Ordinary licensing breaches, negligent accidents and localised regulatory offences should remain within domestic environmental law. Grave environmental conduct should be treated as a crime against humanity only where an underlying article 7 act of the Rome Statute is established, or where a future environmental act is defined, and the conduct is part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of a State or organisational policy, with the required knowledge. Drawing on environmental-justice theory, the accountability gaps in existing international environmental law and international humanitarian law, and recent developments including the ICC Office of the Prosecutor's 2025 policy on environmental damage, the EU's qualified environmental offences and the Council of Europe's 2025 Convention, the paper demonstrates the doctrinal compatibility of environmental destruction with murder, extermination, forcible transfer, persecution and other inhumane acts under article 7. It argues that this classification advances global environmental justice through recognition, distributive analysis, victim participation and reparations, transnational jurisdiction, expressive stigma, and a pluralistic relationship with the proposed crime of ecocide. It addresses objections concerning conceptual stretching, legality, distributive hypocrisy, evidential difficulty and institutional selectivity, and proposes cumulative elements, safeguards and an institutional model, including a possible amendment to article 7, corporate accountability mechanisms, evidence strategy and victim-centred reparations. Environmental destruction becomes an international criminal-law concern not because nature is valuable or damage is large, but because organised actors may use ecological systems to attack civilian populations. Properly designed and kept exceptional, this classification can name the most organised forms of environmental victimisation without displacing ecocide, domestic regulation or human-rights enforcement.

Keywords: *Environmental Crime; Crimes Against Humanity; Environmental Justice; Ecocide; Rome Statute; International Criminal Court; Corporate Accountability; Reparations*

1. INTRODUCTION

International law has long regulated pollution, biodiversity loss, hazardous waste and wartime damage, but it has rarely named deliberate environmental devastation for what it may become: a mode of mass victimisation. The category of crimes against humanity is directed not at isolated wrongs but at organised attacks on civilian populations. Where poisoning a river, destroying subsistence forests, rendering territory uninhabitable or concealing lethal industrial exposure forms part of such an attack, the legal character of the conduct is not exhausted by the words 'environmental offence'. It may be an environmental crime and a crime against humanity at the same time.¹

That claim is grounded in the human dependence on ecological systems. Clean air, potable water, fertile soil, stable climatic conditions and functioning ecosystems are not amenities external to the legal person; they are material preconditions for life, health, home, culture and political agency. The World Health Organization has stated that a healthy environment could prevent nearly one quarter of the global disease burden. Yet criminal law commonly fragments the injury into permit violations, unlawful disposal, corruption, homicide, or property damage, while the cumulative assault on a population disappears from the indictment.²

The normative context has also shifted. In 2022 the United Nations General Assembly recognised the human right to a clean, healthy and sustainable environment. That resolution did not create an international offence, but it confirmed that ecological integrity and human dignity are mutually dependent. A legal system which recognises the right while reserving its gravest penal categories for more visibly violent techniques of abuse risks an unusually permissive account of power: bullets are legible, slowly administered toxins are not.³

This paper defends a qualified thesis. Ordinary licensing breaches, negligent accidents and localised

regulatory offences should remain within domestic environmental law. Grave environmental conduct should be treated as a crime against humanity only where an underlying article 7 act is established, or where a future environmental act is defined, and the conduct is part of a widespread or systematic attack directed against a civilian population, pursuant to or in furtherance of a State or organisational policy, with the required knowledge. The argument is doctrinal, institutional and justice-based. It does not collapse ecocide into crimes against humanity; it explains why the two can be complementary.⁴

2. ENVIRONMENTAL CRIME AND THE ARCHITECTURE OF ENVIRONMENTAL INJUSTICE

'Environmental crime' covers heterogeneous conduct: illegal logging and mining, wildlife trafficking, fisheries crime, hazardous-waste trafficking, unlawful emissions, destruction of protected habitats, and the corrupt authorisation of dangerous projects. Some offences are profit-driven and transnational; others are carried out through formally lawful corporate or governmental programmes. Their common feature is not a single protected object but the conversion of ecological systems into sites of illicit extraction, disposal, control or exclusion. The economic scale is substantial, although estimates are necessarily uncertain because the markets are clandestine and enforcement data remain weak.⁵

UNEP and INTERPOL estimated the annual value of environmental crime at approximately USD 91-258 billion in 2016, with forest crime alone estimated at USD 51-152 billion. The sectoral ranges in Figure 1 are not measures of human suffering, and should not be mistaken for one. They nevertheless show why environmental offending cannot be dismissed as marginal 'green' misconduct. It is a major political economy, enabled by demand, finance, corruption and

¹ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 ('Rome Statute') art 7; Frédéric Mégret, 'The Problem of an International Criminal Law of the Environment' (2011) 36 *Columbia Journal of Environmental Law* 195, 198-202.

² World Health Organization, 'Environmental Health' <<https://www.who.int/health-topics/environmental-health>> accessed 16 July 2026.

³ UNGA Res 76/300 (28 July 2022) UN Doc A/RES/76/300.

⁴ Matthew Gillett, *Prosecuting Environmental Harm* before the International Criminal Court (CUP 2022) 22-28; David Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature* (OUP 2007) 11-17.

⁵ C Nellemann and others, *The Rise of Environmental Crime: A Growing Threat to Natural Resources, Peace, Development and Security* (UNEP-INTERPOL Rapid Response Assessment 2016) 17-23.

asymmetric regulatory capacity.⁶

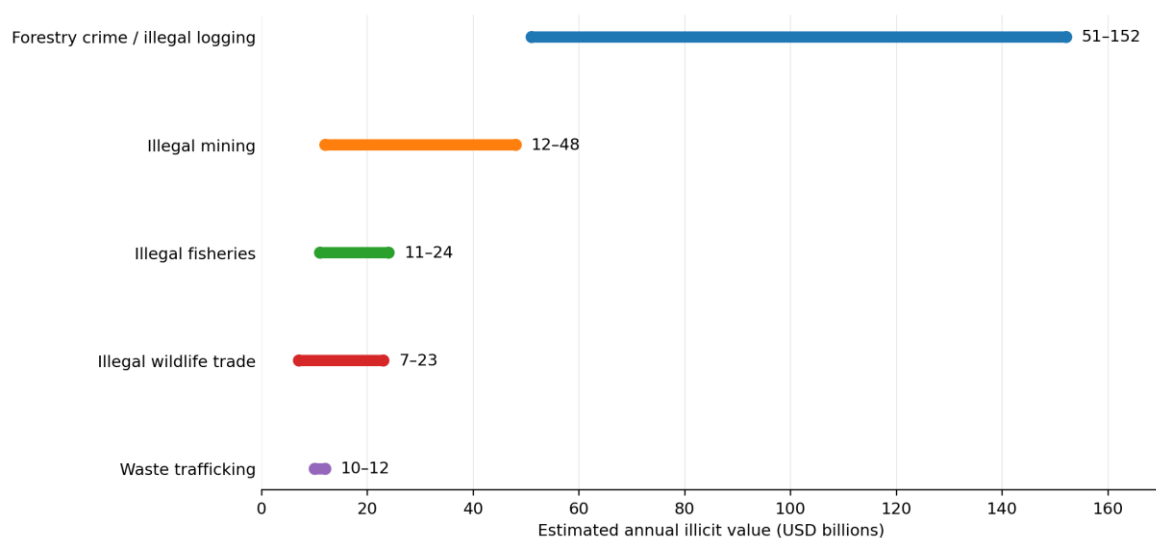


Figure 1. Estimated annual illicit value of selected environmental-crime sectors (USD billions).

Source: author's visualisation of UNEP-INTERPOL 2016 estimates. Ranges are indicative and do not measure ecological or human harm.

The legal boundary between crime and harm is especially unstable in this field. A toxic discharge may be unlawful in one jurisdiction, administratively tolerated in another, and formally licensed in a third after regulatory capture. Green criminology therefore distinguishes offences prohibited by law from serious environmental harms produced through lawful activity. International criminal law cannot simply borrow domestic unlawfulness as a complete filter, because a State participating in an attack may write or manipulate the very permits that appear to legalise it. The challenge is to define criminal wrongfulness without turning every contested development decision into atrocity law.⁷

Environmental-justice theory supplies the missing evaluative frame. Distributive justice asks who receives economic benefits and who bears contamination, displacement and loss. Procedural justice asks who has access to information, participation, courts and scientific expertise. Recognition justice asks whether law respects the

identity, knowledge, land relations and political status of affected groups. Capabilities and corrective justice add questions about what people are actually able to do, and how damaged relationships and ecosystems can be repaired. A crimes-against-humanity analysis should address all of these dimensions, not merely quantify emissions or count bodies.⁸

The distribution is rarely random. Low-income districts, Indigenous territories, racialised communities, informal workers and people in territories with weak institutions commonly receive a disproportionate burden of extraction and waste. Environmental harm also travels through colonial trade routes: hazardous materials, dirty production and resource risks are externalised, while profits and finished commodities accumulate elsewhere. The resulting injustice is both local and global. It is produced by decisions taken across corporate groups, ministries, banks, purchasing markets and security forces, sometimes over many years.⁹

⁶ *ibid* 17-23, estimating total environmental crime at USD 91-258 billion annually and reporting sectoral ranges including forestry crime at USD 51-152 billion.

⁷ Rob White and Diane Heckenberg, *Green Criminology: An Introduction to the Study of Environmental Harm* (Routledge 2014) 8-13; Mégret (n 1) 204-09.

⁸ Schlosberg (n 4) 12-19, 25-29; Gordon Walker, *Environmental Justice: Concepts, Evidence and Politics* (Routledge 2012) 41-48.

⁹ Robert D Bullard, *Dumping in Dixie: Race, Class, and Environmental Quality* (3rd edn, Westview Press 2000) 29-38; Carmen G Gonzalez, 'Environmental Justice, Human Rights, and the Global South' (2015) 13 *Santa Clara Journal of International Law* 151, 154-61.

Regional human-rights bodies have already recognised this human-environment nexus. The African Commission's decision concerning the Ogoni people connected oil-related contamination with rights to health, property, food, housing and a satisfactory environment. The Inter-American Court has treated a healthy environment as an autonomous right and has ordered protection of Indigenous access to water, food and cultural life. These decisions establish responsibility and remedies; they also reveal factual patterns that, in an exceptional case, may support individual criminal responsibility.¹⁰

3. THE ACCOUNTABILITY GAP IN EXISTING INTERNATIONAL LAW

Domestic environmental criminal law remains the first and most important line of protection. Its weakness is not the absence of statutes alone, but uneven criminalisation, low penalties, fragmented agencies, dependence on technical regulators, poor data and political interference. UNEP's work on environmental rule of law repeatedly shows a distance between legal proliferation and implementation. When the offender is economically powerful, the conduct crosses borders, or public officials are implicated, ordinary enforcement may become structurally incapable of naming the whole course of conduct.¹¹

Human-rights litigation partially corrects that failure. It can recognise affected communities, require consultation, order monitoring, and award compensation. Decisions such as *Lhaka Honhat*, *Öneryildiz* and *Cordella* demonstrate that environmental conditions can violate rights to life, private life, property, health, food, water and cultural identity. But human-rights regimes ordinarily adjudicate State responsibility, not the personal culpability of ministers, commanders or corporate executives. Proceedings may also be slow, territorially

bounded and dependent on prior exhaustion of domestic remedies.¹²

International environmental law contributes prevention, cooperation, due diligence and State responsibility. These norms matter greatly, yet they are generally decentralised and remedial rather than penal. A finding that a State failed to prevent significant transboundary harm does not itself identify who designed, authorised or concealed an attack on a civilian population. Nor does treaty compliance readily reach environmental violence occurring wholly within one State. The result is an accountability vacuum of an unusual kind: the more organised and policy-driven the destruction, the more it may be shielded by sovereign administration.¹³

International humanitarian law addresses the natural environment most expressly during armed conflict. Additional Protocol I prohibits methods or means of warfare intended, or expected, to cause widespread, long-term and severe environmental damage; the Rome Statute criminalises intentionally launching an attack in an international armed conflict with knowledge that specified environmental damage would be clearly excessive in relation to anticipated military advantage. These provisions are symbolically important. They are also narrow in conflict classification, cumulative threshold, proportionality structure and mens rea.¹⁴

The peacetime gap is therefore decisive. The environment may be destroyed through land clearance, extractive concessions, toxic exposure or water deprivation without an armed conflict and without any projectile being launched. Crimes against humanity are not confined to wartime. Their contextual element asks whether there is a widespread or systematic attack on civilians, not whether armies are formally engaged. This makes article 7 a more plausible doctrinal home

¹⁰ Social and Economic Rights Action Center and Center for Economic and Social Rights v Nigeria (2001) AHRLR 60 (ACHPR 2001) paras 50-69; Indigenous Communities of the Lhaka Honhat Association v Argentina (Merits, Reparations and Costs) IACtHR Series C No 400 (6 February 2020) paras 202-09, 243-89.

¹¹ United Nations Environment Programme, Environmental Rule of Law: Tracking Progress and Charting Future Directions (UNEP 2023) 15-24.

¹² *Lhaka Honhat* (n 10); *Öneryildiz v Turkey* App no 48939/99 (ECtHR, Grand Chamber, 30 November 2004) paras 89-118; *Cordella and Others v Italy* Apps nos 54414/13 and 54264/15 (ECtHR, 24 January 2019) paras 157-74.

¹³ Rio Declaration on Environment and Development, UN Doc A/CONF.151/26 (vol I) (12 August 1992) principles 2, 10, 13 and 16; International Law Commission, 'Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries' [2001] II(2) Yearbook of the International Law Commission 148.

¹⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3 arts 35(3) and 55; Rome Statute art 8(2)(b)(iv).

than the environmental war crime for organised civilian victimisation through ecological means.¹⁵

The Office of the Prosecutor has moved in this direction. Its 2016 case-selection policy identified destruction of the environment, illegal exploitation of natural resources and illegal dispossession of land as relevant to gravity. In December 2025 the Office adopted a policy on environmental damage through the Rome Statute, emphasising that genocide, crimes against humanity, war crimes and aggression can be committed by means of, or result in, serious environmental damage. The policy does not amend jurisdiction. It does, however, reject the idea that environmental facts are peripheral.¹⁶

Regional criminal-law developments reinforce the momentum. Directive (EU) 2024/1203 creates 'qualified' environmental offences for intentional conduct causing destruction or widespread and substantial, irreversible or long-lasting damage; its preamble states that such offences may encompass conduct comparable to ecocide. The Council of Europe's 2025 Convention, CETS No 228, similarly requires a particularly serious offence and adds corporate responsibility, victim protection, specialised enforcement and international cooperation. Neither instrument creates a crime against humanity, but both demonstrate that precise gravity thresholds are legally workable.¹⁷

The ecocide project addresses another part of the gap. The Independent Expert Panel proposed an autonomous Rome Statute offence centred on unlawful or wanton acts committed with knowledge of a substantial likelihood of severe and either widespread or long-term environmental damage. Ecocide is valuable because it recognises the environment as a direct object of protection, including where a civilian-population attack cannot be proved. But that strength is also a difference: crimes against humanity foreground collective human victimisation and the

policy context. A complete architecture may need both.¹⁸

4. DOCTRINAL COMPATIBILITY WITH CRIMES AGAINST HUMANITY

Article 7 of the Rome Statute requires one or more enumerated acts committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. An 'attack' is a course of conduct involving the multiple commission of such acts pursuant to or in furtherance of a State or organisational policy. Environmental destruction is not itself listed. The relevant question is therefore functional: can ecological conduct constitute, cause or implement an existing act, while satisfying the chapeau? In many factual patterns the answer is yes.¹⁹

The word 'attack' does not require a military operation, armed force or a formal conflict. International jurisprudence treats the concept as a campaign or course of conduct, and distinguishes 'widespread' scale from 'systematic' organisation. Repeated poisoning of community water, coordinated burning of settlements and cropland, or a policy of exposing workers and residents to known lethal substances may be less spectacular than a massacre, but spectacle is not an element. The occurrence of cumulative acts, their pattern and their civilian object are what matter.²⁰

The policy element also fits many serious environmental cases. Government ministries may grant concessions, security forces may remove residents, regulators may suppress findings, and companies may continue operations after internal studies establish grave risk. A policy need not be formally announced; it may be inferred from deliberate action, organised resources, recurrence and institutional tolerance that is more than mere negligence. Care is essential, because regulatory failure alone is not a policy to attack. The prosecution

¹⁵ Prosecutor v Kunarac, Kovač and Vuković (Judgment) IT-96-23 and IT-96-23/1-A (ICTY Appeals Chamber, 12 June 2002) paras 86, 91-98; Rome Statute art 7.

¹⁶ Office of the Prosecutor, International Criminal Court, Policy Paper on Case Selection and Prioritisation (15 September 2016) para 41; Office of the Prosecutor, International Criminal Court, Policy on Addressing Environmental Damage Through the Rome Statute (2 December 2025) 4-8.

¹⁷ 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 [2024] OJ L 2024/1203, recital 21 and art 3(3); Council of Europe Convention on the

Protection of the Environment through Criminal Law (opened for signature 3 December 2025) CETS No 228, arts 31, 34 and 43-45.

¹⁸ Independent Expert Panel for the Legal Definition of Ecocide, Commentary and Core Text (June 2021) 5; Polly Higgins, Damien Short and Nigel South, 'Protecting the Planet: A Proposal for a Law of Ecocide' (2013) 59 Crime, Law and Social Change 251, 257-64.

¹⁹ Rome Statute arts 7(1) and 7(2)(a); International Criminal Court, Elements of Crimes (2011) art 7, introduction paras 1-3.

²⁰ Kunarac (n 15) paras 86, 94-98; International Criminal Court, Elements of Crimes (n 19) art 7, introduction para 3.

must prove that the course of conduct was actively promoted or encouraged by a State or organisation.²¹

A civilian population may be targeted through its ecological conditions. '*Directed against*' does not mean that every act must physically strike a human body at the moment of commission. Destroying wells, fisheries, grazing land, forests, seed systems or housing can be the means by which a population is coerced, impoverished, removed or made sick. The environmental medium should not interrupt legal attribution when the human object is clear. Indeed, perpetrators may choose ecological methods precisely because delayed and dispersed injury is harder to trace and easier to describe as development, accident or natural scarcity.²²

Murder is the most direct predicate. Where decision-makers intentionally cause death through toxic releases, contaminated water, lethal working conditions or deliberate destruction of indispensable resources, the fact that a pollutant rather than a firearm delivers the fatal injury is legally irrelevant. Article 30 ordinarily requires intent and knowledge, including awareness that a consequence will occur in the ordinary course of events. Proof will be demanding: epidemiological association alone cannot establish each accused's mental state. Internal warnings, prior incidents, concealment, continued exposure and operational control may together do so.²³

Extermination is particularly important because article 7 expressly includes intentional infliction of conditions of life, including deprivation of access to food and medicine, calculated to bring about the destruction of part of a population. The deliberate contamination of a principal water source, destruction of subsistence systems, or blockade of environmental resources can satisfy this logic when the scale and mens rea are proved. Environmental destruction is then not an analogy to extermination. It is the material technique by which destructive conditions of life are imposed.²⁴

Deportation or forcible transfer may apply where land is rendered uninhabitable or access to livelihood is intentionally destroyed in order to clear a population. Coercion is not confined to physical force; fear of violence, detention, oppression, abuse of power and conditions depriving people of genuine choice are relevant. A community that '*leaves*' after its wells are poisoned, crops destroyed and defenders attacked may be forcibly transferred even if buses are not waiting. The prosecution must still establish lawful presence, displacement and absence of grounds permitted by international law.²⁵

Persecution captures environmental conduct used to discriminate against an identifiable group. Article 7 requires intentional and severe deprivation of fundamental rights by reason of group identity, connected with another article 7 act or a crime within the Court's jurisdiction. The targeted destruction of sacred landscapes, discriminatory denial of clean water, or selective exposure of an ethnic or Indigenous community to toxic harm may qualify where the nexus and discriminatory intent are established. The environmental fact pattern gives content to the deprivation; the persecution charge identifies its group-directed character.²⁶

The residual category of other inhumane acts addresses intentional conduct of similar character causing great suffering or serious injury to body or to mental or physical health. Long-term toxic exposure, reproductive injury, severe respiratory disease, psychological trauma from ecological destruction, and the knowing creation of unliveable conditions are plausible candidates. Similarity must be assessed cautiously by reference to nature and gravity, not by a prosecutor's moral intuition. Yet excluding serious environmental injury merely because its mechanism is chemically or ecologically mediated would be a formalism, not legality.²⁷

Mens rea is the principal limiting device. Crimes against humanity should not absorb negligent pollution, unforeseeable accidents or good-faith policy

²¹ Prosecutor v Katanga (Judgment pursuant to art 74) ICC-01/04-01/07-3436-tENG (7 March 2014) paras 1101-11; Situation in the Republic of Kenya (Decision pursuant to art 15) ICC-01/09-19-Corr (31 March 2010) paras 84-94.

²² Office of the Prosecutor, Policy on Addressing Environmental Damage (n 16) 9-15; Gillett (n 4) 93-104.

²³ Rome Statute arts 7(1)(a) and 30; International Criminal Court, Elements of Crimes (n 19) art 7(1)(a).

²⁴ Rome Statute arts 7(1)(b) and 7(2)(b); Prosecutor v Omar Hassan Ahmad Al Bashir (Second Decision on the

Prosecution's Application for a Warrant of Arrest) ICC-02/05-01/09-94 (12 July 2010) paras 30-40.

²⁵ Rome Statute art 7(1)(d); International Criminal Court, Elements of Crimes (n 19) art 7(1)(d), fn 12.

²⁶ Rome Statute arts 7(1)(h) and 7(2)(g); SERAC v Nigeria (n 10) paras 54-69.

²⁷ Rome Statute art 7(1)(k); International Criminal Court, Elements of Crimes (n 19) art 7(1)(k); Cordella (n 12) paras 157-74.

error. Under the existing Statute, the accused must intend the conduct and possess the requisite intent or knowledge regarding consequences, together with knowledge that the act forms part of the broader attack. In a future environmental act, 'knowledge of a substantial likelihood' may better accommodate scientifically established risk than a purpose requirement, but it must be reconciled expressly with article 30. Recklessness should not enter by verbal disguise.²⁸

Causation is equally difficult. Environmental disease may have latency, multiple sources and population-level expression; ecosystem collapse can emerge from cumulative contributions. Criminal adjudication nevertheless deals with complex causation in poisoning, industrial disaster and command structures. A sound approach would require proof beyond reasonable doubt that the accused's conduct made a substantial causal contribution to the charged result, while allowing expert epidemiology, toxicology, attribution science, remote sensing and documentary evidence to be evaluated together. Statistical proof cannot replace individual attribution, but neither should law demand impossible biological tracing.²⁹

Responsibility must also move through organisations. The ICC has jurisdiction over natural persons, not corporations, but article 25 can reach those who order, solicit, induce, aid or otherwise contribute to crimes, subject to its elements. Senior corporate officers and public officials are not responsible by title. They may be responsible where evidence proves decision authority, contribution and mens rea. Domestic systems should separately impose liability on legal persons. Without that division of labour, the international case risks becoming a symbolic prosecution of one manager while the enterprise retains its assets and licences.³⁰

The doctrinal pathway is summarised in Figure 2. It is deliberately sequential. Severe environmental damage alone does not establish a crime against humanity; nor does widespread civilian suffering without an article 7 act, policy-linked attack and knowing participation. The sequence protects the exceptional character of the offence while making visible an environmental modality that current charging practice often divides into unrelated incidents. That is the core interpretive move.³¹

²⁸ Rome Statute art 30; Independent Expert Panel (n 18) 11-12; Kevin Jon Heller, 'Skeptical Thoughts on the Proposed Crime of Ecocide' (Opinio Juris, 23 June 2021) <<https://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide/>> accessed 16 July 2026.

²⁹ Gillett (n 4) 225-46; Alessandra Mistura, 'Is There Space for Environmental Crimes under International Criminal Law? The Impact of the Office of the Prosecutor Policy Paper on Case Selection and Prioritization on the Current

Legal Framework' (2018) 43 Columbia Journal of Environmental Law 181, 214-23.

³⁰ Rome Statute art 25(1)-(3); Joanna Kyriakakis, 'Corporations before International Criminal Courts: Implications for the International Criminal Justice Project' (2017) 30 Leiden Journal of International Law 221, 225-35.

³¹ Office of the Prosecutor, Policy on Addressing Environmental Damage (n 16) 8-18; Gillett (n 4) 89-116.

Only the cumulative pathway reaches crimes-against-humanity liability

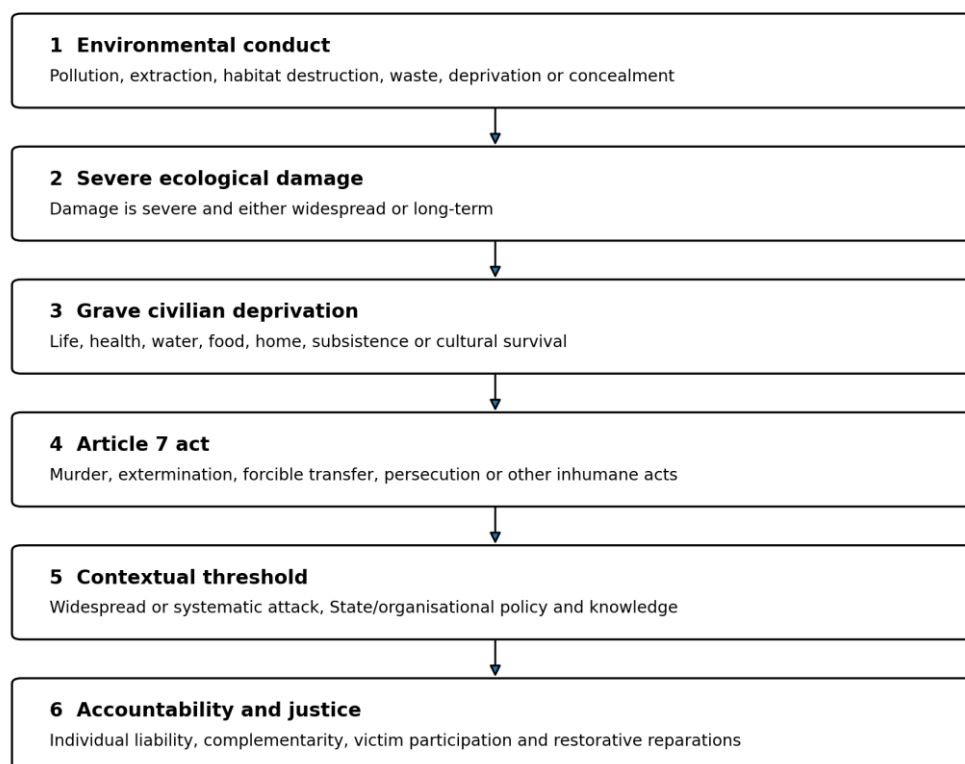


Figure 2. Cumulative pathway from environmental conduct to a crime against humanity.

Source: author's doctrinal synthesis of Rome Statute article 7 and the authorities cited in this section.

5. WHY THE CLASSIFICATION ADVANCES GLOBAL ENVIRONMENTAL JUSTICE

First, the classification produces recognition. Communities exposed to systematic contamination are often described as unfortunate neighbours of development, illegal occupants, or statistical populations. Crimes-against-humanity language recognises them as rights-bearing civilians subjected to organised power. This does not cure ecological loss, but legal characterisation shapes archives, public memory and institutional response. It also refuses the convenient narrative that slow violence has no author because it lacks a single dramatic moment. Recognition is therefore not rhetorical excess; it is part of justice.³²

Secondly, it exposes distribution. A conventional prosecution may ask whether an emission exceeded a limit. An atrocity analysis also asks why the exposure was repeatedly concentrated on a particular

population, who profited, what alternatives were rejected, and how officials responded to warnings. These questions reveal the supply chains and governance choices behind local injury. The label can therefore connect harms in the global South with decisions, finance and consumption elsewhere, although jurisdiction over each participant must still be established.³³

Thirdly, crimes-against-humanity procedure can strengthen participation and remedy. The Rome Statute permits victims to present views and concerns and authorises reparations against a convicted person. Environmental cases would require procedures capable of representing dispersed and intergenerational interests, translating technical evidence, protecting defenders, and respecting Indigenous institutions. Reparations should include compensation where appropriate, but also medical monitoring, water and soil remediation, rehabilitation,

³² Schlosberg (n 4) 13-19, 82-90; Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard UP 2011) 2-10.

³³ Bullard (n 9) 29-38; Gonzalez (n 9) 168-80.

guarantees of non-repetition, restoration of access, and community-controlled funds. A cheque alone may reproduce the injury.³⁴

Fourthly, the classification provides a transnational jurisdictional vocabulary. Environmental attacks routinely involve acts, decisions, effects and assets in different States. Crimes against humanity are widely subject to domestic universal-jurisdiction legislation, and the complementarity principle enables national systems to act before the ICC. The value is not automatic universality; State practice remains uneven. The value is that a grave, policy-linked attack is understood as a concern beyond the territorial State, reducing the chance that captured domestic institutions have the final word.³⁵

Fifthly, the offence carries a distinctive stigma and rejects official immunity before the ICC. It identifies conduct as an attack on humanity's minimum conditions of coexistence, not merely as inefficient regulation. This expressive function can influence corporate due diligence, financing, insurance and public administration before a case is filed. Yet deterrence should not be romanticised. Criminal law acts late, selectively and expensively. Its strongest preventive effect will arise when international exposure changes domestic investigation, disclosure duties, board decisions and the behaviour of officials who might otherwise believe ecological injury is politically deniable.³⁶

Finally, a crimes-against-humanity route corrects an anthropocentric accountability gap without claiming that human interests exhaust the value of nature. Ecocide protects ecosystems even where no civilian attack can be shown. Crimes against humanity protect populations where ecological destruction is the instrument of attack. In some cases both legal descriptions may be available; in others only one. This pluralism is preferable to forcing every grave harm into a single conceptual box. It also avoids the false choice between '*people*' and '*planet*', a distinction that the

lived experience of affected communities has never accepted.³⁷

6. OBJECTIONS, RISKS AND LIMITING PRINCIPLES

The first objection is conceptual stretching. Crimes against humanity emerged to address attacks on human populations, whereas ecocide recognises intrinsic ecological value. Adding environmental destruction, critics argue, may dilute both fields. The answer is a strict human nexus: the proposed article 7 act should require grave deprivation of a civilian population's conditions of life, health, subsistence, home or cultural survival. Harm to an ecosystem with no such attack may still constitute ecocide or a domestic offence, but not the environmental crime against humanity proposed here.³⁸

The second objection is legality. Terms such as 'severe', 'widespread' and 'long-term' can be indeterminate, and article 22 requires strict construction. That concern is real. It supports definitions, elements of crimes and scientific guidance rather than legal silence. Existing instruments already use gravity thresholds: the environmental war crime, the ecocide proposal, the EU qualified offence and article 31 of CETS No 228. A future amendment should define scale, duration, reversibility, ecological value and human deprivation, while preserving judicial assessment of context. No retroactive application is permissible.³⁹

The third objection concerns development and distributive hypocrisy. Industrialised States accumulated wealth through historic pollution and extraction; international prosecutions could fall instead on poorer producer States. A legitimate framework must therefore scrutinise demand-side actors, financiers, parent-company decisions and waste-exporting States, not only the visible site of damage. It must also distinguish a grave knowing attack from good-faith development policy and respect differentiated capacity. None of this creates a defence of poverty or sovereignty for atrocity. It creates a duty

³⁴ Rome Statute arts 68(3) and 75; Prosecutor v Thomas Lubanga Dyilo (Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations') ICC-01/04-01/06-3129 (3 March 2015) paras 33-48.

³⁵ International Law Commission, 'Draft Articles on Prevention and Punishment of Crimes against Humanity, with Commentaries' [2019] II(2) Yearbook of the International Law Commission, draft arts 7-10; Rome Statute art 17.

³⁶ Rome Statute art 27; Antonio Cassese and Paola Gaeta, Cassese's International Criminal Law (3rd edn, OUP 2013) 21-26.

³⁷ Independent Expert Panel (n 18) 5-12; Higgins, Short and South (n 18) 257-64.

³⁸ Mégret (n 1) 224-32; Gillett (n 4) 327-33.

³⁹ Rome Statute arts 22 and 24; Directive (EU) 2024/1203 (n 17) art 3(3); CETS No 228 (n 17) art 31.

to apply the law across the chain, with attention to global inequality.⁴⁰

The fourth objection is evidential. Scientific uncertainty can be manipulated in both directions: defendants may invoke it to postpone action indefinitely, while prosecutors may overstate association as proof of individual causation. Independent experts, disclosure of models and data, adversarial testing, uncertainty ranges, and reasoned judicial treatment are essential. Prosecutors should charge only results that can be attributed beyond reasonable doubt, while using risk evidence primarily to prove knowledge, policy choices and the foreseeability of consequences. The evidence must be rigorous. So must the restraint.⁴¹

The fifth objection is institutional selectivity. The ICC already faces limited resources, geopolitical pressure and uneven cooperation. An environmental docket could favour cases with accessible satellite imagery while neglecting less visible contamination, or pursue actors from weaker States while headquarters and markets remain untouched. Selection criteria should therefore address victim vulnerability, cross-border decision structures, ecological irreversibility, discriminatory patterns and the availability of genuine national proceedings. Independent review, published reasons and investment in global-South forensic capacity are necessary, though they cannot eliminate politics.⁴²

A final limitation is corporate jurisdiction. Because the ICC cannot convict legal persons, international prosecution alone cannot dissolve a corporation, recover enterprise-wide profits or reform a business group. Domestic implementation must include liability of legal persons, director and officer responsibility based on culpability, confiscation, debarment, remediation orders and protection for whistleblowers. Civil and administrative mechanisms remain essential. The crimes-against-humanity label should coordinate these responses, not displace them.⁴³

7. A PROPOSED LEGAL AND INSTITUTIONAL MODEL

Reform should proceed on two tracks. Immediately, prosecutors should investigate environmental facts under existing article 7 predicates, draft charges that explain the ecological mechanism, and avoid treating environmental damage as background evidence only. The ICC Prosecutor's 2025 policy provides an institutional foundation for this practice. In parallel, States Parties should negotiate an express article 7 environmental act. Interpretation can reveal what the Statute already contains; amendment can improve notice, consistency and expressive clarity for future conduct.⁴⁴

A possible provision would criminalise: *'intentionally or knowingly causing severe and either widespread or long-term damage to the environment, where that damage deprives a civilian population of conditions indispensable for life, health, subsistence, home or cultural survival'*. The act would remain subject to the full article 7 chapeau. *'Wanton'* conduct could be defined as damage clearly excessive in relation to reasonably anticipated social and economic benefits, but only if the balancing standard is made precise enough for criminal law. Domestic authorisation obtained through corruption or issued as part of the attack should not exculpate.⁴⁵

The elements in Table 1 combine the victim-centred structure of crimes against humanity with thresholds developed in ecocide and recent European law. They are intentionally cumulative. This makes the offence difficult to prove. It should be. International criminal law is justified here not by environmental importance in the abstract, but by an exceptional convergence of grave ecological damage, collective human deprivation, organisational attack and culpable participation.⁴⁶

⁴⁰ Rio Declaration (n 13) principles 3, 7 and 11; Gonzalez (n 9) 168-80.

⁴¹ Gillett (n 4) 225-46; Mistura (n 29) 214-23.

⁴² Gonzalez (n 9) 174-80; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (CUP 2005) 245-72.

⁴³ Rome Statute art 25(1); Kyriakakis (n 30) 225-35; CETS No 228 (n 17) art 34.

⁴⁴ Office of the Prosecutor, *Policy on Addressing Environmental Damage* (n 16) 4-18; Rome Statute art 7.

⁴⁵ Independent Expert Panel (n 18) 5-12; Rome Statute arts 7 and 30.

⁴⁶ Directive (EU) 2024/1203 (n 17) art 3(3); CETS No 228 (n 17) art 31; International Criminal Court, *Elements of Crimes* (n 19) art 7.

Table 1
Proposed Cumulative Elements and Safeguards for an Environmental Crime against Humanity

Element	Proposed rule or safeguard
Protected interest	Civilian life, health, subsistence, home, cultural survival and agency, protected through the ecological conditions on which they depend.
Underlying conduct	Commission, ordering, authorisation or culpable assistance in pollution, extraction, destruction, release, disposal, deprivation or comparable environmental conduct.
Environmental gravity	Severe damage that is either widespread or long-term; reversibility, ecosystem value and cumulative effects are assessed on evidence.
Civilian nexus	The damage causes grave deprivation of conditions indispensable to a civilian population; ecological damage alone is insufficient for article 7.
Context	The conduct forms part of a widespread or systematic attack pursuant to or in furtherance of a State or organisational policy.
Mens rea	Intent as to conduct; specified knowledge of environmental and civilian consequences; knowledge of the broader attack.
Causation and contribution	Result attributable beyond reasonable doubt, with a substantial causal contribution and liability established under recognised modes of participation.
Jurisdiction and institutions	Complementarity, domestic extraterritorial jurisdiction where lawful, cooperation, specialised units and ICC action only when admissibility and gravity are met.
Remedies	Victim participation, restitution, compensation, rehabilitation, remediation, restoration, medical monitoring and guarantees of non-repetition.

Source: author's proposed synthesis of Rome Statute article 7, ecocide thresholds and recent European instruments.

Mens rea should be specified rather than left to doctrinal improvisation. The accused should intend the underlying conduct, know that severe and either widespread or long-term damage is substantially likely, know that grave civilian deprivation will occur in the ordinary course of events or substantially likely as defined by the amendment, and know the conduct forms part of the attack. Where multiple actors contribute, liability should depend on the Statute's modes of participation and a substantial contribution, not on mere association with a polluting sector.⁴⁷

Enforcement should be decentralised through complementarity. States should criminalise the offence, establish territorial, nationality and appropriate extraterritorial jurisdiction, remove limitation periods where consistent with crimes-against-humanity law, and create specialised multidisciplinary units. The ICC should act where national proceedings are absent or not genuine and where gravity and admissibility are met. Mutual legal

assistance must cover environmental samples, corporate records, beneficial ownership, financial flows, remote-sensing data and witness protection. The CoE model offers useful operational provisions even outside Europe.⁴⁸

Corporate accountability requires a linked domestic regime. Legal persons should face effective, proportionate and dissuasive sanctions; courts should be able to order restoration, confiscate gains, suspend activities, exclude companies from public procurement and appoint monitors. Parent-company and financial actors should not be liable merely because they are connected to a project, but neither should corporate form conceal knowing approval, control or assistance. Executives who receive repeated scientific warnings and deliberately continue an attack should be assessed as individuals under ordinary modes of liability.⁴⁹

Evidence strategy must begin before catastrophe is complete. Regulators and prosecutors need protocols for chain of custody, sampling, community-held

⁴⁷ Rome Statute arts 25 and 30; Heller (n 28).

⁴⁸ Rome Statute arts 17, 86 and 93; International Law Commission, Draft Articles on Crimes against Humanity (n 35) draft arts 7-10; CETS No 228 (n 17) arts 5-9 and 33.

⁴⁹ CETS No 228 (n 17) arts 34-38; Directive (EU) 2024/1203 (n 17) arts 6-8.

knowledge, open-source material, health data and preservation of corporate communications. Scientific disagreement should be recorded, not suppressed. Environmental defenders, workers and whistleblowers need protection because they often supply the earliest proof of policy and knowledge. Dedicated investigation teams should combine criminal lawyers, ecologists, epidemiologists, financial investigators, geospatial analysts and culturally competent community liaisons. This is expensive. Impunity is not cheaper; its costs are merely displaced.⁵⁰

Reparations must be both victim-centred and ecologically literate. Article 75 can support restitution, compensation and rehabilitation, but environmental cases may require decades of monitoring and collective restoration beyond the convicted person's resources. States should therefore create restoration funds financed by confiscated assets, corporate penalties and public contributions without shifting the polluter's burden to victims. Community participation is indispensable in determining whether restoration, relocation, land return, memorialisation or health care is appropriate. The goal is not to price a destroyed world. It is to rebuild conditions of agency as far as possible.⁵¹

Institutionally, the amendment process should be accompanied by Elements of Crimes, prosecutorial guidelines and capacity-building rather than a bare new label. States Parties could first adopt a resolution affirming that existing article 7 acts may be committed through environmental means, then negotiate the amendment under article 121. National legislation can move faster. Coherent rules at all levels—international, regional and domestic—would reduce jurisdictional refuge while preserving the ICC as a court of last resort.⁵²

8. CONCLUSION

Environmental destruction becomes an international criminal-law concern not simply because nature is valuable or because damage is large, but because organised actors may use ecological systems to attack civilian populations. Existing crimes against

humanity law can already reach murder, extermination, forcible transfer, persecution and other inhumane acts committed through environmental means. The main deficits are visibility, charging practice, investigative capacity and an express legal vocabulary. Those deficits are serious, but they are capable of correction.

The proposed classification must remain exceptional. Severity, scale or duration, a grave civilian nexus, the widespread-or-systematic attack, State or organisational policy, knowledge, individual contribution and proof beyond reasonable doubt are cumulative safeguards. They prevent an international crime from becoming a general environmental code. They also prevent the opposite error: treating a policy of poisoning, dispossession or ecological destruction as less than an atrocity merely because its violence unfolds through air, water, soil and time.

Global environmental justice requires distribution, recognition, participation and repair. Crimes-against-humanity law cannot deliver all of them, and it should not claim to. Properly designed, however, it can name the most organised forms of environmental victimisation, activate duties beyond captured borders, individualise culpability, and support restorative remedies. Ecocide should protect the environment as such; crimes against humanity should protect populations attacked through the environment. Together with strong domestic regulation and human-rights enforcement, that dual framework offers a more honest law of planetary harm.

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⁵⁰ Office of the Prosecutor, Policy on Addressing Environmental Damage (n 16) 18-29; CETS No 228 (n 17) arts 5, 8, 9 and 45.

⁵¹ Rome Statute art 75; Lubanga reparations appeal (n 34) paras 33-48; CETS No 228 (n 17) arts 39 and 43.

⁵² Rome Statute art 121.