

# ECOCIDE LAW FAQs

**When is ecocide a crime?** The test proposed is either size or duration or impact (note this is a disjunctive test). These are the same parameters set out under the Environmental Modification Convention 1977.

**Is everyone guilty?** No. Ecocide law, as an international crime, is primarily concerned with persons of 'superior responsibility'; those who make decisions in their capacity as CEOs, directors, ministers, heads of state etc. A test case took place in the UK Supreme Court in 2011; see the Mock Ecocide Trial ([eradicatingecocide.com/the-law/mock-trial/](http://eradicatingecocide.com/the-law/mock-trial/)). Polly Higgins second Book, Earth is our Business, includes the indictments used in the trial and the Ecocide Act.

**Is ecocide caused by intent?** Rarely. It is not the intention of companies to destroy; the intent is usually for a company to maximise their business for profit. To establish whether ecocide has (or is likely to) occur is a matter of fact and evidence, not mental state of mind. For the purposes of ecocide law, if there is intent (or knowledge or recklessness, which is when the defendant knew it would cause harm but proceeded in any event), it is an aggravating feature for the purpose of sentence only. Thus, for an ecocide crime to be established, no intent is required to be proven in court unless it is to be relied upon for sentencing purposes. This is in line with many international pollution laws.

**Is it too early to put this law in place?** No. It is incumbent upon us to act now; this is a legacy issue.

**Is there any other time in history where something similar happened?** Yes. Before slavery was criminalised in 1833, 300 international agreements were implemented, with very little success, to suppress slavery. Many of these agreements lacked adequate institutions and procedures to ensure that they were enforced. Similarly with apartheid; Resolutions were passed in the United Nations, motions and declarations written and signed, nations publicly condemned and signed a Convention, but none of it stopped apartheid. Finally, apartheid was upheld as an international Crime Against Humanity. The rule of law means very little until and unless those who cause the harm or injustice can be held to account and the harmful activities (and the decision-making that leads to the harm) are outlawed.

**What is naturally occurring ecocide?** An act of god (a legal term used to describe naturally occurring disasters) is not in itself a crime. Where a disaster occurs (or is about to occur) that causes significant harm, persons of superior responsibility are bound by a mandatory duty of care to assist where required. E.g. a Small Island State is threatened with severe loss and damage due to rising sea levels: any state leader who refuses to assist could be prosecuted in a criminal court of law.

**Is it easy to identify who to charge?** Most of the time. Most ecocides (but not all) are corporate-caused. However, nonhuman ecocides, such as rising sea-levels, do not lead to a prosecution in the same way; in this instance it is the failure to take action, for instance to give assistance, that can give rise to a prosecution.

**How does the crime of ecocide affect indigenous rights?** By making ecocide a crime, many communities that previously had no support in law to prevent mass damage and destruction shall be protected by the law. Ecocide law puts in place the legal duty that upholds indigenous rights for their territories. Where a company causes ecocide, or is threatening to cause an ecocide, the state must intervene.

**Why have a crime when an individual can sue?** Without ecocide law the state has no duty to act on your behalf (i.e. prosecute) which means you have to take the case yourself (costly) and even if you win (remedies are usually limited to fines only), the company can do the same again. Civil remedy does not prohibit, pre-empt or prevent. Criminal law does; where a state has a duty to prohibit, pre-empt or prevent ecocide, it has a duty to prosecute. As the law stands at the moment in many countries, the interests of the shareholders come first, usually to maximise profit.

**Is ecocide law anti-development?** Ecocide law is pro-development. Yes it prohibits dangerous industrial activity that causes significant harm, but it also places a mandatory duty on governments, business and finance to ensure all industry is non-harmful on a major scale. In other words, by law governments, business and banks shall prioritise e.g. clean energy generation and production, creating many more jobs in the process. Investors shall have a level playing field, helping to facilitate non-harmful economies with investments moving from e.g fossil fuels to renewables.

**Will criminalising ecocide stop all ecocide?** We still have theft, yet we would not think of revoking the law of theft; what we do have is the opportunity to put in place a route to justice. Likewise for genocide. Once genocide became an international crime, the normative flipped. Instead of being a norm (where there were not laws to stop it), genocide is now an exception. By criminalising a moral wrong, we prohibit a legal wrong. It provides the legal tools for lawyers to act and speak on behalf of those harmed, and society at large no longer deems it acceptable for the crime to take place.

**What about the many decisions by many of us that contribute to ecocide?** Under the international criminal law principle of 'superior responsibility', the few who make major decisions that can cause harm on a widespread, long-term or severe basis are the individuals who are prosecuted. Ecocide law goes to the source, identifying the few key decision makers whose decisions adversely impact many. Ecocide law does not prosecute end-users (who often have little or no choice).

How can ecocide law help environmental non-governmental organisations (NGO's)? Where NGO's (and individuals) are speaking out about ecological injustices, there is missing law. As recent litigation demonstrates, what is in existence at the moment does not stop significant harm. Many NGO campaigners and environmental defenders risk arrest in the course of their pursuit of justice. Ecocide law gives them the support of law.

How will ecocide law affect businesses that already have effective monitoring systems in place? Those businesses that are already ensuring their businesses cause no harm shan't be touched by a law of ecocide. What ecocide law does do is ensure that best practice standards are the same for all businesses; previously voluntary or soft provisions are reinforced by ecocide law and what was once voluntary becomes mandatory enforcement. Businesses that already have effective monitoring systems in place shall have first mover advantage in the market place.

What are the immediate political and economic implications? Ecocide law disrupts an existing system. Amongst other things, ecocide law shall ensure our economies are service-led rather than ownership-driven; our businesses shall have an overriding legal duty of care rather than putting profit before people and planet; and our governments shall by law be required to switch to non-harmful policies.

Will any countries object to ecocide law? Possibly. What matters is whether the state is a signatory to the Rome Statute - if not, there is no say. Likewise, for states that stand to benefit from the protected status afforded by ecocide law; if not a signatory, they have no locus. Thus only those that are signatories can vote for ecocide law, and gain the support of the law of ecocide when required (some states will want to join so that they have the support of ecocide law).

Who can vote to make ecocide a crime? Each member State of the Rome Statute (there are currently 123) has the right to vote to have ecocide included as an international crime. When 83 member States support an amendment to the Rome Statute to include the crime of ecocide, it becomes law.

Can ecocide law bind other non-signatory countries? Yes, in certain circumstances. Universal jurisdiction for international crimes committed by non-signatories has been upheld, most famously by the UK House of Lords when crimes against humanity were lodged by a Spanish lawyer against General Pinochet when he visited the UK in 1998.

Will it take a long time to get countries to agree to its implementation? This depends on political will. All nations can pass emergency laws overnight and past experience shows us that when a tipping point is reached, many countries come on board. Take the crime of genocide, signed-off under 3 years. Amending the Rome Statute is a fast-track and cannot be vetoed; it is much easier to amend a document than put in place a legally toothless Treaty, Convention or Agreement.

Could the continuing amendment process of the crime of aggression be an obstacle? Only if it is used politically as a barrier by those who do not want to support ecocide law. Or, it could be a benefit; we can pre-empt the hurdles.

Could signatory states who do not want ecocide law withdraw from the Rome Statute? Maybe. Until ecocide law is tabled, it is impossible to gain-say whether States would threaten to leave on the basis that they wish to continue committing the crime of ecocide. However, all signatories support the prosecution of the 'most serious offences known to man' - to object to ecocide pre-supposes that a state no longer adheres to the shared values.

Is implementation of an international crime of ecocide a challenge? Indeed. Whilst originally there was a lot of support when it was first included in the Rome Statute, now there is a shrinking democratic space. Yes our challenge may be greater, but all the more reason to act.

Will leaders agree to being held to account? Ultimately a head of State (or Minister) is accountable to their people and depends on their support. A government policy based on preventing harm is strengthened by ecocide law.

How can we prevent ecocide law from being rendered toothless? There are a number of ways. Ensuring all documents are in the public domain; building support from diverse and numerous organisations, individuals and communities; ensuring the intent behind the law remains visible and inviting many others to become advocates for ecocide law.

Does Ecocide law apply to climate change? Yes. Ecocide law, whilst it specifically addresses the source of the harm, can rely on evidence that is climate related to establish the harm. Climate change related evidence is often a symptom of ecocide (eg data to show excess greenhouse emissions from Carbon Major industries).

Can the International Criminal Court expand and strengthen its remit? Yes. Expanding its remit with ecocide law strengthens the power of the Rule of Law as it was originally meant to be. There is a historical premise for ecocide within the UN that lends legitimacy; ecocide was originally drafted into the Rome Statute, the governing document of the International Criminal Court. Many states had supported its inclusion previously. Moreover, many countries such as Small Island States that are not signatories to the Rome Statute will have good reason for joining - to be protected by the crime of ecocide. To reinstate ecocide as the missing 5th Crime Against Peace is to ensure that the original intent of the Rome Statute to prevent significant harm - and thus promote global peace - is fully realised.