

*Ecocide and New Paradigms: Protecting Our Environment through Criminal Law*

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**Kariuki Muigua**

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**Ecocide and New Paradigms: Protecting Our Environment through Criminal Law**

**Kariuki Muigua\***

**Abstract**

*Environmental crimes have been identified as a major threat to environmental sustainability. Recognizing ecocide as an international crime is therefore an essential protective and preventive deterrent to severe and either widespread or long-term harm to ecosystems as a result of environmental crimes. Creating and prosecuting the international crime of ecocide can therefore enhance efforts towards protecting our environment through criminal law. This paper critically discusses the need to create and prosecute the international crime of ecocide. The paper argues that the environment is facing increasing threats that amount to environmental crimes. The paper further argues that strengthening criminal law is necessary in enhancing environmental protection. It conceptualizes the crime of ecocide and posits that it is necessary to adopt and prosecute this crime in order to protect our environment through criminal law.*

**1.0 Introduction**

The natural environment has been described as the foundation of our health and well-being<sup>1</sup>. The environment gives us clean air, water, food, materials and space for recreation<sup>2</sup>. Further, it has been noted that spending time in nature is good for our mental health<sup>3</sup>. It has been argued that if we do not take care of the planet, its climate and ecosystems, we undermine how our societies function, worsen our lives and, perhaps most directly, harm our own well-being<sup>4</sup>. Protecting the environment is therefore humanity's fundamental obligation.

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\* PhD in Law (Nrb), FCI Arb (Chartered Arbitrator), OGW, LL. B (Hons) Nrb, LL.M (Environmental Law) Nrb; Dip. In Law (KSL); FCPS (K); Dip. in Arbitration (UK); MKIM; Mediator; Consultant: Lead expert EIA/EA NEMA; BSI ISO/IEC 27001:2005 ISMS Lead Auditor/Implementer; ESG Consultant; Advocate of the High Court of Kenya; Professor at the University of Nairobi, Faculty of Law; Member of the Permanent Court of Arbitration (PCA) [May, 2024].

<sup>1</sup> European Environment Agency., 'Editorial – Caring for the Environment is Caring for Ourselves' Available at <https://www.eea.europa.eu/en/newsroom/editorial/editorial-caring-for-the-environment#:~:text=It%20gives%20us%20clean%20air,harm%20our%20own%20well%2Dbeing.> (Accessed on 30/05/2024)

<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Ibid

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It has been pointed out that the environment is facing increasing threats including the triple planetary crisis of climate change, biodiversity loss, and pollution<sup>5</sup>. Sustainability has therefore been advanced as an ideal towards protecting the environment<sup>6</sup>. It seeks to create and maintain the conditions under which humanity and nature can exist in productive harmony to support present and future generations<sup>7</sup>. This ideal is captured under the concept of Sustainable Development which seeks to foster development that meets the needs of the present without compromising the ability of future generations to meet their own needs<sup>8</sup>. Sustainable Development aims to promote sustainability by embracing an integrated approach towards development that takes into consideration environmental conservation along with economic and social development<sup>9</sup>.

The United Nations *2030 Agenda for Sustainable Development*<sup>10</sup> sets out the global vision for protecting the environment. It seeks to protect the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action to combat climate change, so that it can support the needs of the present and future generations<sup>11</sup>. The agenda envisions attainment of the ideal of Sustainable Development through 17 Sustainable Development Goals (SDGs) which seek to strike a balance between social, economic and environmental facets of

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<sup>5</sup> United Nations Environment Programme., 'The Triple Planetary Crisis: Forging a New Relationship Between People and the Earth' Available at <https://www.unep.org/news-and-stories/speech/tripleplanetary-crisis-forging-new-relationship-between-people-and-earth> (Accessed on 30/05/2024)

<sup>6</sup> Ibid

<sup>7</sup> United States Environmental Protection Agency., 'What is Sustainability?' Available at <https://www.epa.gov/sustainability/learn-about-sustainability> (Accessed on 30/05/2024)

<sup>8</sup> World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

<sup>9</sup> United Nations., 'Sustainability' Available at <https://www.un.org/en/academic-impact/sustainability> (Accessed on 03/04/2024)

<sup>10</sup> United Nations General Assembly., 'Transforming Our World: the 2030 Agenda for Sustainable Development.' 21 October 2015, A/RES/70/1., Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 30/05/2024)

<sup>11</sup> Ibid

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sustainability<sup>12</sup>. Achieving the 2030 Agenda for Sustainable Development is vital in protecting the environment.

It has been argued that in order to bolster environmental protection, it is imperative to recognize and prosecute environmental crimes by strengthening environmental criminal law<sup>13</sup>. Environmental crimes have been identified as a major threat to environmental sustainability<sup>14</sup>. Recognizing ecocide as an international crime is therefore an essential protective and preventive deterrent to severe and either widespread or long-term harm to ecosystems as a result of environmental crimes<sup>15</sup>. Creating and prosecuting the international crime of ecocide can therefore enhance efforts towards protecting our environment through criminal law.

This paper critically discusses the need to create and prosecute the international crime of ecocide. The paper argues that the environment is facing increasing threats that amount to environmental crimes. The paper further argues that strengthening criminal law is necessary in enhancing environmental protection. It conceptualizes the crime of ecocide and posits that it is necessary to adopt and prosecute this crime in order to protect our environment through criminal law.

### **2.0 The Growth of Environmental Crimes**

According to the United Nations Environment Programme (UNEP), there has been a rise in environmental crimes all over the world posing a threat to peace and security, Sustainable Development and environmental rule of law<sup>16</sup>. UNEP further notes that

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<sup>12</sup> Ibid

<sup>13</sup> United Nations Environment Programme., 'Environmental Crime' Available at <https://www.unep.org/news-and-stories/story/environmental-crime> (Accessed on 30/04/2024)

<sup>14</sup> Ibid

<sup>15</sup> United Nations., 'To accelerate, via Diplomatic Convening and Building of Cross-Sector Networks and Collaborations, the Introduction of Enhanced and Enforceable Legal Protections for Water ("Ecocide Law") into International, National and Regional Legislative Frameworks' Available at <https://sdgs.un.org/partnerships/accelerate-diplomatic-convening-and-building-cross-sector-networksand-collaborations> (Accessed on 30/05/2024)

<sup>16</sup> United Nations Environment Programme., 'Environmental Crime' Op Cit

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abuse of the environment is the fourth largest criminal activity in the world costing up to \$258 billion<sup>17</sup>. It is estimated that environmental crimes are increasing by five to seven per cent every year and converging with other forms of international crime<sup>18</sup>. Environmental crimes are therefore a growing threat to peace, security and stability<sup>19</sup>.

The environment is often jeopardised and harmed during armed hostilities and conflict situations and reduced to a silent casualty of war<sup>20</sup>. Armed hostilities and conflict situations often lead to environmental degradation or destruction, with long-lasting effects that contribute to the increased vulnerability of the affected populations<sup>21</sup>. They cause environmental damage, leading to food and water insecurity, loss of livelihoods, and biodiversity loss<sup>22</sup>. Parties to armed hostilities and conflict situations often adopt tactics that damage the environment such as polluting water resources, torching down crops and forests, poisoning soils, and killing animals in order to gain military advantage<sup>23</sup>.

The environment therefore continues to be a silent victim of armed hostilities and conflict situations worldwide<sup>24</sup>. For example, Russia's invasion of Ukraine has led to many far-reaching environmental abuses: for instance, the seizure of the Chernobyl nuclear disaster site has mobilized radioactive dust and increased detectable radiation which may

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<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> Ibid

<sup>20</sup> Palarczyk. D., 'Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment' *Criminal Law Forum.*, Volume 34, pp 147-207 (2023)

<sup>21</sup> Geneva Environment Network., 'Protecting the Environment in Armed Conflict' Available at <https://www.genevaenvironmentnetwork.org/resources/updates/protecting-the-environment-inarmed-conflict/> (Accessed on 31/05/2024)

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> United Nations Environment Programme., 'Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law' Available at [https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict\\_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&%3BisAllowed=](https://wedocs.unep.org/bitstream/handle/20.500.11822/7813/-Protecting%20the%20Environment%20During%20Armed%20Conflict_An%20Inventory%20and%20Analysis%20of%20International%20Law-2009891.pdf?sequence=3&%3BisAllowed=) (Accessed on 31/05/2024)

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spread radioactive material into new areas<sup>25</sup>. The war continues to pose ongoing environmental risks associated with the unprecedented militarisation of nuclear sites, threats associated with air quality and solid waste management from the devastation of towns and cities<sup>26</sup>. In addition, the ongoing Israel-Hamas armed conflict is resulting in environmental damage and fueling the climate crisis<sup>27</sup>. It has been noted that carbon dioxide emissions from aircraft missions, tanks and fuel from other vehicles, as well as emissions generated by making and exploding the bombs, artillery and rockets to sustain the conflict are resulting in pollution and could worsen the problem of climate change<sup>28</sup>. The impacts of climate change such as sea level rise, drought and extreme heat were already threatening water supplies and food security in the region and the ongoing armed conflict could make the situation more severe<sup>29</sup>.

In addition, it has been pointed out that maritime environmental crimes are perpetrated in every part of the ocean and include a vast array of activities, mostly related to ship-source pollution, particularly accidental and willful oil discharges, which are a major threat to the marine environment and human health, accounting for most of the oil pollution in the ocean<sup>30</sup>. Maritime environmental crimes are one of the main causes of destruction of marine ecosystems and devastation of marine life<sup>31</sup>. It has been noted that these crimes take place across the whole shipping sector, from unseaworthy vessels

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<sup>25</sup> Palarczyk. D., 'Ecocide Before the International Criminal Court: Simplicity is Better Than an Elaborate Embellishment' Op Cit

<sup>26</sup> Weir. D., & Denisov. N., 'Assessing Environmental Damage in Ukraine' Available at [https://zoinet.org/wp-content/uploads/2018/01/Ukraine-assessing-environmental-damage\\_EN.pdf](https://zoinet.org/wp-content/uploads/2018/01/Ukraine-assessing-environmental-damage_EN.pdf) (Accessed on 31/05/2024)

<sup>27</sup> The Guardian., 'Emissions from Israel's war in Gaza Have 'Immense' effect on Climate Catastrophe' Available at <https://www.theguardian.com/world/2024/jan/09/emissions-gaza-israel-hamas-warclimate-change> (Accessed on 31/05/2024)

<sup>28</sup> Ibid

<sup>29</sup> Ibid

<sup>30</sup> Becker-Weinberg. V., 'Recognition of Maritime Environmental Crimes within International Law' Available at <https://www.cambridge.org/core/books/environmental-rule-of-law-for-oceans/recognition-of-maritime-environmental-crimes-within-international-law/E6C169B342301A3112330D0E14957964> (Accessed on 31/05/2024)

<sup>31</sup> Ibid

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engaged in illegal, unreported and unregulated fishing, to oil tankers and luxury cruise liners<sup>32</sup>.

Environmental crime has been ranked as the world's third most lucrative criminal business after drugs and counterfeit goods, and ahead of human trafficking<sup>33</sup>. The rising global scarcity of natural resources attracts transnational criminal organisations which are rapidly shifting from traditional criminal activities to the illegal trade in natural resources<sup>34</sup>. It has been noted that these organisations have diversified into the lucrative business of natural resources such as tropical timber, endangered species, waste and natural minerals and metals among others<sup>35</sup>. These activities are associated with money laundering, human trafficking and the murder of indigenous peoples<sup>36</sup>.

Environmental crimes are therefore on the rise all over the world. Environmental crimes can be defined as a grave act against the environment that results in the infringement of the right of citizens to a clean and healthy environment<sup>37</sup>. These crimes include wildlife crimes, pollution crimes, illegal fishing, illegal logging, and illegal mining<sup>38</sup>. Environmental crimes are a serious and growing global concern, leading to the near extinction of valuable wildlife species, and significantly impacting on the ecological integrity of the planet<sup>39</sup>. These crimes contribute to environmental degradation, which in turn affects the quality and quantity of environmental resources<sup>40</sup>. They also worsen the

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<sup>32</sup> Ibid

<sup>33</sup> European Law Institute., 'ELI Report on Ecocide' Available at [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Report\\_on\\_Ecocide.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Ecocide.pdf) (Accessed on 31/05/2024)

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Kamweti. D et al., 'Nature and Extent of Environmental Crime in Kenya' Available at <https://www.eldis.org/document/A67815> (Accessed on 31/05/2024)

<sup>38</sup> List of Environmental Crimes: Examples and Types., Available at <https://airly.org/en/list-of-environmental-crimes-examples-types/#:~:text=The%20list%20of%20environmental%20crimes,illegal%20fishing%2C%20and%20illegal%20logging> (Accessed on 31/05/2024)

<sup>39</sup> Kamweti. D et al., 'Nature and Extent of Environmental Crime in Kenya' Op Cit

<sup>40</sup> Ibid



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triple planetary crisis of climate change, pollution, and biodiversity loss. For example, the trade in endangered species not only puts their survival at risk but it also deprives humanity of natural resources for their own survival and damages biodiversity<sup>41</sup>. Further, greenhouse gas emissions due to activities such as armed hostilities and conflicts, deforestation, and pollution contributes to climate change threatening sustainability<sup>42</sup>.

In light of these challenges, it has been argued that there is need for positive developments and new solutions to crimes and harms affecting the environment<sup>43</sup>. It has been suggested that there is need to introduce ecocide as the fifth international crime in order to strengthen environmental protection through criminal law<sup>44</sup>. It has been noted that currently, environmental regulation is only dealt with through civil courts<sup>45</sup>. However, civil law can be inadequate in protecting the environment due to its limited remedies that include injunctions, damages, compensation, and environmental restoration orders<sup>46</sup>. Large corporations can get away with such remedies and continue with acts that harm the environment<sup>47</sup>. However, under criminal law, individuals of superior responsibility can be prosecuted, creating a genuine deterrent to environmental damage and enhancing environmental protection<sup>48</sup>.

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<sup>41</sup> Vervaele. J., & van. Uhm. D., 'Criminal Justice and Environmental Crime: How to Tackle Organized Crime and Ecocide?' Available at <https://www.penal.org/en/criminal-justice-and-environmental-crime-how-tackle-organized-crime-and-ecocide> (Accessed on 31/05/2024)

<sup>42</sup> Ibid

<sup>43</sup> Higgins. P., Short. D., & South. N., 'Protecting the Planet after Rio - The Need for a Crime of Ecocide' Available at <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/09627251.2012.751212.pdf> (Accessed on 31/05/2024)

<sup>44</sup> Ibid

<sup>45</sup> Khimba. J., & Dyson. C., 'Stop Ecocide: Change the Law' Available at <https://www.themarinediaries.com/tmd-blog/stop-ecocide-change-the-law> (Accessed on 31/05/2024)

<sup>46</sup> Ibid

<sup>47</sup> Ibid

<sup>48</sup> Ibid

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Despite the transnational and intergenerational character of the harmful activities against the environment including depletion of the ozone layer, pollution of oceans and seas, deforestation, and environmental degradation as a result of armed hostilities and conflict situations, many of these activities have not been criminalized<sup>49</sup>. It has been pointed out that in most national, regional, and international legal frameworks, the environment and natural resources are viewed as state property to be exploited for the economic growth of nations rather than being viewed as an essential life condition<sup>50</sup>. This approach towards the environment is generally strongly rooted in anthropocentric and materialistic worldviews and ignores harmful activities that may jeopardize the environment and the future of the planet<sup>51</sup>. It is therefore necessary to introduce ecocide in order to protect our environment through criminal law.

### **3.0 Towards Ecocide as an International Crime**

Ecocide has been defined as the extensive destruction, damage to or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of that territory has been severely diminished<sup>52</sup>. It has also been defined as mass damage and destruction of ecosystems and severe harm to nature which is widespread or long-term<sup>53</sup>. Further, ecocide can also be understood as adverse alterations, often irreparable, to the environment – for example through nuclear explosions, chemical weapons, serious pollution and acid rain, or destruction of the rain forest – which threaten the existence of entire populations, whether deliberately or with criminal negligence<sup>54</sup>. It has also been suggested that ecocide consists of acts which

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<sup>49</sup> Vervaele, J., & van. Uhm. D., 'Criminal Justice and Environmental Crime: How to Tackle Organized Crime and Ecocide?' Op Cit

<sup>50</sup> Ibid

<sup>51</sup> Ibid

<sup>52</sup> Mwanza. R., 'Enhancing Accountability for Environmental Damage under International Law: Ecocide as a Legal Fulfilment of Ecological Integrity' *Melbourne Journal of International Law.*, Volume 19 (2), (2018)

<sup>53</sup> Stop Ecocide International., 'What is Ecocide?' Available at <https://www.stopecocide.earth/what-is-ecocide> (Accessed on 31/05/2024)

<sup>54</sup> The Promise Institute for Human Rights., 'International Criminal Law & the Protection of the Environment' Available at <https://promiseinstitute.law.ucla.edu/wp-content/uploads/2022/02/Report-of-the-Expert-Workshop-ICL-and-environment-v2.pdf> (Accessed on 31/05/2024)

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threaten the security of the planet by causing widespread, long-term and severe damage to the air, atmosphere, earth, water, aquatic environment, fauna or flora or their ecological function; or death, permanent disability or serious incurable disease to a population or if they dispossess a population the long-term of their land, territory or resources<sup>55</sup>.

It has been noted that the concept of ecocide relates to descriptions of ecological harm; how such harm is or might be criminalised within a given legal system; and in a way that includes principles of eco-justice<sup>56</sup>. It refers to actions whereby specific ecosystems experience harm to the extent that their ecological integrity is damaged<sup>57</sup>. Ecocide therefore refers to serious destruction of or damage to the environment at substantial scale<sup>58</sup>. Ecocide covers acts of environmental damage and degradation including greenhouse gas emissions, deforestation, biodiversity loss, water pollution, soil depletion, overfishing, industrial farming, and oil spills<sup>59</sup>. It criminalises any activity leading to widespread, long-term or severe loss, damage or destruction of ecosystems, including ways of life dependent on those ecosystems<sup>60</sup>. Ecocide covers all unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts<sup>61</sup>.

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<sup>55</sup> Ibid

<sup>56</sup> Medlock. F., & White. R., 'Ecocide, Ecocentrism and Social Obligation' Available at [https://www.elevenjournals.com/tijdschrift/ELR/2022/3%20\(incomplete\)/ELR-D-22-00018/fullscreen](https://www.elevenjournals.com/tijdschrift/ELR/2022/3%20(incomplete)/ELR-D-22-00018/fullscreen) (Accessed on 31/05/2024)

<sup>57</sup> Ibid

<sup>58</sup> Ibid

<sup>59</sup> Khimba. J., & Dyson. C., 'Stop Ecocide: Change the Law' Op Cit

<sup>60</sup> Ibid

<sup>61</sup> Killean. R., 'The Benefits, Challenges, and Limitations of Criminalizing Ecocide' Available at <https://theglobalobservatory.org/2022/03/the-benefits-challenges-and-limitations-of-criminalizing-ecocide/> (Accessed on 31/05/2024)

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It has been argued that there is need to introduce and prosecute ecocide as the fifth international crime<sup>62</sup>. Until recently, acts of ecocide have been considered as individual problem and individual states were responsible to deal with them within their boundaries<sup>63</sup>. However, it has been noted that these acts result in massive destruction and damage to the environment including mass extinction and loss of biodiversity, ecological collapse and climate change<sup>64</sup>. Acts of ecocide not only result in the loss of human lives but also leave irreparable damage to ecosystems<sup>65</sup>. These acts therefore pose a major threat to humanity, human rights and social justice and have long lasting environmental consequences<sup>66</sup>. It is therefore necessary to introduce ecocide as an international crime. It has been argued that introducing ecocide as an international crime will strengthen environmental protection through criminal law by imposing an international and trans-boundary duty of care on any person or persons exercising a position of superior responsibility, without exemption, in either private or public capacity to prevent the risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s)<sup>67</sup>; and creating a law with criminal sanctions when the actions of individuals or corporations create a risk of and/or actual extensive damage to or destruction of or loss of ecosystem(s)<sup>68</sup>.

Recognizing ecocide as a core international crime may prevent humanity from the effects armed hostilities and conflict situations as well as protect the environment from being damaged<sup>69</sup>. Ecocide has been described as an essential protective and preventive

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<sup>62</sup> Sarkar. U., 'Ecocide- Protection of Environment: An International Crime' Available at <https://thelawbrigade.com/wp-content/uploads/2021/12/Utsa-Sarkar-IJLDAI.pdf> (Accessed on 31/05/2024)

<sup>63</sup> Ibid

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> Higgins. P., Short. D., & South. N., 'Protecting the Planet after Rio - The Need for a Crime of Ecocide' Op Cit

<sup>68</sup> Ibid

<sup>69</sup> Van Uhm. D., '22 Atrocity Crimes and Ecocide: Interrelations between Armed Conflict, Violence, and Harm to the Environment' Available at <https://academic.oup.com/edited-volume/42558/chapterabstract/357099488?redirectedFrom=fulltext> (Accessed on 31/05/2024)

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deterrent to severe and either widespread or long-term harm to ecosystems<sup>70</sup>. It has been argued that by adopting and prosecuting the crime of ecocide, the environment will gain its lost importance which has been sidelined due to overexploitation by human beings for economic advantages<sup>71</sup>. In addition, this will strengthen national efforts towards protecting the environment through criminal law<sup>72</sup>. Recognizing ecocide as an international crime will also foster prosecution of environmental crimes that fall outside national laws therefore strengthening transboundary environmental protection<sup>73</sup>. Adopting ecocide will result in the expansion of international accountability for environmental harms<sup>74</sup>. It has been noted that the crime of ecocide extends the possibility of prosecutions for environmental damage beyond the context of war, therefore enabling individuals to be prosecuted for harms such as ocean damage through oil spills, deforestation, land and oil contamination, and air pollution<sup>75</sup>. This will strengthen environmental protection by contributing to a growing consciousness of the need to prevent and meaningfully address the harms perpetrated against the natural world<sup>76</sup>. Further, introducing ecocide as an international crime, will foster impartiality and independence in prosecution of environmental crimes by international institutions such as the International Criminal Court (ICC)<sup>77</sup>. It has been noted that prosecuting such crimes at a national level may not be effective since large corporations causing and benefiting from environmental damage could exert political influence and gain favourable outcomes from national courts and therefore continue to perpetrate acts of

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<sup>70</sup> United Nations., 'To accelerate, via Diplomatic Convening and Building of Cross-Sector Networks and Collaborations, the Introduction of Enhanced and Enforceable Legal Protections for Water ("Ecocide Law") into International, National and Regional Legislative Frameworks' Op Cit

<sup>71</sup> Sharma. K., 'Ecocide: Will it be the Fifth International Crime' Available at <https://www.sconline.com/blog/post/2021/11/26/ecocide/> (Accessed on 31/05/2024)

<sup>72</sup> Ibid

<sup>73</sup> Ibid

<sup>74</sup> Killian. R., 'The Benefits, Challenges, and Limitations of Criminalizing Ecocide' Op Cit

<sup>75</sup> Ibid

<sup>76</sup> Ibid

<sup>77</sup> Why is an International Crime of Ecocide Necessary?., Available at <https://internationallaw.blog/2023/06/01/why-is-an-international-crime-of-ecocide-necessary/#:~:text=International%20criminalisation%20of%20the%20most,not%20captured%20by%20this%20crime> (Accessed on 31/05/2024)

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environmental damage<sup>78</sup>. Ecocide cases are likely to involve powerful government officials, or corporate leaders, who have considerable influence to intimidate, sway or suppress prosecutions at a national level<sup>79</sup>. Prosecuting such crimes through a neutral international forum is therefore necessary to strengthen environmental protection through criminal law<sup>80</sup>.

Despite the ideal of criminalizing ecocide towards strengthening environmental protection through criminal law, it also been noted that introducing the crime of ecocide as an international crime is likely to face challenges related to amending the Rome Statute<sup>81</sup>. Further, it has been pointed out that states who are not party to the Rome Statute would be exempted from the new crime therefore limiting the scope of ecocide<sup>82</sup>. Further, since environmental harms can be slow to materialize, ecocide is likely to throw up a range of challenges surrounding proving causality and responsibility, and gathering evidence therefore raising implementation challenges<sup>83</sup>. It is imperative to address these concerns in order to effectively introduce and embrace ecocide towards protecting our environment through criminal law.

#### **4.0 Conclusion**

Environmental crimes are growing all over the world posing a threat to peace and security, Sustainable Development and environmental rule of law<sup>84</sup>. The environment is facing increasing threats from armed hostilities and conflict situations, wildlife crimes, pollution crimes, illegal fishing, illegal logging, illegal mining, and maritime crimes among other environmental crimes<sup>85</sup>. These crimes contribute to environmental degradation, which in turn affects the quality and quantity of environmental resources

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<sup>78</sup> Ibid

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Killian. R., 'The Benefits, Challenges, and Limitations of Criminalizing Ecocide' Op Cit

<sup>82</sup> Ibid

<sup>83</sup> Ibid

<sup>84</sup> United Nations Environment Programme., 'Environmental Crime' Op Cit

<sup>85</sup> Ibid

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and further worsen the triple planetary crisis of climate change, pollution, and biodiversity loss<sup>86</sup>. As a result, it has been argued that there is need to introduce the crime of ecocide in order to strengthen environmental protection through criminal law<sup>87</sup>.

Introducing ecocide will strengthen environmental protection by safeguarding the environment during armed hostilities and conflict situations<sup>88</sup>; strengthening environmental rule of law at national, regional and global levels<sup>89</sup>; ensuring prosecution of environmental crimes that fall outside national jurisdiction<sup>90</sup>; expanding international accountability for environmental harms<sup>91</sup>; and fostering impartiality and independence in prosecution of environmental crimes by international institutions such as the International Criminal Court<sup>92</sup>. There have been proposals towards amending the Rome Statue of the International Criminal Court (ICC) in order to create an international crime of ecocide<sup>93</sup>. If these proposals are implemented, ecocide would become the fifth category of offences to be prosecuted under the court, alongside war crimes, crimes against humanity, genocide, and the crime of aggression<sup>94</sup>. The inclusion of ecocide as a fifth international crime will strengthen environmental protection through criminal law<sup>95</sup>. It is therefore necessary to fast track efforts towards amending the Rome Statue of the ICC in order to introduce and prosecute the crime of ecocide. It is also necessary for the amendment to improve the legal definition, nature, and scope of ecocide to cover all acts identified as unlawful and dangerous for the environment, or which results or are likely

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<sup>86</sup> Kamweti. D et al., 'Nature and Extent of Environmental Crime in Kenya' Op Cit

<sup>87</sup> Higgins. P., Short. D., & South. N., 'Protecting the Planet after Rio - The Need for a Crime of Ecocide' Op Cit

<sup>88</sup> Van Uhm. D., '22 Atrocity Crimes and Ecocide: Interrelations between Armed Conflict, Violence, and Harm to the Environment' Op Cit

<sup>89</sup> Sharma. K., 'Ecocide: Will it be the Fifth International Crime' Op Cit

<sup>90</sup> Ibid

<sup>91</sup> Killean. R., 'The Benefits, Challenges, and Limitations of Criminalizing Ecocide' Op Cit

<sup>92</sup> Why is an International Crime of Ecocide Necessary?., Op Cit

<sup>93</sup> United Nations Environment Programme., 'Observations on the Scope and Application of Universal Jurisdiction to Environmental Protection' Available at [https://www.un.org/en/ga/sixth/75/universal\\_jurisdiction/unep\\_e.pdf](https://www.un.org/en/ga/sixth/75/universal_jurisdiction/unep_e.pdf) (Accessed on 31/05/2024)

<sup>94</sup> Ibid

<sup>95</sup> Sharma. K., 'Ecocide: Will it be the Fifth International Crime' Op Cit

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to result in severe, long-term, irreparable, or irreversible damage to the environment<sup>96</sup>. It is necessary to adopt and prosecute the crime of ecocide in order to enhance efforts towards protecting our environment through criminal law.

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<sup>96</sup> Otunge. D., 'ELI Report should Inspire Africa into Speedy Action Against Ecocide' Available at <https://scienceafrica.co.ke/2023/03/08/eli-report-should-inspire-africa-into-speedy-action-against-ecocide/> (Accessed on 31/05/2024)



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