

ECOCIDE IN PAKISTAN: COMPARING THE FEASIBILITY OF A DOMESTIC ECOCIDE LAW TO INTERNATIONAL LAW

BRESHNA RANI

Breshna Rani is a Barrister in England & Wales. She graduated from the City St George's, University of London with a specialisation in international law and is currently working as an advocate in the UK. Her primary interests include international criminal law, international human rights law and international humanitarian law.

ABSTRACT

The international community has debated the introduction of an international environmental crime for decades. Notwithstanding the international debate, many States have assumed responsibility for protecting their environment through domestic ecocide laws. While the major focus of the global ecocide discourse has been on advocating for an international environmental crime, this paper seeks to advocate for the introduction of environmental crime in domestic jurisdictions. The limitations and challenges of introducing ecocide internationally mean that States, especially climate-vulnerable and developing States like Pakistan, should introduce a domestic legal framework to prosecute environmental crime within their jurisdiction and protect its environment without primary dependence on international legal mechanisms.

KEYWORDS: Ecocide, International Criminal Law, Environmental Law, Pakistan, Developing States, Pollution, Environmental Degradation.

1. INTRODUCTION

At the 55th session of the UN Human Rights Council in March 2024, the UN Special Rapporteur on Human Rights and the Environment, David Boyd, shared his experiences of meeting a grandmother in Slovenia who had lost many relatives to industrial pollution, a mother in Chile who was frightened to send her children to school because of the mass poisoning caused by industrial pollution and another mother in the United Kingdom (UK) who

lost her 9-year-old daughter to air pollution.¹ The discourse on the environment often refers to figures or the broader impact of its destruction on the community, but these individual accounts around the world closely illustrate how lives are impacted, signifying the cruciality of environmental protection.

There are currently more than 2000 international treaties and conventions concerning the protection of the environment.² However, consistent compliance with these obligations is absent, which hampers progress in decelerating the rate of environmental degradation. The international community requires a more stringent mechanism to deal with environmental concerns beyond multilateral negotiations and treating environmental regulation through civil law. An example of such a proposition is an environmental crime or ‘ecocide’.³

‘Ecocide’ refers to the extensive destruction of an area’s natural environment.⁴ At present, it is not recognised as an international crime but is recognised as a domestic crime in a few jurisdictions. There has been an ongoing debate for over a decade about the possibility of incorporating it as the fifth crime under the Rome Statute of the International Criminal Court (ICC).⁵ In 2019, at the 18th session of the Assembly of States Parties (ASP) to the Rome Statute of the ICC, Vanuatu invited States Parties to consider criminalising acts that could constitute ecocide.⁶ A few years later, Vanuatu, joined by other Pacific Islands of Fiji and Samoa, formally proposed the inclusion of ecocide as the fifth core crime of the Rome Statute to the Court’s Working Group on

¹ United Nations, ‘17th Meeting- 55th Regular Session of Human Rights Council’ (UN Web Tv, 6 March 2024) <http://webtv.un.org/en/asset/k1g/k1gva0r5dq> accessed 30 April 2024.

² Université Laval, ‘International Environmental Agreements Database Project’ <https://www.ica.ulaval.ca/en> accessed 18 December 2024.

³ Tasneem Kausar, ‘International Environmental Crime: Concept, Scope and Possibility’ (2001) 1 Pakistan Law Review 106.

⁴ ‘Ecocide’ (*Cambridge Dictionary*) <https://dictionary.cambridge.org/dictionary/english/ecocide> accessed June 2023.

⁵ Rome Statute of the International Criminal Court (adopted on 17 July 1998) 2187 UNTS 3 (‘Rome Statute’).

⁶ John H. Licht,

‘Statement by H.E. John H. Licht, Ambassador of the Republic of Vanuatu to the European Union General Debate, 18th ICC ASP’ *ICC Legal Tools Database* (7 December 2019) <https://www.legal-tools.org/doc/uqwj4qhw/> accessed 10 December 2024.

Amendments.⁷ At the 23rd ASP in December 2024, Vanuatu also stated the law is supported by many key players, including ‘national proposals in multiple jurisdictions’ reinforcing the proposition of this article that many States have assumed responsibility for protecting their environment by legislating an ecocide crime.⁸ Further to this, recently, the ecocide bill has passed its first reading in Azerbaijan,⁹ whereas ecocide bills have been proposed in the parliaments of Italy and Peru.¹⁰

This article evaluates the feasibility of introducing a domestic crime of ecocide in Pakistan by drawing comparisons with the subsequent introduction and implementation of ecocide in international criminal law. It assesses the practicability and utility of a crime of ecocide in domestic jurisdictions, encouraging States to be self-sufficient in protecting their environment rather than waiting for international consensus on the matter. The first section looks at the pretext for criminalising ecocide. The second section focuses on examining ways to introduce and prosecute it at the ICC. This overview is important to identify the gaps and challenges that currently exist at the ICC, which necessitates States to consider introducing ecocide in domestic law. The third section is a case study focusing on Pakistan to illustrate that even in a developing, climate-vulnerable State, the introduction and enforcement of ecocide laws can be both feasible and beneficial at the State level.

⁷ International Criminal Court Assembly of States Parties ‘Report of the Working Group on Amendments’ (2024) ICC-ASP/23/26, 20 https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-26-ENG.pdf.

⁸ Ralph Regenvanu, ‘Statement by Hon. Ralph Regenvanu, Vanuatu’s Special Envoy on Climate Change and the Environment, 23rd ICC ASP’ (*ICC Legal Tools Database*, 3 December 2024) https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP23-GD-VUT-3-12-ENG.pdf accessed 10 December 2024.

⁹ Stop Ecocide International, ‘Ecocide Bill Passes First Reading in Azerbaijan’ (*Stop Ecocide International*, 8 October 2024) <https://www.stopecocide.earth/2024/ecocide-bill-passes-first-reading-in-azerbaijan> accessed 10 December 2024.

¹⁰ Stop Ecocide International, ‘Bill to Criminalise ‘Ecocide’ Proposed in Italy’ (*Stop Ecocide International*, 13 September 2024) <https://www.stopecocide.earth/breaking-news-2023/bill-to-criminalise-ecocide-proposed-in-italy> accessed 10 December 2024; ‘Two New Ecocide Bills Presented in Peru’s Parliament’ (*Stop Ecocide International*, 30 June 2024) <https://www.stopecocide.earth/2024/two-new-ecocide-bills-presented-in-perus-parliament> accessed 10 December 2024.

1.1. Why Should Ecocide be Criminalised?

Between 1962 and 1971, the United States (US) used 60 litres of ‘Agent Orange’ during the Vietnam War. This chemical, classified as a herbicide, was deployed with the primary purpose of defoliating forests and destroying crops ‘to remove ariel cover and food supplies to the North Vietnamese and Allied Forces.’¹¹ The chemical has had long-lasting impacts, including causing birth defects, skin diseases, cancer, and more.¹² Similarly, the Deepwater Horizon oil spill in 2010 caused thousands of chronic respiratory cases, with some people being diagnosed with cancer.¹³ In 2016, a palm oil plant in Guatemala released high levels of agricultural insecticide into the river, resulting in the extermination of 23 species of fish which affected the local community.¹⁴ More recently, the Amazon wildfires in 2022 were of an alarming scale.¹⁵

These are a few examples of why the world must recognise ecocide as a crime. The term ‘ecocide’ was coined during the 1972 United Nations Conference on the Human Environment in Stockholm. Olaf Palme, the Swedish Prime Minister at the time, described the act of using harmful chemicals causing ecological destruction by the US during the Vietnam War as ecocide.¹⁶

In 1991, the International Law Commission (ILC) proposed a new crime of ‘wilful and severe damage to the environment’ under Article 26 of the proposed Draft Code of Crimes Against the Peace and Security of Mankind

¹¹ Michael G. Palmer, ‘The Case of Agent Orange’ (2007) 29(1) Contemporary Southeast Asia 172-195.

¹² Doug Ashburn, ‘Dow Chemical Company’ (*Britannica Money*, 10 December 2024) <https://www.britannica.com/topic/Dow-Chemical-Company> accessed 10 December 2024.

¹³ Sara Sneath, ‘They Cleaned up BP’s Massive Oil Spill. Now they’re Sick and Want Justice’ *The Guardian* (London, 20 April 2023) <https://www.theguardian.com/environment/2023/apr/20/bp-oil-spill-deepwater-horizon-health-lawsuits> accessed 9 June 2024.

¹⁴ Carlos Chavez, ‘Guatemala’s La Pasi3n River is Still Poisoned, Nine Months after an Ecological Disaster’ (*Mongabay*, 1 February 2016) <https://news.mongabay.com/2016/02/guatemalas-la-pasion-river-> accessed June 2023.

¹⁵ Chris Greenberg, ‘Amazon rainforest fires 2022: Facts, causes, and climate impacts’ (*Greenpeace*, 5 September 2022) <https://www.greenpeace.org/international/story/55533/amazon-rainforest-fires-2022-brazil-causes-climate/> accessed 9 June 2024.

¹⁶ Gladwin Hill, ‘US at UN Parley on Environment, Rebukes Sweden for ‘Politicizing’ Talks’ *The New York Times* (New York, 8 June 1972) <https://www.nytimes.com/1972/06/08/archives/us-at-un-parley-on-environment-rebukes-sweden-for-politicizing.html> accessed 18 December 2024.

(Draft Code).¹⁷ Only three countries went on record to completely oppose the inclusion of this crime, namely the Netherlands, the UK, and the US, while States like Australia, Austria and Belgium suggested amendments to make Article 26 more inclusive.¹⁸ The UK's position was that 'it would be extending international law too far to characterise such damage as a crime against the peace and security of mankind',¹⁹ whereas the US said Article 26 was 'perhaps the vaguest of all the articles' and that it failed 'to consider fully the existing and developing complex treaty framework concerning the protection of the environment'.²⁰ While there were justified reasons for opposing the introduction of environmental crime by the US and UK, there was nevertheless potential to work collectively and address the concerns of abstaining States, but this did not occur. Later, in 1996, the ILC withdrew the reference to Article 26 on environmental crime from the Draft Code without any recorded reasoning,²¹ and in 1998, the number of core crimes in the Rome Statute was reduced to four.²² This appears to be a missed opportunity to protect the environment under international criminal law.

In 2020, the Stop Ecocide Foundation formed an Independent Expert Panel (IEP) to create a legal definition of ecocide. The IEP comprised of 12 lawyers from around the globe specialising in criminal law, environmental and climate law.²³ The IEP defined ecocide as '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'.²⁴

¹⁷ Yearbook of the International Law Commission (1991) Volume 2 Part II A/CN.4/SER.A/1991/Add.1, 94-107.

¹⁸ Yearbook of the International Law Commission (1995) Volume 2 Part I A/CN.4/SER.A/1995/Add.1.

¹⁹ Yearbook of the International Law Commission (1993) Volume 2 Part I A/CN.4/448 and Add.1, 102.

²⁰ *ibid* 105.

²¹ Yearbook of the International Law Commission (1996) Volume 2 Part II A/CN.4/SER.A/1996/Add.1 (Part 2), 50.

²² Saloni Malhotra 'The International Crime That Could Have Been but Never Was: An English School Perspective on the Ecocide Law' (2017) 9 *The International Journal of Vrije Universiteit Amsterdam* 49.

²³ Stop Ecocide International, 'Independent Expert Panel for the Legal Definition of Ecocide Commentary and Core Text' (*Stop Ecocide Foundation*, June 2021) <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d1e6e604fae2201d03407f/1624368879048/SE+Foundation+Commentary+and+core+text+rev+6.pdf> accessed 27 June 2023.

²⁴ *ibid*.

The IEP also expanded the definition of each term. For example, under the proposed legal definition, ‘environment’ means ‘the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere as well as outer space’.²⁵ The definition succinctly covers all systems of the earth and forestalls ambiguity without narrowly limiting it to specific acts. Others argue that the omission of any underlying acts in the definition potentially clashes with the principle of legality,²⁶ i.e., that if an act or omission did not constitute a criminal offence under national or international law, an individual must not be accused or convicted of it.²⁷

The key indicators that distinguish environmental harm from ecocide are severity and either widespread or long-term damage to the environment. The term ‘wanton’ means ‘reckless disregard for damage which would be excessive concerning the social and economic benefits anticipated’.²⁸ However, some have criticised this as taking away the symbolic value of ecocide, acknowledging that humans can, in some instances, legitimately cause environmental damage for social or economic benefit.²⁹

The diverging academic positions on the elements of the crime already illustrate the challenges in reaching a consensus. Other international movements to recognise ecocide as an international crime include the End Ecocide on Earth Initiative, a non-governmental organisation (NGO) which defines ecocide as ‘extensive damage or destruction which would have for consequence a significant and durable alteration of the global commons or Earth’s ecological systems’.³⁰ This article supports the authoritative legal definition proposed by the IEP and uses it as the basis for its discussion while

²⁵ *ibid.*

²⁶ Matthew Gillett, ‘A Tale of Two Definitions: Fortifying Four Key Elements of the Proposed Crime of Ecocide’ (*Opinio Juris*, 20 June 2024) <http://opiniojuris.org/2023/06/20/a-tale-of-two-definitions-fortifying-four-key-elements-of-the-proposed-crime-of-ecocide-part-i/> accessed 23 June 2024.

²⁷ International Committee of the Red Cross, ‘The Principle of Legality’ (*ICRC*) Volume II, Chapter 32, Section N, Rule 101 <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule101> accessed 19 November 2024

²⁸ Stop Ecocide International (n 23) article 8 ter 2(a).

²⁹ Liana Gerogjeva Minkova, ‘The Fifth International Crime: Reflections on the Definition of “Ecocide”’ (2023) 25(1) *Journal of Genocide Research* 62.

³⁰ End Ecocide, ‘What is Ecocide?’ (*End Ecocide*), <https://www.endecocide.org/en/what-is-> accessed 9 June 2024.

cognisant of its aforementioned criticisms.³¹ The Pacific Islands States, in their proposal at the 23rd Session of ASP, have also adopted the IEP's definition and expanded on its commentary.³²

2. OVERVIEW OF INTERNATIONAL LEGAL MECHANISMS

2.1. The International Criminal Court (ICC)

The ICC's subject matter jurisdiction is limited to the Rome Statute's core crimes of genocide, crimes against humanity (CAH), war crimes, and the crime of aggression.³³ Currently, the only reference in the Rome Statute to the environment is in Article 8(2)(b)(iv), which lists among the activities constituting a war crime the act of intentionally launching an attack in the knowledge that such attack will cause 'widespread, long-term and severe damage to the natural environment'.³⁴ The reference is specific to environmental harm committed during a state of war and does not suffice to cover ecocide caused during peacetime. I consider two ways in which ecocide can be tried at the ICC: firstly, by leveraging the positions outlined in Article 7 of the Rome Statute,³⁵ and secondly, through an amendment to the Rome Statute.

2.1.1. Article 7 Discretion of the ICC

Article 7(1) of the Rome Statute defines CAH as acts committed as part of a widespread or systematic attack directed against any civilian population with knowledge of the attack.³⁶ Apart from the listed activities in paragraphs (1)(a) to (1)(j), Article 7(1)(k) allows for wide discretion to consider 'other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health' as CAH.³⁷ As the phrase 'other

³¹ Kevin Jon Heller, 'Skeptical Thoughts on the Proposed Crime of "Ecocide"' (*Opinio Juris*, 23 June 2021) <http://opiniojuris.org/2021/06/23/skeptical-thoughts-on-the-proposed-crime-of-ecocide-that-isnt/> accessed 16 June 2024.

³² ICC ASP (n 7) Annex II.

³³ Anja Gauger, 'Ecocide is the missing 5th Crime Against Peace' (2013) Human Rights Consortium, School of Advanced Study University of London https://sas-space.sas.ac.uk/4830/1/Ecocide_research_report_19_July_13.pdf accessed 22 June 2024.

³⁴ Rome Statute (n 5) art 8(2)(b)(iv).

³⁵ *ibid* art 7.

³⁶ *ibid* art 7(1).

³⁷ *ibid* art 7(1)(k).

inhumane acts' is broad, if any action that is directed against a civilian population eventually causes environmental harm, ecocide can be prosecuted as a CAH.

In *Prosecutor v Zdravko Tolimir*,³⁸ the International Criminal Tribunal for the former Yugoslavia (ICTY) decided that while the *actus reus* (the act constituting the crime)³⁹ for CAH requires the crime to be a widespread or systemic attack directed against a civilian population, the 'victims of the underlying crime do not have to be civilians.'⁴⁰ Consequently, the environment can be an unintentional but justified victim for the purposes of prosecution.

However, this can prove complex. The Office of the Prosecutor (OTP) would need to establish *mens rea* (the intent or knowledge that one possesses when perpetrating a crime)⁴¹ to commit harm against the civilian population, with the effect on the environment constituting an 'inhumane act' under Article 7(1)(k). Ecocide can be prosecuted at the ICC as an inhumane act of CAH under Article 7(1)(k) of the Rome Statute in cases where, for example, an individual attempts to displace people from their homes by affecting their source of income or depriving them of means of agriculture as their primary source of food. Similar impacts could include deliberate water-source contamination, affecting access to water for livelihoods, sanitation and hygiene. In such cases, both the civilian population and the environment are victims of the CAH.

2.1.2. Amending the Rome Statute of the International Criminal Court

A second approach is that of the Stop Ecocide Foundation, now also proposed by the Pacific Islands States, which is to amend the Rome Statute to include a separate prosecutable crime of ecocide. A specific amendment to the Rome Statute was recommended as the IEP stressed that 'the Statute addresses crimes that are deemed to be of international interest and relevance,

³⁸ *Prosecutor v Zdravko Tolimir* (2015) Case No. IT-05-88/2-A.

³⁹ Rome Statute (n 5) art 25(3).

⁴⁰ *Prosecutor v Zdravko Tolimir* (n 38) [141]-[142].

⁴¹ Rome Statute (n 5) art 30.

and the time has come to extend the protections for serious environmental harm, already recognised to be a matter of international concern'.⁴² Vanuatu asserted the amendment is required to deal with grave cases of environmental harm in times of peace.⁴³ The principal differences between the suggested ecocide provision recommended by the Stop Ecocide Foundation and the Pacific Islands States (as discussed above) with the existing Article 7 of the Rome Statute are the elements of 'foreseeability' in the suggested article and committing an act with the knowledge of 'substantial likelihood' under Article 7, which creates a lower evidentiary threshold for ecocide than CAH. Similarly, with an amendment, the environment can be the sole victim of a crime; a nexus does not have to be drawn with harm to a civilian population.

Article 121(2) and 3 of the Rome Statute require the ASP to vote on whether to take up the proposal for amendment at the next meeting. The adoption of an amendment requires a consensus or a two-thirds majority of States Parties where consensus cannot be reached.⁴⁴ There is no update yet as to when the proposal could be considered. It is also notable that if consensus is not reached but a two-thirds majority is reached to introduce ecocide as a fifth crime in the future, the court cannot exercise its territorial jurisdiction on States Parties that voted against the amendment, nor on the State Party's nationals, the limited jurisdiction would leave another gap in the effective implementation of the proposed crime.⁴⁵

2.1.3. Limitations of prosecuting ecocide at the International Criminal Court

Despite the avenues discussed above, there are several limitations posed by prosecuting ecocide at the ICC. The two main limitations include an absence of appropriate penalties and issues with attribution.

⁴² Stop Ecocide Foundation (n 23).

⁴³ Ralph Regenvanu (n 8).

⁴⁴ Rome Statute (n 5) art 121(2), (3).

⁴⁵ *ibid* art 121(5).

a. *Absence of Penalties*

As per Article 77 of the Rome Statute, the penalties available to the ICC are imprisonment, fines, and forfeiture of the proceeds of the crime.⁴⁶ If ecocide is prosecuted under Article 7(1)(k), the remedies will not provide appropriate means of reparation for the effects of the crime, such as environmental remediation. If an amendment is to be made to the Rome Statute, its effectiveness hinges on a concurrent amendment to Article 77 allowing for additional sanctions such as environmental remediation and injunctions, which are better suited to deal with environmental damage.⁴⁷

b. *Attribution of Ecocide*

Attributing criminal acts raises questions about modes of liability. Article 25(3)(a) of the Rome Statute States that a person can be liable for acts committed by another person.⁴⁸ Article 28(b) provides that a superior would be liable for crimes ‘committed by subordinates under his or her effective authority and control’.⁴⁹ Many recommend that ecocide should be a strict liability crime,⁵⁰ i.e., a crime where the prosecution is not required to prove *mens rea* and ‘guilt can be established by the commission of an act (and not the intent behind it).’⁵¹ Establishing intent is essential to prove ecocide because if the ICC prosecutes ecocide through Article 7(1)(k), proving CAH requires an element of intent and knowledge.⁵²

⁴⁶ *ibid* art 77.

⁴⁷ Parliamentarians for Global Action, ‘Modernising the International Criminal Court: Crimes against the Environment, Trafficking in Human Beings, Hybrid Justice and Corporate Accountability’ (*Parliamentarians for Global Action*, 2022) <https://www.pgaction.org/pdf/2022/report-expanding-the-jurisdiction-of-the-icc.pdf> accessed 27 June 2023.

⁴⁸ Rome Statute (n 5) art 25(3)(a).

⁴⁹ *ibid* art 28(b).

⁵⁰ **Tarini Mehta, ‘Accountability for Environmental Destruction–Ecocide in National and International Law (Part II) The Way Forward’ (*Opinio Juris*, 29 September 2020), [⁵¹ Christopher Sykes, ‘Strict Liability’ \(*Lexis Nexis Practice Notes*\) <https://www.lexisnexis.co.uk/legal/guidance/strict-liability> accessed 8 June 2024.](https://opiniojuris.org/2020/ accessed 24 June 2024.</p>
</div>
<div data-bbox=)**

⁵² Rome Statute (n 5) art 7(1).

Similarly, the Stop Ecocide Foundation definition includes an element of knowledge, and Article 30(1) of the Rome Statute States that a person would only be criminally liable if the acts were committed with intent and knowledge unless otherwise provided.⁵³ Thus, knowledge and attribution are inherently linked prerequisites for a successful ecocide prosecution.

3. A DOMESTIC ECOCIDE LAW IN PAKISTAN

3.1. Pakistan's Environmental Crisis

As per the World Climate Index, Pakistan is the 8th most vulnerable country to the impacts of climate change. This costs the economy approximately \$38 billion annually.⁵⁴ Many elements that worsen the climate change crisis are not in Pakistan's direct control, as the majority of global emissions are caused by countries like China, India and the US, which have the highest amount of carbon emissions.⁵⁵ Nevertheless, Pakistan is responsible for protecting its environment and nurturing it for a sustainable future by preventing domestic practices that degrade the environment.

Pakistan experiences significant environmental damage through illegal logging, contamination of water sources and air pollution. According to a 2010 study, around 250,000 tonnes of hazardous medical waste are annually produced by healthcare facilities and dumped without proper management.⁵⁶ In Karachi, 30% of deaths caused by gastro-intestinal diseases are caused by polluted water.⁵⁷ Similarly, in early 2023, toxic gas was discharged from factories in the Keamari district of Karachi, leading to the demise of 18

⁵³ *ibid* art 30(1).

⁵⁴ United Nations Development Programme, 'Resilience, Environment and Climate Change' (*UNDP Pakistan*) <https://www.undp.org/pakistan/environment-and-climate-change> accessed 15 April 2024.

⁵⁵ World Economics, 'Carbon Emissions' (*World Economics*) <https://www.world-economics.com/Indicator-Data/ESG/Environment/Carbon-Emissions/> accessed 18 December 2024.

⁵⁶ Ramesh Kumar, 'Healthcare Waste Management (HCWM) in Pakistan: Current Situation and Training Options' (2010) 22 *Journal of Ayub Medical College Abbottabad* 1010; Zalmay Azad, 'Unmanaged Hospital Waste Disposal Poses Grave Threats in Pakistan' *The Friday Times* (Islamabad, 20 March 2024) <https://thefridaytimes.com/20-Mar-2024/unmanaged-hospital-waste-disposal-poses-grave-threats-in-pakistan> accessed 26 November 2024.

⁵⁷ South Asia Co-operative Environment Programme, *Environmental legislation and institutions in Pakistan* (Colombo, 2001) 69 <http://www.sacep.org/pdf/Reports-Technical/2001-UNEP-SACEP-Law-Handbook-Pakistan.pdf> accessed 27 June 2023.

people.⁵⁸ A medical board confirmed in April 2023 that the ‘causative factor [of these deaths was] mainly environmental’, whereas the Sindh Environmental Protection Agency claimed that the deaths were caused by measles.⁵⁹ The release of the toxic gas was not only a crime against persons but a crime against the environment as well. While the Sindh High Court (SHC) is investigating the factory owners of the crime under charges of manslaughter and criminal negligence,⁶⁰ the examination of this incident does not extend to considering their impact on the environment under a criminal lens within the current trial.

Pakistan has passed several environmental laws and policies; they are cohesive laws built on strong foundations, but they fail to account for serious environmental harm that could constitute an ecocide. An ecocide law in Pakistan is imperative to combat environmental degradation. The existing legal framework can set the foundation for a new ecocide law. This section first recommends the foundations for a special criminal law on ecocide, how it would be different from mere environmental damage, and the threshold required to invoke criminal liability. It then conducts an overview of existing legal provisions in the environmental legal framework in Pakistan to determine gaps and how existing laws and procedures can assist lawmakers in developing new complex ecocide provisions.

3.2. Recommended Ecocide Legal Framework in Pakistan

At the regional level, the European Union issued a new Directive in 2024 for environmental crimes that are ‘comparable to ecocide’, which applies to all Member States.⁶¹ At the domestic level, several countries have adopted a domestic crime of ecocide or a more general ‘environmental crime’

⁵⁸ Azfar-ul-Ashfaq, ‘Toxic emissions from factories kill 18 in Keamari in two weeks’ *Dawn* (Karachi, 27 January 2023) (<https://www.dawn.com/news/1733832> accessed 27 June 2023).

⁵⁹ Imtiaz Ali, ‘Toxic gases, not measles, caused deaths in Karachi’s Keamari, rules Medical Board’ *Dawn* (Karachi, 6 April 2023), <https://www.dawn.com/news/1746063> accessed 6 October 2024.

⁶⁰ Naimat Khan, ‘Karachi factory owner arrested for manslaughter, negligence after 15 dead from suspected gas leak’ *Arab News* (Karachi, 30 January 2023) <https://arab.news/vx56j> accessed 15 April 2024.

⁶¹ Directive of the European Parliament and of the Council on the Protection of the Environment through Criminal Law (2024) PE-CONS 82/23 (Brussels, 13 March 2024) <https://data.consilium.europa.eu/doc/document/PE-82-2023-INIT/en/pdf> accessed 18 December 2024.

framework, such as Uzbekistan⁶² and Kyrgyzstan.⁶³ Kyrgyzstan introduced ecocide as a strict liability crime in 1997 under Article 374 of its Criminal Code. This penalises ‘massive destruction of the animal or plant kingdoms, contamination of the atmosphere or water resources, and commission of other actions capable of causing an ecological catastrophe, shall be punishable by deprivation of liberty for 12 to 20 years.’⁶⁴

There are two notable elements in Kyrgyzstan’s ecocide law: firstly, the definition identifies the non-human victims of the crime, i.e., animals, atmosphere and water resources. The open-ended term ‘ecological catastrophe’ leaves room for interpretation and overcomes the impracticality of introducing an exhaustive list of actions that can constitute an ecocide. Secondly, Kyrgyzstan’s definition of ecocide provides a strict punishment focused on the deprivation of liberty, i.e., imprisonment, which Pakistani environmental law does not currently provide for. Virtually most States that have ecocide law in their jurisdiction have incorporated it into their constitutional or criminal codes; however, the recommendation for Pakistan goes one step further and proposes a separate ecocide statute.

3.2.1. Defining the Environment and Ecocide

The Constitution of the Islamic Republic of Pakistan 1973 does not currently define the term ‘environment’.⁶⁵ However, the Pakistan Environmental Protection Act 1997 (PEPA) defines the ‘environment’ to include the following:

- (a) air, water and land.
 - (b) all layers of the atmosphere;
 - (c) all organic and inorganic matter and living organisms;
 - (d) the ecosystem and ecological relationships;
 - (e) buildings, structures, roads, facilities and works;
 - (f) all social and economic conditions affecting community life
- and

⁶² Criminal Code of Uzbekistan 1994, art 196 and 198.

⁶³ Criminal Code of the Kyrgyz Republic 2024, art 374.

⁶⁴ Ecocide Law, ‘Ecocide law in national jurisdictions’ (*Ecocide Law*) <https://ecocidelaw.com/existing-ecocide-laws/>, accessed 27 June 2023.

⁶⁵ Constitution of the Islamic Republic of Pakistan 1973.

(g) the inter-relationships between any of the factors in sub-clauses (a) to (f).⁶⁶

Alongside this, the IEP definition of the environment encompasses all of water, air, land and space.⁶⁷ It is nevertheless vague about what constitutes ‘ecocide’ without a reference to a non-exhaustive list of actions. At the domestic scale, a definition should contain a list of defined acts that incorporate the current understanding of the environment while also including open-ended language that leaves room for future developments. This was recommended by Dr. Matthew Gillett in his proposed definition of ecocide, such as ‘killing or harming, or removing protected flora or fauna’, ‘trafficking of dumping hazardous substances’ and more.⁶⁸

The statute can adopt simpler language to classify ‘ecocide’ or ‘environmental crime’ as actions that cause mass destruction or pollution of the environment or other actions that cause ecological disasters.⁶⁹ The term ‘ecological disaster’ leaves room for many interpretations. Dr Gillett’s proposed definition of ecocide provides for a similar unrestricted provision, i.e., ‘any other acts of a similar character where those acts involve unsustainable harm to the natural environment’.⁷⁰ This approach balances the need for legal certainty to combat crime with the need for flexibility to incorporate future developments.

3.2.2. Elements of the Crime

The proposed new law will distinguish between ecocide and environmental harm that invokes civil liability along the lines of severity, whether it is widespread or contained or whether its impact is in the short-term or the long-term, as recommended by the Stop Ecocide Foundation.

⁶⁶ Pakistan Environmental Protection Act 1997, s 2(x).

⁶⁷ Stop Ecocide Foundation (n 23).

⁶⁸ Matthew Gillett, *Prosecuting Environmental Harm before the International Criminal Court* (Cambridge University Press 2022) Chapter VI.

⁶⁹ Melly Aida, ‘Ecocide in the International Law: Integration Between Environmental Rights and International Crime and Its Implementation in Indonesia’ (2023) Proceedings of the 3rd Universitas Lampung International Conference on Social Sciences (ULICoSS 2022).

⁷⁰ *Opinio Juris*, ‘Dr Matthew Gillett’s Proposed Definition of Ecocide’ (*Opinio Juris*, 20 June 2024) <http://opiniojuris.org/wp-content/uploads/Dr-Matthew-Gilletts-Proposed-Definition-of-Ecocide.pdf> accessed 23 June 2024.

a. *Severity*

The IEP defines ‘severe’ damage as ‘damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources.’⁷¹ While the severity of each incident will be assessed on a case-by-case basis, if the matter involves very serious adverse changes to any element of the environment but does not have a long-term impact or is not widespread, it will not cross the threshold of environmental harm to become ecocide. It is additionally discussed below that upon establishing ecocide, various types of penalties should be part of the statute to address each incident according to the scale of severity and its level of impact, considering different levels of culpability and aggravating factors. This will make the law more comprehensive and act as an effective deterrent.

b. *Widespread*

The IEP defines ‘widespread’ damage as ‘damage which extends beyond a limited geographic area, crosses State boundaries, or is suffered by an entire ecosystem or species or a large number of human beings.’⁷² Pakistan’s ecocide statute can borrow this definition while omitting a reference to State boundaries and ensuring ‘widespread’ is not limited to a geographically widespread impact but also widespread in impact on livelihood in a small vicinity as well.

c. *Long-term*

The IEP defined long-term as ‘damage which is irreversible, or which cannot be redressed through natural recovery within a reasonable period.’⁷³ The IEP suggested that a ‘reasonable period’ will hinge on the circumstances of a case; the recovery time could vary depending on the extent of the damage, the resources present to assist in its natural recovery, and the state of the

⁷¹ Stop Ecocide Foundation (n 23).

⁷² *ibid* [2(a)(ii)].

⁷³ *ibid* [2(a)(iii)].

biological and chemical components of the environment.⁷⁴ A similar definition is recommended for the statute with a case-by-case determination of a reasonable period for the natural recovery of damage.

3.2.3. *Mens Rea*

In their proposed ecocide crime that utilises the IEP's definition of ecocide, the Pacific Islands States, take a different stance on *mens rea* whereby they propose a test of recklessness that requires knowledge of the substantial likelihood of severe and either widespread or long-term damage.⁷⁵ It focuses on the likelihood of harm rather than knowledge of actual harm. Presently, more than a dozen countries have included ecocide as a strict liability crime in their domestic laws.⁷⁶ A strict liability crime does not require the prosecutor to establish criminal intent or mental state to determine the offender's guilt.⁷⁷ It can help act as an effective deterrent against future incidents of ecocide.⁷⁸ It is proposed that ecocide in Pakistan should be a strict liability crime. The purpose of ecocide in Pakistan is to punish environmental catastrophes irrespective of one's intentions or knowledge, and liability should be based on the level and impact of the offence, as per the legal threshold.

José Destéfánis argued that a strict liability crime disregards the nature of human beings,⁷⁹ their ability to make mistakes and the absence of knowledge about the environment and the law. According to Destéfánis, being 'obsessed with risk prevention would sometimes justify the punishment of persons whose freedom, in the sense of knowledge, is absent.'⁸⁰ Although a rarity, Australia's Criminal Code has a defence to strict liability offences akin to that of a 'reasonable mistake of fact'.⁸¹ While this could, in some instances, protect

⁷⁴ K. Kindji, 'Assessing Reparation of Environmental Damage by the ICJ: A lost opportunity' (2019) 57 Questions of International Law 5 [3.2.2].

⁷⁵ Report of the Working Group on Amendments (2024) ICC-ASP/23/26 Annex II

⁷⁶ Ecocide Law (n 64).

⁷⁷ Daniel S. Nagin, 'Deterrence in the Twenty-First Century' (2013) 42(1) Crime and Justice 199.

⁷⁸ Rosemary Mwanza, 'Enhancing Accountability for Environmental Damage under International law: Ecocide as a Legal fulfilment of Ecological Integrity' (2018) 19 (2) Melbourne Journal of International Law 586.

⁷⁹ José Ignacio Destéfánis, 'Should Criminal Law Only Prevent Risks? On Strict Liability' (*Centre for Criminology Oxford*, 8 March 2024) <https://blogs.law.ox.ac.uk/centre-criminology-blog/blog-post/2024/03/> accessed 8 October 2024.

⁸⁰ *ibid.*

⁸¹ Commonwealth Criminal Act (1995) (Australia), s 9.2.

from the shortcomings of a strict liability offence, in practice, it will not be feasible because strict liability operates on the notion of securing conviction if the criminal act is proved despite intention or knowledge. In Pakistan, where environmental literacy is low, there is a potential for prosecution against individuals who were not reasonably aware of the severity and impact of their acts. The absence of knowledge can be raised as a mitigating factor at the sentencing stage and assist in imposing a fair penalty within the wide range of penalties discussed below; the mitigation can balance the shortcomings of a strict liability crime.

Another criticism of a strict liability approach is that it increases the burden of proof in proving the *actus reus*, requiring the responsible bodies to collect evidence and carry out effective investigations to prove the unlawful act was committed beyond a reasonable doubt.⁸² This is countered because the burden of proving the occurrence of the unlawful act and attributing it to the accused remains the same, with or without strict liability. *Mens rea* in the form of intention to harm the environment or knowledge of the likelihood of a large-scale harm can be extremely difficult to prove. A number of these actions are driven by financial gain rather than a specific motive of harming the environment, which furthers the case for a strict liability crime.

In 2005, England's Environment Agency recorded 50,000 environmental incidents; it adopted a strict liability model and 'conviction [was] the norm... [leading] to moderate fines.'⁸³ Since 2005, much has changed in the way data is collected and how the environment is regulated. In the Agency's 2022 review, the number of serious pollution incidents decreased, but the '5-year moving average still increased', whereas 114 environmental prosecution cases were brought by the Agency with fines totalling £4.8 million.⁸⁴ There is a lack of statistics illustrating whether strict liability crime has reduced criminality in developed States such as England that have stronger law enforcement;

⁸² W Wilson, *Making Environmental Laws Work: An Anglo-American Comparison* (Hart Publishing, Oxford 1999) 110.

⁸³ Dr. Michael Walson, 'The Enforcement of Environmental Law: Civil or Criminal Penalties?' (2005) 17(1) *Environmental Law and Management* 3.

⁸⁴ UK Government, 'Review of Activities Regulated by the Environment Agency 2022' (GOV.UK, 28 February 2024) <https://www.gov.uk/government/publications/> accessed 16 October 2024.

nevertheless, the strict liability model persists in many countries, and its benefits outweigh the downsides of the proposed law.

3.2.4. Penalties

The punishment for ecocide should be wide-ranging, with a combination of financial, punitive, and reparative measures. This approach is adopted in many jurisdictions. In February 2024, the European Union issued a new directive introducing various penalties for such cases, from imprisonment to heavy fines, and also requiring offenders to ‘reinstate the damaged environment and compensate for it’.⁸⁵ For example, perpetrators should be responsible for ‘restoring the environment in a given period.’⁸⁶ This can be in different forms, such as decontamination of water bodies or building waste disposal systems. The Directive then places an obligation for compensation if the damage cannot be rectified or if the perpetrator is unable to undertake such restoration.⁸⁷

Similarly, in India, the High Court of New Delhi ordered an offender who was responsible for discharging untreated effluents into the public sewer to plant 100 trees in the city along with a fine and a bank guarantee for 3 years for continued compliance with the Delhi Pollution Control Committee.⁸⁸ While the ‘polluter pays’ principle is an important principle in international environmental law (IEL) – i.e., that the cost of the pollution should be borne by those who produce it –⁸⁹ a purely financial penalty might not effectively deter large businesses and corporations that can afford the fine while maintaining high-profit margins gained through environmental harmful activities.

⁸⁵ European Parliament, ‘Environmental Crimes: MEPs adopt extended list of offences and sanctions’ (*European Parliament News*, 27 February 2024)

<https://www.europarl.europa.eu/news/en/press-room/> accessed 27 April 2024.

⁸⁶ Directive of the European Parliament and of the Council of 11 April 2024 on the Protection of the Environment Through Criminal Law (2024) PE/82/2023/REV/1 (Brussels, 11 April 2024), art 7.

⁸⁷ *ibid.*

⁸⁸ *Vikash Bansal v Delhi Pollution Control Committee* (2018) SCC OnLine Del 12523, 8

⁸⁹ Grantham Research Institute on Climate Change and the Environment, ‘What is the Polluter Pays Principle’, (*LSE*, 18 July 2022), <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-polluter-pays-principle/> accessed 14 October 2024.

Alternatively, prison sentences have proven to be more effective. For example, in the Australian case of *R v Dempsey*, ‘an actual period of prison custody was held to be likely to have a deterrent effect.’⁹⁰ Similarly, in 2016, the Spanish Supreme Court held the captain of an oil tanker liable to two years of imprisonment for reckless damage to the environment when the oil tanker sank off the coast of Spain, causing severe environmental damage in the process.⁹¹ Adopting this approach can be useful when navigating between different categories of penalties

In Bangladesh, the Environment Conservation Act 1995 provides for wide-ranging punishments listed in the statute.⁹² This approach is better than leaving punishments at the wide discretion of the judges on a case-to-case basis. The difficulty in wide-ranging punishments for a new law could be the challenge judges face in determining the extent of environmental harm. This might be more challenging in some cases where the immediate impact of the harm is not visible.⁹³ Furthermore, the absence of jurisprudence specifically on punishment for environmental crimes to assist judges can make the task more difficult. The area of law will slowly develop to address these different gaps, but the right approach at the outset is for the suggested statute to comprise wide-ranging penalties with appropriate sentencing guidelines for judges, which will help establish a balance between legal certainty and flexibility. Pakistan already follows this approach to some extent under section 17 of PEPA with several penalties,⁹⁴ but it later forms part of the discussion on how these existing penalties are not rigorous for ecocide.

3.2.5. Corporate Liability

Pakistan is not a party to the Rome Statute; therefore, even if the Rome Statute is amended to incorporate ecocide, it will not make any difference to Pakistan unless Pakistan accepts the jurisdiction of the ICC or if any foreign individual commits an environmental crime in Pakistan is a national of a State

⁹⁰ *Dempsey v R* (2002) QCA 45 (McPherson JA).

⁹¹ *Prestige* (2016) Spanish Supreme Court Ruling 865/2015.

⁹² Bangladesh Environment Conservation Act 1995, s 15.

⁹³ Prof. Dr. Gert Vermeulen & Wendy De Bondt, ‘Exploring the Potential of Criminal Law in Protecting the Environment’ (2013) 1(1) *Revista Eletronica de Direito Penal* 81.

⁹⁴ Pakistan Environmental Protection Act 1997, s 17.

Party to the Rome Statute. Furthermore, the ICC can only try ‘natural persons’ as opposed to legal persons such as corporations.⁹⁵ Some argue that it is imperative to include corporate criminal liability (CCL) to effectively prosecute ecocide at the ICC.⁹⁶ While this is another hurdle for the ICC, corporations are considered legal persons in Pakistan and can be prosecuted domestically, like in many other States.⁹⁷ For example, in 2016, the Environmental Court in Guatemala held an African corporation liable for ecocide as it contaminated the Pasión River and killed millions of fish, and severely affected over 20 different species of fish, reptiles, birds and mammals.⁹⁸ A similar model can be introduced under the proposed ecocide law in Pakistan, one that also exists in the current law.⁹⁹

3.3. Existing Environmental Law in Pakistan

In 2024, the 26th Amendment to the Constitution introduced a new fundamental right to a ‘clean, healthy and sustainable environment’ under Article 9A of the Constitution.¹⁰⁰ Before this, the right was interpreted under the right to life under Article 9.¹⁰¹ After the 18th Amendment to the Constitution’s removal of the Concurrent Legislative List from the Fourth Schedule, environmental protection fell under the legislative jurisdiction of the provincial governments as opposed to the federal government.¹⁰² Consequently, the provincial governments have enacted equivalent environmental protection statutes in their respective jurisdictions. However, Article 142(b) of the Constitution clarifies that the Parliament and the Provincial Assembly shall both have the power to make criminal law.¹⁰³ Therefore, an ecocide statute would be introduced at the federal level as a

⁹⁵ Rome Statute (n 5) art 25(1).

⁹⁶ Ricardo Pereira, ‘After the ICC Office of the Prosecutor’s 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide?’ (2020) 31 Criminal Law Forum 179.

⁹⁷ Pakistan Penal Code 1860, art 11; Pakistan Environmental Protection Act 1997, s 18.

⁹⁸ Cindy Woods, ‘The Guatemala Ecocide Case: What it Means for the Business and Human Rights Movement’ (*Due Process of Law Foundation*, 10 March 2016) <https://dplfblog.com/2016/03/10/the-guatemala-ecocide/> accessed 30 April 2024.

⁹⁹ Pakistan Environmental Protection Act 1997, s 18.

¹⁰⁰ The Constitution (Twenty-sixth Amendment) Act (2024), s 2.

¹⁰¹ *Shehla Zia v WAPDA* (PLD 1994 SC 693).

¹⁰² Furuza Pasatakia, ‘Environmental Protection and the Eighteenth Amendment’ (*IUCN Pakistan*, 2014) www.eia.nl/docs/mer/diversen/pos722-environmentalprotection-18amendment accessed 14 April 2024.

¹⁰³ Constitution of Pakistan (n 65), art 142(b).

criminal law. Nevertheless, exploring how the proposed ecocide law would work in conjunction with the existing environmental legal framework is pertinent.

3.3.1. Pakistan Environmental Protection Act 1997 and the Environmental Protection Tribunals

Section 14 of the PEPA prohibits actions that adversely affect the environment. As a foundation, similar actions can be incorporated in the ecocide statute and invoke criminal liability for ecocide once they pass the threshold of severity and either widespread or long-term damage, as recommended above.¹⁰⁴

The PEPA establishes the Pakistan Environmental Protection Agency (EPA) that administers the implementation of this act.¹⁰⁵ It also establishes a system of specialised Environmental Protection Tribunals and Environmental Magistrates.¹⁰⁶ These Tribunals can exercise both civil and criminal jurisdiction depending upon the cases they hear, whereas the Magistrates exercise criminal jurisdiction.¹⁰⁷ A judicial Magistrate can be granted the powers of an Environmental Magistrate and try instances of non-compliance with the orders of the Council of Federal or Provincial Environmental Agencies.¹⁰⁸ The Environmental Magistrate also has the exclusive capacity to try breaches of the provisions on handling hazardous substances and regulation of motor vehicles.¹⁰⁹ The PEPA has dedicated provisions that prohibit certain discharges and emissions, import of hazardous waste, etc. The text of the PEPA is sufficiently broad to account for various harmful activities for the environment. Section 2 defines some of these acts to include discharging hazardous waste, emissions from motor vehicles,¹¹⁰ and all others that cause adverse environmental effects.¹¹¹

¹⁰⁴ Pakistan Environmental Protection Act 1997, s 14.

¹⁰⁵ *ibid* s 5.

¹⁰⁶ *ibid* s 20.

¹⁰⁷ *ibid* ss 21(4), (5) and (6).

¹⁰⁸ *ibid* s 17(2).

¹⁰⁹ *ibid* ss 14 and 15.

¹¹⁰ *ibid* ss 11 and 15.

¹¹¹ *ibid* s 2(i).

In the presence of all these provisions, one might question the role and exigency of a separate ecocide law. There are three reasons for this: firstly, the proposed law seeks to deal with cases of a certain gravity, scale and effect that differentiates it from the existing law. Secondly, the current law is inadequate to penalise and deter cases that could constitute ecocide, as it omits a uniform approach and presents gaps that will impede the functionality of the proposed ecocide law.¹¹² Thirdly, the proposed law in the present time would not only be symbolic in the international community but would also bring greater awareness locally about the repercussions of grave environmental harm and the importance of protecting it.

a. *Lack of penalties*

Section 17 of PEPA 1997 provides for a range of penalties, starting with fines up to one million rupees, or one hundred thousand rupees, for some offences, such as for failure to comply with the license issued by the Federal Agency in the handling of hazardous substances.¹¹³ There is also a scope to impose an additional fine that may extend to one hundred thousand rupees for every day the failure to comply with Sections 11, 12, 13 or 16 of the PEPA. These provisions related to the prohibition of certain discharges or emissions, failure to conduct environmental impact assessment, prohibition of import of hazardous waste and breach of an environmental protection order (EPO), are only triable by the Environmental Protection Tribunal.¹¹⁴ The fines can adequately penalise for a certain scale of environmental damage, but due to their limit, it does not accommodate for serious breaches. Furthermore, some cases below prove that the enforcement of the fines, compared to the scale and duration of the breach, has been inadequate.

In *DG EPA vs Sheikh Yousaf*,¹¹⁵ the respondent was held guilty as his tannery was found to be polluting the environment by discharging untreated wastewater beyond the limit permitted.¹¹⁶ He also failed to close his tannery

¹¹² Maryam Umer Khayam, 'Decentralisation of Environment in Pakistan: Issues in Governance' (2020) 17(2) Policy Perspectives 101.

¹¹³ Pakistan Environmental Protection Act 1997, ss 17(1) and (2).

¹¹⁴ *ibid* ss 11, 12, 13 and 16.

¹¹⁵ *DG EPA vs Sheikh Yousaf* (2019 CLD 155).

¹¹⁶ *ibid*.

when an EPO was issued. He was only fined Rs 500,000 for non-compliance with the EPO. Later, his tannery was found to still be operational. Similarly, in *DG EPA v Messrs RB Poultry Farm No. 1*,¹¹⁷ the owner of the poultry farm was evading compliance with an EPO of six years requiring him to clean up the site, and he was fined Rs 500,000 after an extensive period of breaking a legal order.¹¹⁸ There is an absence of strict penalties that the Tribunal awards and can award under the legislation; corporations or individuals leading large businesses can easily afford to pay some of these fines without incurring a financial impact that creates a deterrent impact on them and the wider community.

The current discussion predominately focuses on PEPA, but the absence of strict penalties can also be seen in the Pakistan Penal Code 1860's (PPC) provisions relating to the environment. Section 277 of the PPC states that the fouling water of a public spring or reservoir will be punishable by imprisonment of up to three months or a fine of up to one thousand five hundred rupees or both.¹¹⁹ Furthermore, Section 278 of the PPC penalises making the atmosphere noxious to health with a fine of up to one thousand five hundred rupees.¹²⁰ The fines under both articles used to be five hundred rupees, but they were substituted and increased by the Criminal Laws (Reforms) Ordinance 2002.¹²¹ The penalty on these articles is outdated as it has not been subject to an amendment since 2002. In 2002, one thousand five hundred rupees was a decent sum to deter individuals, but over 20 years later, the sum is not significant and adjusted to account for inflation; therefore, it is not a deterrent penalty now, nor does it provide reparations for actions whose effects cannot always be reversed and has long term implications.

The Environmental Protection Tribunals and Magistrates have the power to pass a prison sentence of up to two years and even order a person to restore the environment at his own cost, but only if it is held to be a repeat offence.¹²² In the first instance, the existing law does not empower the Tribunals to

¹¹⁷ *DG EPA v Messrs RB Poultry Farm No. 1* (2018 CLD 1484).

¹¹⁸ *ibid.*

¹¹⁹ Pakistan Penal Code 1860, s 277.

¹²⁰ *ibid* s 278.

¹²¹ Criminal Laws (Reform) Ordinance 2002.

¹²² Pakistan Environmental Protection Act 1997, s 17(5).

impose a prison sentence. The provincial statutes of Sindh, Punjab, Balochistan and Khyber Pakhtunkhwa follow the same structure. This raises two concerns: firstly, despite the seriousness of an offence, the Tribunals are not at liberty to impose serious punishments such as a prison sentence in the first instance. Where one's liberty is not at risk despite the offence unless one repeats it, this can inadvertently build disregard for the environment. Secondly, the prison sentence time is also limited to two years in all provinces and three years in Sindh.¹²³ The severity of ecocide and massive impact require incarceration as a choice of penalty in the first instance, and a penalty limited to two or three years would not sufficiently penalise the grave offence nor be an effective deterrent. States such as Russia, Belgium, Georgia and Tajikistan have introduced the terms of imprisonment in their ecocide provisions to be up to 20 years as this adequately reflects the seriousness of the offence.¹²⁴ While the suggestion for Pakistan is to have a wide range of penalties, a long-term prison sentence within the range is crucial alongside higher fines, and the suggested ecocide law seeks to fill the existing gaps.

An amendment to the penalties within the existing law is an alternative, but due to the 18th Amendment, each province would have to initiate an amendment to their acts separately. This can be futile to the proposed law as some States might not reach a consensus to pass the law. It could be a long exercise to amend separate acts compared to one legislative process at the parliament and could limit the jurisdiction of ecocide within the nation. Reaching a consensus is already challenging under international law, and the division can be overcome feasibly locally.

b. *Environmental Protection Tribunals*

There are currently four Environmental Protection Tribunals in Pakistan situated Across Lahore, Karachi, Peshawar, and Quetta. As per the Ministry of Law and Justice Pakistan, only the Lahore Tribunal is fully operational, with the remaining only partially operational.¹²⁵ While there is no updated

¹²³ Sindh Environmental Protection Act 2014, s 22(5)(a).

¹²⁴ Criminal Code of Russian Federation 1996, art 358; Belgian Criminal Code 1967, art 96; Criminal Code of Georgia 1999, art 409; Criminal Code of Tajikistan 1998, art 400.

¹²⁵ Ministry of Law and Justice Pakistan, 'Environmental Protection Tribunal' (*Ministry of Law and Justice Pakistan*)

information on how active the Tribunals are at present, the presence of only four Tribunals creates an accessibility challenge. The proposed law does not give the Tribunal a specialised jurisdiction to conduct the case with the risk of impeding the progress of an ecocide case, leaving it dependent on the functionality of a Tribunal.

In the broad subject matter jurisdiction, the lack of uniformity comes in existence with the Environmental Protection Tribunals exercising exclusive jurisdiction in certain cases, whereas cases relating to the handling of hazardous substances and regulation of motor vehicles are exclusively triable by the Environmental Magistrates.¹²⁶ Both the Tribunals and Magistrates can hear cases of offences that are beyond their exclusive jurisdiction if there is a complaint in writing by any agency, government, or local council and aggrieved person under a certain time frame.¹²⁷ At the same time, only the Tribunal has the power to issue bailable arrest warrants for breaches that are exclusively triable by the Tribunal.¹²⁸ The effectiveness of the new proposed law would require uniformity. Currently, the division of subject matter jurisdiction between the Tribunal and Magistrate, whereby the Tribunal can issue arrest warrants if required, will not assist the functionality of the proposed law of ecocide. The Environmental Protection Tribunal would require a higher power of arrest in a situation where there is suspicion of ecocide based on the legal test, and the power to issue a warrant is not limited to contraventions of certain provisions relating to hazardous substances, emissions, failure to comply with an EPO and failure to complete environmental impact assessment.

c. *Environmental Protection Agencies*

The EPAs have a multifunctional role, from implementing the provisions of the legislation to establishing systems for surveillance, issuing licenses, certifying laboratories, aiding the government in natural disasters and more.¹²⁹

<https://molaw.gov.pk/Detail/ZDIzYmE2MWMtYTk3ZS00ZDFiLTlIMDktZjVjOGVlZGYwMmU3> accessed 10 December 2024

¹²⁶ Pakistan Environmental Protection Act 1997, s 24.

¹²⁷ *ibid* s 21(3).

¹²⁸ *ibid* s 21(7).

¹²⁹ *ibid* s 6.

While the wide functioning of the provincial EPAs illustrates their important functions, the role of the police is very limited despite such cases being dealt with under the Code of Criminal Procedure. The police provide assistance in the enforcement of the Acts.¹³⁰ In criminal cases, the police are usually the first point of contact and are responsible for the investigation unless the statute, such as the Environmental Protection Act, provides otherwise. Under the existing law, the EPAs are also responsible for the investigation of environmental issues,¹³¹ and are authorised to undertake searches with warrants issued by the Tribunal or a court.¹³²

The proposed ecocide law seeks to deal with severe cases of environmental harm. The involvement of the police will be important from the initial investigation stages, like in any other crime. Introducing ecocide would mean that EPAs do not have the exclusive responsibility to manage such cases. This could also work positively as police inherently have investigation training, including collecting witness evidence.¹³³ It has also been noted that ‘pursuing criminal prosecution of environmental offenders gives rise to the reluctance on the part of regulatory agencies to pursue more difficult cases.’¹³⁴ Because of their inherent serious, widescale or long-term impact, ecocide cases mean they could require more resources and investigation, and the role of the police can be useful in this regard. This was noted in Bangladesh, where the environmental courts closer link to the Department of Environment than the police was a barrier to ‘maximising capacity and encouraging collaboration’.¹³⁵ EPAs can work collaboratively and use their expertise on the subject to lead the case without undertaking the sole investigation responsibility.

One of the gaps in the PEPA and all provincial Environmental Protection Acts is that they only allow aggrieved persons or government agencies to

¹³⁰ The Environmental Tribunals (Procedure and Functions) Rules 2008, rule 22.

¹³¹ Pakistan Environmental Protection Act 1997, s 6(2)(a).

¹³² *ibid* s 7.

¹³³ Code of Criminal Procedure 1898, s 161.

¹³⁴ Amin Rosencranz and Videh Upadhyay, ‘Some Suggestions and recommendations towards a Model State Pollution Control Board (SPCB) in India’ (2011) 1 *Environmental Law and Practice Review* 106, 113.

¹³⁵ Sarker Faroque, ‘Law-Enforcement Challenges, Responses and Collaborations Concerning Environmental Crimes and Harms in Bangladesh’ (2020) 66(4) *International Journal of Offender Therapy and Comparative Criminology* 389.

bring a case before the Tribunals.¹³⁶ However, under the proposed ecocide law, anyone will be able to make complaints and bring a case. This crime should be introduced by being cognisant of a threshold that qualifies one to hold standing to bring a case, such as by geographical proximity, special interest in the case or impact suffered. Permitting individuals to bring a case invoking the protection of the environment creates more accessibility to cases that might usually be overlooked.

d. *Symbolic Value*

A law against ecocide holds symbolic value, illustrating a State's commitment towards criminalising serious harm to the environment. States such as Italy, which already have crimes against the environment in its penal code with comparatively stricter punishments than Pakistan, also want to strengthen their commitment towards the environment with a proposed ecocide bill.¹³⁷ The ecocide terminology gives it distinct importance and symbolic value while spreading greater awareness about gravely harming the environment and its stricter repercussions.

In *D.G. Khan Cement vs Government of Punjab*,¹³⁸ the Supreme Court of Pakistan referred extensively to the rights of nature.¹³⁹ Rights of nature, in one way, means the right of natural objects to be 'respected and allowed to exist, thrive and flourish for themselves and not for utilitarian purposes'.¹⁴⁰ The Court ruled against the installation of a plant affecting the local groundwater and affirmed that 'the environment needs to be protected in its own right'.¹⁴¹ The judgment also referred to the well-established precautionary principle of international environmental law (IEL), reflected in the Rio Declaration on Environment and Development 1992.¹⁴² The reference to IEL in this

¹³⁶ Pakistan Environmental Protection Act 1997, s 21(3).

¹³⁷ UN Food and Agriculture Organisation, 'Law 68-2015 Amending the Italian Criminal Code' (FAOLEX Database) <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC145750/> accessed 10 December 2024

¹³⁸ *D.G. Khan Cement Company Ltd v Government of Punjab* (2021 SCMR 384).

¹³⁹ *ibid.*

¹⁴⁰ Tolulope N. Ogboru, 'Recognising the Rights of Nature: How Have the Courts Fared?' (2024) 29(3) European Law Journal 445.

¹⁴¹ *D.G. Khan Cement Company Ltd* (n 138) [16].

¹⁴² Rio Declaration on Environment and Development 1992 31 ILM 874, Principle 10.

domestic judgment already shows Pakistan's inclination towards following IEL principles protecting the environment.¹⁴³ Much like Italy's, the proposed ecocide law could further Pakistan's commitment towards the environment.

3.3.2. Efficacy of Criminal Prosecution

An effective and potent criminal law must comprise four elements.¹⁴⁴ The first element is institutionalism, which entails a functioning executive that upholds the administration of justice. The second element is specificity, which demands that the law is unambiguous. The third element is uniformity, which requires a uniform application of the law. The fourth element is the penalty, which must be implemented consistently and be clear to ensure that individuals are aware of their consequential punishment if a crime is committed.¹⁴⁵ The proposed law would seek to meet these requirements with its codified structure defining ecocide, setting out a threshold of severity and widespread and a list of adequate punishments.

Nevertheless, despite the structure of the law, its efficacy depends on its implementation. Ecocide crimes will be prosecuted in the criminal court system, i.e., the Magistrates and the Sessions Courts. However, these Courts are already overburdened with significant backlogs and processing delays.¹⁴⁶ There is a paucity of data to determine how similar ecocide laws are unfolding in other States. Challenges such as a lack of eyewitnesses, the recording of evidence and procedural delays exist in India's environmental criminal legal framework – issues that might be replicated in Pakistan as well.¹⁴⁷ The proposed ecocide law in Pakistan would permit the Sessions Courts to take up such cases like any other criminal case without limiting the jurisdiction of

¹⁴³ Basel Convention on the Transboundary Movements of Hazardous Wastes and their Disposal (adopted on 22 March 1989) 1673 UNTS 125; United Nations Convention of the Law of the Sea (10 December 1982) 1833 UNTS 3.

¹⁴⁴ Hamza Hameed, 'A Study of the Criminal Law and Prosecution System in Pakistan' (*Manzil Pakistan*, October 2013) <https://manzilpakistan.org/pdf/Law-and-Justice-Study-on-Criminal-Prosecution.pdf> accessed 8 October 2024.

¹⁴⁵ *ibid*

¹⁴⁶ Muhammad Imran, 'Pendency of Cases in Pakistan: Causes and Consequences' (2024) 4(1) *Current Trends in Law and Society* 54.

¹⁴⁷ Sairam Bhat and Rohith R Kamath, 'Comparative Enforcement Mechanisms and Pinning of Liability in Environmental Crimes in India and Asia Pacific Region' (*Law Asia*, October 2022) <https://lawasia.asn.au/sites/> accessed 8 October 2024.

such crimes to only certain dedicated Environmental Protection Tribunals or Magistrates. As an ecocide law seeks to primarily focus on criminal prosecutions of the more serious cases of the environment that meet the criteria of widespread severity and impact, the division of cases also creates accessibility to Session Courts all around the country.

Dr. Martin Lau's assessment of the reported judgments under the criminal jurisdiction showed that the Environmental Protection Tribunals had not experienced a particular need for additional scientific or technical expertise.¹⁴⁸ This further encourages the idea of introducing environmental crime and extending its subject matter jurisdiction to all criminal courts like any other crime in Pakistan, as the need for separate technical expertise might not become an obstacle for the criminal courts. Experts are often required during criminal trials; therefore, when an ecocide case necessitates the use of experts, they can be instructed to assist the Court. The application or use of the proposed law would not be exclusive to the Tribunals or the Courts, but they can co-exist and adjudicate upon ecocide cases. The allocation of a case can depend on the jurisdiction and administrative factors, such as a particular court's capacity to deal with a case in the given time. The geographical limitation that inherently comes with domestic law is a feasible benefit compared to international law,¹⁴⁹ as the proximity that supports the ability to collect evidence, arrest alleged perpetrators and carry out investigations more smoothly.

Shafqat Masud conducted a study which highlights the barriers to implementing climate change policies in Pakistan, in which he predominantly concluded that the 'inability of federally administered climate change policy framework to merge with existing decentralised model, however, has created ineffective policy implementation'.¹⁵⁰ His study focused on the climate change framework and how it overlaps with the environmental legal framework, which experiences similar operational challenges. In Pakistan, there are

¹⁴⁸ Dr. Martin Lau, 'The Role of Environmental Tribunals in Pakistan: Challenges and Prospects' (2018) 20(1) Yearbook of Islamic and Middle Eastern Law Online 1 https://brill.com/view/journals/yimo/20/1/article-p1_2.xml accessed 18 December 2024.

¹⁴⁹ Mwanza (n 78)

¹⁵⁰ Shafqat Maud and Ahmed Khan, 'Policy Implementation Barriers in Climate Change Adoption: The Case of Pakistan' (2023) 34(1) Environmental Policy and Governance 42.

several agencies, dissected laws found in different sources and the enforcement authority is dispersed between different agencies. A codified ecocide statute provides a way to have a unified system whose aim is to deal with the serious cases of environmental harm constituting ecocide. The existing environmental legal framework is not coherent because it exists differently in all provinces and has its challenges, but the important consideration is that a framework does exist, and many aspects of it could prove to be foundational for introducing an environmental crime in Pakistan, such as the due diligence mechanisms that can assist in attributing the conduct to the individual or corporation and a non-exhaustive list of unlawful activities.

4. CONCLUSION

The UN Environment Programme has recognised the severity of environmental crimes and urged for universal jurisdiction to prosecute them.¹⁵¹ Introducing ecocide as a fifth crime requires more than an amendment to the Rome Statute; States Parties would have to amend the Rome Statute to introduce more penalties, widen its territorial jurisdiction, and accept principles such as CCL that could assist in prosecuting corporations for ecocide. This article looked at the feasibility of introducing a law against ecocide in domestic law and concluded that it is currently more practical to advocate for the recognition and incorporation of ecocide in domestic laws.

Criminalising environmental crime in a domestic legal system like Pakistan will inevitably bring challenges. These challenges can range from bureaucratic challenges to documenting the crime and managing the complementarity of roles where the judiciary and executive can work with the EPAs to bring the alleged perpetrators to court. This ensures the court is supported with expert evidence when needed and, most importantly, a strong mechanism to enforce orders.¹⁵² Given Pakistan's strongly established environmental institutions,

¹⁵¹ United Nations Environment Programme, 'Observations on the Scope and Application of Universal Jurisdiction to Environmental Protection', (*United Nations Environment Programme*) https://www.un.org/en/ga/sixth/75/universal_jurisdiction/unep_e.pdf accessed 28 June 2023.

¹⁵² A. K. Biswas, M. R. Farzanegan, and M. Thum 'Pollution, Shadow Economy & Corruption: Theory and Evidence' (2012) 75(C) *Ecological Economics* 114.

introducing and prosecuting the crime of ecocide may not necessitate a drastic change, especially as it may often be intertwined with other illegal activities like providing unlawful land clearances or license to operate factories without a proper evaluation of the impact on the environment. This is the benefit of having environmental regulators in domestic settings that are not present internationally.¹⁵³

Pakistan has already been working to increasingly identify environmental crimes by becoming a member of the Asia/Pacific Group on Money Laundering (APG) and with the help of the Financial Action Task Force (FATF) that focuses on creating a link between money laundering that fuels environmental crimes such as illegal wildlife trade. However, no measurable progress has been made so far, which can be attributed to the lack of environmental crime's definition.¹⁵⁴ This article suggested a domestic ecocide statute for Pakistan that deals with serious cases crossing the suggested degree of threshold on severity, widespread, long-term impact of the crime and the potential penalties focussed on deterrence and reparation. The deteriorating state of the environment and its tangible effects on the current and future generations signify Pakistan's need to strengthen its environmental protection with a more stringent law.

¹⁵³ Darryl Robinson, 'Ecocide – Puzzles and Possibilities' (2022) 20 *Journal of International Criminal Justice* 313.

¹⁵⁴ Dr. Bahadur Ali, Parveen Gul and Muhammad Humayun, 'The Dynamics of Environmental Criminology and Response from the Legal System of Pakistan' (2021) 15(2) *International Journal of Innovation, Creativity and Change* 1177.