



Prosecuting environmental crimes through extraterritorial jurisdiction: Strategic Reflections and Recommendations

Submitted to the High-Level Working Group on the Environmental Consequences of the War

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I. Definitions and preliminary remarks

For the purpose of this document,¹ the term “environmental crimes” covers international crimes (genocide, crimes against humanity, war crimes and the crime of aggression) that directly harm the environment.²

Extraterritorial jurisdiction (EJ) allows States to prosecute perpetrators of international crimes committed outside of their territory, based on the nationality or the residency of the victim/s and/or perpetrator/s, as well as on the basis of the universal jurisdiction (UJ) principle. Some international crimes being so serious that they constitute offenses against all humankind, UJ gives States the option – and sometimes the obligation – to prosecute perpetrators of such crimes when present on their territory, regardless of where the crimes may have been committed or of the nationality of the parties involved. Several States can even exercise criminal jurisdiction without the presence of any suspect on their territory.³ EJ types of actions can be initiated by domestic prosecutors autonomously, following denunciations or complaints made by victims, witnesses or civil society organizations (CSOs) or on the basis of cooperation request from Third States – depending on the specific legal system. In some domestic jurisdictions political authorization is necessary for the prosecutor to proceed.

EJ is an increasingly effective tool at the service of international justice. It allows for the domestic prosecution of a number of international crimes⁴ committed abroad, thus reinforcing access to justice for victims and survivors, and generating a deterrent effect on the commission of further violations. For instance, a criminal investigation is ongoing in Switzerland concerning the alleged illegal exploitation of rosewood in Casamance, a region of Senegal where a decades-long conflict is taking place, with long-term consequences on the environment.⁵ Even though the EJ-based prosecution of environmental crimes might have been rare,⁶ the conflict in Ukraine and an increased awareness of the global degradation of the environment could very well lay the foundation for new practices. Strong legal precedents are likely to have an impact not only on further cases related to the conflict in Ukraine but also more largely on the prosecution of on environmental crimes worldwide.

1 This document has been prepared by [TRIAL International](#), an NGO fighting impunity for international crimes- The organization investigates and files complaints based on EJ and has developed a recognized expertise on the topic (see its Universal Jurisdiction Annual Reviews– published since 2015, as well as its Universal Jurisdiction Law and Practice Briefing Papers – both series available [here](#)). TRIAL International would like to thank for their expert contribution to this document (in alphabetical order): Kelly Matheson, Maud Sarliève, Thomas Unger.

2 For the purpose of this document, this definition does not encompass ecocide, as it is not (yet) included in the list of international crimes under the [Rome Statute](#).

3 See for instance the structural investigation opened by German authorities over suspected war crimes and crimes against humanity committed in link with the conflict in Ukraine.

4 See TRIAL International, online [universal jurisdiction database](#).

5 The destruction of Casamance forests is a disaster with long-term environmental consequences such as the decrease in rainfall and the increased desertification of the region. More information on this case can be found [here](#).

6 For instance, regarding UJ, until early 2020, “the international community ha[d] not applied the principle of universal jurisdiction in the field of the environment” (UNEP, [Observations on the scope and application of universal jurisdiction to Environmental protection](#), submission to the UN General Assembly on the scope and application of universal jurisdiction). However, cases tackling crimes with an environmental impact (such as destruction of property, looting of natural resources, usage of chemical and other forbidden weapons of war, attacks against indigenous communities etc.) have been the object of investigations and prosecutions both at the national and international level (See for instance the [Al-Bashir case](#) at the International Criminal Court and the [Hostages Trial](#) at the International Military Tribunal at Nuremberg with reference to the “scorched earth” policy).

Whilst the present document primarily focuses on criminal jurisdiction, a few recommendations – as indicated below - aim at exploring other extraterritorial avenues towards justice that could well advance accountability for environmental crimes. The transboundary effect of environmental crimes coupled with the gravity of international crimes strongly call for complementary approaches to accountability encompassing individual, corporate and State responsibility.

II. Strategic use of EJ for environmental crimes related to the conflict in Ukraine

In Ukraine, despite unprecedented efforts undertaken by the authorities documenting, investigating and prosecuting environmental crimes, opportunities to hold high-level perpetrators under command responsibility accountable, or for certain grave crimes like crimes against humanity, remain limited. Moreover, some perpetrators, either individuals or legal entities, reside abroad and their complex transnational structures and opaque links to the crimes are difficult to investigate and prosecute by the Ukrainian authorities alone. In those cases, the use of EJ can be particularly strategic as it allows:

- victims residing abroad to access justice;

The conflict in Ukraine has forced people to flee to other States, due to massive civilian casualties and destruction of civilian infrastructure. Survivors should be supported in accessing justice, full-scale reparations and holistic services in the country they find themselves, following a victims-centered approach.

- perpetrators, including legal entities, outside of Ukraine to be apprehended and prosecuted (or extradited);

Some perpetrators implicated in the commission of international crimes in Ukraine do reside abroad (whether in the Russian Federation or Third States). As mentioned above, Third States exercising EJ can investigate and prosecute those perpetrators - provided some conditions are met (see above) - and closing therefore the accountability gap. In addition to natural persons (individuals), companies and other private entities abroad can also be prosecuted for their participation in international crimes committed in Ukraine, as some States established the liability of legal persons in their legislations.

- the full scale of implication of individuals to the commission of crimes to be recognized;

Some States provide in their criminal legislations the possibility for perpetrators to be prosecuted under superior responsibility (whether for civilian or military commanders). Being international crimes in Ukraine committed on a vast scale, the possibility to prosecute superiors (e.g. mid to high-level perpetrators) for failure to take all necessary and reasonable measures to prevent or repress the commission of international crimes is of paramount importance – and this in addition to the other possible forms of liability.

- systematic and/or generalized violence to be qualified as crimes against humanity (CAH).

Some of the conducts perpetrated in Ukraine, including environmental crimes, can be qualified as crimes against humanity, given the systematic and/or generalized character of the ongoing attack against the civilian population (see for instance forced displacement caused by environmental harm). It is therefore critical to qualify those conducts as CAH, to ensure the full scale of harm suffered by victims is recognized.

The following recommendations suggest effective ways to ensure EJ is used at its full potential and in strategic complementarity with the ongoing work of Ukrainian authorities.

III. Recommendations

A. To Third States – where not already implemented

Legal framework

- Incorporate all international crimes into domestic legislations and establish full EJ (including UJ) for those crimes – instrumental for domestic courts and tribunals to be able to qualify all the conducts constituting environmental crimes as genocide, crimes against humanity, war crimes and the crime of aggression (when relevant) and have jurisdiction over their investigation and prosecution even when committed abroad;
- Develop legislations criminalizing acts and conducts with substantial likelihood to cause environmental harm (especially when severe and either widespread or long-term);
- Include in the Constitution the right to clean, healthy, and sustainable environment;
- Ratify and implementing international environmental conventions - such as the [Convention on the prohibition of military or any other hostile use of environmental modification techniques](#) (ENMOD Convention) - in order to give full protection to the natural environment in times of armed conflict;
- Adopt laws that expressly exclude the applicability of statutes of limitation for international crimes – so as to ensure the possibility to prosecute implicated individuals for the longest possible time period after the commission of environmental crimes;
- Adopt laws that expressly exclude the applicability of immunities attributed to perpetrators (personal/functional) in line with existing or developing international law rules – so as to ensure the possibility to prosecute all individuals implicated in the commission of environmental crimes even when State agents;
- Remove from domestic legislation any condition limiting the exercise of EJ (e.g. political approval, prosecutorial discretion, etc.) to facilitate the investigation and prosecution of environmental crimes;
- Incorporate into domestic legislations the full scale of modes of liability for international crimes: individual/joint commission, participation (aiding and abetting, ordering, instigating, participation in group activities, etc.), inchoate crimes (attempt, conspiracy, etc.), responsibility of commanders and other superiors, etc. – to ensure individuals can be prosecuted according to their implication in the commission of environmental crimes and impunity is not tolerated;
- Provide for the liability of companies and other legal persons in the domestic legislations – covering therefore participation of economic actors in the commission of environmental crimes;
- Adopt legislations permitting the repurpose of perpetrators' assets for reparation;
- Provide for the possibility for NGOs or local communities to initiate and/or take part in the procedure (including as plaintiffs) in the domestic legislations, recognizing the enormous added value of NGOs at different stages of the proceedings (including in pre-identification and sensitization of victims, contextual knowledge and link with affected communities);
- Adopt a wide definition of “victim” under domestic legislations in accordance with international law and standards, to ensure individuals, communities and organizations can be recognized as victims of the damage they suffered in link with environmental crimes;
- Favor participation of victims and communities in proceedings, including by adopting specific legislations on the use of communication technologies, protection measures and forms of support;
- Ensure children are supported to access justice and reparation, in accordance with the [General comment No. 26 \(2023\) on children's rights and the environment](#), issued by Committee on the Rights of the Child – given that they are disproportionately impacted by environmental degradation and crimes.

Operational issues

- Make the prosecution of environmental crimes a strategic priority, given their life-threatening implications on civilians, the environment and the future of next generations;
- Provide national prosecuting authorities with adequate financial and human resources to handle the caseload, as environmental crimes cases (and more generally international crimes) are often long and complex;
- Establish specialized units within prosecution and police authorities to investigate and prosecute international crimes (War Crimes Units) and provide those units with specific environmental, scientific and technical expertise and resources to investigate and prosecute environmental crimes;
- Develop robust protocols to collect, store, safeguard and analyze different types of evidence (including digital and forensic ones) necessary to establish that environmental damage occurred, its extent and duration and its impact on the civilian population;
- Expedite investigations and prosecutions of environmental crimes, as key witnesses might become hard to locate, forget about the events or pass away;
- Consider the environmental impact of international crimes not directly targeting the environment (e.g. war crimes of pillaging, destruction of property, use of prohibited weapons etc.) in investigative and prosecutorial strategies;
- Increase sharing of knowledge and expertise between War Crimes Units and units specialized on environmental crimes that do not constitute international crimes to ensure the maximum availability of expert resources;
- Use international coordination platforms (such as the Eurojust Genocide Network, Interpol, Europol and the United Nations Office on Drugs and Crime) to share best practices and lessons learnt on how to investigate, prosecute and redress environmental crimes and to monitor environmental damages as well as to disseminate relevant jurisprudence;
- Consider developing legal strategies beyond criminal prosecution (including via inter-State complaints before international bodies when possible) to tackle environmental crimes linked to the conflict in Ukraine, by recognizing their transboundary impact (environmental harm and impact have no borders);
- Consider sponsoring a resolution to be adopted by the UN General Assembly or the UN Human Rights Council calling on States to advance accountability for environmental crimes committed in Ukraine through extraterritorial jurisdiction (among others).

Support to victims and witnesses

- Take appropriate and effective protective measures for victims and witnesses of environmental crimes to ensure their physical and psychological well-being and their privacy are guaranteed at all times ;
- Take adequate measures to support victims and witnesses throughout the process, including by providing them with free legal and other appropriate assistance, such as medical and psychological support;
- Recognize the well-established right of victims to full and effective reparation and the specificities of environmental harm and providing them with adequate measures of reparation not limited to pecuniary compensation, but encompassing a wide range of forms, including collective reparations (see for instance the [comprehensive approach](#) to reparations followed by the International Criminal Court - ICC);
- Conduct sensitization campaigns for the benefit of victims, witnesses and civil society organizations on the definition of environmental crimes, the identification of victims, their rights in proceedings and the available support measures and assistance (including on the mandate of the [Register of Damage](#) Caused by the Aggression of the Russian Federation against Ukraine).

International cooperation

- Sign, ratify and implement international instruments facilitating the prosecution of environmental crimes, including the [Rome Statute](#) establishing the International Criminal Court, and supporting the process towards the adoption of a Convention on Crimes against Humanity;
 - Sign, ratify and implement the [Ljubljana-The Hague Convention \(from February 2024\)](#) – allowing States to fully cooperate in the investigation and prosecution of international crimes before domestic jurisdictions, including by executing mutual legal assistance and extradition requests as well as requests for confiscation to provide reparations to victims;
 - Promptly submit evidence to Eurojust's [Core International Crimes Evidence Database](#) (CICED) to facilitate coordination and cooperation in the investigation of environmental crimes;
 - Consider adhering to the Joint Investigation Team (JIT) to increase collaboration with other States, Ukraine and the ICC Office of the Prosecutor (OTP) in the investigation and prosecution of environmental crimes committed in Ukraine ?;
 - Cooperate with or adhere to the [Enlarged Partial Agreement](#) on the Register of Damage Caused by the Aggression of the Russian Federation against Ukraine to facilitate the Register in receiving and processing information on claims of damage and evidence related to environmental crimes – and future reparations options;
 - Consider the establishment of a reparation fund for victims of international crimes linked to the conflict in Ukraine – including for environmental damage – and cooperate with the [ICC Trust Fund for Victims](#) to provide assistance and support.
- B. To the international community (including Eurojust, Europol, the ICC OTP, UN and regional human rights protection mechanisms and special procedures)
- Increase support to Ukrainian authorities and practitioners (including lawyers and CSOs) through transfer of knowledge and technical resources on the investigation and prosecution of environmental crimes;
 - Support Third States investigating and prosecuting environmental crimes in link with the conflict in Ukraine with transfer of knowledge and technical resources, when necessary;
 - Favor increased sharing of expertise, cooperation and coordination among different actors investigating and prosecuting environmental crimes in link with the conflict in Ukraine;
 - Develop thematic studies, reports and policy papers on environmental harm as a specific aspect of international crime investigations and prosecutions (including through joint initiatives and/or cooperation with the UN Special Rapporteur on human rights and the environment);
 - Develop a specific mapping of existing legal framework and jurisprudence related to environmental crimes under multiple types of jurisdictions to favor cross-fertilization;
 - Develop solid and impactful jurisprudence on strategic environmental cases (at the international and regional level) that can be referenced in further cases (including at the domestic level) – in order to advance accountability;
 - Recommend that States advance accountability for environmental crimes committed in Ukraine through extraterritorial jurisdiction.
- C. To Ukraine
- Continue promptly collecting, preserving and archiving evidence of environmental crimes;
 - Enhance coordination and cooperation among different units investigating and prosecuting environmental crimes;
 - Share the expertise acquired in investigation and prosecution of environmental crimes with Third States and disseminate relevant jurisprudence to foster the debate around environmental crimes and their impact in situations of conflicts and beyond;
 - Continue prioritizing the investigation and prosecution of crimes against the environment as in the Strategic Plan on the implementation of powers of the General Prosecutor's Office in the area of prosecution for international crimes for 2023-2025, adopted on 15 September

2023;

- Consider supporting EJ environmental crimes cases abroad when strategic for prosecution (for instance in case of specific crimes or liability forms not covered in the Ukrainian criminal code);
- Cooperate with Third States exercising EJ over crimes committed in Ukraine, including through sharing of evidence, JIT or judicial cooperation agreements;
- Sign, ratify and implement international instruments facilitating the prosecution of environmental crimes and inter-State cooperation on the matter, including the [Rome Statute](#) establishing the International Criminal Court, the Ljubljana-The Hague Convention (from February 2024) and supporting the process towards the adoption of a Convention on Crimes against Humanity;
- Promptly submit evidence of environmental crimes to Eurojust's [Core International Crimes Evidence Database](#) (CICED) to facilitate coordination and cooperation in the investigation and prosecution;
- Conduct sensitization campaigns at the benefit of victims, witnesses and civil society organizations on the definition of environmental crimes, the identification of victims, their rights in proceedings and the available support measures (including on the mandate of the [Register of Damage](#) Caused by the Aggression of the Russian Federation against Ukraine);
- Secure funding and adequate resources for long-term monitoring of the environmental damage as a result of the full-scale invasion;
- Secure funding and adequate resources for provision of redress and reparation to victims of environmental harm (with special attention to vulnerable categories).

IV. Conclusive remarks

International crimes are complex in their legal and factual elements, often imply transnational dimensions, a multitude of victims and perpetrators and thousands of different pieces of evidence, and require – for efficient prosecution – adequate human and financial resources, collaboration and expertise. This is even more complex when these challenges intersect with the ones proper to environmental crimes, such as specific legal qualifications, difficulties in the identification of victims, collective harm and adequate forms of reparation as well as in the collection of evidence. It is therefore paramount to use all the available prosecution options, including EJ, to ensure accountability of perpetrators for their different degrees of implication in the crimes and for the multifaceted impact environmental crimes have. EJ can only work and be efficient in the context of the broader accountability network on Ukraine. Complementarity of actions of multiple domestic and international jurisdictions and increased cooperation and coordination (such as within the JIT, with the Atrocity Crimes Advisory Group, etc.) are indeed the only viable solution to fully address environmental crimes committed in the conflict in Ukraine and provide justice and support to victims and survivors worldwide.