

POLICY BRIEF
13-2025

Charging
environmental
damage before
the Colombian
Jurisdicción
Especial
para la Paz

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This policy brief was sponsored

by the German Colombian Peace Institute - CAPAZ

Academic edition

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Cover and back cover image

Cauca River, between Caldas and Antioquia. 2006. WikiCommons

Bogotá, Colombia, August 2025

Periodicity: bimonthly

ISSN: 2711-0346

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Summary

This policy brief analyzes how Colombia's *Jurisdicción Especial para la Paz* (JEP) has made progress in its approach to prosecuting environmental harm caused during the internal armed conflict and how it can continue to develop this jurisprudence in accordance with international law, particularly the Rome Statute. Based on Macro Cases 02 and 05, together with precedents recognizing the environment and the Cauca River as victims, it documents charges for war crimes linked to deforestation, water pollution, illegal mining, and the use of explosives. For the JEP, the International Criminal Court, and other jurisdictions, it is suggested that environmental harm be systematically incorporated into charges for war crimes and crimes against humanity; that the environment be recognized as a victim; and that the extraction of natural resources be considered a driver of the conflict, among other recommendations.

Keywords: crimes against humanity; environmental harm; international law; Rome Statute; transitional justice; war crimes

How to cite this text

Gillett, M., & Lostal, M. (2025). *Charging environmental damage before the Colombian Jurisdicción Especial para la Paz* (Policy Brief 13-2025). German Colombian Peace Institute - CAPAZ.

The Colombian *Jurisdicción Especial para la Paz* (JEP) is a ground-breaking institution, mandated to investigate, clarify, prosecute and punish atrocity crimes committed over more than 50 years of armed conflict in Colombia. Particularly outstanding among the areas where the JEP has been at the vanguard of legal developments, is its approach to prosecuting environmental harm. Because the JEP can base its decisions on the norms of International Criminal Law (ICL), International Humanitarian Law (IHL) and International Human Rights Law (IHRL), as well as the Colombian Penal Code, it has a rich constellation of legal influences to draw on. This policy brief highlights ways in which environmental harm can be prosecuted under provisions of ICL, with a focus on the Rome Statute of the International Criminal Court (ICC), while also contextualizing this in light of the framework of the JEP and the influence of IHL, IHRL, and ecocid more generally. The JEP's jurisprudence is timely, as it will provide an important input for the Office of the Prosecutor (OTP) of the ICC as it formulates its policy on environmental crimes under the Rome Statute.¹

In 2016, peace talks between the Colombian government and the former guerrilla group FARC-EP led to the signing of the Final Peace Agreement. As part of the deal, the JEP was created to handle justice for crimes committed during the armed conflict. Its main goals are to uphold victims' rights, provide reparations, and help build lasting peace in Colombia.

The JEP follows its own legal framework and can apply national and international laws—including those related to war crimes, human rights, and international criminal law. Article 5 of the

Colombian Constitution, as amended by Constitutional Act 01 of 2017, along with Article 23 of Law 1957 of 2019, provides the JEP with jurisdiction over crimes committed before 1 December 2016 in the context of the conflict with the FARC-EP. Interim Article 5 outlines the various sources of law which it may apply:

When adopting its resolutions or sentences, the JEP will make a legal qualification of the System with respect to the behaviors that are the object of the same, a qualification that will be based on the Colombian Penal Code and/or on the norms of International Law on Human Rights (IHRL), International Humanitarian Law (IHL) or International Criminal Law [ICL], always with mandatory application of the principle of favourability.

Article 23 of the Statutory Law provides guidance on applying these various sources, including the important the principle of favourability, known by its Latin label *in favor rei*. As an overarching principle, the Colombian Constitutional Court has held that, when exercising its distinctive competence to prosecute the crimes under its jurisdiction, the JEP must harmonize these multiple legal regimes (Constitutional Court of Colombia, 2017, Ruling C-674/17). That need to harmonize legal regimes, traversing the international and domestic domains, is a unique and powerful aspect of the JEP's mandate. It provides it with the challenge of drawing together strands of law to ensure accountability for atrocity crimes while also respecting fundamental legal values such as the principle of legality. Because of the range and volume of offending, the JEP organises its proceedings into 'macro' cases, which address linked patterns of offending, which have thematic and geographic parameters. It has opened eleven macro cases to date, covering a broad variety of offences and regions.

¹ The OTP released a draft of the policy on 18 December 2024 (OTP, 2024).



The JEP's consideration of environmental harm as criminal conduct has primarily occurred in two of its macro cases, numbers 02 and 05. In 2023, it issued Orders No. 001 and No. 003, which entered formal war crimes charges related to environmental destruction in Macro Cases 05 and 02, respectively. These decisions rule out the possibility of amnesty for such environmental harm, and also recognize environmental harm as an international crime within the context of transitional justice. Moreover, in 2019, the JEP issued Order No. 079, which recognised the environment as a victim of the armed conflict. Notably, the JEP also recognized the Cauca River itself as a victim of the armed conflict in Order No. 226 of 2023.

Macro Case 05 examines the actions of members of the FARC-EP's Jacobo Arenas and Gabriel Galvis Mobile Columns. It focuses on the area of southwestern Colombia, encompassing the Northern Cauca region, including the municipalities of Buenos Aires, Caldone, Caloto, Corinto, Jambaló, Miranda, Morales, Padilla, and Puerto Tejada, Toribío, Santander de Quilichao and Suárez. In addition, it covers parts of Southern Valle del Cauca, including Candelaria, Jamundí, Florida, Palmira, and Pradera. The JEP chose this region because it was deeply affected by the conflict—it has a large Indigenous and Afro-Colombian population, was a hotspot for armed group activity and drug trafficking, and experienced severe violence. Of the affected groups, victims from Afro-Colombian, Indigenous, and campesino communities were especially affected—both as individuals and organized groups—were officially recognized and have played an active role by sharing their experiences and the harm they endured.

In Macro Case 05, the JEP accused top leaders of the FARC-EP's Jacobo Arenas and Gabriel Galvis Mobile Columns of crimes against the natural environment, including through the following:

1. **Illegal cultivation of coca and marijuana**, which destroyed forests, introduced toxic agrochemicals, caused soil erosion, disrupted traditional Afro-Colombian and Indigenous farming practices, and led to food insecurity.
2. **Deforestation and soil degradation**, leading to biodiversity loss, damaged fertile land, and forest fires.
3. **Pollution of water sources**, especially rivers, caused by oil and chemical spills, explosions, attacks on oil infrastructure, and runoff from chemicals and pesticides used in coca cultivation.

4. **Use of anti-personnel landmines**, which contaminated soil and water sources, reduced biodiversity, and made it difficult to restore affected areas.

Macro Case 02 looks into events that occurred between 1990 and 2016, involving former members of the FARC-EP's Front 29, the Mariscal Sucre Mobile Column, and the Daniel Aldana Mobile Column. It focuses on the region covering the municipalities of Barbacoas, Ricaurte, and Tumaco, which are home to Indigenous peoples, Afro-Colombian communities, small-scale farmers, and urban residents. In Order No. 003 of 2023, the JEP's SRVR chamber identified crimes against humanity and war crimes in this context. The decision seeks to hold former FARC-EP members accountable for crimes including environmental crimes, while also providing truth and recognition to victims and the public, and supports the broader goals of transitional justice.

In Macro Case 02, the JEP recognized the following war crimes linked to environmental destruction:

1. **Pollution of water sources and the soil as a result of oil spills**, which caused severe impacts on the environment, including contamination, harm to biodiversity, as well as harming agricultural and fishing practices, and causing threats to public health.
2. **Illegal mining and exploitation of natural resources**, which caused the poisoning of water sources, including rivers, the accumulation of mercury in fish, the acceleration of deforestation, and the loss of biodiversity.

Between these two cases, the range of environmental harm being addressed covers much of the core impact during armed conflicts. Because of this, the JEP's approach will be extremely significant for the prosecution of environmental harm in future cases in other jurisdictions. Recent conflicts have shown the extent of the impact on the environment, particularly the war in Ukraine following Russia's full-scale invasion in February 2022. Moreover, the JEP has sought to incorporate multiple historical and socio-economic perspectives including from Indigenous, racial, and gender viewpoints, as noted in Order No 003 of 2023. In this light, the JEP's jurisprudence merits close examination, particularly in the respects set out below.



Environmental harm as a crime under the Rome Statute applicable in the Colombian context

In Macro Cases 02 and 05, the JEP reviewed IHL and ICL, as well as the Colombian criminal code, to find bases for prosecuting environmental harm. The primary types of offences for which environmental harm can be prosecuted under the Rome Statute are war crimes and crimes against humanity. Looking at these sequentially, reveals insights into the legal bases on which the JEP can prosecute environmental harm.

War crimes

War crimes are offences which are committed in connection with an armed conflict. War crimes have a long history and can be found in instruments such as the Hague Regulations of 1899 and 1907, the Geneva Conventions of 1949 and the Additional Protocols of 1977. War crimes are divided between international armed conflicts (IACs) and non-international armed conflicts (NIACs). The range of crimes applicable in IACs is larger than those applicable in NIACs. For the JEP, the assessment is limited to those committed in a NIAC, given the nature of the armed conflict that occurred in Colombia. However, some of the IAC war crimes have been used by the JEP, in conjunction with the other legal sources that it can apply, as bases for liability.

A key war crime which was used by the JEP in Macro Case 05 is Article 8(2)(e)(xii) of the Rome Statute. This provision prohibits “[d]estroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.” The element of ‘destruction’ has been described as “setting ablaze, demolishing, or otherwise damaging property.”² A central issue for the prosecution of environmental harm under this provision is whether it would fulfil the requirement of being considered ‘property’. The environment can constitute property, but that opens up a question of which specific environmental facets are property and who they belong to. In NIACs, the concept of property has been regulated by national law (Gillett, 2022, pp. 120-121). To the extent environmental features can be considered property, they are typically vested in the State (Dam-de Jong, 2015, p. 223).

The notion of collectively held property, as sometimes is the case with indigenous groups, adheres to the approach adopted by human rights bodies such as the Inter-American Court of Human Rights and the African Commission on Human and Peoples’ Rights.³ Importantly, in relation to environmental harm, the element requiring that the property belong to an adverse party to the conflict would exclude self-inflicted environmental harm (meaning harm to one side’s own property), such as scorched-earth tactics to forestall advancing armed forces (Gillett, 2022, p. 121).

Other relevant war crimes provisions of the Rome Statute are also of relevance. In Macro Case number 02, the JEP classified the environmental destruction as war crimes under both international and national law. A key legal basis is Article 8(2)(b)(iv) of the Rome Statute, which criminalizes attacks launched with the knowledge that they will cause “widespread, long-term, and severe damage to the natural environment,” especially when that damage is clearly excessive in relation to any expected military advantage. This classification is also supported by Colombia’s Criminal Code, particularly Articles 154 and 164, which penalize the destruction and appropriation of protected property and methods of warfare intended to cause serious environmental harm. Article 8(2)(b)(iv) prohibits

Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.

Although Article 8(2)(b)(iv) only applies in international armed conflicts in the Rome Statute, this is without prejudice to the application of the substantive crime in domestic jurisdictions in accordance with Article 10 of the Rome Statute, according to which the definition of crimes in the Rome Statute shall not be “interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute.”

In addition, the JEP identified the destruction of areas considered cultural property and sacred

² ICC (Katanga Trial Judgment ICC-01/04-01/07, 2017, para. 891).

³ IACHR (*Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001, para. 149); Martini & Sarliève (2022, pp. 108-109, citing inter alia IACHR, 2020, para. 94; ACHPR, 2017, paras. 124-201).



spaces—especially those belonging to Indigenous and Afro-Colombian communities—as a separate war crime under Article 8(2)(e)(iv) of the Rome Statute. This provision prohibits attacks on buildings dedicated to religion, education, science, art, or humanitarian purposes, as long as they are not being used for military purposes. Whereas the reference to “buildings” in Article 8(2)(e)(iv) effectively excludes the direct application of the provision to attacks on the environment, such attacks would fit the definition under related provisions of IHL, such as Article 16 of Additional Protocol II. Article 16 has significantly broader wording, prohibiting acts of hostility against inter alia “places of worship which constitute the cultural or spiritual heritage of peoples.”⁴ That phrase is broad enough to cover the natural environment, insofar as natural locations are used as places of worship. However, the JEP interpreted “buildings” to include places, so as to cover areas where spiritual celebrations occurred which were not structures in the classical sense.

A further provision of relevance is Article 8(2)(e)(v), which prohibits “[p]illaging a town or place, even when taken by assault”. Whereas the crime of pillage has been used as a basis to prosecute illegal exploitation of natural resources during armed conflict (Dam-de Jong & Stewart, 2017, p. 593), its formulation under the Rome Statute would render this difficult as it requires showing appropriation, which means depriving the owner of his or her property in the sense of stealing that property rather than destroying it.⁵ Moreover, even in cases of appropriation, the requirement of showing appropriation for *private or personal use* would exclude appropriation undertaken for the use of the military force or group rather than private use.

Crimes against humanity

Beyond war crimes, environmental destruction can also be charged as a crime against humanity, a key issue will be whether the attack on the environment also constituted an attack on a civilian population (as opposed to civilians incidentally being harmed by an attack on the environment) committed pursuant to a governmental or organisational policy. In this respect, it has been clarified

that the attack on the civilian population can exist alongside other purposes to the attack.⁶

The JEP’s jurisprudence in Macro Case No. 5 constitutes an important precedent for environmental harm being part of crimes against humanity charges. The JEP considered the use of anti-personnel mines and other impacts on the environment were one of the patterns of conduct used to secure the perpetrators’ control of territory and inhabitants and thereby were part of the attack on a civilian population.⁷ It also held that the environmental harm was part of the conduct that violated fundamental rights, and therefore constituted the crime against humanity of persecution.⁸

Looking to specific provisions, there are several underlying crimes against humanity that could be committed by or through environmental harm, the most relevant being: deportation and forcible transfer under Article 7(1)(d) of the Rome Statute (Lambert, 2017, pp. 726-727); persecution under Article 7(1)(h) of the Rome Statute; and other inhumane acts under Article 7(1)(k) of the Rome Statute.

For deportation and forcible transfer to be committed through environmental harm, it would be necessary to show that the perpetrators used environmental destruction to forcibly expel persons from places where they are lawfully present without grounds permitted under international law. For persecution, it would be necessary show the perpetrators used environmental destruction to inflict the intentional and severe deprivation of fundamental rights contrary to international law against a group or collectivity, committed “on political, racial, national, ethnic, cultural, religious, gender..., or other grounds that are universally recognised as impermissible under international law”.⁹ For other inhumane acts, it would be necessary to show that the perpetrators used environmental destruction to intentionally cause great suffering, or serious injury to body or to mental or physical health and that this harm was of a similar character as the crimes against humanity listed under Article 7. A range of acts, such as harm to

⁴ See also Additional Protocol I, Article 53(2) for the corresponding provision covering IAC.

⁵ ICC (Katanga Trial Judgment ICC-01/04-01/07, 2017, paras. 950-4, 957).

⁶ ICC (*The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, 2021, para. 424).

⁷ JEP (Macro Case No. 5 Decision, 2023, para. 671(iv)).

⁸ JEP (Macro Case No. 5 Decision, 2023, para. 1005).

⁹ Under the Rome Statute, it is necessary also show that the persecution was committed ‘in connection with any act referred to in [Article 7] or any crime within the jurisdiction of the Court’, but this is not a general requirement to show persecution under international law.

indigenous groups, wildlife poaching, and toxic emissions, could be considered to have sufficient cause sufficient harm to constitute other inhumane acts. To meet the intent requirements, to charge environmental harm as a crime against humanity, it will require showing that the perpetrators harmed the environment either (i) as a means to cause harm qualifying as an underlying crime against humanity to humans or (ii) in the knowledge that such harm to humans would be a virtual certainty as a result of their actions. Pure environmental destruction not intended to cause harm to any humans will not qualify as crimes against humanity.

The Colombian criminal code

Under the Colombian Criminal Code, there are multiple provisions that are potentially relevant to prosecuting environmental harm. These include Article 164, titled “Destruction of The Environment”, which prohibits “on the occasion and in the course of an armed conflict, [using] methods or means designed to cause widespread, long-term and severe damage to the natural environment” (JEP, TP-SA-SENIT 1, 2019, as cited in Ramírez & Saavedra, 2020). For Article 164 to be applicable, (1) the method or means employed must be conceived to cause harm to the natural environment; and (2) the nature of that expected damage must be widespread, long-term and severe (Ramírez & Saavedra, 2020, p. 138).

Article 154 establishes the crime of destruction and appropriation of protected objects. It punishes those who destroy or appropriate protected objects by either illegal or excessive means, which could encompass environmental harm. Finally, Article 157 establishes the crime of attack towards works and installations containing dangerous forces.

Legality, individual criminal responsibility, and related considerations

Under IHRL, any conduct qualifying under the provisions of the Rome Statute specified below could be prosecuted irrespective of whether the relevant domestic laws covering the conduct were brought into effect after it occurred, as long as the crimes were established under customary international law at the time they occurred. This is set out under Article 15(2) of the International Covenant on Civil and Political Rights of 1966 (“Nothing in this Article shall prejudice the trial and punishment of

any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”). Indeed, there is precedent for the JEP directly applying international crimes, including the crime against humanity of serious deprivation of liberty, notwithstanding the fact that Colombian national law does not explicitly provide for crimes against humanity.¹⁰

Establishing victimhood in relation to environmental crimes

The question of how the environment can be classified as a victim in proceedings for atrocity crimes is a key topic. It carries significant implications for other jurisdictions as well as for the JEP. As noted, the JEP also recognized the Cauca River itself as a victim of the armed conflict in Order No. 226 of 2023 and has recently done the same in relation to the Magdalena River in 2025 in connection to case 08. This type of determination provides an important instance of attributing victimhood to a non-human entity. It also constitutes relevant context for assessing the provisions on victimhood at the ICC in relation to the natural environment.

At the ICC, the notion of victimhood is set out in rule 85 of the Rules of Procedure and Evidence (RPE). Being labelled as a victim has far-reaching implications: victims have a right to participate in proceedings (art. 68(3) Rome Statute) through a common legal representative and, upon conviction of the accused, to receive reparations (art. 75 Rome Statute). The participation of victims entails that they are no longer passive or abstract entities on whose name justice is done, but a collective with an active voice during judicial proceedings with the capacity to, for example, to make opening and closing statements, to question witnesses and have access to the case record (Massidda, 2020, p. 35). In essence, they contribute to the narrative and truth-telling function of the criminal trial. Reparations can take the form of restitution, compensation, rehabilitation, symbolic measures and/or guarantees of non-repetition, and can be

¹⁰ Sala de Reconocimiento de Verdad, de Responsabilidad y de Determinación de los Hechos y Conductas, JEP (Chamber for Acknowledgment of Truth, Responsibility and Determination of Facts and Conduct) (SRVR, 2021, Decision (auto) No. 19 de 2021 in Case No. 01); Arévalo-Ramírez & Martini (2022, pp. 1021-1022).



individual or collective in character.¹¹ They aim to re-establish the victim to their ex-ante status quo but, since this is usually impossible in atrocity crimes, they aim to assist victims in recovering from their harm and pursuing their life goals.¹²

In this light, the idea of the natural environment qualifying as a victim has major ramifications at the ICC. Given the example of the rivers Cauca and Magdalena being recognised at the JEP, it is instructive to assess whether a similar approach is possible at the ICC. According to the ICC's legal framework, victims encompass two categories: natural persons, and what is sometimes referred to as legal persons.¹³ Natural persons (i.e. human beings) can be considered victims when they have suffered harm as a result of the commission of any crime within the jurisdiction of the Court. Contrastingly, legal persons need to have sustained direct harm to their property to obtain victim status. The ICC Appeals Chamber has defined 'harm' as denoting "hurt, injury and damage".¹⁴ The causality between crime and harm needs not be immediate but reasonably foreseeable.¹⁵

The lynchpin of the ICC definition is the concept of harm, which expands the notion of victimhood beyond the immediate target, to include any person (natural or legal) that has suffered harm as a result of the crime. For the environment, this means that its damage or degradation may become legally relevant if (1) it can be linked to any crime within the jurisdiction of the Court and (2) it has led to material, psychological and/or physical harm to human beings, or harm to the property of legal persons. The harm to the environment just needs to exist and does not need to meet all the elements of the crime in Article 8(2)(b)(iv) of the Rome Statute (the only one that mentions the "natural environment") per se. Some examples of

when harm to the natural environment could be discussed under the framework of victims' participation are set out below.

Natural persons, who "have suffered harm as a result of the commission of any crime within the jurisdiction of the Court", can qualify as victims. If the harm was caused through or in connection with environmental damage, that would provide a conduit to examine the impact on the environment. There are plausible ways to conceive how harm to the environment could become relevant in the context of victims' rights. For example, imagine a scenario where an individual commits arson against a municipality in a way that qualifies as the war crime of 'destruction of enemy property' (Article 8(2)(e)(xii) RS), and the fire extends to a nearby forest. Even though the objective of the perpetrator was not to target the forest, its immolation would arguably be a consequence that was a reasonably foreseeable. In such circumstances, persons who had moral and economic ties with the forest, or who were physically hurt, could potentially be able to apply for victim status, participate in proceedings and receive reparations (see Gillett, 2022, pp. 181-2).

Future generations, as in persons not born at the time of the commission of the crime, may also qualify as victims.¹⁶ For environmental purposes, this finding would be relevant in cases where environmental degradation in the form of poisonous, toxic, radioactive and the like elements lead to foetal malformations and/or other affections. Children with such conditions would thereby constitute direct victims of the crime which harmed the environment. In addition, abstract collectives, such as the 'international community', the community of a country, or a locality have been recognised as victims.¹⁷ Given the collective harm that can result from spoiling the environment, the population of an entire location all the way to the international community could be labelled as victims of crimes involving environment damage and be repaired accordingly.

Legal persons, which may qualify as victims according to Rule 85(b) are "organizations or

¹¹ Article 75(2) of the Rome Statute, and Rule 97(1) RPE.

¹² ICC (*Prosecutor v. Ntaganda*, Reparations Order, ICC-01/04-02/06-2659, 2021, para. 4).

¹³ Rule 85(a) and 85(b) RPE, respectively.

¹⁴ ICC (*Prosecutor v. Thomas Lubanga Dyilo*, Annex A, Reparations Principles, ICC-01/04-01/06-3129-AnxA, 2015, para. 10, confirmed in the Ntaganda Reparations Principles (ICC, ICC-01/04-02/06-2659, 2021, para. 32).

¹⁵ The causality test between crime and harm is that of but/for and 'proximate cause' (See e.g. ICC, *Prosecutor v. Lubanga*, Reparations Principles, ICC-01/04-01/06-3129, 2015, para. 80, and Lubanga Annex A, Reparations Principles, 2015, para. 11; ICC, Katanga Reparations Order, 2014, paras. 134 and 162; ICC (*Prosecutor v. Al Mahdi*, Reparations Order, ICC-01/12-01/15-236, 2017, para. 44; ICC, Ntaganda Reparations Principles, ICC-01/04-02/06-2659, 2021, paras. 132-133).

¹⁶ ICC (Ntaganda Reparations Principles, ICC-01/04-02/06-2659, 2021, para. 123); ICC (*Prosecutor v. Ntaganda*, 2022, ICC-01/04-02/06-2782, para. 661) confirming this finding.

¹⁷ ICC (Al Mahdi Reparations Order, 2017, paras. 53 and 91); ICC (*Prosecutor v. Ntaganda*, Addendum to the Reparations Order, ICC-01/04-02/06-2858-Red, 2023, para. 234).

institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.” Given that ICC case-law has recognised and expanded notion of organizations and institutions in the jurisprudence of the Court to any “legal entity”,¹⁸ this would mean that, in principle, Ministries for the environment, associated governmental departments, environmental agencies and the like could potentially qualify as legal persons. The application forms for organisations and institutions in three recent ICC cases lists loss or damage to property in the form of “land, such as agricultural land, farming land” and “environmental damage, such as water sources” as types of harm.¹⁹

If the environment were harmed as a result of a crime under the jurisdiction of the ICC, it could still benefit from the implementation of reparations directed at other natural and legal persons. That is, it can receive material help despite the lack of official victim status. In *Al Mahdi* case, the ICC explicitly identified only humans as victims and ordered, among others, collective reparations in the form of rehabilitation activities for the protected buildings that had been destroyed.²⁰ According to this precedent, an object that does not fit within the definition of victimhood under the ICC Rules, but that is important to the designated victims, like the environment would, can benefit from reparative programmes on the grounds that its improvement will impact case-victims positively.

Finally, some jurisdictions have granted legal personality elements of nature, such as mountains and rivers, including New Zealand, Colombia, India or Spain – among others. If those precedents were adhered to in ICC proceedings, then those entities could potentially qualify directly as victims pursuant to Rule 85(b) RPE, as long as they were harmed as a result of the commission of a crime within the jurisdiction of the ICC (see Lostal, 2024; Killeen & Newton, 2024).

¹⁸ ICC (Lubanga Reparations Principles, 2015, para. 8); ICC (Ntaganda Reparations Principles, 2021, paras. 31 and 32).

¹⁹ See Al Hassan form, Yekatom & Ngaïssona form, Abd-Al-Rahman form, common section 6.

²⁰ ICC (Al Mahdi Reparations Order, 2017, para. 104(i)).

Recommendations

Based on the foregoing, there is a broad range of ways in which international criminal law can be incorporated into the work of the JEP to address environmental harm. These avenues for redress of the destruction of nature cover the crimes that can be charged for environmental harm, the conception of the victims of these crimes, and the incorporation of indigenous groups’ views into these assessments.

In light of the foregoing, the following recommendations can be advanced:

- **The JEP should remain vigilant for opportunities to include environmental harm within the range of charges that it addresses.** As Macro cases 02 and 05 continue, the JEP should engage a review process to take stock of how harm to the environment has been addressed, whether it has been approached in a consistent manner both legally and factually, and what lessons can be learnt for future cases before the JEP and for other institutions.
- **At the technical legal level, the ICC and other jurisdictions applying the Rome Statute framework, should take note that environmental harm may be prosecuted** under Article 8(2)(e)(xii) prohibiting: “[d]estroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict”, in addition to Article 8(2)(b)(iv), which refers to the natural environment, along with other crimes which can potentially encompass environmental harm.
- **For war crimes**, the JEP, the ICC, and other institutions should not only examine how the environmental harm occurs in the context of armed conflict as an element of the relevant crime, but also **how resource extraction and other environmentally harmful activities act as drivers of the initiation and prolongation of conflict.**
- Beyond war crimes, **the Office of the Prosecutor of the ICC, and other institutions applying crimes against humanity, may look to charge environmental harm as part of the contextual elements of crimes against humanity**, as well as the following underlying acts deportation and forcible transfer under Article 7(1)(d) of the Rome Statute; persecution under Article 7(1)(h) of the Rome Statute;



and other inhumane acts under Article 7(1) (k) of the Rome Statute.

- **For the JEP in particular**, when it comes to interpreting the laws governing the JEP in a harmonious way, the chambers of the JEP should **strive to avoid interpretations which would conflict with international laws incumbent on Colombia**, such as human rights principles of legality and non-retroactivity.
- **For the ICC in particular, the rules concerning victimhood should be applied in light of the impact that environmental harm can have on both natural and legal persons.** The ICC should closely review the possibility of recognizing the environment as a victim of its own.
- For all entities prosecuting environmental harm, they **should provide the opportunity to incorporate multiple perspectives** including from Indigenous, racial, gender, and varying socio-economic viewpoints, in accordance with the accessibility and transparency of justice.

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