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IMPLEMENTATION OF ECOCIDE LEGISLATION ON THE ISLAND OF IRELAND

Current legal framework,
challenges, and future directions

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The idea of criminalising acts that cause serious ecological destruction as ‘ecocide’ is gaining support in many jurisdictions. To date, more than [10 countries](#) are known to have criminalised ecocide in their domestic criminal law. Although environmentally harmful acts such as water pollution or illegal waste disposal are already subject to criminal penalties such as fine or imprisonment, the criminalisation of the more expansive concept of ecocide is seen as a new wave of environmental protection that will prevent systematic ecological destruction and preserve the habitability of our planet. In November 2023, the European Commission agreed on the revised [Environmental Crime Directive](#), which was finally passed in the European Parliament on 27th February 2024 and adopted by the European Council on 26th March. This environmental criminal law provides for up to ten years of imprisonment for ‘cases that are comparable to ecocide’, which have not been properly prevented and prohibited. Ireland has opted out of this new legislation. However, a global trend towards strengthening environmental protection through criminal law raises questions about how Ireland and Northern Ireland should enhance environmental cooperation to combat serious, often transboundary, environmental crimes that undermine the rule of law and cause irreversible damage to the (human and non-human) inhabitants of the island of Ireland. Further uncertainty surrounds the nature of the policy and legal instruments needed to prevent and punish ecocide on the island of Ireland, and how these may operate in a cross-border context. This briefing paper explores these key questions about the all-island implications of criminalising ecocide. It also explores the possibility of prohibiting and prosecuting ecologically destructive acts in Northern Ireland, such as [the systematic failure to prevent catastrophic ecological damage to Lough Neagh](#), as an all-island ecocide.

Summary

- **The concept of ecocide is gaining traction globally, with several countries, including Member States of the European Union, adopting or considering legislation.**
- **The EU is moving towards greater environmental corporate responsibility by revising its Environmental Crime Directive (2008/99/EC) directive to include “offences comparable to ecocide”.**
- **Both jurisdictions on the island of Ireland have environmental laws, but neither effectively criminalise severe environmental destruction comparable to ecocide.**
- **Cross-border cooperation to establish a common legal framework is necessary to criminalise and prevent ecocide on the island of Ireland in accordance with the principles of the Good Friday Agreement.**
- **The criminalisation of ecocide in both the Republic of Ireland and Northern Ireland may need to be accompanied by other policy instruments or governance reform to protect the well-being of ecosystems and local communities. This will require enhanced implementation of existing regulatory instruments, but also new initiatives such as legislation recognising the rights of nature, inter-agency cooperation, enhanced cross-border/all-island cooperation and more robust public participation in environmental decision-making.**
- **The worst-ever contamination of Lough Neagh, the largest waterbody on the island of Ireland, should be considered an ‘all-island ecocide’ due to its ecological importance on the island of Ireland (and indeed internationally) and the extent of the pollution and destructive practices such as sand mining, habitat destruction, water pollution and waste dumping which have caused catastrophic degradation.**

1. How has the criminalisation of 'ecocide' gained political endorsements?

- [A law of ecocide](#) was first proposed at international level during the 1970s as a draft international convention to prevent and punish acts with a clear intent to destroy the environment. This idea was [advocated](#) by anti-war lawyers and scientists including Arthur W. Galston, whose research was unfortunately misused by the UK and US governments to make chemical agents used for the military purpose in Indochina.
- In 1972, at the UN Conference on the Human Environment, the then Swedish Prime Minister [Olof Palme](#) criticised the American use of Agent Orange in Vietnam as ecocide – the first use of the term in the global political theatre.
- In 1998, a provision of ecocide was eventually opted out from the [Rome Statue](#) of the International Criminal Court. However, Article 8(2)(b)(iv) of the Rome Statute sets out a war crime of: '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.' The question of [war crimes as ecocide](#) has become increasingly prominent in recent years.
- In 2010, lawyer Polly Higgins [proposed](#) a new definition of ecocide to the International Law Commission, which would regulate corporate activities detrimental to the survival and sustainability of ecosystems. This marked a significant departure from the past discussions on ecocide, which had focused on wartime environmental destruction. Influenced by Higgins' idea, the Stop Ecocide Foundation organised an independent panel group to draft the [legal definition](#) of ecocide, which reads 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.'
- As of today, more than 10 countries (Vietnam, Russia, Ukraine, France, and Chile, etc.) have a provision in their criminal law to punish both peacetime and wartime ecocide, while a dozen of countries are in parliamentary discussions to do the same (Spain, [Scotland](#), Brazil, Mexico, Kenya, and many others). The [Stop Ecocide International](#) and other civil society organisations are campaigning for the International Criminal Court to revise its Rome Statue to punish ecocide as the 5th international crime.
- For the United Kingdom, [draft proposals and amendment bills](#) for the criminalisation of ecocide were recently submitted by Baroness Bennett of Manor Castle to the House of Lords and the [Scottish Parliament](#).
- Although no legislation has yet been proposed yet in Northern Ireland, since the restoration of the Northern Ireland Executive Members of the Legislative Assembly would need to be alert to what is happening outside to strengthen environmental protection through criminalisation. In 2021, Jennifer Whitmore TD [urged](#) the Irish government to take the lead in preventing and prosecuting ecocide on a global and national scale.

2. What is the status of ecocide law in the EU?

- In 2008, the European Union introduced [Directive 2008/99/EC on Environmental Crime](#) to set the minimum standards for criminal justice measures against environmental offences. It penalises three types of environmental crime: (a) acts that cause or are likely to cause human casualty or injury or substantial damage to the environment, (b) acts that are committed in a non-negligible quantity or with a non-negligible impact on the conservation of species, and (c) acts that cause a significant deterioration of habitat within a protected site. In addition to the Irish government, the UK government

has [transposed](#) the Environmental Crime Directive into its environmental legislation, which extends to Northern Ireland.

- In 2020, the European Commission evaluated the implementation of [Directive 2008/99/EC on Environmental Crime](#) across the EU and, as part of the European Green Deal, committed to strengthening the EU's harmonised approach to environmental crime. This led to the renovation of the EU Environmental Crime Directive to rectify the fragmented implementation of the original directive among EU Member States.
- [Campaigns and policy discussions](#) to criminalise ecocide led to the European Commission agreeing to include 'ecocide' in its revised directive in November 2023, albeit in the watered-down form of '[offences comparable to ecocide](#)'. On 27th February 2024, the European Parliament [passed](#) the new directive with a huge majority (499 in favour against 100 against and 23 abstentions). On 26th March 2024, the European Council formally [adopted](#) the directive, mandating Member States to align their domestic regulations with the directive within a two-year timeframe.
- This policy change by the EU indicates an acceptance that the criminalisation of mass environmental destruction, regardless of clear intent, is imperative to restore, maintain, and improve habitable conditions for human-being as well as flora and fauna on our burning planet.
- In addition to the developments at EU level, some EU Member States have also criminalised ecocide at domestic level:
 - France's [Climate and Resilience Act](#) passed in 2021 defines harmful acts that cause 'serious and lasting damage' to the environment as a crime for up to 10 years of imprisonment.
 - In 2024, Belgium amended its penal code to criminalise ecocide as an international crime. This change in the law places greater responsibility on senior management (e.g. CEOs and boards of directors) to make decisions that do not compromise environmental sustainability, and allows the judiciary to prosecute and punish the owners of Belgian companies for ecocide (potentially extending to overseas).
- Other [EU member states](#) have also developed draft legislation designed to prevent and punish ecocide, for example in Spain including the Catalan Parliament, Sweden, Italy, and the Netherlands. The revision of the EU Environmental Crime Directive, which includes the punishment of environmental offences comparable to ecocide, will therefore build upon the criminalisation of ecocide across the EU area.
- Under the Lisbon Treaty, the Republic of Ireland can [opt out](#) from EU legislation related to home affairs and justice, including the revised Environmental Crime Directive. In a [letter](#) to the Council of the European Union, the Irish Houses of Oireachtas expressed concerns over the 'vagueness' of the proposed definitions of "deliberate" and "negligent" crime and Ireland's distinct common law system. [The revised Directive](#) agreed by the European Commission in 2023 states that "Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application".
- Further scrutiny and open discussions seem necessary regarding Ireland's opt-out from the Directive, as the country shows inconsistency in opting out of EU justice- and home affairs-related directives. The fact that Ireland [participated](#) in the EU Directive on Preventing and Combating Trafficking in Human Beings raises the question of whether the country should reconsider its position on the environmental crime directive to foster strong cross-border cooperation in safeguarding the environment from criminal activities.

3. Are there legal instruments to punish all-island ecocide?

- The cross-border nature and impact of environmental pollution and crime in the island of Ireland suggests the necessity of more [robust policy coordination in the environmental sector](#), as also set out explicitly in the 1998 [Belfast/Good Friday Agreement](#).
- Since Brexit, policy divergence in the environmental sector in the Republic of Ireland and Northern Ireland may create barriers to harmonised efforts for environmental cooperation between the two jurisdictions on the island of Ireland. However, as signatories of multiple other international agreements for environmental protection and as stewards of the common land, the two jurisdictions should and can pursue criminal charges against serious polluters across the border.
- Existing legal arrangements provide a basis upon which enhanced all-island environmental cooperation on serious environmental crime may be based:

a) International Regulations

- To date, there is no international agreement that imposes criminal liability on perpetrators of ecocide. Only the Rome Statute of the International Criminal Court has a provision that punishes intended environmental destruction during war. However, this situation may change as the International Criminal Court is being more responsive to the criminalisation of gravest environmental destruction.
- There is an array of potential international rights-based possibilities. For example, if ecocide impacted on the right to private and family life or another Convention right then the European Convention on Human Rights may be relevant.
- Where environmental pollution results from failure to adequately assess impacts, a complaint to the Aarhus Convention Compliance Committee is an option as is a complaint to the European Commission. EU mechanisms may still offer possibilities in Northern Ireland in certain legal areas under the Windsor Framework (e.g. where human health is impacted). The Espoo Convention also contains a Compliance Mechanism for Transboundary cases. Access to information is of vital importance to prevent criminal offences against nature, alarm (potential) victims of environmental crime, and identify the nature and scope of the damage caused. Some international agreements, especially the [Aarhus Convention](#) and the [Espoo Convention](#), may assist citizens to have access to environmental information and participate in decision-making processes at local, regional, and national levels. Both Ireland and the United Kingdom are signatories of these conventions.

b) Environmental criminal law in the Republic of Ireland

- The Republic of Ireland has a [body of environmental law](#) that regulates environmental pollution, including the Environmental Protection Agency Act 1992 and its amendment (2011), the Protection of the Environment Act 2003, the Local Government (Water Pollution) Acts 1977 to 1990, and the European Communities (Birds and Natural Habitats) Regulations 2011.
- The Irish government is currently implementing the EU Directive 2008/99/EC through [amendments to several existing laws](#). The Irish Environmental Protection Agency is primarily responsible for enforcing environmental law and protecting the environment from criminality, although other bodies also have enforcement functions (e.g. county councils, Inland Fisheries and Garda Síochána).
- There is no single maximum penalty for environmental offences in Ireland, although (unlimited) fines, imprisonment (mostly up to six months, but for serious waste crime the possibility of up [to three years exists](#)), revocation of environmental management licences, and confiscation of the profits derived from

environmental criminality can be sought for crimes against nature.

- In 2015, the Irish Environmental Protection Agency successfully [prosecuted](#) a landfill operator, who was fined with €20 million for pollution offences. While this was to be a landmark case, the existing mechanisms to deter environmental crime can be characterised as reactive rather than preventative.

c) Environmental criminal law in Northern Ireland

- [Key environmental legislation](#) in Northern Ireland includes the Waste and Contaminated Land Order 1997, the Environmental Liability (Prevention and Remediation) Regulations (Northern Ireland) 2009, the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, and the Water (Northern Ireland) Order 1999.
- Under the auspices of the Northern Ireland Department of Agriculture, Environment and Rural Affairs, the Northern Ireland Environment Agency is responsible for the prevention and prosecution of environmental crime, although again other bodies have enforcement functions including the Police Service of Northern Ireland and local councils.
- The [Office for Environmental Protection](#) provides an independent oversight of environmental regulation in Northern Ireland and influences environmental enforcement by public authorities in Northern Ireland by monitoring their performance and investigating complaints against them.
- In Northern Ireland, the court can impose potentially unlimited fines ranging and imprisonment up to 5 years, depending on the type and severity of the environmental crime. Additional penalties such as confiscation of proceeds of environmental crime, stop notices and clean-up/restoration orders can also be imposed, but the [quality of environmental enforcement](#) in Northern Ireland remains poor and fragmented.
- Serious regulatory failures have been cited as a contributing factor in the failure to prevent persistent offending at for example the [Mobuoy illegal dump](#) in Derry.

4. What legal/policy instruments are needed to deliver and implement the criminalisation of all-island ecocide?

- In order to protect the life and dignity of the inhabitants of Ireland, it is necessary to introduce [measures](#) to (1) hold polluters accountable and to set higher standards of duty of care and (2) to protect and compensate the victims of environmental crime for ecological damage. The criminalisation of ecocide in both jurisdictions is important to regulate environmentally damaging corporate activities and to strengthen social responsibility for the safety of the planet. Existing measures and environmental governance structures have failed to ensure the environment is protected.
- Although the Republic of Ireland has opted out of the EU Environmental Crime Directive and the same directive cannot be applied to Northern Ireland, this must not be seen as a green light for polluters. Under the structures of the Good Friday Agreement, all-island environmental measures can and should be introduced to prevent ecocidal acts on the island of Ireland. Implementation of the EU Directive is not the only route to delivering legal mechanisms to protect against ecocide on the island of Ireland.
- Criminalisation of ecocide may be bolstered through the development/enhancement of other legal and policy instruments which operate on a transboundary basis on the island of Ireland, including enhanced protection for environmental human rights, legal provisions protecting the rights of nature, more robust provision to ensure greater public participation across the border and ultimately better implementation and enforcement of existing environmental laws.

- For example, the adoption of legislation recognising the rights of nature in both Ireland and Northern Ireland could help to ensure that the ecosystems and flora and fauna affected by ecocide are represented in legal considerations and proceedings. The protection of the rights of nature goes hand in hand with the improvement of protection for environmental human rights defenders, who could speak for the non-human plaintiffs against the perpetrators of ecocide in the courtroom.
- Recently, the Citizens' Assembly on Biodiversity Loss in Ireland recommended a referendum on the inclusion of the [rights of nature](#) in the Irish Constitution. Some local councils and community groups in Northern Ireland are calling for nature's rights to be enshrined in environmental law and [evidence](#) put before the Citizen's Assembly highlighted potential avenues through which rights of nature might be operationalised in Ireland.
- The Oireachtas Joint Committee on Environment and Climate Action, [noting](#) that many countries protect nature in its own right, agreed in principle to a referendum to protect the environment by incorporating the rights of nature and/or the right to a healthy environment into Bunreacht na hÉireann (the Irish Constitution). It also recommended a "fundamental change" in environmental governance and enforcement, with more professional personnel, sanction mechanisms, and planning policies.
- Since Brexit, regulatory divergence between Ireland and Northern Ireland has complicated the barriers to all-island environmental protection. [Recent research](#) indicates that governments must now be proactive to ensure cooperation on shared environmental challenges occurs, and that legal divergence between Northern Ireland and Ireland does not occur to the detriment of the environment.
- On a structural level, an [enhanced role](#) for the all-island cooperation bodies (e.g. the North South Ministerial Council) established by the 1998 Good Friday/Belfast Agreement and [improved governance structures](#) in Northern Ireland are both well-established avenues for reform which could boost current levels of cross border cooperation the environment.

5. Is the destruction of Lough Neagh an all-island ecocide?

- Lough Neagh is the largest waterbody in the UK and Ireland, which is the main source of drinking water in Northern Ireland and extends to some catchments in the Republic of Ireland. Its destruction and continued degradation are therefore an all-island problem which will require the intervention of governments on both sides of the border. Lough Neagh is not only an [essential habitat](#) on the island of Ireland and an internationally [recognised](#) site of environmental significance, but also a symbolic, sacred heartland for the people of Ireland.
- Since the 1800s, under the colonial rule of the British Empire, Lough Neagh has been [privately owned](#) and exploited by the Shaftesbury Estate. Lough Neagh has been slowly killed off by private profit-seekers who have reneged on their legal and ethical responsibilities to preserve the Lough's regenerative capacity and protect the lives that depend on Lough Neagh. Lough Neagh has been devastated by continuous sand extraction, (illegal) waste disposal, and other environmentally detrimental activities - notably from increasingly intensive agricultural and sewage pollution sources.
- The pollution crisis in Lough Neagh has been disastrous consequences in many ways. The [worst-ever chemical contamination](#) in Lough Neagh was reported in 2023, which has increased the proliferation of algal blooms that threaten the lough's ecosystems. The bed of Lough Neagh has been severely damaged by [predatory sand dredging](#) and is unlikely to recover within decades, if not centuries.
- The damage caused to Lough Neagh could therefore be considered as an ecocide that contravenes international norms and agreements on environmental human rights and justice and

the global trend towards criminalising corporate ecological destruction. The death of Lough Neagh will have an island-wide impact, destroying biophysical habitats as well as the historical and cultural relationships between people and the lough.

- The destruction of Lough Neagh also violates the principles set out in the [Good Friday Agreement](#), which commits the parties of the agreement to uphold the civil, political, social and cultural rights, including environmental rights of the people of the island of Ireland and therefore to adopt 'common policies, in areas where there is a mutual cross-border and all-island benefit'.
- The case of Lough Neagh as an all-island ecocide demonstrates the need for a holistic reform of existing policies and mechanisms for all-island environmental cooperation towards the creation of norms and rules that recognise human survival in the context of the dignity and well-being of ecosystems.
- Research into similar issues at other water bodies across the island of Ireland would be beneficial, for example the Shannon Catchment, or Lough Ree in the Shannon system.

6. Future Directions

- In the midst of global ecological collapse, business owners and executives have been able to hide behind the rules that allow them to 'voluntarily' contribute to environmental protection. An ecocide law is more than just imposing tougher criminal penalties for environmental offences. Its primary purpose is to immediately stop environmentally harmful business practices and hold corporations and governments accountable for making decisions that are consistent with the sustainability of habitats and the well-being of human and non-human.
- For example, according to Antonius Manders, the rapporteur on the EU Environmental Crime Directive, the new Directive may allow the judiciary to [prohibit](#) business practices and development projects that were permitted before the adoption of the new Directive if they are found to cause serious damage to the environment, such as cases comparable to ecocide. To avoid criminal liability, governments and businesses will be obliged to pursue development paths. This is in contrast to the existing environmental law, which penalises only the tip of a wider polluting activity once a certain level of pollution is exceeded.
- Both jurisdictions on the island of Ireland should strengthen their criminal sanctions for environmental offences amounting to ecocide which have severe and irreversible consequences for inhabitants of the areas concerned. The Republic of Ireland should transpose the revised EU Environmental Crime Directive and strengthen the capacity of the Irish Environmental Protection Agency to tackle all-island ecocide.
- Since the restoration of the Northern Ireland Executive on 3 February 2024, Stormont must urgently review the loopholes in current environmental protection regulations and restore public confidence in environmental governance to tackle catastrophic environmental pollution across the country and the border. The establishment of an independent Environmental Protection Agency, enhanced enforcement policy together with a concrete plan to prevent and where necessary criminalise polluting activities that result in ecocide can be a meaningful start.
- In parallel with the development of a future referendum in the Republic of Ireland on the recognition of the rights of nature, the Northern Ireland government should consider the preparation of draft legislation to recognise the rights/legal personhood of nature and ensure public participation by environmental human rights defenders who are able to speak for non-human rightsholders. This change in the law would allow for stronger and more effective representation of communities and nature in legal proceedings and decision-making processes (e.g. planning).

- The Irish government and the Northern Ireland Executive should commission an independent review of the existing mechanisms for cross-border policing of environmental crime, including policy recommendations and hold island-wide public forums on environmental protection through criminalisation.
- Harmful policies and planning decision/permissions (especially surrounding agricultural intensification/expansion and extractive industries) should be reconsidered as a matter of urgency by the devolved government in Northern Ireland. The government should take responsibility for protecting Lough Neagh as a victim of long-standing environmental harms and from further acts of ecocide and for ensuring its peaceful existence.