

ROUNDTABLE REPORT

THE IMPACT ON CHILDREN OF INTERNATIONAL CRIMES AND SERIOUS HUMAN RIGHTS VIOLATIONS AFFECTING THE ENVIRONMENT

JUSTICE RAPID RESPONSE (JRR)

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1. BACKGROUND

Justice Rapid Response (JRR), in collaboration with the Government of Canada, the Government of Belgium, UN Women, and Save the Children hosted a two-day roundtable on the impact on child rights of international crimes and serious human rights violations affecting the environment. Since 2015, JRR has steadily increased the number of deployments of its rostered child rights experts to national and international investigations. These experts have supported international and national investigations in the world's most violent conflicts and fragile settings. During these deployments, JRR child rights experts are increasingly confronted with the many and complex interlinkages between conflict and the environment and how those affect very specifically children living in conflict areas: not only the environment in itself is a driver of armed conflict (i.e. rooted on the exploitation of natural resources, including as a primary source of financing for non-state armed groups and militias), but also armed conflict and serious human rights violations, including during peace times, severely damage the environment in substantive and lasting ways, where children are at the forefront of vulnerable groups.

Given the current spotlight on environmental harm and destruction, its causes, and consequences, particularly related to serious human rights violations and conflicts, JRR pioneered an expert roundtable that addressed the need for international accountability mechanisms to adopt a child-centered approach in the documentation and investigation of international crimes and serious human rights violations affecting the environment.

Forty-three participants, environmental experts, child rights experts, justice professionals from academia, civil society, the International Criminal Court, the Human Rights Council-mandated investigations, including JRR rostered experts among the above experts, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Independent Investigative Mechanism for Myanmar, UN Women, the Office of the High Commissioner for Human Rights, Save the Children and the Child Rights International Network, joined to share experiences and perspectives, to exchange knowledge, and to do a collective effort to identify and examine international judicial and non-judicial avenues to address the environmental impact of international crimes and human rights violations applying a child-centered and gender-responsive approach.

A set of thematic panels were organized during the 2-day expert roundtable:

Introductory Panel: Where do we stand?

Panel A: Accountability Avenues

Panel B: International Human Rights Avenues

Panel C: International Criminal Investigations

Panel D: Ecocide

Final Discussion Panel: Interlinkages between child rights and the impact of international crimes and serious human rights violations and the environment

The following sections present the key elements of the discussions held per thematic as well as the recommendations to move forward a specific agenda on the environmental harm and destruction and violations and crimes against and affecting children.

2. ROUNDTABLE DISCUSSION INSIGHTS

This section captures per thematic and in a structured manner the most important points that were discussed by the roundtable experts.

2.1 Where do we stand?

2.1.1 *The International Criminal Court's role in crimes affecting the environment and children*

The Rome Statute is anthropocentric and, hence, protects the integrity of human life. The destruction of the environment is inextricably linked with human life and the human rights attached to every single person. Indeed, article 8.2.b.(iv)¹ expressly mentions that intentional attacks that cause ‘*long-term and severe damage to the environment which would be excessive in relation to the concrete and direct overall military advantage anticipated*’ could constitute a war crime. This article has not been used up until today. However, there are evident linkages between the destruction of the environment and crimes outlined in the RS: forcible displacement due to poisoning fields, for example, serious bodily harm due to the contamination of water wells, uncontrolled mining, etc. Thus, there is legal space within the Rome Statute.

The question of the environment, including its destruction or its use to cause harm to human lives, has profound implications in the dynamics, means, and drivers of armed conflicts; all three elements are part of the ICC’s mandate when prosecuting crimes.

The ICC has a specific focus on children, even more in recent years. Children are direct victims and the most vulnerable ones due to the impact of crimes affecting the environment. In many cases, they are also direct targets of perpetrators who harm/destroy the environment for conflict advantage. As highlighted in the ICC’s Rome Statute Preamble, its mandate is determined considering the ‘sake of present and future generations’, presenting a clear intergenerational approach that is particularly relevant when assessing the impact on children of international crimes and serious human rights violations affecting the environment.

2.1.2 *Human Rights Council (HRC) mandated investigations and crimes affecting the environment*

While mandates vary, they usually contain a general element referring to the documentation and investigation of ‘(other related) gross violations of human rights. Hence, while, as such, there has been little express mention of crimes against the environment or the consideration of environmental harm within those investigations, linkages can be made focusing on specific crimes of the mandate’s focus, such as child trafficking and/or sexual and gender-based violence (SGBV) against children. For example, in Venezuela, SGBV committed against women and young girls in gold mining areas is linked to illegal armed groups that control the mines and, therefore, to the illegal exploitation of natural resources, which also leads to environmental degradation.

¹ Rome Statute of the International Criminal Court, article 8.2.b.(iv), 2. For the purpose of this Statute, “war crimes” means other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts [...] 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;

Making those linkages and highlighting the environmental harms of direct crimes against the environment and the impact regarding other child-specific crimes progressively depends more on the resources, expertise, and time provided to the mandates rather than on the specific mentions within the mandate in question.

However, moving forward, it would be relevant to collectively make a case for the environment to be expressly mentioned in those mandates. In 2006 the Commission of Inquiry in Lebanon included in its mandate the duty to explicitly tackle the impact of military operations carried out by Israel on the environment. The current investigations in Ukraine, surely at the national level and likely at the international level, are strongly considering the environmental lens. Other HRC-mandated investigations currently active (Myanmar, South Sudan, Myanmar, Venezuela, or Palestine) can definitively showcase how to apply an environmental approach to the investigation of violations and crimes against and affecting children.

2.1.3 The Committee on the Rights of the Child's (CRC Committee) role in the impact of serious human rights violations affecting the environment on children's rights

In 2022, the UN General Assembly (UNGA) passed a resolution recognizing the right to a clean, healthy, and sustainable environment as a human right. The CRC Committee has just approved its General Comment No. 26, which clarifies the obligations the States need to take up (among others, domestic law and its enforcement, including specifically in terms of remedies) to ensure children's rights as related to the environment. While the CRC GC 26 (2023) does not focus specifically on international crimes and violations, it is definitively a powerful instrument to make the case internationally on environmental harm and child-related violations and crimes, particularly to be included in judicial and non-judicial mechanisms, where the CRC Committee can advocate for within the frame of the CRC GC 26 (2023). Indeed, the CRC Committee could also support some of the documentation and investigations through the information received under its mechanisms (individual communications and inquiry procedures) of the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC) or the Human Rights Council mechanism of the Universal Periodic Review.

2.2 Accountability Avenues²

There is no universal definition of what an environmental crime is, and hence, it'd be challenging to seek accountability without having a starting point that provides the key elements of the crime as such. In domestic legal norms, environmental harm/destruction is regulated through illegal acts that impact the environment. The following categories can be established:

- Negligence/recklessness
 - ▶ **Corporations' accountability:** a landmark case in France was the conviction of the Total oil giant over the 1999 shipwreck of the Erika oil tanker³. It set the 'prejudice ecologique' that has been since then widely used as key jurisprudence (precedent).
 - ▶ **States' accountability:** there are several domestic examples particularly related to children (i.e. 2017 India's National Green Tribunal⁴, 2019 Colombia's case brought by children to protect the Amazonas from deforestation⁵, UK's landmark case about air pollution that caused the death of a 9-year-old child⁶).
 - Organised crime around the exploitation of natural resources, usually linked with armed conflict geographies. The link with international violations and crimes against and affecting children is direct: child recruitment, child enslavement, and GBV against children, among others. But also the impact of uncontrolled exploitation of environmental resources has a direct negative effect on the health, development, and access to basic resources required to preserve children's lives.
- Several regional instruments could be a crucial step to make the case on the hitch between international crimes, the environment, and children:
- At the request of Colombia, the Inter-American Court of Human Rights (IACtHR) issued an advisory opinion (OC-23/17)⁷ regarding the environmental obligations of states that comprise the Inter-American Human Rights System. The IACtHR held that the right to a healthy environment is a fundamental human right and detailed the obligations of states when they have caused or may cause significant environmental harm, including cross-border harm.
 - In June 2019 the Swiss NGO TRIAL International filed a criminal complaint against Buzaianu for alleged involvement in pillage,⁸ which can constitute a war crime when perpetrated in the context of a war. Senegal's southern Casamance region has been engulfed since 1982

² For the purpose of this report, accountability is understood to include justicial and non judicial avenues. The report lists some accountability avenues mentioned by participants that are not under JRR's mandate but that can be useful as a reference.

³ Judgment of the Court (Grand Chamber) of 24 June 2008, Commune de Mesquer v Total France SA and Total International Ltd. Reference for a preliminary ruling: Cour de cassation – France, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62007CJ0188>

⁴ <https://www.ourchildrenstrust.org/india>

⁵ <https://www.dw.com/en/colombias-youth-fighting-for-the-amazon-in-the-courts-and-on-the-streets/a-49523373>

⁶ <https://www.nytimes.com/2020/12/16/world/europe/britain-air-pollution-death.html>

⁷ https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf

⁸ <https://trialinternational.org/latest-post/nicolae-bogdan-buzaianu/#:~:text=Procedure,rosewood%20as%20a%20war%20crime>

in what is one of Africa's longest-running guerrilla wars, claiming the lives of more than five thousand people and having caused the forced relocation of thousands of people. The key financier of the rebellion was the illegal timber trade.

■ Since the right to a clean, healthy, and sustainable environment has been recognized as an 'autonomous' human right, the question of giving legal standing to the 'rights of nature' was discussed. This aims at securing the highest level of environmental protection under which an ecosystem can thrive and whose rights are not violated. These natural rights are very often associated with human rights, especially the right to a clean and healthy environment. The issue of identifying perpetrators and making the linkages between them and eventual criminal responsibility remains a challenge. A focus on '*livable conditions*' (i.e. Drinkable water, eatable food, breathable air) could be of interest to frame the perimeter of the right to a healthy environment about serious human rights violations and crimes and could help to establish a direct connection with children (longer and deeply impacted due to the stage of their development). An environmental lens to transitional justice processes, particularly when referring to children crafting remedies and reparations is paramount in the position of the theme going forward in terms of accountability avenues.

2.3 International Human Rights Avenues

■ To practically progress in embedding environmental harm and destruction as an element of priority when documenting and investigating international crimes and serious human rights violations within HRC-mandated bodies, a list of criteria (non-exhaustive) in armed conflict contexts was proposed and discussed (that could eventually be considered in the 2015 OHCHR operational guidance for fact-finding missions and commissions of inquiry):

- Use of certain types of weapons;
- Damage to survival conditions of the population, particularly children;
- Direct attacks against the environment within genocidal and extermination campaigns;
- Direct threats to environmental activists by armed groups, particularly considering age, gender, and ethnic elements;
- Direct impact on traditional ways of living of the population, with a particular focus on the impact on children;
- In front of specific crimes such as enforced disappearances and forced displacement, environmental harm should be assessed at least as an intersectional analytical element;
- Destruction of cultural heritage (following the 2021 ICC Policy on Cultural Heritage);
- In armed conflict contexts that involve armed groups in mining territories, the environmental dimension of child-specific violations and crimes such as child trafficking, child recruitment, and gender-based violence against children is to be included (the work of the Venezuelan Fact-Finding Mission could be a reference);
- Severe intergenerational impact;
- Financial investigation focuses on environmental dimensions.

■ Several points when advocating for the application of environmental dimensions within HRC-mandated investigations were highlighted:

- Collaborative work with UN Special Rapporteurs, Civil Society Organizations (including academia, think tanks, and activists/human rights defenders), and the Committee on the Rights of the Child is essential to gather relevant information and able to present it to the Commissioners and Members to shape/expand the mandate of the investigations teams. Thematic meetings with representatives of these UN investigative bodies and special mandate holders could be organized in order to enhance their awareness and foster discussion on how these topics can be integrated into their work.
- Deploy professionals with specific skills as earlier as possible (i.e. environmental experts, child rights experts, etc.). This will largely depend on the ability to integrate specific elements of the mandate of the investigative body in question. JRR was mentioned as a key actor in mobilizing this expertise;
- Creation and operationalization of an 'expert community of practice' that can regularly exchange and help to advocate and 'put on the table' elements that require attention in the investigative work and mandate of international human rights mechanisms; JRR was highlighted again as a key actor in mobilizing this;

2.4 International Criminal Investigations

■ A case study (Cerro del Pasco, Peru)⁹ was referenced as an example where environmental crimes were qualified as crimes against humanity and where a child-specific lens was taken as an evidentiary priority. The case proved that the pollution caused by the company extracting material from a mine was causing severe bodily and mental harm to children (inhibiting intellectual development, producing physical illnesses such as nose bleeding and several headaches, as well as changes in behavior such as increased aggression and violent attitudes). The key ingredients of the successful investigation of this case were, among others: working closely with the community (and hence, with organizations based at the community level) and the creation of an on-call consortium of different experts and organizations with several profiles (legal, environmental scientists, children rights experts, high-tech experts for the documentation and analysis of evidence). A civil action on behalf of the children harmed is to be submitted, where an opportunity to craft child-specific environmental reparations is foreseen.

■ It exists a wide amalgam of regulations beyond the criminal laws that can be used to document, investigate and deter environmental harm:

- Environmental destruction linked with corruption/money laundering or linked with different commodities (i.e. beef, timber market import/export) or commercial interests (i.e. tropical deforestation for the purpose of urbanization). It'd be key to identify the root cause/source/ultimate motive of the environmental harm to be able to apply (i) regulatory offenses (enforcement actions are faster, the evidentiary proof is lessened and it can have an impact on corporations' reputational risk affecting their entire profit and operations); (ii) *financial regulations* (i.e. big corporations on the stock market where their supply chain providers are harming the environment would avoid at all cost being investigated by financial authorities); (iii) *sanction regulations* (which normally include broader jurisdictional access); (iv) *civil laws* (i.e. compliance and/or due diligence obligations as related to the environment). The OECD mechanism of national focal points could be used as well in this sense. The role of civil society organizations in bringing cases to enforcement authorities is crucial.
- Using criminal laws to prosecute crimes against the environment would require a better framing of the acts to fall under within existing legal provisions and jurisprudence: under article 7 of the RS (crimes against humanity), the 'course of conduct' that results in acts included in the aforementioned article would be a better strategy than investigate individual acts. Similarly, the ICC jurisprudence has confirmed that the element 'policy' does not require to be an 'explicit political manifesto' but an operational way of working.
- Finally, and although never used as related to the environment, it might be worth thinking about how the 'Magnitsky sanctions' machinery could be tailored to target those responsible for serious human rights violations and crimes against and affecting children and the environment.

⁹ <https://climatecrimeanalysis.org/project/environmental-and-human-contamination-cerro-de-pasco-lead-mine/>

2.5 Ecocide

■ The concept of 'ecocide' is not new but it has definitively gained attention over the last years. It was not until 2020 that there was a proposal to define the elements of the crime of ecocide (proposed to be taken by the RS as article 8 ter¹⁰). There were several issues raised with the definition proposal that should serve to advance the discussion forward: (i) the threshold to the damages to the environment is not specific/measurable, (ii) the notion of the environment is variable, (iii) proving intent is challenging, (iv) authorship: the issue of the delusion of responsibilities and how to deal with extraterritoriality (i.e. cross border operations, multiple authors, successions of CEOs). The use of existing laws and avenues should not be disregarded despite the fact that ecocide is not nowadays a crime subject to be prosecuted.

■ Political attention and legal debate around the ecocide are highly stimulating and should continue to overcome some of the challenges that the proposed definition entails. New concepts to measure environmental harm/destruction and to prove it are already in discussion: such as 'planet de-habitability'. Indeed ongoing discussion on how to legally frame 'ecocide' in the RS provides an exceptional opportunity to bring child-specific considerations/elements of the crime (i.e. similar to the crime of genocide that contains a child-specific act, article 6(e) RS: '*forcibly transferring children of the group to another group*').

10 Proposed Article 8 ter Ecocide. For the purpose of this Statute, "ecocide" means 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. Source: <https://www.stopecocideearth/legal-definition>

3. KEY RECOMMENDATIONS: INTERLINKAGES BETWEEN CHILD RIGHTS AND THE IMPACT OF INTERNATIONAL CRIMES AND SERIOUS HUMAN RIGHTS VIOLATIONS ON THE ENVIRONMENT

The final panel, which was framed as an open discussion, provided the opportunity for the experts to share key recommendations for action. Those are summarized below:

- Proposing an intersectionality analytical tool (checklist or similar) in the documentation and investigation of violations and crimes against and affecting children that includes 'environmental harm' both as a root cause/driver and as a consequence/impact. It could be a practical way to start gaining environmental sensitivity and apply systematically the environmental lens.
- Concerning HRC-mandated investigations, the 2015 OHCHR Operational Guidance for fact-finding missions and commissions of inquiry could be revised to incorporate specific case criteria elements related to environmental harm/destruction and children, with a view to progressively include an environmental lens in the mandate of investigative bodies (some elements were discussed, see section 2.3 above). Additionally, existing examples are to be used (Venezuela, Lebanon) to mainstream an environmental lens in the mandates. Advocacy and collective visibilization from experts in the sector is very important.
- Expertise is of the essence. There is a need to ingrain multi-expert teams particularly environmental and child rights experts that could work in tandem and be deployed to different investigative bodies, the ICC, HRC-mandate investigations, transitional justice mechanisms (i.e. JEP in Colombia), etc. Experts on financial investigations could also be worth considering in terms of environmental harm/destruction.
- An 'expert community of practice (CoP) on environmental crimes' that could include gender and child rights experts (or eventually can be connected with the already existing SGBV and Child CoPs managed by JRR) would be highly helpful in pushing efforts on the theme forward.
- In this sense of collective efforts, it is paramount to work with civil society organizations to document and expose environmental destruction and the crimes and violations against and affecting children that flow from it. They are also crucial as an advocacy actor on the theme.
- Making use of the 'momentum' brought by the approval of the CRC GC 26 on Children's Rights and the environment to highlight the need to include expertise, foster investigations and enhance coordination pertaining to international crimes and serious human rights violations affecting children and the environment. Promoting the use of inquiry and the individual request procedures of the OPIC and the UPRs and establishing a coordination mechanism with the CRC Committee to signal early if there are grounds for documenting and investigating crimes and serious human rights violations against or affecting children and the environment.
- Progressively incorporate the role of corporations into the investigation of international crimes and serious rights violations affecting the environment, including with a specific impact on children. The use of regulatory offenses, civil law, financial and sanctions mechanisms, human rights due diligence, etc. could be used as a pathway to deter environmental harm but also to document and investigate crimes and violations. At the

international level, the 'Magnitsky sanctions' machinery could be tailored to target those responsible for child serious human rights violations and crimes against and affecting the environment.

- The ongoing discussions to shape the crime of 'ecocide' provide an opportunity to advocate for child-specific elements within its legal definition. For instance, elements about 'organized crime' around uncontrolled environmental exploitation and how children are specifically targeted (trafficking, labor exploitation, serious bodily and physical harm, SGBV against children).
- Gather data about cases and processes on going in different countries on the impact on children of crimes and violations affecting the environment to make the case for international documentation and investigation of violations and crimes in armed conflict situations under international investigative procedures.



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