

Beyond Environmental Harm: Redefining Ecocide Through Ghana's Illegal Mining Crisis

Addressing Global South Realities in International Criminal Law

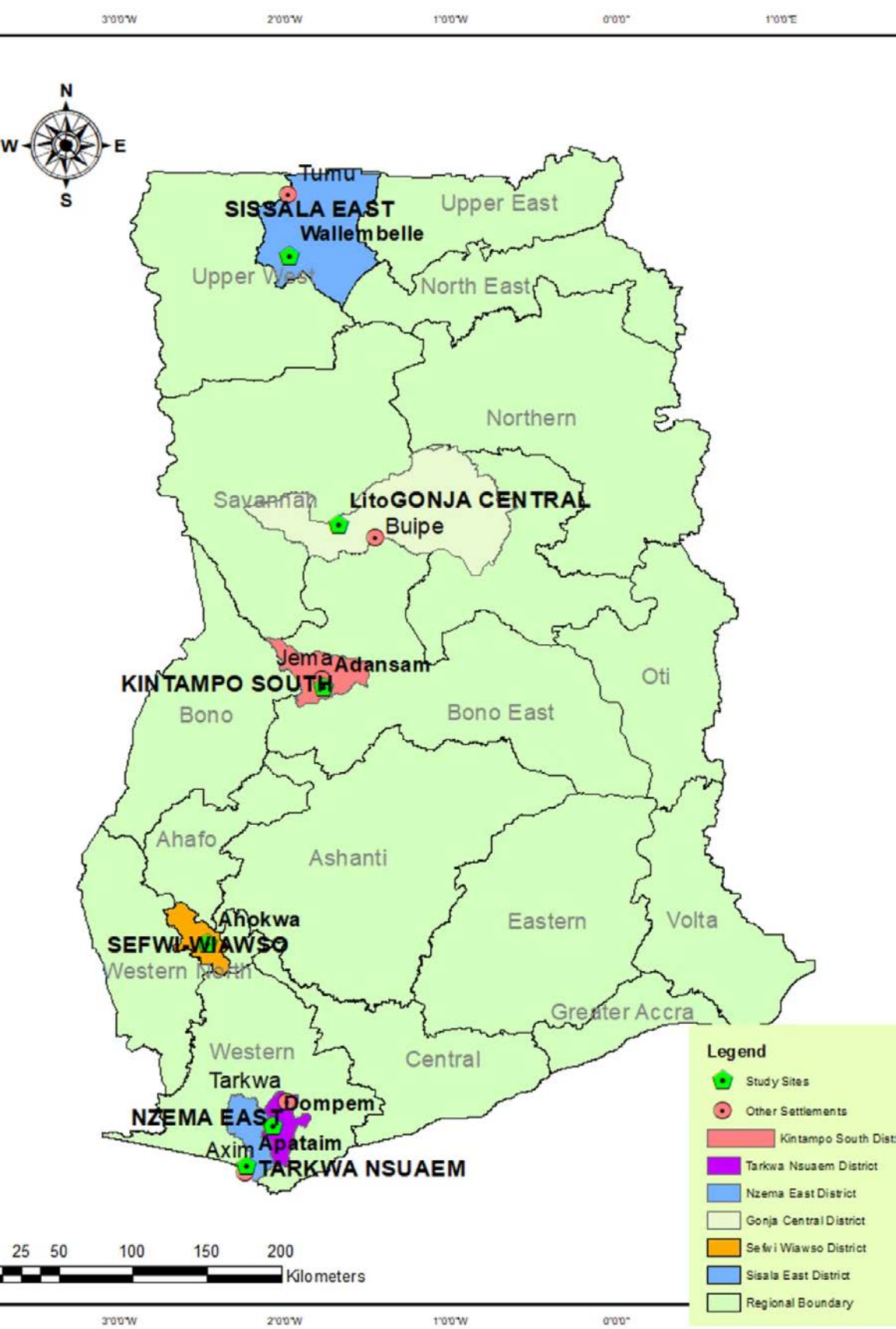
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Roadmap

- Analysis of Ghana's Illegal Mining Crisis
- Review of Current Definitions and discussion of associated problems
- Present Proposed Definition
- Concluding Remarks



Ghana's Galamsey

Crisis

Galamsay—"gather them and sell"—represents illegal gold mining that has devastated Ghana's environment and communities. This crisis exemplifies why current ecocide definitions fall short.

85%

Illegal Mining

Of all small-scale mining operations

1.1M

People Involved

Directly participating in galamsay

60%

Water Bodies

Severely polluted nationwide

24%

Forest Cover Lost

1.46 million hectares destroyed

Environmental Devastation by the Numbers

The scale of environmental destruction in Ghana reveals the inadequacy of purely environmental approaches to ecocide. These numbers tell a story of systematic ecological collapse.

Water Contamination

Crisis

- Turbidity levels: 14,000 NTU (WHO guideline: 4 NTU)
- Major rivers Pra, Ankobra, Birim severely contaminated
- 40% of population affected by compromised groundwater

Agricultural Collapse

- 9% decline in food production
- 77.2 square miles of cocoa farms lost in 2020

Forest Destruction

- 34 of 288 forest reserves affected
- 4,726 hectares destroyed in protected areas
- Critical biodiversity habitats eliminated





Human Rights

Catastrophe

Beyond environmental damage, Galamsey has created a human rights crisis that pure environmental definitions of ecocide cannot address. The human cost reveals why we need a hybrid approach.

Health Impacts

- Mercury poisoning causing neurological disorders
- Respiratory diseases and kidney damage
- Developmental disorders in children

Livelihood

~~Destruction~~

- Mining plant shutdowns
- Rising water costs for vulnerable populations
- Agricultural communities displaced

Rights Violations

- Right to clean water compromised
- Right to health systematically violated
- Indigenous land rights ignored

Political Ecology of Destruction

Understanding galamsey requires examining the political and economic structures that enable environmental destruction. Historical and contemporary factors create a perfect storm of ecological devastation.



Colonial Legacy

Historical mining concessions established extractive patterns that continue today through elite capture of resources.



Structural Adjustment

Structural adjustment policies enabled uncontrolled extraction and weakened environmental protections.



Political Complicity

Elite involvement in illegal mining frustrates enforcement efforts and perpetuates the crisis.



Global Demand

International gold prices and market demands drive continued environmental destruction.



The Regulatory Paradox: LI

2462

Guatemala's 2022 Environmental Protection Regulations (LI 2462) intended to control illegal mining through legalization. Instead, it created a "legitimization signal" that accelerated destruction.

0

1 Legislative Intent

Control illegal mining in forest reserves through regulated legalization

0

2 Unintended Signal

Miners interpreted regulations as government approval for expanded operations

0

3 Accelerated

Destruction

Post-LI 2462 data shows increased mining activity rather than control

0

4 Regulatory Capture

Domestic frameworks can be co-opted and manipulated by powerful interests

This regulatory failure demonstrates why domestic frameworks alone cannot address systematic environmental destruction and why international intervention is necessary.

Various Current Ecocide

Defintions

UCLV Promise Institute Definition: **Promise Institute for Human Rights (UCLA) Group of Experts, 9 April 2021**

"For the purpose of this Statute, "ecocide" means any of the following acts, committed with the knowledge that they are likely to cause widespread, long-term and **severe damage to the natural environment**:

- a. [Substantial] destruction or despoliation of natural habitats, ecosystems, or natural heritage;
- b. Destruction or despoliation of biological resources, in a manner likely to have adverse effects on biological diversity;
- c. Introducing harmful quantities of substances or energy into the air, water, or soil;
- d. Illegal traffic in hazardous waste;
- e. Production, import, export, sale, or use of ozone-depleting substances or of persistent organic pollutants;
- f. Killing, destruction, or taking of specimens of protected wild fauna or flora species, on a scale likely to impact the survival of the species;
- g. Significantly contributing to dangerous anthropogenic interference with the climate system, including through large scale emissions of greenhouse gases or destruction of sinks and reservoirs of greenhouse gases;
- h. Any other acts of a similar character likely to cause an ecological disaster.

For the purpose of paragraph 1, conduct is not ecocide if it is

(a) lawful under national law, (b) lawful under international law, and (c) employs appropriate available measures to prevent, mitigate, and abate harm"

Various Ecocide

Definitions

Independent Expert Panel for the Legal Definition of

Ecocide, June 2021

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.

For the purpose of paragraph 1:

- a. “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- b. “Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
- c. “Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- d. “Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
- e. “Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

Various Definitions of

Ecocide

Dr. Matthew Gillett's Proposed Definition

Ecocide means wilfully committing any of the following acts and thereby causing severe damage to the natural environment that is also widespread or long-term:

- a) killing, harming, or removing protected flora or fauna;
- b) destroying or damaging ecosystems or wild animal habitats;
- c) destroying or damaging natural heritage;
- d) trafficking or dumping hazardous substances;
- e) releasing, emitting, or introducing harmful quantities of substances

or energy into the air, water, or soil;

Why Current Ecocide Definitions Fall

Short

The Independent Expert Panel definition and similar approaches create significant problems for Global South countries, potentially criminalizing legitimate development while failing to address human rights dimensions.

Vague Standards

Terms like "wanton acts" lack legal certainty and could be interpreted to criminalize necessary resource extraction for development.

Colonial Implications

Risk of "kicking away the ladder"—criminalizing development pathways already used by developed nations to achieve prosperity.

Human Rights Gap

Pure environmental focus ignores the inseparable connection between environmental harm and human rights violations in Global South contexts.

"Current definitions could restrict essential resource extraction needed for legitimate economic development in countries still building their infrastructure and economies."

Towards a Hybrid Solution

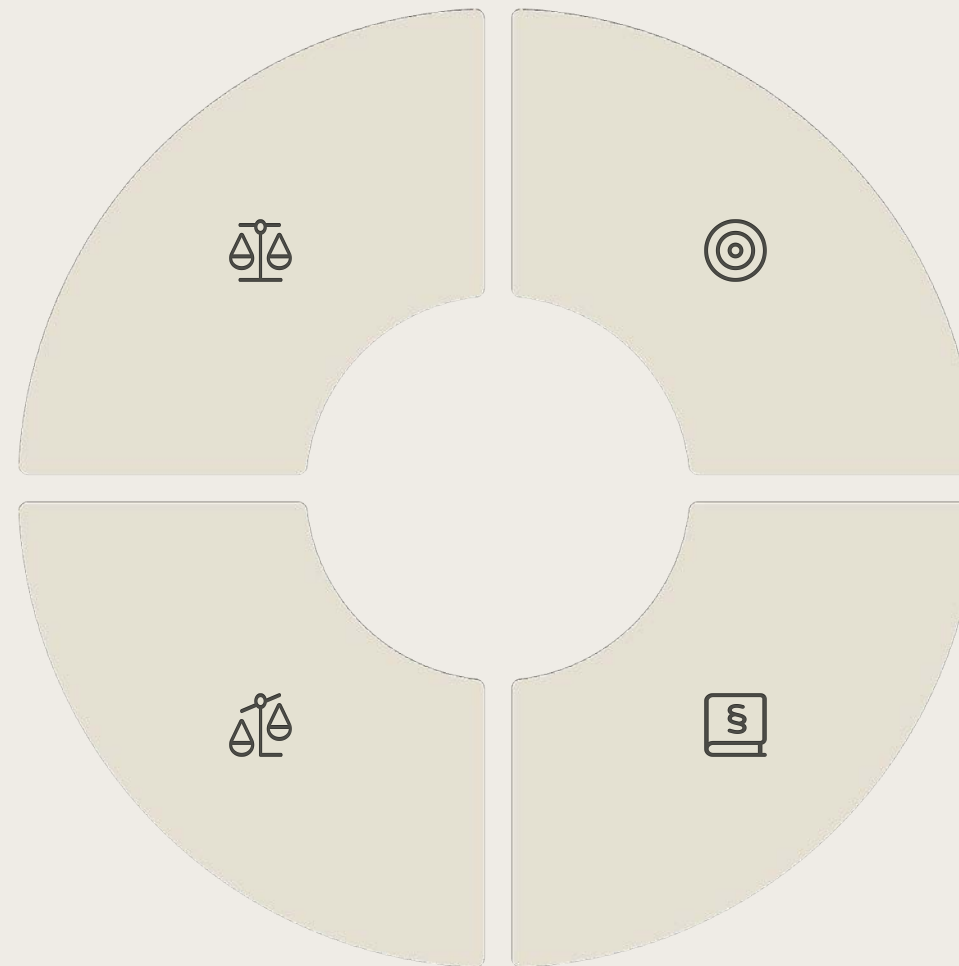
Environmental harm and human rights are inseparable in Global South contexts. A hybrid approach offers both legal clarity and political viability for international acceptance.

Core Principle

Environmental destruction and human rights violations are interconnected and must be addressed together.

Proven Framework

SERAP v Nigeria, Ogiek Case, and Wiwa v Shell demonstrate effective legal pathways.



Strategic Advantage

More politically viable for international acceptance by addressing Global South concerns.

Legal Precedent

Successful cases already link environment to human rights in international courts.

Proposed Hybrid Definition

1. Ecocide means intentionally or recklessly committing acts or omissions that cause severe and either widespread or long-term damage to the natural environment, where such damage:

(a) substantially disrupts essential ecological functions, biodiversity, or ecosystem services; **and**

(b) results in, or creates a substantial likelihood of, serious harm to human health, safety, livelihood, or fundamental rights, including those of present and future generations.

Such acts include, but are not limited to:

i. Destruction of protected ecosystems or habitats

ii. Large-scale pollution of air, water, or soil

iii. Trafficking or dumping of hazardous substances

iv. Systematic deforestation or land degradation

v. **Other acts or omissions of a similar character causing severe or irreversible environmental harm**

This definition shall not apply to acts conducted under legally authorized, scientifically validated sustainable management practices, provided such acts include measures to prevent, mitigate, and remediate environmental harm

Proposed Hybrid Definition


We propose a comprehensive definition that balances environmental protection with development rights, providing clear legal standards while protecting legitimate resource use.

**Element 1: Intent/
Recklessness**
Reckless acts causing severe environmental damage

**Element 3: Human
Impact**
Impact result in serious harm to human health, safety, livelihood, or rights

**Element 2: Environmental
Threshold**
Thresholds that substantially disrupt ecological functions or cause widespread damage

**Safe Harbor
Provision**
Exemption for legally authorized, scientifically validated sustainable practices

 This definition provides legal certainty while protecting legitimate development activities that follow environmental safeguards and respect human rights.

Ghana Meets the Ecocide

Threshold

Applying our hybrid definition to Ghana's galamsey crisis demonstrates clear grounds for ecocide prosecution under international criminal law.



Intent/Recklessness

Continued operations despite known environmental and health consequences, with deliberate disregard for regulations.



Environmental

Damage Severe and widespread destruction across water systems, forests, and agricultural land exceeding any reasonable threshold.



Human Impact

Clear violations of rights to health, water, livelihood, and safe environment affecting millions of Ghanaians.



No Exemption

Illegal activities with no environmental safeguards or scientific validation cannot claim safe harbor protection.

Conclusion: Ghana's galamsey crisis represents a clear case for ecocide prosecution under our hybrid definition, demonstrating both environmental destruction and systematic human rights violations.

Advantages of the Hybrid

Approach

Our hybrid definition addresses key concerns while providing practical advantages for implementation in international criminal law.

Legal Certainty

Clear enumerated acts and specific exemptions provide predictable legal standards that reduce prosecutorial discretion and protect legitimate activities.

Human Rights

Foundation
Builds on established legal frameworks that courts already understand and can effectively enforce.



Development

Balance

Protects legitimate resource use while preventing harm, addressing Global South concerns about development constraints.



Global Acceptance

More politically feasible by addressing key concerns about restricting necessary economic development in developing nations.

Implications for International Criminal

Law

The *Cyber* approach offers a practical pathway for ecocide adoption while setting important precedents for environmental justice and Global South representation in international law.

→ Adoption Pathway

More politically feasible than pure nature-based approaches for Rome Statute amendment

→ Precedent Setting

Ghana could become the first major ecocide prosecution, establishing important legal precedents

→ Regional Impact

Model for addressing similar environmental crises across Africa and the Global South

→ Deterrent Effect

Clear signal that environmental destruction with human harm will face international accountability



This framework transforms ecocide from an abstract environmental concept into a practical tool for protecting both ecosystems and human rights.



Call to Action & Concluding Remarks

The time for action is now. Ghana's crisis demands immediate intervention, while the international community must embrace a more inclusive approach to ecocide that serves both environmental protection and global justice.



International Community

Support a hybrid definition in Rome Statute discussions and recognize the need for Global South-inclusive approaches to environmental crimes.



Ghana

Immediate intervention in the galamsey crisis through international cooperation and accountability mechanisms when domestic solutions fail.



Scholars

Further research on the environment-human rights nexus and development of prosecution strategies using hybrid frameworks.



Practitioners

Develop concrete prosecution strategies and legal mechanisms for implementing hybrid ecocide definitions in practice.

Together, we can redefine ecocide to serve both environmental protection and global justice.