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Criminalizing the Guardians: Eco-Justice and Indigenous Struggles in Indonesia and Nigeria

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Abstract

This study examines the criminalization of Indigenous communities in Indonesia and Nigeria within the broader framework of ecological justice and natural resource governance. Using a normative legal research method combined with a comparative approach, the research explores how state–corporate alliances and positivist legal paradigms perpetuate structural injustice against Indigenous environmental defenders. Findings reveal that the law, instead of serving as an instrument of protection, often legitimizes ecological exploitation and marginalization through selective enforcement and the absence of robust safeguards for Indigenous land rights. The study introduces the eco-justice and ecocide frameworks as normative foundations for transforming criminal law toward a more equitable and ecocentric model. Eco-justice demands the integration of distributive, procedural, and recognition justice in environmental decision-making, while the concept of ecocide expands criminal liability to cover large-scale and systemic environmental destruction. Comparative insights from

Sweden further illustrate that genuine ecological justice requires multi-layered protection combining legal recognition, participatory consultation, and judicial precedents that affirm Indigenous sovereignty over natural resources. This research argues that recognizing Indigenous communities as legitimate legal subjects and incorporating ecocide into national criminal law constitute essential steps toward restoring balance between human rights and the rights of nature.

Keywords
Indigenous Peoples; Criminalization; Eco-Justice; Ecocide; Environmental Law.

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Introduction

Indigenous communities and natural resources reflect a bond that transcends the material dimension, embodying profound spiritual and cultural values.[1] One of them, the river, is regarded as the center of life that sustains economic activities and serves as a space for ritual and social practices, while reinforcing a collective identity passed down through generations.[2] Indigenous communities' utilization of the environment reflects local wisdom, not by causing damage, but by preserving the authenticity of nature and keeping it well-maintained. By internalizing sacred symbols into their daily practices, such as regarding a forest area as a sacred place, Indigenous communities fulfill their needs without exceeding limits while preserving the integrity and sustainability of nature.[3]

The ecological crisis creates a paradox for Indigenous communities in environmental management, as unequal law enforcement often reveals a bias in favor of capitalist interests.[4] Meanwhile, Indigenous communities, as vulnerable groups who manage natural resources wisely and with a focus on sustainability, are often criminalized for their efforts in conservation and

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1 Indigenous peoples inhabiting a territory revitalize ancestral practices through contextual interpretation, thereby fostering a harmony that aligns human life with the natural world. Read more David Román-Chaverra, Yolanda Teresa Hernández-Peña, and Carlos Alfonso Zafra-Mejía, "Ancestral Practices for Water and Land Management: Experiences in a Latin American Indigenous Reserve," *Sustainability (Switzerland)* 15, no. 13 (2023): p.1, https://doi.org/10.3390/su151310346.

2 Nur Arfiani, Isnawati Isnawati, and Nopi Abadi, "Perlindungan Dan Pengelolaan Tanah Adat Di Dayak Meratus Desa Papagaran Kalimantan Selatan," *Jurnal de Jure* 12, no. 2 (2020): p.108, https://doi.org/10.36277/jurnaldejure.v12i2.496.

3 Ramadhani Arumningtyas, Andi Alimuddin Unde, and Jeanny Maria Fatimah, "Komunikasi Simbolik Ritual Andingingi: Pesan Masyarakat Adat Ammatoa Kajang Tentang Pentingnya Menjaga Hutan," *Perspektif Komunikasi: Jurnal Ilmu Komunikasi Politik Dan Komunikasi Bisnis* 7, no. 1 (2023): p.30, https://doi.org/10.24853/pk.7.1.19-32.

4 Industrialization and capitalism are key drivers of inequality. Read more Lailiy Muthmainnah, Rizal Mustansyir, and Sindung Tjahyadi, "Kapitalisme, Krisis Ekologi, Dan Keadilan Intergenerasi: Analisis Kritis Atas Problem Pengelolaan Lingkungan Hidup Di Indonesia," *Mozaik Humaniora* 20, no. 1 (2020): p.62-64, https://doi.org/10.20473/mozaik.v20i1.15754.

protection.[5] By applying the ethnodevelopment concept, the principle of ecological justice should serve as a central foundation in policymaking if the government truly favors Indigenous communities.[6] The concept of environmental justice or environmental equity emerged prominently in environmental discourse over three decades ago and entered legal discussions in the 1990s. It highlights the link between environmental degradation and social injustice, emphasizing fairness in the distribution of environmental benefits and burdens. Drawing from the Brundtland Report's notion of sustainable development,[7] environmental justice integrates ecological sustainability with social equity, urging global action to address the interconnection between environmental and developmental challenges. Scholars like Bullard,[8] argue that traditional environmentalism has ignored the unequal impacts of environmental harm on marginalized indigenous communities. The idea of the concept is to ensure that disadvantaged groups do not disproportionately bear the environmental and socio-economic costs of industrialization, particularly oil exploration as is the experience of the Niger Delta communities in Nigeria.[9]

In the context of environmental justice, the peoples of the Niger Delta may justifiably be regarded as indigenous communities, irrespective of the

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5 Indigenous communities' values and local wisdom often conflict with development projects, whether initiated by the government or by corporations engaged in natural resource exploitation. Read more Sampean Sampean and Sofyan Sjaf, "The Reconstruction of Ethnodevelopment in Indonesia: A New Paradigm of Village Development in the Ammatoa Kajang Indigeneous Community, Bulukumba Regency, South Sulawesi," *Masyarakat: Jurnal Sosiologi* 25, no. 2 (2021): p.182, https://doi.org/10.7454/mjs.v25i2.12357.

6 In line with the concept of living law that has been reintroduced in Indonesia's legal reform, Sweden's experience demonstrates that the law living within society namely, local values that emerge from community practices can serve as a genuine source of ecological legitimacy. Read more Ali Masyhar et al., "Reclaiming the Unwritten: Living Law's Prospects under Indonesia's 2023 Penal Reform," *Jambe Law Journal* 8, no. 1 (2025): 255–85, https://doi.org/https://doi.org/10.22437/home.v8i1.502.

7 Uwem Udok, Erimma Gloria Orie, and I Ukpong, "Challenges of Access to Environmental Justice in Nigeria," *Cavendish University Law Journal* 2 (March 1, 2023): 1–21.

8 Thomas Estabrook and Robert D. Bullard, "Confronting Environmental Racism: Voices from the Grassroots," *Economic Geography* 72, no. 2 (1996): p.45, https://doi.org/10.2307/144273.

9 Udok, Gloria Orie, and Ukpong, "Challenges of Access to Environmental Justice in Nigeria."

absence of formal recognition under Nigerian law. International legal instruments such as the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007),[10] and the International Labour Organization (ILO) Convention No. 169,[11] conceptualize indigenous peoples as groups possessing historical continuity with pre-colonial societies, distinct socio-cultural systems, and a deep dependence on their traditional territories and resources. These groups are often politically and economically marginalized within modern nation-states. The Niger Delta peoples including, the Ogoni, Ijaw, Itsekiri, and Urhobo exhibit these defining features, given their ancestral attachment to their environment and the disproportionate environmental harm and socio-economic deprivation resulting from extensive oil exploration and exploitation in the region.[12]

While the Nigerian Constitution confines the notion of indigene to administrative and political identity within the federal structure, the broader indigenous peoples' framework provides a more compelling analytical lens for understanding their environmental struggles. This interpretive shift aligns with the human rights-based approach to environmental governance, which recognizes that environmental degradation can infringe upon rights to life, health, property, and livelihood. The reasoning of the African Commission on Human and Peoples' Rights in Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria[13] is particularly instructive, as it affirmed the

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[10] Ani Widyani Soetjipto, "Journey to Justice: The United Nations Declaration on the Rights of Indigenous Peoples in the Context of West Papua," *Journal of ASEAN Studies* 10, no. 1 (2022): p.132, https://doi.org/10.21512/jas.v10i1.8491; UN. General Assembly, "United Nations Declaration on the Rights of Indigenous Peoples : Resolution / Adopted by The" (United Nation Digital Library, 2007), https://digitallibrary.un.org/record/606782.

[11] International Labour Organization, "ILO Convention C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)," *International Labour Organization*, no. June (1989).

[12] Fo Nyemutu Roberts, "Engendering Access to Environmental Justice in Nigeria's Oil Producing Areas," *Law, Democracy and Development* 25, no. spe (2021), https://doi.org/10.17159/2077-4907/2020/ldd.v25.spe8.

[13] *Social and Economic Rights Action Centre (SERAC) and Another v. Nigeria*, Communication No. 155/96, (2001) AHRLR 60 (ACHPR 2001).

collective environmental and socio-economic rights of the Ogoni people and held the Nigerian Government accountable for failing to protect them from oil-related pollution.

Environmental justice advocates for positive discrimination to correct imbalances, aiming for equitable access to environmental benefits and fair compensation for damages. It also calls for integrated policies that simultaneously address environmental degradation and social exclusion, promoting both ecological sustainability and social justice. However, many current policies contradict this principle, as reflected in Indonesia's food estate development program within forest areas, which has failed to promote a harmonious relationship between humans and nature.[14] The program framework should ideally balance economic growth, social welfare, and environmental protection within sustainable development policies.[15]

Violations of indigenous land rights and environmental degradation in Indonesia occur systematically and repeatedly, reflecting the intersection between state interests, corporate dominance, and the weak protection of customary law. A clear illustration of this can be seen in the case of PT Toba Pulp Lestari in North Sumatra, where local government support for corporate interests reinforced by the involvement of law enforcement agencies has resulted in the criminalization of indigenous communities. Such actions include arbitrary detention, data manipulation, and acts of violence that ultimately lead to the neglect and

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[14] Rizkia Diffa Yuliantika, Imamulhadi Imamulhadi, and Supraba Sekarwati, "Analisis Yuridis Terhadap Program Pembangunan Food Estate Di Kawasan Hutan Ditinjau Dari Eco-Justice," *LITRA: Jurnal Hukum Lingkungan, Tata Ruang, Dan Agraria* 2, no. 1 (2022): p.56-57, https://doi.org/10.23920/litra.v2i1.1014.

[15] Mohammed Basheer et al., "Balancing National Economic Policy Outcomes for Sustainable Development," *Nature Communications* 13, no. 1 (2022): p.6, https://doi.org/10.1038/s41467-022-32415-9.

dispossession of indigenous peoples' ancestral land rights.[16]

Companies granted licenses by the government to exploit natural resources often neglect the principles of sustainability and ecological balance. In this regard, the presence of indigenous communities plays a crucial role as direct overseers, ensuring that resource utilization does not lead to environmental degradation. The customary legal system embodies a set of values and norms that not only regulate the use of natural resources but also maintain social harmony within the community. Consequently, customary law serves as both an ethical and ecological foundation for achieving sustainable and equitable natural resource management that upholds the integrity of human–environment relations.[17]

Empirical evidence reveals that the existence of indigenous communities is often overlooked within Indonesia's legal framework. Although the Constitution specifically Article 18B paragraph (2) of the 1945 Constitution of the Republic of Indonesia explicitly recognizes and respects the unity of indigenous legal communities and their traditional rights, this recognition lacks strong standing in the practice of positive law.

This constitutional provision should be reinforced by Law No. 39 of 1999 on Human Rights (Article 6), which mandates that the differences and needs of indigenous legal communities must be acknowledged and protected by the state. Additionally, Law No. 32 of 2009 on Environmental Protection and Management provides a foundation for indigenous participation in environmental conservation. However, in

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[16] The conflict, which began in 2014, continues to this day. At its peak, tensions have escalated to the point where local residents involved in the incident were designated as suspects and faced criminalization threats by PT Toba Pulp Lestari (TPL). Read more Musdodi Frans Jaswin Manalu, "Criminalization and Land Rights Conflict: The Indigenous Struggle Against PT Toba Pulp Lestari," *Indigenous Southeast Asian and Ethnic Studies* 1, no. 1 (2025): p.37, 41.

[17] Dhita Puthi Jaenong, Liliana Nur Ahimi, and Zubaedillah Zubaedillah, "Customary Law and Natural Resource Governance: Strengthening Indigenous Rights in Environmental Management," *Hakim: Jurnal Ilmu Hukum Dan Sosial* 3, no. 2 (2025): p.1171.

practice, these regulations have not been followed by derivative legal instruments capable of ensuring tangible protection of indigenous rights over land and natural resources.

As a result, companies granted exploitation permits by the government often disregard the presence of indigenous communities and their customary land rights. This situation underscores a gap between normative recognition and substantive implementation, wherein Indonesia's legal framework systematically sidelines customary land ownership systems.

Furthermore, this condition has given rise to a form of structural violence institutionalized through the national legal system. Indigenous peoples are frequently criminalized when defending their ancestral territories, while corporations receive legal legitimacy to exploit natural resources on those same lands. This disparity illustrates how development paradigms and economic interests are often prioritized over ecological justice and the human rights of indigenous communities.[18]

Consequently, a restructuring of the national legal framework is urgently needed, particularly by strengthening the implementation of Constitutional Court Decision No. 35/PUU-X/2012, which affirms that customary forests are no longer considered state forests.[19] This ruling serves as a critical foundation for upholding indigenous sovereignty over their territories and ensuring that national law no longer functions as a

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[18] Van Vollenhoven's *adatrecht* theory asserts that customary law is not a primitive form of law, but rather an autonomous and dynamic legal system with its own internal coherence and legitimacy. However, the inability of state courts to accommodate the mechanisms of *adatrecht* places indigenous actors in a structurally disadvantaged position within the formal legal system. Read more M Yudi Satria, Purwadi Wahyu Anggoro, and Joko Setiono, "National Law and Minangkabau Customary Law Disparity in Ulayat Land Disputes in the Bidar Alam Area, West Sumatra," *Jurnal Greenation Sosial Dan Politik* 3, no. 3 (2025): p.427, https://doi.org/https://doi.org/10.38035/jgsp.v3i3.

[19] Which affirms that customary forests are no longer considered state forests. However, implementation remains weak because technical regulations are inconsistent and regional enabling laws are largely absent. Ibid., p.424.

legal instrument for marginalization and exploitation of indigenous communities and their environments.

Environmental law enforcement in Indonesia continues to exhibit serious weaknesses, particularly due to the absence of specific legal provisions addressing the crime of ecocide. This legal gap makes it difficult to effectively prosecute perpetrators of large-scale environmental destruction, ultimately fostering a tendency toward impunity. The lack of regulation not only exacerbates ongoing ecological degradation but also highlights the urgent need for legal reform that prioritizes environmental preservation.

Moreover, current legal practices in Indonesia remain dominated by a positivist paradigm that places economic interests above ecological and social concerns. This paradigm treats economic growth as the primary goal, often disregarding long-term environmental impacts and the welfare of affected communities.[20] As a result, a fatal imbalance emerges in environmental protection efforts, sacrificing the sustainability of natural resources and the rights of local communities. To address this issue, a paradigm shift is needed toward a more integrative and ecocentric legal model. Such a model should harmonize state law with customary law, thereby upholding principles of ecological justice and environmental sustainability while respecting local wisdom that understands ecosystems in a holistic manner.

Failure to safeguard the environment from the impacts of oil spills can result in violations of fundamental human rights, including the rights to life, health, property, and privacy, as well as the collective rights of

[20] Such a paradigm is particularly relevant in the context of ecocide, which typically involves large-scale, systemic environmental harm often justified in the name of development or economic gain. Read more Gregorius Widiartana, Vincentius Patria Setyawan, and Ariesta Wibisono Anditya, "Ecocide as an Environmental Crime: Urgency for Legal Reform in Indonesia," *Journal of Law, Environmental and Justice* 3, no. 2 (2025): p.272, https://doi.org/https://doi.org/10.62264/jlej.v3i2.129.

indigenous communities to their ancestral lands, resources, and a healthy environment. Scholars,[21] continue to debate the advantages of adopting a human rights-based approach to environmental protection, with growing support for framing environmental justice within the broader context of human rights. The case of oil exploitation in the Niger Delta, Nigeria, offers both a parallel and a contrast to the situation in Indonesia. In the Niger Delta, oil drilling activities have created a severe ecological disaster zone, marked by oil spills, gas flaring, soil degradation, and water pollution. This environmental damage has devastated agriculture and fisheries key sources of livelihood for indigenous communities and triggered a deep socio-economic crisis. Community resistance, such as the Ogoni Movement led by Ken Saro-Wiwa in the 1990s, was met with brutal state repression. The execution of these activists became a symbol of the failure to hold multinational corporations accountable, as they escaped punishment.

Oil-producing regions in Nigeria experience environmental injustice on at least two fronts.[22] First, oil exploration causes severe environmental degradation and pollution, undermining the health and socio-economic wellbeing of local communities. Second, the financial gains from oil production are inequitably distributed, leaving the producing areas underdeveloped despite their contribution to national revenue. These injustices, coupled with broader political marginalization, have fueled activism and demands for environmental justice, particularly among minority groups like the Ogoni people as earlier stated. Women in the Niger Delta face the harshest impacts of this injustice. As the main agricultural workforce, they suffer directly from land loss caused by continuous oil-related land acquisition. Their reliance on natural

[21] Onyia Anna and P.I Gasiokwu, "The Concept of Environmental Justice in the Nigeria Legal System," *Global Journal of Politics and Law Research* 12, no. 5 (2024): 27–40, https://doi.org/https://doi.org/10.37745/gjplr.2013/vol12n52740.

[22] Roberts, "Engendering Access to Environmental Justice in Nigeria's Oil Producing Areas."

resources such as firewood and water has also been severely constrained by environmental pollution, reducing their capacity to sustain their families. Consequently, promoting environmental justice in the Niger Delta requires a gender-sensitive approach that recognizes women's unique vulnerabilities and the disproportionate burdens they bear, which often go unacknowledged in policy and practice.[23]

From Indonesia's perspective, the Niger Delta case underscores the necessity of firm legal provisions that not only prosecute environmental offenders but also protect affected communities from violence and state neglect. The Environmental Impact Assessment (EIA) Act is one of Nigeria's most debated environmental laws.[24] It mandates that any individual or entity undertaking a project with potential environmental effects must prepare an EIA report. This report must identify possible environmental impacts, propose preventive or mitigation measures, and outline clean-up strategies. Approval of such reports rests with the Federal Ministry of Environment (FME). The Act includes a schedule listing projects that require EIAs covering sectors such as agriculture, petroleum, mining, power, housing, transportation, and waste management. It also prescribes penalties for violations: corporate offenders may face fines, while individuals may be fined or imprisoned for up to five years per offence.[25] Furthermore, the EIA Act empowers the FME to inspect licenses and permits, search premises, and arrest suspected violators of environmental regulations. It also mandates the creation of a public registry to make environmental assessment documents accessible to the public. To enhance enforcement, the Ministry issues sector-specific EIA guidelines, recognizing that different industries generate distinct forms of pollution. Implementation remains the limitation of this laudable legislation in

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[23] Ibid.

[24] Anna and Gasiokwu, "The Concept of Environmental Justice in the Nigeria Legal System."

[25] Ibid.

Nigeria. Including ecocide as a criminal offense in national legislation would serve as a vital instrument to ensure accountability, prevent impunity, and uphold ecological justice.[26] More broadly, integrating national law with local wisdom could pave the way for a responsive and equitable environmental legal system one that avoids repeating the socio-ecological tragedies witnessed in Nigeria.

The criminalization of indigenous communities in Indonesia and Nigeria reflects a structural bias within the criminal justice system. Rather than serving as an instrument for protecting ecosystems and indigenous rights, the law is often employed to delegitimize grassroots resistance and safeguard state and corporate interests. This imbalance exacerbates environmental injustice, social marginalization, and ecological degradation, trapping indigenous peoples in a paradox of law and politics. For example, in Nigeria, citizens have unrestricted access to courts[27], but this right is not freely enjoyed for the protection of their ancestral lands and similar environmental justice claims. In Adediran v. Interland Transport Ltd[28], the court affirmed that individuals have unrestricted access to the courts under Section 6 (6) of the 1979 Constitution and removed the need for the Attorney General's consent in private prosecutions. The court affirmed this precedent in Ekperusi v. Governor of Delta State & Ors,[29] where the court maintained that the legal jurisprudence in Nigeria is that any person who is convinced that there is an infraction of his constitutional right has not just a civic obligation but

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[26] In literature and policy debates, ecocide appears both in deliberate acts and negligence, including large-scale deforestation, oil spills, industrial pollution, deep-sea mining, and the construction of giant dams, each with the potential to permanently damage ecosystems and displace communities. In some contexts, slow violence in the form of ecological damage that occurs gradually and invisibly is also categorized as ecocide. Widiartana, Setyawan, and Anditya, "Ecocide as an Environmental Crime: Urgency for Legal Reform in Indonesia," p.270.

[27] Section 6 (6) Constitution of the Federal Republic of Nigeria, 1999

[28] (1991) LPELR-88(SC)

[29] (2021) LPELR-56742(CA)

a legal right to approach the court to ventilate his rights.[30] However, victims of environmental harm must still prove direct and specific damage before initiating legal action. This strict requirement has limited environmental litigation and precedents, leading many affected communities to accept out-of-court settlements instead of pursuing lengthy and uncertain legal processes, which would otherwise have guaranteed better and adequate compensations for loss and injuries. Environmental justice demands a fair and efficient distribution of resources, alongside a structured system for compensating victims of environmental harm. According to the economic principle of efficient resource allocation,[31] the true social costs and benefits of every economic activity should be accurately reflected in market values. Therefore, the environmental and social damages caused by crude oil pollution should be fully assessed, quantified, and factored into the pricing of petroleum products. Moreover, equity requires that affected individuals and communities receive adequate compensation for their losses. Despite these principles, the pursuit of environmental justice in Nigeria remains largely ineffective.[32]

Previous studies addressing similar issues have not yet integrated the role of criminal law as an active instrument in ecological injustice, particularly from a comparative perspective between Indonesia and Nigeria. The *Down to Earth* (2002) report outlines the impact of Indonesia's centralized forestry regulations, which disregard indigenous rights and further strengthen government control over natural resources.[33]

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[30] Adediran v. Interland Transport Ltd.

[31] Abraham Osa Ehiorobo, "Efficient Resource Allocation and Utilization: The Missing Link in Nigeria's Quest for Sustainable Development," *Economics and Business* 32, no. 1 (2018), https://doi.org/10.2478/eb-2018-0020.

[32] Anna and Gasiokwu, "The Concept of Environmental Justice in the Nigeria Legal System."

[33] Customary law had existed long before Indonesia's independence. Each ethnic community's legal system has its own historical roots in the development of spiritual beliefs, cultural norms, and decision-making structures. Following independence, Indonesia established its highest constitution, which regulates land ownership and declares that the utilization of land shall be controlled by the state.

Ukiwo et al. (2011) examined the social, political, and economic conflicts arising from oil exploitation in Nigeria's Niger Delta region. Despite its vast oil wealth, local communities remain impoverished and suffer from severe environmental degradation caused by the activities of multinational oil corporations.[34] Serfiyani et al. (2021), explain that the recognition of indigenous communities lacks a solid foundation if it is not supported by local government acknowledgment through regional regulations. Therefore, the declarative system provides a more legitimate and authoritative basis compared to relying solely on the constitutive system.[35] Bosio (2023), proposes the establishment of a new category of crime in international criminal law,[36] **ecocide**.[37] The concept of ecocide seeks to fill

Subsequently, through derivative regulations, the government—particularly through forestry authorities—granted hundreds of exploration and exploitation concessions for mineral resources, many of which overlap with forestry and plantation concessions. This process has often disregarded the fact that much of the land has long been, and continues to be, claimed under customary law. Read more Down to Earth, "Forests, People and Rights: A Down to Earth Special Report June 2002," 2002, pp.5, https://www.downtoearth-indonesia.org/sites/downtoearth-indonesia.org/files/2002 Forests report PDF.pdf.

[34] Ukoha Ukiwo et al., *Oil and Insurgency in the Niger Delta: Managing the Complex Politics of Petro-Violence*, ed. Cyril Obi and Siri Aas Rustad, Africa Now (London: Bloomsbury Publishing, 2011), https://books.google.co.id/books?id=BQI1EAAAQBAJ.

[35] Criminalization against indigenous communities often occurs when they take legal action on customary land whose rights have been transferred to other parties. Although various regulations and the Indigenous Peoples Bill (*RUU Masyarakat Adat*) have been introduced, protection for indigenous peoples remains weak due to the lack of alignment in the recognition of customary rights, the protection of customary lands, and the enforcement of criminal sanctions. As a result, synchronization between national law, the Indigenous Peoples Bill, and regional regulations has not yet been effectively achieved. Read more Cita Yustisia Serfiyani, Ari Purwadi, and Ardhiwinda Kusumaputra, "Declarative System in Preventing the Criminalisation of Indigenous People for Adat Rights Conflicts in Indonesia," *Sriwijaya Law Review* 6, no. 2 (2022), https://doi.org/10.28946/slrev.Vol6.Iss2.1359.pp254-267.

[36] Eleonora Bosio, "The Environmental Protection under International Criminal Law: The New Crime of Ecocide" (Università Ca'Foscari Venezia, 2023), https://unitesi.unive.it/retrieve/150160c0-cce5-4b01-be51-e99270b16242/888214-1274572.pdf.

[37] Ecocide refers to actions that cause extensive and irreversible ecological damage. Categorizing ecocide as a crime serves as a means to hold individuals, corporations, and even states accountable for environmental destruction. This classification also enables the international community to strengthen preventive measures against activities that disrupt global ecological balance. However, such efforts face significant challenges due to differing paradigms between economic development goals and the need for natural resource conservation. Read more Ridwan Arifin et al., "Ecocide as the Serious Crime: A Discourse on Global Environmental Protection," in *IOP Conference Series: Earth and Environmental*

the gaps in international law by expanding the jurisdiction of the International Criminal Court (ICC) to prosecute large-scale environmental offenders, including states and corporations. This marks a paradigmatic shift from an anthropocentric legal framework toward ecocentric justice, which recognizes that the environment possesses intrinsic value and is entitled to legal protection.[38]

Building upon this gap, the present study poses two central questions: (i) how does the criminalization of indigenous communities unfold within the context of natural resource exploitation in Indonesia and Nigeria? and (ii) how can the principles of eco-justice and the recognition of ecocide serve as frameworks for transforming criminal law toward equitable ecological governance?

The primary contribution of this research lies in three dimensions. First, it demonstrates that criminal law is not a neutral instrument but rather a mechanism that reinforces ecological injustice through the criminalization of indigenous environmental activism. Second, it offers a comparative analysis between Indonesia and Nigeria in the context of resource conflicts and the criminalization of indigenous peoples. Third, it introduces the frameworks of eco-justice and ecocide as normative lenses that pave the way toward socio-ecological justice.

The eco-justice framework emphasizes the integration of social justice and ecological protection, while the concept of ecocide provides an international legal avenue to prosecute systemic and large-scale environmental destruction. By adopting these frameworks, criminal law

Science, vol. 1355 (Bristol: IOP Publishing, 2024), 12004, https://doi.org/https://doi.org/10.1088/1755-1315/1355/1/012004.

[38] The recognition of ecocide as an international crime serves not only as a means of law enforcement and deterrence but also as a form of global ecological justice, in which the protection of the environment is regarded as an integral part of safeguarding humanity and promoting world peace. Read more Bosio, "The Environmental Protection under International Criminal Law: The New Crime of Ecocide."

can be reoriented to protect indigenous environmental defenders, ensure corporate accountability, and uphold both human rights and ecological rights in a balanced manner.

Method

This research employs a normative legal research method supported by a comparative approach. The normative dimension focuses on examining and interpreting legal norms that regulate environmental protection, Indigenous peoples' rights, and criminal accountability. Primary legal materials analyzed include national constitutions, statutory laws, government regulations, court decisions, and international human rights and environmental conventions. Secondary legal sources such as scholarly articles, policy papers, expert commentaries, and critical literature on green criminology and Indigenous law are used to contextualize and critique the application of these norms in practice.

The comparative approach is applied to analyze the contrasting yet structurally related experiences of Indonesia and Nigeria. These two jurisdictions were selected based on three considerations. First, both are resource-rich postcolonial states where extractive industries particularly mining, palm oil, gas, and petroleum play dominant roles in national economic agendas. Second, both countries exhibit persistent conflicts between state-corporate interests and Indigenous communities over land, forests, and waterways. Third, both have documented patterns of criminalization of Indigenous environmental defenders, making them analytically significant for examining how legal systems can enable or resist ecological injustice.

In addition to legal interpretation, the research incorporates document-based empirical evidence drawn from authoritative and

verifiable sources. These include reports issued by government agencies, national human rights commissions, international organizations, and reputable non-governmental organizations that monitor environmental conflict and displacement. Where quantitative data (e.g., number of land concessions, oil spill incidents, or deforestation rates) are referenced, their provenance is identified and cross-checked with at least two independent sources to ensure reliability. However, it is important to clarify that the study does not collect or generate new field data; rather, it critically analyzes existing documented evidence to support normative arguments.

This study acknowledges several limitations. The availability and consistency of data vary between Indonesia and Nigeria due to differing levels of institutional transparency and monitoring capacity. Furthermore, the analysis is limited by the scope of documented cases and does not capture unreported or informal forms of criminalization that may occur at local levels. Despite these limitations, the triangulation of legal texts, policy documents, and internationally recognized fact-finding reports offers a valid foundation for examining how legal frameworks can perpetuate or mitigate ecological injustice.

By integrating normative legal reasoning with rigorously sourced comparative evidence, this methodology provides a grounded basis for evaluating the structural role of criminal law in shaping Indigenous-state-environment relations and for advancing transformative approaches such as eco-justice and ecocide law.

Result and Discussion

A. The Criminalization of Indigenous Communities in the Context of Natural Resource Exploitation

Indigenous peoples constitute social groups possessing a profound and enduring connection to specific territories, encompassing both land and water areas, which they have inhabited for generations long before the emergence of modern nation-states. Their existence is characterized by a strong sense of historical continuity, as well as by distinct cultural and linguistic systems that differentiate them from the surrounding majority populations. Furthermore, their relatively small numbers often position indigenous communities as minority groups vulnerable to various forms of marginalization social, economic, and political alike particularly in the context of state governance and development policies.[39]

The phenomenon of the criminalization of indigenous peoples cannot be separated from the framework of power relations among the state, corporations, and local communities. The root of the problem lies in the paradigm of positive law, which prioritizes state control over natural resources while often disregarding the existence of customary legal systems and communal land rights (*hak ulayat*) that have been preserved for centuries. Within this context, extractive projects such as mining[40] operations frequently become arenas of conflict, where state-sanctioned

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[39] Based on the testimony of Dr. Phil. Geger Riyanto in the trial of the Maba Sangaji case, registered under case numbers 99/PID.B/2025/PN SOS to 108/PID.B/2025/PN SOS, as documented by Mochdar Soleman, "Ketika Hukum Menjadi Senjata Dan Rakyat Jadi Sasaran," Sentra, October 10, 2025, https://sentranews.id/ketika-hukum-menjadi-senjata-dan-rakyat-jadi-sasaran/. Furthermore, the definition of *indigenous law communities* can be found in Article 1, paragraph (6) of the Law of the Republic of Indonesia Number 39 of 2014 concerning Plantations.

[40] In addition to opposing large corporations, Indigenous communities also resist illegal mining activities, which further intensify environmental degradation and negatively impact the lives of surrounding populations. Read more Andi Firdaus, "Prabowo Incar 1.063 Tambang Ilegal Untuk Selamatkan Rp300 Triliun," ANTARA News, August 15, 2025, https://www.antaranews.com/berita/5040385/prabowo-incar-1063-tambang-ilegal-untuk-selamatkan-rp300-triliun.

corporate interests clash with indigenous communities' efforts to safeguard their ancestral territories and uphold their traditional legal orders, large-scale plantations and infrastructure development projects often serve as catalysts for conflict, as customary lands are frequently designated and treated as "state-owned land",[41] they are then allocated to concession holders without involving indigenous peoples as legitimate legal subjects in the decision-making process.

In postcolonial states such as Indonesia and Nigeria, the colonial legal legacy that positioned the state as the sole proprietor of natural resources continues to persist within modern legal practice. This legal structure reinforces the dominance of the state and corporate actors in controlling land, forests, and marine areas, while indigenous peoples are often portrayed as "unlawful occupants". Consequently, when indigenous communities seek to defend their territories in accordance with customary legal systems and principles of ecological sustainability, such actions are frequently perceived as violations of positive law and ultimately lead to criminalization.

The marginalization and criminalization of indigenous peoples represent two facets of the same process namely, the state's domination over natural resources legitimized through instruments of positive law. When state law fails to accommodate the values of ecological justice and the collective rights of indigenous communities, the law itself becomes an instrument for reproducing structural injustice.[42] In this context, the

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[41] Based on the legal foundation provided by Constitutional Court Decision No. 35/PUU-X/2012, the practice of state recognition may be deemed invalid. The ruling explicitly states that forest areas occupied by Indigenous communities (masyarakat adat) should not be classified as state land. Read more Herman Hidayat et al., "Forests, Law and Customary Rights in Indonesia: Implications of a Decision of the Indonesian Constitutional Court in 2012," *Asia Pacific Viewpoint* 59, no. 3 (2018): p.2, https://doi.org/10.1111/apv.12207.

[42] For Indigenous communities, even judicial recognition and the enactment of laws that create or affirm rights constitute fragile progress if not accompanied by efforts to address the social factors that drive discrimination, entrenched patterns of structural racism within political and economic practices, and difficult historical relationships built upon injustice, violence, and the erasure of language, culture,

paradigm of eco-justice emerges as a crucial alternative approach one that places humans, nature, and culture in an equitable and mutually sustaining relationship. This approach calls for legal and policy reforms that go beyond the mere symbolic recognition of indigenous peoples, ensuring instead their substantive rights to manage natural resources in accordance with principles of ecological sustainability and traditional wisdom. A legal reconstruction grounded in ecological justice thus becomes essential to ending the practice of criminalization and to securing the survival of indigenous communities alongside the ecosystems they protect.

The legal and political structures that enable the dispossession of indigenous lands operate through several mechanisms. First, the state's recognition of national forest zones or management rights often disregards customary claims unless they are formally registered within the state administrative system. Second, concessions granted to corporations are typically regulated through sectoral laws that prioritize national development goals or foreign investment interests over the protection of indigenous rights. Third, the enforcement of administrative law tends to favor license holders, as seen in practices such as the issuance of execution orders, the revocation of customary rights, or the unilateral recognition of corporate ownership. In certain contexts—such as within the concession areas of PT. Toba Pulp Lestari in Sumatra,[43] these mechanisms have led to prolonged land conflicts, displacement of indigenous communities, and the erosion of traditional governance systems or in extractive projects such as oil and gas developments in the Niger Delta[44], Public institutions beyond

and existence. Meaningful transformation requires the cultivation of long-term social change at both national and local levels to acknowledge previously marginalized Indigenous minorities and to develop solutions that recognize political, social, and cultural rights in addition to property rights. Read more Ibid., p.3.

[43] Manalu, "Criminalization and Land Rights Conflict: The Indigenous Struggle Against PT Toba Pulp Lestari."

[44] Amnesty International, "No Clean up, No Justice: Shell's Oil Pollution in the Niger Delta," www.amnesty.org, June 18, 2020, https://www.amnesty.org/en/latest/news/2020/06/no-clean-up-no-justice-shell-oil-pollution-in-the-niger-delta/.

forestry or mining agencies, including security forces, are often mobilized to secure physical access to project sites.[45] This practice, however, undermines horizontal negotiation mechanisms between corporations and the affected indigenous communities. Empirical evidence from field research indicates that similar patterns recur across multiple regions, reflecting a systemic consistency in the manner in which states and corporations manage and maintain control over natural resources.

The economic impact of the criminalization of indigenous peoples is starkly evident through the loss of access to traditional resources, which disrupts livelihoods. In the Niger Delta, the region has experienced 7,940 oil spill incidents, a number that continues to rise over time, with 67% occurring on land primarily associated with sabotage (87% of onshore cases), corrosion, and equipment failure.[46] Environmental pressures from oil production have degraded land and water resources, directly affecting the surrounding communities.[47]

The stance taken by the state toward corporations not only generates economic impacts but also carries ecological consequences. The enforcement of criminal sanctions against companies responsible for environmental degradation continues to face numerous obstacles, ranging from weak evidentiary standards and inter-agency conflicts to structural corruption. In contrast, affected indigenous communities attempting to

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[45] Another case that occurred in Kalimantan was the forced arrest of the Dayak Tomun customary leader, Effendi Buhing, along with six other youths in Kinipan, Lamandau Regency, Central Kalimantan Province, by police authorities. "AMAN Kaltim Kecam Kriminalisasi Masyarakat Adat Di Kalteng," Ruai.tv, August 28, 2020, https://ruai.tv/berita-2/aman-kaltim-kecam-kriminalisasi-masyarakat-adat-di-kalteng-2/.

[46] Akinola S. Akinwumiju, Adedeji A. Adelodun, and Seyi E. Ogundeji, "Geospatial Assessment of Oil Spill Pollution in the Niger Delta of Nigeria: An Evidence-Based Evaluation of Causes and Potential Remedies," *Environmental Pollution* 267 (2020), https://doi.org/10.1016/j.envpol.2020.115545.

[47] The local population is afflicted by poverty, hunger, malnutrition, and violence, thereby exacerbating longstanding grievances among communities competing for scarce resources. Read more Isidore Udoh, "Oil Production, Environmental Pressures and Other Sources of Violent Conflict in Nigeria," *Review of African Political Economy* 47, no. 164 (2020): p.199, https://doi.org/10.1080/03056244.2018.1549028.

defend their rights are often perceived as impediments to development or as threats to public infrastructure. The phenomena of legal instrumentalization and corporate impunity are central to understanding the roots of this injustice, illustrating how indigenous peoples are frequently positioned vulnerably between two forces: corporations controlling natural resources and the state providing legal legitimacy. Criminal law, security policies, and forestry regulations are selectively applied to criminalize actions taken by indigenous communities to protect their rights. In this context, law ceases to be neutral and instead functions as an ideological instrument for controlling populations and securing capital accumulation.[48]

It has been evidenced that the increase in attacks and criminalization of environmental defenders in Indonesia signals the state's failure to provide adequate legal protection for activists striving to safeguard ecosystems.[49] There have been 40 documented cases of criminalization and violence against Indigenous Peoples across various regions in Indonesia. The majority of these cases are continuations of pre-existing conflicts that, to date, remain unresolved by the state, reflecting both neglect and discriminatory attitudes toward indigenous communities. Among these cases, the highest number of conflicts occurred between Indigenous Peoples and the plantation sector (10 cases), followed by mining (5 cases), dam and hydropower projects (6 cases), national and local governments (5

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[48] Daan P. van Uhm and Ana G. Grigore, "Indigenous People, Organized Crime and Natural Resources: Borders, Incentives and Relations," *Critical Criminology* 29, no. 3 (2021), https://doi.org/10.1007/s10612-021-09585-x.

[49] The criminalization of environmental activists and Indigenous communities in Indonesia, coupled with weak legal protection, has created a culture of fear and opened space for systemic repression. Cases such as those of Daniel Frits Tangkilisan and Jasmin illustrate how legal accusations are frequently used to silence dissent, highlighting the state's failure to provide adequate legal protection for activists fighting for ecosystem conservation. Read more I Ketut Kasta Arya Wijaya et al., "The Urgency of the Indigenous Peoples Bill: Developing a Legal Framework for the Protection of Environmental Activists in Indonesia," *Jurnal Pertahanan: Media Informasi Tentang Kajian Dan Strategi Pertahanan Yang Mengedepankan Identity, Nasionalism Dan Integrity* 11, no. 1 (2025), https://doi.org/https://doi.org/10.33172/jp.v11i1.19762.

cases), Forest Management Units or KPH (6 cases), industrial plantation forests (3 cases), the Indonesian National Armed Forces (TNI) (1 case), and environmental pollution in indigenous territories (4 cases). As a result of these conflicts, 39,069 individuals, or 18,372 households, have suffered economic, social, and moral losses, with a total affected indigenous land area of 31,632.67 hectares. AMAN emphasizes that these figures only represent cases identified on the surface, while the actual number is likely much higher due to numerous latent conflicts that remain unreported or unexposed to the public.[50]

A key weakness in the legal system lies in its application of corporate criminal liability. Field-level individuals often become scapegoats, while corporate actors and government officials who grant illegal permits remain untouched by the law. The implication of this dynamic is structural neglect of environmental degradation and the weakening of indigenous communities' role as social stewards over land and natural resources. Considering all this empirical evidence, the criminalization of indigenous peoples represents not only a violation of human rights but also a form of ecological injustice (eco-injustice) that threatens global socio-environmental sustainability. True sustainability can only be achieved if national legal systems undergo a reconstruction of the concepts of land and resource rights, recognizing both the existence and the traditional wisdom of indigenous communities.

Hence, there is a pressing need for the harmonization of national laws in alignment with principles that formally recognize indigenous land rights (*hak ulayat*), strengthen community-based dispute resolution mechanisms, and enforce strict legal accountability against environmentally destructive

[50] Aliansi Masyarakat Adat Nusantara, "Catatan Akhir Tahun Aliansi Masyarakat Adat Nusantara: Resiliensi Masyarakat Adat Di Tengah Pandemi Covid-19 Agresi Pembangunan & Krisis Hak Asasi Manusia," www.aman.or.id, 2020, p.28, https://www.aman.or.id/wp-content/uploads/2021/01/CATATAN-AKHIR-TAHUN-2020_AMAN.pdf.

corporations. Such reforms would not only improve the relationship between the state and indigenous communities but also lay the foundation for genuine ecological justice. In this context, the criminalization of indigenous peoples exemplifies the paradox of modern law: on one hand, the law purports to protect the environment and maintain social order, yet on the other hand, it functions as an instrument for displacing the very stewards of nature. Therefore, only through just legal reform, enhanced corporate accountability, and substantive recognition of indigenous rights can the global community break free from the cycle of structural inequality and ecological degradation inherited from colonial legacies and extractive capitalism.

Furthermore, legal protection of indigenous peoples' rights in the utilization of natural resources is closely linked to their criminalization in the context of resource exploitation. Although indigenous rights have been formally recognized in the 1945 Constitution of Indonesia and various other legal instruments, weak implementation and inconsistent law enforcement leave many indigenous communities vulnerable to criminalization. When indigenous peoples seek to defend their ancestral lands and natural resources against exploitative practices, they are often targeted with legal repression, intimidation, and accusations that undermine the legitimacy of their struggle.[51] This situation reflects the state's failure to ensure effective legal protection and to recognize indigenous legal communities along with their traditional rights.[52] An inadequate legal framework creates space for the domination of corporate

[51] Read on Baso Madiong et al., "Legal Protection of Indigenous Peoples Over Natural Resources and Paradigm Shift of Traditional and Modern Values in South Sulawesi, Indonesia," *Journal of Law and Sustainable Development* 11, no. 9 (2023), https://doi.org/10.55908/sdgs.v11i9.458; Yunia Indah Setiawati, "Harmonization of Natural Resource Utilization Rights by Indigenous Peoples in the Indonesian Legal System," *Indonesian State Law Review (ISLRev)* 1, no. 1 (2018), https://doi.org/10.15294/islrev.v1i1.26937.

[52] Yuniar Rahmatiar, "Legal Protection and Rights of Indigenous Peoples: Legal Certainty in Managing Natural Resources," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 22, no. 3 (2023): 1485–1505, https://doi.org/https://doi.org/10.31941/pj.v22i3.4999.

and state interests, ultimately marginalizing the voices of indigenous communities and exacerbating both social and ecological injustices.[53] Although the government and non-governmental organizations (NGOs) play important roles in advocating for indigenous peoples' rights, various obstacles in law enforcement and access to justice reveal systemic weaknesses.[54] Justice in environmental disputes is not achieved solely through judicial proceedings. Government Regulation No. 54 of 2000 on Institutions Providing Environmental Dispute Settlement Services Outside the Court provides a mechanism for dialogue and negotiation to reach agreements regarding compensation for environmental damage. The amount of compensation is determined based on the extent of pollution and its long-term impact on the affected community's quality of life. Examples of such settlements include those reached between PT Riau Andalan Pulp & Paper and the community of Lubuk Jering Village; PT Musim Mas and the community of Kesuma Village; PT Citra Riau Sarana (Wilmar Group) and the Indigenous Community of Kenegerian Pangean; as well as PT Bertuah Aneka Yasa (Duta Palma Group) and the community of Kuala Cenaku Village.[55]

Furthermore, Law No. 32 of 2009 on Environmental Protection and Management provides several legal avenues for seeking environmental justice. Article 92 grants environmental organizations the right to file lawsuits in the interest of environmental conservation. Article 90 allows

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[53] Read on Soelistyowati Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle," *Jambe Law Journal* 7, no. 1 (2024): 149–67, https://doi.org/10.22437/jlj.7.1.149-167 150; Amri Panahatan Sihotang, Wafda Vivid Izziyana, and Panji Wirawan, "Legal Protection of Indigenous Peoples and Traditional Communities in Indonesia from The Perspective of The Social Environment," in *1st International Conference on Social Environment Diversity (ICOSEND 2024)* (Atlantis Press, 2025), 686–92, https://doi.org/https://doi.org/10.2991/978-2-38476-366-5_68.

[54] Soelistyowati, "Reassessing State Responsibility for Indigenous Rights to Natural Resources Based on Justice Principle."

[55] Marhaeni Ria Siombo, *Hukum Lingkungan Dan Pelaksanaan Pembangunan Berkelanjutan Di Indonesia* (Jakarta: PT. Gramedia Pustaka Utama, 2012), p.113-115.

government agencies responsible for environmental protection to file claims for compensation for environmental damage or pollution. Article 91 permits class action lawsuits filed by groups with shared interests or through representative actions. Article 93 allows for administrative lawsuits challenging policies or permits that may result in environmental harm.[56]

Despite the availability of these legal mechanisms for state institutions, civil society organizations, and community representatives, criminalization continues to occur. This can be seen in the case of the Indigenous Maba Sangaji Community, who were prosecuted under the Mining Law.[57] Therefore, comprehensive legal reform is urgently needed to strengthen protections, prevent criminalization, and ensure that Indigenous peoples can exercise their rights over natural resources without fear of repression. This approach is crucial not only for safeguarding human rights but also for achieving sustainable and equitable natural resource governance.

B. Examining Eco-Justice and Ecocide as a New Legal Paradigm

Environmental injustice is the concept that environmental harm is distributed unfairly and influenced by patterns of racism and inequality. It occurs when low-income or underserved communities bear the impacts and burdens of factors such as toxic waste, resource extraction, and other land uses from which they do not benefit. Environmental injustice also constitutes a public health issue, as populations living near industrial sites, waste transfer stations, landfills, and other pollution sources may be

[56] Ibid., p.121-123.

[57] The judge declared that the defendant, Sahrudin Awad, also known as Udin, was proven legally and convincingly guilty of committing the criminal act of obstructing or interfering with mining business activities, read on Intan Setiawanty, "Hakim Vonis 11 Warga Adat Maba Sangaji 5 Bulan 8 Hari Penjara, Tak Dianggap Pejuang Lingkungan," tempo.co, October 16, 2025, https://www.tempo.co/hukum/hakim-vonis-11-warga-adat-maba-sangaji-5-bulan-8-hari-penjara-tak-dianggap-pejuang-lingkungan-2080168.

exposed to environmental hazards that cause serious health effects.[58] The criminalization of indigenous peoples in the context of natural resource exploitation must be understood within a broader framework, as a manifestation of the disconnect between national legal systems and the paradigm of ecological justice, which demands recognition that indigenous communities are not merely subjects of development but also rights-bearing actors within the human nature relationship.

The eco-justice paradigm emphasizes that, in addition to the equitable distribution of environmental burdens and benefits and participation in decision-making, indigenous communities also require recognition of their local knowledge systems and traditional management practices.[59] In many cases, the neglect of recognition rights creates conditions where Free, Prior, and Informed Consent (FPIC) is either not obtained or carried out merely as a procedural formality, paving the way for exploitation that severs indigenous communities' ecological and cultural connections. This procedural justice paradigm demands meaningful participation mechanisms, access to litigation, and recognition of the complex identities of indigenous peoples within environmental governance.[60]

On the other hand, the concept of ecocide expands the scope of criminal liability from administrative violations or localized damage to large-scale ecological destruction that is widespread, long-term, and severe, carried out with knowledge of or gross negligence regarding the

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[58] Julie Rogers and Alexandra Jonker, "What Is Environmental Justice?," www.ibm.com, accessed October 24, 2025, https://www.ibm.com/think/topics/environmental-justice?

[59] Deborah McGregor, Steven Whitaker, and Mahisha Sritharan, "Indigenous Environmental Justice and Sustainability," *Current Opinion in Environmental Sustainability*, 2020, https://doi.org/10.1016/j.cosust.2020.01.007.

[60] Philippe Le Billon and Päivi Lujala, "Environmental and Land Defenders: Global Patterns and Determinants of Repression," *Global Environmental Change* 65 (2020), https://doi.org/10.1016/j.gloenvcha.2020.102163.

accompanying ecological and social impacts.[61] Ecocide shifts the paradigm of environmental criminal law from merely punishing technical violations to holding accountable for systemic actions that destroy ecosystems and the communities that depend on them.[62] When indigenous communities inhabit areas targeted for extractive expansion and ecosystem destruction directly impacts their way of life, the denial of access, land dispossession, ecosystem degradation, and criminalization of protests or defense efforts by these communities can be understood as tangible manifestations of social and ecological ecocide.[63]

In national practice, for instance in Indonesia or countries with significant indigenous populations and extensive extractive territories, the application of the eco-justice and ecocide paradigms can provide a normative foundation to reform the still-fragmented criminal law system. Through the proposed norm, namely the article on "Ecological Crimes and Violations of Indigenous Rights," the state can establish that actions causing widespread or long-term environmental damage and impacting indigenous communities constitute criminal offenses subject to tangible sanctions: imprisonment, fines, and obligations for restoration and compensation. This norm incorporates FPIC elements, recognition of indigenous peoples as legitimate consultation subjects, and protections

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[61] Liana Georgieva Minkova, "The Fifth International Crime: Reflections on the Definition of 'Ecocide,'" *Journal of Genocide Research* 25, no. 1 (2023), https://doi.org/10.1080/14623528.2021.1964688.

[62] Liana Georgieva Minkova, "Ecocide, Sustainable Development and Critical Environmental Law Insights," *Journal of International Criminal Justice* 22, no. 1 (2024): 81–97, https://doi.org/https://doi.org/10.1080/14623528.2021.1964688.

[63] There is a direct link between extractive expansion, the criminalization of Indigenous communities, and socio-ecological ecocide. Baca selengkapnya Leah Temper and Joan Martinez-Alier, "The God of the Mountain and Godavarman: Net Present Value, Indigenous Territorial Rights and Sacredness in a Bauxite Mining Conflict in India," *Ecological Economics* 96 (2013), https://doi.org/10.1016/j.ecolecon.2013.09.011; Thomas Sikor and Peter Newell, "Globalizing Environmental Justice?," *Geoforum*, 2014, https://doi.org/10.1016/j.geoforum.2014.04.009; Adrian J. Bailey, Dusan Drbohlav, and Joseph Salukvadze, "Migration and Pastoral Power through Life Course: Evidence from Georgia," *Geoforum* 91 (2018), https://doi.org/10.1016/j.geoforum.2018.02.023.

ensuring that permits or concessions cannot be granted without their consent. It thereby integrates distributive, procedural, and recognition justice the core of eco-justice together with the degree of ecological harm that constitutes ecocide. This legal framework bridges indigenous rights and ecological dimensions as a unified normative entity.

Analytically, such a norm carries several important implications. First, recognizing indigenous communities as legal subjects in consultation and decision-making processes strengthens their position from merely being victims to rights-bearing partners in the management of their territories, signaling a paradigm shift from "management over" to "co-management" or "management by" indigenous peoples.[64] Second, the obligation to document FPIC as a condition for permits transforms the approval process from a mere administrative procedure into a substantive requirement; neglecting it strengthens the criminal offense and provides a deterrent effect often absent in conventional environmental regulations. Third, imposing liability on corporations and state officials including corporate dissolution and bans on obtaining permits for a defined period signals that large-scale ecological damage can be treated as a structural crime, not merely an individual error or isolated local activity. This underscores that the criminal law system must be capable of holding major economic power actors accountable, not just minor offenders.

However, the implementation of this norm also faces significant challenges. Proving elements of "widespread, large-scale, and long-term" damage is often difficult because environmental investigative institutions

[64] It underscores the transformation from a top-down management of Indigenous communities to co-management and management by Indigenous peoples themselves as a core principle of eco-justice and equitable legal governance. Read more McGregor, Whitaker, and Sritharan, "Indigenous Environmental Justice and Sustainability"; Kyle P. Whyte, "Indigenous Science (Fiction) for the Anthropocene: Ancestral Dystopias and Fantasies of Climate Change Crises," *Environment and Planning E: Nature and Space* 1, no. 1–2 (2018), https://doi.org/10.1177/2514848618777621; Paul Robbins and Fikret Berkes, "Sacred Ecology: Traditional Ecological Knowledge and Resource Management," *Economic Geography* 76, no. 4 (2000), https://doi.org/10.2307/144393.

have limited capacity and are vulnerable to pressures from corporations and political elites.[65] Additionally, political resistance to recognizing ecocide as a criminal category often arises because it conflicts with economic interests and the sovereignty of extractive-state economies.[66] The recognition of indigenous communities in consultation procedures is often hindered by national legal frameworks that still prioritize state ownership of natural resources and have yet to fully accommodate the legal pluralism advocated by indigenous peoples.[67] Therefore, serious legal reform must strengthen environmental investigative institutions, indigenous peoples' litigation mechanisms, and protections for environmental and indigenous rights defenders to ensure that the norm does not remain merely symbolic.

From the perspective of national criminal law reform, the proposed norm could serve as a blueprint for legislation or additional articles in the Penal Code explicitly addressing ecological crimes and violations of

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[65] The proof of large-scale ecocide faces methodological and structural challenges due to limited investigative capacity as well as political and corporate interference. Read more Polly Higgins, Damien Short, and Nigel South, "Protecting the Planet: A Proposal for a Law of Ecocide," *Crime, Law and Social Change* 59, no. 3 (2013), https://doi.org/10.1007/s10611-013-9413-6; Arifin et al., "Ecocide as the Serious Crime: A Discourse on Global Environmental Protection."

[66] Political resistance to the criminalization of ecocide primarily emerges from states with extractive economic interests, as recognizing ecocide would extend criminal liability to both the state and corporations. This resistance is structural and ideological, rooted in an economic paradigm that prioritizes growth over ecological sustainability. Read more Xue Gao et al., "The Challenges of Coal Phaseout: Coal Plant Development and Foreign Finance in Indonesia and Vietnam," *Global Environmental Politics* 21, no. 4 (2021): 110–33, https://doi.org/https://doi.org/10.1162/glep_a_00630; Bosio, "The Environmental Protection under International Criminal Law: The New Crime of Ecocide."

[67] Currently, Indonesia is considered to have failed in adequately accommodating legal pluralism and recognizing indigenous communities in the management of natural resources. Read more Carolien Jacobs, "Navigating through a Landscape of Powers or Getting Lost on Mount Gorongosa," *Journal of Legal Pluralism and Unofficial Law* 42, no. 61 (2010), https://doi.org/10.1080/07329113.2010.10756643; Elena Sergeevna Boltanova and Maxim Vladimirovich Kratenko, "The Specific Nature of Environmental Damage and the 'Conventionality' of Its Assessment as Factors Hindering the Development of Environmental Insurance in the Russian Federation," *Asia Pacific Journal of Environmental Law* 25, no. 1 (2022), https://doi.org/10.4337/apjel.2022.01.01; Forest Stewardship Council, "Implementing Free, Prior, and Informed Consent (FPIC): A Forest Stewardship Council Discussion Paper" (Bonn, FSC International, 2018).

indigenous peoples' rights. For instance, an article could stipulate that any development permit in indigenous territories must be accompanied by the consent of the indigenous communities, that violations of this obligation constitute a criminal offense with significant prison terms and fines, and that offenders are obliged to restore environmental and socio-cultural conditions for affected communities. This model reflects a restorative and preventive approach, not only punishing after damage occurs but also preventing it through FPIC standards and the recognition of indigenous rights. Such implementation positions indigenous communities as active subjects in natural resource governance while simultaneously safeguarding the environment as an entity protected under criminal law.

Furthermore, this norm has the potential to overcome the dualism in conventional environmental law, which often separates administrative and civil liability from criminal responsibility. By formulating criminal provisions that incorporate elements of large-scale ecological damage and violations of indigenous peoples' rights, the criminal justice system becomes a genuine instrument of ecological justice, affirming that development must not sacrifice the life-ecology relationship of indigenous communities and is not merely a matter of permits and resource monetization. This paradigm aligns with the notion that violations against nature and the communities dependent on it constitute simultaneous infringements of human rights and socio-ecological justice.

In terms of implementation, such a norm must be complemented by operational mechanisms: clear definitions of indigenous territories, verification of indigenous community membership, FPIC standards, complaint mechanisms for indigenous peoples, establishment of environmental-indigenous restoration funds, and mechanisms for resolving environmental-indigenous disputes. Without concrete implementing instruments, the norm risks remaining a moral formulation without

enforceability. Strengthening the capacity of investigative institutions, drafting technical guidelines, involving indigenous communities in monitoring and evaluation, and ensuring access to anti-corruption and environmental judicial mechanisms are key to success.

Thus, integrating the paradigms of eco-justice and ecocide through stronger criminal law norms, as proposed, provides an implementable pathway toward a more just, inclusive, and ecologically grounded environmental legal order. Such reform not only protects Indigenous communities and their ecosystems, but also affirms that sustainable development must be understood in terms of ecological life-relations, rather than merely in GDP figures or exploitation output. Only in this way can law return to its role as a holistic instrument of justice recognizing that human rights and the rights of nature, particularly in the context of Indigenous communities, are two sides of the same coin of justice.

Law Number 1 of 2023 concerning the Criminal Code does not explicitly define criminal acts related to large-scale environmental destruction. Based on the *lex specialis* principle, such provisions are generally covered under Law Number 32 of 2009 on Environmental Protection and Management. However, there is still no specific legal formulation that recognizes ecocide as a distinct criminal offense, resulting in a legal gap in integrating the concept of ecocide into Indonesia's environmental law enforcement framework. The existing provisions merely prohibit activities causing environmental pollution and provide general criminal sanctions for environmental destruction, without addressing large-scale, systematic ecological harm as a distinct and grave offense.[68]

[68] Although the imposition of sanctions against perpetrators of environmental destruction has been regulated under Law Number 32 of 2009, the implementation of criminal consequences aimed at environmental function restoration has not been fully optimized. In comparison, Brazil has applied an administrative sanctions system that has proven to be more effective, including imposing fines, revoking corporate licenses, and implementing various preventive measures to anticipate excessive environmental exploitation. These preventive actions are taken to avoid the negative impacts of

As discussed by Arifin et al. in their work titled "Ecocide as the Serious Crime: A Discourse on Global Environmental Protection,"[69] the formulation and recognition of ecocide as an international crime present both conceptual and practical challenges. Sunardi further emphasizes that although the existence of indigenous communities has been legally recognized, additional supporting regulations are still needed. This aligns with broader efforts to strengthen environmental law enforcement through more comprehensive and specific legal instruments.[70]

In practice, the enforcement of environmental law in Indonesia remains inconsistent, often hindered by weak scientific evidence, political and economic interference, and limited institutional capacity among law enforcement agencies. Moreover, national economic interests are frequently prioritized over ecological sustainability, leading to numerous cases of environmental degradation that do not result in firm sanctions for perpetrators. Nevertheless, growing public awareness and pressure from civil society have encouraged the government to enhance oversight mechanisms and expand international cooperation in addressing environmental crimes.

The enactment of Presidential Regulation Number 5 of 2025, which governs the management and enforcement of forest area utilization and establishes a legal framework for reclaiming forest lands used without authorization, constitutes a crucial step toward achieving ecological justice in Indonesia. This policy is expected to contribute to environmental restoration and promote the sustainable use of natural resources while

overexploitation of natural resources and to ensure that exploitation activities remain within the limits of ecological sustainability. M. Zaid et al., "The Sanctions on Environmental Performances: An Assessment of Indonesia and Brazilia Practice," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023), https://doi.org/10.53955/jhcls.v3i2.70.

[69] Arifin et al., "Ecocide as the Serious Crime: A Discourse on Global Environmental Protection."

[70] Sunardi Purwanda et al., "The Fate of Indigenous Peoples' Rights Recognition After the Enactment of the National Criminal Code," *Indonesian Journal of Criminal Law Studies* 9, no. 2 (2024): p.380-381, https://doi.org/https://doi.org/10.15294/ijcls.v9i2.50321.

meeting societal needs and protecting the rights and livelihoods of indigenous communities residing in and around forest areas. Furthermore, it is anticipated to serve as an initial milestone for the development of legal provisions specifically addressing ecocide, thereby strengthening the legal protection of the environment and preventing large-scale ecological destruction in the future.

C. Indigenous Peoples, Eco-Justice, and Mechanisms for the Protection of Natural Resources: Lessons from Sweden

Recognition of indigenous peoples' rights is a central element in the concept of ecological justice. Sweden serves as a notable example of a country that has successfully developed a protection system integrating indigenous rights particularly those of the Sámi community with ecosystem conservation efforts. This approach focuses not only on safeguarding endemic species but also on maintaining ecological processes that sustain traditional livelihoods, such as reindeer migration patterns, seasonal grazing systems, and indigenous land management practices. Such success has been achieved through a combination of legislation, legal precedents, policy zoning, and consultation mechanisms, creating a multi-layered protection framework for collective rights and ecological balance.[71]

The 2022 Consultation Act represents a significant step in ensuring indigenous participation in any decision affecting their lives and traditional territories. This regulation mandates the government to conduct formal consultations with Sámi representatives before issuing decisions or policies that carry particular significance for the community. The consultation requirement provides legal legitimacy to indigenous voices while enhancing

[71] Riksdagen, "Lag Om Konsultation i Frågor Som Rör Det Samiska Folket (SFS 2022:66): Svensk Författningssamling," www.riksdagen.se, 2022, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-202266-om-konsultation-i-fragor-som-ror-det_sfs-2022-66.

transparency in public administrative processes.[72] Although the law does not grant a veto right, its existence signifies a paradigm shift toward more participatory and equitable decision-making. The consultation process also compels government agencies to document indigenous input, consider social and ecological aspects, and provide space for conflict resolution through dialogue on an equal footing between the state and the community.

The strengthening of indigenous rights in Sweden is further reinforced through influential judicial precedents. The Swedish Supreme Court ruling in the Girjas case of 2020 represents a landmark in the country's indigenous law history. In this decision, the court recognized the Sámi Girjas community's right to regulate hunting and fishing permits within their traditional territories based on the principle of *urminnes hävd*, or ownership derived from long-standing customary use. The ruling affirmed that longstanding indigenous practices carry legal weight capable of rivaling state ownership claims.[73] The impact of this ruling extends beyond strengthening the bargaining position of indigenous communities vis-à-vis the state and economic actors; it also sets a precedent for the protection of natural resources managed sustainably by indigenous peoples.

Protection in Sweden is further reinforced through the recognition of multilayered areas such as Laponia, which is registered as a UNESCO World Heritage Site. Laponia is acknowledged not only for its natural beauty but also for the cultural and spiritual values embedded in the reindeer herding and migration practices maintained by the Sámi people.[74]

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[72] Linn Flodén and Elsa Reimerson, "Conservation, Collaboration, and Claims: Saemie Inclusion and Influence in a Swedish National Park Process," *Frontiers in Conservation Science* 3 (2022), https://doi.org/10.3389/fcosc.2022.1105415.

[73] The Supreme Court of Sweden, "The 'Girjas' Case – Press Release - The Supreme Court," Högsta Domstolen: Sveriges Domstolar, January 23, 2020, https://www.domstol.se/en/supreme-court/news-archive/the-girjas-case--press-release/.

[74] UNESCO World Heritage Centre, "Laponian Area," https://whc.unesco.org, accessed October 24, 2025, https://whc.unesco.org/en/list/774/.

This international status carries significant implications, as it obliges the state to maintain a balance between environmental conservation and the continuity of local culture. Any development or extractive activity in the area must undergo rigorous environmental and cultural impact assessments in accordance with UNESCO standards. This makes Laponia a model region that safeguards both biodiversity and the local traditional knowledge that underpins ecological sustainability.

In addition, Sweden's legal framework provides substantive protection for traditional economic practices through regulations such as the Reindeer Husbandry Act. This legislation recognizes reindeer herding as an exclusive right of the Sámi people and grants legal legitimacy to the traditional management systems carried out by the sameby or siida communities.[75] This recognition is crucial because reindeer herding is not only of economic value but also plays a key role in maintaining tundra and forest ecosystems through land rotation, seasonal grazing patterns, and the preservation of natural vegetation diversity. In this context, traditional practices become an integral part of the national sustainable ecological strategy.

The success of this protection is also reinforced by moral and political pressure from the international community. The case of the planned mining project in the Gállok (Kallak) area illustrates how global advocacy mechanisms strengthen the position of indigenous communities. UN human rights experts, international environmental organizations, and global media have exerted pressure on the Swedish government to refrain from issuing open-pit mining permits that could threaten reindeer migration routes and disrupt ecosystem balance.[76] Such transnational

[75] International Centre for Reindeer Husbandry, "Reindeer, People, Pastures," ICR, accessed October 24, 2025, https://reindeerherding.org/.

[76] UN Human Rights Experts, "Sweden: Open Pit Mine Will Endanger Indigenous Lands," United Nations Western Europe, February 10, 2022, https://unric.org/en/sweden-open-pit-mine-will-endanger-indigenous-lands-and-the-environment-un-experts/.

pressure adds an additional layer of oversight over domestic policies and reinforces the state's accountability for its international obligations.

Although Sweden's protection system is relatively advanced, there are still limitations in its implementation. The consultation obligation mandated by law does not grant a veto right, meaning that final decisions remain with the central government. In practice, the consultation process can sometimes be formalistic and does not always result in significant policy changes.[77] Legal proceedings, such as the Girjas case, also demonstrate that the struggle to enforce indigenous rights often requires substantial time and financial resources. The tension between national economic interests and the preservation of ecological-cultural heritage demands a policy balance that is difficult to achieve.

Nonetheless, Sweden remains a significant model for the protection of indigenous peoples and ecological systems, successfully integrating national law, international instruments, and traditional practices within a single framework of ecological justice. Sweden's success lies in its consistency in maintaining multilayered protection: recognition of indigenous law, consultation obligations, judicial precedents, and the safeguarding of areas with international value.[78] Each layer provides an additional safety net when another layer weakens. This system demonstrates that ecological justice cannot be separated from the rights of

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[77] Flodén and Reimerson, "Conservation, Collaboration, and Claims: Saemie Inclusion and Influence in a Swedish National Park Process."

[78] In a global comparative context, Sweden's approach reflects a model of good governance in law, exemplifying the integration of social and ecological values into a formal legal system. This approach aligns with the idea of developing national legal frameworks by drawing on best international practices, as applied, for instance, in the establishment of Indonesia's correctional law system. Read more Anis Widyawati et al., "Crafting an Ideal Penitentiary Law: A Global Comparative Framework for Indonesia's Correctional System," *Legality: Jurnal Ilmiah Hukum* 33, no. 2 (2025): 417–44, https://doi.org/https://doi.org/10.22219/ljih.v33i2.40358.

indigenous peoples, as their local knowledge and traditional practices serve as the very foundation of ecological sustainability.[79]

The protection of indigenous peoples in Sweden also reflects that local knowledge can function as an effective ecological mechanism. Cross-national studies on pastoralists' local knowledge show that global principles embedded in traditional practices such as rotational grazing management, seasonal site selection, and natural control of land degradation represent sustainability models derived from long-term ecological experience.[80] The Sámi way of life, rooted in harmony with nature, demonstrates that cultural traditions can coexist with environmental conservation.[81] When traditional practices are granted legal space and formal recognition, indigenous communities become key actors in maintaining ecosystem balance. Strengthening indigenous rights not only addresses social injustices but also functions as a long-term ecological strategy. Sweden demonstrates that ecological protection and indigenous rights are not mutually exclusive, but rather two facets of a holistic and sustainable eco-justice policy.

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[79] The differences between legal systems in Southeast Asia and Sweden also highlight a divergence in legal practice: Southeast Asian countries tend to adopt a more legalistic and administrative approach, whereas Sweden has moved toward a system that is more transparent, participatory, and ecologically oriented. This underscores that the advancement of indigenous protection in Sweden lies not only in the existence of positive law but also in its ability to integrate living social values into everyday legal practice. Read more Anis Widyawati et al., "Dynamics of the Penitentiary System, Transparent and Accountable Handling of Criminal Cases in Criminal Execution Law in Southeast Asia: Convergence and Divergence of International Perspectives," *Indonesia Law Review* 15, no. 1 (2025): 15–35, https://doi.org/https://doi.org/10.15742/ilrev.v15n1.1.

[80] Abolfazl Sharifian et al., "Global Principles in Local Traditional Knowledge: A Review of Forage Plant-Livestock-Herder Interactions," *Journal of Environmental Management* 328 (2023): 116966.

[81] Samuel Roturier and Marie Roué, "Of Forest, Snow and Lichen: Sámi Reindeer Herders' Knowledge of Winter Pastures in Northern Sweden," *Forest Ecology and Management* 258, no. 9 (2009), https://doi.org/10.1016/j.foreco.2009.07.045; Berit Inga, "Reindeer (Rangifer Tarandus Tarandus</Em>) Feeding on Lichens and Mushrooms: Traditional Ecological Knowledge among Reindeer-Herding Sami in Northern Sweden," *Rangifer* 27, no. 2 (2009), https://doi.org/10.7557/2.27.2.163.

Conclusion

This study demonstrates that the criminalization of Indigenous communities in Indonesia and Nigeria reflects a structural imbalance in environmental governance, where law is frequently employed to secure extractive economic and political interests rather than to uphold ecological sustainability and collective cultural rights. The Indonesian context, including the Maba Sangaji case, indicates that the environmental regulatory framework under Law No. 32/2009 remains anthropocentric, fragmented, and inadequate in providing protection for Indigenous peoples as guardians of ecological systems. The Nigerian experience similarly illustrates the function of state law as an ideological instrument that legitimizes corporate impunity and suppresses Indigenous environmental activism. In contrast, Sweden's initiative to recognize ecocide as a serious criminal offense provides a comparative model for a paradigm shift in environmental criminal law that positions ecological integrity as a core legal value and imposes substantive accountability on corporate and state actors responsible for severe ecological damage. Accordingly, this study proposes a dual-track legal reform: first, substantive reform to codify ecocide as an autonomous criminal offense that acknowledges the intrinsic value of ecosystems and captures the scale and irreversibility of ecological destruction; and second, institutional reform to reinforce the protection of Indigenous rights, prevent the misuse of criminal law against environmental defenders, and strengthen corporate liability mechanisms. Ultimately, integrating the paradigms of eco-justice and ecocide into Indonesia's environmental criminal law offers a transformative direction for harmonizing human rights protection, cultural recognition, and environmental sustainability. Empowering Indigenous communities as legitimate legal subjects and ecological stewards is essential to restoring the moral and ecological legitimacy of law as an instrument of justice

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