



COMMENT ON ICC-OTP POLICY ON ENVIRONMENTAL CRIMES

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I. Introduction

Amnesty International welcomes the policy initiative by the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) to advance accountability for environmental crimes under the Rome Statute and is committed to engage in this public consultation.

Amnesty International appreciates the recognition by the ICC Prosecutor that “[d]amage to the environment poses an existential threat to all life on the planet.”¹ The triple planetary crisis of climate change, pollution, and biodiversity loss threatens human survival, the right to a clean, healthy and sustainable environment, and the enjoyment of all other human rights for present and future generations.² This reality underscores that harm to the environment and harm to humanity are inextricably entwined and that international institutions must do everything within their mandate to contribute to protecting human rights by safeguarding the environment in which we live.

With this framework principle in mind, Amnesty International will briefly comment on this public consultation process before addressing the substance of the proposed policy.

¹ Office of the Prosecutor of the International Criminal Court, The Office of the Prosecutor launches public consultation on a new policy initiative to advance accountability for environmental crimes under the Rome Statute, 16 February 2024, <https://tinyurl.com/44j4ravr>.

² The United Nations High Commissioner for Human Rights has described the triple planetary crisis of climate change, biodiversity loss and pollution as the biggest threat to human rights globally. See United Nations Environmental Management Group, Upholding the Human Right to a Healthy Environment to Address the Triple Planetary Crisis, November 2022, <https://tinyurl.com/4u49ck6e>.

II. Comments on process

The public consultation on the OTP policy initiative to advance accountability for environmental crimes under the Rome Statute should be undertaken in a manner which ensures the robust, meaningful and effective participation of those most affected by environmental harm and climate change.

Regrettably, the limited time permitted for public consultation at this stage of the policy initiative, with a public deadline of just one month following the announcement of the launch of the policy initiative, does not realistically allow for the type of participation of relevant stakeholders that the current policy requires.

Amnesty International strongly urges the OTP to reconsider its planned timeline and methodology for public consultation. The OTP should at least extend the allotted time for each subsequent stage in the policy's development, and — with a view to effective and meaningful engagement — ensure that the consultation allows for the participation of members of civil society and communities most affected by environmental harm.

In considering which groups, among others, should be viewed as key stakeholders in the OTP's policy initiative on environmental crimes, it is important to emphasize that although the triple planetary crisis is a global challenge that affects all of humanity, it disproportionately affects people in lower-income countries, especially in low-lying, small island states and least developed countries. The crisis also disproportionately affects groups that have been historically marginalized, including Indigenous and Tribal Peoples as well as other racialized groups, who are subjected to intersecting forms of discrimination and structural inequalities that exacerbate environmental harm faced by these communities. The OTP should ensure that these groups are at the centre of the policy development process.

Amnesty International believes that meaningful participation by those most affected by environmental harm is critical to the OTP developing an impactful policy on environmental crimes.

III. Preliminary comments on substance

Amnesty International welcomes the OTP's commitment to "systematically address[...] environmental crimes in all stages of its work, from preliminary examinations to prosecutions" and believes that this must serve as the underlying framework that guides the development of the OTP's policy on environmental crimes. Amnesty International also considers that the OTP's work in this area goes to the heart of whether victims and survivors can access redress and reparations emanating from ICC cases, as well as being critical to the impact and legacy that the Court's activities will have in a situation country.

Amnesty International appreciates the OTP's prior policy commitment to giving "particular consideration to prosecuting Rome Statute crimes that are committed by means of, or that result in, *inter alia* the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land" in evaluating the gravity of crimes for the purpose of selecting cases for investigation and prosecution.³ The current policy development should further strengthen and elaborate on this commitment including by recognizing that the nature, manner of commission, and impact of environmental crimes may disproportionately or differentially affect Indigenous and Tribal Peoples or other marginalized groups based on intersecting criteria such as race, ethnicity or culture.⁴

In light of the limited time made available to provide comments at this stage, Amnesty International limits itself to raising a few key issues for further consideration as the policy development process commences.

In developing its policy, Amnesty International recommends that the OTP focus its attention on both State and non-State actors as likely perpetrators of environmental crimes including the role and responsibility of corporate actors in particular.⁵ Corporate actors contribute significantly to toxic pollution of the land, air, and water, illegal deforestation, greenhouse gas emissions, and other instances of widespread, long-term, and severe harm to the natural environment.⁶ As a result, absent attention to corporate actors the OTP cannot effectively address environmental crimes. Although the ICC does not have jurisdiction over legal persons, the OTP should consider how its forthcoming policy will contribute to holding natural persons to account for environmental crimes within the Court's jurisdiction that are committed by means of business activity.

For instance, in determining whether there is a reasonable basis to proceed with an investigation, the OTP should consider information about environmental crimes and harm as relevant to the assessment provided for in Article 53 of the Rome Statute.⁷ When a crime within the ICC's jurisdiction appears to

³ Office of the Prosecutor of the International Criminal Court, Policy paper on case selection and prioritization, 15 September 2016, para. 41.

⁴ *Id.* at paras. 39-41.

⁵ In this context, the term corporate actor denotes natural persons that are acting in the context of business activity including corporate directors, board members, shareholders, and others.

⁶ See, e.g., Europol, Environmental Crime in the Age of Climate Change, 2022, <https://tinivurl.com/v7pn7tsu> ("As a large part of the environmental crime activities are carried out by legal businesses, they are often labelled as corporate crimes.").

⁷ A similar commitment is made with respect to gender-based crimes. Office of the Prosecutor of the International Criminal Court, Policy on gender-based crimes, December 2023, para. 100.

have been committed by means of or results in environmental harm, Amnesty International recommends that the OTP seek cooperation from the relevant States Parties pursuant to Part 9 of the Rome Statute and request information directly from the corporate actors involved, when applicable, about any relevant conduct. In this regard, we recall that the ICC Prosecutor has the authority under Article 15(2) of the Rome Statute to “seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or *other reliable sources that he or she deems appropriate*.”⁸

A policy on environmental crimes that institutes a practice of seeking information from corporate actors would not only fulfill the OTP’s mandate to collect all relevant information necessary to determine whether there is a reasonable basis to proceed with an investigation, but also potentially deter the commission of crimes, put perpetrators on notice, and promote national proceedings. In accordance with its draft policy on Complementarity and Cooperation,⁹ the OTP should consider — where appropriate — sharing these requests for information and any response(s) with national authorities that may have broader jurisdiction with respect to environmental crimes. In this regard, Amnesty International welcomes the OTP’s commitment to “cooperate and provide assistance to States, upon request, with respect to conduct which constitutes a serious crime under national law, such as [...] the destruction of the environment.”¹⁰

Amnesty International also recommends that the OTP’s policy on environmental crimes include a commitment to public and regular reporting about its implementation. Amnesty International continues to urge the OTP to commit to regular, detailed, situation-specific public reporting on its preliminary examinations, investigations, and any other context in which it is actively supporting national proceedings. A practice of public reporting, including with respect to environmental crimes, is crucial to promoting accountability, transparency, and predictability in the OTP’s work. Public reporting may also encourage States Parties to meet their Rome Statute obligations, deter environmental crimes by State and non-State actors, and inform engagement by civil society actors as well as other relevant stakeholders with the ICC.

⁸ Rome Statute, Article 15(2) (emphasis added).

⁹ Office of the Prosecutor of the International Criminal Court, Draft policy on complementarity and cooperation, September 2023.

¹⁰ Office of the Prosecutor of the International Criminal Court, Policy paper on case selection and prioritization, 15 September 2016, para. 7.