

COUR PÉNALE INTERNATIONALE

LE BUREAU
DU PROCUREUR



INTERNATIONAL CRIMINAL COURT

THE OFFICE OF
THE PROSECUTOR

THE OFFICE OF THE PROSECUTOR

DRAFT POLICY ON ENVIRONMENTAL CRIMES UNDER THE ROME STATUTE

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I. EXECUTIVE SUMMARY

The Office of the Prosecutor’s Policy Paper on Environmental Crimes sets out how the Office will use its mandate and powers to investigate and prosecute environmental crimes within the Court’s jurisdiction that are committed by means of or that result in environmental damage, what the Policy collectively refers to as “environmental crimes.”¹ It also shows how the Office will support national efforts to prosecute illegal conduct that has an environmental dimension.

Although the Rome Statute is largely anthropocentric, primarily protecting human life, it also recognises and protects the inherent value of the natural environment. There are significant synergies between the fight against impunity for international crimes and mitigating environmental damage. Destroying, degrading, or otherwise altering the natural environment will often directly impact humans, such as by causing people to be displaced, inflicting great suffering or injury on victims, or even causing death. If a direct causal link can be established between a perpetrator’s actions and such consequences, those acts may constitute Rome Statute crimes both during armed conflict and in times of peace.

By issuing this Policy Paper, and by highlighting the link between environmental damage and international crimes, the Office seeks to achieve the following objectives:

- a. To affirm the Prosecutor’s commitment to the rigorous investigation and prosecution of environmental crimes, thereby remedying the historical neglect of such crimes;
- b. To emphasise that numerous crimes under the Rome Statute may be committed by means of or result in damage to the environment²;
- c. To emphasise the Prosecutor’s commitment to establishing an institutional framework that facilitates effective investigation and prosecution of environmental crimes – including through recruitment, training, external collaboration, and meaningful implementation, monitoring, and evaluation measures;
- d. To encourage and support national efforts to repress environmental crimes and other activities involving unlawful environmental damage;
- e. To cooperate with and coordinate civil society organisations and other non-State actors whose expertise or access to information enables them to support law enforcement action at the international or national level;
- f. To engage with corporate and other private actors in order to put them on notice of legal risks related to their activities and to their supply chains or portfolios;
- g. To contribute to the development of international jurisprudence and best practices concerning the prosecution of environmental crimes at the ICC and beyond.

This Policy was developed through an extensive consultative process involving multiple rounds of written input and direct discussion with internal Office staff and external experts

¹ See “Key Terms and Concepts” *infra*.

² This Policy uses the terms “natural environment” and “environment” interchangeably.

from across the globe. It is organised to maximise its utility and implementation by the Office while also optimising relevance and accessibility to colleagues working in other parts of the environmental-justice ecosystem.

Section I of the Policy defines the key terms and concepts relevant to the investigation and prosecution of environmental crimes and introduces how the Office understands the relationship between those concepts in the context of its mandate under the Statute. Section II discusses how general principles governing the Office's exercise of its powers, such as gravity, apply in the environmental context and provides a systematic overview of how the crimes within the jurisdiction of the Court can be committed by means of or resulting in environmental damage. Section III of the Policy presents the principles that underlie all aspects of the Office's work on environmental crimes: the need to adopt an intersectional perspective³; the obligation to perform due diligence, including protecting the rights of suspects and defendants; and the need for effective outreach to Court stakeholders. Finally, Section IV lays out how a commitment to investigating and prosecuting environmental crimes is operationalised by the Office in terms of how it will integrate a focus on environmental damage into each operational phase of its work and continuously implement, monitor, and evaluate the Policy.

Ultimately, this Policy articulates the Prosecutor's desire to ensure that humanity's urgent need to protect the environment is reflected in all of the Office's investigations and cases. Through the implementation of this Policy, the Office will more fully account for crimes within its jurisdiction that are committed by means of or that result in environmental damage.

³ See "Principles" *infra* for the Office's understanding of an intersectional approach.

II. INTRODUCTION

a. The issue

1. Law has helped safeguard the natural environment from undue harm since ancient times. Every legal system in the world currently protects the environment against at least some kinds of harm, and multilateral agreements designed to limit climate change and safeguard natural resources have proliferated in the past five decades. Moreover, the right to a healthy environment has been endorsed by the UN General Assembly, forms part of most regional human-rights instruments,⁴ and is recognised by the constitutions or national legislation of more than 125 states.⁵

2. Despite the importance the international community assigns to the natural environment and legal efforts to protect it, human-induced environmental damage has reached unprecedented levels. This damage poses a direct and imminent threat to both human and non-human life,⁶ because the natural environment forms the bedrock of life itself. It also contributes to climate change,⁷ jeopardising life indirectly.⁸ UN Secretary-General António Guterres has stated that “[t]he climate emergency and unchecked environmental degradation represent an existential threat to the world as we know it,”⁹ and the Intergovernmental Panel on Climate Change (“IPCC”) has recently confirmed that “[t]here is a rapidly closing window of opportunity to secure a liveable and sustainable future for all. [...] The choices and actions implemented in this decade will have impacts now and for thousands of years.”¹⁰

3. The international community has affirmed that effective action to tackle environmental damage and climate change is facilitated, among other things, by “well-aligned multilevel governance.”¹¹ Because environmental damage is often linked to both international crimes and crimes under national law -- such as organised crime, financial

⁴ See, e.g., [African Charter on Human and Peoples’ Rights](#) (1981), Art. 24; [Arab Charter on Human Rights](#) (2004), Art. 38; [San Salvador Protocol to the American Convention on Human Rights](#) (1988), Art. 10; [ASEAN Human Rights Declaration](#) (2012), Art. 28(f). The precise language used by various instruments differs, but the fundamental concept is the same.

⁵ See [Report of the Special Rapporteur, Right to a Healthy Environment: Good Practices](#) (2019), Annex II.

⁶ Intergovernmental Panel on Climate Change, [Climate Change 2023 Synthesis Report, Summary for Policymakers \(“IPCC Summary Report 2023”\)](#), para. A.2.6.

⁷ According to the IPCC Special Report on Climate Change and Land Use of 2019, Summary for Policy Makers (“[IPCC Land Use Report 2019](#)”), agriculture, forest and other land use account for about 23% of global greenhouse gas emissions. The destruction and degradation of forests and peatlands account for about half of these emissions, while in addition also reducing their ability to absorb atmospheric carbon. See *ibid.*, paras. A.3, A.3.1-A.3.6.

⁸ The WHO estimates that between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year from undernutrition, malaria, diarrhoea, and heat stress alone. See [WHO, Climate Change](#).

⁹ Press Release, [SG/SM/21173](#), 10 March 2022. See also [IPCC Summary Report 2023](#), para. C.1.

¹⁰ [IPCC Summary Report 2023](#), para. C.1.

¹¹ [IPCC Summary Report 2023](#), para. C.6.

crimes, corruption, and the financing of armed non-state actors¹² -- States have pledged to leverage all forms of criminal justice to prevent and combat crimes that affect the environment and to work toward the achievement of the 2030 Agenda for Sustainable Development.¹³ The UN General Assembly further urged Member States to label crimes that affect the environment as serious crime¹⁴ and endorsed principles on the protection of the environment in relation to armed conflicts that had been set out by the International Law Commission.¹⁵

4. The International Criminal Court (“Court”) has been established “for the sake of present and future generations,”¹⁶ “recognizing that [...] grave crimes threaten the peace, security and well-being of the world.”¹⁷ The term “world” in the Rome Statute’s Preamble is not limited to humanity and extends to the natural environment.¹⁸ The Court’s forward-looking mandate is “to contribute to the prevention of such crimes” by putting an end to impunity for their perpetrators.¹⁹ In this context, the Office of the Prosecutor (“Office”) resolves – within the boundaries of its mandate and authority – to actively contribute to humanity’s coordinated efforts to prevent future crimes that involve environmental damage.

5. The Court’s jurisdiction is limited. The Rome Statute primarily focuses on safeguarding the integrity of human life and property, and it makes only limited express reference to the natural environment.²⁰ Nevertheless, there are numerous provisions in the Statute that are equally applicable to attacks against the natural environment and against humans, and there are notable synergies between accountability for international crimes within the Court’s jurisdiction and preventing and mitigating environmental harm. Destroying, degrading, or otherwise altering the natural environment will often directly impact human life, such as by causing people to be displaced, inflicting great suffering or injury on victims, or even causing death. If a sufficient causal link exists between a perpetrator’s intentional actions and an objective element of a Rome Statute crime, these

¹² See, e.g., UNEP-INTERPOL, [Strategic Report: Environment, Peace and Security A Convergence of Threats](#), 2016; UNEP-INTERPOL, [The Rise of Environmental Crime: A Growing Threat to Natural Resources, Peace, Development and Security](#), 2016. See also Reports from the UN Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo, April 12, 2001 (c), May 22, 2002 ([S/2002/565](#)), October 16, 2002 ([S/2002/1146](#)), October 23, 2003 ([S/2003/1027](#)).

¹³ See, e.g., UN General Assembly Resolution [76/185](#), 16 December 2021; UN General Assembly resolution [76/181](#), 11 January 2022; UN Office on Drugs and Crime, [Kyoto Declaration](#) on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development, 16 December 2021; UNTOC Resolution 11/3; UNTOC [Resolution 11/6](#); International Union for Conservation of Nature, [WCC-2020-Res-038](#).

¹⁴ UN General Assembly Resolution [76/185](#), 16 December 2021.

¹⁵ UN General Assembly resolution [77/104](#), 7 December 2022.

¹⁶ [Rome Statute](#), Preamble, para. 9.

¹⁷ [Rome Statute](#), Preamble, para. 3.

¹⁸ Triffterer, O. et al., “Preamble,” in Ambos, K. (ed.), *Commentary to the Rome Statute of the International Criminal Court* (4th ed., C.H. Beck, 2022), p. 10 (mn. 11) (noting that the drafters of the Preamble chose the term ‘world’ because it ‘includes not only human beings but also the world around them and thus its well-being’).

¹⁹ [Rome Statute](#), Preamble, para. 5.

²⁰ [Rome Statute](#), article 8(2)(b)(iv).

acts may constitute crimes both during armed conflict and in times of peace within the established legal framework of the Statute.²¹

6. This concept is not new to the Office’s strategic outlook. In 2016, the Office stated in its Policy Paper on Case Selection and Prioritisation that it would, when assessing the gravity of a crime, “give 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.”²² Although the illegal exploitation of natural resources and illegal dispossession of land do not necessarily cause environmental damage, in practice they often do.²³

7. Conflicts throughout the world, including in situation countries such as Darfur and Ukraine, reveal a pattern where conflicts that involve Rome Statute crimes are often motivated by competition over natural resources, such as land and water, and routinely result in serious environmental damage. Focusing on Rome Statute crimes with an environmental dimension will thus not only protect the environment, it may also help address the root causes of conflict itself and the factors that exacerbate it, thereby contributing to the prevention of crimes as mandated by the Preamble of the Rome Statute. To address those crimes effectively, the Office will cooperate and coordinate with national authorities in the manner foreseen by the Office’s Policy on Complementarity and Cooperation.²⁴

8. In analysing environmental crimes, the Office will emphasise the rights of individual members of groups that have a particularly close connection with the natural environment, particularly Indigenous Peoples.²⁵ The Inter-American Court of Human Rights has emphasised that “the close ties of Indigenous People with the land must be recognised and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival,” because “[f]or Indigenous Peoples, the land is not merely a matter of possession and production but a material and spiritual element, which they must fully enjoy [...] to preserve their cultural legacy and transmit it to future generations.”²⁶

²¹ For a list of examples of possible Rome Statute crimes applicable in this context, *see infra*, Section 4. Some Rome Statute crimes, such as those under article 8(2)(b)(iv), are conduct crimes and do not require proof of a consequence. In such cases, intent only relates to the conduct, and not to the consequence.

²² [OTP Policy Paper on Case Selection and Prioritisation](#), para. 41. This Policy refers to “environmental damage” instead of to “environmental destruction” to avoid confusion about the amount of harm required by certain crimes in the Rome Statute.

²³ Instances of illegal exploitation of natural resources and land grabbing that do not result in environmental damage are not covered by this Policy.

²⁴ [OTP Policy on Complementarity and Cooperation](#).

²⁵ *See* [United Nations Declaration on the Rights of Indigenous Peoples](#). In focusing on Indigenous Peoples, the Office will be sensitive to the fact that such communities do not speak with one voice. Moreover, in keeping with its commitment to intersectionality, the Office will pay particular attention to how some environmental crimes can affect certain members of Indigenous Peoples, such as women and children, more than others.

²⁶ [Case of the Mayagna \(Sumo\) Awas Tingni Community v. Nicaragua](#), Merits, Reparations and Costs, Judgment of 31 August 2001. Series C No. 79, para. 149. Peasants are another example. The United Nations

9. Environmental crimes may also affect individuals and communities based on other characteristics, such as race and gender. States, NGOs, and scholars have noted, for example, the proliferation of sex work near extractive mines often controlled or financed by armed actors.²⁷ Conversely, the ability of many vulnerable or marginalised people to avoid sites of environmental damage depends on access to resources – those who cannot afford to live far from the damage or quickly escape from environmental crimes may be forced to stay and suffer additional harm.

10. The Office’s mandate is structured by the Statute as it currently exists. The prosecution of environmental crimes is thus distinct from proposals to amend the Statute to criminalise ecocide²⁸ or intentional environmental destruction.²⁹ The Office nevertheless hopes that a clear accounting of Rome Statute crimes that can be committed by means of or that result in environmental damage will help stakeholders prioritise efforts, international and national, that will complement the Office’s efforts to combat impunity in the environmental area.

11. As with any other interpretation of crimes in article 5 of the Statute, the concept of environmental crimes in this Policy “shall not be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than [the] Statute.”³⁰

b. Policy objectives

12. By issuing this Policy and emphasising the link between Rome Statute crimes and environmental damage, the Office seeks to achieve the following objectives:

- a. To affirm the Prosecutor’s commitment to the rigorous investigation and prosecution of environmental crimes, thereby remedying the historical neglect of such crimes;
- b. To emphasise that numerous crimes under the Rome Statute may be committed by means of or result in damage to the environment;
- c. To emphasise the Prosecutor’s commitment to establishing an institutional framework that facilitates the effective investigation and prosecution of environmental crimes – including through recruitment, training, external

Declaration on the Rights of Peasants and Other People Working in Rural Areas notes “the special relationship and interaction between peasants and other people working in rural areas and the land, water and nature to which they are attached and on which they depend for their livelihood.” See [United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#), para. 6.

²⁷ See, e.g., Kelly, J.T.D., “‘This Mine Has Become Our Farmland’: Critical Perspectives on the Coevolution of Artisanal Mining and Conflict in the Democratic Republic of the Congo,” *Resources Policy*, Vol. 40 (2014).

²⁸ See, e.g., [the proposal](#) endorsed by the Stop Ecocide Foundation.

²⁹ See, e.g., Freedland, S., *Addressing the Intentional Destruction of the Environment During Warfare Under the Rome Statute of the International Criminal Court* (Intersentia, 2015), p. 2.

³⁰ [Rome Statute](#), article 10.

- collaboration, and meaningful implementation, monitoring, and evaluation measures;
- d. To encourage and support, in a manner consistent with the Office’s new Policy on Complementarity and Cooperation,³¹ national efforts to repress environmental crimes and other activities involving unlawful environmental damage;
 - e. To cooperate with and coordinate civil society organisations and other non-State actors whose expertise or access to information enables them to support law enforcement action at the international or national level³²;
 - f. To engage with corporate and private actors³³ in order to put them on notice of legal risks related to their activities and to their supply chains or portfolios;
 - g. To contribute to the development of international jurisprudence and best practices concerning the prosecution of environmental crimes at the ICC and beyond.
13. The Policy presents the Office’s understanding of its mandate vis-à-vis environmental crimes and of how its staff will interpret this mandate. After outlining the Office’s interpretation of the Rome Statute with respect to environmental crimes, it articulates fundamental principles underlying the Office’s approach to the investigation and prosecution of such crimes and provides guidance as to how these principles inform Office practice.
14. This Policy aligns with the Office’s other policy documents. It draws on the experience of the Office, its existing good practices and lessons learned, as well as relevant jurisprudence, including that of the Court and other courts and tribunals. This Policy is subject to revision and does not give rise to legal rights.

c. History and methods

15. In April 2023, the Prosecutor announced his intention to issue a Policy on Environmental Crimes. In June 2023, the Office launched its Strategic Plan 2023-2025, which included an announcement concerning the development of the Policy.
16. The Office undertook a series of review activities that began in June 2023 and ended with the launch of the Policy in _____. The process was led by the Special Adviser on War Crimes, Prof. Kevin Jon Heller, with direction from Deputy Prosecutor Nazhat Shameem Khan.³⁴
17. In February 2024, the Office launched a public consultation on the Policy, requesting input from any interested persons, states or organisations concerning the

³¹ [OTP Policy on Complementarity and Cooperation](#).

³² In this context, see ICC/OTP-Eurojust, [Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations](#), 21 September 2022.

³³ In the context of this Policy the terms individual corporate or private actors denote to natural persons that are acting in the context of business activities.

³⁴ Additional support was provided by UCLA’s Promise Institute Europe and Laura Baron-Mendoza, a Legal Fellow seconded to the Office *pro bono* by City University of New York.

specific crimes that should be included in the policy paper, how to understand the applicable modes of participation in those crimes, best practices for investigating and prosecuting environmental crimes, and how to consider environmental crimes in terms of cooperation and complementarity. The Office received nearly 80 submissions, including from states, IGOs, CSOs, legal scholars and practitioners, business leaders, and religious institutions. Notable respondents included UNEP, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, the Office of the Prosecutor General of Ukraine, and the High-Level Working Group on the Environmental Consequences of the War in Ukraine. The core writing team also engaged in direct consultations with interested parties such as UNODC, UNEP, and the Head of the IPCC.

18. Based on the input from external stakeholders and its own research, the core writing team produced a series of drafts of the Policy between April 2024 and November 2024. Those drafts received feedback from staff in various divisions of the Office, including international cooperation and complementarity, policy drafting and gender issues, preliminary examinations, investigations, and prosecutions. The team also consulted with relevant Special Advisers and Advisory Group members to ensure the Policy harmonised with other relevant Office Policies and guidance documents.

19. On December 18, the Office released a draft of the Policy for public consultation. It received ___ submissions. The core writing team then produced a final draft of the Policy. Deputy Prosecutor Khan and the Prosecutor reviewed and approved that final draft in _____.

20. The Policy was launched in English, Spanish and French at ____ in _____. Translation into other languages is anticipated in due course.

III. KEY TERMS AND CONCEPTS

a. Natural environment

21. “Natural environment” refers to the earth’s biosphere, cryosphere, lithosphere, hydrosphere, and atmosphere, including outer space.³⁵ This definition draws upon scientific recognition of the interactions that make up the environment.

22. In general, the term “natural environment” should be “understood in the widest possible sense, in line with the meaning States have given it in the context of IHL,” because the concept of the environment “may evolve over time as knowledge about it increases” and because “the environment itself is constantly changing.”³⁶

b. Environmental damage

23. “Environmental damage” refers to any loss or deterioration of the natural environment, as defined above. Such loss or deterioration includes the impact on the health and well-being of a particular ecosystem’s non-human as well as human inhabitants.³⁷

c. Environmental crime

24. “Environmental crimes” are crimes in article 5 of the Rome Statute³⁸ that are committed by means of or that result in environmental damage.³⁹ The following types of acts are thus covered by the Policy:

- a. The crime in article 8(2)(b)(iv) of the Rome Statute, which expressly refers to environmental damage as part of its *legal elements*.
- b. Rome Statute crimes committed by means of environmental damage, making the damage a *material fact* relevant to establishing an element of the crime and/or the *actus reus* of a mode of liability.
- c. Rome Statute crimes resulting in environmental damage, making the damage *contextual information* relevant to assessing the gravity or the impact of the crime, and for informing selection and prioritisation,⁴⁰ sentencing, and reparations.

³⁵ See, e.g., Independent Expert Panel for the Legal Definition of Ecocide, [‘Definition, Commentary, and Core Text’](#) (June 2021), p. 11.

³⁶ [ICRC Guidelines on the Protection of the Natural Environment in Armed Conflict](#), p. 16.

³⁷ See, e.g., Gillett, M., *Prosecuting Environmental Harm before the International Criminal Court* (Cambridge University Press, 2022), pp. 11-12.

³⁸ The specific crimes are identified in Articles 6-8*bis* of the Statute.

³⁹ See, e.g., UNODC, ‘Environmental Crime: A Threat to Our Future’ (Oct. 2008), p. 1 (“Environmental crimes can be broadly defined as illegal acts which directly harm the environment.”). See also [Rome Statute](#), article 10.

⁴⁰ See, e.g., [OTP Policy Paper on Case Selection and Prioritisation](#), para. 41.

25. This Policy defines “environmental crimes” only for purposes of the Policy itself. The definition is not intended to limit the development of the concept of environmental crimes for any other purpose.

IV. THE ENVIRONMENT AND ROME STATUTE CRIMES

a. General principles

26. The prosecution of environmental crimes – those committed by means of or that result in environmental damage – takes place within a prescribed legal framework, namely the Statute, with assistance in interpretation and application provided by the Elements of Crimes (“Elements”⁴¹) and the Rules of Procedure and Evidence (“Rules”).

27. Article 21(3) of the Statute governs all aspects of the Office’s work. It mandates that both the application and interpretation of the Statute must be consistent with internationally recognised human rights law. Rights particularly relevant to the investigation and prosecution of environmental crimes include, *inter alia*, the right to life, the right to physical and mental health, the right to a healthy environment, the right to adequate food and water, the right to housing, the right to privacy and family life, the right to freedom of movement, and the right to participate in cultural life.

28. Any case involving environmental crimes that the Office investigates must fulfil the Statute’s regular jurisdictional requirements: temporal jurisdiction; either territorial or personal jurisdiction; and subject-matter jurisdiction. In terms of territorial jurisdiction, the Court can prosecute crimes committed not only on the territory of a State Party, but also “on board a vessel or aircraft” registered to a State Party. In terms of personal jurisdiction, although the Office cannot bring environmental-crime charges against a corporation on the basis of its legal personhood⁴² because the Statute limits the Court’s jurisdiction to natural persons,⁴³ it can prosecute individual corporate officers who satisfy the requirements of territorial or nationality jurisdiction and are personally responsible for the commission of an environmental crime pursuant to articles 25 or 28 of the Statute.

29. The commission of any crime within the jurisdiction of the Court is generally sufficient to satisfy gravity as a condition of admissibility.⁴⁴ The Office will consider the environmental damage caused by a crime when making admissibility assessments. Although assessing the gravity of environmental crimes will normally focus on harms caused to humans through environmental damage, the assessment may also consider environmental damage from an ecocentric perspective,⁴⁵ such as when a crime leads to large-scale damage to an ecosystem that is not being used for subsistence purposes. The Office will also consider environment-specific factors when assessing gravity, including:

⁴¹ [Rome Statute](#), article 9.

⁴² Proposals to extend the Court’s jurisdiction to legal persons were rejected during the drafting of the Statute. See, e.g., Saland, P., “International Criminal Law Principles,” in Lee, R. (ed.), *The International Criminal Court: The Making of the Rome Statute* (Kluwer, 1999), p. 200.

⁴³ [Rome Statute](#), article 25(1).

⁴⁴ *Prosecutor v. Al Hassan*, [ICC-01/12-01/18-601-Red](#), para. 53. The exception is the “unusual case[] in which the specific facts are only of marginal gravity.” *Ibid.*

⁴⁵ Oxford Reference defines “[ecocentrism](#)” as “[a] worldview that sees all of nature as having inherent value, and is centred on nature rather than on humans.”

- **Scale:** the number of direct and indirect human and non-human victims and/or the geographical or temporal spread of the environmental damage.
- **Nature:** whether the environmental crimes were committed against or affected particularly vulnerable or marginalised victims, including but not limited to women, children, the elderly, and Indigenous Peoples.⁴⁶
- **Impact:** the extent of the damage caused to the natural environment regardless of its anthropocentric effect; the intergenerational effect of environmental damage on human life⁴⁷; and the specific social, cultural, psychological, religious, or socioeconomic damage the environmental crimes inflicted on an affected community.

30. As set out below, environmental crimes may be prosecuted under a variety of provisions in the Statute.⁴⁸

b. Genocide

31. Article 6(c) of the Statute criminalises as genocide “[d]eliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part” with “intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”⁴⁹ This form of genocide⁵⁰ can be committed through environmental damage, illegal exploitation of natural resources, or illegal dispossession of land if the acts in question deprive the affected group of the means of their survival.⁵¹ In the Darfur situation, for example, the Office alleges that Omar Al-Bashir has committed genocide under article 6(c) through, *inter alia*, the destruction of the targeted groups’ “food, wells and water pumping machines, shelter, crops and livestock”⁵² and the “usurpation of the[ir] land.”⁵³

⁴⁶ Including People of African Descent.

⁴⁷ “Intergenerational effect” refers to the extent to which the environmental damage harms the environment in ways that will affect how future generations will live. As the Preamble to the Statute notes, the Court has been established “for the sake of present and future generations.” The importance of considering the intergenerational effect of environmental damage, particularly with regard to members of vulnerable groups, was recently acknowledged by the European Court of Human Rights. See *Verein Klimaseniorinnen Schweiz and others v. Switzerland*, App No. 53600/20 (ECtHR, 9 April 2024), para. 410.

⁴⁸ See e.g., Brady, H. & Re, D., “[Environmental and Cultural Heritage Crimes](#): The Possibilities under the Rome Statute” in Bose, M. et al. (eds), *Justice Without Borders: Essays in Honour of Wolfgang Schomburg* (Brill, 2018), pp 125-135.

⁴⁹ [Rome Statute](#), article 6.

⁵⁰ Other forms of genocide could conceivably be committed via environmental damage. Spraying subsistence crops with a chemical known to cause sterility with the intention of destroying a group, for example, could violate article 6(d) of [the Statute](#), which criminalises as genocide “[i]mposing measures intended to prevent births within the group.”

⁵¹ The ICTY Appeals Chamber has noted, for example, that this form of genocide “typically relate[s] to the deliberate withholding or taking away of the basic necessities of life over an extended period of time,” [Tolimir AJ](#), para. 234, such as “deprivation of food.” *Ibid.*, para. 228.

⁵² *Prosecutor v. Al Bashir*, [ICC-02/05-157-AnxA](#), para. 174.

⁵³ *Prosecutor v. Al Bashir*, [ICC-02/05-157-AnxA](#), para. 179.

c. Crimes Against Humanity

i. Contextual elements

32. An act that involves or results in environmental damage in a manner prohibited by article 7(1) may be charged as a crime against humanity as long as it is committed “as part of a widespread or systematic attack directed against any civilian population” and “pursuant to or in furtherance of a State or organizational policy to commit such attack.” Environmental damage, the illegal exploitation of natural resources, and the illegal dispossession of land may contribute to the existence of a widespread or systematic attack whenever they amount to acts listed in article 7(1), such as murder, persecution, or other inhumane acts. Crimes against humanity can be prosecuted during wartime or in times of peace; no connection to armed conflict is required.

33. A group qualifies as an “organization” for purposes of article 7 as long as it has “sufficient resources, means and capacity to bring about the course of conduct or the operation involving the multiple commission of acts referred to in article 7(2)(a) of the Statute.”⁵⁴ Crimes against humanity involving the environment can thus be committed not only by government officials but also by non-state actors such as members of rebel groups, terrorist groups, and – critical in the environmental context – corporations.

ii. Examples of underlying crimes

34. Assuming the contextual elements are satisfied, a number of crimes against humanity in the Statute may be committed either by means of or that result in environmental damage.

35. Article 7(1)(a) of the Statute criminalises murder. This includes the intentional causing of death through indirect means, such as deliberate environmental damage. For example, a person may commit murder by poisoning a well that provides the only drinking water for a local community intending to kill or being aware that death would occur in the ordinary course of events.

36. Article 7(1)(b) of the Statute criminalises extermination. Extermination can be committed “by different methods of killing, either directly or indirectly,”⁵⁵ and includes “the intentional infliction of conditions of life, *inter alia*, the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.”⁵⁶ As noted in the Policy on Cultural Heritage, “when the survival and cultural heritage of members of a group are intricately linked to, and depend upon, their territory, including certain natural formations, attacks that make the territory uninhabitable may be [...] acts of extermination.”⁵⁷ In the Darfur situation, the Office has charged Omar Al-Bashir with

⁵⁴ *Situation in Kenya*, [ICC-01/09-19-Corr](#), para. 90; *Prosecutor v. Katanga*, [ICC-01/04-01/07-3436-ENG](#), para. 1119; *Prosecutor v. Ongwen*, [ICC-02/04-01/15-1762-Red](#), para. 2677.

⁵⁵ [Elements of Crimes](#), article 7(1)(b), Element 1 n. 8.

⁵⁶ [Rome Statute](#), article 7(2)(b).

⁵⁷ [OTP Policy on Cultural Heritage](#), para. 16.

extermination in the alternative with genocide on the basis of the environmentally damaging acts described above.⁵⁸

37. Article 7(1)(d) of the Statute criminalises deportation or forcible transfer of population, defined as the “forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.”⁵⁹ In some situations, a perpetrator may unlawfully coerce civilians to leave their homes in order to obtain access to land, water, or similar natural resources. In other situations, a perpetrator may unlawfully coerce civilians to leave their homes by destroying or polluting the environment. Such acts would qualify as the crime against humanity of deportation or forcible transfer provided that the perpetrator intended to cause civilians to leave their homes or was aware that their actions would, in the ordinary course of events, compel the civilians to leave them.⁶⁰

38. Article 7(1)(h) of the Statute criminalises “[p]ersecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”⁶¹ The act of persecution is defined as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.”⁶² A group or collectivity may potentially be deprived of various fundamental rights through environmental damage, the illegal exploitation of natural resources, or the illegal dispossession of land, including but not limited to the right to life, the right to a healthy environment, the right to physical and mental health, the right to adequate food and water, the right to housing, the right to privacy and family life, the right to freedom of movement, and the right to participate in cultural life. It is particularly important to take an intersectional approach to persecution in the environmental context, because a persecutory act involving or resulting in environment damage may be committed on multiple or intersecting grounds,⁶³ including gender, political, racial, ethnic, cultural, religious, or other grounds that are universally recognised as impermissible under international law.

⁵⁸ *Situation in Darfur*, [ICC-02/05-157](#), para. 180. The IACtHR has found that “depriving indigenous communities of access to their ancestral territory expose(s) them to precarious and inhuman living conditions, to greater vulnerability to diseases and epidemics, and subject them to situations of extreme lack of protection.” *Case of the Afro-Descendant Communities Displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*, para. 354.

⁵⁹ [Rome Statute](#), article 7(2)(d).

⁶⁰ *Prosecutor v. Ntaganda*, [ICC-01/04-02/06-2359](#), para. 1046. In some cases, the act causing environmental damage will be unlawful under either national or international law. Article 7(1)(d), however, does not require the act that displaces civilians from the area in which they are lawfully present to be unlawful. The act must simply be “forcible,” understood as the “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.” [Elements of Crimes](#), article 7(1)(d), Element 1 n. 12.

⁶¹ For an explanation of how the “in connection” requirement functions in the context of the crime against humanity of persecution, see [OTP Policy on the Crime of Gender Persecution](#), paras. 56-58.

⁶² [Rome Statute](#), article 7(2)(g).

⁶³ [OTP Policy on the Crime of Gender Persecution](#), para. 55.

39. Unlike the other crimes against humanity, persecution requires proof of discriminatory intent: the perpetrator must have deprived the group or collectivity of a fundamental right “by reason of” their identity. “Intent to discriminate is demonstrated when the perpetrator specifically intended to treat a targeted [...] group or member of that group unequally.”⁶⁴ Dumping toxic chemicals into a river on which a particular Indigenous People depended for food and water would thus, by itself, not amount to the crime against humanity of persecution. Such pollution could amount to persecution, however, if the perpetrator chose to pollute the river in question specifically targeting that particular Indigenous People.

40. Article 7(1)(k) of the Statute criminalises “[o]ther inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” The provision is a residual clause intended to capture conduct that is similar in *nature* and *gravity* to the other crimes listed in article 7(1).⁶⁵ Given the central role that the environment plays in the social, cultural, and religious life of many people, particularly members of Indigenous Peoples, environmental damage, illegal exploitation of natural resources, and illegal dispossession of land may often cause great physical or mental suffering even when they do not amount to one of the other crimes against humanity enumerated in article 7(1).⁶⁶ As long as the perpetrator who caused the mental suffering was aware that this harm would occur in the ordinary course of events, such acts may qualify as the crime against humanity of other inhumane acts.

d. War Crimes

i. Contextual elements

41. An act that involves or results in environmental damage in a manner prohibited by article 8(2) may be charged as a war crime as long as the act “took place in the context of and was associated with” an armed conflict, whether international or non-international.⁶⁷ There is no requirement that the perpetrator intended the act in question to further the armed

⁶⁴ [OTP Policy on the Crime of Gender Persecution](#), para. 49.

⁶⁵ Some judges have expressed the view that because the other crimes listed in article 7(1) are crimes against the physical integrity or liberty of persons, this excludes property crimes from the purview of crimes against humanity. *See, e.g., Prosecutor v. Bemba*, ICC-01/05-01/08-3636-Anx2, para. 63.

⁶⁶ As the National Institute for Military Justice has pointed out, empirical studies have documented a variety of specific types of mental harm caused by environmental damage, such as ecological grief, environmental melancholia, and solastalgia. *Ecological grief* refers to “the grief felt in relation to experienced or anticipated ecological losses, including the loss of species, ecosystems, and meaningful landscapes due to acute or chronic environmental change.” *See, e.g., Cunsolo A. & Ellis, N.R., “Ecological Grief as a Mental Health Response to Climate Change-Related Loss,” Nature Climate Change*, Vol. 8 (2018), 275. *Environmental melancholia* refers to “[t]he state of loss of relation with “nonhuman objects” in nature (e.g., rivers, fields, lakes, natural setting, etc.)” *See, e.g., Cianconi, P, et al., “Eco-Emotions and Psychoterratic Syndromes: Reshaping Mental Health Assessment Under Climate Change,” Yale Journal of Biological Medicine*, Vol. 96(2) (2023), 211-26. *Solastalgia* refers to “a sense of desolation, detachment and grieving in response to losing an important place which is similar to homesickness whilst one is still at home” that occurs “when people are confronted with irrevocable changes to landscapes that they feel connected to.” *See, e.g., Albrecht G., et al., “Solastalgia: The Distress Caused by Environmental Change,” Australian Psychology*, Vol. 15 (2007), 95-98.

⁶⁷ [Elements of Crimes](#), article 8, Chapeau.

conflict; it is enough that the conflict “played a substantial part in the perpetrator’s ability to commit the crime, the decision to commit it, the purpose of the commission, or the manner in which the crime was committed.”⁶⁸ The absence of an intent requirement is important in the environmental context because officers of a corporation may take advantage of the existence of an armed conflict to engage in environmental damage, illegal exploitation of natural resources, or illegal dispossession of land without its members intending these acts to further the conflict.

ii. Examples of underlying crimes

42. The only crime in the Statute that explicitly protects the environment from the effects of armed conflict is Article 8(2)(b)(iv), which criminalises “intentionally launching an attack in the knowledge that such attack will cause [...] widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.” The Office will charge violations of article 8(2)(b)(iv) when appropriate, taking into account the fragile state of the environment and relying on the best available scientific knowledge when determining whether environmental damage caused by an attack qualifies as “widespread,” “long-term,” and “severe.” The applicability of the provision is limited, however, to the specific circumstances contemplated by its elements. In particular, the war crime applies only in international armed conflict and prohibits damage that is not only widespread, long-term, and severe but is also disproportionate relative to the concrete and direct overall military advantage anticipated.⁶⁹

43. A number of other war crimes in the Statute may either be committed by means of or result in environmental damage. For example, acts such as wilful killing,⁷⁰ wilfully causing serious injury to body or health,⁷¹ or unlawful deportation or transfer⁷² may qualify not only as crimes against humanity but also as war crimes when committed in international or non-international armed conflict. The following paragraphs thus set out additional examples of war crimes that may involve environmental damage.⁷³

44. Article 8(2)(a)(iv) criminalises the “[e]xtensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.” Because the property destroyed or appropriated must be protected under the Geneva Conventions, this war crime applies primarily during occupation. The war crime

⁶⁸ *Prosecutor v. Ntaganda*, [ICC-01/04-02/06-2359](#), para. 731.

⁶⁹ See generally Lawrence, J., & Heller, K.J., “The Limits of Article 8(2)(b)(iv) of the Rome Statute, the First Ecocentric War Crime,” *Georgetown International Environmental Law Review*, Vol. 20 (2007).

⁷⁰ [Rome Statute](#), articles 8(2)(a)(i) and 8(2)(c)(i).

⁷¹ [Rome Statute](#), articles 8(2)(a)(ii) (inhuman treatment) and 8(2)(c)(i) (cruel treatment). Although the war crimes do not have same name, they each criminalise the infliction of “severe physical or mental pain or suffering.”

⁷² [Rome Statute](#), articles 8(2)(a)(vii) and 8(2)(e)(viii).

⁷³ The list is not meant to be exhaustive. The focus is on war crimes in which environmental damage is central to the prohibited act. This section thus does not discuss war crimes involving prohibited weapons, such as articles 8(2)(b)(xvii), 8(2)(b)(xviii), 8(2)(e)(xiii), and 8(2)(e)(xiv). The use of such weapons may damage the environment, but their use is criminal regardless of whether or to what extent environmental damage results. The Office may nevertheless take the environmental damage caused by the use of prohibited weapons into account, *inter alia*, when assessing the gravity of a crime or advocating for a particular sentence.

nevertheless provides broad protection to natural resources such as land, water, food, as well as to the means used to utilise such resources, because article 53 of the Fourth Geneva Convention deems protected property “real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations.”⁷⁴

45. Similarly, article 8(2)(b)(xiii) of the Statute criminalises in international armed conflict “[d]estroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war,” while article 8(2)(e)(xii) of the Statute criminalises in non-international armed conflict “[d]estroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.” These war crimes will have even greater applicability in the environmental context than article 8(2)(a)(iv) because they prohibit *any* destruction or seizure of enemy or adversary property⁷⁵ that is not justified by military necessity; extensive destruction or appropriation is not required. Prohibited destruction would include a State’s armed forces deliberately destroying another State’s dam or nuclear power station being used for civilian purposes intending to cause significant damage to the surrounding environment or knowing that such damage would occur in the ordinary course of events.⁷⁶ Prohibited seizure would include an armed force appropriating for non-military purposes land, water, food, or any other natural resource that belonged to an Indigenous group whose allegiance was to its adversary.

46. With regard to all three war crimes involving property – articles 8(2)(a)(iv), 8(2)(b)(xiii), and 8(2)(e)(xii) – the “military necessity” exception applies only to a State’s armed forces and members of an organised armed group. It cannot be invoked by a corporate agent or an individual acting in a private capacity to justify destroying or appropriating enemy or adversary property that is otherwise criminal.⁷⁷

47. Article 8(2)(b)(ii) of the Statute criminalises in international armed conflict “[i]ntentionally directing attacks against civilian objects, that is, objects which are not military objectives.” Because the natural environment as a whole generally qualifies as a civilian object,⁷⁸ intentionally attacking any element of the environment, such as a field or

⁷⁴ [Fourth Geneva Convention](#), art. 53. In some States, land and resources not owned by natural or legal persons are owned by the government. In other States, indigenous groups hold native title to a significant amount of land and natural resources. See Gillett, p. 120.

⁷⁵ Echoing article 53 of the Fourth Geneva Convention, the Trial Chamber held in *Katanga* that the property in question “whether moveable or immovable, private or public – must belong to individuals or entities aligned with or with allegiance to a party to the conflict adverse or hostile to the perpetrator, which can be established in the light of the ethnicity or place of residence of such individuals or entities.” *Prosecutor v. Katanga*, [ICC-01/04-01/07-3436-tENG](#), para. 892. See also *Prosecutor v. Ongwen*, [ICC-02/04-01/15-1762-Red](#), para. 2775.

⁷⁶ According to the ICTY, “a single act, such as the destruction of a hospital, may suffice to characterize” this war crime (*Prosecutor v. Blaškić*, [Trial Judgment](#), 3 March 2000, para. 157).

⁷⁷ This scenario presumes a nexus between the private act and the armed conflict. If the nexus requirement is not satisfied, the destruction or appropriation does not qualify as a war crime under the Rome Statute.

⁷⁸ See ICRC Customary IHL Database, [Rule 43](#).

forest or body of water, would be a war crime unless the attacked object was a military objective at the time of the attack.

48. Articles 8(2)(b)(xvi) and 8(2)(e)(v) criminalise, in international and non-international armed conflict respectively, “[p]illaging a town or place, even when taken by assault.” Because pillaging protects both private and public property, appropriating land or natural resources owned, for example, by a government, a local community, or a private individual may qualify as pillaging as long as the appropriation was “for private or personal use.”⁷⁹ Public officials, corporate actors, or private individuals may thus commit the war crime of pillaging by engaging in the illegal exploitation of natural resources or the illegal dispossession of land.

49. Article 8(2)(b)(xxv) of the Statute criminalises in international armed conflict “[i]ntentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions.” Article 8(2)(e)(xix) criminalises the same acts in non-international armed conflict pursuant to an amendment adopted in 2019.⁸⁰ Objects indispensable to survival include “foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works.”⁸¹ Environmental damage, illegal exploitation of natural resources, or illegal dispossession of land intended to starve civilians may thus qualify as the war crime of starvation if those actions deprive the civilians of objects indispensable for their survival. Importantly, there is no requirement that the deprivation actually result in starvation; the intent to starve is sufficient for criminal responsibility.

50. Articles 8(2)(b)(ix) and 8(2)(e)(iv) of the Statute criminalise, in international and non-international armed conflict respectively, “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.” As stated in the Office’s Policy on Cultural Heritage, this war crime protects from attack “the cultural and spiritual heritage of peoples,”⁸² which includes “natural sites of cultural value, including certain natural or cultivated landscapes and physical, biological, or geological formations.”⁸³ The war crime may thus be committed by attacks directed against natural sites and mixed natural/cultural sites that have important meaning for human groups, such as Indigenous Peoples, even if they are not buildings or monuments within the traditional meaning of those terms. In determining which natural sites are protected against attack, the Office will rely, *inter alia*, on UNESCO’s criteria for inclusion in the list of World Heritage sites, as well as on the World Heritage List itself.

⁷⁹ See, e.g., [Elements of Crimes](#), article 8(2)(b)(xvi), Element 2.

⁸⁰ The amendment was adopted pursuant to article 121(5) of the [Statute](#). To date, it has been ratified by [18 States](#).

⁸¹ [Additional Protocol II](#), article 14.

⁸² See *Situation in Mali*, [article 53\(1\) Report](#), p. 31.

⁸³ [OTP Policy on Cultural Heritage](#), para. 16.

e. Aggression

51. The crime of aggression poses a unique threat to the natural environment not only because the military force involved in the aggressive act will normally cause environmental harm, but also because acts of aggression often trigger armed conflicts that cause additional harm to the environment.

52. Article 8*bis*(1) of the Statute criminalises aggression, defined as “the planning, preparation, initiation or execution [...] of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.” An act of aggression is defined by article 8*bis*(2) as “the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations.” Examples of aggressive acts listed in article 8*bis*(2) include invasion, military occupation, and bombardment.

53. Nearly all of the acts of aggression enumerated in article 8*bis*(2) can either be directed against or cause harm to the environment.⁸⁴ Bombing the territory of a State, for example, will often cause the death of animals and destroy and pollute fields, forests, and bodies of water. Similarly, the invasion of a State may lead to the illegal exploitation of natural resources or the illegal dispossession of land – including its formal annexation.

54. Whether an act of aggression constitutes “a manifest violation of the Charter of the United Nations” is determined by its “character, gravity, and scale.”⁸⁵ In assessing those factors, the Office will take into account, *inter alia*, the damage to the environment caused by the aggressive act, the number and kind of the act’s human and non-human victims, and whether the environmental damage is potentially irreversible. The Office considers intentionally destroying or damaging the environment to be a particularly grave form of the use of force because the natural environment should not be instrumentalised in the conduct of international relations.

⁸⁴ Environmentally destructive acts in one State, such as the pollution of waterways, often have effects in another State. Such transboundary harm cannot qualify as an act of aggression, because article 8*bis*(2) of the [Statute](#) specifies that such acts must involve “armed force.”

⁸⁵ [Rome Statute](#), article 8*bis*(1).

V. PRINCIPLES

55. The Office’s strategic and operational approach to environmental crimes is guided by certain fundamental principles. This section of the Policy presents the Office’s key principles, which inform the practical aspects of the Office’s work at every stage.

a. Intersectionality

56. Consistent with its other policies,⁸⁶ the Office will apply an intersectional approach to environmental crimes. An intersectional approach acknowledges the way individuals and communities can have disparate positions of power and vulnerabilities to harm due to multiple, compounding grounds of identity. Such grounds include race, ethnicity, socio-economic status, religion, age, sex characteristics, gender (including sexual orientation, identity and expression), caste, indigenous status, legal or displacement status and disability. An intersectional perspective considers such grounds and their relationship to structural drivers of violence and environmental damage in a given context as well as the differential impact environmental damage has on people’s vulnerabilities, opportunities, and interactions. For example, the Office should be alert to the ways in which environmental residue of chemical or biological warfare may cause specific reproductive harms to women and girls of childbearing age in a politically targeted community.

b. Due diligence

57. As with it does generally, the Office will exercise due diligence at all stages of its work relevant to environmental crimes, including with regard to all elements necessary for proof of individual criminal responsibility, i.e., underlying crimes, contextual elements, and modes of liability

58. The due diligence principle extends to ensuring independent, impartial and ethical investigations and prosecutions that seek to establish the truth. In particular, the Office takes appropriate measures to respect the interests and personal circumstances of survivors, victims and witnesses, including their age, gender and health. To properly understand the nature of environmental crime, the Office must accurately understand its context, relying on appropriate geographic, gender and other intersectional expertise. The Office must also fully respect the rights of the suspect and/or accused at all times.

c. Complementarity

59. In line with the Prosecutor’s vision for the Office to serve as a hub for international justice, the Office takes a dynamic approach to the principle of complementarity. Where possible under its mandate, the Office will encourage complementary efforts by States and other stakeholders to stop, prevent, and punish environmental crimes including by encouraging domestic criminalisation, by including specific consideration of domestic

⁸⁶ See, e.g., [OTP Policy on Children](#); [Policy on the Crime of Gender Persecution](#); [OTP Policy on Gender-Based Crimes](#); [OTP Policy on Cultural Heritage](#).

accountability mechanisms for environmental crimes in its complementarity assessments, by participating in awareness-raising activities, and by exchanging best practices to support and learn from domestic investigative and prosecutorial strategies. The Office will also work to assist national authorities and other relevant stakeholders to investigate and prosecute environmental crimes, as appropriate.

d. Inclusive outreach

60. The Office's public information activities will encompass creating and taking advantage of opportunities to highlight the impact of environmental crimes and increase awareness of them among its stakeholders, victims, affected communities, the media and the general public. This effort will employ diverse communication methods, including public events, press releases, social-media campaigns, and documentary projects.

61. Outreach initiatives play a pivotal role in realising these objectives. While the Registry is responsible for, and leads, the planning and implementation of outreach-related activities, the Office will support the Registry and participate in outreach activities that are focused on the environment, as deemed appropriate.

VI. PRACTICE

a. Implementation of the policy

62. The Office is committed to ensuring it possesses the necessary competencies and support to effectively execute its functions concerning the implementation of this Policy.

63. Each Pillar will appoint a Focal Point for environmental crime. The Focal Points will be appointed based on individual expertise and interest and will have ownership of the implementation of this Policy for annual recommendations to the Prosecutor.

64. The Office will integrate the principles, objectives, and procedures set out in this Policy into its internal regulatory and operational framework. This is to ensure that the Prosecutor's policy decisions regarding environmental crimes are comprehensively implemented at each stage of the Office's work and in its day-to-day operations. Such integration also promotes strict adherence to applicable law and evolving jurisprudence concerning environmental crimes and maintains consistency in the Office's activities across all teams and other parts of the Office.

65. Staff members involved in the implementation of this Policy will receive training organised by the Office Focal Points that is aimed at enhancing their capacity to identify instances of Rome Statute crimes committed by means of, or resulting in, environmental damage. This training will bolster their effectiveness in investigating and prosecuting environmental crimes. Relevant staff members will also receive training aimed at strengthening the Office's cooperation with domestic authorities to encourage and support domestic prosecution of environmental crimes and to assist domestic enforcement actions against associated illegal conduct, in close cooperation and coordination with relevant international and regional organisations.

66. The Office recognises the need to strengthen its in-house expertise on environmental crimes committed in both conflict and non-conflict situations. It will continue to recruit persons with the required expertise and experience in this field as appropriate, while benefiting from external expertise where needed.

67. The Office will consistently monitor its practices and procedures to ensure that it conducts effective preliminary examinations, investigations, and prosecutions of environmental crimes and other activities in accordance with this Policy. Utilising its standardised institutionalised 'lessons learned' process, the Office will identify, document, and implement best practices. This will facilitate continuous learning and the preservation of institutional knowledge derived from practical experience.

b. Specific phases of OTP work

68. The Office will endeavour to address environmental crimes throughout all phases of its operations: preliminary examination, investigation, prosecution, sentencing, and appeals. Whenever evidence permits, the Office will strive to include charges that encompass the environmental damage resulting from alleged Rome Statute crimes.

69. The Office will use its mandate and powers under the Statute to combat impunity for offences related to the environment, in accordance with this Policy and the Policy on Complementarity and Cooperation.

c. Preliminary examinations

70. In conducting preliminary examinations, the Office will pay attention to and record information concerning alleged Rome Statute crimes committed by means of or resulting in environmental damage.⁸⁷ When conducting a preliminary examination, the Office will seek to encourage and support genuine national proceedings.

71. The Office is committed to reacting promptly to upsurges in the commission of environmental crimes. At an early stage, the Office will engage with government authorities, civil society organisations, scientific and technological institutions, and other stakeholders to preserve and verify information on alleged crimes.⁸⁸ It may also “receive information on alleged crimes and may seek additional information from States, organs of the United Nations, intergovernmental and non-governmental organisations and other reliable sources,” as well as “undertake field missions to the territory concerned in order to consult with the competent national authorities, the affected communities and other relevant stakeholders.”⁸⁹

d. Investigations

72. The Office will, with the input of the Office Focal Points, proactively seek to determine whether there is an environmental dimension to alleged crimes. If so, it will include specific lines of inquiry in the relevant situation strategies, information requirements, and investigation plans. This approach is designed to optimise the use of resources, allow for sufficient time for evidence collection and analysis, and facilitate strategic planning and decision-making.

73. The Office will seek to rely on diverse sources of evidence to establish environmental damage, assess the causes and impact of such damage, and determine individual criminal responsibility for Rome Statute crimes resulting in environmental damage. In line with its inclusive and intersectional approach, the Office will ensure that it takes into account a variety of perspectives and experiences related to environmental damage and its impact throughout the course of its investigations.⁹⁰ This will include seeking input from women, Indigenous Peoples, youth, persons with disabilities, displaced

⁸⁷ [OTP Policy Paper on Case Selection and Prioritisation](#), para. 41.

⁸⁸ [Rome Statute](#), article 15(2); [Rules of Procedure and Evidence](#), rules 47, 104.

⁸⁹ [OTP Policy Paper on Preliminary Examinations](#), para. 85.

⁹⁰ For example, the JEP in Colombia adopted an intercultural ontological approach for identifying, measuring, and understanding environmental damage, one that recognizes the Colombian armed conflict impacted not only individuals and collectivities but also the natural environment itself. To implement this approach, the tribunal collected evidence of socio-environmental and territorial harm through a *diálogo de saberes* (dialogue of knowledge) that involved collective interviews and social mapping with Indigenous Peoples, Afro-descendant communities, and rural communities. See [JEP Case 02, Order No. 03 of the SRVR](#), July 5, 2023, paras. 1239-43.

persons, and other vulnerable or marginalised groups. Children may also be engaged by qualified experts,⁹¹ where appropriate.

74. To conduct effective investigations into environmental crimes, the Office will actively cooperate with external partners who have access to information or specialised expertise. Such partners may include government agencies, specialised accountability mechanisms, relevant international and regional organisations, universities, scientific and technology institutions, private corporations, individual experts, and other relevant actors. It specifically also includes civil-society organisations and grassroots communities, including Indigenous Peoples.⁹²

75. In conducting investigations of environmental crimes, the Office will employ its complete set of investigative powers under the Statute. It will cooperate with domestic authorities pursuant to Part 9 of the Statute and, when necessary, will seek the Pre-Trial Chamber's authorisation to carry out discrete investigative steps.⁹³ The Office also aims to enhance its capacity to conduct financial investigations.⁹⁴

76. To manage the unprecedented amount of digital and other evidence that may be collected during investigations, the Office is making substantial investments in staff, tools, and methodologies. This is designed to ensure the efficient collection, storage, analysis, disclosure, and presentation of information, as well as its transmission to other jurisdictions.⁹⁵

77. Where appropriate and possible, the Office will consider participating in joint investigations with national authorities.⁹⁶

e. Prosecutions

78. The Office will select and pursue cases only if doing so is justified by the information and evidence available or accessible to the Prosecution, including upon investigation.⁹⁷ In making those determinations, the Office will follow the criteria set out in the OTP Policy Paper on Case Selection and Prioritisation.⁹⁸

79. The Office will consider the broader socio-economic context in which Rome Statute crimes are committed and seek to identify not only the principal perpetrators of the crimes, but also those who are responsible for facilitating or materially supporting them. Such persons may include the financiers of the principal perpetrators, including their

⁹¹ See [OTP Policy on Children](#), para. 114.

⁹² [OTP Policy on Complementarity and Cooperation](#), paras. 82-85.

⁹³ [Rome Statute](#), articles 56 and 57(3)(d).

⁹⁴ [OTP Strategic Plan 2023-2025](#), para. 29.

⁹⁵ [OTP Strategic Plan 2023-2025](#), paras. 25-29, 42-45, 73-77. [OTP Policy on Complementarity and Cooperation](#), paras. 59-71.

⁹⁶ [OTP Strategic Plan 2023-2025](#), para. 37; [OTP Policy on Complementarity and Cooperation](#), paras. 102-112.

⁹⁷ [OTP Policy Paper on Case Selection and Prioritisation](#), para. 21.

⁹⁸ See [OTP Policy Paper on Case Selection and Prioritisation](#), paras. 34-55.

investors, lenders, insurers and supply chain actors, when acting with the requisite intent and knowledge.

80. The Office will consider the full range of crimes in article 5 and modes of liability under articles 25 and 28 of the Statute when examining environmental damage that potentially violates the Statute.

81. Under article 25 of the Statute, individuals are responsible for crimes that they commit either as individuals or jointly with and/or through another person, or if they order, solicit, induce, aid, abet, otherwise assist in, or in any way contribute to the commission or attempted commission of those crimes by an individual or group. Complicity is particularly important in the context of environmental crimes, because the persons contributing to those crimes may include actors who are geographically removed from the crimes themselves.

82. Under article 28 of the Statute, individuals can also be held responsible for environmental crimes on the basis of superior responsibility. If environmental crimes are committed through corporate structures, senior corporate officers may potentially qualify as non-military superiors for purposes of article 28(b).

83. In general, the motive for committing article 5 crimes is legally irrelevant.⁹⁹ It is thus immaterial whether such crimes are carried out for political, ideological, or economic reasons – or for no clear reason at all. What matters for the purposes of the Statute is that the perpetrators meant to engage in their conduct and either meant to cause a consequence or were aware that the consequence would occur in the ordinary course of events¹⁰⁰ and that they otherwise fulfil the mental elements of the crime(s) charged.

84. Upon the issuance of a warrant of arrest or a summons to appear against a person by a Pre-Trial Chamber,¹⁰¹ the Office may request the Chamber to seek the cooperation of States to take protective measures for the purpose of forfeiture. Specifically, a State may be requested to trace and freeze or seize the proceeds, property, assets, and instrumentalities of the crimes.¹⁰² Given that there is no requirement that property and assets subject to a Chamber's request for cooperation be derived from, or otherwise linked to, alleged crimes within the Court's jurisdiction,¹⁰³ the Office may seek the freezing or seizure of a suspect's assets worldwide.

⁹⁹ Specific intent crimes, such as persecution or genocide, are an exception to this principle.

¹⁰⁰ [Rome Statute](#), article 30(2).

¹⁰¹ [Rome Statute](#), article 58.

¹⁰² [Rome Statute](#), articles 57(3)(e) and 93(1)(k).

¹⁰³ [ICC-ACRed-01/16](#), paras. 1, 63.

f. Sentencing

85. In determining an appropriate sentence, the Court is required to consider various factors, including the gravity of the crime, the extent of the damage caused – in particular the harm caused to victims and their families – and the nature of the unlawful behaviour.¹⁰⁴

86. The Office will advocate for sentences that reflect the seriousness of the crimes for which convictions are entered, including the extent of the harm they cause to victims (human and non-human), affected communities, and the environment itself. For sentencing purposes, environmental damage directly caused by the perpetrator’s acts may be treated either as increasing the gravity of the charged crimes¹⁰⁵ or, when proven beyond a reasonable doubt, as a separate aggravating factor.¹⁰⁶ Where appropriate, the Office will present expert evidence that illuminates the impact of the relevant crimes on the environment, as well as on victims, their families, the community, and humanity as a whole, including future generations. To that end, the Office may explore collaborations with organisations and other experts able to testify on environmental issues.

g. Cooperation and Complementarity

i. Engaging with National Authorities

87. Consistent with the Office’s Policy on Complementarity and Cooperation,¹⁰⁷ the Office will actively collaborate with competent national authorities, encouraging them to conduct genuine national investigations and prosecutions of Rome Statute crimes that are committed by means of or that result in environmental damage, and providing them with all possible support to do so.¹⁰⁸ The Office will also advocate for and assist relevant national authorities and other entities in addressing barriers that may impede genuine proceedings. The Court’s regulatory framework makes clear that cooperation between

¹⁰⁴ [Rome Statute](#), article 78(1). Rule 145(1)(c) of the [Rules of Procedure and Evidence](#) provides that, in determining sentence, the Court shall, “[i]n addition to the factors mentioned in article 78, paragraph 1, give consideration, *inter alia*, to the extent of the damage caused, in particular the harm caused to the victims and their families, the nature of the unlawful behaviour and the means employed to execute the crime; the degree of participation of the convicted person; the degree of intent; the circumstances of manner, time and location; and the age, education, social and economic condition of the convicted person.”

¹⁰⁵ *Prosecutor v. Ntaganda*, [ICC-01/04-02/06-2442](#), para. 16 (“As long as they relate to the elements of the offence and mode(s) of liability, the factors stipulated in Rule 145(1)(c) will be considered in the evaluation of gravity, including the extent of the damage caused.”).

¹⁰⁶ *Prosecutor v. Ntaganda*, [ICC-01/04-02/06-2442](#), para. 17 (“For a factor to be considered as aggravating, there must be a sufficiently proximate link between the factor and the crime or crimes that form the basis of the conviction.”).

¹⁰⁷ [OTP Policy on Complementarity and Cooperation](#).

¹⁰⁸ [OTP Policy Paper on Case Selection and Prioritisation](#), para. 7. [OTP Policy on Complementarity and Cooperation](#). Rome Statute crimes involving environmental damage are also often linked to other crimes under national law, such as atrocity crimes not amounting to violations of the Statute; organised crime, money laundering or other financial crimes; corruption; fraud; and the financing of armed groups or terrorism.¹⁰⁸ They are also often associated with other kinds of violations of national law, including regulatory or administrative offences or violations of sanction mechanisms. *See, e.g.*, UNEP-INTERPOL, [Strategic Report: Environment, Peace and Security A Convergence of Threats](#), 2016; UNEP-INTERPOL, [The Rise of Environmental Crime: A Growing Threat to Natural Resources, Peace, Development and Security](#), 2016.

States and the Court may occur irrespective of whether a State is a party to the Rome Statute.¹⁰⁹

88. When engaging with national authorities, the Office will adopt a two-track approach: namely, coordinating with national authorities to promote cooperation and complementarity while remaining committed to its mandate to independently and impartially investigate and prosecute Rome Statute crimes when national authorities are unwilling or unable to act.¹¹⁰ The Office may also work in tandem with national partners to share the burden of delivering justice for the victims of Rome Statute crimes.¹¹¹

89. The Office's assistance to national authorities in their efforts to investigate and prosecute environmental crimes may include the sharing of intelligence, evidence, or situation briefs; offering expertise and support to enhance the capacity of national authorities; undertaking joint investigative activities; holding strategic consultations on case selection and prioritisation to share the burden of investigating and prosecuting Rome Statute crimes; and providing assistance concerning legislation in the realm of environmental justice.¹¹²

90. If the Office obtains information indicating that individuals or organisations involved in ongoing environmental crimes are enabled in their activities by receiving support or financing from third persons or corporations, it will analyse such information and may share it with national law enforcement authorities. This includes criminal jurisdictions, regulatory or administrative enforcement mechanisms, and government authorities responsible for enforcing violations of sanction mechanisms. Through such actions, the Office, in collaboration with its national enforcement partners, may target individual supply chain actors (both upstream and downstream) and financiers (including investors, lenders, and insurers) whose actions contribute to the commission of environmental crimes, thus encouraging them to disengage from those committing such crimes.

91. The Office will cooperate with national authorities either bilaterally or through the envisaged Cooperation and Complementarity Forum. The Forum serves as a platform for the two-way sharing of information and expertise between the Office and national authorities, aiming to enhance coordination, harmonisation, and cohesion, and will identify areas where mutual support can be provided.¹¹³

92. The Office's renewed technological architecture enables it not only to receive, process, and preserve larger data sets, but also to categorise and analyse vast amounts of

¹⁰⁹ See e.g. [Rome Statute](#), articles 87(5), 93(1)(c) and 99(5); [Rules of Procedure and Evidence](#), rule 44. See also [OTP Policy on Complementarity and Cooperation](#), para. 42.

¹¹⁰ [OTP Policy on Complementarity and Cooperation](#), paras. 3-6, 140). See, for example, the Office's engagement with the authorities of Venezuela, Colombia and Guinea.

¹¹¹ See, for example, the Office's collaboration with authorities from multiple national jurisdictions in the context of its investigation in Ukraine, CAR and DRC. [OTP Policy on Complementarity and Cooperation](#), paras. 131-138.

¹¹² [Rome Statute](#), article 93(10); [OTP Policy on Complementarity and Cooperation](#), paras. 46-47; 54-58, 86-91, 131-138.

¹¹³ [OTP Strategic Plan 2023-2025](#), para. 35; [OTP Policy on Complementarity and Cooperation](#), paras. 38-45.

information using tools such as machine learning and advanced cognitive services. This positions the Office to function as a hub at the centre of global accountability efforts, including for environmental crimes, capable of providing, intelligence, evidence, and analytical products to support national proceedings.¹¹⁴

93. To maximise its impact on preventing environmental damage related to Rome Statute crimes, the Office will coordinate and cooperate with a broad range of international, regional, and specialised rule of law and accountability actors around the world.¹¹⁵ The types of cooperation include those set out in the previous section.

ii. Engaging with Corporate and Other Private Actors

94. If the Office has information that a corporation, an individual corporate actor, or other private actor is involved in environmental crimes, the Office may, if appropriate and consistent with its powers under the Statute, directly engage with the relevant actor or corporation.¹¹⁶

95. Such engagement may yield various advantages:

- a. It may generate evidence indicating that the relevant actors have knowledge of the allegations about their involvement in environmental crimes (“putting them on notice”).
- b. It may ensure that individual actors or corporations who have come into possession of proceeds, property, or assets and instrumentalities of crimes are not deemed *bona fide* third parties protected from forfeiture.¹¹⁷
- c. It may prompt the relevant corporations to conduct further investigations into the matter, pursuant to their legally binding due-diligence obligations.
- d. It may inform individual actors or corporations of the legal, financial, and reputational risks associated with their activities, thereby encouraging them to cease the illegal activities causing environmental damage or to disengage from those involved in such activities.

h. Budgetary Issues

96. The Office’s regular programme budget remains the primary source of funding with respect to its investigative and prosecutorial activities and related support functions.¹¹⁸ The Office has also created a Trust for Complementarity and Cooperation, which allows it to

¹¹⁴ [OTP Strategic Plan 2023-2025](#), para. 36; [OTP Policy on Complementarity and Cooperation](#), paras. 59-71.

¹¹⁵ [Rome Statute](#), article 93(10); [OTP Policy on Complementarity and Cooperation](#), paras. 113-118. *See also* [OTP Policy Paper on the Interests of Justice](#), pp. 7-9.

¹¹⁶ Such engagement will be conducted with full regard for the rights and protections given to suspected perpetrators under article 55(1) of the [Rome Statute](#).

¹¹⁷ [Rome Statute](#), articles 77(2)(b), 93(1)(k), and 119.

¹¹⁸ Proposed Program Budget for 2025 of the International Criminal Court, [ICC-ASP/23/20](#), 24 July 2024, para. 226.

promote the Office's dynamic complementarity approach by increasing its engagement with and support to specific programmatic activities in selected situations and thematic areas of work.

97. Any voluntary contributions to this Trust by governments, international organisations, individuals, corporations, and other entities in accordance with article 116 of the Statute¹¹⁹ will enable the Office to further strengthen its capacity to implement this Policy. Similarly, State Parties and other partners may second expert personnel to the Office with a view to support the implementation of this Policy.¹²⁰

¹¹⁹ See [Financial Regulations and Rules](#), regulations 7.2-7.4. As the Prosecutor informed the States Parties in his Note Verbale of 7 March 2022, donations from States Parties are to be used to enhance the capacity of the OTP across all situations. Earmarking donations for certain situations is not possible; however, donors may direct the funds to one of the specific priority areas, which were stated in the Note Verbale and repeated in several documents thereafter. See Report of the Committee on Budget and Finance on the Work of Its Thirty-Ninth Session, Governance of the OTP Trust Fund, [ICC-ASP/21/15](#), 29 November 2022, paras. 248-52.

¹²⁰ See [OTP Strategic Plan 2023-2025](#), para. 41; [OTP Policy on Complementarity and Cooperation](#), paras. 48-53.

VII. WAY FORWARD

98. With this Policy, the Office commits to ensuring that environmental crimes – crimes that are committed by means of or that result in environmental damage – are a strategic priority at the heart of its investigations and prosecutions. The Office will continue to strengthen its understanding of and approach to these crimes.

99. Ultimately, the test of this Policy lies in its rigorous and consistent implementation. To this end, the Office will ensure that the key principles articulated above are reflected across every layer of its internal operational guidance and throughout its hiring, training, and evaluation efforts.

100. This Policy and the operational guidance that underpins it are living documents. As the Office absorbs relevant expertise and developments, these documents will evolve as necessary.

101. The Prosecutor is grateful for the robust support the Office received as it created this Policy. Staff and external colleagues from all regions of the world have generously given their time and expertise to this process.

102. It is the Prosecutor's hope that this marks a new chapter in the establishment of the global partnership that is necessary to ensure success in the investigation and prosecution of environmental crimes. The victims of such crimes, human and non-human alike, deserve no less.