



**NO PEACE
WITHOUT
JUSTICE**

No Peace Without Justice

Non C'è Pace Senza

Giustizia ETS

Via C. B. Vaccolini, 5 00153 Roma
(RM), Italia

Tel. 0645436641

C.F. 97107730588 – Email

info@npwj.org

Sito web: www.npwj.org

Organisation in Special Consultative
Status with the United Nations ECOSOC
since 2022

NPWJ Submission on the Draft OTP Policy on Environmental Crimes under the Rome Statute

21 February 2025

Introduction

1. No Peace Without Justice (NPWJ) welcomes the consultations undertaken by the Office of the Prosecutor (OTP) on its draft Policy on Environmental Crimes under the Rome Statute, both prior to and after the production of the draft, and the opportunity to provide written comments on the draft policy. We have participated in these consultations and others relating to different OTP policies and continue to believe such consultations are important not just in terms of the content of submissions the OTP may receive, but also in terms of a concrete expression of the OTP's commitment to transparency and cooperation, including with civil society. In particular, on 16 March 2024, within the consultation opened by the OTP, NPWJ submitted general considerations regarding the investigation and prosecution of environmental crimes within the Rome Statute¹ ("NPWJ's 2024 Submission").
2. NPWJ is an international non-profit organisation founded in 1994 by Emma Bonino that works for the protection and promotion of human rights, democracy, the rule of law and international justice. NPWJ's International Criminal Justice work focuses on strengthening national, regional and international systems, mechanisms and standards that promote and protect human rights and deliver justice and redress for victims; and on promoting international justice and accountability, including through the International Criminal Court (ICC), to combat impunity for war crimes, crimes against humanity, genocide and ecocide, also by holding States to their obligations to investigate and prosecute crimes under international law. NPWJ has been working on the ICC since its inception; NPWJ participated in the Rome Conference and all subsequent Preparatory Committees and Assembly of States Parties sessions and works with stakeholders around the world, including the ICC, to promote the principles of universality, effectiveness, efficiency and impact of the ICC. NPWJ is in special consultative status with the Economic and Social Council (ECOSOC) since July 2022.
3. The first part of this submission concerns elements of the draft that NPWJ particularly welcomes and supports ("Positive elements"). This part highlights those elements and

¹ See <https://www.npwj.org/press-release/npwj-submission-to-the-icc-otp-public-consultation-on-a-new-policy-initiative-to-advance-accountability-for-environmental-crimes-under-the-rome-statute/>

concepts that NPWJ believes should be retained and for which reasons. The second part concerns elements of the draft that NPWJ believes could usefully be clarified, amended or expanded ("Suggestions on specific elements"). This part focuses both on language and concepts, including some aspects that may seem less significant, but which could cause confusion. The third part concerns elements that NPWJ believes should be included in the draft policy that are currently absent ("Suggestions for additions"). This part contains specific recommendations and the reasoning behind the suggestions.

Positive elements

4. NPWJ appreciates the OTP's acknowledgment that, while the Rome Statute is largely anthropocentric, it does recognise and protect the inherent value of the natural environment. The policy's discussion on how environmental destruction often directly impacts human life (displacement, suffering, injury, or death) is a crucial point that aligns with NPWJ's stance on the relationship between environmental crimes and the Rome Statute. Furthermore, the recognition that environmental crimes can occur "in times of peace" reinforces that environmental crimes under the Rome Statute are not solely confined to war crimes under Article 8(2)(b)(iv). NPWJ strongly supports maintaining these elements in the final policy.

In this regard, the draft policy acknowledges the Rome Statute's limited jurisdiction regarding environmental crimes, stating that it primarily focuses on human life and property. However, it correctly emphasises that several provisions in the Statute are applicable to environmental attacks. This recognition should be upheld, as it establishes a legal basis for prosecuting environmental crimes even within the ICC's current framework.

5. The draft policy appropriately emphasises that environmental damage poses a direct and immediate threat to both human and non-human life, given that the natural environment is fundamental to all life forms (paragraph 2). NPWJ welcomes this statement, as it accurately underscores the widespread implications of environmental harm and destruction, extending beyond just human impact.

Additionally, the OTP highlights that environmental harm is often interconnected with crimes such as organised crime, financial crimes, and corruption (paragraph 3). This perspective aligns with NPWJ's 2024 Submission (paragraph 16), and we strongly support its inclusion in the final policy.

Similarly, NPWJ supports the OTP's recognition of its responsibility to work for the sake of present and future generations (paragraph 4). Given the long-term impact of environmental crimes, this perspective is essential.

6. The OTP correctly notes that "although the illegal exploitation of natural resources and illegal dispossession of land do not necessarily cause environmental damage, in practice they often do" (paragraph 6). NPWJ fully supports the inclusion of this statement, as it

highlights the significant environmental consequences of resource exploitation and land dispossession.

Furthermore, the draft policy acknowledges that many situations involving Rome Statute crimes are driven by competition over natural resources, such as land and water, which frequently leads to severe environmental damage (paragraph 7). NPWJ strongly endorses this point, which aligns with our analysis that environmental factors can serve as root causes of conflict. Including this perspective strengthens the policy's relevance in the context of conflict prevention.

7. The draft policy highlights that vulnerable and marginalised communities often lack the resources to escape environmental damage, forcing them to suffer additional harm (paragraph 9). This point is crucial and aligns with NPWJ's broader values. We recommend its retention in the final policy.
8. The draft policy states that "the concept of the environment may evolve over time as knowledge about it increases and because the environment itself is constantly changing" (paragraph 22). NPWJ supports this statement, as it underscores the need for flexibility and adaptation in addressing environmental crimes.
9. NPWJ welcomes the OTP's thorough crime-by-crime analysis outlined in Section V of the draft policy, which aims to identify and explore ways to incorporate environmental crimes within the framework of each crime outlined in the Rome Statute. This approach is commendable, as it offers a comprehensive and systematic means of addressing environmental harm in the context of international criminal law. By integrating environmental crimes across various categories, the OTP ensures that the full scope of environmental degradation is considered in the prosecution of serious offenses, reinforcing the importance of environmental protection as part of international justice. At the same time, it contributes to expose the normative gaps and show avenues for a potential codification of "ecocide" (see paragraph 39 below).

In particular:

- (a) The draft policy discusses genocide in relation to environmental crimes, stating that "this form of genocide 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" (paragraph 31). This statement resonates with NPWJ's 2024 Submission (paragraph 33), where we argued for the recognition of environmental destruction as a potential act of genocide when it threatens the survival of specific groups. We strongly support the retention of this important provision, as it underscores the crucial link between environmental harm and the ability of groups to maintain their existence, particularly in vulnerable or conflict-affected regions.
- (b) The draft policy explicitly recognises that crimes against humanity involving environmental destruction can be committed not only by government officials but also by non-state actors, including corporations (paragraph 33). Given the extensive and often catastrophic environmental harm caused by corporate actions,

particularly in sectors such as mining, agriculture, and infrastructure development, NPWJ strongly supports the inclusion of this provision. We urge that this provision remains in the final policy to address the growing role of corporations in environmental crimes, which are frequently overlooked in traditional international justice frameworks (see paragraph 35 below for further comments on forms of participation).

- (c) The draft policy recognises that the crime against humanity of extermination can be committed through environmentally damaging acts (paragraph 36), which aligns with NPWJ's perspective on extermination via environmental destruction, as expressed in paragraph 12 of NPWJ's 2024 Submission. This recognition is essential for expanding the legal understanding of crimes against humanity, and we fully support the retention of this acknowledgment in the final draft.
- (d) The draft correctly recognises Article 8(2)(b)(iv) as the only explicit environmental protection provision in the Rome Statute (paragraph 42). NPWJ commends the OTP for its commitment to prosecuting violations under this article and integrating scientific assessments of environmental damage into the prosecutorial process. This approach is vital for ensuring that environmental harm is adequately quantified and considered in the prosecution of war crimes. We support the continued application of Article 8(2)(b)(iv) as a central provision for environmental protection within the Rome Statute framework.
- (e) The OTP's recognition of environmental destruction under Article 8(2)(a)(iv) (paragraph 44) strengthens protection for natural resources as property. This provision offers an important extension of legal protection to natural resources during armed conflict, ensuring they are not treated as mere commodities to be exploited. NPWJ strongly supports its inclusion and urges that it remain in the final policy.
- (f) The draft policy's clarification that military necessity cannot be invoked by corporate actors or individuals acting in a private capacity (paragraph 46) is a significant and necessary distinction that should remain in the final document. This provision ensures that corporate actors and private individuals cannot justify environmentally destructive actions through claims of military necessity, which could otherwise undermine efforts to protect the environment during armed conflicts. NPWJ strongly supports the inclusion of this critical distinction and urges that it be preserved in the final policy.
- (g) We share the view that attacking elements of the environment can constitute war crimes. This view is reflected in the draft policy (paragraph 47), which acknowledges that natural sites of cultural significance, including those important to indigenous peoples, are protected under international law. NPWJ believes that this recognition is crucial for preserving not only the environment but also the cultural heritage and indigenous rights tied to it. We fully support the retention of this acknowledgment, as it reinforces the link between cultural preservation, indigenous culture and environmental protection.

- (h) The draft policy appropriately classifies the dispossession of natural resources for private or personal use as pillaging (paragraph 48) and recognises that environmental destruction can constitute starvation crimes (paragraph 49). NPWJ agrees with this classification, as noted in paragraph 12 of our 2024 Submission. The inclusion of environmental destruction in the context of pillaging and starvation crimes is essential for ensuring that environmental harm is addressed as part of the broader framework of international criminal law. We strongly support the retention of these provisions in the final draft.
 - (i) The draft policy acknowledges the environmental consequences of aggression (paragraph 51), aligning with our own observations (paragraph 12 of NPWJ's 2024 Submission). NPWJ agrees that acts of aggression often lead to significant environmental damage, both during and after the conflict. Recognising this relationship is crucial for understanding the full scope of harm caused by this conduct and for ensuring that the environment is properly protected under international law. The recognition of additional environmental harm triggered by aggression (paragraph 53) is an important step, and we advocate for its continued inclusion in the final version of the policy.
 - (j) The draft further states that assessing the severity of aggression will consider environmental damage, non-human victims, and the potential irreversibility of harm (paragraph 54). This is a progressive and necessary approach that aligns with our analysis regarding the instrumentalisation of the environment in conflicts. By considering environmental damage alongside human suffering and the irreversibility of harm, the policy takes a holistic approach to the impact of aggression. NPWJ strongly supports this inclusion, as it reflects the growing recognition that environmental damage must be an integral part of assessing the severity of conflicts.
10. The OTP's commitment to complementarity (paragraph 59) mirrors NPWJ's suggestions and represents a pivotal step toward ensuring global accountability for environmental crimes. This commitment underscores the need for international cooperation in the prosecution of environmental offenses, allowing for a more robust legal framework where national jurisdictions play a primary role, and the ICC steps in only when necessary. NPWJ strongly supports this approach, as it encourages local ownership while addressing the global nature of environmental harm. Similarly, the OTP's outreach efforts (paragraph 23) are essential to raising awareness not only among affected communities and victims but also the broader public. Sustaining these outreach initiatives will enhance global understanding of the importance of holding environmental criminals accountable and expand support for domestic and international legal actions.
11. Paragraphs 68 and 69 of the draft policy highlight the OTP's commitment to addressing environmental crimes at all phases of operations and combating impunity. This proactive approach is commendable and crucial for addressing the complex, often covert, nature of environmental crimes. By ensuring that environmental harm is investigated and prosecuted from the outset, the OTP sends a strong message that such crimes will not go unchecked. This approach should be maintained, as it strengthens the overall

accountability framework and the deterrence possibilities for future offenses. In preliminary examinations, early engagement with government authorities, civil society, and scientific institutions to preserve and verify information is vital (paragraph 71). The early collection of evidence is essential to ensuring its integrity and the success of prosecutions. The OTP's openness to receiving and seeking information from States, international organisations, NGOs, and field missions is a crucial step in building a comprehensive case for accountability, demonstrating transparency and fostering trust among stakeholders.

12. The OTP's commitment to incorporating diverse perspectives in investigations—particularly from women, Indigenous Peoples, youth, persons with disabilities, displaced persons, and other marginalised groups—is crucial (paragraph 73). These communities are disproportionately impacted by environmental degradation, and their input is vital for a full and fair investigation. Including their voices ensures that the policies developed reflect the lived experiences of those most affected by environmental crimes. For Indigenous and youth communities, who often face heightened vulnerability due to their dependence on natural resources for survival, this inclusivity is essential to ensuring that their rights and concerns are central to the policy framework.
13. The OTP's strategy to collaborate actively with external partners, including civil society organisations and grassroots communities (paragraph 74), aligns perfectly with NPWJ's advocacy for broad-based cooperation in addressing environmental crimes. This collaborative approach ensures that all relevant stakeholders, from local communities to international organisations, are involved in the process of investigation and accountability. NPWJ strongly believes that such cooperation is essential for creating a comprehensive and effective response to environmental crimes. This commitment to multi-stakeholder engagement should remain a core element of the policy, as it strengthens the legitimacy and effectiveness of the OTP's actions.
14. The provision allowing the OTP to request States to trace, freeze, or seize proceeds and assets linked to environmental crimes (paragraph 84) is a critical and effective measure to promote environmental protection. By targeting the financial aspects of environmental crime, the OTP can disrupt the economic incentives that drive such illegal activities. This strategy helps to create a deterrent effect while ensuring that those responsible for environmental crimes cannot benefit from their illicit actions. Additionally, the OTP's approach to sentencing—taking into account environmental harm, non-human victims, and the impact on future generations—rightly reflects the gravity of these crimes (paragraph 86). Recognising the long-term and often irreversible consequences of environmental destruction is essential for ensuring that punishments match the severity of the offenses. This holistic approach to sentencing should be preserved in the final policy draft.
15. The OTP's commitment to collaborating actively with national authorities to support domestic prosecutions of environmental crimes is a critical aspect of ensuring global accountability (paragraph 87). Strengthening domestic legal frameworks is key to fostering long-term, local ownership of environmental justice. The OTP's two-track approach—promoting cooperation while maintaining the ability to act independently

when States fail to prosecute (paragraph 88)—ensures that environmental crimes do not go unpunished due to state incapacity or unwillingness. By supporting national efforts, the OTP plays a crucial role in enhancing the capacity of States to handle such crimes, while retaining the necessary tools to intervene when States fail to fulfill their obligations.

16. The OTP's role in monitoring the financial enablers of environmental crimes (paragraph 90) is particularly significant. By tracking and disrupting financial networks that support environmental crimes, the OTP plays a critical role in addressing the root causes of such offenses. Sharing intelligence with national enforcement authorities on financiers and supply chain actors who facilitate these crimes is a vital and effective deterrent. This proactive monitoring is crucial in breaking the cycles of impunity that often surround environmental crimes, and it should remain a priority in the final policy draft.
17. The establishment of a Cooperation and Complementarity Forum to facilitate information exchange between the OTP and national authorities (paragraph 91) is a welcome initiative to improve global coordination in tackling environmental crimes. By fostering greater collaboration between national jurisdictions and international bodies, the Forum can strengthen the overall response to environmental crimes. This exchange of knowledge and expertise could enhance the capacity of national authorities and ensure a more coherent approach to prosecution and enforcement.
18. The OTP's commitment to refining its policy based on expertise and developments (paragraphs 98 to 100) ensures that the policy remains relevant and adaptable to emerging challenges. This ongoing refinement process is crucial for addressing the evolving nature of environmental crimes, which often require innovative legal approaches. Embedding the key principles of this policy into operational guidance, hiring, training, and evaluation efforts (paragraph 99) is essential for ensuring its effective implementation. By ensuring that staff are adequately trained and the policy remains a living document, the OTP can continue to effectively address environmental crimes in an ever-changing global landscape.

Suggestions on specific elements

19. NPWJ welcomes the OTP's definition of environmental crimes as those "committed by means of or that result in environmental damage" (paragraph 6). However, we recommend broadening this definition to also include crimes that arise due to an environmental situation, where environmental factors serve as a driving force for criminal acts. For example, as noted in NPWJ's 2024 Submission (paragraph 6), in Sierra Leone, the illegal exploitation of natural resources—especially diamonds—was a well-known driver of conflict and a means to sustain it.
20. The OTP lists its policy objectives in Section II.b. While NPWJ generally agrees with these objectives, we propose the following enhancements:
 - In objective e), NPWJ recommends explicitly mentioning scientists with expertise in environmental issues to assess the severity of environmental crimes more

- accurately among the non-State actors with which cooperation and coordination should be sought.
- The policy should also explicitly commit to cooperating with stakeholders most affected by environmental crimes, such as Indigenous Peoples and younger generations who rely on international support. While the draft policy acknowledges their rights (paragraph 8), this aspect should be highlighted as a main objective.
21. The draft policy provides an example of a crime against humanity: "a person may commit murder by poisoning a well that provides the only drinking water for a local community" (paragraph 35). While NPWJ agrees with the overall example, we suggest modifying the wording to remove "the only" drinking water. Poisoning any drinking water supply with intent to kill or with awareness of the lethal consequences should constitute a crime against humanity, regardless of whether alternative sources exist.
 22. The draft policy acknowledges that environmental destruction can serve as a means of forcibly transferring populations (paragraph 37). Similarly, in NPWJ's 2024 Submission (paragraph 12), we highlighted forced displacement due to environmental destruction, which is well reflected in the draft policy. However, the broader reasoning behind forced transfer—where perpetrators coerce populations to relocate in order to exploit natural resources—should also be emphasised as an essential aspect of environmental crimes.
 23. The draft policy (paragraph 38) references cultural and ethnic persecution but omits explicit mention of indigenous communities, except in an example later in the text. Given the significance of environmental destruction in the historical oppression of indigenous groups, their specific inclusion in this context is recommended.
 24. The draft policy (paragraph 40) shares our emphasis on environmental destruction as an inhumane act causing great suffering (see paragraph 12 of NPWJ's 2024 Submission). However, the draft lacks concrete examples of such acts. Including real-world instances would enhance clarity and reinforce the policy's applicability.
 25. The draft policy outlines four guiding principles: intersectionality, due diligence, complementarity, and inclusive outreach (Section V). While the principle of intersectionality is correctly linked to environmental crimes, its application should not be limited solely to reproductive harms for "women and girls of childbearing age" (paragraph 56). Harm can be done to the female reproductive system, with potentially severe consequences, whether that person is of "child-bearing age" or not, especially considering that limitation would encompass girls who are not yet capable of reproduction. While recognising that environmental damage, particularly the use of agents such as tear gas, can cause disproportionate damage to reproductive systems, we are doubtful of the utility to highlight this aspect, which risks playing into backward-looking trends that value women only for their reproductive abilities.
 26. The OTP commits to ensuring that its staff possess the necessary expertise to identify and prosecute environmental crimes (paragraph 62), stating its intention to provide training for "relevant staff members" to enhance cooperation with domestic authorities and support the prosecution of such crimes (paragraph 65). While this is a positive step,

further clarification is needed on the criteria used to determine who qualifies as a "relevant staff member" in this context. In principle, environmental expertise would benefit all staff members, as environmental elements can potentially be present in any Rome Statute crime, across all regions under the ICC's jurisdiction, and throughout every phase of the prosecutorial process.

Rather than concentrating environmental knowledge within a specialised subset of personnel, the policy should emphasise the mainstreaming of this expertise across all teams. A compartmentalised or 'siloed' approach risks limiting the integration of environmental considerations into broader prosecutorial strategies. Instead, a comprehensive training framework that ensures all teams are equipped to recognise and address environmental harm would maximise the effectiveness of the OTP's work. Embedding environmental expertise throughout the OTP would also strengthen cross-cutting approaches, improve case-building, and enhance accountability for environmental crimes within the Rome Statute framework.

27. The draft policy acknowledges the importance of cooperation with external partners (paragraph 74). While this is a positive step, NPWJ recommends explicitly highlighting collaboration with relevant United Nations agencies, particularly those focused on water, sanitation, and hygiene (WASH). These agencies, such as UNICEF, UN-Water, WHO, and UNEP, play a critical role in monitoring environmental degradation, assessing its impact on public health, and providing essential data that can support the investigation and prosecution of environmental crimes. Cooperation with these agencies would facilitate access to specialised expertise, environmental assessments, and on-the-ground reporting, all of which are crucial for building strong cases under the Rome Statute. Explicitly recognising these partnerships in the policy would reinforce the OTP's commitment to a multidisciplinary approach, ensuring that environmental crimes are addressed holistically with input from experts across different fields. Additionally, such collaboration would strengthen global efforts to protect fundamental human rights related to access to clean water, sanitation, and a healthy environment.
28. Regarding case selection and prioritisation, the draft policy merely cross-references the 2016 Policy Paper on Case Selection and Prioritisation (paragraph 78) and briefly mentions strategic consultations (paragraph 89). While NPWJ acknowledges the necessity of maintaining a flexible approach that can adapt to evolving circumstances and resource constraints, the policy would benefit from greater specificity regarding the criteria the OTP will consider when selecting and prioritising cases involving environmental crimes. Given the unique and far-reaching consequences of environmental crimes—both in terms of immediate human suffering and long-term ecological damage—it is important to outline key factors that will guide prosecutorial decisions in this area. These could include the scale and severity of environmental destruction, the degree of intent or knowledge on the part of perpetrators, the impact on vulnerable communities (such as Indigenous Peoples or displaced populations), and the potential for environmental harm to contribute to broader patterns of violence and conflict. Including these considerations in the policy would not only enhance transparency but also provide a clearer framework for stakeholders—including affected communities, civil society

organisations, and national authorities—to understand the OTP’s priorities in addressing environmental crimes under the Rome Statute.

29. Section VI(D) of the draft policy addresses investigations and includes several positive elements, such as the establishment of Focal Points, collaboration with external partners, and investments in staff tools and methodologies. These measures demonstrate a commitment to strengthening investigative capabilities. However, NPWJ notes a lack of specificity regarding investigative techniques that are particularly relevant for environmental crimes. Environmental crimes often require distinct investigative approaches due to their complex, scientific, and often transboundary nature. The policy should explicitly mention key investigative measures that are crucial for effectively documenting and prosecuting such crimes, including physical samples, expert reports on environmental phenomena, longitudinal studies, epidemiological studies, big data analysis, satellite imagery, official documents and business records, among others.² Strengthening forensic, technological, and scientific investigative capacities will be essential in addressing the unique challenges posed by environmental crimes under the Rome Statute.
30. Direct engagement with corporations and private actors implicated in environmental crimes (paragraph 94) may provide valuable evidence and encourage corporate actors to comply with legal and ethical standards. This measure, along with corporate due diligence obligations and financial risk assessments (paragraph 95), could play an important role in the broader effort to achieve environmental justice. This should, however, be approached with care. Approaching such actors runs the risk of alerting potential perpetrators to the OTP’s investigations, particularly those higher up the chain. While not suggesting this approach should not be taken, for the reasons mentioned in the first sentences, we would recommend reframing these paragraphs to indicate its potentially delicate and sensitive nature and the need for a full risk assessment prior to implementation.
31. The draft policy suggests relying on voluntary contributions to the Trust Fund for Complementarity and Cooperation to strengthen the capacity for implementing the policy (paragraphs 96 and 97). While NPWJ acknowledges the financial constraints posed by the limitations of the regular budget, we are concerned about the risks associated with relying on voluntary contributions. Such an approach may expose the OTP to external influences, political interference, and shifting donor priorities, potentially undermining its independence and ability to act impartially.

A well-funded, independent OTP is essential for ensuring the effective prosecution of environmental crimes and other Rome Statute violations. States Parties must recognise that only a sufficient and stable regular budget can guarantee the OTP’s autonomy and operational effectiveness. Securing consistent financial resources within the core budget would not only enhance the OTP’s ability to carry out its mandate free from undue

² See, for instance, https://iucn.org/sites/default/files/2024-04/icc_submission_matthew_gillett1.pdf

influence but also reinforce its long-term commitment to addressing environmental crimes in a systematic and sustained manner.

Suggestions for additions

32. An important aspect we would recommend to include in the final policy is the recognition that certain crimes inherently cause significant environmental harm, particularly those involving the use of poisonous or incendiary weapons. These types of weapons, by their very nature, inflict damage not only on human life but also on ecosystems, water sources, and entire landscapes, leading to long-term environmental degradation. As highlighted in NPWJ's 2024 Submission (paragraph 11), the direct and lasting impact of such weapons on the environment should be explicitly addressed in the policy. The final policy should therefore include a clear recognition of these crimes and their environmental consequences. By doing so, the policy will more comprehensively reflect the profound and unavoidable environmental damage that accompanies certain forms of violence, ensuring that environmental protection is integrated into all aspects of the legal framework addressing serious crimes.
33. NPWJ recommends that the policy explicitly include consultations with insider witnesses during preliminary examinations. These individuals can offer critical insights into the perpetrators' knowledge and intent regarding the environmental impact of the methods used in Rome Statute crimes, as noted in NPWJ's 2024 Submission (paragraph 17). Insider witnesses are often uniquely positioned to provide firsthand accounts of how environmental harm was deliberately caused or facilitated during the commission of these crimes. However, the draft does not sufficiently address the specific needs of insider witnesses in the context of environmental crimes, nor does it highlight the enhanced protections that these witnesses require due to the sensitive and often dangerous nature of their testimony. Given the potential risks faced by insider witnesses—especially in cases involving powerful perpetrators or corporate actors—special protections must be considered to ensure their safety and willingness to cooperate. Incorporating these considerations into the policy will improve the robustness and effectiveness of investigations, making it more likely that insider witnesses will come forward and perpetrators of environmental crimes will be held accountable.
34. The Office's approach to prosecution ensures that action is taken only when sufficient information justifies it (paragraph 78), thereby preventing arbitrary case selection and reinforcing the legitimacy of its actions. Furthermore, its intent to identify financiers, investors, insurers, and supply chain actors involved in environmental crimes (paragraph 79) is a crucial step toward dismantling the financial and logistical networks that enable such offenses. However, the policy would benefit from greater specificity regarding how the criminal responsibility of suppliers is determined, particularly in cases involving the production, distribution, and financing of environmentally harmful materials used in violations of the Rome Statute. Clear criteria should be established to assess when suppliers cross the threshold from lawful business activity to criminal liability, especially in instances where they knowingly provide resources that contribute to environmental

destruction. Strengthening this aspect of the policy would enhance accountability across the entire chain of responsibility and ensure that those facilitating environmental crimes, whether directly or indirectly, do not escape scrutiny.

In this regard, the draft policy rightly underscores the importance of complicity in the context of environmental crimes, particularly when such crimes are committed through corporate structures. This recognition is crucial, as corporations and financial actors often facilitate large-scale environmental harm, whether through direct involvement or by enabling destructive practices. However, in our view, the draft does not devote sufficient attention to the different modes of participation in environmental crimes, such as aiding and abetting or contributing to the commission of a crime while acting with a common purpose.

Given the nature of these crimes, environmental destruction is often not the primary purpose but rather an “accepted” consequence in pursuit of other purposes, such as economic profit, territorial control, or resource exploitation. This makes it particularly important to clarify the requisite intent for each mode of participation. The discussion in paragraphs 79 to 81 regarding “requisite intent and knowledge” is a good starting point, but it should be expanded to ensure a nuanced approach that reflects the reality of environmental crimes. Specifically, the policy should address how different actors—whether corporate executives, financiers, or intermediaries—can be held accountable when they knowingly contribute to environmental harm, even if their ultimate aim lies elsewhere. Strengthening this section would help ensure that all those who play a role in facilitating environmental crimes—whether as direct perpetrators, aiders and abettors, or otherwise—can be held accountable under the Rome Statute.

35. NPWJ believes that the policy should clarify that victim status under Rule 85(b) of the Rules of Procedure and Evidence can be extended, *inter alia*, to organisations dedicated to safeguarding environmentally significant locations. These organisations play a critical role in the protection of vital ecosystems, biodiversity, and natural resources, often acting as frontline defenders against environmental crimes. Granting victim status to such organisations would enable them to contribute actively to the legal process and potentially receive reparations under Article 75 of the Rome Statute. This inclusion would not only enhance the accountability framework but also strengthen the alignment of the Rome Statute with the growing global recognition of environmental rights and the rights of those who defend the environment.
36. While NPWJ welcomes the upcoming adoption of this landmark policy, we also emphasise the need for its swift and effective implementation by the OTP. In this regard, we note that despite the 2016 Policy Paper on Case Selection and Prioritisation³ stating that the OTP would “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” (paragraph 41), no substantial concrete actions have been publicly taken to translate this commitment into practice. Given credible allegations of environmental war

³ See https://www.icc-cpi.int/sites/default/files/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf

crimes in situations already under investigation—such as Ukraine⁴— the OTP has both the opportunity and the responsibility to put these policies into practice.

37. The draft policy lacks specific reference to a formal review process, which is crucial for ensuring its continued relevance and effectiveness over time. A dedicated review mechanism would enable regular assessments of the policy's implementation, allowing for updates based on evolving legal, scientific, and social contexts. This review process should include consultations with a wide range of stakeholders, including civil society, legal experts, and affected communities, to ensure that the policy remains responsive to new challenges and emerging issues related to environmental crimes. Furthermore, the policy review process should explicitly integrate the voices of Indigenous Peoples and youth, who are often disproportionately impacted by environmental degradation and the crimes that harm their lands and livelihoods. Their inclusion in consultations ensures that their perspectives are respected, and that their contributions are considered in the development and implementation of the policy. A robust review process, inclusive of these consultations, would enhance the policy's legitimacy and capacity to address environmental crimes in a comprehensive, equitable, and sustainable manner.

Conclusion

38. This draft policy demonstrates commendable efforts to integrate environmental concerns into the prosecution of crimes under the Rome Statute, which, as acknowledged in the draft policy, "is largely anthropocentric" (Section I). However, it also highlights significant normative gaps in the international justice system regarding accountability for environmental harm. NPWJ urges States Parties to the Rome Statute to advance the codification of an autonomous crime of "ecocide," emphasising that only a truly ecocentric approach to its definition can close these gaps and effectively enhance environmental protection in practice. We hope that the OTP will also engage in those discussions and support the inclusion of this crime within the Rome Statute, to enhance its ability to prosecute environmental crimes.
39. NPWJ remains committed to supporting the work of the ICC, and the OTP, including through participating in consultations such as these. We would find it very useful to receive feedback on this submission, so we can tailor our contribution to future consultations to be as beneficial as possible. NPWJ stands ready to provide any further information or clarifications.⁵

⁴ See, for example, Truth Hounds and Project Expedite Justice, *Submerged: the Study of the Destruction of the Kakhovka Dam and Its Impacts on Ecosystems, Agrarians, Other Civilians, and International Justice* (<https://truth-hounds.org/en/cases/submerged-study-of-the-destruction-of-the-kakhovka-dam-and-its-impacts-on-ecosystems-agrarians-other-civilians-and-international-justice/>).

⁵ Please contact Alison Smith, NPWJ Legal Counsel, on asmith@npwj.org.