

Comment on OTP Environmental Crimes Policy

Taking an environmentally-protective approach

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Overview

Detailed doctrinal guidance relevant to this call for submissions is set out in the recent book: Matthew Gillett, *Prosecuting Environmental Harm before the International Criminal Court* (Cambridge University Press, 2022). The present submission provides updates on pertinent legal developments since the writing of that book, as well as exploring issues that are closely linked with these developments or otherwise relevant to the International Criminal Court (ICC) Office of the Prosecutor's (OTP) Environmental Crimes Policy. Its contents are divided into 4 sections:

- (i) An environmentally-protective approach to the ICC legal framework;
- (ii) New jurisprudence from the Colombian Special Jurisdiction for Peace;
- (iii) Defining the natural environment;
- (iv) Investigating environmental harm.

~~(i) An environmentally-protective approach to the ICC legal framework~~

It is important that an environmentally-protective approach is taken to the reading of the Rome Statute and other components of the ICC's governing legal framework. This should not be substitutive of the Court's anthropocentric orientation, but instead complementary to it.

Adopting an environmentally-protective approach entails two facets. First, from the legal

These findings underscore that environmental harm can be prosecuted as multiple crimes, and that several of these fall within the jurisdiction of the ICC, in addition to Article 8(2)(b)(iv) of the Rome Statute.

(iii) Defining the natural environment

There are many definitions of the “natural environment” in various branches of international law. For present purposes, it is emphasized that the Policy should adopt a sufficiently broad

likely require emphasis on considerable scientific evidence. Such environmental harm is almost inevitably multi-causal,¹⁸ requiring an intricate disentangling of the relative effects of various human and non-human causes.

Because of this, the involvement of environmental experts during investigations should be prioritized. Investigative measures should typically encompass a wide variety of evidence, such as physical samples, expert reports on environmental phenomena, longitudinal studies (where available and feasible), epidemiological studies,