



To:
Mr Karim Khan, K.C.
The Prosecutor,
International Criminal Court,
Den Haag,
Netherlands

26 October 2023

OPEN LETTER

Analysing Climate Security and Prosecuting Environmental Atrocity Crimes: Opportunities for the Prosecutor of the International Criminal Court

Dear Prosecutor Khan,

This Open Letter concerns two distinct but interrelated issues: climate change as a driver of conflict ('climate security'¹) and environmental atrocity crimes as a consequence of conflict.² Both issues are directly relevant to the work of the ICC's Office of the Prosecutor ('OTP') in general, and the situation in Darfur, Sudan in particular. Furthermore, with its mandate, resources, and expertise, the OTP is uniquely placed to promote (i) a better *understanding* of how climate change impacts mass crimes, by collating pertinent data, and (ii) the *prevention* of environmental atrocity crimes, by prosecuting those most responsible. Yet, despite clear opportunities, your predecessors at the OTP have largely ignored both issues.

Climate Security: Climate change is now recognized as a *threat multiplier* to international peace and security – it increases the likelihood of violent conflict and atrocity crimes that fall within the jurisdiction of the International Criminal Court. In fact, nearly every geopolitical crisis on earth is now marked in one way or another by environmental strife. The conflict in Darfur, Sudan – which the former UN Secretary-General described as “an ecological crisis, arising at least in part from climate change”³ – is an obvious (but by no means exceptional) example of a conflict driven partially by climate change; the crimes

¹ Climate security refers to the various global security risks induced, directly or indirectly, by changes in climate patterns. The general idea is that certain effects of climate change may exacerbate existing risks that already endanger human security and/or create new ones.

² The term 'environmental atrocity crimes' is used herein to mean cases of war crimes or crimes against humanity that are committed by means of, or result in, unlawful forced eviction, resource exploitation or serious degradation or destruction of the natural environment. As war crimes, this may include, for example, cases of indiscriminate bombing of or excessive harm to the natural environment (see Rome Statute Articles, 8(2)(a)(iv), Article 8(2)(b)(ii), Article 8(2)(b)(iv)). Sudan and Ukraine are pertinent cases. As crimes against humanity, this may include cases where Article 7 crimes are committed within the context of mass environmental harm. Brazil and Cambodia are pertinent cases.

³ 'A Climate Culprit In Darfur', United Nations Secretary-General, Ban Ki-Moon, 16 June 2007.

arising from that conflict include genocide (see Annex 1). As the earth gets hotter Darfur may be a harbinger of things to come. In this context, a greater appreciation of the interconnection between global warming, conflict, and mass crimes will help governments and the UN prepare for and prevent atrocities. By examining climate security issues as part of its investigations, the OTP can substantially contribute to this process and place its analysis of crimes within the proper context (see Annex 2).

Environmental Atrocity Crimes: Serious instability and armed conflicts often involve atrocity crimes that result in serious degradation or destruction of the natural environment. As the OTP has noted, 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” have a particularly significant impact on local communities.⁴ In Sudan, armed groups seeking to profit from illegal gold mining poison the ground and water sources of entire communities with mercury and cyanide; in Ukraine Russian forces have destroyed the Kakhovka Dam, flooding vast areas of fertile land. Although the Rome Statute provides a legal framework to prosecute environmental crimes in both peacetime⁵ and armed conflict,⁶ the OTP has not prosecuted a single case in its lifetime.

With climatic drivers intensifying and environmental atrocity crimes multiplying, urgent action is needed. We urge the OTP to start making full use of its powers under the Rome Statute to analyze climatic drivers and prioritize the prosecution of environmental atrocity crimes with respect to all situations, including Darfur. We respectfully recommend the following initiatives:

- a. Appoint an internal climate-security expert (special advisor) to evaluate the impact of climate change on the OTP’s caseload;
- b. reevaluate, revise, and expand current OTP policies and investigative methods to include a forensic climate-security-based approach;
- c. in each relevant case, submit evidence demonstrating how issues related to climate security are relevant to the crimes being prosecuted;
- d. prioritize the prosecution of environmental atrocity crimes, in line with the OTP’s 2016 policy on case selection and prioritization;
- e. publicly support the amendment of the Rome Statute to include the international crime of “ecocide”.⁷

⁴ ICC, Office of the Prosecutor, Policy Paper on Case Selection and Prioritization, 15 September 2016.

⁵ In peace time, the ICC can use its Rome Statute Article 7, crimes against humanity, to address atrocity crimes committed in the context of environmental destruction. See, [‘Communication Under Article 15 of the Rome Statute of the International Criminal Court: The Commission of Crimes Against Humanity in Cambodia’](#); [‘Article 15 Communication - Crimes Against Humanity in Brazil: 2011 to the Present Persecution of Rural Land Users and Defenders and Associated Environmental Destruction’](#).

⁶ In the context of armed-conflict, the ICC has a multitude of legal options, including Rome Statute Articles 8(2)(b)(iv), 8(2)(a)(iv), 8(2)(b)(ii), 8(2)(b)(xiii), 8(2)(b)(xvi), Article 8(2)(b)(xvii), Article 8(2)(b)(xviii), and Article 8(2)(b)(xxv). See, Climate Counsel, [‘Guide to Identifying and Framing Environmental War Crimes in Ukraine – Revised Edition’](#), 10 August 2023.

⁷ Ecocide as a stand-alone international crime and/or national crimes is gaining considerable support from states in the global south and north, civil society, international institutions, and earlier this month from the UN High Commissioner for Human Rights (see, Stop Ecocide International, [‘Leading States, Key Dates’](#); Volker Türk, [Twitter/X](#), 3 October 2023).

Yours sincerely,



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Attachments:

Annex 1: Climate Security and Environmental Atrocity Crimes in Sudan

Annex 2: Perspectives on Climate Security

This Open Letter is Supported by:

Sudanese Lawyers for Justice, Sudanese Center for Legal Aid, Darfur Bar Association, Darfur Network for Monitoring and Documentation, the Darfur IDPs and Refugees Coordination Body, and the Human Rights and Advocacy Network for Democracy.