

PERMANENT MISSION OF THE REPUBLIC OF VANUATU TO THE UNITED NATIONS

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## Proposal – Independent Crime of Ecocide

### Explanatory Notes

Ecocide, commonly understood as the severe and reckless destruction of nature, continues to increase in relevance and popularity as a legal concept. Following national and regional proposals around the world to recognise ecocide as a serious crime, as well as multiple recommendations from diverse sectors and stakeholders, the concept has gathered considerable weight, as has the notion of its recognition within the Rome Statute. The Republic of Vanuatu was the first sovereign state to propose consideration of such recognition at the Assembly of States Parties (ASP) of the ICC in 2019.

A proposed definition of ecocide as a Rome Statute crime, the consensus result of a six-month drafting project by an international Independent Expert Panel, was published in 2021 (Annex). This definition, building upon established law with similar remits to ecocide law, has rapidly gained political and legal traction and is now widely associated with the concept of ecocide, having catalysed significant legislative developments since its publication. A number of ecocide law proposals into domestic parliaments were modelled on the definition, as was the text the European Parliament proposed for the recently adopted revision of the EU *Directive on the protection of the environment through criminal law*.<sup>1</sup>

Vanuatu considers this definition an appropriate starting point for consideration of ecocide law by States Parties (Annex). We propose this definition in accordance with the understanding that ecocide should be **an independent crime** within the Statute. We would stress two key arguments in this respect:

1. The existing Rome Statute crimes cover principally those harms with direct impact on people and property;
2. Where the Statute explicitly addresses environmental harm, it is only during wartime and with an exceptionally high threshold.

We highlight that while environmental damage commonly does create harm to humans, the requirement of human harm as a condition for bringing consideration of environmental aspects of crimes significantly

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<sup>1</sup> Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC (2024), available at: <https://data.consilium.europa.eu/doc/document/PE-82-2023-INIT/en/pdf>

restricts their effectiveness, both in protecting the environment and protecting humans. This is not least because very significant harms may be perpetrated upon elements of the environment without immediate harm to humans but with horrific long-term effects that will be very harmful to local, regional, or even global populations of multiple species including humans, constituting thereby crimes of most serious concern to the international community as a whole.

A crime to protect the environment in peacetime as well as conflict is of fundamental importance, not only to cover the inadequacies of existing law, but also to promote a shift in mindset in both contexts to reflect an understanding of the severity of the danger posed by grave environmental harms. A positive legislative trend indicates that recognition of ecocide as a serious crime is being increasingly well received amongst States. The inclusion of such a crime under the Rome Statute would see enforceable environmental protection in domestic, regional and international courts according to the principle of complementarity, ensuring both cooperative action on threats to climate, and enforceable parameters to prevent impunity for the most serious actions against nature, on earth and in outer space.

It is essential to propose comprehensive and inclusive legal measures that can apply to a variety of actors and environmental contexts. Such measures should avoid the risk of becoming outdated: they should ensure that deterrence and prevention of the worst environmental harms will continue to be justiciable and enforceable. The definition proposed (Annex) achieves this by focusing on severity of outcome, rather than prohibiting specific behaviours. This ensures that any actions, whether committed intentionally or through reckless disregard for consequences, of a kind that directly or indirectly expose the environment in its various components to an immediate risk of severe and either widespread or long-term harm, are potentially caught by the scope of the crime. This is of crucial relevance to preventing breakdown of life-sustaining ecosystems, as well as safeguarding our collective human rights which the Rome Statute exists to protect.

Vanuatu considers that it is timely to acknowledge both the need and the growing demand for recognition of ecocide in international criminal law; to acknowledge the gravity of environmental crimes, the extent to which they threaten the peace, security and wellbeing of the world, as well as human rights; and to begin a collaborative, international negotiation of a fifth international crime of ecocide.

Our New York Mission remains available for further information.



H.E. Ambassador Odo Tevi, Permanent Representative of Vanuatu to the UN

## ANNEX: PROPOSED AMENDMENTS

### **Addition of a preambular paragraph 2 *bis*:**

“Concerned that the environment is daily threatened by severe destruction and deterioration, gravely endangering natural and human systems worldwide,”

### **Addition to Article 5:**

“(e) The crime of ecocide.”

### **Addition of Article 8 *ter*:** “Article 8 *ter*

Ecocide

1. For the purpose of this Statute, “ecocide” means unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts.
2. For the purpose of paragraph 1:
  - a. “Wanton” means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
  - b. “Severe” means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
  - c. “Widespread” means damage which extends beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
  - d. “Long-term” means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time;
  - e. “Environment” means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.”

We note that consequential amendments may also be required for other provisions of the Rome Statute, such as Article 9, and to the ICC Rules of Procedure and Evidence, and the Elements of Crimes.