THE VICTIMS IN INTERNATIONAL ENVIRONMENTAL CRIMINAL LAW*

Abstract

Capitalistic engines of the modern economy, led by states and multinational corporations, have operated and perpetrated, directly and indirectly, many international environmental crimes with impunity and remained unsanctioned due to the weaknesses of the Rome Statute in overlooking destruction of the environment in peacetime. A critical survey of basic international legal instruments relative to victims' role, protection and access to justice found that international environmental crime victims virtually invisible. It was further discovered that the context in which victims of international environmental crime can be found is only within the perimeters of international armed conflict. Victims of egregious environmental destruction in peacetime are unknown, unseen and unheard. This has spawned injustice across localities and communities in many nations particularly those in the margins of society. It is hoped that if the invisible victims of international environmental crime are given their right and role, it will mitigate the hardship and suffering of many people and communities across the world.

Keywords: Victims, Environment, International, Criminal law, Compensation.

1. Introduction

This study analyses the situation of victims in international environmental criminal law. Rights movement succeeded in bringing to the frontline the plights of victims into limelight and this enabled drafters of Rome statute of international criminal court to give victims visibility, rights and access to justice. Hence, victims' participation in international criminal trial is a novel concept ushered in by the Rome Statute of international criminal court, and which has received applause as a significant development in international criminal law. It is undisputed that there are great benefits for victims' participation in the provisions for their compensation and remediation in the Rome statute of the international criminal court. But the lacuna in the novel provision for victims, particularly with regard to non-human life forms (ecosystem) in environmental crime needs to be addressed and filled. This article brings to the fore the invisibility of such environmental victims and calls for their recognition, compensation and remediation in international criminal process.

2. The Threshold of International Criminal Law

International Criminal Court (ICC) is constituted to prosecute only crimes against humanity, genocide, war crimes and crimes of aggression.[1] The call by some commentators for international criminal court to prosecute international environmental crimes (ecocide), can only materialize when it is of the same gravity like other crimes in the Rome Statute.[2] Crimes against the environment should have to be part of a widespread or systematic attack directed against the environment. The core and essential acts could cover, for instance, reckless misconduct at nuclear power facilities,[3] 'testing biological weapons; intentional dumping of oil or chemical waste at sea, and trade in endangered species, hazardous wastes or ozone-depleting substances'.[4] To broaden the scope of crime against the environment beyond armed conflict would be a proactive way to protect the environment and preserve intergenerational equity.[5] It has been argued that, 'if international criminal law should repress acts causing widespread, long-term and severe damage to the environment in armed conflict (when decision is taken in the heat of passion) why should it be difficult to criminalize such conduct and attacks in peacetime?'[6] This argument is hinged on the fact that attacks on the environment during the heat of battle can be excused albeit on moral

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[1]G. Heine (eds), *Environmental Protection: Potentials of Criminal Justice* (Freiburg: United Nations Interregional Crime and Justice Research Institute, 1997) 28. Article 5 of Rome Statute of the International Criminal Court (1998) 2187 *UNTS* 3; 37 *ILM* (Here after Rome Statute. opened for signature 17 July 1998 and entered into force 1 July 2002)

[2]Rosemary Mwanza, 'Enhancing Accountability for Environmental Damage under International Law: Ecocide as a Legal Fulfillment of Ecological Integrity' (2018) 19 (2) *Melbourne Journal of International Law* 448

[3]Matthew Gillett, 'Prosecuting Environmental Damage under International Criminal Law' in James Crawford & Sara Nouwen (eds) *Select Proceedings of the European Society of International Law* Vol. 111 (Oxford: Hart Publishing, 2010)338; See Timothy Schofield, 'The Environment as an Ideological Weapon: A Proposal to Criminalize Environmental Terrorism' (1998 - 1999) 26 *Boston College Environmental Affair Law Review* 622 , 626

[4]Mark Drumbl, 'International Human Rights, International Humanitarian Law, and Environmental Security: Can the International Criminal Court Bridge the Gaps?' (2000) 6 *International Law Students Association Journal of International and Comparative Law* 325

[5]Matthew Gillett, *op cit* 338

[6]Frederic Megret, 'The Case for a General International Crime against the Environment' in Sebastien Jodoin & Marie-Claire C. Segger (eds) *Sustainable Development, International Criminal Justice, and Treaty Implementation* (Cambridge: Cambridge University Press 2013) 56

ground because of flawed logic than during peace time when decision is made in the comfort of normalcy. A comparative analysis of crimes against humanity vis-à-vis crimes against environment could discover that the former is thoroughly separated from that of armed conflict.[7] The gravity and consequences of damage occasioned by human actions against the ecosystem should be the major factor in deciding proscription of actions and not the context in which the act occurs.[8] It is understandable that armed conflict has been identified as the point through which idea of criminal law is introduced into international law. But again, the destruction caused by human actions in peacetime is often greater than that caused in war.[9]

A certain degree of threshold should be used to qualify certain harms as indictable Frederic Megret states that precautionary principle and the diffuse, long-term, and aggregate impact of environmental harm suggest that certain attacks on the environment that clearly violates international environmental law should be punished without the need to prove that they have already provoked harm to identifiable populations.[10] It is posited that the violation of environmental prohibitions is in itself a form of endangerment which can be prosecuted.[11] The *mens rea* threshold for crimes against the environment follows the path proposed by Regina Rauxloh, 'objective recklessness'.[12] Though generally, the mental element required in the Rome Statute is intent or knowledge,[13]the idea of command responsibility comprises recklessness.[14] Objective recklessness implies that the offender could be liable 'if they commit the *actus reus* while the prohibited results were clearly foreseeable for a reasonable person'.[15]Thus, the requirement is a strict liability crime,[16]that will comprise the most serious crimes in both wartime and peacetime environmental damage.

A major issue that lends credence to crime of strict liability is its support for deterrent effect on the types of actions that may worsen current global environmental crisis.[17] One may ask whether environmental crimes requiring proof of *mens rea* in the form of intention would not be able to serve this purpose. It has been shown that strict liability crimes present a deterrent advantage than other crimes could offer.[18]This is because the deterrent effect of a crime originates principally from its capacity to create 'certainty of punishment',[19] thereby enhancing the ability of the prosecution to prove his case. In the final analysis, this 'type of crime would work best in securing deterrence, an outcome that fits better with the need to respect absolute ecological limits envisaged within the ecological integrity framework.'[20]This would broaden the category of victims in international environmental criminal law and ensure their role, participation and access to international criminal justice.

3. The Place of the Victim in International Criminal Law

The global community has established criminal tribunals to try abusers;[21]yet there are some who occupy political power who are protected from prosecution by their governments.[22]Victims seeking recognition of injury perpetrated against them and remediation for their pains often do not get them in their home countries nor anywhere for that matter.[23] Many of these victims of atrocities have few avenues to seek justice on their own. In exceptional circumstances, bringing action against governments which revel under the concept of sovereign immunity is near impossible. And, they cannot bring action against individual offenders before international criminal tribunal which are not authorized to take civil proceedings[24]. The Rome Statute of international criminal court has blazed the trail to advance restorative justice through the provisions that aim to provide reparations to

[7] Rome Statute *Supra*, Art 7.
[8] Frederic Megret, *opcit* 66
[9] *Ibid* 66
[10] *Ibid*
[11] *Ibid*
[12] Regina E. Rauxloh, 'The Role of International Criminal Law in Environmental Protection' in Francis N. Botchway (ed) *Natural Resources Investment and Africa's Development* (London: Edward Elgar Publishing 2011) 449
[13] Rome Statute *Supra,* Art 30 (1)
[14] Rome Statute *Supra*, Art 28 (2)(a)
[15] Regina Rauxloh, *opcit* 449
[16] Rosemary Mwanza, *opcit* 15
[17] Rosemary Mwanza, *opcit* 15
[18] *Ibid*
[19]Daniel S Nagin, 'Deterrence in the Twenty-First Century' (2013) 43 *Crime and Justice: A Review of Research* 199.
[20] Rosemary Mwanza, *opcit* 16
[21]Charter of the International Military Tribunal (1945) 59 Stat. 1544, 82 U N T S 280; International Criminal Tribunal for the Former Yugoslavia (I.C.T .Y) (1993) U. N Doc S/RES/808; Reprinted at 32 *ILM* 1163; International Criminal Tribunal Rwanda (I.C.T.R) (1994) S/RES/955; 33 ILM 1598.
[22]Pierre N. Leval 'The Long Arm of International Law: Giving Victims of Human Rights Abuses their Day in Court' (2013) 92(2) Foreign Affairs 16
[23] *Ibid.*
[24] *Ibid*

victims of crimes.[25] It is postulated that 'some of the oldest legal sources refer not only to the offender and to punishment, but also in some cases also talk about the victims of a crime.[26] But the questions are: who is a victim within the contemplation of Rome Statute? Which type of victim is provision made within the Rome Statute? Environmental victims are they different from that contemplated in the international criminal law? Environment is it categorized as a victim of crime? In answering these questions recourse is made to the provision of International Criminal Court, Rules of Procedure and Evidence,[27]

> Victims means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the court; victims may include organizations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.[28]

This definition and provision is similar to Declaration of Basic Principles of Justice for Victims,[29]

> Victims means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states, including those laws proscribing criminal abuse of power.[30]

M. Cherif Bassiouni sees these provisions as contemplating four types of victims,[31] viz.; (a) individuals who directly suffer harm[32] (b) dependents or family of a direct victim who suffer indirectly[33] (c) Individuals injured while intervening to prevent violations (d) collective victims such as organizations or entities.[34] The significance of the categorization above portray victims broadly into human persons and entities that suffer harm to property dedicated to religious, educational, humanitarian or charitable purposes. The implication is that, victims are seen through anthropocentric and humanitarian lens only. Environment *per se* is not seen as a victim that merits appropriate measure for safety and reparation. There is urgent need to capture environmental victimization.

The idea of victims in regards to environment has been applied loosely.[35] Natural disasters like tornadoes and earthquakes in which no perpetrator can be held responsible often have been the concern of many scholars in regards to environment.[36] A different meaning is given in another context in a headline[37] because 'the environmental factors were not seen to be natural, but as a result of culpable entity'.[38] In describing environmental victims, it is very important to exclude those who are described as 'environmental casualties' i.e. those who suffer as a result of natural disasters. Implicit in the concept of 'casualty', is the notion of *chance,* but the idea of 'victims' has the notion of suffering caused by a deliberate or reckless human act or omission.[39] There are some situations that appear natural but on a deeper analysis, it is dependent on human actions.[40]

4. The Missing Victims of International Environmental Harm

The outcome of victimization could be described as injury rather than suffering. It is on the account that injury is seen as an adverse health effect caused by environmental factors.[41] This has been well defined as 'any effect that results in altered structure or impaired function, or represents the beginnings of a sequence of events leading to

[25] Rome Statute art 75; Rosemary Mwanza *opcit*, 27

[26]Dragan Petrovec, 'Resurrection of Victims: The Traditional Approach to Victimology' (1997) 24 (1) *Social Justice: A Journal of Crime, Conflict & World Order* 163

[27]International Criminal Court, Rules of Procedure and Evidence, U N Doc PCNICC/2000/1/ Add (2000) at Rule 85 (Here after, Rules of Procedure and Evidence)

[28] *Ibid*

[29] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G A Res 40/34 (29 Nov 1985)

[30] *Ibid* art 1

[31]M. Cherif Bassiouni, *Introduction to International Criminal Law* (2nd revised ed. Leiden: Martinus Nijhoff Publishers 2013)123

[32] *Ibid*

[33] *Ibid*

[34] *Ibid*

[35]Christopher Williams, 'An Environmental Victimology' (1996) 23 (4) *Social Justice: A Journal of Crime, Conflict & World Order* 19

[36]Peter H. Rossi, James D. Wright et al., *Victims of the Environment: Loss from Natural Hazards in the United States* (New York: Plenum Press 1983) 45

[37] 'Brian Damage Found in Victims of Bhopal Disaster' (1994) 308 *British Medical Journal* 309

[38] *Ibid*

[39] Christopher Williams, *opcit*, 19

[40] *Ibid*

[41] *Ibid*

altered structure or function'.[42]Thus, 'the term injury connotes a relationship between two events (cause and effect) that leads to tangible harm while suffering implies less acute general experiences that might be tolerated without actual injury'.[43]This distinction is especially important as it attends to the debate in poorer countries, that people must tolerate a measure of suffering because of economic development, like building of dams. This is not satisfactory to trade off the infliction of human injury which results to death in most cases against economic benefit.[44]

Environmental victims can be defined as 'those of past, present, or future generations who are injured as a consequence of change to the chemical, physical, microbiological, or psychosocial environment, brought about by deliberate or reckless, individual or collective, human act or act of omission'.[45] It is important to include environment in the categorization of victims as it equally need redress and reparation. Contemporary discussion of crimes refers not only to the offender and punishment, but also about the victims of a crime.[46] Environmental harm focuses on what 'humans do to and with nature, particularly through a social process'.[47] This comprises human actions in their quest to meet particular needs.

At the international level, the attempt to address the environmental victimization through the structure of International Criminal Court which made a provision for the victims of crime is full of ambiguity[48]. It has been opined that, 'environmental crimes do not fall within the jurisdiction of international criminal court'.[49]This has prompted some scholars to propose for a separate international court for environment and possible creation of an international crime of ecocide.[50] The clamor for ecocide is rooted in the notion of Earth stewardship, in which environment is viewed as having value for its own sake, apart from any utilitarian value to humans.[51]Ecocentrism views non-human animals, plants and rivers as rights holders deserving a duty of care on the part of humans.[52]In this perspective, ecocide is a crime not only against humans but against non-human environmental entities.[53]

In many legal discourses about victims in international criminal justice system[54], environmental victims as contemplated by proponents of ecocide have often been neglected or abandoned altogether.[55] Categorization of environmental victims is often a product of context in which society has chosen to situate the issue of harm. For instance, starting from the notions of harm and rules of environmental activity, there is hardly adequate criminal justice response to such issues. Commentators have rightly pointed out that 'the politics of definition of environmental harm are complicated by the politics of denial, in which particular concrete manifestations of social injury and environmental damage are obfuscated, ignored, or redefined in ways that re-present them as being of little relevance to academic criminological study or State criminal justice intervention'.[56] Generally however, denial is inherent in the hegemonic dominance of anthropocentric notions of association between humans and nature.[57]It is argued that 'society's limited conception of victimization is a product of definitions of crime, interpreted often for political reasons, when extrapolated to environmental degradation, economic reasons too'.[58]

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[42]E. Chivian & M. McCally et al., *Critical Condition: Human Health and the Environment* (Massachusetts: MIT Press 1993)15

[43] Christopher Williams, *opcit* 20

[44] *Ibid*

[45] Carole Gallagher. *American Ground Zero: The Secret Nuclear War* (Massachusetts: The MIT Press 1993) 217

[46] Dragan Petrovec, 'Resurrection of Victims' (1997) 24 (1) *Social Justice: Journal of Crime, Conflict & World Order* 163

[47]Alan A. Block, 'Environmental Crime and Pollution: Wasteful Reflections' (2002)1 -2 *Social Justice: A Journal of Crime, Conflict & World Order* 84

[48]J. Van Dijk & Letschert, R. 'Reconstructing Victim-Centered Justice on a Global Scale' in R. Letschert & J. Van Dijk (eds), *The New Faces of Victimhood* (Dordrecht: Springer 2011) 303 - 317

[49] Matthew Hall, Environmental Harm: The Missing Victims?' (2012) 90 Center for Crime and Justice Studies 13

[50]Polly Higgins, *Earth is our Business: Changing the Rules of the Game* (London: Shepheard-Walwyn Publishers 2012) 7; See also Polly Higgins, Eradicating Ecocide (2nd edn London: Shepheard-Walwyn Publishers 2016)

[51] Rob White, 'Ecocide and the Carbon Crimes of the Powerful' (2018) 37 (2) *The University of Tasmania Law Review* 103 (Range 95 – 115).

[52]Douglas Fisher, 'Jurisprudential Challenges to the Protection of the Natural Environment' in Michelle Maloney and Peter Burdon (eds), *Wild Law – in Practice* (New York: Routledge, 2010);

[53] Rob White, *op cit* 104.

[54]Timothy K. Kuhner, 'The Status of Victims in the Enforcement of International Criminal Law' (2004) 6 (95) *Oregon Review of International Law* 2 (1 – 39)

[55]Matthew Hall, *op cit* 12; See also Charles P. Trumbull IV, 'The Victims of Victim Participation in International Criminal Proceedings' (2008) 29 (4) *Michigan Journal of International Law* 778 (Range 777 – 826)

[56]Rob White, Environmental Harm and the Political Economy of Consumption' (2002) 29 (1-2) *Social Justice: A Journal of Crime, Conflict & World Order* 82 (Range 82 – 102).

[57] *Ibid.*

[58]R. Elias, The Politics of Victimization: Victims, Victimology and Human Rights (New York: Oxford University Press 1986) 56

This is exemplified on how the states have handled environmental degradation like the case of Ogonis in Niger Delta. Thus,

> …I repeat that we all stand before history. I and my colleagues are not the only ones on trial. Shell Oil is here on trial, and it is as well that it is represented by counsel said to be holding a watching brief. The company has, indeed, ducked this particular trial, but its day will surely come and the lessons learnt here may prove useful to it, for there is no doubt in my mind that the ecological war the company has waged in the delta will be called to question sooner than later and the crimes of that war will be duly punished. The crime of the company's wars against the Ogoni people will also be punished….[59]

The cry of Ken Saro-Wiwa and his compatriots is a sad result and commentary of states' prioritization of economic dependence on natural resources over the protection of the ecosystem, reparation to individuals and communities for the egregious damage caused by states and corporations over communities.[60] Our world is replete with people who are poisoned by radiation exemplified in the case of Chernobyl in Ukraine, deadly industrial disaster as witnessed in Bhopal in India',[61]environmental pollution and displacement of fishing communities in the Niger Delta in Nigeria by the multi-national oil corporations,[62]all of these represent a pandemic pattern which involves environmental victims.[63] Therefore, a broader conception of environmental crime inherent in green criminology includes environmental harms enabled by the state as well as multinational corporations and other powerful actors so long as these institutions have capacity to shape official definitions of environmental crime in ways that allow or condone environmentally harmful practices.[64]The consequence of this is that victims of state, corporation or transnational environmental activities all suffer harm whose compensations and remediation are not captured in the classical criminal justice system.

A brief discussion of the threefold rights of victims as contemplated in international crimes are relevant under this study. The first is that victims have right to 'equal and effective access to justice'.[65] This implies that victims of gross international crimes have right of access to justice. Traditionally, the major focus of international criminal law is punishment of an individual for a crime committed against the global common.[66] Little or no attention was paid to victims except to protect them minimally when appearing as witnesses.[67] But the international criminal court (ICC) has broken the jinx by recognizing victims as participants at various stages of the pre-trial and trial phases.[68]Yet, there are some gaps because victims are yet to be recognized as parties in the trial. Allowing individual victims to 'activate international enforcement procedures increases political participation together with transparency of information'.[69] This is aptly captured in Basic Principles and Guidelines, thus:

> A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under

[59]Ken Saro-Wiwa, 'Final Statement to the Tribunal' (1996) 23 (4) *Social Justice: A Journal of Crime, Conflict & World Order* 7 (Range 7) (Ken Saro-Wiwa delivered this address in Port Harcourt, Nigeria, on November 1, 1995 during his trial . He was hanged by the Nigerian government under the repressive regime of General Sani Abacha on November 19, 1995 alongside with eight other members of the grass-roots environmental and political organization he headed, for defending the Ogoni people against the continued rape of the environment by the oil companies headed by Shell Oil and enabled by Nigerian government.)

[60] K. Ebebku, 'judicial Attitudes to Redress for Oil-Related Environmental Damage in Nigeria' (2003) 12 (2) *Review of European Community & International Environmental Law* 200

[61] Satinath Sarangi, 'The Movement in Bhopal and Its Lessons' (1996) 23 (4) *Social Justice: A Journal of Crime, Conflict & World Order* 100

[62] Alicia Fentiman, 'The Anthropology of Oil: The Impact of the Oil Industry on a Fishing Community in the Niger Delta' (1996) 23 (4) *Social Justice: A Journal of Crime, Conflict & World Order* 87

[63] Peter Penz, 'Environmental Victims and State Sovereignty: A Normative Analysis' (1996) 23 (4) *Social Justice: A Journal of Crime, Conflict & World Order*

[64] Rob White, *Transnational Environmental Crime: Toward an Eco-Global Criminology* (New York: Routledge 2011) 80

[65]Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of Human Rights Law and Serious Violations of international Humanitarian Law U N Doc A Res 147 2005 (A/Res/60/147 2005) Principle 11 (a) (Hereafter called Basic Principles and Guidelines). See also Implementing Victim's Rights: *A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation* (London: The Redress Trust 2006); See also M. Cherif Bassiouni *op cit* 124

[66] Lori F. Damrosch et al., *International Law: Cases and Materials* (Minnesota: West Group Publishers 2001)1315

[67] Andrew D. Mitchell et al., *International Law: I n Principle* (Melbourne: Law book Company 2009) 31

[68] Rome Statute *Supra*, Art 57 & 75; See also Rules of Procedure and Evidence *Supra* Rule 87,88 & 91

[69]Neil A.F Popovic, 'Humanitarian Law, Protection of the Environment, and Human Rights' (1995) 8 *Georgetown International Environmental Law Review* 89

> international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws.[70]

The understanding portrayed with the above provision is that victims of gross violations have the right of access to justice. This encompasses the capacity to trigger effective judicial remedies of adequate high standard of fairness and impartiality.[71] There is great doubt on the capacity of individual victims to initiate criminal proceedings in the international criminal court against violator(s) going by its provisions.[72] The prospect that the victim of criminal actions will participate in decision-making concerning the case has generated discordant voices.[73] An important factor in the debate on victim participation is the differences among various justice systems.[74]For instance, the full participation of the victim in the criminal justice system is understood to be in conflict with the basic principles undergirding the criminal justice mechanism.[75]In most other systems (Civil law countries), victims are seen to play an active role in criminal proceedings. In such systems, victims have the likelihood to bring action against the perpetrator or become party in the procedure.[76] One of the most significant contributions of international criminal court is the right of the victim to participate in the criminal proceedings.[77]Victim's involvement has been postulated by many to ensure that the interest of the victim would be a priority for international criminal justice.[78]Again, involvement would restore the victim's dignity, increase the reconciliation process and expose facts and evidence that will be used in the trial.[79] A drawback to individual victim's participation is his inability to initiate international criminal proceedings; the office of the Prosecutor (OTP) must initiate proceedings[80].

Furthermore, States are enjoined to publicize information about available remedies,[81] to protect victims, their representatives, witnesses and families from intimidation and retaliation,[82] provide assistance to victims seeking access to justice,[83]to provide appropriate legal, diplomatic and consular means to ensure that all victims can exercise their rights to a remedy,[84]etc. There is little or no room for concern that environmental crimes will be well attended to under the Rome Statute because the unique nature of the crimes are not wholesomely addressed. The human person as victim is the focus of Rome Statute and even at this, international law does not provide *modalities* in which a victim may present a claim even though he has right to make claims.[85]

Secondly, victims have right to reparation if their claims are adjudged valid.[86] A fundamental component of restorative justice is the provision that 'adequate, effective and prompt reparation for harm suffered'.[87] International criminal law provides a legal basis for reparations to victims of crimes against humanity, war crimes and genocide.[88]The procedural rights of victims in international criminal law are not left out.[89]International criminal court has power to award reparations directly to victims.[90] As has been rightly stated, 'the moment in which reparations (substantive redress) are materially granted is the moment in which the idea of justice

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[70] Basic Principles and Guidelines *Supra,* Principle 12

[71]Implementing Victim's Rights: *A Handbook on the Basic Principles and Guidelines on the Right to a Remedy and Reparation* (London: The Redress Trust 2006)

[72] Rome Statute *Supra*, Article 13, 15 & 16

[73]Timothy K. Kuhner, 'The Status of Victims in the Enforcement of International Criminal Law' (2004) 6 *OR. REV. Int'l L.* 95; Charles P. Trumbull IV, 'The Victim Participation in International Criminal Proceedings' (2008) 29 *Michigan Journal of International Law* 777; United Nations Office for Drug Control and Crime Prevention, *Handbook on Justice for Victims* (New York: Centre for International Crime Prevention 1999) 36 (Hereafter, Handbook on Justice for Victims).

[74] Handbook on Justice 37

[75] I*bid*

[76] I*bid*

[77]Raquel Aldana-Pindell, 'An Emerging Universality of Justiciable Victims' Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes' (2004)26 *Human Rights Quarterly* 607,

[78]Castern Stanhl et al., 'Participation of Victims in Pre-Trial Proceedings of the International Criminal Court' (2006) 4 *Journal of International Criminal Justice* 219

[79] Aldana-Pindel op cit 675

[80] Rome Satute *Supra*, Article 13, 14

[81] Basic Principles and Guidelines *Supra,* Principle 12 (a)

[82] Basic Principles and Guidelines *Supra,* Principle 12 (b)

[83] Basic Principles and Guidelines *Supra,* Principle 12 (c)

[84] Basic Principles and Guidelines *Supra,* Principle 12 (d)

[85] M. Cherif Bassiouni, *opcit* 125

[86] Basic Principles and Guidelines *Supra,* Principle 11 (b)

[87] *Ibid*

[88] Rome Statute *supra*, Art 68, 75 & 79

[89]Rules of Procedure and Evidence Supra, Theo Van Boven, 'The Right to Compensation and Related Remedies for Racial Discrimination' (2001) *Human Rights Development Yearbook* 429.

[90] Rome Statute *Supra*, Art 75

crystallizes, and only at that precise moment justice is effectively realized'.[91] This is in consonance with the famous statement made by Permanent Court of International Justice which said, 'State is under an obligation to make full reparation for the injury caused by the internationally wrongful act'.[92]In explaining the nature of obligation incumbent on the State, International Law Commission stated that it is the 'obligation to grant full reparation as the duty of wiping out as far as possible all the consequences of the illegal act and re-establishing the situation which would , in all probability, have existed if that act had not been committed'.[93]Therefore all measures targeted at restoring justice through cleaning up all the consequences of the harm suffered by the individuals and/or peoples concerned as the result of a wrong, and at re-establishing the situation which would have existed if the wrong had not been produced are thus suitable of being considered as reparations'.[94]The main aim of reparation is 'to rectify the wrong done to a victim, that is, to correct injustice'.[95] Basic Principles and Guidelines [96] recognizes various forms of reparations: restitution,[97] compensation,[98] rehabilitation,[99] satisfaction,[100] and guarantees of non-repetition.[101] These provisions make it clear that individual accounts must be taken into consideration, not every serious violation will require same approach and reparation.[102]

Restitution 'should whenever possible, restore the victim to the original situation before the gross violation…occurred. Restitution includes, as appropriate; restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'.[103] The appropriate areas of restitution are outlined but not exhaustive of all the different circumstances which can occur.[104]There are many situations in which it is not feasible to restore the victim to the position he was before violation occurred. In the case of the environment, it seems that there is not much room to compel restitution, remediation of blight, establish civil liability or to clean up the environment.[105]This differs greatly from Council of Europe convention whose provision of sanctions comprises of imprisonment, fines and reinstatement of the environment.[106]The focus of this Convention is to ensure that perpetrators of egregious environmental hazards do escape neither prosecution nor punishment.[107] Therefore, the inability of international criminal court to order restorative or injunctive remedies renders the curative nature of the punishment for causing 'widespread, long-term, and severe' damage to the natural environment limited if not defeated.

Again, compensation is another form of reparation available to the victims. Basic Principles and Guidelines provides that, compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as

(a) Physical or mental harm;
(b) Lost opportunities, including employment, education and social benefit;
(c) Material damages and loss of earnings, including loss of earning potential;
(d) Moral damages
(e) Costs required for legal or expert assistance, medicine and medical services, psychological and social services.[108]

[91]Federico Lenzerini, 'Reparations for Indigenous Peoples in International and Comparative Law: An Introduction' in Federico Lenzerini (ed), *Reparations for Indigenous Peoples: International and Comparative Perspectives* (Oxford: Oxford University Press 2008)8
[92] Factory at Chorzow Case (Merits, 1928 *PCIJ* Series A, No 17, P. 47)
[93]International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts Art 31 in *International Law Commission Report*, A/56/ 10 August 2001
[94] Factory at Chorzow Case *Supra*, 47
[95] D. Shelton, *Remedies for International Human Rights Law* (2nd Edn Oxford: Oxford University Press 2005)10
[96] Basic Principles and Guidelines *Supra*, Rule IX
[97] Basic Principles of and Guidelines *Supra*, Principle 19
[98] Basic Principles of and Guidelines *Supra*, Principle 20
[99] Basic Principles of and Guidelines *Supra* Principle 21
[100] Basic Principles of and Guidelines *Supra* Principle 22
[101]Basic Principles of and Guidelines *Supra* Principle 23
[102] Basic Principles of and Guidelines *Supra* Principle 18
[103] Basic Principles and Guidelines *Supra*, Principle 19
[104] Implementing Victim's Rights *Supra* 34
[105] Mark Drumbl, opcit 327
[106]Council of Europe Convention on the Protection of the Environment through Criminal Law, Article 6 ETS No 172 (1998) (Here after, Council of Europe).
[107] Ibid, Preamble
[108] Basic Principles and Guidelines *Supra*, Rule 20

The concept of compensation connotes the issue of making financial payment that encompasses all the damage which the victim has suffered and which can be financially assessed so as to ensure full reparation.[109]In line with its title, it is wholly compensatory, and conforms to what can be assessed in monetary terms for the damage suffered by the injured party.[110] It is least concerned with the punishment of the offender (Individual, State or Corporate entity) nor does it include the notion of punitive or exemplary damages.[111] In the *Velasquez Rodriguez Case* the court held that 'it is appropriate to fix the payment of fair compensation in sufficiently broad terms in order to compensate, to the extent possible, for the loss suffered'.[112]The focus of monetary compensation is to ensure that the damage suffered by the victim is compensated to the extent that money can do.

Another aspect of reparation is rehabilitation. The Basic Principles and Guidelines provides that, 'rehabilitation should include medical and psychological care as well as legal and social services'.[113]As an important part of reparation, it is more focused on the necessary things victims are entitled to, such as, material, medical, psychological, social assistance and support.[114]Each victim will need to discover the best way to rehabilitate and reconstruct a new life.[115]Just as trauma is common but experienced in different ways by each person, so must the 'restoration and construction of a new routine and equilibrium be unique yet with common elements'.[116] Rehabilitation integrates diagnostic methods, medicines, specialized aid, hospitalization, surgeries, laboring, traumatic rehabilitation and mental health.[117] Once more, incorporated into the reparation scheme is satisfaction. Satisfaction includes, where applicable, any, or all of the following:[118]

(a) Effective measures aimed at the cessation of continuing violation;[119]
(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;[120]
(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;[121]
(d) An official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;[122]
(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;[123]
(f) Judicial and administrative sanctions against persons liable for the violations;[124]
(g) Commemorations and tributes to the victims;[125]
(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.[126]

[109] Implementing Victim's Rights *Supra* 35
[110] *Ibid*
[111] *Ibid*
[112]Inter-American Court of Human Rights Case of Velasquez-Rodriguez v Honduras Interpretation of the Compensatory Damages Judgment, Judgment of August 17 1990 Para 27 available at: <https://www.refworld.org/cases,IACRTHR,3ae66d18.html>accessed 30 April 2020
[113] Basic Principles and Guidelines *Supra*, Rule 21
[114] Implementing Victim's Rights *Supra* 36
[115] U. N Handbook on Justice for Victims *opcit* 29
[116] *Ibid*
[117] Implementing Victim's Rights *Supra* 36
[118] Basic Principles and Guidelines *Supra*, Rule 22
[119] I*bid*
[120] *Ibid*
[121] *Ibid*
[122] Basic Principles and Guidelines *Supra*, Rule 22
[123] *Ibid*
[124] *Ibid*
[125] *Ibid*
[126] *Ibid*

An integral part of satisfaction is public acknowledgement of the violations. It embraces extensive and diverse non-monetary measures that can add to the larger and longer-term restorative aims of reparation.[127] Worthy of note is the victim's right to know the truth, and for the perpetrators to be made accountable.[128] In most cultures, 'the admission of responsibility and public apology to the victim could help to satisfy the interests of Justice and the needs of the victims.[129] Another important part of reparation is commemoration. Building a memorial or a commemorative observance of a particular event can assuage some pain.[130]An example is the Holocaust Day in Israel or the naming of a park or other area in commemoration of the heroism or martyrdom of a victims.[131]

Thirdly, they have access to relevant information concerning violations and reparation mechanisms.[132] The procedural remedies such as judicial and administrative should be in accordance with the substantive rights violated.[133] African Charter on Human and People's Rights provides 'Every individual shall have the right to have his cause heard….'[134] Thus, the procedure for fair hearing is a legitimate right of a victim of crime. It is said that the victim of a crime is granted the possibility to intervene in penal proceedings with special powers of action to gain a judgment that can satisfy his individual rights.[135]

5. Conclusion

Environmental victimization challenges traditional notion of criminal justice system in a number of ways. Traditional international criminal justice system seems to focus on individual victims rather than mass victimization which is a feature of environmental crime. Again, current criminal justice mechanism is too anthropocentric instead of a balance provision for non-life forms and the ecosystem which is included in the categorization of victims of environmental crimes. In the provisions for rights of victims of international crime as seen in the Basic Principles and Guidelines, it seems that no space was found for non-life forms to be represented to access reparation and remedy. This is understandable because the non-human habitat is not contemplated as victims of international crime. The question emerges, how can the non-human habitat who are victims of international environmental crime ever find compensation and remediation without adequate provision in the instrument in which such provisions should have been made? The restrictive limitation of international environmental crime only within the ambit of international armed conflict seems to have excluded many actors and victims on the scene. This calls for engagement by international criminal justice actors and policy makers with environmental crime as a whole for synergy and appreciation in order to address these myriad issues.

[127] Implementing Victim's Rights *Supra* 38
[128] *Ibid*
[129] U. N Handbook on Justice for Victims *opcit* 43
[130] *Ibid*
[131] *Ibid*
[132] Basic Principles and Guidelines *Supra,* Principle 11 (c)
[133] Implementing Victim's Rights *Supra* 31
[134] African Charter on Human and People's Rights Art 7 (1981) 21 *ILM* 59 (Hereafter Banjul Charter)
[135]G. Tartaglione, 'The Victim in Judicial Proceedings' in I. Drapkin and E. Viano (eds.), *Victimology: A New Focus,* Vol. 1 (Massachusetts: Lexington Books)5