

Protection of Environmental Crime Victims: Review of the Contribution of International Human Rights Law

Muthukuda Arachchige Dona Shiroma Jeeva Shirajanie Niriella

University of Colombo, Colombo, Sri Lanka

Historically victims of crime are not recognized in the fields of traditional criminology and criminal justice and therefore victimology, a study of victims, has been excluded from criminology. Also, the role of victims was minimal in the traditional criminal justice process. This means no attempt or very little attempt has taken to analyze the issues related to victims. The environmental crime victims are not an exception this situation in the traditional criminal law. Though the environmental crimes affect the society collectively, including living (people and animals) and non-living things/objects, the results of these crimes are not visible at the time of commission of the crime or even soon after the crime, as in the other traditional crimes. This specific nature is always led to recognize environmental crimes as victimless crimes, creating issues in protecting the victims of environmental crime and their rights. Furthermore, the international human rights treaty law has set out minimum standards to safeguard the basic rights of the victims of crime. However, it developed some norms and principles to protect the environment from harmful activities committed by people in the name of the economic development process. Until to the date, it is open for a discussion to what extent the international human rights treaty law has drawn its serious attention to protect the victims of environmental crimes and their rights specifically. Therefore, this study intends to investigate the adequacy of the international human treaty law in protection of the rights of the victims of environmental crimes. In this study some international human rights law treaties such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985, Stockholm Declaration of 1972, Aarhus Convention, Espoo Convention—Kiev Protocol and Rome Statute are reviewed in this regard. The study discusses the issues in definition of environmental crime, and victims of environmental crimes, under the aforementioned international conventions in order to fill the lacuna in the international human rights law in protection of the rights of the victim. A study of this nature facilitates to expand the horizon of the international human rights law relating to the protection of the environment and to the protection of basic rights of a human being which is essential in the implementation of the concept of sustainable development.

Keywords: international law, environmental crimes, victims rights

Introduction

Criminality against the environment (environmental crimes) and associated phenomena such as the impacts on human and non-human life, land, water, and air, causation of criminality, and corresponding punishments for environmental crimes were not adequately recognized in the traditional criminal law until the recent past. The (serious) harm done to the environment can certainly be considered environmental crimes which extend from micro to macro levels. It may be committed by persons individually or organized groups, business entities (companies), and also by the Governments. These three categories of perpetrators may commit crimes against the environment due to various reasons including daily essential need, vulnerability, survival, for one's personal benefit, economic reasons, competition, conflicts, power, and development.

Commissions of some environmental crimes are higher than others. The UN Interregional Crime and Justice Research Institute has recognized that the rate of the following environmental crimes has rapidly increased during the past decades among the other environmental crimes. They are: illegal wildlife trade in endangered species,¹ smuggling of ozone depleting substances (ODS),² dumping and illicit trade in hazardous waste,³ oil pollution from ships⁴ (which have transboundary/transnational effect and are against related international standards), illegal, unreported, and unregulated fishing, illegal logging and timber trafficking (which largely violate national laws). These crimes have been identified as one of the most profitable and fastest growing areas of both international and local criminal activities with increasing involvement of organized criminal networks internationally and locally.

Environmental crime affects all in society. The harm of environmental crimes is more severe than compared with that of the harm of conventional crimes such as crimes against the human body or property etc. It can have severe detrimental consequences for the human security of a country. For individuals and communities, it may have impact on (public) health, livelihoods, and future generations. It may also have impact on non-human species and nature itself, including land, soil, water including sea and air. Furthermore, this may lead to revenue loss for States. It is important to note, that the effects of a single environmental offence may not appear significant, but the cumulative environmental consequences of repeated violations over time are substantial. Furthermore, illegal trade in environmentally-sensitive commodities/products leads organized criminal syndicates to commit other severe crimes such as trafficking in drugs and weapons and human beings especially women and children for prostitution⁵ (Niriella, 2008). Due to all these reasons, in recent years, with a greater understanding of the necessity to protect the environment and in some cases, criminalization of harm to the environment is becoming more admitted.

¹ This is in contravention to the Convention on International Trade in Endangered Species of Fauna and Flora (CITES).

² This is in contravention to the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer.

³ This is in contravention to the 1989 Basel Convention on the Control of Trans-boundary Movement of Hazardous Wastes and Other Wastes and their Disposal.

⁴ This is in contravention to the Marpol Convention in 1973 and Protocols in 1978 and 1997.

⁵ See, the paper titled on Criminal Justice Challenges in the Age of Globalization, presented by Mr. Liew Thaim Leng, Senior State Counsel, Criminal Justice Division, Attorney-General's Chambers, Singapore at 9th Asia Crime Prevention Foundation Conference held in Tokyo in October 2002, research paper published in ACPA TODAY No. 10, published by Asia Crime Prevention Foundation in December 2003 edited by Minoru Chairman Board of Directors ACPA, p. 145. Further see Jeeva Niriella, Transnational Organized Crimes: Trafficking in Women and Children, Colombo Law Review, Special Volume to Commemorate the 60th Anniversary Celebration 2008.

Environmental crimes often fail to receive the prompt response that required by governments, the enforcement authorities, and the public. Environmental crimes often perceived as “victimless”, as do not always produce an immediate consequence which would be able to identify specific victims immediately. The harm may be neglected, ignored, or undetected for a long period though the harm is rigorous. Therefore, victims of environmental crime are not widely recognized as victims of crime and thus are excluded from the traditional view of criminology and victimology. This means little attempt has been taken in those fields to describe the actual prevalence and consequences of environmental crime victimization and legal issues related to their victimization. Collective victimization which includes non-human species, the environment, and future generations and far-reaching impacts of environmental crime, raises complex issues in protecting the victims of environmental crime and their rights in the criminal justice system.

The United Nations Organization also realized the gravity of this menace and acknowledged the challenges posed by emerging forms of crime that have severe impact on the environment. The UN Organization further realized the necessity to invite member States of the United Nations to study this issue and share best practices to combat the crime successfully. To some degree it is true, that the international human rights treaty law has set out minimum standards to safeguard the basic rights of the people and developed some norms and principles to protect the environment from harmful activities committed by people in the name of the economic development process. However, there is a question of the adequacy of international treaty law concerning the protection of the victims of environmental crimes and their rights.

Undoubtedly, environmental crimes are closely associated with human rights. Therefore, harming the environment/violation of the environment certainly amounts to a serious violation of human (fundamental) rights. Protection of the environment against environmental crimes is an essential condition for effective protection of human rights of the victims of such crimes. The role of the international human rights treaty law in this regard is vital. The international human rights instruments should contain effective standards with a steady mechanism devoted to the protection of human rights enabled to denounce and prosecute the environmental crimes. It is a valuable exercise to investigate and evaluate the adequacy of the contribution of the international (human rights) treaty in this regard.

Therefore, this study has done a (brief) review of international treaty law relating to the issues and challenges in definition of environmental crime and victims of environmental crimes and rights of the victims of environmental crimes in the criminal justice system in order to fill the gap in the international human rights law in protecting the environmental crime victims and their rights.

International Instruments for Protection of the Environment

As said earlier the international community developed a range of norms and standards to protect the environment from the damage done to the environment in the economic development activities.⁶ These

⁶ They are: Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Alpine Convention together with its nine protocols, ASEAN Agreement on Transboundary Haze Pollution, Convention for the Conservation of Antarctic Marine Living Resources, Agreed Measures for the Conservation of Antarctic Fauna and Flora, Convention for the Conservation of Antarctic Seals, Convention for the Conservation of Antarctic Marine Living Resources, Protocol on Environmental Protection to the Antarctic Treaty, Anti-Ballistic Missile Treaty, Asia-Pacific Partnership on Clean Development and Climate, Barcelona Convention for Protection against Pollution in the Mediterranean Sea, Convention on

international instruments adopted several directives aimed at a high level of environmental protection. Collectively, these international instruments agreed to adopt an important concept called sustainable development as the basis of environmental protection. The Report of the World Commission on Environment and Development 1987 (Brundtland Report of 1987) defined sustainable development as “development that meets the needs of the present without compromising the ability of future generations to meet their own need”. By introducing this concept, the international law anticipated to direct the member countries to take

the Control of Transboundary Movements of Hazardous Wastes and their Disposal, Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological [Biological] and Toxin Weapons and on their Destruction, Bonn Agreement (Environment), Framework Convention on the Protection and Sustainable Development of the Carpathians, Cartagena Protocol on Bio-safety, Chemical Weapons Convention, China Australia Migratory Bird Agreement, Convention on the International Trade in Endangered Species of Wild Flora and Fauna, Comprehensive Test Ban Treaty, Convention for the Conservation of Antarctic Seals, Convention for Co-operation in the Protection and Development of the Marine and Coastal Environment of the West and Central African Region, Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Convention for the Protection of the Marine Environment and Coastal Area of the South-East Pacific, Convention for the Protection of the Marine Environment of the North-East Atlantic, Convention for the Protection of the Natural Resources and Environment of the South Pacific Region, Convention of the Protection, Management and Development of the Marine and Coastal Environment of the Eastern African Region, Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency, Convention on Biological Diversity, Convention on Certain Conventional Weapons, Convention on Civil Liability for Damage Caused During Carriage of Dangerous Goods by Road, Rail, and Inland Navigation Vessels, Convention on Cluster Munitions, Convention on Early Notification of a Nuclear Accident, Convention on Fishing and Conservation of Living Resources of the High Seas, Convention on Long-Range Transboundary Air Pollution, Convention on Nuclear Safety, Vienna Convention on Civil Liability for Nuclear Damage, Convention on the Conservation of European Wildlife and Natural Habitats, Convention on the Conservation of Migratory Species of Wild Animals, Convention on the International Trade in Endangered Species of Wild Flora and Fauna, Convention on the Prevention of Marine Pollution by Dumping Wastes and Other Matter, Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Convention on the Transboundary Effects of Industrial Accidents, Convention on Wetlands of International Importance Especially as Waterfowl Habitat, Convention to Combat Desertification, Convention on the Protection of the Black Sea Against Pollution, Convention on the Protection of the Marine Environment of the Baltic Sea Area, Conventions Within the UNEP Regional Seas Programme, Convention on the Ban of the Import Into Africa and the Control of Transboundary Movements and Management of Hazardous Wastes Within Africa, EMEP Protocol, Nitrogen Oxide Protocol, Volatile Organic Compounds Protocol, 1985 Helsinki Protocol on the Reduction of Sulphur Emissions, 1994 Oslo Protocol on Further Reduction of Sulphur Emissions, Heavy Metals Protocol, POP Air Pollution Protocol, Directive on the Legal Protection of Biotechnological Inventions, Energy Community South East Europe Treaty, Convention on Environmental Impact Assessment in a Transboundary Context, European Agreement Concerning the International Carriage of Dangerous Goods by Inland Waterways, European Agreement Concerning the International Carriage of Dangerous Goods by Road, FAO International Code of Conduct on the Distribution and Use of Pesticides, FAO International Undertaking on Plant Genetic Resources, Framework Convention on Climate Change, Framework Convention for the Protection of the Marine Environment of the Caspian Sea, Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, International Convention for the Prevention of Pollution From Ships, International Convention for the Conservation of Atlantic Tunas, International Convention for the Prevention of Pollution of the Sea by Oil, International Convention for the Regulation of Whaling, International Treaty on Plant Genetic Resources for Food and Agriculture, International Tropical Timber Agreement (Expired), International Tropical Timber Agreement, Kuwait Regional Convention for Co-operation on the Protection of the Marine Environment from Pollution, Regional Convention for the Conservation of the Red Sea and the Gulf of Aden Environment, Kyoto Protocol—Greenhouse Gas Emission Reductions, Migratory Bird Treaty, Minamata Convention on Mercury, Montreal Protocol on Substances That Deplete the Ozone Layer, North American Agreement on Environmental Cooperation, Protocol on Environmental Protection to the Antarctic Treaty, Putrajaya Declaration of Regional Cooperation for the Sustainable Development of the Seas of East Asia, Convention on Wetlands of International Importance, especially as Waterfowl Habitat, Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Stockholm Convention on Persistent Organic Pollutants, Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water, Comprehensive Test Ban Treaty, United Nations Convention on the Law of the Sea, United Nations Convention to Combat Desertification, United Nations Framework Convention on Climate Change, Vienna Convention for the Protection of the Ozone Layer including the Montreal Protocol on Substances that Deplete the Ozone Layer, Vienna Convention on Civil Liability for Nuclear Damage, Convention to Ban the Importation Into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes Within the South Pacific Region, Western Regional Climate Action Initiative, and Working Environment (Air Pollution, Noise and Vibration) Convention.

precautionary measures such as environmental impact assessments in the economic development activities/processes to minimize the harm/damage done to the environment and preserve the environment for both present and future generations. The “polluter pays principle” with its limitation of the “proportionality principle” is another important norm introduced by the international law in the protection of the environment. According to this principle, person who is responsible for the harm done to the environment should bear the cost associated with it (Cordato, 2001). Here (only) the administrative and civil liabilities are permitted against the damage done to the environment. However, the international treaties which encompass the criminal prohibitions for the protection of the environment are insufficient.⁷ During the past two decades, there has been a trend in the international law to make use of criminal law to deal (at least) with the most serious environmental damages/violations.

At the 12th UN Congress on Crime Prevention and Criminal Justice (2010) the international community drew the attention to the challenges posed by the emerging forms of crimes, especially, those which have a great and adverse impact on the environment, and acknowledged the necessity of introducing new and effective international standards in order to combat this specific category of crimes and to protect the rights of the victims of these crimes.⁸ This demonstrates the significant role that the international treaty law could play in fighting against environmental crimes and protecting the rights of affected parties. It further demonstrates the inadequacy of the available international standards which contain criminal responsibility and suggests bestowing rich set of standards, which provides the directives to the member States to enact strong national criminal/penal laws in this connection.

Contribution of International Law: Defining Environmental Crimes

Prior to discuss the rights of the victims of environmental crime, it is pertinent to scrutinize the definition of environmental crime and victims of environmental crime under international law. Generally, there is no clear definition of environmental crime in international treaty law. International treaties are commonly established according to the type of harm. For instance: for ocean (marine) pollution, there are some specific international treaties which accept the criminal responsibility such as MARPOL Convention, UN Convention on the Law of the Sea (UNCLOS) London Protocol on dumping at sea, International Convention for the Control and Management of Ships’ Ballast Water and Sediments, International Convention on the Control of Harmful Anti-Systems on Ships etc. For crimes committed against wildlife, CITES has included some criminal liability provisions; for hazardous waste and its disposal, Basel Convention integrated some criminal responsibility provisions. Some scholars are of the view that definition for environmental crime should be based on types of harm but in a broader manner. According to their point of view, there should be three types of environmental crimes, namely, green environmental crimes, brown environmental crimes, and white environmental crimes. Under this categorization, green environmental crimes refer mainly to wilderness areas and associated issues.

⁷ Paper presented by Sergio Marchisio, Professor of Sapienza University of Rome on Environment Crimes and Violations of Human Rights at the Conference held in 2012 in Rome, Italy on theme of Environmental Crime—Current and Emerging Threats, Convention on the Protection of Environment through Criminal Law 1998 which has not entered into force as only a few countries have signed and only one country has ratified yet.

⁸ See, Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, 19 April 2010, A/CONF 213/18, Para. 14.

Brown environmental crimes are defined in terms of urban life and pollution issues. And white environmental crimes denote issues pertaining to science laboratories and the negative impact of technologies.

Protocol I to the Geneva Convention established the criminal liability against environmental damage which is the first attempt at Universal level. The direct international criminal offence regarding the environment was introduced by this protocol. It provides the standards for prohibition for the use of methods of warfare which are intended or may be to cause widespread, long-term, and severe damage to the natural environment.⁹ This has been directly incorporated into the Rome Statute under war crimes (ICC Statute).¹⁰ Though it was not successful, a suggestion was made by the International Law Commission to recognize international crime against environment as a distinct international criminal offence in addition to the genocide, war crimes, offences against humanity, and aggression and to incorporate it into the Rome Statute¹¹ (Megret, 2013). Another proposal was made to insert international environmental crimes into the Rome Statute as a separate crime called ecocide defining it “the extensive destruction, damage to or loss of ecosystem/s of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the Inhabitants of that territory have been severely diminished” (Higgins, 2010). However, serious attention has not paid to this proposal yet. Nonetheless, it should be important to note that the aforementioned two instruments covered the serious environmental harm committed under a special circumstance: (only in the situations of) warfare.

As said earlier, although there are several treaties adopted to protect the environment, only a few focus on criminal prohibition also focuses only on specific activities/actions.¹² The Convention on the Protection of the Environment through Criminal Law 1998 made the history in defining the environmental crimes under normal circumstances applicable in general. It defines environmental crimes under three categories: Intentional offences,¹³ negligent offences,¹⁴ and administrative offences.¹⁵ According to the Convention, any person or corporate body engages in any prohibited action listed in the treaty either intentionally or negligently, is defines as an environmental crime/offence. However, it is significant to note the Convention does not cover illegal omission as well as an action or omission done with wrongful knowledge in its definition.

⁹ Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. See the Article 35.3.

¹⁰ The Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9. Refer the Article 8(2)(b)(iv) says “Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”

¹¹ When drafting the Code of Crimes Against the Peace and Security of Mankind in 1996, the Commission proposed to define international crime against the environment, requiring a serious intentional act with harm done to the environment including the act must be serious (seriousness being deduced from either the nature of the act or the magnitude of the effects); the harm must have an international element (as when it is transboundary or some human commons are affected); the conduct need not be prohibited by any specific environmental norm (if it targets the foundations of human society, it must be deemed unlawful per se), and the act must be willful, as main elements of such a crime. Further see, Frederic Megret, *The Case for a General International Crime Against the Environment*.

¹² Supra notes 1, 2, 3, and 4.

¹³ Article 2.

¹⁴ Article 3.

¹⁵ Article 4.

Victims of Environmental Crimes Under International Law: Definition

As far as who and what should be acknowledged as victims of environmental crime are concerned, it is essential to discuss the concept of “Eco-Justice”. Environmental Justice, Ecological Justice, and Species Justice are the three main pillars of eco-justice. These three types of justice focused on three distinct types of victims. In Environmental justice, environmental rights are considered an extension of human social rights to enhance the quality of human life, now and in the future. The victims of environmental crimes under Environmental Justice are mostly the human beings.¹⁶ In Ecological Justice, human beings are merely one component of complex ecosystems that should be preserved for their own sake and the victims of environmental crimes under ecological justice are mostly the specific environment. In Species Justice, animals have an intrinsic right to not suffer abuse, and plant the degradation of habitat to the extent that threatens biodiversity loss. The victims of environmental crimes under Species Justice are animals and plants. Some scholars are of the view the above said three categories of victims of environmental crimes into two major groups, namely, anthropocentric (human victims) and eco-centric (nature and living objects other than human).¹⁷ Some scholars¹⁸ regard the environmental crimes as victimless crimes, observing those crimes through the anthropocentric viewpoint which is not very much correct.

When considering human beings as victims of environmental crime, it is clear that the harm does not affect only individuals, but it affects groups of people, communities, future generation, or sometimes individuals who do not realize their victimization at the time of the commission of the crime. Due to this reason a range of possible human victims can be seen in environmental crime victimization. The question arises as to whether the current available international treaty law is adequately covering all these victims.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power defines victims of crime. According to this Declaration, people who individually or collectively, have suffered harm due to commissions of crimes and the immediate family members or dependents of the direct victim and persons who have suffered harm in intervening to assist the victims in distress or to prevent victimization are considered victims.¹⁹ Individuals, groups, or communities who have been affected/suffered as a result of the crime are fully covered by this Declaration. However, no coverage is provided by this Declaration to the unborn children at the time of commission of the crime but who would be affected in the future by the harm as a result of that particular crime. Is it possible or correct to disregard/ignore these victims in international human rights law? If they should be included as victims of environmental crimes, what kind of conceptual issues are there to be sorted out? The answer to the first question is “yes” and the following discussion supports an answer to the latter. The concept of sustainable development adopted in the environment protection treaties is intimately and directly connected to inter-generational equity where the rights of both present and future generations are considered in equal manner. Further, one of the objectives of the concept of sustainable development is to end the present criminal activities against future generation. Future generation (including unborn children) who would be affected from harm resulted by any present action/omission committed with the wrongful knowledge of the substantial likelihood of their severe consequences on the long-term health, safety, or means of survival of any identifiable group or

¹⁶ For the purpose of this study considered only human beings as victims.

¹⁷ For the purpose of this study considered only human victims.

¹⁸ Hazel Croall, 2010, Victims of White Colour and Cooperate Crime.

¹⁹ Articles 1 and 2.

collectivity should necessarily be protected. The same argument is valid with regard to the victims who are not aware of their victimization at the time of the commission of the offence (Jodoin, 2010; Jodoin & Saito, 2010). The Convention on the Protection of Environment through Criminal Law or the Rome Statute did not include any provision for the definition of victims of environmental crimes yet.

Rights of the Victims of Environmental Crimes: International Law Perspective

The Convention on Access to Information, Public Participation in Decision making and Access to Justice in Environmental Matters (Aarhus Convention) adopted in 1998 was based basically on the Stockholm Declaration on the Human Environment, the Rio Declaration on Environment and Development,²⁰ the European Charter on Environment, and Health and World Charter for Nature which mainly focus on environment, man, and the development. This convention is a milestone in the history of international (human rights) treaty law and contributed to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being. The instrument states that State parties should guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of the Convention. This may be considered as a major development as far as upholding procedural environmental rights are concerned. It may claim that Article 9 which states access to justice allows both individuals who are affected directly and interested groups who are not directly affected by environmental decision making to challenge such decisions through the judicial review process. Nonetheless, the convention is closely investigated, it is clear that neither the Article 9 nor other provision in the convention applies the criminal procedure as against such decision.

Article 11 of the Convention on the Protection of Environment through Criminal Law is of relevance in this connection. Accordingly, any person may, at any time, have a right to participate in criminal proceedings pertaining to criminal offences recognized in the convention. However, the convention does not focus on the rights of the victims in such proceedings.

In a (broader) theoretical perspective the rights of the victims should be based on the concept of fair trial, which is in four-fold: right to truth, right to reparation, right to equality, right to access to justice. According to the modern international human rights law discourse, the rights of the victims are discussed under service rights (the rights that concern the protection, support, and assistance during the process) and procedural rights (the rights that affect the influence of the final decision making which permits the victim to actually participate in the process). The environmental crime victims should also be allowed to enjoy these rights in the criminal proceedings.

As far as the rights of the victims of environmental crimes are concerned, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power could be taken into consideration. In the Declaration procedural rights are recognized under active participation in the proceedings (trial and sentencing), obtaining the information of the proceedings when appropriate but without prejudicing the rights of the defendant.

²⁰ Principle 10.

Concerning the service rights, it calls upon the countries to ensure victims' assistance,²¹ treatment,²² and all forms of possible remedies for victims of crimes which include redress/restitutions²³ and compensation²⁴ either through formal or informal procedures regardless of identifying the perpetrator, apprehending the suspect, prosecuting the accused, or convicting the offender.²⁵

Since the scope of this Declaration is limited only to the victims of crimes and it does not encompass statutory (environmental) offences, administrative offences, with the strict liability concept and environmental crimes, it poses some challenges in ensuring the procedural and service rights available in the Declaration for the victims of those situations.²⁶

The Convention on Environmental Impact Assessment in a Trans-boundary Context in 1991, entered into force in 1997 (informally called the Espoo Convention) set out provisions relating to the obligation of the parties to carry out environmental impact assessments of certain activities at early stages of their planning specially in the major development projects/programmes which consists of significant adverse environmental impact across boundaries (For instance: Expansion of a planned spent nuclear fuel repository in Finland, Chancy-Pougny Hydropower Station on the border between France and Switzerland in 2008, Thonon-Annemasse Road in France in 2008, Bridge over Danube River between Bulgaria and Rumania 2004, Pipeline between Italy and Croatia 2004). However, this convention focuses only on precautions not on criminal prohibition.

Kiev Protocol on Pollutant Release and Transfer Registers adopted in 2009 has the objective of enhancing the public access to information through the establishment of coherent, nationwide pollutant release by industries and other sources and transfer registers (PRTRs) in accordance with the provisions of this Protocol, which could facilitate public participation in environmental decision-making as well as contribute to the prevention and reduction of pollution of the environment (Article 1). This Protocol is based on Article 5, Paragraph 9, and Article 10, Paragraph 2, of the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention), and Principle 10 of the 1992 Rio Declaration on Environment and Development. According to this instrument any human activity, whether deliberately, accidentally, routinely, or non-routinely, including dropping, emitting, discharging, injecting, disposing or dumping, or through sewer/drain systems without final wastewater treatment, discharge of any substance or a group of substances that may be harmful to the environment or to human health should be disclosed to the public. The disclosure is maintained in the way of entering the relevant details (Article 6) into a register whether the public has the access. This may be considered as victim register which is used to update the level of victimization and the number of victims (details of the victims). Though this instrument demonstrates the public participation in the decision-making process which is similar to the Aarhus Convention, this particular Protocol also is not applicable in criminal procedure.

²¹ Articles 14-17.

²² Articles 4-7.

²³ Articles 8-11.

²⁴ Articles 12-13.1.

²⁵ Articles 1-11.

²⁶ See further, the Draft United Nations Convention on Justice and Support for Victims of Crime and Abuse of Power in 2010 has cleared the said issues. Special reference to Part 2 (Article 5: Access to justice and fair treatment, Article 6: Protection of victims, Article 7: Information, Article 8: Assistance, Article 9: Restorative justice, Article 10: Restitution including reparation, Article 11: Compensation).

Conclusion

The above said discussion reveals that environmental crime victimization is a social problem, which was not extracted an adequate attention in protection of the environmental crime victims and their rights, yet. International treaties which contain clear criminal prohibitions for the protection of the environment are insufficient. This is the high time to draw the attention on creating a specific international treaty which focuses on the victims of environmental crimes and the protection of their rights in order to provide them the real justice.

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