Environmental Crimes: Effect of COVID-19 on Non-human Victims

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Abstract

The article aims at finding out the impact of COVID-19 on forest and wildlife crimes, as the novel coronavirus or COVID-19 stalled our daily activities in the most unexpected manner. Studies have shown that the origin of any influenza virus is typically from animals. Thus, a direct nexus can be established between wildlife trade (primarily which is illegal) and the spread of coronavirus. United Nations Environmental Programme of 2016 identified issues of upcoming zoonotic diseases while discussing their emergence and re-emergence and its link with the ecosystem. In this article, an attempt is made to understand the framework and stance of International Criminal Court in regard to the environmental crimes. Further this article mentions the role International Criminal Court can play if the office of prosecutor were to try and prosecute the cases of environmental crimes.

Further, Sustainable Development Goals 13, 14 and 15 play an important role in this secondary study. Since these goals have presented us with the opportunity to interlink goals with one another and thus discuss the need of protecting and conserving non-human victims of environmental harms along with human victims. Study of reports from international and national organizations, law journals, case laws, news reports, books, commentaries, etc., are used and finally the conclusive remark is based on the interpretation of this primary data. This article solely proposes to analyse and identify the challenges faced by non-human victims mainly forest and wildlife during the course of pandemic outbreak.

1 Advocate.

2 World Health Organization, *Emergency Preparedness Response*, https://www.who.int/csr/disease/swineflu/frequently_asked_questions/pandemic/en/ (last visited Feb. 24, 2010).

3 Sustainable Development Goals, United Nations archives, *Climate Action, Life Below Water and Life on Land Respectively*, https://www.un.org/sustainabledevelopment/biodiversity/
**Keywords**

Environmental crimes, COVID-19, wildlife, illegal trafficking

**Introduction**

The Indian Policy Commission, that is, NITI Aayog\(^4\) releases the baseline report called as *Sustainable Development Goals (SDG) India Index* every year which has reports on the progress made by Indian states towards achieving 2030 SDG targets.\(^5\) The report of 2019 covered 16 goals out of 17 SDG’s.\(^6\) As we are entering the final decade, also known as the *Decade for Action*, it is imperative to act now as we only have 12 years to combat the effects of climate change. The Brundtland Report (1987), also known as ‘Our Common Future’, gave sustainable development a definition, that is, ‘development that meets the needs of the present without compromising the ability of the future generations to meet their own needs’.\(^7\) Under this concept, the Agenda 21 on Environment and Development, and the Statement of Principles for the Sustainable Management of Forests was held at Rio de Janeiro in 1992. Later in the year again Brazil hosted the conference on Sustainable Development called as ‘The Future We Want’. Then the Agenda 30 of SDG (People, Planet and Prosperity) was framed in order to build even stronger international cooperation between state parties. These are 17 different yet interconnected goals and 169 targets.\(^8\) Countries aim at achieving the goals of sustainable development by 2030, the principle of common but differentiated responsibilities by keeping in mind the benefit of present and future generations. At the same time parties such as developing nations should be given full consideration, especially countries that are vulnerable towards effects of climate change and ease them of abnormal burden under the convention.\(^9\)

Although, international and national organizations hold certain fealty and are expected to meet the outcome of goals by 2030, the reports and news opine otherwise. We are facing perils of climate change and the work to support the Decade of Action for the goals required preparedness and cooperation. Does that

\(^4\) Hindi for ‘The Policy Commission’ stands for ‘National Institution for Transforming India’, established on 29th May 2014, is the policy think tank of the Government of India. Main aim of the NITI Aayog is to achieve Sustainable Development Goals.

\(^5\) NITI Aayog Releases SDG India Index and Dashboard 2019, India is the first country in the world with a government-led, sub-national measure of progress on Sustainable Development Goals (Dec. 30, 2019, 4:14 PM by PIB Delhi), https://pib.gov.in/PressReleaseframePage.aspx?PRID=1597981

\(^6\) UN India, NITI Aayog Releases SDG India Index and Dashboard 2019 (Dec. 30, 2019), https://in.one.un.org/un-press-release/niti-aayog-releases-sdg-india-index-and-dashboard-2019/

\(^7\) Report of the World Commission on Environment and Development: Our Common Future, http://www.un-documents.net/our-common-future.pdf

\(^8\) Sustainable Development Goals: Knowledge Platform, Transforming Our World: The 2030 Agenda for Sustainable Development—Preamble, https://sustainabledevelopment.un.org/post2015/transformingourworld

\(^9\) United Nations Framework Convention on Climate Change, 1992: Article 3, https://unfccc.int/resource/docs/convkp/convkp.pdf
mean that we have put at risk the ability of future generations to enjoy the basic fundamental rights due to our past and current actions?\textsuperscript{10}

**Relationship Between COVID-19 and Environment**

During the lockdown period across the globe, many regions encountered wildlife venturing in places that are in close proximity of forest due to low human interaction. This increased sighting of wild animals near the cities, and at the same time, it increased the mitigating risk factor such as how these pathogens are more susceptible in coming in contact with humans.\textsuperscript{11} In the past few decades, as our rapacious aspirations grew along with increasing interference in environmental issues, human activities have now meddled with 75\% of earth’s surface, and have pushed non-human beings in one corner.\textsuperscript{12}

Deforestation, migration due to climate crisis, increasing gender injustice, poverty and, ultimately, risk of climate change pose a huge threat to sustainable development. Nearly 3.3 million hectares of forest area has been wiped out due to deforestation during the year 2010–2015. This is a severe issue for nearly 1.6 billion people who at present depend on the forest produces for their livelihood.\textsuperscript{13} One of the significant role in this displacement is played by the emergence of zoonotic diseases; the diseases that are transmissible between animals and humans. The report on Special Edition Progress Towards the SDG, 2019, observed that these goals are yet to meet its set or expected outcome globally. Even though with a slow progress, it might not be justified to compare the progress of developing nations to that of developed nations, of meeting these targets for 2030.\textsuperscript{14} On the other hand, the Illegal Wildlife Trade has become a multibillion-dollar market which is driven by transnational criminal organizations and is fuelled by poverty and corruption. Wildlife trade is the biggest player which when is combined with climate change and habitat loss would give results as devastating as the extinction of species and breakdown of ecosystem.

\textsuperscript{10} Lewis, Bridget. The Rights of Future Generations within the Post-Paris Climate Regime. *Transnational Environmental Law*, 7(1), pp. 69–87, 2018.

\textsuperscript{11} Justina Ray, *The Future of Wildlife Post COVID-19*, *Can. Geographic* (May 19, 2020), https://www.canadiangeographic.ca/article/five-conservation-experts-weigh-future-wildlife-post-covid-19

\textsuperscript{12} United Nations Environmental Programme, *First Person: CoVid-19 Is Not a Silver Lining for the Climate*, https://news.un.org/en/story/2020/04/1061082

\textsuperscript{13} An Estimation of 70 Million Indigenous Populations, Which Makes Forest Home to More Than Eighty Percent of Global Species of Plants, Insects and Animals, Is at Stake, https://www.un.org/sustainabledevelopment/biodiversity/

\textsuperscript{14} Special Edition: Progress Towards the Sustainable Development Goals Report of the Secretary-General, 2019 Session, (Jul. 27, 2018–Jul. 26, 2019), https://sustainabledevelopment.un.org/content/documents/22700E_2019_XXXX_Report_of_the_SG_on_the_progress_towards_the_SDGs_Special_Edition.pdf
Identification of Non-human Victims

Often the environmental crimes are side-tracked; despite the fact that they are considered to be the fastest growing international criminal activity, which includes transnational organized criminal network. ‘Environmental Crimes’ is often used interchangeably with emerging forms of crimes that have effect on the environment, and these crimes indicate unlawful activities or actions that harm environment. One such important instrument on international cooperation and sharing best practices is Salvador Declaration of 2010 on Crime Prevention and Criminal Justice System, in which novel threats that are adversely impacting environment were acknowledged. They urged the state parties to strengthen municipal criminal justice legislation, policies and practices in order to prevent such crimes. Regardless of the growing awareness, the response from the government lacks effectiveness. Since it is difficult to show an immediate consequence of environmental crimes, it is also known as ‘victimless’ crimes. Another implication is the collective victimization, that is, inclusion of non-human species challenging the traditional criminal law and victimology. This inclusion, although, is too broad, but it aids in levitating concern over the issue of environmental victims. Absence of strong international legal sanctions benefit these criminal activities, and broad disparity between various municipal laws further aids the offenders.

Increasing Market Demand for Illegal Wildlife and Forest Products Trade

Today both developed and developing economies play a crucial role in the demand and supply for the black market of wildlife and forest produces. It is often reported that the ‘wet markets’ in many Asian countries are still operating, indicating increase in wildlife crimes. This is one of the reasons that environmental crimes are asserted to be amongst the most profitable transnational criminal acts. Illegal wildlife trafficking is estimated to be the fourth largest area after drugs, counterfeits and human trafficking to dominate the black market. Therefore, saying that wild

15 According to the International Crime Threat Assessment, http://www.fas.org/irp/threat/pub45270index.html
16 International Crime Threat Assessment, http://www.fas.org/irp/threat/pub45270index.html
17 Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (Apr. 19, 2010), https://www.un.org/en/conf/crimecongress2010/documents.shtml
18 Eileen Skinnider, Victims of Environmental Crimes: Mapping the Issues (March, 2011), https://globalinitiative.net/wp-content/uploads/2017/12/ICCLR-Victims-of-Environmental-Crime.pdf
19 https://www.weforum.org/agenda/2020/04/coronavirus-animals-wildlife-biodiversity-tiger-boar-pandas-zoos/
20 Environmental Rights and Governance, Environmental Crimes Are on the Rise So Are Efforts to Prevent Them, (Sep. 21, 2018), https://www.unenvironment.org/news-and-stories/story/environmental-crimes-are-rise-so-are-efforts-prevent-them
must be kept in *wild* justifies, restoring natural resources and other conservation activities such as eradicating deforestation, poaching and management of protected areas.\(^{21}\)

Among Asian countries, China is a leading economy and an influential market for all types of trade and business. However, China is also known as the largest market for trafficked wildlife products in the world. Various factors such as traditional medicinal practices and food choices\(^{22}\) are responsible for its increasing demand. The international wildlife trafficking is a low risk–high return trade, that is estimated to generate from $7 billion to $29 billion annually. For instance, the Chinese ancient traditional medicines hold significant values, and these medicines include wildlife products. China, a Party to the CITES,\(^{23}\) has legal framework to act upon these issues as well; however, the municipal laws or the domestic laws weaken the capacity of the CITES to protect the listed species from being used for various purposes. Other offenses that need to be addressed are captive breeding, an illegal wet market setup, illegally selling body parts or products of animals such as bear bile, tiger bone, ivory, rhino horns, pangolin skin, etc. These offenses are highly advocated under the name of traditionally used medicines; however, it is now proven that there are better scientific alternatives available for it in the pharmaceuticals. There are high stake risks associated with illegal wildlife trade where interaction between wildlife and human increases risk transmission of zoonotic diseases. This interaction could be between the reservoir hosts (non-human victim/animal) kept in captivity or in the market for consumption and the handler.

Another type of environmental crimes is illegal logging. Although it is worth noting that it does not get covered under any international convention for any punitive measure. Despite of having serious environmental impact and concern, this act is not considered as an environmental crime under international environmental crimes.\(^{24}\) However, it has become evident from past studies that, increasing demand of timber, has led to shredding the tropical forests in the regions of China, India, and Vietnam where legal and illegal imports is a common practice.\(^{25}\) Illegal logging is commonly used term for deforestation which is responsible for destructing the biodiversity and forest resources. Their liability for committing environmental crimes extends to entire human race as well as the non-human species, that is, animals and also to the future generations. The communities that are dependent on the forest produces are also deprived and denied of their access.

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\(^{21}\) Interpol, *Environmental Crimes, Forestry Crimes*, https://www.interpol.int/en/CRIMES/Environmental-crime.Forestry-crime

\(^{22}\) Suzanna Stephens, *China’s Role in Wildlife Trafficking and the Chinese Government’s Response*, U.S.—China Economic and Security Review Commission (Jun. 12 2018), https://www.uscc.gov/research/chinas-role-wildlife-trafficking-and-chinese-governments-response

\(^{23}\) China Is a State Party to Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES) Since 1981, https://www.cites.org/eng/disc/parties/chronolo.php

\(^{24}\) Ricardo Pereira, *After the ICC Office of the Prosecutor’s 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide?*, 31 Crim. L. For. 179–224 (2020). https://doi.org/10.1007/s10609-020-09393-y

\(^{25}\) Supra note 21.
for food and fuel. Illegal forest logging and climate change have increased carbon in the atmosphere, as a direct result of deforestation, meat and dairy farming. The climatic impression can be experienced in the form of uneven rain distribution, floods, unpredictable cyclonic conditions and worse of all is the impact on the agricultural practices and farming.

Interpol carried some significant operations for tracking cases of wildlife and forestry crime such as Project Leaf: Operation Amazonas II (2015) in South and Central America, Operation Log (2015) in West Africa, and Operation Putumayo (2014) was lead on cooperation of governments of Peru, Colombia and Brazil. The wood species such as rosewood or mahogany are legalized as sowed wood through proper plantation is one of the common approaches these criminal organizations adhere to. This particular branch of crime often starts from the stage of harvesting, transport, processing, export to sale and are mostly related to money laundering, fraud and corruption.

The policy paper published by the Office of Prosecutor of International Criminal Court (ICC) in 2016 mentioned how case selection and prioritization of cases can play a huge part in bringing environmental issues concerning environmental damage, illegal mining, overexploitation of resources and land grabbing, etc. to the court. Although this policy paper did little about the jurisdiction of the ICC over ecocide, but it revitalized the debate over role of international law, and it discussed at length whether ICC can or cannot expand its jurisdiction over ecocide.

Role of Transnational Organized Crimes

For the purpose of this very article, the term ‘transnationality of these crimes’ plays the most crucial role in determining the criminal liability. Parallel economy also poses a threat to the economy as the illegal trade is directly fuelling the perpetrators via this network. It helps in indicating the potential risks and affects these criminal activities have on nations. These crimes are usually well planned and are executed in a very efficient manner. One of the major functions of law is to maintain the order and prevent a wrongful act. In 2003, United Nations Convention Against Transnational Organized Crime came into force, as the state parties came to the realization that no single country can fight the organized crime across border alone without mutual cooperation. ICC is one permanent body that recognizes the need to bring the justice. Thus, in order to set an international platform against the organized crime, the convention framed definition for such organized crimes; although it was observed that not all the elements of the

26 Supra note 19.
27 Ricardo Pereira, After the ICC Office of the Prosecutor’s 2016 Policy Paper on Case Selection and Prioritisation: Towards an International Crime of Ecocide? (Apr. 18, 2020), https://link.springer.com/article/10.1007/s10609-020-09393-y
organized crimes necessarily occur in every case, which was why the convention rather defined ‘organized criminal group’. Under the article 2(a) of the convention, there are four main criteria that qualify as organized criminal group:

1. A structured group of three or more persons;
2. The group exists for a period of time;
3. Acts in concert with committing one serious crime (at least);
4. Main aim is to obtain a financial or other material benefit, directly or indirectly.

Under this convention, a serious crime would indicate the crimes or offences that are punishable with a maximum penalty of incarceration for at least four years. Other activities that qualify as transnational environmental crimes are wildlife trafficking, illegal fishing, illegal logging, mining, water theft, etc. These crimes are estimated to be around $91 billion to $259 billion out of global economy. Whereas the transnational wildlife crimes are estimated at $200 billion annually which is far more disturbing than any other fact.

Conclusive Remark

On national level, assessment of policies and legal framework is highly required before laws are passed by legislature. This assessment should include identification of problem, need for action and discussion over alternatives. The undetected and untraceable illegal trade of the wildlife and forestry has given us enough reasons to retrospect our action. These observations make it evident that there is so much to do with respect to the environmental crimes and harms on international platform. Under the ICC, so far there is not much clarity on the subject of environmental crimes and the trials. To bring charges against an individual or corporation or state party is not entertained by the office of the prosecutor. The environmental crimes are still categorized under the ‘crimes against humanity’, which makes it even difficult to deal with among the traditional war crime issues.

COVID-19 pandemic showed us only one aspect of the future for the humankind. Mass habitat displacement has created problems for environment, but it has increased risk for the wildlife who are now easily bred and raised in captivity. Although the trade is majorly motivated by greed and lust for owning and monopolizing the illegal trade of wildlife and forestry, it reflects the status for many developing and developed countries. Climate change, hunger, poverty, inequality, species extinction and other countless issues related to environment are surfacing every day that are direct result of human intervention.

28 UNDOC, The Doha Declaration: Promoting a Culture of Lawfulness, https://www.unodc.org/e4j/en/organized-crime/module-1/key-issues/definition-in-convention.html
29 Id.
30 Daniel T Cross, Environmental Crimes Pose Threats to Us All (Aug. 23, 2019), https://www.sustainability-times.com/environmental-protection/environmental-crimes-pose-threats-to-us-all/
Green consumption and green spaces promote maintaining green shed in the urban areas; however, despite of knowing the crucial value of the forest land space, hectares of forest land are being encroached and cut down. Post-COVID-19 scenario is certainly a challenge for the entire humanity; it is now more vital to deliver justice to sustainable development and the goals set by the UN. The chances are thin yet not negligible, given a dependable cooperation between the agencies (international and national), authorities and the citizens. Sustainable development was introduced with 17 goals that formed to be SDG which is aimed to be achieved by 2030. But with the unchecked exploitation of resources, it is feared whether we will be able to achieve these goals or not. If within the timeframe we are successful in bringing the offender to the court of law and set a trial against these actors, there is still a scope for conserving the nature from the environmental crimes.

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