

Environmental harm: the missing victims?

Matthew Hall argues that these types of victims have been left behind by policy and lawmaking

Recent decades have witnessed a marked expansion of the so-called 'victims movement' in political and policy circles in many states, leading to important legal reforms in relation to the rights and participation of victims of crime. These have included affording victims' rights and legitimate expectations within those systems and challenged the traditional view of victims as merely another source of evidence in a prosecution case. The UK has been at the forefront of this endeavour: launching the second state-funded victims compensation fund in the world in 1964 (after New Zealand) and introducing 'rights' for victims through a statutory code of practice to be followed by most criminal justice actors.

Despite these developments, however, it is remarkable how little of this 'victims' policy agenda has touched upon the issue of environmental crime, environmental harm and those who suffer as a result of it. Certainly 'environmental victims' are not mentioned in any of the official policy documents or pieces of legislation concerning victimisation in England and Wales. The definitions employed in documents like the UK *Victims Code of Practice*, the *EU Council Framework Decision of 2001 on the standing of victims in criminal proceedings* or the new *EU Directive establishing minimum standards on the rights, support and protection of victims of crime* are too restrictive to adequately cover this kind of harm, even when it results from criminal acts. This state of affairs was reflected by the UK House of Commons Environmental Audit Committee (2004), which emphasised a lack of

awareness of the issue of environmental harm by criminal justice actors, something that the English Law Society in its evidence to the Committee labelled as 'clearly unacceptable'.

The invisibility of 'environmental victims'

In the UK and elsewhere 'environmental victims' have been left behind the main vanguard of the victims' movement and its associated policy developments in the field of criminal justice. Indeed, as noted by Skinnider (2011):

[M]any environmental disruptions are actually legal and take place with the consent of society. Classifying what is an environmental crime involves a complex balancing of communities' interest in jobs and income with ecosystem maintenance, biodiversity and sustainability.

Critical criminology and victimology offers some insights into this political blind spot. Elias (1986) for example argues that society's narrow conception of victimisation is brought about by selective definitions of crime, construed for political purposes, and in the case of environmental degradation, we might add economic purposes. To take an extreme example from elsewhere, it has been documented how the judiciary in

Nigeria had prioritised the country's economic reliance on the oil industry over the protection of the environment and the compensation to individuals and communities for the massive harms caused by that industry on the Nigerian Delta and its peoples (Ebeoku, 2003).

Criminal justice challenges

Of course, environmental victimisation poses a number of novel challenges to traditional criminal justice mechanisms. For example, the majority of criminal justice systems across the world are not geared up to deal with 'mass victimisations' of the kind that are often a feature of environmental offending. Furthermore, the wide and eclectic scope of possible harms that can be associated with environmental victimisation go well beyond those with which criminal justice systems are traditionally concerned: or indeed, some might argue, can ever be concerned given the necessarily high standard of proof that is required to convict defendants in a criminal court. Such impacts might be social, cultural, practical, economic, health-related or (frequently) intergenerational (White, 2008).

That said, there are examples from abroad of policies designed with more 'traditional' forms of victimisation in mind being applied in the environmental sphere. The most notable such case is that of the US *Crime Victims Rights Act* of 2004. Most recently in *Parker: US v US District Court and WR Grace & Co*

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the United States Ninth Circuit Court of Appeals confirmed that prospective victims of environmental harm are included within the ambit of rights provided under the 2004 Act. The US

example is a telling indication that the lack of engagement by criminal justice actors and criminal justice policy makers with environmental crime as a whole, and environmental

victimisation in particular, does not reflect any fundamental incompatibility between such harms and criminal justice. It rather implies (as the UK Law Society suggests) a lack of awareness and appreciation amongst criminal justice working cultures for this kind of harm, which as yet successive governments seem reticent to address.

International moves

Given the global nature of environmental harm, and its lack of respect for borders, many commentators are looking towards a relatively new body of so-called international environmental law to address the problems inherent to the dumping of waste, environmental degradation and climate change. Most recently, the Rio+20 UN Conference on Sustainable Development of June 2012 attracted a great deal of media attention, albeit the 'Outcome Document' produced by the conference has already received staunch academic criticism for failing to establish or take forward firm principles of international law in this area (Cléménçon, 2012). The difficulty from the perspective of victims of environmental harm is of course that international law is usually conceived as a system devised 'by states, for states' and thus excludes individual actors below the state level. Presently however there is a move in international legal scholarship to take greater account of human rights, and indeed the Rio+20 Outcome document does concede:

We recognize that people are at the centre of sustainable development and in this regard we strive for a world that is just, equitable and inclusive, and we commit to work together to promote sustained and inclusive economic growth, social development and environmental protection and thereby to benefit all.

The Outcome Document also goes on to stress 'the need to provide social protection to all members of society, fostering growth, resilience, social justice and cohesion'.

The reference to 'social justice' here in particular is a notable, if vague, hint that states need to concern themselves more with how environmental degradation impacts upon individuals and communities. A similar message may be gleaned from other recent documents, including the *Johannesburg Plan of Implementation* and the *United Nations Millennium Declaration of 2000*.

As is often the case in the realm of integration in environmental law, however, such documents remain at best 'soft law' and thus often do not provide the necessary drive for individual governments to take action. The other possibility at the international level might be to address environmental victimisation through the structure of the International Criminal Court, which is required under the Rome Statue of 1998 to address the needs of victims. At present, however, 'environmental crime' does not fall within the jurisdiction of the court and, in any case, it has been noted that the operation of the provisions designed to address victims' needs at the court are often more difficult to apply in practice than in principle (van Dijk and Letschert, 2011). For this and other reasons, some commentators have spoken of the need for an entirely separate 'international environmental court' and the creation of an international crime of 'ecocide'.

Beyond criminal justice solutions

Of course, it is almost certainly restrictive to assume that *criminal law* (international or otherwise) is the only, or even the best, solution to meet the needs of environmental victims. One other option is to extend present experiments that are ongoing in the UK and elsewhere to facilitate the use of restorative justice to those affected by environmental harms. There is some literature on so-called 'environmental mediation' that examines this possibility, although little in-depth work has been done. More significantly, there is at present a serious absence of empirical research in which victims of environmental harm are

questioned as to their needs and expectations of a criminal justice (or other) system. In some ways then the policy vacuum on this issue reflects the paucity of academic study (even amongst victimologists) of environmental harm.

What is clear, however, is that as the full and varying effects of environmental harm become better understood, and the impacts of that harm on individuals and communities become more obvious, it is likely that the criminal justice system (as well as other mechanisms of justice) will increasingly be called upon to address such issues. As such, it is submitted that the time is now for academics, governments and international organisations alike to truly engage with environmental victimisation just as they have engaged with more traditional criminal victimisation. ■

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