

**LAW AND POLICY ON ECOCIDE AND GENOCIDE: AN IMPERATIVE ROAD TO AMEND THE ROME STATUTE OF INTERNATIONAL CRIMINAL COURT\***

**Abstract**

*Ecocide is the act of killing in the environment that can lead to many deaths. These acts should result to environmental damage for them to be considered an international crime equivalent to genocide. This kind of crime could be connected with climate change due to issue like major storm. This paper analyzed situations of ecocide in the pacific island of Vanuatu that led to calls by stakeholders to equalize these situations that involved massive killings genocide. We are of the view that since the acts of killing by environmental forces have resulted to the level of killing occasioned by genocide at international level, there is need to treat ecocide as genocide is treated. However, since ecocide occurred at international level which can only be punished by international criminal court as stated, stipulated and provided for in the Rome Statute. Trial and punishment of criminals thereto can be possible but the offence must be provided and defined by the statute. We recommend that amendment to the Rome Statute of International Criminal Court to provide for this crime that is so heinous like genocide for the sake of international criminal justice. This is the thrust of this paper.*

**Keywords:** Ecocide, genocide, killing, Vanuatu, International Criminal Justice and Rome Statute of International Criminal Court.

**1. Introduction**

International criminal court is currently responsible for prosecuting four internationally recognized crimes against peace: genocide, crime against humanity, war crimes and the crime of aggression. A fifth could be included through an amendment to the Rome Statute.<sup>1</sup> This fifth crime is Ecocide. The pacific Island of Vanuatu has called for ecocide-wide scale, long term environmental damage – to be considered an international crime equivalent to genocide. The Court (ICC) should consider an amendment to the Rome Statute which sets the court’s legal framework that would criminalize acts that amount to ecocide. We believe this radical idea merits serious discussion.<sup>2</sup> Vanuatu, which is particularly vulnerable to sea level rise, has been an advocate of climate justice at international forums for many years, but has been more vocal since 2015, when Cyclone Pam devastated the island, an example of a major storm whose impact was made significantly worse by climate change. Vanuatu’s statement is a major victory for the Stop Ecocide campaign, which was launched by British lawyer Polly Higgins two years ago. The organization wants any agreed-upon criminal definition of ecocide to include the impacts of climate change as well as other forms of environmental harm. Until now, Vanuatu was the only state to have formally announced it was working with the campaign, which provides diplomatic and practical help for countries to get to the negotiation table. The Republic of Maldives announced on Thursday that it was adding its support as well.

A member of the Maldives parliament and chair of the Parliamentary Standing Committee on Climate Change and Environment, said in a statement the ‘time is ripe’ to consider an amendment to Rome Statute, emphasizing how serious a threat climate change posed to his nation. ‘We see little or no concrete action at multilateral level to bring about transformative changes necessary to prevent the repercussions of climate change,’ Saleem said. ‘It is time justice for climate change victims be recognized as part and parcel of the international criminal justice system.’ To change the Rome Statute, the head of a state that is party to the International Criminal Court must submit a formal amendment. If a two-thirds majority approve the change, it can be adopted into the Rome Statute and countries can formally ratify it.

The idea of ecocide has been around for nearly 50 years and had been under serious consideration in early drafts of the Rome Statute. But it was dropped due to resistance from a few countries including the United States and the United Kingdom. According to the Stop Ecocide campaign, it is the first time since 1972 that a state representative has formally called for ecocide to be recognized at this kind of international forum. Jojo Mehta, spokesperson for Stop Ecocide and co-ordinator of its international diplomatic and campaign teams, said she is optimistic that a formal amendment could be submitted as early as next year, although others believe it is unlikely to happen until at least 2021. This is an idea whose time has not only come, it’s long overdue,’ said Mehta. ‘It’s

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<sup>1</sup> I Kaminski ‘Vulnerable Nations Call for Ecocide to be Recognized as an International crime, available at <https://www.climate-liabilitynews.org/2019/12/06/ecocide-international-criminal-court-vanuatu/> accessed on 12<sup>th</sup> day of December, 2019

<sup>2</sup> J Licht, *Ibid*

committed and courageous of Vanuatu to take the step of openly calling for consideration of a crime of ecocide, and it was clear from the response today that they will not be alone. The political climate is changing, in recognition of the changing climate. This initiative is only going to grow – all we are doing is helping to accelerate a much-needed legal inevitability.’ Pope Francis has lent his support to the idea of making ecocide a crime, proposing in November that ‘sins against ecology’ be added to the teachings of the Catholic Church.

## 2. Clarification of Terms

The term ‘**Ecocide**’ was not defined in the Oxford Advanced Learners Dictionary 9<sup>th</sup> edition, but the term ‘Eco’ and ‘cide’ were defined. Eco is simply defined as connected with the environment while ‘cide’ was defined as the act of killing.<sup>3</sup> The writer of this paper therefore defined ‘Ecocide’ as the act of killing that is connected with the environment. Again, we are of the view that since ecofriendly is defined as not harmful to the environment,<sup>4</sup> ecocide should be opposite of ecofriendly; that is, harmful to the environment.

**Law** is defined as the aggregate of legislation, judicial precedents, and accepted legal principles; the body of authoritative grounds of judicial and administrative action; especially the body of rules, standards and principles that the courts of a particular jurisdiction apply in deciding controversies brought before them. Put in another way, law is defined as the set of rules or principles dealing with a specific area of a legal system.<sup>5</sup> **Policy**, on the other hand is defined as a standard course of action that has been officially established by an organization, business, political party etc.<sup>6</sup> **Innovation** is defined as the introduction of new things, ideas or ways of doing something; an age of technological innovations.<sup>7</sup> **Beg** as a verb means to ask somebody for something especially in an anxious way because you want or need it very much.<sup>8</sup> **Amendment** is defined as a small change or improvement that is made to a law or a document, the process of changing a law or a document; to introduce/purpose / table an amendment.<sup>9</sup> **Rome Statute** is hereinafter called the International Criminal Court Statute. This is the Rome Treaty of 1998 which established the International Criminal Court as a permanent institution with power to exercise jurisdiction over persons ‘for the most serious crimes of international concern.’<sup>10</sup> **International Criminal Court** is defined as a court established by a treaty known as the statute of international criminal court (effective 2002), with jurisdiction, over genocides, crime against humanity, war crimes and aggression. It sits in the Hague, the Netherlands.<sup>11</sup> **Genocide** is defined as an international crime involving acts causing serious physical and mental harm with the intent to destroy, partially or entirely a national, ethnic, racial or religious group. The widely ratified Genocide Convention of 1948 defines the crime. Raphael Lemkin, a Polish jurist of Jewish origin is credited with developing the modern principles relating to the crime of genocide. The word was also coined by him. His ideas were based on the activities of the Nazi regime in deliberately targeting for elimination the Jews, Gypsies and other groups.<sup>12</sup> The International Criminal Court has jurisdiction to try those accused of genocide. Many countries also have criminal laws providing punishment for individual convicted of genocide.<sup>13</sup> **Climate Change** is the changes in the earth’s weather, including changes in temperature, wind patterns and rainfall, especially the increase in the temperature of the earth’s atmosphere that is caused by the increase of particular gases, especially carbon dioxide.<sup>14</sup> It is also a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is an addition to natural climate variability observed over comparable time periods. **Ecology** is defined as the relation of plants and living creature to each other and to their environment, the study of this: plant/animal/human ecology.<sup>15</sup>

<sup>3</sup> A S Hornby, *Oxford Advanced Learner’s Dictionary* (Oxford: 9th ed, Oxford University Press, 2015)

<sup>4</sup> *Ibid*

<sup>5</sup> B A Garner, *Black’s Law Dictionary*

<sup>6</sup> *Ibid*

<sup>7</sup> *Op.cit*

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> Paragraph 4 of the Preamble and Article 1 of the Rome Statute of the International Criminal Court.

<sup>11</sup> Black’s Law dictionary *op.cit*

<sup>12</sup> J Rehman, *International Human Right Law* (Edinburgh, 2<sup>nd</sup> ed, Pearson Edu. Ltd, 2010 )145.

<sup>13</sup> *Ibid*

<sup>14</sup> Oxford Advanced Learner’s Dictionary *Op.cit*

<sup>15</sup> L I Nwokike, ‘Climate Change Adaptation: A determining force towards Nigeria Economic, Environmental and Social Development’, Umunze, *Journal of Business and General Education* (BUSGEN), (2009) Vol. 3, No. 1, 155

### 3. Background and Establishment of ICC

The first step towards the creation of a permanent international criminal court was taken in the Treaty of Versailles, 1919<sup>16</sup> and later in the draft statute for a court to try international terrorists which was produced by the League of Nations in 1937.<sup>17</sup> Owing to the weaknesses of the League, nothing concrete resulted from these measures. In the aftermath of the Nuremberg and Tokyo trials, the international community represented by the newly formed United Nations expressed a desire to set up an international penal tribunal in 1948. But the cold war which developed between the East and the West (particularly between USSR and USA) stultified the move towards the establishment of such a tribunal. For almost four decades, the idea remained in deep freeze until the end of the cold war when the General Assembly of the United Nations raised the issue once again in 1989<sup>18</sup> following an application by Trinidad and Tobago for the establishment of a special international criminal court to deal with the problem of drug trafficking.<sup>19</sup> The matter was referred to the International Law Commission which submitted its Report in 1990. The Report covered not only drug trafficking but other crimes which may be of concern to the international community.<sup>20</sup> The ILC continued its work and in 1993 produced a comprehensive Report (modified in 1994) which recommended a conference of plenipotentiaries to consider the adoption of a convention on the establishment of a permanent international criminal court. Also in the early 1990s, events in the former Yugoslavia and Rwanda which prompted the Security Council of the United Nations to set up the ICTY and ICTR coincided with the efforts of the ILC to produce a workable legal framework for a permanent international criminal adjudication. The successes recorded by ICTY and ICTR further encouraged more efforts for the creation of ICC.<sup>21</sup> The General Assembly set up committees to review the draft prepared by ILC in the light of the proposal and amendments suggested by states.

In December, 1997 the United Nations convened a Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court by the General Assembly. The conference took place in Rome from June 15 to July 17, 1998. In attendance as observers were inter-governmental and credible non-governmental organizations. At the end, the conference succeeded in adopting the Rome Statute but not without difficulties and disagreements, most of which were however, resolved by compromises. At the negotiations, three major groups emerged with three different, ideological propositions.<sup>22</sup> The group which was tagged the 'Like-Minded states' led by Canada and Australia wanted a strong court with an independent Prosecutor and all encompassing definitions of war crimes. Among this group were the United Kingdom and France. But other Security Council members joined the second group led by the USA which advocated for a system which assigns a strong role to the Security Council and excludes aggression and references to nuclear weapons in the jurisdiction of the court. The third group led by India comprised of members of the Non-Aligned Movement. This last group canvassed for a lesser role to the Security Council and the inclusion of the crime of aggression, drug trafficking and terrorism in the jurisdiction of the court as well as the power to inflict death sentence by the court. As was noted earlier, most of the differences were eventually resolved by compromises. Nevertheless, the USA and a few other states opted out of the treaty<sup>23</sup> on grounds that can hardly be regarded as convincing by a dispassionate mind. Thus, America which initially supported the idea of a permanent court against impunity eventually became the fiercest opponent of ICC.

### 4. Crimes within the Jurisdiction of ICC

Article 5(1) of the Rome statute provides that the jurisdiction of the court shall be limited to 'the most serious crimes of concern to the international community as a whole.' The article continues in the following words: The

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<sup>16</sup> C L Blakesley, 'Obstacles to creation of a Permanent War Crimes Tribunal' in Fletcher Forum of World Affairs, Vol. 18, No. 2, P. 18. Cited in Unegbu, 'The International Criminal Court: Antecedents and Prospects,' in Nwauche and Asogwah, *op.cit.*, pp. 1-20 see also Asogwah, Frank, 'An Overview of the Statute of the International Criminal Court' in Nwauche and Asogwah, (eds), *Essays in Hon of Prof C.O. Okonkwo* (Port Harcourt, Jite Books, 2000) 21-50.

<sup>17</sup> Weller, Marc, 'The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia', 86, AJIL 568, cited in Wallace, M M Rebecca, *International Law*, (5th ed.), (London: Sweet and Maxwell, 2005) p. 246

<sup>18</sup> See UNGA Resolution 4439 of Dec. 1989

<sup>19</sup> See UN Doc. A/49/10 of 1994. President Gorbachev of USSR had earlier suggested it as a measure against terrorism. See G Robertson, *op.cit.*, p 347

<sup>20</sup> See UN Doc, *Crime Against Humanity: The Struggle for Global Justice* (London, 2<sup>nd</sup> ed Penguin Books) 347

<sup>21</sup> See R M M Wallace, *International Law* (London, 5th ed, Thomson/Sweet and Maxwell, 2005) 250 and J A Williamson, An Overview of the International Criminal Jurisdictions operating in Africa pp. 111-131. See also Posse, Gutierrez 3 Hortensia, 'The Relationship Between International Humanitarian Law and the International Criminal Tribunals' IRRC vol. 88 (2006) No 861

<sup>22</sup> See also Robertson, *op.cit.*, p 325

<sup>23</sup> See I E Edemekong, *Enforcement of Armed Conflicts* (Uyo, IVY Press Ltd, 2004) chapter 6. The treaty was adopted with 120 states voting in favor, seven voted against and twenty abstained. Those who voted against were USA, China, Iraq, Israel, Libya, Sudan and Syria eu.wikipedia-org/wiki/international

court has jurisdiction in accordance with the statute with respect to the following crimes: Crime of genocide, Crimes against humanity, War crimes, and Crime of aggression With respect to the crime of aggression, Article 5(2) provides that it shall come into effect upon a definition of the crime and the conditions under which the court shall exercise jurisdiction thereof by an agreement among the states parties under Articles 121 and 123 of the statute.<sup>24</sup> Articles 6, 7 and 8 respectively define/describe in details the crime of genocide, crimes against humanity and war crimes. The call for an adding Ecocide to the crimes within the jurisdiction of ICC as the number ‘e’ is the thrust of this paper.

### Crime of Genocide<sup>25</sup>

Article 6 of the statute dealing with genocide provides as follows:

For the purpose of this Statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group of another group.

This definition of genocide is in *pari materia* with the definition in the Genocide Convention and the statutes of the ad hoc tribunals. A brief historical background will assist in understanding the nature, scope and seriousness of the crime of genocide.

The word genocide was coined by Raphael Lemkin from the Greek word ‘genos’ which means race or tribe and the Latin word ‘cide’ meaning to kill.<sup>26</sup> Lemkin, through his campaigns, was instrumental in focusing the conscience of the international community to the seriousness of genocide. His unrelenting efforts paid off eventually when he persuaded the United Nations to adopt the ‘UN Convention on Prevention and Punishment of the Crime of Genocide’ in 1948.<sup>27</sup> The distinguishing features of this crime are the emphasis placed on the treatment of individuals because they form part of group as opposed to an individual qua individual. In the words of Lemkin, genocide ‘is directed against the national group as an entity and the actions involved are directed against the individuals not in their personal capacity but as members of the national group.’<sup>28</sup> In other words, the ultimate target is the group through the individual members thereof. Among the charges against the accused persons in the Nuremberg trials was one alleging that they conducted ‘deliberate and systematic genocide namely, the extermination of racial and national groups, against the civilian population of certain occupied territories in order to destroy particular races and classes of people and national, racial or religious groups.’<sup>29</sup> In the aftermath of the trials, genocide gained recognition as an international crime and in 1946 the General Assembly of the UN unanimously adopted Resolution 96(1) which paved the way for the adoption of the 1948 Convention.<sup>30</sup>

Few examples may suffice to show that genocide is a historical reality that ought not to be ignored. During the World War I, Armenians were allegedly to have suffered genocide in the hands of the Turks.<sup>31</sup> In the period preceding World War II and during the war, Jews, Gypsies and Poles suffered genocide in the hands of the Nazi regime of Germany.<sup>32</sup> In recent times, Tutsis suffered the same fate in the hands of Hutus in Rwanda.<sup>33</sup> That

<sup>24</sup> ICC Review Conference took place in Kampala, Uganda from May to June 2010 were the crime of Aggression was defined in terms of UN resolution 3314 of 1974. But it was agreed that Jurisdiction will not come into force until 1/1/2017

<sup>25</sup> This crime was adequately dealt with by the ICTR. See for instance, *Prosecutor v. Jean Paul Akayesu*, ICTR-96-4-5 and *Prosecutor v. Jean Kambanda*, ICTR 97-23-5

<sup>26</sup> See R Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government Proposals for Redress*, (Carnegie Endowment for World Peace, 1994) cited in C C Nweze, “Definition of Crimes in the Rome Statute of the International Criminal Court: Implications for the Protection of Human Rights Norms,” in *UNIZIK Law Journal*, Vol. 6 No 1, 2007, p. 142, see also D J Harris, *Cases and Materials in International Law*, (London, 2nd ed, Sweet and Maxwell, 1979)

<sup>27</sup> T De Claire and E Shorts, *International Criminal Law and Human Rights*, 1st ed., (London: Sweet and Maxwell, 2002) p. 65,

<sup>28</sup> *Ibid*, p. 66

<sup>29</sup> Genocidal activities before and during World War II were directed mostly against the Jews, Poles and Gypsies (the Roma). An estimated six million Jews were massacred in what is now known as the holocaust. See T De Claire and E Short, *ibid*. see also Robertson, *op.cit*, p. 17 cited in Igwe and Ovat, “Human Rights, Trade and Investment” in Unegbu and Okoronye, *Legal Development in the New World Order* (Enugu: Snaap Press Books, 2009) 53-78

<sup>30</sup> Claire De Than, *International Crime Law and Human Rights* (London: Sweet and Maxwell, 2002)

<sup>31</sup> See Buergenthal, Thomas., *International Human Rights in a Nutshell*, 2nd ed. (Minnesota: West Publishing Co., 1995)

<sup>32</sup> See Claire De Than, *op.cit*

<sup>33</sup> *Prosecutor v. Jean Paul Akayesu*, ICTR 96-4-5 and *Prosecutor v. Jean Kambanda*, ICTR 07-23-5.

genocide is about the most serious crime in a civilized world cannot be over-emphasized. It is indeed the 'crime of crimes.'<sup>34</sup> The statutes of ICTY, ICTR and ICC filled a major gap in the 1948 Genocide Convention which has remained redundant owing to the absence of any provision for its enforcement. This omission, in our view encouraged impunity in this respect as was witnessed in Rwanda and the former Yugoslavia.

With regard to the definition of genocide, scholars have argued that since the specific group targeted for extinction is restricted to those categories of people of national, ethnic, racial or religious, it is discriminatory. According to De Than and Shorts;<sup>35</sup> omitted intentionally, area social, cultural, political and other groups.' One reason for these omissions is that genocide is supposedly a very specific and distinctive crime. At the time of adoption of the Genocide Convention it was thought that including 'other groups' whose characteristics did not possess the qualities of stability or permanency or who were not easily identifiable, would create uncertainty and ambiguity within the meaning of the word 'genocide'. This argument is not tenable because it may have the effect of discriminating the targeting of members of other groups. Those involved in targeting other groups however, may still be prosecuted under other categories of internationally recognized crimes such as crimes against humanity or war crimes.

The restriction on the meaning of the word 'group' highlights the deficiency that political and social groups, homosexuals, the aged, the mentally and physically disabled and so forth are per se excluded from the protection of the law. Indeed, many of the killings during the Second World War could not be characterized as genocide because the Nazis deliberately exterminated such groups as gay men, gypsies, the mentally ill and so forth, as well as some one hundred and fifty thousand of its own 'pure' race. Moreover, since state parties are obliged to incorporate the crime of genocide into their national laws, there is nothing preventing a particular state legally declaring that such a crime may be committed against 'all' groups irrespective of their particular characteristics. The 'groups' mentioned in the crime of genocide have been defined in the ICTR case of *Prosecutor v. Akayesu*<sup>36</sup> as follows:

a national group is defined as a people who are perceived to share a legal bond based on common citizenship, coupled with reciprocity of rights and duties. Ethnic group is a group whose members share a common language or culture (or a group which distinguishes itself as such; or a group identified as such by others, including perpetrators of the crimes... Racial group is based on the hereditary physical traits often identified with a geographical region, irrespective of linguistic, cultural, national or religious factors. Religious group is one whose members share the same religion, denomination or mode of worship.

The next question is; how many members of that group must be destroyed in order for the words 'in part' to be fulfilled?

In the ICTY case of *Prosecutor v. Krstic*<sup>37</sup> the accused was charged, inter alia, with genocide in relation to the massacres of Bosnian Muslim men of military age in Srebrenica between July 11, and November 1, 1995. The defence submitted that the Bosnian Muslims of Srebrenica did not represent part of a protected group within the meaning of Article 4(2) of the Statute of the ICTY. The prosecution argued that killing the Bosnian-Muslim men in Srebrenica affected not only a substantial part of that group, but also that those men represented a significant part of that group. The defence argued, inter alia, that had there been an intention to destroy the Bosnian Muslims, they would have murdered all its inhabitants, that is women and children, as well as the men; instead the VRS (Bosnian Serb Army) merely wished to kill those men in order to eliminate a military threat.<sup>38</sup> The Trial Chamber disagreed and stated as follows:

- (1) the Bosnian Serb forces knew by the time they decided to kill all men, that this selective destruction of the group would have lasting impact upon the entire group;
- (2) the Bosnian forces ought to be aware of the catastrophic impact that the disappearance of two or more generation of men would have on the survival of a traditional patriarchal society;
- (3) the killings and the forcible transfer of the women, children and elderly would inevitably result in the physical disappearance of the Bosnian Muslims in Srebrenica; and
- (4) intent by the Bosnian Serb forces to target the Bosnian Muslims as a group is further evidenced by the destruction of the homes of Bosnian Muslims in Srebrenica and Potocari and the principal Mosque in Srebrenica soon after the attack.

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<sup>34</sup> Per Laity Kama, J. in Kambanda's case, supra

<sup>35</sup> Op.cit, see also Umozurike, U. Oji, *Self-Determination in International Law* (Connecticut: Archon Books, 1972) p. 125

<sup>36</sup> Supra, paragraph 211-212

<sup>37</sup> IT-98-33-T of Nov. 1, 2001

<sup>38</sup> Paragraph 593-595 of the judgment

Accordingly, the Trial Chamber held that attempting to massacre all the Bosnian Muslim men of military age amounted to genocide for the purposes of Article 4.

The ‘actus reus’ of the offence of genocide thus comprises of any one of the stipulated acts committed by positive means or by acts of omission as stated in Article 6(a) – (e) of the ICC Statute. Genocide is a unique crime, its aim being the physical or biological destruction of the targeted group. The mental element of the crime differs from other international crimes. The introductory part of the definition under Article 6 reads:

For the purpose of this statute, ‘genocide’ means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such...<sup>39</sup>

Thus, in order for this special intent to be established, it must be shown that the act was directed against a national, ethnical, racial or religious group and was carried out with the clear objective of destroying in whole or in part that particular group. Anything short of this may constitute another offence.<sup>40</sup> Acts which ultimately destroy in whole or in part a protected group, but were not committed with the intent to destroy that group, will not constitute genocide; again acts committed with any objective other than the destruction of a protected group, will not suffice for a prosecution of genocide, even if the consequences of that action actually results in the annihilation of that group; destroying one group when it was intended to destroy another will also not amount to genocide. Recklessness is not part of the *mens rea* of the offence. The intention to destroy a particular group may take the form of a plan or policy which may in fact not result in the extinction of that group. But as long as the special intent exists which in reality did not cause the destruction of the group, this may constitute attempted genocide; it does not matter that the acts were not fully completed; what is relevant is that the perpetrator intended the genocidal events to come to fruition. Finally, it is not necessary that the perpetrator intends every detail of the plan; it will suffice for the crime of genocide if he intended the end result.

Proof of specific intent may also be inferred and determined from the circumstances of the particular event or through a pattern of purposeful actions as stated by the trial chamber in the Rwandan case of *Prosecutor v. Kayishema & Rusindana*.<sup>41</sup> In order for the prosecution to prove genocide, discriminatory intent is required. It must be proved that the accused targeted a protected group. Merely attacking and killing members of a particular group is not sufficient to constitute genocide; it must be proved that the perpetrator targeted that group in whole or in part. The various methods and situations in which these crimes may be perpetrated include the use of labour, prison and concentration camps which are set up to hold a particular group with the intention of bringing about their eventual destruction either through starvation, torture, experimentation, or a systematic means of extermination. Typical examples of these methods were the deliberate extermination of the European Jewish people and other groups during World War II and in more recent times the horrific acts committed in the former Yugoslavia and Rwanda.<sup>42</sup>

### 5. Comparative Analysis of Ecocide and Genocide

Ecocide was defined as the act of killing that is connected with the environment whereas Genocide was defined as an international crime involving acts causing serious physical and mental harm with the intent to destroy, partially or entirely a national, ethnic, racial or religious group. Killing on the other hand is defined as an act of killing somebody deliberately. It is synonymous with murder.<sup>43</sup> Therefore, when an act of killing is in a form of murder and another act involves causing serious physical and mental harm with intent to destroy humans, the researcher is of the view that both should be equalized and treated as serious crimes. These crimes when perpetrated at the International level should be punished as such. In environmental law, environmental degradation has the same meaning of environmental pollution, environmental contamination and decline in environmental quality.<sup>44</sup> Pollution has been defined as the introduction by man into the environment of substances or energy liable to cause hazards to human health, harm to living resources and ecological system, damage to structures or amenity or interference with legitimate use of the environment.<sup>45</sup> Put in another way, pollution can be defined as the direct or indirect introduction as a result of human activity of substances, vibration, heat or noise into the air, water or land which may be harmful to human health or the quality of the environment, results in damage to

<sup>39</sup> Article 6 of the Rome Statute is *in pari materia* with Article 2 of the Genocide Convention, 1948

<sup>40</sup> Article 6, *ibid*

<sup>41</sup> ICTR-95-1 (Trial Chamber 2)

<sup>42</sup> M O Unegbu From Nuremberg Charter To Rome Statute: Judicial Enforcement of International Humanitarian Law (Enugu: SNAPP Press Ltd, 2015) 185

<sup>43</sup> A S Hornby Oxford Advanced Learners Dictionary of Current English, *op.cit*

<sup>44</sup> A K Usman Environmental Protection Law and Practice (Ibadan: Ababa Press Ltd, 2012) 56

<sup>45</sup> Art 2(2) of E C Council Directive 1996

material, property or impair or interfere with amenities and other legitimate use of the environment.<sup>46</sup> There are two points worthy of note relative to the above definition of environmental pollution. The first point is that the definitions hold human beings as the sole and exclusive agents of environmental pollution. There are however instances when environmental pollution may seem to arise from natural sources. For instance, radio gas emission from rocks and sediments is said to cause radioactive environmental pollution that can lead to cancer and leukaemia in humans.<sup>47</sup> Man remains the central agent of environmental pollution despite the natural causes. Decline in environmental quality on the other hand has to do with environmental deterioration such as extinction of animal and plant species, desertification, ozone layer depletion and global warming among others. It is worthy to note here cyclone pam was an example of a major storm whose impact was made significantly worse by climate change and which led the people in the Island of Vanuatu to champion the cause against ecocide. This is an act of environmental degradation, which of course, forms the fulcrum of this paper.

## **6. Conclusion and Recommendation**

Our conclusion therefore is that the men who can cause this form of environmental degradation at international level should be treated the same way men that cause genocide are treated. However, since it is international criminal court that provide for punishment for international crime. We recommend that there is need to add Ecocide as the number five crime in the Rome Statute and that there is need to amend the Rome Statute of ICC to provide/add the crime before it can be punished thereto.

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<sup>46</sup> See Regulation 2 of the Pollution Abatement in industries and facilities generating waste regulations.

<sup>47</sup> A K Usman, *op.cit*