

## ANALYSIS OF THE LINK BETWEEN HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION WITHIN THE EXISTING INTERNATIONAL HUMAN RIGHTS LAW

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### Abstract

Recent emergence and increased awareness of the need for conservation of the environment has certainly introduced a new dimension of human rights under the international human rights law. Although, the 1948 Universal Declaration of Human Rights did not contemplate or mention the environment, the world has begun to realise how much damage human activities could cause to the environment and mankind. This, coupled with the recognition of the inextricable relation between man and the environment, raise the question on the need for human rights law to recognise the importance of environmental protection. This is because, a safe and clean environment is integral to the realisation and full enjoyment of a broad range of human rights, including the rights to life, health, food, water and hygiene. Accordingly, human rights obligations in relation to a clean, healthy and sustainable environment became the core concern of the 'mandate on human rights and the environment' espoused by the UN General Assembly in 2022. Using doctrinal method, this article analyses the nexus between human rights and the environment under international human rights legal framework. The article finds that, beyond the inclusion of environmental issues in the broad range of human rights, there is no global/international agreement yet specifically on right to a healthy environment. It argues that environmental human right falls within the purview of the existing international human rights law, and recommends for a coherent and comprehensive universal human rights law on the environment.

**Keywords: HUMAN RIGHTS, ENVIRONMENTAL RIGHTS, ENVIRONMENTAL PROTECTION, RELATIONSHIPS AND ENVIRONMENTAL DEGRADATION**

### 1.0 Introduction

Since 1948, over 75 years ago, the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR) which essentially set out a wide range of fundamental rights and freedoms to which all people are entitled<sup>1</sup>. The new and evolving threats to the environment resulting from man's activities only call to remembrance, the centrality of these rights in every facet of human existence. Man, all over the globe depends on the environment, thus his existence and sustenance are inextricably linked to it, indicating the essentiality of the environment to human life. Though, the understanding that all human beings depend on the environment in which they live is not new, the realization and recognition regarding the correlations between human rights and the environment have greatly increased globally in the recent years. Due to the increase of human activities degrading the environment and affecting our well-being, environmental rights have emerged as a new dimension or extension of fundamental human rights. Environmental right is not an 'abstract, remote or irrelevant concept but, a measurable, prominent and functional aspect of the society and its ecology'<sup>2</sup>. Such rights require respect and protection by the law. It is now, a widely accepted fact that a safe, clean, healthy and sustainable environment is *sine quo non* and integral to the realization and full enjoyment of a broad range of human rights, including the rights to life,

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<sup>1</sup>A Okai, 'The Critical Connection between Human Rights and our Natural World', (2022) UNDP <<https://www.undp.org/blog/critical-connection-between-human-rights-and-our-natural-world>>. Accessed on 19 December, 2023.

<sup>2</sup>The UN Environment Programme', (June 2020) <https://www.unep.org/resources/infographic/linking-human-rights-and-environment-illustrations>. Accessed on 20 December, 2023.

health, food, water and hygiene<sup>3</sup>. In keeping with this knowledge, there has been a tremendous increase in recent years, in the number and scope of international and domestic laws, judicial decisions, as well as academic studies regarding the relationships between human rights and the environmental protection<sup>4</sup>. For instance, ‘the human rights and the environment mandate’, established in 2012 and extended in 2018, takes the responsibility of investigating the human rights obligations as they relate to a safe, clean, healthy and sustainable environment<sup>5</sup>. The investigations are done with the aim of promoting and inculcating best practices regarding the use of human rights in environmental policymaking. Additionally, many countries now embody the right to a healthy environment in their constitutions.

Indeed, the understanding and knowledge of the interconnection and interdependent nature of human rights and the environment are crucial, to spur coordinated actions for the protection of these international concepts by developing the necessary mechanisms and laws. Human rights belong to all people so, preserving them is a shared responsibility<sup>6</sup>. The work therefore, examines the nexus between human rights and the environment, to determine how they impact each other and find solution through international human rights provisions.

## **2.0 Relation between Human Rights and Environmental Protection**

Right to a clean and healthy environment are being widely accepted as an aspect or extension of a basic human rights internationally. This is known as environmental rights and is defined as ‘any proclamation of a human right to environmental conditions of a specified quality’<sup>7</sup>. Environmental human rights, is the human rights understood to be related to environmental protection and, clarifications on this relationship are essential since they are ‘late arrivals to the body of human rights law’<sup>8</sup>. Obviously, the Universal Declaration of Human Rights of 1948 makes no explicit mention of the environment, nor at the time, did the national constitutions upon which the drafters of the Universal Declaration relied for inspiration. The silence was explainable because, although, man has never been oblivious of his dependence on the environment, the world has just begun to appreciate the gravity of the danger or damage human activities could cause to the environment and, invariably, to man<sup>9</sup>.

Human rights and the environment are intrinsically and inextricably interwoven in that, human rights cannot be enjoyed without a safe, clean and healthy environment, while sustainable environmental protection and governance would be a sheer delusion without the establishment of and respect for human rights through a robust legal framework. In essence, while environmental degradation interferes with the enjoyment of human rights, effective protection of the environment can be achieved through human rights approach. The relationship between human rights and the environment, and the impacts of one on the other has long been established. Such relationship has been summarized in this way: ‘the nature of the environment is a primary determinant of livelihood patterns, whereas livelihood patterns, in turn, often shapes and reshapes

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<sup>3</sup>‘About Human Rights and the Environment’, <https://www.ohchr.org/en/special-procedures/sr-environment/about-human-rights-and-environment>. Accessed on 20 December, 2023.

<sup>4</sup>*Ibid.*

<sup>5</sup>J H Knox, ‘The United Nations Mandate on Human Rights and the Environment’, (2017) < <https://www.cairn.info/revue-juridique-de-l-environnement-2017-2-page-251.htm>>. Accessed on 20 December, 2023.

<sup>6</sup>A Okai, (n1)

<sup>7</sup>D L Shelton, ‘Developing Substantive Environmental Rights’ (2010) *Journal of Human Rights and the Environment*, Vol. 1 No. 1, pp. 89–120

<sup>8</sup>J H Knox, (n5).

<sup>9</sup>*Ibid.*

the environment'<sup>10</sup>. Invariably, a 'polluted, hazardous and otherwise unhealthy environment is tantamount to a violation of human rights'<sup>11</sup>. However, the ongoing triple planetary crisis of climate change, pollution, and biodiversity loss presently constitute huge threats to the global environment and the fundamental rights of all people. Accordingly, issues relating to environmental protection require serious and urgent attention today both in the national and international plane. This is due to the fact that the realization and full enjoyment of human rights would squarely depend on the state and functionality of the environment. This probably informs the reason why the United Nations General Assembly, which is the principal policy-making body of the UN, on 28 July 2022, passed a resolution recognizing human rights to a clean, healthy and sustainable environment<sup>12</sup>. While recognizing the human rights implications of environmental damage, the Assembly noted with concern that, climate change and environmental degradation were some of the most pressing threats to human rights and humanity's future<sup>13</sup>. The right to a clean, healthy and sustainable environment (environmental right) is therefore, related to other forms of human rights and existing international law<sup>14</sup>. Its promotion would require the full implementation of the multilateral environmental agreements (MEAs) under the principles of international environmental law.<sup>15</sup>

Although, the resolution is not a legally binding document on the UN Member States, it is the springboard, prompting States to incorporate the right to a clean environment in national constitutions and regional treaties, in view to implementing these laws. Prior to the above declaration by the UN General Assembly on human rights to a clean environment, the United Nations Human Rights Council (UNHRC) had earlier adopted a resolution<sup>16</sup> recognizing that a clean, healthy and sustainable environment is a human right<sup>17</sup>. Consequently, the UN General Assembly Declaration on the right to a clean, healthy and sustainable environment was a follow up or aftermath of the UN Human Rights Council's resolution.

In addition to the recognition and association of human rights with a clean environment by these international bodies, more than 150 States now recognize and protect the right to a clean and healthy environment through their constitutions, national laws judicial decisions or through ratification of international treaties<sup>18</sup>. This trend is not only commendable but a necessary requirement for the conservation and protection of our environment to ensure the realization and full enjoyment of the fundamental human rights espoused by the international human rights law. Governments are therefore, invited to further consider the environmental right issue at the UN General Assembly for a comprehensive, consolidated consensus regarding what these rights would entail. With this, 'the General Assembly could catalyze more ambitious, coherent and coordinated action to protect the environment'<sup>19</sup> and safeguard our collective human rights. Recognition of the human rights to a clean and healthy paves the way for the full enjoyment of all human rights,

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<sup>10</sup>A Musa and H Y Bappah, 'Issues and Challenges on Environmental Rights: The Nigerian Experience', (2014) [https://www.researchgate.net/publication/348546371\\_ISSUES\\_AND\\_CHALLENGES\\_ON\\_ENVIRONMENTAL\\_RIGHTS\\_THE\\_NIGERIAN\\_EXPERIENCE](https://www.researchgate.net/publication/348546371_ISSUES_AND_CHALLENGES_ON_ENVIRONMENTAL_RIGHTS_THE_NIGERIAN_EXPERIENCE). Accessed on January 4, 2024.

<sup>11</sup>'Geneva Environment Network' (Dec. 2023) <https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment/>. Accessed on 22 December, 2023.

<sup>12</sup>United Nations General Assembly Resolution A/76/L/75

<sup>13</sup>'Geneva Environment Network' (n8)

<sup>14</sup>UNGA Resolution A/76/L/75, *para.* 2

<sup>15</sup>*Ibid*, *para.* 3

<sup>16</sup>Resolution 48/13 adopted on 8 October 2021.

<sup>17</sup>A B Hehris, 'UN Recognition of the Right to a Clean, Healthy and Sustainable Environment: Past development and Future Prospects' (April 2022) <https://www.ohchr.org/en/statements-and-speeches/2022/04/right-healthy-environment#:~:text=Human%20Rights%20Council%20resolution%2048,at%20the%20UN%20General%20Assembly>. Accessed on 22 December, 2023.

<sup>18</sup>*Ibid*.

<sup>19</sup>*Ibid*.

including the rights to life, health, food, water and hygiene, among others<sup>20</sup>. Such recognition invariably creates an obligation on all States, under international human rights law, to respect, protect and fulfil the right to a clean, healthy and sustainable environment<sup>21</sup>. This right-based approach to environmental action would not only ensure, but enhance effectiveness and accountability in relation to environmental actions and decision-making and enable those affected by environmental damage seek redress. This will, for instance, secure respect for the rights of Indigenous Peoples whose human rights have been adjudged as being disproportionately affected by the impacts of the triple planetary crisis<sup>22</sup> and state action, with constant struggle to make their voices heard.

### 3.0 Environmental Protection Under International Human Rights Law

Protection and conservation of the environment are the core concern of the environmental law. However, both environmental law itself, and the international recognition of human rights and freedoms derive from the common interest of mankind<sup>23</sup>. The nexus between the two concepts had been recognized and established since early 1972, by the *Stockholm Declaration*<sup>24</sup> in the first World Conference on Environment. The *Stockholm Declaration* in essence, placed environmental issues and challenges at the forefront of international concerns. Accordingly, it stipulates in its *principle I* that: 'Man has the fundamental right to freedom, equality, and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations'. The right to environment was therefore, proclaimed at the beginning of the "environmental era" at a global level<sup>25</sup>. Just like the World Charter of Nature<sup>26</sup>, which provides for the rights and duties resulting from the necessity to protect the environment, the *Stockholm Declaration*, though exert positive impact towards environmental protection, is a mere legal but non-mandatory document. However, they are a number of human rights provisions with a mandatory character in regional charters for the protection of human rights in relation to the environment. For instance, the African Charter of Human and Peoples' Rights, 1981 recognizes the rights of "all peoples" to a "generally satisfactory environment favourable to their development."<sup>27</sup> Also, the American Convention, another human rights protection system, *Article II* of an Additional Protocol to the Convention on Human Rights in relation to Economic, Social, and Cultural Rights<sup>28</sup>, states that: "1. Everyone shall have the right to live in a healthy environment and to have access to basic public services. 2. The States Parties shall promote the protection, preservation and improvement of the environment."<sup>29</sup> All these only point to the fact that environmental rights have been recognized in positive international law.<sup>30</sup>

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<sup>20</sup>"Link Between Human Rights and Environment must be Preserved", (November, 2023) <https://www.ohchr.org/en/stories/2023/11/link-between-humans-and-environment-must-be-preserved>. Accessed on 28 December, 2023.

<sup>21</sup>*Ibid.*

<sup>22</sup>*Ibid.*

<sup>23</sup>A Kiss, 'International Human Rights Law and Environmental Problems' <https://archive.unu.edu/unupress/unupbooks/uu25ee/uu25ee0k.htm>. Accessed on 9 January, 2023.

<sup>24</sup>United Nations Conference on the Human Environment, 5 – 16 June 1972, Stockholm

<sup>25</sup>A Kiss (n22)

<sup>26</sup>UN General Assembly Resolution 37/7 adopted on 28 October, 1982, which proclaims five principles of conservation by which all human conduct affecting nature should be guided and judged.

<sup>27</sup> African Charter of Human and People's Rights (Banjul, 20 June 1981), Art. 24.

<sup>28</sup> Protocol of San Salvador

<sup>29</sup>Protocol adopted at San Salvador on 18 Nov. 1988. 28.

<sup>30</sup>A Kiss, (n24)

Similarly, several multilateral environmental agreements (MEAs)<sup>31</sup> now acknowledge the linkages between human rights and the environment<sup>32</sup>. Also, major human rights instruments, like the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all forms of Discrimination Against Women and the Convention on the Rights of the Child, incorporate important provisions related to human rights and the environment<sup>33</sup>. Certain international bodies, including the Human Rights Council, the International Court of Justice, and the World Bank Inspection Panel have also recognized and addressed the linkages between human rights and the environment, thereby offering protection to the environment. For instance, a recent United Nations Human Rights Council resolution on climate change stresses that “human rights obligations, standards and principles have the potential to inform and strengthen international, regional and national policymaking in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes”<sup>34</sup>. In its earlier resolution on human rights and the environment, the Council encourages States to step up action regarding respect for, and promotion of human rights within the framework of the United Nations Framework Convention on Climate Change (UNFCCC)<sup>35</sup>, calls for them “to respect, protect and fulfil human rights, including in all actions undertaken to address environmental challenges” while emphasizing that environmental degradation can have some negative impact, both direct and indirect, on the effective enjoyment of all human rights<sup>36</sup>. Decisions of regional human rights bodies, including the Inter-American Commission and Court of Human Rights, the African Commission on Human and Peoples’ Rights and the European Court of Human Rights, have also, on the equal note, recognised these relationships between the two concepts, thereby increasing the prospect for environmental protection.

Besides, there are many national legislations today, which incorporate clauses related to environmental protection, either as a state duty or as an individual right or both<sup>37</sup>. Research has revealed, for instance, that the European Court of Human Rights alone has hitherto delivered judgment on some 300 environment-related cases, applying human rights concepts such as the right to life, free speech and family life to a broad range of issues including pollution, man-made or natural disasters as well as access to environmental information<sup>38</sup>. In the same vein, advocates of environmental protection have in the recent, used the European Convention on Human Rights at

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<sup>31</sup>Such as the Convention on Biological Diversity and its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2014; the UN Economic Commission for Europe Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, June 1998; the Ramsar Convention on wetlands; UN Convention on the Law of the Sea, 1982; the Convention on the International Trade in Endangered Species, 1973 etc.

<sup>32</sup>United Nations Environment Programme, ‘Factsheets on Human Rights and the Environment: Linkages between Human Rights and the Environment’, (2015) <https://wedocs.unep.org/handle/20.500.11822/9933>. Accessed on 24 January, 2024.

<sup>33</sup>Human Rights and the Environment: Excerpt from UNDG Guidance Notes on Human Rights for Resident Coordinators and UN Country Teams, (2017). < <https://unsdg.un.org/sites/default/files/2020-03/Human-Rights-and-the-Environment.pdf>>. Accessed on 11 January, 2024.

<sup>34</sup>‘COP27: Urgent Need to Respect Human Rights in all Climate Change Action, Says Un Experts’, (November 2022) <https://www.ohchr.org/en/statements/2022/11/cop27-urgent-need-respect-human-rights-all-climate-change-action-say-un-experts>. Accessed on 15 January, 2024.

<sup>35</sup>1992.

<sup>36</sup>Human Rights and the Environment: Excerpt from UNDG Guidance Notes on Human Rights for Resident Coordinators and UN Country Teams’, (n32).

<sup>37</sup>E B Weiss, ‘In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity; (1988) *The Fletcher Forum of World Affairs*, Vol. 16 NO,1. Pp. 172-175.

<sup>38</sup>A Vageinheim, ‘See You in Court – What’s driving Growth in Climate Cases?’, (2024) <https://www.ciwem.org/the-environment/whats-driving-the-growth-in-climate-cases>. Accessed on 10 January, 2024.

the national level to persuade governments to take more serious action in addressing climate change and environmental degradation challenges<sup>39</sup>. The human rights framework provides both moral and legal justification for immediate and urgent action to protect the environment for the benefit of mankind. Environmental protection and enjoyment of human rights are complementary objectives that must be pursued with vigor for sustainable development. This is because, the ecosystems and the services they render are *sin qua non* to the full realisation of human rights objectives. Accordingly, States have human rights obligations to forestall the adverse effect of environmental damage on the full enjoyment of human rights by their citizens.

#### **4.0 The Concept of Environmental Rights**

The term, environmental rights has been defined as ‘any proclamation of a human right to environmental conditions of a specified quality’<sup>40</sup>. Environmental rights or environmental human rights is human rights related to environmental protection. The concept involves an array of issues touching the protection of natural resources; the access to and use of natural resources; and how the access to and use of these resources affects surrounding populations, as well as the resources themselves<sup>41</sup>. In essence, environmental rights are human rights related to natural resources<sup>42</sup>. These rights are not mere abstract or irrelevant concepts as earlier mentioned in this work, but are measurable, prominent and functional aspects of society and its ecology. Environmental right asserts that the environment must meet some basic standards of healthfulness and includes affirmative substantive rights, like the right to clean water and air, and defensive substantive rights, such as the right of protection from toxic wastes or pollution<sup>43</sup>. They are human rights, because people’s livelihoods, health, and in many cases, their very existence depends upon the quality and functionality of, as well as their access to the surrounding environment. Accordingly, they are often regarded as *enabling rights*, because many other human rights, such as the right to life, require certain environmental standards for their enjoyment<sup>44</sup>. The concept of environmental rights bears the same connotation with the right to a clean, healthy and sustainable environment which is generally understood to include ‘the right to clean air; a safe and stable climate; access to safe water and adequate sanitation; healthy and sustainably produced food; non-toxic environments in which to live, work, study and play; and healthy biodiversity and ecosystems’<sup>45</sup>. It also includes access to information; the right to participate in decision-making; and access to justice and effective remedies including the secure exercise of these rights free from reprisals and retaliation<sup>46</sup>. Environmental right is an extension of the basic human rights to which all people are entitled. Therefore, in addition to having the right to food, clean water, suitable shelter, and education, having a safe and sustainable environment is paramount since all other rights are dependent upon it<sup>47</sup>. The struggle for universal recognition of the right to a healthy environment was evident in collective action and a powerful demonstration of the possibilities for environmental protection enabled by the exercise of

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<sup>39</sup>Council of Europe, ‘Protecting the Environment using Human Rights Law’, <https://www.coe.int/en/web/portal/human-rights-environment>. Accessed on 10 January, 2024.

<sup>40</sup>D L Shelton (n7)

<sup>41</sup>‘Environmental Rights’, (2023) <https://pachamama.org/environmental-rights> Accessed on January 4, 2024.

<sup>42</sup>E Moses, ‘The Roadmap to Realising Environmental Rights in Africa, Moving from Principles to Practice’, (January 2022) *The Access Initiative*, [https://accessinitiative.org/wp-content/uploads/2022/10/22.01\\_rep\\_access\\_initiative\\_v583-4.pdf](https://accessinitiative.org/wp-content/uploads/2022/10/22.01_rep_access_initiative_v583-4.pdf). Accessed on January 15, 2024.

<sup>43</sup>Environmental Rule of Law: First Global Report’ (July 2019) <https://www.unep.org/resources/assessment/environmental-rule-law-first-global-report>. Accessed on 18 January 2024.

<sup>44</sup>E Moses, ‘The Roadmap to Realising Environmental Rights in Africa, Moving from Principles to Practice’ (n41).

<sup>45</sup>Link Between Human Rights and Environment must be Preserved”, (n18)

<sup>46</sup>*Ibid.*

<sup>47</sup>Environmental Rights’, (n22).

human rights<sup>48</sup>. In the words of *Benjamin Schachter*<sup>49</sup>, human rights are both a means and an end when it comes to protecting the environment. According to him, ‘the right to a healthy environment can serve as an important legal basis for increasing rights-based environmental litigation in national and international courts and tribunals.

As earlier noted, environmental rights are recognized in several international human rights treaties, constitutions, national laws, as well as legal precedents. For instance, in a recent ruling from a court in the US State of Montana, a group of 16 young environmentalists won a landmark climate case against the State when the judge ruled that the State was violating their constitutional right to “a clean and healthful environment,” as well as their rights to dignity, health and safety, and equal protection of the law<sup>50</sup>. The plaintiffs had argued that the State of Montana was violating their constitutional rights by permitting fossil fuel development without considering its effect on the climate, harming them both mentally and physically. The court in its ruling, recognizes that every ton of greenhouse gas emissions matters and calls for science-based actions, safeguarding our planet for generations to come<sup>51</sup>.

## **5.0 Challenges Relating to Environmental Rights**

The campaign for the recognition of environmental rights is gaining momentum due to the increasing environmental degradation. In Nigeria for instance, environmentalists, legal scholars, non-governmental organisations and other stakeholders have continued to press for the recognition and enforcement of these rights as a fundamental right in the country<sup>52</sup>. Despite these efforts, the concept of environmental rights still faces numerous challenges especially in Nigeria like other developing economies. Among these challenges are:

### **5.1 Environmental Degradation**

Environmental degradation refers to the deterioration of the environment due to the depletion of resources such as quality of water, air and soil. It encompasses the destruction of ecosystems, habitat destruction, the extinction of wildlife, and pollution. Environmental degradation is generally defined as any change or disturbance to the environment considered as deleterious or undesirable<sup>53</sup>. Degradation is a global environmental challenge today, with negative impacts on the health and human rights. It is a process through which our natural environment is compromised in some ways, affecting biodiversity and the quality and functionality of the environment. This process can be a purely natural occurrence, or it can be caused or accelerated by human activities. In fact, environmental degradation constitutes a major threat facing the natural environment, and by implication a strong impediment or challenge to the full enjoyment of the whole gamut of human rights<sup>54</sup> in accordance with the international human rights norms.

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<sup>48</sup>*Ibid.*

<sup>49</sup>A human rights officer and environment team leader at the United Nations Office of the High Commissioner for Human Rights.

<sup>50</sup>S Bookman and SJD Candidate, ‘Held v. Montana: A Win for Young Climate Advocates and what it Means for Future Litigation’, (August 2023) <https://eelp.law.harvard.edu/2023/08/held-v-montana/>. Accessed on 28 December, 2023.

<sup>51</sup>“This is About our Human Rights:” US Youths Win Landmark Climate Case’, (August 2023) <https://www.ohchr.org/en/stories/2023/08/about-our-human-rights-us-youths-win-landmark-climate-case>. Accessed on 28 December, 2023.

<sup>52</sup>B E Umukoro, ‘Revisiting the non-justiciability issue in environmental rights dialogue in Nigeria’ (2023) *Environmental Law Review*, Vol 25, Issue 2. <<https://doi.org/10.1177/14614529231168491>>. Accessed on 8 January, 2024.

<sup>53</sup>D L Johnson, *et al*, ‘Meanings of environmental terms’, (1997) *Journal of Environmental Quality* 26: 581–589

<sup>54</sup>F O Ekpa, ‘Environmental Degradation as a Human Rights Violation in Nigeria: A re-analysis’, (2016) *Kogi State University Law Journal*, VOL. 8

## **5.2 Non-Justiciability Issue**

The non-justiciability issue constitutes one of the major challenges facing environmental right, particularly in Nigeria. Although, *section 20* of the 1999 Constitution of the Federal republic of Nigeria places obligation on the Nigerian State to protect the environment by providing that, “the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria”, there is the problem of enforcement. The unfortunate issue is that, the above section is placed in Chapter II of the Constitution, which is named ‘Fundamental Objectives and Directive Principles of State Policy’. Placing environmental rights in Chapter II of the 1999 Constitution puts it in a precarious position, by reason of section 6 (6) (c) of the Constitution according to which provisions the Fundamental Objectives and Directive Principles of which the environmental rights are covered are not justiciable in court of law.<sup>55</sup> Even in the international level, environmental rights are yet to reach a hard law stage.<sup>56</sup>

## **5.3 Lack of Effective Legal Framework**

The primary focus of environmental law is to balance the economic interests of nature conservation, the protection of human health, by extension, human rights, as well as the use of natural resources<sup>57</sup>. The legal framework for environmental components provides for a broad range of relationships. In general, however, there is yet dearth of effective and comprehensive legal framework regarding environmental protections, conservation and enforcement of environmental rights. Progress on implementation and enforcement of these rights is lacking due to some reasons, such as the lack of clear standards or necessary mandates, lack of clear direction in terms of national and local contexts<sup>58</sup>. Although, environmental laws have grown dramatically for about three decades now, they have not been able to satisfactorily tackle or address the emerging environmental challenges due to the problems associated with implementation and enforcement<sup>59</sup>. This trend cuts across the globe irrespective of the level of development.<sup>60</sup> The legal framework for environmental rights and protection is actually a complex system which involves several unifying objectives, which creates opportunities to assess both the role of the national state and that of the international community.<sup>61</sup>

## **5.4 Environmental Rule of Law**

Environmental rule of law integrates critical environmental needs with the essential elements of the rule of law, constituting an important pillar of international law and environmental governance<sup>62</sup>. Environmental rule of law focuses on environmental sustainability by linking it with fundamental rights and obligations. It simply incorporates the related components<sup>63</sup> of ‘rule of law’ and applies them in the environmental context. Without environmental rule of law and the enforcement of legal

<sup>55</sup>O Olu-David and N C Ole, ‘Justiciability of Environmental Rights: Whither the Nigerian Law?’ (2023) *African Journal of Law, Ethics and Education (AJLEE)* VOL.3, No. 1.

<sup>56</sup>J Scott, ‘From Environmental Rights to Environmental Rule of Law: A Proposal for Better Environmental Outcomes’, (2016) *Michigan Journal of Environmental & Administrative Law.*, Vol. 6.

<sup>57</sup>A Kipane and A Vilks, ‘Legal Framework for Environmental Protection in the Context of Sustainable Development’ (2022) *European Journal of Sustainable Development*, 11, 4, 169-179.

<sup>58</sup>‘Environmental Laws Impeded by lack of Enforcement, First-Ever Global Assessment Finds’, (January 2019) <https://sdg.iisd.org/news/environmental-laws-impeded-by-lack-of-enforcement-first-ever-global-assessment-finds/>. Accessed on January 16, 2024.

<sup>59</sup>*Ibid.*

<sup>60</sup>*Ibid.*

<sup>61</sup>A Kipane and A Vilks, (n54).

<sup>62</sup>A Kreilhuber and A Kariuki, ‘Environmental Rule of Law in the Context of Sustainable Development’, (2020) *The Georgetown Envtl. Law Review*, Vol. 32:591.

<sup>63</sup>Law should be consistent with fundamental rights; aw should be inclusively developed and fairly effectuated; and lastly, law should bring forth accountability not just on paper, but in practice.



rights thereto, the objective of the concept of environmental rights cannot be archived. This is because the environmental rule of law not only ensure effective environmental governance, but also provides the basis for environmental rights and obligations.<sup>64</sup> Environmental rule of law is now an accepted/established concept and certainly will help to improve compliance with environmental law, which is essential to ensuring protection of environmental human rights<sup>65</sup>.

Unfortunately, according to the 'global assessment of environmental rule of law' report, there is a disturbing global trend in terms of weak enforcement of the environmental law despite the proliferation of environmental laws and agencies around the globe in the recent decades.<sup>66</sup> Lack of full implementation and enforcement of these laws presents one of the greatest challenges with regard to the mitigation of climate change, reduction of pollution and prevention of extensive species and habitat depletion and loss<sup>67</sup>. This shows why environmental problems such as pollution, declining biodiversity and climate change persist in spite of the prolific growth in environmental laws. Unless the environmental rule of law is strengthened, the clamour and hope for fundamental human rights to a healthy environment will remain mirage<sup>68</sup>. The situation has a ripple effect on the exercise and full enjoyment of environmental human rights.

### 5.5 Protection of the Environment through Human Rights Law

The concept of human rights law can serve as a veritable tool in the ongoing campaign for environmental protection both at national and international levels. This is because, respect for, and promotion of the human rights create an avenue for environmental protection. Thus, the human rights law provisions, both nationally and internationally, can be cited and relied upon in the efforts to protect the environment. For instance, the African Commission on Human and Peoples' Rights<sup>69</sup> stipulates that 'all peoples shall have the right to a general satisfactory environment favorable to their development'. Likewise, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights<sup>70</sup>, declares that:

- i. Everyone shall have the right to live in a healthy environment and to have access to basic public services.
- ii. The States Parties shall promote the protection, preservation and improvement of the environment

Unfortunately, the Protocol specifically permits complaints to be filed only on allegation of violations of the right to education and the right to trade union freedoms<sup>71</sup>, making it difficult to invoke Protocol *Article 11* directly before the Inter-American institutions. Interestingly however, the African system has few restrictions on justiciability as it provides a wide chance to file complaints. The first decision of the African Commission on Human and Peoples' Rights regarding environmental quality and rights arose from Communications 25/89, 47/90, 56/91 and 100/93

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<sup>64</sup>United Nations Environment Programme, 'Environmental Rule of Law'. <https://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>. Accessed on January 18 2024.

<sup>65</sup>'Environmental Rule of Law: First Global Report' (n42).

<sup>66</sup>*ibid.*

<sup>67</sup>*ibid.*

<sup>68</sup>David Boyd, Special Reporteur on Human Rights and the Environment, in *ibid.*

<sup>69</sup>June 1981, Art. 24.

<sup>70</sup>November 1988, Art. 11

<sup>71</sup>D K Anton and D L Shelton, 'Problems in Environmental Protection and Human Rights: A Human Right to the Environment' (2011) *Human Rights & Environment Case Study*, <[https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2050&context=faculty\\_publications](https://scholarship.law.gwu.edu/cgi/viewcontent.cgi?article=2050&context=faculty_publications)>. Accessed on January 18 2024.

against Zaire<sup>72</sup> and later, that of Ogoni case. The position of the Commission here coupled with its relevant articles speak volumes of the environmental rights of the people and the corresponding state duties. For instance, the Commission through its *Article 24* provides that, ‘all people shall have the right to a general satisfactory environment favourable to their development’<sup>73</sup>. The rights created by this article invariably include the rights to a clean, healthy and safe environment which, in the view of the Commission oblige governments and States to abstain from actions that directly threaten the health and the environment of their citizens<sup>74</sup>. The article by implication, places obligation on the State to take measures to prevent pollution and all form of environmental degradation.

The general recognition and acceptance of the link/relationship between human rights and the environment suggests that human rights laws can now intervene and be applied in many respects to help improve and protect the environment and make the concept of environmental human rights fully operational. Such intervention can contribute to the implementation of multi-lateral environmental treaties and progress towards internationally agreed global environmental goals<sup>75</sup>.

## **6.0 Conclusion**

Human rights and the environment are intrinsically and inextricably intertwined. A safe, clean healthy and functional environment is required for full enjoyment of human rights. At the same time, a sustainable environmental protection and governance that would guarantee the above standard cannot exist without the establishment of and true respect for human rights. The fact that an inextricable relationship/link exists between human rights and the environment has been understood, widely accepted and recognized by many countries and international Human rights bodies. Due to this inseparable interconnections, environmental degradation ordinarily yields adverse impacts, both direct and indirect, on the effective enjoyment of all human rights. Consequently, stronger international human rights mechanisms should be developed to look into environmental aspects of human rights such as the rights to life and property, health, water, food, and culture. In some instances, the rights to a safe and healthy environment have been addressed directly, though with particular focus on the environmental dimensions of more established rights. Discussions and studies on the linkages between human rights and environment are not done for the purpose of paper work or mere academic exercise. Recognition of this interrelations and interdependent between them and efforts in this regard would have more far-reaching consequences on environmental conservation and the promotion of our common human rights. It will in addition, assist in the reduction of environmental damage and preservation of the role of natural resources and ecosystem services in promoting the overall human wellbeing including human rights. This is so because, all efforts to promote environmental sustainability can only be effective when they occur in the context of enabling legal frameworks that guarantee the entire gamut of environmental human rights.

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<sup>72</sup>25/89, 47/90, 56/91, 100/93 World Organisation Against Torture, Lawyers’ Committee for Human Rights, Jehovah Witnesses, Inter-African Union for Human Rights /Zaire.

<sup>73</sup>For further discussion on this, see S A Ebeku, ‘The Rights to Satisfactory Environment and the African Commission’ (2003) *African Human Rights Law Journal*, Vol. 3 NO. 1. 149 - 166

<sup>74</sup>E Pelletier, ‘The Ogoni case before the African Commission on Human and Peoples’ Rights’, (2023) 52 *INT’L & COMP. L.Q.* 749 [https://www.researchgate.net/publication/375277746\\_The\\_Ogoni\\_case\\_before\\_the\\_African\\_Commission\\_on\\_Human\\_and\\_Peoples%27\\_Rights](https://www.researchgate.net/publication/375277746_The_Ogoni_case_before_the_African_Commission_on_Human_and_Peoples%27_Rights). Accessed on 19 January, 2024

<sup>75</sup>Asia Pacific Issue Brief: SDG16, ‘Human Rights and Environmental Rule of Law’, (March 2021) <https://wedocs.unep.org/bitstream/handle/20.500.11822/35408/SDG16.pdf>. Accessed on 19 January, 2024.

## **7.0 Recommendations**

Against the backdrop of the recognized interrelation and interdependent between human rights and the environment, this article strongly, recommends as follow:

- 7.1 The need for comprehensive internationally coordinated responses based on fundamental human rights and environmental principles such as solidarity, accountability, transparency, equity, and justice, to tackle effectively, the contemporary transboundary environmental issues/challenges like climate change, pollution, biological diversity loss and ecosystem management.
- 7.2 Aside the establishment of legal framework, politically, States should respect, promote and consider human rights when taking environmental actions. This would help in reducing environmental damage that result from climate change, pollution and biodiversity loss and mitigate, if not eliminate their adverse effects on human rights and the environment.
- 7.3 States and government officials should implement the provisions of relevant Multilateral Environmental Agreements (MEAs), to fulfil international human rights objectives, develop and adopt environmental laws, regulation and policies required/needed to prevent adverse effects on the full enjoyment of human rights while preserving the environment for the present and future generations.
- 7.4 There should be deliberate efforts both at the national and international levels, to record, document and report instances in which environmental damage and climate change are affecting the enjoyment of human rights, especially in its wide range. States, government officials and relevant bodies should regularly monitor human rights implications of development projects to ensure they are in line with, and actually project the overall well-being, including the development and human rights of the people.