

RIGHT TO A HEALTHY ENVIRONMENT: TRENDS AND APPROACHES*

Abstract

It is an undeniable truth that the right to a healthy environment, referred to by some as a third generation right has gained prominence since the second half of the 20th century. This is despite the fact that after the United Nations Conference on the Human Environment held in Stockholm, where it was declared that man has a right to the environment; the UN failed to consolidate on the rights approach to environmental protection in subsequent conventions. This paper considers environmental rights and the diverse approaches suggested by its proponents. Its objectives are to analyse the content of a healthy environment as it relates to environmental rights and to examine the diverse approaches adopted and proposed by the proponents of environmental rights over the years, as well as determine the responsibility of the present generation, with regard to inter-generational equity. It adopts the doctrinal research method and concludes that whatever the approach, the right to a healthy environment has metamorphosed into an inalienable right. It recommends a more robust public interest litigation as well as judicial radicalism to promote environmental rights and inter-generational equity.

Keywords: Healthy Environment, Sustainable Development, Inter-Generational Equity

1. Introduction

Ken Saro Wiwa, the late environmental activist once declared that ‘the environment is the first right of man’.¹ This right however, has over time been subsumed under governmental economic policies that are essentially exploitative and destructive of the ecosystems that support life and living of both plants and animals. This has continued over time at such a scale as has made it impossible for nature to regenerate the resources so exploited, thereby leading to the present environmental crisis. The right to a healthy environment, though considered novel, has been embraced by many regional instruments, but that is not nearly enough. Coming generations are entitled to an environment that meets their social and developmental needs and this can only be achieved if nature is recognised internationally, as entitled to the inalienable right accorded to man. This paper looks at the different approaches proposed and adopted by some groups and how a global adoption of same would invariably lead to a healthy environment for the present as well as future generations.

2. Environmental Protection: Historical Evolution

Environmental law has its roots in environmentalism, a value system, seeking a redefinition of the relationship of human kind to nature.² It seeks to persuade or cause men to be stewards rather than exploiters of the environment.³ Ultimately environmental law has the purpose of changing the system of resource use incentives, from those that promote unsustainable development to those that encourage and promote environmentally sustainable development.⁴ A vast majority of the values advanced by environmental regulations are not aimed at the enhancement of human welfare, human dignity, protection of property or the maintenance of social order. Environmentalism rather seeks to radically redefine the relationship between humans and nature, by partially subordinating initiatives to benefit the ecosystem, as well as future generations - two communities that traditionally had no voice and no legal personality.⁵ Like all emerging areas of law, environmental law is an unsystematic, synthetic and unstable mix of rules from other areas, recently enacted positive laws, and new but contested normative principles, all aimed at protecting the present and future generations and preserving the natural environment.⁶ Throughout history, environmental protection has been a concern of international law, albeit a minor one, prior to the 20th century.⁷ It can be said to have ‘evolved as a by-product of the development of law in areas of law like fisheries, navigation’, wildlife conservation, etc.⁸ They were efforts aimed at managing shared resources of nature in order to ensure continual harvest over time.⁹ Some accounts of the historical development of international environmental law distinguish three or four periods, viz. the traditional era that lasted until about 1970 (or a sub division of pre and post 1945 period); the modern era from 1972 to 1992, that is from Stockholm

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¹ The statement is said to have been made in 1995, during the period of his detention, trial and execution. Probably made in the course of his purported trial.

² Dan Tarlock, ‘History of Environmental Law’ (vol. 1) *Encyclopedia of Life Support Systems* <ww1w.eolss.net.sample-chapters> accessed 10 January, 2019.

³ *ibid*

⁴ *ibid*

⁵ Dan Tarlock, ‘The Future of Environmental Rule of Law Litigation’ [2002]19 *Pace Env't Rev*, in Elizabeth Fisher and Elizabeth Charlotte Fisher and Bettina Lange, *Environmental Law: Text, Cases & Materials* (OUP Oxford 2013)9

⁶ *ibid*

⁷ Aaron Schwabach, *International Environmental Disputes: A Reference Handbook* (ABC CLIO 2006)3.

⁸ *Ibid*.

⁹ Elizabeth R. Desombre, ‘Evolution of International Environmental Cooperation’ [2004] Vol. 1 (1-2) *Journal of International Law and International Relations* 75 <www.org1_7DESOMBRE_FINAL> accessed 12 January, 2020

Conference,¹⁰ to the UN Conference on Environment and Development in Rio de Janeiro, and the postmodern era.¹¹ The era can be said to have started precisely in 1872, a century before Stockholm, with particular concern for migratory wildlife, marine animals and fisheries.¹² Early in the 20th century, congresses like the International Congress for the Protection of Nature, the International Congress for Flora, Fauna and National sites and Monuments and the second International Congress for the Protection of Nature, among others, were held in Paris in 1909, 1923 and 1931. A Consultative Commission was also established for the International Protection of Nature in 1913 at Berne, with seventeen European signatories. Even though the commission was never functional by reason of the First World War, it retained its legal status between the two world wars.¹³

In 1949, a conference was sponsored by the Swiss League for the protection of nature at Brumen, Gambia. It was attended by delegates from 24 countries and nine international organizations. It was at that meeting and the follow up one called by UNESCO¹⁴ in 1948 at Fontainebleau in France, that the International Union for the Conservation of Nature and Natural Resources (IUCN), the principal nongovernmental organization for environmental protection was established.¹⁵ A landmark event that could be described as the herald of the new dawn in environmental protection was the publication of the book 'the Silent Spring' by Rachel Carson in 1962.¹⁶ A scientist and writer, the author warned about the use of chemical pesticides in agriculture, stressing the need for protection of the ecosystem, human health and the environment.¹⁷ Her passionate and persuasive presentation of the subject matter led to an awakening of the international community to the actual and potential hazards the use of such chemicals (Chlorinated hydrocarbons) posed to the environment.¹⁸

Initially, industries and businesses resisted efforts aimed at environmental protection and resource conservation due to the mindset that resources expended on such efforts would diminish profit.¹⁹ However, as the rape of the earth's natural resources continued, and the negative consequences became more obvious, the international community rose up to the challenge and countries through their representatives, came together under the auspices of the United Nations to find the means of combating the already bad situation. The United Nations Conference on the Human Environment held in Stockholm in 1972 marked the first organized international effort at environmental protection.²⁰ The conference, which marked the commencement of the modern era, produced the Stockholm Declaration which adopted an anthropocentric approach to the protection of the environment.²¹ The approach put the human being at the Centre of environmental protection, claiming that all regard for the environment, are actually obligations owed to the human components of the environment.²² The declaration in its preamble proclaimed that 'man is both the creature and molder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth'.²³ It went on to direct that the natural resources of the earth and the ecosystems must be safe guarded and managed for man's benefit, both now and in the future.²⁴ The declaration is made up of a set of principles for the inspiration and the guidance of man in the preservation and enhancement of the human environment.²⁵

After the Stockholm Conference of 1972, other conferences followed, including the UN Habitat Conference on Human Settlement of 1976, Vancouver; World Water Conference of 1997, Mardel Plata; the Paris Conference of

¹⁰United Nations Conference on the Human Environment, held in Stockholm, from 5 to the 16 June 1972

¹¹Peter H. Sand, *The Evolution of International Environmental Law* (the Oxford Handbook of International Environmental Law, 2012) www.oxfordhandbook.com oxfordhb> accessed 28 December, 2019; Simone Schiele, *Evolution of International Environmental Regimes: The Case of Climate Change* (CUP 2014)22

¹²Ibid Page 49

¹³Ibid; After the second world war, International Congresses for the Protection of various aspects of nature resumed

¹⁴UNESCO-United Nations Educational Scientific & Cultural Organization established in 1945.

¹⁵ The IUCN has a membership of over 1200 governmental and nongovernmental organizations; see About IUCN <www.IUCN.org.about> accessed 28 December, 2018.

¹⁶Global Issues www.un.org/en/global/issues accessed 28 December, 2018.

¹⁷Ibid.

¹⁸Celia Campbel-Mohn, 'Environmental Law' <www.britannica.com>topic>environmental> accessed 28 December, 2018.

¹⁹NK Uberoi, *Environmental Management* (2ndedn, Excel Books New Delhi 2003)36.

²⁰Ibid.

²¹Elli Louka, *International Environmental Law: Fairness, Effectiveness & World Order* (CUP2006) 30.

²²Internet Encyclopedia of Philosophy, 'Environmental Ethics' <www.lep.utm.edu>envi-eth> accessed 11 January, 2019; Baird Callicoth 'Non-anthropocentric Value Theory and Environmental Ethnics (October 1984) 21(4) *American Philosophical quarterly*. www.philpapers.org rec>CALNVT> accessed 23 December, 2019. This is in contrast with ecocentric or non-anthropocentric approach that confers value on other components of the environment, both living and nonliving.

²³Stockholm 1972- Declaration of the United Nations Conference on the Human Environment <www.Unep.orgdocuments.muchlingual> accessed 10 January, 2019; David R Boy, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights & the Environment* (UBC press 2011)13.

²⁴Ibid, Principle 2

²⁵Louis B Sohn, 'The Stockholm Declaration on the Human Environment [1973] 14(3) the *Harvard International Law Journal* www.resources.spaces3.com accessed 11 January, 2019.

1986 for Saving of Trees and Forests; the UN Environmental Education Conference 1977, Louis Georgia.²⁶ Another important milestone in the development of environmental law is the report of The World Commission on Environment and Development of 1987 tagged 'Our Common Future.'²⁷ The commission was created in 1983 by the UN to evaluate the global environment, reassess and proffer solutions to critical problems.²⁸ The report, which was written by 23 experts from 22 countries, gave the first official definition of sustainable development.²⁹ The report also drew a link between poverty and environmental degradation and called for cooperation among governments, citizens, nongovernmental organizations and institutions in the quest for development and environmental protection.³⁰ The UN in 1989, sequel to the Brundtland's Report called for the Conference on Environment and Development in Rio de Janeiro,³¹ also known as the Earth Summit. The goal of the summit, which was held in June 1992, was inter alia, to ensure a healthy future for the planet by promoting socio economic development that would prevent the continued deterioration of the environment.³² This marked the beginning of the post-modern era. Three major agreements were adopted at the conference. Agenda 21 – a programme of action for sustainable development;³³ the Rio Declaration on Environment & Development – 'a set of principles that define the rights and responsibilities of states'; the statement of forest principles – a set of principles for the sustainable management of forests worldwide.³⁴ Additionally, two conventions were opened for signature, first, the UN Framework Convention on Climate Change (UNFCCC). The convention which came into force on 21 March 1994 'recognizes that the climate system is a shared resource' and that the emissions of carbon-dioxide and other greenhouse gasses from industries affect its stability. Parties to the convention were expected to inter alia, launch strategies aimed at addressing greenhouse gas emissions. They are also expected to come together to share information on how best to tackle the problem.³⁵ Secondly, the Convention on Biological Diversity represents a positive step in the conservation of the diverse life forms on earth and their sustainable use.³⁶ The convention and its protocols have succeeded in generating an 'enormous amount of interest in biodiversity globally'. The treaty is one of the most widely ratified.³⁷

It can be said that the achievements of the Stockholm Conference include inter alia, the establishment of the UN Environment Programme (UNEP), an agency of the UN for the setting of environmental agenda and coordination of the implementation of environment programmes, serving as an authoritative advocate for the international environment;³⁸ the encouragement and support for NGOs and civil society's participation in matters relating to the environment.³⁹ A study by Oran Young about the effectiveness of the different environmental regimes posits that they have made contributions to the development of practices that have impacted positively in trans boundary air pollution in Europe', the depletion of the stratospheric ozone layer, the management of commercial fisheries in the Berent's sea,⁴⁰ among others. Jesse Ausabel and David Victor however, are skeptical in their analysis of levels of compliance and the general efficacy of environmental regimes. This, according to them is based on the fact that 'monitoring and verification' are not a major part of most environmental issues. They posited that although compliance seems to be high, the source of such reports may be inaccurate due to conflict of interest on the part of the reporters who are nationals of the states reported.⁴¹ The reports as to the success or otherwise of the climate efforts are contradictory.

²⁶Uberiori (n19) 36.

²⁷It is also referred to as the Brundtland's Report, named after the chairman of the commission, Gro Harlem Brundtland.

²⁸ OUP Academic, Our Common Future: World Commission on Environment and Development, (OUP, 1987) <<https://global.oup.com/product/our-c...>> accessed 28 August, 2019.

²⁹It defined such development to be "the development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

³⁰Our Common Future: Report of the World <www.UN-documents.net/our-common-t...> accessed 29 December 2018; see also the Bundtland Report, a 25-year-old Milestone www.downtoearth.danone.com 2012/04/04> accessed 29 December, 2018

³¹ Philippe Sands, *Principles of International Law*, (CUP2003) 52.

³²The Earth Summit Agreements <www.un.rggenfo/envirp2> accessed 29 December 2018

³³Agenda 21 is a programme of action to be taken globally, nationally and locally by organisations of the UN, systems governments and major groups in every area in which human activities impact on the environment.

³⁴ Earth Summit, www.un.org/geninfo/envirp2> accessed 22 June, 2019.

³⁵ The United Nations Framework Convention on Climate Change www.unfccc.int/convention/items> accessed 11 January 2019.

³⁶ Global Biodiversity Outlook <www.cbd.int> accessed 12 January 2019

³⁷Convention on Biological Diversity www.biodiv.be/convention> accessed 8 January 2019.

³⁸Rose Buss, 'United Nations Conference on Human Environment (UNCHE) Stockholm in Sweden' [2007] <www.eoearth.org/view/article/156774> accessed 19/1/16; <www.unep.org/about> accessed 12 January 2019.

³⁹ Ministry of External Affairs, 'Stockholm, Johannesburg, Brazil and the three UN Conferences on the Environment' [August 12,1988] www.funag.gov.bisloja/download-528-st-> accessed 11 January 2019.

⁴⁰Oran R Young, 'Effectiveness of International Environmental Regimes: Existing Cutting-edge Themes & Research Strategies (2011) Vol. 108 No 50 *PNAS* www.M.Pnas.org/Content> accessed 12 January 2019.

⁴¹Jesse H. Ausabel & David G. Victor, 'Annual Review of Energy Environment' (1992) 17:1-43, www.phe.recketeller.edu/verification accessed 12 January 2019

Under the Kyoto protocol, 38 developed countries referred to as Annex B countries committed to reduce their average annual GHG emission by 5% relative to 1990 levels between 2008 & 2012. This amounts to 1 Gigaton (Gt) of CO₂ per year. It was reported that the 38 countries actually reduced their emissions by 2 Gt. In other words, they doubled expectations; however, the emissions from former soviet states had plummeted before the deal was signed and so could not altogether be attributed to emission cuts.⁴² It was also revealed that global emissions generally increased. According to Clark, a look at the total carbon foot print of each nation would reveal that the progress made under Kyoto is extremely poor, with Europe having reduced by just 1% and the emissions of the developed countries rising by 7% within the period of 1990 to 2008.⁴³ In agreement with the assertion of Clark, Almer and Winkler posited that we find very little evidence of an emission reduction effect for the major emitters among the Annex B countries.⁴⁴ Alex Scrivener, vehemently arguing on the same side posited that the problem of climate change cannot be solved only by negotiations carried out by governments, most of which are also involved in corporate deals that benefit polluting industries.⁴⁵

3. The Concept of Human Rights

As stated earlier in this work, these are rights that inure to you ‘simply, because you are human’.⁴⁶ They are rights ‘inherent to all humans, no matter the nationality, sex, religion or race. Everyone is entitled to his human rights without discrimination.’⁴⁷ Human rights recognise the values we cherish most as a people and are an expression of our moral.⁴⁸ The main objective or aim of the human right law is for individuals to attain actualisation of themselves, including the prevention of abuse of power by the state, against individuals.⁴⁹

Human rights are defined by the following characteristics- universal – it applies to all persons and cannot be taken away; moral – applies, whether recognised by the government or not; interdependent and indivisible – all the human rights are intertwined and interwoven; equal and non-discriminating - human rights support the principle of non- discrimination on the bases of race, colour, sex, etc; both rights and obligation – it is the duty of state under international law to protect the fundamental rights of its citizens and prevent its abuse and also to fulfill their human rights.⁵⁰

4. The Human Right to a Healthy Environment

The human right to a healthy environment was a very novel idea some decades ago, and was viewed by some as radical.⁵¹ Presently however, it is a right recognised by international law and also accepted and endorsed by a good number of countries.⁵² In what was considered a historic move, the United Nations General Assembly, on the 28th day of July, 2022 declared that ‘everyone on the planet has a right to a healthy environment’.⁵³ In June 2022, at the Stockholm 50plus meeting, it issued a call for the recognition and implementation of the right as forming part of the action for accelerating towards a healthy ‘planet for the prosperity of all’.⁵⁴

When is an Environment said to be Healthy?

The term ‘healthy environment’ when used, usually refer to an environment that poses little or no risks for disease or health hazards.⁵⁵ It includes the totality of the surrounding conditions and improved effects on the environment’.

⁴² Michael le Page, ‘Was Kyoto Climate Deal a Success’, Earth (14 June, 2016) www.nowscientist.com accessed 14 October, 2020

⁴³ Duncan Clark, ‘Has Kyoto Made any Difference to Carbon Emission?’ The Guardian 26 November, 2012 www.theguardian.com accessed 14 October, 2020

⁴⁴ Christian Almer and Ralph Winkler, ‘Analysing the Effectiveness of International Environmental Policies: the Case of the Kyoto Protocol’, Journal of Environmental Economics and management, [March 2017] vol 82

⁴⁵ Alex Scrivener, ‘Global Justice now’ (14th August 2015) www.theecologist.org/News/news_analysis accessed 28 August, 2019.

⁴⁶ United for Human Rights [www.humanrights.com.what-are-human...>](http://www.humanrights.com.what-are-human...) accessed 13 January, 2019.

⁴⁷ Universal Declaration of Human Rights, 1948. Article 2; United Nations Human Rights Office of the High Commissioner <www.ohchr.org.issues/pages> whata...> accessed 13 January, 2019.

⁴⁸ Stewart C. Udall, ‘*The Quiet Crisis and the Next Generation* (Revised Edn Avon Books.1988) 2.

⁴⁹ Dina Shelton, The Environmental Jurisprudence of Human Rights Tribunals, in Romina Piccolotti & Jorge D Taillant, (eds) *Linking Human Rights and the Environment* (Uni of Arizona press 2010)2 see generally Donald K. Antons and Dina L. Shelton, *Environmental Protection & Human Rights* (CUP 2011); Philippe Sands, *Principles of International Law*, (CUP 2003) 52.

⁵⁰ UN Human Rights www.ohchr.org.issue pages>whata---> accessed 13 January, 2019

⁵¹ David R. Boyd, ‘The Constitutional Right to a Healthy Environment’ (July – August 2012) Environment Magazine <www.environmentmagazine.org/archives> accessed 6 July, 2019 .

⁵² Ibid.

⁵³ UN Environment Programme, ‘Environmental Rights and Governance’ [28 July. 2022] www.unep.org accessed 21 March, 2023

⁵⁴ IISD, ‘UNGA Recognises Human Right to Clean, Healthy and Sustainable Environment’ [[3 August 2022] www.sdg.iisd.org accessed 27th February, 2022.

⁵⁵ Wise GEEK, ‘What is a Healthy Environment?’ [December 4, 2014] www.m.wisegeek.com/what-is-a-healthy=envi... accessed 12 January, 2019.

It means an atmosphere free from pollution, 'clean water, nutritious food and better shelter, both for man and his animals'.⁵⁶ From the forgoing therefore, it can be said that a healthy environment is one that promotes health, which according to the World Health Organisation (WHO), in the preamble to its constitution is defined 'as a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity'.⁵⁷ This agrees with the Business Dictionary that environmental health is the 'aggregate of conditions, forces and substances in an environment that affect the physical and mental well-being of the people living in it'.⁵⁸

The Right to a Healthy Environment

All humans, as biological species are in total dependence on a 'healthy ecosystem for life, health and well-being'.⁵⁹ According to the report of a High Level Expert Meeting in 2009, 'more than 2 million annual deaths and billions of cases of diseases are attributable to pollution all over the world; people experience the negative effects of environmental degradation including water shortage, fisheries depletion, natural disasters due to deforestation and unsafe management and disposal of toxic and dangerous waste products. Indigenous people suffer directly from the degradation of ecosystems that they rely on for their livelihoods'.⁶⁰ The very first written suggestion that the healthy environment should be considered a human right came from Rachel Carson in her book 'the Silent Spring', as stated earlier in this work.⁶¹ Before dying of cancer, she made a public speech where she testified before the Scientific Advisory Committee of President Kennedy, saying that a citizen has the right to be safe and 'secure in his own home against the intrusion of poisons applied by other persons'. She noted that it had been a much neglected problem and that 'it ought to be one of the basic human rights'.⁶² Carson having agitated the minds of the people toward environmental consciousness, some disasters in the late 60s and 70s, causing major environmental pollution like the Torrey Canyon oil spill of 1967 and Rhine River chemical spill of 1969, further heightened the consciousness.⁶³ These environmental crisis and the movements they generated culminated in the first international recognition of human right to the environment, under the auspices of the United Nations. The Stockholm Conference on Human Environment which held in 1972 produced a declaration referred to as Stockholm Declaration which states thus in principle 1, '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'.⁶⁴ This principle created the background for linking environmental protection to human rights and health.⁶⁵ From the late 1980s the human rights organs of the UN began to meet annually to consider environmental matters. This was spurred by the complaints by African countries concerning 'trans boundary movements and dumping of hazardous and toxic wastes'.⁶⁶

The UN Sub-commission on Prevention of Discrimination and Protection of Minorities in 1988 considered the subject matter and adopted Resolution 1988/26, which made reference to the right of all peoples to life, including that of future generations to the enjoyment of their 'environmental heritage'.⁶⁷ It went further to state that the basic human rights to life, and right to live in a sound and healthy environment is endangered or hampered by the dumping of 'toxic and dangerous wastes'.⁶⁸ The Earth Summit of 1992⁶⁹ did not build on the gains of environmental rights initiated by its predecessor, the Stockholm Conference.⁷⁰ The focus of the summit was broadened to include development, saying that human beings are at the center of concerns for sustainable

⁵⁶Bryan Steopher, 'what is a Healthy Environment?' (March 22, 2003) www.beforeitsnews.com/2003/03/what-is-a-... accessed 12 January, 2019.

⁵⁷WHO, 1946.

⁵⁸ What is Environmental Health? <www.businessdictionary.com> accessed 30 December, 2018.

⁵⁹Udall (n48).

⁶⁰UNEP, Report of a High Level Expert Meeting on the New Future of Human Rights & Environment: Moving the Global Agenda Forward (Nairobi, 30 November to 1 December 2009) <www.unep.org> accessed 26 November, 2018.

⁶¹ Global Issues www.un.org/en/global/issues accessed 28 November, 2018..

⁶²David R. Boyd, 'The constituted Right to a Healthy Environment (July August 2012) Environment Magazine<www.environmentmagazine.org/archives> accessed 29 December, 2018.

⁶³ See Centre for Climate Change, Energy and Environmental Law, 'Environmental Movement' <www.pollutionissues.com/Ec-Fi/Environmental-Movement.html> accessed 9th February, 2019 .

⁶⁴Stockholm Declaration of the UN Conference on the Human Environment, 16 June 1972.

⁶⁵Dina Shelton, 'Human Rights Health & Environmental Protection: Linkages in Law and Practice 2002 , A Background Paper for the WHO <www.who.int> accessed 15 November, 2018

⁶⁶Dina Shelton, *The Environmental Jurisprudence of International Human Rights Tribunals*, in Romina Picoloti & Donton Taillant (eds), *Linking Human Rights and the Environment* (Uni of Arizona Press 2010)6 <www.uapress.arizona.edu.bid1492> accessed 20 January, 2019

⁶⁷ Ibid, 8.

⁶⁸ Resolution 1988/26 at Preamble.

⁶⁹The UN Conference on Environment and Development held in Rio the Janeiro, Brazil. 1992

⁷⁰See Dina Shelton, 'Human Rights and the Environment: What Specific Environmental Rights Have Been Recognised?' (2008) vol. 35:1 Denver. *J. Int'l L & Policy* 129 www.djilp.org/uploads/2011/08/Human-... accessed 23 December, 2018.

development and are 'entitled to a healthy and productive life in harmony with nature'.⁷¹ The language of entitlement adopted in the Rio declaration, 'falls short of proclaiming a right to the environment'.⁷² The declaration however adopted a procedural rights approach to achieving environmental protection, viz 'access to environmental information, public participation and access to environmental justice'.⁷³ This formed the background for the Aarhus Convention on Access to Information, Public Participation in Decision Making and Access to Justice in Environmental Matters or issues for European countries, adopted in June 1998, in the city of Aarhus.⁷⁴

Like its predecessor, the World Summit for Sustainable Development (WSSD), held in Johannesburg in 2002, also fell short of an explicit recognition of the existence of a right to the environment.⁷⁵ At the end of the subsequent one in Rio de Janeiro, 2012, which did not do any better, BBC reported former Brazilian president, Fernando Cardoso, the chairman of the 1992 version, as saying that the 'declaration did not do as much for environmental protection as for human development'.⁷⁶ He went further to state that '(t)his old division between environment and development is not the way we are going to solve the problems that we are creating for our grandchildren and great-grandchildren'.⁷⁷ In spite of the failure of the earth summits since 1992 to build on the environmental rights declaration of the Stockholm Conference, international law experts have adopted a series of declarations which indorse the human right to a healthy environment, including, the 1991 Draft Charter on Environmental Rights and Obligations;⁷⁸ the 1992 Bizkaia Declaration on the Right to the Environment;⁷⁹ the Limoges Declaration of 1990, 2001 and 2014, and the Draft Declaration of Principles on Human Rights and Environments.⁸⁰

5. International and Regional Human Rights Instruments Endorsing the Right to the Environment

A majority of international human rights treaties were drafted prior to the emergence of international concerns for environmental protection. Consequently, the right to the environment is not explicit in a lot of them, but is implicit in the wording of some other basic rights.⁸¹ The major treaties include inter alia:

1. The International Covenant on Economic Social and Cultural Rights of December 1966. The covenant recognized 'the right of everyone to an adequate standard of living for himself and family', which include food, housing and clothing. It also recognized the right of everyone to the enjoyment of the highest standard of physical and mental health.⁸²
2. Convention on the Right of the Child of November 1989. The convention which entered into force in 1990 provides for the recognition of the right of the child to the 'enjoyment of the highest attainable standard of health', and should not be denied access to adequate health care. It also provides that in pursuit of the implementation, clean water and nutrition food should be provided and environmental pollution avoided.⁸³
3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights 'Protocol of San Salvador' (1988). The convention recognizes the right of everyone to the 'enjoyment of the highest level of physical, mental and social well-being' (health). It also explicitly provides for the right of 'everyone to live in a healthy environment and to have access to basic public services'.⁸⁴

⁷¹ Principle 1; Ben Boer & Alan Boyle, 'Human Rights and the Environment', a Background Paper at the 13th Informal ASEM Seminar on Human Rights 21-23 October 2013 <www.asef.org/images> accessed 8 February, 2019.

⁷² CIEL, 'Human Rights & Environment in the Rio+20 UN Conference on Sustainable Development' [February 15, 2012] <www.ciel.org/publications/Rio+20Is...> accessed 6 January, 2019.

⁷³ Principle 10, Rio Declaration; Centre for International Environmental Law, 'Human Rights & Environment in the R10 +20 UN Conference on Sustainable Development. February 2010 www.ciel.org/publications/R10+20-is...> accessed 14 January, 2019,

⁷⁴ Aarhus Convention – Environment – European Commission www.ec.europa.eu/environment/Aarhus > accessed 4 February, 2019.

⁷⁵ Dina Shelton, 'What Happened in Rio to Human Rights'? (1992) 3 Yearbook of IEL 75 www.yielaw.oxfordjournals.org/content/75...> accessed 14 January, 2019.

⁷⁶ Regional Criticism and Discord Mark Rio- summit End' BBC News (22 June 2016) www.bbcnews.com/science-environment> accessed 14 January, 2019.

⁷⁷ Ibid.

⁷⁸ Among its fundamental principles is the right of everybody to an environment adequate for his health and wellbeing.

⁷⁹ Organized by UNESCO and OHCHR, Article I of the Declaration states that everyone has the right, individually or in association with others, to enjoy a healthy and ecologically balanced environment".

⁸⁰ The first international instrument that recognizes the link between human rights and the environment. It highlights the environmental dimension of already established human rights like rights to life, health, etc. it also includes procedural rights necessary for the realization of the substantive rights.

⁸¹ Shelton, linkages in law & practice (n63).

⁸² Articles 11 and 12.

⁸³ Article 24.

⁸⁴ Articles 10&11.

4. Arab Charter on Human Right May 2004. The charter provides that ‘everyone has the right to an adequate standard of living’ which includes ‘food clothing housing, services and the right to a healthy environment’.⁸⁵

6. Human and Environmental Rights Nexus

Indigenous people from various places in the world have traditions which consider humans as a thread in the interconnected web of life,⁸⁶ the right to live in a healthy environment is therefore a ‘necessary corollary’ to the all-inclusive ‘approach to the value and protection of life and nature’.⁸⁷ Human rights laws and international environmental laws have interwoven objectives, which is to endeavor to make available ‘better conditions of life on earth’.⁸⁸ According to John H. Knox, UN Independent Expert on Human Right and Environment, “it is absolutely clear that the realization of human rights depends on a healthy environment that allows people to enjoy their rights’.⁸⁹ Klaus Toepfer, executive director of UNEP said it all when he stated that ‘human rights cannot be secured in a degraded or polluted environment’.⁹⁰ He went on to explain that deforestation, exposure to toxic wastes, consumption of contaminated water, etc, all threaten the realization of the fundamental right to life.⁹¹ Human rights laws promote the protection of the environment through the empowerment of ‘states, peoples and individuals to defend the interests of human rights and ecosystems’.⁹² As a society, it must be understood that everything and anything that influences our environment, directly influences our conditions as humans. A violation of our environment therefore is invariably a violation of our Human Right’.⁹³

Human rights and environmental rights therefore can be said to be the two sides of a coin. One cannot effectively exist without the other. Man can only pursue his fundamental rights in an environment that supports his healthy existence.

What is the Content of the Right to a Healthy Environment?

The right to the environment includes both negative and positive rights. The former is a right not to be exposed to harmful substances from either state sponsored or state sanctioned activities. The latter is a ‘right to clean air, water and healthy ecosystems’ which may require state legislations and enforcement.⁹⁴ The right to a healthy environment does not necessarily mean a right to a perfect, pollution free environment, but rather to an environment sufficiently protected to support the ‘enjoyment of basic human rights’.⁹⁵ Neil Popovic, commenting on the 1994 Draft Declaration of Principles on Human Rights and the Environment, defined the right as the right to ‘an environment sufficiently free of human intervention’ to prevent the disruption of its essential processes and can sustain its biodiversity, including human life.⁹⁶ The right also makes it a responsibility of states to refrain from activities that will cause harm to the environment and also adopt and enforce measures and policies that will promote ‘conservation and improvement of the quality of the environment’.⁹⁷ Since Stockholm, over 110 nations (representing 92%) of the world have recognized the human right to a healthy environment based on, but independent from the rights to life and health, either through legislations, constitutional provisions, decisions of courts or ratifications of international or regional treaties.⁹⁸ This is a situation which according to Rebecca Bratspies, promotes ‘policy coherence and legitimacy’ while lending strength to ‘environmental outcomes’.⁹⁹

⁸⁵Article 38.

⁸⁶Marcus Orellana, ‘Reflections on the Right to a Healthy Environment: Comments on Rebecca Bratspies’ Do we Need a Human Right to a Healthy Environment?’ (2015) Vol13 *SANTA CLARA Int.ll.* www.digitalcommons.law.scu.edu viewcontent> accessed 23 January, 2019.

⁸⁷Ibid.

⁸⁸Philippe Cullet, ‘Definition of Environmental Right in a Human Rights Context’ (1995) 13 *Netherlands quarterly Rep of Human Rights* 25 <www.ielric.org>content> accessed 12 January, 2019.

⁸⁹Third meeting of the Focal Points, appointed by the governments of the signatory states of the Declaration on the application of principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, Lima Peru,3 – 31 October 2013

⁹⁰Shelton, Linkages in Law & Practice (n 110), citing the 57th Session of the Commission on Human Rights, 2001.

⁹¹Ibid.

⁹²Linda Hajjar Lieb, *Human Rights and the Environment : Philosophical, Theoretical and Legal Perspectives* (Martinus Nijhoff Publishers 2011) 5.

⁹³Romina Picolotti & Danton Tailant (eds), *Linking Human Right and the Environment* (University of Arizona press 2010)2.

⁹⁴David R Boyd, *The Environmental Rights Revolution : A Global Study of Constitutions, Human Rights and Environment* (UBC Press 2011)23.

⁹⁵Melissa Thorne, ‘Establishing Environment as a Human Right’ [1990-1991] *Denver Journal of International Law & Policy* 92 www.gnhre.org 2015/09/29>establishing-a-...> accessed 29 January, 2019.

⁹⁶Neil AF Popovic ‘In Pursuit of Environmental Human Rights: Commenting on the Draft Declaration of Human Rights and the Environment (1996) Vol. 27 *Columbia Human Rights Law Review* www.gnhre.org 2014/05/24>in-pursuit-of-e> accessed 10 February, 2019.

⁹⁷Cullet (n86).

⁹⁸Kimberly Shearon & Margot Venton, ‘The Right to a Healthy Environment: Canada’s Time to Act’ [April 2015] *Ecojustice* < www.ecojustice.ca> accessed 9 February, 2019; Boyd,(n139)

⁹⁹ Rebecca Bratspies, ‘Do We Need a Human Right to a Healthy Environment?’ (2015) Vol.3 Iss. 1 *Santa Clara Journal of International Law* 31www.digitalcommons.law.scu.edu vol13>iss1> accessed 11January, 2019.

Whereas Tim Hayward, a proponent of the right declared that ‘as a moral proposition, the claim that all humans have the fundamental right to an environment adequate for their health and well-being is unimpeachable’,¹⁰⁰ Chris Miller posits, that they are only ‘welfare aspirations, which at best may be considered a goal rather than a right’.¹⁰¹

7. Intergenerational Equity and Nature’s Rights

Some advocates of environmental rights have proposed two alternative approaches to environmental rights. The first relates to the rights of future generations and the second focuses on the right of nature.¹⁰² According to the UN, this first approach which is a duty owed to future generations, also referred to as intergenerational equity, is the right of future generations to ‘inherit a natural and cultural patrimony from past generations, both as beneficiaries and as custodians’, with a similar duty to do same to subsequent generations.¹⁰³ This approach was adopted by the supreme court of the Philippines in 1993 in the famous case of *Oposa v Factoran*,¹⁰⁴ when it ruled in favour of a group of children who were in court for themselves and for future generations.¹⁰⁵ John Nolt, proffering arguments for and against obligations to future generations, put forth an argument he referred to as ‘argument from temporal location’.¹⁰⁶ According to the argument, the future generations are not owed any obligations because they do not already exist. This argument according to him though valid, is built on false premise. This is because, obligation to future generations is just obligation to unborn children who may not necessarily be ours. Another argument, which he referred to as argument from ignorance, posits that since we don’t know what the future generations will look like, or what they will want, we cannot owe them any obligation. According to him, though the argument is valid and the premise correct, it is only an argument in support of irresponsibility in the present generation.¹⁰⁷ Thus, future generations have rights which the present generation has a duty to, not only protect, but also to respect.¹⁰⁸

The second approach, which is the right of nature recognizes that nature has rights and these rights which include the rights to ‘exist, persist, maintain and regenerate its vital cycles’, we have a responsibility to enforce.¹⁰⁹ The new constitution adopted by Ecuador in 2008, which is its 20th adopted this approach when it stated that ‘nature ... has the right to exist, persist, maintain and regenerate its vital cycles, structure, function and evolutionary processes’.¹¹⁰ According to Natalia Greene, an Ecuadorian advocate of Nature’s Rights, recognizing the right is an opportunity to ‘change the paradigm and to rethink humanity’s development in harmony with nature’.¹¹¹ According to Pablo Solon, Bolivia’s UN ambassador, ‘we have to see the damages to the environment, not only from the perspective of humans, but also from the perspective of nature itself’.¹¹²

8. The Rights of Mother Earth

One of the key teachings of the Aetherius society¹¹³ is the doctrine that considers Mother Earth as a living goddess. This belief however is not held by the group alone. Many cultures and traditions of the world consider the earth a mother and nature, including humans, her offspring.¹¹⁴ From this perspective, the rights of nature and those of mother earth can be seen to differ to an extent. The rights of nature on its own focus on ‘the non-human components of the earth system’ and the rights accruing to them. The rights of mother earth on the other hand aspire to create an all-encompassing new regime of rights.¹¹⁵ According to Andrew Martin, the legal systems of most nations have embedded in them, policies and regulations that are inherently exploitative of the earth and at best only regulate the speed of its destruction.¹¹⁶ The

¹⁰⁰ Tim Hayward, *Constitutional Environmental Rights* (OUP, 2005), in David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada’s Constitution* (UBS Press, 2012) 2.

¹⁰¹ Boyd *ibid*.

¹⁰² David Bollier and Burns H. Weston, ‘The Human Right to a Clean and Healthy Environment’ [Dec. 20, 2013] <www.csr.org> accessed 6 July, 2019

¹⁰³ Duty to future generations www.archive.unu.edu.unupress/unupbooks accessed 6 July, 2019

¹⁰⁴ (G.R.No.101083) 1993.

¹⁰⁵ Future Policy.org, ‘The Philippines: Right of Future Generations to a Healthy Environment’ <www.futurepolicy.org/crimes/right-of-...> accessed 6 July, 2019.

¹⁰⁶ John Nolte, ‘Arguments for and Against Obligations to Future Generations’ www.web.utk.edu/nolt/courses/futurgen accessed 6 July, 2019.

¹⁰⁷ *Ibid*.

¹⁰⁸ The Online Gadfly, ‘On the Rights of Future Generations’ www.gadfly.igc.org/papers/org accessed 6/7/16.

¹⁰⁹¹⁰⁹ Global Alliance for the Rights of Nature, ‘What is the Rights of Nature?’ www.therightsofnature.org/what-is-rights-of-... accessed 6 July, 2019.

¹¹⁰ Article 71.

¹¹¹ Melissa Arias, ‘Conversation with Natalia Greene About the Rights of Nature in Ecuador’ (March 09, 2015) Yale Centre for Environmental Law and Policy www.environment.yale.edu/vironcenter/post accessed 6 June 2019.

¹¹² Jason Mark, ‘Natural Law’ (Spring, 2012) *Earth Island Journal*. <www.earthisland.org...> Spring2012> accessed 6 July, 2019.

¹¹³ A worldwide spiritual organization, focused on preaching and acting upon teachings of advanced extraterrestrial intelligences.

¹¹⁴ The Aetherius Society, ‘The Mother Earth’ www.aetherius.org/the-mother-e... accessed 26 March, 2020.

¹¹⁵ Pablo Salon, ‘The Rights of Mother Earth’, [March 2017] *Systemic Alternatives*. www.systemicalternatives.org accessed 26 March, 2020

¹¹⁶ Andrew Martin, ‘The universal Declaration of the Rights of Mother Earth’ [August 24, 2014] *Collective Evolution* www.collective-evolution.com/the-uni accessed 26 March, 2020.

recognition of the earth as a living system which includes humans, instead of a chattel to be owned and destroyed at will, represents a paradigm change from the ‘climate capitalism’ enshrined in international trade deals and environmental treaties (the Paris treaty not excluded).¹¹⁷ A change that is most needed, if we must halt this race ‘towards the collapse of our planetary system’.¹¹⁸ In 2010, environmental rights had a boost when the World People’s Conference on Climate Change and the Rights of Mother Earth, which was held in Cochabamba, Bolivia, adopted a Declaration of the Rights of Mother Earth.¹¹⁹ The declaration recognized mother earth as a living being which has inalienable rights akin to that of humans and which every human being has the responsibility to respect.¹²⁰ The preamble to the declaration states that we are an indivisible part of mother earth, interrelated and interdependent, with a common destiny.¹²¹ The declaration further provides inter alia that mother earth has inalienable rights, which include the rights to ‘live and to exist’, ‘be respected’ and to ‘regenerate its biodiversity’ and continue its vital processes without human disruptions.¹²² The recognition of these rights places on us humans, the obligation to live within and not above nature, of which we are only a part, and protect its systems, not putting a price tag on its processes, the well-being of which, our existence depends,¹²³ as according to Darlene Lee¹²⁴ other species and ecosystems have inherent rights, just like humans, to exist.¹²⁵ Even though it has been reported¹²⁶ that Bolivia, which passed the Framework law on Mother Earth and Integral Development for Living Well, since 2012 has done little by way of implementation, as the law is yet to evolve from good intentions to action,¹²⁷ the fact remains, that it acts as a catalyst to complacent governments and people, to wake up to their responsibility of caring for the earth. The United Nations has designated the 22nd day of April every year as the International Mother Earth day. The day is celebrated to serve as a reminder to each of us, that we depend on the earth and its systems for sustenance and that we have a responsibility to promote harmony with it, in all our activities.¹²⁸ It may be reasonable therefore, to conclude, that the approach notwithstanding, the right to a healthy environment does exist, depending on where one looks.¹²⁹

9. Conclusion and Recommendations

The subject matter of environmental rights has had a colourful evolution over time. From its embryonic stage when it was the lone cry from an individual, to the first tentative steps when the United Nations began to consider and even incorporate it directly and indirectly into its instruments. Further through the times when regional bodies, led by Africa, began to boldly incorporate its ideals into their statutes, to the present, when the effects of climate change has led to the general acceptance, that drastic steps have to be taken, if life on earth must subsist. The different approaches suggested and canvassed, gear towards accommodating individuals and groups who find the outright notion of environmental rights to individuals and people groups unacceptable, and who feel that economic development must take precedence over ecological considerations and by inference, its effects on man. The fact remains that whatever the approach, the principle of environmental protection, which is not new to many indigenous cultures of the world, has found acceptance the world over. What remains however, is to lend ‘walk’ to the ‘talk’. Nature is at the brink of a catastrophic dive into nothingness and if there is no drastic reversal of policies and processes, with subsequent adoption of safe and remedial approaches, the human race would soon find, that there is no place to call home. The Universal Declaration of the Rights of Mother Earth is yet to be adopted by the UN. It is the intendment of the drafters that Mother Earth be recognised as having rights, and the declaration recognized, just like the Universal Human Rights Declaration. According to them, its adoption by the UN will inspire nation states to recognize also, and include it in their body of laws as having inherent rights.¹³⁰ The following measures may be necessary. Lawyers should seek, not just a general knowledge but a specialization in this aspect of law practice, in other to horn their skills in environmental advocacy. Legal practitioners should also take advantage of the opportunity provided by the present fundamental rules and engage in public interest litigation for persons and communities who are either ignorant of their rights or are not capable of funding private litigations because in environmental degradation issues, harm done to one is harm done to all. The bench should not be left out of the reform. This calls for judicial activism on their part, bearing in mind the promotion of environmental justice and fairness for peoples and groups who look upon them as the last hope of the common man.

¹¹⁷Shannon Biggs and others (eds.) ‘The Challenge is Upon Us: Climate Chaos or Communities of Cooperation’, in ‘Rights of Mother Nature and Mother Earth; Rights Based Law for System Change’ www.wecaninternational.org/ROME-Rights... accessed 21 March, 2020

¹¹⁸ *ibid*

¹¹⁹ Global Alliance for the Rights of Nature, ‘Universal Declaration of the Rights of Mother Earth’ www.therightsofnature.org/universal-declarat... accessed 7 July, 2019.

¹²⁰ Articles 1, 2 and 3.

¹²¹ World People’s on Climate Change and the Rights of Mother Earth www.pwccc.wordpress.com/programa > accessed 21 March 2020

¹²² Article 2

¹²³ Biggs (n115)

¹²⁴ Executive Director of Earth Law Centre

¹²⁵ Statement made at the Earth Law Centre during the 2017 United Nations Earth Conference www.sustainabledevelopment.un.org... accessed 20th October, 2021.

¹²⁶ Anna Hernandez, ‘Defending Mother Earth in Bolivia’ [2016] 27(3) *Indigenous Policy Journal* www.indigenouspolicy.org/index.php/ipj/artcle/view accessed 25th March, 2020

¹²⁷ New Earth ‘Bolivia Passes “Law of Mother Earth” February 2016

¹²⁸ United Nations, ‘international Mother Earth Day, 22nd April. www.un.org/en/events/mother accessed 26 March, 2020

¹²⁹Mahmood Monsipouri and others, *Constructing Human Right to ENVIRONMENT Globalization* (Routledge, June 2015)71.

¹³⁰ Rights of Mother Earth, ‘Welcome to Rights of Mother Earth’ [March 2018] www.rightsofmotherearth.com