

ENVIRONMENTAL JUSTICE AND THE RIGHTS OF INDIGENOUS PEOPLES UNDER
INTERNATIONAL HUMAN RIGHTS LAW*

Abstract

Industrialization and development result in increased economic activity globally, which in turn, exerts relentless pressure on the world's environment. Despite prolific growth of environmental laws and policies to regulate actions affecting the environment, world economy continues in the profligate exploitation of natural resources at unsustainable degrees. The ensuing environmental degradation impacts on people's enjoyment of fundamental rights, intensifying the struggle for environmental justice, including the clamour for indigenous peoples' rights across nations. Concept of environmental justice seeks to address the emerging issues of fair and equal distribution of environmental burdens and benefits through the principle of inclusiveness at the local, national and international plane. This aims at securing a meaningful participation in decision and policy-making processes by the indigenous populations mostly affected by environmental damage, and guarantee adequate recourse to redress. Accordingly, indigenous populations disparately beset by environmental degradation 'are increasingly framing their demands for environmental justice' in the context of human rights. This paper therefore, investigates the prospects and perils of using the concept of environmental justice as a means to advance indigenous peoples' rights within the purview of international human rights law. The work finds that, irrespective of ever-increasing pressures on indigenous peoples' environment and natural resources by outside factors such as climate change, globalization and state actions, their rights are yet to be fully articulated in international law. It argues that, failure to protect the environment may somehow, violate the collective rights of indigenous peoples to their ancestral lands and resources resulting in environmental injustice. It thereafter concludes with useful recommendations.

Keywords: Environmental Justice, Indigenous Peoples, Environmental Human Rights, Human Rights Law, Environmental Injustice

1. Introduction

The concept of environmental justice strives to recognise and accommodate those human rights some of which are specifically accorded to indigenous peoples under international law¹. It equally seeks to prevent every activity by authorities and other stakeholders, that would result in degradation of the environment, especially where the environment plays a crucial role in the traditional, cultural or spiritual lives of the people as recognized by relevant article² of the International Covenant on Civil and Political Rights (ICCPR). The concept of environmental justice was conceived to address issues relating to the fair and equal distribution of environmental burdens and benefits through the application of the principle of inclusiveness both at the domestic and international levels. This aims at ultimately securing a meaningful participation in decision and policy-making processes by the indigenous populations mostly affected by environmental degradation³. The negative effects of environmental degradation are global and are borne disproportionately by the world's most vulnerable groups, including the rural and urban poor, ethnic minorities, and indigenous populations⁴. From the people of *Ogoni* in Nigeria whose environments are in ruin due to oil drilling, to the *Inuit* and other indigenous peoples faced with ugly consequences of climate change, communities disparately beset by environmental degradation have continued to frame their demands for environmental justice in the context of human rights⁵. The right to a clean and healthy environment is part of environmental human rights which are now widely accepted and recognized as an extension of basic human rights. Given the interrelation between human rights and the environment, a clean, healthy and sustainable environment is crucial for the full exercise and enjoyment of the broad range of human rights including the right to food, water and sanitation. However, despite the proliferation of environmental laws and policies in recent decades to curtail and combat environmental degradation, the condition of the world's environment continues to deteriorate placing serious limitation on the enjoyment of human rights by individuals and communities⁶. The world's environment is in bad shape today, arising from the triple planetary crisis of climate change, loss of biodiversity, and pollution orchestrated by immoderate human activities. Environmental degradations disproportionately affect vulnerable persons and groups including indigenous peoples who often times, are exposed to various risks while defending their ancestral lands and resources upon which they rely for sustenance, livelihoods, religious and customary practices. Lack

*By **Ferdinand Onwe AGAMA, PhD**, Senior Lecturer, Department of Public Law, Faculty of Law, National Open University of Nigeria, Plot 91 Cadastral Zone Nnamdi Azikiwe Expressway, Jabi Abuja. Email: fedinchrist@yahoo.com, fagama@noun.edu.ng, Tel: 08039368014.

¹C G Gonzalez, 'Environmental Justice, Human Rights, and the Global South', (2015) 13 *Santa Clara Journal of International Law* 151.

²such as *Article 27* which provides that, 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language

³C G Gonzalez, (n1).

⁴D McLaren, 'Duncan McLaren, Environmental Space, Equity and the Ecological Debt', in Julian A, Robert B, and Bob E. (Eds), *Just Sustainabilities: Development in An Unequal World* (Routledge 2023)

⁵C G Gonzalez, (n3).

⁶UNDP, 'What is the Right to a Healthy Environment'?? <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf>. Accessed on 1 February, 2024.

of adequate legal rights leaves them defenceless, repeatedly, in the hands of governments and corporations who have little effective motivation to consult with them or seek their consent prior to activities leading to environmental degradation. Whether and how the concept of environment justice could address issues relating to indigenous peoples' rights in the face of ever-increasing environmental challenges therefore forms part of the core concern of this article.

2. Meaning of Indigenous Peoples

There is as yet, no generally accepted definition of the term 'Indigenous Peoples' in international law. Consequently, various governments, national and international organizations, non-government organizations, indigenous groups and scholars have different ways of defining the concept. According to the Secretariat of the Permanent Forum on Indigenous Issues, the prevailing view regarding the concept of indigenous peoples today is that 'no formal universal definition of the term is necessary, given that a single definition will inevitably be either over- or under-inclusive...'⁷. In any case, with regards to who 'indigenous peoples' are, the International Labour Organization's Indigenous and Tribal Peoples Convention⁸ indicates that the convention covers, among others:

peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.⁹

From the foregoing, indigenous peoples refer to the original occupants with distinct social and cultural identities and share collective ancestral ties to the lands and natural resources on which they occupy. The land and natural resources on which the indigenous populations live are intrinsically and inextricably connected to their traditions, cultures, identities, livelihoods, as well as their physical and spiritual well-being. The term, 'indigenous peoples' is also defined as 'living descendants of pre-invasion inhabitants of lands now dominated by others', who 'are culturally distinct groups that find themselves engulfed by other settler societies born of forces of empire and conquest'¹⁰. Owing to conquest and or colonization especially by established nations, most of world frontiers which were home to people indigenous to those regions were either eliminated or assimilated by the invaders. Where there was a remnant who survived the invasion and continued to maintain their distinctive cultures and customary practices., they qualify as indigenous peoples. The United Nations describes indigenous people as those which 'having an historical continuity with pre-invasion and pre-colonial societies', and 'consider themselves distinct from other sectors of the societies now prevailing in those territories or parts of them'.¹¹ To maintain their uniqueness, indigenous people are 'determined to preserve, develop and transmit to future generations, their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples in accordance with their own cultural patterns, social institutions and legal systems'¹².

Although, the United Nations Declaration on the Rights of Indigenous Peoples¹³ does not provide a definition of indigenous peoples, it actually affirms their right to self-determination including determining their own identity and management of their natural resources, including the rights to a clean and healthy environment. Consequently, for the concept of environmental justice to be operational, the recognition and respect for the indigenous peoples, their cultures and traditional practices must be at the front burner. A few of the many groups of indigenous people around the globe are: the various groups of Native American tribes including the *Navajo*, *Sioux* in the contiguous 48 states, the *Inuit* of the arctic zone from Siberia to Canada, the rainforest tribes in Brazil, and the *Ainu* of northern Japan, Zhuang and Uyghurs in China etc. During the World's first Conference on Indigenous Peoples¹⁴ perspectives and best practices were shared on how to secure the rights of indigenous peoples, 'including pursuing the objectives of the United Nations Declaration on the Rights of Indigenous Peoples'.¹⁵

3. Indigenous Peoples of Africa

The indigenous peoples and their custom, tradition, ritual and communal governance, particularly in Africa, pre-dated the present configurations of nation-states in the continent. Domestic and international law has however consistently failed to accorded this reality its pride of place, resulting in the historical arbitrary conglomeration of 'customary

⁷United Nations, 'Secretariat of the Permanent Forum on Indigenous Issues, State of the World's Indigenous Peoples, (2009) New York: pp. 4–7.

⁸1989 (ILO Convention No. 169)

⁹S E Douglas, 'Indigenous peoples: Issues of definition', (1999) *International Journal of Cultural Property*, Vol. 8 (1) pp 4–13.

¹⁰S J Anaya, 'Indigenous Peoples in International Law' 2nd ed., (Oxford University press, 2004) p. 3.

¹¹United Nations, 'Workshop on Data Collection and Disaggregation for Indigenous People', (January, 2004) *New York*.

¹²*Ibid.*

¹³September, 2007.

¹⁴Held on September 22- 23, 2014.

¹⁵EPA's Role in Promoting International Human Rights, Rights of Indigenous Peoples, and Environmental Justice'<https://www.epa.gov/environmentaljustice/epas-role-promoting-international-human-rights-rights-indigenous-peoples-and>. Accessed on 20 February, 2024.

communities under the rubric of peoples without cognisable sovereignty¹⁶. The rights of indigenous peoples are intrinsically connected to environmental protection because indigenous peoples' livelihoods depend to a large extent, on the conservation of their natural environment¹⁷. There is a wide acceptance 'within mainstream human rights scholarship and activism' in which certain communities of hunter-gatherers and pastoralists are considered as indigenous peoples of Africa,¹⁸ who themselves have endorsed the indigenous identity and solicited for recognition and protection under the relevant law¹⁹. The African Union became the first to adopt indigenous land rights decided by its judicial organ - the African Commission on Human and Peoples' Rights (ACHPR)²⁰. The breakthrough is the culmination of 40 years of struggle championed by the *Endorois* community, which in 1973 was dispossessed of the ancestral land it had lived on since antiquity²¹. The claim was that the failure to compensate the community with enough grazing land after their ejection seriously depleted their livestock. However, precisely in May 2017, the African Court on Human and Peoples' Rights delivered its first indigenous rights case over the eviction of the *Ogiek* from their ancestral lands in the Kenyan *Mau Forest*²². Meanwhile, majority of the occupants of the South-Eastern zone of Nigeria has also consistently maintained that they are 'Indigenous People' of Biafra (IPOB)²³.

4. Environmental Justice and the Rights of Indigenous Peoples

Environmental justice is defined as the fair treatment and meaningful involvement of all people irrespective of race, national origin, social or economic status regarding the development, implementation, and enforcement of environmental laws, regulations, and policies²⁴. 'Environmental justice is about social transformation directed towards meeting basic human needs and enhancing our quality of life – economic quality, health care, housing, human rights, environmental protection, and democracy' and which 'seeks to challenge the abuse of power which results in poor people having to suffer the effects of environmental damage caused by the greed of others'²⁵. The core concern and advocacy of the concept of environmental justice is the adoption of environmental and public health strategies that guarantee the equal protection of every group, including indigenous peoples who often are on the receiving end of the ugly effect of resource exploitations, waste disposal and pollution in their community²⁶. Several human rights are specifically accorded to indigenous peoples under international law which are also susceptible to violation by environmental degradation, especially where the environment plays a specific role in their cultural, traditional, or spiritual lives. Accordingly, *Article 27* of the International Covenant on Civil and Political Rights (ICCPR) provides that: 'In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'²⁷. The implication is that, where the environment contributes to indigenous peoples' culture, language or spirituality, any actions that damage the environment potentially violate *article 27* of the ICCPR).

The idea behind the concept of environmental justice is to have every group of people bear a proportionate share of the negative environmental consequences that may result from industrial, governmental and commercial operations or policies. To ensure environmental justice, there must therefore, be a fair and equal treatment of every group whose means of livelihood might be affected one way or the other, by environmental degradation. Hence, every group especially the indigenous peoples should enjoy adequate protection from environmental degradation and secure access to the decision-making process required to maintain a sustainable environment conducive for their development.²⁸ Degradation of environment jeopardises the health conditions and general well-being of indigenous populations and to ensure justice,

¹⁶R Laher and K Sing'Oei, 'Indigenous People in Africa: Contestation, Empowerment and Group Rights' (2022) *African Institute of South Africa*. <https://www.jstor.org/stable/j.ctvh8r1v2>. Accessed on 21 February, 2024.

¹⁷*Ibid.*

¹⁸For instance, hunter-gatherer groups such as the *San-Basarwa* of southern Africa, the *Batwa-Pygmyes* of Central Africa and several hunter-gather communities in East Africa including *Ogiek*, *Hadza*, *Awee*, and also nomadic pastoralist communities like the *Maasai*, *Boran*, *Rendille*, *Turkana*, *Karamojong* and *Mbororo*,

¹⁹R Laher and K Sing'Oei, (n17)

²⁰*Ibid.*

²¹*Ibid.*

²²B Rosch, 'Indigenusness and Peoples' Rights in the African Human Rights System: Situating the *Ogiek* Judgment of the African Court on Human and Peoples' Rights' (2017) *Law and Politics in Africa, Asia and Latin America*, Vol. 50, No. 3, Special Issue: pp. 242-258.

²³Now, a secessionist group within Nigerian polity.

²⁴The United States Environmental Protection Agency – Office of Environmental Justice. <https://www.epa.gov/environmentaljustice>. Accessed on 8 February, 2024.

²⁵J Cock, 'Connecting the Red, Brown and Green: The Environmental Justice Movement in South Africa', (2004). <https://ccs.ukzn.ac.za/files/Cock%20Connecting%20the%20red,%20brown%20and%20green%20The%20environmental%20justice%20movement%20in%20South%20Africa.pdf>. Accessed on 8 February, 2024.

²⁶Environmental Justice Organisation, Liabilities and Trade (EJOLT), 'Mapping Environmental Justice', <<http://www.ejolt.org/2013/02/environmental-injustice/>>. Accessed on 8 February, 2024.

²⁷(1966), Art. 27.

²⁸'Environmental Justice and Indigenous Struggles', (n15)

there must be adequate recourse to redress²⁹ for every form of environmental injustices³⁰. The concept of environment justice encapsulates the recognition and enforcement of the environmental rights of all citizens, including indigenous peoples, under international law. These rights are outlined in national legislations, treaties and international law including the rights to customary laws, development, health, education, protection from discrimination, protection of the environment and natural resources³¹. Indigenous peoples are specifically entitled to the rights to self-determination and to protect their cultures, languages, identities ceremonies, and access to employment, health, education and natural resources as contained in the United Nations Declaration on the Rights of Indigenous Peoples³². In relation to the environment in particular, indigenous peoples 'have the right to the conservation and protection of their environment and the productive capacity of their lands or territories and resources'. Accordingly, States are required to collaborate and consult the concerned people regarding all developmental projects to ensure the conservation and protection of the environment and natural resources³³.

Environmental justice as a concept is very pivotal to the recognition and protection of the environmental and other rights of the indigenous peoples. The concept particularly arose from the fact that certain group of people are disproportionately exposed or subjected to higher levels of environmental hazards than others in the society³⁴. The injustices resulting from the disproportionate environmental burdens led to the emergence of a grassroots civil rights demand 'for environmental justice in the 1980s in the United States'³⁵. This campaign has today, snowballed into an international environmental justice movement, embracing the notion 'of justice based on recognition, participation and capabilities'³⁶. However, despite the attention by the United Nations on the subject of indigenous peoples' rights and environmental justice, the rights and conditions of these people are often passed over, even by supposedly culturally advanced economies. In many cases, those in the federal government keep pushing to extract resources in the region where the indigenous people live, who also depend on these resources and the environment for economic, cultural and spiritual sustenance. An instance is the Arctic National Wildlife Refuge on the northern coast of Alaska in the United States where an indigenous people of *Gwich'in* who depend culturally and spiritually on the herds of caribou that live in the zone, maintain that drilling in the region degrade the environment and destroy their way of life. Also, in the Niger Delta region of Nigeria, it has been widely publicized that the degradation of the environment resulting from oil drilling and other environmental activities adversely affects the people within the region, most of whom 'do not earn enough to relocate from polluted areas'³⁷.

To ensure adequate protection of indigenous peoples in line with the intention of this paper, all and every environmental action must be taken with due consideration and regard to the environment justice norms. What is at the centre of most environmental challenges confronting governments usually involves what constitutes proper and sustainable levels of development.

For many indigenous peoples, sustainable development constitutes an integrated wholeness, where no single action is separate from others. They believe that sustainable development requires the maintenance and continuity of life, from generation to generation and that humans are not isolated entities, but are part of larger communities, which include the seas, rivers, mountains, trees, fish, animals and ancestral spirits. These, along with the sun, moon and cosmos, constitute a whole. From the point of view of indigenous people, sustainable development is a process that must integrate spiritual, cultural, economic, social, political, territorial and philosophical ideals³⁸

Accordingly, all environmental action must be taken with due cognizance of the above elements, to ensure that the rights and feelings of the indigenous peoples are not jeopardised.

5. Environmental Injustice, Factors and Effects

The concept of environmental justice in essence, seeks to address the problem of environmental policies or actions often skewed against certain disadvantaged groups in the society. Environmental injustice occurs where there is an imbalance or disproportionate impact of environmental degradation against the vulnerable groups such as the poor and indigenous peoples without adequate compensation, or there is exclusion of such groups from the processes which determine how

²⁹E Miller, 'Flint Water Crisis: A Turning Point for Environmental Justice', (2017) *WOSU 89.7 NPR NEWS*. <https://news.wosu.org/news/2017-09-21/flint-water-crisis-a-turning-point-for-environmental-justice>. accessed on 1 February, 2024.

³⁰Environmental injustice refers to disproportionate exposure of a group of people (minority), to environmental pollution and other forms of degradation and its effect, due to their location, income level or origin.

³¹Indigenous and Tribal Peoples Convention 1989, NO. 169. Arts. 3, 4 (1), 7 (4) 15 (1) & (2)

³²Adopted by the UN General Assembly on 13 September, 2007.

³³United Nations Declaration on the Rights of Indigenous Peoples, 2007. Art. 29.

³⁴Environmental Justice Organisation, *Liabilities and Trade* (n18).

³⁵R D Bullard, 'Unequal Protection: Environmental Justice and Communities of Color', (1994) *Random House*.

³⁶D Schlosberg, *Defining Environmental Justice: Theories, Movements, and Nature*, (New York: Oxford University Press, 2007), 256.

³⁷O D Elisha, 'Niger Delta is in Rich Resources, but Environmental Destruction is pushing People into Poverty' (Oct. 2023) <https://theconversation.com/niger-delta-is-rich-in-resources-but-environmental-destruction-is-pushing-people-into-poverty-214598>. Accessed on 8 February, 2024.

³⁸'Environmental Justice and Indigenous Struggles'<https://openoregon.pressbooks.pub/envirobiology/chapter/1-5-environmental-justice-and-indigenous-struggles/>. Accessed on 1 February, 2024.

the distribution of environmental burdens and benefits will be effected. Environmental degradations are common in regions where there are more industrial sites and operations usually due to the high concentrations of soil, air and water pollution. This usually have negative effects on the quality of life, health, and well-being of the residents in the neighbourhood and can impede their chance to fully enjoy their rights which the law guarantees. Environmental injustice can occur at local and regional scales³⁹.

Factors that Precipitate Environmental Injustice

Environmental injustice is of several forms and can be precipitated by many factors, ranging from skewed or poor enforcement of environmental policies to siting of pollution industries in or around the neighbourhoods of low-income and minority groups. Some major factors that may precipitate environmental injustice are:

Discriminatory Environmental Policies

The initiation and enforcement of environmental policies depend to a great extent on local political power⁴⁰. Hence, detections, punishments for noncompliance, and enforcement are not accorded the expected priority in indigenous people and other 'minority and low-income neighbourhoods'⁴¹. In the United States for instance, punishments and enforcement are often more frequent and quicker in more affluent and white communities. Experience shows that the economic state of the neighbourhood can influence the level of penalties and compliance.⁴² Environmental discriminatory policies are often initiated due to racial or ethnic inclinations. Therefore, environmental injustice arising from the placement of industrial sites in minority communities and other vulnerable groups has historically been associated with racism⁴³. The poor, minority groups are at the receiving end of the impacts of environmental degradation due to the cluster of industrial sites in their neighbourhoods while the elites who are able to access loans and insurance pitch their tents in more serene and safe zones. In the United States for instance, environmental policies determining the siting of polluting industries for decades between 1890s and 1968, had been influenced by racial discrimination⁴⁴. Due to these skewed policies, Black communities are exposed to more concentrations of noxious industrial pollutants in the United States irrespective of income⁴⁵. While environmental harms occur from industrial operations within the neighbourhood of these communities, 'toxic waste sites' were also being sited in Black and Hispanic communities at higher rates⁴⁶. The minority groups lack the political and financial muscle to combat business and eke a living in the city. One of the earliest cases on environmental injustice was the suit against the siting of toxic industries under civil rights laws in Houston, Texas⁴⁷. In the 1970s, about 80 percent of landfills and incinerators were reportedly located in Black communities notwithstanding that only 25 percent of Houston's population was Black⁴⁸. "Community members filed action challenging the Texas Department of Health's permit to build a solid waste landfill in a predominantly Black neighbourhood in 1979"⁴⁹. The suit was however, stamped out and the site was built.

Quest for Cheaper Lands by Industries.

As part of economic strategies, production and manufacturing industries both at the local and regional levels tend to concentrate near low-income and indigenous communities where lands/sites are cheaper. The availability and quest for cheaper lands result in the placement of more industrial and waste sites in these areas that have lower property values⁵⁰. Lower property values in the minority and low-income communities were mainly due to redlining⁵¹ before it was banned in 1968⁵². All these contribute to low property values in the affected communities leading to the concentration of industrial sites around the neighbourhoods with the residents being exposed to ugly effects of environmental degradations affecting their rights and health⁵³.

³⁹Environmental Injustice. <https://www.studysmarter.co.uk/explanations/human-geography/urban-geography/environmental-injustice/>. Accessed on 9 February, 2024.

⁴⁰*Ibid.*

⁴¹*Ibid.*

⁴²R S Diaz, 'Getting to the Root of Environmental Injustice: Evaluating Claims, Causes, and Solutions', (2016) *Georgetown Environmental Law Review*, 29.

⁴³*Ibid.*

⁴⁴*Ibid.*

⁴⁵L Downey and H B Race, 'Income, and Environmental Inequality in the United States. Sociol Perspect' (2008) DOI: 10.1525/sop.2008.51.4.759.

⁴⁶M C Mitchell, 'Environmental Racism: Race as a Primary Factor in the Selection of Hazardous Waste Sites', (1993) *National Black Law Journal*, 12(3).

⁴⁷'Environmental Injustice' (n29).

⁴⁸H Kanu, 'Toxic racism confronted by DOJ's environmental discrimination probes', (2022) *Reuters*.

⁴⁹U Outka, 'Environmental Injustice and the Problem of the Law', (2005) *Maine Law Review*, 57(1).

⁵⁰'Environmental Injustice' (n37).

⁵¹A general practice by financial institutions to refuse or withhold loans and insurance to residents of an area deemed to be poor with high financial risk.

⁵²By the Fair Housing Act of 1968.

⁵³H M Lane *et al*, 'Historical Redlining Is Associated with Present-Day Air Pollution Disparities in U.S. Cities', (2022) *Environmental Science & Technology Letters*, 9 (4).

Industrialisation.

Industrialization requires multiple industrial operations involving large number of companies. These industrial actions destroy the environment, which ultimately affects residents in nearby neighbourhoods. Hence, the advent of industrialization, facilitated the expansion of large companies with damaging impacts on the environment and catalyse environmental injustice. Though, environmental injustices, basically affect indigenous and minority groups arising from environmental deterioration, the effect eventually reaches everyone, everywhere in the society.

6. Environmental Rights under International Human Rights Law

Human rights and environmental issues are interwoven with some inextricable relations. The relationships between human rights and the environment are widely recognised both in the national and international law today, as individual experts in each field increasingly bridge the epistemic gap, exposing the commonalities involved in integrating human rights and environmental legal analyses⁵⁴. By virtue of the Human Rights Council Resolutions adopted in 2021⁵⁵ and that of the General Assembly adopted in 2022,⁵⁶ environmental human right is now included in the library of internationally recognized rights⁵⁷. The United Nations Independent Expert⁵⁸ recognized and recommended that the enjoyment of a ‘safe, clean, healthy and sustainable environment’ constitutes an aspect of human rights. In his words, ‘as humanity confronts an unprecedented planetary crisis, it is our genuine hope that the right to a clean, healthy and sustainable environment will serve as a catalyst for systemic and transformative changes to produce a just and sustainable future in harmony with nature’⁵⁹. The issue is whether it is better to expand recognition of environmental human right separately or simply give it interpretation in the existing human rights law. Expansion of the right ‘within the context of the existing economic, social and cultural rights paradigm, which already recognizes rights to water, food, and environmental hygiene’ seems to be a better option rather than engaging in the rigorous task of expanding civil and political rights to encapsulate environmental human rights⁶⁰. International human rights law realises the crucial role of the environment in ensuring the fulfillment and full enjoyment of the rights which it seeks to safeguard.

Environmental changes and degradations are human rights issues because, not only that they exacerbate inequalities among various groups in the society, but can impede the enjoyment of the broad range of human rights. The inequalities introduced by environmental or climate crisis mostly disfavour the poor and vulnerable groups including indigenous peoples. It is gratifying to learn, however, that international human rights law equally recognizes the existence and rights of indigenous peoples around the world. The rights are vast and encompass ‘the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access to their religious and cultural sites; the right to the use and control of their ceremonial objects...’⁶¹ and the right ‘to the conservation and protection of the environment and the productive capacity of their lands or territories and resources’⁶². The law therefore, provides for a broad range of rights including environmental rights accorded to the indigenous peoples. The concepts of environmental human rights and indigenous people’s rights are however, subsumed in the wider human rights norm, recognized and provided for, by international human rights law. This explains why environmental human rights in particular, is regarded as the late arrivals to human rights law⁶³, though now, widely recognized as an extension of human rights under international human rights law. In every case, the recognition by international law, of environmental human rights as a dimension of human rights is very crucial in every effort to achieving environmental justice for all peoples, particularly the indigenous peoples who are often poverty-ridden and disproportionately bear the effects of environmental degradation.

7. Promoting Environmental Justice through Human Rights Law

The Environmental justice strategy of the United Nations Development Programme (UNDP) conceptualizes environmental justice as promoting justice and accountability in environmental issues, paying attention to the respect, protection and fulfilment of environmental rights and the promotion of the environmental rule of law⁶⁴. Environmental degradation is a global issue, with general impact on human rights. It exacerbates environmental injustices, threatens the enjoyment and protection of human rights and, disproportionately affects the most vulnerable and marginalized groups

⁵⁴E Burlson, *Environmental Law Dimension of Human Rights*, (Oxford University Press, 2015) pp. 272.

⁵⁵A/HRC/RES/48/13.

⁵⁶A/RES/76/300.

⁵⁷D R Boyd, ‘The Right to a Clean, Healthy and Sustainable Environment’ (2023) *United Nations Human Rights Special Procedures*. <https://www.ohchr.org/en/special-procedures/sr-environment>. Accessed on 9 February, 2024.

⁵⁸D R Boyd in *Ibid*.

⁵⁹D R Boyd (n32)

⁶⁰E Burlson, (n29).

⁶¹United Nations Declaration on the Rights of Indigenous Peoples, Adopted by the General Assembly on 13 September, 2007. Art. 12 (1).

⁶²*Ibid*, Art. 29 (1).

⁶³J H Knox, ‘United Nations Mandate on Human Rights and the Environment’ (2017) *United Nations Special Rapporteur on human rights and the environment*, Vol 42, pp 251 - 254.

⁶⁴United Nations Development Programme, ‘Promoting Environmental Justice’, (2022) <https://www.undp.org/sites/g/files/zskgke326/files/2022-06/Environmental%20justice-Guidance%20Note.pdf>. Accessed on 14 February, 2024.

including indigenous populations. Environmental right is now adjudged part of the broad range of our fundamental rights to which all peoples are entitled⁶⁵. Environmental rights are recognized both at international level by the United Nations Human Rights Council, United Nations General Assembly and at national level in many countries including the United States⁶⁶, through international or regional treaties, national constitutions, legislation or policies⁶⁷.

Environmental rights incorporate a set of:

- i. procedural rights such as access to justice, access to information and public participation on environmental affairs; and
- ii. substantive rights including clean air, sanitation, healthy ecosystems and biodiversity, pure water, healthy and sustainably produced food, as well as non-toxic environments⁶⁸.

Accordingly, environmental justice can only be achieved when the above rights are given adequate recognition and enforcement necessary for the fulfillment and full enjoyment of environmental rights. These rights, when incorporated in the legal framework will have catalytic outcomes for environmental justice. In accordance with the United Nations Development Programme's adopted concept, environmental justice can be realized through the establishment of enabling legal frameworks both at national and international levels, applying human rights-based approaches that prioritise respect for, protection and fulfillment of environmental rights⁶⁹. Moreover, strengthening institutions that are people-centred and promoters of justice and human rights, guaranteeing their accessibility to all, with adequate facility 'to monitor, enforce and implement environmental laws, and to respect, protect and fulfill the environmental rights'⁷⁰ of every group has a lot to do with the concept of environmental justice. Lastly, there is a need for an increased access to justice and legal empowerment in environmental affairs to enable the people actively participate in the decision-making processes and effectively defend their environmental rights whenever the need arises.

The international human rights regulatory framework provides a mechanism for the promotion of environmental justice⁷¹. Accordingly, human rights laws create and impose obligations on governments to take measures to respect, protect and fulfil human rights,⁷² including those relating to environment. In addition to the obligation to take positive steps, States are expected also, to desist from environmental activities capable of infringing upon the citizens' rights irrespective of the group to which they belong. Acts by any States, allowing degradation of the environment can be condemned, 'not only for violating principles of environmental protection and conservation but also for failing to protect the human rights of their citizens'⁷³. The normative effect of human rights can therefore be utilized to pressurize States to take actions promoting environmental justice, especially for the betterment of vulnerable groups in the society. Moreover, individuals and groups, including indigenous populations who allege the violation of their environmental rights can leverage on the availability of human rights tribunals, courts and committees to obtain redress. In the main, the relationships between human rights and environmental issues make the concept of environmental justice a worthy course, especially as they go *Pari passu* with a clean, healthy and sustainable environment required for development⁷⁴. Human rights principles including environmental human rights therefore, offer a framework necessary for promoting environmental justice. As a result, States with robust human rights agenda including strong democratic processes and improved access to justice are often better able to tackle environmental problems and work against environmental injustice. It follows therefore, that human rights-based approach can be adopted to assist in decision-making and policy-formulation to bring about just outcomes when addressing environmental issues⁷⁵.

8. Conclusion

A broad range of human rights including those relating to the environment are guaranteed under international human rights law, creating and imposing some obligations on States. Like other individuals and groups, indigenous peoples are entitled to the entire gamut of human rights guaranteed under human rights law, without discrimination. However, the close ties which indigenous peoples have with their natural environment make them particularly vulnerable in respect of the general rights, necessitating some specific steps and actions by the governments for their protection. The cultural integrity, religious continuity and physical wellbeing of an indigenous group for instance, may be intrinsically connected with their environment such that any interference with or degradation of the environment negatively affects the environmental and other human rights of the people. The implication is that the concept of environmental justice is an essential factor in

⁶⁵S Theil, *Environmental Human Rights*, (Cambridge University Press, 2021)

⁶⁶E Cogan, 'The United States Recognises the Human Rights to a Clean, Healthy and Sustainable Environment' (January 2023) *American Journal of International Law*, Vol.117, pp128 – 133.

⁶⁷United Nations Development Programme (n54)

⁶⁸*Ibid.*

⁶⁹*Ibid.*

⁷⁰*Ibid.*

⁷¹B Lewis, 'Human Rights and Environmental Wrongs: Achieving Environmental Justice through Human Rights Law', (2012) *International Journal for Crime, Justice and Social Democracy*, Vol. N0.1.

⁷²*Ibid.*

⁷³*Ibid.*

⁷⁴United Nations Development Programme (n58)

⁷⁵B Lewis, (n62)

ensuring that indigenous peoples enjoy the complete range of rights which are guaranteed to every people under international law. The concept can impact on States' capacity and willingness to protect and fulfill the rights of the people, particularly, those of the vulnerable indigenous population. The concept can achieve this by pressing on the governments, providing justifications for the application of right-based approach to environmental issues and governance, highlight fully the human effect of environmental degradation. On the other hand, human rights framework can play important role in promoting and safeguarding environmental justice. For instance, human rights enforcement mechanisms provide a valuable avenue for individuals and communities to seek redress for environmental harm arising from unjust or discriminatory environmental actions and policies. In essence, the two concepts are mutually supportive.

Environmental concerns are global issues which must be addressed from national, regional and international perspectives. Improving the environment requires political, legal and other sensitive but collective approach. As a result, an effective international coordination and collaboration among States is necessary, to tackle environmental issues and address the specific concerns of vulnerable groups like indigenous peoples in the face of the triple planetary crisis confronting the world community. Equally, representatives of community-based non-governmental organizations who are working to create environmental justice programmes in their countries should be coopted in the formulation and implementation of environmental and human rights agenda. In the legal perspective, non-discriminatory and right-based environmental policies should be adopted and implemented by States to ensure improved environmental justice and adequate protection of the rights of every individual and group including those of indigenous peoples. This work also recommends the adoption of an effective mechanism for raising and addressing environmental justice and indigenous issues in the context of human rights and periodic critical review of the environmental and human rights records of States, especially as it relates to more vulnerable groups like indigenous peoples across the globe.