

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

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ABSTRACT

Every right without an enforcement strategy is ham-fisted. The environment and its components are to be utilized, protected and preserved in a way to achieve sustainability. Companies, though inanimate persons created by human laws, have also emerged as users of the environment for the diverse purposes they are created. Mankind and science development are experiencing the fourth industrial revolution which is mostly characterized by a fusion of technologies that blurs the lines between the physical, digital and biological aspects of the environment. This industrial revolution is presently evolving at an exponential than a linear space. It is to welcome breakthroughs in fields like artificial intelligence which include self-driving cars and drones to virtual assistants and software that translate or invent; robotics, the internet of things, 3-D printing, autonomous vehicles, nanotechnology, energy storage, quantum computing and material science. This era is still unfolding². However, despite the beauty of these human and scientific advancements, it is the environment and mostly humans that bear the brunt of the negatives.

The study therefore examines the usage of the environment by companies and the attendant pollution from their activities and how these scientific undertakings on the environment often infringe on the rights of humans.

Key Words- Environment, Human Rights, Environmental Rights, Sustainability, Carbon Emission

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² Schwab, K. 2016. The Fourth Industrial Revolution: what it means, how to respond. *The World Economic Forum*. www.weforum.org, accessed 07/05/2021.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

1.0.Introduction

The environment is everything in nature. It comprises of both living and non-living components of our existence as humans. It includes plants, animals, land, water, the air we breathe in and much more. Man cannot exist or live without an environment to exist in or to support his existence. We live, breathe and move in the environment, no wonder why in the beginning, God created the environment before placing man to live therein. It is an eternal storehouse of great mysteries and enchanting beauties. It is viewed as a sincere friend that embalms man when his heart is wounded and a great philosopher that answers many questions of man. The environment in its natural state is so beautiful that man becomes spell bound by its overall beauties so much that he finds tongues in trees, books in brooks, sermons in stones and good in everything.

The environment comprises of all the physical and biological surroundings and how they connect and interact. All organisms, from the tiniest virus to the biggest man interact and are dependent on the environment for their survival and needs such as water, food, land, air, shelter, clothing, horticulture amongst others. This is the reason why the environment is viewed as an inseparable whole that is constituted by the interacting systems of physical, biological and cultural elements which are interlinked individually as well as collectively in myriad ways. The physical elements of the environment include space, soil, landforms, climate, water bodies, rocks, minerals which interact with the biological elements like plants, animals, micro-organisms. These also interact with the cultural aspects of the environment such as the social, economic and political. These cultural elements are essentially the man-made features of the environment.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

The concept “the environment” is derived from the ancient french word “*environner*” which means to encircle and so by broadly applying this idea to the surroundings, the environment includes the natural, social and cultural conditions that influence the life of an individual community. Geographically, this term has been used to refer to a limited area or that which compasses the entire planet which includes the atmosphere and stratosphere³. The difficulty in defining this important concept can be deduced from the fact that many conventions like the 1992 Rio Declaration on Environment and Development tries to avoid defining it. Little wonder why Caldwell states that “it is a term that everyone understands and no one is able to define”⁴.

However, several legislations, scholars and jurists have attempted to define this important concept at different levels. At the global level, the United Nations Stockholm Conference on Human and Development has stated that “Man is both creature and molder of his environment which gives him physical sustenance and affords him the opportunity for intellectual, moral and spiritual growth”⁵ Though this may not be viewed as a definition, it is however anthropogenic in nature as it places the responsibility for the care of the physical environment solely on man. The Declaration of the 1972 Stockholm Conference on Human Environment (UNCHE)⁶ merely referred to man’s environment by stating that “both aspects of man’s environment, the natural and man-made, are essential for his well-being and enjoyment of basic human rights”. The

³ Judicial Handbook on Environmental Law (UNEP). 2005. [www.abysinnialaw.com>item>462](http://www.abysinnialaw.com/item/462), accessed on 10/11/2020.

⁴ Caldwell A. 1980. *International Environmental Policy and Law*. 1st Edition Durham NC 170.

⁵ Preamble, para. 1. 1972. *Report of the United Nations Report on Human and Development and Environment*, Stockholm. A/CONF.48/Rev.1, New York.

⁶ www.ipcc.ch>njlite_download, accessed on 10/11/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

World Commission on Environment and Development (WCED), also known as the Brundtland Commission just states simply that “the environment is where we live”⁷.

As beautiful and enchanting as the environment is, man through his activities constantly tampers negatively with it especially through industrial activities which pollute it grossly. It has been recorded recently that more than two million annual deaths and billions of cases of diseases have been attributed to pollution⁸. Nearly half a billion of people, mainly women and children in poor rural areas live in severely polluted environments. Annually, 500 million premature deaths have been attributed to the high levels of pollution in cities. It has been estimated that the deterioration of the ozone layer will lead to more than 300,000 additional cases of skin cancer in the world and 1.7 million cases of cataracts⁹.

Environmental problems such as the above increasingly transcend national borders and pose serious challenges to the health of the planet, this is why there is the need for efficient laws and legal systems that enhance the enforcement of these laws in an increasing measure as the world evolves towards environmental sustainability. As much as man is both the molder and builder of his environment, through the rapid acceleration of science and technology, he has acquired the power to transform his environment positively in numerous ways on an unparalleled scale. In spite of this, companies managed by man, engage in activities that are unfriendly to the environment. There is the imperative to enforce environmental rights against companies to

⁷ [Sustainabledevelopment.un.org](https://sustainabledevelopment.un.org)> accessed on 10/11/2020.

⁸ Air pollution responsible for more than 2 million deaths worldwide each year, experts estimate. July 12, 2013. Science Daily. Institute of Physics (IOP). <https://www.sciencedaily.com>, accessed on 10/07/2021.

⁹ Piqueras P. 2016. The rapidly growing death toll attributed to air pollution: A global responsibility. <https://sustainabledevelopment.un.org>>accessed on 07/07/2021.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

ensure that these companies engage in activities that do not violate environmental rights and cause degradation. Environmental degradation has adverse effects on the quality of human life and particularly on the full enjoyment of human rights¹⁰ as the environmental is essential to the well-being of man and the enjoyment of his basic human right, especially the right to life¹¹.

Pathak has stated that “the protection and improvement of man’s environment arises directly out of a vital need to protect human life, to quality and condition, to ensure the prerequisites indispensable to safeguarding human dignity and human worth and the development of the human personality and to create an ethos promoting individual and collective welfare in all dimensions of human existence¹². Degradation of the environment most times results in serious human right violations. Usually, the right to the environment comes in the form of claims to a decent, healthy and sustainable environment. Environmental right is a substantive right that involves the promotion of a certain level of environmental quality.

In order to better understand the subject matter of this study and the need for environmental rights enforcement in developing countries, especially in Nigeria, it is necessary to examine the concept and development of the degradation and violation of the environmental rights.

¹⁰ Merieux de M. 2001. Deriving environmental rights from the European Convention for the Protection of Human Rights and Fundamental Freedoms. *Oxford Journal of Legal Studies*. Vol. 21. No 3.

¹¹ Stockholm Declaration of the UN Conference on Human Right. 1973. Preamble Para. 1. UN Doc A/CON/48/14/Rev.1

¹²Pathak S. 1992. Environmental Change and International Environmental Law in Dias A. 2000. Human Rights, Environment and Development with special emphasis on Corporate Accountability. Human Development Report 2000 Background Paper.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

2.0.The Development of Environmental Rights

The development of international environmental law cannot be traced to a specific time and date, though it has been estimated that its development started in the second half of the 19th Century. This development since conception has involved the process of industrialization which has gone through three major phases referred to as the industrial revolutions and it has evolved over three distinctive periods. These include - Post Industrial revolution up to 1945, Post United Nations Era and the period from Stockholm to the Rio Era¹³.

Each one of these periods have presented its unique characteristics of how to preserve the environment and avoid the accumulation of wastes. With the attainment of revolutions, environmental preservation has become more complex as large scale production, the demand for primary raw materials and the generation of wastes have significantly increased. With the planet increasingly under stress, action on environmental issues such as climate change, biodiversity, and ocean health constitute some of the most urgent and large-scale challenges.

Before the late nineteenth and early twentieth centuries, there was no widespread appreciation of the idea that ecosystems, water and air masses were “geographical units” that should be the subject of special legal protection¹⁴. The science-based idea that the biosphere was a fragile system vulnerable to human-induced impairment only became widely accepted after World War II¹⁵. When the idea gained wide acceptance in the late 1960s, legal protection of air, water, soil, and ecosystems, such as wetlands and forests, quickly followed, particularly in USA, Europe,

¹³ Sands P. 1995. *Principles of International Environmental Law*. Vol. 1 Manchester University Press.
Kiss A. and Shelton D. *International Environmental Law*. Irvington-on-Hudson, N.Y: Transnational, 1994.

¹⁴ Ibid

¹⁵ Ibid

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

Australia and New Zealand¹⁶. Since then, environmental protection has become an important element of the domestic legal systems of all developed countries and many developing ones. Since the 1980s, environmental law has also become an important and evolving component of international law.

Modern environmental protection laws have some roots in nineteenth century public health and resources conservation laws as well as in private legal actions for pollution damage. Environmental law has roots in private actions which protect the use and enjoyment of land, nuisance and abuse of rights, as well as in the public health reform laws of the nineteenth century¹⁷. According to Samman, “there is a flurry if international environmental law making efforts already underway. If these laws are to be successful, however, enforcement mechanisms must be established”¹⁸. As a result of these developments, there are a plethora of legislations that have been enacted by different legislative arms of various countries of the world over the years. There are also bilateral and multilateral instruments, both binding and non-binding between independent nations on environmental law some of which include the Rio Declaration¹⁹ 1992 which was entered into by over 150 States and the Kyoto Protocol²⁰ 1997 that was entered into by about 84 States. There are more than 870 international legal instruments that have one or

¹⁶ Tarlock A.D. Distinguished Prof of Law and Co-Director, Program in Environment and Energy Law, Chicago Kent College of Law, USA. *Environmental Laws and their Enforcement*. Vol 1- History of Environmental Law. [www.eolss.net>sample-chapters](http://www.eolss.net/sample-chapters), accessed on 28/06/2020.

¹⁷ Hughes. 1986. *Predicting the Sensitivity of Marine Populations to Rising Temperatures*. esajournals.onlinelibrary.wiley.com>, accessed 16/09/2020.

¹⁸ Samman A.W. 1993. Enforcement of International Environmental Treaties: An Analysis. 5 FORDHAM Environmental Law Journal 261.

¹⁹ The Rio Declaration on Environment and Development. <https://www.eolss.net>> accessed on 20/07/2020.

²⁰ Agreed upon at Kyoto, Japan on the 11th of December, 1997 and came into effect on the 16th of February, 2005. The Kyoto Protocol to the United Nations Framework Convention on Climate Change. <https://earth.org>> accessed on 20/07/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

more provisions addressing the environment²¹. As much as this is, there is however the pertinent issue which seems to have militated against the progress of these laws, having positive effect on humans; this is the enforcement and implementation of these different legislations especially as it relates to the environment in which we live in.

Some of these legislations that have been enacted and agreed upon by various nations of the world to guide the existence of man in preserving the environment for future generations as well as maximizing its benefits for the present generation include: The World Heritage Convention (1972)²², the London Ocean Dumping Convention (1972)²³, the Convention on International Trade in Endangered Species of Fauna and Flora (1975)²⁴, the Clean Air Act (1970)²⁵, the United Nations Framework Convention on Climate Change (UNFCCC) (1992)²⁶, Cartagena Protocol on Biosafety (2000)²⁷, Stockolm Convention on Persistent Organic Pollutants (2001)²⁸, Minamata Convention on Mercury (2013)²⁹, Paris Agreement (2016)³⁰.

²¹ Chapter 3 environment protection and international law- Shodhanga. shodhanga.inflibnet.ac.in> accessed on 20/07/2020.

²² Adopted by the United Nations Educational, Scientific and Cultural Education (UNESCO) General Conference at its 17th session in Paris on the 16th of November 1972. The Convention came into force in 1975. <https://whc.unesco.org/convention>, accessed on 25/06/2020.

²³ Known as the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972. It was adopted on the 13th of November 1972 and came into force on the 30th of August 1975. www.imo.org/1972, accessed on 25/06/2020.

²⁴ The text of this Convention was finally agreed at a meeting of representatives of 80 countries in Washington DC., United States of America on the 3rd of March 1973 and on the 1st of July 1975 when it came into force. The original copy of the Convention was deposited with the Depository Government in the Chinese, English, French, Russian and Spanish languages. <https://www.researchgate.net/2427>, accessed on 25/06/2020.

²⁵ This is a United States Federal law that was passed in 1970 and later amended to prevent air pollution and so protect the ozone layer and promote public health. <https://www.epa.gov/evolution>, accessed on 25/06/2020.

²⁶ Was agreed upon by about 197 countries at Rio de Janeiro, Brazil; New York, United States, became effective from the 24th of March 1994. <https://ec.europa.eu/organisation>, accessed on 20/07/2020.

²⁷ Cartagena Protocol on Biosafety. www.cbd.int/doc/legal, accessed on 18/11/2020.

²⁸ Stockholm Convention on Persistent Organic Pollutants. www.unece.org/ppp/pdfs, accessed on 18/11/2020.

²⁹ The Minamata Convention on Mercury. www.mercuryconvention.org> accessed on 18/11/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

Primary sources of international environmental law are treaties and international agreements. Customary international law is also another major source as well as national legislation, government statements, restatements of the law, and the interpretations of international tribunals such as the International Court of Justice and other arbitral bodies³¹. These laws, regulations, treaties and agreements have been enacted and agreed upon to guide man's existence within the environment.

3.0. Understanding Environmental Rights

According to the Office of the High Commissioner of the United Nations Human Rights, "All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation"³².

According to Friends of the Earth International, Environmental Rights mean access to the unspoiled natural resources that enable survival, including land, shelter, food, water and air. They also include more purely ecological rights, including the right for a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape³³.

The United Nations Environment Programme (UNEP) has also stated that environmental rights means any proclamation of a human right to environmental conditions of a specified quality.

³⁰ Paris Agreement. [unfccc.int>default>files](https://unfccc.int/default/files), accessed on 18/11/2020.

³¹ Burnett A. 2015. *Electronic Resource Guide, International Environmental Law*. American Society of International Law. <https://www.accesstolaw.com>>, accessed on 16/05/2021.

³² UN Human Rights, Office of the High Commissioner. 2021. [https://www.ohchr.org>pages](https://www.ohchr.org/pages)> accessed on 06/05/2021.

³³ Friends of the Earth International. 2003. Environmental Rights are Human Rights. [https://www.foei.org>what-we-do](https://www.foei.org/what-we-do), accessed on 06/05/2021.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

Human rights and the environment are intertwined as human rights cannot be enjoyed without a safe, clean and healthy environment. Environmental rights are composed of substantive rights (also known as fundamental rights) and procedural rights (which are tools used to achieve substantive rights). The substantive rights are those rights in which the environment has a direct effect on the existence or the enjoyment of the right itself. They include civil and political rights, economic and social rights and cultural rights³⁴.

The civil and political rights include right to life, right to freedom of association and right to freedom from discrimination. The economic and social rights are right to health, right to food and adequate standard of living while the cultural rights include right to access religious sites and collective rights that are affected by environmental degradation. The procedural rights on the other hand usually prescribe the steps laid down by the law that need to be taken in enforcing the above legal rights. This is the focus of this paper. Examples of this kind of rights include- access to information, access to justice and right to public participation³⁵.

Environmental rights cannot be guaranteed without first guaranteeing the right to life of every person³⁶. The right to life is the most fundamental of all rights and the right to a clean and healthy environment is solely hinged upon this right³⁷. The interpretation of existing rights such as the right to life, property and privacy of persons affects the core of human life and when it is

³⁴ United Nations Environmental Programme. 2021. What are environmental rights? <https://www.unep.org/what-we-do>, accessed on 06/05/2021.

³⁵ Ibid

³⁶ Bridget L. 2012. Environmental rights or a right to the environment? Exploring the nexus between human rights and environmental protection. *Macquarie Journal of International and Comparative Environmental Law*. 8(1), pg 36-47.

³⁷ Rand A. *Individual Rights*. online http://aynrandlexicon.com/lexicon/individual_rights.htm accessed on 07/08/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

affected by environmental degradation, it goes to the foundation of life itself³⁸. According to Rand, other rights are corollaries of the right to life³⁹. He views life as a process of self-sustaining and self-generating actions geared towards the sustenance, furtherance, fulfillment and gratification of life⁴⁰. Therefore, the right to life is the precursor to other rights as there must be life before a man can engage in other pursuits, including liberty and happiness.

The right to life also means freedom from physical compulsion, coercion or interference by others⁴¹. The right to life is the source of every other right and the right to a healthy environment is an evidence of its implementation⁴². Human rights are intended not only to protect life but also people's means of livelihood, as any threat to the environment on which they depend on for their livelihood impinges directly or otherwise on their right to life⁴³. The Universal Declaration on Human Rights (UDHR) provides directly for this in Articles 3, 17 and 25 of this convention. Article 3 states that everyone has the right to life, liberty, and security while Article 17 posits that everyone has the right to own property and no one shall be arbitrarily deprived of his/her property. Article 25 likewise provides that everyone has the right to a standard of living adequate for the health and well-being of him/herself and his/her family, including food, clothing,

³⁸ Bridget L. 2012. Environmental rights or a right to the environment? Exploring the nexus between human rights and environmental protection. *Macquarie Journal of International and Comparative Environmental Law*. 8(1), pg 36-47.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Bhatt S.R. 2018. Freedom and Responsibility. *Journal of Indian Council of Philosophical Research*. 35, 585-602, <https://doi.org/10.1007/s40961-018-0157-7>.

⁴² Ibid

⁴³ Universal Declaration on Human Rights, www.un.org>universal-declaration-human-rights, accessed on 08/12/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

housing, medical care, social services and security⁴⁴. The right to life is guaranteed at the international, regional and national levels. At the international level, the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁴⁵, provide that “every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”⁴⁶. At the regional level, the African Charter provides that “every human being shall be entitled to respect for his life and the integrity of his person”⁴⁷. The African Commission has stated that “the right to life is the fulcrum of all other rights. It is the fountain through which other rights flow and any violation of this right without due process amounts to arbitrary deprivation”⁴⁸.

The Nigerian constitution provides in Section 33(1) that “every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria”⁴⁹. The right to life is not limited to protection against the termination of life, but arguably includes any activities the effect of which may cause injury to life, this includes environmental hazards that inhibit the right to a healthy and safe environment to live in. The right to life is the fountain from which all other rights flow and any violation of this right without due process, for example, through exposure to

⁴⁴ Ibid

⁴⁵ Both were adopted on the 16th of December 1966 and entered into force on the 23rd of March and the 3rd of January 1976 respectively, G.A Res. 2200 (XXI).

⁴⁶ Article 6 (1) of the International Covenant on Civil and Political Rights, treaties.un.org>unts>volume-999-i-14668-english.pdf, accessed on 08/12/2020.

⁴⁷ Adopted June 27, 1981 and entered into force Oct., 21, 1986, OAU Doc. OAU/CAB/LEG/67/3/Rev. 5 (hereinafter the “African Charter”).

⁴⁸ Articles 4 and 7 (1) (a) of the African Charter on Human and Peoples’ Rights- African Commission, Communication 223/98- *Forum of Conscience v. Sierra Leone*, at Para. 19, hrlibrary.umn.edu>Africa>comcases, accessed on 08/12/2020.

⁴⁹ The 1999 Constitution of the Federal Republic of Nigeria (as amended).

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

toxic pollutants, carcinogenic agents, persistent gas flares associated with oil exploration and production, amounts to arbitrary deprivation of life and directly impinges on the right to life of any individual and organism on the earth's surface⁵⁰.

4.0. Concept of Environmental Rights Protection

For any right to be effectively enforced, it must first be articulated with sufficient uniqueness to permit a tailored remedy. In the case of environmental rights, it has been described as unclear in meaning and content as it lacks a unanimous definition⁵¹. This lack of clarity with regard to its meaning and content leads to difficulties of enforcement. Once environmental rights are well defined, our strongest tool for its enforcement would then be the judicial system, as only the courts have adequate power to both render and execute judgments through financial and other means but before one can take legal enforcement action however, one must first understand the content of these kind of rights⁵².

Environmental rights have been described as elusive because there is no universal definition for it. It is controversial because of the hybridization of the ecocentric perspectives (nature-centered system of values) of environmentalists and the anthropocentric perspectives (human-centered system of values) that is dominant among human right activists⁵³. However, stating that because environmental rights have not received a universal definition and so it does not exist, would be wrong. It is not unexpected to encounter definitional problems in an attempt to delimit the scope

⁵⁰ African Commission, Communication 223/98- Forum of Conscience v Sierra Leone @ para. 19.

⁵¹ Apple B. 2004. Commentary on the *Enforceability of environmental rights*, Human Rights Dialogue *Environmental Rights*, Carnegie Council for Ethics in International Affairs, Open Society Justice Initiative, Columbia University. <https://sipa.columbia.edu/faculty/betsy-apple>.

⁵² Ibid

⁵³ <https://www.encyclopedia.com/.../environmental-rights>, accessed on 14/08/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

of a concept in law. For example, even the concept of what connotes human rights is still a subject of debate, bearing in mind the cultural, ethnic, social, educational challenges and differences it is confronted with⁵⁴.

Shari holds the view that the most fundamental “right to life” presumes prior and the more basic “rights to clean air, water and soil”⁵⁵. Jurgen also identifies the uniqueness of human rights by noting that human rights are “Janus-faced, looking simultaneously toward morality and the law”. Their moral content notwithstanding, they have the form of legal rights, this is because they are codified in documents like the Universal Declaration of Human Rights (UDHR), they clearly resemble rights held by citizens as a matter of constitutional law that protect them only as far as their nation state allows⁵⁶. Due to the dual nature of human rights, they can be viewed both as like and unlike positive legal rights on one hand and universal as well as moral or natural legal rights on the other hand⁵⁷. The scope of environmental rights has been viewed as been rather ambiguous as it covers several areas of life. It would relate to abstract rights such as extending to persons not yet born and this would extend to timelessness which is usually not associated with the practice of rights. It would also be viewed as group rights since it would also refer to future generations as a whole and it would also extend to unspecified relationship with non-human

⁵⁴ Abdulkadir A.B. 2014. The Right to a healthy Environment in Nigeria: A review of alternative pathways to environmental justice in Nigeria. *Afe Babalola University: Journal of Sustainable Development Law and Policy*. p. 4.

⁵⁵ Collins-Chobanian S. 2000. *Beyond Sax and Welfare Interests: A Case for Environmental Rights*. 22 ENV. ETHIC 133-48 Pg 1348, doi:10.5840/enviroethics200022231, accessed 07/08/2020.

⁵⁶ Habermas J. 1998. *Remarks on Legitimation through Human Rights*. 24 PHIL. & SOC. CRITICISM 157, 161 pg 1349 of *The Right to a Green Future: Human Rights, Environmentalism and Intergenerational Justice- Human Rights Quarterly- Vol 27-* Richard Hikes, downloaded on Wednesday, June 24, 2020, 01:07:01.

⁵⁷ Hart H.L.A. 1995. *Are There Any Natural Rights?* 64 PHIL REV. 184; Joel Feinberg. 1980. *The Nature and Value of Rights in RIGHTS, JUSTICE AND THE BOUNDS OF LIBERTY* pg 1350.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

aspects of the external environment which includes animals which might be protected by rights of non-humans⁵⁸. So, these three points- futuristic, group related and non-human elements of environmental rights might not be realistic and would end up widening its scope without end.

The air, water and soil that make up our environment are affected not only by human interactions with them but also with each other as well. Environmental rights are important to us as humans because we need rights to protect us from human or natural hazards in the environment. These rights should be enshrined and embodied in existing law and made enforceable. We also need rights against the effects of unseen, unnamed, no longer living fellow citizens who collectively made choices, took actions and made policies that seemed harmless or even unwise at the time it was made but are now a threat to our existence⁵⁹.

Environmental rights emerge as rights when human relationships have evolved to the point that cause environmental effects potentially harmful to individuals to the natural environment. They are not rights that existed before society existed⁶⁰. Donnelly states that all claims of rights are future oriented to some extent, since “their principal aim is to challenge or change existing institutions, practices or norms, especially legal institutions”⁶¹.

⁵⁸ Hiskes R.P. 2009. *The Human Right to a Green Future: Environmental Rights and Interzenerational Justice*. Cambridge: Cambridge University Press, pg. 1351, [www.researchgate.net>publication>278670381](http://www.researchgate.net/publication/278670381), ISBN 9780521696142, accessed on 08/12/2020.

⁵⁹ Ibid

⁶⁰ Hiskes R.P. 2009. *The Human Right to a Green Future: Environmental Rights and Interzenerational Justice*. Cambridge: Cambridge University Press, pg. 1354, [www.researchgate.net>publication>278670381](http://www.researchgate.net/publication/278670381), ISBN 9780521696142, accessed on 08/12/2020.

⁶¹ Donnelly J. 1989. *Universal Human Rights in Theory and Practice*. p. 1355.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

Even if the environmental rights of future generations infringe on some of our actions in this present generation and the rights attendant therein, for example, if it infringes on our right to make money now in ways that cause environmental degradation, they would invariably strengthen our right to a safe environment⁶².

5.0.Environmental Rights as Human Rights

Human rights are rights that accrue to all humans irrespective of their tribe, race, gender, color or nationality. They are inherent and inalienable rights that human beings secure simply for being humans. Human rights are fundamental, ethical principles that empower citizens and communities to experience freedom and dignity in their lives. These rights are contained and codified in the Universal Declaration of Human Rights as well as other recognized statutes. They are inalienable, universal, indivisible, inherent and interdependent rights.

At the universal level, the Preamble to the Universal Declaration of Human Rights (UDHR)⁶³ emphasizes that *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*⁶⁴. Article 1 of the UDHR⁶⁵ states that *“All human beings are born free and equal in dignity and rights”*. Article 6 provides that *“everyone has the right to recognition everywhere as a person before the law”* while Article 7 as well states that *“All are equal before the law and are entitled*

⁶² Hiskes R.P. 2009. *The Human Right to a Green Future: Environmental Rights and Interzenerational Justice*. Cambridge: Cambridge University Press, pg. 1356, [www.researchgate.net>publication>278670381](http://www.researchgate.net/publication/278670381), ISBN 9780521696142, accessed on 08/12/2020.

⁶³ The Preamble to the Universal Declaration of Human Rights, adopted on the 10th of December, 1948.

⁶⁴ Malcom S. 2003. *International Law*. Cambridge University Press, Uk, 8th Edition, pg 265.

⁶⁵ Ibid

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

without any discrimination to equal protection of the law. All are entitled to prevention against any form of discrimination in violation of this Declaration and against any incitement to such discrimination". It can be therefore gleaned that at the global level, every human has rights and these rights are equal before the law.

At the regional level, Article 2 of the African Charter of Human and Peoples Rights (AFCHR) provides that *"Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, birth or other status"*. Article 3(1) of this Charter likewise provides that *"Every individual shall be equal before the law"* and 3 (2) states that *"every individual shall be entitled to equal protection of the law"*.

Civilized nations of the world also recognize this in their various municipal laws such as their various constitutions. Nigeria for instance, makes provision for this in Section 20 of its Constitution⁶⁶ which states that *"the Federal Republic of Nigeria shall protect and improve the environment and safeguard the water, air, forest and wildlife of Nigeria"*, though this is contained therein as one of the fundamental objectives and directive principles of state policy which is non-justiciable according to Section 6 (6) (c) of the same constitution⁶⁷.

⁶⁶ 1999 Constitution of the Federal Republic of Nigeria (as amended).

⁶⁷ Ibid

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

Scholars such as Sheth⁶⁸, have also defined the concept “human rights” as “basic moral guarantees that people in all countries and cultures allegedly have simply because they are humans”. Calling these guarantees "rights" suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country⁶⁹.

In “The Human Right to a Green Future”, Richard Hiskes⁷⁰ asserted that a clean environment, conceptualized throughout as comprising “clean air, water, and soil,” is a basic human right, and a necessary component of the notion of justice. The United Nations Charter of 1945 marked the beginning of modern international human rights law, whereas the Stockholm Declaration of 1972 is generally seen as the starting point of a rights based approach to environmental protection. Despite their separate initial stages, it has become more and more acknowledged over the years that human rights and the environment are inherently interlinked. To give a clear example; the right to life, personal integrity, family life, health and development of each human being depends on protecting the environment as the resource base for all aspects of human life⁷¹.

⁶⁸ Sheth K.N. 2016. *Environmental Rights as Human Rights-Focus of International Law*. Gujarat Technological University. <https://www.researchgate.net/publication/314078189>, accessed on 07/08/2020.

⁶⁹ Ibid

⁷⁰ Hiskes R.P. 2009. *The Human Right to a Green Future: Environmental Rights and Interzenerational Justice*. Cambridge: Cambridge University Press, [www.researchgate.net>publication>278670381](https://www.researchgate.net/publication/278670381), ISBN 9780521696142, accessed on 08/12/2020.

⁷¹ Sheth K.N. 2016. *Environmental Rights as Human Rights-Focus of International Law*. Gujarat Technological University, <https://www.researchgate.net/publication/314078189>, accessed on 07/08/2020.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

The first formulation of environmental rights as a separate human right was established in 1988 in the San Salvador Protocol to the American Convention on Human Rights. Article 11 of that Protocol was adopted in 1988 and entered into force in Nov, 1999. It states that “*Everyone shall have the right to live in a healthy environment and to have access to basic services*”⁷².

Explicit recognition of an environmental human right in a binding international instrument also occurred for the first time with the adoption of African Charter on Human & Peoples’ rights which has been ratified by most of the countries in Africa. Article 24 of that Charter declares that “*All people shall have the right to a general satisfactory environment favorable to their development*”⁷³. This Charter applied this right to a satisfactory environment in a 2001 case of, *The Social and Economic rights Action Center v Nigeria*, when there was a wide spread pollution from oil extraction that degraded the environment of Ogoni people of Southern Nigeria⁷⁴.

The Rio Declaration was next in the development of environmental rights as a human right. It reconciled worldwide economic development with protection of the environment. The Earth Summit was the largest gathering of world leaders in history, with 117 heads of state and representatives of 178 nations in attendance. The Declaration on Environment and Development, or Rio Declaration, laid down 27 broad, non-binding principles for environmentally sound

⁷² *Protocol of San Salvador* Nov 17, 1988 OASTS no 69 available at <http://www.cidh.org/Basic05/basic5.htm>.

⁷³ African Charter on Human and Peoples Rights art XXIV adopted Jun 27 1981 available at http://www.umn.edu/humanrts/instreet/z_lafchar.htm or [www.achpr.org>legalinstruments>detail](http://www.achpr.org/legalinstruments/detail), accessed on 07/08/2020.

⁷⁴ Cassel J. 2008. *Enforcing Environmental Human Rights. Selected Strategies of US NGO's*” *Northwestern Journal of International Human Rights*. Vol.6, issue 1 article 4 Fall, p. 103-112.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

development. Among this was Agenda 21, which outlined global strategies for cleaning up the environment and encouraging environmentally sound development⁷⁵.

Principle 10 of the Rio Declaration has formulated the connection between human rights and environmental protection largely in procedural terms. It states that:

Environmental issues are best handled with the participation of all concerned citizens at the relevant level. At the national level, each individual shall have an appropriate access to information concerning the environment that is held by public authorities including information on hazardous materials and activities in their communities and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings including redress and remedy shall be provide⁷⁶.

6.0. Nexus between Human Rights and the Environment

The linkage between the environment and human rights was first recognized and acknowledged in a United Nations resolution as far back as 1968⁷⁷. The Stockholm Declaration on the Human Environment is perhaps the first authoritative instrument that recognizes the environment as an aspect of human rights. Ever since its enactment, Africa has acknowledged the linkage between

⁷⁵ The Editors of Encyclopedia Britannica , United Nations Conference on Environment and Development (UNCED) International organization <http://www.britannica.com/>, accessed on 07/08/2020.

⁷⁶ Dinah S. 2002. Back ground paper no. 1, “*Human rights and Environmental issues in Multilateral treaties adopted between 1991 and 2001* ”, Joint UNEP-OHCHR expert seminar on Human Rights and Environment, Jan 14-16, 2002 Geneva.

⁷⁷ UNGA Res. 2398 (XXII) UN Doc. A/L 553/Add 1-4 (1968), the United Nations Yr. bk, Vol. 22, pg 473-474. This resolution was adopted without any objection of the fifty-five member countries in attendance, including fifteen African countries, namely, Algeria, Nigeria, Cameroon, the Congo Brazzaville, Ethopia, Ivory Coast, Kenya, Libya, Senegal, Madagascar, Somalia, Sierra Leone, Sudan, Zambia, amongst others

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

the environment and human rights as it being intertwined. Principle 1 of this Declaration provides that “Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and wellbeing and he bears a solemn responsibility to protect and improve the environment for present and future generations”⁷⁸. Though it has been stated that this declaration falls short of proclaiming a right to the environment⁷⁹. This is because a declaration does not really have binding effect on anyone, it serves as a mere guide to man’s existence and as at that time, there was neither state practice nor opinion juris in support of such a proclamation.

There has also been a growing body of evidence pointing to the recognition of the environment as a human right⁸⁰. The United Nations General Assembly in 1990 at its eighth plenary meeting of the forty-fifth session⁸¹ adopted a resolution on the “Need to ensure a healthy environment for the well-being of individuals”. Principle 1 of the Rio Declaration provides that, “Human beings are at the center of the concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature”⁸². As good as this may look, even if the Rio Declaration had taken a progressive step by recognizing the right to a healthy and clean environment, declaration and resolutions are generally weak sources of international law as they are not

⁷⁸ Declaration of the UN Conference on the Human Environment, UN Doc. A/CONF. 48/14/Rev. 1 (1972), reprinted in 11 ILM 1416 1972.

⁷⁹Kiss A. & Shelton D. 2000. *International Environmental Law*. 2nd Edition. ISBN 9781571051004, [www.amazon.com>International –Environmental-Law](http://www.amazon.com>International-Environmental-Law), accessed on 08/12/2020.

⁸⁰ Worika I.L. 2002. *Environmental Law and Policy of Petroleum Development- Strategies and Mechanisms for Sustainable Management in Africa*. Published by Anpez Centre for Environment and Development, P.O Box 1064, Port Harcourt, Rivers State.

⁸¹ Res G.A. 45/94 adopted on 14th December 1990.

⁸² Rio Declaration on the Environment and Development, Principle 1 in Report of the UNCED Rio de Janeiro, 3-14 June 1992 @ 3, UN Doc. A/CONF. 151/26/Rev. 1. 1993. Reprinted in P.Snads et al. supra note 64 pg 11.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

binding in nature. They may be useful in identifying common aspirations of the international community and so gradually crystallize into binding international norms, they can likewise be discarded into the dustbin of history.

A connection between the environment and human rights was expressed in the Hague Declaration on the Environment 1989⁸³, where a fundamental duty to preserve the ecosystem was recognized and also the right to live in dignity in a viable global environment. In 1990, the United Nations General Assembly observed that environmental protection is indivisible from the achievement of full enjoyment of human rights by all⁸⁴. This comment heralded the recognition of the right of all individuals to "live in an environment adequate for their health and well-being"⁸⁵. Further, in 1994 the Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities proposed a set of Draft Principles providing for a stand-alone environmental right, described as the right "to a secure healthy and ecologically sound environment"⁸⁶. Those Principles also recognized the interlinking of human rights, an ecologically sound environment, sustainable development and peace⁸⁷.

In 2002, a Joint Expert Seminar was convened by the United Nations Commission on Human Rights and the United Nations Environment Programme, to assess progress in promoting and protecting human rights in relation to environmental questions since the Rio Declaration was

⁸³ Hague Declaration on the Environment 1989, 28 ILM 1308, 1309, signed by 24 heads of state.

⁸⁴ *Need to Ensure a Healthy Environment for the Well-Being of Individuals*. UNGA Resolution 45/94. 14 December 1990.

⁸⁵ *Ibid*

⁸⁶ Draft Principles on Human Rights and the Environment E/CN.4/Sub.2/1994/9 Annex I (1994) [1994 Draft Principles]. *Ksentini Report*, above n 10, para 7.

⁸⁷ 1994 Draft Principles, above n 33, part 1 para 1.

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

agreed upon. The conclusions of the experts were that national and international developments reflect the growing interrelationship between approaches to guaranteeing human rights and environmental protection⁸⁸.

These early expressions provided the foundation for more recent international discussions on environmental rights, which have focused on the propagation of the right to a healthy environment.

7.0. Summary and Conclusion

Environmental rights are the only human rights that are intrinsically tied to the welfare and interests of future generations as moral persons and at the same time, provide reciprocal benefits for the present generation in arguing for beneficial environmental policies⁸⁹. Human environmental right is the product of collective decision and policies that include past actions and anticipate future ones.

Environmental policies do not leap fully formed from legislatures, courts or government agencies rather they are built up overtime in response to previous policy decisions, changing conditions or political pressures and the growth of knowledge. All environmental policies anticipate the future in a special way because they deal, by their very nature with presumptively changing environmental conditions, but they also look backward toward earlier policies. Policies

⁸⁸ Office of the High Commissioner for Human Rights *Meeting of Experts on Human Rights and the Environment* (2002) www.unhcr.ch para 3 (accessed at 11/08/2020) [2002 Experts' Report].

⁸⁹ Ibid

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

Iyanuoluwa Akinbola Ibukun

always try to anticipate future events, policy makers and citizens as well understand that those who live with those events are in some way part and parcel of them⁹⁰.

⁹⁰ Ibid

Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

Journal of Advanced Public International Law Vol. 2 Issue 2

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Examining the Concept and Development of Environmental Rights and it's Nexus to Human Rights

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