

THE EMERGENCE OF ENVIRONMENTAL HUMAN RIGHT UNDER INTERNATIONAL LAW

Author - Empire Hechime Nyekwere

Lecturer, Institute of Continuing Education, Law Diploma Programme, Captain Elechi Amadi Polytechnic (Formally Port Harcourt Polytechnic), Rivers State, Nigeria. Ph.D. Research Candidate, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. Barrister and Solicitor, Supreme Court of the Federal Republic of Nigeria. E-mail:empire.hechime@yahoo.com

ABSTRACT

The value of the environment and its realization as a human right is generally acknowledged under International Law. What is less acknowledged is the proposal that we, as humans, have a right to the environment beyond what is needed to support our basic human needs. The proposition that human beings have a right to a healthy environment under the international law raises vigorous intellectual discussion regarding a number of theoretical and practical critical issues. It is argued that Human Rights Law can contribute positively to environmental protection thus; there arises a need for introduction and recognition of a human right to a healthy environment. This paper examines the diverse ways in which the environment is conceptualised in the International Human Rights Law and x-rays the proposition that a right to a healthy environment is emerging under international law. To achieve its aim, this paper is divided into five parts namely: introduction, the nature of the relationship between human rights and the environment, the introduction of substantive human rights to a healthy environment, arguments on the scope of an environmental right implied by different legal perspective and conclusion.

Keywords: Emergence, Human Rights Law, Environmental Protection, Environmental Human Right, Right to a Healthy Environment, International Law.

1. INTRODUCTION

The influence of environmental factors on our ability to enjoy fundamental human rights is well recognised. Many of the rights guaranteed under International Human Rights Law are defined to include an environmental dimension. For example, rights to the highest attainable standard of health and an adequate standard of living depend upon the degree of environmental quality. In several cases, environmental degradation or destruction has been

viewed as a violation of these human rights.¹ The connection between environmental damage and human rights would seem to be self-apparent. When air is polluted by toxic fumes, people who breathe those fumes are injured, perhaps even killed. When water becomes contaminated, people who drink that water may become sick, and pregnant women who drink it may pass the contaminants on to their unborn babies. When climate change leads to the melting of the polar caps at previously unheard of rates, people who have built their cultures atop that polar ice are left to sink, along with the seals, penguins, and polar bears that have nourished them for generations. To sum up, anytime the natural environment is seriously harmed, people that depend on that harmed environment are inevitably harmed as well.²

In spite of a clear link between environmental harm and human rights violations, International Human Rights Law which contemplates environmental destruction as a violation of human right has only recently begun to emerge. A clear definition of Environmental Human Right is yet to be formulated.³ This important relationship between a healthy environment and the enjoyment of our human rights is well recognised. What is less accepted is the proposition that we, as humans, possess rights to the environment beyond what is necessary to support our basic human needs. The proposition for the emergence of Right to a healthy environment as a human right under the International Law⁴ has led to a widespread intellectual discussion regarding a number of critical issues. The theoretical discussion engages two central issues -

- First, what is the nature of the relationship between human rights and the environment?
- Second, should the international community recognize a new human right to a healthy environment?⁵

2. THE NATURE OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

In connection with the first issue, there are three major approaches for explaining the nature of the relationship between human rights and the environment, These approaches are capable of coexistence and do not necessarily exclude one another -

¹Bridget Lewis, *Environmental Rights or a Right to the Environment? Exploring the Nexus between Human Rights and Environmental Protection*, MqJICEL, 2012, 8(1), 36-47:36.

²Jennifer Cassel, *Enforcing Environmental Human Rights: Selected Strategies of US NGOs*, Nw. J. Int'l Hum. Rts., 2008, 6(1), 104-127:104.

³*Ibid*, p. 104.

⁴Supra note 1.

⁵Report of the United Nations High Commissioner for Human Rights, *Analytical study on the Relationship between Human Rights and the Environment*, 16 December, 2011, pp. 4-5, Srenvironment.org > uploads > 2013/05, Last visited May 19, 2017.

The first approach postulates that the environment is a precondition to the enjoyment of human rights. This approach underscores the fact that life and human dignity are only possible where people have access to an environment with certain basic qualities. Environmental degradation, including pollution of air, water and land can affect the realization of particular rights, such as the rights to life, food and health.⁶ Environmental factors may therefore influence or determine the level of rights fulfilment and environmental degradation can amount to a violation of those rights. This relationship is well established under the International Human Rights legal discourse and the environmental dimensions of several long-standing rights have been well-defined.⁷

The second approach submits that human rights are tools to address environmental issues, both procedurally and substantively. This approach emphasizes the possibility of using human rights to achieve adequate levels of environmental protection. From a procedural perspective, rights such as access to information, participation in public affairs and access to justice are central to securing governance structures that enable society to adopt fair decision-making processes with respect to environmental issues. From a substantive perspective, this approach underscores the environmental dimensions of certain protected rights.⁸ The second approach can also be referred to as the ‘greening of existing human rights’ to achieve environmental protection. The third approach proposes the integration of human rights and the environment under the concept of sustainable development. Accordingly, this approach underlines that societal objectives must be treated in an integrated manner and that the integration of economic, environmental and social justice issues is done with a view to the concept of sustainable development.⁹

2.1 The Environment as a Precondition to the Enjoyment of Human Rights

It is a well-accepted principle of International Human Rights Law that a healthy environment is a necessary precondition for the promotion and enjoyment of several recognised human rights. According to Justice Weeramantry, then Vice-President of the International Court of Justice in his separate opinion in the *Gabcikovo-Nagymaros* case before the International Court of Justice:

“The protection of the environment is ... a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate

⁶*Ibid.*

⁷*Supra* note 1, p. 37.

⁸*Supra* note 5.

⁹*Ibid.*

*on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments”.*¹⁰

Human rights abuses often have ramifications that translate into environmental abuses as well. Similarly, abuses against the environment generally affect the human rights of people who live in those environments.¹¹ In other words, environmental damage has a direct effect on the enjoyment of human rights and human rights violations may result in damage to the environment.¹² Protecting human rights requires preserving the environment, and safeguarding the environment requires respecting human rights.¹³ In recognition of this, Human Rights Law defines certain rights to include environmental dimensions. Thus, through the adoption of environmental dimensions, human rights law recognizes environmental protection as a pre-condition for the enjoyment of several human rights. For example, the African Commission on Human and Peoples’ Rights (The African Commission)¹⁴ in deciding the contentious case of **The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights V Nigeria** involving violation of the right to a general satisfactory environment found that Article 24¹⁵ of the African Charter on Human and Peoples’ Rights obliges States to: take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources as the breakdown of the fundamental ecologic equilibria is harmful to physical and moral health’.¹⁶ In concluding its findings, the African Commission recommended among others: undertaking a comprehensive clean up of lands

¹⁰Gabcikovo-Nagymaros Project (*Hungary v Slovakia*) (Separate Opinion of Vice-President Weeramantry), [1997] ICJ Rep 92.

¹¹One Species, One Planet: Environmental Justice and Sustainable Development, Final edn, Centre for International Environmental Law (CIEL) Washington, DC, USA October 2002), p. 6, www.ciel.org reports > one-species one..., Last visited May 3, 2017.

¹²Human Rights and the Environment. Earth justice Environmental Rights Report 2008,p. 2. Earthjustice.org > files > library > reports, Last visited May 3, 2017.

¹³*Ibid.*

¹⁴Acting on a petition filed by two non-governmental organizations on behalf of the people of Ogoniland whose environment has been greatly degraded by the activities of Multinational Corporations operating in the region.

¹⁵Which provides that “All peoples shall have the right to a general satisfactory environment favourable to their development”? See African [Banjul] Charter on Human and Peoples’ Rights, adopted on 27 June 1981, OAU Doc. CAB/LEG/67/3 rev 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986.

¹⁶See K.S.A. Ebeku, *The Right to a Satisfactory Environment and the African Commission*, African Human Rights Law Journal, 2003,3, 149, 163; J. C. Nwobike, *The African Commission on Human and Peoples’ Rights and the Demystification of Second and Third Generation Rights under the African Charter*, African Journal of Legal Studies, 2005, 1, 129, 139.

and rivers damaged by oil operations; ensuring that appropriate environmental and social impact assessments are prepared for any future oil development.¹⁷

The European Court of Human Rights (ECtHR) serves as another good example where through the adoption of environmental dimensions human rights law recognizes environmental protection as a pre-condition for the enjoyment of several human rights, having gone to great lengths in subsuming environmental concerns under the European Convention of Human Rights (ECHR), in particular in relation to the right to privacy and family life and the right to information.¹⁸ In the **Giacomelli v. Italy Case**, the applicant who lives in a house located 30 metres away from a plant for the storage and treatment of “special waste” classified as hazardous or non-hazardous, which had begun operating in 1982 complained that the persistent noise and harmful emissions coming from the plant represented a serious threat to her environment and a permanent risk to her health and home. The Court held that there had been a violation of Article 8 of the Convention, finding that Italy had not succeeded in striking a fair balance between the interest of the community in having a plant for the treatment of toxic industrial waste and the applicant’s effective enjoyment of her right to respect for her home and her private and family life. It noted in particular that the company which operated the plant was not asked to undertake a prior environmental-impact assessment (“EIA”) until 1996, seven years after commencing its activities involving the detoxification of industrial waste.¹⁹

Further, both the Inter American Commission on Human Rights (IACHR) and the Inter American Court of Human Rights (IACtHR) have interpreted the rights to life, health and property to afford protection from environmental destruction and unsustainable development. The **Maya Indigenous Community and their Members v Belize Case**²⁰ claimed that the

¹⁷Alan Boyle, *Human Rights and the Environment: A Reassessment*. P. 4. First Preparatory Meeting of the World Congress on Justice, Governance and Law for Environmental Sustainability. 12 - 13 October 2011 - Kuala Lumpur, Malaysia. P. 3. Web-loc: www.rudn.ru > prep >files > f=prep... accessed 3 May 2017; The Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v. Nigeria, Communication No. 155/96, Case No. ACHPR/COMM/A044/1, paras. 1-9, 69 (Afr. Comm’n Hum. & Peoples’ Rts. May 27, 2002), available at [africa.comcases/a/llcases.html](http://www.africa.comcases/a/llcases.html).

¹⁸Article 8 of the European Convention on Human Rights provides that “Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

¹⁹Environment and the European Convention on Human Rights. www.echr.coe.int> FS_Environment_ENG accessed 4 May 2017; See the 2nd November, 2016 *Giacomelli v. Italy Case* <http://hudoc.echr.coe.int/sites/frac-press/pages/search.aspx?i=003-1827418-1917260> accessed 3 May 2017.

²⁰*Maya Indigenous Communities v. Belize, Case* 12.053, Inter-Am. C.H.R., Report No. 40/04, OEA/Ser.L/V/II.122, doc. 5 rev. ¶ 1 (2004), para 153-155, See also *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 2001 Inter-Am. Ct. H.R. (ser. C) No.79, para. 140 (Aug. 31, 2001).

state violated the rights of Mayan communities in relation to their lands and natural resources by granting numerous concessions for logging and oil development. The petition alleged that the state's actions violate rights guaranteed by the American Declaration on the Rights and Duties of Man.²¹ The Commission found violations of the right to property, equal protection under the law, and the right to judicial protection.²² The Inter American Commission on Human Rights accepted that logging concessions threatened long-term and irreversible damage to the natural environment on which the petitioners' system of subsistence agriculture depended. Loss of topsoil would prevent forest regeneration, damaging water supplies, and diminishing the availability of wildlife and plants. The court found that there has been a degradation of the petitioner's environment. Its final order required Belize to repair the environmental damage.²³

From the examples given above, human rights law thus seeks to ensure that environmental conditions do not deteriorate to the point where the substantive right to life, the right to health, the right to a family and private life, the right to culture, and other human rights are seriously impaired.²⁴

The right to a safe and healthy environment was referred to by the former United Nations Human Rights Commission²⁵ (UNHR Commission) in several resolutions. In its resolution 2001/65 ("Promotion of the Right to a Democratic and Equitable International Order"),²⁶ the Commission affirmed that a democratic and equitable international order requires, inter alia, the realization of... the right to a healthy environment for everyone. It aims at defining an adequate level of environment for the health and safety of human beings. The core actor in this approach is the individual and to bring an environmental human right is in place through the implementation of safety measures and policies aiming at protecting

²¹This includes: the right to life, the right to equality before the law, the right to religious freedom and worship, the right to a family and protection thereof, the right to the preservation of health and to well-being, the right to judicial protection, the right to vote and to participate in government, and the right to property.

²²See Dinah Shelton, *Human Rights and the Environment: What Specific Environmental Rights have been Recognized?*, *Denv. J. Int'l L. & Pol'y* 2006, 35(1), 129, 129-30.

²³Supra note 17.

²⁴Supra note 22; See S. De Los Reyes, *The Extraterritorial Application of Human Rights in Cases of Transboundary Environmental Harm* (2013), p. 3, [Repositorio.educacionsuperior.gob.ec > T...](http://Repositorio.educacionsuperior.gob.ec), Last visited May 3, 2017; See also Dinah Shelton, *Resolving Conflicts between Human Rights and Environmental Protection: Is there a Hierarchy?*, De Wet, K., and Vidmar, J. (eds), *Hierarchy in International Law: The Place of Human Rights* (Oxford: Oxford University Press 2012).

²⁵In 2006, the UN Human Rights Commission became the UN Human Rights Council.

²⁶UNHRC (UN Human Rights Commission), 2001, Resolution 2001/65 "Promotion of the Right to a Democratic and Equitable International Order".

peoples' health (as argued by the UNHR Commission). This wording has been adopted by the United Nations, as stated in a report from the High Commissioner on Human Rights²⁷:

*“While the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the UNHR treaty bodies all recognise the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing”.*²⁸ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes a right of everyone to the enjoyment of the highest attainable standard of physical and mental health. It further provides that the steps parties must take to achieve the full realization of the right to health –

*“Shall include those necessary for ... the improvement of all aspects of environmental and industrial hygiene.”*²⁹ A similar right is also enshrined in the *Convention on the Rights of the Child* which states that environmental pollution poses “dangers and risks” to nutritious foods and clean drinking-water,³⁰ the *Convention on the Elimination of All Forms of Discrimination against Women*, and the *International Convention on the Elimination of all Forms of Racial Discrimination*.³¹

The General Comment No. 14, the United Nations Committee on Economic, Social and Cultural Rights elaborated on the meaning of article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) stating. The wording of article 12 is intended to include a wide range of socio-economic factors and underlying determinants of health including food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. Article 12 also requires the prevention and reduction of the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health. General Comment No. 14 clearly indicates that the environment is considered a significant contributing factor for achieving an adequate standard

²⁷UNHRC (UN Human Rights Council), 2009, Resolution 10/4 “*Human Rights and Climate Change*”.

²⁸MorganeDussud, Ba., *Towards the Emergence of Environmental Human Rights? A Discussion of the Relevance of the Right to a Safe and Healthy Environment*. 2013, Munin.uit.no > bitstream> handle > thesis, Last visited May 4, 2017.

²⁹International Covenant on Economic, Social and Cultural Rights, Art. 12, para. 2(b); See also Committee on Economic, Social and Cultural Rights, General Comment No. 14, 15 (stating that this requires States “to ensure an adequate supply of safe and potable water and basic sanitation; and ... prevent and reduce ... the population's exposure to harmful substances such as radiation and harmful chemicals or other detrimental environmental conditions that directly or indirectly impact upon human health”).

³⁰*Convention on the Rights of the Child*, Art. 24, para. 2 (c), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>, Last visited May 4, 2017.

³¹*Supra* note 1, p. 38.

of health, and environmental problems such as pollution are construed as barriers to the full enjoyment of the right.³² Article 11 of the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) guarantees to all individuals the right to an adequate standard of living- including adequate food, clothing and housing, and the continuous improvement of living standards. This right is also located in the Convention on the Rights of the Child. It is considered that the right to an adequate standard of living implies rights to adequate food and water, and is clearly affected where environmental degradation such as pollution, deforestation or desertification affects the availability of clean and secure water supplies, or limits a community's ability to provide adequate food and nourishment.³³

A number of international instruments have highlighted the right of indigenous people to participate in environmental decision-making. Article 15 of the International Labour Organization's Indigenous and Tribal Peoples Convention (ILO) (No. 169) identifies an environmental right of indigenous peoples to "participate in the use, management and conservation of resources". Article 4 places an obligation on States to protect indigenous peoples' environment from exploitation. Article 13 recognises the crucial nature of the interconnectedness between the environment and indigenous culture. Article 23 recognises the importance of traditional activities, such as hunting and fishing. It provides that subsistence economy and traditional activities of the indigenous peoples ... such as hunting, fishing, trapping and gathering, shall be recognised as important factors in the maintenance of their cultures and in their economic self-reliance and development.³⁴

More so, at the 61st Session of the General Assembly, the UN General Assembly adopted the Declaration on the Rights of Indigenous Peoples on September 13, 2007 during its 107th plenary meeting. Article 29 of the Declaration reads that Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. The Declaration went further to provide that States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. More

³²*Ibid*; See Committee on Economic, Social and Cultural Rights, General Comment 14: The Right to the Highest Attainable Standard of Health, UN Doc No E/C.12/2004/4, 11 August 2000.

³³*Supra note 1*, pp. 38-39.

³⁴Human Rights and the Environment: Background Paper prepared for the consideration of the Advisory Council of Jurists at the 12th Annual Meeting of the Asia Pacific Forum of National Human Rights Institutions Sydney, Australia, 24-27 September 2007, p. 345, www.langmichener.ca > Files >SOCarrol..., Last visited May 4, 2017.

so, States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented. Through the adoption of this declaration, the UN General Assembly recognized indigenous peoples' rights to land, health, and culture.³⁵

The environment can also have an indirect impact on the enjoyment of human rights. A poor environment may affect an individual's or community's capacity to realise their human rights generally, or impede a government's ability to protect the rights of its citizens. This is perhaps best demonstrated in the context of major environmental disasters such as floods, earthquakes or tsunamis, where resources which would otherwise be used for development of human rights, are necessarily diverted to address the more immediate environmental concerns.³⁶ To many communities and societies across the world, land, forest, water and sea are intimately tied to the right to food, water, health, shelter. The way these natural resources are used, controlled, managed, distributed and protected affects societies and peoples' lives in profound and multidimensional ways.³⁷

1.2 Human Rights as Tools to Achieve Adequate Levels of Environmental Protection ('Greening' existing Human Rights)

A second approach is the 'greening' of existing human rights, which signifies that environmental matters are, subsumed under inter alia the rights to life, health, adequate living conditions and information.³⁸ Relevant substantive rights that may be used to address environmental issues that affect human life include the right to life, the right to health, the right to an adequate standard of living, and the right to privacy and family life.³⁹ For example, some writers argue that a good environment is necessary to enjoy the right to life,

³⁵*Ibid*, p. 12; UN Permanent Forum of Indigenous Issues, United Nations Declaration on the Rights of Indigenous Peoples Adopted by General Assembly (Sept. 13, 2007); GA Res. 61/295, 29, UN Doc A/RES/61/295 (Oct. 2, 2007).

³⁶*Supra*, note 1, p. 39.

³⁷WWF Denmark Position Paper on Human Rights and Environment. October, 2014, pp. 1-8:2, [awsassets.wwfdk.panda.org > downloads](https://awsassets.wwfdk.panda.org/downloads), Last visited May 3, 2017.

³⁸Nicole Bjerler, *Do Europeans Have a Right to Environment?* P. 5, [www.esil-sedi.eu > sites > files > Bjerler_0](http://www.esil-sedi.eu/sites/files/Bjerler_0), Last visited May 4, 2017.

³⁹Joshua C. Gellers, *Constitutional Environmental Rights: A Quantitative Analysis of Intra-Regional Influences*, Presented at the Western Political Science Association Annual Meeting, Portland, March 22-24, 2012, <https://wpsa.research.pdx.edu/gellers>, Last visited May 5, 2017; Atapattu S., *The Right to a Healthy Life or the Right to Die Polluted?: The Emergence of a Human Right to a Healthy Environment under International Law*, *Tulane Environmental Law Journal*, 2002, 16, 65-126:96.

for “without the environment, no life is possible.”⁴⁰ The right to life is set out in article 3 of the Universal Declaration of Human Rights as ‘Everyone has the right to life, liberty and security of person.’ The Hague Declaration on the Environment notes that environmental protection is essential to the operation of the right to life. Further, as the human right to life is considered to be *jus cogens*, (a peremptory norm from which no derogation is permitted) an argument can be made that a healthy environment is inseparable from the right to life, and that some features of environmental protection, in circumstances where lives are threatened, may also be *jus cogens*.⁴¹

The human right to a private life is protected in the International Covenant on Civil and Political Rights. States that fail to regulate environmental nuisances or neglect environmental protection may infringe upon this human right to a private life. A large number of cases have been brought before the European Court of Human Rights (ECHR) concerning the right to privacy in the European Convention.⁴² In other words, existing civil and political rights can be used to give individuals, groups and NGOs Procedural environmental rights⁴³ namely; access to environmental information, participation in environmental decision-making and judicial remedies in the event of environmental harm. On this view their role is one of empowerment, facilitating participation in environmental decision-making and compelling governments to meet minimum standards of protection for life, private life and property from environmental harm.⁴⁴

⁴⁰*Ibid*, p. 3; Reh binder E. and Loperena D., *Legal protection of Environmental Rights: The Role and Experience of the International Court of Environmental Arbitration and Conciliation*, Environmental Policy and Law, 2001, 31(6), 282-293:283.

⁴¹Laura Horn, *Reframing Human Rights in Sustainable Development*, Journal of the Australasian Law Teachers Association, 2013, 6(1), 1-15:5; See Universal Declaration of Human Rights, GA Res on the Universal Declaration of Human Rights, 217A (III) UNGAOR, 177th plenmtg, UN Doc A/810 (10 December 1948), Art 3; See International Covenant on Civil and Political Rights, opened for signature 16 December 1966, 999 UNTS 171, Art 6 (entered into force 23 March 1976); See International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3, Art 12 (entered into force 3 January 1976; See Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (Oxford University Press, 3rd ed, 2009) 282; The Hague Declaration (1989) 28 ILM 1308); Fatma Zohra Ksentini, *Review of Further Developments in Fields with which the Sub-Commission has been concerned Human Rights and the Environment*, E/CN.4/Sub.2/1994/9, UN ECOSOC, 46th sess, Agenda Item 4, (6 July 1994) (‘Ksentini Report’) Annex 1 Draft Principles on Human Rights and the Environment, Principle 2 recommends the adoption of a human right to a secure, healthy and ecologically sound environment. However, this recommendation was not adopted; W Gormley, *Human Rights and the Environment: The Need for International Co-operation* (LedenSijthoff, 1976), p. 43.

⁴²1950 *European Convention on Human Rights*, arts 11(2), 21; Supra note 32, p. 6; See *Guerra v Italy* (1998) 26 Eur Court HR 357, *Fadeyeva v Russia* [2005] Eur Court HR 376, *Taskin v Turkey* [2006] 42 Eur Court HR 50.

⁴³Supra note 41, p.2, Procedural environmental rights promote the transparency, participation, and accountability that form the cornerstones of environmental governance; Bruch C., Coker W. and Van Arsdale C., *Constitutional Environmental Law: Giving force to fundamental principles in Africa*. Columbia Journal of Environmental Law, 2001, 26, 131-211:135.

⁴⁴Supra note 23, p. 1.

A major concept which forms a part of greening existing human rights is the use of human rights as a tool to achieve adequate levels of environmental protection and promotion of procedural or participatory rights in connection with environmental concerns - a concept which has come to be referred to as 'environmental democracy'. The underlying assumption of this claim is - to name it with a catch phrase of our times- good governance. Environmental democracy assumes that governments operating with openness, accountability and civic participation will make better environmental decisions. Giving the public a voice in environmental decision-making is likely to improve the formulation, implementation and enforcement of environmental policies. Moreover, raising the awareness for environmental matters in the broader public can in turn also contribute to compliance with existing international environmental obligations. Applying a long-term perspective, public participation contributes to the promotion of environmental justice and is beneficial to the delicate act of balancing the needs of present and future generations.⁴⁵

The source and foundation of environmental democracy emanates from Principle 10 of the Rio Declaration, which reads:

*“Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have 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 the decision-making process. 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 provided”.*⁴⁶

The most prominent example of putting Principle 10 into practice is the Aarhus Convention,⁴⁷ which was elaborated under the auspices of the UN Economic Commission for Europe (UNECE), and is the first legally binding instrument linking human rights and the environment. **The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention)**

⁴⁵*Supra* note 38.

⁴⁶*Ibid*; Rio Declaration, Principle 10.

⁴⁷*Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*, opened for signature 25 June 1998, 2161 UNTS 447 (entered into force 30 October 2001), ('Aarhus Convention'); For specific articles on public participation, see Articles 6-8, for access to information, see Articles 4-5, for access to justice in environmental matters, see Article 9, <http://www.unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>, Last visited May 4, 2017.

as of today counts 40 signatories, of which 30 have fully ratified and thus become full-fledged Parties by now.⁴⁸ However, the focus of the Aarhus Convention is strictly procedural in content, limited to public participation in environmental decision-making, access to justice and information.⁴⁹ Thus, the Convention has three pillars:

- (1) Access to Environmental Information: Members of the public (individual and their organizations) are entitled to request environmental information from public bodies and these bodies are obliged to maintain this information.
- (2) Public Participation in Environmental Decision-Making: Arrangements should be made by public authorities to enable the public to comment on, for example, proposals for projects affecting the environment, or plans and programmes relating to the environment. Any subsequent comments should be taken into consideration in the decision-making process.
- (3) Access to Justice in the Event of Environmental Harm: It is the right to seek redress when environmental law is infringed and the right to access review procedures to challenge public decisions that have been made without regard to the two other pillars of the Convention.⁵⁰

First, the right to environmental information was conceived based on the human right to freedom of expression. Second, the right to public participation in the environmental decision making processes was derived from the human right to participate in public affairs, which is recognized by the majority of human rights conventions. Third, the right to environmental justice and redress by individuals affected by environmental harm was founded on the rights to an effective access to justice, a fair hearing in an independent and impartial tribunal, and compensation or reparation of the damage.⁵¹

As Kofi Annan, former Secretary-General of the UN, observed:

‘Although regional in scope, the significance of the Aarhus Convention is global... It is the most ambitious venture in the area of ‘environmental democracy’ so far undertaken under the auspices of the United Nations.’

In his view the Convention has the potential to serve as a global framework for strengthening citizens’ environmental rights.⁵²

⁴⁸*Supra* note 38, p. 6; United Nations Treaty Series, Vol. 2161, p. 447.

⁴⁹*Supra* note 23, p. 36; See J. Ebbesson, *The Notion of Public Participation in International Environmental Law*. 1997, 8, YbIEL, 51.

⁵⁰*Supra* note 37, p. 3.

⁵¹S. De Los Reyes, *supra* note 24.

⁵²Ben Boer and Alan Boyle, *Human Rights and the Environment. The 13th Informal ASEM Seminar on Human Rights*. Background Paper, 21-23 October, 2013, Copenhagen, Denmark, p. 43, asef.org >images . docs >

2.3 The Integration of Human Rights and the Environment under the Concept of Sustainable Development

This third approach proposes the integration of human rights and environment under the concept of sustainable development. This approach underlines that societal objectives must be treated in an integrated manner and that the integration of economic, environmental and social justice issues should be done with a view to the concept of sustainable development.⁵³ Sustainable development has become a key obligation and aspiration in various national and international legal instruments. It is the international community's agreed-upon goal for improving human well-being and environmental management. Sustainable development is often invoked as a means for reconciling important objectives that might sometimes appear to compete. These include respect for human rights, promotion of socially and environmentally sustainable economic growth, and protection and wise use of the natural environment.⁵⁴ Paragraph 6 of the 1995 Copenhagen Declaration on Social Development expresses these interconnections. It states:

“We are deeply convinced that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development, which is the framework for our efforts to achieve a higher quality of life for all people. . . .”

Since its initial formulation, the concept or principle of sustainable development has encapsulated aspects of human rights, making the link between environment protections on the one hand and the meeting of basic human needs on the other. Despite the fact that Principle 1 of the 1992 Rio Declaration on Environment and Development places human beings... at the centre of concerns for sustainable development' and that they are entitled to a healthy and productive life in harmony with nature, there is no explicit proclamation of a right to sustainable development as such in the Declaration-nor is there a right to its mirror image, a right to decent environment. While Principle 3 endorses the right to development, this amorphous concept embraces not just the promotion of economic development by States but also the social and cultural aspects of human development found in the 1966 UN Covenant on Economic, Social and Cultural Rights. Similarly, the 1986 UN Declaration on

13th_Informa..., Last visited May 4, 2017; UNECE, Environmental Rights not a Luxury - Aarhus Convention enters into force, <http://www.unece.org/press/pr2001/01env15e.html>, Last visited May 5, 2017.

⁵³*Supra* note 5.

⁵⁴*Supra* note 11, p. 2; Copenhagen Declaration, World Summit on Social Development, 1995, Copenhagen, Denmark, U.N. Doc A/CONF.166/7/Annex (1995), <http://www.un.org/esa/socdev/wssd/>, last visited May 5, 2017.

the Right to Development places on States a duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population....⁵⁵The Millennium Development Goals (MDGs) adopted by the UN General Assembly reiterate and expand these commitments. Goal 7 is focused on ensuring environmental sustainability, and sets out four targets:

- Integrate the principles of sustainable development into country policies and programmes and reverse the loss of environmental resources.
- Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss.
- Halve, by 2015, the proportion of the population without sustainable access to safe drinking water and basic sanitation.
- Achieve, by 2020, a significant improvement in the lives of at least 100 million slum dwellers.⁵⁶

Acknowledging that the environment is also part of this equation, the 1992 Rio Declaration (Principle 3) and the 1993 Vienna Declaration on Human Rights (Paragraph 11) both emphasize that the right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations.⁵⁷ The Rio Declaration also affirms both as the sovereign right of States to exploit their own resources pursuant to their own environmental and developmental policies and their responsibility 'to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction' (Principle 2). Principle 2 is neither an absolute prohibition on trans-boundary environmental damage, nor does it confer on States absolute freedom to exploit natural resources. Principle 4 spells out the obvious point that sustainable development requires integration of economic development and environmental protection.⁵⁸

These principles are also recognised and reinforced in the IUCN Draft International Covenant on Environment and Development, which provides in its Preamble that respect for human rights and fundamental freedoms, including non-discriminatory access to basic services, is essential to the achievement of sustainable development and in Article 4: Peace, development, environmental conservation and respect for human rights and fundamental

⁵⁵*Supra* note 52, p. 40; B. A. Andreassen and S.P. Marks, (eds), *Development as a Human Right* (Cambridge, Mass., 2006); Declaration on the Right to Development, UNGA Res. 41/128 (1986), Article 2(3).

⁵⁶*Supra* note 47; The Millennium Development Goals are set out in UNGA Res. 55/2, 8 September 2000.

⁵⁷Alan, Boyle, *Human Rights and the Environment: Where Next?* The European Journal of International Law, 2012, 23(3), 613-642:629.

⁵⁸*Supra* note 52, p. 23; See 1996 ILC Report, Working Group on International Liability, GAOR A/51/10, Annex 1, at 264-5; R. Lefeber, *Transboundary Environmental Interference (The Hague, 1996)*, 23-25.

freedoms are indivisible, interrelated and interdependent, and constitute the foundation of a sustainable world. The commentary on the Draft Covenant's Article 4 elaborates:

*“Development and environmental protection depend upon respect for human rights, in particular rights of information, political participation, and due process. ...In turn, full and effective exercise of human rights cannot be achieved without development and a sound environment because some of the most fundamental rights, e.g., the rights to life and health, are jeopardised when basic needs, such as sufficient food and water, cannot be provided”.*⁵⁹

Article 1 of the 1966 UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights proclaims the right of all people to pursue economic development, and to dispose freely of their natural wealth and resources. At the same time, regional human rights treaties and declarations in Africa, Latin America and Southeast Asia also recognise a right to some degree of environmental protection, and so does the judicial precedents of the European Court of Human Rights. The essential point of each of these examples is that, while recognising that the right to pursue economic development is an attribute of a State's sovereignty over its own natural resources and territory, it cannot lawfully be exercised without regard for the potential detrimental impact on human rights or the environment of other states or areas beyond national jurisdiction.⁶⁰ Equally, neither environmental protection nor human rights necessarily trump the right to economic development. United Nations Human Rights Council (UNHRC) Resolution 2005/60 recognised the link between human rights, environmental protection and sustainable development. Among other things, it encourages all efforts towards the implementation of the principles of the Rio Declaration on Environment and Development.⁶¹

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. The expert's observed that sustainable development requires that different societal objectives, such as economic, environmental and human rights, be treated in an integrated manner.⁶²

⁵⁹Supra note 52, p. 24; See Draft International Covenant on Environment and Development, Second Edition, 2010 Environmental Law and Policy Paper no 31 Rev. 3, 2010, http://www.iucn.org/about/work/programmes/environmental_law/elp_resources/elp_res_publications/?uPubsID=4197, Last visited May 5, 2017.

⁶⁰Supra note 52.

⁶¹Ibid.

⁶²Justice, Susan Glazebrook, *Human Rights and the Environment*. pp. 299-300; Office of the High Commissioner for Human Rights Meeting of Experts on Human Rights and the Environment (2002), para 3.

3. THE INTRODUCTION OF A SUBSTANTIVE HUMAN RIGHT TO A HEALTHY ENVIRONMENT

An alternative conceptualisation of the relationship between human rights and the environment provides that a healthy environment is something to which human beings are entitled, independent from other human rights. It has been suggested by some that such a right is emerging as customary law⁶³ or that it ought to be added to the catalogue of rights contained in multilateral human rights treaties.⁶⁴ The relationship between the environment and human rights is clearly significant, and on this basis, humans may be entitled to claim a certain degree of environmental well-being as fundamental.⁶⁵ Thus, the need to establish, introduce and recognise, a stand-alone substantive human right to environment.⁶⁶ The substantive component of the Right to a Healthy Environment includes a human right to live in an environment which at its minimums allows for the realization of a life of dignity and well-being. This 'right to environment' is thought to incorporate the substantive standards of recognized economic, social, and cultural rights indispensable for the realization of human dignity, such as the right to a standard of living adequate for health and well-being, the right to the highest attainable standard of mental and physical health, and the right to safe and healthy working conditions. The substantive component of the right to a healthy environment is informed by existing human rights - right to be free from pollution and environmental degradation, and the right to protection, inter alia, of air, water, soil, biological diversity, and ecosystems.⁶⁷

Drawing from the interpretation of the right to health, the right to a healthy environment, could contain both freedoms and entitlements. The notion of healthy

⁶³Supra note 1, p. 40; Dinah, Shelton, *Human Rights, Environmental Rights and the Right to Environment*. Stanford, Stanford Journal of International Law, 1992, 28, 106; W. Paul Gormley, *The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms*. Georgetown International Environmental Law Review, 1990, 3, 85; Stephen, Marks, *Emerging Human rights: a new generation for the 1980s?* Rutgers Law Review, 1980-81, 33, 435.

⁶⁴Supra note 1; Karen Macdonald, *A Right to a Healthful Environment – Humans and Habitats: Rethinking Rights in an Age of Climate Change*. European Energy and Environmental Law Review, 2008, 17, 213; John, Lee, *The Underlying Legal Theory to Support a Well-Defined Human Right to a Healthy Environment as a Principle of Customary International Law*, Columbia Journal of Environmental Law, 2000, 25, 283; Fatma Ksetini, Special Rapporteur for Human Rights and the Environment, *Final Report to Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities: Human Rights and the Environment*, UN Doc E/CN.4/Sub.2/1994/9, 6 July 1994.

⁶⁵Supra note 1

⁶⁶Ibid. Supra note 38.

⁶⁷Costanzo Chiara, *The right to a healthy environment: A right based approach to environmental issues*. Pp. 82, 56. <https://aran.library.nuigalway.ie/handle/10150/10150>, Last visited May 4, 2017; See Rodriguez, R. L. E., *Is the Human Right to Environment Recognized Under International Law? It Depends on the Source*, Colorado Journal of International Environmental Law and Policy, 2001, 12, 1-45.

environment is changing and widened in scope and it does not refer to the realm of environmental protection. Resource distribution, gender differences and access to resources are all elements to be taken into consideration as well as participation and democratic decision-making. Economic and social factors, changing lifestyles, dictate a new sense of the environment we live in.⁶⁸

The substantive Right to a Healthy Environment could refer to the right for all individuals to be protected from environmental degradation, which is one of the notions of environmental justice. Though, the greatest advantage of the concept of environmental justice is that it facilitates debates beyond environmental issues, encompassing also laws and decisions. Therefore, as a superficial understanding of the Right to a Healthy Environment might indicate that everyone should be free to live in a non-contaminated environment, the Right to a Healthy Environment is more importantly affirming that everyone is entitled to equal and non-discriminating opportunity to participate to environmental decision-making.⁶⁹

The Right to a Healthy Environment as an inclusive right extends from the environment per se or the human environment to the mechanisms through which underlying determinants of the natural and human environment are affected. These mechanisms refer to the stages of decision-making process that define needs, resources and risks. Thus, the Right to a Healthy Environment includes entitlements and freedoms in deciding development. Participation is the core of the Right to a Healthy Environment as it underpins the notion of human and resources mobilization to overcome inequalities, discrimination and exclusion. Through participation peoples can collectively define their needs and protect, exercise and enjoy their rights, but it must involve genuine ownership or control of productive resources such as land, financial capital and technology. Thus, the Right to a Healthy Environment spills over to encompass other rights and ultimately questions resource distribution and access, and the right to development.⁷⁰

Under the Right to a Healthy Environment, entitlements include the right to a system of environmental governance which provides equality of opportunity for people to enjoy the highest attainable standard of sustainable development. The right to a healthy environment is

⁶⁸*Ibid*, p. 224. See UN/CESCR, 2000a. General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant). UN Committee on Economic, Social and Cultural Rights (CESCR), [E/C.12/2000/4], para. 10. Available: <http://www.refworld.org/docid/4538838d0.html> .

⁶⁹*Ibid*, pp. 224-225. See Pedersen, O. W., *Environmental Principles and Environmental Justice*, Environmental Law Review, 2010, 12, 26-49.

⁷⁰*Ibid*, p. 225. See United Nations, 2013. Realizing the Right to Development. Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development. United Nations, New York and Geneva, [UN Doc HR/PUB/12/4], p. 60.

a right to a system of environmental governance to advance sustainable development based on the principle of precaution, Common But Differentiated Responsibilities and equal inter and intra generational access to resources. A healthy environment is achieved when it balances the competing goals of sustainable development, reclaiming the importance of social development as substantive equality in the context of access to resources, benefits and burdens, wealth redistribution and improvement of social conditions.⁷¹

For what concerns the obligations that impose on the state, human rights impose substantive obligations on the states to establish an adequate legal and institutional framework for environmental protection.⁷² Mirroring the right to health, the obligation to fulfil (promote) the right to a healthy environment requires States to undertake actions that create, maintain and restore the health of the environment. Such obligations include: (i) fostering recognition of factors favouring positive environmental results, e.g. research and provision of information; (ii) ensuring that environmental procedures are culturally appropriate and that environmental institutional personnel are trained to recognize and respond to the specific needs of vulnerable or marginalized groups; (iii) ensuring that the State meets its obligations in the dissemination of appropriate information relating to environmentally friendly lifestyles, harmful traditional and modern practices and the availability of services; (iv) supporting people in making informed choices about their environment. As violations of the Right to a Healthy Environment can occur through the direct action of States or other entities insufficiently regulated by States, States should have the obligation to monitor and control non-state entities that are in charge of participatory process, for instance the Environmental Impact Assessments.⁷³

While there is currently no broadly applicable multilateral treaty which guarantees the right to a healthy environment, there are a number of regional treaties and soft-law

⁷¹*Ibid.* See Ishay, M. R. 2008. *The History of human Rights. From Ancient times to the globalization Era*, Berkeley, Los Angeles, London: University of California Press.

⁷²*Ibid.* See Knox, J. 2013. *Access Rights as Human Rights*. Third meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean ed. Lima, Peru; KNOX, J., 2013. Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox. UN General Assembly, Human Rights Council, [UN Doc. A/HRC/25/53]; KNOX, J. 2014. *The emerging law of environmental human rights is clearer than ever before*. In: Environment, U. I. E. o. H. R. a. t. (ed.); KNOX, J. 2014. Statement by John H. Knox, Independent Expert on Human Rights and the Environment at "The Development of Environmental Human Rights". Fourth meeting of the focal points appointed by the Governments of the signatory countries of the Declaration on the application of Principle 10 of the Rio Declaration on Environment and Development in Latin America and the Caribbean, Santiago, Chile, 6 November 2014. Available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15274&LangID=E#sthash.Pxszz0TC.dpuf>.

⁷³*Ibid.*, pp. 225-226.

instruments which do refer to the right, as well as a growing number of national constitutions.⁷⁴ The 1972 United Nations Stockholm Declaration on the Human Environment was the first international instrument to establish an explicit link between human rights and environmental protection.⁷⁵ The nexus between human rights and protection of the environment is evident from the Preamble of the Stockholm Declaration:⁷⁶

“Man is both creature and moulders of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth. In the long and tortuous evolution of the human race on this planet a stage has been reached when, through the rapid acceleration of science and technology, man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights the right to life itself.”⁷⁷

Principle 1 of the Stockholm Declaration further underscores this relationship by proclaiming that:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”⁷⁸

The United Nations’ Draft Principles on Human Rights and the Environment further proclaims that:

“All persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and

⁷⁴*Supra* note 1; See Helena Kern, *The Right to a Healthy Environment Versus Mining: An Examination of Federal Environmental Law and its Failure to Protect People’s Health*. P. 140, scu.edu.au > law-justice > download, Last visited May 5, 2017.

⁷⁵*Supra* note 37, pp. 2-3.

⁷⁶Written Opinion by the World Commission on Environmental Law of the International Union for the Conservation of Nature on Request by the Republic of Colombia for an advisory opinion from the Inter-American Court on Human Rights concerning the interpretation of Article 1(1), 4(1) and 5(1) of the American Convention on Human Rights. January, 2017. P. 19, <https://www.iucn.org>> documents > 2007, Last visited May 5, 2017.

⁷⁷Stockholm Declaration Preamble.

⁷⁸Declaration of the United Nations Conference on the Human Environment, adopted at Stockholm, 16 June, 1972, U.N. Doc. A/CONF.48/14/Rev.1, Principle 1.

*indivisible.*⁷⁹*All persons, individually and in association with others, have a duty to protect and preserve the environment.*⁸⁰ *All States shall respect and ensure the right to a secure, healthy and ecologically sound environment. Accordingly, they shall adopt the administrative, legislative and other measures necessary to effectively implement the rights in this Declaration.*⁸¹ *States and all other parties shall avoid using the environment as a means of war or inflicting significant, long-term or widespread harm on the environment, and shall respect international law providing protection for the environment in times of armed conflict and cooperate in its further development”.*⁸²

Support for a right to a healthy environment can be found within regional human rights regimes.⁸³ **The 1981 African Charter on Human and Peoples’ Rights** promote and protect human and peoples' rights including the promotion and protection of the right to a satisfactory environment. The African Charter relevantly provides, at Article 24:

*“All peoples shall have the right to a general satisfactory environment favourable to their development”.*⁸⁴

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, (the Protocol of San Salvador) 1988, determined that everyone is entitled to live in a healthy environment,⁸⁵ and therefore states have the legal duty to protect, preserve and improve the environment.⁸⁶ Article 11 of the Protocol states that:

*“Everyone shall have the right to live in a healthy environment and to have access to basic public services. The States Parties shall promote the protection, preservation, and improvement of the environment”.*⁸⁷

Globally, by 2005, approximately 60 per cent of all states had constitutional provisions protecting the environment. Out of 109 constitutions which did recognise some protection for the environment, 56 recognised explicitly the right to a clean and healthy environment, 97 made it the duty of governments to prevent harm to the environment and 56

⁷⁹Draft Declaration of Principles on Human Rights and the Environment. UN Doc E/CN.4/Sub.2/1994/9, Annex I (1994).

⁸⁰*Ibid*, Principle 21

⁸¹*Ibid*, Principle 22

⁸²*Ibid*, principle 23

⁸³*Supra* note 1, p. 42.

⁸⁴*Supra* note 15.

⁸⁵Organization of American States, Additional Protocol to the American Convention of Human Rights in the Area of Economic, Social and Cultural Rights [“Protocol of San Salvador”] (1999) A-52, Article 11(1).

⁸⁶Article 11(2), Protocol of San Salvador to the American Convention on Human Rights (ACHR)

⁸⁷*Ibid*, Article 11(1).

recognised the responsibility of citizens and residents to protect the environment.⁸⁸ It has been argued that this trend represents consistent state practice sufficient to evidence an emerging customary norm.⁸⁹

A careful examination of the above national constitutional provisions shows some similarities and differences among them. While some of these national constitutional provisions guarantee a right to a clean and healthy environment, others imposed a duty on the state to protect the environmental, or mention the protection of the environment or natural resources; some others impose a duty on both the citizens and state to prevent harm to the environment, others imposes a duty on citizens to protect the environment without expressly giving the citizens or anyone the right to a healthy and balanced environment. For example, the constitutional provisions of the national constitutions of Afghanistan,⁹⁰ the Kingdom of Nepal,⁹¹ the Republic of the Philippines,⁹² Cambodia,⁹³ the Republic of Palau,⁹⁴ the Occupied Palestinian Territory,⁹⁵ Qatar,⁹⁶ Saudi Arabia,⁹⁷ the People's Republic of China⁹⁸ and the Federal Republic of Nigeria⁹⁹ are similar in that they impose a duty on the state to protect, preserve, conserve and improve the environment.

Also, the constitutional provisions of the national constitutions of Indian, the Democratic Socialist Republic of Sri Lanka,¹⁰⁰ Mongolia,¹⁰¹ the Kingdom of Thailand,¹⁰² the Republic of Korea,¹⁰³ Spain,¹⁰⁴ the Islamic Republic of Iran¹⁰⁵ and the Socialist Republic of Vietnam¹⁰⁶ are similar on the ground that they impose a duty on both the state and citizens to protect, preserve, conserve and improve the environment. Further, the constitutional

⁸⁸*Supra* note 62; p. 304; *Supra* note 34; *Supra* note 12.

⁸⁹*Supra* note 1; p. 59; *Supra* note 12.

⁹⁰The 2004 Afghanistan Constitution, Chapter 1, Article 15; Preamble to the Constitution.

⁹¹The 1990 Constitution of The Kingdom of Nepal, Part 4, Article 26.

⁹²The 1986 Constitution of The Republic of the Philippines, Article II, Section 16, Article XII, Section 2, Article XIII, Section 7.

⁹³The Constitution of Cambodia, Article 59.

⁹⁴The 1981 Constitution of the Republic of Palau, Article VI.

⁹⁵The 2003 Draft Constitution of The Occupied Palestinian Territory Draft Constitution 2003, Article 15.

⁹⁶The 2003 Constitution of Qatar, Part II, Article 33.

⁹⁷The 1992 Saudi Arabia Constitution, Chapter 5, Article 32.

⁹⁸The 1982 Constitution of the People's Republic of China, Article 9 & 26.

⁹⁹The 1999 Constitution of the Federal Republic of Nigeria, Section 20. See Federal Republic of Nigeria Official Gazette, No. 27, Vol. 86, 5th May, 1999-Part A.

¹⁰⁰The 1978 Constitution of the Democratic Socialist Republic of Sri Lanka, Chapter VI, Article 27(14), Article 28(f).

¹⁰¹The 1992 Constitution of Mongolia, Chapter 2, Article 16(2), 6(1), 17(2) and Chapter One, Article 6(4).

¹⁰²The 1991 Amended Constitution of The Kingdom of Thailand, Chapter V, Section 79 and Chapter IV, Section 69.

¹⁰³The Constitution of the Republic of Korea, Chapter II, Article 35(1) and Chapter IX, Article 120(2).

¹⁰⁴The Constitution of Spain, Article 45.

¹⁰⁵The 1980 Constitution of the Islamic Republic of Iran, Chapter IV, Article 50.

¹⁰⁶The 1992 Constitution of The Socialist Republic of Vietnam, Chapter 2, Article 29 & 18.

provisions of the Lao People's Democratic Republic,¹⁰⁷ the Independent State of Papua New Guinea,¹⁰⁸ United Arab Emirate¹⁰⁹ and the Republic of Vanuatu¹¹⁰ are similar in the sense that they all impose a duty on the citizens to protect, preserve, conserve and improve the environment. The constitutional provisions of South Africa¹¹¹, Argentina¹¹² and Russia¹¹³ are similar in that they give everyone a right to a protected environment. The similarity in the constitutional provisions of Angola,¹¹⁴ Brazil,¹¹⁵ Turkey,¹¹⁶ Portugal¹¹⁷ and Korea is that they give everyone a right to a healthy, balanced and unpolluted environment and also places a duty on the state and citizens to protect the environment.

There are also, differences in the constitutional provisions of the above mentioned national constitutions. For example, while the constitutions of Afghanistan, the Kingdom of Nepal, the Republic of the Philippines, Cambodia, the Republic of Palau, the Occupied Palestinian Territory, Qatar, Saudi Arabia, the People's Republic of China and the Federal Republic of Nigeria imposes a duty on the state to protect, preserve, conserve and improve the environment without making reference to the duty of the citizens to do same. The constitutions of Indian,¹¹⁸ the Democratic Socialist Republic of Sri Lanka, Mongolia, the Kingdom of Thailand, the Republic of Korea, Spain, the Islamic Republic of Iran; and the Socialist Republic of Vietnam imposes a duty on both the state and citizens to protect, preserve, conserve and improve the environment.

Further, while the constitutional provisions of the constitutions of the Lao People's Democratic Republic, the Independent State of Papua New Guinea, United Arab Emirate and the Republic of Vanuatu imposes a duty on the citizens to protect, preserve, conserve and improve the environment without making reference to the express right of the citizens to a healthy and balanced environment and the duty of the state to protect, preserve, conserve and improve the environment, the constitutional provisions of South Africa, Argentina, Russia explicitly gives everyone a right to a healthy environment and the constitutional provisions of

¹⁰⁷The 1991 Constitution Lao Peoples' Democratic Republic, Chapter II, Article 17.

¹⁰⁸The amended 1975 Constitution of The Independent State of Papua New Guinea, Section: National Goals and Directive Principles and Section: Basic Social Obligations.

¹⁰⁹The 1971 United Arab Emirates Provisional Constitution, Chapter 2, Article 23.

¹¹⁰The Republic of Vanuatu amended 1980 Constitution, Chapter 2, Part II, Article 7.

¹¹¹Constitution of the Republic of South Africa, Act 108 of 1996, Section 24; See Shelton D., *Developing Substantive Environmental Rights*. Journal of Human Rights and the Environment, 2010, 1, 89-120.

¹¹²The constitution of the Republic of Argentina, Article 41.

¹¹³The 1993 Russian Constitution, Article 42.

¹¹⁴The Constitution Angola, Part II of the Constitution, Fundamental Rights and Duties.

¹¹⁵The Constitution of the Federal Republic of Brazil, Article 225.

¹¹⁶The Constitution of Turkey, Article 56.

¹¹⁷Constitution of the Portuguese Republic, Article 66(2).

¹¹⁸The Constitution of India, Part IV, Article 48A; Part IV, Article 51A.

Angola, Brazil, Turkey, Portugal and Korea gives everyone a right to a healthy, balanced and unpolluted environment and also imposes a duty on the state and citizens to protect the environment.

5. ARGUMENTS ON THE SCOPE OF AN ENVIRONMENTAL RIGHT IMPLIED BY DIVERSE LEGAL PERSPECTIVE

One criticism of the proposal for the introduction of a substantive environmental right centres on the problem of proliferation of human rights. As Shelton argues, there are legitimate fears that the addition of numerous claims will devalue existing human rights. Gibson emphasises the need to ensure that any new right is supported by existing human rights theory and architecture commenting that the right to a clean environment is not a frivolous claim; however, declaring it to be a human right without support at the highest level threatens the integrity of the entire process of recognising human rights. While it is important for international human rights law to evolve to meet contemporary problems, Alston argues that a ‘delicate balance must be struck which ensures respect for the integrity of the tradition both in terms of its content and of the process by which it evolves.’¹¹⁹

Boyle and Anderson consider the right to a healthy environment to be problematic for two reasons: firstly, it is not recognised in any legally binding universal instrument. Secondly, it has no operational definition that allows its enforcement. The lack of a precise formulation of the right to a healthy environment is rooted in the perception of the environment as a value judgement that varies across cultures. This variability makes it difficult to codify the right to a healthy environment in legal language.¹²⁰ On the other hand, the UN Special Rapporteur, John Knox observes that there are a growing number of legal statements that together create a body of human rights norms relating to the environment” and that despite their diversity, these legal statements are coherent, providing “strong evidence of converging trends towards greater uniformity ... of human rights obligations relating to the environment.”¹²¹

¹¹⁹*Supra* note 1, p. 44; See Dinah, Shelton, *Human Rights, Environmental Rights and the Right to Environment*. Stanford Journal of International Law, 1991, 28, 103-138:121; Philip, Alston, *Creating New Environmental Rights under International Law: Desirability and Feasibility*. In *Human Rights and Environmental Protection: The Vital Link Proceedings* (Sydney, 12 October 1991), 46.

¹²⁰*Supra* note 67, p. 24; See Boyle, A. E. and Anderson, M. R. (eds.), *Human Rights Approaches to Environmental Protection*. Oxford: Clarendon Press 1996.

¹²¹*Ibid* pp. 25-26; Knox, J., *Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 2013, John H. Knox. UN General Assembly, Human Rights Council*, [UN Doc. A/HRC/25/53].

In addition, the eventual recognition of an environmental human right is considered to be impossible because of the chronic vagueness of the formulation and interpretation of the right. Critiques of vagueness refer to the interpretation of meanings assigned to the term “environment”, the qualitative and quantitative standards of reference of the right, the clear identification of rights holders and duty bearers. The importance of this debate lies in the fact that the capacity of the right to be enforceable and justiciable might be undermined by the lack of a precise definition. However, many authors provide solutions to this critique of the right to a healthy environment addressing various supposed weaknesses of the right.¹²²

Desgagné addresses the critique of the vagueness, and broadness, of the term “environment”, that would discourage interpretation and application of the right. He asserts that the vagueness of the term is a reflection of the persistent doctrinal controversy surrounding human rights and environmental protection. However, the number of legal instruments that include the right to a healthy environment shows a general acceptance that human rights and environmental protection are in fact related in multiple ways and, even though they might represent different social values, they need equal promotion.¹²³ Desgagné argues further that the vagueness of the terms ‘right to a healthy environment’ or ‘right to a safe environment’ is not necessarily an insurmountable obstacle to their interpretation and application in concrete situations. Human rights law teems with vague terms that are eventually given more precise meaning through State practice and judicial interpretation.¹²⁴

More so, Van Dyke argues that the vagueness of right to a healthy environment is, in fact, a positive feature conferring a flexibility that enables the right to adapt to social and environmental necessities.¹²⁵ Anderson similarly believes that “substantive ambiguity” gives enough flexibility to fill gaps in regulations and can address complex and indirect environmental issues. He stresses that narrow definitions of right to a healthy environment should be avoided since they carry different social and economic consequences¹²⁶ and could reduce the capacity of the right to be protected. More broadly, Alston considers the vagueness

¹²²Ibid, p. 23.

¹²³Ibid, p. 23. See Desgagné, R., *Integrating Environmental Values into the European Convention on Human Rights*. The American Journal of International Law, 1995, 89, 263-294; *Supra* note 19.

¹²⁴Richard Desgagné, Human Rights, Conventions, Treaties and other Responses to Global Issues – Vol. II.

¹²⁵*Supra* note 67; See Van Dyke, B., *A Proposal to Introduce the Right to a Healthy Environment into the European Convention Regime*, Virginia Environmental Law Journal, 1994, 13, 323-373.

¹²⁶Ibid; Anderson M. R. *Individual Rights to Environmental Protection in India*. In Boyle, A. E. and Anderson, M. R. (eds.) *Human Rights Approaches to Environmental Protection*. Oxford: Clarendon Press 1996, p. 225.

a “chameleon-like quality”¹²⁷ of new solidarity rights that allows consensus building and support.¹²⁸

Based on a comparative analysis of states’ legislation, courts’ cases and international instruments, Boyd argues that the Right to a Healthy Environment automatically overcomes all the critiques of lack of substantive content and justiciability aimed against it by positivist law because it signals a presence at the very highest level in the hierarchy of legal instruments. A constitutionalized Right to a Healthy Environment transcends the debates, being an individual and collective right and having a positive (welfare) as well as a negative (liberty) character. In addition, analysing the capacity of the constitutional Right to a Healthy Environment to contribute to environmental protection, Boyd suggests that constitutional Right to a Healthy Environment leads to better environmental performance.¹²⁹ Boyd argues that the alleged vagueness of the Right to Healthy Environment has not impeded enshrinement in constitutions, courts interpretation and implementation of the right. In fact, the problem of the vagueness of the right is often seen as a common feature of every human right. Boyd adds that constitutional provisions are by necessity brief and inherently vague. The understanding of human rights should not derive from detailed definitions nor court interpretations, but rather from a more systemic analysis of concepts, moral judgement and social scientific knowledge or from public consciousness. Operational meanings are shaped by the political, social and cultural contexts, and develop over time. Therefore, the Right to Healthy Environment is as vague as other rights.¹³⁰

Given that the environment is of international concern, some have argued that it is only appropriate that environmental protection be addressed through international instruments, and that the strong links between human rights and environment warrant that international human rights law ought to recognise the right to a healthy environment specifically. To them, the need of the hour is an independent, internationally-recognised human right to a healthy environment that is narrowly and rigorously defined so as to become a useful and legally applicable right.¹³¹

¹²⁷Ibid; See Alston P., *Conjuring up new human rights: a proposal for quality control*. American Journal of International Law, 1984, 78, 607-621:613; Alston P., *Peoples’ Rights: Their Rise and Fall*. In Alston P. (ed.) *Peoples’ Rights*. New York, Oxford University Press 2001.

¹²⁸Ibid.

¹²⁹Ibid, p. 24. See Boyd D. R. 2012. *The Environmental Rights Revolution: a global study of constitutions, human rights, and the environment*, Vancouver, Toronto: UBC Press.

¹³⁰Ibid, pp. 23-24; Boyd, *ibid*, p. 33; See Freeman, M. *Human rights: an interdisciplinary approach*: Cambridge, UK: Polity Press; Malden, MA: Blackwell 2002. P. 5.

¹³¹*Supra* note 1, p. 40; W. Paul, Gormley, *The Legal Obligation of the International Community to Guarantee a Pure and Decent Environment: The Expansion of Human Rights Norms*. Georgetown International

Some authors have attempted to set out criteria for admitting new rights. Ramcharan states that human rights are rights which possess certain characteristics, such as universality; essentiality to human life, security, dignity, liberty and equality; essentiality for international order and for the protection of vulnerable groups. Gibson argued that any new right must be consistent with but not repetitive of existing human rights law. Following from this, Handl has argued that it is difficult to conceptualise the right to a healthy environment as an independent and inalienable right. Further, the right to a healthy environment potentially expands the territorial scope of state obligations. Shelton has argued that the required broad expansion of state liability may prove to be the biggest single hurdle to establishing a right to environment.¹³²

To others, a specific right in an international legal instrument would allow for claims to be brought by individuals or groups where domestic laws have failed to offer adequate remedies for harm suffered as a result of environmental degradation. It would also bolster the recognition which the right already receives in some domestic legal systems and enhance the positive duties which would flow from it. In addition to the benefits that the new right to a safe and healthy environment would confer to victims of environmental problems, it is argued that recognising a new right to a healthy environment in international law would enhance existing mechanisms for environmental protection.¹³³ The main arguments advanced by the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994, for adopting an autonomous right to a healthy and decent environment (in its proposed Declaration of Principles on Human Rights and the Environment) are the enhanced status it would give environmental quality when balanced against competing objectives, and that it would recognise the vital character of the environment as a basic condition of life, indispensable to the promotion of human dignity and welfare, and to the fulfilment of other human rights.¹³⁴

Another major criticism against the introduction of a substantive Right to a Healthy Environment is that there is a lack of concentration on the environment for its own sake. In other words, the proposal to introduce a right to a healthy environment would make such a

Environmental Law Review, 1990, 3, 85; Steve, Turner, *The Human Right to a Good Environment - the Sword in the Stone*, Non- State Actors and International Law, 2004, 4, 277; Achim, Steiner, *Executive Director United Nations Environment Programme*, letter from UNEP to Council of Europe, 14 May 2010.

¹³²*Supra* note 1, p. 44; Bertrand, Ramcharan, *The Concept of Human Rights in Contemporary International Law*. Canadian Human Rights Year Book, 1983, 267, 280; Noralee, Gibson, *The Right to a Clean Environment*, Saskatchewan Law Review, 1990, 54, 5, 6-8.

¹³³*Supra* note 1 pp. 40-41; *Supra* note 126.

¹³⁴*Supra* note 57, pp. 10-11.

right to be too anthropocentric. In casting the right to a healthy environment as a human right, it is inextricably linked to human interest. This alignment has provoked criticism from the fields of deep ecology, and earth jurisprudence, on the basis that it effectively denies recognition of animals, plants, species and ecosystems as rights-holders, thereby making their protection contingent on establishing some other human interest.¹³⁵

Gibson argues that by labelling the right to a clean environment a ‘human’ right, the natural world is valued according to human values and needs with humans being promoted to a position of superiority. This is contrary to the deep ecologists’ account, which holds that all organisms and entities in the ecosphere, as parts of the interrelated whole, are equal in intrinsic worth.¹³⁶ The concern is that the protection of the environment for its own sake would give way to the right for humans to use and abuse the environment to the detriment of other species and to the ecosystem. Both Gibson and Macdonald argue that, while a rights-based approach to environmental protection can be useful, the use of human right to a healthy environment may be problematic, in that it takes away from a more ecocentric approach. Macdonald argues, however, that human rights law can contribute to environmental protection by strengthening the appreciation of environmental considerations and providing practical mechanisms for achieving better environmental outcomes.¹³⁷

However, Justice Susanhas argued that any right to the environment would have to include the right to biodiversity and the responsibility for the general protection of biodiversity and the ecosystem for its own sake. According to him, rights do not have to relate only to physical needs and desires of humans. They can and should also relate to spiritual, cultural and aesthetic needs and desires.¹³⁸ Promoting a human right to a healthy environment, it is argued, perpetuates the values and attitudes that are at the root of environmental degradation, and reinforces the idea that the environment is only there to serve human needs, creating a hierarchy where human needs supersede environmental concerns.¹³⁹

¹³⁵*Supra* note 1, pp. 45-46; Bill, Devall and George, Sessions, *Deep Ecology* (Gibbs Smith, 1985); Judith, Koons, *Earth Jurisprudence: The Moral Value of Nature*, *Pace Environmental Law Review*, 2008, 25,263; Judith, Koons, *What is Earth Jurisprudence?: Key Principles to Transform Law for the Health of the Planet*. *Penn St Law Review*, 2009, 18, 47; Cormac, Cullinan, *Wild Law: A Manifesto for Earth Justice*(Chelsea Green, 2nd edn, 2011); Prue, Taylor, *From Environmental to Ecological Human Rights: A New Dynamic in International Law?* *Georgetown International Environmental Law Review*, 1998, 10, 309-361:346; Alan, Boyle, *The role of international human rights law in the protection of the environment*. In Alan, Boyle, and Michael, Anderson (eds), *Human Rights Approaches to Environmental Protection* (Oxford University Press, 1996) 43, 48-49.

¹³⁶*Ibid* pp. 45-46.

¹³⁷*Supra* note, 1, p. 46.

¹³⁸*Supra* note 57, p. 318.

¹³⁹*Supra* note 1.

To the contrary, Justice Susan is of the view that as humans are the cause of environmental degradation, a human rights approach, properly coupled with an emphasis on individual, collective, business and state responsibility, should provide impetus for addressing root (human) causes.¹⁴⁰ Further, Taylor suggests that, while an environmental human right is essentially an anthropocentric concept which presents some concerns, it may nonetheless play some useful role in developing an ecological consciousness which will foster the adoption of a new environmental ethic.¹⁴¹

6. CONCLUSION

In conclusion, one might consider that the existence of a substantive right to environment is still controversial. Several authors suggest that the evidence that States have accepted a generic right to environment is not convincing. Others question the judiciousness or the usefulness of the concept in international law. Some underlined the vagueness of the concept of environment, even when qualified with terms such as ‘decent’, ‘healthy,’ or ‘satisfactory’. Others argue that such a broad entitlement would be too indeterminate to be meaningful. Furthermore, its application would heavily depend on the context, so that it could not be regarded as a universal standard.¹⁴² Despite the perceived challenges and controversies against a substantive right to environment, it is however the view of the author that there is need for the introduction and recognition of a specific or stand alone substantive human right to a healthy environment. Having a specific substantive right to a healthy environment will among other benefits, give greater prominence to the environment, address the needs of the vulnerable more clearly,¹⁴³ empower participants to participate in decisions affecting the environment, the environment could be balanced as a separate right against other rights, rather than being isolated in its own legal framework.¹⁴⁴

Further, the introduction of a substantive right to environment matters because first, it helps to identify actions that produce environmental damage, which could affect the full enjoyment of some existing human rights, such as the right to life, health, property and private and family life. Second, it expands the body of human rights law which could be used as a complementary interpretative instrument for the implementation of other environmental treaties under public international law. A rights based framework to environmental protection provides a strong claim to an absolute entitlement not prone to negative influences of strong

¹⁴⁰*Supra* note 57, p. 321.

¹⁴¹*Supra* note, 1, p. 46.

¹⁴²*Supra* note 67.

¹⁴³Poor and developing nations are more at risk from environmental degradation. Having a right to a quality environment would concentrate attention on their plight.

¹⁴⁴*Supra* note 57, pp. 322-323.

powers. It provides wider access to justice, supporting legitimate claims that would otherwise fall through legislative gaps. The general statements that characterize human rights regime can stimulate political activism at local as well as international level. In general, rights encourage political debates for the creation of meanings and contents relevant to specific contexts. At the same time, they may provide means to bridge local issues to global concerns, promoting political mobilization.¹⁴⁵

Third, the introduction of Right to a Healthy Environment could lead to the implementation of higher environmental standards and reduce the likelihood of severe environmental damage. Fourth, the Right to a Healthy Environment imposes a legal duty on states to regulate and control environmental nuisances. A failure to do so makes the state directly accountable for the damage produced. Also, states must provide effective access to justice and redress to the victims whose human rights to a healthy environment were breached due to the effects of environmental damage. Finally, the Right to a Healthy Environment promotes the adoptions of environmental features among the different human rights courts and help these judicial forums¹⁴⁶ to coordinate their approaches.¹⁴⁷ The incorporation of environmental features by one court could lead to the harmonization of the entire human rights system in relation to the environmental dimensions.¹⁴⁸

For those who still need convincing of the need for a right to environment, I refer to the following data:

1. Worldwide, 13 million deaths (23 per cent of all deaths) could be prevented each year by making our environment healthier.
2. For children under fourteen, over one third (36 per cent) of all disease is caused by environmental factors such as unsafe water or air pollution. There are more than four million environmentally caused deaths of children each year.

¹⁴⁵Supra note 67, p. 24; See Boyle, A. E. and Anderson, M. R. (eds.), *Human Rights Approaches to Environmental Protection* (Oxford: Clarendon Press 1996); Anderson, M. R., *Human Rights Approaches to Environmental Protection: An Overview*. In Boyle, A. E. & Anderson, M. R. (eds.) *Human Rights Approaches to Environmental Protection*. (Oxford: Clarendon Press 1996). P. 22.

¹⁴⁶For example, the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), the African Commission on Human and Peoples Right (ACHPR) etc.

¹⁴⁷See Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, [2010] ICJ Rep 639, paras 64–68. In this case the ICJ used the existing jurisprudence of the Human Rights Committee, the ECtHR and of the IACtHR to corroborate the interpretation given to article 13 of the ICCPR and article 12(4) of the African Charter; See Higgins R., 'A Babel of Judicial Voices? Ruminations from the Bench' (2006) 4 *The International And Comparative Law Quarterly*, 798.

¹⁴⁸See *Caesar v. Trinidad and Tobago*, Separate Opinion of Judge Trinidad, Inter-American Court of Human Rights, Sers. No. 123 (2005).

3. Better environmental management could prevent 42 per cent of deaths from malaria, 41 per cent of deaths from lower respiratory infections and 94 per cent of deaths from diarrhoeal disease. These are three of the world's biggest childhood killers.¹⁴⁹

The introduction and recognition of a stand-alone specific substantive human Right to a Healthy Environment is thus, the need of the hour because it channels human rights and environmental law principles in an experimental manner to deliver long awaited human rights objectives of justice, fairness and equality within environmental limits. It is therefore my recommendation that:

1. The international community through the United Nations System should introduce and recognise a substantive human Right to a Healthy Environment. The Right to a Healthy Environment should include the right to biodiversity and the responsibility for the general protection of biodiversity and the ecosystem.
2. States should respect and protect the Right to a Healthy Environment-which includes States' respect for and protection of the right to biodiversity and the responsibility for the general protection of biodiversity and the ecosystem.
3. States should adopt the administrative, legislative and other measures necessary to effectively implement the Right to a Healthy Environment. The measures adopted should be aimed at the prevention of environmental harm, at the provision of adequate remedies in the event of environmental rights violations, and at the sustainable use of natural resources. For example, States should adopt measures aimed at ensuring that transnational corporations, wherever they operate, carry out their duties of environmental protection, sustainable development and respect for environmental human rights.
4. Regional human rights courts and judicial forums such as the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), the African Commission on Human and Peoples Right (ACHPR) etc should be given enhanced capacity and freedom to define, interpret and enforce environmental human right; each regional system seems to adopt a different and somewhat successful approach when it comes to resolve cases of environmental human rights violations.

¹⁴⁹*Supra note 57*, p. 324; World Health Organisation Preventing Disease through Healthy Environments: Towards an Estimate of the Environmental Burden of Disease (2006), [www.who.int> publications > preventing...](http://www.who.int/publications/preventing...), Last visited May 4, 2017.