



HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION: AN APPRAISAL

Ogwutum Chile Amarachi*

Abstract

It was Prof. John Knox who said, 'The exercise of human rights helps to protect the environment, and a healthy environment helps to ensure the full enjoyment of human rights'. On 28 July 2022, the United Nations General Assembly (UNGA) adopted a resolution declaring that everyone on the planet has a right to a healthy environment. This landmark decision is the result of decades of mobilization of various stakeholders. The resolution, based on a similar text adopted in October 2021 by the Human Rights Council, called upon States, international organizations, and business enterprises to scale up efforts to ensure a healthy environment for all. Employing the doctrinal method of research, this paper explained substantive environmental rights vis-à-vis procedural rights, examined the various human rights linked to the environment and considered the loopholes in the existing legal regime. This paper concluded that environmental rights are classified as either substantive or procedural; the substantive guaranteeing the right to quality environment. Recommendations were also made on ways to better feel the impact of the myriad provisions of the law on environmental rights.

Keywords: Human Rights, Environmental Protection and Appraisal

1.0 Introduction

Human rights and the environment are intrinsically intertwined: a safe, clean, healthy and sustainable environment is essential in the enjoyment of our human rights; whilst polluted, hazardous and otherwise unhealthy environments potentially violate our human rights. Environmental rights are not abstract, remote, irrelevant concepts; they are measurable, prominent and functional aspects of society and its ecology. More than 100 countries incorporate constitutional rights to a healthy environment. When environmental rights are violated, people and the planet suffer from reduced health and well-being¹.

The human rights framework provides a strong moral and legal justification for immediate action to protect the environment. Environmental sustainability and the promotion, protection, and fulfilment of human rights are complementary objectives at the core of sustainable development. Environmental sustainability and the promotion of human rights are closely intertwined and complementary objectives that are at the core of sustainable development.

After decades of debate, the human right to a clean, healthy and sustainable environment is now recognized in resolutions adopted by the UN General Assembly and the Human Rights Council. These resolutions have propelled the integration of environmental rights into multilateral environmental agreements, setting the stage for more comprehensive and interconnected approaches to addressing global environmental challenges. Notable examples include the Sharm el-Sheikh Implementation Plan,

LL.B (RSU), B.L (LAGOS), LL.M (RSU) in view, Email: ihundaamarachi@gmail.com, Phone number: 08060939671

¹ Geneva Environment Network (2024), Human Rights and the Environment.

<https://www.genevaenvironmentnetwork.org/resources/updates/human-rights-and-the-environment/> accessed on May 28, 2024.



the Kunming-Montreal Global Biodiversity Framework and the Bonn Declaration for the Sustainable Management of Chemicals and Waste.²

International attention to the links between human rights and environmental protection has expanded considerably in the past several decades. As early as the 1972 Stockholm Conference on the Human Environment, participating states recognized that environmental degradation hampers the enjoyment of internationally guaranteed human rights. In the Conference's concluding declaration, the participating states referred to the fundamental rights of freedom, equality and adequate conditions of life in an environment of a quality that permits a life of dignity and well-being. The three headings of freedom, equality and adequate conditions of life encompass recognized civil, political, economic and social rights. The UN General Assembly reaffirmed the linkage between human rights and environmental protection in resolution 45/94, stating that all individuals are entitled to live in an environment adequate for their health and well-being and calling for enhanced efforts to ensure a better and healthier environment.³

During the three decades since the Stockholm Conference, law-makers in many countries have drafted constitutional and legislative provisions to add environmental rights, including the right to an environment of a specified quality, such as 'healthy', 'safe', 'secure', 'clean' or 'ecologically sound'. Two international treaties also directly guarantee a right to environmental quality (see *infra*). In addition to these direct substantive rights, environmental guarantees also emerge indirectly, because courts interpreting and enforcing other rights have recognized that violations of them may be the result of a degraded environment. International human rights tribunals, in particular, have come to view environmental protection as essential for the enjoyment of certain internationally guaranteed human rights, especially the rights to life, health, home life, and property. Environmental protection is thus deemed a prerequisite to the effort to secure the effective enjoyment of human rights.

Apart from recognizing that human rights cannot be enjoyed in a degraded environment, there are several other reasons why those persons concerned with environmental protection may adopt a rights-based approach. First, human rights are maximum claims on society, elevating concern for the environment above a mere policy choice that may be modified or discarded at will. Rights are inherent attributes of human beings that must be respected in any well-ordered society. The moral weight this concept affords exercises an important compliance pull. Second, all legal systems establish a hierarchy of norms. Constitutional guarantees usually are at the apex and 'trump' any conflicting norm of lower value. Thus, recognizing a sound environment as a constitutional right ensures that its protection will be given precedence over other legal norms that are not constitutionally based. Third, at the international level, enforcement of human rights law is more developed than are the procedures of international environmental law. The availability of individual complaints procedures to denounce violations of

² D. R. Boyd, 'SPECIAL RAPPORTEUR ON THE HUMAN RIGHT TO A CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT' ; *The Right to a Healthy Environment A USER'S GUIDE* (2024) p. 8

³ D Shelton, 'Human Rights and the Environment: Substantive Rights,' in *RESEARCH HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW* (Malgosia Fitzmaurice, David M. Ong & Panos Merkouris eds., 2011).



human rights has given rise to extensive jurisprudence in which the specific obligations of states to protect and preserve the environment are detailed.⁴

Human rights law and environmental law initially evolved separately. However, overlaps emerged over time. Certain existing human rights were used to protect the environment, while new rights specifically addressing environmental concerns were developed.

2.0 Sources of Human Rights and Environmental Obligations

International Human Rights Treaties:

A treaty is a formally signed and validated agreement between states that lays out specific rules on how the state will conduct its affairs on a particular issue. Treaties are signed and agreed upon by individual states on an ad hoc basis. Human Rights treaties provide an agreed set of human rights standards. They establish mechanisms to monitor treaty implementation by participating countries. Once ratified, a treaty becomes part of a country's domestic law.

Notable examples include the International Covenant on Economic, Social, and Cultural Rights and the International Covenant on Civil and Political Rights. The Universal Declaration on Human Rights is an international declaration that is binding universally and has significant moral value.

The Universal Declaration of Human Rights is a landmark document in the history of human rights. Drafted by representatives from diverse legal and cultural backgrounds worldwide, it was proclaimed by the United Nations General Assembly in Paris on December 10, 1948. The UDHR sets out fundamental human rights to be universally protected and has been translated into over 500 languages. It serves as a common standard of achievement for all peoples and nations, inspiring more than seventy human rights treaties.

International Covenant on Civil and Political Rights

The ICCPR is a multilateral treaty that commits nations to respect civil and political rights. It covers rights such as the right to life, freedom of religion, freedom of speech, assembly, and electoral rights. The ultimate aim is to prevent "dangerous" human interference with the climate system.

International Covenant on Economic, Social, and Cultural Rights

The ICESCR focuses on economic, social, and cultural rights. It includes labour rights, the right to health, education, and an adequate standard of living.

Convention on Biological Diversity

The CBD covers all aspects of biological diversity: conservation, sustainable use, and benefit-sharing from genetic resources. It aims to prevent "dangerous human interference" with ecosystems. The CBD supports the Kunming-Montreal Global Biodiversity Framework and the Sustainable Ocean Initiative.

⁴ Ibid



United Nations Framework Convention on Climate Change

The UNFCCC aims to limit dangerous climate change. It stabilizes greenhouse gas concentrations to prevent interference with the climate system.

Environmental Treaties:

Environmental treaties address global concerns such as pollution, biodiversity, and climate change. They intersect with human rights by safeguarding the right to a healthy environment. Some include The Convention on Biological Diversity, the UN **Framework Convention on Climate Change** and The **Kyoto Protocol**.

Bilateral and Multilateral Agreements:

These treaties allow countries to collaborate on various issues, including human rights and the environment. Multilateral agreements unite countries on environmental matters. They create a framework for shared responsibilities and obligations.

3.0 Substantive Human Rights

Human rights are interdependent and non-hierarchical in nature, whether substantive or procedural. The right to cultural life, for example, cannot be enjoyed without the right to equality or the right to participation. Moreover, the right to property cannot be adequately protected if the rights to due process are not guaranteed. This interdependency of human rights is clearly demonstrated in the many individual complaints brought before international supervisory mechanisms referring not only to violation of one human right but to several, such as the right to fair trial and the right to non-discrimination.

Twelve rights essential for the protection of the individual can be outlined based on the rights enumerated in the Universal Declaration of Human Rights.

These rights include:

The Right to Due Process

The Right to Freedom of Expression and Religion

The Right to Integrity

The Right to Liberty

The Right to Privacy and Family Life

The Right to Property

The Right to an Adequate Standard of Living

The Right to Health

The Right to Education and Culture

The Right to Participate in Society

The Right to Equality and Non-Discrimination

There are several established human rights related to the environment. Environmental rights are composed of substantive rights (fundamental rights) and procedural rights (tools used to achieve substantial rights).

Substantive rights are those in which the environment has a direct effect on the existence or the enjoyment of the right itself. Substantive rights comprise of:

1. Civil and political rights, such as the rights to life, freedom of association and freedom from discrimination;
2. Economic and social rights such as rights to health, food and an adequate standard of living;
3. Cultural rights such as rights to access religious sites; and
4. Collective rights.

Substantive guarantees to an environment of a quality that is compatible with health and well-being are separate from, although interdependent with, the procedural rights to information, participation and access to justice. The other rights are matters of process, intended to ensure that decision-making takes place with informed input from those potentially affected by the decision and that these same persons have an avenue of redress for any harm that results. Substantive rights, in contrast, place certain limits on the outcome of the process, ensuring that the majority does not abuse its dominant position to discriminate or to cause environmental degradation at a level that infringes the enjoyment of human rights⁵.

Environmental human rights are both substantive – they provide rights to different aspects of a healthy and safe environment – and procedural, for they ensure the public's access to environmental decision-making and to judicial review of environmental decisions. The substantive content of environmental rights can be deduced from human rights, which must be realized through a healthy environment.

As mentioned above, such rights include the right to health, the right to food and nutrition, the right to water and the right to housing. In the ICESCR, rights to adequate food, clothing and housing are referred to collectively as the “right to an adequate standard of living” (art. 11). There also have been proposals for specific environmental rights.

According to the proposed Draft Principles on Human Rights and the Environment, these would include:

- Right to freedom from pollution, environmental degradation and activities that adversely affect the environment;
- Right to protection and preservation of the air, soil, water, sea, ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems;

⁵ D Shelton, (n 3)

- Right to timely assistance in the event of natural or technological or other human-caused catastrophes;
- Right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

International human rights treaties do not provide technical guidance in the form of microbial, chemical and radiological standards. However, in its General Comment on the Right to Water, the Commission on Social, Economic and Cultural Rights referred to WHO guidelines for drinking water quality, which may be used to develop national standards on safe drinking water. WHO has issued environmental guidelines also on air quality and food safety. These guidelines do not have binding legal force, but they may be used to define the content of substantive environmental rights.

4.0 Human Rights Directly Related to Environmental Conservation

Human Rights Related to Environmental Conservation include:

Right to Life⁶

The right to life is accepted as the most fundamental norm of human rights law and constitutes a cornerstone of most international and regional human rights instruments. For instance, in Europe, Article 2(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) confer the right to life of everyone falling within the jurisdiction of the contracting states. A safe and healthy environment is essential for life itself. Courts recognize that environmental protection is a prerequisite for the effective enjoyment of the right to life.

According to Article 3 of the Universal Declaration of Human Rights, ‘everyone has the right to life, liberty and security of person.’ Article 6 of the International Covenant on Civil and Political Rights further establishes 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.’

This means that no person or entity is entitled to take another person’s life. It also means that all States have the obligation to protect the lives of their citizens, as well as that of all people residing in their territory. This obligation includes the requirement to both adopt all relevant measures to secure the enjoyment of the right to life and to refrain from violating or permitting violations of this right. For example, public authorities must take into account the effects that their decisions might have on people’s life expectancy, and avoid adopting any measures that risk endangering a person’s life.

Article 6 of the International Covenant on Civil and Political Rights further establishes that:

‘In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and

⁶ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/right-to-life/> accessed on 12/08/2024.



Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.’

Article 6 of the Convention on the Rights of the Child establishes:

- ‘1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.’

The right to life is recognized through regional standards such as the African Charter on Human and Peoples’ Rights, the American Convention on Human Rights (Pact of San José), and the EU Charter of Fundamental Rights.

The right to life is closely related to the right to a healthy environment. The relationship between the right to life and the right to a healthy environment has been recognised by different national, regional and international mechanisms.

The Framework Principles on Human Rights and the Environment state through principles 1 and 2: States should ensure a safe, clean, healthy and sustainable environment in order to respect, protect and fulfil human rights, and likewise, States should respect, protect and fulfil human rights in order to ensure a safe, clean, healthy and sustainable environment. On this regard it establishes:

‘Human rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to safe drinking water and sanitation, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself.

United Nations Human Rights Committee has affirmed that States are responsible for failing to protect individuals from the deadly effects caused by the environmental harm resulting from the use of biochemical fertilisers.

People’s life expectancy can be affected by environmental degradation resulting either from natural causes or unsustainable human action. The protection of the right to life demands that governments take preventive and corrective action whenever an activity is known or believed to have negative effects on people’s life expectancy.

Right to Health⁷

Access to clean air, water, and sanitation directly impacts health. Environmental degradation can harm physical well-being.

⁷ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/right-to-health/> accessed on 12/08/2024.



According to Article 25 of the Universal Declaration of Human Rights, everyone has the right to a standard of living adequate for the health and well-being of themselves and of their families.

Furthermore, Article 12 of the International Covenant on Social, Economic, and Cultural Rights states that

‘the States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.’

Other international treaties which relate to the right to health are:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- Convention on the Rights of the Child (CRC)
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPRMW)
- Convention on the Rights of Persons with Disabilities (CRPD)

For this purpose, States must grant access to health care facilities and services, sanitation, adequate food, among others. It also means that States are obliged to prevent serious mental and physical health harms.

The Committee on Economic, Social and Cultural Rights explained:

‘The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health’.

The African Charter on Human and Peoples’ Rights establishes in Article 16 the right to health and the European Social Charter states everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable. The right to health is also recognized in the Arab Charter on Human Rights, the ASEAN Human Rights Declaration, and the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms.

The right to health and the right to a healthy environment are closely related.

The Framework Principles on Human Rights and the Environment clearly states that human rights and environmental protection are interdependent. A safe, clean, healthy and sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, the right to the highest attainable standard of physical and mental health, among many others.

In 2018 the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment states that ‘Climate change has many



other harmful effects on human health, including increasing the frequency and severity of heatwaves, compounding the toxicity of fossil-fuel pollutants such as ozone and contributing to wildfires. Children are, again, more vulnerable to all of these effects.’

The Convention on the Rights of the Child ‘requires States parties to pursue full implementation of the right to health by appropriate measures that include the provision of nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.’

Good health depends extensively on environmental conditions. In order to guarantee the best attainable state of physical and mental health, governments must make every possible effort, within available resources, to protect the individuals from the harmful effects of environmental degradation, caused by the State or private entities.

Negative effects of the climate emergency can violate the right to health, not only through premature deaths, but also through increased incidences of respiratory and cardiovascular disease, malnutrition, stunting, wasting, allergies, injuries and mental illness.

Human rights mechanisms have recognized that environmental problems can lead to violations of the right to health. For example, the African Commission on Human and Peoples’ Rights regarding the African Charter on Human and Peoples’ Rights, has affirmed that:

“Reduced to their most basic level, the rights to health and a healthy environment (general satisfactory environment favourable to their development) serve to prohibit governments from directly threatening the health and environment of their citizens. The State is under the obligation to respect and this entails largely non-interventionist conduct from the State for example, from carrying out, sponsoring or tolerating any practise, policy or legal measures violating the integrity of the individual.”

Human rights and the environment are intertwined; human rights cannot be enjoyed without a safe, clean and healthy environment; and sustainable environmental governance cannot exist without the establishment of and respect for human rights. This relationship is increasingly recognised, as the right to a healthy environment is enshrined in over 100 constitutions.

Right to Safe and Clean Drinking Water and Sanitation⁸

Water is essential to people’s health and livelihoods, as well as the sustainable alleviation of poverty. For conflict-affected countries, in particular, safe access to water and sanitation plays a critical role in meeting basic human needs, upholding human rights and supporting peaceful and prosperous livelihoods at all levels.

⁸ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/right-to-safe-and-clean-drinking-water-and-sanitation/> accessed on 12/08/2024.

The Special Rapporteur on the right to safe drinking water and sanitation has stressed that ‘International human rights law obliges States to work towards achieving universal access to water and sanitation, guided by human rights principles and their defined standards, while prioritizing those most in need.’

The legal content of the human right to water and sanitation encompasses the following dimensions:

- **Availability** – that States must provide sufficient and continuous water for personal and domestic use, and a sufficient number of sanitation facilities;
- **Accessibility** – that water and sanitation services must be accessible to everyone within, or in the immediate vicinity, of household, health and educational institution, public institutions and workplaces;
- **Acceptability** – that sanitation facilities, in particular, have to be culturally acceptable, and constructed in a way that ensures privacy and dignity;
- **Affordability** – that the price of sanitation and water services must be affordable for all without compromising the ability to pay for other essential necessities guaranteed by human rights such as food, housing and health care.

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right of everyone to an adequate standard of living. The Committee on Economic, Social and Cultural Rights, the treaty body in charge of monitoring State compliance with the ICESCR, has pointed out that although the right to water is not explicitly recognised on the Covenant, the list is not exhaustive and the right to water is essential to an adequate standard of living. Accordingly, UN General Assembly Resolution 64/292 explicitly recognised the right to safe and clean drinking water and sanitation as a human right.

The Convention on the Rights of the Child recognizes the need ‘to combat disease and malnutrition, including within the framework of primary health care, through inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution’. At a regional level, some regional treaties explicitly recognize the right to safe drinking water and sanitation such as the Arab Charter on Human Rights and the ASEAN Human Rights Declaration.

The report ‘On the Right Track’ clearly exposes the importance of the right to clean water and sanitation:

‘For the individual, access to safe water and sanitation is fundamental for leading a dignified life, and improves health, access to education and work opportunities. On a societal level, a population that has access to safe water and sanitation services will be healthier, more available to work and can contribute to development and economic growth, while living in a cleaner environment.’

The right to safe and clean drinking water is closely linked to the right to a clean, safe, healthy, and sustainable environment, as water is a natural resource, the quality and quantity of which depends entirely on the environment. The Framework Principles On Human Rights And The Environment recognises that human rights are interconnected, and as such, ‘a safe, clean, healthy, and



sustainable environment is necessary for the full enjoyment of human rights, including the rights to life, to the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to **safe drinking water and sanitation**, to housing, to participation in cultural life and to development, as well as the right to a healthy environment itself.’

Major threats to the environment, such as accelerating urbanization, climate change, increasing pollution and depletion of water resources, also pose major challenges to the adequate fulfilment of the right to safe drinking water. As explained by the Special Rapporteur on human rights and the environment, ‘Climate change is affecting precipitation patterns across the world, with some dry areas receiving less precipitation and wet areas receiving more frequent and intense precipitation’, affecting the core components of the right to water.

The Special Rapporteur on the human right to safe drinking water and sanitation has also explored the impacts that megaprojects such as infrastructure projects, extractive industries, energy production projects, water supply systems and transport projects to mega-events, inter alia, can have on the fulfilment of the right to water. According to his report, ‘the extensive usage of land required for the implementation and the massive exploitation of water sources may have dire consequences for the availability and quality of water and, in general, for the way the population accesses water and sanitation services.’

Given that water is a vital resource for the fulfilment of the right to life, and the right to safe drinking water and sanitation is a recognised human right, the defence of the environment and the protection of natural resources such as water, should be one of the main priorities of governments and societies.

Right To Adequate Standard Of Living⁹

The Universal Declaration of Human Rights establishes in Article 25 that ‘Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.’

The right to adequate housing has also been recognised in Article 11 of the International Covenant on Economic, Social and Cultural Rights, which establishes that

‘The States parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.’

The Committee on Economic, Social and Cultural Rights, the treaty body in charge of monitoring State compliance with the ICESCR, has further explained that the right to adequate housing goes beyond the right to merely have a roof over one’s head. Rather, adequate housing means ‘adequate privacy,

⁹ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/right-to-adequate-housing/> accessed on 12/08/2024.

adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.’

This Committee has also affirmed that housing facilities need to fulfil certain criteria in order to be considered adequate. These include: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities; and must be culturally adequate, meaning that ‘the way housing is constructed, the building materials used, and the policies supporting these must appropriately enable the expression of cultural identity and diversity of housing.’

Some regional human rights conventions and treaties recognize the right to adequate housing. The treaties’ monitoring bodies and courts, in particular the African Charter on Human and Peoples’ Rights, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the European Committee of Social Rights, play an important role in protecting the right to adequate housing and have developed specific jurisprudence related to it. This right is also recognized in the Arab Charter on Human Rights and the ASEAN Human Rights Declaration.

The right to adequate housing is related to the right to a healthy environment as housing depends on, and can be affected by, environmental circumstances. Availability of resources, services, materials, facilities and infrastructure, as well as habitability can be affected by environmental harm, such as land and water pollution, or the improper disposal of toxic and hazardous waste.

The Special Rapporteur on adequate housing has pointed out the present and anticipated effects of climate change indicate serious risks for the right to adequate housing. Flooding and landslides, caused by increases in rainfall intensity, sea-level rise and storm surges in coastal areas can severely impact housing and service infrastructure, such as drainage and sanitation systems. She has also affirmed that the poorest people are most likely to suffer the negative effects of climate change, including when it comes to the right to adequate housing.

Moreover, a 2009 report from the Special Rapporteur on adequate housing stated:

‘The most vulnerable to the impacts of intense storms, floods and droughts are frequently those who already live in poverty and whose human rights are less well protected. Hundreds of millions of urban dwellers live in slums, which are usually located in the most hazardous sites within cities, at risk from the direct and indirect impacts of climate change. Slums lack the basic infrastructure and services necessary to protect their dwellers from environmental disasters.’

The Special Rapporteur on adequate housing has also affirmed that indigenous peoples’ right to adequate housing has been violated when they are ‘subject to forced evictions and land-grabbing for the sake of resource extraction, agribusiness, nature conservation initiatives and development projects, including pipeline and dam construction.’

Accordingly, Principle 8 of the Framework Principles On Human Rights And The Environment affirms that:



‘To avoid undertaking or authorizing actions with environmental impacts that interfere with the full enjoyment of human rights, States should require the prior assessment of the possible environmental impacts of proposed projects and policies, including their potential effects on the enjoyment of human rights.’ The Special Rapporteur on human rights and the environment has confirmed that assessments should take into account the impacts those actions might have on housing.

The Right to Food and Nutrition¹⁰

The Universal Declaration of Human Rights states that everyone has the right to food, as part of the right to a standard of living adequate for health and well-being.

The Special Rapporteur on the Right to Food defines this right as,

‘the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.’

The International Covenant on Economic, Social and Cultural Rights also includes the right to food in Article 11 regarding the right to an adequate standard of living which includes the production, conservation, and distribution of food, as well as healthy and nutritious food. This right is also recognized in the Arab Charter on Human Rights and the ASEAN Human Rights Declaration.

The main binding instruments related to the right to food are the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention Related to the Status of Refugees, and the Convention on the Rights of Persons with Disabilities. Moreover, there are a number of non-binding instruments related to the right to food such as the Universal Declaration on the Eradication of Hunger and Malnutrition, the Rome Declaration on World Food Security, and the Voluntary Guidelines to support the progressive realization of the right to adequate food in the context of national food security. Additionally, the main monitoring mechanisms at a regional level are the African Commission on Human and Peoples’ Rights and The Inter-American Court of Human Rights.

Accordingly, States have the obligation to respect, protect, and fulfil this right. In terms of respect, States must guarantee that everybody has the full capacity to access food. Protecting this right requires active efforts from States to deter any third party violations of this right, for example, by polluting land, water or air with hazardous materials, which would consequently result in contaminated food or food scarcity. To fulfil this right, States must also facilitate the access to or provision of food to those in need. To do this, they should promote sustainable food-related policies, such as agrarian reform programs or minimum income regulations.

The right to food is directly linked with the right to a safe, clean, healthy, and sustainable environment as food production depends completely on environmental conditions. As mentioned earlier, land, water

¹⁰ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/right-to-food/> accessed on 12/08/2024.

or air pollution could be considered both violations of the right to food and the right to a safe, clean, healthy, and sustainable environment, because pollution can affect the quality and availability of food in markets.

As stated by the Special Rapporteur on human rights and the environment, climate change, understood as a product of human activity and as the main driver behind the ongoing environmental crisis, can severely affect the right to food;

‘Food production, food security and the enjoyment of the right to food are affected by shifting precipitation patterns, higher temperatures, extreme weather events, changing sea ice conditions, droughts, floods, algal blooms, and salinization.’

The effects of climate change can, therefore, affect major crops and other food sources, intensifying both food scarcity and the main factors related to food insecurity such as poverty and conflict, children being the most vulnerable under these conditions.

Right to Land¹¹

Land rights typically refer to land-related property or tenure rights. Land rights can be private or collective rights.

Article 17 of the Universal Declaration of Human Rights states that ‘Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property.’

Nonetheless, the right to property is not explicitly mentioned in either of the two International Covenants of human rights. However, the International Covenant on Economic, Social and Cultural Rights mentions, as part of the right of everyone to an adequate standard of living, the obligations that States have in ‘developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources.’

The UN developed a document, Land and Human Rights – Standards and Applications which is a useful guide to understand the status of land under international law, and the human rights related to land.

The right to property is, however, recognized in various regional human rights instruments. The First Protocol to the European Convention on Human Rights establishes that

‘No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.’

The American Convention on Human Rights establishes that

‘Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. No one shall be deprived of his property except upon payment

¹¹ Environment-rights.org. Know Your Rights. <https://environment-rights.org/rights/land-rights/> accessed on 12/08/2024.

of just compensation, for reasons of public utility or social interest, and in the cases according to the forms established by law. Usury and any other form of exploitation of man by man shall be prohibited by law.’

The African Charter on Human and Peoples’ Rights states in Article 14 that

‘The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.’ Furthermore, Article 21 establishes that ‘In case of spoliation the dispossessed people shall have the right to the lawful recovery of its property as well as to an adequate compensation.’

Land rights should be entitled to anyone in possession of the land. Nevertheless, there are particular and traditionally vulnerable groups whose land rights tend to be violated, such as indigenous peoples and women.

The International Labour Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries¹², contains important developments regarding indigenous peoples land rights. Articles 13 to 18 are related to land concerns. Indigenous peoples’ land rights are more specifically, rights over territory. This includes rights over ‘the total environment of the areas which the peoples concerned occupy or otherwise use.’ Indigenous peoples’ land rights are collective, in the sense that they belong to the indigenous community as a whole.

The Convention obliges States parties to consult whenever they want to develop resource extraction projects in the territories of indigenous peoples. In that sense, Article 15 establishes that in cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands.’

Traditionally, in many societies women have been excluded from land rights. However, important efforts have been made in order to recognize the historical role of women in land use and likewise, their right to land ownership. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) explicitly recognises women’s land rights.

Land rights are closely related to the right to a healthy environment in a number of ways. Land rights, both private and collective, are often affected when, for example, megaprojects of different kinds produce environmental harm. Infrastructure projects, extractive industries, energy production projects, water supply systems and transport projects to mega-events, inter alia, can trigger drought or pollute surrounding land and, therefore, have negative effects on the people that depend on that land to live.

Indigenous peoples are often those most vulnerable to environmental threats in their territories. Their rights are continuously being violated when economic and political interests take over their lands for

¹² 1989 (ILO No. 169)



exploitation. Environmental harm near their territories can also cause their living standards to deteriorate. A typical example is the oil exploitation in the Niger Delta area of Nigeria and the attendant devastation on both humans, wildlife, aquatic bodies and creatures and the entirety of the environment.

Principle 15 of the Framework Principles On Human Rights And The Environment develops the obligations that all States have with indigenous peoples regarding the protection of the environment. Those are:

‘Recognizing and protecting their rights to the lands, territories and resources that they have traditionally owned, occupied or used;

Consulting with them and obtaining their free, prior and informed consent before relocating them or taking or approving any other measures that may affect their lands, territories or resources;

Respecting and protecting their traditional knowledge and practices in relation to the conservation and sustainable use of their lands, territories and resources;

Ensuring that they fairly and equitably share the benefits from activities relating to their lands, territories or resources.’

4.0 Legal Frameworks

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

This is the grundnorm and the most basic of all laws, from which other laws draw life. Chapter IV of the constitution recognizes the fundamental human rights, to which every individual is entitled.

Section 33 provides that all citizens have the right to life and no one shall be intentionally deprived of his life, save in certain instances. The very essence of protection of environmental rights is to safeguard the lives of citizens and ensure quality and standard living.

Chapter II provides for Fundamental Objectives and Directive Principles of State Policy. Section 20, which falls under chapter II provides that The State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.

Section 16A¹³, also under chapter II, which provides for food security provides as follows:

The State shall direct its policy towards ensuring that

(a) strategies that guarantee food security of the nation regarding availability, accessibility, and affordability of food to the citizens are initiated, undertaken, and implemented;

¹³ Section 16A is inserted by the Constitution of the Federal Republic of Nigeria, 1999 ((Fifth Alteration) (No. 34) Act, 2023.



(b) the means of production, conservation and distribution of food are upgraded and improved upon on a continuous basis; and

(c) adequate measures are provided to ensure that food security of the nation is not compromised by any individual, group, or institution.

(2) The State shall promote and sustain activities that enhance food security.

This section becomes relevant in the light of the constant destruction and pollution of the Niger Delta, whose resources form the bedrock of the source of livelihood for the natives and residents.

Section 17(2)(d) also provides that in furtherance of the social order, exploitation of human or natural resources in any form whatsoever for reasons other than the good of the community, shall be prevented.

Section 6(6)(c) of the Constitution (hereunder reproduced), however, negates the impact of the beautiful provisions of all chapter II rights, making them mere cosmetic provisions.

‘The judicial powers vested in accordance with the foregoing provisions of this section shall not except as otherwise provided by this constitution, extend to any issue or question as to whether any act or omission by any judicial decision is in conformity with the fundamental objectives and directive principles of state policy set out in chapter II of this Constitution’

The provisions of section 6(6) (c) has been interpreted as denying the court the power to adjudicate on any issue having to do with the enforceability of the provision of all chapter II rights in the Constitution. This includes chapters 20 and 16A. The combined reading of section 20, 16A and section 6(6) (c) of the Nigerian Constitution clearly shows that the Constitution does not include any express provision for the right to a healthful environment.

It is pertinent to note, however, that Section 12 of the constitution provides for Implementation of treaties after such treaty has been enacted into law by the National Assembly. The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty. Some of these rights which are non-justiciable and unenforceable are contained in International treaties which have been ratified and domesticated by the National Assembly.

2. National Environmental Standards and Regulations Enforcement Agency (NESREA) Act, 2007 (as amended)

This Act was a replacement of The Federal Environmental Protection Agency (FEPA) Act. The National Environmental Standards and Regulation Enforcement Agency is currently the major federal body charged with the protection of Nigeria’s environment. The federal government, in line with section 20 of the 1999 constitution, established the Agency as an institution under the supervision of the Federal Ministry of Environment, Housing and Urban Development. It is responsible for the enforcement of environmental standards, regulations, rules, laws, policies and guidelines.



Its authority extends to the enforcement of environmental guidelines and policies, such as the National Policy on the Environment, 1999. The Agency is charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology.

3. Environmental Impact Assessment Act, 1992

The Environmental Impact Assessment (EIA) Act was enacted to ensure that possible scientific and socio-economic impacts of all new industrial projects are evaluated before the project commences. Environmental impact assessment (EIA) assesses the impact of a planned activity on the environment in advance, thereby allowing avoidance measures to be taken.

The provisions of the Act are to be administered by the "Agency", meaning the Nigerian Environmental Protection Agency established by the Federal Environmental Protection Agency Act.¹⁴

Some other relevant domestic laws include:

1. Harmful Waste (Special Criminal Provision) Act, 1988¹⁵
2. Petroleum Industry Act¹⁶
3. Niger-Delta Development Commission (NDDC) Act¹⁷
4. Oil in Navigable Waters Act, 2004¹⁸
5. The Nigerian Urban and Regional Planning Act¹⁹
6. The Endangered Species Act.²⁰

Regulations

1. National Effluent Limitation Regulations.
2. National Environment Protection (Pollution Abatement in Industries and Facilities producing Waste) Regulations (1991).
3. Federal Solid and Hazardous Waste Management Regulations (1991).
4. Petroleum Drilling and Production Regulations
5. Petroleum Refining Regulation

¹⁴ Section 61, ENVIRONMENTAL IMPACT ASSESSMENT ACT, 1992.

¹⁵ Harmful waste (Special Criminal Provisions) Act, Cap H1 LFN 2004.

¹⁶ Cap P10 LFN 2004

¹⁷ Niger-Delta Development Commission (NDDC) Act, Cap N68 LFN 2004.

¹⁸ CAP 06, LFN 2004

¹⁹ CAP N138, LFN 2004

²⁰ CAP E9, LFN 2004



6. Mineral Oil Safety Regulations and Crude Oil Transportation and Shipment Regulations.

5.0 Conclusion

It has been established that environmental rights intersect with other human rights, including the right to life, health, and privacy. A healthy environment is fundamental to human well-being. Substantive rights are what we typically think of as environmental rights: they guarantee the right to quality environment. In general, procedural human rights linked to environmental protection receive more attention than do substantive environmental rights in legal instruments, jurisprudence and in doctrine. Some argue that procedural rights are weak versions of substantive rights: they do not secure the thing that is of value - a clean or healthy environment - but only the opportunity to pursue the thing of value, and even that opportunity is subject to political manipulation and requires time, effort, and expense to exercise, and even then, there is no guarantee of success.

The divergent structures of substantive rights and procedural rights indicate that they perform distinct functions. Substantive environmental rights require that courts assess what the environment is or requires in order to be safe, healthy, or clean. Procedural environmental rights, by contrast, demand only that courts identify specific procedures by which certain decisions are to be made.

6.0 Recommendations

1. **Explicit Recognition:** Universally recognize the right to a healthy environment as a fundamental human right and define its content and correlative obligations to ensure effective protection.
2. **Strengthen Legal Frameworks:** Enact stronger environmental laws based on the right to a healthy environment and ensure access to justice for environmental harms.
3. **Transparency and Participation:** Integrate human rights principles (such as the right to information and participation) into environmental policymaking.
4. **Solidarity and Accountability:** Address trans-boundary environmental issues through international cooperation and uphold principles of equity, transparency, and justice.
5. **Education and Awareness:** Promote environmental literacy and awareness among citizens, policymakers, and legal professionals and educate people about their rights and responsibilities related to the environment.
6. **International Cooperation:** Collaborate across borders to address global environmental challenges. Strengthen international treaties and agreements related to environmental protection.