

50 YEARS AFTER: APPRAISING THE IMPACT OF THE STOCKHOLM CONFERENCE ON THE ADVANCEMENT OF ENVIRONMENTAL RIGHTS

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Abstract: *The journey through the development of the right to clean, safe and sustainable environment has not been an easy ride. Since the first attempt to link human right and the environment began in 1972 at Stockholm, the United Nations has tried to sustain the temple of the agitations through various soft laws and treaties aimed at encouraging states in the domestication and implementation of national laws protective of the right to the environment. This journey came to a successful climax when the United Nations General Assembly in 28 July 2022 resolved officially recognising the right to clean, healthy and sustainable environment as a universal human right. This paper is an analytical survey of the progressive development of environmental rights at international law through the 5 decades (1972 -2022) and the impact it has made at regional and domestic levels as well as how it has inspired the world into greener human rights.*

Keywords: *sustainable environment, universal human rights, environmental rights, international law*

1. INTRODUCTION

Though there were some allusions at local level, the rapport between human rights and the environment is understood to have had its roots at the Stockholm Conference of 1972 which was specifically designed to shape and strengthen environmental regulations and policies via human rights vehicle, especially, at domestic level.¹ The issue of the protection of the human environment is a pretty new area of concern at international law and as such traditional human rights instruments had been concluded before the emergence of the concept of environmental rights. This accounts for why there are no direct statements on the role of the environment in the enjoyment of those stipulated and avowed human rights recognised in early international human rights treaties.² To this extent, “environmental rights do not fit neatly into any single category or generation of human rights.”³ Notwithstanding, the preponderance of views is that “many of the rights guaranteed under international human rights law are defined to include an environmental dimension.”⁴

While conventional human rights treaties and the international human rights system do not directly incorporate certain rights (including the right to clean environment) as human rights, some of the provisions of these treaties have been freely relied upon as guaranteeing substantive interest in the environment at different levels. Today, it is widely recognised that certain of the civil and political rights or fundamental rights guaranteed both in international and domestic laws cannot be fully

¹ Boyd, David R. “The Constitutional Right to a Healthy Environment.” *Environment: Science & Policy for Sustainable Development*, 54 (4) (2012): 3. In Nigeria for instance, the National Policy on the Environment 1991(now 2016 edition) is an example of the indirect influence of the Stockholm Declaration. See Umukoro, B. E. and Omozue, M. O. “Environmental Protection and the Role of National Policy and Guidelines in Nigeria” *Baltic Journal of Law & Politics* 15 (1) (2022): 2016-2029.

² *ibid.*

³ Boyle, Allen. “Human Rights and the Environment: A Reassessment?” *Fordham Environmental Law Review*, 18 (3) (2006): 471.

⁴ Lewis, Bridget. “Environmental Rights or Right to the Environment? Exploring the Nexus between Human Rights and Environmental Protection.” *MqJICEL*, 8(1) (2012): 36.



realised except these other rights⁵ (including the right to clean environment) are recognised as enforceable rights, a situation which has necessitated the campaign for the advancement of the category of rights (the third generation rights) as part of the existing human rights catalogue.⁶

International and regional law on the environment have been a huge source of inspiration to the development, recognition and enforcement of the right to clean environment especially at domestic level.⁷ Today, although the campaign for the recognition of the right to clean environment was initially confined to international law, over 177 national jurisdictions have been identified as recognising an enforceable right to clean environment.⁸ According to a 2019 report by the UN Special Rapporteur on Human Rights and the Environment, “[t]here are 110 States where this right enjoys constitutional protection...In total, more than 80 per cent of States Members of the United Nations (156 out of 193) legally recognize the right to a safe, clean, healthy and sustainable environment.⁹ It was further reported that “19 out of 27 EU countries have enshrined the right to healthy environment in their constitutions (some only implicitly) and 17 in their national law.”¹⁰ It is in this connection that this paper is intended to analyse how international law has influenced the advancement of the right to clean environment at various levels since 1972 when the attention of the world was first drawn in Stockholm to the benefit of the relationship between human rights and the environment. The paper discusses international law contribution to the development of the right to clean, healthy and sustainable environment, the legal status of the right and the challenges in the light of the new resolution of the General Assembly recognising the right to clean, healthy and sustainable environment as universal human right.

2. A Historical Survey of the Link between Human Right and the Environment

Human rights dialogue was mostly a theoretical discourse at international law having its root in natural law theory until it found its way expressly into international law in 1948 through the Universal Declaration of Human Rights.¹¹ Although, the United Nations Charter¹² makes references to human

⁵ See Tang, Ke and Spijkers, Otto. “The Human Right to a Clean, Healthy and Sustainable Environment.” *Chinese Journal of Environmental Law* (2022): 89 and Buys, Elinos and Lewis, Bridget. “Environmental Protection through European and African Human Rights Frameworks.” *The International Journal of Human Rights* 26 (6) (2022): 9550. <https://doi.org/10.1080/13642987.2021.1986011>

⁶ Tang and Spijkes (n5).

⁷ In a 2019 report, it was stated that there are 101 states where the right to clean environment has been incorporated into national legislation. A good example of countries where the right to a healthy environment serves as a unifying principle that permeates legislation, regulations and policies are Argentina, Brazil, Colombia, Costa Rica, France, the Philippines, Portugal, and South Africa. See Human Rights Council, Right to a Healthy Environment: Good Practices UN Doc A/HRC/43/53 (30 December 2019), para. 12. (hereafter HRC 2019) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/355/14/PDF/G1935514.pdf?OpenElement>>

⁸ Boyd posits that as at 2012, 177 of the world’s 193 UN members nations have recognised the right to clean environment in their Constitutions, environmental legislation, court decisions, or ratification of international agreements. See Boyd (n3).

⁹ See Human Rights Council, Right to a Healthy Environment: Good Practices UN Doc A/HRC/43/53 (30 December 2019), paras. 10 & 13. See also Heinämäki, Leena. “Human Right and the Environment.” *Yearbook of International Environmental Law* 31 (1) (2021): 37. <https://doi.org/10.1093/yiel/yvab002>

¹⁰ European Parliament, At A Glance: A Universal Right to a Healthy Environment <[https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA\(2021\)698846_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2021/698846/EPRS_ATA(2021)698846_EN.pdf)>

¹¹ G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1st Plen. Mtg., U.N. Doc. A/810 (10 Dec 1948) (hereafter UDHR). Venis, Jan van de. “A Human Right to a Clean and Healthy Environment: Dream or Reality in Europe?” *Environmental Law Network International Review* 1 (2011): 27 has also acknowledged that “[t]he United Nations Charter of 1945 and the 1948 Universal Declaration on Human Rights mark the beginning of modern international human rights law. This was long before people started thinking of the concept of a rights-based approach to environmental concerns.”

¹² 26 June 1945, 59 Stat. 1031, T.S 993, Bevans 1153



rights,¹³ it has been said that “it must not be assumed that human rights were the primary concern of the politicians who had engaged themselves in the drafting of the United Nations Charter.”¹⁴ Thus, the UDHR is regarded as the authoritative interpretation of the meaning of human rights as prescribed within the UN Charter.¹⁵ Though the UDHR does not directly address environmental concerns it has been seen as sufficient platform for agitating for the right to clean environment. Given the preponderance of literatures advocating the right to clean environment as a human right, there has been serious effort by scholars to link the emergence of environmental rights to the UDHR majorly because of some of its provisions and for the fact that the UDHR is the first human rights document at international law. Weston and Bollier¹⁶ have canvassed that “[t]he 1948 Universal Declaration on Human Rights assertion that ‘everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized’¹⁷ necessarily mandates a clean and healthy environment, without which human beings cannot fully enjoy their rights.” The UDHR has survived and withstood the test of passing years even as a soft law. The Declaration which clocked 70 years in 2018 is no longer an “aspirational treatise, [but has grown] into a set of standards that has permeated virtually every area of international law.”¹⁸

Though Weston and Bollier are right, the ideological propositions for the extension of traditional international human right law to the protection of the environment is a much more recent debate. The point has been made that these pioneer human rights instruments were drafted when environmental concerns were not at the centre of the deliberations. At the moment, the uncontrolled depletion and destruction of the ecosystem and the natural habitation of man and other things have made Weston and Bollier’s postulation inviolable. Still, care must be exercised in the debate as to when the right to clean environment arrived at the global plane. This is because there are pockets of other agitations by private individuals which have been credited with the development of the right.¹⁹ Legally speaking, it has been generally accepted that the first statement at international law on the link between the environment and human rights is the Stockholm Declaration.²⁰ According to Grieger, the Conference “marked a watershed in the evolution of humanity’s relationship with the earth and global concern about the environment ...”²¹ Environmental policy became a universal concern within international diplomacy while the conference’s motto of “Only one Earth” became

¹³ See the Preamble to the UN Charter.

¹⁴ See Henkin, *International Law: Politics, Values and Functions* 216 (IV) Rec. des Cours (1989) cited in R. Rehman, R. *International Human Rights Law*. (2nd ed. Pearson Educational Ltd: London 2010):30.

¹⁵ See Rehman, (n14) at 79.

¹⁶ Weston, Burns H. and Bollier, David. “Universal Covenant Affirming a Human Right to Commons-and Rights - Based Governance of Earth’s Natural Wealth and Resources.” *Journal of Human Rights and the Environment* 4(2) (2013) 215.

¹⁷ See Article 28, UDHR.

¹⁸ OHCHR Press releases, 70th Anniversary of the Universal Declaration of Human Rights (6 December 2018) <<https://www.ohchr.org/en/press-releases/2018/12/70th-anniversary-universal-declaration-human-rights>>

¹⁹ For instance, in the early ‘60s, Rachel Carson, a US biologist and author was already advocating strongly for a right to live in a poison-free environment as a basic human right. In her testimony before the 88th Congress of the United States in 1963, she said: “I hope this Committee will give serious consideration to a much neglected problem - that of the right of the citizen to be secured in his own home against the intrusion of poisons applied by other person. I speak not as a lawyer but as a biologist and as a human being, but I strongly feel that this is or ought to be one of the basic human rights.” See the Report of the Hearing before the Committee on Government Operations (United States 88th Congress (Senate) May and June, 1962 (US Govt. Printing Office, Washington, DC, vol.3 at 210.

²⁰ See generally Sohn, Louis B. “The Stockholm Declaration on the Human Right.” *Harvard Int. L. J.* 14(3) (1973):423 - 515.

²¹ Grieger, Andreas. *Only One Earth: Stockholm and the Beginning of Modern Environmental Diplomacy.* *Environment & Society Portal*, Arcadia (Rachel Carson Center for Environment and Society) (2012): 10 <https://doi.org/10.5282/rcc/3867>.



iconic for the modern environmental movement.”²² Very importantly, the outcome of the Conference “catalyzed a new era of multilateral environmental cooperation and treaty-making...”²³ In spite of this giant stride at Stockholm, the road to environmental rights so far has been an uneven one.²⁴ Since the advent of the Declaration in 1972, concern for the environment at international law has been accentuated with agitations and controversies over the recognition of environmental rights at different levels.

Twenty years after the Stockholm Declaration²⁵ was the Rio Declaration.²⁶ This Declaration was the outcome of the United Nations Conference on Environment and Development (UNCED) also known as the 'Earth Summit.' The primary objective of the summit was to produce a broad agenda and a new blueprint for international action on environmental and development issues that would help guide international cooperation and development policy in the twenty-first century.²⁷ Agitations during the summit were based on the hoped that the environment would serve as a catalyst for a 'new globalism.'²⁸ Principle 10 of the Declaration for instance provides for the right of access to information on the environment and the right to participate in the decision making process. It states that “[e]nvironmental issues are best handled with the participation of all concerned citizens, at the relevant level.” Principle 10 of the Declaration was the first internationally agreed commitment that recognised the rights of people to hold their governments to account for environmental policies and laws.²⁹ It calls upon states to ensure that each individual has access to information, public participation in decision making in environmental matters.³⁰ Access to information, public participation, and access to justice are keys to more transparent, inclusive, and accountable decision-making in matters affecting the environment. Some referred to this as “environmental democracy.”³¹ As instructive as Principle 10, the role of the private sector, in particular, transnational corporations (TNCs) in the degradation of the environment was not covered in the Declaration. Principle 10 for instance, seeks to concentrate on Public authorities as those under a duty to provide information on the environment leaving out multi-national companies which are major collaborators in environmental degradation. It was observed that this palpable and deliberate narrow provision was as a result of the cautious efforts of developed countries at weakening controls over corporations especially at the global level.³² Notwithstanding, the Declaration, particularly

²² Ibid.

²³ Chasek, Pamela. “Stockholm and the Birth of Environmental Diplomacy” IISD Earth Negotiation Bulletin, September 2020 at 7 < https://www.iisd.org/system/files/2020-09/still-one-earth-stockholm-diplomacy_0.pdf >

²⁴ See May, James R. and Daly, Erin. “Vindicating Environmental Rights Worldwide.” Oregon Review of International Law, 11 (2009): 367.

²⁵ Stockholm Declaration on the Human Environment, Report of the United Nations Conference on the Human Environment (New York, 1973), UN Doc. A/CONF.48/14/Rev.1.

²⁶ Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (Aug. 12, 1992), United Nations Conference on Environment and Development, June 3-14, 1992, Rio de Janeiro, Brazil, (hereafter referred to as Rio Declaration)

²⁷ See UNCED: A New Blueprint for International Action on the Environment available at <https://www.un.org/en/conferences/environment/rio1992>

²⁸ Porras, Ileana M. “The Rio Declaration: A New Basis for International Co-operation.” RECIEL 3(1) (1992) 252. <https://doi.org/10.1111/j.1467-9388.1992.tb00043.x>

²⁹ Sustainable Development in the 21st century (SD21): Review of Implementation of the Rio Principles Review of Implementation of the Rio Principles, 68 <<https://sustainabledevelopment.un.org/content/documents/1127rioprinciples.pdf> >

³⁰ See, Handl, G. “Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration), 1972 and the Rio Declaration on the Environment and Development, 1972.” United Nations Audiovisual Library of International Law (2012): 3-6. <www.un.org/law/avl>

³¹ Foti, Joseph, et al. “Voice and Choice: Opening the Door to Environmental Democracy.” (WRI, 2008): 3 <https://www.accessinitiative.org/sites/default/files/voice_and_choice.pdf>

³² Ling, Chee Yoke . The Rio Declaration on Environment and Development: An Assessment. (Third World Network: Malaysia 2012): 6 <<https://www.twn.my/title/end/pdf/end12.pdf>>



Principle 10 has led to legal reforms and promoted capacity to demand for access to information on the environment.³³

The UN General Assembly has also at different times emphasised the right to live in a healthy environment in its Resolutions.³⁴ Another very important document is the general treaty interpretation rules of the Vienna Convention on the Law of Treaties.³⁵ The Convention by article 31 provides that the context for the purpose of interpretation of a treaty shall comprise in addition to the text, its preamble and annexes as well as any agreement made between the parties and any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.³⁶ According to Shelton, the VCLT has encouraged a dynamic and evolutive approach to the interpretation of human rights' instruments to the benefit of "environmental rights, which might be excluded from consideration using an 'originalist' interpretation of human rights agreements, because most of the latter were written before environmental law developed and thus environmental conditions were not contemplated by the treaty drafters."³⁷ Treves refers to the effect of article 33 of VCLT as providing what is termed as "systemic integration" which aims "to broaden the law applicable in a specific case."³⁸ Other efforts at advancing the right to clean environment was the Ksentini Report³⁹ which expressly recognised a human right to a quality environment. Besides, regional multilateral agreements have played a prominent role in the development of the right to clean environment. The

³³ For instance, Uganda has enacted Access to Information legislation and has established a one-stop information and documentation center to provide the public with key government policy and other information. In 2006, the "Regulation of Previous Consultation about Environment Government Decisions" was signed into law in Ecuador after a long consultation with citizens. Thailand has equally got new Constitution via collaboration with NGOs which assisted in ensuring language that would encourage public participation in environmental matters. See Foti, *Voice and Choice*, 91.

³⁴ See 'The Need to Ensure a Healthy Environment for the Well-Being of Individuals,' G.A. Res. 45/94, U.N. GAOR, 45th Sess., Supp. No. 49A, at 178, U.N. Doc. A/45/40 (1990), in which the General Assembly recognises that 'all individuals are entitled to live in an environment adequate for their health and well-being...' See also 'The Human Right to a Clean, Healthy and Sustainable Environment, UN Doc A/HRC/48/L.23/Rev.1 (adopted 8 October 2021) available at <https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf?ln=en> where the General Assembly recognises, among others, that "environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy human rights, including the right to life." Others are 'Mandate of the Special Rapporteur on the Implications for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes,' UN Doc A/HRC/RES/45/17 (adopted 6 October 2020) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/259/12/PDF/G2025912.pdf?OpenElement>> and 'Rights of the Child: Realizing the Rights of the Child Through a Healthy Environment,' UN Doc A/HRC/RES/45/30 (7 October 2020) <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/264/85/PDF/G2026485.pdf?OpenElement>> In Resolution A/HRC/RES/45/30, the General Assembly recognises, among others, that "environmental harm, including climate change, exacerbates environmental disasters, which can deprive affected persons of essential livelihoods and generate displacement and migration, including of unaccompanied children and young persons..."

³⁵ Vienna Convention on the Law of Treaties (23 May 1969) 1155 UNTS 331 (hereafter, VCLT).

³⁶ On how article 33 of the VCLT has been applied by different fora, see Vries-Zou, Ivo Tarik de. "Divided but Harmonious? The Interpretations and Applications of Article 31(3)(c) of the Vienna Convention on the Law of Treaties." *Utrecht Law Review*, 16(1) (2020) : 86-100. <https://doi.org/10.36633/ulr.528>

³⁷ Shelton, Dinah L. "Developing Substantive Environmental Rights." *Journal of Human Rights and the Environment* 1(1) (2010): 94.

³⁸ Treves, Tullio. "Fragmentation of International Law: The Judicial Perspective" *Agenda Internacional*, XVI (27) (2009): 241.

³⁹ Ksentini Report (Sub Commission of the United Nations Commission on Human Rights) UN. Doc. E/CN.4/sub.2/1989/C23(1989).



African Charter on Human and Peoples' Rights,⁴⁰ particularly, recognises an express right to *generally satisfactory environment*.⁴¹

3. The Advancement of Environmental Rights at International Law

The promotion of the relationship between human rights and the environment is through the concerted efforts international instruments which include traditional international human rights' treaties, customary international law, multilateral agreements, Declarations, Resolutions of the UN General Assembly as well as decisions of the International Court of Justice and regional courts on environmental rights. Some of these shall now be discussed.

3.1 The Stockholm Declaration

The major legal document expressly entrenching the right to clean environment at international law is the Stockholm Declaration adopted in 1972. It consists of three non-binding instruments; a resolution on institutional and financial arrangement; a declaration containing 26 principles; and an action plan containing 109 recommendations.⁴² The Stockholm Declaration was a product of a growing environmental movement and was based on the understanding that the impact of environmental concern on the international community and on international law, which was already increasing, would continue to increase and more rapidly as time goes on.⁴³ Thus, since the inception of the Stockholm Declaration "governments have ratified hundreds of multilateral environmental agreements (MEAs) on issues ranging from the atmosphere to hazardous substances, terrestrial living resources, the marine environment, noise pollution and nuclear safety..."⁴⁴ The Declaration has served as a very influential instrument for the advancement of the right to clean environment at different levels, international, regional and domestic. Principle 1 of the Stockholm Declaration provides:

Man has the fundamental right to freedom, equality and adequate condition of life and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generation.

The object of the Declaration was to provide both inspiration and guidelines for the government and the people of the world.⁴⁵ Since that conference, fifty years ago, there have been several environmental victories, a primary one being the development of international environmental laws.⁴⁶ The Declaration led to the conclusion of several important treaties. One of them is the International Convention for the Prevention of Marine Pollution from Ships (MARPOL). With the growing rate of the shipping business and the growing number of ships on the high seas, the marine environment has been placed at great danger as a result of the increase in the amount of garbage and excretions from ships, accidental or deliberate.⁴⁷ One of the fundamental environmental issues faced today is the pollution of the world's oceans from ships.⁴⁸ MARPOL was originally adopted in 1973. The same was modified

⁴⁰ OAU Doc. CAB/LEG/67/3 Rev.5, 21 I.L.M 58 (June 27, 1981). (Hereafter, African Charter).

⁴¹ Article 24, African Charter.

⁴² See The Right to a Healthy Environment: (Module 15) available at <<https://www1.umn.edu/humanrts/edumat/IHRIP/circle/modules/module15.htm>>

⁴³ Teclaf, Ludwik A. "Impact of Environmental Concern on the Development of International Law." *Natural Resources Journal*, 13 (2) (1973) 389.

⁴⁴ Foster, S. J. and Vincent, A. C. J. "Holding Governments Accountable for their Commitments: CITES Review of Significant Trade for a very High-volume Taxon." *Global Ecology and Conservations* 27 (2021): 1. <https://doi.org/10.1016/j.gecco.2021.e01572>

⁴⁵ Sohn, supra note, at 434.

⁴⁶ UN Climate Change, *Fifty Years of Environmental Action*, (3 June 2022) <<https://unfccc.int/blog/fifty-years-of-environmental-action>>

⁴⁷ Mantoju, Deepak. "Analysis of MARPOL Implementation Based on Port State Control Statistics." *Journal of International Maritime Safety, Environmental Affairs, and Shipping*, 5(3) (2021): 132. <https://doi.org/10.1080/25725084.2021.1965281>

⁴⁸ Ibid.



by Montreal Protocol of 1978, hence it has been frequently referred to as “MARPOL 73/78.”⁴⁹ It has been updated by amendments through the years. Sufficient number of states ratified the Convention in 1982 thus bringing it into force on the 2 October 1983. The MARPOL ensures that the marine environment is preserved by the elimination of pollution by all harmful substances discharged from the ship. It has been observed that one of the fundamental environmental issues faced today is the pollution of the world’s oceans from ships.⁵⁰

Another important treaty arising from the influence of the Stockholm Conference is the Convention on International Trade in Endangered Species of Wild Fauna and Flora in 1975 (CITES).⁵¹ The CITES has been described as “the main global instrument for addressing overexploitation and illegal trade in the international context ...”⁵² The CITES has a mechanism for remedial action to help ensure that State Parties are meeting their obligations for sustainability.⁵³ Thus, several endangered species have recovered from the edge of extinction due to effective implementation of CITES.⁵⁴ CITES has led to seizures of illegally wild collected plants and has moved the international trade in endangered species to “a more sustainable use of the wild populations.”⁵⁵ The CITES has encouraged similar collaboration at regional level in the likes of the Convention on the Conservation of European Wildlife and Natural Habitats adopted by the European Union at Bern on 19 September 1979 as well as the Bird Directive 1979.⁵⁶

Yet another treaty to the credit of the Stockholm Conference is the Convention on Migratory Species (CMS).⁵⁷ This Convention arose from the acknowledgement that there is need to take action to avoid any migratory species becoming endangered.⁵⁸ The Parties to the Convention agree to promote, cooperate and support research relating to migratory species. They are also obligated to provide immediate protection for migratory species as specified in Appendix I and concluded agreements covering the conservation and management of migratory species as specified in Appendix II of the Convention. Appendix I lists endangered migratory species while Appendix II lists migratory species of which the conservation status is unfavourable, as well as those which would significantly benefit from international agreements for their conservation and management. The CMS provides guidelines

⁴⁹ 1340 UNTS 61, [1988] ATS 29, 17 ILM 546 (1978). The Convention includes six technical annexes, each regulating a specific kind of pollution from ship. They are: Annexe I: Regulation for pollution prevention by oil (October 1983). Annex II: Regulations for controlling pollution by Noxious Liquid Substance in bulk (April 1987). Annexe III: Regulation for preventing pollution by harmful substances carried at sea in packaged form (July 1992). Annexe IV: Regulation for pollution prevention by sewage from ships (Sep 2003). Annexe V: Regulation for pollution prevention by Garbage from ships (Dec 1998). Annex VI: Regulation for prevention of Air pollution from ships (May 2005).

⁵⁰ Mantoju (n47) 132.

⁵¹ 993 UNTS 243, 27 UST 1087, 12 ILM 1085 (1973), [1976] ATS 29, signed by some 80 countries at Washington, D.C., on 3 March 1973 and entered into force in 1975. See text of the CITES at <<https://cites.org/sites/default/files/eng/disc/CITES-Convention-EN.pdf>>. As at 4 January 2022, there were 184 states which have accented to CITES. See CITES: List of Contracting Parties <<https://cites.org/eng/disc/parties/chronolo.php>>.

⁵² Wyatt, Tanya. “Canada and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES): Lessons Learned on Implementation and Compliance.” *Liverpool Law Review*, 42 (3) (2021): 155. <https://doi.org/10.1007/s10991-020-09267-8>

⁵³ Foster and Vincent (n44) 2.

⁵⁴ Sajeval, Maurizio, Carimi, Francesco and McGough, Noel. “The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and its Role in Conservation of Cacti and Other Succulent Plants.” *Functional Ecosystems and Communities* 1(2) (2007): 84.

⁵⁵ *Ibid.*

⁵⁶ The Bird Directive 79/409/EEC is a European Union legislation unanimously adopted in April 1979 and amended in 2009.

⁵⁷ 1651 UNTS 333, 19 ILM 15 (1980). The CMS was adopted in Bonn, Germany on 23 June 1979 and came into force in 1983. See the text of the Convention <<https://cil.nus.edu.sg/wp-content/uploads/2019/02/1979-Convention-on-the-conservation-of-migratory-species-of-wild-animals-1-1.pdf>>

⁵⁸ See article 2(2) CMS.



relating to the contents of such Agreements and equally establishes a Conference of the Parties to review the implementation of the Convention.⁵⁹ The CMS has in its own way contributed to the advancement of environmental protection for the conservation and management of migratory species. According to Yakushina, the “CMS framework has already taken the leading position in terms of action to light pollution reduction.”⁶⁰ The Convention has been praised for its progressive mechanisms and its ecosystem approach.”⁶¹

A remarkable stride as an aftermath of the Stockholm Conference is the Montreal Protocol on Substances that Deplete the Ozone Layer.⁶² The Montreal Protocol was designed to stop the production and importation of ozone depleting substances and reduce their concentration in the atmosphere to help protect the earth's ozone layer.⁶³ It was stated that “under the Protocol, nations phased out chlorofluorocarbons (CFCs) - a class of compounds that were used mostly in aerosol sprays, refrigerants, foams and as solvents, and were damaging the protective ozone layer that shields the planet from harmful ultraviolet radiation.”⁶⁴ Recent evidence shows that the ozone hole over Antarctica is beginning to repair itself because of efforts under the Protocol to reduce ozone-depleting substances.⁶⁵ The Montreal Protocol is widely considered as the most successful environmental protection agreement. It sets out a mandatory timetable for the phasing out of ozone depleting substances with a timetable which has been reviewed regularly. The phase out dates are accelerated in accordance with scientific understanding and technological advances.⁶⁶

Besides, the Stockholm Declaration influenced the creation of the United Nations Environmental Programme (UNEP) and led to the development of the United Nations Convention on the Law of the Sea (UNCLOS) and the World Charter for Nature in 1982. As a further follow up, the UN General Assembly in 1983 created the World Commission on Environment and Development (WCED) which was established as an independent body linked to the United Nations System.⁶⁷ Further still, in 1987 the WCED published the Brundland Report which among other things introduced a new phrase in the protection of the environment. The Brundtland Report was aimed at structuring economic activities within the context of environmental limitation.⁶⁸

⁵⁹ See article V, *Ibid.*

⁶⁰ Yakushina, Yana . “The response of the Bonn Convention on Migratory Species to Light Pollution” *IOP Conference Series: Earth and Environmental Science*, 1099 (2022) :7. <https://doi.org/10.1088/1755-1315/1099/1/012048>.

⁶¹ Sellheim, Nikolas and Schumacher, Jochen. “Increasing the Effectiveness of the Bonn Convention on the Conservation of Migratory Species.” *Journal of International Wildlife Law & Policy* (2022):16. <https://doi.org/10.1080/13880292.2022.2153461>.

⁶² 1522 UNTS 3, 26 ILM 1541, 1550, signed in Montreal, Canada on 16 September 1987 (hereafter, Montreal Protocol). The text of the Protocol is available at <<https://cil.nus.edu.sg/wp-content/uploads/2019/02/1987-Montreal-Protocol.pdf>>. The Montreal Protocol has been amended severally at different times. On 21 September 2022, the United States makes the 138th nations that have ratified the Kigali Amendment. The amendment was officially adopted at the 28th Meeting of the Parties to the Montreal Protocol on 15 October 2016, in Kigali, Rwanda. See EIA Press Release, ‘U.S. Senate Votes to Ratify Kigali Amendment’ (21 September 2022). <https://us.eia.org/press-releases/20220921-us-senate-votes-kigali-pr/>

⁶³ See article 2, 2A to 2J of the Protocol.

⁶⁴ Center for Climate and Energy Solutions, *The Montreal Protocol* <<https://www.c2es.org/content/the-montreal-protocol>>

⁶⁵ *Ibid.* see also, UNEP, *Rebuilding the Ozone Layer: How the World came Together for the Ultimate Repair Job* (15 September 2015) <<https://www.unep.org/news-and-stories/story/rebuilding-ozone-layer-how-world-came-together-ultimate-repair-job>>

⁶⁶ Montreal Protocol factsheet, <<https://www.dceew.gov.au/environment/protection/ozone/montreal-protocol>>

⁶⁷ *Ibid*

⁶⁸ *Ibid.* Other attempts at international law inspired by the Stockholm Declaration on the Environment and Human include conclusion of other documents protective of the environment e.g. The World Heritage Convention of 1972; Vienna Convention of 1985; Montreal Convention of 1987; Basil Convention on the Control of Trans boundary Movement of Hazardous Wastes and their Disposal;



Apart from opening the door for the conclusion of several international legal documents by the international community for the protection of human rights against environmental harm, the Stockholm Declaration also encouraged and has been a source of encouragement to national jurisdictions in the development of the right to clean environment. According to Ebeku⁶⁹ most constitutions enacted in the Latin and Caribbean countries since the 1972 Stockholm conference contain important environmental protection principle and older constitutions have been amended to incorporate such principle. May observes in 2009 that about 130 countries have constitutional provisions that reflect policy directives and procedural rights to the environment.⁷⁰ This data has changed considerably since then as result of the growing recognition of the right to clean environment around the world. In over four decades since the *Stockholm* Declaration, the right to a healthy environment has rapidly migrated around the globing with countries like India setting the pace in Asia and South Africa beginning the trend in Africa. “As of 2012, 177 of the world’s 193 UN member nations recognize this right through their constitution,⁷¹ environmental legislation, court decisions, or ratification of an international agreement.”⁷² As at 2009, about sixty countries have included or added constitutional provisions that expressly recognise a right to quality environment.⁷³

3.2 The Rio Declaration

The Rio Declaration on Environment and Development⁷⁴ was made in the United Nations Conference on Environment and Development which held in Rio de Janeiro, Brazil from 3 - 14 June, 1992. The Declaration rather appears to have introduced a shift which is conceptual in nature.⁷⁵ The Declaration

United Nations Frame Work Convention on Climate Change of 1992; Convention on Biological Diversity of 1992.

⁶⁹ Ebeku, K. S. A. “The Right to a Satisfactory Environment and the African Commission.” *African Human Rights Law Journal* 3 (2003): 152.

⁷⁰ See May, R. “Constituting Environmental Rights Worldwide” *Pace Environmental Law Review* 23 (2005-2006): 121.

⁷¹ Some countries like Nigeria have non justiciable constitutional provisions to the environment. See section 20 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Though, Nigeria domesticated the African Charter, (African Charter on Human and People’s Rights (Ratification and Enforcement) Act, Cap A9, Vol. 1, LFN 2004) it is not yet a settled law if the domesticated African Charter can sustain a right to a “general satisfactory environment” as contained in article 24 of the said Charter in view of sections 20 and 6(6) (c) of the Constitution. In *Oronto Douglas v Shell Petroleum Development Company Limited* (1999) 2 NWLR (Pt 591) 466 the Court of Appeal in Nigeria however upheld the justiciability of an action brought on the basis of article 24 of the African Charter (Ratification and Enforcement). To this extent Ebobrah is of the view that: “[t]he important thing to note is that the provisions of article 24 of the African Charter (or at least its spirit) are similar to the provisions of section 20 of the 1999 Nigerian Constitution but that fact alone did not deter the decision by the Court of Appeal (Oronto’s case.)” See Ebobrah, S. T. “Towards Effective Realization of the Right to a Satisfactory Environment in the African Charter on Human and People’s Right: A Case for Domestic Horizontal Application” (Unpublished LLM Thesis, University of Pretoria, South Africa, 2006) <<http://repository.up.ac.za/handle/2263/1210>>

According to May “implicit constitutional rights are largely a judicial intervention.” May, J. R. *Global Environmental Constitutionalism* (London: Cambridge University Press, 2015):70.

⁷² Boyd, (n3) 4.

⁷³ See May, (n70) 121. See also, Earthjustice, *Environmental Rights Report 2008* available at <<http://www.earthjustice.org/library/reports/2008-environmental-rights-report.pdf>>

⁷⁴ United Nations Conference on Environment and Development, 31 I.L.M 814, 876 (1992); or U.N. Doc. A/Conf. 151/5/Rev. 1 (1992).

⁷⁵ Agenda 21 of the Declaration outlines polices to be adopted for the realization of sustainable development without mentioning the term “human rights” even though these rights form a necessary part of the strategy proposed. See Cullet, P. “Definition of an Environmental Right in a Human Right Context.” *Netherlands Quarterly of Human Rights* 13 (1995): 25. Cullet argues that what is at stake in the Rio Declaration is “the relationship between economic growth and environmental protection rather than development, human rights and the environment.” *Id.*, at 29. She continued that the “problem is then that economic growth is seen as the first element in the relationship between development and environment and that the human rights dimension is left aside, although human rights should constitute an essential means and end of development. *Id.*, at 29-30.



shifted emphasis from man and the environment and moved to man and sustainable development.⁷⁶ Principle 1 of the Declaration provides: “Human beings are the centre of concerns to sustainable development. They are entitled to a healthy and productive life in harmony with nature.”⁷⁷

Principle 20 of the Declaration specifically recognises the right of the woman to play “a vital role in environmental management and development.” The Declaration provides further that the full participation of the women in environmental management and development is essential to achieving sustainable development.⁷⁸ While the Declaration does not define the term ‘sustainable development’ the Brundtland Report which originated the concept defines it as “development which meets the needs of the present generation without compromising the ability of future generation to meet their own need.”⁷⁹ Thus, though the declaration does not place emphasis on the relationship between the environment and human right, the idea of relationship between the environment and economic growth or preservation of the environment for the future generation basically cannot stand without giving attention to human rights in the use of the environment for economic growth. This is why a writer argues that “conceptually, sustainable development can be conceived of as integrating three “pillars”: international environmental law, international human rights law and international economic law”⁸⁰ and “the integrated structure of sustainable development is such that it requires support from each of the pillars.”⁸¹

5. The Development of Environmental Rights at Regional Level: The African Human Rights System as a Case Study.

Without regional support the task for the advancement of human rights generally, and in particular, the right to clean environment would have been a much more difficult project. Even though a number of states parties to the United Nations Charter have signed and ratified the traditional international human rights instruments, ensuring compliance by members has proven to be increasingly difficult for a number of reasons one of which is that most state parties do not feel very strongly obligated to the wider international bodies especially where individual state’s interest is involved. But the story is slightly different at regional level. At the region, state parties appear to have certain environmental conditions in common. Thus, enforcement and implementation mechanism at regional level appear more successful given that this category of treaties is closer to the people. Under this head of discussion, the study is limited to the African region given the leading role of the African human rights system in the advancement of environmental rights.

Among the regional human rights systems, the African human rights system establishes a comparatively sharp difference in the protection of the environment. Unlike the position in other regional human rights systems and under international human rights instruments, the African Charter

⁷⁶ Turner, S. “The Human Right to a Good Environment - The Sword in the Stone” *Non States Actors & Int. Law* 4 (2004):283.

⁷⁷ On the effect of the environment on the health of the people see generally Umukoro, B. E. “The Ogidigben EPZ Gas Project and the Environment: Health and Human Rights Implications” *Ajayi Crowther University Law Journal* 1 (1) (2017): 1-38 and Umukoro, B. E. “Gas Flaring, Environmental Corporate Responsibility and the Right to a Healthy Environment.” in Festus Emiri & Gowon Deinduomo (eds.) *Law and Petroleum Industry in Nigeria- Current Challenges* (Malthouse Press Ltd., Lagos: 2008): 49-64.

⁷⁸ Principle 20, Rio Declaration.

⁷⁹ Report of the World Commission on Environment and Development (WCED) 1987, *Our Common Future* (hereafter Brundtland Report).

⁸⁰Dias, A. “Human Rights, Environment and Development: with Special Emphasis on Corporate Accountability” *Human Development Report 2000* available at <<http://hdr.undp.org/sites/default/files/ayesha-dias.pdf>>

⁸¹ McGoldrick, A. “Sustainable Development and Human Right: An Integrated Conception.” *International & Comparative Law Quarterly* 45 (1996) cited in Dias, *Ibid.*



on Human and Peoples' Rights⁸² clearly creates a right to a general satisfactory environment⁸³ by virtue of article 24 and as such the foremost in the development of the right to clean environment among its counterpart. Under the Charter the African Commission was empowered to consider complaint both from individuals and from states. Article 24 provides: "All peoples shall have the right to a general satisfactory environment favourable to their development." This provision was given full force in the popular case of *Social and Economic Rights Action Centre (SERAC) v Federal Republic of Nigeria*.⁸⁴ In this case, this communication was brought against the Federal Republic of Nigeria alleging *inter alia*, that oil prospecting activities by multinational companies in Ogoni land have caused environmental degradation and health problems amongst the Ogoni people and that the resulting contamination of water, soil and air has had serious short and long-term health impacts on the people. The communication called on the African Commission to formally interpret the content of this right to satisfactory environment in article 24 of the African Charter. The Commission found the Communication admissible and held against the Federal Republic of Nigeria, *inter alia*, as follows: The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the State 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.

This is a milestone decision given the rampancy and the impunity with which the environment within the African region is being exploited. The African Charter has made huge impact on the right to clean environment and such needs to be acknowledged.⁸⁵ It has been noted that "this communication was the first time, since the inception of the African Commission in 1987 that the African Commission proclaimed a meaning to article 24 of the African Charter ..."⁸⁶ Article 24 of the African Charter, no doubt, has reflected directly or indirectly, explicitly or impliedly in the constitutions and environmental legislation of several African countries. It has been observed that there are about 35 countries in African which recognise a right to a healthy environment in their national constitutions.⁸⁷ The Constitution of the Republic of South Africa 1996 is a good example of an African country with direct constitutional environmental rights. In Nigeria, although social, economic and cultural rights are in the Nigeria Constitution, they are not justiciable. This has generated extensive scholarship⁸⁸

⁸² OAU Doc. CAB/LEG/67/3 Rev.5, 21 I.L.M 58 (June 27, 1981). For discussion on article 24 of the African Charter see generally Ekhaton, E. O. "Improving Access to Environmental Justice under the African Charter on Human and Peoples' Rights: The Roles of NGOs in Nigeria." *African Journal of International and Comparative Law* 22(1) (2014): 63-79; Amechi, E. P. "Enhancing Environmental Protection and Socio-Economic Development in Africa: A Fresh Look at the Right to a General Satisfactory Environment under the African Charter on Human and Peoples' Rights." *Law, Environment and Development Journal* 5 (1)(2009): 60-71.

⁸³ Ebobrah, S. T. "The Future of Economic, Social and Cultural Rights Litigation in Nigeria." *CALS Review of Nigerian Law and Practice*, 1 (2) (2007):114.

⁸⁴ Communication 155/96, Decision of the African Commission on Human and Peoples' Rights, made at the 30th Ordinary Session, held in Banjul, Gambia, 13th to 27th October 2001, available at <http://www.cesr.org/downloads/AfricanCommissionDecision.pdf> last visited October 20, 2015.

⁸⁵ See Rehman, (n14)14 310.

⁸⁶ Linde, Morne` van de and Louw, Lirrete. "Considering the Interpretation and Implementation of article 24 of the African Charter on Human and Peoples' Rights in Light of the SERAC Communication." *African Human Rights Journal*, 3 (2003)169-170. See also Umukoro, B. E and Ituru, O. "Conceptual Challenges to the Recognition and Enforcement of the Right to Clean, Safe and Healthy Environment" *Journal of Environmental Law and Policy* 2 (2) (2022) 1-28. <https://doi.org/10.33002/jelp02.02.01>

⁸⁷ Moses, Elizabeth. "The Road to Realizing Environmental Rights in Africa: Moving From Principles to Practice" *The Access Initiative* (January 2022), 10. <https://accessinitiative.org/resources/road-realizing-environmental-rights-africa-moving-principles-practice>

⁸⁸ See some very recent work are: Umukoro, Brown Etareri, "Looking Beyond the Constitution: Legislative Efforts toward Environmental Rights in Nigeria: A Review of Some Salient Legislations" *Brawijaya Law Journal : Journal of Legal Studies*, 9(2) (2022): 141- 164.



since 2005 when a Federal High Court in Nigeria made the first attempt to recognise breaches of environmental rights as breaches of fundamental rights.⁸⁹ The more recent case law position in Nigeria now is that the rule of *locus standi* does not apply to public interest litigation for the protection of the environment.⁹⁰ This has been widely celebrated as a welcoming development in the pursuit of environmental rights in Nigeria, though the issue of whether environmental rights are enforceable in Nigeria is yet to be decided.⁹¹

6. The Role of Customary International Law

Customary International Law is an international custom which is developed from recurrent acts of state practice⁹² and which practice has been accepted as law. It is unwritten and it is derived from actual practice of nation over a period of time.⁹³ To be accepted as having the force of law at international law, it must be “long-standing, widespread and practiced (sic) in a uniform and consistent way among nations.”⁹⁴ Besides general states practice, customary international law may also be derived from the application of soft law over a period of time. Soft law involves certain declarations and resolutions of international organisations which often consist of guidelines of conduct which are neither strictly binding legal norms but which are not completely irrelevant in the international legal system.⁹⁵ With time soft law crystallises into general principle, and more importantly customary international law. For example, Principle 21 of Stockholm Declaration is widely regarded as reflecting customary international law.⁹⁶ Principle 21 provides: “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the 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.” This principle asserts the customary international law principle of “*sic utere tuo ut alienum non laedas*.” In other words, whenever a state makes use of its own territory in an arbitrary fashion and thereby causes unjustifiable loss or damage in another state, such action should be deemed to be contrary to international law.⁹⁷

Again, though Declarations and Resolutions of the General Assembly of the United Nations are not binding, they suggest a blueprint of the General Assembly and its desire to re-enforce by way of codification and confirmation an already existing customary international law. For instance, several principles of international law relating to sustainable development came from the Rio Declaration. The precautionary Principle which requires that any scientific uncertainty should lead to a decision most favourable to the environment has been a very useful preventive measures and effective form of environmental protection. Furthermore, the Stockholm Declaration, while arguably not

<http://doi.org/10.21776/ub.blj.2022.009.02.03> and Umukoro, Brown Etareri, “Revisiting the non-justiciability issue in environmental rights dialogue in Nigeria” *Environmental Law Review* 25 (2) (2023)101-119. <https://doi.org/10.1177/14614529231168491>

⁸⁹ See *Gbemre v SPDC* (Unreported) Suit No. FHC/CS/B/153/2005 (14 November 2005)

⁹⁰ See *Centre of Oil Pollution Watch v NNPC* (2019) 5 NWLR (PT1666) 518. See also Amechi, E. P and Ihua-Maduenyi, A. “Greening the Judiciary in Nigeria: - Centre For Oil Pollution Watch v. NNPC in Perspectives.” *African Journal of Law and Justice System* 1 (2) (2022):42. <https://doi.org/10.31920/2753-3123/2022/v1n2a2>

⁹¹ Umukoro, (n88)151.

⁹² This practice includes action, omission and even abstentions by states from taking part in certain activities. See Rehman, supra note 14 at, 22. What is required is a general practice and not universal practice. Id.

⁹³ See Oji, E. A. “Application of Customary International Law in Nigerian Courts” *NIALS Law and Development Journal* (2010): 153.

⁹⁴ Ibid.

⁹⁵ See Puvimanasinghe, S. F. “Foreign Investment, Human Rights and the Environment: A Perspective from South Asia on the Role of Public International Law (Essex: Nijhoff Publishers, 2007): 54.

⁹⁶ Turner, (n76) 279.

⁹⁷Ibid.



establishing a clearly independent substantive right, has nonetheless been influential in the increased articulation of the relationship between human rights and the environment. It has been referred to in a number of subsequent instruments, and its influence as a starting point for greater integration between environmental and human rights principles remains significant.⁹⁸ Besides, the number of nation states which have decided to incorporate environmental rights into their constitutions after the Stockholm and Rio Declaration Declarations is indicative of general acceptability of the principle at international law, a situation which can be referred to as establishing customary international law to the right to clean environment.⁹⁹

In addition, the United Nations' Draft Principles on Human Rights and the Environment¹⁰⁰ which proclaim that "[a]ll persons have the right to a secure, healthy and ecologically sound environment [and that these rights] ... are universal, interdependent and indivisible" have been acknowledged providing evidence to support an emerging customary norm.¹⁰¹

CONCLUSION

Although, the right to clean environment has been very contentious at international law, in comparison with its application at domestic level, international law has played a giant role in the development of the right to clean environment at all climes, especially as the right was officially midwived and nurtured at international law. The result or impact of the Stockholm Declaration at regional and domestic levels is a positive attestation to the gains of the Conference. With the UN General Assembly Resolution of 28 August 2022, it is no longer a viable argument whether the right to clean environment is a valid right. The various relevant documents from which the right to clean environment can be deduced, particularly the Stockholm Declaration, and the recent declaration of the UN General Assembly generally articulate "the need for a common outlook and for common principles to inspire and guide the peoples of the world in the preservation and enhancement of the human environment"¹⁰²

Given the advancement of the right at regional level and the effect on national environmental laws, it can be safely concluded that the right to clean environment at international law is admirably progressive and that the world has actually been inspired on the need to green human rights. The agitation for the recognition of the right at global plane merely requires sustainability. Today, international environmental activists are more optimistic that in the near future the legal platform for agitating for the right to clean, healthy and sustainable environment at any level would be developed the more.

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⁹⁸ Lewis, B. M. "The Human Right to a Good Environment in International Law and the Implication of Climate Change (Unpublished Ph.D. Thesis, Monash University, Australia) at 105 available at <http://arrow.monash.edu.au/hdi/1959.1/1179104Lewis>.

⁹⁹ Though, Lewis concludes that "there is insufficient consistent state practice and *opinio juris* to suggest that the right to a good environment exists at customary international law." *Ibid.*, at 22.

¹⁰⁰ Draft Principles on Human Rights and The Environment, UN Doc E/CN.4/Sub.2/1994/9, Annex I (1994).

¹⁰¹ Stephen Marks, Stephen . "Emerging Human Rights: A New Generation for the 1980s?" *Rutgers Law Review* 33 (1980-81): 435 cited in Lewis, (n4), 42.

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