

POVERTY AND DENIAL OF ENVIRONMENTAL RIGHTS: A FOCUS ON THE GLOBAL LEGAL FRAMEWORK*

Abstract

This paper examines some global framework that IS in place to enhance eradication of poverty, protect environmental rights and fundamental rights. Poverty has become synonymous with the nation in particular and the international community in general. One of the ways to effectively tackle this menace head on is to globally accept and adopt the truism that poverty situation in any nation amounts to and projects the level of environmental and fundamental human rights abuses prevalent in such country. The narrative textual nature was adopted in addressing the issue under discussion. The fact remains that an honest quest and effective implementation and upholding of environmental and fundamental human rights principles will reduce the level of poverty evidenced all over the world to zero tolerance level. Fundamental human rights enforcement holds at its centre an approach that tends to balance the link between poverty, environmental and fundamental human rights. Available literature of the subject will be reviewed. Finally we suggest that the government and all environmental and human rights organizations and agencies should enforce implementation of human rights policies so as to fight poverty.

Keywords: *Poverty, Environmental Rights, Fundamental Human Rights and Legal Framework.*

1. Introduction

The link between poverty, environmental right and fundamental human rights is obvious and cannot be neglected or discarded with a wave of hand. They have a lot in common but are erroneously considered or addressed differently. Although they are all global area of concern, the way and manner in which they are conceived, accepted and purported to be resolved, creates doubt as to whether the linkages between the concepts are understood. Poverty in the general sense connotes among others not having enough to feed and clothe a family, not having a school or clinic to go to, not having the land on which to grow one's food or a job to earn one's living, not having access to credit. It means insecurity, powerlessness and exclusion of individuals, households and communities; it means susceptibility to violence, living in marginal or fragile environment without access to clean water or sanitation¹. The poverty profile of Nigeria reveals that poverty was first measured in 1980 by the Federal Office of Statistics (FOS). In that year, 272% of the population or 18 million people were poor. In 1985, about 176% of Nigerians live below poverty level. In 1992, the percentage dropped to 43%. In 1996, the percentage catapulted to 66% and the number of people that were poor increased to 67 million². It is estimated that poverty rate today would have increased to over 100%³. Poverty is one of the greatest problems of Nigeria today (No thanks to the economic recession being witnessed in the country). It is generally associated with the conditions under which the people live. For example, a whole community could be labeled poverty stricken due to their limited opportunity for employment, education and other necessities of life⁴. Environmental rights on its own are extension of the basic human rights that mankind requires and deserves in addition to having the right to food, clean water, suitable shelter and education, having a safe and sustainable environment is paramount as all other rights are dependent upon it. The desire to endure access to all of earth's inhabitants for this essential standard of living is the primary concern of environmental rights. Beyond equal distribution and access to clean and sustainable resources, environmental right also include an additional obligation from those in the industrialized nations, it requires us to act responsibly in our own use of natural resources and to regulate our level of consumption in a more equitable manner⁵.

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¹ C.I.N. Emelie, 'Poverty Eradication: Environmental Conservation and Sustainable Development in Nigeria', *Journal of Social Sciences* Vol. 14, IAUE Port Harcourt, 2007, p. 17.

² Federal Office of Statistics (1997), Poverty Profile for Nigeria.

³ S. Khalid, 'The Policies of Poverty Eradication in Nigeria', www.gamli.com/article6000/news6036.htm accessed

⁴ Abu Aminu, 'Alleviating Poverty in Nigeria Through the Sustainable Development Goals: The Role of Public Relations', *Journal of Social Sciences*, IAUE, Port Harcourt, Vol. 14, 2017, p185.

⁵ Pachamama Alliance, www.pachamama.org accessed 12/4/2018.

In the same order, human rights are inherent in human beings simply because of their humanity, they are rights which are inherent in the human being and are to be enjoyed by all human beings of the global village and not gifts to be withdrawn, withheld or granted at someone's whim or will⁶. In this sense, they are said to be inalienable or imprescriptibly. If you remove them from any human being, they will become less than human⁷. They are part of the very nature of human beings and attached to all human beings everywhere in all societies, just as much as to do his arms and legs⁸. In this sense, and for poverty to be eradicated, the analyzed concepts must command a fused natural approach and adoption for effective result.

2. Poverty, Environmental Rights and Fundamental Human Rights Defined

Poverty

According to the United Nations, Poverty is the inability of having choices and opportunities, a violation of human dignity⁹. It means laws of basic capacity to participate effectively in the society. The word basic means forming the part of something that is most necessary and from which other things develop; it also means something that is necessary and important to all people or something before anything extra is added¹⁰. It will also connote the inability to meet human needs. Human needs on the other hand means to require something because they are essential or very important, not just because you would like to have them¹¹. The concept of needs includes the notion of what is conventionally regarded as necessary to lead one's life as an integrate member of a particular society¹². All over the globe, the basic human needs are food, shelter and clothing. These basic needs of course are the root of life and existence, where there are deprivation of these basics, the right to life is challenged and abused.

Right

A right is that which is proper under the law, morality or ethics¹³. It is a legally enforceable act, a recognized protected interest, the violation of which is a wrong.¹⁴It is a capacity residing in one man of controlling, with the assent and assistance of the state, the actions of others. Rights are perfect and imperfect; positive and negative; real and personal; proprietary and personal; legal and equitable¹⁵.

Environmental Right

Often referred to as part of the third generation of human rights, environmental rights means access to the unspoiled natural resources that enables survival including land, shelter, food, water and air. They also include more purely ecological rights including the right to a certain beetle to survive or the right for an individual to enjoy an unspoiled landscape¹⁶. Environmental rights as has earlier stated is a extension of the basic human right that mankind requires and deserves.

Fundamental Human Rights

These are serious and very important rights that every human being possesses and is entitled to enjoy, simply by virtue of being a human being. They are birthright of all human beings and the protection of human rights is the first

⁶ See 'The Universal Declaration of Human Rights Magna Carta for All Humanity' United Nations Department of Public Information, Feb. 1998.

⁷ O.N. Ogbu, *Human Rights Law and Practice in Nigeria* (2nd Rev. Ed) Vol. 1, Snaap Press Nigeria Ltd, Enugu, 2013, p4.

⁸ M. Mac Donald, 'Natural rights' in Jeremy Waldron (ed.) *Theories of Rights*, Oxford University Press, London, 1984, p27.

⁹ UN Development Program, 'Overcoming Human Poverty, Poverty Report, New York, 2000.

¹⁰ A.S. Hornby, *Oxford Advanced Learners Dictionary of Current English*, Oxford University Press, Oxford, 2006, p108.

¹¹ *Ibid*, p. 979.

¹² S. Khalid, note 3 p

¹³ H.C. Black, B. Garner (ed.) *Black's Law Dictionary*, 8th Ed. Thomson West Group, America, 1999, p. 1322.

¹⁴ M.O.I Nwabuoku, 'Is there a Constitutional Right to a Protected Environment?' *Reading in Law and Policy*, Faculty of Law, Rivers State University Port Harcourt, 2017, p. 13.

¹⁵ R. Bird (Ed.) 7th ed. *Osborn's Concise Law Dictionary*, Sweet and Maxwell, London, 1983, pp. 293-294.

¹⁶ Friends of The Earth International, Environmental Rights are Human Rights. www.foei.org accessed 14/14/2018.

responsibility of the government. These serious and important rights are based on the fundamental principle that all persons possess an inherent human dignity and that regardless of sex, race, color, language, national origin, age, class or religious or political beliefs, they are equally entitled to enjoy their rights.

3. Environmental Rights are Human Rights

The fact that environmental rights are also human rights cannot be over emphasized. This is because all human beings depend on the environment in which we live, a safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the right to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfill our aspirations or even live at a level commensurate with the minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment¹⁷. Right to life which is a fundamental human right, cannot be secured in an environment where life itself is not guaranteed. In recent year, the recognition of the human right and the environmental right are the same has greatly increased. The number and scope of international and domestic laws, judicial decisions and academic studies on the matter have grown rapidly.

4. Global Legal Framework For Human And Environmental Rights

The modern international human rights framework are rooted in the charter of the United Nations. The birth of the United Nations represented a critical point in the evolution of human consciousness. The trauma of the World War II, the widespread abuses of people and groups, including genocide, mass killing and other forms of violence against humanity, motivated governments to demand and set standards for the treatment of people by their own governments¹⁸. The Universal Declaration of Human Rights (UDHR) in 1947, marked and created the common standard for all people and nations to strive for the promotion of human dignity¹⁹. The general assembly of the United Nations adopted the universal declaration on December 10, 1948. The adoption of the universal declaration of human rights was followed by regional efforts towards the promotion and protection of human²⁰ rights. On November 4, 1950 the Council of Europe agreed to the European Convention for the protection of human rights and fundamental freedom²¹. The convention which came into effect in 1953 was thus the first regional instrument on human rights. The 1969 Inter-American Specialized Conference on Human Rights in San Jose, Costa Rica adopted the Inter-American convention on human rights and it came into effect in 1979. In the same spirit, the African nations in 1961, held a conference on the rule of law in Lagos and declared, inter alia:

That in order to give full effect to the universal declaration of human rights of 1948, this conference invites the African governments to study the possibility of adopting an African convention on human rights in such a manner that the conclusion of this conference will be safeguarded by the creation of a court of appropriate jurisdiction and that recourse therefore be made available for all persons under the jurisdiction of the signatory states.

The 18th Assembly of Heads of State and Government of the O.A.U²² meeting in Nairobi, Kenya adopted the African Charter in 1981. The charter came into effect on 21st October, 1986 after its rectification by a majority of African states. The charter is also referred to as the 'Banjul Charter' since Banjul, the capital of The Gambia hosted most of the conference on the drafting of the charter.²³ Of note, is the fact that Nigeria is a state party to most of the human rights conventions and has constitutionally provided for human rights protection under chapter IV of the Constitution of The Federal Republic of Nigeria and the institutional mechanism for the promotion and enforcement of human rights in the nation, is the National Human Rights Commission, established by Decree 22 of 29th September, 1995.

¹⁷ World Conference on Human Rights, Vienna, 1993.

¹⁸ United Nations Human Rights, Office of The High Commissioner. www.ohchr.org. accessed 16/4/2018.

¹⁹ M.A. Schuler and D.O. Thomas (ed.), *Women's Human Rights Step by Step, Women, Law and Development International and Human Rights Watch Women's Project*, Washington D.C. 1997,p8.

²⁰ O.N. Ogbu, *Human Rights Law and Practice in Nigeria* 2nd Revised ed. Vol. 1, Snaap Press Nigeria Ltd, Enugu, 2013, p73.

²¹ Ibid.

²² The Organization of African Unity (OAU) has metamorphosed into the African Union (A.U). This is in pursuant to the adoption of the Charter of The African Union.

²³ O.N Ogbu, Note 20, p.74.

While the need to uphold human right was recognized as far back as 1947, the right to a healthy environment was recognized only in 1972 in Stockholm during the 1st world conference on Human development²⁴. The Inter-Governmental Conference on the Human Environment held between 5th-16th June 1972, proclaimed the right to clean environment for the first time at the international level. The Conference observed that man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits life of dignity and well-being and that he bears a solemn responsibility to protect and improve the environment for present and future generations. This was to be followed by the United Nations Charter of Nature in 1982, which proclaims that in recognition of the fact that human kind is part of nature; nature shall be respected and its essential process shall not be impaired²⁵. Twenty years after the Stockholm meeting, the world conference on the environment and development known as ‘The Earth Summit’ which took place in Rio de Janeiro further recognized the place of environmental rights by asserting that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.²⁶ Environmental rights are mentioned more explicitly at the regional level, it had since taken a place of prominence in the legal instrument of the regions such as Africa. Hence the African Charter on Human and People’s Right which was adopted in 1987 recognized the right to satisfactory environment²⁷. Many constitutions of nations like South Africa, have included provisions that guaranteed human rights to sound environment, however, many like the Nigerian nation do not specify jurisdictional guarantees. Such rights are considered as mere guidelines which may not be protected²⁸.

5. Poverty, Abuse of Environmental Rights or Fundamental Human Rights Interlinked

A close analysis of the provisions of environmental or human rights will support the fact that the fundamental or at the centre of these pronouncement is the protection and promotion of human dignity. Poverty as a matter of fact degrades human dignity. The normative framework for human rights codified in 1948, is the basis for asserting that poverty can never be mentioned where human rights are upheld. This is because the Universal Declaration of Human Rights (UDHR) is the foundation for both national and international policy setting that will not give room to poverty. It provides the crucial set of norms and values to guide policy making through the respect of human rights that are inherent to the person and belong equally to all human beings, regardless of the race, color, sex, language, religion, political or other opinion, nation or social origin, property, birth or other status. Also, the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits life of dignity and well-being, presupposes that honesty, sincere and dutiful and serious guide of these attributes of human rights will not call for poverty or will fight poverty to a standstill. The millennium declaration recognizes the importance of addressing human right issues in order to halt poverty when it states as follows: ‘We will spare no effort to free own fellow men, women, and children from the abject and dehumanizing conditions of extreme poverty. We are committed to making the right development a reality for everyone and to freeing the entire human race from want’²⁹. In the same spirit, the United Nations Development Programme (UNDP) report, asserts that: ‘Poverty is an infringement on the freedom of human dignity and that elimination of poverty should be addressed as a basic entitlement of human right, not merely as an act of charity. It calls for a framework for development, trade and investment respects, protects and promotes human rights’³⁰. Poverty has become the central concern of the globe, the relationship between poverty and fundamental human rights can no longer be ignored. Under the International Human Rights Law, state parties have specific obligation to respect, protect and fulfill the rights contained in the convention. Failure to perform anyone of these three fundamental obligations constitutes a violence of such rights and proper efficient and effective enforcement of sanctions should be meted out as the occasion demand. Poverty persists mostly because the poor do not enjoy fundamental rights and does not have the power to exercise or seek redress for the deprived or abuse rights.

²⁴ See Principle I of Stockholm Declaration.

²⁵ See Principle I of World Charter for Nature, 1982

²⁶ See principle 111 of the Rio De Janeiro Declaration..

²⁷ See Article 24 of The Charter.

²⁸ Environmental Rights, Encyclopedia of Science, Technology. And Ethics. <http://www.encl.com> accessed 13-4-2018.

²⁹ UNDP, ‘Administrator’s Note on Implementing Human Rights in the Millennium’. Training Manual, 2000 p. 2

³⁰ UNDP, Human Development Report, 2000.

6. A More Pragmatic Approach

To chart a new course for the global challenging issue of poverty, the following suggestions are proffered;

- a) There is need to promote pro-poor governance and strengthen the protection and promotion of basic socio-economic needs and rights of the poor.
- b) To secure the poor through basic service delivery, local partnership, decentralization and institution building, that will constitute a decisive break with the past and a whole set of new development to the meaning of human rights.
- c) Poverty elimination paradigm must make a shift in wider liberal projects that has underpinned development.
- d) Transparent and inclusive governance should be seen as an important link between the government and the poor. Accountability is deemed essential by the poor, as it will bring about institutional change that will also affect the way the poor are treated by service providers.
- e) Strengthening institutions through which policy makers can be held accountable for the breach of fundamental rights.
- f) Broadening the scope of poverty elimination strategies to address the structures of discrimination and abuses that generate, nurture and deepen poverty.
- g) Strengthening civil and political rights which can play an instrumental role in addressing the cause of poverty.
- h) Adding legitimacy to the demand to ensuring meaningful participation of the poor in decision making process at all levels.
- i) The state parties should be cautioned against retrogression and non-fulfillment of minimum core obligations of human rights protection and promotion in the name of policy trade-offs.
- j) There is need for conscious and constant review of human rights and poverty elimination laws, policies and programmes in order to conform with the modern needs and aspirations of human beings worldwide.
- k) The global community should crave, pursue and maintain peace and stability in the world. Human rights cannot be protected in the faces of all form of insecurity that the globe is facing presently.

7. Conclusion

The international community has developed a comprehensive legal framework for the protection and promotion of human rights. The International Covenant on Economic, Social and Cultural Rights and The International Covenant on Civil and Political Rights together with UDHR constitutes the International Bill of Rights. State parties therefore are under specific mandate to implement and enforce these rights. The protection and preservation of these rights has to become a priority to save the poor from becoming poorer or even eradicate poverty. Environmental rights which is human rights does not only aspire to preserve nature, but also to achieve the conditions necessary for a more sustainable and healthy life for all persons and all people on earth. Sustainable human development as a global vision entails that every individual everywhere, man or woman, girl or boy, must have the opportunity to fulfill their potentials, that they must have choices and power to make them, over how they live. Equality of rights and protecting of human dignity for all is the indispensable foundation on which human development must be built. The international world has laid down a framework that will eradicate poverty. They are a strong beginning. We must find the global commitment to redeem their promises and pledges by action at the same, we must build the local conditions, the local expertise and knowledge, the regional and neighborly collaboration necessary to spread the benefits of growth and to ensure the stability needed for our poorest citizens, regions and neighbors to prosper³¹.

³¹ S. Sathirathai, 'Peace and Security: The Challenge and The Promise', *Texas International Law Journal*, Vol.41:507, 2005, p521.