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# The Legal Roadmap for Environmental Sustainability in Africa: Expansive Participatory Rights and International Environmental Justice

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**PACE LAW SCHOOL**  
P A C E U N I V E R S I T Y

**The Legal Roadmap for Environmental Sustainability  
in Africa  
Expansive Participatory Rights and International  
Environmental Justice**

**Doctor of Juridical Science (S.J.D.) in Environmental Law  
Degree  
S.J.D. Dissertation**

**Under the Supervision of  
Professor Ann Powers**

**January 2012**

**© Alali M. Tamuno, 2012**

## **Dedication**

I dedicate this work to all the men, women, youth and children in the Niger Delta Region of Nigeria, especially the people of Rivers State, who are disproportionately burdened by environmental contamination, particularly “oil and gas pollution,” in Nigeria.

I also dedicate this work to the memory of my late dear friends, Anita Balogun (nee Simkaiye) and Bala Halilu.

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To my colleagues, chain of command, and staff at the New York State Department of Environmental Conservation ("DEC"), especially staff in the White Plains, New York Office, I thank you all for your support and encouragement throughout my study. I am especially grateful to my colleague, Rosalie Rusinko, for her practical help, support, and encouragement. John Burrows and Edith Bain in the DEC's headquarters in Albany deserve special mention for their willingness at sometimes very short notice to resolve personnel and administrative issues. I am especially thankful to the former General Counsel of the DEC, Alison Crocker, Assistant Counsel Benjamin

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## List of Selected Abbreviations and Acronyms

AMCEN	African Ministerial Conference on the Environment
ATSDR	Agency for Toxic Substances and Disease Registry
AU	African Union
CDM	Clean Development Mechanism
CEC	Corruption and Economic Crime
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CIA	Central Intelligence Agency
CIESIN	Center for International Earth Science Information Network
CO <sub>2</sub>	Carbon Dioxide
COD	Chemical Oxygen Demand
CPI	Corruption Perceptions Index
DCEC	Directorate of Corruption and Economic Crime
DFID	Department for International Development
DPR	Department of Petroleum Resources
ECOSOC	Economic and Social Council
ECOWAS	Economic Community of West African States
EFCC	Economic and Financial Crimes Commission
EIA	Environmental Impact Assessment
EMA	Environmental Management Act
EPCRA	Emergency Planning and Community Right to Know Act
EPI	Environmental Performance Index
ESD	Education for Sustainable Development
ESI	Environmental Sustainability Index
EGAS	Environmental Guidelines and Standards
EU	European Union
EVI	Environmental Vulnerability Index
FEPA	Federal Environmental Protection Agency
FOIL	Freedom of Information Law
FOIA	Freedom of Information Act
GA	General Assembly
GHG	Greenhouse Gas Emissions
HDI	Human Development Index
HDR	Human Development Report
ICAC	Independent Commission Against Corruption
ICCPR	International Covenant on Civil and Political Rights
ICEAFRD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IOC	Intergovernmental Oceanographic Commission
IPCC	Intergovernmental Panel on Climate Change

IUCN	International Union for Conservation of Nature
LFN	Laws of the Federation of Nigeria
LGA	Local Government Area
MDGs	Millennium Development Goals
MESA	Mainstreaming Environment and Sustainability in Africa
NAPPHR	National Action Plan for the Promotion and Protection of Human Rights
NDDC	Niger Delta Development Commission
NEMA	National Environmental Management Act
NEPAD	New Partnership for Africa's Development
NESREA	National Environmental Standards and Regulations Enforcement Agency
NEITI	Nigeria Extractive Industries Transparency Initiative.
NGO	Non-governmental Organization
NYS	New York State
NYSC	National Youth Service Corps
NYSDEC	New York State Department of Environmental Conservation
OAU	Organisation of African Unity
OHCHR	Office of the High Commissioner for Human Rights
OPEC	Organization of the Petroleum Exporting Countries
PCE	Tetrachloroethylene
PHR	Port Harcourt Refinery
POPs	Persistent Organic Pollutants
PRTRs	Pollutant Release and Transfer Registers
RCRA	Resource Conservation and Recovery Act
SDWA	Safe Drinking Water Act
SERAC	Social and Economic Rights Action Center
SNEPCO	Shell Nigeria Exploration and Production Company
SOPAC	South Pacific Applied Geoscience Commission
SPDC	Shell Petroleum Development Company
TNCs	Transnational Corporations
TRI	Toxics Release Inventory
UDHR	Universal Declaration of Human Rights
UIC	Underground Injection Control
U.N.	United Nations
UNDG	United Nations Development Group
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNODC	United Nations Office on Drugs and Crime
UNSD	United Nations Statistics Division

UNTC	United Nations Treaty Collection
U.N.T.S.	United Nations Treaty Series
WCED	World Commission on Environment and Development
WHO	World Health Organization
WHOSIS	World Health Organization Statistical Information System
YCELP	Yale Center for Environmental Law & Policy

# **Chapter One: Expansive Participatory Environmental Rights and International Environmental Justice: Introduction**

## **1.1: Background**

Environment is an important, if not the most important public resource. The manner of its current use affects the welfare of both present and future generations. The public should, therefore, have a right not only to participate in decisions affecting the management and status of the environment (whether they concern its exploitation or conservation) but also to institute legal proceedings in vindication of the public interest.  
-UNEP

An indigenous American quote, which states that “[treat the earth well: it was not given to you by your parents, it was loaned to you by your children. We do not inherit the Earth from our Ancestors, we borrow it from our Children,” lays the foundation for this study’s environmental sustainability argument. The importance of maintaining an ecologically wholesome environment for its intrinsic value and for the benefits it brings to humans and other forms of life is expressed in different ways at the international, regional, and national levels. The former head of the United Nations Development Program, Kemal Dervis, considers that “a healthy environment is a vital national asset and when it is eroded, the poorest people suffer the most.”<sup>1</sup> UNEP’s Angela Lusigi also recognizes the benefits the long term maintenance of a healthy environment brings to humans by suggesting that environmental sustainability calls for the management of ecosystems so that they are able to provide services that support sources of livelihood for

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<sup>1</sup> See also United Nations Development Programme, *Making Progress on Environmental Sustainability: Lessons and recommendations from a review of over 150 MDG experiences* (2006) (tracking countries progress towards MDG 7), available at <http://www.undp.org/fssd/docs/mdg7english.pdf> (last visited Sept. 7, 2011).

humans.<sup>2</sup> The U.N. Millennium Declaration<sup>3</sup> and MDGs<sup>4</sup> may be viewed as recognition at the international level that there is inequity in the world economy, that extreme poverty is a grave threat to a significant number of the world's population, that protecting the environment is vital for the progress of people around the world and for eradicating poverty, and that African countries are at a disadvantage in terms of socio-economic and environmental progress as these countries face special challenges in eradicating poverty, ensuring the long-term viability of the environment in Africa, and achieving sustainable development and enduring peace. The World Charter for Nature recognizes the intrinsic value of the environment and its value to different kinds of living organisms.<sup>5</sup>

Numerous reports and instruments on the environment in Africa, including “environment outlook” reports, find that Africa’s natural environment plays a pivotal role in the poverty eradication fight in Africa. It provides social and cultural benefits and vital life support processes for the African region and significant benefits for people outside the African continent. The revised African Convention on Nature and Natural Resources, which is yet to go into force, describes Africa’s natural environment as a priceless asset that provides tremendous social, economic or cultural benefits to people inside and outside the continent of Africa (Preamble).<sup>6</sup> Odote and Makoloo are of the view that

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<sup>2</sup> Angela Lusigi, *Linking Poverty to Environmental Sustainability*, United Nations Development Programme/United Nations Environment Programme: Poverty-Environment Initiative 1-2 (May 2008), available at [http://www.povertyandconservation.info/docs/20080524-UNDP-UNEP\\_Poverty\\_Environment\\_Initiative.pdf](http://www.povertyandconservation.info/docs/20080524-UNDP-UNEP_Poverty_Environment_Initiative.pdf) (last visited Sept. 7, 2011).

<sup>3</sup> United Nations Millennium Declaration, G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 18, 2000) [hereinafter Millennium Declaration].

<sup>4</sup> The Millennium Development Goals were agreed to at the Millennium Summit in September 2000.

<sup>5</sup> World Charter for Nature, pmbl., G.A. Res. 37/7 (Annex), UNGAOR, 37<sup>th</sup> Sess., Supp. No. 51 at 17, U.N. Doc A/37/51, (Oct. 28, 1982).

<sup>6</sup> African Convention on Nature and Natural Resources (Revised Version), *adopted on July 11, 2003* (not yet in force) [hereinafter Revised African Nature Convention], available at [http://www.africa-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/nature%20and%20natural%20resource.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/nature%20and%20natural%20resource.pdf) (last visited Sept. 7, 2011).

Africa's natural resources provide significant income for African countries.<sup>7</sup> UNEP's Executive Director, Achim Steiner also sees the socio-economic value of Africa's environment and considers that Africa needs its abundant natural resources as the engine for economic development and the catalyst for economic growth.<sup>8</sup> Mr. Steiner is of the view that Africa's natural resources may be the key to for poverty eradication in Africa if these resources are used carefully and the benefits are evenly shared, and suggests that Africa's natural resources can serve as an instrument for peace in Africa.<sup>9</sup> MDG 7, a global goal for achieving environmental sustainability for all people, affirms the value of an environment that is healthy in the fight against poverty and to achieve sustainable development, and affirms a principle in the Millennium Declaration that the environment should be protected and natural resources conserved for the benefit of current and future generations of humankind.<sup>10</sup>

Literature indicates that the principle of sustainable development grew out of the need to reconcile socio-economic and environmental goals. The critical role the public plays in reconciling these objectives is emphasized in numerous global and regional instruments on human rights, economic development, environment, and education. Key global non-legally binding instruments that affirm this view include the

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<sup>7</sup> Collins Odote & Maurice Makoloo, *African Initiatives for Public Participation in Environmental Management*, in THE NEW "PUBLIC": THE GLOBALIZATION OF PUBLIC PARTICIPATION 121 (Carl Bruch ed., 2002).

<sup>8</sup> Achim Steiner, *Africa's Natural Resources Key to Powering Prosperity*, 5 Env. & Poverty Times 1 (2008).

<sup>9</sup> AFRICAN MINISTERIAL CONFERENCE ON THE ENVIRONMENT/UNITED NATIONS ENVIRONMENT PROGRAMME, AFRICA ENVIRONMENTAL OUTLOOK 2: OUR ENVIRONMENT OUR WEALTH xxiii (2006), available at <http://www.unep.org/dewa/Africa/publications/AEO-2/content/005.htm> (last visited Sept. 27, 2011).

<sup>10</sup> MDG 7 uses "targets and indicators" to measure the advancement of countries towards environmental sustainability.



Rio Declaration on Environment and Development<sup>11</sup> and Agenda 21: Programme of Action for Sustainable Development.<sup>12</sup> These instruments describe different groups of people that comprise the public and the types of mechanisms and strategies to facilitate public participation. If it is accepted that public participation in decision-making processes is crucial for achieving sustainable development, it is reasonable to suggest that effective public participation in environmental matters is crucial for ensuring that a pillar of sustainable development, i.e., a viable and wholesome environment, is maintained.<sup>13</sup> UNEP literature lists different forms of public involvement that may be encouraged during an EIA process, such as informing, notifying, and consulting the impacted public, seeking comments from the public before a decision is made, and providing legal avenues to resolve disputes regarding an EIA project and in her seminal work on public participation in decision-making Sherry Arnstein describes different participatory levels in the form of a “citizen participation” ladder.<sup>14</sup> This author suggests that real public participation in environmental issues occurs at the level of “partnership” described in Sherry Arnstein’s “citizen participation” ladder, at which level this author considers all the forms of public involvement described in the above-mentioned UNEP guidance document coalesce. This study argues that environmental education is a critical element of the partnership rung. Support for the position that education is essential for effective public participation in a general sense is found in the position of UNESCO that:

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<sup>11</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 Rev.1 (vol. I), Annex I (Aug. 12, 1992) [hereinafter Rio Declaration].

<sup>12</sup> United Nations Conference on Environment and Development, Rio de Janeiro, Braz., June 3-14, 1992, *Agenda 21: Programme of Action for Sustainable Development*, ¶ 23, U.N. Doc A/Conf.151/26 (vols. I-III), (1992) [hereinafter Agenda 21].

<sup>13</sup> See *id.*, ¶ 23.2.

<sup>14</sup> UNEP, ENVIRONMENTAL IMPACT ASSESSMENT TRAINING RESOURCE MANUAL 172-73 (2d ed. 2002); See also Sherry R. Arnstein, *A ladder of Citizen Participation*, 35(4) JAIP 216 (1969).

Indeed, access to education is the sine qua non for effective participation in the life of the modern world at all levels. Education, to be certain, is not the whole answer to every problem. But education in its broadest sense, must be a vital part of all efforts to imagine and create new relations among people and to foster greater respect for the needs of the environment.<sup>15</sup>

The subsidiarity principle, a hierarchal decision-making rule that is gaining recognition around the world, especially in Europe, and may be applied to the field of the environment, and the principle of public participation in environmental decision-making are thematically similar. Writings suggest that real public participation allows the public to be a partner in the decision-making process, while subsidiarity gives the lowest capable level of society control of the decision-making process. In a broad sense, Subsidiarity gives people in the local community control of the decision-making process either indirectly through the tier of government closest to the community or directly to the local community. This author considers that the subsidiarity principle calls for the highest level of public involvement in environmental matters.

Principle 10 of the Rio Declaration endorses public participation in environmental matters, and this principle is further developed in the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters<sup>16</sup> and the Revised African Nature Convention. Although the rights set out in Principle 10 of the Rio Declaration and the Aarhus Convention have received intense scrutiny, and in particular the Aarhus Convention has received accolades

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<sup>15</sup> United Nations Educational, Scientific and Cultural Organization, *Educating for a Sustainable Future: A Transdisciplinary Vision for Concerted Effort*, UNESCO Doc. EPD-97/CONF.401/CLD.1. (November 1997).

<sup>16</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, arts. 3(3), 4-9, 2161 U.N.T.S. 447, 38 I.L.M. 517 (1999) [hereinafter Aarhus Convention], available at [http://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch\\_XXVII\\_13p.pdf](http://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch_XXVII_13p.pdf) (last visited Oct. 14, 2011).

from writers for creating what may be considered to be minimum legally binding mechanisms to allow the public to participate in environmental matters, and the Revised African Nature Convention secures environmental procedural rights for people in Africa, this author suggests that these instruments are deficient to the extent that they do not recognize a right of access to the form of education promoted in this study as an element of the rights structure set out in the instruments. Although the Rio Declaration supports the promotion of the traditional knowledge of indigenous people in Africa in Article 22 it does not recognize the public's right of access to broad environmental education. The Aarhus Convention on the other hand endorses environmental education, but it is not prescribed as an indispensable component of the three pillars of participatory environmental rights recognized in the Aarhus Convention. The Revised African Nature Convention contains procedural environmental rights and obligations similar to Principle 10 of the Rio Declaration and the Aarhus Convention, but the duties of the Parties to the instrument to promote environmental education and raise the capacity of Africans to protect the environment are set out in a separate clause.<sup>17</sup>

Support for the position that education is critical for socio-economic and environmental progress is found in the World Bank Group's education strategy for developing countries, which considers the central goal of education to be to foster learning and not only as a tool for teaching in the classroom, and considers education to be an important tool for the development of humankind and a mechanism to reduce poverty.<sup>18</sup> Further support for the position that education is a tool to promote human

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<sup>17</sup> Revised African Nature Convention, *supra* note 6, arts. XVI & XX.

<sup>18</sup> World Bank Group, *Learning for All: Investing in Peoples Knowledge and Skills to Promote Development* 1-8 (April 12, 2011), available at

development may be found in the International Covenant on Economic Social and Cultural Rights, with its recognition of a right to education for every person in order to foster, among other things, the “full development of the human personality and the sense of its dignity....”<sup>19</sup> This author considers that support for the form of environmental education prescribed in this study is found in CESCR’s comment on the right to education that:

Education is both a human right itself and an indispensable means of realizing other human rights. As an empowerment right, education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering women, safeguarding children from exploitative and hazardous labour and sexual exploitation, promoting human rights and democracy, protecting the environment, and controlling population growth. Increasingly, education is recognized as one of the best financial investments States can make.<sup>20</sup>

CESCR considers that respect for nature and gender equality are necessary elements of the right to education recognized in Article 13(1) of the ICESCR although they are not specifically mentioned in Article 13(1), that taking steps to “progressively” realize a right to education means that State Parties must take tangible, purposeful and specific actions in a prompt and efficient manner to realize the goals of Article 13 of the ICESCR, and that education should take into account local cultures and traditions. Considering that a goal of education stated in Article 13(1) of the ICESCR is to enable all groups to take part freely in governing processes in a democratic society, that the CESCR

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[http://siteresources.worldbank.org/EDUCATION/Resources/ESSU/463292-1306181142935/WB\\_ES\\_ExectiveSummary\\_FINAL.pdf](http://siteresources.worldbank.org/EDUCATION/Resources/ESSU/463292-1306181142935/WB_ES_ExectiveSummary_FINAL.pdf) (last visited Sept. 27, 2011).

<sup>19</sup> International Covenant on Economic, Social and Cultural Rights, art. 13(1), Dec. 16, 1966, 993 U.N.T.S. 3, 6 I.L.M. 360 (1967) (Dec. 16, 1966) [hereinafter ICESCR].

<sup>20</sup> United Nations, Econ. and Soc. Council, Comm. on Economic, Social and Cultural Rights, General Comment No. 13, 21<sup>st</sup> Sess., Nov. 15-Dec. 3, 1999, E/C.12/1999/10 (December 8, 1999), *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement> (last visited Oct. 8, 2011).

considers that education is a tool to teach people about respect for nature, and that the UNDP considers that corruption “strikes at the heart of democracy,” it is reasonable to suggest that corruption hinders democratic decision-making generally and environmental decision-making in particular. If one accepts that effective public participation can contribute to environmental sustainability and corruption can hinder collaborative decision-making, it is reasonable to suggest that corruption is an obstacle to environmental sustainability. For purposes of this study the CESCR’s General Comment No. 13 on the right to education is expanded to include educating the public about ways to fight corruption, particularly public sector corruption, especially in the field of the environment.<sup>21</sup> In this study, this form of education is referred to as broad environmental education. The terms environmental education, multi-faceted education, multi-dimensional environmental education and broad education are used interchangeably. This study considers this form of environmental education to be the glue that holds together the participatory rights in Principle 10 of the Rio Declaration and similar regional documents in order for these rights to collectively contribute to environmental sustainability.

Understanding the high premium Africans place on general education is essential to understanding why this study considers that a right to broad education can produce positive environmental results in countries in Africa. Despite the many socio-economic and environmental problems countries in Africa have to contend with, several

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<sup>21</sup> See also, United Nations Convention Against Corruption, art. 6(1)(b), *opened for signature* Dec. 9, 2003, G.A. Res. /58/422, U.N. Doc. A/58/422 (2003) [hereinafter U.N. Convention against Corruption], *available at* <http://www.unodc.org/unodc/en/treaties/CAC/index.html> (last visited Sept. 5, 2009) (setting out goals to fight corruption in all its forms and to promote transparent, honest and open governance); see also USAID-MSI, *Corruption and the Environment* (Nov. 2002) (by Svetlana Winbourne), for a detailed discussion of the impacts corruption has on environmental governance, particularly as it concerns natural resources, and for recommendations on ways to combat public sector corruption in the environment sector.

African countries are reportedly on target to meet MDG 2, which is the target for providing primary education for all people. Although 0% is the target for poverty, a finding in the 2010 Human Development Report that Nigeria's poverty index score was 42.4% for the percentage of the Nigerian population said to be suffering from a severe deprivation in education (based on an assessed period of 2000-2008) compared with the figures for health (59.5%) and standard of living (72.1%) shows that Nigerians fared better in the area of education. The destructive effect of corruption is also felt in the education sector. In a key ruling discussed by commentators, the Community Court of Justice of the Economic Community of West African States determined that corruption has negative impacts on education and reproved the Nigerian government for not making sure that the right to basic education at no cost is enjoyed by all in Nigeria.<sup>22</sup> To facilitate effective public participation in environmental matters, this author argues that the environmental procedural rights structure set out in international and regional instruments like the Rio Declaration, Aarhus Convention<sup>23</sup> and African Union instruments on the environment<sup>24</sup> need to be strengthened with a fourth rights pillar in the form of a right of access to broad environmental education. This study focuses primarily on informal mechanisms for promoting a right of access to broad education.

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<sup>22</sup> See Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v. The Federal Republic of Nigeria and Universal Basic Education Commission (UBEC), Suit No. ECW/CCJ/APP/12/07, Judgment No: ECW/CCJ/JUD/07/10 (2010), *available at* [http://www.worldcourts.com/ecowasccj/eng/decisions/2010.11.30\\_SERAP\\_v\\_Nigeria.htm](http://www.worldcourts.com/ecowasccj/eng/decisions/2010.11.30_SERAP_v_Nigeria.htm) (last visited Nov. 8, 2011) (ruling that a party has an actionable right to basic education).

<sup>23</sup> Aarhus Convention, *supra* note 16.

<sup>24</sup> See, e.g., African Convention on Nature and Natural Resources, art. XVI, OAU Doc. CAB/LEG/24.1, (1968) [hereinafter African Nature Convention I], *available at* [http://www.african-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Convention\\_Nature%20&%20Natural\\_Resources.pdf](http://www.african-union.org/official_documents/Treaties_%20Conventions_%20Protocols/Convention_Nature%20&%20Natural_Resources.pdf) (last visited Sept. 7, 2011). The African Nature Convention I does not guarantee a right of access to public participation in environmental decision-making but Article XVI mandates that African countries collaborate to achieve the goals of the instrument.

This study also argues that environmental injustices at the international level have prevented African countries from achieving environmental sustainability. The argument of historian and world religions scholar Richard Foltz, who recounts the position of philosopher Ramachandra Guha that industrialized countries often support and promote the adoption and implementation of foreign environmental protection and nature conservation measures in less-developed and poorer countries without taking into account the socio-cultural and historical background of such countries and then end up exploiting the resources of the poorer countries, lends support to this study's position that environmental injustices are an obstacle to the development of developing countries in Africa.<sup>25</sup> In the same way that the New International Economic Order sought to close the economic divide that existed and still exists between developed and developing countries this study argues that an international environmental justice legal regime is necessary in order for African countries to make advances towards environmental sustainability. This international justice legal order will require, among other things, fairness and equity in resolving global environmental problems and that the global environment is safe-guarded for all countries. Considering that international environmental instruments like the U.N. Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, require that States Parties pay special attention to the situation in Africa,<sup>26</sup> that the U.N. Framework Convention on Climate Change promotes strategies to protect the climate order for current and future generations based

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<sup>25</sup> ISLAM AND ECOLOGY: A BESTOWED TRUST, xxxix (Richard C. Foltz et al. eds., 2003).

<sup>26</sup> United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, *opened for signature* October 14, 1994, 1954 U.N.T.S. 3, 33 I.L.M. 1328 (1994) [hereinafter Desertification Convention].

on fairness in the implementation of the instrument,<sup>27</sup> that the entire region of Africa is considered to be a developing region in the U.N. system, and that important global non-legally binding instruments like the Rio Declaration call for special attention to be given to the plight of developing countries, particularly the least developed and those most environmentally exposed, this study is focused on developing countries in Africa, using the Federal Republic of Nigeria, or Nigeria as it is often called, as the case study.

## **1.2: Statement of the Problem**

Nigeria is situated in the western part of Africa and is reportedly the most densely populated country in Africa and is one of the major oil producing countries in the world. Reports indicate that, Nigeria, like many African countries, has significant socio-economic and environmental problems. According to regional reports, the West African region has not made sufficient progress towards MDG 7.<sup>28</sup> According to a UNECA report, as of 2005 Nigeria was responsible for approximately 78.4% of the 145.3 million metric tons of carbon dioxide emissions in the West African Region.<sup>29</sup> It is clear from environmental reports on Nigeria that excessive oil and gas exploration and production activities have caused deplorable environmental conditions in the Niger Delta region.

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<sup>27</sup> United Nations Framework Convention on Climate Change, art. 3, *opened for signature* June 4, 1992, 1771 U.N.T.S. 107, 31 I.L.M. 849, (1992), [hereinafter Climate Change Convention].

<sup>28</sup> See United Nations Economic Commission for Africa, *Ensuring Environmental Sustainability in West Africa (MDG 7)*, ECA-WA/ICE.13/2010/3 (2010) (concluding that West Africa is one of the regions in the world that is most sensitive to the impacts of climate change) (last visited Nov. 22, 2011); see United Nations Economic Commission for Africa/African Union/African Development Bank, *Assessing Progress in Africa Towards the Millennium Development Goals: MDG report 2009 3*, (2010) (concluding that Climate Change is a major obstacle for the achievement of MDG 7 in Africa), see UNECA/AU/ADB/UNEP, *Assessing Progress in Africa Towards the Millennium Development Goals: MDG Report 2010 52* (2010) (concluding that the cost of responding to climate change will hinder the progress of African countries towards MDG 7). For an assessment of the progress African countries are making towards the MDGs, see UNECA/AU, *Report on Progress in Achieving the Millennium Development Goals (MDGs) in Africa* (2011), available at <http://www.uneca.org/cfm/2011/documents/English/Report-onProgress-inAchievingMDGs-inAfrica.pdf> (last visited Nov. 22, 2011).

<sup>29</sup> UNECA, *Ensuring Environmental Sustainability in West Africa (MDG 7)* 15, ECA-WA/ICE.13/2010/3 (2010).



However, despite Nigeria's oil wealth, many Nigerians are said to be living at or below the poverty level. The poverty indicator in the 2010 Human Development Report shows that the percentage of the population in Nigeria (2000-2008) suffering from what is referred to as "multi-dimensional poverty" was 63.5%.<sup>30</sup> According to a MDG report, decades of oil exploration and associated activities in Nigeria's Niger Delta region have caused severe damage to ecosystems, loss of biological and species diversity, degraded and depleted natural resources.<sup>31</sup> A U.S. CIA Report on Nigeria asserts that Nigeria's income from its "petroleum-based economy" has been wasted as a consequence of corrupt practices and mismanagement of funds in Nigeria.<sup>32</sup> According to a recently-released UNEP report of its findings on the environmental pollution of the *Ogoni* Region of Rivers State, Nigeria (*Ogoniland*), unlawful oil bunkering, vandalism of oil pipelines and other intentionally destructive activities targeted at oil installations have also contributed to oil pollution in the Niger Delta region.<sup>33</sup> According to this UNEP report, weak enforcement of environmental laws and regulations, underfunded institutions with duplicative roles, a dearth of environmental information, and the limited capacity of the regulatory bodies have also contributed to the environmental degradation in the Niger Delta region.<sup>34</sup> In 2008 and 2009, Amnesty International assessed the environmental, socio-economic development and human rights problem in the Niger Delta region of Nigeria. The findings of the Amnesty International researchers indicate that

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<sup>30</sup> See UNDP, *Multidimensional Poverty Index*, [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Table5\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Table5_reprint.pdf) (last visited Sept. 13, 2011), for the 2010 multi-dimensional poverty index country rankings.

<sup>31</sup> United Nations Development Group, *National Millennium Development Goals Report-Nigeria* (2004).

<sup>32</sup> Central Intelligence Agency-United States of America, *The World Fact Book* online, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html#Intro> (updated October 21, 2011) (last visited Nov. 8, 2011).

<sup>33</sup> UNEP, *Environmental Assessment of Ogoniland* 9, 101-4, Doc. No. DEP/1337/GE (2011).

<sup>34</sup> *Id.* at 9.

environmental problems of a substantive and procedural nature have hindered the full realization of human rights in the Niger Delta region. According to the Amnesty International researchers, a lot of the EIA information they requested from federal and state public officials in Port Harcourt, Rivers State, was not provided to the researchers and insufficient or no explanation was given as to why the information could not be produced.<sup>35</sup> It is therefore not unreasonable to suggest that the dearth of information and the absence of institutional knowledge have prevented people in the Niger Delta region of Nigeria from finding lasting solutions to environmental problems in this region. This study considers that the activities of transnational corporations in developing countries in Africa have created a disproportionate environmental burden on such developing countries, hindering their ability to achieve environmental sustainability.<sup>36</sup> This study argues that the absence of a participatory environmental rights legal framework in the form prescribed in this study hinders the ability of developing countries in Africa, including Nigeria, to achieve environmental sustainability.<sup>37</sup>

### **1.3: Research Thesis**

The first part of this study's hypothesis is that a right of access to broad environmental education is a required fourth pillar of the participatory environmental rights model set out in Principle 10 of the Rio Declaration and similar regional provisions in order for such rights paradigm to promote environmental sustainability in the African region. The operating premises of this hypothesis are that sound environmental

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<sup>35</sup> Amnesty International, *Nigeria: Petroleum, Pollution and Poverty in the Niger Delta* 51, Index: AFR 44/017/2009 (June 2009).

<sup>36</sup> See generally Richardson, Benjamin J., Ikechi Mgbeoji & Francis Botchway, *Environmental Law in Post-colonial Societies: Aspirations, Achievements and Limitations*, in ENVIRONMENTAL LAW FOR SUSTAINABILITY: A READER 436-43 (Benjamin J. Richardson & Stepan Wood, eds.) (2006).

<sup>37</sup> International instruments like Agenda 21 call for the participation of different segments of society in achieving sustainable development, and this study considers that environmental sustainability is needed for sustainable development to be achieved.

governance is needed to achieve environmental sustainability as it enables countries to take necessary actions to address environmental problems; that corruption promotes bad governance; that effective public participation in environmental matters promotes sound governance in the field of the environment by expanding the knowledge base for decision-making, promoting environmental justice, and ensuring that the environmental decision-making process is transparent; that an aware and “well-informed public” is needed for effective public participation in environmental matters and to fight corruption; and that the expansive public participatory rights model proposed in this study promote effective public participation in environmental matters by providing people with the awareness, knowledge, understanding and impetus to take action to prevent and respond to environmental problems and to combat corruption. Support for the first pillar of this study’s thesis is found in multiple global environmental indexes,<sup>38</sup> such as the 2005 ESI, which measures environmental sustainability in countries around the world using multiple indicators to assess sociopolitical and environmental viability, and the 2004 EVI which considers a myriad of environmental issues and factors to measure the resilience of the environment in countries, and also in international instruments, such as the Belgrade Charter, the Rio and Millennium Declarations, the Revised African Nature Convention

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<sup>38</sup> See Yale Center for Environmental Law & Policy (YCELP) and the Center for International Earth Science Information Network (CIESIN) of Columbia University, *2005 Environmental Sustainability Index: Benchmarking National Environmental Stewardship* (2005) (assessing past, present and projected environmental and socio-economic conditions in a country); see also SOPAC/UNEP, [http://www.vulnerabilityindex.net/EVI\\_Indicators.htm](http://www.vulnerabilityindex.net/EVI_Indicators.htm) (last visited Nov. 22, 2011) (assessing the potential of future impacts to a country’s natural environment). Based on the elements for an environmental sustainability evaluation in the 2005 ESI, it is reasonable to suggest that a country is more likely to achieve environmental sustainability if, among other things, the population of a country have the information, understanding and knowledge, skills and opportunity to effectively respond to environmental issues, and the governments cooperate and work together to address common global environmental problems. The EPI, which was developed in 2006 to replace the ESI, measures the advancement of a country towards environmental protection goals.

and Agenda 21 and contributions of writers who promote a right to environmental education and environmental justice.<sup>39</sup>

The second part of this study's hypothesis is that global environmental justice is required for developing countries in Africa to achieve environmental sustainability.<sup>40</sup> The operating premises of this argument are that international cooperation in the use and management of shared environmental resources is necessary for environmental sustainability at the national level and international environmental justice enables such collaboration by requiring, among other things, that countries work together in the exploitation, protection, management, restoration and improvement of common environmental resources; that States end the illegal dumping of dangerous waste in countries that can't properly manage and dispose of such wastes; that developed countries provide financial and other assistance to developing countries in Africa so they can comply with their international environmental obligations and commitments; and that global environmental problems are resolved in a prompt and fair manner.

The study has taken into account that scholars, such as Birnie and Boyle, are of the view that there is insufficient factual information or tangible evidence to show that involving the public in decision-making pertaining to the environment engenders positive

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<sup>39</sup> Millennium Declaration, *supra* note 3; Rio Declaration, *supra* note 11; UNESCO-UNEP, International Workshop on Environmental Education, Belgrade Yugoslavia, Oct. 13-22, 1975, UNESCO Doc. ED-76/WS/95, *Belgrade Charter: A Global Framework for Environmental Education* [hereinafter *Belgrade Charter*], available at [http://portal.unesco.org/education/en/file\\_download.php/47f146a292d047189d9b3ea7651a2b98The+Belgrade+Charter.pdf](http://portal.unesco.org/education/en/file_download.php/47f146a292d047189d9b3ea7651a2b98The+Belgrade+Charter.pdf) (last visited Nov. 8, 2011). See also, UNESCO-UNEP, *Final Report of the International Workshop on Environmental Education*, October 13-22, 1975, ED-76/WS/95, available at <http://unesdoc.unesco.org/images/0002/000276/027608eb.pdf> (last visited Nov. 8, 2011) (providing different strategies to promote environmental education around the world). The caveat to the first pillar of this study's hypothesis is that a "one size fits" all approach for promoting environmental sustainability is inappropriate for the circumstances of developing and least developed countries in Africa.

<sup>40</sup> For the environmental sustainability country rankings, see YCELP-CIESIN, *Environmental Sustainability Index* (2005), available at [http://epi.yale.edu/file\\_columns/0000/0008/epi-2010.pdf](http://epi.yale.edu/file_columns/0000/0008/epi-2010.pdf) (last visited Nov. 22, 2011).

environmental outcomes except by inference from a country's perceived weakness in maintaining, protecting, restoring and improving the environment and weak socio-economic development.<sup>41</sup> Therefore, to determine how a country has fared in protecting, restoring and enhancing the environment, this study looked at several global reports and indexes that measure socio-economic and environmental progress around the world, including the HDI,<sup>42</sup> ESI,<sup>43</sup> EPI, CPI and the Ibrahim Index of African Governance,<sup>44</sup> and paid particular attention to Nigeria's rankings on these global and regional indexes.<sup>45</sup>

#### **1.4: Purpose of the Study**

This study attempts to build upon the work of scholars who have made significant contributions to the evolving environmental human rights law, especially procedural environmental human rights, and to the international environmental justice debate, including Robinson, Anderson, Richardson, Sands, Razzaque, Kiss, Birnie, Bosselmann, Bruch, Ebbesson, Shelton, Boyle, Churchill, Du Plessis, by strengthening the procedural

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<sup>41</sup> See ARD Inc. under contract with USAID, *Nigeria: Environmental Analysis: Final Report* (April 2002) (finding that political and institutional limitations are a key cause of environmental deprivation in Nigeria).

<sup>42</sup> See, e.g., UNDP, *Human Development Statistical Tables* (2010), available at [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Tables.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Tables.pdf) (last visited Nov. 22, 2011); see also UNDP, *Human Development Report 2011: Sustainability and Equity: A Better Future for All*, available at <http://hdr.undp.org/en/reports/global/hdr2011/download/> (last visited Nov. 15, 2011) (concluding that environmental sustainability, justice, equity and fairness are essential for advancing freedoms for people now and in succeeding generations). Although, this report is focused on inequality at the national level and this study is focused on inequality at the international level, it provides support for this study's position that environmental sustainability is critical for human development.

<sup>43</sup> See YCELP-CIESIN, *supra* note 40.

<sup>44</sup> See Mo Ibrahim Foundation, *Ibrahim Index of African Governance* (2010), available at [http://www.moibrahimfoundation.org/en/media/get/20101108\\_eng-table-iiag2010-revised.pdf](http://www.moibrahimfoundation.org/en/media/get/20101108_eng-table-iiag2010-revised.pdf) (last visited Nov. 22, 2011); see Transparency International, *Corruption Perception Index* (2009), [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2009/cpi\\_2009\\_table](http://www.transparency.org/policy_research/surveys_indices/cpi/2009/cpi_2009_table) (last visited Nov. 22, 2011). While the Ibrahim Index of African Governance evaluates the quality of governance in African countries paying particular attention to how public officials and private parties provide benefits and services to the people in a country, the CPI assesses the level and pervasiveness of corruption in the public sector of countries around the world.

<sup>45</sup> Nigeria consistently fared poorly on indexes that track environmental sustainability, environmental performance, environmental vulnerability, corruption and human development.

rights structure in Principle 10 of the Rio Declaration and similar provisions and promoting international environmental justice.

This study attempts to answer the following questions:

What are the key international and regional environmental and human rights instruments that may be used to secure substantive and procedural environmental rights? What are the major international and regional laws that may be used to secure a right of access to environmental education proposed in this study? Are there adequate national laws in Nigeria that implement Principle 10 of the Rio Declaration and guarantee a right of access to broad environmental education in Nigeria? Is there authority at the international level for developing an international environmental justice legal regime?

### **1. 5: Importance of the Study**

The research on participatory environmental rights is innovative and unique because it builds on existing studies on procedural environmental rights by: examining procedural environmental rights law through the lens of major and not as widely recognized international and regional instruments on the environment, human rights, development and UNESCO instruments; assessing Nigeria's fulfillment of its commitments to implement the procedural environmental rights set out in Principle 10 of the Rio Declaration; proposing the addition of broad environmental education as an integral component and fourth pillar of the procedural environmental rights structure set out in Principle 10 of the Rio Declaration and similar instruments; calling for an international environmental justice legal regime; and developing a legal roadmap for protecting and promoting procedural environmental rights for developing countries in

Africa using Nigeria as a model for similarly situated African countries and promoting international environmental justice.

Scholars and students, particularly those interested in environmental, education, development and human rights laws; international and regional bodies, particularly the AU, UNECA, UNEP, UNDP, UNESCO, WHO, World Bank, NEPAD, ECOWAS, AMCEN; the Nigerian government; civil society in Nigeria and the Nigerian public; other African governments and people; and the progressive environmental justice movement, will find this study significant. I expect my work will serve as a blueprint for the development of effective procedural environmental rights laws in the African region.

#### **1.6: Delimitations**

This study is essentially a theoretical evaluation. The rationale for this type of study is that this author supports the view that a law is only as effective as its weakest part. Therefore inadequately developed laws will have limited effectiveness when implemented. This study has taken into account that international documents, such as UNEP's Montevideo Programme and Agenda 21, recommend that laws and policies need to be constantly assessed, improved and strengthened. While recognizing the importance and application of numerous laws at all levels of government in Nigeria, this study is primarily focused on major laws, regulations, policies and plans adopted at the national level in Nigeria during the period 1988 to 2009. Major developments in law and policy at the international, regional and national levels outside the period of review will be discussed as warranted. Although directly relevant to this study, an extensive discussion of environmental governance, environmental sustainability and sustainable development, is outside the scope of this study.

## **1.7: Research Methodology**

Research methodology includes but is not limited to a survey and study of relevant literature, including books, periodicals, scholarly journals, and drafts and approved dissertations related to the study, interviews with relevant stakeholders in Nigeria, and field trips to Nigeria as the author deemed necessary.<sup>46</sup>

## **1.8: Structure of the Study**

This paper is divided into seven chapters:

The first chapter introduces the subject, scope and purpose of this research. It describes the environment in Africa and discusses the environmental problems in Nigeria, the emergence of environmental human rights law at the international, regional and, domestic levels. The second chapter provides background information about Nigeria from the pre-colonial period to modern times. It discusses at length the major environmental problems in Nigeria and examines the environmental legal, regulatory, policy and institutional framework in Nigeria for protecting and improving the environment and conserving natural resources. Major Nigerian environmental laws, regulations, and policies adopted between 1988 and 2009 will be examined in this chapter. The third chapter examines major international and regional human rights instruments that may be used to guarantee substantive environmental rights at the international and regional levels. Legally binding and non-legally binding instruments will be assessed in this chapter and key domestic and regional cases on the subject will be examined. The fourth chapter discusses environmental education and public sector corruption at the international, regional and national levels. Major UNESCO documents

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<sup>46</sup> This author made field trips to Nigeria, and on one such occasion met with the then chair of the Senate environmental committee in Nigeria, staff of the Federal Ministry of the Environment in Abuja, lawyers in Nigeria and other stakeholders.



and anti-corruption instruments at the international, regional and national levels and key anti-corruption bodies will be examined. Anti-corruption education adopted in Botswana to fight corruption will be discussed as a best practice. The fifth chapter examines sources of international environmental justice. Although the concept of substantive environmental justice at the international level is the primary focus of this study, a brief assessment of procedural environmental justice at the international, regional and national levels will be discussed. An assessment of environmental injustice in the Niger Delta region of Nigeria will be carried out by means of a case study on chemical water pollution in the Niger Delta region. While the second chapter focuses on the substantive aspects of environmental rights law in Nigeria, the sixth chapter focuses on procedural environmental rights in Nigeria and assesses Nigeria's compliance with its international and regional obligations and commitments to guarantee procedural environmental rights at the national level in Nigeria. The final chapter concludes the study with a recap of what is discussed in preceding chapters and presents the author's recommendations for strengthening procedural environmental rights in Nigeria and developing an international environmental justice legal regime.

### **1.9: Definition of Key Terms**

Poverty is considered in this study in terms of the “multi-dimensional poverty index” developed by Oxford University and the UNDP and introduced in the 2010 HDR, which comprises three elements: health, living standards and education.<sup>47</sup> The use of the terms “developed” and “developing” countries in this study is intended to distinguish the richer countries of the world, which are mostly located in the northern hemisphere, from the poorer countries, mostly found in the southern hemisphere, based on the U.N.

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<sup>47</sup> UNDP, *supra* note 30.

Division of Statistics groupings of countries and regions in the world.<sup>48</sup> The fact that the U.N. Division of Statistics classifies the entire continent of Africa as a “developing region” is a reflection of the dire socio-economic and environmental problems in Africa. On the other hand, Northern America, Europe, Japan, Australia and New Zealand are considered to be “[d]eveloped regions.” It is therefore reasonable to refer to developing countries in Africa and developed countries based on the U.N. Division of Statistics classification.

Like Pring and Noe, this author is of the view that when the term “public participation” is used it may mean different things to different people but, based on its common usage in international and regional instruments, it includes, in many cases, public participation in decision-making, access to information and access to justice.<sup>49</sup> In this study, the terms public participation, public involvement, participatory rights, procedural rights in the field of the environment are used interchangeably and depending on the context, may refer to one, two or all of these access rights and the right of access to environmental education.

Grinlinton suggests that the term “environment” may be defined broadly to include all things “external to an organism” or be limited to the “surroundings of man.”<sup>50</sup> While Grinlinton considers the description of environment crucial for a good understanding of environmental law, Kiss and Shelton consider the definition of the term

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<sup>48</sup> See United Nations Department of Economic and Social Affairs, Statistics Division, *Composition of macro geographical (continental) regions, geographical sub-regions, and selected economic and other groupings*, <http://unstats.un.org/unsd/methods/m49/m49regin.htm> (last visited Nov. 22, 2011).

<sup>49</sup> George (Rock) Pring & Susan Y. Noe, *The Emerging International Law of Public Participation Affecting Global Mining, Energy, and Resources Development*, in HUMAN RIGHTS IN NATURAL RESOURCE DEVELOPMENT: PUBLIC PARTICIPATION IN THE SUSTAINABLE DEVELOPMENT OF MINING AND ENERGY RESOURCES 11-12 (Donald N. Zillman et al. eds., 2002).

<sup>50</sup> David Grinlinton, *Contemporary Environmental Law in New Zealand*, in ENVIRONMENTAL LAW FOR A SUSTAINABLE SOCIETY 20 (Klaus Boselmann & David Grinlinton eds., Nzcel monograph Series, Vol.1, 2002).

“environment” crucial to determine what is covered in the subject, the capability of domestic and international bodies and to establish the law and liability scheme that applies in the case of environmental damage.<sup>51</sup> Sands is also of the view that the definition of environment is important for reasons that are similar in many respects to those offered by Kiss and Shelton.<sup>52</sup> Sands refers to the different ways in which the term environment is used in international instruments concerning the environment, including its use in the Convention on Environmental Impact Assessment in a Transboundary Context adopted at Espoo, Finland, and the Stockholm Declaration.<sup>53</sup> At the regional level in Africa, when used in the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, the term “environment” appears to refer to the natural and man-made environment. At the domestic level in Nigeria, key national environmental laws, including a 1992 EIA law and a 2007 law establishing an agency to enforce standards and regulations in Nigeria appear to view the environment in terms of the natural environment. Considering the critical importance of nature and natural systems to the survival of humankind, and the importance of Africa’s natural environment and natural resources to the African people, when used in this study, “environment” refers to the natural environment,<sup>54</sup> including renewable and non-renewable natural resources.

In this study the term “environmental sustainability” means safe-guarding the natural environment and systems and conserving the resources of the natural environment

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<sup>51</sup> ALEXANDRE KISS & DINAH SHELTON, *MANUAL OF EUROPEAN ENVIRONMENTAL LAW* 3 (2d ed. 1997).

<sup>52</sup> See PHILLIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 15-18 (2d ed. 2003).

<sup>53</sup> See *id.*; see also Convention on Environmental Assessment in a Transboundary Context (Espoo) entered into force on September 10, 1997, 30 I.L.M. 802 [hereinafter Espoo Convention].

<sup>54</sup> U.N Millennium Project, *Interim Report: Task Force 6 on Environmental Sustainability: Interim Report* 5 (April 19, 2004).

for current and future generations, other life forms, and for its inherent value.<sup>55</sup> This purposely broad definition is not an attempt to engage in an inter-generational equity argument, but rather it attempts to highlight the myriad of life forms and systems that depend on a healthy environment.<sup>56</sup> In using this definition, this study takes into account the argument of historian Tekena N. Tamuno that sustainability as a concept is untenable when one considers the argument of the Greek philosopher *Heraclitus* that the earth is continually changing.<sup>57</sup> Although Tze-Chin Pan and Jehng-Jung Kao consider that inter-generational equity is essential to achieve environmental sustainability, and they propose an index to measure inter-generational equity and an “endowment equation” to assess the change in the environment among generations,<sup>58</sup> this author views these concepts as different sides of the same coin.<sup>59</sup> In describing environmental sustainability this study is guided by the definition in the 2005 ESI.<sup>60</sup>

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<sup>55</sup> See *id.* at 1, 2. International instruments such as the Declaration on the Responsibilities of the Present Generation to the Future Generation (Article 5), the World Charter for Nature (Part II), the Declaration of the United Nations Conference on the Human Environment (Principle 1), the Rio Declaration, (princ.7), and the Millennium Declaration (Principles 21-23) provide what may be considered to be a reasonable description of environmental sustainability. Some writers have suggested that the environmental sustainability concept “has its roots” in a Forestry Principle that asserts that a harvesting schedule should not be more than the natural growth rate. For a detailed discussion of environmental sustainability and inter-generational equity from the perspective of a child, see Intergovernmental Conference for Children in Europe and Central Asia, May 16-18, 2001, Working Group 5, Background Paper, *Intergenerational Justice and Environmental Sustainability* (2001) (by Aleg Cherp).

<sup>56</sup> See generally ANDREW DOBSON, JUSTICE AND THE ENVIRONMENT: CONCEPTIONS OF ENVIRONMENTAL SUSTAINABILITY AND THEORIES OF DISTRIBUTIVE JUSTICE 33-86 (1998) (discussing environmental sustainability and social justice concepts).

<sup>57</sup> Interview with Tekena N. Tamuno, Emeritus Professor, University of Ibadan, Nigeria, in Ibadan, Nigeria (Dec. 2009).

<sup>58</sup> Tze-Chin Pan and Jehng-Jung Kao, *Intergenerational Equity Index for Assessing Environmental Sustainability: An Example on Global Warming*, Ecological Indicators, Volume 9, Issue 4, at 725-731 (July 2009).

<sup>59</sup> See Bali Principles of Climate Justice, princs. 26, 27, *infra* note 273 (declaring intragenerational and intergenerational equity principles); see also Environmental Justice Principles, princ. 17, *infra* note 272.

<sup>60</sup> See generally YCELP-CIESIN, *supra* note 38 (providing examples of key environmental problems that are linked to industrial and economic growth such as the depletion of natural resources, particularly non-renewable types, pollution and the destruction of ecosystems).

Borrowing from the UNDP definition of governance, when used in this study the term “environmental governance” refers to the government response to and interaction between instruments of government and the general public, particularly the poor, marginalized, and vulnerable in society, and with citizen groups, in the exercise of decision-making authority in the field of the environment.<sup>61</sup> Environmental governance principles of particular relevance to this study include fairness, broad public participation, integrity and transparency in public service.<sup>62</sup>

A substantive environmental human right is considered in this study to be the right of a person now and in the future to a wholesome natural environment.<sup>63</sup>

Although writings indicate that there does not appear to be a universally accepted definition of sustainable development, French considers that sustainable development seeks to address environmental protection and human development goals and to ensure that the environment is protected and natural resources are not depleted.<sup>64</sup> This study adopts this broad definition of sustainable development.

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<sup>61</sup> UNDP, *Governance for Sustainable Development: A UNDP Policy Document* (January 1997), available at <http://mirror.undp.org/magnet/policy/chapter1.htm> (last visited January 2012); see also UNDP, UNDP and Governance: Experiences and Lessons Learned: Lessons Learned Series No. 1 (June 2006).

<sup>62</sup> See generally United Nations Development Group, *Mainstreaming Environmental Sustainability in Country Analysis and the UNDAF: A Guidance Note for United Nations Country Teams and Implementing Partners Teams* (2009) (providing guidance on how to implement environmental sustainability strategies and enhance environmental governance).

<sup>63</sup> See, e.g., U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Final Report of the Special Rapporteur, princ. 4, U.N. Doc. E/CN.4/Sub.2/1994/9, (July 6, 1994) (asserting different types of environmental human rights).

<sup>64</sup> DUNCAN FRENCH, INTERNATIONAL LAW AND POLICY OF SUSTAINABLE DEVELOPMENT 10, 24 (2005).

## **Chapter Two: Nigeria: The “Giant of Africa”?**

The previous chapter presented the background, substance, and scope of this study. Since Nigeria is the focus of inquiry in this study, this chapter provides background information on Nigeria. In this chapter, key environmental laws, regulations and policies in Nigeria will be examined for their substantive value, particularly as it relates to a substantive environmental right or environmental sustainability. An examination of the procedural environmental rights provisions of key instruments in Nigeria will be carried out in a later chapter. The purpose of the assessment of substantive environmental goals in this chapter is to provide context for this study’s procedural environmental rights assessment. This author argues that procedural environmental rights are essential for achieving environmental sustainability, and a sustainable environment is vital is essential for the enjoyment of a substantive environmental right for every person now and in the future.

### **2.1: Country Narrative**

As stated earlier, Nigeria is located in the western part of the continent of Africa. Nigeria has a storied history which includes over half a century of British colonial rule that ended when Nigeria gained independence on October 1, 1960.<sup>65</sup> At the peak of its regional dominance, Nigeria was often referred to as the “Giant of Africa,” presumably for its then socio-economic dominance and the size of its population. There are thirty-six states in present-day Nigeria and the federal capital territory of Abuja.<sup>66</sup> Nine of the thirty-six states are located in what is referred to as the Niger Delta region of Nigeria,

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<sup>65</sup> See A.O OBILADE, *THE NIGERIAN LEGAL SYSTEM* (1979); A.W. PARK, *THE SOURCES OF NIGERIAN LAW* (1963); JUDICIAL AND LEGAL SYSTEMS IN AFRICA, (A.N. Allot ed. 1970).

<sup>66</sup> CONSTITUTION OF NIGERIA (1999), §§ 2-3.

namely *Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo* and Rivers states. A UNDP report refers to these states as the oil-producing states in Nigeria.<sup>67</sup> Nigeria's total area is approximately 923, 768 square kilometers with the Atlantic Ocean bounding Nigeria to the south, the Republic of Niger to the North, the Republic of Chad to the north-East, the Republic of Cameroon to the east, and the Republic of Benin on its western side.<sup>68</sup> The Niger River, a major river in Africa, runs through Nigeria with its delta covering the Niger Delta states.<sup>69</sup> The total area that comprises the Niger Delta region is said to be approximately 112,000 square kilometers.<sup>70</sup>

According to OPEC records, Nigeria has the largest confirmed unrefined oil reserves in the southern part of Africa with approximately 37.20 billion barrels of confirmed reserves (2010).<sup>71</sup> A policy document in Nigeria confirms that the bulk of Nigeria's oil exploitation activities are conducted in the Niger Delta region.<sup>72</sup> Instead of being a catalyst for development in Nigeria, writings and reports show that the exploitation of oil and gas resources in the Niger Delta region has caused severe environmental damage, particularly in *Ogoniland*, River State. The socio-economic costs of oil and gas resources in Nigeria are reflected in the comments of International economics and development expert Arvind Subramanian that the extreme reliance on oil

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<sup>67</sup> UNDP, *Niger Delta Human Development Report 1*, (2006), available at [http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/nigeria\\_hdr\\_report.pdf](http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/nigeria_hdr_report.pdf) (last visited Sept. 9, 2011). *see* Niger Delta Development Commission, *Niger Delta Regional Development Master Plan* 49-51 (2006); *see* NDDC (Establishment) Act 2000 (Nigeria) (establishing the Niger Delta Development Commission, with a mandate to ensure the development of the Niger Delta Region). A Ministry of Niger Delta Affairs was established in 2008 to oversee the activities of Niger Delta development bodies like the NDDC.

<sup>68</sup> UNEP, *supra* note 33, at 20.

<sup>69</sup> *Id.*

<sup>70</sup> *See* NDDC, *Niger Delta Regional Development Master Plan*, *supra* note 67, at 49.

<sup>71</sup> Approximately 3.1% of OPEC proven global crude oil reserves shares are attributable to Nigeria, [http://www.opec.org/opec\\_web/en/data\\_graphs/330.htm](http://www.opec.org/opec_web/en/data_graphs/330.htm) (last visited Sept. 9, 2011).

<sup>72</sup> *See* National Energy Policy (Nigeria) (April 2003) [hereinafter Energy Policy] (asserting that Nigeria's over-reliance on oil has resulted in lack of progress in the development of other energy sources).

earnings in Nigeria has undermined its economic growth and caused a natural resources burden on the country.<sup>73</sup> A UNDP assessment of the Niger Delta region lends support to Subramanian's assessment of the socio-economic costs of oil and gas resources in Nigeria with a finding that historically the Niger Delta region has not enjoyed the benefits that should come with oil wealth.<sup>74</sup> According to a national report on the Niger Delta, approximately 40 million people (2015 projected figure) of the estimated 150 million people in Nigeria reside in the Niger Delta region.<sup>75</sup>

Despite enormous environmental, socio-economic and political challenges, the size of its population today, estimated to be nearly 150 million, may be one reason why Nigeria can still be referred to as the "Giant of Africa," although this author considers it to be more like a "limping giant." The socio-cultural make-up of Nigeria, with ethnic groups numbering in the hundreds, multiple languages, and multiple religious beliefs and local traditions and practices, may be another reason why Nigeria was once considered to be the "Giant of Africa."<sup>76</sup> The three major languages spoken in Nigeria are Hausa spoken mostly in the northern part of Nigeria, Igbo in the southeast, and Yoruba in the southwest. However, a legacy from its colonial past is that English remains the official language in Nigeria. Reportedly about forty percent of Nigerians are Christians, fifty percent are Muslims and the remainder of the population practice traditional African beliefs.<sup>77</sup> This author considers that the figure for Christians is slightly higher than forty percent and the traditional beliefs lower than ten percent.

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<sup>73</sup> Arvind Subramanian, *Addressing the Natural Resource Curse: An Illustration from Nigeria*, NBER Working Paper No. 9804 (2003).

<sup>74</sup> UNDP, *supra* note 67, at 9.

<sup>75</sup> See NDDC, *supra* note 67, at 54.

<sup>76</sup> UNEP *supra* note 33, at 20.

<sup>77</sup> See CIA-USA, *supra* note 32.



Nigerian environmental law scholar Oludayo Amokaye considers that centuries before the environmental rights debate at the international level, or the formulation of a sustainable development principle, local traditions, customs, processes and procedures existed to protect and safeguard the environment and conserve natural resources for current and future generations of Nigerians.<sup>78</sup> Amokaye gives examples of local practices of the Yoruba people in Nigeria to preserve land for future generations of a family, including a farming practice to cultivate land based on different uses, personal and commercial, a practice this author considers to be a practical land preservation measure.<sup>79</sup> Another unique practice Amokaye emphasizes is what he considers to be a century-old forestry practice of the Yoruba people that this author is personally familiar with not to take down certain types of trees which are believed to have cultural and spiritual significance to the people, such as the *Iroko* tree.<sup>80</sup> Adeh, on the other hand, discusses the traditional practices of some communities in the Niger Delta region to protect forests and birds.<sup>81</sup> This author views such traditional forestry practices as practical forest conservation measures that will no doubt be applauded today by the States Parties to the Forest Principles developed at the Rio Conference. This author considers that Principle 2(b) of the Forest Principles promotes environmental sustainability in requiring that forest resources and lands are to be managed in a sustainable manner in order to satisfy the socio-economic, cultural ecological, “and

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<sup>78</sup> OLUDAYO G. AMOKAYE, ENVIRONMENTAL LAW & PRACTICE IN NIGERIA 6-10 (2004).

<sup>79</sup> *Id.* at 7-10.

<sup>80</sup> *Id.* at 8.

<sup>81</sup> IGNATIUS ADEH, CORRUPTION AND ENVIRONMENTAL LAW: THE CASE OF THE NIGER DELTA 74-75 (2010).

spiritual needs of present and future generations.”<sup>82</sup> The communities in the eastern and northern parts of Nigeria also have unique traditional and local practices to protect the environment and conserve natural resources that are similar in some aspects to the practices mentioned above.

## **2.2: Environmental Legal and Policy Framework**

Nigeria is a party to several international and regional instruments that seek to address issues concerning the environment, socio-economic development, and education and to protect and promote human rights, including the Universal Declaration of Human Rights,<sup>83</sup> the Declaration of the U.N. Conference on the Human Environment,<sup>84</sup> the Rio Declaration,<sup>85</sup> the World Charter on Nature,<sup>86</sup> the African [Banjul] Charter on Human and Peoples’ Rights,<sup>87</sup> the African Convention on the Conservation of Nature and Natural Resources (1968),<sup>88</sup> Agenda 21,<sup>89</sup> and the Convention on Wetlands of International Importance especially as Waterfowl Habitat.<sup>90</sup> Nigeria has signed the Revised African

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<sup>82</sup> U.N. Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all types of Forests, U.N. Doc. A/CONF.151/26 (Vol. III) (1992), *available at* <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> (last visited Sept. 10, 2011).

<sup>83</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

<sup>84</sup> Declaration of the United Nations Conference on the Human Environment, U.N. Doc. A/CONF.48/14/Rev. 1(1973), 11 I.L.M. 416 (1972) [hereinafter Stockholm Declaration]. Nigeria and some other African countries, including Botswana, Kenya, South Africa and the United Republic of Tanzania, participated in the conference. For the list of signatories to the Stockholm Declaration, *see* <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=97&ArticleID=1519&l=en> (last visited Sept. 10, 2011).

<sup>85</sup> Rio Declaration, *supra* note 11. Nigeria signed the Rio Declaration on June 13, 1992 and ratified it on August 29, 1994.

<sup>86</sup> World Charter for Nature, *supra* note 5.

<sup>87</sup> African [Banjul] Charter on Human and Peoples’ Rights, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58, 59 [hereinafter African Charter on Human Rights] Nigeria signed the African Charter on Human Rights on August 31, 1982 and ratified it on June 22, 1983.

<sup>88</sup> African Nature Convention I, *supra* note 24. Nigeria signed the 1968 African Nature Convention I on September 15, 1968, and ratified it on April 2, 1974.

<sup>89</sup> Agenda 21, *supra* note 12.

<sup>90</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitats, Feb. 2, 1971, 996 U.N.T.S. 245, 11 I.L.M. 963 (1972) [hereinafter Ramsar Convention], *available at* <http://www.ramsar.org/cda/en/ramsar-documents-texts-convention-on/main/ramsar/1-31->

Nature Convention but like many member countries of the African Union has not ratified it.<sup>91</sup> Also, Nigeria has enacted key legally binding and non-legally binding international and regional human rights instruments into national laws.<sup>92</sup> This author considers international instruments like the Rio Declaration and Stockholm Declaration to provide, at a minimum, persuasive authority for recognizing substantive and/or procedural environmental rights in Nigeria. In the examination of environmental laws that follows, this study adopts the format Amokaye uses in his examination of the principal laws, policies and plans on the environment and natural resources in Nigeria. For a detailed exposition on the international and regional environmental instruments that influence environmental laws in Nigeria, this author refers the reader to Amokaye's work on environmental protection law in Nigeria. Other than to note that Nigeria has a program to address oil spills in the country, enunciated in a National Oil Spill Contingency Plan, that the national body set up to administer the oil spill response program is called the National Oil Spill Detection and Response Agency, established pursuant to the National Oil Spill Detection and Response Agency (Establishment Act),<sup>93</sup> and that Nigeria has an energy policy laid out in the National Energy Policy, which has a stated goal of using such

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38%5E20671\_4000\_0\_\_ (last visited Sept. 10, 2011). Nigeria acceded to the Ramsar Convention on October 31, 2000.

<sup>91</sup> Revised African Nature Convention, *supra* note 6. Nigeria signed the Revised African Nature Convention on December 16, 2003.

<sup>92</sup> See, e.g., International Trade in Endangered Species of Wild Fauna and Flora, *opened for signature* March 3, 1973, 993 U.N.T.S. 243 12 I.L.M. 1085 (1973) [hereinafter CITES]. Nigeria is a party to CITES and has enacted the Endangered Species (Control of International Trade and Traffic) Act [Decree No. 11 of 1985] into Nigerian law. The stated purpose of this national legislation is to conserve and manage wild life in Nigeria, and safeguard rare species in Nigeria in accordance with international law. Nigeria is a party to the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 as Amended (Ratification) Act 2006, and has enacted the International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act, 2006. See Rotterdam Convention, *infra* note 246. Nigeria is a party to the Rotterdam Convention and has enacted the Treaty to Establish Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (Ratification and Enforcement) Act, 2005.

<sup>93</sup> National Oil Spill Contingency Plan (2000); see also National Oil Spill Detection and Response Agency (Establishment) Act, 2006.

resources in a sustainable manner that is not harmful to environment, humans and other life forms on earth,<sup>94</sup> a detailed assessment of these instruments is beyond the scope of this study. In addition to the 1999 Nigerian Constitution, key instruments related to the environment adopted during the period of review for this study at the national level include but are by no means limited to the following:

- Harmful Waste (Special Criminal Provision) Act, 1988;<sup>95</sup>
- Federal Environmental Protection Agency Act 1988 as amended.<sup>96</sup> The Federal Environmental Protection Agency Act has been repealed by the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, 2007;<sup>97</sup>
- African Charter on Human and Peoples Rights (Ratification and Enforcement) Act;<sup>98</sup>
- National Environmental Protection (Effluent Limitation) Regulations 1991;<sup>99</sup>
- National Environmental Protection (Pollution Abatement in Industries and facilities Generating Wastes) Regulations 1991;<sup>100</sup>
- Environmental Impact Assessment Act, 1992;<sup>101</sup>

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<sup>94</sup> Energy Policy, *supra* note 72. It is stated in the Energy Policy that pollution and the removal or loss of forest resources are some of the negative consequences of production, supply and use of energy in Nigeria and it lays out strategies to address such energy problems.

<sup>95</sup> Harmful Waste (Special Criminal Provision) Act, Cap. H1 2004 [hereinafter Harmful Waste Act].

<sup>96</sup> Federal Environmental Protection Agency Act, Cap. F10, Vol.1, 2004 [hereinafter FEPA Act].

<sup>97</sup> National Environmental Standards and Regulations Enforcement Agency (Establishment) Act, Cap. N164, Vol. 12, 2004 [hereinafter NESREA Act].

<sup>98</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Cap. A9, Vol. 1, 2004 (enacts the African Charter on Human Rights into Nigerian law).

<sup>99</sup> National Environmental Protection (Effluent Limitation) Regulations S. 1.8 of 1991, Official Gazette Federal Republic of Nigeria No 42, Vol. 78, August, 1991 [hereinafter Regulation 1.8].

<sup>100</sup> National Environmental Protection (Pollution Abatement in Industries and Facilities Generating Wastes) Regulations S.1.9 of 1991 [hereinafter Regulation 1.9]; *see also*, National Guidelines and Standards for Environmental Pollution Control (1991) (applies to the industrial and agricultural sector in Nigeria).

<sup>101</sup> Environmental Impact Assessment Act, Cap. E 12, Vol. 6, 2004 [hereinafter EIA Act].

- National Environmental Protection Management of Solid and Hazardous Wastes Regulations, 1991;
- National Policy on the Environment (Revision, 1999);<sup>102</sup>
- Nigeria’s National Agenda 21; and
- National Action Plan for the Promotion and Protection of Human Rights in Nigeria: 2009-2013.

### **2.2.1: The Nigerian Constitution**

As this author has previously stated, without an easily understood purpose and goal as an inspiration for individual and collective action, a group of people perish.<sup>103</sup> The 1999 Nigerian Constitution is the supreme law of the country and it enunciates the civil, political, environmental, economic, social, and cultural national policy for Nigeria, guarantees fundamental human rights and duties for all Nigerians, sets forth the obligations of the different branches of government, and at least on paper affirms the federation status of Nigeria based on a three tier system of government.<sup>104</sup> The local government system is established pursuant to Section 7 of this Constitution and the duties of a local government authority are set out in the “Fourth Schedule” of the 1999 Nigerian Constitution.<sup>105</sup> International and regional treaties and non-legally binding instruments also play an important part in the development of national legislation in Nigeria, to a greater degree when legally binding instruments have been implemented into the domestic laws of Nigeria. Under Section 12(1) of the 1999 Nigerian Constitution,

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<sup>102</sup> See Draft National Policy on the Environment (Revised Edition) (1999) [hereinafter Revised Environmental Policy].

<sup>103</sup> Alali M. Tamuno, *Nigeria: The Constitution as Catalyst for Change in the Niger Delta*, This Day Newspaper (Law & Judiciary Section, November 27, 2007).

<sup>104</sup> CONST. OF NIGERIA (1999), §§ 1(1) & 2(2). The 1999 Nigerian Constitution was amended in 2010.

<sup>105</sup> *Id.*, Fourth Schedule, §2.

treaties Nigeria has signed and ratified must be implemented into Nigerian law in order to take effect in Nigeria.<sup>106</sup> Chapter II of the 1999 Nigerian constitution lays out the educational, economic, political, social, foreign policy, and environmental goals for the country and the duties of Nigerians to their country (“Fundamental Objectives”). Pursuant to Section 13 of the 1999 Constitution government officials in Nigeria are called upon to respect and put into effect the Fundamental Objectives, and for Nigerians to, among other things, contribute to the advancement, health, and progress of their respective communities (Section 24(d)). Fundamental Objectives particularly relevant to this study include the environmental goal for key environmental resources in the country to be safeguarded and enhanced (Section 20), which in this author’s calls for the long-term protection and improvement of the environment in Nigeria; a political objective that requires that all forms of “corrupt practices and abuse of power” be abolished (Section 15(5)); and the economic objectives to encourage planned and steady economic growth and the use of key resources of Nigeria to the greatest extent possible for the good of all Nigerians (Section (2)(a) and (b)). As Okorodudu-Fubara points out, the 1999 Nigerian Constitution does not directly guarantee a substantive right to the environment.<sup>107</sup> This study considers this failure to recognize a substantive environmental right to be a weakness of the 1999 Nigerian Constitution. An underlying weakness of the 1999 Nigerian Constitution that numerous writers and constitutional scholars point to is that the provisions of Chapter II of the Nigerian constitution are not considered to be legally enforceable because Section 6(c) of the 1999 Nigerian constitution excludes from judicial review those matters covered in Chapter II of this primary law of Nigeria. This style of

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<sup>106</sup> *Id.* § 12(1). The National Assembly in Nigeria is given the responsibility to enact into Nigerian law a treaty Nigeria enters into with another country in order for the law to be enforceable in Nigeria.

<sup>107</sup> MARGARET T. OKORODUDU-FUBARA, LAW OF ENVIRONMENTAL PROTECTION 71 (1998).

enunciating legal entitlements as State Policy standards instead of guaranteeing fundamental rights has no place in modern-day constitutions and is in stark contrast to the constitutions of some African countries that guarantee social, environmental or economic rights as fundamental human rights. Writers like Bruch, Coker and VanArsdale highlight the constitutions of several countries in Africa, including the Republic of South Africa (Constitution No. 108 of 1996, as amended), that guarantee environmental rights. The recently adopted constitution of the Republic of Kenya (replaced the 1963 version and went into effect on August 27, 2010) also guarantees environmental rights for its people. Also, the 1995 Constitution of the Republic of Uganda guarantees a right to a “clean and healthy environment” for all Ugandans (Section 39). Although it does not directly secure a substantive right to the environment, this author considers that the 1999 Nigerian Constitution has provisions that may be used to secure such a right based on an indirect rights argument commentators advance to link the enjoyment of basic human rights to an environment of a good quality and promotes the sustainability of the environment in Nigeria. Fundamental human rights for all Nigerians are contained in Chapter IV of the 1999 Constitution. A fundamental human right in the Nigerian Constitution that may be used to recognize a substantive environmental right is the right to life in so far as a severely contaminated environment can lead to the deaths of humans.<sup>108</sup> The “Love Canal” environmental disaster that occurred in New York State in the 1970s and the Bhopal disaster in India in 1984 demonstrate, albeit on a cataclysmic scale, that a polluted environment threatens human health and life. Also, support for the position that the right to the environment for all Nigerians is recognized in Nigeria is found in Nigerian case law, specifically the oft-cited case of *Fawehinmi v. Abacha* that may be

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<sup>108</sup> CONST. OF NIGERIA (1999), § 33.

viewed as a victory, at least on paper, for environmental rights advocates in Nigeria,<sup>109</sup> as the Court of Appeal in Nigeria considered that the human rights specified in the African Charter on Human Rights, as enacted into Nigerian law by means of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, in particular the provision of a right to the environment in Section 24, could be used by a Nigerian to enforce the individual's right to the environment instead of relying on the environmental provisions in Chapter II of the 1999 Nigerian constitution.<sup>110</sup> This author is of the view that the court could also have relied on Articles 15 (right to equitable and satisfactory working conditions) and 16 (right to best attainable mental and physical health) of the African Charter on Human Rights as implemented into Nigerian law as additional authorities for the recognition of a substantive environmental right in Nigeria based on an indirect human rights argument. In the case of Articles 15 and 16 of the African Charter on Human Rights and the Nigerian equivalent, relying on an indirect human rights claim, it is reasonable to suggest that the rights to equitable and satisfactory working conditions and best attainable mental and physical health respectively can't be enjoyed in a degraded environment. Few will disagree with the position that farmers, fishermen, and hunters in the Niger Delta region are unable to enjoy satisfactory conditions to carry out their economic, social and cultural activities, including hunting, fishing, farming, and traditional festivals, because of the deplorable environmental conditions in the Niger Delta region.

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<sup>109</sup> See Fawehinmi v. Abacha (1996) 9 NWLR (Part 475) 710.

<sup>110</sup> See generally African Charter on Human Rights, *supra* note 87 (enunciating rights in an individual and collective capacity for all Africans).



### 2.2.2: Policies and Plans

The Revised Environmental Policy, which amends the original National Policy on the Environment in Nigeria that was issued in 1989, sets out the strategies that the Nigerian government must adopt to achieve sustainable development in Nigeria.<sup>111</sup> A right to an environment of a “clean and healthy” quality for Nigerians is recognized in the Revised Environmental Policy. Like the action strategy of the Habitat Agenda at the global level, the Revised Environmental Policy recognizes the negative impact of unsustainable human settlements on environmental sustainability goals at the national level.<sup>112</sup> In addition to social, economic and environmental goals, the Revised Environmental Policy seeks to address the political causes of the environmental problems in Nigeria, which this study suggests includes ending corruption at the highest level. The overarching goal of the Revised Environmental Policy is to achieve sustainable development, and in doing so to secure an ecologically healthy environment; adopt measures to achieve environmental sustainability, promote public participation in environmental issues, public awareness and education about environmental matters; and collaborate and cooperate with countries around the world to solve global environmental problems.<sup>113</sup> In addition to a substantive environmental right, sustainable development and environmental sustainability, this author considers that the Revised Environmental Policy supports what this study considers to be substantive environmental justice for all Nigerians by recognizing the equal right of diverse groups in Nigeria to an environmental benefit, specifically to benefit from the use of natural resources and the right to a healthy

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<sup>111</sup> Revised Environmental Policy, *supra* note 102.

<sup>112</sup> *Id.* at 4; *see also* Habitat Agenda Goals and Principles, Commitments and Global Plan of Action, ¶ 101 (asserting the need for sustainable urban and rural human communities to promote global environmental sustainability).

<sup>113</sup> Revised Environmental Policy, *supra* note 102, at 2-3.

and clean environment. A weakness in the Revised Environmental Policy is the absence of a clear goal to tackle corruption in the public sector as it concerns the environment.

Nigeria has developed a National Agenda 21 (Draft Objectives and Strategies for Nigeria's Agenda 21) Program.<sup>114</sup> A Primary goal of Nigeria's Agenda 21 is to improve the management of the environment in Nigeria in order to achieve sustainable development. If it is accepted that environmental sustainability is critical for achieving sustainable development, it should also be accepted that a major goal of Nigeria's Agenda 21 is promote the sustainability of the environment in Nigeria. To that end, a stated objective of Nigeria's Agenda 21 is to ensure that impacts to the environment are considered when planning for development at every level of government and the private sector. In other words, Nigeria's Agenda 21 promotes the use of environmental impact assessment procedures. Key objectives of Nigeria's Agenda 21 include the enhancement of living standards for the health and welfare of all Nigerians and to ensure that Nigerians have the "appropriate knowledge and skills in environmental management."<sup>115</sup> Writings suggest that an ecologically healthy environment is necessary for enhancing living standards and safeguarding the health and safety of humans. In developing programs to remediate contaminated sites in New York, the New York State Department of Environmental Conservation, in collaboration with the New York State Department of Health, evaluates the intrusion of contaminated soil vapor into buildings.<sup>116</sup> Enabling the right of access of all Nigerians to "water adequate in quantity and quality to satisfy their

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<sup>114</sup> Draft Objectives and Strategies for Nigeria's Agenda 21 (n.d.) [hereinafter Nigeria's Agenda 21], available at <http://www.nesrea.org/images/NIGERIA'S%20AGENDA%2021.pdf> (last visited Sept. 11, 2011).

<sup>115</sup> *Id.* at 37 & 76,

<sup>116</sup> See, New York State Department of Health, *Final: Guidance for Evaluating Soil Vapor Intrusion in New York State* (2006) (providing guidance on methods to evaluate and mitigate soil vapor intrusion).

basic needs” through good water management is a stated goal of Nigeria’s Agenda 21.<sup>117</sup> The Draft Principles on Human Rights and the Environment consider that clean water is an essential component of a right to a clean and healthy environment.<sup>118</sup> Also, to the extent that a polluted environment is an obstacle to the enjoyment of a right to adequate living conditions for all Nigerians, this author suggests that Nigeria’s Agenda 21 supports a right to the environment for all Nigerians.

### **2.2.3: Laws, Regulations and Institutions**

The Rio Declaration commits national governments to adopt and implement environmental legislation that will produce intended results on the ground, “reflect the environmental and development context to which they apply,” and considers the socio-economic conditions in the respective country.<sup>119</sup>

At the national level in Nigeria, the Harmful Waste Act imposes criminal sanctions for certain actions that damage the Nigerian environment as a consequence of the use, management, and disposal of “harmful waste” as the term is defined in Section 1 of the Harmful Waste Act. The Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal at the international level and the Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa at the regional level, put restrictions on the importation of hazardous waste into certain states.<sup>120</sup> Although

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<sup>117</sup> See Nigeria’s Agenda 21, *supra* note 114, at 22.

<sup>118</sup> See U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *supra* note 63.

<sup>119</sup> Rio Declaration, *supra* note 11, princ. 11.

<sup>120</sup> Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, *opened for signature* March 23, 1989, 1673 U.N.T.S. 126, 28 I.L.M. 657 (1989) [hereinafter Basel Convention]; Bamako Convention on the Ban on the Import into Africa and Control of Transboundary Movement and Management of Hazardous Wastes within Africa, 30 I.L.M. 773 (1991)

Nigeria is a signatory to the Basel Convention and the Bamako Conventions, a government official in Nigeria considers the limited capacity of enforcement bodies in Nigeria and the weak enforcement of laws to be one of many reasons why illegal substances banned under these instruments are used and brought into Nigeria.<sup>121</sup> In prohibiting specific activities associated with the use of dangerous substances, at least on paper, the Harmful Waste Act promotes environmental sustainability and protects and promotes a substantive environmental right in seeking to prevent the degradation of the natural resources in Nigeria now and in the future.

The EIA Act is another major environmental instrument in Nigeria that does not explicitly guarantee a substantive right to the environment.<sup>122</sup> Considering the time this law was adopted, it is reasonable to suggest that the EIA Act is a response to the call in Principle 17 of the Rio Declaration for governments to establish an EIA program at the national level for proposed activities that are expected to have a major adverse effect on the environment and require a final agency determination. A primary goal of the EIA Act is to make sure that the effects of a project on the environment are assessed before a project is approved in Nigeria (Section 1(a)). The EIA Act establishes a key EIA program in Nigeria even though there are other EIA programs in Nigeria, such as the one under the guidance of the Department of Petroleum Resources (“DPR”) in Nigeria.<sup>123</sup> In

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(entered into force on April 22, 1998) [hereinafter Bamako Convention], *available at* <http://www.africa-union.org/root/au/Documents/Treaties/Text/hazardouswastes.pdf> (last visited Sept. 18, 2011).

<sup>121</sup> Modupe Taiwo Odubela, et al., *Transboundary Shipments of Hazardous Waste, Toxic Chemicals (Pesticides) Contraband Chlorofluorohydrocarbons: The Nigerian Experience*, Proceedings of the Fourth International Conference on Environmental Compliance and Enforcement, Chiang Mai Thailand, April 22-26, 1996 (1996).

<sup>122</sup> EIA Act, Cap. E 12, Vol. 6, 2004.

<sup>123</sup> See Nerry Echefu and E Akpofure, *Environmental impact assessment in Nigeria: regulatory background and procedural framework*, in UNEP: STUDIES OF EIA PRACTICE IN DEVELOPING COUNTRIES, 63-74 (Mary McCabe and Barry Sadler, 2003). (arguing that several factors including lack of effective penalties and knowledge about the connection between development procedures,

attempting to prevent major negative impacts to the environment over the long term, this study considers that at least in theory the EIA Act protects and promotes a substantive right to the environment for all Nigerians of the current and future generations and environmental sustainability.

The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act explicitly guarantees a right to a healthy environment suitable for the development of all Nigerians. This author is of the view that the satisfactory environment referred to in Article 24 is an ecologically wholesome environment.

The Federal Environmental Protection Agency was established pursuant to the FEPA Act to carry out functions set out in the FEPA Act, including safeguarding and enhancing the environment.<sup>124</sup> The FEPA Act was repealed by the NESREA Act in 2007.<sup>125</sup> Although FEPA is no longer in existence, key regulations made pursuant to the FEPA Act are still in effect.

Like the FEPA Act, the NESREA act seeks to, among other things, protect and enhance the Nigerian environment (Section 4), develop natural resources in a sustainable manner, conserve biodiversity, and build up environmental technology (Section 2). NESREA has issued additional regulations covering a wide range of issues, including a permitting and licensing scheme.<sup>126</sup> A weakness in the NESREA Act, like the repealed

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environmental issues, and “human and natural resources” have resulted in severe impacts to the environment in Nigeria).

<sup>124</sup> FEPA Act, Cap. F10, Vol.1, 2004, §§ 4, 5. For a detailed description about the functions and authority of the now defunct FEPA, *see* Fubara-Okorodudu, *supra* note 107, at 168-234.

<sup>125</sup> NESREA Act, Cap. F10, Vol.1, 2004.

<sup>126</sup> For list of NESREA regulations, *see* <http://www.nesrea.org/lawsandregulations.php> (last visited Sept. 11, 2011). This author considers that the public notification and involvement requirements in the National Environmental (Permitting and Licensing System) regulation are in some cases non-existent or inadequate in so far as NESREA can approve or deny a permit application without giving the public an opportunity to comment on the application (Part I), and it is only required to give the public notice of a proceeding to cancel a permit as it deems needed (Section 28)).

FEPA Act, which writers often recount, is its removal of matters pertaining to the oil & gas sector from NESREA's regulatory ambit.<sup>127</sup> This flaw in the NESREA Act is compounded by what this author considers to be untenable and sometimes contradictory mandates in the NESREA Act. Section 7(c) is one example of a flawed provision in NESREA Act. While NESREA has authority to enforce international agreements pertaining to the environment and power to ensure that projects, presumably including those concerning oil and gas, funded by bodies outside Nigeria and other "donor organizations," comply with applicable environmental standards and regulations (Section 7(i)), at the domestic level NESREA's regulatory authority in oil and gas industry is curtailed (Section 7(g)-(h) and Section 7 (j)-(l)). Unlike many provisions in the NESREA Act, the oil and gas sector is not excluded in Section 25(1) with respect to NESREA's authority to develop regulations to safeguard the health of the public and promote "sound environmental sanitation." Although on paper, NESREA's goals and duties under the NESREA Act can contribute to the protection and promotion of a substantive right to the environment and promote the sustainability of the Nigerian environment,<sup>128</sup> considering the extent of the pollution from the oil and gas sector in Nigeria, particularly in the Niger Delta region, excluding the oil and gas sector from NESREA's regulatory authority hinders NESREA's ability adequately safeguard and promote a substantive right to the environment.

Two key environmental regulations in Nigeria are the National Environmental Protection (Effluent Limitation) Regulations 1991(Regulation National Environmental

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<sup>127</sup> FEPA Act, Cap F10, Vol.1, 2004. FEPA had a mandate under Section 23 of the defunct FEPA Act to collaborate with the petroleum resources unit of the Ministry of Petroleum Resources to have oil spills cleaned-up and to support the petroleum resources unit as necessary.

<sup>128</sup> NESREA Act, Cap. N164, Vol. 12, 2004, §§ 2 & 7.

Protection (Pollution Abatement in Industries and facilities Generating Wastes)

Regulations 19911.8) (Regulation 1.9). Amokaye is of the view that environmental regulations, such as Regulations 1.8 and 1.9, play a vital role in ensuring that facilities in Nigeria are operated in an environmentally sound manner.<sup>129</sup> Fubara-Okorodudu considers that Regulation 1.9 is a mechanism to protect the environment in Nigeria.<sup>130</sup> While Regulation 1.8 presents a legal regime to ensure the treatment of waste to specified levels before being discharged into water bodies, Regulation 1.9 seeks to protect environmental quality and natural resources in Nigeria from uncontrolled release of hazardous and toxic substances (Section 1) by means of a permit scheme. It is therefore reasonable to suggest that Regulations 1.8 and 1.9, at least in theory, promote environmental sustainability and safeguard and promote a substantive right to the environment for all Nigerians by requiring that the adverse impacts to the environment in Nigeria are limited or prevented.

### **2.3: Religion and Environmental Sustainability**

Information from the National Bureau of Statistics in Nigeria supports a CIA-USA report mentioned above that the two most widely practiced religions in Nigeria are Christianity and Islam. While a large percentage of the people who live in the northern part of Nigeria are Muslims, Christians are mostly found in the southern part of Nigeria. The right of every person in Nigeria to freely practice and spread such person's "religion or belief in worship, teaching, practice and religious ceremony" is guaranteed in Section 38(1)) of the 1999 Nigerian Constitution. The discussion in this section focuses primarily on the two major religions in Nigeria.

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<sup>129</sup> Amokaye, *supra* note 78, at 76-82.

<sup>130</sup> Okorodudu-Fubara, *supra* note 107, at 219.

Tucker, Keller, Grim, Conradie, Xiaogan, Berthrong, Gottlieb and other eminent scholars in the area of world religions are of the view that religion can play a crucial role in developing, inspiring, shaping and influencing the lifestyle and conduct of humans as it relates to the natural environment. The value of religion in promoting environmental ethics is hotly debated by scholars and authors. Roger Gottlieb recounts the views of writers Lynne White and Steven Rockefeller who consider that the Christian faith at its core does not encourage Christians to protect the environment or conserve nature often citing *Genesis* 1: 26 and 28.<sup>131</sup> Gottlieb suggests that commentators who refer to *Genesis* 1: 26 and 28 to support their arguments that the Christian religion does not encourage the conservation of nature's resources conveniently fail to mention verses in the Bible that direct people to take care of nature (*Genesis* 2: 15), lay out the consequences for failing to take care of nature (*Deuteronomy* 11: 12), and speak about God's love for all life forms (*Genesis* 9: 9-15). Foltz, however, suggests that time is better spent developing and implementing appropriate rules to protect the environment and conserve natural resources rather than attempting to determine whether there is foundational authority in the different religions of the world directing the adherents of each religion to safeguard the environment and earth's resources.<sup>132</sup> Ian Barbour, on the other hand, suggests that the Bible endorses a sustainability concept with its numerous references to God's promises to the future descendants of notable Biblical figures, such as Abraham, Isaac, King David and Noah.<sup>133</sup> Barbour argues that although humans are unique because they

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<sup>131</sup> ROGER S. GOTTLIEB, A GREENER FAITH: RELIGIOUS ENVIRONMENTALISM AND OUR PLANETS FUTURE 24 (2006).

<sup>132</sup> Foltz, *supra* note 25, at 249-75.

<sup>133</sup> Ian Barbour, *Scientific and Religious Perspectives on Sustainability*, in CHRISTIANITY AND ECOLOGY: SEEKING THE WELL-BEING OF EARTH AND HUMANS 389 (Hessel D. & Ruether, R, eds. 2000).



are created in the image of God, the Bible directs humans to value all life forms on earth.<sup>134</sup> As an example, Barbour points to the Book of Psalms for its uplifting passages about the beauty of the natural environment. Author Lewis Regenstein also finds numerous verses in the Bible that instruct humans to protect and take care of all of God's creation and use earth's resources in a responsible manner. Regenstein refers to some of the passages in the Bible that Gottlieb also refers to that teach people to conserve nature, such as *Deuteronomy* 20: 19, (directive in the Bible not to cut down trees during warfare) and *Leviticus* 19: 23, which this study views as foundations for the Forest Principles, and sustainable agriculture principles in *Leviticus* 25: 1-7.<sup>135</sup> A passage in the Bible that religious studies scholars and writers often mention as having a nature conservation message include *Genesis* 2: 15 where God directs Adam to look after the Garden of Eden. Considering that the Bible is replete with God's promises of wealth and prosperity to the off-springs of Abraham (*Genesis* 12 and *Psalms* 105), to current and future generations that obey the word of God, including *Psalms* 112: 2, *Psalms* 37: 9-11, 18-19 and 22, *Psalms* 65, *Psalms* 67: 4-7, *Psalms* 72:3, *Psalms* 85: 12, *Psalms* 104, *Psalms* 115: 16, *Psalms* 119:90, *Psalms* 146:5-7 and *Isaiah* 44:3 (the generation of people that obey God's word shall be blessed) and the Bible encourages Christians to conserve nature, it is reasonable to suggest that the Bible supports environmental sustainability. This study refers readers to Gottlieb's scholarly work cited above for additional material on environmental conservation and the Bible, the compilation of commentaries on ecology and Christianity edited by Hessel and Ruether, and Bergstrom's succinct exposition of environmental

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<sup>134</sup> *Id.* at 391.

<sup>135</sup> LEWIS REGENSTEIN, HSUS FAITH OUTREACH BOOKLET SERIES, THE BIBLE'S TEACHINGS ON PROTECTING ANIMALS AND NATURE (2006), available at <http://www.humanesociety.org/assets/pdfs/faith/replenish-booklet-in-color.pdf> (last visited Nov. 22, 2011).

ethics principles for a Christian, which this author suggests provide support for this study's position that the Bible supports environmental sustainability.

As shown in scholarly works, such as IUCN's collection of writings on Islam and environmental protection,<sup>136</sup> and the compilation of writings on Islam and the environment edited by Foltz, Denny and Baharuddin,<sup>137</sup> the Quran, the fundamental religious authority for Muslims, instructs Muslims to protect the natural environment and use common environmental resources, such as water, land, and air wisely, and directs Muslims to preserve non-human living things, such as plants and animals, for generations to come and to treat animals humanely. Scholars and authors, such as Ibrahim Ozdemir, Sayyed Hossein Nasr, and Othman Abd-Ar-Rahman Llewellyn, Bruch, Coker, and VanArsdale, also suggest that Islamic law enjoins Muslims to use natural resources in a responsible manner.<sup>138</sup> According to authors of the IUCN paper referred to above, a key goal of Islamic law on environmental protection is to secure the universal good of all living beings now and in the future and every Muslim has a part to play in the protection, management and use of the natural environment and its resources. In other words, every Muslim has a duty and right with respect to the environment. In what this writer considers to be a response to White from an Islamic perspective, Ibrahim Ozdemir implores people to view injunctions and directives in the Quran in a holistic manner and recognize that humans' alleged authority over other life forms and the natural environment is not limitless.<sup>139</sup> Using water resources as an example, Ibrahim Ozdemir

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<sup>136</sup> ABUBAKR AHMED BAGADER ET AL., ENVIRONMENTAL PROTECTION IN ISLAM (2d rev'd ed., IUCN 1994).

<sup>137</sup> Foltz, *supra* note 25.

<sup>138</sup> *See id*; *see also* Carl Bruch, Wole Coker, and Chris VanArsdale, *Constitutional Environmental Law: Giving Force to Fundamental Principles in Africa*, 26 Colum. J. Envtl. L. 132 at 143 (2001).

<sup>139</sup> Ibrahim Ozdemir, *Toward an understanding of Environmental Ethics from a Qur'anic Perspective*, in ISLAM AND ECOLOGY: A BESTOWED TRUST 25-29 (Richard C. Foltz et al. eds., 2003).

notes that the Quran directs Muslims to safeguard water resources and prevent the degradation of water resources.<sup>140</sup> Gottlieb, citing the work of Islamic scholars, including Ozdemir, also considers that the Quran contains numerous instructions for the Muslim to use the environment in a responsible manner for current and future generations.<sup>141</sup> Considering the assessment above, it is reasonable to suggest that Christianity and Islam support environmental sustainability and provide religious foundations for Christians and Muslims in Nigeria to adhere to the call in the Millennium Declaration to show prudence in the use and “management of all living species and natural resources” (Principle 6).

## **Conclusion**

English law was introduced into Nigeria with the advent of formal British colonial rule in Nigeria in the nineteenth century. Since then, Nigeria’s environmental law has evolved partly influenced by English law and to some extent by international and regional law. There are several sector-specific environmental laws and criminal laws in Nigeria which have substantive environmental goals, some dating back to the colonial period.<sup>142</sup>

This chapter examined, among other things, the Laws and policies in Nigeria that recognize, or promote and protect a substantive environmental goal, and the key institutions established to protect the environment. While on paper the current constitution, laws, policies and plans in Nigeria have laudable substantive environmental goals, including setting forth rights and duties to protect the environment and ensure environmental sustainability, it is evident from the environmental disaster in the Niger

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<sup>140</sup> Ibrahim Ozdemir, *Towards an Understanding of Environmental Ethics from a Qur’anic Perspective*, in *ISLAM AND ECOLOGY: A BESTOWED TRUST* 15 (Richard C. Foltz et al. eds. 2003).

<sup>141</sup> Gottlieb, *supra* note 131.

<sup>142</sup> Amokaye, *supra* note 78, at 55-59.

Delta region of Nigeria that these instruments have not been effective. There are numerous reasons why effective solutions have not been found to address substantive environmental problems in Nigeria, including dual institutional roles and functions. Using the EIA scheme in Nigeria as an example, it is easy to surmise from the writings of experts in the field that multiple agencies in Nigeria carrying out similar environmental functions, such as the DPR and NESREA, impede rather than enhance governmental action in the field of the environment.<sup>143</sup>

The next chapter advances the first pillar of this study by examining international and regional instruments on the environment, human rights and development that may be used to secure substantive and procedural rights to the environment.

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<sup>143</sup> See Nerry Echefu and E Akpofure, *supra* note 123.

## **Chapter Three: Environmental Rights: The International and Regional Legal Framework**

Writings suggest that procedural environmental rights are essential for protecting and promoting substantive environmental rights. The previous chapter provided background information on Nigeria and examined the key environmental laws, regulations and policies that promote substantive environmental goals at the national level in Nigeria and examined the institutional framework in Nigeria for the protection of the environment and natural resources in Nigeria. Christian and Islamic principles for the protection of the natural environment and natural resources were discussed. This chapter continues to advance the first pillar of this study's hypothesis by examining international and regional laws on the environment, human rights, and development that may be used to secure substantive and procedural environmental rights at the global and regional levels.<sup>144</sup> The purpose of the examination of substantive environmental rights in this chapter is intended to provide a snapshot of the evolving environmental rights debate. While the three pillars of procedural environmental rights set out in Principle 10 of the Rio Declaration will be considered in this chapter, broad environmental education will be discussed in the next chapter. An oft-cited decision of the African Commission on Human and Peoples Rights will also be discussed in this chapter.

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<sup>144</sup> See generally MAGUELONNE DEJEANT-PONS, MARC PALLEMAERTS & SARA FIORAVANTI, HUMAN RIGHTS AND THE ENVIRONMENT: COMPENDIUM OF INSTRUMENTS AND OTHER INTERNATIONAL TEXTS ON INDIVIDUAL AND COLLECTIVE RIGHTS RELATING TO THE ENVIRONMENT IN THE INTERNATIONAL AND EUROPEAN FRAMEWORK, (2002) (evaluating international and regional legally and non-legally binding instruments that provide authority for environmental human rights).

### 3.1: Introduction

The United Nations Millennium Declaration states that:

Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development. Only in this way can the immeasurable riches provided to us by nature be preserved and passed on to our descendants. The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.<sup>145</sup>

Writings indicate that developments in international law after the United Nations Charter was adopted in 1945, especially in the 1970's, have brought the human rights and environment connection to the forefront of global discourse.<sup>146</sup> The Stockholm Declaration, the World Charter for Nature, and the Rio Declaration are key international non-legally binding instruments that document the evolving environmental human rights law over a span of twenty years.<sup>147</sup> The World Charter for Nature makes the human rights and environment connection in the first introductory statement of this instrument that "[m]ankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients."<sup>148</sup>

Boyle suggests that after the U.N. Conference on the Human Environment, international instruments, which hitherto had focused on common global environmental issues, increasingly began to address environmental issues at the national level.<sup>149</sup>

Writings indicate that this conference was the event that brought global attention to the unfolding debate about how human rights and environmental quality relate, as

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<sup>145</sup> U.N. Millennium Declaration, *supra* note 3, princ. 6.

<sup>146</sup> Charter of the United Nations, pmbl., signed June 26, 1945, 59 Stat. 1031 (1945) [hereinafter U.N. Charter].

<sup>147</sup> These instruments, in varying degrees, recognize substantive and procedural environmental rights.

<sup>148</sup> World Charter for Nature, *supra* note 5, pmbl.

<sup>149</sup> Alan E. Boyle, *The Role of International Human Rights Law in the Protection of the Environment*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 54-55 (Alan E. Boyle & Michael R. Anderson eds. 1996).

documented in the Stockholm Declaration.<sup>150</sup> The environmental human rights debate continued at the international and regional levels. Principle 1 of the Proposed Legal Principles contained in the 1987 Report of the WCED titled *Our Common Future* (the “Brundtland Report”) as Annex 1, which states that all of humankind have the fundamental right to an environment sufficient for their well-being and health,<sup>151</sup> showed the strengthening of environmental human rights law almost two decades after the Stockholm Conference. The Vienna Declaration and Programme for Action adopted at the Vienna Conference endorses a right to development that takes into account the “environmental needs” of the current and succeeding generations (Article 11),<sup>152</sup> which this author considers to be a right to sustainable development. Another milestone in the development of environmental human rights many writers refer to is the submission of the final report of the Special Rapporteur of the U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mrs. Fatima Zohra Ksentini, in 1994.<sup>153</sup> This report discussed the outcome of the Special Rapporteur’s study of the linkage between human rights and the environment, and contained draft Principles on Human Rights and the Environment which included substantive environmental rights.<sup>154</sup>

Scholars and commentators offer different views for and against recognizing a new class of human rights. While J.G. Merrills is of the view that using international

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<sup>150</sup> Stockholm Declaration, *supra* note 84. Representatives of the government of Nigeria participated in the Stockholm Conference.

<sup>151</sup> Experts Group on Environmental Law of the World Commission on Environment and Development, *Legal Principles for Environmental Protection and Sustainable Development*, U.N. Doc. WCED 86/23/Add.1 (1986) [hereinafter Brundtland Proposed Principles].

<sup>152</sup> World Conference on Human Rights, June 14-25, 1993, *Vienna Declaration and Programme for Action*, U.N. Doc. A/CONF. 157/23 (July 12, 1993) [hereinafter Vienna Declaration].

<sup>153</sup> U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, *supra* note 63.

<sup>154</sup> *See id.*; *see also* Draft Principles On Human Rights And The Environment, E/CN.4/Sub.2/1994/9, Annex I (1994), [hereinafter Draft Human Rights Principles].

treaties and customary law to “demonstrate a recognition” of an environmental right either in a collective or individual capacity is not as persuasive as basing the recognition of an environmental right on case law,<sup>155</sup> Robin Churchill is of the view that some human rights, albeit few, expressly recognize rights to the environment.<sup>156</sup> Boyle, recounting the argument of authors like Handl, suggests that the absence of a universally accepted description of a substantive environmental right and the vagueness of its components reduces the value of a new human right to the environment as a tool to protect the environment.<sup>157</sup> Alexandre Kiss suggests that a substantive right to the environment could be “concretized” if in practical application it is considered to be the right to conserve, safe-guard, and enhance the environment.<sup>158</sup>

While arguably substantive environmental rights are a recent development, Pring and Noe suggest that different kinds of general procedural rights have existed in international, regional and national laws long before the environmental rights debate took center stage after the Stockholm Conference, but are now increasingly being applied in an environmental context.<sup>159</sup> While Boyle considers that the best case scenario for the recognition of environmental human rights is in a procedural context, particularly at the international level,<sup>160</sup> Dinah Shelton is of the view that procedural rights are one of three

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<sup>155</sup> J.G. Merrills, *Environmental Protection and Human Rights: Conceptual Aspects*, in Human Rights Approaches to Environmental Protection 25, 39 (Alan E. Boyle & Michael R. Anderson eds.) (reprinted 2003).

<sup>156</sup> Robin Churchill, *Environmental Rights in Existing Human Rights Treaties*, in Human Rights Approaches to Environmental Protection 89 (Alan E. Boyle & Michael R. Anderson eds.) (reprinted 2003).

<sup>157</sup> Alan E. Boyle *supra* note 149, 50-57.

<sup>158</sup> Alexandre Kiss, *An introductory note on a human right to environment*, in ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: NEW CHALLENGES AND DIMENSIONS 59 (Edith Brown Weiss, ed.) (1992).

<sup>159</sup> Pring & Noe, *supra* note 49.

<sup>160</sup> Alan E. Boyle *supra* note 149, at 59-60.



rights-based approaches that link human rights and the protection of the environment.<sup>161</sup> According to Shelton, the three procedural rights affirmed in Principle 10 of the Rio Declaration, which are recognized in human rights documents in a general sense, are included in environmental instruments to facilitate improved decision-making as it concerns the environment.<sup>162</sup> Writings indicate that while there is wide-spread recognition of participatory environmental rights at the international, regional and national levels, the form and types of procedural environmental rights varies around the world. Kristain recounting the arguments of scholars Pring and Noe suggests that the form of the public participatory measures adopted in countries around the world, in many cases, depends on what part of the world the country is located.<sup>163</sup> Writings suggest that public participation may be considered in terms of participation in environmental decision-making processes, or the availability of access to information pertaining to the environment in conjunction with public participation in environmental decision-making, or the right of access to justice in matters related to the environment, or to all the three pillars of participatory rights enunciated in Principle 10 of the Rio Declaration, Article XVI of the Revised African Nature Convention and the Aarhus Convention. Of the three generally accepted pillars of environmental procedural rights in these instruments, literature suggests that the pillar on public participation in environmental decision-making is more widely recognized, particularly in the context of the EIA process. Not surprisingly, in the case of Nigeria, based on the responses to a questionnaire on

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<sup>161</sup> See Dinah Shelton, *Human Rights, Health & Environmental Protection: Linkages in Law & Practice: A Background Paper for the World Health Organization*, Health and Human Rights Working Paper Series No 1, 3-5 (2002).

<sup>162</sup> *Id.* at 4.

<sup>163</sup> Mynitti Kristian, *The Right of Indigenous Peoples to Participate in Development Projects*, Hum. Rts. Dev. Y.B. 225, 233 (2002).

environmental procedural rights in Nigeria provided by this author, it appears that when environmental procedural rights are discussed, it is often in the narrower sense of public participation in environmental decision-making processes, usually as it pertains to the EIA process.<sup>164</sup> Whether it is viewed in the narrow or broader sense, Kristian, like Pring and Noe, finds substantive benefits in public participation when it contributes to another goal and is viewed as a means to an end, such as protecting and promoting a substantive right to the environment, and procedural benefits when it is considered to be the end objective as in promoting environmental democracy.<sup>165</sup> Kristian gives examples of what he considers to be “end-in-itself” goals similar to those offered by Pring and Noe, such as increasing public perceptions and educating the public, presumably about the environment, and substantive benefits when public participation contributes to decisions that may be said to reflect local wishes and are better for the environment.<sup>166</sup> Instruments like the Aarhus Convention assert that a benefit of procedural environmental rights is to aid in the safeguarding of a substantive environmental right for people in the current and succeeding generations (Article 1).<sup>167</sup>

The Action Plan of the Vancouver Declaration on Human Settlements endorses public participation in the decision-making process at the national level, albeit in the context of settlements for the human population, and considers it to be a human right.<sup>168</sup> Also, the importance of the environment in the development of sustainable communities is affirmed in the Istanbul Declaration on Human Settlements and the application of

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<sup>164</sup> Nigeria has an EIA Act, which was adopted shortly after the Earth Summit in 1992.

<sup>165</sup> Mynitti Kristian, *supra* note 163, at 234.

<sup>166</sup> *Id.* at 234-235.

<sup>167</sup> Aarhus Convention, *supra* note 16.

<sup>168</sup> Conference on Human Settlements, Vancouver, Canada, May 31-June 11, 1976, Vancouver Declaration on Human Settlements and Action Plan, Agenda Item 10(e) [hereinafter Vancouver Declaration].

subsidiarity is said to have a role in protecting and promoting human settlements.<sup>169</sup>

According to Article 12 of the Istanbul Declaration on Human Settlements, local authorities are considered to be the “nearest partners [to the Public] for the implementation of the Habitat Agenda.” Further support for what this study considers to be subsidiarity in a broad sense may be found in Chapter 28 of Agenda 21. Section 28.1 of Agenda 21, describes local government councils as the governance level nearest to the people that play a critical role in providing education to people, galvanizing and responding to the public in the promotion of sustainable development.

What follows is an examination of key international and regional instruments on human rights and the environment that may be used to recognize a substantive right to the environment and procedural environmental rights. For purposes of this study a substantive right to the environment is “concretized” in terms of Article 6 of the Draft Human Rights Principles as “the 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” and to avoid any doubt is further expanded to include conservation of non-renewable natural resources. The terms “substantive environmental right” and a “substantive right to the environment” are used interchangeably.

### **3.2: The International and Regional Legal Regimes for Environmental Human Rights: Substantive Rights**

Literature suggests that commentators use two main approaches, direct and indirect rights approaches, to recognize a substantive environmental right. A direct rights

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<sup>169</sup> Report of the United Nations Conference on Human Settlements (Habitat II), Istanbul, 3-14 June 1996, *Istanbul Declaration on Human Settlements* ¶¶ 7, 10, Chap. I, Resolution 1, Annex I, U.N. Sales No. E.97.IV.6 (1996).

approach considers that a stand-alone substantive right to the environment is explicitly specified (direct rights approach), while the indirect rights approach expands fundamental human rights, such as the right to life, health, property, healthy working conditions, adequate standards of living and food, to include an environmental component (indirect rights approach). The comments of the former executive director of UNEP, Klaus Toepfer, that a contaminated environment prevents the enjoyment of human rights, particularly the right to life, is in this author's opinion an expression of a substantive environmental right that derives from a fundamental human right to life.<sup>170</sup> This author suggests that the decision of the former U.N. Commission on Human Rights (now replaced by the Human Rights Council) at a meeting in Geneva, Switzerland in April 2001 that "everyone has the right to live in an environment free from toxic pollution and environmental degradation" asserts a substantive environmental right that is derived from a right to an adequate standard of living sufficient for the health of humankind, and the right to life and right to health.

The examination below looks for authority in major and not as widely recognized international and regional instruments on the environment, development and human rights that may be used to secure a substantive environmental right. The U.N. Charter,<sup>171</sup> Universal Declaration of Human Rights,<sup>172</sup> International Covenant on Civil and Political Rights,<sup>173</sup> ICESCR,<sup>174</sup> International Convention on the Elimination of all forms of Racial

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<sup>170</sup> See UNEP, *Living In A Pollution-free World A Basic Human Right*, UNEP News Release 01/49, available at <http://www.grida.no/news/press/2150.aspx> (last visited Sept. 15, 2011).

<sup>171</sup> U.N. Charter, *supra* note 146.

<sup>172</sup> Universal Declaration of Human Rights, *supra* note 83, arts. 22 & 25.

<sup>173</sup> International Covenant on Civil and Political Rights G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171; 6 I.L.M. 368 (1967) (Dec. 16, 1966) [hereinafter ICCPR]. Nigeria acceded to this treaty on July 29, 1993.

<sup>174</sup> ICESCR, *supra* note 19. Nigeria acceded to this treaty on July 29, 1993.

Discrimination,<sup>175</sup> Stockholm Declaration,<sup>176</sup> Convention on the Elimination of all forms of Discrimination Against Women,<sup>177</sup> the Convention concerning Indigenous and Tribal Peoples in Independent Countries,<sup>178</sup> and the U.N. Convention on the Rights of the Child<sup>179</sup> are major international instruments guaranteeing basic human rights for all people or sensitive groups of people.

### **3.2.1: Charter of the United Nations and Legally Binding International Human Rights Instruments**

Although a stand-alone right to the environment is not explicitly specified in the U.N. Charter, this author suggests that provisions in the U.N. Charter may be used to recognize a substantive right to the environment. These provisions include the Preamble (affirming a belief in basic human rights); Article 1(3) (advancing and safeguarding basic human rights and freedoms for all of humankind); Article 13 (setting out functions of the General Assembly to promote international collaboration in socio-economic, educational and health sectors, and to work together to ensure that basic human rights and freedoms are enjoyed by all people); Article 55(a) (asserting the determination of members of the U.N. to support improved living standards for all peoples); and Article 56 (requiring members of the U.N. to individually and collectively satisfy the provisions of Article 55).

Adopting an indirect rights approach, it is reasonable to suggest that the U.N. Charter

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<sup>175</sup> International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966) (Dec. 21, 1965) (entered into force Jan. 4, 1969) [hereinafter ICEAFRD]. Nigeria acceded to the ICEAFRD on October 16, 1967.

<sup>176</sup> Stockholm Declaration, *supra* note 84.

<sup>177</sup> Convention on the Elimination of All Forms of Discrimination against Women, 1249 U.N.T.S. 13, 19 I.L.M. 33 (1980) (Dec. 18, 1979) [hereinafter CEDAW]. Nigeria signed the CEDAW on April 23, 1984 and ratified the treaty on June 13, 1985.

<sup>178</sup> Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, *concluded* June 27, 1989, 72 ILO Official Bill. 59 28 I.L.M. 1382 (1989) [hereinafter ILO No. 169]. Nigeria is not a party to this convention. Only one African country, Central African Republic, is a party to the treaty, which it ratified on August 30, 2011.

<sup>179</sup> Convention on the Rights of a Child, G.A. Res. 44/25, annex, U.N. Doc. A/44/49 (1989), 1577 U.N.T.S. 3, 28 I.L.M. 1456 (1989) (Nov. 20, 1989). Nigeria signed this treaty on January 26, 1990 and ratified it on April 19, 1991.

supports a substantive environmental right because fundamental human rights, including the right to life, health, and a standard of living appropriate for the health and welfare of members of a household, cannot be enjoyed in a degraded environment. The provisions of the U.N. Charter mentioned above require that the government of Nigeria safeguard and promote the right of the people who reside in the Niger Delta region to basic human rights and a substantive environmental right.

Like the U.N. Charter, the ICEAFRD does not explicitly guarantee a separate substantive environmental right, but it has several provisions that may be used to recognize such a right.<sup>180</sup> Like the U.N. Charter, the ICEAFRD condemns discriminatory practices. Like the UDHR (Articles 2 and 23(1)), the right to equal protection under the law in relation to the right to conditions of work that are fair and favorable is guaranteed in the ICEAFRD (Article 5(e)(i)). It is reasonable to insert an environmental component into the right guaranteed in Article 5(e)(i), because the right to just and favorable working conditions requires, among other things, that all workers be protected from toxic and hazardous substances and in the case of agricultural workers, to be protected from, among other things, pesticide contamination. This protection also requires that the Nigerian government ensure that fishermen and farmers in Nigeria, including those in the Niger Delta region, have a safe and healthy environment to earn a decent income and should not be forced to choose between an unsafe occupation and joblessness.<sup>181</sup> Using an indirect rights approach, it may be inferred that the ICEAFRD recognizes a substantive right to the environment because a degraded environment

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<sup>180</sup> ICEAFRD, *supra* note 175.

<sup>181</sup> See Environmental Justice Principles, *infra* note 272, princ. 8 (affirming the right of every person that works to be able to earn a livelihood in a secure environment).

hinders the enjoyment of the right to equal protection in terms of “just and favorable conditions of work.”

Although the ICCPR does not explicitly secure a stand-alone substantive environmental right, this author considers that the ICCPR contains provisions that may be used to recognize a substantive environmental right.<sup>182</sup> Like Article 6 of the U.N. Convention for the Rights of the Child,<sup>183</sup> Article 6 of the ICCPR guarantees the fundamental human right to life. Article 24(1) of the ICCPR prescribes for every child, without discrimination of any kind, the right to “such measures of protection as are required by *his* status as a minor, on the part of his family, society and the State” (emphasis added). Although Article 24(1) inexcusably refers to the male child only, the Human Rights Committee uses a gender neutral term, “children”, in its comments on Article 24(1) of the ICCPR (General Comment No. 17). Like the Human Rights Committee, this author considers that male and female “children” are covered in Article 24(1). Most scholars will agree that the right to life and health for all humans is threatened in an environment that is degraded and polluted by toxic and noxious substances, particularly for children. Adopting an indirect rights approach, it is reasonable to argue that the ICCPR recognizes a substantive environmental right for children because male and female children are more susceptible to diseases caused by a contaminated environment, such as water-borne diseases and asthma, and require special “measures of protection (Article 24(1)) in the form of a substantive environmental right. Also, considering the provision of Article 5 of the ICCPR (non-derogation from

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<sup>182</sup> ICCPR *supra* note 173.

<sup>183</sup> Convention on the Rights of a Child, *supra* note 179. Article 6(2) of the Convention on the Rights of a Child provides that: a State Party shall use its best efforts to make sure that every child is able to survive and thrive.

fundamental human rights), that Article 24 of the U.N. Convention on the Rights of the Child prescribes a child's right to the enjoyment of the maximum achievable standard of health, and that Article 14 of the African Charter on the Rights and Welfare of the Child specifies for a child the highest level of bodily, spiritual, and mental health and health services, using an indirect rights approach, it is reasonable to argue that the ICCPR supports a substantive right to the environment for all humans, male and female, young and old, because an unsafe environment prevents the enjoyment of the basic human right to health, particularly for male and female children. This author argues that the people who reside in the Niger Delta region who are exposed to dangerous substances from the non-stop flaring of gas, contaminated soils, noise pollution and water pollution have been deprived of, among other rights, a right to health.

Unlike the other legal documents examined above, the ICESCR specifically refers to the environment, but like the instruments above it does not specifically assure a separate substantive right to the environment.<sup>184</sup> The ICESCR refers to “environmental hygiene” in Article 12(2)(b) in relation to the right to health guaranteed in Article 12(1). Also, a fundamental human right to a safe and healthy working condition is guaranteed in Article 7 and the right to a satisfactory living standard with the continuous enhancement of living conditions is assured in Article 11(1). Like the U.N. Convention on the Rights of the Child and CEDAW, which is examined below, the ICESCR guarantees the right to health (Article 12). While the provisions in CEDAW and the Convention on the Rights of the Child cover specific vulnerable groups (women and children, respectively), in the case of the ICESCR, the right to health of the highest level is recognized for everyone (Article 12(1)). Writers like Bruce Porter argue that the ICESCR is deficient to the extent

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<sup>184</sup> ICESCR, *supra* note 19.



that the limitation in Article 2(1) links a State's implementation of the provisions of the ICESCR to its disposable assets and allows developing countries to limit the rights with respect to "non-nationals" (Article 2(3)).<sup>185</sup> As it concerns Article 12 of the ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR) consider that a State Party must take steps that are "deliberate, concrete and targeted towards the full realization of the right to health" (General Comment No. 14, 2000). This study accepts the CESCR's interpretation. Using an indirect rights approach, it is reasonable to suggest that the ICESCR recognizes a substantive right to the environment because the enjoyment of basic rights in the ICESCR, particularly the right to work, food, housing, an adequate standard of living, and health is dependent on a healthy environment. This study considers that the environmental conditions in the Niger Delta region, particularly water pollution, have prevented the people who reside in the Niger Delta region, including non-nationals, from enjoying the highest attainable standard of physical and mental health.

Like all the instruments examined above, the Convention on the Rights of the Child does not specifically guarantee a separate substantive right to the environment, but like the ICESCR it mentions the environment with its reference to "environmental sanitation" in Article 24(2)(e) and "environmental pollution" in Article 24(2)(c).<sup>186</sup> Like the ICCPR (Article 6), the Convention on the Rights of the Child also guarantees the right to life, albeit for every child (Article 6(1)) and a State Party to the Convention on the Rights of the Child agrees to ensure the survival and growth of a child to the

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<sup>185</sup> Bruce Porter, Remarks at the Workshop for Judges and Lawyers in North East Asia on the Justiciability of Economic, Social and Cultural Rights, *The Domestic Implementation of the ICESCR: the Right to Effective Remedies, the Role of Courts and the Place of the Claimants of ESC Rights* (January 26, 2004). For a transcript of Brue Porter's remarks, see [http://www.srap.ca/publications/porter\\_the\\_domestic\\_implementation\\_of\\_the\\_icescr.pdf](http://www.srap.ca/publications/porter_the_domestic_implementation_of_the_icescr.pdf) (last visited Sept. 16, 2011).

<sup>186</sup> Convention on the Rights of a Child, *supra* note 179.

maximum extent possible (Article 6(2)). Like the ICESCR, the Convention on the Rights of the Child guarantees a right to the enjoyment of the “highest attainable standard of health” for a child (Article 24). Like the ICESCR, the Convention on the Rights of the Child links a State’s implementation of the social, cultural and economic rights set out in the instrument to dispensable assets (Article 4). The obligation in Article 6(2) will therefore be subject to the limitation of a state’s available resources. In interpreting the provisions of Article 6, the Committee on the Rights of a Child considers that a State Party must make every effort to achieve the maximum progress of Children (General Comment No. 5, 2003). This study accepts this interpretation. Using an indirect rights approach, it may be inferred that the U.N. Convention on the Rights of the Child recognizes a substantive right to the environment for a child, because a contaminated environment prevents the enjoyment of the basic human rights of the child, including the right to life, and the maximum achievable standard of health. According to a UNDP human development report for the Niger Delta Region that refers to the results of a 1999 national survey, when compared to other geo-political regions in Nigeria, the mortality figures for newborns and infants in the Niger Delta region were extremely high, with the “worst post-neonatal mortality rate” in the country.<sup>187</sup>

CEDAW, like some of the instruments examined above, does not directly specify an individual substantive right to the environment.<sup>188</sup> Like the U.N. Charter and the ICEAFRD, CEDAW seeks equality for all people, including marginalized groups, calls for the elimination of discrimination against women, and promotes the progress of these disadvantaged groups. CEDAW considers the plight of rural women and in Article 14

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<sup>187</sup> UNDP, *supra* note 67, at 47.

<sup>188</sup> CEDAW, *supra* note 177.

requires that a State Party ensure the right of rural women to enjoy suitable living conditions, especially as it concerns the supply of water and sanitation, among other things. Also, the CEDAW mandates that women be treated equally as it concerns their health care (Article 12). According to a human development report for the Niger Delta region of Nigeria, while on a national scale about one third of women in Nigeria claim that they are unable to pay for health care, almost half of the women in the Niger Delta claim that they do not have the financial resources to pay for health care.<sup>189</sup> This author suggests that the Nigerian government has failed to fulfill its obligation under CEDAW to promote the progress of the women in the Niger Delta region of Nigeria. Adopting an indirect rights approach, it is reasonable to suggest that CEDAW recognizes a substantive right to the environment for women, as an unhealthy environment prevents the right of enjoyment of acceptable living conditions and health care for women.

Although ILO No. 169 does not explicitly guarantee a separate substantive right to the environment, but like the ICESCR and the Convention on the Rights of a Child, ILO No. 169 specifically refers to the environment (Article 4(1)). ILO No. 169 mandates that a State Party take extraordinary steps, as appropriate, to protect indigenous and tribal peoples, their social and economic structures and their environment.<sup>190</sup> The use of the term “as appropriate” in Article 4(1) of ILO No. 169 in this author’s opinion reduces the effectiveness of ILO No. 169 to protect and promote the rights of indigenous people because it gives too much discretion to a State Party to decide when special actions may be taken to safeguard the environment of indigenous people. Also, this study considers that Article 4(1) of ILO No. 69 is inconsistent with Article 7(4), which requires that a

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<sup>189</sup> UNDP, *supra* note 67, at 48.

<sup>190</sup> See ILO No. 169, *supra* note 178, art. 4(1).

State Party take routine measures to safeguard and conserve the environment. Like the CESCR's interpretation of Article 12 of the ICESCR (ICESCR General Comment No. 14), this study considers that States Parties have an obligation under ILO 169 to take "concrete and continuous" steps to protect the environment of indigenous people. Like CEDAW, ILO No. 169 ensures access to health care (Article 25).<sup>191</sup> Adopting an indirect rights approach, it may be inferred that ILO No. 169 recognizes a substantive right to the environment as it concerns tribal and indigenous people because it reports suggest that a degraded environment prevents the enjoyment of a basic human right, including the highest level of physical and mental health. The 2006 Niger Delta Region of Nigeria Human Development Report refers to a 1996 survey by Oluwole *et. al.* on air pollution in the Niger Delta region, which found that elevated levels of certain chemical compounds were present in the region in excess of national environmental standards.<sup>192</sup> Nigeria is not a party to ILO No. 169.

While none of the legally binding international human rights instruments examined above explicitly guarantee a human right to a "sound environment", some non-legally binding instruments examined below explicitly specify a stand-alone substantive right to the environment.

### **3.2.2: Non-Legally Binding International Documents: Human Rights, Environment and Development**

Many will agree that the UDHR is a blueprint for minimum basic human rights and freedoms to be enjoyed by every person in the world, such as the right to life (Article 3) and a right to an adequate standard of living (Article 25).<sup>193</sup> The UDHR does not

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<sup>191</sup> *Id.* art. 25(1).

<sup>192</sup> UNDP, *supra* note 67, at 78-79.

<sup>193</sup> UDHR, *supra* note 172.

specifically refer to the environment or a substantive environmental right. Like the ICCPR (Article 24), the UDHR uses language that lacks gender neutrality in Article 25(1). This author considers the right in Article 24 is available to every human being. Like the ICEAFR, the UDHR (Article 23) recognizes the right to “just and favorable conditions of work”. Using an indirect rights approach to recognize a substantive environmental right, it may be inferred that a right to a wholesome environment is recognized in the UDHR since research indicates that environmental pollution can affect the quality of life and living conditions of humans, human health, and human life. It is clear from the human development report and environmental assessments in the Niger Delta region that fishermen and farmers in the region are exposed to unfavorable environmental conditions when carrying out their trade.

Although the Stockholm Declaration is considered a non-legally binding document, it continues to have significant influence for national laws. This instrument is noteworthy for making the connection between good environmental quality and the enjoyment of basic human rights. The Stockholm Declaration, like some of the instruments examined above, also uses language that lacks gender neutrality when it refers to a rights holder (First recital paragraph and Principle 1). This study considers that these provisions apply to both the males and females. The environment and human rights connection is first expressed in the first statement in the Preamble that declares that the natural and the man-made environment are essential to the well-being of humankind and for the enjoyment of fundamental human rights such as the right to life. Principle 1 expands upon this assertion by connecting the enjoyment of specific fundamental human rights to environmental quality. This author supports the position of commentators who

argue that the statements in the first preamble and Principle 1 of the Stockholm Declaration assert a substantive environmental right. This author suggests that an indirect rights approach may be used to recognize a substantive right to the environment in the Stockholm Declaration, because it is clear from research on human rights and the environment that a degraded environment can hinder the enjoyment of fundamental human rights. While most commentators focus on what they consider to be the Stockholm Declaration's introduction of a substantive environmental right, this author suggests that the instrument also enunciates other important principles. Hunter, Salzman and Zaelke appear to consider the importance of the Stockholm Declaration in the context of sustainable development.<sup>194</sup> Alexandre Kiss, on the other hand, appears to find human rights and sustainable development elements in Article 1 of the Stockholm Declaration.<sup>195</sup> This author is of the view that the Stockholm Declaration promotes environmental justice principles (Principle 1) and environmental sustainability (Principle 2).

The non-legally binding Draft Human Rights Principles prepared by a select group of experts on human rights explicitly recognizes a substantive environmental right (Principle 2).<sup>196</sup> In this instrument, a substantive environmental right is elevated to the stature of other first and second generation human rights. What makes the Draft Human Rights Principles stand out in this author's opinion is that the elements of a substantive environmental right are described in the instrument.<sup>197</sup> The right to water of an adequate

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<sup>194</sup> See DAVID HUNTER, JAMES SALZMAN, DURWOOD ZAELEKE, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 286 (University Casebook Series, 1998).

<sup>195</sup> Kiss, *supra* note 158.

<sup>196</sup> Draft Human Rights Principle, *supra* note 154.

<sup>197</sup> *Id.* prins. 5-14.

quality is one such element.<sup>198</sup> “Inter-generational environmental justice” is also promoted in the Draft Human Rights Principles (Principle 4).

The Hague Declaration on the Environment reaffirms the connection between the enjoyment of human rights and environmental quality, and it espouses what this study considers to be international environmental justice principles.<sup>199</sup> Although the primary focus of the Hague Declaration is atmospheric contamination and climate change issues, it is noteworthy for formally acknowledging at the international level that industrialized countries are responsible for the bulk of the emissions that cause the warming of the atmosphere and depletion of the ozone layer and should therefore have the major responsibility to address the problem and aid developing countries in combating the negative impacts of atmospheric changes in the developing countries (Paragraphs 7-8). In other words, it asserts the “common but differentiated responsibility” later adopted in international instruments like the Rio Declaration and the Climate Change Convention. In Paragraph 1 it is asserted that a “right to live” for all humans is considered the fundamental right from which other rights flow. Relying on an indirect rights theory, it is reasonable to argue that the Hague Declaration recognizes a substantive environmental right in that the “right to live” is dependent on an ecologically healthy environment.

The 1990 U.N. General Assembly Resolution 45/94 contains the U.N. General Assembly’s recommendations to ensure a healthy environment for every person.<sup>200</sup> The pronouncement in the fourth introductory paragraph that women and men have a firm duty to safeguard and enhance the environment for current and future generations lends

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<sup>198</sup> *Id.* princ. 8.

<sup>199</sup> Hague Declaration on the Environment, 28 I.L.M 1308 (1989) (March 11, 1989) [hereinafter Hague Declaration].

<sup>200</sup> U.N. General Assembly Resolution 45/94, A/RES/45/94, 68<sup>th</sup> plenary Meeting, (Dec. 14, 1990) [hereinafter Resolution 45/94].

support to Alexandre Kiss's position that the substantive right to the environment can be concretized as a right to protect and enhance the environment.<sup>201</sup> In the first resolution, the General Assembly asserts its recognition that every person is entitled to reside in a satisfactory environment for that person's health and well-being. Like Principle 1 of the Stockholm Declaration, this author is of the view that the right in the first resolution of Resolution 45/94, does not explicitly recognize a separate right to the environment, but rather links the fulfillment of rights to life, adequate health and well-being to the quality of the environment. Although the first resolution in Resolution 45/94 does not unequivocally and explicitly recognize a stand-alone substantive right to the environment, like the Stockholm Declaration it clearly recognizes that adequate environmental quality is a precondition for enjoying basic human rights.

The Proposed Legal Principles for Environmental Protection and Sustainable Development express the WCED experts' formal recognition of the environment and human rights connection.<sup>202</sup> Like the Draft Human Rights Principles, a right to an adequate environment is guaranteed in the Brundtland Proposed Principles, albeit linked to other aspects of human well-being. Also, inter-generational environmental justice is recognized in Article 2 of the Brundtland Proposed Principles. Like the Stockholm Declaration, the Brundtland Proposed Principles recognizes a substantive environmental right, though tied to other fundamental human rights.

Although a substantive right to the environment is not clearly and unequivocally specified in the Rio Declaration, the Rio Declaration affirms the natural environment and

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<sup>201</sup> Kiss, *supra* note 158.

<sup>202</sup> Brundtland Proposed Principles, *supra* note 151.



human rights connection in Principle 1.<sup>203</sup> The Rio Declaration is noteworthy for its efforts to elaborate on the sustainable development concept and enunciate sustainable development principles. Although this study agrees that an argument for asserting a right to the environment based on the Rio Declaration is not as strong as one based on the Stockholm Declaration, using an indirect rights method, it may be inferred that the Rio Declaration recognizes a substantive right to the environment in so far as a healthy natural environment is necessary for the enjoyment of the right to life, particularly one that is healthy and productive. It is stated in Nigeria's National Action Plan for the Promotion and Protection of Human Rights (2006) that the Rio Declaration has provided guidance for Nigeria in the protection and promotion of a substantive right to the environment.

The Vienna Declaration is an action outcome of the 1993 World Conference on Human Rights.<sup>204</sup> Like the Rio Declaration but unlike the Draft Human Rights Principles, the Vienna Declaration does not expressly specify a substantive environmental right. The Vienna Declaration asserts the universality, indivisibility and mutually-supportive nature of human rights for all peoples (Article 5). In linking the illegal dumping of dangerous substances to the abridgement of fundamental human rights to life and health (Declaration 11), this study suggests that the Vienna Declaration recognizes a substantive right to the environment, but linked to the rights to life and health. It is reasonable to make this inference as a healthy and safe environment is considered to be a pre-requisite for the successful achievement of basic human rights to life and health. It is stated in Nigeria's National Action Plan for the Promotion and

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<sup>203</sup> Rio Declaration, *supra* note 11.

<sup>204</sup> Vienna Declaration, *supra* note 152.

Protection of Human Rights (2006) that the Vienna Declaration has provided significant inspiration in Nigeria.

The UNESCO Declaration of Bizkaia on the Right to the Environment is an action document of the international seminar on the right to the environment held at Bilbao, Spain in 1999.<sup>205</sup> While Article 1(1) of the Bizkaia Declaration clearly presents a standalone substantive environmental right, Article 1(3) states that such a right should be exercised in a manner that is compatible with the right to development and other human rights. Duties for everyone to safeguard the environment, including the general public, public officials and international groups, are set out in Article 2. A unique feature of Article 2 is that it places a duty on international groups to safeguard and restore, as necessary, the environment. The Bizkaia Declaration considers a State's competence in safeguarding and restoring the environment (Article 2(2)). Like ILO No. 169, this study considers that every state must take concrete steps to safeguard and restore the environment. Despite the limitation in Article 2(2) and the requirement that the right in Article 1(1) be subject to a compatibility test (Article 1(3)), the Bizkaia Declaration, in some form, asserts a substantive right to the environment for everyone.

Like the Brundtland Proposed Principles and the Draft Human Rights Principles, the former U.N. Commission on Human Rights Resolution on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights recognizes a standalone substantive right to the

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<sup>205</sup> Declaration of Bizkaia on the Right to the Environment UNESCO Doc. 30 C/ INF.11 (September 24, 1999) [hereinafter Bizkaia Declaration], *available at* <http://unesdoc.unesco.org/images/0011/001173/117321e.pdf> (last visited Sept. 16, 2011).

environment.<sup>206</sup> It does so in its introductory paragraphs with its acknowledgment of the existence of the right to a wholesome environment asserted in other international human rights instruments and reaffirms that such a right exists in the fourth substantive resolution. The danger the illegal movement of dangerous and toxic products presents to the rights to life, health and a sound environment is restated throughout the Toxic and Dangerous Product Resolution, and is condemned in Article 3.

### **3.2.3: Constitutive Act of the African Union, Legally Binding and Non-Legally Binding Human Rights Instruments in Africa**

The purpose of the examination of key instruments on human rights in the African region and relevant case law in the area is to find out if there is regional legal authority to enable, promote, and protect a substantive environmental right for the African people, either by means of a direct or indirect rights approach.<sup>207</sup>

The Constitutive Act of the African Union was adopted in July 2000<sup>208</sup> to replace the 1963 Charter of the OAU.<sup>209</sup> Like the Charters of the U.N. and OAU, the

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<sup>206</sup> U.N. Commission on Human Rights, Res. 2000/72 (April 26, 2000) [hereinafter Toxic and Dangerous Product Resolution].

<sup>207</sup> For a list of key human rights documents for the African Region, *see* <http://www1.umn.edu/humanrts/instree/afrinst.htm> (last visited Nov. 25, 2011).

<sup>208</sup> Constitutive Act of the African Union, *adopted on* July 11, 2000, O.A.U. Doc. CAB/LEG/23.15 (2001) (entered into force on May 26, 2001) [hereinafter Constitutive Act]. Nigeria, a member of the former OAU, signed the Constitutive Act on September 6, 2000, ratified it on March 29, 2001, and deposited ratification documents on April 26, 2001. Nigeria has enacted a Treaty to give effect to the Constitutive Act in Nigeria, specifically, Treaty to Establish the African Union (Ratification and Enforcement) Act, 2003, available at [http://www.nassnig.org/nass/acts.php?pageNum\\_bill=3&totalRows\\_bill=153](http://www.nassnig.org/nass/acts.php?pageNum_bill=3&totalRows_bill=153) (last visited January 7, 2012). It is unclear what African Union treaty the Nigerian government was putting into effect in Nigeria. While the name of the Nigerian law suggests that the Constitutive Act was being put into effect in Nigeria, the preamble to the Nigerian law states that "...the Treaty establishing the African Union was signed by the Heads of Government of the Member States of the African Union on 26, April 2003." However, the Constitutive Act was adopted on November 7, 2000. Also, the schedule to the Nigerian law, presumably the Constitutive Act, is different from the Constitutive Act that is available on the African Union web-site. It is also unlikely that the Nigerian law was enacting the Treaty establishing the African Economic Community into Nigerian law as that Treaty was adopted in June 1991. The Nigerian government should immediately correct this mistake.

Constitutive Act does not explicitly guarantee a stand-alone substantive right to the environment. Like the U.N. Charter, the Constitutive Act seeks to protect and promote basic human rights, including life and good health and good governance. A goal of the Constitutive Act is to promote sustainable development in Africa (Article 3(j)). As a member of the U.N. and the African Union, the Nigerian government has a legal duty to respect and promote human rights. It is clear from the findings of the African Commission on Human and Peoples' Rights in the oft-quoted case of *SERAC v. Nigeria* that the Nigerian government failed to carry out its obligations under the Constitutive Act and violated the human rights of the people of *Ogoniland*, and that the Nigerian government does not take its obligations under the Constitutive Act and U.N. Charter to protect and promote human rights seriously.<sup>210</sup> Like the OAU Charter (Article 2), the Constitutive Act (Article 3) has social and economic goals, such as to promote a better life, standard of living, and good health in Africa and eradicate illnesses that are preventable. Clearly Nigeria has not fulfilled its obligations under the Constitutive Act. A UNDP report on human development in the Niger Delta region found that decades of oil exploration in the Niger Delta region negatively impacted the livelihood and social welfare of the people in that region, especially in Rivers and Bayelsa States, the States that were the focus of the assessment in the report.<sup>211</sup> It is easy to suggest that improving the standards of living, eradicating preventable diseases and promoting the good health of the people that reside in Nigeria, including those in the Niger Delta region, are goals that

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<sup>209</sup> Charter of the Organization of African Unity, May 25, 1963, 479 U.N.T.S. 39, available at [http://www.africa-union.org/root/au/Documents/Treaties/text/OAU\\_Charter\\_1963.pdf](http://www.africa-union.org/root/au/Documents/Treaties/text/OAU_Charter_1963.pdf) (last visited Sept. 16, 2011).

<sup>210</sup> African Commission on Human and Peoples' Rights, *Decision Regarding Communication 155/96 (Social and Economic Rights Action Center and the Center for Economic and Social Rights/Nigeria)*, May 2002.

<sup>211</sup> UNDP, *supra* note 67, at 80.

are impossible to achieve in a degraded environment. It is reasonable to suggest that the Constitutive Act recognizes a substantive right to the environment because the basic human rights recognized in the African Charter on Human Rights and other international and regional instruments cannot be enjoyed in a degraded environment.

This author, like many writers and scholars, singles out the African Charter on Human Rights for its early recognition of a substantive environmental right for all Africans.<sup>212</sup> Article 24 of this instrument guarantees for Africans “the right to a general satisfactory environment favorable” to their development. This provision distinguishes the African Charter on Human Rights from its international counterpart, the UDHR, as the UDHR does not even mention the environment. Literature on the African Charter on Human Rights indicates that there is no consensus regarding the scope of the right specified in Article 24, nor universal agreement on whether it is an individual or collective right, or whether it is specified directly or may be recognized by an indirect rights approach. In its instructions on how to submit a communication to the African Commission on Human and Peoples’ Rights, this regional body considers “peoples’ right” to be a right held by the entire community at the local or national level.<sup>213</sup> Other basic rights in the African Charter that may be used to recognize a substantive environmental right include the right to life (Article 4), and like the ICESCR (Article 12(1)) a right to enjoy the highest achievable level of mental and physical well-being in

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<sup>212</sup> African Charter on Human Rights, *supra* note 87. A protocol to the African Charter on Human Rights was adopted in 1998 creating an African Court on Human and Peoples’ Rights. The African Court on Human and Peoples’ Rights was merged with the Court of Justice of the African Union, created pursuant to the Constitutive Act of the African Union, to set-up “[t]he African Court of Justice and Human Rights” in July 2008).

<sup>213</sup> See African Commission on Human and Peoples’ Rights, *Guidelines for Submission of Communications*, available at [http://www.achpr.org/english/\\_info/guidelines\\_communications\\_en.html](http://www.achpr.org/english/_info/guidelines_communications_en.html) (last visited Nov. 27, 2011).

Article 16(1), a right to work under reasonable conditions in Article 15, and a right to the best possible health in Article 16. Significant for the application of environmental rights in Nigeria is that the African Charter on Human Rights has been adopted into Nigerian law.<sup>214</sup> Even if it is accepted that the substantive right to the environment guaranteed in Article 24 of the African Charter on Human Rights is only to be enjoyed as a collective right and is limited to some extent by the right to development, the African Charter on Human Rights clearly recognizes a substantive environmental right however it is derived.

Over two decades after the African Charter on Human Rights was adopted, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa was adopted.<sup>215</sup> The Maputo protocol focuses on women in Africa and is further proof of Africa's ability to be in the forefront in the development of legal frameworks for environmental human rights, environmental justice, and sustainable development long before the developed countries caught up. Several provisions in the Maputo Protocol link an environment of an adequate quality to the enjoyment of basic human rights for women. Article 18(1) of the Maputo Protocol explicitly asserts a right for women to reside in an ecologically wholesome and sustainable environment. The duties of the State Parties with respect to the right in Article 18(1) are set forth in Article 18(2). Specific reference to a healthy environment in connection with a right to ample housing is asserted in Article 16 of the Maputo Protocol. The right of equal access to shelter and adequate conditions of living in a wholesome environment is assured for women in Article 16 and the corresponding obligation for State Parties to ensure this right is also specified. The right of women in Africa to sustainable development is

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<sup>214</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, *supra* note 98.

<sup>215</sup> Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa, July 11, 2003, CAB/LEG/66.6 (Sept. 13), [hereinafter Maputo Protocol].

asserted in Article 19. Although a stand-alone right to the environment and environmental sustainability is asserted in the Maputo Protocol, this instrument also asserts for women in Africa a right to life (Article 4), which can form the basis for recognizing a substantive environmental right by means of an indirect rights approach.

The African Charter on the Rights and Welfare of the Child is a regional agreement that affirms the Convention on the Rights of the Child.<sup>216</sup> Like its international counterpart, the African Charter on the Child does not explicitly guarantee a separate substantive right to the environment. To the extent that the African Charter on the Child does not explicitly guarantee an explicit right to the environment for the most vulnerable segment of society, the African Charter on the Child is in this author's opinion deficient. How can the African Charter on the Child ensure "to the maximum extent possible the survival and development of the child," (third paragraph in the Preamble) when available scientific information indicates that the disposal of hazardous substances into the environment can impact the health of humans (benzene, a natural component of crude oil, is a known carcinogen) and the African Charter on the Child does not unequivocally guarantee a right to an ecologically healthy environment for the child? This deficiency in the African Charter on the Child is contrasted with the provision in the Maputo Protocol, which specifies a stand-alone right to the environment and environmental sustainability for women in Africa.<sup>217</sup> The failure of the State Parties to the African Charter on the Child to explicitly and unequivocally guarantee a substantive

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<sup>216</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990) (entered into force on November 29, 1999) [hereinafter African Charter on the Child], *available at* <http://www.africa-union.org/root/au/Documents/Treaties/Text/A.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf> (last visited Sept. 16, 2011). The last preamble section of this instrument sets forth the AU's affirmation of the U.N. Convention on the Rights of a Child and an OAU instrument on the welfare of a child in Africa.

<sup>217</sup> Maputo Protocol, *supra* note 215, art. 18.

environmental right for a child in Africa does not in this author's view promote the goals of regional instruments, such as the African Charter on Human Rights, which requires that States Parties protect the rights of a child as mandated in international instruments,<sup>218</sup> and the Constitutive Act, which calls for collaboration in all human endeavors to increase the living standards of the African population.<sup>219</sup> Basic human rights in the African Charter on the Child that may be used to recognize a substantive environmental right for the child include a right to life (Article 5) and, a right to the enjoyment of the highest achievable "physical, mental and spiritual health" (Article 14), which requires that States Parties ensure, among other things, that sufficient water for the wellbeing of the child is provided (Article 14(2)(c)). Using an indirect rights approach, it may be inferred that a substantive right to the environment is recognized in the African Charter on the Child because a healthy environment is vital for a child's enjoyment of basic human rights to life and to the highest achievable physical, mental and spiritual health conditions.

The 1999 Grand Bay (Mauritius) Declaration and Plan of Action on Human Rights affirms the members of the defunct OAU's recognition of the indivisibility and universal nature of the still developing cadre of human rights specified in Declaration 2 of the Grand Bay Declaration.<sup>220</sup> In addition to the recognition of an explicit right to a reasonably adequate wholesome environment, Declaration 2 of this instrument introduces new categories of human rights, namely the right to development for the African people and the right to peace and security of the country. These rights are recognized in the

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<sup>218</sup> African Charter on Human Rights, *supra* note 87, art. 18(3).

<sup>219</sup> Constitutive Act, *supra* note 208, art. 3(k).

<sup>220</sup> See First OAU Ministerial Conference on Human Rights, April 1-16, 1999, *Grand Bay (Mauritius) Declaration and Plan of Action*, ¶ 2, adopted on April 16, 1999 (1999) [hereinafter Grand Bay Declaration], available at [http://www.achpr.org/english/declarations/declaration\\_grand\\_bay\\_en.html](http://www.achpr.org/english/declarations/declaration_grand_bay_en.html) (last visited Sept. 16, 2011).



Grand Bay Declaration as part of established fundamental human rights. Like the right to life in the African Charter on the Child, the universality of human rights including the right to life is affirmed in the Grand Bay Declaration (Declaration 5). The Grand Bay Declaration lays out the position that the existence of a degraded environment leads to the violation of human rights. The defunct OAU's inaugural "Ministerial Conference on Human Rights" asserted awareness of the fact that environmental degradation is one of the many causes of violations of human rights in Africa (Declaration 8(n)). Other causes of the violation of human rights in Africa noted in the Grand Bay Declaration directly relevant to this study include misconduct, poor governance and corrupt practices (Declaration 8(g)) and the absence of accountability in the administration of the affairs of the public (Declaration 8(h)). This approach to list the causes of human rights violations is not embraced in the other instruments examined above with the exception of the Toxic and Dangerous Product Resolution, which also adopts a similar style. Using an indirect rights approach, it is reasonable to assert that the Grand Bay Declaration recognizes a substantive environmental right as the human right to life, development, national peace and security cannot be enjoyed in a degraded environment. The agitation of the people in the Niger Delta region of Nigeria illustrates how long-term pollution of the environment can cause unrest and the breakdown of law and order.

In the oft-cited decision of the African Commission on Human and Peoples' Rights pertaining to communication 155/96, the African Commission on Human Rights determined that the Nigerian government had violated certain provisions of the African Charter on Human Rights, including the rights to life, food, health, and the

environment.<sup>221</sup> This decision may be used to recognize the rights of the *Ogoni* people to enjoy a substantive environmental right.

### **3.3: Participatory Rights: International and Regional Legal Regimes**

International and regional human rights instruments recognize different types of general participatory rights. These rights include the right to freedom of thought, the right to freedom of expression and opinion, the right to freely participate in the cultural life of a community, and the right to freedom of peaceful assembly and association. The right to general education is also asserted in international and regional human rights documents, and in some cases a right to human rights education is also asserted. Anderson is of the view that by guaranteeing a democratic system and a process that requires the dissemination and consideration of relevant information and knowledge, first generation human rights which are primarily participatory in nature, assure the protection of the environment.<sup>222</sup> Alan Boyle is also of the view that first generation human rights are primarily “empowerment” rights that ensure that people have access to information, the right to take part in environmental decision-making processes, and access to justice in environmental matters.<sup>223</sup> International and regional environmental instruments, legally binding and non-legally binding, often specify duties for States Parties to promote and protect environmental resources and environmental education, and sometimes assure participatory environmental rights.

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<sup>221</sup> The African Commission on Human and Peoples’ Rights determined that Nigeria had violated multiple provisions of the African Charter on Human Rights.

<sup>222</sup> Michael R. Anderson, *Human Rights Approaches to Environmental Protection: An Overview*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 9 (Alan E. Boyle & Michael R. Anderson eds. 1996).

<sup>223</sup> Alan Boyle, *supra* note 149, at 48.

While the Stockholm Declaration recognizes a right to environmental education at the national level (Article 19), the World Charter for Nature expands upon the Stockholm Declaration and in this author's opinion lays the foundation for the modern-day formulation of an environmental registry (Article 16), assures public participation in environmental decision-making and access to justice (Article 23). Principle 10 of the Rio Declaration built upon Article 23 of the World Charter for Nature by adding a third participatory right in the form of access to environment-related information. At the regional level in Africa, the Revised African Nature Convention prescribes duties for governments of African Union countries to protect and promote procedural environmental rights (Article XVI). Although it is yet to enter into force, the Revised African Nature Convention has the potential to be a key environmental instrument in the African region by building upon the original 1968 African Nature Convention to explicitly guarantee procedural environmental rights. The goal of the assessment that follows is to find authority in international and regional development, environmental and human rights instruments that may be used to secure procedural environmental rights.

### **3.3.1: Charter of the United Nations, Legally Binding and Non-Legally Binding International Human Rights Documents**

The UDHR does not specify participatory environmental rights but asserts different types of general procedural rights such as freedom to hold and express a view, which includes freedom to receive and disseminate information, freedom to assemble and associate in a peaceful manner, equality before the law and a right of access to a complete hearing that is fair and open, access to an effective remedy by the relevant national institution, and the right to basic education that is multi-faceted in nature and teaches the

value of human rights.<sup>224</sup> Although the UDHR does not specifically refer to the environment, this study is of the view that the procedural rights in the UDHR are broad enough to be extended to the environmental field.

Like the UDHR, the ICEAFRD does not explicitly guarantee participatory environmental rights but this study suggests that the broad civil and political rights in the ICEAFRD, which guarantee for every person equal protection before organs that administer justice, freedom of opinion and expression, freedom of association, and the right to education and learning, may be extended to the environmental field.<sup>225</sup> Article 5 also assures the right to participate in cultural activities on an equal footing with others. It is clear from human rights literature that the scope and content of the right to participate in cultural life is open to different interpretations. Experts at the U.N. Human Rights Committee are of the view that “[C]ulture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law.”<sup>226</sup>

Relying on this interpretation, this author suggests that the right to take part in cultural life, either in an individual or collective capacity, will confer on those who seek the protection of their cultural life, the rights to obtain information related to the environment and to participate in the environmental decision-making process as environmental issues may affect long-established activities of the community such as

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<sup>224</sup> Universal Declaration of Human Rights, *supra* note 83, arts. 8, 10, 19, 20 & 26.

<sup>225</sup> ICEAFRD, *supra* note 175, art. 5.

<sup>226</sup> Human Rights Committee, General Comment No. 23: Rights of Minorities (Art 27), U.N. Doc. CCPR/C/21/Rev.1/Add.5 (1994), *available at* [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/fb7fb12c2fb8bb21c12563ed004df111?Opendocument) (last visited Sept. 17, 2011).

farming and fishing. The right to take part in cultural life should also include access to justice (administrative and judicial) on matters related to the environment that have the potential to adversely affect the cultural life of the individual. This author considers that a consequence of the environmental degradation in the Niger Delta region of Nigeria is that people in this region, especially farmers and fishermen, have been denied a fundamental right to cultural activities, and the right to participate in cultural activities on an equal footing with other communities in Nigeria.<sup>227</sup>

Like the UDHR and the ICEAFRD, the ICCPR does not explicitly assure procedural environmental rights but it contains general participatory civil and political rights that this study considers are broad enough to be applied in an environmental context.<sup>228</sup> Article 19(2) of the ICCPR recognizes a right to freedom of expression which includes the “freedom to look for, obtain, and share information and viewpoints. This author considers that the restrictions placed on the enjoyment of these under the guise of a vague “national security and public order” concern (Article 19(3)(b)) may be used by undemocratic governments to restrict the public’s access to pertinent information on the environment, and this restriction on the free flow of information has the potential to exclude the individuals in the affected community from participating in matters related to the environment, including an EIA process.<sup>229</sup> If under the guise of maintaining the security of oil resources and activities in the Niger Delta region, basic human rights of the people in the region are trampled upon, how can one reasonably expect that the

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<sup>227</sup> Universal Declaration of Human Rights, *supra* note 83, art. 27(1).

<sup>228</sup> ICCPR, *supra* note 173.

<sup>229</sup> While this paper was still in a draft form, with a recommendation that Nigeria promptly enact a FOIA, this author became aware that on or about May 27, 2011, a FOIL Bill was enacted into law in the form of the Freedom of Information Act, 2011. It is gratifying know that the Nigerian government has adopted a recommendation of this study which this author hopes will be fully implemented in practice.

procedural environmental rights of the people that reside in the Niger Delta region, which are yet to be clearly defined in national legislation or in the constitution, will be assured?

The ICESCR contains general provisions on the right to education and the right to participate in cultural activities.<sup>230</sup> This study considers that these rights are expansive enough to be applied in an environmental context. The comments on the right to participate in cultural activities offered above for the ICEAFRD are reiterated here.

In this author's opinion, the CEDAW guarantees general procedural rights that may be used to secure procedural environmental rights for women. The right to participate in the governance of a country, on an equal footing with men, is guaranteed (Article 7(b)), and access to information related to the environment and public health information is assured for all women (Article 10(h)) and for women who live in rural areas (Articles 14(2)(a) and 14(d)).<sup>231</sup> Article 14(2)(d) refers to both formal and non-formal education. Although the provisions cited above do not explicitly refer to the environment, the provisions are general enough to be applied by implication to the environmental field. In Article 10(h), a right to educational information "to ensure the health and well-being of families" is specified for women on an equal footing with men. Article 14(2)(a) guarantees for rural women, on an equal footing with men, a right to participate in the "elaboration and implementation of development planning at all levels." This author considers that the provision in Article 14(2)(a) confers on women in rural areas the right to participate in the EIA process.

Like the other human rights instruments examined above, the Convention on the Rights of the Child guarantees general participatory rights and freedoms for the Child

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<sup>230</sup> ICESCR, *supra* note 19, arts. 13 & 15.

<sup>231</sup> CEDAW, *supra* note 177.

such as freedom to express ideas, including the right to ask for, obtain and share information and opinions (Article 13(1)), freedom to think and adhere to a religion (Article 14(1)) and to assemble and associate with others in a peaceful manner (Article 15).<sup>232</sup> This author is of the view that these rights are broad enough to be applied from an environmental perspective. Like the ICCPR, the right assured in Article 13(1) of the Convention on the Rights of the Child has the same restriction and limitation as the corresponding right in the ICCPR (Article 13(2)). The same cautionary note that was proffered above with respect to Article (19)(3) of the ICCPR is reiterated herein. For a legally binding instrument that seeks to protect the most vulnerable members of society, any restriction on the exercise of freedoms or rights of such vulnerable individuals on political or vague security claims must be given the highest scrutiny to ensure that the rights provided for the child do not effectively become meaningless.

The promotion and protection of fundamental human rights for all people is a stated goal and objective in the U.N. Charter.<sup>233</sup> If it is accepted that human rights instruments enunciate procedural rights that are broad enough to be applied in an environmental context, and the U.N. Charter requires that members and organs of the U.N. must observe and promote basic human rights, it is reasonable to argue that the U.N. Charter provides authority to recognize participatory environmental rights.

### **3.3.2: The African Region: Constitutive Act of the African Union, Legally Binding and Non-Legally Binding Instruments on Human Rights and Development**

The Constitutive Act does not directly guarantee procedural environmental rights but it has participatory goals and principles that are broad enough to be applied to the

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<sup>232</sup> Convention on the Rights of a Child, *supra* note 179. A right of freedom of conscience is also guaranteed in Article 14.

<sup>233</sup> See U.N. Charter, *supra* note 146, pmbl. para. 2 & art. 55(c). Nigeria became a member of the U.N. on October 7, 1960 shortly after it gained independence on October 1, 1960.

environment, such as to encourage the participation of the public, particularly in the actions of the African Union (Articles 3(g) and 4(c)), promote collaboration in all aspects of human endeavor in order to improve the standards of living of Africans and promote research “in all fields, in particular in science and technology” (Article 3(m)). If it is accepted that environmental sustainability is vital for sustainable development and a goal of the Constitutive Act is to promote sustainable development (Article 3(j)); and that the African Charter on Human Rights recognizes substantive and procedural environmental rights and a goal of the Constitutive Act is to promote and safeguard human and peoples’ rights in accordance with the African Charter on Human Rights, it should also be accepted that the Constitutive Act recognizes procedural environmental rights for all Africans.

Like its international counterpart, the UDHR, the African Charter on Human Rights espouses general procedural rights that this study considers are expansive enough to be applied in an environmental context. Such rights include the right of access to a hearing before a capable body (Article 7), the right to obtain information and to share ideas (Article 9), unrestricted association within legal boundaries (Article 10), the right to assemble freely with others (Article 11), and the rights to be educated, participate in the cultural activities of the community and safeguard traditional values (Article 17). Unlike the UDHR, the African Charter on Human Rights specifically refers to environmental rights in Article 24. If it is accepted that Article 24 of the African Charter on Human Rights secures a substantive environmental right and that general procedural rights are secured in this instrument, it should also be accepted that procedural environmental rights are guaranteed in the African Charter on Human Rights. Noteworthy is the provision in



Article 7 that guarantees access to a hearing for abridgements of fundamental human rights guaranteed by the laws of a country, or recognized by tradition, which includes environmental rights recognized in the constitution of an African country.<sup>234</sup> Like the ICCPR and the Convention on the Rights of a Child, the African Charter on Human Rights contains restrictions and limitations that have the potential to reduce the effectiveness of some of the provisions of the instrument. An example is the vague “necessary restriction” placed on the right to assembly.<sup>235</sup> This restriction in the African Charter on Human Rights is contrasted with a similar provision in the UDHR that merely calls for “peaceful assembly.”<sup>236</sup> This author restates the arguments made above for the ICCPR and Convention on the Rights of the Child in that a vague “national security” restriction may end up muzzling free speech, and result in an abridgement of an individual’s basic human rights. Article 26 requires that State Parties ensure the impartiality of the courts in a country and establish and enhance national organizations for the protection of rights and freedoms set out in the African Charter on Human Rights. Since a substantive environmental right is recognized in the African Charter on Human Rights, it is easy to consider the duties in Article 26 in an environmental context. Although national institutions to protect and enhance the environment and human rights have been established in Nigeria, such as NESREA and the National Human Rights Commission of Nigeria, respectively, considering the level of environmental contamination in Nigeria and documented violations of the human rights violations in Nigeria, including the people that reside in the Niger Delta, this author considers that

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<sup>234</sup> See, e.g., S. AFR. CONST., 1996, § 24 (guaranteeing a substantive right to the environment for all South Africans).

<sup>235</sup> African Charter on Human Rights, *supra* note 87, art. 11. The restrictions include those in the interests of “national security, the safety, health, ethics and rights and freedoms of others.”

<sup>236</sup> UDHR, *supra* note 83, art. 20(1).

these institutions have been derelict in their duties, particularly with respect to the people and environment in the Niger Delta region.

The African Youth Charter is a unique agreement that promotes basic rights for, and protects, an under-appreciated but no doubt important segment of the African population, the young men and women in Africa aged between 15 and 35 years.<sup>237</sup> General procedural rights and freedoms guaranteed in the Youth Charter relevant to this study include the right to express thoughts and views (Article 4), freedom to freely associate and assemble (Article 5), the right to socio-economic, cultural and political advancement (Article 10) with a corresponding duty on State Parties to promote the dissemination of relevant information by the media (Article 10(a)), the right to participate in societal activities (Article 11), and the right to high-quality education (Article 13). Also, the African Youth Charter explicitly specifies procedural environmental rights for the youths in Africa. This instrument among other things, calls for the development of the skills and knowledge of African youths for the enhancement of the environment in Africa. State Parties have a duty to build the capacity of youths to protect the environment in order to promote environmental sustainability (Article 19(2)). Obligations for State Parties to promote and protect procedural environmental rights include ensuring that information to protect the environment as it concerns youths is collected and exchanged, (Article 19(2)(a)), ensuring that youths in Africa are involved in the development and implementation of policies concerning the environment (Article 19(2)(d)), enabling access to and respect for traditional knowledge for youths (Article

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<sup>237</sup> African Youth Charter *adopted on July 2, 2006*, Doc.Ex.CI/Dec.262(IX), *available at* [http://www.africa-union.org/root/au/Documents/Treaties/Text/African\\_Youth\\_Charter.pdf](http://www.africa-union.org/root/au/Documents/Treaties/Text/African_Youth_Charter.pdf) (last visited Sept. 17, 2011) (entered into force on August 8, 2009). Nigeria signed the African Youth Charter on April 21, 2009 and ratified it on July 13, 2009.

20), and making sure that African languages are taught in the educational institutions (Article 20(f)). A general duty of youths to protect and preserve the environment is set forth in Article 26.

The Grand Bay Declaration does not unequivocally guarantee procedural environmental rights but its unique approach giving examples of the actions, conditions and activities, or the failures that have caused human rights violations in Africa, is noteworthy (Declaration 8).<sup>238</sup> It is asserted in this instrument that the lack of impartial human rights bodies (Declaration 8(l)), the absence of a free press and the ability to associate freely (Declaration 8(m)), and the absence of an accountable public service (Declaration 8(h)) are causes of human rights violations in Africa. Considering the assertion in Declaration 2 (rights to a wholesome environment, to pursue development, and global and national peace and order), it is easy to suggest that these provisions may be expanded to the environmental field. The Grand Bay Declaration calls for, among other things, the development of formal and informal measures to educate Africans about human rights matters and global humanitarian law (Declaration 20). It is permissible to suggest that a right to broad environmental education is endorsed in this instrument.

Public Participation is a recurring theme in the African Charter for Popular Participation in Development and Transformation.<sup>239</sup> A primary goal of the Arusha Charter is to promote collaboration and participation of all Africans in the development of measures, plans and programs for the economic advancement of all Africans.<sup>240</sup> Like

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<sup>238</sup> Grand Bay Declaration, *supra* note 220, ¶ 8.

<sup>239</sup> UNECA, International Conference on Popular Participation in the Recovery and Development Process in Africa, Feb. 12-16, 1990, Arusha, United Republic of Tanzania, African Charter for Popular Participation in Development and Transformation (1990) [hereinafter Arusha Charter], *available at* <http://www.uneca.org/search.htm> (last visited Sept. 18, 2011).

<sup>240</sup> *Id.* ¶ 11.

Principle 10 of the Rio Declaration, public participation in decision-making is recognized in the Arusha Charter, in this case with respect to all aspects of human development in Africa (Paragraph 10). Although the environment is not specifically mentioned with respect to a right to participate in the decision-making process in Paragraph 10 of the Arusha Charter, this author considers the language broad enough to apply to the environment as the state of the environment no doubt impact's the socio-economic progress of people. Like the CEDAW, the Arusha Charter demands a high sense of urgency be given to the development of procedures that promote equality for, and the full participation of, women in Africa in all aspects of human development (Paragraph 12).

### **3.3.3: Procedural Environmental Rights and International Environmental Instruments**

The examination above showed that legally binding and non-legally binding international and regional instruments on human rights instruments and/or development contain procedural rights that are expansive enough to be applied to the field of the environment. The examination below shows that legally binding international environmental instruments often seek to assure the sustainability of the environment for current and future generations and, to that end, specify procedural duties for a State Party at the international level, and in a few cases the instruments promote and protect procedural environmental rights at the domestic level.<sup>241</sup> As this author has stated earlier, collaboration in addressing global environmental issues at the international level is critical for ensuring environmental sustainability at the national level. Non-legally binding international environmental instruments also have the long-term maintenance and

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<sup>241</sup> See UNEP-OHCHR Expert Seminar on Human Rights and the Environment Background Paper No. 1: *Human Rights and Environmental Issues in Multilateral Treaties adopted between 1991 and 2001*, (January 14-16, 2002) (Prepared by Dinah Shelton), for a fuller discussion of human rights treaties that have environmental elements.

protection of global environmental resources as a primary goal and specify duties for States Parties to achieve this goal but often assert procedural entitlements for people to be enjoyed at the national level. Key legally-binding international environmental law instruments include the Climate Change Convention and its Kyoto Protocol,<sup>242</sup> the Desertification Convention,<sup>243</sup> the Convention on Biological Diversity as amended by the Cartagena Protocol on Biosafety to the Convention on Biological Diversity,<sup>244</sup> the Basel Convention,<sup>245</sup> the Rotterdam Convention,<sup>246</sup> the POP Convention,<sup>247</sup> and the Ozone Convention,<sup>248</sup> to mention a few.

### 3.3.3.1: Legally Binding Instruments

The Climate Change Convention is a major international environmental law instrument that promotes MDG 7, particularly Target 7a, in requiring that present and future generations are not made to bear the burden of a degraded atmosphere and “climate system.”<sup>249</sup> To achieve the substantive goals of this instrument, the Climate Change Convention sets out procedural obligations for States Parties relevant to this

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<sup>242</sup> Climate Change Convention, *supra* note 27; Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, U.N. Doc FCCC/CP/1997/7/Add.1, 37 I.L.M. 22. (1998) [hereinafter Kyoto Protocol], *available at* [http://treaties.un.org/doc/Treaties/1998/09/19980921%2004-41%20PM/Ch\\_XXVII\\_07\\_ap.pdf](http://treaties.un.org/doc/Treaties/1998/09/19980921%2004-41%20PM/Ch_XXVII_07_ap.pdf) (last visited Oct. 14, 2011).

<sup>243</sup> Desertification Convention, *supra* note 26.

<sup>244</sup> Convention on Biological Diversity, *opened for signature* June 5, 1992, 1760 U.N.T.S. 79, 31 I.L.M. 818 (1992), *available at* [http://treaties.un.org/doc/Treaties/1992/06/19920605%2008-44%20PM/Ch\\_XXVII\\_08p.pdf](http://treaties.un.org/doc/Treaties/1992/06/19920605%2008-44%20PM/Ch_XXVII_08p.pdf) [hereinafter Biological Diversity Convention] (last visited Oct. 14, 2011); Cartagena Protocol on Biosafety to the Convention on Biological Diversity, *opened for signature* May 15, 2000, U.N. Doc. UNEP/CBD/ExCOP/1/3, at 42 (2000) 2226 U.N.T.S. 208, 39 I.L.M. 1027 (2000) [hereinafter Cartagena Protocol], *available at* [http://treaties.un.org/doc/Treaties/2000/01/20000129%2008-44%20PM/Ch\\_XXVII\\_08\\_ap.pdf](http://treaties.un.org/doc/Treaties/2000/01/20000129%2008-44%20PM/Ch_XXVII_08_ap.pdf) (last visited Oct. 14, 2011).

<sup>245</sup> Basel Convention, *supra* note 120.

<sup>246</sup> Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 38 I.L.M. 1(1999), *opened for signature* September 11, 1998, [hereinafter Rotterdam Convention].

<sup>247</sup> Stockholm Convention on Persistent Organic Pollutants, May 22, 2001, 40 I.L.M. 532 (2001) [hereinafter POP Convention].

<sup>248</sup> Vienna Convention for the Protection of the Ozone Layer, Mar. 22, 1985, T.I.A.S. No. 11,097, 26 I.L.M. 1529 (1987), [hereinafter Ozone Convention].

<sup>249</sup> Climate Change Convention, *supra* note 27, pmbl. para. 23 & art. 2.

study, including collating, updating and sharing information about greenhouse gas emissions (Article 4), conducting research on climate change issues (Article 5), and developing and implementing climate change education, capacity building and public enlightenment programs (Article 6). The provisions in Article 6 with respect to climate change education, scientific and technical training, collection and dissemination of information related to climate change, and public participation are to be enjoyed at the national level. This study notes that the requirements in Article 6 are linked to domestic laws and regulations and the capacity of the respective country. Provisions on access to justice are set out in Articles 13 and 14. Although some of the procedural obligations for State Parties in the Climate Change Convention are qualified, this author suggests that all States Parties must use their best efforts to fulfill their obligations under the Climate Change Convention.

The Desertification Convention promotes environmental sustainability in requiring States Parties to take adequate action to combat desertification and reduce the effects of drought for the benefit of current and future generations, re-asserts the goals of other international instruments like the Climate Change Convention and Biological Diversity Convention, and specifies participatory rights and duties to achieve the substantive objectives of the instrument.<sup>250</sup> In Articles 2(1) and 2(2), States Parties are called upon to consider the plight of African countries in tackling desertification and drought. A participatory duty for State Parties that has national application is found in Article 3(a) of the Desertification Convention, which requires that States Parties ensure that the public participates in the decision-making process regarding measures to combat desertification, drought and related issues. Like the Climate Change Convention, the

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<sup>250</sup> Desertification Convention, *supra* note 26, pmb1.

Desertification Convention contains qualified procedural environmental obligations for States Parties to the extent of the States Parties capabilities. Like the Climate Change Convention, this author considers that all States Parties must use every means available to that State Party to comply with the instrument. States Parties have an obligation to work together to ensure that relevant information about drought and desertification and its effects is collected, analyzed and shared so it may be used by affected communities at the local level (Article 16). Like the Climate Change Convention, in addition to international collaboration, the Desertification Convention also promotes capacity building at the national and local levels. State Parties, to the extent possible, are called upon to build the capacity of the local communities by specified means, make sure that the general public has access to relevant information about desertification and drought, and assure comprehensive education about the goals and objectives of the Desertification Convention (Article 19(1)). Like the Climate Change Convention, the Desertification Convention has a mechanism for finding solutions to issues that arise in the implementation of the Desertification Convention (Article 27), and for resolving disputes (Article 28). This author considers that the procedures for dispute resolution in this convention can serve as a basis for strengthening the administrative and judicial processes pertaining to the environment at the national level.

The Biological Diversity Convention promotes environmental sustainability by requiring that States Parties ensure that biological diversity is used in a sustainable manner, that it is managed and conserved for the good of current and future generations and other living beings, and that it is maintained for its intrinsic worth and life sustaining

attributes.<sup>251</sup> Like the instruments above, this instrument uses procedural mechanisms to attain the substantive goals of the document. States Parties are called upon to collaborate to achieve the goals of the instrument (Article 5), promote and support public instruction and awareness on measures to protect biological diversity (Article 13); develop national plans and measures to carry out the primary goals of this convention (Article 6); promote research, instruction and capacity building with respect to the matters covered in this instrument; develop and implement at the national level what may be considered to be EIA and SEA procedures on issues related to biological diversity (Article 14); and ensure the sharing of pertinent information at the national and international levels (Article 17). Like the instruments examined above, this instrument contains qualified obligations for State Parties, including the duties in Article 14, which allows States Parties to undertake impact assessment procedures “as far as possible [sic], and appropriate”. This study considers that States Parties shall use every tool available to such State Party to promote and achieve the goals of this instrument. Provisions for resolving disputes regarding matters covered in the Biological Diversity Convention are provided for in Article 27.

The Basel Convention promotes environmental sustainability in requiring that hazardous and other wastes are managed in a manner that is protective of human health and the environment.<sup>252</sup> This study suggests that reference to human health considers the health of present and future generations of humankind, and that this instrument seeks to protect the environment for all life forms in earth’s ecosystems. Like the instruments examined above, the Basel Convention contains substantive duties for States Parties and uses procedural tools to promote the stated substantive goals. The procedural

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<sup>251</sup> Biological Diversity Convention, *supra* note 244, pmbl. para. 2, 23 & art. 1.

<sup>252</sup> Basel Convention, *supra* note 120, pmbl. para. 4.



mechanisms are mostly to be exercised at the international level. Procedural obligations for States Parties include the use of appropriate labeling and packaging of hazardous wastes and manifests to track the movement of hazardous wastes (Article 4(7)), notifying the relevant body in a receiving state when hazardous waste is moved across State boundaries (Article 6), requiring that States Parties collaborate with each other so that hazardous wastes may be used and managed in a sound manner (Article 10), and so that a rules and processes may be adopted for apportioning liability and ensuring compensation for damage arising out of the transboundary transfer of covered wastes (Article 12). Also, States Parties are required to provide information to the relevant body in another State when it becomes aware that an accident has occurred during the movement of covered wastes across State boundaries that have the potential to impact public health and the environment (Article 13). Like the international environmental instruments examined above, the Basel Convention has mechanisms to resolve the disputes of State Parties in the execution and application of the Basel Convention (Article 20).

The Rotterdam Convention promotes environmental sustainability by requiring that the global trade in dangerous chemicals is conducted in a manner that is not harmful to the environment.<sup>253</sup> Like what was suggested above for the Basel Convention, this study considers that the reference to human health is intended to cover all of humankind now and in the future, and that the States Parties seek to protect the environment for all life forms on earth. The Rotterdam Convention, like the instruments above, uses procedural tools to achieve the substantive objectives of the instrument. The Rotterdam Convention requires that States Parties share relevant information about covered chemicals, adopt and implement a decision-making process at the national level for the

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<sup>253</sup> Rotterdam Convention, *supra* note 246, art. 1.

import and export of covered chemicals and transmit the final determination to States Parties (Article 1). The requirements for labeling and notifying relevant authorities in the importing state about the risks and dangers of hazardous chemicals are set forth in Articles 12 and 13, respectively. The Rotterdam Convention also contains qualified obligations like the instruments above. This study considers that States Parties have a duty under the Rotterdam Convention to use all efforts to satisfy the provisions of the instrument. The Rotterdam Convention is unique in explicitly requiring wide public involvement at the national level. States Parties are required by this instrument to ensure that the public has access to pertinent information on regulatory activities in a state as it concerns prohibited chemicals (Article 14(1)(b)). Similar to the other international environmental instruments examined above, the Rotterdam Convention contains mechanisms for settling disputes between States Parties (Article 20).

A stated primary goal of the Ozone Convention is to safeguard the health of all of humankind and the environment from negative effects of human actions that change or have the potential to damage the ozone layer.<sup>254</sup> This author suggests that the health of current and future generations is considered in the Ozone Convention and the protection of the environment is intended to benefit all life forms. As in the case of the instruments examined above, the Ozone Convention promotes the use of procedural measures to attain the substantive purposes of the Ozone Convention. States Parties are required to, among other things, conduct research and share information regarding matters covered in the instrument (Article 2(a)); work together to undertake research and evaluations with respect to matters covered in the Ozone Convention (Article 3); share information on matters of a technical, scientific, social, economic, business and legal nature related to

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<sup>254</sup> Ozone Convention, *supra* note 248, art. 2(1).

issues in the Ozone Convention (Article 4); and provide information about steps a State Party has taken to fulfill its obligations under the Ozone Convention to the *Conference of Parties* (Article 5). Like the instruments assessed above, the Ozone Convention places limitations on States Parties obligations. As suggested above, this author is of the view that States Parties are required to use their best efforts to fulfill their obligations under this instrument. Like the instruments examined above, the Ozone Convention provides a mechanism for settling disputes between State Parties (Article 11) as it concerns matters covered in this instrument.

A major objective of the POP Convention is to safeguard the health of all of humankind and protect the environment from the harmful effects of POPs.<sup>255</sup> States Parties affirm their awareness of the impact of POPs on human health, especially on the health of women, and through women, upon succeeding generations.<sup>256</sup> Reading the above provisions together, this study suggests that the POP Convention considers environmental sustainability to be a major goal of the instrument. Like the instruments considered above, the POP Convention contains procedural environmental duties for States Parties to achieve the substantive goals of the instrument. States Parties are required to share irrelevant information (Article 9); seriously consider developing inventories of chemicals (Article 10(5)); make available to the public participatory procedures, information and education, awareness and capacity building programs pertaining to matters covered in the instrument (Articles 10(1)-(4)). The POP Convention is noteworthy for requiring that State Parties promote environmental education for the general public, and build the capacity of policy makers, the regulator

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<sup>255</sup> POP Convention, *supra* note 247, art. 1.

<sup>256</sup> *Id.*, pmb. para. 2.

and the regulated community regarding POPs (Article 10(1)). Another unique feature of the POP Convention is its call on State Parties to consider developing what could be viewed as PRTRs (Article 10(5)) and like the UDHR (Article 19), encouraging the use of the media to disseminate information on matters covered in the POP Convention (Article 10(4)), in this case mass media. Among all the international environmental instruments examined above, the POP Convention in this author's estimation comes closest to securing, at the national level, a broad array of procedural environmental rights in Article 10 similar to those in Principle 10 of the Rio Declaration and environmental education, and requiring that States Parties pay particular attention to marginalized segments of society, women, children, and educationally disadvantaged people (Article 10(1)(c)). For this reason, this instrument is in a class of its own when compared to the instruments examined above. Although the obligations of States Parties obligations under Article 10 is limited to the extent of the State Parties capabilities, this author considers that States Parties must use every effort to adopt, implement and promote the procedural measures in Article 10 and other qualified provisions. Like the environmental instruments analyzed above, the POP Convention contains judicial and administrative mechanisms for settling disputes that may arise between State Parties in the interpretation of the POP Convention (Article 18).

### **3.3.3.2: Non-Legally Binding Instruments**

In calling for the protection and improvement of the environment for current and future generations (Principle 1) and a halt to the discharge of dangerous substances at excessive levels in order to protect ecosystems (Principle 6), this author considers that the Stockholm Declaration promotes environmental sustainability. The Stockholm

Declaration also recognizes the value of procedural measures to achieve substantive goals. The value of environmental education for a wide group of people is asserted in Article 19 of the Stockholm Declaration, and Article 20 of the instrument calls for the development and exchange of scientific expertise and information. While the Stockholm Declaration is undeniably noteworthy for its recognition of substantive environmental goals such as a substantive environmental right and environmental sustainability, this study considers this instrument deficient to the extent that the Stockholm Declaration does not provide a full array of procedural environmental rights.

The principles in the World Charter on Nature clearly promote environmental sustainability in protecting the health and stability of the natural environment for its inherent value, for the benefit of present and prospective generations of humankind, and for all life forms (Preamble and Principle 4). The World Charter on Nature built upon the Stockholm Declaration by introducing two pillars of integrated procedural rights in the form of individual or collective opportunities to participate in environmental decision-making procedures and access to judicial and administrative processes to remedy the destruction of, or injury to, the environment (Principle 23). As a separate measure, the widest possible audience should be given access to “ecological education” about nature (Principle 15). This author suggests that the seeds of the EIA and SEA processes were sown in the World Charter for Nature (Principle 16). The Stockholm Declaration calls for scientific studies about nature and for the results of such studies to be widely disseminated (Principle 18). It is worth pointing out that the World Charter on Nature makes a distinction between the environment and nature as evidenced in the provisions of Principles 15, 18 and 23 refers to the “environment” in relation to public participation.

This author suggests that the members of the United Nations are deliberately making a distinction between the “man-made” and “natural” environment. Duties of members of the United Nations to protect the nature are set out in Principles 6 to 13.

The Rio Declaration followed a decade after the World Charter on Nature, focusing on economic development and the environment, with special emphasis on developing countries. In seeking to meet the development and environmental requirements of current and future generations fairly, and to protect, enhance and restore the viability of the world’s ecosystems (Articles 3 and 7), this study considers that the Rio Declaration clearly promotes environmental sustainability. The Rio Declaration built upon the Stockholm Declaration and the World Charter on Nature with its enunciation of three pillars of procedural environmental rights to be enjoyed at the national level (Article 10).

If one accepts that environmental sustainability is critical for ensuring sustainable development, then one should accept that the Dublin Declaration on Access to Environmental Information, an agreement of UNEP Infoterra representatives, promotes and protects environmental sustainability in calling for sustainable development.<sup>257</sup> A unique measure proposed in the Dublin Declaration is its recommendation of the use of civil society groups, on behalf of the local community, to collect and disseminate information (Declaration 9). This measure may be viewed as a new tool to provide information to, and get information from, the “ground up.” The UNEP Infoterra representatives appear to consider that a more independent participatory process will be

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<sup>257</sup> Infoterra 2000-Global Conference on Access to Environmental Information, Sept. 11-15, 2000, *Dublin Declaration on Access to Environmental Information*, pmbl. para. 10, ¶¶ 2, 7 & 9 [hereinafter *Dublin Declaration*], available at <http://www.unep.org/infoterra/infoterra2000/report1.htm> (last visited Sept. 18, 2011).

take place if civil society groups collect, submit, and analyze information pertaining to the environment. Recognizing the important contribution of the Aarhus Convention in promoting participatory environmental rights, countries outside the European Economic Region are encouraged to accede to the Aarhus Convention or undertake comparable schemes in their regions (Declaration 13), and the international community is called upon to develop an international instrument based on principle 10 of the Rio Declaration (Declaration 14).

The Malmo Declaration endorses the use of a wide range of procedural mechanisms to achieve environmental sustainability and sustainable development.<sup>258</sup> States are encouraged to work together to prevent damage that endangers the “integrity” of the environment (Principal 5); to promote the participation of different segments of society in environmental decision-making, enlighten and educate the public about matters related to the environment (Principles 7 and 12). Like the Dublin Declaration, the Malmo Declaration asserts the vital role civil society plays in addressing environmental problems, particularly to combat public-sector corruption in the field of the environment, and calls on States to provide civil society groups with the access rights set out in Principle 10 of the Rio Declaration (Principles 14, 15 and 16). The vital role of the scientific community in promoting sound decision-making is asserted in the Malmo Declaration, and a partnership between the scientific community, governments and other interested parties is endorsed (Principle 17). Also, the important role different groups in society, local and indigenous communities and the media play in increasing awareness about environmental issues and promoting knowledge, including traditional knowledge,

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<sup>258</sup> First Global Ministerial Environment Forum, princ. 1, May 29-31, 2000, *Malmo Ministerial Declaration* [hereinafter *Malmo Declaration*], available at [http://www.unep.org/malmo/malmo\\_ministerial.htm](http://www.unep.org/malmo/malmo_ministerial.htm) (last visited Sept. 18, 2011).

is asserted in the Malmo Declaration (Principle 20). Governments are called upon to prevent the threats that international economic growth poses to the diversity in cultures and the local knowledge of communities (Article 18), and to stop gender discrimination in environmental and natural resource management decision-making (Principle 19).

#### **3.3.4: The African Region: Procedural Environmental Rights and Regional Environmental Instruments**

Legally binding and non-legally binding environmental instruments in the region of Africa typically prescribe duties for Contracting Parties to promote and protect procedural environmental rights for the general public.

In seeking collective and individual responsibility in the sustainable use and maintenance of natural resources in Africa for current and future generations and safeguarding the natural systems of the earth and other life forms, this author considers that the 1968 African Convention on the Conservation of Nature and Natural Resources promotes environmental sustainability in the continent of Africa.<sup>259</sup> A deficiency in the African Nature Convention I is the absence of procedural measures, which are vital for achieving the goal of environmental sustainability. The African Nature Convention I calls for domestic legislation to provide for a permit scheme to ensure the sound use, development, and preservation of faunal resources (Article VII (2)), and the adoption of the requisite mechanisms for the development and coordination of water development schemes (Article V(1)). This author suggests that the above-mentioned provisions provide entry points for public involvement in environmental issues.

Although the Revised African Nature Convention has the same goals to protect the environment and sustainably use natural resources (Article II) as the African Nature

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<sup>259</sup> African Nature Convention I, *supra* note 24, pmbl., arts. II & VIII.



Convention I, it built upon the 1968 document with the introduction of procedural environmental rights and obligations in Article XVI. The Revised African Nature Convention specifies duties for Contracting Parties to protect and promote environmental rights. Contracting African States are required to consider local and traditional knowledge, and to ensure the participation of local communities in the development of plans and processes to manage natural resources (Articles VI.3 (a), VIII.1 (a) and XVII). This author is of the view that the procedural environmental rights and duties in Article XVI of the Revised African Nature Convention in some respects gives with one hand, and take back with the other hand. Like the Aarhus Convention it imposes an active duty on the Contracting Party to disseminate information related to the environment (Article XVI(1)(b)), and a passive duty to ensure that the public has access to information related to the environment upon request (Article XVI(1)(a)). On the other hand, unlike the Rio Declaration and Aarhus Convention, the right to public participation in decision-making processes specified in Article XVI(1)(c) of the Revised African Nature Convention is limited to activities that have a significant impact on the environment compared to the broad provision in Principle 10 of the Rio Declaration. The deficiency in Article XVI(1)(c) appears to be inadvertent when compared to the provision in Article XIV(2)(b) of the Revised African Nature Convention that does not require a significant impact to trigger public involvement, and should be immediately corrected. In contrast to most international environmental instruments, in addition to promoting environmental sustainability, the Revised African Nature Convention specifies a right to the environment that considers the development needs of the people (Article III.1), which is identical to Article 24 of the African Human Rights Charter. Another particularly

noteworthy aspect of the Revised African Nature Convention is that it calls for community based environmental governance and management (Article XVII(3)). This author suggests that the provision in Article XVII(3) is an application of the subsidiarity in the environmental field.

The Bamako Convention may be considered to be the African region's equivalent to the Basel Convention.<sup>260</sup> In seeking to safeguard the health of humans and the environment from the negative impacts of the production of hazardous wastes, this study suggests that the Bamako Convention promotes and protects environmental sustainability. This author considers that the Bamako Convention seeks to protect humans of this generation and future generations, ecosystems, environmental resources, and all living beings on earth. Like the international environmental instruments examined above, particularly the Rotterdam Convention, the Basel Convention and the POP Convention, the Bamako Convention uses procedural mechanisms to achieve its substantive goals, albeit at the regional level. Such mechanisms include notification requirements for African Union countries, cooperation among these parties in the collection and exchange of information on the transfer of hazardous waste, and the requirement that each Contracting Party immediately notify an impacted country when accidents occur during the transfer of hazardous wastes between States.<sup>261</sup> A unique feature of the Bamako Convention, in this author's estimation, is that it encourages the participation of individuals in the decision-making process in allowing an individual that has experience on hazardous waste matters to participate in the meetings of the "Conference of Parties" as observers (Article 15(5)). Like the Basel Convention, the

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<sup>260</sup> Bamako Convention, *supra* note 120.

<sup>261</sup> *Id.* arts. 4(1)(a), 6, 10 & 13.

Bamako Convention does not specify rights of access to justice for individuals but like the Basel Convention it specifies judicial and administrative procedures to resolve disputes between Contracting Parties regarding matters covered in the Bamako Convention (Article 20). It appears that the organizations that are accorded observer status pursuant to Article 15(5) can't partake of the mechanisms in Article 20 as these provisions are reserved only for state governments.

Background information on AMCEN shows that it is a regional platform for environmental ministers in Africa that has primary goals to foster collaboration between African countries and seek answers to the socio-economic and environmental problems in Africa.<sup>262</sup> In seeking to ensure that the continent of Africa is able to handle its immediate economic development issues and food crisis without compromising long-term goals for the environment, it is reasonable to suggest that AMCEN seeks to achieve environmental sustainability in the continent of Africa.<sup>263</sup> AMCEN uses procedural mandates that are relevant to this study to achieve its substantive goals including public awareness and capacity building programs, and encouraging Africans to participate in decision-making processes related to the environment. AMCEN uses the instrumentality of decisions to specify substantive and procedural mandates for African countries. Noteworthy decisions include AMCEN decisions on the implementation of NEPAD's environmental action plan (Decision 1), climate change (Decision 2), the management of hazardous substances (Decision 5), education on the environment and technology (Decision 6), the adoption of an environment day in Africa (Decision 7), and development and implementation of a

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<sup>262</sup> African Ministerial Conference on the Environment, *established in* December 1985 under the Cairo Programme of African Cooperation, UNEP/AEC. 1/2 Annex I [hereinafter AMCEN], *available at* [http://www.unep.org/roa/Amcen/docs/AMCEN\\_Decisions/PDF/Amcen%201%20decision.pdf](http://www.unep.org/roa/Amcen/docs/AMCEN_Decisions/PDF/Amcen%201%20decision.pdf) (last visited Sept. 19, 2011).

<sup>263</sup> *Id.*

process that measures environmental progress in African countries (Decision 8). These decisions often call for the use of procedural measures such as sharing of knowledge, the development of an information database, building technical and scientific capacity, and disseminating information to achieve substantive goals of AMCEN. The Cairo Programme for African Cooperation supports this study's call for broad environmental education as it calls for the provision of environmental education and instruction in Africa, of a formal and non-formal type, to solve environmental problems at all levels in Africa.<sup>264</sup>

The Action Plan for the Environment Initiative of NEPAD is a political platform in Africa to enable sustainable development and environmental sustainability in Africa.<sup>265</sup> NEPAD's environmental plan attempts to address key environmental issues in the region of Africa including drought and desertification, degradation of wetlands, climate change, and pollution of water-based resources, and to ensure that transboundary issues involving the preservation and management of natural resources are resolved.<sup>266</sup> The steps to be taken to address these problems include participatory measures which are similar to the procedural environmental rights promoted in this study, including raising of awareness, collection and exchange of information, adequate communication, environmental education, research, training, outreach to the public, impact assessments, and participation of women in decision-making processes.

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<sup>264</sup> *Id.*

<sup>265</sup> UNEP, *Framework of an Action Plan for the Environment Initiative of the New Partnership for Africa's Development (NEPAD)*, approved by AU Assembly in Maputo, Mozambique in July 2003, [hereinafter Environment Initiative].

<sup>266</sup> *Id.*

## Conclusion

Although legally binding international and human rights instruments generally do not explicitly guarantee a substantive environmental right, a substantive environmental right may be derived from these instruments using an indirect rights approach that relies on basic human rights to secure such a right. On the other hand, numerous non-legally binding international instruments on human rights and the environment explicitly recognize a standalone substantive environmental right. Regional Human Rights documents for Africa often directly mention the environment. The African Charter on Human Rights is often singled out for explicitly guaranteeing a right to the environment. With its reference to the right to development of people in Africa (Article 24), this author suggests that the substantive environmental right in Article 24 is linked to a right to “economic, social and cultural development”, which is guaranteed in Article 22 of the African Charter. In the case of regional instruments such as the African Charter on Human Rights, the Maputo Protocol, and ILO 169 at the international level, when a standalone substantive environmental right is guaranteed, it appears to be guaranteed as a group right. A key Human Rights body in Africa also recognizes a substantive environmental human right asserted in Article 24 of the African Charter.<sup>267</sup> Also, as Carl Bruch and Sarah King have noted, a number of constitutions of African countries developed in the 1990’s guarantee a substantive right to the environment.<sup>268</sup>

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<sup>267</sup> African Commission on Human and Peoples Rights, *supra* note 210.

<sup>268</sup> See, e.g., S. AFR. CONST. (1996), art. 24 (provides an expansive right to the environment for all South Africans; REP. OF BENIN CONST. (1990), art. 27 (provides a right to a healthy and satisfactory environment as a fundamental right to its citizens with a corresponding duty for the people to defend the environment); ANGOLA CONST. (1992), art. 24 (provides a fundamental right to a healthy and unpolluted environment for citizens); CHAD CONST. (1996), art. 47 (provides a fundamental right to a healthy environment for all Chadians); UGANDA CONST. (1995), art. 39 (provides a right to a clean and healthy environment for all Ugandans); REP. OF SAO TOME AND PRINCIPE CONST. art. 48 (provides an environment of human life for all citizens and a corresponding duty to defend it).

While general procedural rights are guaranteed in international and regional legally binding human rights instruments, such rights may be expanded and used in an environmental context. Numerous non-legally binding international and regional instruments for Africa on human rights and development explicitly specify procedural environmental rights or duties. Also, legally binding and non-legally binding international and regional environmental instruments for the African region often explicitly recognize procedural environmental rights or set forth legal duties for State Parties.

This chapter examined key international and regional laws for Africa that explicitly specify environmental rights or may be used to secure a substantive environmental right and the procedural environmental rights promoted in Principle 10 of the Rio Declaration. A brief review of international and regional instruments that may be used to secure a right of access to environmental education and/or specify States Parties obligations to ensure and promote environmental education was carried out in this chapter. The next chapter advances the first pillar of this study's argument by examining UNESCO documents and other international, regional, and national environmental and human rights instruments that provide authority for a right of access to broad environmental education.

## Chapter Four: Education for Environmental Sustainability

“Environmental education is a learning process that increases people’s knowledge and awareness about the environment and associated challenges, develops the necessary skills and expertise to address the challenges, and fosters attitudes, motivations, and commitments to make informed decisions and take responsible action.”<sup>269</sup>  
-UNESCO/UNEP

This study argues that broad environmental education is a required fourth pillar of the procedural rights structure set out in Principle 10 of the Rio Declaration and similar regional provisions in order for developing countries in Africa to make progress towards environmental sustainability. The previous chapter examined international and regional human rights instruments and documents on the environment and development that may be used to guarantee commonly recognized substantive and procedural environmental rights. This chapter will review international regional and national instruments that may be used to secure a right of access to broad environmental education and States Parties obligations to ensure and protect such a right.

### 4:1: Introduction

According to Plato “[i]f a man neglects education, he walks lame to the end of his life.” This study advances the position of scholars and writers who consider that an informed, aware and knowledgeable public is more likely to participate in matters related to the environment than members of the public who do not have the information, skills, knowledge or opportunity to take action to resolve environmental problems. The decision in *M.C. Mehta v. Union of India*,<sup>270</sup> often cited by writers, provides support for

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<sup>269</sup> UNESCO/UNEP, Intergovernmental Conference on Environmental Education, Oct. 14-26, 1977, *Declaration of the Tbilisi Conference on Environmental Education*, UNESCO Doc. ED/MD/49 [hereinafter Tbilisi Declaration] (April 1978).

<sup>270</sup> *M.C. Mehta v. Union of India*, S.C. of India Writ Petition (Civil) No. 860 of 1991. For a comprehensive discussion of the case, see Bruch et al., *supra* note 138 at 158.

this position as this Court acknowledged that it serves no useful purpose in requiring the public to fulfill duties with respect to the environment if they do not have the requisite knowledge about issues that affect the environment. Sally Eden appears to be promoting broad environmental education when she refers to the British Government Panel on Sustainable Development and suggests that in order for environmental education to be effective in stimulating public participation in environmental decision-making in the area of environmental policy development and execution, an interdisciplinary approach must be adopted, which includes religion and community and social duty.<sup>271</sup> Advocates for environmental and climate justice also recognize the importance of a right of access to broad environmental education as the Environmental Justice Principles call for the education of the present generation and future generations about social and environmental matters,<sup>272</sup> and the Bali Principles of Climate Justice calls for the education of the current generation and future generations about a wide range of issues including energy, matters related to the environment, and social development.<sup>273</sup>

Although access to education is not specified as a fundamental human right in Nigeria's 1999 Nigerian Constitution, Section 18 of the 1999 Nigerian Constitution declares the educational policy of the country, which requires that the government in Nigeria promote a policy that ensures the availability of equal and sufficient educational opportunities at every level. As stated earlier, the weakness in the provisions of Chapter II of the 1999 Nigerian Constitution is that they are not considered to be legally

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<sup>271</sup> Sally Eden, *Public Participation in Environmental Policy: Considering Scientific, Counter-Scientific and Non-Scientific Contributions*, 5 Public Understand. Sci. 183 (1996).

<sup>272</sup> National People of Color, Environmental Leadership Summit, October 24-27 1991, *Principles of Environmental Justice*, princ.16 [hereinafter Environmental Justice Principles], available at <http://www.ejnet.org/ej/principles.html> (last visited Sept. 9, 2011).

<sup>273</sup> Bali Principles of Climate Justice (June 2002), princ. 25 [hereinafter Bali Climate Justice Principles], available at <http://www.ejnet.org/ej/bali.pdf> (last visited Sept. 9, 2011).



enforceable. Formal education in Nigeria is guaranteed in the Compulsory, Free Universal Basic Education Act 2004, major national legislation, which assures basic education in Nigeria at no cost to children in Nigeria from the elementary school to the high school. This author suggests that broad environmental education will provide Nigerians with the information and understanding to take action to address environmental problems in Nigeria. While formal education appears to have received significant attention in international and regional human rights and environmental instruments, informal forms of education do not appear to have received as much attention. This author considers that informal environmental education outside a strict academic setting is a mechanism to reach a wider audience, and that UNESCO documents support different forms of education, particularly non-formal education.<sup>274</sup> Informal mechanisms to protect and promote a right of access to environmental education are the primary focus in this study.

The destructive effect of corruption on human rights, socio-economic development and environmental protection is reflected in the comments of scholars and the assessments of governmental and non-governmental bodies and organizations. International Scholar Errol Mendes argues that major international human rights instruments are deficient to the extent that they do not contain a “right of all members of the human family to be free from the evil of corruption.”<sup>275</sup> Mendes considers that corruption is the primary cause of suffering and degradation and recounts a comment of Kayode Fayemi, a Nigerian democracy and development advocate, who considers that

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<sup>274</sup> See, e.g., Belgrade Charter, *supra* note 39.

<sup>275</sup> Errol Mendes, *Corruption eroding the global economy and Sustainable Development: The United Nations Global Compact at Risk*, in BUSINESS AGAINST CORRUPTION: CASE STORIES AND EXAMPLES: IMPLEMENTATION OF THE 10<sup>TH</sup> UNITED NATIONS GLOBAL COMPACT PRINCIPLE AGAINST CORRUPTION 27, 27 (UNGC/UNODC, 2006).

corruption has been, and continues to be, a greater threat to human existence in Nigeria than the HIV/AIDS disease.<sup>276</sup> Nigeria has consistently ranked poorly on multiple global and regional indexes that measure corruption. Former U.N. Secretary General Kofi Annan also considers “corruption [to be] an insidious plague that has far-reaching corrosive effects on different segments of society.”<sup>277</sup> A major international body, the World Bank, views corruption as the most severe impediment to poverty reduction goals.<sup>278</sup> Peter Eigen of Transparency International, while expressing Transparency International’s position on the U.N. Global Compact, suggested that corruption, like other socio-economic and environmental ills, is synonymous with environmental destruction. Obilade is of the view that the seeds of corruption and abuse of power were sown in Nigeria when the indigenous courts in local communities were replaced with a foreign native court system in the southern part of Nigeria and the chiefs in the communities, serving as members of the local ruling body, exceeded their legal authority.<sup>279</sup> Obilade recounts the comments of T.O Elias that clerks in the indigenous courts took bribes while conducting official business and sometimes carried out functions in excess of their legal authority.<sup>280</sup> The conclusion in a human development report for the Niger Delta region of Nigeria that bad governance and corruption are responsible for the practice of higher spending on personnel and operating expenses, instead of payments for major expenditure, is indicative of the pervasive nature of corruption in Nigeria.<sup>281</sup> This author

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<sup>276</sup> *Id.*

<sup>277</sup> Convention against Corruption, Foreword, G.A. Res. 58/4, U.N. Doc. A/58/422 (2003).

<sup>278</sup> For the position of the World Bank on fighting corruption, *see* <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/EXTANTICORRUPTION/0,,contentMDK:21540659~menuPK:384461~pagePK:148956~piPK:216618~theSitePK:384455,00.html> (last visited Sept. 20, 2011).

<sup>279</sup> AKINTUNDE OLUSEGUN OBILADE, *THE NIGERIAN LEGAL SYSTEM* 25 (1979).

<sup>280</sup> *Id.*

<sup>281</sup> UNDP, *supra* note 67, at 38.

considers that corruption in Nigeria has allowed government officials to pay inflated personnel expenses and allowances instead of investing the money in environmental remediation projects. This author argues that corruption in the public sector in Nigeria, especially in the environmental sector, is a major obstacle to the goal of environmental sustainability in Nigeria and a right of access to anti-corruption education gives the public another tool to fight this destructive behavior. This author expects that the public will hold their respective governments accountable for protecting and promoting a right of access to broad environmental education once national legislation recognizes the right.

#### **4.2: International Human Rights Instruments and General Education**

Legal rights and duties for general education assured in human rights and environmental instruments are often presented either in the form of a specific right of the individual with corresponding duties for the State to recognize, safeguard and advance such a right, or a combination of both. While international and regional human rights instruments typically guarantee a right to general education for all people, including in some cases human rights education, environmental instruments at the international and regional levels often specify environmental duties for contracting parties to promote capacity building, training and education about a specific environmental issue like climate change, modification of the ozone layer or desertification. Like the UDHR (Article 26), the ICESCR guarantees a right to education for all people that considers the full growth of human character.<sup>282</sup> Several authors, especially human rights scholars, have noted that while general human rights instruments at the international level typically do not refer to the environment when specifying a right to education, international human rights instruments focused on a particular group of people, like the woman, child, or

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<sup>282</sup> ICESCR, *supra* note 19, art. 13.

indigenous people, lend support to the CESCR's position that the right to education includes an environmental component.<sup>283</sup> The Convention on the Rights of the Child assures for a child education that includes instruction about the natural environment (Article 29(1)(e)), and the CEDAW calls for every kind of formal and informal instruction for women who reside in rural communities so that their functional skills may be improved (Article 14(2)(d)). The examination below indicates that key UNESCO documents, including the Tbilisi Declaration, the Belgrade Charter and the Bizkaia Declaration, call for the protection and promotion of a right of access to broad environmental education.

#### **4.3: Environmental Education: UNESCO Instruments and Initiatives**

The Belgrade Charter and Recommendations are outcomes of a workshop on environmental education convened in Belgrade, Yugoslavia in October 1975.<sup>284</sup> This study considers that the Belgrade Charter strengthened Article 19 of the Stockholm Declaration and responded to Recommendation 96 of the Stockholm Conference in laying down the goals, objectives and principles for a new type of environmental education for all of humankind. Stated key objectives of environmental education in the Belgrade Charter include helping people, individually and collectively, to get basic knowledge about all aspects of the environment and related problems, encourage public participation in environmental matters, and ensure that all people have the know-how and opportunity to address environmental problems. The Belgrade Charter calls for this new kind of education to be taught by formal and informal means to all people and groups. This author considers that the Belgrade Charter and the recommendations that were

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<sup>283</sup> See CESCR, *supra* note 20.

<sup>284</sup> See Belgrade Charter, *supra* note 39.

agreed upon at the education seminar in 1975 recognize a right of access to broad education. An oft-quoted remark of 17<sup>th</sup> century legal scholar, Samuel von Pufendorf, that “More inhumanity has been done by man himself than any other of nature’s causes,” underscores the vital importance of environmental education to increase the knowledge of people around the world about the environment and how human activities can damage the environment.

Another major global conference convened after the Stockholm Conference which, like the conference in Belgrade, focused primarily on environmental education was held in Tbilisi, Georgia in October 1977.<sup>285</sup> The Tbilisi Declaration is an outcome of this conference. Like the Belgrade Charter, a goal of the Tbilisi Declaration is to provide an opportunity for all peoples, individually and collectively, to actively participate in environmental matters.<sup>286</sup> In attempting to stop behavior that is inimical to the conservation of natural resources and improvement of the environment, this author suggests that the Tbilisi Declaration It is this author’s view that the Tbilisi Declaration endorses a right of access to broad environmental education as a key goal of the Tbilisi Declaration is to develop ethical behavior that will require the conservation and enhancement of the environment.<sup>287</sup>

The Bonn Declaration on Environmental Education for Sustainable Development (“ESD”) was issued by the participants at the UNESCO World Conference on Education for Sustainable Development that was held in Bonn, Germany, from late March to early

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<sup>285</sup> Tbilisi Declaration, *supra* note 269.

<sup>286</sup> *Id.*, ¶ I(3).

<sup>287</sup> *Id.*, ¶ I(6).

April 2009.<sup>288</sup> Participants at this conference acknowledged, among other things, that existing patterns of production and trade and use of goods and services are causing strains and damage to the environment. Therefore participants called for a shared commitment to education that provides people with tools to change such unsustainable patterns.<sup>289</sup> The participants at this conference support ESD as a mechanism to save lives especially in places where there has been severe strife and unrest and in the poorest countries of the world.<sup>290</sup> Recognizing the significant role education plays in enhancing the well-being of humans (Principle 12), the participants at this conference resolved to, among other things, support the use of informal and formal means of education at the international and national levels to integrate sustainable development concerns into ESD (Principle 15(f)) and involve different segments of society, including youths, women, media, civil society, the public and private sector and NGO's, in the implementation, review, and enhancement of ESD activities (Principle 15(i)-(k)) and appreciate and recognize the benefits of traditional, local and indigenous expertise in the implementation and review of ESD (Declaration 15(l)). Considering the principles in and provisions of the Bonn Declaration, it is reasonable to suggest that it recognizes a right of access to broad environmental education.

The Changwon Declaration on Human Well-being and Wetlands was adopted by the Conference of Parties to the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat during a meeting held in Changwon,

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<sup>288</sup> UNESCO, World Conference on Education for Sustainable Development, Bonn Germany, Mar. 31-April 2, 2009, *The Bonn Declaration* (April 2, 2009).

<sup>289</sup> *Id.*, ¶¶ 1 & 4.

<sup>290</sup> *Id.*, ¶ 3.

Republic of Korea, from October to November 2008.<sup>291</sup> A key goal of the Changwon Declaration is to ensure the sustainability of water resources, particularly wetland ecosystems. Signatories to the Changwon Declaration consider ecosystems to be, among other things, an educational resource. It is therefore not surprising that strategies set out in the Changwon Declaration promote learning about wetland ecosystems and associated matters by means of the dissemination of knowledge and experience, including local knowledge, as a tool to enable good decision-making on wetlands and water issues. The Ramsar Strategic Plan (2009-2015) is aimed at helping a Contracting Party implement the provisions of the Ramsar Convention, particularly at the domestic level.<sup>292</sup> Like the other Strategic Plans (1997-2002 and 2003-2008), the current strategic plan lays out procedural goals and measures that governments should take to achieve the objectives of the Ramsar Convention at the national level such as encouraging local and indigenous people to use traditional knowledge and expertise to achieve the goals of the Ramsar Convention at the national level (Goal 1), develop and keep a list of important wetlands at the national level (Goal 2), strive for international collaboration (Goal 3), and ensure that national bodies have the capacity and resources to carry out their functions effectively (Goal 4). This study suggests that insufficient resources have been given to government parastatals in Nigeria to fight corruption in the public sector. Strategies to achieve these goals that are

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<sup>291</sup> UNESCO, Tenth Meeting of the Conference of Contracting Parties to the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar, Iran, 1971), Changwon, Republic of Korea, Oct. 28 - Nov. 4, 2008, *Changwon Declaration on Human Being and Wetlands*, Resolution X.3 (2008) [hereinafter Changwon Declaration], available at [http://www.ramsar.org/cda/en/ramsar-documents-changwon/main/ramsar/1-31-434\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-documents-changwon/main/ramsar/1-31-434_4000_0__) (last visited Sept. 21, 2011).

<sup>292</sup> UNESCO, Tenth Meeting of the Conference of Contracting Parties to the Ramsar Convention, Changwon, Republic of Korea, Oct. 28 - Nov 4, 2008, *The Ramsar Strategic Plan (2009-2015)*, Resolution X.1 (2008), available at [http://www.ramsar.org/pdf/key\\_strat\\_plan\\_2009\\_e.pdf](http://www.ramsar.org/pdf/key_strat_plan_2009_e.pdf) (last visited Sept. 21, 2011); UNESCO, Tenth Meeting of the Conference of Contracting Parties to the Ramsar Convention, Changwon, Republic of Korea, Oct. 28 - Nov 4, 2008, *The Convention's Programme on Communication, Education, Participation and Awareness (CEPA) 2009-2015*, Resolution X.8 (2008), available at [http://www.ramsar.org/pdf/res/key\\_res\\_x\\_08\\_e.pdf](http://www.ramsar.org/pdf/res/key_res_x_08_e.pdf) (last visited Sept. 21, 2011).

particularly relevant to this study include ensuring that a database of the different kinds of wetlands that exist in the world is kept and routinely updated, as warranted (Strategy 1.1), improving access to wetlands facts and figures by means of an information system on wetlands of global application (Strategy 1.2); ensuring that adequate laws and institutions exist to implement national commitments to carry out the “wise use provisions” of the Ramsar Convention (Strategy 1.3), encouraging the collation and exchange of information, skills, and aid at the international level (Strategy 3.4), and facilitating broader awareness, participation in, and knowledge of the Ramsar Convention by putting into operation the Ramsar Convention’s “Communication, Education, Participation and Awareness Programme (Resolution X.8)” and establishing by 2015 a minimum of one center for wetland education at each Site on the Ramsar list of Wetlands of global significance (Strategy 4.1). This study suggests that the Changwon Declaration and Ramsar Strategic Plan support a right of access to broad environmental education.

Like the other UNESCO documents examined above, the Bizkaia Declaration calls for appropriate education and raising the awareness of the public, so that every individual has the skills and knowledge to contribute, in a meaningful way, to processes to safeguard the environment (Article 7).<sup>293</sup> Corresponding duties for States and international bodies to promote and protect a person’s right to environmental education are also specified in Article 7. The Bizkaia Declaration asserts a substantive right to the environment for the current generation (Article 1) and future generations (Article 3), with corresponding duties for a wide group of people, including individuals and the State, to safeguard the environment (Article 2). This author suggests that the signatories to the Bizkaia Declaration in enunciating Article 7(1) were guided by the case of *M.C. Mehta*

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<sup>293</sup> See Bizkaia Declaration, *supra* note 205.



*v. Union of India, S.C. of India* mentioned above, which considered environmental education critical in order for an individual to carry out his or her duty to protect the environment. This author considers that informal and multi-faceted instruction, including anti-corruption education, is promoted in the Bizkaia Declaration as the State Actor is called upon to promote environmental education by all possible means so the individual can play a meaningful role in safeguarding the environment (Article 7(1)). In this author's opinion, the Bizkaia Declaration supports a right of access to broad environmental education.

Like the UDHR and ICESCR, the Declaration on the Responsibilities of the Present Generation Towards Future Generations affirms the vital role education plays in the development of humans and society as a whole (Article 10(2)).<sup>294</sup> This author is of the view that multi-faceted education, including anti-corruption education, is necessary to enable socio-economic and human advancement. This study suggests that the Declaration on the Responsibility of Present and Future Generations recognizes a right of access to broad environmental education.

The Talliores Declaration is an action plan developed by university officials from different regions of the world.<sup>295</sup> The Talloires Declaration presents a plan to achieve environmental sustainability from the perspective of academia and consists of ten action

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<sup>294</sup> Conference of the United Nations Educational, Scientific and Cultural Organization, Paris, France, Oct. 21-Nov. 12, 1997, *Declaration on the Responsibilities of the Present Generations Towards Future Generations*, (Nov. 12, 1997) [hereinafter Declaration on Responsibilities of Present and Future Generations], available at [http://portal.unesco.org/en/ev.php-URL\\_ID=13178&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13178&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last visited Sept. 21, 2011).

<sup>295</sup> Conference of University Presidents, Talloires, France, Oct. 4-7, 1990, *Talloires Declaration* (Oct. 1990), available at [http://www.ulsf.org/programs\\_talloires\\_signatories.html](http://www.ulsf.org/programs_talloires_signatories.html) (as of March 9, 2010, representatives of two Nigerian universities, Ahmadu Bello University, Zaria, and University of Ibadan, Ibadan, had signed this instrument).

items to promote environmental sustainability.<sup>296</sup> Particularly noteworthy is action item three (“Educate for Environmentally Responsible Citizenship”), which this author suggests is thematically similar to an environmental education goal of the Belgrade Charter, albeit from the perspective of university administrators. Action Item 3 calls for the building of awareness, knowledge, proficiency, behavior, commitment and motivations of the world population on matters related to the environment, so that people in different parts of the world can work individually and collectively to solve existing problems and prevent new ones. Although the Talloires Declaration appears to focus primarily on formal education and is an agreement of professionals in the academic field, this author suggests that in calling for an interdisciplinary approach to promote environmental sustainability this instrument recognizes a right of access to broad environmental education.

#### **4.4: Nigeria and UNESCO Documents**

Nigeria is a party to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, and thereby accepts that it has national commitments under this instrument, including the preservation and responsible use of wetlands on the Ramsar list of wetlands of global significance, designated pursuant to Article 2 of the Ramsar Convention.<sup>297</sup> Nigeria has eleven sites on this list and two of such sites are located in states in the Niger Delta region, *Apoi* Creek Forests in *Bayelsa* State and Upper *Orashi* Forests in Rivers State.<sup>298</sup> According to national reports required under the Ramsar Convention, the Upper *Orashi* Forests is home to a bird that is listed in Nigeria’s

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<sup>296</sup> *Id.*

<sup>297</sup> Ramsar Convention, *supra* note 90.

<sup>298</sup> The Ramsar List of Wetlands of International Importance, *available at* [http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218\\_4000\\_0\\_\\_](http://www.ramsar.org/cda/en/ramsar-documents-list/main/ramsar/1-31-218_4000_0__) last visited Sept. 21, 2011).

Endangered Species (Control of International Trade and Traffic) Act for which there is a total ban on the international trade of such “animal,” the Grey Parrot (*Psittacus Erithacus*).<sup>299</sup> This study’s review of Nigeria’s National Report to the Conference of Parties regarding Nigeria’s implementation of the Ramsar Convention for 2008 (COP 10)(2008)) indicates that as of the time of the report, Nigeria had no designated government official or informal contact person or expert on issues relating to the Ramsar Convention’s CEPA Programme (Communication, Education, and Public Awareness) or the “Scientific and Technical Review Panel”, and Nigeria’s greatest obstacle to implementing the Ramsar Convention was said to be insufficient funds and lacking capacity to carry out its duties.<sup>300</sup> The vital importance of wetlands to humans and the environment is recognized in international instruments, such as the Changwon Declaration, that consider wetlands to be a tool to fight climate change and for the immense social, health and economic benefits they bring to people around the world.<sup>301</sup> Under Article 4 of the Ramsar Convention, a State Party to the Ramsar Convention such as Nigeria has a duty to encourage research and information exchange, and provide training in all aspects of wetlands management and use. Considering the value of wetlands, especially as the home to endangered species, this study considers that anti-corruption education is necessary to provide adequate training in the use and management of wetlands. This study submits that the Ramsar Convention unwittingly takes back with one hand what it gives with the other hand to the extent that the procedures and

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<sup>299</sup> Nigeria: Apoi Creek Forests: Information Sheet on Ramsar Wetlands (RIS) (2006-2008), (June 25, 2007), available at <http://www.wetlands.org/reports/ris/1NG003-Nigeria%20Apoi%20Creek%20Forests%20RIS%202007%20E.pdf> (last visited (last Sept. 21, 2011).

<sup>300</sup> See Nigeria, National Report for COP 10(2008), available at [http://www.ramsar.org/pdf/cop10/cop10\\_nr\\_nigeria.pdf](http://www.ramsar.org/pdf/cop10/cop10_nr_nigeria.pdf) (last visited Sept. 21, 2011).

<sup>301</sup> See Changwon Declaration, *supra* note 291, at 3.

guidelines for adding sites to, and removing sites from, the *Montreux* Record of notable sites that have undergone, or are undergoing, or may undergo, changes in environmental quality, as a consequence of technological advancement, contamination or the actions of humans,<sup>302</sup> gives the final decision-making power to remove or include a site from the *Montreux* Record to a State Party.<sup>303</sup> Presumably as a tool to address the contamination in *Ogoniland*, River State, UNEP has recommended that the Nigerian government consider nominating the wetlands in *Ogoniland* as sites on the Ramsar List.<sup>304</sup> Despite the gap in the Montreux Record noted above, this author suggests that the Ramsar Convention recognizes a right of access to broad environmental education for all Nigerians.

Nigeria is a party to the Convention for the Safeguarding of the Intangible Cultural Heritage.<sup>305</sup> It is important for purposes of this study to note that knowledge and practices concerning nature and the universe are considered manifestations of “intangible cultural heritage,” as well as the age-old traditional works of art associated with “intangible cultural Heritage.” Under Article 14 of the Convention for Intangible Cultural Heritage, a State Party has a duty to ensure that the general public has access to programs that provide education and information, build capacity, and raise awareness about intangible cultural heritage, especially for young people (Article 14(a)(i)). The

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<sup>302</sup> The original expression of the *Montreux* Record was developed at the fourth meeting of the Contracting Parties in June 1990 in Montreux Switzerland.

<sup>303</sup> Ramsar Convention, Sixth Meeting of the Conference of Contracting Parties, Brisbane, Australia, March 19 - 27, 1996, *Working Definitions of Ecological Character, Guidelines for Describing and Maintaining the Ecological Character of Listed Sites, and Guidelines for Operation of the Montreux Record*, Resolution VI.1 (March 1996), available at [http://www.ramsar.org/pdf/res/key\\_res\\_vi.01e.pdf](http://www.ramsar.org/pdf/res/key_res_vi.01e.pdf) (last visited Sept. 11, 2011).

<sup>304</sup> UNEP, *supra* note 33, at 227.

<sup>305</sup> Convention for the Safeguarding of the Intangible Cultural Heritage, Paris, France, Oct. 17, 2003, UNESCO Doc. MISC/2003/CLT/CH/14, [hereinafter Convention for Intangible Cultural Heritage], available at <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf> (Last visited Sept. 21, 2003). Nigeria deposited its instrument of ratification on October 21, 2005.

Convention for Intangible Cultural Heritage specifically calls for the use of non-formal mechanisms to disseminate knowledge (Article 14(a)(iv)). Considering that rare and expensive works of art may be part of “intangible cultural heritage,” this author considers that anti-corruption education is considered in Article 14. This author considers the mandate in Article 14 for a State Party to “endeavor” to fulfill its obligations under Article 14, albeit by “all appropriate means,” to mean that the State Party shall use its best efforts to fulfill the obligations in Article 14. Under Article 13 of the Convention for Intangible Cultural Heritage, a State Party has an obligation to encourage research and different types of studies to protect intangible cultural heritage (Article 13(c)). This author considers that the Convention for Intangible Cultural Heritage endorses a right of access to broad environmental education for all Nigerians.

The assessment in the preceding sections presented authority in international human rights law and UNESCO documents that this study suggests may be used to recognize, protect, and promote a right of access to environmental education. What follows is an assessment of major human rights instruments for the African region that may be used to guarantee, safeguard or advance a right of access to broad environmental education.

#### **4.5: The African Region: Environmental Education and Human Rights Instruments**

While a right to the environment is recognized in Article 24 and Article 29 of the African Charter on Human Rights requires that individuals in Africa contribute to the moral well-being of African society. Like the UDHR, the African Charter on Human Rights specifically guarantees a right to education and freedom to take part in a community’s cultural life (Articles 17(1) and (2)). It is noted in this study that the right

to education in Article 26 of the UDHR is more detailed in scope compared to the barebones assertion of a right to education in Article 17(1) of the African Charter. Under Article 25 of the African Charter on Human Rights, a State Party has a duty to promote education about the rights in the African Charter. Reading Articles 17, 24, 25 and 29 of the African Charter on Human Rights together, this author suggests that the African Charter recognizes a right of access to broad environmental education.

The African Youth Charter specifically mentions the environment in terms of education for young men and women in Africa.<sup>306</sup> Duties for the State to ensure that development in Africa is sustainable and that current and future generations of African youths have a sustainable environment are set out in Article 19. Like the Convention on the Rights of a Child (Article 29(1)(e)), the African Youth Charter guarantees a right to education that encourages young men and women to value the environment and the resources of nature (Article 13(3)(e)). This instrument mentions different ways to realize the right to education for young men and women in Africa, including by informal means and through distance learning (Article 13(2)). This study considers that the “all appropriate measures” qualification for State Parties to fully realize the right to education for African Youths (Article 13(4)) is interpreted in the same way the CESCR interprets the “progressive realization” of Section 13 of the ICESCR. Like the African Charter on Human Rights, albeit in a more direct manner, the African Youth Charter calls for the education of young men and women in Africa on positive “African morals.” No doubt such positive morals eschew corruption, which commentators suggest can destroy the “fabric” of African society. This author submits that the African Youth Charter endorses a right of access to broad environmental education, especially for young men and women.

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<sup>306</sup> African Youth Charter, *supra* note 237, art. 13(3)(e).

#### **4.5.1: Nigeria: Environmental Education and Human Rights Law**

The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, like its regional counterpart, recognizes a substantive environmental right in some form.<sup>307</sup> A general right to education is also guaranteed in Article 17(1) and a substantive right to the environment is guaranteed in Article 24. Like the African Charter on Human Rights, Article 25 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act places a duty on a State Party to ensure that the rights and freedoms in the treaty are respected by means of teaching, education, and provision of written materials on the subject. Like its regional counterpart, Article 29(7) of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act calls for the promotion of the moral welfare of African society. The position stated above, for the African Charter on Human Rights, that Articles 17, 24, 25 and 29 of the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act may be read together to recognize and protect a right of access to broad environmental education is re-stated here. Considering the provision of Article 24, this study suggests that the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act guarantees environmental justice for the people in the Niger Delta region in that Article 2 of this instrument calls for equal “enjoyment of all the rights and freedoms” in the document for everyone without distinction.

#### **4.6: Anti-Corruption Laws and Measures**

The major threat corruption poses to human development is underscored in Principle 19 of the Johannesburg Declaration on Sustainable Development, which

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<sup>307</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, *supra* note 98, art. 24.

declares that corruption is a threat to sustainable development for all of humankind. If one accepts that the long-term protection of the environment is essential for development that is sustainable, one should also accept that corruption is a threat to achieving the long term viability of the environment.

The study above examined UNESCO documents and international, regional and national instruments on human rights that may be used to secure, protect or promote a right of access to broad environmental education. The examination that follows continues the discussion on a right to environmental education but focuses on anti-corruption instruments, particularly those that seek to combat public sector corruption. Key anti-corruption instruments, programs or bodies at the international, regional and national levels will be examined in the succeeding sections.

There are multiple international, regional and national anti-corruption documents and institutions that seek to prevent corruption and encourage transparency, accountability, and probity in the management of public goods and affairs. These documents affirm the view that corruption impedes democracy, destroys societies, and is an obstacle to effective participation of the general public and civil society in the management of the affairs of society and usually have substantive and procedural elements. This study suggests that the examined instruments protect, respect and promote a right to environmental education.

#### **4.6.1: The Global Anti-Corruption Legal Regime and International Initiatives**

The U.N. Convention against Corruption is a major international instrument that requires that a State Party develop and implement measures to combat corruption and ensure honesty, accountability and efficiency in the administration of the affairs of the



State.<sup>308</sup> Although the public sector relating to the environment is not specifically mentioned in this instrument, this author considers that the definition of public official in Article 2(a) is broad enough to cover any person conducting a public role related to the environment. The U.N. Convention against Corruption promotes the use of participatory measures to achieve the substantive goals of the instrument, such as, a State Party shall ensure that the public has access to information about government activities (Article 10), the judicial arm of the government is independent (Article 11), the public has access to decision-making processes and anti-corruption information and education (Article 5(1)) and 13(1)), the public has access to anti-corruption bodies to report corrupt practices (Article 13(2)) and that government workers have access to anti-corruption education and training (Article 7(1)(d)). This study considers that the qualification of a State Party's obligations in Article 13 of the U.N. Convention against Corruption to the "means" of a State Party means that the State Party shall use "all means possible" to fulfill its obligations under Article 13. If one accepts that the definition of a "public official" is broad enough to include a person performing a public function related to the environment, it is reasonable to accept that the U.N. Convention against Corruption supports a right of access to broad environmental education.

The United Nations Global Compact is a platform to promote sound business practices in the areas of human rights, labor, environment, and corruption, with its goals covered in ten principles.<sup>309</sup> Global Compact members include companies, private parties, and organizations. Principle 10 of the Global Compact covers the goal to combat corruption, while Principles 7 to 9 present the environmental goals. Materials about the

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<sup>308</sup> U.N. Convention against Corruption, *supra* note 21, art. 1.

<sup>309</sup> The United Nations Global Compact was formally inaugurated in New York on July 26, 2000 [hereinafter Global Compact].

Global Compact indicate that the UDHR, Rio Declaration, U.N Convention against Corruption and an International Labour Organization instrument provide foundational support for the Global Compact's ten principles. Since Principle 10 of the Global Compact requires that businesses eschew every form of corruption, and Principle 8 calls for businesses to develop and implement measures to ensure responsible environmental practices, and the UDHR secures a right to education that is broad enough to be extended to the environment, this author suggests that the Global Compact provides a platform for private entities and international bodies and governments to promote a right of access to broad environmental education.<sup>310</sup>

#### **4.6.2: Regional Anti-Corruption Instruments**

There are several legally binding and non-legally binding regional instruments for Africa that promote transparency, integrity and honesty in public service, especially for the environmental sector, such as, the African Union Convention on Preventing and Combating Corruption,<sup>311</sup> the African Charter for Popular Participation in Development and Transformation<sup>312</sup> the Grand Bay Declaration,<sup>313</sup> the Charter for the Public Service in Africa,<sup>314</sup> the African Charter on the Values and Principles of Public Service and

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<sup>310</sup> *Id.*

<sup>311</sup> African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5 [hereinafter African Convention against Corruption], *available at* [http://www.au.int/en/sites/default/files/AFRICAN\\_UNION\\_CONVENTION\\_PREVENTING\\_COMBATING\\_CORRUPTION.pdf](http://www.au.int/en/sites/default/files/AFRICAN_UNION_CONVENTION_PREVENTING_COMBATING_CORRUPTION.pdf) (last visited Sept. 22, 2011).

<sup>312</sup> Arusha Charter, *Supra* note 239; *see also* African Charter on Democracy, Elections and Governance, *adopted on* January 30, 2007, A.U. Dec. Doc. EX.CL/301(X) [hereinafter African Governance Charter], *available at* [http://www.au.int/en/sites/default/files/AFRICAN\\_CHARTER\\_ON\\_DEMOCRACY\\_ELECTIONS\\_AND\\_GOVERNANCE.pdf](http://www.au.int/en/sites/default/files/AFRICAN_CHARTER_ON_DEMOCRACY_ELECTIONS_AND_GOVERNANCE.pdf) (last visited Sept. 23, 2011).

<sup>313</sup> Grand Bay Declaration, *supra* note 220.

<sup>314</sup> Third Pan-African Conference of the Ministers of Civil Service, Windhoek, Namibia, February 5, 2001, *Charter for the Public Service in Africa* (2001).

Administration,<sup>315</sup> the African Charter on Democracy, Elections and Governance, and the Economic Community of West Africa Protocol on Democracy & Good Governance (the “ECOWAS Protocol”).<sup>316</sup> The Grand Bay Declaration asserts that the lack of accountability in the management of public affairs is a cause of human rights violations in the continent of Africa.<sup>317</sup> The African Governance Charter promotes good governance in African countries by requiring that governments in Africa recognize and support participatory measures, such as, public participation, an enabling environment for a free press, rights of access to education and information, an open and accountable government.<sup>318</sup> Also, the African Governance Charter requires that a State Party combat corruption in all its forms and promote efficiency in government work (Article 27(5)). This author considers it to be a disservice to Africans that more than four years after the African Governance Charter was adopted only a handful of countries have ratified it.<sup>319</sup> The Arusha Charter and the ECOWAS Protocol also have provisions that may be used to fight public sector corruption. Two key regional instruments will be examined below.

The African Convention against Corruption is a major anti-corruption instrument in Africa.<sup>320</sup> A primary objective of this instrument is to provide an enabling environment for an open and accountable government.<sup>321</sup> Like the U.N Convention against Corruption, the African Convention against Corruption contains participatory

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<sup>315</sup> African Charter on the Values and Principles of Public Service and the Administration, *adopted on* January 31, 2011, AU Dec. Doc. EX.CL/645(XVIII) (2011).

<sup>316</sup> Economic Community of West African States, *Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism For Conflict Prevention, Management, Resolution, Peace Keeping and Security*, (Dec. 21, 2001).

<sup>317</sup> Grand Bay Declaration, *supra* note 220, ¶ 8(h).

<sup>318</sup> African Governance Charter, *supra* note 312, art. 2(10).

<sup>319</sup> The list of countries that signed and have ratified the African Governance Charter is available at the African Union website, [http://au.int/en/sites/default/files/Charter\\_on\\_Democracy\\_and\\_Governance.pdf](http://au.int/en/sites/default/files/Charter_on_Democracy_and_Governance.pdf) (last visited Sept. 23, 2011). Fifteen ratification instruments are needed for the African Governance Charter to go into effect. Nigeria signed the instrument on July 2, 2007, but has not ratified it.

<sup>320</sup> African Convention against Corruption, *supra* note 311.

<sup>321</sup> *Id.*, art. 2(5).

duties for the parties to the instrument. Under Article 12 of the African Convention against Corruption, a State Party has a duty to involve civil society and the media in combating corruption and to provide these parties with information that is not otherwise excluded from public review. A unique mechanism to fight corruption is recognized in Article 22(5)(e) of the African Convention against Corruption in the form of an advisory board, with mandates to collect information on multi-national corporations that do business in Africa and share such information with relevant national establishments. Like the U.N. Convention against Corruption, States Parties to the African Convention against Corruption are required to adopt laws and other programs to promote and protect a right of access to information on corruption and related crimes.<sup>322</sup> Although the African Convention against Corruption does not explicitly guarantee a right of access to broad environmental education, considering that a goal of this instrument is to promote the social and economic development in Africa, and authors argue that environmental sustainability is vital for achieving sustainable development, and a requirement in Article 5(8) of this instrument mandates that States Parties promote strategies to educate people on ways to fight corruption and strive for the common good, it is easy for this author to suggest that the African Convention against Corruption promotes a right of access to broad environmental education in Africa. It is worth pointing out that the provision for promoting education in the African Convention against Corruption is more detailed than in the U.N. Convention against Corruption.<sup>323</sup>

The NEPAD Declaration on Democracy, Political, Economic and Corporate Governance memorializes the commitment of governments in Africa to adopt and

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<sup>322</sup> *Id.*, art. 9.

<sup>323</sup> See U.N. Convention against Corruption, *supra* note 21, art. 13(1)(c).

promote democratic structures and good governance in Africa in the fight against poverty (Principle 5).<sup>324</sup> To achieve these goals, governments in Africa are called upon to work together to end poverty in Africa, and to protect and promote the participatory rights of all the people in Africa, particularly the right of access to public participation in decision-making processes and every African's right of access to justice (Principles 6 and 8). Also African Union countries are called upon, among other things, to raise the awareness and understanding of the public about the provisions of the African Charter, particularly in academic institutions (Principle 13). If it is accepted that the African Charter on Human Rights recognizes environmental rights (Article 24), promotes a right to environmental education (Articles 17 and 24) and eschews corruption (Article 29(7)), it should also be accepted that in order to increase the knowledge of people in Africa about the African Charter, the NEPAD Declaration supports a right of access to broad environmental education for all Africans.

#### **4.6.2.1: Nigeria: Anti-Corruption Legal and Institutional System**

The overall national policy for fighting corruption in Nigeria, to end all dishonest practices and misuse of power, may be found in the 1999 Nigerian Constitution.<sup>325</sup> It may be said that Nigeria responded to the call for national legislation establishing criminal offences for corruption and other related crimes in the U.N. Convention against Corruption (Article 15) and the African Convention against Corruption (Article 5) with its enactment of criminal laws to combat corruption in Nigeria. Major anti-corruption laws in Nigeria include the Economic and Financial Crimes Commission (Establishment)

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<sup>324</sup> NEPAD Declaration on Democracy, Political, Economic and Corporate Governance, July 8, 2002, AHG/235 (XXXVIII) Annex 1, [hereinafter NEPAD Declaration].

<sup>325</sup> CONST. OF NIGERIA, § 15(5).

Act 2004<sup>326</sup> and the Corrupt Practices and other Related Offences Act, 2000,<sup>327</sup> under which two key anti-corruption agencies in Nigeria were established. While the EFCC Act establishes the EFCC as the lead and coordinating agency of other bodies tasked with fighting economic and related crimes in Nigeria (Section 1(2)(c)), the [I]ndependent Corrupt Practices and Other Related Offences Commission (“ICPC”) is established under the CPRO Act. A major distinction between the EFCC Act and the CPRO Act is that while the CPRO Act is focused on fighting corrupt activities of public officials, the EFCC Act targets both public and private officials. The term “Public officer” is defined expansively in the CPRO Act, and this author suggests that it may include a person carrying out a governmental function in the field of the environment. On the other hand, the term “Economic and Financial Crimes” is defined in the EFCC Act to include most activities that are considered illegal in Nigeria including “oil bunkering” and “dumping of toxic wastes and prohibited goods” (Section 46). Both instruments promote the use of participatory measures to achieve the goals of the respective instruments. While the ICPC is required to, among other things, educate the Nigerian people about the offences of bribery, corruption and associated offences (Section 6(e)) and seek the support of the public in fighting corruption (Section 6(f)), the EFCC has a mandate to undertake broad public awareness-raising campaigns as part of the battle against economic and related crimes within Nigeria and overseas (Section 6(p)). Considering the definition in Section 46 of the EFCC Act, and that the Nigerian government has a duty to promote public awareness measures, which this study suggests should include instruction about the effect of corruption on the oil, gas and environmental sector in Nigeria, this study suggests that

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<sup>326</sup> Economic and Financial Crimes Commission Establishment Act (2004) [hereinafter EFCC Act].

<sup>327</sup> The Corrupt Practices and other Related Offences Act 2000, Act No. 5, Laws of the Federation of Nigeria, [hereinafter CPRO Act].

the EFCC Act protects a right of access to broad environmental education for all Nigerians. In the case of the CPRO, since the definition of a “public officer” in Section 6(e) is broad enough to include a public official in an environmental agency, and the ICPC has a duty to promote anti-corruption educational programs, this study suggests that the CPRO Act supports a right of access to broad environmental education.

Nigeria Extractive Industries Transparency Initiative Act provides for the Extractive Industries Transparency Initiative in Nigeria.<sup>328</sup> A key goal of NEITI is to stop corrupt practices it concerns oil revenue owed to the Nigerian government, from companies associated with the extractive industry.<sup>329</sup> The NEITI Act sets out duties for the governing arm of NEITI, “the National Stakeholders Working Group,” to, among other things, publish and make available the results of independent audits<sup>330</sup> and other revenue information.<sup>331</sup> Procedures for commencing legal action against NEITI are set forth in Section 18 of the NEITI Act. This study considers the NEITI Act deficient as it doesn’t explicitly require that public officers and other parties receive training and continuing education about ways to fight corruption in the extractive industry. This study recommends that NEITI be guided by a recommendation in guidance material on the U.N. Convention against Corruption that recommends that listed businesses train their workers on how to eschew corruption.<sup>332</sup> This recommendation should be applied to all private and public enterprises.

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<sup>328</sup> Nigeria Extractive Industries Transparency Initiative (NEITI) Act, 2007 [hereinafter NEITI Act].

<sup>329</sup> *Id.* § 2(c).

<sup>330</sup> *Id.* § 4(3).

<sup>331</sup> *Id.* § 3(h).

<sup>332</sup> See United Nations Office on Drugs and Crime, *Technical Guide to United Nations Convention Against Corruption* (2009).

Other than to state that Nigeria's ranking on the CPI and the Ibrahim Index of African Governance has consistently been poor since the NEITI, EFCC and ICPC were established, this author has insufficient concrete evidence to draw any conclusions on whether Nigerian anti-corruption laws and policies have made "inroads" in the fight against corruption in Nigeria. This author does not offer an opinion on whether, in the long-term, these instruments can adequately reduce and prevent corruption in Nigeria, but merely draws attention to the fact that such laws exist in Nigeria and their potential to promote and protect a right of access to broad environmental education for all Nigerians.

#### **4.6.2.2: Botswana: Anti-Corruption Legal and Institutional Arrangements**

For comparative purposes, this study selected the Republic of Botswana for a discussion on anti-corruption education because it has consistently maintained good rankings on international and regional indexes that rank countries in the area of corruption. This author considers that the measures adopted in Botswana to promote anti-corruption education for the public in Botswana are broad enough to be applied in an environmental context. Botswana has consistently ranked highly on the Transparency International Corruption Index, was ranked 33<sup>rd</sup> out of 178 countries, the best-ranked African country, on the 2010 CPI,<sup>333</sup> and was ranked 3<sup>rd</sup> out of 53 African countries on the Ibrahim Index of African Governance for 2010 with a score of 76 (from 100). On the other hand, Nigeria is ranked 134<sup>th</sup> out of 178 countries on the 2010 CPI and 37<sup>th</sup> out of 53 countries on the Ibrahim Index of African Governance (with a score of 43 out of 100). While Nigeria's ranking on the 2011 CPI dropped to 143<sup>rd</sup> out of 182 countries ranked, Botswana's ranking improved from 33<sup>rd</sup> to 32<sup>nd</sup>. Nigeria did not fare better on the 2011

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<sup>333</sup> Transparency International, Corruption Perception Index (2010), *available at* [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010](http://www.transparency.org/policy_research/surveys_indices/cpi/2010) (last visited Sept. 23, 2011).



Ibrahim Index of African Governance as there was a significant drop in its ranking to 41<sup>st</sup> out of 53 countries while Botswana retained its ranking of 3<sup>rd</sup> out of 53 countries in the 2011 Ibrahim Index of African Governance.

Nigeria and Botswana have some similarities but also differ in many respects. Nigeria is situated in the western part of Africa while Botswana is in the southern region of Africa. Both countries are notable for their wealth in natural resources, Nigeria for its oil and gas resources, and Botswana for its mineral resources, including diamonds. While Botswana appears to have been able to avoid the pitfall that comes with wealth in natural resource, Nigeria has not been able to do so. Like Nigeria, Botswana has a major economic and financial crimes law, the Corruption and Economic Crime Act of 1994,<sup>334</sup> and like Nigeria's EFCC Act, a commission is set up under the CEC Act to fight corruption and financial crimes in Botswana. Like the EFCC Act, the CEC Act requires that the DCEC, the commission established under the CEC Act to fight corruption and financial crimes in Botswana, conduct education and enlightenment programs to fight corruption. Like the EFCC Act (Section 6(p)), the CEC Act (Section 6(i)) requires that the DCEC enlighten the public about ways to fight corruption and associated crimes. While under Section 6(i) of the CEC Act the DCEC has an obligation to educate the public against the harmful effects of corruption, presumably so they can effectively combat it, the EFCC is merely charged with enlightening the public in Nigeria about the elements of an economic and financial crime. The DCEC is also charged with enlisting and eliciting public support to fight corruption (Section 6(j) of the CEC Act). Official publications indicate that measures to provide the public with anti-corruption information and education take different forms in Botswana, depending upon the targeted age group,

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<sup>334</sup> Corruption and Economic Crime Act of 1994 [hereinafter CEC Act].

which includes young persons, public officials and the general public.<sup>335</sup> Different participatory strategies are adopted for the different groups, such as encouraging the individual's participation in anti-corruption organizations and writing and debating contests, assigning DCEC staff to government parastatals on a temporary basis and providing anti-corruption courses in schools. Botswana uses a unique tool in the form of a superhero cartoon character named "*Rre Boammaruri*" (also referred to as "Mr. Honesty") to develop and promote good ethical behavior in younger children, which measure this author suggests responds to the "creative art" initiative promoted in the Durban Commitment. Another noteworthy measure adopted by the DCEC is to teach public officials about the dangers of corruption and how it can hinder socio-economic progress of the country. Print and electronic media are reportedly used to teach public officials on ways to resist bribes and seminars and workshops provide forums to garner the support of public officials in the fight against corruption. This author considers this requirement to be a response to the recommendation in the Technical Guide to the U.N. Convention against Corruption to train workers at stock exchanges on ways to resist corrupt practices, albeit targeted at a much wider group of people, public officials generally. For the rural population in Botswana, different tools are employed to teach this segment of society in Botswana about ways to fight corruption, including the use of local events and celebrations, such as, "*Kgotla* meetings" and agricultural displays.<sup>336</sup>

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<sup>335</sup> For a detailed review of Botswana's approach to fighting corruption, see OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, GOOD GOVERNANCE PRACTICES FOR THE PROTECTION OF HUMAN RIGHTS 60-62 HR/PUB/07/4, U.N. Sales No. E. 07.XIV.10 (2007).

<sup>336</sup> Information about the anti-corruption public awareness and information measures adopted in Botswana is available at the DCEC website at <http://www.gov.bw/en/Ministries--Authorities/Ministries/State-President/Department-of-Corruption-and-Economic-Crime-DCEC/Divisions/Public-Education/> (last visited Sept. 23, 2011).

#### 4.6.3: Civil Society and Anti-Corruption Instruments

The Lima Declaration against Corruption, an action outcome of a global anti-corruption conference, presents the plan of action of people and groups from around the world to fight every form of corruption, at all levels, around the world.<sup>337</sup> The Lima Declaration endorses procedural measures that are relevant to this study that governments around the world should take to fight corruption in the public sector. These measures are similar to some of the measures in the U.N. and African Conventions against Corruption, such as, enabling the public's access to relevant information, (Principle 22), ensuring that the judiciary in a country is independent and impartial (Principle 24), establishing an Ombudsman's position (Principle 25), Strengthening anti-corruption and human rights laws (Principle 30), promoting anti-corruption education for the public, especially as it concerns the electoral process (Principle 33), using the print and electronic media to provide anti-corruption information to the public (Principles 35 and 36), and educating youths around the world about the dangers of corruption, with the assistance of educational establishments, religious bodies, and the respective governments (Principle 37). A unique tool to fight corruption that is proposed in the Lima Declaration is for governments around the world to undertake an independent assessment of peoples' views about public bodies and services (Principle 39) and to designate certain days, on an annual basis, as days of responsibility to raise the awareness of the public about anti-corruption measures (Principle 40). Considering that this instrument asserts that corruption is a major obstacle to development, that environmental sustainability is essential for achieving sustainable development, and that this document promotes anti-

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<sup>337</sup> Eight International Anti-Corruption Conference, Lima, Peru, Sept. 7-11, 1997, *The Lima Declaration against Corruption* (Sept. 11, 1997) [hereinafter Lima Declaration].

corruption education for the general public, this study suggests that the Lima Declaration supports a right of access to broad environmental education.

The Durban Commitment sets forth commitment of peoples and organizations from around the world to fight all forms of corruption.<sup>338</sup> The themes and strategies to fight corruption in the Durban Commitment are similar to the ones contained in the Lima Declaration, such as the requirements to ensure openness and transparency in government contract bidding processes, public participation in the fight against corruption, and measures to ensure the independence of bodies set up to fight corruption, including providing sufficient funding. The Durban Commitment promotes the use of fine art to raise the awareness of the public about the destructive effects of corruption, characterized as art in opposition to corruption. Considering this instrument's specific reference to anti-corruption initiatives in the health, education and mining and building sectors, its use of innovative art to spread the anti-corruption message and raise awareness about the ills of corruption and to promote integrity in the management of public goods, this author suggests that the Durban Commitment endorses a right of access to broad environmental education.

## **Conclusion**

Major legally and non-legally binding international and regional human rights instruments usually specify a right of access to general education with corresponding obligations for State Parties. On the other hand, international and regional environmental instruments typically set specify duties for States Parties to promote and protect a right of access to education about a particular environmental resource or problem or problem or

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<sup>338</sup> Ninth International Anti-Corruption Conference, Durban, South Africa, Oct. 10-15, 1999, Durban Commitment to Effective Action Against Corruption (Oct. 15, 1999) [hereinafter Durban Commitment].

contain broad provisions on general education that may be extended to the environmental field. UNESCO instruments usually have more detailed provisions on environmental education. The examination of major UNESCO documents indicates that these documents consider that environmental education is vital for enabling social, economic and environmental progress. The examination in this chapter shows that the rights or duties with respect to environmental education are usually provided as standalone provisions and are not considered to be an integral component of the set of rights set out in Principle 10 of the Rio Declaration.

A number of international, regional, and national instruments that seek to prevent corruption in the public and private sectors contain provisions that are broad enough to be considered in an environmental context. Considering that many countries in Africa, including Nigeria, consistently rank poorly on international and regional indexes that track corruption in countries around the world, it is reasonable to suggest that these instruments have not been effective in fighting corruption in Africa.

This chapter examined international, regional, and national instruments that may be used to support the right of access to broad environmental education. The next chapter advances the second pillar of this study's hypothesis by seeking authority in international law for the development of an international environmental justice legal regime that ensures that developing countries, especially those in Africa, are not disproportionately burdened by global pollution.

## **Chapter Five: International Environmental Justice and Water Justice**

Literature indicates that environmental justice is still evolving at the international level. The previous chapter focused on broad environmental education, while this chapter focuses on environmental justice issues, primarily at the international level. A Water Justice assessment, at the national level, will also be conducted.

### **5.1: Environmental Justice: An Introduction**

The Literature indicates that no universal definition of environmental justice exists at the domestic or international levels, but scholars have found some basic environmental justice principles and themes. While a basic substantive theme at the domestic level is that environmental pollution burdens are often unequally distributed, mostly affecting marginalized groups, particularly minorities and the low-income community, at the global level, the basic substantive environmental justice issue remains the same as what occurs at the national level, but at this level environmental pollution burdens appear to be distributed based upon the economic power and location of a country, with poorer countries, mostly located in the southern hemisphere, suffering the most.

According to renowned environmental justice scholar, Robert Bullard, the environmental justice movement has its origins in the United States of America where it started as a grass-roots movement in the early 1980's.<sup>339</sup> Research by Bullard and other environmental justice advocates in the U.S. demonstrated that the negative impacts of environmental pollution are often unequally shared with minority and low-income communities in the U.S. bearing a disproportionate share of environmental burdens

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<sup>339</sup> ROBERT D. BULLARD, THE QUEST FOR ENVIRONMENTAL JUSTICE: HUMAN RIGHTS AND THE POLITICS OF POLLUTION 20 (Robert D. Bullard, ed., Sierra Club Books 2005).

compared to more affluent communities and people.<sup>340</sup> Glazewski, in the context of South Africa, shares Bullard's view about the unequal impacts of environmental contamination on marginalized groups, and he recounts the comments of Lazarus and Hofrichter that a key objective of the environmental justice movement is to ensure that a segment of society is not made to carry an excessive burden of environmental contamination, that laws be obeyed by every person and business, and that society is changed in a positive way.<sup>341</sup> The demand for environmental justice in the U.S. led to the endorsement of environmental justice principles by participants at a conference on environmental justice in the U.S. in 1991.<sup>342</sup>

The conclusion of the WCED that "[t]he earth is one but the world is not. We all depend on one biosphere for sustaining our lives," espouses what this author considers to be a foundational international environmental justice principle about caring for shared environmental resources.<sup>343</sup> As reflected in the climate change problem, a negative but significant consequence of a contaminated common environmental resource is the disproportionate environmental burden that is placed on developing and less-developed countries. As the experts at the UNDP have pointed out "climate change provides a potent reminder of the one thing that we share in common. It is called planet Earth. All nations and all people share the same atmosphere. And we only have one."<sup>344</sup> The global nature of the climate change problem is highlighted in the position of the experts at the UNDP that greenhouse gas emissions can't be differentiated based on the nation they

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<sup>340</sup> *Id.*

<sup>341</sup> JAN GLAZEWSKI, *Environmental justice and the new South African democratic legal order*, in ENVIRONMENTAL JUSTICE AND THE LEGAL PROCESS 3 (1999).

<sup>342</sup> Environmental Justice Principles, *supra* note 272.

<sup>343</sup> World Commission on Environment and Development, *Our Common Future: Report of the World Commission on Environment and Development*, U.N. Doc. A/42/42, (Mar. 20, 1987).

<sup>344</sup> UNDP, *Human Development Report 2007/2008: Fighting climate change: Human solidarity in a divided world* 8 (Nov. 27, 2007).

originate from.<sup>345</sup> This disparity in the Climate Change burden was recognized as early as 1989 in the Hague Declaration on the environment, specifically that the industrialized nations are responsible for most of the emissions that are a concern today, they have the greatest ability to make changes and the most resources to do so, and should therefore help developing countries that are negatively impacted by atmospheric changes.<sup>346</sup> This study suggests that the seed of the “common but differentiated responsibilities” principle, which takes into account a historical basis for concluding that developed and developing countries have contributed differently to international environmental problems and have different technological and economic capabilities to solve such problems, was planted in the Hague Declaration. The Bali Climate Justice principles, approved by a coalition of NGOs and other environmental groups from around the world in 2002, call for the developed countries and transnational companies to pay their “ecological debt” to developing countries (Principle 7).<sup>347</sup> Depletion of the ozone layer, desertification, marine degradation, and the transboundary movement of toxic substances, present other global environmental problems. For purposes of this study, international environmental injustice in a substantive context is considered to be the disproportionate burden of global environmental issues on developing countries, particularly those in Africa, including fulfilling their environmental obligations considering their special circumstances and situations. Also, this study considers the activities of transnational companies and other international business enterprises, particularly those in the oil and gas industry, that are inconsistent with international, regional, national, and local laws, principles, and requirements and procedures to protect the environment of the States in which they carry

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<sup>345</sup> *Id.* at 9.

<sup>346</sup> Hague Declaration, *supra* note 199, ¶¶ 7-8.

<sup>347</sup> Bali Climate Justice Principles, *supra* note 273.



out their activities, especially developing countries in Africa, to be global environmental injustice in a substantive context.<sup>348</sup>

Literature indicates that environmental justice is also considered in a procedural context. According to Participants at an international workshop on environmental justice in December 2003, conditions of environmental justice are said to exist in a procedural context when “access to information, participation in decision-making, and access to justice in environment-related matters are enjoyed by all.”<sup>349</sup> Anderson is of the view that procedural rights can contribute to substantive environmental justice, in so far as the participation of an individual in environmental matters (a procedural right) gives such person the opportunity to ensure that an unequal environmental load is not placed on that person’s community (substantive environmental injustice).<sup>350</sup> This author is of the view that conditions of procedural environmental justice may be said to exist at the international level, when developed countries provide financial aid to developing countries, particularly those in Africa, so such poorer countries can fulfill their obligations under environmental instruments; share information and expertise concerning the global environment with developing countries, especially those in Africa, including technical information and scientific knowledge; collaborate with developing countries, particularly countries in Africa, in the development and implementation of laws, policies,

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<sup>348</sup> See United Nations Economic and Social Council, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, *Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights*, 55<sup>th</sup> Sess., August 13, 2003, E/CN.4/Sub.2/2003/12/Rev.2, ¶ 14 (August 26, 2003).

<sup>349</sup> Conditions of environmental justice and injustice were defined at the Central Europe/Central and Eastern Europe/Eastern European Workshop on Environmental Justice, which held in Budapest, Hungary in December 2003.

<sup>350</sup> Michael Anderson, *supra* note 222 at 9; *see also* Draft Human Rights Principles, *supra* note 154, princ. 5.

and measures to protect and restore the global environment<sup>351</sup> and when all countries have equal access to impartial administrative and judicial processes in cases of disputes concerning the global environment. AMCEN considers that colonial and apartheid policies that were adopted and implemented in African countries that were under colonial administration or apartheid rule, as it concerns the management of the environment and natural resources in Africa, have contributed to environmental degradation in Africa.<sup>352</sup> In seeking to find solutions to the environmental consequences of apartheid policies, this study suggests that AMCEN is calling for international environmental justice as it relates to African countries.

## **5.2: Legal Foundations for International Environmental Justice**

This study considers an often-quoted ancient Cree Indian saying that "Only after the last tree has been cut down, Only after the last river has been poisoned, Only after the last fish has been caught, Only then will you find that money cannot be eaten," to assert a basic environmental justice principle that opposes the exploitation of the lands and resources of people or states. This author argues that the international instruments examined in this chapter provide authority for an international environmental justice legal order that seeks to prevent the placing of undue global environmental burdens on developing countries, especially those in Africa, and provide benefits associated with the environment to these countries. Although hardly any of the international instruments examined below specifically mention environmental justice, this study suggests that the examined instruments support international environmental justice. The sustainable

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<sup>351</sup> See Agenda 21, *supra* note 12, ¶ 2.1-4 (calling for international collaboration to advance sustainable development in the developing world and related national policies); *see also* Rio Declaration, *supra* note 11, princ. 27 (calling for the collaboration of States and people around the world so the goals of the Rio Declaration may be met and achieve the overarching goal of sustainable development).

<sup>352</sup> AMCEN, *supra* note 262 at 19.

development principles in the Rio Declaration, particularly the “common but differentiated responsibilities” rule (Principle 7), provide the foundational principles for the international environmental justice document developed by this author.

### **5.2.1: Legally Binding International Environmental Instruments**

As stated earlier, a primary goal of the Climate Change Convention is to stabilize the concentrations of greenhouse gases generated by humans to a level that is safe for the climate system.<sup>353</sup> Among the developed countries of the world, the U.S. is considered to be a major emitter of greenhouse gases but recent reports suggest that China may be surpassing the U.S. in the emission of CO<sub>2</sub>, a greenhouse gas.<sup>354</sup> Literature suggests that a great majority of the people that live in poorer and less-industrialized nations will feel the greatest impacts of climate change.<sup>355</sup> Although the Climate Change Convention does not specifically mention environmental or climate justice, like the Environmental Justice Principles (Principle 17) and the Bali Climate Justice Principles (Principles 26 and 27), Article 3.1 of the Climate Change Convention recognizes what may be considered to be principles of both environmental and climate justice in the form of intergenerational equity and the “common but differentiated responsibilities” principles. States Parties are called upon to protect the climate for the present and succeeding generations, and developed countries of the world are called upon to be in the forefront of the fight against climate change and its negative effects. Using the language of environmental justice advocates, it may be said that Article 3(1) of the Climate Change Convention seeks to

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<sup>353</sup> Climate Change Convention, *supra* note 27, art. 2.

<sup>354</sup> See Millennium Development Goals, *supra* note 4, ¶ 7.A (calling for a decisive answer to climate change).

<sup>355</sup> See Bali Climate Justice Principles, *supra* note 273, princ. 7 (asserting a principle of “ecological debt” owed by developed countries to developing countries because of their contribution to climate change). For information about greenhouse gas emissions around the world, *see* [http://www.ipcc.ch/publications\\_and\\_data/publications\\_and\\_data\\_reports.shtml](http://www.ipcc.ch/publications_and_data/publications_and_data_reports.shtml) (last visited Oct. 7, 2011).

ensure that future generations have equal access to an environmental benefit, such as an ecologically healthy environment and that developing countries should not carry a disproportionate load to address the Climate Change problem. Also, like the Bali Climate Justice Principles (Articles 4, 6, 7 and 27), this author considers that Article 3(2) of the Climate Change Convention promotes environmental and climate justice for developing countries by requiring that States Parties recognize that developing countries face special challenges in implementing the Climate Change Convention and provide assistance to such countries so they can fulfill their obligations under the Climate Change Convention. The Climate Change Convention (Article 3(5)) is similar to the Bali Climate Justice Principles (Principle 17) by promoting sustainable economic growth for all countries, particularly for developing countries of the world, and by requiring that States Parties work together to promote a transparent international economic order that enables States Parties to address climate change issues. This study considers that the Kyoto Protocol to the Climate Change Convention also espouses substantive or distributive environmental justice themes.<sup>356</sup> Like the Bali Climate Justice Principles (Principle 4), and consistent with the Climate Change Convention (Article 3(1)), Article 10 of the Kyoto Protocol calls for the implementation of the international law principle of “common but differentiated responsibilities.” Like Bali Climate Justice Principles (Principles 7 and 8), the Kyoto Protocol also asserts an “ecological debt” that developed countries owe to developing countries. The Kyoto Protocol uses a CDM measure (Article 12) to assist mostly developing countries in realizing sustainable development. The Kyoto Protocol calls for research and sharing of knowledge and information to develop proficiency for all States Parties to meet their environmental obligations. This

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<sup>356</sup> Kyoto Protocol, *supra* note 242.

author suggests that the Climate Change Convention and its Kyoto Protocol endorse substantive and procedural international environmental justice by requiring that countries in Africa are not disproportionately burdened with the impacts of climate change or overburdened in the implementation of the Climate Change Convention.

Environmental justice is not specifically mentioned in the POP Convention but this study suggests that this convention has environmental justice goals that apply at the international level.<sup>357</sup> Like the Environmental Justice Principles, which call for worldwide protection from nuclear tests and activities and demand that the production of harmful substances be brought to an end (Principles 4 and 6), the POP Convention seeks the protection of all of humankind from dangerous substances, particularly in the handling of such harmful substances (Article 6(1)). By taking into account the capacity and ability of States Parties from developing countries to undertake the required research, supervision and development in the implementation of the POP Convention (Article 11(2)(c)), the POP Convention like the Climate Change Convention and its Kyoto Protocol, seeks to prevent the placement of a disproportionate environmental burden on developing countries in implementing the POP Convention. To that end, the POP Convention requires that States Parties provide technical assistance and facilitate the transfer of technology to economically disadvantaged countries of the world and other depressed economies so these countries can fulfill their obligations under the POP Convention (Article 12). Through the provision of financial resources, technical aid and the transfer of technology from developed countries to developing countries, it is reasonable for this author to suggest that the POP Convention attempts to prevent unfair

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<sup>357</sup> POP Convention, *supra* note 247, art. 3.

environmental burdens being placed on African Countries that are parties to the POP Convention in the implementation of the instrument.

Like the POP Convention, environmental justice is not mentioned in the Rotterdam Convention, but his study considers that basic environmental justice themes are promoted in this instrument.<sup>358</sup> In seeking that the environment and health of all people in every country be safeguarded from hazardous chemicals in international trade (Article 1), the Rotterdam Convention promotes goals of the Environmental Justice (Principle 17) and Bali Climate Justice Principles (Principles 26 and 27) to protect the natural environment for current and succeeding generations. Like the instruments examined above, the Rotterdam Convention requires that States Parties take into account the needs of countries with struggling economies and provide technical assistance and training to such disadvantaged countries (Article 16). The Rotterdam Convention relies heavily on procedural tools to achieve the substantive goals of the treaty (Articles 10-16). This study considers that the Rotterdam Convention seeks to prevent a disproportionate environmental burden on developing countries in Africa that are States Parties to the Rotterdam Convention and to ensure that such countries have adequate technical assistance and training to implement the Rotterdam Convention.

The Vienna Convention does not directly mention environmental justice, but it contains what this author considers to be environmental justice principles that may be applied at the international level.<sup>359</sup> Like the foundational environmental justice themes in Principle 1 of the Environmental Justice and Bali Climate Justice Principles respectively, which assert the importance of an ecologically healthy environment for all

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<sup>358</sup> Rotterdam Convention, *supra* note 246.

<sup>359</sup> Vienna Convention, *supra* note 248, pmbl.

life-forms, the Ozone Convention seeks to safeguard the environment and health of all humans (Article 2). Similar to the Climate Change Convention and its Kyoto Protocol, which require the application of the international law principle of common but differentiated responsibilities, the Ozone Convention considers the ability and resources of States Parties in fulfilling their obligations under the Ozone Convention (Article 2) and calls on States Parties to consider the needs of developing countries through the dissemination of knowledge, sharing of technology and expertise (Article 4(2)). This author is of the view that the Ozone Convention endorses environmental justice at the international level by ensuring that countries in the African region do not carry a disproportionate environmental load in implementing their obligations under the Ozone Convention and have access to necessary scientific and technological information to protect the Ozone layer.

Like the instruments above, environmental justice is not explicitly specified in the Basel Convention, but a primary goal of the Basel Convention is to prevent the illegal movement of such wastes from one State to another.<sup>360</sup> Like the Rotterdam Convention, the Basel Convention largely uses procedural mechanisms to promote the goals of the treaty. Article 4(2)(e) of the Basel Convention promotes what may be considered to be a key environmental justice goal by prohibiting the export of hazardous wastes to economically and politically weak countries, particularly developing countries that cannot properly manage such wastes. Article 4(2)(e) places what may be considered to be a due diligence requirement on the exporting country by putting the onus on such

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<sup>360</sup> Basel Convention, *supra* note 120, art. 4; Protocol on Liability and Compensation for Damage Resulting From Transboundary Movements of Hazardous Wastes and their Disposal, U.N. Doc. UNEP/CHW.1/WG.1/9/2, available at [http://treaties.un.org/doc/Treaties/1999/12/19991210%2012-52%20PM/Ch\\_XXVII\\_03\\_bp.pdf](http://treaties.un.org/doc/Treaties/1999/12/19991210%2012-52%20PM/Ch_XXVII_03_bp.pdf) (last visited Sept. 29, 2011).

country to determine (“reason to believe”) whether the receiving country has the capability to manage the hazardous wastes in a sound manner. The Basel Convention requires that States Parties share technical knowledge with developing countries (Article 10). This author suggests that the Basel Convention has an international environmental justice objective to prevent a disproportionate environmental burden on countries in Africa by limiting the transfer of hazardous and other wastes to these and other developing countries and requiring that knowledge be shared to prevent harm to the environment from hazardous wastes. The Bamako Convention may be considered to be the African region’s counterpart to the Basel Convention.<sup>361</sup>

The 1994 Desertification Convention does not directly refer to environmental justice but of all the instruments examined in this chapter, this author considers the Desertification Convention to be the one that has the clearest international environmental justice agenda as it relates to the African region.<sup>362</sup> As stated earlier, the primary objectives of this instrument include the reversal of the threat of desertification around the world, ensure that one country is not disproportionately burdened by the threats of desertification, and encourage a State Party to consider the needs and particular circumstances of developing countries that are affected by desertification and drought.<sup>363</sup> A State Party that is a developed country is called upon to assist developing countries financially, particularly those in Africa, and provide other forms of assistance to such countries to combat desertification and drought, paying particular attention to the unique conditions in the continent of Africa.<sup>364</sup> In an effort to ensure that developing countries,

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<sup>361</sup> See Bamako Convention, *supra* note 120.

<sup>362</sup> Desertification Convention, *supra* note 26.

<sup>363</sup> *Id.*, art. 3.

<sup>364</sup> *Id.*, arts. 6(b) & 7.



including African countries, have the necessary tools to combat drought and desertification, the Desertification Convention calls on developed States Parties to ensure that the information needs and technical and scientific expertise of African countries are secured so such countries can fulfill their obligations under the Desertification Convention.<sup>365</sup> In Article 19(1)(g) States Parties are called upon to assist affected developing country States Parties strengthen their capacity to fulfill their obligations to collect information and analyze and exchange relevant information under Article 16. The Desertification Convention requires, to the extent of the capabilities of the States Parties, their collaboration to share information, expertise and knowledge, and to undertake joint scientific and technological research with developing countries and for States Parties to implement these participatory measures at the national and local levels (Articles 16 and 19). This author considers that the limitation regarding the capabilities of States Parties requires that States Parties use every means possible to fulfill their obligations under Articles 16 and 19. The requirement for the development and exchange of education and public awareness materials in local languages in Article 19(3)(d) is unique for international instruments but an extremely important mechanism to ensure that every person at all educational levels obtains the necessary information to combat desertification and drought. Although Africa was singled out for priority attention, the Desertification Convention promotes environmental justice not only for African countries but for other disadvantaged countries and developing countries around the world. Clearly, the Desertification Convention promotes international environmental justice by ensuring that developing countries, particularly those in the African region, do not carry a disproportionate burden to combat drought and desertification.

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<sup>365</sup> *Id.*, art. 6(e).

### **5.2.2: Non-Legally Binding International Instruments: Human Rights, Economic and Social Development and the Environment**

The U.N. General Assembly adopted the Declaration for the Establishment of a New International Economic Order in an effort to spur economic development in developing countries.<sup>366</sup> Stated primary objectives of the New International Economic Order include closing the widening economic gap that exists between developing and developed countries of the world, guaranteeing a right to economic and social advancement for present and future generations, ending wars and ensuring justice for all.<sup>367</sup> Although this instrument is focused primarily on the economic advancement of developing countries, this study finds a basic substantive environmental justice theme in the New International Economic Order. Principle 4(f) of the New International Economic Order is thematically similar to Principle 9 of the Environmental Justice Principles in calling for full restitution to countries that have suffered environmental injustices.

The Charter of Economic Rights and Duties of States affirms the rights of all States Parties to economic, social and cultural progress (Article 7).<sup>368</sup> This author is of the view that this instrument promotes international environmental justice by requiring that all countries explore and use common global resources only for “peaceful purposes,” ensuring that the benefits obtained from such activities are shared in a fair manner, calling on States to consider the special circumstances and needs of developing countries

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<sup>366</sup> U.N. Declaration for the Establishment of a New International Economic Order, A/RES/S-6/3201 (1974) [hereinafter New International Economic Order], *available at* <http://www.un-documents.net/s6r3201.htm> (last visited Sept. 29, 2011).

<sup>367</sup> *See generally*, TUOMAS KUOKKANEN, INTERNATIONAL LAW AND THE ENVIRONMENT: VARIATIONS ON A THEME, 200-207, 315-338 (2002) (discussing the New International Economic Order).

<sup>368</sup> Charter of Economic Rights and Duties of States, G.A/RES/29/3281, U.N. Doc. A/9631 (Dec. 12, 1974) [hereinafter Charter of Economic Rights].

in the use of common global resources, and sharing of benefits that come from such exploitation and use (Article 29). This document requires that all States must ensure that actions in their individual States do not cause harm to the environment of another State and States are encouraged to work together to strengthen international environmental law (Article 30). This study finds procedural environmental justice goals in Article 13 of the Charter of Economic Rights and Duties of States in requiring that developed countries collaborate with developing countries in the sharing of knowledge about science and technology and research in these fields. If it is accepted that oil and gas resources provide the bulk of foreign earnings for some developing countries in Africa like Nigeria, and that knowledge about science and technology is critical for the development of oil and gas projects, it should also be accepted that the sharing of knowledge about the environmental impacts of oil and gas projects is called for in Article 13.

The Stockholm Declaration does not specifically mention environmental justice, but it endorses basic environmental justice principles that may be considered in a global context.<sup>369</sup> Principle 24 of the Stockholm Declaration, which reads that “international matters concerning the protection and improvement of the environment should be handled in a cooperative manner by all countries, big and small, on an equal footing” provides a key international environmental justice argument. This study suggests that like the Bali Principle (Principle 4), and the Climate Change and Rotterdam Conventions, the Stockholm Declaration promotes international environmental justice in requiring that the special needs and circumstances of developing countries be taken into account for the preservation and improvement of the environment (Principle 12), that the attempts of poor countries to contain pollution should be supported by all States (Principle 6), and

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<sup>369</sup> Stockholm Declaration, *supra* note 84.

that knowledge in environmental matters be shared and technology transferred to developing countries on reasonable terms that do not cause economic hardship on developing states (Principle 20). In seeking to safeguard humankind and the environment from the effects of weapons of mass destruction, this study considers that Principle 26 of the Stockholm Declaration is thematically similar to the Environmental Justice Principles (Principle 4), and the Bali Climate Justice Principles (Principle 10).

This study finds substantive and procedural international environmental justice goals in the World Charter for Nature as it calls on the international community to adopt consultative measures to conserve nature and to share information on nature (Principle 21(a)), prevent transboundary harm to nature from activities within a country (Principle 21(d)), and protect and conserve nature in places beyond national control (Article 21(e)).<sup>370</sup>

Although the Rio Declaration does not directly mention environmental justice, domestic or international, the Rio Declaration espouses basic environmental justice principles that may be applied at the international level. This author relied heavily on the Rio Declaration in developing an international environmental justice instrument, which is attached as Appendix “A”. The Rio Declaration recognizes a “common but differentiated responsibilities” principle with respect to the conservation, protection and restoration of the environment (Principle 7), and promotes procedural international environmental justice in calling for the exchange of scientific and technological information, expertise, and training (Principle 9). This author considers that the procedural pronouncements in Principles 10, 16, 17, 20 and 22 of the Rio Declaration provide principles for promoting

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<sup>370</sup> World Charter on Nature, *supra* note 5, princ. 21.

procedural environmental justice at the national level, while the remaining principles in the Rio Declaration promote environmental justice at the international level.

The Millennium Declaration does not explicitly specify environmental justice, but it promotes fundamental environmental justice themes of equality and fairness that have global application.<sup>371</sup> This study suggests that Principle 5 of the Millennium Declaration affirms an international environmental justice goal in calling for an equitable and inclusive globalization scheme that takes into account the challenges that developing and struggling economies struggle with. Principle 5 of the Millennium Declaration is thematically similar to Article 3(5) of the Climate Change Convention and Principle 17 of the Bali Climate Justice Principles which support sustainable economic development. This author suggests that a substantive environmental justice principle in the form of intergenerational equity, applicable at the global level, is promoted in Principle 6 of the Millennium Declaration as it calls for States to respect nature so the benefits of nature may be enjoyed by future generations. States are called on to work together to protect shared environmental resources (Principles 21, 22 and 23). With its call on States to pay special attention to the needs of Africa so the countries in Africa can achieve sustainable development and considering that environmental sustainability is considered to be a pillar of sustainable development, this study suggests that substantive international environmental justice, particularly for the region of Africa, is promoted in the Millennium Declaration (Principles 27 and 28). It is suggested in this study that procedural international environmental justice is promoted in the Millennium Declaration with its requirement that special procedures be put in place to assist African countries in

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<sup>371</sup> Millennium Declaration, *supra* note 3, princ. 2.

achieving sustainable development, including through the sharing of knowledge about science and technology (Principle 28).

The U.N. Commission on Human Rights Resolution on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights does not specifically mention environmental justice but in this author's opinion it has a clear international environmental justice goal as it condemns the illegal disposal of harmful goods and wastes in developing countries (Resolution 3).<sup>372</sup> Recognizing that many developing countries do not have the ability to handle dangerous wastes and substances, U.N. bodies are called on to collaborate with the international community and to provide technical aid for the proper management of harmful substances (Resolution 6). The Toxic Waste Resolution encourages international environmental justice in calling on appropriate U.N. organs and the international community to aid developing countries in their implementation of global and regional instruments to combat the transfer and dumping of dangerous substances and wastes, such as the Basel and Bamako Conventions (Resolution 9).

If the positions of UNDP researchers and writers including this author that MDG 7 is crucial for the achievement of the other MDGs is accepted, the arguments of this author that international environmental justice is essential for environmental sustainability and that it is unlikely that developing countries, particularly those in Africa, can achieve the MDGs in the absence of international environmental justice, should also be accepted. A recommendation in this study is that international environmental justice be added as an additional indicator for MDG 7. A proposed

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<sup>372</sup> Commission on Human Rights Res. 2000/72, Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, 56<sup>th</sup> Sess., April 26, 2000, [hereinafter Toxic Waste Resolution].

declaration on international environmental justice and summary are attached as Appendices A and B, respectively.

Considering that multiple international and regional instruments and scholars, such as Nicholas Robinson, assert the vital importance of water to humankind, other living beings and the environment,<sup>373</sup> and this study argues that expansive procedural rights are critical to environmental sustainability, what follows is a water justice assessment, primarily in a procedural context, using the Niger Delta region as the focus of inquiry. Water Justice in a substantive context affirms the right of access of every person in the world to water of a good quality and in a sufficient quantity and requires that the “chemical, physical and biological integrity” of water is maintained for all living beings and the environment.<sup>374</sup> In a procedural context, water justice requires that every person in the world has equal access to the participatory rights promoted in this study as it pertains to water issues.

### **5.3: Water Justice for All: International and Regional Legal Foundations**

Researchers at the UN-Water program consider water essential for the survival of humankind, other living beings and for the sustainability of the environment.<sup>375</sup> The World Charter for Nature provides authority for Water Justice at every level in requiring that the disposal of dangerous substances into “natural systems” be prevented (Principle 12). Agenda 21 supports Water Justice in supporting the position of UN-Water

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<sup>373</sup> See, e.g., UNEP, *THE GREENING OF WATER LAW: MANAGING FRESHWATER RESOURCES FOR PEOPLE AND THE ENVIRONMENT* (2010); see also *TRAINING MANUAL ON INTERNATIONAL ENVIRONMENTAL LAW* 243 (Nicholas A. Robinson & Lal Kurukulasuriya, eds., 2006).

<sup>374</sup> See World Water Assessment Programme, *1<sup>st</sup> U.N. World Water Development Report :Water For People, Water For Life* (Mar. 5, 2003), available at [http://www.unesco.org/water/wwap/wwdr/wwdr1/table\\_contents/index.shtml](http://www.unesco.org/water/wwap/wwdr/wwdr1/table_contents/index.shtml) (last visited Sept. 29, 2011).

<sup>375</sup> International Decade for Action: ‘Water For Life’ 2005-2015, G.A. Res 58/217 (Dec. 23, 2003); see also Federal Water Pollution Control Act (1948), amended by 33 U.S.C 1251(a) (1972).

researchers that sources of clean water are crucial for ecosystem integrity and vital for sustaining human life and other living beings, and it promotes the use of procedural measures to protect such sources of water, including by means of an EIA.<sup>376</sup> Other procedural measures include providing comprehensive education about water management issues, public information and awareness campaigns, strengthening local governments to assume responsibility to manage water resources, facilitating public participation in water management and collation and dissemination of water monitoring results.<sup>377</sup> The goals of key international documents on water, such as the Mar Del Plata Action Plan and the New Delhi Statement on Safe Drinking Water and Basic Sanitation are affirmed in Agenda 21 (Paragraphs 18.47 and 18.48).<sup>378</sup> Agenda 21 recognizes Water Justice at every level in reaffirming a guiding principle of the Mar Del Plata Action Plan that “people in all parts of the world”, despite their socio-economic conditions and level of development, have a right of access to water of a sufficient quality and quantity (Paragraph 18.47) and a goal of the New Delhi Statement, “water for some rather than more for all” (Paragraph 18.48). The Mar Del Plata Action Plan and the New Delhi Statement endorse participatory measures to achieve the substantive goals of the instrument, including research, international cooperation, education, information dissemination and the participation of the public. The New Delhi statement emphasizes the need for participation of women to achieve sustainable development (Principle 2).

#### The Ministerial Declaration of the Hague on Water Security in the 21<sup>st</sup> Century

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<sup>376</sup> Agenda 21, *supra* note 12, ¶¶ 18.2 & 18.35-64.

<sup>377</sup> *Id.* ¶¶ 18.47-18.55.

<sup>378</sup> See Global Consultation on Safe Water and Sanitation for the 1990's, New Delhi, India, Sept. 10-14, 1990, *New Delhi Statement: Some for all rather than (sic) more for some*” (Sept. 14, 1990) [hereinafter *New Delhi Statement*], available at <http://www.unesco.org/water/wwap/milestones/index.shtml> (last visited Sept. 29, 2011); U.N. Conference on Water, Mar Del Plata, Argentina, Mar. 14-25, 1977, *Mar Del Plata Action Plan*, (Mar. 25, 1977).



recognizes Water Justice at every level in affirming the importance of clean and safe drinking water for the well-being of humans everywhere in the world, the environment, and for the progress of a country.<sup>379</sup> Like Agenda 21, the Hague Water Declaration calls for the use of participatory measures to promote substantive water goals, such as the involvement of the public in water governance at the national level.

While Chapter 18 of Agenda 21 lays out strategies to protect freshwater bodies, Chapter 19 sets out measures to ensure that dangerous chemicals are handled properly so that damage to the environment, including the aquatic environment, is prevented.<sup>380</sup> The participatory tools promoted in Chapter 19 of Agenda 21 are similar to those in Chapter 18. In Paragraph 19.61(c), States are called upon to implement a community right-to-know program or similar program and develop and make available to the public a data base of toxic chemical emissions. Chapter IV of the Plan of Implementation of the World Summit on Sustainable Development lays out strategies to manage natural resources of earth and to achieve the target of MDG 7(c).<sup>381</sup> Paragraph 23 of the Johannesburg Plan of Implementation, reaffirms the goals, objectives and strategies set out in Paragraph 19 of Agenda 21 and lays out additional steps to ensure that chemicals are properly managed from the time of manufacture to their disposal. Governments are encouraged to set up national registries that contain complete information on dangerous chemicals in circulation in the country (Paragraph 23(f)). Developing and least developing countries in Africa, such as Nigeria, should look to the Kiev Protocol on PRTRs for guidance in

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<sup>379</sup> Second World Water Forum, Hague, Netherlands, Mar. 17-22, 2000, *Ministerial Declaration of the Hague on Water Security in the 21<sup>st</sup> Century* (Mar. 22, 2000) [hereinafter Hague Water Declaration].

<sup>380</sup> Agenda 21, *supra* note 12, ¶¶ 19.8, 19.23, 19.33-19.37, 19.51 & 19.61.

<sup>381</sup> World Summit on Sustainable Development, Johannesburg, South Africa, Aug. 26-Sept. 4, 2002, *Plan of Implementation of the World Summit on Sustainable Development*, reprinted in Report of the World Summit on Sustainable Development, UN. Doc. A/CONF. 199/20, U.N. Sales No. E.03.II.A.I (2002) [hereinafter Johannesburg Plan of Action or Johannesburg Plan of Implementation].

developing legislation to maintain a PRTR structure at the national level and adapt it to the special circumstances in African countries.<sup>382</sup>

The fundamental right to water for every person in the world is endorsed in multiple international documents. A recent U.N. General Assembly resolution affirmed a right to safe drinking water as a fundamental human right.<sup>383</sup> The U.N. Human Rights Council takes the position that a right to water [and basic sanitation] is already, by implication, contained in hard law documents that assert a right to an acceptable living standard and is included in the right to the highest achievable standard of mental and physical health and the right to life and dignity of the human person.<sup>384</sup> In providing a human right to water for every person, Water Justice is promoted and protected at all levels. The MDGs promote Water Justice at every level. MDG 7(c) contains a water quality target [and sanitation] for the world population. According to a recent WHO and UNICEF report although the world appears to be on target to meet MDG 7(c) by 2015, a large number of people around the world, with a large number of such people living in the African continent, primarily in the southern part of the continent, do not have access to safe drinking water.<sup>385</sup> According to the WHO, safe drinking water is considered to be enhanced drinking water sources, including rainfall that is contained and water from “protected springs.”<sup>386</sup> The global and U.S. environmental justice and climate justice movements also seek Water Justice at every level. While Principle 4 of the

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<sup>382</sup> Protocol on Pollutant Release and Transfer Registers to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, *adopted on* May 21, 2003 [hereinafter Kiev Protocol].

<sup>383</sup> The Human Right to Water and Sanitation, G.A. Res. 64/292, U.N. Doc. A/RES/64/292 (July 28, 2010).

<sup>384</sup> Human Rights Council Res. 15/L. 14, 15<sup>th</sup> Sess., Sept. 13-October 1, 2010 (Sept. 30, 2010).

<sup>385</sup> WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, *Progress on Sanitation and Drinking Water: 2010 Update 7* (2010).

<sup>386</sup> For the different ways the WHO uses terms “improved water sources” and “unimproved water sources,” see WHOSIS, *Access to improved drinking-water sources and to improved sanitation (percentage)*, available at <http://www.who.int/whosis/indicators/compendium/2008/2wst/en/> (last visited Nov. 13, 2011).

Environmental Justice Principles calls for international safeguards as it concerns nuclear testing, exploitation, production and disposal of dangerous wastes and harmful substances that pose a threat to basic human rights to uncontaminated air, water, food and land, the Bali Climate Justice Principles call for the protection and promotion of a right to clean water (Principle 17) and reject hostile the exploitation of natural resources, including water, particularly from the oil and gas industry (Principles 24).

A report containing Africa's vision for protecting water resources in the region into the future supports Water Justice in Africa in planning for a continent that has adequate water in terms of quality and quantity for people in Africa, other living beings, and the African environment.<sup>387</sup> Africa Water Vision considers that over 75% of the African population depends on groundwater as a primary drinking water source.<sup>388</sup> The Dublin Statement on Water and Sustainable Development is said to provide support for the Africa Water Vision.<sup>389</sup> Like the Dublin Principles, which encourage the use of participatory measures to achieve the goals in the Dublin Principles, such as public participation in water management issues, application of the subsidiarity principle, and public awareness and capacity building campaigns regarding water management issues (Principle 2), the Africa Water Vision also endorses the use of similar participatory techniques to achieve substantive goals. A unique approach promoted in the Africa Water Vision is to increase wisdom in water matters for all Africans in order to achieve good water quality for all living beings. The African Nature Convention I also supports

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<sup>387</sup> UNECA/UN-Water/Africa, *The Africa Water Vision for 2025: Equitable and Sustainable Use of Water for Socioeconomic Development* at 10 (2000) [hereinafter Africa Water Vision], available at <http://www.uneca.org/awich/African%20Water%20Vision%202025.pdf> (last visited Sept. 30, 2011).

<sup>388</sup> *Id.* at 8.

<sup>389</sup> See International Conference on Water and the Environment, Dublin, Ireland, Jan. 26-31, 1992, *The Dublin Statement on Water and Sustainable Development* (Jan. 31, 1992).

Water Justice in Africa in requiring that Contracting Parties maintain surface and underground water resources and assure safe drinking water for every person in Africa.<sup>390</sup> Like the African Nature Convention I, the Revised African Nature Convention, which is yet to go into effect, requires that States Parties manage water resources in a sensible manner, so that human health, aquatic water systems, and the water bodies of neighboring States are safeguarded.<sup>391</sup> The Revised African Nature Convention supports Water Justice in Africa.

While the assessment above focused on key international and regional instruments that this study suggests recognize and promote Water Justice in substantive and procedural contexts, the water justice assessment for the Niger Delta Region that follows focuses on “community right to know” requirements and chemical water pollution associated with oil and gas exploration and production activities in the Niger Delta Region. Key federal environmental laws in the U.S. related to this subject will also be discussed for their value in keeping the public informed about discharges of dangerous chemicals to the environment.

#### **5.4: Nigeria: The Right to Know about Chemical Water Pollution**

According to oil and gas experts, chemicals are used at different stages of oil and gas exploration and production that have the potential to cause environmental damage.<sup>392</sup> This potential for environmental damage is expressed in a joint UNEP and international oil and gas industry report, which finds that waste generated during oil and gas exploration and production activities, including “well treatment chemicals,” contaminate

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<sup>390</sup> African Nature Convention I, *supra* note 24, arts. V(1) & VII(1)(b).

<sup>391</sup> *Id.* art. VII.

<sup>392</sup> See International Expert Meeting on Environmental Practices in Offshore Oil and Gas Activities, November 17-20, 1997, Noordwijk, The Netherlands, *Technical Meeting Document: Compilation of Information Discussed in the Working Sessions* (Jan. 1998).

water bodies and can degrade freshwater resources.<sup>393</sup> This study suggests that the Niger Delta region will be no different in terms of the use of chemicals in oil and gas exploration and production activities, waste generated, and the impacts to water bodies. Although environmental degradation in the Niger Delta region from oil spills and the flaring of gas has been extensively investigated and reported by scholars and organizations, this author is of the view that insufficient attention has been paid to the procedural aspects of chemical water pollution, especially the right of people to know about the dangerous chemicals released into water bodies in their communities.

### **Background: Chemical Water Pollution: The information and “Participatory Gap”**

According to a WHO-UNICEF national water assessment, Nigeria is rich in surface and groundwater resources.<sup>394</sup> This WHO-UNICEF assessment also considers that human health in Nigeria may be impacted by chemical water pollution from naturally-occurring chemicals or chemicals introduced into the environment by means of human activities.<sup>395</sup> This author suggests that such human activities include oil and gas production and exploration activities. WHO-UNICEF researchers also list some of the barriers to adequate water pollution control in Nigeria, such as the inability of relevant bodies in Nigeria to produce reliable information on water quality, particularly for the rural areas, and the absence of validated groundwater test results.<sup>396</sup> Not surprisingly, lack of access to relevant information, which has resulted in limited civil society involvement and capacity as it relates to water resources management are said to be some

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<sup>393</sup> See Oil Industry International Exploration and Production Forum/United Nations Environment Program Industry and Environment Centre, *Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches* 13 (1997).

<sup>394</sup> See WHO/UNICEF, *Rapid Assessment of Drinking-Water Quality in the Federal Republic of Nigeria: Country Report of the Pilot Project Implementation in 2004-2005* 3-4 (2010) (by M. Ince, D. Bashir, O.O.O Oni, E.O Awe, V Ogbechie, K. Korge, M.A Adeyinka, A.A Olufolabo, F. Ofordu, M. Kehinde).

<sup>395</sup> *Id.*

<sup>396</sup> *Id.* at 5.

of the challenges Nigeria faces in achieving MDG 7(c).<sup>397</sup> Considering the first pillar of this study's argument, it is not surprising that a 2010 MDG Report on Nigeria concludes that Nigeria is unlikely to meet the target for safe drinking water, MDG 7(c).<sup>398</sup>

The Water Resources Act is key legislation in Nigeria that provides for overall water management in Nigeria.<sup>399</sup> Although Nigerians have a right under the Water Resources Act to obtain water from any "easily accessible" water bodies and from underground sources of water for domestic uses, the official in charge of water resources matters in Nigeria has a duty to prevent a person in Nigeria from removing groundwater if the official considers that using groundwater will be dangerous to the health of humans.<sup>400</sup> Although the Water Resources Act sets forth measures to control the use of groundwater (Section 2), the Water Resources Act does not require that the water supplier provide water quality information to Nigerians. This gap in the Water Resources Act is contrasted with the U.S. Safe Drinking Water Act, which contains public information and right-to-know provisions and requirements for the suppliers of water to give water quality information to their customers on a regular basis.<sup>401</sup>

### **Background: Water Justice: The Niger Delta Environment and Aquatic Life Forms**

The Niger Delta region of Nigeria covers approximately 12% of the land and water area of Nigeria.<sup>402</sup> The natural environment in the Niger Delta region is notable for

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<sup>397</sup> *Id.*

<sup>398</sup> UNICEF, *Fact Sheet: Water, Sanitation, and hygiene in Nigeria*, at 2 (April 2010); *see also* Nigeria: Millennium Development Goals Report, Fact Sheet 45 (2010), *available at* <http://www.ng.undp.org/mdgs/Final-MDG-report-2010.pdf> (last visited Nov. 8, 2011).

<sup>399</sup> Water Resources Act (1993) Cap. (101), §1(c) (Nigeria).

<sup>400</sup> *Id.* §§ 2, 3 & 4(c).

<sup>401</sup> *Compare with*, Safe Drinking Water Act (1974), *amended by* 42 U.S.C. §§ 300f-300j-26 (1996) [hereinafter SDWA]. The SDWA is a key federal law in the U.S. that protects the quality of drinking water in the U.S.A originally enacted in 1974. The 1996 amendments require that a water supplier provide the public with information about the drinking water in the community.

<sup>402</sup> *See* NDDC, *supra* note 70.

its diverse ecological systems, which include mangrove forests.<sup>403</sup> Numerous environmental assessments of the region find that water bodies and aquatic life have been negatively impacted by decades of oil and gas exploration and production in the region. According to UNEP researchers, water bodies in a part of the Niger Delta, *Ogoniland*, are polluted with hydrocarbons from oil spills, damaging the aquatic environment and the life forms in the aquatic environment, including fish.<sup>404</sup> These UNEP researchers also report that oil and gas infrastructure in *Ogoniland*, which are no longer in use, have not been formally closed and pipelines in the area are not properly maintained.<sup>405</sup> This author suggests that this abandoned structures or poorly maintained pipelines contribute to water pollution in the region.

A Niger Delta socio-economic report describes the different types of living beings that may be found on the floor of mangrove swamps in the Niger Delta region, including crabs, some types of shrimps, shellfish, a wide variety of fish, big and small, periwinkles, and birds.<sup>406</sup> Like the UNEP assessment of *Ogoniland* mentioned above, a Niger Delta Human Development Report referred to earlier also found that oil pollution in the Niger Delta region has, among other things, caused a depletion of aquatic fauna and harmed mangrove marshes and sources of groundwater in the area.<sup>407</sup> The Niger Delta Human Development Report refers to authors Powell and White's assessment of the impact of an oil spill in *Oshawa* village in Rivers State, Nigeria, which caused the death of some aquatic life forms and birds in the area, including some of the living species mentioned above, and conclusion that the construction of canals in the Niger Delta region can cause

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<sup>403</sup> *Id.* at 59, 60.

<sup>404</sup> UNEP, *supra* note 33 at 10.

<sup>405</sup> UNEP, *supra* note 33 at 25.

<sup>406</sup> NDDC, *supra* note 70 at 60.

<sup>407</sup> UNDP, *supra* note 67 at 76.

water pollution, degrade ecosystems, and change the environmental landscape, which presumably includes the aquatic environment.<sup>408</sup> This UNDP report also refers to possible environmental impacts from the dredging of the Niger Waterway project, which EIA report will be discussed in a later chapter.<sup>409</sup> This author reviewed a Shell Petroleum Development Company of Nigeria Limited report for incident No. 2011-610757 that allegedly occurred on January 14, 2011 (reported on January 17, 2011) at an SPDC facility in Rivers State.<sup>410</sup> The oil spill reportedly impacted swamps and water near the *Oloma* community in Rivers State. According to the oil spill report, SPDC reported the spill three days after it occurred. The delay in reporting is unacceptable. According to the UNEP report cited above, a delay in responding to spills often times leads to fires which have the potential to “change species diversity over significant areas.”<sup>411</sup> With the development of the *Bonga* and *Agbami* deep oil and gas fields, this author considers that more damage to the aquatic environment in the Niger Delta region will ensue.<sup>412</sup> According to a Shell Petroleum Development Company of Nigeria limited publication, the *Bonga* Oil and gas field is located in about 1000 meters of water and spread across an approximately 60 square kilometers area.<sup>413</sup> This author considers that the “chemical, physical and biological integrity” of water in the Niger Delta region has

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<sup>408</sup> *Id.*

<sup>409</sup> *Id.*

<sup>410</sup> A copy of the Shell Petroleum Development Company of Nigeria Limited [hereinafter SPDC] oil spill report and the information about oil spills that occurred or were reported in January 2011 is available at SPDC website at [http://www.shell.com.ng/home/content/nga/environment\\_society/respecting\\_the\\_environment/oil\\_spills/january.html](http://www.shell.com.ng/home/content/nga/environment_society/respecting_the_environment/oil_spills/january.html) (last visited Nov. 27, 2011).

<sup>411</sup> UNEP, *supra* note 33 at 38.

<sup>412</sup> NDDC, *supra* note 67 at 72.

<sup>413</sup> Information on the *Bonga* oil and gas field deep water project is available at SNEPCO website at [http://www-static.shell.com/static/nga/downloads/pdfs/briefing\\_notes/bonga.pdf](http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/bonga.pdf) (last visited Nov. 22, 2011).



not been maintained for all living beings and for the “integrity” of the Niger Delta environment.

### **Background: Water Justice: The Niger Delta People**

Farming and fishing are reportedly the major customary socio-economic practices of the people in the Niger Delta region. According to a 2008 UNICEF water and sanitation assessment report, as of the time of the UNICEF assessment (2004-2005), Nigeria was not on target to meet its MDG 7(c) goal for safe drinking water coverage of 75% and 63% for basic sanitation (by 2015), and a UNICEF MDG report (2010) cited above found that as of 2010 Nigeria was still not on target to meet MDG 7(c).<sup>414</sup> According to a Niger Delta socio-economic and environmental plan, a large number of rural communities in the Niger Delta region rely on water wells and springs as a means of water supply while some of the bigger rural settlements use boreholes.<sup>415</sup> A UNDP human development report for the Niger Delta Region, which recounts a 2005 report of the National Bureau of Statistics in Nigeria that “water in the majority of Niger Delta states comes from unsafe supply facilities, including rivers, lakes or ponds, unprotected wells and boreholes,”<sup>416</sup> highlights the irony of the Niger Delta situation that despite being surrounded by numerous water bodies, the people in the region do not have access to safe drinking water. This UNDP report also recounts the findings of a 2000 Niger Delta Environmental Survey that less than 25% of the rural population (excluding the rural population in Cross Rivers State) and just under 50% of the urban population in the

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<sup>414</sup> See UNICEF, *supra* note 398; see also United Nations Children’s Fund, Water and Sanitation Monitoring Platform, Water and Sanitation Summary Sheet, Nigeria: Country Summary Sheet (2008), available at [http://www.unicef.org/nigeria/ng\\_media\\_Water\\_sanitation\\_summary\\_sheet.pdf](http://www.unicef.org/nigeria/ng_media_Water_sanitation_summary_sheet.pdf) (last visited Nov. 15, 2011).

<sup>415</sup> NDDC, *supra* note 67 at 86.

<sup>416</sup> UNDP, *supra* note 67 at 27.

Niger Delta region had access to safe drinking water.<sup>417</sup> It is therefore not surprising that the UNDP report cited above concluded that limited access to sufficient drinking water in the Niger Delta region had caused severe human health, environment and socio-economic impacts and that authors Tamunobereton-Ari and Omubo-Pepple consider that about 95% of the inhabitants of Okrika community in Rivers State have to rely on groundwater as a source of water because the surface water in the area has been severely degraded by human activities.<sup>418</sup> Restating the conclusion of other researchers and authors, UNDP researchers indicated that oil pollution threatens human health through the ingestion of contaminated food, especially fish.<sup>419</sup> A contrary view is presented in the recently issued UNEP report of its environmental assessment of *Ogoniland* that “the accumulation of hydrocarbons in fish tissue is not a serious health risk” in *Ogoniland* although the UNEP report finds that there has been a decline in the income from the fishing industry in *Ogoniland* since fishing grounds in the mangrove zones and creeks are no longer suitable for fishing.<sup>420</sup> Also, the UNEP researchers recommend that medical monitoring of people in at least ten communities in this region should be carried out to track the impacts of oil and gas activities on human health, particularly for people in the *Nsisioken Ogale* community. The assessment found that people in this community have, and continue to, ingest and use water contaminated with benzene that is in excess of WHO recommended guidelines.<sup>421</sup>

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<sup>417</sup> *Id.* at 28.

<sup>418</sup> *Id.*; see generally I. Tamunobereton-Ari, Uko, E.D. Uko, V.B. Omubo-Pepple, *Anthropogenic Activities-Implications for Ground Water Resource in Okrika, Rivers State, Nigeria*, 5(3) Research Journal of Applied Sciences, 204 (2010) (discussing the susceptibility of sources of water in the area to contaminants associated with industrial and domestic activities in the region).

<sup>419</sup> *Id.* at 76-77.

<sup>420</sup> UNEP, *supra* note 33 at 181.

<sup>421</sup> *Id.* at 214.

According to Amnesty International researchers, key sources of environmental pollution in the Niger Delta region include oil spills, gas flaring and dumping of oil exploration and production waste into the environment and water bodies in the region.<sup>422</sup> Like the UNDP and UNEP reports mentioned above, Amnesty International researchers also found that oil pollution has damaged the fishing industry in the Niger Delta region and provided the accounts of people in the community and of the Food and Agricultural Organization that oil pollution has destroyed the aquatic environment in the region.<sup>423</sup> Based on their research, Amnesty International researchers concluded that the people of the Niger Delta region were deprived of a human right to water and conditions for the enjoyment of a right to health did not exist as the right to an environment could not be enjoyed. According to the Amnesty International researchers, the failure of the government of Nigeria to ensure that impacted communities enjoy participatory rights of access to information, public participation and access to justice regarding matters related to the environment is one of several major human rights abuses in the region.<sup>424</sup> The Amnesty International report referred to CESCR's General Comments No. 14 (regarding the right to the highest attainable standard of health) and No. 15 (regarding the right to water) and recalled CESCR's position that embedded in the right to water, which derives from other basic rights, is a right to information about all aspects of water and the right to take part in decision-making that has the potential to affect the individual's right to water.<sup>425</sup> Considering UNEP's finding that at least one community in the *Ogoni* region, *Nisisioken Ogale*, has been exposed to highly elevated levels of benzene, a substance

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<sup>422</sup> Amnesty International, *supra* note 35, at 14-20.

<sup>423</sup> *Id.* at 26-30.

<sup>424</sup> *Id.* at 49-51.

<sup>425</sup> *Id.* at 49; *see also* CESCR, General Comments 1-21, *available at* <http://www2.ohchr.org/english/bodies/cescr/comments.htm> (last visited Oct. 1, 2011).

associated with the oil and gas industry, in its drinking water supply,<sup>426</sup> and benzene is a known human carcinogen, this author argues that people in *Ogoniland* have been deprived of the rights to life, health, water, information and right to participate in environmental decision-making matters, especially as it relates to water issues and Water Justice. The Amnesty International researchers also discussed CESCR's Comment No. 9 (national implementation of the ICESCR) and the requirement for domestic, administrative and judicial processes and effective remedies to enforce a person's rights under the ICESCR and the implications for the Niger Delta people. Amnesty International researchers mentioned what they considered to be impediments to the enjoyment of a right of access to justice for the people in the Niger Delta region, including a lack of knowledge about available rights, and prohibitive costs for litigation.<sup>427</sup> An environmental assessment of the Niger Delta region dating back to the mid 1990's when chemical water pollution was not as much of a concern as it is today, showed that almost two decades ago researchers involved in the World Bank sponsored study concluded that water-linked diseases account for about 80% of the reported sicknesses in Rivers and Delta States.<sup>428</sup> This author considers that the Nigerian government has failed to deal with water injustices as it pertains to the Niger Delta region and the people in the region have been unable to enjoy basic human rights in the same manner as other Nigerians in other parts of the country, particularly the right to water.<sup>429</sup>

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<sup>426</sup> UNEP *supra* note 33 at 215.

<sup>427</sup> Amnesty International, *supra* note 35, at 64-77.

<sup>428</sup> World Bank, *Defining an Environmental Development Strategy for the Niger Delta*, 70, (vol. 1 of 2), Doc. No. 14266 (May 25, 1995) (by Jasdip Singh, David Moffat, Olof Linden), available at [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/11/10/000094946\\_00082605382641/Rendered/PDF/multi\\_page.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2000/11/10/000094946_00082605382641/Rendered/PDF/multi_page.pdf) (last visited Oct. 1, 2011).

<sup>429</sup> See generally, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, art 4, G.A. Res. 47/135, annex 47, U.N. Doc. A/47/49 (1993) (proclaiming rights for a person who belongs to an ethnic, religious or linguistic minority group).

## **Issue: Water Justice: The Niger Delta Region: The “Right to Know” about Chemical Water Pollution**

As stated above, UNEP and Amnesty International consider that there is a critical dearth of information on matters related to the environment in the Niger Delta region. UNEP researchers also consider that the laws in Nigeria are unobtainable due to their prohibitive costs and the limited forms in which they are reproduced, which has resulted in a legal process that is not transparent and in a loss of confidence in the legal process, with UNEP recommending that the Nigerian government provide easy access to laws and regulations at a minimal cost and in different forms in an effort to change the perception of the public about the judicial system.<sup>430</sup> Although this study found key national laws from 1999 on the National Assembly of Nigeria’s website, with the inconsistent power supply in Nigeria and limited availability of computers and internet services in rural parts of the country, this form of providing laws to Nigerians is not adequate. According to Amnesty International researchers, the lack of information about oil pollution and its impact on the health of humans and the environment in terms of its collection, review, accessibility and dissemination has compounded the environmental problem in the Niger Delta region and has the potential to exacerbate hostilities between communities and can cause wider human rights issues.<sup>431</sup> The Amnesty International researchers refer to the conclusion of the African Commission in the case of *SERAC v. Nigeria* cited earlier that the government of Nigeria should gather, publish and make information related to the environment available to the public, particularly EIA information, and provide real opportunities for the public to participate in environmental decision-making processes.<sup>432</sup>

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<sup>430</sup> UNEP, *supra* note 33 at 142.

<sup>431</sup> Amnesty International, *supra* note 35 at 49.

<sup>432</sup> *Id.* at 51.

This study argues that unobtainable information about chemicals discharged into the environment, particularly into water bodies in the Niger Delta region, is water injustice, of a procedural kind.

### **Recommendation: Develop a Suitable PRTR System in Nigeria**

In an effort to correct water injustices in the Niger Delta region, and promote and protect human rights for all Nigerians, this study calls on the Nigerian government to immediately fulfill its commitments under Agenda 21 (Section 19.61(c)) and the Johannesburg Plan of Implementation (Section 23(f)) to develop an easily accessible database of facts and figures about toxic substances released into the environment in Nigeria so people in the Niger Delta region can obtain knowledge about the chemicals used in the region and released into the environment, especially water bodies in the region. Such a PRTR structure can contribute to water wisdom for people in Nigeria as envisioned in the Africa Water Vision, especially as it concerns chemical water pollution, and the people in the Niger Delta region, who bear a disproportionate burden of pollution from oil and gas activities, can take action to protect the quality and quantity of water in their respective communities, public health and the environment.

UNITAR provides guidance to States in the development of national PRTR systems, which countries in Africa can look to for the development of their PRTR structures.<sup>433</sup> At the time of this study, UNITAR was working with the Togolese government to develop a national PRTR structure. Nigeria can look to the Togolese system, when it is fully developed and implemented, for procedures that can be adapted

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<sup>433</sup> PRTR guidance documents and information are available at UNITARs website at <http://www.unitar.org/cwm/prtr/> (last visited Oct. 1, 2011).

to the situation in Nigeria. Also, the U.S. has a well-established PRTR system that the Nigerian government can also consider in the development of a PRTR system in Nigeria.

The Emergency Planning and Community Right-to-Know Act in the U.S. guarantees for all Americans information about the chemicals they may be exposed to from certain industrial operations in their community.<sup>434</sup> EPCRA preceded Agenda 21 and the Johannesburg Plan of Implementation. The TRI developed pursuant to EPCRA provides the public, regulators and researchers, and public-safety officials, with information about “covered-chemicals” released into the environment and appears to be the precursor to the toxics emissions database called for in Agenda 21 and PRTR system in the Johannesburg Plan of Implementation. A flaw in the PRTR system in the U.S. that numerous writers point to is its exclusion of the oil and gas industry from the TRI’s reporting obligations pursuant to Section 313 of EPCRA. This study notes that although the oil and gas industry currently does not have a TRI reporting obligation under EPCRA, other industries that may be sources of chemical pollution, including petroleum refineries and chemical manufacturers, have reporting requirements under Section 313 of EPCRA.<sup>435</sup> Also, there is a bill pending in the U.S. to amend the Safe Drinking Water Act, the Fracturing Responsibility and Awareness of Chemicals (FRAC) Act, so that hydraulic fracturing, a technique the oil and gas industry uses to create fractures in rocks that contain oil and gas, may be regulated under SDWA. The SDWA has “public notification” requirements as it concerns the quality of water and threats to water supplies.

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<sup>434</sup> Emergency Planning and Community Right to Know Act, 42 U.S.C. §§11001-11050 (1986) [hereinafter EPCRA].

<sup>435</sup> *Id.* § 313(b).

In addition to the specific recommendations in this study for the development of expansive environmental participatory national legislation, for the development of a comprehensive PRTR system in Nigeria, this study recommends that NESREA in consultation with DPR collate the information owners and operators of facilities, particularly those associated with the oil and gas industry in Nigeria, are required to provide pursuant to applicable solid and hazardous waste and oil and gas regulations regarding chemicals stored, used, recycled, treated or discharged into the environment, and post the collated material on websites maintained by NESREA, DPR and the National Assembly. As a deterrent to facility owners and operators, letters of violations should be issued, consent orders executed, which may include stiff penalties, and in egregious cases criminal sanctions should apply, when facility operators and owners fail to timely submit the required information or provide false information. As multiple languages are spoken in Nigeria, information in a PRTR database should, at a minimum, be provided in the three main languages in Nigeria. Due to the irregular power supply in Nigeria, this study recommends that at least on a quarterly basis NESREA should compile a report of the information in the PRTR database (PRTR Report) and make the PRTR Report available to members of the National Assembly, other agencies with a mandate to protect public health and the environment in Nigeria, and to the public for a nominal fee. This study makes the following recommendations based on what it considers to be best practices around the world, especially in the U.S. The government in Nigeria should use state-owned and private electronic and print media, such as radio, television, movie theaters, and newspapers and encourage telephone companies, particularly cell-phone providers using text messages, to inform the public about the



availability of the PRTR Report, the location of document repositories for the PRTR Report, such as primary and secondary schools, universities, government offices, traditional rulers residences, NGO offices, offices of public unions, and business associations, and major public facilities, and inform the public about the procedures for reviewing or purchasing the PRTR Report. A particularly innovative tool to strengthen governance in the *Abua-Odual* local government area of Rivers State Nigeria that is recommended by Living Earth Nigeria Foundation, a civil society organization in Nigeria, is the traditional town crier, an individual who makes important announcements in a community, may also be used to provide PRTR information to the community. This author recommends that the town crier be used to announce the availability of a PRTR Report and to obtain information from the public about known or suspected discharges of dangerous chemicals into the environment, especially water bodies in the community.

## **Conclusion**

Considering that numerous international bodies including the IPCC assert that pollution is not limited to a single State, this study suggests that an international environmental justice legal order is required to enable developing countries, particularly those in Africa, to achieve environmental sustainability.

The examination in this chapter shows that there are a number of international instruments concerning the environment, human rights, and economic development that may be used to assure international environmental justice. While legally-binding environmental instruments in these fields, particularly in the field of the environment, do not specifically mention environmental justice as a goal of the instrument, they contain provisions that may be used to recognize international environmental justice, especially

in a substantive context. On the other hand, non-legally binding international instruments on the environment and development may be used to recognize participatory environmental justice at rights at the national level. Also, binding international human rights instruments may be expanded to secure procedural environmental justice at the national level. Nigeria does not have an adequate “community-right-to-know” program that, satisfies the requirements of Agenda 21 ((Section 19.61(c)) and the Johannesburg Plan of Implementation (23(f)).

This chapter advanced the second part of the argument in this study by examining international and regional instruments that may be used to provide authority for an international environmental justice legal order. The next chapter considers whether and to what extent Nigeria has fulfilled its international and regional obligations and commitments to protect, respect and promote the procedural environmental rights promoted in this study in Nigeria.

## **Chapter Six: Nigeria: The “Law of Public Participation in Environmental Matters”**

Nigeria is the focus of inquiry in this study. The previous chapter advanced the second pillar of this study’s hypothesis by presenting authority in international and regional laws pertaining to the environment, economic development, and human rights that may be used to assure international environmental justice and also discussed water justice, using the Niger Delta region as the case study to advance the argument that expansive participatory rights for every person without “any form of discrimination,” are vital for protecting public health and the environment. The examination in this chapter tests part of this study’s hypothesis by considering whether Nigeria has fulfilled its obligations and commitments under key legally binding and non-legally binding international and regional instruments that call on a State Party to provide and promote at the national level rights of access to environmental information, public participation in decision matters related to the environment, real access to justice in environmental matters, and this study’s proposal of a right of access to broad environmental education.

### **6.1: Introduction**

It is evident from the examination in earlier chapters that the general participatory rights and duties have existed in human rights law for decades. In the years following the Stockholm Conference, these rights were increasingly being applied in an environmental context. An assessment of international environmental instruments suggests that these instruments generally do not specify environmental human rights to be enjoyed at the national level, but often contain duties for a State Party to promote and enact laws to guarantee an individual’s right of access to a number of environmental participatory

rights at the national level. Ebbesson suggests that this style of prescribing duties for a State Party should not prevent the reader from construing the provisions in such environmental instruments as providing legally enforceable rights at the national level.<sup>436</sup> Increasingly, international and regional instruments on education and development are requiring that States Parties guarantee a right of access to environmental education.

Nigeria is a party to major global and regional environmental and human rights legally binding and non-legally binding instruments that may be used to secure and promote the environmental procedural rights specified in Principle 10 of the Rio Declaration and a right of access to environmental education. Nigeria has enacted some, but not all, of its treaty obligations into Nigerian law. Persuasive authority for the position of writers who argue that Nigeria's duties under international and regional law are not obviated even though the Nigerian government has not enacted treaty obligations into domestic law as required by Section 12 of the 1999 Nigerian Constitution may be found in the Draft Declaration on Rights and Duties of States that was endorsed, for further comments, by the U.N. General Assembly in December 1949, specifically that "[e]very State has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty."<sup>437</sup>

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<sup>436</sup> Jonas Ebbesson, *Participatory and Procedural Rights in Environmental Matters: State of Play*, (UNEP/OHCHR High level Expert Meeting on the Future of Human Rights and Environment: Moving the Global Agenda Forward (Draft Paper, 2009).

<sup>437</sup> Declaration on the Rights and Duties of States, G.A. Res 375 (IV), 1949 Y.B. Int'l L. Comm'n 178; *see also* CONST. OF NIGERIA (1999), §12(1) (requiring that treaties Nigeria has signed must be enacted into Nigerian law in order to have effect in Nigeria).

**Table 6.1:** Key International Environmental and Human Rights Instruments

<b>Major International Human Rights Instruments (Name)</b>	<b>State Party Yes (Y) No (N)</b>	<b>General Procedural Rights or Duties Yes (Y) No (N)</b>	<b>International Environmental Instruments</b>	<b>State Party Yes (Y) No (N)</b>	<b>Environment Procedural Rights Yes (Y) No (N)</b>
UDHR	Y	Y	Climate Change Convention/Kyoto Protocol	Y	Y
ICEAFRD	Y	Y	Desertification Convention	Y	Y
ICCPR	Y	Y	Biological Diversity Convention	Y	Y
ICESCR	Y	Y	Basel Convention	Y	Y
CEDAW	Y	Y	Rotterdam Convention	Y	Y
U.N. Convention on the Rights of a Child	Y	Y	Stockholm Convention	Y	Y
U.N. Charter	Y	Y	Ozone Convention/ Montreal Protocol	Y	Y
Vienna Declaration/Program of Action	Y	Y	World Charter for Nature	Y	Y
			Stockholm Declaration	Y	Y
			Rio Declaration	Y	Y

**Table 6.2:** Key Regional Environmental and Human Rights Instruments

<b>Major African Human Rights Instrument</b>	<b>Endorsing/ State Party? Yes (Y) No (N)</b>	<b>General Procedural Rights? Yes (Y) No (N)</b>	<b>OAU/AU Environmental Instrument</b>	<b>State Party? Yes (Y) No (N)</b>	<b>Environmental Procedural provisions Yes (Y) No (N)</b>
African Charter on Human and Peoples Rights	Y	Y	Revised African Nature Convention	N (signed but not ratified)	Y
Grand Bay (Mauritius) Declaration and Plan of Action	Y	Y	Bamako Convention	N (signed but not ratified)	Y
African Charter for Popular Participation	Y	Y	African Convention on Nature and Natural Resources	Y	Y
African Charter on the Rights and Welfare of a Child	Y	Y			
Maputo Protocol	Y	Y			
African Youth Charter	Y	Y			

## **6.2: Participatory Environmental Rights and Duties: An Overview of International, Regional, National and Provincial Models**

The ability of “soft law” international instruments to quickly effectuate change at the national level is reflected in the comments of international scholar Roberto Andomo who considers the efficacy of such documents to be their ability to have immediate and direct influence in countries that recognize and respect them since they are not usually

subject to the ratification process.<sup>438</sup> The Rio Declaration is an example of a “soft law” document that is recognized around the world for its enunciation of sustainable development principles, and an environmental rights structure in Principle 10.<sup>439</sup>

Principle 10 of the Rio Declaration reads as follows:

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

The Aarhus Convention, a UNECE instrument, strengthened the Rio Declaration with its legally enforceable provisions.<sup>440</sup> The Aarhus Declaration follows the same basic structure of three pillars of participatory environmental rights and duties as the Rio Declaration. Parties outside the UNECE region may accede to the Aarhus Convention with approval of UNECE countries. The importance of the Aarhus Convention is reflected in the comments of the former U.N. Secretary-General Kofi Annan who considers that the Aarhus convention is “...the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.” It is asserted in the Aarhus Convention that to be able to secure a substantive environmental right and fulfill a corresponding individual and collective duty to safeguard and enhance the environment for current and future generations, individuals must have rights of access to the three pillars of procedural environmental rights set out in the Aarhus

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<sup>438</sup> Roberto Andorno, *The Invaluable Role of Soft Law in the Development of Universal Norms in Bioethics* (2007), available at [www.unesco.de/1507.html](http://www.unesco.de/1507.html) (last visited Nov. 27, 2011).

<sup>439</sup> Rio Declaration, *supra* note 11, princ.10.

<sup>440</sup> Aarhus Convention, *supra* note 16.

Convention.<sup>441</sup> Details of the rights are provided in Articles 4 and 5 (access to and dissemination of information), Articles 6, 7 and 8 (public participation for specific projects and plans, policies and programmes, and legal instruments), and Article 9 (access to justice). Like the Rio Declaration (Article 11), the parties to the Aarhus Convention have an obligation to develop and implement laws to carry out the objectives of the convention (Article 3). The Aarhus Convention recognizes the importance of providing environmental education to the public but does not recognize environmental education as an integral right of the stature of the three participatory rights promoted in the Aarhus Convention (Article 3(3)).

Although it is yet to enter into force, the Revised African Nature Convention, an environmental treaty for the region of Africa, specifies procedural environmental duties for a State Party to develop and enact laws to guarantee the types of procedural environmental rights set out in Principle 10 of the Rio Declaration and the Aarhus Convention. Like the Aarhus Convention, the Revised African Nature Convention states that a goal of the procedural environmental rights or duties in the instrument is to secure a right to the environment, in this case the right set out in Article 24 of the African Human Rights Charter (Article III.1). Unlike the Rio Declaration and Aarhus Convention, the right to public participation in decision-making processes secured in Article XVI(1)(c) of the Revised African Nature Convention appears to be limited to activities that have a significant impact on the environment. Although a right to environmental education is not explicitly mentioned, the Revised African Nature Convention sets out obligations for a State Party to support environmental education (Article XX) including training and building awareness of the general public and to educate and build the capacity of a State

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<sup>441</sup> *Id.* art 1.



Party in the field of the environment and natural resources conservation. Despite the above-mentioned gap in Article XVI(1)(c) and the failure to consider the provisions set out in Article XX as an integral part of the rights structure in Article XVI, the procedural obligations in the Revised African Nature Convention are reasonable starting points to ensure that the goals of the Revised African Nature Convention set forth in Article II and the rights and duties of the African peoples and governments specified in Article III are fulfilled and to promote Principle 10 of the Rio Declaration.

This study considers that on paper the Province of Ontario's Environmental Bill of Rights, provincial law in Canada, sets out sound measures for national governments to consider in the development of national legislation to fulfill their obligations under Principle 10 of the Rio Declaration.<sup>442</sup> Like the Aarhus Convention and Revised African Nature Convention, the importance of procedural environmental rights in protecting a substantive environmental human right is asserted in Ontario's Environmental Bill of Rights (Section 2). A unique feature of Ontario's Environmental Bill of Rights is that it in addition to protecting a substantive environmental right, enhancing, safeguarding and restoring the environment's integrity, it affirms the importance of procedural rights in enabling environmental sustainability (Section 2(1)(b)). At least on paper, South Africa's National Environmental Management Act is noteworthy for enunciating environmental management principles that contribute to the protection and promotion of the rights in Principle 10 of the Rio Declaration.<sup>443</sup> NEMA assures substantive and procedural environmental justice for the people of South Africa (Section 2(4)(c)) and specifies corresponding duties for different tiers of governments in South Africa (Section 2(1)).

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<sup>442</sup> Province of Ontario Environmental Bill of Rights, 1993, S.O. 1993, c. 28.

<sup>443</sup> National Environmental Management Act 107 of 1998 (S. Afr.) [hereinafter NEMA].

Tanzania has a sound environmental management program that will be discussed in the next chapter. Like Ontario's Environmental Bill of Rights, this study considers that procedural rights are critical for ensuring environmental sustainability.

### **6.3: Nigeria: National Legislation, Regulations and Policies for Procedural Environmental Rights and Duties: "Is the Glass Half Empty or Half Full"?**

The vital importance of effective national bodies and legislation is highlighted in international and regional environmental and human rights instruments. Signatories to the landmark Stockholm Declaration agreed to establish, in their respective countries, requisite national institutions to plan, regulate, and manage the environmental resources of the State in order to improve the quality of the environment (Principle 17). Signatories to the groundbreaking Rio Declaration have committed themselves to adopt, at the national level, environmental laws that are effective.<sup>444</sup> The African Charter on Human Rights requires that a State Party enact laws or measures to, among other things, give effect to the basic human rights, freedoms, and duties guaranteed in the African Charter.<sup>445</sup> Contracting Parties to the Revised African Nature Convention have a duty to enact effective laws and processes to secure environmental procedural rights (Article XVI(1)). The examination in this section will be limited to an examination of key national legislation and policies in Nigeria that explicitly guarantee or may be used to recognize the participatory environmental rights and duties in Principle 10 of the Rio Declaration and support the right of access to broad environmental education in Nigeria.

#### **6.3.1: The 1999 Nigerian Constitution**

The 1999 Nigerian Constitution does not explicitly specify for Nigerian citizens a right of access to the participatory rights in Principle 10 of the Rio Declaration and

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<sup>444</sup> Rio Declaration, *supra* note 11, art 11.

<sup>445</sup> African Charter on Human Rights, *supra* note 87, art. 1.

broad environmental education. Like the UDHR and the African Charter, the 1999 Nigerian Constitution contains general procedural rights that are broad enough to be applied in the context of the environment. Fundamental human rights for all Nigerians specified in Chapter IV of the 1999 Nigerian Constitution include the rights to a fair hearing (Section 36); freedom of thought, conscience and religion (Section 38); freedom of expression and the press (Section 39); peaceful assembly and association, and freedom from discrimination (Section 42). As stated above, the environmental vision for the nation to safeguard and enhance the environment and the different natural resources in Nigeria is set out in Section 20 but is not considered to be a fundamental human right for Nigerians.<sup>446</sup> Unlike the Constitution of other countries in Africa like South Africa, (Section 29 of the 1996 South African Constitution), the 1999 Nigerian Constitution does not specify the right to education for Nigerians as a fundamental human right but specifies this right as a fundamental objective of state policy.<sup>447</sup> In contrast, the constitutions of other African countries like the Constitution of Seychelles (1993 as amended) guarantees a broad right of access to information (Section 28), the right to education for the full development of a person (Section 33), the right to a safe environment, including the duty of the State to make sure the public is made aware of the need to safeguard, conserve and enhance the environment (Section 38). The Revised Kenyan Constitution (2010) places a duty on the State to promote public participation in matters related to the environment (Section 69(d)), provide EIA processes and require environmental audits (Section 69(f)) and guarantee access to justice in the case of an abridgement of a right to a safe environment (Section 70).

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<sup>446</sup> CONST. OF NIGERIA (1999), § 20.

<sup>447</sup> CONST OF NIGERIA (1999), § 18.

### **6.3.2: National Policy Documents and Plans**

The Revised Environmental Policy requires that the national government in Nigeria increase the public's awareness and knowledge about sustainable development principles, and encourage the public's participation in actions to restore the environment.<sup>448</sup> The Revised Environmental Policy encourages the use of procedural measures to achieve substantive environmental goals, including the overarching goal of sustainable development. Of particular relevance to this study are participatory goals and strategies that are endorsed in the Talliores and Bonn Declarations. In addition to the public awareness and information measures (Section 6.6), other participatory strategies include promoting environmental education through formal and informal means, encouraging research on multiple subjects and providing adequate training in the field of the environment at all educational levels, cooperating with the media and entertainment industry to build the capacity of Nigerians in environmental matters and endorsing the use of environmental information schemes at the domestic, regional and international levels (Section 4.17), public participation in matters related to the environment (Section 7.0), promoting the principle of subsidiarity (Section 1), and improving laws in the field of the environment and ensuring that laws are complied with and enforced (Section 8.0). The Revised Environmental Policy does not recognize a right of access to broad education and this author considers the requirements for judicial or administrative processes to address environmental issues to be weak.

In response to the call in the Vienna Declaration for each country to develop action plans to promote and protect human rights (Part II-Article 71), Nigeria prepared its National Action Plan for the Promotion and the Protection of Human Rights for the

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<sup>448</sup> Revised Environmental Policy, *supra* note 102, 1 & 3.

period 2009 through 2013.<sup>449</sup> The NAPPHR presents Nigeria's strategies to strengthen and develop human rights in Nigeria and lists the international and regional binding and non-legally binding documents that Nigeria is guided by in promoting and protecting a human right to the environment. Like the Revised Environmental Policy, the NAPPHR uses procedural mechanisms to achieve substantive goals. Procedural measures proposed in the NAPPHR to realize a right to the environment for all Nigerians, which is asserted in the NAPPHR, include promoting effective public education, awareness, and enlightenment programs, supporting effective EIA's, encouraging increased cooperation between government agencies in Nigeria and civil society bodies, adopting environmental decisions that promote sustainable practices, and ensuring a strict environmental enforcement legal regime. The Rio Declaration and Agenda 21 were singled out in the NAPPHR as non-legally binding instruments that provide guidance to Nigeria as it concerns the rights of everyone in Nigeria to sustainable development, peace and the environment. While Principle 10 of the Rio Declaration specifies the procedural environmental rights to be secured at the national level for all concerned people, Section III (Chapter 23-27) of Agenda 21 presents strategies to enable the expansive and real involvement of key groups in society in decision-making processes for sustainable development. The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act is cited in NAPPHR as domestic legislation that supports a right to the environment. Although the NAPPHR endorses a substantive right to the environment and sets out multiple procedural environmental obligations for the Nigerian government

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<sup>449</sup> Nigeria deposited its National Action Plan for the Promotion and the Protection of Human Rights (2009-2013) [hereinafter NAPPHR] at the U.N. Secretariat in Geneva in July 2009. The NAPPHR is available at <http://www.nigeriarights.gov.ng/images/articles/National%20Action%20Plan%202009-2013.pdf> (last visited Oct. 2, 2011).

in order to secure, protect, and promote a substantive environmental right, the NAPPHR is considered deficient to the extent that rights or duties with respect to access to justice in environmental issues and broad environmental education are insufficient.

### **6.3.3: Laws and Regulations**

Although there are numerous laws that seek to protect the environment in Nigeria, some predating Nigeria's independence in 1960, for purposes of this study, only major laws and policies this author considers are directly relevant to this study will be examined. While general procedural rights that may be applied to the environment are supported in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the NESREA and EIA Acts specify procedural environmental duties for government bodies in Nigeria. UNEP's voluntary "Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters"<sup>450</sup> are used in this study to examine the laws in Nigeria. This study considers that the Access Guidelines are primarily based on the provisions of the Aarhus Convention and like the Aarhus Convention the Access Guidelines do not explicitly specify a substantive right of access to the environment. The Access Guidelines are summarized in Table 6.3.

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<sup>450</sup> Governing Council of United Nations Environment Programme, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, Dec. SS.XI/5, part A, (Feb. 26, 2010) [hereinafter Access Guideline], available at <http://www.unep.org/DEC/PDF/GuidelinesAccessToJustice2010.pdf> (last visited Oct. 3, 2011).

**Table 6.3:** Summary of Access Guidelines

<b>Access to Information</b>	<b>Public Participation</b>	<b>Access to Justice</b>
Publicly accessible Environmental information should include factual, statistical, public health and information on relevant laws and policies and instructions for obtaining such information.	States should make every effort to actively seek the participation of the public in an open and collaborative fashion, and provide sufficient opportunities for the affected public to provide comments.	States should guarantee for a member of the affected public opportunities to contest the validity of the substance and procedural aspects of a decision, action or failure to act as it relates to public participation in environmental decision-making or a matter that affects the environment, in a judicial, administrative or independent forum.
States should construe requests for information broadly in favor of release with explicit grounds for refusing access.	States should, in a timely, readable, objective and effective format, provide information that is necessary for decision-making pertaining to the environment to those who members of the affected public.	States should make sure that persons deemed part of the “concerned public” can contest in a judicial, administrative or independent forum, a State or non-State Party’s decision or omission that relates to the environment or an alleged breach of State standards pertaining to the environment.
Appropriate State Agencies should routinely put together and update pertinent environmental information. Appropriate systems should be put in place to disseminate information about planned and current actions that may have a significant impact on the environment. <sup>451</sup>	States should make sure that appropriate consideration is given to the comments submitted by members of the public during the decision-making process and the decisions are shared with the public.	States should permit an expansive interpretation of the legal standing rules in environmental-related proceedings in to enable real access to justice.
States should regularly	States must ensure, to the	States should put in place an

<sup>451</sup> See *id.* Guideline 4.

Access to Information	Public Participation	Access to Justice
prepare and distribute reports on the condition and viability of the environment.	extent possible, that the public is given an opportunity to participate in review proceedings when significant environmental problems that were not previously considered exist.	effective process for prompt judicial, administrative, independent, and impartial review of problems concerning the application and enforcement of laws and determinations regarding the environment that is open, just, and accessible.
When there is an “imminent threat to human health or the environment” full information that would assist the public in implementing measures to stop such harm must be immediately distributed by the State. <sup>452</sup>	States should think of ways to guarantee to the public, at a suitable time, the opportunity to participate in the development of legally enforceable rules that may significantly impact the environment, policies and procedures pertaining to the environment.	States should guarantee for persons deemed to be the “concerned public” an opportunity to review procedures at a reasonable cost and should think about establishing suitable procedures to make access to justice affordable for all.
States should make available and promote effective capacity-building programs for State and non-State actors to enable real access to information related to the environment.	States should adopt measures to build the capacity of the public, raise the awareness of the public and educate the public so people can participate in environmental decision - making processes. <sup>453</sup>	States should put in place a system for timely, sufficient and real remedies in actions involving the environment, including permanent and interim injunctions, restitution, monetary damages and other suitable procedures.
		States should make sure that the decisions pertaining to the environment that are issued by a judicial, administrative, independent, or other appropriate body are promptly and fully enforced.
		States should provide the public with sufficient information about the applicable procedures that apply for an action in court or other proceedings to

<sup>452</sup> See *id.* Guideline 6.

<sup>453</sup> See *id.* Guideline 14.



Access to Information	Public Participation	Access to Justice
		resolve environmental issues.
		States should make sure that decisions and orders concerning the environment issued by judicial, administrative, or other independent tribunals are made available to the public, as necessary and in conformance with domestic law.
		States should regularly sponsor programs to build the capacity of judicial staff, other professionals in the legal field, and people and the affected public.
		States should support the adoption and use of different dispute resolution procedures when necessary.

### 6.3.3.1: Human Rights Law

The African Charter on Human and Peoples Rights (Ratification and Enforcement) Act does not explicitly specify procedural environmental rights or a right to broad environmental education but it guarantees general procedural rights that are applicable in an environmental context. The procedural rights that may be applied to the environmental field include the rights of access to receive information and express opinions, to equal protection under the law, to education, and to be heard in a judicial or administrative forum. Also, this instrument prescribes duties for the Nigerian government to promote education and teaching, to ensure capacity building for national

institutions and to secure the independence of the courts.<sup>454</sup> Although the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act recognizes multiple general procedural rights that may be considered in an environmental context, its provisions do not meet the standards in the Access Guidelines. Support for a right of access to broad education in the African Charter on Human and Peoples Rights (Ratification and Enforcement) is weak.

### **6.3.3.2: Environmental Laws and Regulations**

The NESREA Act established an agency, NESREA, to be the primary environmental enforcement agency in Nigeria as it concerns the setting of environmental standards and regulations.<sup>455</sup> A key function of NESREA is to protect and develop the environment, preserve biodiversity, sustainably develop the natural resources in Nigeria, and collaborate with bodies inside and outside Nigeria regarding the enforcement of environmental instruments and associated matters.<sup>456</sup> NESREA's procedural duties are set out in Section 7, including a duty to generate awareness and guarantee environmental education as it pertains to the protection, management and conservation of the environment, but such duty does not extend to the oil and gas industry, and to ensure that all Nigerians have scientific information that NESREA generates in its regulatory capacity (Section 7(1)). Another function of NESREA is to collaborate with government and non-governmental bodies in the collection and publication of technical and other information about environmental principles in Nigeria.<sup>457</sup> This study suggests that the

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<sup>454</sup> African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, *supra* note 98, arts. 3(2), 7, 9, 17(1) & 26. An impermissible error in the African Charter on Human Rights and the Nigerian equivalent is that they do not use gender neutral language for the individual rights provisions.

<sup>455</sup> NESREA Act, Cap. F10, Vol.1, 2004, §1(1).

<sup>456</sup> *Id.* §2.

<sup>457</sup> *Id.* § 8(p).

NESREA Act is weak to the extent that it does not explicitly direct NESREA to carry out environmental education programs that teach the public about ways to stop public-sector corruption in the field of the environment, or contain strong mandates for NESREA to disseminate information related to the environment to the public, or a requirement for NESREA to involve the public in the development and strengthening of environmental regulations and standards in Nigeria, or to provide guidance to the public on ways to challenge an agency action or inaction for a matter covered in the NESREA Act.<sup>458</sup>

Nigeria's National Environmental Protection (Management of Solid and Hazardous Waste) Regulations, which was adopted a year before the Rio Declaration, seeks to protect and promote the environment in Nigeria from the production, use and disposal of solid and hazardous wastes in Nigeria by means of substantive and procedural requirements.<sup>459</sup> Procedural requirements relevant to this study include a requirement for the owner or operator of facilities regulated under Regulation S.1.15 to ensure that records are kept properly as it relates to highly hazardous wastes, and to facilitate research on re-use potentials of such hazardous wastes.<sup>460</sup> There are numerous deficiencies in Regulation S.1.15. While businesses must tell the regulatory agency about "regulated substances" that are kept in a facility or released into the environment in the course of business operations, and the regulatory agency must keep a record of businesses that store substances regulated under Regulation S.1.15 or release such

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<sup>458</sup> *But cf.* Rio Declaration, *supra* note 11, princ. 11; Revised African Nature Convention, *supra* note 6, art. XVI; African Charter on Human Rights, *supra* note 87, art. 1; African Charter on Human and Peoples Right (Ratification and Enforcement) Act, *supra* note 98, art. 1 (requiring that a Contracting State Party enact laws to give effect to the rights, freedoms and obligations in the respective instrument).

<sup>459</sup> National Environmental Protection (Management of Solid and Hazardous Waste) Regulations S.1.15 (1991) [hereinafter Regulation 1.15]. Regulation 1.15 refers to the term "hazardous waste" as it is defined in the FEPA Act, which law has since been replaced by the NESREA Act. This study notes that Section 3 of Regulation 1.15 is missing.

<sup>460</sup> *Id.* §1.

substances into the environment, and keep a current list of such deadly substances that are banned in Nigeria and provide covered facilities with such information, the Agency does not appear to have a corresponding duty to provide the public with the information it obtains from covered industries or it maintains pursuant to Section 2 of Regulation S.1.

15.<sup>461</sup> Another deficiency in Section 2 is that the relevant regulatory agency has authority to request information regarding the disposal of covered substances from an industry subject to its regulatory authority, such as information on the production, use, and discharge of covered substances, but there does not appear to be a corresponding duty to collate and provide such information to the public. Regulation S.1.15 requires that the regulatory agency establish committees, in the different regions of Nigeria, to monitor the transfer of poisonous substances to different parts of Nigeria.<sup>462</sup> If people from the different “geo-political regions” in Nigeria, particularly people that reside in rural communities, are given an opportunity to serve as members of the so-called “DUMP WATCH,” this study suggests that the provision in Section 2(5)(e) can enable a real partnership to be formed between the public and the regulatory agency to address environmental issues. This study considers Section 20(1) of Regulation S.1.15 to be deficient to the extent that, while the owner or operator of a covered facility has a duty to promptly alert the regulatory agency that a reportable spill or release of covered substances has occurred at or from such facility, there is no corresponding duty on the part of the agency to immediately provide the public with the information it obtains from the regulated entity. The requirements in Regulation S.1.15 regarding the use of manifests (Sections 24, 25 and 26) provide tools for the regulatory agency to obtain and

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<sup>461</sup> *Id.* §§ 2(1), 2(2) & 2(4).

<sup>462</sup> *Id.* §§ 2(5)(b) & 2(5)(e).

collate, for dissemination to the public, information on the movement and disposal of dangerous substances covered in Regulation S.1.15. Despite some gaps, this author considers that the requirements in Regulation S.1.15 for the preparation and implementation of a contingency plan (Section 35) provide a mechanism for the public to obtain information on dangerous substances in their community.<sup>463</sup> Deficiencies in Section 35 include the absence of a duty on the part of the regulatory agency to notify the community about dangers posed by activities at a facility or how the rights of a community situated off-site from a facility will be integrated into a facility's contingency plan required under Sections 35(1) and 35(2) of Regulation S.1.15, (Section 35(3)), or how the neighboring community should be informed about the likely harm from unexpected or gradual discharges at such sites and about steps to remediate such emergencies (Section 35(4)). Additional opportunities for the public to obtain information about dangerous substances in their community present themselves with the emergency procedures requirements for the entity or person(s) that owns or operates the facility to notify the regulatory agency when a discharge or impact from a discharge has the potential to impact the health of people and environment outside the facility boundaries.<sup>464</sup> This author considers this provision deficient to the extent that it does not direct the agency that is so notified to provide the information it receives to the affected community and by what means it should do so. The record keeping requirements in Sections 39 and 41 provide another opportunity for the local community to obtain information about deadly substances used in the community if a duty is placed on the regulatory agency to compile the information on hazardous waste, which the site owners

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<sup>463</sup> *Id.* § 35.

<sup>464</sup> *Id.* §38(2).

and operators are required to maintain for three years, and make it available to the public in a database and in an annual report. A groundwater monitoring plan for operators and owners of covered facilities is required under this instrument to ensure that groundwater standards for covered substances are not exceeded.<sup>465</sup> These groundwater monitoring procedures could be strengthened and become effective tools to disseminate information about dangerous substances in a community to the public if there is a requirement that the results of a groundwater monitoring program shall be given to adjoining property owners, tenants, and other affected parties as well as the regulatory agency, and in the case of an exceedance of groundwater standards, in addition to the regulatory agency, the public should be immediately notified about such elevated levels.<sup>466</sup> The regulatory agency in Nigeria has authority under Regulation S.1.15 to inspect records and gain access to covered facilities for the purpose of inspection and sampling on such property (Sections 104, 105 and 106). With the recent passage of a Freedom of Information Law in Nigeria, it is hoped that a right of access of the public to environmental related information is thereby promoted and protected.<sup>467</sup> Despite the entry points for protecting and promoting commonly recognized environmental participatory rights as mentioned above, Regulation S.1.15 does not explicitly secure, support or advance the requirements of Principle 10 of the Rio Declaration or a right of access to environmental education.

Regulations 1.8 and 1.9 set forth standards in Nigeria to prevent and control the contamination of the Nigerian environment but do not in this author's estimation secure

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<sup>465</sup> National Environmental Protection (Management of Solid and Hazardous Waste) Regulations, §§ 49-51.

<sup>466</sup> Under the New York State Environmental Conservation Law (§27-2403), a responsible party or in the case of a State-funded remedial program, the New York State Department of Environmental Conservation, must provide the owner of property with validated results of tests that are conducted on such owner's property.

<sup>467</sup> Freedom of Information Act, 2011.

the procedural environmental rights set out in Principle 10 of the Rio Declaration or a right of access to broad environmental education. Under Regulation 1.8, although a facility that disposes of wastes has a duty to inform the regulatory agency of the make-up of the treated waste it has discharged (Section 3(2)), it only has to submit the information from “time to time,” which can mean different things to different people. Furthermore, there is no requirement for the agency to compile this information and make it available to the affected or interested public. Under Regulation 1.9 a facility has reporting and notification obligations with respect to a release of hazardous and toxic substances and must submit such information to the regulatory agency in the form of an inventory of chemicals used in the facility’s manufacturing processes, stored in the facility, and must provide to the regulatory agency the location of the place it buys, obtains or sells chemicals and the identity of an intermediary or buyer of such chemicals. There is no corresponding duty on the part of the regulatory body to provide the list of chemicals used and stored in the facility to the public and no timeframe is given for the submission of the information to the regulatory agency.<sup>468</sup> A major component of the environmental management scheme in Regulation 1.9 is the permitting process specified in Sections 10 and 15. The requirement for environmental audits for existing facilities and EIA’s for new industries and other specified types of development projects is set forth in Section 21. However, there is no requirement that the regulatory agency provide the results of environmental audits to the public. With the adoption of a FOIL in Nigeria it is hoped that agencies will pass regulations for effectuating the FOIL. It is noted in this study that the provision in Section 21 has now been superseded by the EIA Act.

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<sup>468</sup> Regulation 1.9, *supra* note 100, §§ 3-5.

#### 6.3.3.2.1: The EIA Legal System

The EIA Act in Nigeria has procedural requirements that on paper endorse, promote and protect the participatory rights set out in Principle 10 of the Rio Declaration, the Revised African Nature Convention and the African Human Rights Charter and its Nigerian equivalent, albeit limited to a specific project related to the environment. The EIA Act provides opportunities for the public to participate in the EIA process and to obtain information about a proposed project. Public participation in the decision-making process may occur after a so-called “mandatory study report” is submitted to the Agency for the assessment of a project by the review board established under the EIA Act.<sup>469</sup> This author calls for the strengthening of Sections 24 and 38 of the EIA Act to explicitly specify minimum methods to provide the public notice of the availability of a mandatory study report and a review board’s report. The review board has a duty to make sure that the public is given information that is to be reviewed by the board, conduct hearings in a way that ensures the public can participate in such hearings, consider submitted comments from the general public and prepare a report of its findings (Section 36). Amnesty International’s findings of flaws in the EIA system in Nigeria, such as unobtainable EIA information, broad discretion of the regulatory agency on how and when to consult with the public and weak post-project follow-up procedures supports this study’s position that the regulatory agency has overly broad discretion in carrying out the participatory requirements of the EIA Act.<sup>470</sup> The EIA Act requires that a document repository be established so the public can have access to documents generated during the EIA process until a “follow-up EIA programme” developed for the specific project is

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<sup>469</sup> EIA Act, Cap. E 12, Vol. 6, 2004, §§ 24, 36 & 38.

<sup>470</sup> See, Amnesty International, *supra* note 35 at 51.



concluded (Section 55). For a country that struggles with providing constant electricity for its people, maintaining a registry in an electronic format will be a major challenge, particularly for rural areas where access to computers may be limited. Another major flaw in the EIA Act is the absence of appeal rights to a higher judicial body to contest a final agency determination based on a “defect in form or technical irregularity” (Section 57). Rather than create a sweeping prohibition on appeal rights, this study calls for this prohibition to be removed and each matter to be analyzed on a case-by-case basis since a technical error or defect may affect the outcome of a decision made pursuant to the EIA Act. On paper the EIA Act has the ability to promote and protect one or more of the participatory environmental rights set forth in Principle 10 of the Rio Declaration and similar regional documents but is not sufficiently comprehensive, particularly in light of the Access Guidelines.

The now defunct FEPA issued EIA general procedural guidelines in 1995 to assist parties who were planning to undertake a project to carry out an EIA. The EIA general procedural guidelines provided guidance on how to carry out public involvement activities during the EIA process. This study considers procedural guidelines requirement of a public hearing during the scoping process based on the attention the project generates to be inappropriate (Section 4.0) and contrary to the goals and objectives of the EIA Act to facilitate the development of measures for the exchange of information, provide notice of a project and to enable discussions between all stakeholders and affected parties regarding a particular project (Section 1(c)). This author is of the view that public attention about a project should not be the criterion for conducting a public hearing; rather, it should be a mandatory requirement during the

scoping process which is an early phase of the EIA process when public involvement is especially critical to identify significant issues early in the process. Public interest in a project may not be high for a variety of reasons, such as insufficient public awareness about a proposed project or the public's inability to understand the technical information about the project. The EIA general procedural guidelines should require a number of public education, enlightenment and availability sessions during the scoping process before a formal public hearing. The EIA general procedural guidelines require that the draft EIA report must contain records of the "public consultation" activities that were conducted in villages and towns near the project area. The consultation activities are to be conducted in a public venue and documentation of such proceedings should be included in the draft EIA report as an Appendix to the report. A UNECA report recounts the position of Huges that "[p]ublic participation in the EIA process is, in most cases, inadequate due to many factors," including a "language barrier", the form of presentation of information to the public and education and it describes the findings of Mutemba, Cook and Donnelly-Roark recounted by Huges that assessments of a number of projects that had World Bank support showed that only a few had a modicum of public involvement.<sup>471</sup> Considering that the authors of this UNECA report distinguish between public participation and public consultation proceedings, this author considers that the requirement in the EIA general procedural guidelines for a project sponsor to engage in "public consultation proceeding" is based on a flawed premise that this form of contact with the public is all that is required in the screening, scoping and other processes leading up to the development of the EIA Report. Based on available literature, this study argues

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<sup>471</sup> UNECA, *Review of the Application of Environmental Impact Assessment in Selected African Countries* 41, ECA/SDD/O5/23, (2005).

that public consultation is merely one form of contact with the public which should lead to increased two-way communication and information gathering and sharing with the public throughout the environmental decision-making process, i.e., a more participatory engagement with the public. The authors of the UNECA report referred to above refer to earlier research by some of the authors mentioned above that showed that in a majority of the cases the project sponsor, instead of fulfilling EIA requirements to provide the public with an opportunity to participate in the EIA process, merely told the public what the end result would be.<sup>472</sup> As indicated in the EIA general procedural guidelines, another opportunity for public involvement in the EIA process in Nigeria is during the panel or public review of the EIA report.<sup>473</sup> The authors of the UNECA report refer to earlier findings of Echefu and Akpofure that “[p]ublic participation in the EIA process in Nigeria is hampered by the absence of the necessary provision under the EIA legislation, and illiterate and poor communities who are vulnerable to monetary inducements.”<sup>474</sup> In other words, bribery and corruption is an obstacle to effective public participation in the EIA process in Nigeria. To educate the public about the impacts of corruption in the environmental decision-making process, this study has recommended the inclusion of a fourth environmental procedural rights pillar in the form of a right of access to broad environmental education. This study considers that the requirement in the EIA general procedural guidelines that the announcement of the opportunity for public involvement in the review of the draft EIA report should be by means of notices in a Nigerian newspaper should not be the only means to notify the public about such opportunity, particularly for rural communities where newspaper circulation may be limited. Also, there is no

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<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

requirement that the notice should be provided in the language spoken by the rural community. Relying on the public communication tools recommended in UNEP's EIA training resource manual, this author suggests that the types of notice to be given to the public in Nigeria about an opportunity to take part in the EIA process should be expanded. Television and radio advertisements, press releases, postings on the internet and in government offices and other public places are considered to be reasonable means to notify the public about opportunities to take part in different phases of the EIA process in urban areas.<sup>475</sup> For rural areas, in addition to providing notice of opportunities for public comment, especially when the draft EIA report is available for public comment, this study recommends that fact sheets and newsletters should be placed in local government offices and community halls in the relevant local language, providing basic information about the project and EIA procedures. Local government staff should also be used to distribute such materials to people in the community. Also multiple document repositories should be used in rural areas to satisfy the "Public Registry" requirement in Section 55 of the EIA Act, such as the traditional ruler's residence, hospitals, and town halls, and to the extent they exist, local offices of the different political parties and elected officials, and the EIA general procedural guidelines should specify who is responsible for ensuring that the documents are translated into different languages and specify the cost to the public, if any, for accessing the documents in the registry. In the State of New York, there is a requirement that a document repository be set up for projects in many of the NYSDEC's environmental remediation programs. These document repositories are usually located in multiple locations, including a NYSDEC regional office and a public library in close proximity to the location of the project. The

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<sup>475</sup> See UNEP, *supra* note 14.

EIA guidelines require that the final agency determination be published and made available to the public. Like the EIA Act, this author considers that the EIA general procedural guidelines, at least on paper, promote one or more of the procedural environmental rights in Principle 10 of the Rio Declaration but need to be strengthened. There is inadequate support for broad environmental education.

To obtain real information about the availability of procedural environmental rights in Nigeria, this author sought the Nigerian public's responses to a questionnaire on the availability of procedural environmental rights in Nigeria. A number of the responses were from people in Rivers State, a Niger Delta State. The responses indicate that other than EIA laws, legislation guaranteeing procedural environmental rights in Nigeria either does not exist or is unknown to the public, that the public needs more education about existing EIA processes, and to the extent that it exists, environmental information is not easily accessible, and if available is expensive, and that there is limited environmental education. The Questionnaire is attached as Appendix C.

#### **6.3.3.2.1.1: EIA Report: The “Proposed Dredging of the Lower Niger Waterway”**

This scholar reviewed, for its participatory elements, the final EIA report titled: “Environmental Impact Assessment of the Proposed Dredging of the Lower Niger Waterway,” dated January 2002 and approved by the Federal Ministry of Environment on April 8, 2002.<sup>476</sup> The stated objective of this EIA project is to dredge approximately 573 km of the lower parts of the Niger River and carry out associated activities. According to the project sponsor, Petroleum (Special) Trust Fund, the dredging project covers seven States in Nigeria, including four Niger Delta States, Bayelsa, Delta, Edo, and Rivers

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<sup>476</sup> PETROLEUM (SPECIAL) TRUST FUND, ENVIRONMENTAL IMPACT ASSESSMENT OF THE PROPOSED DREDGING OF THE LOWER NIGER WATERWAY (Vols. I and II) (JAN. 2002) [hereinafter Niger River EIA Report].

States (Section 3.0 of the Niger River EIA Report). The assessment in this section focuses on the public consultation aspects of the Niger River EIA Report as it pertains to the Niger Delta States.

The EIA general procedural guidelines discussed in the preceding section require that a project sponsor include a record of its consultation with communities affected by a proposed project and other stakeholders as an addendum to a draft EIA Report and requires that such public consultation events be held in a public place. Although it is not explicitly stated in the EIA general procedural guidelines, this study suggests that this documentation requirement also applies to the final EIA report. Reportedly, approximately 28 communities were visited for a requirement of the EIA, a socio-economic evaluation in communities affected by the proposed dredging project, but communities in two Niger Delta States, Rivers and Bayelsa, were not sampled because of so-called security considerations.

This study reviewed the documentation provided in Appendix 2 of the Niger River EIA Report and considers the submitted material to be deficient in “substance and form.” In reaching this conclusion, this study was guided by UNEP’s EIA Training Resource Manual, which provides examples of public involvement processes.<sup>477</sup> The authors of this UNEP EIA handbook consider public consultation to be a form of public involvement, with objectives to, among others, obtain and share information about a proposed project, get the views of members of the relevant community about what they consider to be the impacts of a proposed project and gain knowledge about, and an

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<sup>477</sup> UNEP, *supra* note 14, at 159-85.

understanding of, the culture and customs of the people in the relevant community.<sup>478</sup>

Multiple forms of public consultation are listed in this UNEP manual (Topic 3, Table 2).

This author considers the documentation in Appendix 2 of the Niger River EIA Report inadequate because nearly thirty communities were reportedly visited for a socio-economic evaluation, but the documentation in Appendix 2 of this report is for less than 10 communities. Based on the documentation in Appendix 2 of the Niger River EIA Report, this author argues that an insufficient number of people attended the consultation meetings in several of the communities in the Niger Delta Region for the project sponsor to gain knowledge about members of the community's concern with the proposed dredging project, or get sufficient input on ways to improve the project. Appendix 2 is considered deficient as it does not include the materials that were shared or obtained from participants at the so-called consultation meetings in Bayelsa, Delta, Edo and Rivers States. This study considers the one and a half page communiqué issued at the so-called "roundtable conference" held at the federal Petroleum Training Institute in *Effurum* on April 17, 1999 to be inadequate in form and substance because it was not signed by the preparers of the document and their association with the project sponsor or the community is not indicated; it does not adequately summarize what was discussed or the materials exchanged at the conference; it does not indicate the total number of people who attended this conference; and it is not clear from the communiqué whether the proceedings were conducted in English or the local dialect. Having her ancestral home in the *Okrika* community in Rivers State, from personal knowledge, this author knows that many people in local communities in Rivers State, especially the adults, do not read, speak or understand English. If, as it is confirmed in the socio-economic, cultural and

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<sup>478</sup> *Id.* at 163.

health evaluation section of the Niger Delta EIA Report that translators were used for these assessments, it is reasonable to suggest that there were people who attended the so-called “round-table conference” in *Effurum* that did not speak, understand, read or write in English. The documentation of the meeting that allegedly took place in the *Bomadi* Community in Delta State on March 21, 1999 is deficient in substance and form. The sign-in sheet indicates that only fifteen people attended the meeting. The sign-in sheet does not specify the venue of the meeting, which the general procedural EIA guidelines require to be in a public place (Section 5.0), some attendees at this meeting did not provide signatures on the sign-in sheet even though their names were written on the sheet of paper and several of the meeting attendees association with the community, the project sponsor, or its representatives, is not indicated. Only four people attended the so-called “socio-economic study” for the *Aboh* Community, Delta State on August 27, 1999. The names are handwritten on a sheet of papers with no signatures. The venue of the meeting in *Aboh* Community is not specified. Five people are listed as having attended a meeting in *Okwagbe* Community, Delta State on March 20, 1999 at a “community hall.” Like the meeting in *Aboh* Community, only five people are listed as having attended a consultation meeting in *Illah* Community, Delta State on August 28, 1999. If the public consultation meetings and conferences are supposed to be forums to obtain the views of the members of a community about a proposed project and share information about the proposed project with these people, this author argues that the documentation in Appendix 2 of the Niger River EIA Report is deficient.



## **Conclusion**

Nigeria is a party to numerous international and regional instruments that may be used to recognize, promote and protect procedural environmental rights and have corresponding obligations for States Parties. Nigeria has laws, regulations and policies that guarantee one or more of the rights set out in Principle 10 of the Rio Declaration and environmental education to a limited extent, but the rights are not guaranteed as a set of procedural environmental rights as what is called for in Principle 10 of the Rio Declaration, nor are the rights as detailed when compared to the Access Guidelines. An examination of the responses to this author's questionnaire on procedural environmental rights in Nigeria also indicates that at least on paper laws and regulations exist in Nigeria that may be used to secure one or more of the procedural environmental rights set forth in Principle 10 of the Rio Declaration or a right of access to broad environmental education, including the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the 1992 EIA Act, and Regulation S.I 15. Also, the 1999 Nigerian Constitution contains general procedural rights that may be extended to the environment.

## Chapter Seven: Conclusion

According to former U.N. Secretary General, Kofi Annan, “[g]ood governance and democracy are central to Africa's development. Without them it will be hard if not impossible for any African country to reach the Millennium Development Goals by 2015.” This final chapter verifies the two pillars of the hypothesis in this study, summarizes the findings in this study, and presents this study’s recommendations and legal roadmap for achieving the goal of environmental sustainability in Africa. Since Nigeria is the focus of inquiry in this study, the recommendations are based upon the specific situation in Nigeria but may be applied to similarly situated countries in Africa.

### 7.1: Verify the Hypothesis

Although there are multiple global indexes that measure social, economic and environmental progress around the world, this study focused only on those indexes that it considered to be directly relevant to the arguments in this study.<sup>479</sup> This study has taken into account the position of scholars and commentators who argue that these global indexes may not provide an accurate “snapshot” of a country’s socio-economic and environmental position, that indexes use different tools and targets to measure development, that countries face different socio-economic and environmental challenges, and the findings do not show a particular trend as country rankings vary from index to index. As a result, this study considered multiple indexes and looked for general trends

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<sup>479</sup> For examples of different types of indexes that track Environmental Sustainability, *see, e.g.*, SEDAC, COMPENDIUM OF ENVIRONMENTAL SUSTAINABILITY INDICATOR COLLECTIONS: COMPLETE COLLECTION VERSION 1.1 (2007).

in the country rankings noting that the disparity in country rankings appears to be more noticeable on the ESI (2005) when compared to the EPI (2010).<sup>480</sup>

Although the rankings for individual African countries vary on different indexes, some countries have consistently ranked well on multiple indexes. The Republic of Botswana ranked highly on the ESI (34<sup>th</sup> on the 2005 ESI) but not for the EPI (149<sup>th</sup> for the 2010 EPI and it is not ranked on the original 2006 EPI), and had very good rankings on the CPI (33<sup>rd</sup> for the 2010 CPI).<sup>481</sup> Botswana's CPI ranking has remained steady since 2006 (between 30<sup>th</sup> to 40<sup>th</sup> highest ranked country, steadily improving to a 2011 ranking of 32<sup>nd</sup>, and is ranked highly on the Ibrahim Index of African Governance (3<sup>rd</sup> for 2010). Gabon ranked 12<sup>th</sup> on the 2005 ESI, 46<sup>th</sup> on the 2006 EPI, 95<sup>th</sup> on the 2010 EPI, 110<sup>th</sup> on the 2010 CPI, 100<sup>th</sup> on the 2011 CPI, and its environment is considered to be resilient (2004 EVI). Republic of Mauritius is not included in the 2005 ESI or 2006 EPI, is ranked extremely highly on the 2010 EPI (6<sup>th</sup> out of 163 countries), good on the CPI (39<sup>th</sup> for the 2010 CPI and 46<sup>th</sup> on the 2011 CPI), highest on the Ibrahim index of African Governance (1<sup>st</sup> for 2008, 2009, 2010 and 2011), and average on the HDI (72<sup>nd</sup> for the 2010 HDI)<sup>482</sup> despite having its environment rated as highly vulnerable on the EVI (2004). It is worth mentioning that despite the so-called vulnerability of its environment as reflected in the 2004 EVI ranking,<sup>483</sup> Republic of Mauritius's environmental performance has been outstanding as reflected in its 2010 EPI ranking. Nigeria, on the

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<sup>480</sup> See YCELP-CIESIN, *Pilot 2006 Environmental Performance Index* (2006), [http://ciesin.columbia.edu/repository/epi/data/2006EPI\\_AppendixE.pdf](http://ciesin.columbia.edu/repository/epi/data/2006EPI_AppendixE.pdf) (last visited Oct. 6, 2011) (comparing the initial 2006 EPI to the ESI).

<sup>481</sup> See, Transparency International, *Corruption Perceptions Index 2010* (2010), [http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results) (last visited Oct. 6, 2011).

<sup>482</sup> See, UNDP, *Human Development Index and its Components* (2010), [http://hdr.undp.org/en/media/HDR\\_2010\\_EN\\_Tables\\_reprint.pdf](http://hdr.undp.org/en/media/HDR_2010_EN_Tables_reprint.pdf) (last visited Oct. 6, 2011).

<sup>483</sup> See SOPAC/UNEP, *Environmental Vulnerability Index* (2004), [http://www.vulnerabilityindex.net/EVI\\_Country\\_Profiles.htm](http://www.vulnerabilityindex.net/EVI_Country_Profiles.htm) (last visited Nov. 27, 2011).

other hand, had extremely poor rankings for the 2006 and 2010 EPI and on the 2005, 2010 and 2011 CPI; had an unremarkable ranking on the 2005 ESI, and ranked poorly on the 2010 and 2011 Ibrahim Index of African Governance and its poor HDI ranking in 2010 has further slipped in 2011. Nigeria is ranked 37<sup>th</sup> out of 53 countries in the 2010 Ibrahim Index of African Governance and 41<sup>st</sup> in 2011, 134<sup>th</sup> out of 178 countries on the 2010 CPI and 143<sup>rd</sup> out of 183 countries ranked on the 2011 CPI, 152<sup>nd</sup> out of 159 countries on the 2005 CPI, 98<sup>th</sup> out of 146 countries on the 2005 ESI, 123<sup>rd</sup> out of 133 countries in the 2006 EPI, 153<sup>rd</sup> out of 163 countries on the 2010 EPI (33<sup>rd</sup> out of 41 countries in Sub-Saharan Africa), 142<sup>nd</sup> out of 169 countries on the 2010 HDI and 156<sup>th</sup> on the 2011 HDI, with its environment considered highly vulnerable on the EVI (2004 EVI score of 337 with 94% data). To appreciate the extent of environmental degradation in many countries in Africa, it belies logic that even with its poor overall ranking, Nigeria's 2010 HDI score (0.423) is considered above the regional average. The Republic of Chad was ranked last on the 2005 CPI and 168<sup>th</sup> on the 2011 CPI and second to the last on the 2006 EPI, 163<sup>rd</sup> on the 2010 HDI and last on the 2011 HDI. The results of the 2010 CPI, HDI and EPI, 2005 ESI and CPI, 2010 Ibrahim Index of African Governance and 2011 CPI country rankings show that Nigeria and Chad and some other African countries with low CPI and Ibrahim Index of African Governance rankings also have low EPI, HDI and ESI rankings. African countries that stand out (favorable rankings) in the rankings of more than one index are the Republics of Mauritius, Botswana, Seychelles, Cape Verde and South Africa. These countries had good rankings on the 2010 and 2011 CPIs and outstanding rankings on the 2010 and 2011 Ibrahim Index of African Governance as the highest ranked countries. It is noteworthy that these countries are

considered the “top five” countries in the category of participation and human rights in the 2010 Ibrahim Index of African Governance. Seychelles received the highest score for gender inclusiveness but is not ranked on the 2005 ESI or 2010 EPI. The major themes espoused in the 2010 HDR report (sustainability, fairness, and empowerment of humankind) and indicators for the 2010 Ibrahim Index of African Governance (safety and rule of law, participation and human rights, sustainable economic opportunity, human development) reflect the importance of public involvement and good governance for socio-economic and environmental progress and the rankings of African countries reflect the strides this countries have made in these areas. As this study previously stated, the recently released 2011 Human Development Report, *Sustainability and Equity: A Better Future for All*, supports a basic argument in this study that environmental sustainability and equality, fairness, equity, and justice are vital for human progress. Although this study focuses on inequality at the international level, the 2011 Human Development Report focuses on inequality at the national level. Seychelles (52<sup>nd</sup>) and Mauritius (77<sup>th</sup>) are two of the four African countries that are ranked as having high HDIs on the 2011 HDI. The other two African countries are Libya (64<sup>th</sup>) and Tunisia (94<sup>th</sup>). Most of the countries with Low HDIs are African countries. Four of the lowest ranked countries are African countries: Republic of Chad (183<sup>rd</sup>), Republic of Mozambique (184<sup>th</sup>), Republic of Niger (186<sup>th</sup>), and the Democratic Republic of Congo is last (187<sup>th</sup>). The 2011 CPI and Ibrahim Index of African Governance were also issued as this study was concluding and as shown above several African countries are ranked poorly on these indexes. This study has inferred from the unremarkable and in many cases extremely low rankings of several African countries on key global indexes that evaluate countries on issues, such as

democratic governance, gender inclusiveness, environmental sustainability, equity, poverty, education, environmental performance, corruption, adequate laws, health, human rights, and public participation, that the absence of the environmental participatory rights promoted in this study in many African countries is a reason there is poor governance in such countries resulting in the inability of many countries in Africa to make significant strides towards environmental sustainability.

This study also argues that an international environmental justice legal regime is required for developing countries, particularly those in Africa, to achieve environmental sustainability. The vital importance of international environmental justice is highlighted in the climate change issue. An indicator for target 7a and 7b of MDG 7 measures carbon dioxide emissions in countries. Carbon dioxide emissions data indicates that there is a wide disparity in the emissions from developed and developing countries, with the developed countries having a greater share of the carbon dioxide emissions.<sup>484</sup> The disproportionate burden of the climate change problem on African countries is recognized in an IPCC report that concludes that the African continent is highly susceptible to climate change and its impacts, and the problems are made worse by the limited ability of African countries to adjust to climate change.<sup>485</sup> The IPCC researchers give examples of possible climate change impacts on African countries, with different levels of confidence, including causing sea level rise and increasing the water and food

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<sup>484</sup> See United Nations Statistics Division, *Environmental Indicators: Greenhouse Emissions: CO2 emissions in 2007*, [http://unstats.un.org/unsd/environment/air\\_co2\\_emissions.htm](http://unstats.un.org/unsd/environment/air_co2_emissions.htm) (last visited Oct. 6, 2011) (showing a wide disparity in CO2 emissions for developed and developing countries).

<sup>485</sup> Boko, M., I. Niang, et. al., 2007: Africa., IPCC, *Climate Change 2007: Impacts, Adaptation and Vulnerability, Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* 433-67 (2007) (M.L. Parry et al. eds., 2007).

crisis in Africa.<sup>486</sup> This study suggests that the findings of the IPCC researchers provides support for the second part of the argument in this study that international environmental justice is required for developing and least developed countries in Africa to achieve environmental sustainability. Extrapolating from the results of the global indexes mentioned above and research that indicates that common global environmental problems, such as climate change and transboundary water pollution cause disproportionate negative burdens on developing countries, especially those in Africa, and that global environmental indexes suggest that safeguarding and protecting global environmental resources is critical for environmental sustainability at the national level, it is suggested that the second pillar of this study's hypothesis is supported by this study.

As Nigeria is the focus of inquiry in this study, it is suggested that the first pillar of this study's hypothesis is supported in that Nigeria's failure to develop and implement comprehensive national legislation to realize, protect, and promote the procedural environmental rights set out in Principle 10 of the Rio Declaration and guarantee a right of access to broad environmental education has led to poor environmental governance in the country, which has hindered its ability to achieve environmental sustainability. Using the climate change and illegal global hazardous waste disposal trade as examples, it is suggested that the second pillar of this study is supported as it is reasonable to conclude from the exposition in earlier chapters that international environmental injustices have prevented Nigeria from making inroads towards environmental sustainability.

## **7.2: Recap of Earlier Findings**

While the Stockholm Conference brought global attention to the environment and human rights connection, the Rio Conference is noteworthy for bringing international

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<sup>486</sup> *Id.*

attention to the sustainable development concept and procedural environmental rights. The Rio Declaration is an outcome document of the Rio Conference. This study argues that a right of access to broad environmental education is a necessary pillar of the rights structure set out in Principle 10 of the Rio Declaration; that corruption is a major obstacle to socio-economic and environmental advancement in countries in Africa; and that international environmental justice is vital for countries in Africa to achieve MDG 7.

To sum up the findings in this study, using Nigeria as the focus of the inquiry, although Nigeria is a party to several global and regional documents on the environment, human rights, development, anti-corruption and education, and it has laws, regulations, policies and institutions that may be used to secure, protect and promote one or more of the environmental rights asserted in Principle 10 of the Rio Declaration and a right of access to broad environmental education, Nigeria does not have national legislation that assures the access rights set out in Principle 10 of the Rio Declaration to the extent recommended in the Access Guidelines, nor does it have legislation or policies that explicitly guarantee the kind of environmental education promoted in this study. Like the UNITAR, this study recognizes that a “one size fits all approach” is inappropriate for developing legal structures to implement Principle 10 of the Rio Declaration and a right of access to broad environmental education.

### **7.3: Recommendation: Develop a Legal Roadmap for Environmental Sustainability in Africa**

Recognizing that environmental laws, policies, processes and institutions differ from country to country and that a single approach is not appropriate for every country in the formulation and implementation of environmental rights law, this study looked for principles, procedures and initiatives that promote and protect the procedural



environmental rights proposed in this study that could be adapted to the specific circumstances in the African region.<sup>487</sup> This study also looked for what it considered to be reasonable recommendations in writings related to this subject to develop its unique set of recommendations. Using Nigeria as the focus of inquiry, what follows is this study's description of what it considers to be minimum starting points for procedural environmental rights legislation to implement Principle 10 of the Rio Declaration and assure a right of access to broad environmental education in Nigeria, and to develop an international environmental justice instrument. A Declaration of a New International Environmental Justice Legal Regime has been developed by this author to promote international environmental justice. The recommendations that follow take into account the unique situation in Nigeria.

### **7.3.1: Protect and Promote a Right of Access to Broad Environmental Education to Combat Climate Change**

Research has shown that climate change is a major global environmental problem that threatens the goal of environmental sustainability in many countries and it requires multiple novel strategies to combat climate change and its impacts on the environment and all life forms on earth. Reports suggest that the effects of climate change in Africa will cause severe problems in Africa. According to an international project team that includes researchers from UNDP, UNESCO/IOC, and climate change will have devastating effects in the West African region. It will likely cause:

an increase in mean surface temperature of up to 0.5° C per decade, increased evapotranspiration, increased rainfall variability and intensity, accelerated sea level rise of around 1 m per century, any reduced coastal upwelling resulting from

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<sup>487</sup> For guidance material on improving “participatory environmental governance” in countries, see UNITAR, *Methodology to Strengthen Participatory Environmental Governance through Preparation of a National Profile and Action Plan*, available at <http://www.unitar.org/egp/methodology-principle-10> (last visited Oct. 6, 2011).

weakening of the Azores high and the trade winds, exacerbated by disruption from freshwater plumes of continental origin. The resultant shifts in the hydrographical and oceanic conditions due to climate change are likely to exacerbate coastal erosion and sedimentation problems in the West African region.<sup>488</sup>

In order to implement the precautionary principle set out in Principle 15 of the Rio Declaration and Article IV of the Revised African Nature Convention and to promote the goals of the Belgrade Charter, this study calls on the Nigerian government to ensure that all Nigerians have the expertise to adequately manage the effects of environmental problems, such as climate change. This study suggests that protecting and promoting a right of access broad environmental education will assure for all Nigerians the necessary knowledge and skills to adapt to the effects of climate change in Nigeria. Support for a right of access to education to fight climate change is found in a UNESCO strategy to assist countries in predicting and adapting to the effects of climate change on World Heritage properties by means of education and training at the international, regional and national levels and in the Nairobi Declaration on the African Process for Combating Climate Change.<sup>489</sup>

### **7.3.2: Recognize and Emphasize the key Role of Religion in Motivating People to be Actively Involved in Safeguarding and Improving the Environment**

If it is accepted that Christianity and Islam play a vital role in shaping the views and behavior of Christians and Muslims respectively, and Christianity and Islam direct adherents of the religion to be involved in solving problems in their respective

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<sup>488</sup> UNDP, Project Document: *Adaptation to Climate Change-Responding to Coastal Change in its Human Dimensions in West Africa through Integrated Coastal Management (ACCC)* 5 (July 2007).

<sup>489</sup> UNESCO, *Climate Change and World Heritage: Report on predicting and managing the impacts of climate change on World Heritage and Strategy to assist State Parties to implement appropriate management responses* 41-42, based on UNESCO Doc. WHC-06/30.C)M/7.1, (May 2007) (by Augustin Collette ed.); see also AMCEN, *Nairobi Declaration on the African Process for Combating Climate Change* (May 29, 2009), available at [http://www.unep.org/roa/Amcen/Amcen\\_Events/3rd\\_ss/Docs/nairobi-Declaration-2009.pdf](http://www.unep.org/roa/Amcen/Amcen_Events/3rd_ss/Docs/nairobi-Declaration-2009.pdf) (last visited Oct. 26, 2011).

communities, it should also be accepted that when considered in the field of the environment, religion can contribute to solving problems related to the environment. Despite the argument of writers like White who suggest that directives in the Bible promote the degradation of the environment and similar arguments of scholars and writers as regards Islam, this study considers that the two major religions in Nigeria, Christianity and Islam, can promote goals of environmental education in the Belgrade Charter to develop a person's sense of duty to act promptly to solve environmental problems and to change the attitude of people so they are motivated to actively take part in the protection, restoration and enhancement of the environment in Nigeria.

Through its teachings and principles on justice and fairness, group decision-making, knowledge, wisdom, and the care of earth's resources, this author suggests that the Bible, considered by Christians to be the word of God, promotes the participatory rights in Principle 10 of the Rio Declaration, broad environmental education, environmental sustainability and justice. Biblical scholars and writers point to numerous passages in the Bible that direct Christians to look after the environment and nature's resources and Biblical principles on collaborative decision-making, justice, wisdom and understanding and transparency. This author considers that these directives and principles are broad enough to be considered in the context of the environment.

Chapters 1 and 2 of the Book of *Proverbs* instruct Christians to seek and pass on knowledge and wisdom on to others. *Proverbs* 24 verses 30 to 31 describe the consequences of lack of understanding, poor judgment and tardiness, using a nature-based example to make the point that a person who is slothful and lacks discernment will end up with a vineyard that is in need of repairs. The Bible instructs Christians to

eschew corruption in every form. Christians in public office in Nigeria, particularly those in the judicial branch of government and in leadership roles, should be guided by the warnings in *Proverbs* chapter 29 verse 4, which states that justice leads to stability in a country and corruption exacts a heavy price on society. The Bible promotes decision-making that is collaborative. *Proverbs* 11 verse 14 provides what this author considers to be key Biblical authority for public participation in decision-making in stating that “[w]here no counsel is, the people fall: but in the multitude of counsellors there is safety.” *Proverbs* 15 verse 22 reaffirms this principle in stating that “[w]ithout counsel purposes are disappointed: but in the multitude of counselors they are established.” An application of the joint decision-making in the Bible that authors often refer to is found in *Acts* Chapter 15 verse 2 when Paul and Barnabas and others in the community actively seek the guidance of apostles and elders in Jerusalem to resolve a dispute. Further support for collective decision-making may be found in *Deuteronomy* Chapter 17 verses 8 to 9, which verses instruct Christians to value collective decision-making and promote the right of access to justice, specifically access to an impartial judicial tribunal. The Israelites are directed to seek independent counsel from the “levitical priests” and appoint judges to solve difficult problems. When viewed in an environmental context, this study considers that the Bible’s teaching on the “unity of the body” in 1 *Corinthians* 12 verses 12 to 31 specify principles of public participation in decision-making, environmental Subsidiarity and participatory environmental justice, in so far as every person in a community, including men, women, youths, the poorest or least educated, has a role to play in resolving issues that affect the larger community. The Bible provides biblical authority for Christians to support a right of access to justice, including social justice.

*Deuteronomy* Chapter 10 verses 17 to 18 contain biblical principles on access to justice for every person and direct Christians to eschew corruption. Christians are reminded that “[f]or the Lord your God is God of gods and Lord of lords, the great God, mighty and awesome, who is not partial and takes no bribe, who executes justice for the orphan and the widow, and who loves the stranger, providing them food and clothing.” This author finds biblical authority to support a right of access to justice for every person in

*Deuteronomy* Chapter 1 verses 15 to 17 when Moses appointed leaders in the community to act as judges to resolve disputes in the community and instructed the judges to “give the members of your community a fair hearing, and judge rightly between one person and another, whether citizen or alien. You must not be partial in judging: hear out the small and the great alike; you shall not be intimidated by anyone, for the judgment is God’s.”

The Bible warns against social injustices in *Isaiah* chapter 5 verses 8 to 10 using an empty field and house to illustrate the point that greed and injustice yield no rewards.

When applied in an environmental context this verses promote environmental justice.

This author supports the view that the right of access to justice before an independent tribunal is supported in *Deuteronomy* 1 verses 9 to 18 and in *Deuteronomy* 16 verses 18 to 20, as judges are instructed to dispense justice impartially and fairly and warned against succumbing to bribery and corruption.

The writings of Islamic Scholars and commentators show that there are numerous Islamic principles that promote general participatory rights, the acquisition of knowledge, and call on Muslims to eschew corrupt practices, which may be extended to the field of the environment. Ali Ahmad discusses the role of the public in the administration of public affairs from an Islamic perspective, and discusses Islamic law rules on the

handling of nature's resources.<sup>490</sup> According to Ahmad, public participation enhances the decision-making process by adding credibility to the process, enabling a transparent process, and ensuring that decision makers justify their decisions. Ahmad gives numerous examples of principles derived from *Sharia* law that provide authority for Muslims to support public participation in the affairs of humankind.<sup>491</sup> It is clear from the writings of Islamic scholars that the Quran, a primary source of Islamic law, is replete with principles for Muslim to adhere to in order to acquire knowledge and instruction and the Quran has numerous instructions and principles on nature conservation. To support his argument that Islamic Law is replete with principles that support the rights promoted in Principle 10 of the Rio Declaration, Ahmad refers to the 42<sup>nd</sup> Chapter of the Quran for its principles of consultation. Some principles of public participation Ahmad refers to include, "*Shura*," which provides a medium for the Muslim public to be consulted in matters that affect their views and have such views considered, "*mubaya'ah*," which secures a binding agreement on the part of the public to obey the ruler in exchange for the leader's promise to rule justly and collaborate with the governed, "*gharar*," which calls for comprehensive information on a contract to be provided and "*diwan*" for keeping records of important information of a public nature. Ahmad considers that there are numerous judicial and non-judicial mechanisms for seeking justice under Islamic law, and many of such principles seek to prevent corruption in the administration of justice.<sup>492</sup> When viewed in the context of the environment, this author considers *Shura* to be similar to generally accepted public comment procedures that require that the

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<sup>490</sup> See Ali Ahmad, *Righting Public Wrongs and Enforcing Private Rights: Public Involvement in Islamic Law*, in THE NEW "PUBLIC": THE GLOBALIZATION OF PUBLIC PARTICIPATION 39-52, (Carl Bruch ed. 2002).

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

comments of the public be obtained and considered before a final agency determination is made on a matter related to the environment, and “*mubaya ’ah*” as analogous to a citizen’s duty to protect the environment and conserve natural resources and the government’s corresponding duty to protect, promote and respect environmental human rights.<sup>493</sup> For a detailed discussion of Islamic law on public involvement in environmental matters, specifically natural resources management, this author refers the reader to Ahmad’s exposition and to IUCN’s policy paper on Principles of Environmental Law in Islam for a discussion of Islam and the environment.<sup>494</sup>

### **7.3.3: Ensure Widespread Application of the Principle of Subsidiarity in the Field of the Environment**

This author suggests that applying, as widely as possible, the principle of subsidiarity in the management of the environment in Nigeria has the potential to promote and safeguard, for all Nigerians, the access rights set out in Principle 10 of the Rio Declaration and, to a lesser extent, broad environmental education.

Writings suggest that the early beginnings of the subsidiarity principle may be traced to the Roman Catholic Church.<sup>495</sup> According to Catholic Church literature, the subsidiarity principle is considered to be a means of ensuring that every person is accorded respect and dignity and is demonstrated through public participation.<sup>496</sup> The oft-quoted 1931 encyclical of Pope Pius XI entitled “*Quadragesimo Anno*” may be said to be the initial enunciation of the subsidiarity principle for the Catholic Church (Paragraph

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<sup>493</sup> *Id.* at 45.

<sup>494</sup> IUCN, *supra* note 136.

<sup>495</sup> See PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH (2004).

<sup>496</sup> *Id.*

79).<sup>497</sup> If, as stated above, it is accepted that religion plays a vital role in shaping the behavior and views of the adherents of the religion, this study suggests that the principle of subsidiarity as originally understood in the social teachings of the Catholic faith, when applied to the field of the environment, can motivate those who profess the Catholic faith in Nigeria, said to be about 15% of the Nigerian population by un-official sources, to actively participate in decision-making processes to protect and improve the environment. The government in Nigeria should support the Catholic Church in emphasizing the importance of subsidiarity in the field of the environment.

Nigeria's Revised Policy on the Environment states that the principle of subsidiarity, which calls for decisions to be made, to the greatest extent possible, by impacted communities or "on their behalf by the authorities closest to them," is a sustainable development principle that must be applied in Nigeria for the successful implementation of the national environmental policy in Nigeria.<sup>498</sup> As stated earlier, this study considers a community's management of the decision-making process to be an elevated level of public participation in the decision-making process.<sup>499</sup> Support for this view is found in the position of Edith Brown Weiss, who considers that the subsidiarity principle and Principle 10 of the Rio Declaration share similar goals in so far as the subsidiarity principle requires that the decision-making process be brought down to the governance level closest to the people and may be applied to the field of the environment and Principle 10 of the Rio Declaration requires that environmental issues be handled by

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<sup>497</sup> See Encyclical [*Quadragesimo Anno*] of Pope Pius XI on Reconstruction of the Social Order to our Venerable Brethren, the Patriarchs, Primates, Archbishops, Bishops, and other Ordinaries in Peace and Communion with the Apostolic See, and Likewise to all the Faithful of the Catholic Church (May 15, 1931), available at [http://www.vatican.va/holy\\_father/pius\\_xi/encyclicals/documents/hf\\_p-xi\\_enc\\_19310515\\_quadragesimo-anno\\_en.html](http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html) (last visited Nov. 15, 2011).

<sup>498</sup> Revised Environmental Policy, *supra* note 102.

<sup>499</sup> See New Delhi Statement, *supra* note 378, princ. 3.



“concerned citizens, at the appropriate level.”<sup>500</sup> This study suggests that, in application, subsidiarity is what Sherry Arnstein characterizes as citizen control or delegated power (rungs 7-8 of the citizen participation ladder), while public participation promoted in Principle 10 of the Rio Declaration may be viewed as the partnership step in Arnstein’s citizen participation ladder (Rung 6).<sup>501</sup> This study recommends new ways to promote subsidiarity in the context of the environment in Nigeria taking into account the unique cultural norms in the country. Since the Revised African Nature Convention requires that the “traditional rights of local communities and indigenous knowledge” be respected (Article XVII), that the African Youth Charter, the African Charter on Human Rights, and the Nigerian equivalent to the Africa Charter on Human Rights require that traditional values and culture that are not harmful to the people be promoted and respected, that the Revised Policy on the Environment in Nigeria calls for the application of the subsidiarity principle in Nigeria and that the subsidiarity principle as applied in Nigeria calls for decision-making authority to be given to the impacted community or acting on their behalf by the authority that is nearest to the people, this author considers that in appropriate cases, control of the environmental decision-making process should be given to the community acting through the primary traditional authority or structures in such community.<sup>502</sup> In addition to the specific recommendations for amending the 1999 Nigerian Constitution presented later, this study recommends that the 1999 Nigerian Constitution be amended to specify subsidiarity as a principle of environmental

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<sup>500</sup> Edith Brown Weiss, *The Rise or the Fall of International Law?*, 69 Fordham L. Rev. 362 (2000).

<sup>501</sup> See generally Sherry Arnstein, *supra* note 14 (presenting different levels of public participation).

<sup>502</sup> See His Royal Majesty Otumfuo Osei Tutu II. Asantehene, Keynote Address at the Fourth African Development Forum: Traditional Systems of Governance and the Modern State (Oct. 12, 2004), *available at* [http://www.uneca.org/adfiv/documents/speeches\\_and\\_presentations/speech\\_by\\_king\\_ghana.htm](http://www.uneca.org/adfiv/documents/speeches_and_presentations/speech_by_king_ghana.htm) (last visited January 19, 2012).

management in Nigeria, that national environmental legislation should require application of the subsidiarity principles and that the relevant laws regarding the functions and role of traditional rulers and the relevant council of chiefs in Nigeria should be amended to give such traditional institutions control over the decision-making process in the management of the environment in their respective communities. In the Niger Delta Region, this approach may help to reduce the hostilities between government and the people.

#### **7.3.4: Amend the 1999 Nigerian Constitution**

Currently the 1999 Nigerian Constitution only specifies obligations of the Nigerian government to protect the environment in Nigeria and ensure the availability of education at every level as key objectives and guiding principles of the State. In contrast, several African countries, including Seychelles, South Africa, Uganda, Congo and Kenya (Paragraphs 69-72 of the 2010 Kenyan Constitution),<sup>503</sup> boast of constitutions that specify substantive environmental rights in their respective bill of rights and legislation that assures procedural environmental rights, including a right of access to information and to basic education. This author calls on the Nigerian government to amend the 1999 Nigerian Constitution to explicitly guarantee the procedural environmental rights promoted in this study as fundamental human rights. Prescribing the rights proposed in this study as fundamental human rights in the 1999 Nigerian Constitution will provide preeminent authority in Nigeria for the development, protection, and promotion of the participatory rights promoted in this study. Bruch, Coker and VanArsdale caution that although environmental rights in some form are guaranteed in a majority of African countries, such provisions have not been tested in courts.<sup>504</sup> Considering its high ratings

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<sup>503</sup> CONST., ¶¶ 42 & 69-72 (2010) (Kenya).

<sup>504</sup> Carl Bruch, Wole Coker, and Chris VanArsdale, *supra* note 138, at 162.

on numerous global indexes on the environment and human development and corruption, this author was not surprised to find out that the 1993 Constitution of the Republic of Seychelles guarantees environmental rights for its people.<sup>505</sup> This constitution contains a right to the environment for all people of Seychelles with corresponding duties for the state to protect and promote such a right by safeguarding and enhancing the environment and ensuring that the resources of Seychelles are used responsibly.<sup>506</sup> The government in Seychelles has a duty to ensure that the people of Seychelles are made aware of the need to safeguard, conserve and enhance the environment (Section 38(c)), while the right to education that seeks the full development of the individual is guaranteed (Section 33(b)), and access to information, which this study suggests is broad enough to be applied to the environmental field, is specified in Section 28. Constitutional scholars and writers often refer to the 2008 Ecuadorian constitution for its unique environmental provisions. The Ecuadorian constitution specifies rights for nature and it guarantees for Ecuadorians, among others, rights to water, nature, a healthy dwelling and a right to live in an ecologically sound environment that assures sustainability, with corresponding duties for Ecuadorians to protect the environment.<sup>507</sup> These provisions, albeit for a non-African country, may be considered for amendments to the 1999 Nigerian Constitution.

Since natural and legal persons in Nigeria are bound by the provisions of the 1999 Constitution (Section 1(1)), once a right to broad environmental education is prescribed as a fundamental human right in Nigeria, all natural and legal persons in the country must respect, promote and protect such a right or be subject to legal action for violations of such a right pursuant to Section 46(1) of the 1999 Nigerian Constitution.

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<sup>505</sup> CONST. OF THE REPUBLIC OF SEYCHELLES (1993).

<sup>506</sup> *Id.* § 38(a)-(b).

<sup>507</sup> CONST. OF ECUADOR (2008), arts. 12, 14, 27, 30, 39, 44, 71-74 & 83(6).

This study relied on the Indian case of *M.C. Mehta v. Union of India* and the public consultation processes recommended by UNEP's EIA resource manual cited above, other international and regional guidance documents, and best practices around the world to recommend new measures and programs to protect and promote a right to broad environmental education at all levels in Nigeria. Appropriate national and state media and entertainment facilities in Nigeria should be re-opened, refurbished or expanded. At the national level, the National Television Authority and Federal Radio Corporation in Nigeria should be required to provide educational programs of reasonable lengths on television and radio respectively to educate people in Nigeria about ways to protect the environment and fight corruption in Nigeria, particularly public sector corruption. The federal government should collaborate with state governments to show similar educational programs on State-owned television and radio stations. For performances at the National Theatre and Gallery in Lagos, a performing arts venue, documentaries of adequate length on ways to protect the environment and fight corruption should be presented before every show at the National Theatre and Gallery. At the National Gallery of Art in Abuja and its branches and workshop sites in other parts of Nigeria, staff at the relevant agency responsible for such facility should respond to the call in the Durban Commitment to use creative art to fight corruption and should promote environmental education through the use of art displays, exhibitions, pamphlets and murals at public places. Also, the federal government should work with appropriate educational authorities at all levels to ensure that compulsory environmental education and anti-corruption courses are part of the curriculum in institutions of learning around Nigeria. Relying on the practice in New York State, the federal and State environmental

agencies in Nigeria should make available to the general public excursion trips at national parks and game reserves and other protected areas in Nigeria during the school year and during the summer vacations and provide summer day and residential camps to teach the younger generation about ways to protect the environment and enjoy nature. Similar outreach programs should be provided for older people. The federal government in Nigeria should work with state governments to develop nature preserves at the state level. The anti-corruption and the environment agencies should work together to develop, for all Nigerians, an anti-corruption environmental awareness program in Nigeria.

Considering the key functions of Local Government Councils in Nigeria set out in the Fourth Schedule of the 1999 Constitution, Local Government Councils in Nigeria should promote and protect a right to broad environmental education by requiring in private radio and television licenses that government sponsored documentaries that teach the public about ways to protect the environment and fight corruption in Nigeria are aired on television and radio on agreed-upon schedules. Also, through its licensing authority a Local Government Council should require that booklets, circulars and fact sheets on environmental education and anti-corruption techniques are placed at visible locations in car and bus parks, markets, restaurants and on billboards, using creative art for added effect. In accordance with its authority, the Local Government Council should work with the schools to develop compulsory environmental and anti-corruption education classes in “primary, adult and vocational” schools.

### **7.3.5: Enact Expansive Legislation to Implement Principle 10 of the Rio Declaration and Guarantee a Right of Access to Broad Environmental Education**

As stated earlier, Section 12(1) of the 1999 Nigerian Constitution limits the applicability of international and regional human rights, environment and development

instruments Nigeria is a party to until they are enacted into Nigerian law.<sup>508</sup> This study has considered the suggestion of authors, such as Bruch, that an African regional treaty that adapts the Aarhus Convention to the special socio-economic, cultural and environmental conditions in Africa is a reasonable option for securing legally enforceable procedural environmental rights in Nigeria and other African countries, but suggests that such an option is not the most efficient way to protect and promote procedural environmental rights in African countries that require national implementation of treaties, such as Nigeria. In Nigeria, a regional treaty has to go through the dual process of ratification, then domestication into Nigerian law, in order to give the treaty legal effect in Nigeria, and such processes are time-consuming and the outcome is not guaranteed.

This author calls on the Nigerian government to promptly fulfill its commitment under the Rio Declaration, particularly principles 10 and 11, by enacting comprehensive legislation that guarantees the procedural environmental rights set out in Principle 10 of the Rio Declaration for all Nigerians, and to assure a right of access to broad environmental education for all Nigerians. This author recommends that the Nigerian government enact an Environmental Bill of Rights similar in form to the Province of Ontario's Environmental Bill of Rights and to consider the United Republic of Tanzania's Environmental Management Act, which was adopted in 2004, for its substantive elements.<sup>509</sup>

The stated primary purposes of Ontario's Environmental Bill of Rights are to safeguard, conserve and carry out environmental restoration actions as appropriate,

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<sup>508</sup> Nigeria is a party to the Climate Change Convention, and pursuant to Article 6 of the Climate Change Convention, a State Party commits itself to provide educational programs about the effect of Climate Change.

<sup>509</sup> See Province of Ontario Environmental Bill of Rights 1993, S.O. 1993, c. 28; Environmental Management Act, 2004 (Act No. 20/04) (Tanzania) [hereinafter EMA].

enable environmental sustainability and safeguard a right to the environment in accordance with the Environmental Bill of Rights (Section 2(1)). The Environmental Commissioner appointed pursuant to the Environmental Bill of Rights has a duty to put in place programs that educate the public about the provisions of the law.<sup>510</sup> Although other African countries like the Republic of Kenya and South Africa have what this author considers to be reasonably sound framework environmental management legislation, this study selected the EMA for its protection and promotion of the rights set out in Principle 10 of the Rio Declaration and it promotes environmental education, albeit not to the extent promoted in this study. The environmental education pillar of the EMA should be strengthened in the manner prescribed in this study. Although Tanzania's rankings on human development index, environmental, and anti-corruption indexes have not been remarkable compared to other African countries like Botswana and Mauritius, and Seychelles, this study selected the EMA because of its reasonable provisions, at least on paper, which take into account the unique socio-economic conditions and cultural settings in the African region. Tanzania is ranked 16<sup>th</sup> out of 53 countries on the 2010 Ibrahim Index of African Governance, 63<sup>rd</sup> out of 146 countries on the 2005 ESI (ahead of the United Kingdom), 116<sup>th</sup> out of 178 countries on the 2010 CPI, 148 out of 162 countries on the 2010 HDI, and 126<sup>th</sup> out of 169 countries on the 2010 EPI. The recently released 2011 Ibrahim Index of African Governance shows an improvement in Tanzania's ranking from 16<sup>th</sup> in 2010 to 13<sup>th</sup> in 2011, for the CPI from 116<sup>th</sup> in 2010 to 100<sup>th</sup> in the 2011 and for the HDI from 148<sup>th</sup> (out of 169 countries) in 2010 to 152<sup>nd</sup> out of 187 countries (ahead of Nigeria ranked 156<sup>th</sup>). While these rankings are not remarkable, it is noteworthy that there has been a marked improvement in Tanzania's ranking on international and regional

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<sup>510</sup> Ontario Environmental Bill of Rights, 1993, S.O. 1993, c. 28, §57(c).

indexes that track corruption and human development while Nigeria's ranking on these indexes has dropped from 2010 numbers on the CPI and Ibrahim Index of African Governance. It is noteworthy that Tanzania received a score of 85% (nearness to 100% target) for the water quality component of the 2010 EPI compared to Nigeria's 44.8244%, and for the water quality element scored higher than several African countries that had an overall higher ranking on the 2010 EPI, such as Mauritius (highest ranked African country at 6<sup>th</sup> on the 2010 EPI), Algeria (42<sup>nd</sup> on the 2010 EPI), Morocco (52<sup>nd</sup> on the 2010 EPI), Malawi (107<sup>th</sup> on the 2010 EPI), Kenya (108<sup>th</sup> on the 2010 EPI), Ghana (109<sup>th</sup> on the 2010 EPI), and South Africa (115<sup>th</sup> on the 2010 EPI). For the water quality index component of the EPI 2010, Mauritius received a score of 48.7508%, Algeria got a score of 58.253%, Morocco received a score of 62.8806% and South Africa came closest to Tanzania with a score of 84.1722%. Even Ghana, with a higher overall water score (impacts on ecosystems) of 88.92% compared to Tanzania's overall water score of 77.86%, still scored lower for the water quality index with a score of 77.8317% compared to Tanzania's water quality index score of 85.0%. When compared to other countries in its peer group (Sub-Saharan Africa), Tanzania ranked 19<sup>th</sup> out of 41 countries, while Nigeria is ranked 33<sup>rd</sup>.<sup>511</sup> While Tanzania's ranking of 148<sup>th</sup> out of 169 countries on the 2010 HDI (tracked three aspects of human development: education, health and income and is compared with countries with similar data) is poor, and its 2011 ranking is low, reportedly Tanzania's HDI score of 0.398 for 2010 is above the average

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<sup>511</sup> For Tanzania's scores on the EPI, see YELP/CIESIN, see <http://epi.yale.edu/Countries/Tanzania> (last visited Oct. 7, 2011).



for the region, for Sub-Saharan Africa.<sup>512</sup> There was a significant drop in Nigeria's HDI ranking from 142<sup>nd</sup> out of 169 countries in 2010 to 156<sup>th</sup> out of 187 countries in 2011. While Tanzania's environment is classified as "[a]t Risk" on the 2004 EVI (EVI score of 257), Nigeria has a much more dire classification (classified as highly vulnerable with an EVI score (2004) of 336).<sup>513</sup> Botswana appears to be the gold standard for EVI rankings for African countries with an EVI (2004) score of 181 and a classification of "resilient" for its environment. Other African Countries with a "resilient" classification include Gabon (2004 EVI score of 211), Central African Republic (2004 EVI score of 193), Mali (2004 EVI score of 215), Niger (2004 EVI score of 208), Zambia (2004 EVI score of 210) and Zimbabwe (2004 EVI score of 200).<sup>514</sup> Tanzania is a party to an agreement on the management of the environment with Kenya and Uganda, and it is considered to be on track to meet the MDG for universal basic education, MDG 2.<sup>515</sup>

Tanzania's EMA shares similarities with Kenya's Environmental Management and Coordination Act. Examples of some commonsense principles in the EMA include its provision for minimum qualifications for certain office holders in the institutions established under the EMA (Part III), a requirement that the EMA be translated into a major local language, and a unique feature, like the Ecuadorian Constitution, is that Tanzanians have standing to seek justice on behalf of the environment. Other unique principles and concepts include what this study considers to be the application of

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<sup>512</sup> For Tanzania's HDI ranking trend, *see* UNDP, *see* <http://hdrstats.undp.org/en/countries/profiles/TZA.html> (last visited Oct. 7, 2011) (showing that there has been a steady improvement in Tanzania's HDI from 1990-2010).

<sup>513</sup> *See* SOPAC-UNEP, *supra* note 38.

<sup>514</sup> For EVI (2004) country scores, *see* SOPAC/UNEP, *Environmental Vulnerability Index*, *see* [http://www.vulnerabilityindex.net/EVI\\_Country\\_Profiles.htm](http://www.vulnerabilityindex.net/EVI_Country_Profiles.htm) (last visited Oct. 7, 2011).

<sup>515</sup> Memorandum of Understanding for Cooperation on Environment Management (MOU of CEM) *adopted* on October 22, 1998. For information on Tanzania's progress towards MDG2, *see* UNDP, *Millennium Development Goals*, available at [http://www.tz.undp.org/mdgs\\_goal2.html](http://www.tz.undp.org/mdgs_goal2.html) (last visited Oct. 7, 2011).

environmental subsidiarity in giving specific roles and powers to lower tiers of government for the management of the environment in Tanzania down to the village and ward level; detailed provisions for an EIA; what could be considered to be the foundation for a PRTR in Tanzania, and promotion of environmental education.<sup>516</sup> Tanzania's EMA is also noteworthy for its guarantee of a right to a "clean, safe and healthy environment" for the people in Tanzania, which unlike the Aarhus Convention and South Africa's NEMA, is a legally binding provision.<sup>517</sup> This approach is significant as Tanzania's 1998 Constitution does not contain an explicit constitutional right to the environment compared to Kenya, South Africa and Seychelles. South Africa's NEMA contains principles that governmental bodies at every level must consider in the development and application of management plans and legislation pertaining to the environment and to give effect to procedural environmental rights in South Africa.<sup>518</sup> Compared to Tanzania, the World Bank (based on 2009 figures) classifies South Africa's economy as upper-middle income, while Tanzania is classified as a low income economy, and Nigeria a lower- middle income economy.<sup>519</sup> People in Tanzania have a duty under the EMA to protect the environment and report activities that have a significant negative impact on the environment to the relevant authorities, and public officials in Tanzania must be guided by the participatory principles of public participation in environmental decision-making, access to information related to the environment, and access to justice.<sup>520</sup>

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<sup>516</sup> EMA 2004 (Act No. 20/04) (Tanzania), §§ 36-41, 114, 134, 139 & 174.

<sup>517</sup> *Id.* § 4(1).

<sup>518</sup> NEMA107 of 1998 (S. Afr.).

<sup>519</sup> For information on how the World Bank classifies a country's economy, see The World Bank, *Data: How we Classify Countries*, available at <http://data.worldbank.org/about/country-classifications> (last visited Nov. 15, 2011).

<sup>520</sup> EMA 2004 (Act No. 20/04) (Tanzania), § 7(3)(e)-7(3)(g).

The provisions in Tanzania's EMA are measured against the Access Guidelines in order to develop a comprehensive procedural environmental rights structure that may be adapted to the particular conditions in Nigeria. As stated earlier, the Access Guidelines appear to be based on the Aarhus Convention. This study will use the Access Guidelines to close gaps it finds in the EMA. The assessment of the EMA will be limited to the provisions the study considers directly relevant to the participatory rights promoted in this study and is a review of the law on paper so it draws no conclusions nor does it assess the implementation of the EMA in practice. As stated in the delimitation section of this paper, this study considers that a law is only as good as its weakest parts.

### **Access to Information**

The information pillar of Principle 10 of the Rio Declaration is elaborated upon in Articles 4 and 5 of the Aarhus Convention, Access Guidelines 1 through 7 provide guidance for implementing this information pillar into national legislation, and Part XIII of the EMA sets out the rights and duties regarding environmental information for all Tanzanians. A general right of access to the environment for all Tanzanian citizens is guaranteed in Section 172(1) of the EMA and the National Environmental Management Council established under the EMA has a duty to keep records of information provided to it and make such information available to the public at a reasonable fee, including the results of analysis and sampling.<sup>521</sup> The Access Guidelines direct that inexpensive, prompt, and effective access to information be provided (Access Guideline 1), and that information on the environment held by public bodies should cover a wide range of issues including policy, legislation, and project-specific matters, and instructions on how to obtain information should be given (Access Guideline 2). In comparison to the

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<sup>521</sup> See *id.* §§ 164(4), 165 & 167.

Access Guidelines, the EMA mandates that the National Environmental Management Council gather and disseminate information on the environment and natural resources (Sections 166 and 173), that requisite organs of government disclose pollution prevention information to the public (Section 112(1)), and ensure that all Tanzanians have access to information on chemical usage and documents regarding activities related to the mining industry (Sections 170 and 171) and have access to chemical analysis results (Section 164(a)). While the Access Guidelines recommend that the basis for denying information should be clearly spelled out in laws and regulations (Access Guideline 3), the EMA sets out the grounds for denying a request for information.<sup>522</sup> The Access Guidelines recommend that information on the environment should be routinely collated and updated (Access Guideline 4). Under the EMA, access to information regarding executive or legislative decisions affecting the environment is assured for the effective participation of the public in environmental decision-making; public officials who have a duty to safeguard the environment are required to seek, obtain, and collate information required to implement the EMA; and the Director General of the National Environmental Management Council is required to maintain an administrative record for a proposed project that is the subject of an EIA in an easily accessible public registry.<sup>523</sup> Also, the EMA provides for the establishment of a “Central Environmental Information System” (Section 174). This study considers that this provision is similar in form to the Environmental Registry that is required under the Province of Ontario’s Environmental Bill of Rights (Sections 5 and 6). The Access Guidelines recommend that the public be provided reports on the state of the environment on a regular basis (Access Guideline 5),

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<sup>522</sup> *Id.* §§ 172(2)-(3).

<sup>523</sup> *Id.* §§ 96, 172(4), 178(4)(c).

and where danger to the public is imminent, notification and information on the steps to be taken to prevent injury to the environment and humans should be immediately made available to the public (Access Guideline 6). The Director of the Environment established under the EMA is charged with the responsibility of preparing and publishing a detailed national report on the environment every other year.<sup>524</sup> The Access Guidelines recommend that programs be put in place to increase the capacity of governmental and non-governmental entities to protect and promote a right of access to information related to the environment (Access Guideline 7). The EMA specifies duties for particular public bodies and officials and contains general requirements for assuring access to information on the environment, research, and education. The minister of the environment is required to develop and implement programs to increase the awareness of the people about the management of the environment and sustainable development,<sup>525</sup> and the minister shall set aside a day for activities to increase the knowledge of the public about all aspects of the environment to be referred to as “environment day.”<sup>526</sup>

The Aarhus Convention requires that information related to the environment be made available to the public promptly upon request without requiring justification for the request,<sup>527</sup> documents responsive to a request for information be made available to the public at a moderate fee,<sup>528</sup> information to build the capacity of the public regarding the right of access to information rights be made available to the public,<sup>529</sup> and that information regarding an imminent threat to the environment and public health and

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<sup>524</sup> *Id.* § 175(1).

<sup>525</sup> *Id.* § 176(2).

<sup>526</sup> EMA 2004 (Act No. 20/04) (Tanzania), § 10.

<sup>527</sup> Aarhus Convention, *supra* note 16, arts. 4(1)(a) & 4(2).

<sup>528</sup> *Id.* art. 4(8).

<sup>529</sup> *Id.* arts. 5(2) & 5(7).

measures to be taken to prevent such injury be made available to the public.<sup>530</sup> It is reasonable to suggest that the foundation for the development of the Kiev Protocol on PRTRs was laid out in Section 5(9) of the Aarhus Convention, which places a duty on a State Party to establish a database that is easily accessible to the public and contains information about the release and transfer of chemicals into the environment.

The Nigerian government should adapt the access to information provisions of the EMA discussed above to the specific situation in Nigeria and refer to the Access Guidelines and the Aarhus Convention, which this study considers to be the template for developing the Access Guidelines, to fill the gaps in the EMA as necessary. This study took into account the special circumstances and challenges in Nigeria, referred to international and regional documents in this matter, including UNEP guidance (Access Guideline 7), and relied on what this study considers to be sound practices around the world, to propose the following measures, activities and actions to assure real access to information in Nigeria for all Nigerians. Since constant power supply is not assured in Nigeria, particularly in the rural areas, this study recommends that the requisite agency in Nigeria also provide the information that is required to be placed in a public registry in a non-electronic format. This study suggests that such information be collated and provided in the form of a report that is placed in a publicly accessible location, such as the traditional ruler's palace, local government offices, town halls, government schools and hospitals or other publicly available locations in at least the three major languages spoken in Nigeria. Like the mechanism Living Earth Nigeria Foundation recommends for improving communication between local government officials and the people in the Abua-Odual local government area in Rivers State, the "town crier," if available, should be used to

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<sup>530</sup> *Id.* art. 5(1)(c).

inform the people in the local community in the rural areas, where power supply is worse than in the urban areas, about the availability of information in the public registry and the report and inform the people about the locations of such repository or repositories. In urban areas in Nigeria, where the supply of electricity is also a problem but is better than in the rural communities, announcements about the availability of information in the public registry and the availability of a final agency determination with respect to a specific project, laws, policies, and plans related to the environment, should be made on radio, television, and, as recommended in India, in movie theatres. Also, Nigeria's home movie industry often referred to as "Nollywood," an increasingly popular industry in and outside Nigeria, is a unique mechanism to reach a wide audience with important information on the environment. Home movies in the major languages in Nigeria are constantly being produced by "Nollywood." In fulfilling the Durban Commitment's call for using "creative art" to fight corruption, this author urges the Nigerian government to use "creative art" to ensure that Nigerian's enjoy the participatory environmental rights promoted in this study, particularly a right of access to information, and to collaborate with the home movie industry in Nigeria to disseminate information related to the environment by means of short tutorials on home movie DVDs and VCDs. Also, in the rural areas the government should work with the local communities, leaders and elders in such communities to use cultural activities in the community as a forum to spread information and knowledge about the environment and educate the public about ways to protect the environment and fight public sector corruption. As an example, this study proposes the use of local festivities, such as the New Yam festival in the southeastern part of Nigeria, and the *Argungu* fishing festival in the northwestern part of Nigeria as a

forum to disseminate information related to the environment to the community. These festivals that bring together the young and old in the community provide unique avenues to disseminate information to a wide captive audience by means of art and entertainment.

### **Access to Public Participation**

The Public Participation pillar of Principle 10 of the Rio Declaration is elaborated upon in Articles 6 (specific actions related to the environment), 7 (policies, plans and programmes concerning the environment) and 8 (regulations and binding standard-setting documents pertaining to the environment) of the Aarhus Convention, while recommendations for putting into effect the public participation provision into national legislation are set out in Access Guidelines 8 to 14, and the provisions guaranteeing a right to participate in environmental-decision-making processes are set out in Part VI (EIA provisions) and Part XIV of the EMA. This study notes some deficiencies in the provisions on the right to participate in decision-making for specific projects in the EMA that this study suggests may be strengthened with provisions in the Aarhus Convention and the Access Guidelines.

The Access Guidelines encourage national governments to ensure that timely advance notice of opportunities for public participation in environmental decision-making is given to the public (Access Guideline 8); encourage appropriate national institutions to be proactive in seeking public participation in environmental decision-making and to ensure that a reasonable public comment period is provided for public comments (Access Guideline 9); encourage national governments to ensure that pertinent information for decision-making concerning the environment is provided to the public in an unbiased and understandable format and in a timely manner (Access Guideline 10);



encourage national governments to make sure that comments from the public are given appropriate consideration and the final agency decision is documented and made available to the public (Access Guideline 11); and recommend that national governments ensure, to the extent possible, that the public is given an opportunity to participate in the review of final agency determinations when new and relevant information and circumstances are discovered (Access Guideline 12). The EMA specifies the rights of the public to participate in environmental decision-making procedures and spells out the duties of governmental bodies to guarantee effective public participation in environmental decision-making processes.<sup>531</sup> These provisions require that the public be given timely notice of a public body's plan to issue or adopt legal or administrative decisions pertaining to the environment, that the public be given notice of opportunities to participate in such decision-making processes in a timely manner, and that the public be given relevant information on the matter.<sup>532</sup> Also, government bodies are called upon to be proactive in seeking public participation in environmental decision-making early in the process,<sup>533</sup> and to ensure that expansive methods of receiving, collecting and considering oral and written comments are carried out.<sup>534</sup> The Access Guidelines on the other hand recommend that national governments give members of the public an opportunity to participate in the preparation of enforceable rules, programs, policies and plans pertaining to the environment (Access Guideline 13). The Minister of the Environment in Tanzania has a duty under Section 46 of the EMA to encourage all Tanzanians to participate in the development and distribution of the National

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<sup>531</sup> EMA, 2004 (Act No. 20/04) (Tanzania), § 178(2).

<sup>532</sup> *Id.* § 178(1)-(2) & (4).

<sup>533</sup> *Id.* § 178(4).

<sup>534</sup> *Id.* § 178(4)-(5).

Environmental Management Plan in Tanzania. The requirements for an EIA and other assessments are set out in Part VI of the EMA. The duties of the National Environmental Management Council established under the EMA to develop rules for public participation, particularly the participation of the impacted community, and the requirement that a public hearing be convened for the review of an EIS are set out in Sections 89 and 90 of the EMA, respectively. The National Environmental Management Council has a duty under the EMA to provide notice to Tanzanians about where an EIS has been placed for public review and the deadline for the public to submit comments on an EIS.<sup>535</sup> This study notes an inconsistency in the EMA in that the EMA calls for a public examination when an EIS is to be reviewed (Section 90(1)), but the National Environmental Management Council is given broad discretion on whether to set up such an examination to collect written or oral comments on the proposed project (Section 90(2)) even though the EMA states that a review of an EIS should include review of the comments of the public obtained in a public proceeding (Section 88(2)(d)). Also, the National Environmental Management Council may demand a new EIA study be conducted under limited circumstances, including the discovery that fraudulent and misleading information was previously provided to the Environmental Council.<sup>536</sup> People in Tanzania have a right to appeal the Minister of the Environment's decision on an EIS to an Environmental Appeals Tribunal.<sup>537</sup> In light of Access Guideline 13 (timely public participation in the development of enforceable rules, plans, programs, and policies at an early stage), Tanzania's EMA is considered deficient. The requirements for developing and submitting a strategic environmental assessment statement in relation to

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<sup>535</sup> *Id.* § 89(2)(b).

<sup>536</sup> *Id.* § 97(c).

<sup>537</sup> EMA 2004 (Act No. 20/04) (Tanzania), § 95.

laws, regulations, policies, development plans and programs are set out in Part VII of the EMA. The Access Guidelines recommend that national governments strengthen the capacity of the public to participate in environmental decision-making through environmental education and other measures (Access Guideline 14). A general requirement for environmental education is provided in Section 176 of EMA. It is reasonable to suggest that the requirement for raising the awareness of the public in relation to sustainable development and management of the environment in Section 176(2) of EMA includes an environmental education component so the capacity of the public may be built up for effective participation in environmental decision-making. The Nigerian government should modify the public participation terms of the EMA mentioned above to the specific conditions in Nigeria and refer to the Access Guidelines and the Aarhus Convention to close the gaps in the EMA as necessary. Guided by international and regional instruments in this matter and measures around the world, this study recommends that the following procedures and strategies be implemented to ensure real public participation in environmental decision-making in Nigeria. The government in Nigeria should collaborate with private parties, civil society groups, trade unions, and local community leaders on suitable ways to notify the public about opportunities to participate in environmental decision-making. Aware that the Lima Declaration calls on governments to use the media to fight corruption, that the Bonn Declaration encourages the use of the media in the development, review and advancement of ESD activities, that the 1999 Nigerian Constitution, the African Youth Charter, the African Convention against Corruption, the UDHR and POP Convention all consider the media, particularly the mass media, as a means to disseminate knowledge and take part in the fight against

corruption, this study recommends the use of the media, including print and electronic media in Nigeria, to announce to the public opportunities to participate in environmental decision-making and public hearings. The government should place advertisements in the print media, including newspapers and soft sell magazines, movie VCDs and DVDs, radio and television, websites of federal and state agencies, non-governmental organizations and web-based news media, and should post notices in the offices of trade unions like the National Taxi Drivers Association, academic and non-academic staff union offices, market women's associations, and civil society groups, announcing the beginning of a public comment period and where the pertinent documents may be reviewed, including the location for the public registry and when public hearings will be conducted. Aware that the Talliores Declaration and Belgrade Charter call for education for environmental sustainability, this study recommends the use of educational institutions, including academic and non academic staff unions, students unions and other student organizations, to inform students, staff, and the larger community that public comments are sought for specific projects, plans, laws and policies concerning the environment and that public hearings and meetings will be organized to provide materials that educate the public about ways to fight public sector corruption, especially in the environment sector. Also, social media websites and the Facebook and Twitter accounts of public officials, if available, are innovative ways for providing the notices mentioned above and for rural communities such information should be made available in the local languages and placed in public places like the palace of the traditional ruler, government-run schools, public hospitals, local government offices, political party headquarters, and town halls and the meeting places of associations, such as the Market Women's

association. This study recommends the use of a “town crier” to notify people in the rural areas in Nigeria about opportunities to take part in decision-making concerning the environment and to provide pertinent information and notices about EIA laws, and procedures in Nigeria.

### **Access to Justice and Broad Environmental Education**

The access to justice pillar of Principle 10 of the Rio Declaration guarantees effective access to judicial and administrative processes, Article 9 of the Aarhus Convention expands upon the access to justice pillar of Principle 10 of the Rio Declaration, Access Guidelines 15 to 26 provide guidance to countries, especially developing countries, on ways to fulfill their commitments to implement Principle 10 of the Rio Declaration into national legislation, and the right of natural and legal persons in Tanzania to seek access to justice for non-compliance with the provisions of the EMA is guaranteed in Section 202 of the EMA. Also, general principles to promote the right of access to justice are set out in Section 5 of the EMA and the types of remedies available in an aggrieved party are provided in Sections 225, 226 and 228 of the EMA.

Access Guideline 15 encourages governments to guarantee a right of access to courts and other independent tribunal for an aggrieved party who seeks such independent tribunal’s review of an unfavorable decision of a government agency as it concerns a request for information. Although the EIA provisions of the EMA provide rights of appeal to challenge the Minister of the Environment’s determination on an EIS, what is not clear and should be clarified is whether the Minister of the Environment has a duty to provide notice of his decision on an EIS to the public and make the decision available to the public. However, the Minister of the Environment must notify the proponent of the

project about the disapproval of an EIS and provide a written explanation (Section 92(2)(a)). Access to judicial redress and to the Environmental Appeals Tribunal established under the EMA (Section 204) is available to persons and businesses to intervene on behalf of the person, other people and the environment, and to seek redress of a grievance pertaining to a procedural or substantive matter covered in the EMA, including a matter concerning the access to information provisions in Part XIII of the EMA.<sup>538</sup> Appeal from the Environmental Appeals Tribunal is to the High Court of Tanzania.<sup>539</sup> Access Guideline 16 recommends that judicial, independent and administrative processes be made available to aggrieved parties to contest the substantive and procedural basis for a decision on public participation in environmental decision-making processes. Access Guideline 17 recommends that State governments assure to the general public judicial, independent and administrative forums to contest a public body or private party's action or inaction, substantive or procedural, which has an impact on the environment or violates environmental-related rules, laws and regulations. Access Guideline 18 recommends that the rules for standing to initiate proceedings should be interpreted broadly in order to facilitate effective access to judicial remedies. Section 202 of the EMA relaxes the rules for standing to sue in Tanzania for matters covered in the EMA by opening up judicial and administrative review processes to a wide group of aggrieved parties, including those who may not have a direct interest in the matter. Access Guideline 19 recommends that signatories to the Rio Declaration provide prompt, transparent and fair review processes for members of the public so such aggrieved parties can challenge violations concerning the manner in which laws and

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<sup>538</sup> *Id.* §§ 95, 202 & 206.

<sup>539</sup> *Id.* § 209.

decisions affecting the environment are implemented and enforced.<sup>540</sup> Access Guideline 20 encourages State governments to ensure that the cost of the review processes is reasonable and mechanisms for providing the necessary aid to needy individuals is put in place. Although Part XVII of Tanzania's EMA sets out the functions, composition, jurisdiction, proceedings and other matters related to the functioning of the Environmental Appeals Tribunal, including a provision that the tribunal may award costs<sup>541</sup> and appeals from this tribunal are to be made to the high court,<sup>542</sup> specific details on how financial and legal assistance will be provided to those who can't afford to pay for the review process are not explicitly set out in Part XVII of the EMA. This study recommends that South Africa's NEMA and the Aarhus Convention be used to close the gap in Section 209 of the EMA. South Africa's NEMA requires that a losing party pay the reasonable court costs of the aggrieved party under specified circumstances.<sup>543</sup> To the extent that Tanzania's EMA doesn't explicitly state that costs for seeking justice in a judicial proceeding shall not be excessive, this study recommends that the Aarhus Convention provisions that a review process should be speedy and reasonably-priced, or at no cost,<sup>544</sup> be used to strengthen the provision in the EMA regarding administrative review of a decision under the EMA and the EMA should explicitly require that in cases of judicial review costs shall not be prohibitive and review shall be timely. These changes should be adopted in the proposed Environmental Procedural Bill of Rights in Nigeria. Access Guideline 21 recommends that a structure be put in place for ensuring

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<sup>540</sup> See NEMA107 of 1998 (S. Afr.), § 2(4)(k) (requiring decisions to be reached in a public and transparent way).

<sup>541</sup> *Id.* § 206(3)(b).

<sup>542</sup> *Id.* § 209.

<sup>543</sup> NEMA107 of 1998 (S. Afr.), § 32(3).

<sup>544</sup> Aarhus Convention, *supra* note 16, art. 9(4).

timely, effective, and sufficient remedies, including final and interim injunctions, damages and restitution. The EMA guarantees, for every person that resides in Tanzania, a right of access to justice to contest a violation of the right to environmental resources guaranteed in Section 4 of Tanzania's EMA.<sup>545</sup> The types of remedies that may be sought pursuant to Section 5(1) of the EMA are listed in Section 5(2) of EMA, including requiring the party to stop the harmful activity, restoring the environment to its pre-disposal condition to the extent practicable and restitution for damage to the environment and human health. In Section 226 of the EMA, temporary and permanent injunctions and compensation are specifically mentioned as remedies that may be awarded to a party. Access Guideline 22 recommends that prompt and effective enforcement of decisions of judicial, administrative and other relevant bodies that pertain to the environment be guaranteed. Part XVI of the EMA sets forth the compliance and enforcement provisions of the EMA. The different institutions and offices established under the EMA are given the authority to use various compliance mechanisms to protect human health and the environment, such as prevention orders, protection orders, cost orders and emergency protection orders, and to adopt a sliding scale of penalties for offenses under the EMA.<sup>546</sup> Access Guideline 23 recommends that governments give the public necessary information about the procedures adopted by a court and other relevant tribunals to hear environmental disputes. The EMA has a general provision requiring that members of the public be given a right of access to "publicly held information relating to the implementation" of the EMA.<sup>547</sup> This author suggests that this right requires that information about judicial and other processes concerning the environment be given to

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<sup>545</sup> EMA, 2004 (Act No. 20/04) (Tanzania), § 5(1).

<sup>546</sup> *Id.* §§ 182-201.

<sup>547</sup> *Id.* § 172(1).



the public, subject to limited exclusions. To the extent that the EMA does not explicitly prescribe the procedures for commencing the appeal process or require that administrative and judicial decisions be enforced in a prompt and even-handed manner, it is considered deficient and this study recommends that the provisions in Article 9(5) of the Aarhus Convention be used to strengthen the EMA.<sup>548</sup> Access Guideline 23 is similar to Article 9(5) of the Aarhus Convention, which calls on State Parties to the Aarhus Convention to promote the effectiveness of the Access to Justice provisions of the Aarhus Convention by providing members of the public with the procedures for commencing judicial and administrative review of determinations on a matter covered in the instrument. Access Guideline 24 calls on State governments to make sure that the decisions of judicial, administrative and other relevant bodies are provided to the public in accordance with domestic law, to the extent necessary. Access Guideline 24 is similar to Article 9(4) of the Aarhus Convention. The EMA requires that the environmental appeals tribunal notify affected parties of any awards for an appeal brought before the tribunal.<sup>549</sup> This study considers the EMA to be deficient to the extent that it does not explicitly state that the decision of the environmental appeals tribunal will be made available to the general public. This study recommends that Article 9(4) of the Aarhus Convention be used to close the gap in Tanzania's EMA as it concerns the recommendations in Access Guideline 24 and in the development of the recommended bill of environmental rights in Nigeria. Access Guideline 25 calls for the provision of legal education for judicial staff, legal practitioners and parties with a direct interest in an environmental matter. The EMA calls for the provision of environmental education in

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<sup>548</sup> Section 206(2) of the EMA merely refers to an appeal in "the manner that "may be prescribed by the Tribunal."

<sup>549</sup> EMA, 2004 (Act No. 20/04) (Tanzania), § 208(1)(b).

schools and universities and calls for the development and implementation of programs to increase the knowledge of the public about matters related to the environment.<sup>550</sup> The National Environmental Management Council established under the EMA has a duty under the EMA to develop and implement programs to promote environmental education to increase the environmental knowledge of people in Tanzania.<sup>551</sup> Under the EMA, every Agency in Tanzania must establish an environmental section to effectuate the goals of the EMA with a mandate to, among other things, increase the public's awareness of matters related to the environment by means of educational activities and sharing information with the people in Tanzania.<sup>552</sup> If properly developed and implemented, an environmental sections requirement in Nigeria is a vital tool to ensure that environmental considerations will be considered in the decision-making of every Ministry in Nigeria. To the extent that the EMA does not explicitly provide for the continuing legal education of judicial staff, lawyers, and other parties with an interest in an environmental matter, Access Guideline 25 should be used to strengthen the EMA and in the development of the recommended Environmental Bill of Rights in Nigeria. Section 4(h) of the NEMA, which explicitly calls for the empowerment of people in South Africa by means of environmental education, among other measures, is a sound provision that this author recommends for inclusion in a procedural Environmental Bill of Rights in Nigeria. Access Guideline 26 recommends that, in appropriate cases, unconventional dispute resolution procedures should be developed, implemented and promoted. The EMA is considered deficient in this regard. In the development of a procedural Environmental Bill of Rights for Nigeria this study recommends that the provisions in Chapter 4 of

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<sup>550</sup> *Id.* § 176(1)-(2).

<sup>551</sup> *Id.* § 18(2)(h).

<sup>552</sup> *Id.* § 31(f).

South Africa's NEMA, which sets out different dispute resolution techniques that may be used to ensure fairness in environmental decision-making and in the management of conflicts pertaining to the environment, be considered. A unique dispute resolution technique in the NEMA is the use of persons who are not full-time employees of the government of South Africa to provide "facilitation, conciliation, arbitration or investigation services."<sup>553</sup> The "Whistleblower" protection provisions in Part VII of the Province of Ontario's Environmental Bill of Rights and in South Africa's NEMA are recommended for inclusion in an Environmental Bill of Rights for Nigeria to encourage voluntary disclosure of environmental problems in Nigeria. In addition to the specific recommendations for guaranteeing a right of access to environmental education in this section, the recommendations in Chapter Four of this study with respect to a right of access to broad environmental education are restated here for the development of the environmental education pillar of the recommended Environmental Bill of Rights in Nigeria. The Technical Guide to the U.N. Convention against Corruption can provide guidance to States on developing the anti-corruption element of a right of access to environmental education.

Promoting and respecting rights of access to broad environmental education and justice in environmental matters will require the development and implementation of novel techniques and measures in Nigeria and other similarly situated developing countries in Africa. Government in Nigeria, at all levels should ensure that pamphlets and other types of written materials are prepared and published in the three main languages in Nigeria that describe the procedures for initiating an action to obtain judicial relief in environmental matters, and are widely distributed. These materials should be

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<sup>553</sup> NEMA107 of 1998 (S. Afr.), § 21(1).

placed in public places like national, state, and local government offices (especially the departments with a mandate to safeguard the environment, protect public health and promote justice), offices of the independent national electoral commission, courthouses, the residence of traditional rulers, town halls, taxi drivers and market women and men's association headquarters, labor union headquarters, and public universities and schools. Like what this author has recommended above for the public participation and access to information components of an Environmental Bill of Rights in Nigeria, different mediums should be used to inform the public about the availability of these materials, such as electronic and print media (including private and public television and radio stations) and announcements via Twitter and Facebook. Also, announcements should be made before movies begin at movie theatres, and in newspapers, magazines and journals and postings at "internet cafes" in Nigeria. This study proposes the use of the NYSC program in Nigeria as a mechanism to provide information about available administrative or judicial proceedings in case of an environmental harm and to increase the knowledge of the public about broad education, particularly in rural communities, as youth corps members are posted to different parts of Nigeria for the one year compulsory service.<sup>554</sup> The Nigerian government should train and mobilize NYSC members, especially the law graduates, to go into communities and educate the people about ways to fight corruption, particularly public sector corruption in the field of the environment, and use corps members who speak the local language as translators. Forums for carrying out these activities may be in the form of informational sessions for women, youths, chiefs, and elders in the community. Considering the principles in the Talliores Declaration (Action

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<sup>554</sup> Information on the NYSC program in Nigeria is available at <http://www.nysc.gov.ng/history.php> (last visited Nov. 15, 2011).

Item 3: “Educate for Environmentally Responsible Citizenship”), the Bizkaia and Tbilisi Declarations, the Declaration on the Responsibilities of the Present Generation Towards the Future Generations and the Belgrade Charter regarding environmental responsibility, this study recommends that the Nigerian government collaborate with the universities, international bodies, such as UNEP and UNESCO, scholars and professionals in different fields to assist the Nigerian government in training the youth corps members and NYSC staff to carry out their tasks to educate people in the community about broad environmental education. This author considers this proposal to be an “educate the educator” program that can fulfill the goals of the instruments mentioned above to deepen the public’s awareness and appreciation of their responsibility to the environment. Also, the Nigerian government should collaborate with NGOs and CBOs and other private organizations to provide legal assistance to aggrieved persons who do not have the resources or capacity to seek judicial and administrative review of environmental determinations or seek judicial redress for environmental harms. Like what occurs in the State of New York, the national, state or local governments in Nigeria should provide financial aid to a “community group” to pay for experts who can provide technical expertise to affected communities, particularly in the rural areas. Responding to the call in the Durban Commitment to use creative art to fight corruption and like the practice in Botswana, this author urges the Nigerian government to develop age-appropriate materials and literature on ways to combat dishonest and corrupt practices in Nigeria for children in Nigeria using cartoons and colorful pictures and materials and a national mascot to highlight the anti-corruption message that corruption generally, and in the

public sector in particular, has a destructive effect on society and in the field of the environment prevents the achievement of environmental goals.

### **7.3.6: Develop an Effective International Environmental Justice Legal Regime**

This author has prepared a Declaration of an International Environmental Justice Legal Regime to ensure that developed countries do not further degrade global environmental resources, that developed countries, with the support of international bodies, take more steps to help developing countries, especially those in Africa, to fulfill their obligations and commitments to safeguard the global environment and its resources, that there is equal participation of all countries and fairness in global decision-making processes related to the environment, that developing countries can build their capacity to address global environmental problems, and that there is fairness in the resolution of international disputes related to the environment, which document is attached as Appendix A.<sup>555</sup> The proposed instrument attempts to put in place legal safeguards to enable developing countries in Africa to achieve environmental sustainability.

This study proposes for future work the development of the recommended Environmental Bill of Rights for Nigeria based on the recommendations made in this study, which takes into account the special circumstances and conditions in Nigeria.<sup>556</sup>

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<sup>555</sup> The Summary of the International Environmental Justice Declaration is attached as Appendix B.

<sup>556</sup> Rio Declaration, *supra* note 11, princ. 6.

## **APPENDICES**

## Appendix A

### **Draft Declaration on the Establishment of an International Environmental Justice Legal Regime<sup>1</sup>**

We, the Heads of State and Government of the Member States of the African Union,

*Recalling* the political, economic, environmental and social struggles of African countries and their peoples;

*Mindful* of international agreements on human rights and self determination, in particular the Universal Declaration of Human Rights, and the Declaration on the Granting of Independence to Colonial Countries and Peoples, particularly Principle 2, which asserts that all peoples have the right to freely pursue their economic, social and cultural development;

*Aware* of the goals and principles of the Charter of the United Nations to maintain economic development without causing unacceptable global resource depletion, environmental pollution, and the destruction of the natural environment;

*Taking particular note* of the Rio Declaration on Environment and Development, especially the goals of the Declaration to establish a new and just global alliance through the establishment of additional mechanisms for collaboration among States and their peoples', and to promote sustainable development;

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<sup>1</sup> This Declaration on the Establishment of an International Environmental Justice Legal Regime was prepared based on the principles approved at the 1991 People of Color Environmental Justice Leadership Summit in Washington, D.C, U.S, Bali Principles of Climate Justice, adopted on August 29, 2002 and provisions in international and regional instruments on human rights, the environment and socio-economic development.



Affirming the recognition in international law that States have full control over their natural capital and resources, particularly Principle 2 of the Rio Declaration on Environment and Development, which maintains that States have, in conformity with the Charter of the United Nations and international law rules, the absolute right to use their resources in accordance with their domestic policies for the environment and development, and the duty to ensure that actions within a State do not damage the environment of another State;<sup>2</sup>

Taking note that Principle 6 of the Rio Declaration on Environment and Development asserts that while the needs and well-being of all countries should be given adequate attention, in the development and implementation of international law and policy in the field of the environment and development, the particular circumstances and needs of developing countries, especially the least developed and those countries that are most vulnerable to environmental conditions, require special concern; and Principle 6 of the United Nations Millennium Declaration that calls for the fair allocation of costs and obligations and social justice in addressing global problems. Those who bear the greater burden of the global issue are entitled to help from those who are not as severely impacted;

Taking further note of the principle of common but differentiated responsibilities, recognized in international law, particularly as enunciated in Principle 7 of the Rio Declaration on Environment and Development, that States have common but differentiated responsibilities and developed countries have a greater responsibility in the

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<sup>2</sup> See, e.g., Permanent Sovereignty over Natural Resources, G.A. Res. 1803 (XVII), U.N. GAOR, 17th Sess., Supp. No. 17, at 15, U.N. Doc. A/5217, at 15 (Dec. 14, 1962).

global quest for sustainable development in light of the pressures their societies put on the global environment and of the scientific expertise and financial assets they control;

Recalling that Principle 15 of the Rio Declaration on Environment and Development requires that States should apply the precautionary principle in proportion to their capabilities, which requires that action be taken to prevent environmental harm in the face of threats of severe or irreparable damage despite the lack of complete scientific certainty of environmental damage;

Further recalling that Principle 16 of the Rio Declaration on Environment and Development reaffirms the “polluter pays” principle, which requires that the costs of contamination be borne by the polluter, considering of the common good and without compromising global trade and investment;

Bearing in mind that Principle 21 of the United Nations Millennium Declaration asserts that no effort shall be spared to ensure that all peoples, particularly current and future generations of children, do not live in a world that has been damaged beyond repair due to human activities, and no longer has sufficient resources to meet the needs of humankind;

Aware that it is noted in the Declaration of the United Nations Conference on the Human Environment that under-development is the cause of most of the environmental issues in developing countries;

Noting that most of the countries ranked with a low Human Development Index and related indices in the 2009, 2010 and 2011 Human Development Report are African countries;<sup>3</sup>

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<sup>3</sup> See, e.g., UNDP, Human Development Report 2009: *Overcoming Barriers: Human mobility and development* (2009).

Recalling that the international community acknowledged in Principle 9 of the United Nations Conference on the Human Environment that the issues of under-development and natural disasters in developing countries cause serious problems and can best be addressed by enhanced development through the provision of increased and timely financial and technological aid to support the domestic efforts of developing countries;

Further recalling the agreement of members of the United Nations in chapter VII of the United Nations Millennium Declaration to meet the special needs of Africa, in particular Principle 27, which states that the members of the United Nations will encourage the consolidation of democracy in Africa and assist people in Africa in their quest for enduring peace, development that is sustainable, and eradication of poverty in Africa, so that the continent of Africa can be brought into the “mainstream” of the global financial system;

Reaffirming our recognition in the African Union Convention on the Conservation of Nature and Natural Resources (Revised Version) that Africa is richly endowed with a natural environment and natural resources of enormous value that form a unique part of the heritage of Africans and provide vitally important capital to the African continent and all of human kind;

Recalling our position in the Bamako Convention on the Ban of the Import into Africa and The Control of the Transboundary Movement and Management of Hazardous Waste Within Africa that hazardous wastes should, according to ecologically sound and effective practices, be disposed of in the States where they were generated;

Aware that an independent team of experts asserted in a Human Development Report commissioned by the United Nations Development Programme that while developed countries have historic responsibility for the climate change dilemma, poor countries bear the highest consequences of the problem;<sup>4</sup>

Conscious that a top official of the United Nations Food and Agriculture Organization has warned the international community about the creation of a “neo-colonial” order involving wealthy countries with insufficient arable land that acquire property in poor countries, many in Africa, to cultivate crops for export, causing significant human, social and environmental problems in such poor communities;

Recalling that a former Director General of the United Nations Educational, Scientific and Cultural Organization, has said that “globalization’s benefits are not distributed in an equitable way either within or between societies;”<sup>5</sup> and that a former United Nations Secretary General, has said that every person should have “a chance of prosperity in a healthy environment;”<sup>6</sup>

Desirous that the international community take additional steps to: ensure that the costs of protecting the global environment are allocated equitably, guarantee equal access to environmental benefits and investments for developing and least developed countries, particularly those in Africa, stop the appropriation of global resources for destructive

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<sup>4</sup> See UNDP, *Human Development Report 2007/2008: Fighting Climate Change: Human Solidarity in a divided world* (2007).

<sup>5</sup> UNESCO-United Nations University, International Conference, “Globalization with a Human Face: Benefitting All”, July 30-31 2003, Tokyo, Japan, *Final Report of International Conference “Globalization with a Human Face: Benefitting All”* (2004) (Foreword by Koichiro Matsuura, Former Director-General of the UNESCO).

<sup>6</sup> Kofi Annan, Former United Nations Secretary General, Address to the World Economic Forum (Jan. 31, 1999), (Press Release, SG/SM/6881/Rev.1 (Feb. 1, 1999), available at [http://www.un.org/News/ossg/sg/stories/statments\\_search\\_full.asp?statID=22](http://www.un.org/News/ossg/sg/stories/statments_search_full.asp?statID=22) (last visited Nov. 19, 2011)).

activities, end international environmental policies and practices that create economic, environmental and social inequities or burdens in developing and least developed countries, especially those in Africa, guarantee equal participation in international decision-making processes related to the environment for all countries, ensure timely and adequate resolution of environmental matters, particularly as it concerns Africa.

Hereby call on the international community to promote an international environmental justice legal regime based on fairness, “legal equality” of all States, “common but differentiated responsibilities,” increased cooperation between developed and developing countries in accordance with, guided by, and respect for the fundamental principles that follow:

#### Principle 1

International Environmental Justice requires that developed countries fulfill and reaffirm their international legal commitments under numerous international instruments to protect and promote human health and the environment and increase their assistance to needy countries in Africa.<sup>7</sup> International Environmental Justice also calls for the provision of substantial financial, technological and scientific aid to developing and least developed countries, especially those in Africa and requires that the international community cooperate in the development and full implementation of new and effective

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<sup>7</sup> Declaration on the Establishment of a New International Economic Order, ¶¶ 2-3, A/RES/S-6/3202 (May 1, 1974); Programme of Action on the Establishment of a New International Economic Order, A/RES/S-6/3202 (May 1, 1974); Conference on Environment and Development, *Rio de Janeiro* June 3-14, Rio Declaration on Environment and Development, U.N. Doc. A/CONF.151/26 (vol. I) (Jun. 13, 1992) [hereinafter Rio Declaration]; Charter of the United Nations, 59 Stat. 1031; TS 993; 3 Bevans 1153; United Nations Millennium Declaration, G.A. Res. 55/2, 4 U.N. Doc. A/RES/55/2 (Sep. 2002) [hereinafter Millennium Declaration]; Agenda 21: Programme of Action for Sustainable Development, U.N. GAOR, 46th Sess., Agenda Item 21, U.N. Doc A/Conf.151/26 (1992) [hereinafter Agenda 21]; Fourth Programme for the Development and Periodic Review of Environmental Law, (Montevideo Programme IV) [hereinafter Montevideo IV]; Implementation of the United Nations Millennium Declaration: Report of the Secretary General, A/59/282 (Aug. 27, 2004), *available at* <http://www.un.org/millenniumgoals/sgreport2004.pdf?OpenElement> (last visited November 11, 2011).

measures to strengthen international environmental law to correct the imbalance in the distribution of environmental harms, burdens and benefits between rich developed countries of the global north and poorer developing and least developed countries mostly situated in the southern hemisphere, especially those in Africa. To enable International Environmental Justice, the international community shall take into account guiding principles and rules of international law, particularly those enunciated in the Charter of the United Nations, the Declaration on the Establishment of a New International Economic Order, the Rio Declaration on Environment and Development, the United Nations Millennium Declaration, and Agenda 21: Programme of Action for Sustainable Development, including, but not limited to, sovereign equality of all States; inter-generational and intra-generational equity; the precautionary approach to protect the environment; a common concern to preserve, safeguard, and restore the health and stability of the world's ecosystems; common but differentiated responsibilities of States; broad cooperation and involvement of all States in finding solutions to global problems; development that is sustainable; and special consideration for the particular needs and circumstances of developing and least developed countries, especially the environmentally vulnerable ones and those in Africa. Furthermore, the international community shall be guided by the United Nations Environmental Programme's long-term plan of action in the area of environmental law, particularly the fourth Programme for the Development and Periodic Review of Environmental Law (Montevideo IV), which seeks to ensure the effectiveness of environmental law, enhance the preservation, administration and sustainable use of the natural resources of the world, promote a human rights approach in protecting the environment, examine the relationship between

environmental law and other legal regimes, and find solutions to challenges that prevent the achievement of sustainable development for all people. The international community should fully support the work of the various organizations of the United Nations System, particularly the work of the United Nations Environmental Programme in developing and implementing the Montevideo Programmes. The developed countries of the global north, given their historic responsibility for the degradation of the global environment due to the pressures their people put on the environment, and taking into account the significant scientific knowledge, technological expertise and financial resources they control compared to developing and least developed countries of the world, particularly those in Africa, and the need to make amends for the unfairness in the distribution of environmental burdens and benefits between rich and poor countries, should be in the fore-front of the international effort to provide substantial financial, technological and scientific aid and other assistance in order to build the capacity<sup>8</sup> of developing and least developed countries, particularly those in Africa, so these countries can fulfill their international obligations to protect the global environment, conserve global natural resources, restore earth's degraded resources, guarantee environmental sustainability, and achieve the broader goal of sustainable development. The developing and least developing countries in Africa, aware of their responsibility to work with appropriate international partners to protect and promote the health of the African peoples and maintain a satisfactory and ecologically healthy environment in Africa, reaffirm their commitments under international and regional law, particularly those principles and objectives set forth in the Charter of the United Nations; the Constitutive Act of the

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<sup>8</sup> For an example of how the term “capacity building” is used at the international level, *see* Agenda 21, ch. 37, U.N. GAOR, 46th Sess., Agenda Item 21, U.N. Doc A/Conf.151/26 (1992).

African Union; the African Charter on Democracy, Elections and Good Governance; the African Union Convention on Preventing and Combating Corruption; the Organization of African Unity Convention on the Prevention and Combating of Terrorism;<sup>9</sup> the African Charter on Human and Peoples' Rights; the African Charter for Popular Participation in Development and Transformation; and the African Union Convention on the Conservation of Nature and Natural Resources (Revised Version) including, but not limited to, the protection and promotion of human rights, fundamental freedoms and the rule of law; transparency in, and the establishment of, democratic governance processes; promoting the right of public participation in decision-making processes for the peoples of Africa and access to information and justice; and ensuring accountability of public officials in the governance process and the independence of the judiciary and administrative decision-making authorities. The developing and least developed countries in Africa further re-affirm their commitment to strengthen their individual and collective political will to take action in the area of the environment, to vigorously fight corruption and corrupt practices, particularly public sector corruption in the environment sector, and to take action to prevent international terrorism or other subversive activities and strive for peace and security in the continent of Africa.<sup>10</sup> The principles, rules, procedures, practices, responsibilities, commitments and goals in this paragraph underpin and apply *mutatis mutandi* throughout this Declaration on the Establishment of an International Environmental Justice Legal Regime.

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<sup>9</sup> African Charter on Democracy, Elections and Good Governance, *adopted on* January 30, 2007, A.U. Dec. Doc. EX.CL/301(X) [hereinafter African Governance Charter]; OAU Convention on the Prevention and Combating of Terrorism, *adopted on* July 14, 1999 [hereinafter OAU Convention against Terrorism].

<sup>10</sup> See, e.g., African Union Convention on Preventing and Combating Corruption, July 11, 2003, 43 I.L.M. 5 [hereinafter African Convention against Corruption].



## Principle 2

International Environmental Justice calls for the preservation of earth's biological diversity, the prudent and sustainable use of the elements of biological diversity, and the just allocation of the benefits obtained from the use of genetic resources.<sup>11</sup> International Environmental Justice further insists that the international community spare no efforts in enhancing the existing legal regime for maintaining and managing biological diversity on earth and preserving the integrity of the world's ecosystems by every means possible. Therefore, International Environmental Justice requires that developed countries provide more aid to developing and least developed countries, particularly those in Africa, so these poorer countries can fulfill their international obligations to protect and maintain biological diversity for the good of present and future generations, and achieve the time-based international development goals, particularly the goal to secure and maintain an environment of a satisfactory and ecologically healthy condition and the related target to reduce the loss of biological diversity.

## Principle 3

International Environmental Justice requires that earth's resources be protected and improved for all living beings on earth. International Environmental Justice further requires that the international community work together in the development and strengthening of existing laws and policies to limit the excessive use of natural resources on earth, to prevent the destruction of ecosystems on earth, and to require the prompt

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<sup>11</sup> World Charter for Nature, prins. 2 & 11(e), G.A. Res. 37/7, U.N. Doc. A/37/51 (Oct. 28, 1982); Rio Declaration, *supra* note 7, princ. 7; Convention on Biological Diversity, art. 1, 31 I.L.M. 818 (June 5, 1992); Montevideo IV *supra* note 7.

remediation and restoration of degraded environmental resources.<sup>12</sup> Therefore, developed countries should provide developing and least developed countries, particularly those in Africa, with substantial technical and financial resources and share expertise and information so these poorer countries can fulfill their international obligations to protect and enhance the environment, and attain the time-sensitive international development goals, particularly the goal to achieve environmental sustainability, and the corresponding targets to incorporate the principles of sustainable development into the action plans and programs of a State and to remedy degraded environmental resources.

#### Principle 4

International Environmental Justice calls for peace and security around the world and recognizes that economic and social advancement, poverty eradication, environmental protection, and peace and security are mutually supporting goals that all people everywhere in the world desire.<sup>13</sup> International Environmental Justice condemns all forms of terror, aggression, armed conflict, threats to peace and stability, and illegitimate overthrow of governments and requires that the international community adopt additional policies and measures that promote peaceful co-existence in and between States, respect for the rule of law, tolerance of divergent views, and cooperation in solving international problems. Therefore, developed countries should provide necessary assistance to the developing and least developed countries, particularly those in

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<sup>12</sup> Declaration on the Responsibilities of the Present Generations Towards the Future Generations, art. 4, *adopted by* the General Conference of the UNESCO at its 29<sup>th</sup> Session on November 12, 1997; Declaration on the Right to Development, arts. 2 & 4, G.A. Res 41/128, annex 41, (Dec. 4, 1986); Agenda 21, *supra* note 7, cap. 39; Montevideo IV *supra* note 7.

<sup>13</sup> Charter of the United Nations, *supra* note 7, art. 1; United Nations Conference on the Human Environment, June 5-16, 1972, Stockholm, Sweden, Declaration of the United Nations Conference on the Human Environment, prins. 1 & 26, U.N. Doc. A/Conf.48/14/Rev. 1 (Jun. 16, 1973) [hereinafter Stockholm Declaration]; Montevideo IV, *supra* note 7.

Africa, so these struggling countries can fulfill their international obligations to promote and respect the rule of law at the international and national levels, and achieve the time-based international development goals, especially the goal to guarantee environmental sustainability and achieve the associated targets and target indicators.

#### Principle 5

International Environmental Justice demands that earth's environment and humankind be spared the effects of warfare, especially chemical and biological Warfare<sup>14</sup> and it condemns the use of nuclear weapons.<sup>15</sup> International Environmental Justice further requires that weapons of mass destruction be eliminated; that the international community work together in good faith to develop new and effective measures to ensure timely, fair, and concrete steps are taken to ensure the complete dismantling of weapons of mass destruction, and that a right of freedom from the use of weapons of mass destruction is recognized.<sup>16</sup> International Environmental Justice also requires that best efforts be made by States to settle all disagreements within and beyond the borders of the State without resorting to warfare, intimidation and human rights abuses particularly for those disputes related to the environment and natural resources. Therefore, developed countries should provide substantial aid to developing and least developed countries, particularly those in Africa, so these needy countries can fulfill their

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<sup>14</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction 1974 U.N.T.S. 45, 32 I.L.M. 800 (1993) [hereinafter Chemical Weapons Convention], *available at* <http://www.opcw.org/chemical-weapons-convention/> (last visited Nov. 12, 2011); Convention on the Prohibition of Military or any other hostile use of Environmental Modification techniques, *approved on* December 10, 1976, 1108 U.N.T.S. 152 [hereinafter Environment Modification Convention], *available at* [http://treaties.un.org/doc/Treaties/1978/10/19781005%2000-39%20AM/Ch\\_XXVI\\_01p.pdf](http://treaties.un.org/doc/Treaties/1978/10/19781005%2000-39%20AM/Ch_XXVI_01p.pdf) (last visited Nov. 12, 2011); Montevideo IV, *supra* note 7.

<sup>15</sup> Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 11 I.L.M. 309 (1972) [Bacteriological Convention], *available at* <http://treaties.un.org/doc/Publication/U.N.T.S./Volume%201015/volume-1015-I-14860-English.pdf> (last visited Nov. 12, 2011); Montevideo IV, *supra* note 7.

<sup>16</sup> Stockholm Declaration, *supra* note 13, princs. 2 & 26; Declaration on the Right to Development, *supra* note 12, art. 7; Millennium Declaration, *supra* note 7, ¶ 9; Montevideo IV, *supra* note 7.

international obligations under the Environment Modification, Bacteriological and other relevant Conventions concerning arms control and disarmament, promote peace and security, and achieve the time-bound global development goals, particularly the goal to ensure a sustainable environment, and related targets to reduce the number of people living in slums and restore degraded environmental resources and reduce the loss of biodiversity.

#### Principle 6

International Environmental Justice denounces and rejects international policies, plans, and measures that directly or indirectly contribute to discrimination, apartheid, foreign occupation, colonialism, neo-colonialism or any other form of political, social or economic discrimination in and between States.<sup>17</sup> International Environmental Justice further requires that the international community, in the development and implementation of plans, procedures, and policies pertaining to the global environment and world economy, should at all times act in accordance with the Charter of the United Nations, the Universal Declaration of Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples and other instruments that promote and protect human rights and fundamental freedoms and the Declaration on the Establishment of a New International Economic Order that seeks economic parity for developing countries in Africa. International Environmental Justice also insists that the appropriate organs within the United Nations System provide necessary guidance to the international community to ensure that decisions that affect States are reached on the basis of equality and full participation of all States regardless of economic strength. Therefore, developed

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<sup>17</sup> Stockholm Declaration, *supra* note 13, princ. 1; Declaration on the Establishment of a New International Economic Order, *supra* note 7, ¶¶ 2 & 3; Montevideo IV, *supra* note 7.

countries should provide ample material support to developing and least developed countries, especially those in Africa, so these needy countries can fulfill their international obligations in the areas of human rights and global peace and security, and achieve the time-sensitive international development goals, especially the goal to protect and improve the environment for the “benefit of present and future generations” and achieve the time based international target of a fifty percent reduction in the number of people who do not have access to reliable drinking water and basic hygiene, substantially improve the lives of people who live in slums, strive for international collaboration for socio-economic development and incorporate sustainable development principles and measures into the guiding policies and programs of a State.

#### Principle 7

International environmental Justice affirms the right of a State and its peoples to pursue economic development in a sustainable manner and supports the right of a State to develop and implement appropriate procedures for economic development that will apply in such State without hindrance or external interference and for the exploitation of the natural resources of a State in accordance with such policies.<sup>18</sup> International Environmental Justice further expects the international community to cooperate in the reform and improvement of existing international economic and trade policies and measures so equal access to economic investments and opportunities for all States is assured, and to help developing and least developed countries, particularly those in Africa, to further reduce their massive external debt. Therefore, developed countries

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<sup>18</sup> International Covenant on Economic, Social and Cultural Rights, art. 1, GA Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (Dec. 16, 1966) [hereinafter ICESCR]; Declaration on the Establishment of a New International Economic Order, *supra* note 7, ¶¶ 3 & 4; Agenda 21, *supra* note 7, ch. 38; Montevideo IV, *supra* note 7.

should offer these poorer countries special treatment, generous aid, and provide favorable lending terms so these struggling countries can fulfill their international obligations to pursue development in a sustainable manner, repay their international loans, and fulfill the time-based international development goals, particularly the goal to ensure an environment of a satisfactory and ecologically healthy condition is maintained and related targets, especially the targets to incorporate the principles and procedures of sustainable development into the policies and action plans of a State, and to bring an end to extreme food shortage and poverty.<sup>19</sup>

#### Principle 8

International Environmental Justice demands that the global climate system be safeguarded and restored for the benefit of present and future generations and all life-forms on earth.<sup>20</sup> International Environmental Justice also requires that the international community collaborate in the development and implementation of additional innovative schemes and measures to improve the existing global climate change legal regime to make it more equitable. Therefore, developed countries should provide developing and least developed countries, particularly those in Africa, more and substantial aid to help these struggling countries meet their international obligations to safeguard the climate system for current and future generations and achieve the time-based international development goals, particularly the goal to secure and maintain a satisfactory and ecologically healthy environment, and the corresponding targets to achieve an effective

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<sup>19</sup> Declaration on the Responsibilities of the Present Generation Towards the Future Generation, *supra* note 12, art. 5; Rio Declaration, *supra* note 7, prins. 2 & 3; Convention on the Conservation of Nature and Natural Resources (Revised Version) (July 2003) [hereinafter Revised African Nature Convention]; Declaration on the Establishment of the New International Economic Order, *supra* note 7, ¶ 4; Montevideo IV, *supra* note 7.

<sup>20</sup> United Nations Framework Convention on Climate Change, ¶ 3, U.N. Doc. A/AC.237/18 (Part II)/Add.1 (May 9, 1992) [hereinafter UNFCC or Climate Change Convention].

solution to climate change and incorporate the principles of sustainable development into policies, programmes, and action plans of a State and remedy the damage to environmental resources.

#### Principle 9

International Environmental Justice calls for an end to the release of dangerous substances, heat or greenhouse gases in such amounts or concentrations as to surpass the ability of the global environment to render them safe and requires that the international community cooperate in good faith in the adoption of ground-breaking measures to effectively limit the levels of greenhouse gases in the atmosphere.<sup>21</sup> The full involvement of developing and least developed countries, particularly those in Africa, in the development and implementation of such innovative measures is crucial to the fight to control greenhouse gas emissions. Therefore, developed countries should provide generous support to developing and least developed countries, in particular those in Africa, so these poorer countries can fulfill their international obligations to reduce greenhouse gas emissions and can respond to the effects of climate change and achieve the time-bound international development goals, especially the goal to secure and maintain an environment of an adequate and ecologically healthy quality and condition, and meet the related targets to remedy the injury to environmental resources and achieve the target indicator to control increasing emissions of greenhouse gases.

#### Principle 10

International Environmental Justice considers actions within a State's jurisdiction or authority resulting in injury to human health and the environment in areas outside that

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<sup>21</sup> Stockholm Declaration, *supra* note 13, princs. 6 & 22; Montevideo IV, *supra* note 7.

State's jurisdiction or authority to be a violation of international law.<sup>22</sup> International Environmental Justice further calls for an end to all such activities and processes in a State that cause, or are likely to cause, harmful transboundary environmental impacts and affirms the right of all peoples and States to compensation for any transboundary damage that ensues from such dangerous activities. International Environmental Justice also requires that the international community formulate new principles and rules to safeguard human health and the environment from the dangers hazardous wastes create, apportion legal responsibility and compensation for transboundary environmental damage and require that developed countries provide sufficient aid to the organizations of the United Nations System, particularly UNEP, so UNEP can successfully fulfill its mandate to provide leadership and encourage the collaboration of nations and peoples in the restoration and improvement of the environment. Therefore, developed countries should help developing and least developed countries, especially those in Africa, to meet their international commitments to safely and effectively manage hazardous wastes throughout the life cycle of such dangerous substances, to achieve the time-sensitive global development goals, especially the goal to secure and maintain an environment in a satisfactory and ecologically healthy condition, and to meet the associated targets to incorporate sustainable development principles and actions into State policies and programs, ensure a substantial reduction in the rate of harm to biological diversity, and improve access to basic sanitation for the human population.

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<sup>22</sup> Principles of Environmental Justice, princ. 10, *issued at the People of Color Environmental Justice Leadership Summit* (Oct. 24-27, 1991) [hereinafter *Environmental Justice Principles*]; Rio Declaration, *supra* note 7, princ. 13; Revised African Nature Convention, *supra* note 19; Stockholm Declaration, *supra* note 13, princ. 22; Montevideo IV, *supra* note 7.



## Principle 11

International Environmental Justice requires that the transboundary environmental impacts of development be considered and further demands that environmental considerations be taken into account in the formulation of plans and programs which have the potential to substantially affect the environment of another State and human health.<sup>23</sup>

International Environmental Justice also calls for the collaboration of the international community in the development of adequate and fair procedures for the environmental assessment of a project that impacts the global environment and for the international community to assist the relevant bodies in the United Nations system in the development of international law, particularly as it relates to the global environment and the exploitation of shared resources. Therefore, developed countries should provide additional support to developing and least developed countries, particularly those in Africa, so these disadvantaged countries can fulfill their international obligations to develop and implement effective procedures for environmental impact assessments and strategic environmental assessments. Also, developed countries should assist countries in need, in particular those in Africa to achieve the time-based global development goals, especially the goal to secure and maintain a satisfactory and ecologically healthy environment and the corresponding target to incorporate sustainable development principles and practices into national plans and programs.

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<sup>23</sup> Stockholm Declaration, *supra* note 13, princ. 15; Rio Declaration, *supra* note 7, princ. 8; Convention on Environmental Impact Assessment in a Transboundary Context, *entered into force* on September 10, 1997, 30 I.L.M. 802, [hereinafter Espoo Convention], *available at* [http://treaties.un.org/doc/Treaties/1991/02/19910225%2008-29%20PM/Ch\\_XXVII\\_04p.pdf](http://treaties.un.org/doc/Treaties/1991/02/19910225%2008-29%20PM/Ch_XXVII_04p.pdf) (last visited Nov. 12, 2011); Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context adopted on May 21, 2003 [hereinafter Kiev Protocol], *available at* [http://treaties.un.org/doc/Publication/CTC/Ch\\_XXVII\\_4\\_b.pdf](http://treaties.un.org/doc/Publication/CTC/Ch_XXVII_4_b.pdf) (last visited Nov. 12, 2011); Montevideo IV, *supra* note 7.

## Principle 12

International Environmental Justice calls for the illegal transfer and disposal of hazardous wastes in the continent of Africa to end immediately and for the international community to cooperate in the formulation and implementation of new and effective policies and laws to prevent the movement of hazardous wastes across State boundaries, especially to countries that do not have the capabilities to properly dispose of such hazardous wastes.<sup>24</sup> Therefore, Developed countries should make every effort to stop the transfer of hazardous wastes from their countries to countries that are unable to adequately treat and dispose of such wastes and provide ample support to developing and least developed countries, particularly those in Africa, so these poorer countries can fulfill their international obligations as it concerns the movement of hazardous and other wastes across State lines and achieve the time-based international development goals, in particular the goal to guarantee environmental sustainability, and to meet the corresponding targets to restore damaged environmental resources, ensure a substantial reduction in the rate of harm to biological diversity, and improve access to basic sanitation for the human population.

## Principle 13

International Environmental Justice calls for international cooperation in the subject of forests and demands that forest resources be conserved and used in a

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<sup>24</sup> Stockholm Declaration, *supra* note 13, princ. 6; Rio Declaration, *supra* note 7, princ. 14; Basel Convention on the Control of the Transboundary Movements of Hazardous Wastes and Their Disposals, art. 4(2)(e), 28 I.L.M. 657 (1989) [hereinafter Basel Convention]; Bamako Convention on the Ban of the Import into Africa and the Control of the Transboundary Movement and Management of Hazardous Waste Within Africa, art 4, 30 I.L.M. 773 (1991) (entered into force on April 22, 1998) [hereinafter Bamako Convention]); Montevideo IV, *supra* note 7.

responsible manner.<sup>25</sup> International Environmental Justice also calls for increased international collaboration in the development and implementation of new and effective mechanisms and procedures to conserve and restore forest capital, including the adoption of new economic and trade measures. Therefore, developed countries should provide substantial aid to developing and least developed countries, particularly those in Africa, so these poorer countries can fulfill their international obligations to conserve and restore forest capital and mitigate the effects of deforestation, and achieve the time-bound international development goals, especially the goal to secure and maintain a satisfactory and ecologically healthy environment and the related targets to limit the loss of biological diversity, and to achieve the corresponding target indicators to slow down or stop deforestation and designate additional forests for biodiversity protection.

#### Principle 14

International Environmental Justice requires comprehensive and effective measures to mitigate the effects of drought in countries experiencing severe desertification and drought, particularly those in Africa.<sup>26</sup> International Environmental Justice expects that States and international bodies and organizations will “spare no efforts” to improve existing laws and policies to conserve, manage and sustainably develop land and water resources in an equitable manner and respond to the changing circumstances, needs and situations of developing countries, particularly those in the continent of Africa. International Environmental Justice demands that States develop

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<sup>25</sup> Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all types of Forests, princs. 1(b) & 10, A/CONF.151/26 (Vol. III) (June 1992); Montevideo Programme IV.

<sup>26</sup> United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly Those in Africa, ¶ 6, 33 I.L.M. 1328 (1994), [hereinafter Desertification Convention]; Montevideo IV, *supra* note 7.

more measures to combat desertification and mitigate the effects of drought using the time-tested knowledge and practices of the local and indigenous people. Therefore, developed countries should provide substantial aid to developing and least developed countries, particularly those in Africa, so these poorer countries can fulfill their international obligations to effectively combat desertification and control the damaging effects of drought, and achieve the time-sensitive international development goals, particularly the goal to guarantee environmental sustainability, meet the related target to limit the loss of biological diversity, and achieve the associated target indicator to give greater attention to the conservation of land and marine areas.

#### Principle 15

International Environmental Justice demands the protection of human health and the environment from harm that may occur from the global trade in certain hazardous compounds and pesticides. International Environmental Justice further requires that the international community make every effort to adopt and implement new strategies and schemes to monitor the production, use, and global trade in hazardous compounds and pesticides throughout their entire life cycle and that the unintended and negative impacts to international trade should be considered and avoided in the development of these schemes and strategies.<sup>27</sup> Therefore, developed countries should provide generous aid to developing and least developed countries, particularly those in Africa, so these poorer countries can satisfy their international obligations to safeguard the environment and the health of individuals that work with and use hazardous compounds and pesticides, comply with relevant reporting requirements, and achieve the time-sensitive international

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<sup>27</sup> Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, arts. 1 & 16, 38 I.L.M. 1 (1999) [hereinafter Rotterdam Convention]; Rio Declaration, *supra* note 7, princ. 12.

development goals, particularly the goal to ensure a satisfactory and ecologically healthy environment and the corresponding targets to remedy injury to environmental resources, reduce or eliminate the loss of biodiversity, and meet the related target indicator to pay more attention to the growing problem of species extinction.

#### Principle 16

International Environmental Justice opposes human activities that modify or are likely to modify the ozone layer and requires that the health of people around the world and the global environment be protected from the harmful consequences of such dangerous activities.<sup>28</sup> International Environmental Justice also mandates that the international community cooperate in devising and implementing creative measures to protect human health and the environment from the adverse effects of human actions that modify or may modify the ozone layer. Therefore, developed countries should provide generous aid to developing and least developed countries, especially those in Africa, to build the capacity of these countries to meet their international commitments to limit or end human activities that alter or have the potential to alter the ozone layer, and to achieve the time-based global development goals, in particular the goal to guarantee environmental sustainability and the related target to incorporate sustainable development principles and practices into the action plans of the State, and to meet an associated target indicator to limit the use of ozone-depleting substances.

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<sup>28</sup> Vienna Convention for the Protection of the Ozone layer, art. 4, March 22, 1985, 1513 U.N.T.S. 323, 26 I.L.M. 1529, art. 4 [hereinafter Ozone Convention]; Montreal Protocol on Substances that Deplete the Ozone Layer, September 16, 1987, 26 I.L.M. 1550, *available at* [http://treaties.un.org/doc/Treaties/1989/01/19890101%2003-25%20AM/Ch\\_XXVII\\_02\\_ap.pdf](http://treaties.un.org/doc/Treaties/1989/01/19890101%2003-25%20AM/Ch_XXVII_02_ap.pdf) (last visited Nov. 12, 2011); Montevideo IV, *supra* note 7.

## Principle 17

International Environmental Justice requires that the world's seas and oceans should only be used for only nonviolent activities, and it further mandates that the global marine environment and resources shall be protected and improved for all life forms on earth.<sup>29</sup> International Environmental Justice also expects the international community to strive to develop and implement innovative and effective measures to enhance the existing international legal regime to limit or prevent contamination of the marine environment and marine resources. Therefore, developed countries should increase their aid and support to developing and least developed countries, particularly those in Africa, so these countries can fulfill their international obligations to safeguard and preserve the marine environment for present and future generations; meet the time-sensitive international development goals, particularly the goals to maintain a satisfactory and ecologically healthy environment; adopt sustainable development principles and measures as guiding principles in the development and implementation of policies, plans, laws, regulations and rules in a country, and meet the associated international target indicator to stop the degradation of the marine environment.

## Principle 18

International Environmental Justice calls for the reduction or elimination of discharges of persistent organic pollutants into the global environment.<sup>30</sup> International Environmental Justice further requires that the international community work together to

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<sup>29</sup> United Nations Convention on the Law of the Sea, arts. 197-203, 1833 U.N.T.S. 3, 21 I.L.M. 1261 (1982), *available at* [http://treaties.un.org/doc/Treaties/1994/11/19941116%2005-26%20AM/Ch\\_XXI\\_06p.pdf](http://treaties.un.org/doc/Treaties/1994/11/19941116%2005-26%20AM/Ch_XXI_06p.pdf) (last visited Nov. 12, 2011); Montevideo IV *supra* note 7.

<sup>30</sup> Stockholm Convention on Persistent Organic Pollutants, May 22, 2001, 40 I.L.M. 532 (2001), *available at* [http://treaties.un.org/doc/Treaties/2001/05/20010522%2012-55%20PM/Ch\\_XXVII\\_15p.pdf](http://treaties.un.org/doc/Treaties/2001/05/20010522%2012-55%20PM/Ch_XXVII_15p.pdf) (last visited Nov. 12, 2011); Montevideo Programme IV.

ensure that international legal instruments and processes, including international and trade documents, such as the Declaration for the Establishment of a New International Economic Order and the Charter of Economic Rights and Duties of States, are adequately implemented, re-assessed, and strengthened and for the international community to adopt additional innovative requirements and procedures to safeguard humankind and the global environment from the negative impacts of persistent organic pollutants.

Therefore, developed countries should contribute to the efforts of developing and least developed countries, especially those in Africa, so these struggling countries can meet their international obligations to protect public health and the environment from the detrimental effects of persistent organic pollutants and achieve the time-sensitive global development goals, especially the goal to guarantee a sustainable environment, and meet related targets to incorporate sustainable development measures into State action plans and strategies.

#### Principle 19

International Environmental Justice calls for all transnational corporations to respect and fully comply with international law and domestic laws when conducting business in a foreign country. International Environmental Justice further expects that the international community, mindful of the United Nations Global Compact, will work together in the review of existing laws and policies and formulate new rules and procedures to regulate and monitor the activities of transnational corporations and ensure that their activities do not prevent a host country from achieving the overarching goal of sustainable development.<sup>31</sup> Therefore, developed countries should encourage

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<sup>31</sup> Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, princ. 14, E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003), *available at*

transnational corporations under their authority to keep and use the profits generated from activities in a host country in such host country, allow developing countries to compete in their markets, and reduce tariffs, particularly for agricultural goods, so least developed countries can obtain an economic benefit. Also, developed countries should provide generous support to developing and least developed countries, particularly those in Africa, so these poorer countries can achieve the time-sensitive international development goals, particularly the goal to ensure and maintain a satisfactory and ecologically healthy environment and meet the corresponding targets to incorporate sustainable development principles into a State's action plans and processes and remedy injury to environmental resources.

#### Principle 20

International Environmental Justice affirms the right of access of all States to information relating to the global environment, public participation in international decision-making processes related to the environment, and justice in environmental matters pertaining to the global environment.<sup>32</sup> International Environmental Justice also requires that the international community cooperate in the development of a more inclusive international decision-making process that ensures real participation by all States based on fairness and equality in resolving issues of global concern, particularly as it relates to the global environment. International Environmental Justice further requires

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[http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.12.Rev.2.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En) (last visited Nov. 12, 2011); Programme of Action on the Establishment of a New International Economic Order, ¶ 4, A/RES/S-6/3202 (May 1, 1974); Montevideo IV, *supra* note 7.

<sup>32</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, art 1, 2161 U.N.T.S. 447, 38 I.L.M. 517 (1999) [hereinafter Aarhus Convention], available at [http://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch\\_XXVII\\_13p.pdf](http://treaties.un.org/doc/Treaties/1998/06/19980625%2008-35%20AM/Ch_XXVII_13p.pdf) (last visited Oct. 14, 2011); Declaration on the Establishment of a New International Economic Order, *supra* note 7, ¶ 4; Constitutive Act of the African Union, art. 3, July 11, 2000, O.A.U. Doc. CAB/LEG/23.15 (2001) (entered into force on May 26, 2001); Montevideo IV, *supra* note 7.



that the international community strengthen existing international law to ensure transparency and fairness in the global environmental decision-making process and full and real participation of developing and least developed countries in the decision-making process related to the global environment, particularly those in Africa, and that the international community support the work of the United Nations Environment Programme, especially in developing environmental law through the Programme for the Development and Periodic Review of Environmental Law (Montevideo Programme). Therefore, developed countries should provide more financial, technical and other assistance to developing and least developed countries, particularly those in Africa, so such States can meet their international obligations to guarantee procedural environmental rights at the national level and to achieve the time-bound global development goals and targets, particularly the goal to ensure a sustainable environment and corresponding targets to incorporate sustainable development principles into State action plans and remedy injury to environmental resources.

#### Principle 21

International Environmental Justice mandates that public international law should set the boundaries for any restrictions on any individual human or group rights.<sup>33</sup>

International Environmental Justice further requires that appropriate organizations and bodies in the United Nations System, including treaty monitoring bodies, assist the international community in developing additional and effective measures to monitor a

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<sup>33</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948); Universal Declaration on the Human Genome and Human Rights, UNESCO Res 29 C/17, 29<sup>th</sup> Sess. (November 11, 1997), *available at* [http://portal.unesco.org/en/ev.php-URL\\_ID=13177&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13177&URL_DO=DO_TOPIC&URL_SECTION=201.html) (last visited November 12, 2011); Universal Declaration on Bioethics and Human Rights *adopted at* the 33<sup>rd</sup> Session of General Conference of UNESCO on October 19, 2005, *available at* <http://unesdoc.unesco.org/images/0014/001461/146180E.pdf> (last visited November 12, 2011); Montevideo IV, *supra* note 7.

State's compliance with international human rights instruments, particularly the International Bill of Human Rights and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.<sup>34</sup> International Environmental Justice also demands that the international community provide adequate resources to the relevant organs and organizations in the United Nations System in support of their work to develop and strengthen international law, especially to develop new human rights to the environment, peace and security and development. Therefore, developed countries should provide ample resources to developing and least developed countries, especially those in Africa, so developing countries with special needs can achieve the time-sensitive global development goals, particularly the goal to secure and maintain a satisfactory and ecologically healthy environment for current and future generations, and the corresponding targets to incorporate sustainable development procedures, principles and measures into the policies and national plans of a State and to remedy injury to environmental resources of such a country.

#### Principle 22

International Environmental Justice recognizes the important role women, youths and indigenous and ethnic peoples and their local communities play in the assessment and implementation of global policies and programs that promote sustainable development.<sup>35</sup> International Environmental Justice also demands that the international

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<sup>34</sup> Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, G.A. Res.53/144, annex, U.N. Doc. U.N. Doc. A/RES/53/144 (1999), *available at* [http://www.unhchr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.RES.53.144.En](http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.RES.53.144.En) (last visited November 12, 2011); Montevideo IV, *supra* note 7.

<sup>35</sup> Rio Declaration, *supra* note 7, princs. 20-22; Convention Concerning Indigenous and Tribal Peoples in Independent Countries, arts. 7 & 15, 72 ILO Official Bull. 59, 28 I.L.M. 1382 (1989) [hereinafter ILO No.

community adopt additional measures and mechanisms to facilitate broad and real involvement of women, youths, indigenous and ethnic peoples and representatives of their local communities in the implementation and evaluation of international policies and programs on sustainable development at the domestic level; empower women, youths and indigenous and ethnic people; and build a global alliance that brings together diverse groups of people and governments to promote sustainable development. Therefore, developed countries should assist developing and least developed countries, especially those in Africa, in realizing all the time-based global development goals and corresponding targets.

#### Principle 23

International Environmental Justice calls for broad-based environmental education everywhere in the world and demands that the international community encourage States to design and implement educational laws, policies and programs that promote and protect broad environmental education, take into account local knowledge about the environment, and eschew corruption in all its forms.<sup>36</sup> Therefore, developed countries should provide adequate resources to developing and least developed countries, particularly those in Africa, to assist these struggling countries in their efforts to fulfill their international commitments to promote environmental education through laws, action

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169]; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res. 47/135, annex, U.N. Doc. A/47/49 (1993), *available at* <http://www2.ohchr.org/english/law/minorities.htm> (last visited Nov. 12, 2011); United Nations Economic and Social Council; Committee on Economic, Social, and Cultural Rights; Sub-Commission on Prevention of Discrimination and Protection of Minorities, *Final Report: Review of Further Developments in Fields with which the Sub-Commission has been Concerned: Human Rights and the Environment*, U.N. Doc. E/CN.4/Sub.2/1994/9 (1994) (*prepared by Fatma Zohra Ksentini*), *available at* <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/eeab2b6937bcca18025675c005779c3?Opendocument> (last visited Nov. 12, 2011); Agenda 21, *supra* note 7, chs. 24-28; Montevideo IV, *supra* note 7.

<sup>36</sup> Belgrade Charter: A Global Framework for Environmental Education, October 22, 1975; Stockholm Declaration, *supra* note 13, princ. 19; Declaration on the Establishment of a New International Economic Order, *supra* note 7, ¶ 1; Universal Declaration of Human Rights, *supra* note 33; Montevideo IV, *supra* note 7.

plans, guidelines and other mechanisms, incorporate sustainable development rules and procedures into the learning process, develop laws and institutions to combat corruption, particularly in the public sector, and achieve the time-sensitive international development goals, particularly the goal to ensure and maintain a satisfactory and ecologically healthy environment, and the corresponding target to include sustainable development principles and measures in strategies and policies of a State.

#### Principle 24

International Environmental Justice demands that that the amount of waste generated in each State be reduced to the lowest possible levels in order to protect the global environment and the health of all forms of life on earth and insists that the international community make every effort to ensure that the principles in this Declaration are fully implemented, complied with, regularly reviewed, and built upon.<sup>37</sup> International Environmental Justice further requires that a comprehensive program of action be prepared to elaborate upon and develop strategies to implement the general principles of International Environmental Justice set out in this Declaration on the Establishment of an International Environmental Justice Legal Regime. Developed countries should provide substantial resources for these purposes. People in every part of the world should commit to a life-style change based on respect for earth's environment and ecosystems and the conservation of natural resources, and hold their public officials accountable in the use and management of public goods and resources, and decry corruption in any form.

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<sup>37</sup> Environmental Justice Principles, *supra* note 22, princ. 17; Rio Declaration, *supra* note 7, princ. 27; Montevideo IV, *supra* note 7.

## **Appendix B**

### **Summary of the Draft Declaration on the Establishment of an International Environmental Justice Legal Regime (“Declaration”)**

**The entire Declaration is attached as Appendix A**

**The Declaration consists of 21 Introductory Paragraphs and 24 substantive Principles, which are summarized as follows:**

The Introductory Paragraphs describe the historical struggle of African countries for economic, environmental, political and social liberation and identify the primary purposes of the Declaration to promote an international environmental justice legal regime based on fairness and legal equality, and to correct inequities in international environmental law and ensure that developing countries, particularly those in Africa, do not bear a disproportionate share of global environmental burdens.

**Principle 1** calls for additional and effective measures to strengthen international environmental law; specifies the applicable goals, principles, measures, obligations and commitments that apply throughout the Declaration; requires that the international community cooperate in the strengthening of international environmental law; insists that developed countries provide additional substantial aid to developing and least developed countries, particularly those in Africa (“developing countries”), in accordance with relevant international instruments; and requires that developing countries re-affirm their commitments to strengthen their individual and collective political wills to take action in furtherance of international law, particularly to combat corruption and terrorism.

**Principle 2** demands that earth’s biological diversity and its numerous components be conserved and used prudently and the benefits derived from the use of genetic resources be allocated in a fair way; identifies effective measures the international

community should adopt and implement to realize the goals of Principle 2; and insists that developed countries assist developing countries in protecting and maintaining biological diversity and ensuring environmental sustainability.

**Principle 3** requires that earth's natural resources be protected and improved for all life-forms; identifies effective techniques the international community should adopt to achieve the objectives of Principle 3; and insists that developed countries provide substantial resources to developing countries to protect and enhance the global environmental resources and guarantee environmental sustainability.

**Principle 4** calls for international peace and security for all of humankind; identifies additional measures the international community should adopt to achieve the aims of Principle 4; and insists that developed countries provide necessary assistance to developing countries to promote the rule of law at the international and national levels and ensure a sustainable environment.

**Principle 5** demands that earth's environment and humankind be spared from the effects of warfare, especially chemical and biological warfare and weapons of mass destruction; proposes new and innovative procedures the international community should adopt to realize the goals of Principle 5; and insists that developed countries provide substantial aid to developing countries so they can fulfill obligations they may have in international law to dismantle weapons of mass destruction and to promote peace and security, and to guarantee environmental sustainability.

**Principle 6** denounces and rejects international policies, plans, and measures that promote racial and ethnic discrimination or foster animosity between States; identifies relevant documents the international community should be guided by to actualize the

purposes of Principle 6; and insists that developed countries provide ample material support to developing countries to promote human rights, good governance, global peace and security and to secure and maintain a satisfactory and ecologically healthy environment.

**Principle 7** affirms the right of a State and its people to pursue economic development in a sustainable way; identifies effective techniques the international community should adopt to realize the aims of Principle 7; and insists that developed countries offer generous lending terms to developing countries so such poorer countries can repay their international loans and ensure a sustainable environment.

**Principle 8** demands that the global climate system be safeguarded and restored for the benefit of present and future generations and all life-forms on earth; identifies tools the international community should use to attain the objectives of Principle 8; and insists that developed countries provide substantial aid to developing countries to enable these developing countries to safeguard the climate system and guarantee environmental sustainability.

**Principle 9** calls for an end to the release of dangerous substances, heat or greenhouse gases at unsafe levels or concentrations; identifies practical steps the international community should take to achieve the targets of Principle 9; and demands that developed countries provide generous support to developing countries in order for these countries to adequately reduce greenhouse gas emissions and respond to the impacts of climate change and secure and maintain a satisfactory and ecologically healthy environment.

**Principle 10** considers actions within a State's jurisdiction or authority that cause harm to humans or the environment in another State to be a violation of international law; identifies new measures the international community should implement to reach the goals of Principle 10; requires that developed countries provide sufficient aid to United Nations bodies; and developed countries should help developing countries to effectively manage hazardous wastes throughout their life-cycle and ensure a sustainable environment.

**Principle 11** demands that the transboundary environmental impacts of development be considered for projects, policies, strategies and plans; identifies practical steps the international community should take to fulfill the aims of Principle 11; and insists that developed countries provide substantial resources to developing countries so they can set up processes to enable effective environmental impact and strategic environmental assessments and guarantee environmental sustainability.

**Principle 12** calls for an end to the illegal transfer and disposal of hazardous wastes in the continent of Africa; identifies effective tools the international community should adopt to achieve the aims of Principle 12; and insists that developed countries end the transboundary hazardous waste trade and provide substantial support to developing countries so they can effectively combat the illegal hazardous waste trade and secure and maintain a satisfactory and ecologically healthy environment.

**Principle 13** calls for international cooperation in the management of forests and forest resources; identifies effective procedures and measures the international community should adopt to realize the purposes of Principle 13; and demands that developed countries provide substantial resources to developing countries so such



countries can make inroads in the fight to preserve and restore forest capital, mitigate the effects of deforestation, and guarantee environmental sustainability.

**Principle 14** requires the use of comprehensive and effective measures to mitigate the effects of drought and desertification around the world, particularly in African States; identifies new and innovative techniques the international community should adopt to implement the targets of Principle 14; and insists that developed countries provide substantial aid to developing countries in order for these countries to adequately combat desertification and/or drought and ensure a sustainable environment.

**Principle 15** demands the protection of human health and the environment from harm that may occur from the global trade in certain hazardous products and pesticides; identifies effective steps the global community should take to fulfill the aims of Principle 15; and requires that developed countries provide generous aid to developing countries so they can effectively safeguard the environment and human health from hazardous compounds and pesticides in global trade and guarantee environmental sustainability.

**Principle 16** opposes human activities that modify or are likely to modify the ozone layer and requires that the health of humankind and the global environment be safeguarded from the harmful consequences of such dangerous activities; identifies techniques the international community should adopt to realize the objectives of Principle 16; and insists that developed countries provide generous aid to developing countries so inroads can be made in developing countries to limit human activities that alter or have the potential to alter the ozone layer and to ensure a sustainable environment.

**Principle 17** mandates that key global water bodies be used for nonviolent activities and the global marine environment and resources be protected and enhanced for

all of earth's life forms; identifies steps the international community should take to fulfill the purposes of Principle 17; and demands that developed countries provide substantial assistance to developing countries so these poorer countries can adequately safeguard and preserve the marine environment and guarantee environmental sustainability.

**Principle 18** requires the reduction or elimination of discharges of persistent organic pollutants into the global environment; identifies practical measures the international community should adopt to achieve the goals of Principle 18; and insists that developed countries provide generous aid to developing countries to protect public health and the environment from the deleterious effects of persistent organic pollutants and to secure and maintain a satisfactory and ecologically healthy environment.

**Principle 19** calls on all transnational corporations in their activities in countries around the world to respect and fully comply with international law and laws of the host countries; identifies techniques the international community should adopt to realize the purposes of Principle 19; and demands that developed countries incentivize transnational corporations under their authority to keep profits from host countries in host countries, and provide generous support to developing countries to ensure a sustainable environment.

**Principle 20** affirms the right of access of all States to information relating to the global environment, public participation in international decision-making processes related to the environment, and justice in matters concerning the global environment; identifies new and effective procedures the international community should support and promote to achieve the targets of Principle 20; and requires that developed countries

assist developing countries in guaranteeing procedural environmental rights at the national level and environmental sustainability.

**Principle 21** mandates that public international law should set the boundaries for restrictions on any individual or group freedoms; calls on the global community to help relevant United Nations bodies in the development of international environmental and human rights law; and insists that developed countries provide significant extra resources to developing countries so they can secure and maintain a satisfactory environment.

**Principle 22** recognizes the important role of women, youths, indigenous and ethnic peoples and their local communities in the assessment and implementation of global policies and programs to achieve sustainable development; identifies effective practices the international community should adopt to achieve sustainable development; and requires that developed countries assist developing countries in achieving all the time-based global development goals and corresponding targets.

**Principle 23** calls for access to broad-based environmental education in every part of the world; identifies innovative measures the international community should implement to attain the goals of Principle 23; and demands that developed countries provide adequate resources to developing countries so they can adequately promote broad environmental education, fight corruption and ensure environmental sustainability.

**Principle 24** demands that the amount of waste generated in each State be reduced so the global environment and the health of all life-forms on earth may be protected; calls on the international community to ensure that the principles in this Declaration are fully implemented and built upon; insists that developed countries

provide extra resources to achieve these goals and calls for all of humankind to commit to a new life-style based on a high regard for nature and every living being on earth.

## Appendix C

### **Questionnaire: NIGERIA: THE STATUS OF THE LEGAL AND NON-LEGAL FRAMEWORK FOR PROCEDURAL ENVIRONMENTAL RIGHTS SINCE 1988<sup>38</sup>**

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#### **Aim of Questionnaire:**

To obtain the views of Nigerians regarding the availability of the rights of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) in Nigeria.

#### **Instructions for completing the Questionnaire:**

For questions with possible multiple responses put a check mark in front of the selected responses as appropriate.

If yes or no responses are sought, circle the appropriate response.

If there is insufficient space to respond to a question, use a separate sheet of paper to provide a detailed response.

Questions should be answered in the context of federal laws, regulations, policies and action plans adopted in Nigeria after 1988.

Kindly include your name/signature (or initials), where you reside in Nigeria, and the date the questionnaire was completed.

#### **Principle 10 of the 1992 Rio Declaration on Environment and Development states that:**

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

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<sup>38</sup> *This questionnaire was developed using the Regional Environmental Center (REC) questionnaire: REC: Status of Public Participation: Annex 2, as a blueprint.*

Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

**Specific Terms:**

Non Governmental Organization: NGO

Environment: Natural and man-made environment

EIA: Environmental Impact Assessment

**QUESTIONS:**

**1. What are the existing legal instruments in Nigeria that specify rights of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE)?**

**AI   PP   ATJ   EE**

- Constitution
- access to information/Freedom of Information law
- environmental framework law
- EIA law
- permitting and licensing procedure law
- nature conservation law
- waste/management/law
- water management law
- oil & gas law
- petroleum law
- air protection law
- Energy law
- land use law
- media law
- administrative law
- other laws or regulations such as:

**2. Please indicate what other legal mechanisms exist in Nigeria which secure access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE):**

**AI   PP   ATJ   EE**

- ombudsman
- right to petition
- Right to referendum
- Environmental riverkeeper
- Other(s) such as:

**3. Is there a substantive right to a satisfactory environment guaranteed by law or Constitution in Nigeria? (specify)**

**Yes/No**

**4. How is legal standing defined in Nigeria?**

- every citizen has the right to participate in a case
- only those parties who prove “a tangible and demonstrated direct legal interest in the outcome” of the case have the right to participate in a case
- NGOs have the right to participate in a case
- None of the above

**5. What do you consider to be the major obstacles of using existing legal processes in Nigeria to secure access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE)?**

**AI PP ACJ EE**

- legal framework does not exist
- a citizen suit provision does not exist
- existing legal instruments are too general and have no detailed specific provisions for environmental actions
- existing legal framework is not known enough by the public
- citizens/NGOs are too passive to use the existing mechanisms
- existing legal mechanisms are too complicated to use
- public/NGOs need more education about existing legal processes
- government officials need more training about existing legal processes
- no legal assistance available
- limited legal assistance available

**6. Are there citizen enforcement, monitoring, inspection rights guaranteed by law or the constitution for?**

- public involvement in enforcement, monitoring and compliance with laws, regulations and permits concerning the environment
- public involvement in environmental inspections/audits

**7. Is there public notice of?**

**Yes/No** EIA process

**Yes/No** permitting process for an activity related to the environment

**Yes/No** national physical planning processes related to the environment

**8. Is the Public effectively involved in practice?**

Yes/ No in developing legislation related to the environment  
Yes/ No in the development of regulatory standards related to the environment  
Yes/ No in national physical planning processes related to the environment  
Yes/ No in the EIA process  
Yes/ No in a permitting process for an activity related to the environment  
Yes/ No in the enforcement of laws, regulations and permits related to the environment

**9. What legal forms of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) are most often used in Nigeria? (also give ranking 0 being the lowest and 5 being the highest)**

AI PP ATJ EE

- constitutional environmental rights
- legislation and regulations
- remedies redressing abuses guaranteed by law
- remedies addressing abuses guaranteed by constitution
- right to know and freedom of information law

**10. Have you experienced successful outcomes of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) in Nigeria? Please give examples:**

**11. What kind of non-legal instruments are used for access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) in Nigeria? (Rank 0 to 5: never-very often)**

AI PP ATJ EE

- writing letters of protest
- collecting signatures
- petition
- letter of complaint
- lobbying
- demonstrations
- protest actions
- posters
- public meetings
- public hearings



- public forums
- public notices
- publicizing using media/TV/radio
- publishing newsletters/brochures
- publishing advertisements
- actions
- building action coalition
- cooperative action between NGOs
- cooperative action with regional NGOs
- cooperative actions with international NGOs
- networking
- expert advice/advisory services (legal and others)
- others:

**12. Does the public have access to information for?**

- **Yes/ No** the development of environmental legislation:
- **Yes/ No** the development of regulatory environmental standards
- **Yes/ No** local/ regional physical planning decisions related to the environment
- **Yes/ No** EIA procedures
- **Yes/ No** permitting process related to the environment
- **Yes/ No** the enforcement of laws, regulations and permits related to the environment

**13. What kind of support is given to promote public participation activities related to the environment in Nigeria?**

**Financial:**

**Yes/ No** Capacity building, training

**Yes/ No** Environmental education

**14. Do you have ongoing public-awareness and educational programs on issues related to access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) in Nigeria?**

**AI**   **PP**   **ACJ**   **EE**

a) **Yes/No**

b) **Who is initiating them?**

- government
  - federal
  - state

- local
- NGOs
- business
- national foundations
- international foundations
- international assistance programs

**c) Who is funding them?**

- government
  - federal
  - state
  - local
- NGOs
- business
- national foundations
- international foundations
- international assistance programs

**d) Does the environmental education program in Nigeria include education on anti-corruption strategies to combat public sector corruption in the environment sector?**

**Yes/No**

**15. What are the biggest obstacles of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE), within the existing legal and non-legal framework and in existing practices in Nigeria? Please identify briefly the limitations:**

- In legal field (specify for AI, PP, ACJ and EE):
  
- In non-legal field (specify for AI, PP, ACJ and EE):

**16. Please identify areas where the present framework regarding access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) in Nigeria should be changed:**

- In legal field (specify for AI, PP, ACJ, and EE)

- In non-legal field (specify for AI, PP, ACJ and EE)

**17. Which are the areas within the existing framework where access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) that could be improved in Nigeria? Please identify briefly the limitations.**

- In legal field (specify for AI, PP, ACJ and EE):
- In non-legal field (specify for AI, PP, ACJ and EE):

**18. How could the present situation of access to information concerning the environment (AI), public participation in decision-making related to the environment (PP), access to justice in environmental matters (ACJ), and environmental education (EE) be improved in Nigeria?**

- In legal field (specify for AI, PP, ACJ, and EE):
- In non-legal field (specify for AI, PP, ACJ, and EE):

**Thank you for completing the Questionnaire**

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 December 2009

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