

## THE NEED OF SUSTAINABLE ENVIRONMENT AS A HUMAN RIGHTS ISSUE

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### ABSTRACT

Environmental protection is a recent concept, developed in the international or regional human right protection systems or mechanisms. In those early days, especially when modern human rights protection mechanisms such as UDHR, ICCPR, IESCR and other human rights instruments adopted, the concern given to environmental protection was not that much significant. The only few provisions in these instruments recognizes some rights like the right to healthy and favorable condition of work, the right to get adequate food, clothing and shelter and the like. It was during in 1992, earth summit, that the relationship between human rights and sustainable environment is addressed.

The need for the protection of environment becomes a necessity. In fact environment is a totality of human life; it means that it is sources of food, clothing, and shelter. The denial of environmental protection could bring about the denial of some fundamental rights such as the right to health, life, food and so on.

It is true that, environment should be properly managed in order to make it favorable to human life. However; the effort to protect the environment faces different challenges like the issue of locus-standi, justifiability, conflict between developmental efforts and environmental protection, burden of proof, lack of cooperation among states and imbalance in the sharing of burden. This paper gives an overview of such challenges in light of various international instruments.

Furthermore the paper gives suggestions for ensuring and protecting environmental rights or sustainable environment. In the present work cooperation among states in the world, integrated effort to protect the rights between different stakeholders, and equitable burden of shares in the overall environmental protection issues have been suggested for the attainment of the right in its practical sense.

**Key Words:** Sustainable<sup>1</sup> Environment, Human Rights, Environmental Protection, Basel convention, Rotterdam convention, Stockholm convention.

## Introduction

Environmental protection is one of the major issues that attract the attention of every one in the contemporary world. The very reason that attracts the attention of the world towards environment is the awareness of the world towards environment related issues as damages in the environment results damages on the livelihood, health and well being of human beings. Global warming, depletion of ozone layer, Trans boundary movement of hazardous wastes /chemicals, and desertification are some of the challenges that have been faced as a result of miss-use, miss-management or improper utilization of natural resources or the environment at large.

Traditionally or in earlier days the concern given to environment was not that much significant. Now a days, the activities of human being, knowingly or unknowingly damages the environment which ultimately affects the health, life and well being of living things in general.

In order to handle these challenges and to make the environment favorable to life (present or future), the sustainable use of the environment becomes essential whether or not this issue i.e. sustainable environment has something to do with the issues of human right that is addressed in this paper.

As misuse, mismanagement or improper utilization of natural resources damages the condition of environment that ultimately affects the health, life and wellbeing of human in general; sustainable environment by itself becomes the right by its own. In order to protect or minimize the effects of environmental damage the sustainable use of environment be-came doubtless. However; the effort to attain sustainable environment: using the natural environment without endangering the need and interest of the future generation, faces deferent challenges. At the beginning, there was no consensus among scholars and human rights advocators as to how an environmental right has to be protected. Environmental rights in strict sense were alien to International Human right Instruments i.e. UDHR, ICCPR, ICESCR etc. The relationship between human right and environment was not considered much during those times. As far as the issue of protection of environmental rights is concerned, there were different approach to address human rights and environment. Some argues that the existed international human rights instruments are adequate to address environmental rights or sustainable environment. Where as, on the contrary some argues that the existed human rights instrument and institutions are not adequate. As a result they proposed the adoption of new environmental they proposed the adoption of new environmental protection instruments. The third approach lies in between the two and forward the implementation of both existed human rights instruments and environmental instruments integrated. Hence the efforts made to achieve environmental problems are disintegrated, manifested by lack of cooperation of most countries.

## 2 Notion of Environmental Protection, Environmental Right and Sustainability

### 2.1. Meaning of Environment

The word environment means ‘environment is the sum of all external influences and conditions affecting the life and development of an organism or ecological community’.<sup>i</sup> Or in other words ‘the natural surrounding of an organism, which includes everything, living and non-living, that affects the organisms’<sup>ii</sup> Like wise, the term environment is broadly defined ‘to include the physical conditions that will be affected by a proposed action, including land, air water, minerals, flora, fauna, noise, resource of agriculture, archeology, historic or aesthetic’.<sup>iii</sup> Further according to Encyclopedia of sustainable development

*"The environment is our life support system. It includes everything that we rely on during our life time such as air, water metals, soil, rock and other living organisms. It is important to remember that the state our environment is influenced by our behavior and that we have the opportunity to either nurture or mistreat it."*<sup>iv</sup>

## **2.2. Sustainability and Sustainable Environment**

On the other hand the definition of sustainability sees human activities as part of and dependent up on the natural world. The term sustainability is about meeting basic human needs and wants.<sup>v</sup> Most definitions stress that sustainability requires making decisions that recognize the connection between actions and effects in the environment, economy and society. It is very much about what kind of a legacy is human requirement to leave for our children and grandchildren.<sup>vi</sup>

Furthermore the concept of sustainable environment is not as such different from the definition provided to sustainability above. It is also some how similar with the concept of sustainable development. The concept of sustainable development means that the needs of the present generation should be met without compromising the ability of future generalization to meet their own needs.<sup>vii</sup> This definition of the concept of SD is said to be the guiding principles that recognizes the interdependence of environmental, social and economic systems and promotes equality and justice through people empowerment and global citizenship.<sup>viii</sup>

However; the concept of sustainable environment or development does not only focuses on the enjoyment of natural resource with out affecting or compromising the need of the future generations. As all knows the environment includes renewable as well as non renewable resources. So that sustainable development means that development takes place in a way that allows renewable resources to re-accrue.<sup>ix</sup> The concept of sustainable environment should thus be exploited in such a way that it will be able to sustain human, plant and animals life over the longest possible period.<sup>x</sup> It ultimately mean about sustainable human development which places people at the center of all development activities.<sup>xi</sup>

## **2.3. The concept of Human Rights**

The concept of Human rights can also be defined as commonly understood as those rights to which a person is inherently entitled merely for being human which may not be renounced or forfeited.<sup>xii</sup> However, some countries constitution may put in place some limitations upon what is called human rights.

The concept of human rights according to Manfred Nowak can be defined differently from descriptive, legal and philosophical approaches. In the first approach, according to him, it means those fundamental rights, which empower human beings to shape their lives in accordance with dignity.<sup>xiii</sup> While in the second approach it means the sum of civil, political, economic social, cultural and collective rights laid down in international and regional human rights instruments, and in the constitutions of states.<sup>xiv</sup> And 3rdly it is the only universally recognized value system under present international law comprising popular participation, social justice, the rule of law and good governance.<sup>xv</sup>

What ever the definition might be, it has to be emphasized regarding human rights in general that:

*All human rights are universal indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner; on the same footing, and with same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the politician, economic and cultural systems, to promote and protect all human*

*rights and fundamental freedoms.*<sup>xvi</sup>

## **2.4. Environmental rights**

The term environmental rights is sometimes referred to as third generation rights that people have the right to live in a safe and healthy environment and that groups of people have the right to cultural, political and economic development.<sup>xvii</sup> In this regard, it seems difficult to categorize; environmental rights' in to a group rights that can be claimed collectively.

According to certain broader definition, environmental rights encompass three main areas; the right to clean and safe environment, the right to act to protect the environment and the right to information to access to justice and to participate in environmental decision making.<sup>xviii</sup>

By the second definition of environmental rights, it can be observed that the enjoyment of environmental rights (three components) might be on individual or on collective manner. This means that, viewing environmental rights as absolutely individual or collective is defective. The right to clean and safe environment can be claimed individually or otherwise.

## **2.5. The Relationship between Environment and Human Rights**

The link between human rights and environment is intertwined or interconnect that one can not exist with out the other. For instance, the right to life can not be realized without basic rights to safe water, air and land.<sup>xix</sup> That is why the concept of sustainable environment or development gets in to practice.

In fact concern given for environmental rights, environmental protection and the need for sustainable environmental is a recent phenomena; however it has some significant relationship with other Human Right instruments. After the establishment of the United Nations organizations in 1945, a number of international as well as regional or country specific instruments were formulated or adopted.

In the international system, taking in to considerations the weakness of the league of nations and the lessons from two most devastating wars in the world; WWI and WWII, the global system especially the United Nations Organizations prepared human rights instruments that recognizes the inherent rights of human beings. Some of these instruments are the UDHR, ICCPR, ICESCR, CEDAW, CEARD and the likes at different times. These instruments mostly affirm recognition of the inherent dignity and of the equal and inalienable rights of all members of thee human family is the foundation of freedom justice and peace in the world.<sup>xx</sup> Nevertheless, most of them recognize some pertinent rights such as a favorable working conditions, adequate standard of living and health care facilities. This shows that the attention given to the protection of environment, environmental rights and sustainability is almost non-existent.<sup>xxi</sup> Hence none of them clearly stipulates environmental rights and sustainability as it is valued, today.

It was during 1970's and 1980's that the issue of sustainability emerged after a serious of meetings and reports at global plane. Especially, Declaration of the 1972 Stockholm Conference on the Human Environment (UNCHE) marked the first great international meeting on how human activities were harming the environment and putting human at risk.<sup>xxii</sup>

In 1980, the International union for the conservation of nature along with the UN environmental program and the world wildlife fund, promoted the idea of environmental protection in the self-interest of the human species at the 1980 world conservation strategy which they prepared<sup>xxiii</sup>. In so doing, the concern for environment and human rights increased.

In 1992, the United Nations Conference on Environment and Development in Rio de Janeiro<sup>xxiv</sup> reaffirms that human beings shall be at the center of concerns for sustainable development and they are entitled to a healthy and productive life in harmony with nature.<sup>xxv</sup>

Then after, environmental issues are best handled with the participation of all concerned citizens at relevant level. Each individual's access to information concerning the environment that is held by public authorities, the opportunity to participate in decision making processes, effective access to judicial and administrative proceedings, including redress and remedy are provided at the national level of different countries<sup>xxvi</sup>.

Different international environmental protection instruments adopted on different issues some of these instrument are:

- Convention On Biological Diversity
- The United Nations Convention to Combat Desertification (UNCCD) in those Countries Experiencing Serious Drought and /or Desertification, Particularly in Africa.
- The United Nations Framework Convention on Climate Change (UNCCC)
- The Control of Trans –Boundary Movements of Hazardous Wastes And Their Disposal (Basel Convention)
- Convention on Persistent Organic Pollutants (The Stockholm Convention)
- Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticide in International Trade (The Rotterdam Convention) and Etc.

In addition to these kinds of legal instruments, a number of regional environmental conventions and country specific constitutions are enacted by different countries.<sup>xxvii</sup> Global environmental conferences were also practiced in the global system like the Rio summit and the Johannesburg summit on sustainable development. Apart from this the cultural purpose or theme of SHD is to create an enabling environment in which all human beings lead, secure and creative lives. It is directing towards the promotion of human dignity and the realization of all human rights, economic, social cultural, civil and political.<sup>xxviii</sup>

The 1994 draft declaration of principles on Human Rights and the environment provides some principles attesting the relationship between environment and human rights. In this regard, this declaration states that

- *Human rights, an ecologically sound environment, sustainable development and peace are interdependent and indivisible.*<sup>xxix</sup>
- *All persons have the right to a secure, health and ecologically sound environment.<sup>xxx</sup> This right and other human rights, including civil, cultural, economic, political and social rights, are universal, interdependent and indivisible.*
- *All persons shall be free from any form of discrimination in regard to actions and declaration that affect the environment.*<sup>xxxi</sup>
- *All persons have the right to an environment adequate to meet equitably the needs of present generations and that does not impair the rights of future generations to meet equitably their needs.*<sup>xxxii</sup>

Though this draft declaration consists of a number of principles recognizing the relationship between human rights and environment, it lacks a sense of legal obligation or binding character since it is merely a draft declaration.

As it has been mentioned before environment and human rights are interrelated since the source of some rights is the environment, for example, the source of food or the right to food is highly depend out on the capacity of nature (land, water. . . ) to be productive. There fore, environment and HR are intertwined.



### **3. International Legal Framework for Environmental Rights or Sustainable Environment**

The international system or the global community has developed a number of binding as well as non binding instruments that directly or indirectly protect or promote environmental rights, sustainability and HR..

#### **3.1. The Bills Of Rights as an Instrument to Protect Environmental Right and Sustainability.**

The three most important international legal instruments, that comprises of what is called 'The bills of rights', are the UDHR, ICESCR and ICCPR. The first two instruments are basically important regarding environmental rights or in providing same fundamental rights that can be categorized in to modern days so called 'environmental rights'

##### **The UDHR**

Though UDHR does not clearly provide for environmental rights in present sense, it consists of some provisions that one way or the other relates to it. For instance, it provides that,

*'Everyone, as a member of society, has the right to social security and is entitled to realization, though national effort and international co-operation and in accordance with the organization and resource of each state, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.'* <sup>xxxiii</sup>

This provision of the UDHR requires the states to ensure the environmental rights since the realization of economic, social and cultural rights for the dignity of human beings. To that effect, the state shall take measures to protect the environment.

The other important provision in the UDHR proclaims similarly every one's right to just and favorable condition work.<sup>xxxiv</sup> It is difficult to think about the favorable conditions of work without due regard or measures to be taken for the protection of the environment that ultimately fall with the duty of the government.

Like wise, the declaration has also provides every one's right to a standard of living adequate for the health and well – being of himself and his family, including food, clothing , housing and medical care and necessary social service.<sup>xxxv</sup> This duty is ultimately falls on the state which further requires protection of the environment from harm.

##### **The international covenant on economic, social and cultural Rights (1966)**

Despite the customary international law status of the UDHR today, the two most binding international instruments; ICCPR and ICESCR came in to being just to give the binding forces for what has been provided under the UDHR.<sup>xxxvi</sup> The ICESCR under article 1 recognizes all people's rights of self-determination by which they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own ends freely disposed of their natural wealth and resources with out prejudice to any obligations arising out of international economic co-operation<sup>xxxvii</sup>. The same covenant under article 7 imposes an obligation up on states to recognize the right of everyone to the enjoyment of just and favorable, safe and healthy conditions of work. Other provisions of the ICESCR are similarly impose obligation upon state parties to the covenant to recognize the right of everyone to an adequate standard of living . . . including adequate food, clothing and housing, to the continuous improvement of living conditions,<sup>xxxviii</sup> and the rights of every one to the enjoyment of the highest attainable standard of physical and mental health.<sup>xxxix</sup>

These kinds of recognized rights under the ICESCR require the state parties to think about as to how it discharges its obligations. That means protection; promoting or fulfilling such rights requires the

protection of the general environment or the application of sustainable use of the natural resources.

The most important points to be emphasized here is that the very nature of socio economic and cultural rights dependence upon the economic capacity of the state. The state parties to ICESCR are obliged to undertake steps, to the maximum of its available resources with a view to achieving progressively the full realization of rights in the covenant.<sup>xi</sup> This shows that, those rights which are explained above under the ICESCR do not necessarily require immediate gratification or enjoyment unlike civil and political rights that requires immediate implementations.

As a result of this, ESCR, most of the time considered as a right that is not justice able since it allow the state to implement the rights progressively depending on their economic capacity however; in my opinion, as stated in the Limburg principles on the implementation of the international covenant on economic, social and cultural covenants on economic, social and cultural rights,<sup>xli</sup>In the first place, economic social and cultural rights are an integral part of international human rights law <sup>xlii</sup>which is indivisible and interdependent on which it requires equal attention and urgent consideration to its implementation, promotion and protection like that of civil and political rights. <sup>xliii</sup>

Secondly, although the full realization of the rights recognized in ICESCR is to be attained progressively, however the application of some rights can be made justice able immediately while other rights become justice able over time. <sup>xliv</sup>

Thirdly, even if, the state obligation under ICESCR stipulates is take steps by all appropriate means to achieve progressively the full realization of the rights to the maximum of its available resources, this does not mean that the state has no obligation at all today since it is able to meet its objective in the long run. Therefore, the state shall take appropriate measures distributing its wealth fairly for every activity including socio economic and cultural rights. In that case, the failure of the state to distribute its resources fairly become just cable since the state is ignorant to address issues of socio economic rights.

### **3.2. International convention on the elimination of all forms of racial discrimination (1965)**

This convention is adopted and opened for signature and ratification by the general assembly resolutions 2106(XX) of 21 December 1965 and entered in to force 4 January 1969. Like that of the previous international human rights instruments, which have been explained above, it does consists of some provisions that are related with the environmental rights.

For instance, the convention under article 5 obliged state parties under take to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of every one with out distinction in the enjoyment of the rights;

- To economic, social and cultural rights in particular the rights to just and favorable condition of work
- The Right to housing
- The right to public health medical care, social security and social services
- The right to equal participation

### **3.3. The convention on the elimination of all forms of discrimination against women (1979)**

Though there were different legally binding human rights instruments introduced in the world, extensive discrimination against women continues to exist.<sup>xlv</sup> As a result, the adoption of CEDAW in 1979 became the order of the day. The reason of introducing this convention is not to talk about the nature, scope or gravity of discriminations against women, rather to show/explain about some provisions regarding the environmental rights.

One of the most important provisions under CEDAW imposes an obligation over state parties to the convention to take all appropriate measures to eliminate discrimination against women, in particular, the right to protection of health and safety in working conditions, including the safeguard of the function of reproduction.<sup>xlvi</sup> Likewise, the same convention under article 14 stipulates state parties' obligation to take appropriate measures to eliminate discrimination against women in rural areas and to participate in and benefit from rural development and shall ensure to such women the rights;

*-To participate in the elaboration and implementation of development planning at all levels,<sup>xlvi</sup>*

*-To have access to adequate health care facilities, including information, Cultural affairs. Counseling and services in family planning<sup>xlvi</sup>,*

*-To participate in all community activities.<sup>xlvi</sup>*

*To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communication.<sup>i</sup>*

The very important issue, mention has to be given here is that those rights under international human rights instruments are one way or the other related with environmental right, sustainability and human rights which ultimately fall with in the obligation of state parties to those binding instruments. What makes them common in general is that, no mention of the term environmental rights has made with in each of these instruments. This might probably be a result of lack or awareness of the global community to the general environment on which everybody survive.

Therefore, some international as well as regional environmentally oriented instruments are adopted in the world. Same of these instruments are selected for discussion.

### 3.4. The Rio conventions.

The international community came together in 1992 at the Rio conference to deal with environmental and development problems that humanity has faced in this era. The three Rio-conventions; the United Nations convention to combat desertification (UNCED), the United Nations conventions on biodiversity (UNCBD) and the United Nations framework convention on climate change (UNFCCC) have been the major out come this conference.

In recognition of the major environmental problems that are increasingly affecting each country, most countries in the world have joined the international community by signing, adopting and largely ratifying the Rio- conventions. Basic principles of the conventions, protocols or agreements, as well as the obligations and rights arising from each of these instruments are subjects to be discussed below.

#### 3.4.1 Convention on Biological Diversity.

At the 1992 earth summit in Rio –de Janeiro, world leaders agreed on a comprehensive strategy for sustainable development' meeting the needs while ensuring that to leave a healthy and viable world for future generations.

In ratifying the convention, the parties have committed themselves to undertake national and international measures aimed at its achieving three objectives: the conservation of biological diversity, the sustainable use of its components arising out of the utilization of genetic resources.<sup>ii</sup>

Bio safety is one of the issues addressed by the convention which refers to the need to protect human health and the environment from the possible adverse effects of the product of modern technology.

<sup>iii</sup>At the same time, modern biotechnology is recognized as having a great potential for the promotion human well being, particularly meeting critical needs for food, agriculture and health care.<sup>lii</sup>

The convention clearly recognizes twin aspects of modern biotechnology, on the one hand, it



provides for the access to and transfer of technologies that are relevant to the conservation and sustainable use of biological diversity. On the other hand, seeks to ensure the development of appropriate procedures to enhance the safety of biotechnology.<sup>liv</sup>

The objective of the convention as stated in Article 1 is to sets out a balance between conservation, sustainable use and sharing of benefits. The objectives are;

- The conservation of biological diversity.
- The sustainable use of its components and the fair and equitable sharing of the benefits from the use of genetic resources including:
  - A. Appropriate access to genetic resources taking in to account all rights over those resources.
  - B. Transfer of relevant technologies; and
  - C. Funding.

The CBD, as an international treaty, identifies a common problem, sets over all goals and policies and general obligations even if the achievement rests largely with the countries themselves. The basic principles and approach of CBD are;<sup>lv</sup>

- *Governments need to provide the critical role of leadership, particularly by setting rules that guide the use of natural resources, and by protecting biodiversity where they have a direct control over the land and water. Under the convention, governments should undertake conservation and utilization of biodiversity in a sustainable way.*
- *To conduct surveys to find out what biodiversity exists, its value and importance, and what is endangered. On the basis of these survey results, government can get measures targets for conservation and sustainable use.*
- *The conservation of each country's biological diversity can be achieved in various ways; in situ and ex situ' conservation.*

### **3.4.2 The United Nations conventions for combating Desertification.**

The UNCCD was adopted at the united nations Head quarters, New York on the 9 may 1992. It was open for signature at the Rio de Janeiro from 4 to 14 June 1992, and thereafter at United Nations head quarter, from 20 June 1992 to 19 June 1993. The convention entered in to force on 21 March 1994.

According to estimates by the United Nations Environmental Program (UNEP) one quarter of the earth's land is threatened by desertification and the livelihoods of over 1 billion people in more than 100 countries are also jeopardized by desertification, as farming and grazing lands become less productive.<sup>lvi</sup> The objective of the convention, as a result, is to combat desertification and mitigating the effects of drought in countries experiencing serious droughts and /or desertification, particularly in Africa, through effective action at all levels, supported by international cooperation and partnership arrangements, in the framework of an integrated approach which is consistent with Agenda 2, with a view to contributing to achievement of sustainable development in affected area.<sup>lvii</sup> In order to achieve the objective of the convention and to implement its provisions, the parties shall be guided, inter alia, by the following principles:<sup>lviii</sup>

- *the parties should ensure that decisions on the design and implementation of programs to combat desertification and / or mitigate the effects of drought are taken with the participation of populations and local communities and that an enabling environment is created at higher levels to facilitate action at national and local levels.*

- *The parties should, in a spirit of international solidarity and partnership, improve cooperation and coordination at sub-regional, regional and international levels, and better focus financial, human organizational and technical resources where they are needed.*
- *The parties should develop, in a spirit of partnership, cooperation among all levels of government, communities, non –governmental organizations and landholders to establish a better understanding of the nature and value of land and scarce and circumstances of affected developing country parties, particularly the least developed among them.*

As far as the obligations of the parties is concerned, they are categorized in to general and those specific to developed countries and those specific to countries affected by desertification. The general obligations of the parties that they have to undertake individually or jointly, either through existing or prospective bilateral and multilateral arrangements or a combination there of all,<sup>lix</sup>

- *Adopt an integrated approach addressing the physical, biological and socio – economic aspects of the processes of desertification and drought.*
- *Give due attention, within the relevant international and regional bodies, to the situation of affected developing country parties with regard to international trade, marketing arrangements and debt with a view to establishing an enabling international economic environment conducive to the promotion of sustainable development.*
- *Integrate strategies for poverty eradication in to efforts to combat desertification and mitigate the effects of drought.*
- *Promote cooperation among affected country parties in the fields of environmental protection and the conservation of land and water resources, as they relate to desertification and drought;*
- *Strengthen sub regional, regional and international cooperation;*
- *Cooperate within relevant intergovernmental organizations;*
- *Determine institutional mechanisms, if appropriate, keeping in mind the need to avoid duplication; and*
- *Promote the use of existing bilateral and multilateral financial mechanisms and arrangements that mobilize and channel substantial financial resources to affected developing countries parties in combating desertification and mitigating the effects of drought*

In addition to these general obligations, developed country parties undertake to;<sup>lx</sup>

- *activity support, as agreed, individually or jointly, the efforts of affected developing country parties, particularly those in Africa and the least developed countries, to combat desertification and mitigate the effect of droughts;*
- *Provide substantial financial resources and other forms of support to assist affected developing country parties, particularly those in Africa, effectively to develop and implement their own long term plans and strategies to combat desertification and mitigate the effect of drought;*
- *Promote the mobilization of new and additional funding*
- *Encourage the mobilization of funding from the private sector and other non-governmental sources; and*

- *Promote and facilitate access by affected country parties, particularly affected developing country parties, to appropriate technology, knowledge and know how.*

Similarly under this convention in addition to general obligations, affected country parties obliged to undertake;<sup>lxi</sup>

- *Give due priority to combating desertification and mitigating the effects of drought and allocate adequate resources in accordance with their circumstances and capabilities.*
- *Establish strategies and priorities, within the framework of sustainable development plan and /or policies, to combat desertification and mitigate the effect of drought;*
- *Address the underlying causes of desertification and pay special attention to the socio-economic factors contributing to desertification process,*
- *Promote awareness and facilitate the participation of local population, particularly women and youth, with the support of non-governmental organizations, in efforts to effects of drought, and*
- *Provide an enabling environment by strengthening, as appropriate, relevant existing legislation and, where they do not exist, enacting new laws and establishing long-term policies and action programs.*

### **3.4.3 The United Nations Frame Work Convention on Climate Change (UNFCCC)**

The united nations Frame work convention on climate change is an international environmental treaty produced at the united nations conferences on environmental and development (UNCED), informally known as the earth summit, held in Rio de Janeiro in 1992. The treaty is aimed at reducing emissions of greenhouse gases in order to combat global warming.

The treaty as originally framed set no mandatory limits on green house gas emission for individual nations and contained no enforcement provisions; it is there for considered non-binding.<sup>lxii</sup> The general objectives of the convention are;<sup>lxiii</sup>

- *Stabilize the concentration of (GHGS, e.g. carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, per fluoro carbons and sulphur hexafluoride) in the atmosphere that is related to human induced interference with the climate system.*
- *Achieve the stabilization with in a time frame sufficient to allow ecosystems to adapt naturally to climate change*
- *Ensure that food production is not threatened and*
- *Enable economic development to proceed in sustainable manner.*

The guiding principles of the parties to the convention in their action to achieve the objective of the convention and to implement its provisions are;<sup>lxiv</sup>

- *The parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities.*
- *The specific needs and special circumstances of developing country parties, especially those that are particularly vulnerable to the adverse effects of climate change, and of those parties, especially developing country parties, that would have to bear a disproportionate or abnormal burden under the convention, should be given full consideration.*

- *The parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account those policies and measures to deal with climate change should be cost effective so as to ensure global benefits at the lowest possible cost.*
- *The parties have a right to, and should promote sustainable development policies and measures to protect the climate system against human induced change should be appropriate for the specific conditions of each party and should be integrated with national development program.*

The obligation of state parties to the convention divides countries into two groups: those listed in its Annex I (known as “Annex I parties”) and those that are not listed (so called “non-Annex I parties”)<sup>lxv</sup>

The obligations of the Annex I parties under the conventions are;<sup>lxvi</sup>

- *presentation to the cop of a national inventory of emissions*
- *Formulate national and regional programs with measures to mitigate climate change.*
- *To take the lead in modifying longer term trends in emissions.*
- *Cooperation: A joined –up approach is vital to reduce GHG emissions, including action relating to transport, energy, industry, agriculture, forestry and waste management.*
- *Industrial responsibility: the convention recognizes industrial countries bear the greatest responsibility to carry out the agreement as the principal GHG emitters, including technology transfer and financial commitment.*

The obligation on non – Annex I parties under the convention are; <sup>lxvii</sup>

- *Present to the cop a national inventory of emission*
- *Formulate national and regional programs with measures to mitigate climate change, incorporating principles of “common but differentiated responsibilities.*
- *Cooperate with Annex I parties on joined up approach to receive funding from the convention’s financial mechanism, operated by the GEF.*

In general the enabling environments component of the frame work focuses on government actions, such as fair trade policies, removal of technical, legal and administrative barriers to technology transfer, sound economic policy, regulatory frame works and transparency, all of which create an environment conducive to private & public sector technology transfer.

### 3.5 The Kyoto protocol

The Kyoto protocol was created to augment the UNFCCC with agreement of stricter demands for reducing the green house- gas emissions. It marks the first step towards an international determination to limit emissions of green house gases. The text of the Kyoto protocol was adopted unanimously in 1997. The Kyoto protocol consists of six green house gases: carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), per fluorocarbons (PFCs), and hydrofluoric carbons (HFCs).<sup>lxviii</sup>

The protocol’s major feature is that it has mandatory targets on green house gas emissions for the world’s leading economies, which have accepted it. These targets range from -8% to +10% of the countries individual 1990 emissions levels “with a view to reducing their overall emissions of such

gases by at least 5% below existing 1990 levels in the commitment period 2008 to 2012.”<sup>lxix</sup>

In general, the key outcomes of 1992 Earth summit in Rio were several international environmental agreements most of them contains many similar requirements for action, research reporting and other necessary activities agreed by their signatories. However; those environmental conventions are not the only documents enacted by the world community to protect the global environment. There are a number of international as well as regional environmental instruments for the advancement of global sustainable environments such as,

- The Basel convention on the control of Trans- boundary movements of hazardous waste and their Disposal (1999).
- The Bamako Convention on the ban of import in to Africa and the control of Trans’s boundary movement and management of Hazardous wastes within Africa (January 1991)
- The Stockholm Conventions on persistent organic pollutants (2001)
- The Rotterdam convention on prior informed consent procedure for certain hazardous chemicals and pesticides in international trade (1998)
- The Montreal protocol on substances that deplete the ozone layer.

All these multilateral environmental agreements are legally binding documents with one common goal: to facilitate the establishment /strengthening of national programs for the sound management of chemicals in all countries.

### 3.6 Approaches to Environment & Human Rights

So far in this discussion, it has been tried to show as to how environmental related rights are incorporated under international human rights and as to what constitutes in different environmental agreements. As far as the issue of sustainable environment is concerned, the world now reaches to consensus that human rights and environment are intertwined or related. That is way the UN General Assembly stipulates that,

*Prudence must be shown in the management of all living species and natural resources, in accordance with the precepts of sustainable development . . . The current unsustainable patterns of production and consumption must be changed in the interest of our future welfare and that of our descendants.*<sup>lxx</sup>

The 1994 draft Declaration of Principles on Human Rights and the Environment under part I/2 states that “all persons have the right to a secure, healthy and ecologically sound environment. This right and other human rights, including civil, cultural, economic political and social rights, are universal, interdependent and indivisible”<sup>lxxi</sup>.

However; concerning the protection of environmental rights is concerned, there is no consensus as to what kinds of approach is used. One article entitled “Environment and Human Rights; a new approach to sustainable Development” for instance explained about as there are two main approaches to human rights and the environment<sup>lxxii</sup>: The application of existing human rights and the need for new rights.<sup>lxxiii</sup> The first approach is about applying the existing human rights instruments such as UDHR, ICCPR, ICESCR, CRC and others for the protection of environmental rights where as, the second approach requires direct legislation and institutional change which recognize specific rights (substantive and procedural) to a healthy environment.<sup>lxxiv</sup>

In examining the relationship between environmental protection and human rights, the controversial question is whether environmental protection aims of enhancing the quality of human life and is thus a subset of human rights or whether environmental protection as representing two different but



overlapping social values.<sup>lxxv</sup> Another third approach sees human rights and environmental protection as representing two different but overlapping social values.<sup>lxxvi</sup>

On the basis of these concepts, environmental protection can be achieved through the assertion of existing human rights, the development of new human rights relating to the environment, or a general “right to environment”<sup>lxxvii</sup>

However; the application of existing human rights; indirect environmental rights, suffer from a lack of precision on environmental protection and equity.<sup>lxxviii</sup> As a result, direct legislations an environmental issue comes in to being which some are discussed above.

#### **4. The Need of Sustainable Environment as a Human Rights Issue**

##### **4.1 The need of Sustainable Environment**

The need of sustainable environment as a human rights issue is not a one time desire of the global community. Humans through out their history experienced a number of environmental challenges or problem which leads to the death or causality of so many people.

There fore, the need of sustainable environment is related with the need of such problems or protection of the environment at large which is a source of every thing. The protection of human interest is one of the justifications for environmental protection.<sup>lxxix</sup> In addition to that, the protection of environment is regarded by some as an ethical duty of human and it is believed that certain aspect of the environment merit protection purely for aesthetic reasons.<sup>lxxx</sup>

It can be argued that the notion of well being includes spiritual or psychological aspects such as the individual’s need to be able to communicate with nature. These general environmental protection reasons as to why this global community protect the environment; interest of the human, ethical duty of human, aesthetic, spiritual or psychological aspect can be a reason at the same time for the need of sustainable environment.

Moreover; many reasons can be mentioned for the need of sustainable environment some of these are;

- Environment is a foundation for the right to life and the rest. Environment provides natural resources for the realization of economic, social and cultural rights.<sup>lxxxi</sup> This is to mean that, unless global community is able to protect the environment, damages on the natural environment may ultimately causes damages an the interest of human beings or
- Environmental destruction is a direct or indirect threat to the right to life and livelihood.<sup>lxxxii</sup>
- Environment (natural resources) can be a source of conflict that might lead to human rights violations.<sup>lxxxiii</sup>

Therefore, the need for sustainable environment is nothing but protecting and making the over all environment favorable to life or life supporting rather than a cause to destruction through a wise or proper/sound management.

##### **4.2 Challenges of sustainable Environment**

The need for the protection of the environment is unquestionable. However; the effort for the protection of the protection of the environment is backed up by a number of challenges. Some of the challenges are selected to be discussed here;

###### **4.2.1 Sustainable environment & Developmental Activities**

Environmental protection and developmental activities to some extent may fall in conflicting

situations. Countries may be ignorant for the protection of environment since they are able to develop their economy by any means. However; the international system provides the sustainable use of natural environment for the survival and development of both the present and future generations.

#### 4.2.2 The Issues of Justifiability and Burden of Proof

Environmental harm or damage may cause effects on the rights of many people at a time. In such case, the issues who is going to represent the claim before the court, that is, the issue of standing may raised. Here, the debate that environmental right individual or collective right becomes dominant. Even if it may have both faces depending on situations.

The issue of locus-standi is one of the challenges to exercises environmental rights. In most country, every one who is interested on the case can take the violation or harm inflicted on the environment before the court. Even if the issue of standing settled properly, the issues of burden of proof of the damage or harm inflicted on the natural environment become difficult; that is why according to some writers; the burden of proof is typically placed on those advocating the technology. Claimed benefits are assumed, rather than needing to be justified.<sup>lxxxiv</sup>

In relation to the issue of locus-standi and burden of proof, the other important issue that most raise is as to whether environmental rights is justice able or not like that of socio-economic rights. In my opinion, its justice ability of environmental rights goes with out question. Because, it can be seen in the **SERAC VS Nigeria** case before the African Commission on Human & People's Rights.

The communication alleges that the military government of Nigeria has been directly involved in oil production through the state oil company, the Nigerian National Petroleum company (NNPC), the majority share holder in a consortium with shell petroleum Development corporation (SPDC) and that these operations have environmental degradation and health problems resulting from the contamination of the environment among the Ogoni people.<sup>lxxxv</sup>

The communication alleges that the oil consortium has exploited oil reserves in Ogoni land with no regard for the health or environment of the local communities, disposing toxic wastes in to environments and local water ways in violation of applicable international environmental standards. The resulting contamination of water, soil and air has had serious short and long term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems.<sup>lxxxvi</sup>

The communication also alleges that the Government has neither monitored operations of the oil companies nor required safety measures that are standard procedure with in the industry... Ogoni communities have not been involved in the decisions affecting the development of Ogoni land.<sup>lxxxvii</sup>

After being the communication is made admissible before the commission, it found the Federal Republic of Nigeria in violation of the fundamental rights under the African charter on Human & Peoples Rights. The commission appealed to the government of the Federal Republic of Nigeria to ensure protection of the environment, health and livelihood of the people of Ogoni land by;<sup>lxxxviii</sup>

- *Ensuring adequate compensation to victims of the human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking a comprehensive clean up of hands and rivers damaged by oil operations;*
- *Ensuring that appropriate environmental and social impact assessments are prepared for any future oil development and that the safe operation of any future oil development is guaranteed through effective and independent oversight industry; and*

- *Providing information on health and environmental risks and meaningful access to regulatory and decision making bodies to communities likely to be affected by oil operations.*

On the basis of this case it can be concluded that environmental rights are justifiable rights that can be redressed by the formal judicial bodies.

#### **4.2.3 Lack of Cooperation among States and the Imbalance of Share of Burden**

The protection of global environment is not a task that can be addressed by a single country, specific institution or individuals. The very nature of the environmental problems are cross cutting requires the mutual & cooperative efforts of individuals, companies and states. The cooperation among state is the very important mechanisms for the betterment of global environment that ultimately brought about the protection of environmental rights of every one. However; the lock of joined-up governments continues to prove extremely damaging over the environment.<sup>lxxxix</sup> As a result, integration of efforts to address global environmental problems could not achieve.

More over; the share of the burden to address global environmental problems or challenges are backed by the imbalances shared by countries in the world. Industrialized countries take the greatest share in harming the global environmental where as developing countries faces that same effect or impact of environmental harm. While some one explain the imbalances in his article states that . . . not only do industrialized countries currently take for more than a fair share but that they are historically responsible for a wide range of over use of environmental resources<sup>xc</sup>.

These kinds of imbalances in burden of share challenges the global environment through integration of efforts or cooperation of countries in the world.

### **5. Conclusion**

Environmental protection and issues relating sustainability, environmental rights are recent phenomena in the international human rights protection mechanisms. In earlier days especially during the time when most international human rights instruments such as UDHR, ICESCR, CEDAW and the likes were adopted, the concern given to environment was not that much significance. Very few individual rights such as, the right to adequate living standards, favorable condition of work and the right to health that have one way or thee other some relation with environment were recognized. The relationship between environment human rights and the need for sustainable environment were not a hot issue. It was in 1972, the UN Stockholm conference on the Human environment that human activities were addressed as harming the environment and putting human at risk.

In the effort to protect human right and environment, there were different approaches proposed. One approach was that the existed human rights instrument and institutions were adequate enough to ensure thee protection of environment and human rights where as on the contrary, some argued that new environmental instruments and institutions shall be established in order to address issues of human rights and environment. The other most moderate approach regarding human rights and environment dictates that the existed human rights instruments and the proposed environmental instruments can be integrated in the protection. In the effort to protection, there are a number of environmental conventions, protocols and declarations adopted by the global community having on international or regional character.

The need for sustainable environment is one of the major issues recognized by most instruments as a human rights issue. Environment is a totality of human life such as a source of food, health and livelihood. Endangering the environment means endangering the fundamental rights of human beings. That is to mean that, the right to life, health and any other fundamental rights are highly dependant on the favorability of the general environment. There fore, the application of sustainable environment is

not a luxury rather a necessity.

However; the application of sustainable environment, using the environment properly for the need of the current generation with out damage the interest of the future generation, faces different challenges some of them are, the issue of justice ability, burden of proof, lack of cooperation among states and greater imbalances of sharing the border. There fore, the writer would like to recommend the following points;

- Environmental protection is not a task left to a single country or specific intuition. In order to achieve the goal of sustainable environment, there has to be integrated effort of every country, organization and individuals.
- The fact that the issue representation and locus- standi is one of the challenges in the protection of global environment, an independent institution like that of a public prosecutor has to be established. By doing so, it can protect the environment, the harm inflicted on environments or damages on environment.
- The burden of sharing the protection of the environments has to be fair, just and equitable. Since, industrialized countries harm the environment greatly but shares the same burden to that of developing countries.
- The industrialized countries have to support the effort in developing countries to achieve sustainable environment and this global community may take inspiration from Maldiv Islands by getting the world attention after its underwater cabinet meeting predicting that if the pace of greenhouse gas emission and rising sea-levels is not curbed, most of their country would disappear beneath the waves.
- To consider the Paris and Geneva principals as prime and foremost for the realization of right to Health with dignity and certainly consider sustainable environment as an integral part of this right.

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### **Abbreviations:**

CBD	Convention on Biological Diversity
CEARD	Convention on Elimination against Racial Discrimination
CEDAW	Convention on Elimination of Discrimination against Women.
COP	Conference of Parties
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights.
ICESCR	International Covenant on Economic, Social And Cultural Rights
KP	Kyoto protocol
SD	Sustainable Development
SHD	Sustainable Human Development
UDHR	Universal Declarations of Human Rights.
UNCCD	United Nations Convention on Biodiversity.



UNFCCC      United Nations Framework Convention on Climate Change.

UNWD      United Nations Millennium Declaration

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<sup>ii</sup> Environment, <http://www.planetpals.com/ecodictionary> visited on July 10<sup>th</sup>, 2009 at 9.45 AM, Addis Ababa Ethiopia.

<sup>iii</sup> Environment, <http://www.hymir.org/zoning/glossary> visited on July 10<sup>th</sup>, 2009 at 10.05 AM, Addis Ababa Ethiopia.

<sup>iv</sup> Johan de Waal and et al, *The Bill of Rights Handbook*.. 2001,p.405

<sup>v</sup>Sustainable Development Commission, <http://www.sd.comission.org.uk/index.php> visited on July 10<sup>th</sup>, 2009 at 10.10 AM, Addis Ababa Ethiopia.

<sup>vi</sup> Sustainable Development Commission, <http://www.sd.comission.org.uk/index.php> visited on July 10<sup>th</sup>, 2009 at 11.00 AM, Addis Ababa Ethiopia

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<sup>viii</sup> Encyclopedia of sustainable Development, <http://www.ace.mmu.ac.uk/eds/principles>

<sup>ix</sup> Johan de Waal and et al, *The Bill of Rights Handbook*.. 2001,P.406

<sup>x</sup>Johan de Waal and et al, *The Bill of Rights Handbook*.. 2001,P.406

<sup>xi</sup> Ayesh Dias, human rights, environment and development with special emphasis on corporate accountability. *Human Development Report*,2000,p.2

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<sup>xiii</sup> Manfred Nowak, *Introduction to the International Human Rights Regime*.2003,p.1

<sup>xiv</sup> Manfred Nowak, *Introduction to the International Human Rights Regime*.2003,p.1

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<sup>xvi</sup> Article 5 of Vienna Declaration add program of Action

<sup>xvii</sup> Environment and Human Rights: a new approach to sustainable development, <http://www.ring-alliance.org/ring> visited on July 12<sup>th</sup>, 2009 at 11.45 AM, Addis Ababa Ethiopia.

<sup>xviii</sup> Environment and Human Rights: a new approach to sustainable development, <http://www.ring-alliance.org/ring> visited on July 12<sup>th</sup>, 2009 at 11.45 AM, Addis Ababa Ethiopia

<sup>xix</sup> Environment and Human Rights: a new approach to sustainable development, <http://www.ring-alliance.org/ring> visited on July 12<sup>th</sup>, 2009 at 11.45 AM, Addis Ababa Ethiopia

<sup>xx</sup> *Preamble of UDHR, 1<sup>st</sup> paragraph.*

<sup>xxi</sup> Sustainable Development Commission, <http://www.sd.comission.org.uk/index.php> visited on July 10<sup>th</sup>, 2009 at 10.30 AM, Addis Ababa Ethiopia.

<sup>xxii</sup> Sustainable Development Commission, <http://www.sd.comission.org.uk/index.php> visited on July 10<sup>th</sup>, 2009 at 10.30 AM, Addis Ababa Ethiopia.

<sup>xxiii</sup> Sustainable Development Commission, <http://www.sd.comission.org.uk/index.php> visited on July 10<sup>th</sup>, 2009 at 11.00 AM, Addis Ababa Ethiopia.

<sup>xxiv</sup> Widely known as The 1992 Rio Declaration on Environment and Development or Rio submit held at Rio de Janeiro from 3 to 14 June 1992

<sup>xxv</sup> Principle 1 of Rio Declaration on Environment and Development

<sup>xxvi</sup> Principle 1 of Rio Declaration on Environment and Development

<sup>xxvii</sup> E.g. The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment which was done at Lugano, 21 June 1998, Art.2.10

<sup>xxviii</sup> E.g. The Council of Europe Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment which was done at Lugano, 21 June 1998, Art.2.10

<sup>xxix</sup> Article 1 of the 1994 draft declaration of principles on human rights and the environment

<sup>xxx</sup> Article 2 of the 1994 draft declaration of principles on human rights and the environment

- xxxii Article 3 of the 1994 draft declaration of principles on human rights and the environment
- xxxiii Article 4 of the 1994 draft declaration of principles on human rights and the environment
- xxxiiii Article 22 of UDHR
- xxxiv Article 23 of UDHR
- xxxv Article 25/1 of UDHR
- xxxvi Before the UDHR attains a customary international law status it was a mere declaration that has no binding force. It is through ICCPD, ICESCR and other instruments that changed in to practice
- xxxvii Article 1/21 of ICESCR
- xxxviii Article 11 of ICESCR
- xxxix Article 12 of ICESCR
- xl Article 2/1 of ICESCR
- xli Limburg principles on the implementation of the ICESCR is prepared when a group of experts in international law convened by the international commission of jurists, the faculty of law of the university of Limburg
- xliv Article 30 of Limburg principles on ICESCR
- xlvi Article 30 of Limburg principles on ICESCR
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- xlvi Paragraph 6 of CEDAW
- xlvi Article 11/1/f of CEDAW
- xlvi Article 14/2/a of CEDAW
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- l Article 14/2/h of CEDAW
- li Article 1 of CBD
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- lxiii Article 2 of UNFCCC
- lxiv Article 3 of UNFCCC
- lxv Those listed countries under annex 1 are industrialized countries where as the lists under annex 2 are developed countries which pay for non-annex 1 parties including developing countries too.
- lxvi Article 4/2 of UNFCCC
- lxvii Article 4/3 of UNFCCC
- lxviii See, Annex A the protocol
- lxix Article 3/1 of Kyoto protocol
- lxx See, respect for nature ,paragraph 6 of UNWD
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