ACHIEVING EFFECTIVE GLOBAL ENVIRONMENTAL GOVERNANCE THROUGH HUMAN RIGHTS-BASE APPROACH AND EFFECTIVE PUBLIC PARTICIPATION

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Abstract - The ever-growing threatening waves of global environmental challenges have made it appear as if the mechanisms put in place towards global environmental governance are yielding little or no positive outcome. Numerous international legal and policy frameworks have been put in place in the form of treaties and convention which approaches are directed towards ensuring healthy environment both for the present and future generations. This article observes that the key players in the global environmental governance are the traditional states acting as the main targeted subjects of international obligation. It has also been observed that while successes have been recorded through the participation of non state actors, it is suggested that more need to be done. This work argues that to achieve effective global environmental governance, there is need for a human rights compliant mechanism, and public participatory scheme towards global environmental governance which is rooted in substantive and procedural rights jurisprudence.

Keywords - Environmental governance, Environmental Protection, Human Rights, Public Participation.

I. INTRODUCTION

The suitability and rationality of pursuing environmental protection through human rights approach continue to spark debate and disquiet among writers. It is however glaring that the relationship between environmental protection, human rights and the members of the public are mutually inseparable. The reason for this inseparability is not far- fetched. While healthy environment is an essential prerequisite for the enjoyment of human rights,[1] the enjoyment of human rights rests with the global citizenry who are the members of the public. That supports the reason why environmental protection and human rights can rightly be pursued as a mutually coined project which ought to be approached with collaborative vigour in a manner that encourage the followership of the masses.

The threatening waves of global environmental challenge confronting the earth today leads to categorization of environmental protection under items of major concern for contemporary international law.[2]. In reaction to the scourge of rising environmental threat, writers have suggested that the appropriate measure to be applied in environmental pollution is strict liability standards.[3] This global common ever-growing environmental problems have caused international environmental governance to move from state-based approach towards accommodating various interests which now include the recognition of genre of human rights to clean environment; and encouragement of public participation in the quest to secure sustainable environmental governance for the present and posterity. The initial struggle was centered on sovereign states as key actors in this effort, but today the burden has shifted witnessing the rising power of non state actors such as the civil society organizations, Non Governmental Organizations (NGOs), Multinational Corporations and the general public all in the race for securing safe and sustainable environment.

Connecting human rights norms with environmental protection provides the platform for rights-based approach towards environmental protection and at the same time bring the members of the public who are the victims of environmental harm at the fore-front of the struggle for safe environment. For instance, The United Nations Economic Commission for Europe (UNECE) also known as the "Aarhus Convention" pioneered a strong step at the right direction in promoting public participation in environmental governance. This Convention adopted rights-based approach to environmental governance by granting rights to the public regarding access to information, and access to justice in matters relating to environmental governance. It encouraged the active roles of other civil society organizations and public participations to a grass root level. The approach aims at ensuring healthy environment for humanity. And while successes have been recorded through the participation of non state actors, it has been argued that more encompassing effort is required.

[1] P. Pathak "Human Rights Approach to Environmental Protection" OIDA International Journal of Sustainable Development, Vol. 7, p 17, Jan. 2014
[2] Ibid
[3] M. N. Shaw "International Law" Cambridge University Press. p 853. 2008, (6th Edition)

Overall, the question that revolves around this treatise remains; how do we forge a human rights compliant mechanism, and public participatory scheme towards global environmental governance?

II. ENVIRONMENTAL GOVERNANCE AND PUBLIC PARTICIPATION

As earlier pointed out, the traditional approach for attending to complex environmental problems is through sovereign state, whereupon the states are regarded as the main drivers (actors) in the International Environmental Governance. However, the current approach changes the rhythm which is witnessing a gradual and systematic change allowing participation from different stakeholders. These stakeholders comprise of the members of the public as against the individual states. This new dimension is aptly captured where it is observed that; "Protecting the global commons from acts of environmental vandalism is becoming even more urgent as we begin the 21st century. The environmental crisis has several idiosyncrasies that necessitate implementation of a new vision of environmental protection -a vision transcending national boundaries and embracing the global collective"[4]. Scholars believe that the period of sovereign states is gone, because states alone no longer play key roles in global threatening issues such as transnational crime control, capital movement, environmental problems and similar issues of prime important in the international arena.[5] In his speech titled:-'An International Regime For Environmental Protection', Prof. Geoffery Palmer maintained the same stand when he opined that "the threats to our environment are man-made. The solutions lie in our own hands."[6] There is therefore no doubt from this perspective that the aggregate members of the public are responsible for environmental harm, and at the same time possess the potential remedy for the environmental problems.

At The Earth Summit on Environment and Development organized by the United Nations General Assembly at Rio de Janerio in 1992, formal invitations were extended to key NGOs(accredited and non accredited). The invitation was based on Principle 10 of the 1992 Rio Declaration which basic features includes; access to information; access to Justice and Public Participation.[7] These steps promotes right base approach to environmental governance[8] as entrenched by the Aarhus Convention which was endorsed by the UK and the European Commission on the 25th of June 1998, and it came into forces on the 30th of October. Same emphasis was strongly canvassed and revitalized during the 2012 UN Conference on sustainable Development in Rio de Janeiro which advocated on "Strengthening the institutional framework for sustainable development". It shaped the agenda towards gaining public support for international environmental governance. This collective effort provides a rider for effective civil society participation in the environmental decision process which entails opportunity to "observe", "inform", "shape policy" and "engage" in the entire trajectory of environmental governance.[9] In the same manner, the United Nations Environmental Program (UNEP) in its draft guideline for participation of major groups and stakeholders in policy making, suggests that "major groups and stakeholders can be substantive contributors to improving our understanding of the environment and to developing innovative solutions to the environment challenges"[10]

'Participation' connotes positive contribution to a particular phenomenon. For the reasons of this research, it is the "involvement of individuals and groups that are positively or negatively affected, or that are interested in a proposed project, program, plan or policy that is subject to a decision-making process."[11] It simply implies active involvement in the process of general decision making which entail citizens/public involvement and civil society engagement. It involves integration of stakeholders starting from the agenda setting through policy formulation to the implementation and Monitoring stages.[12].Participation breeds proper communication among stakeholders and different interest groups in the form of "joint problem solving" effort in fighting the scourge of environmental decay. It spreads to embrace the public contribution by way of promoting "grass root movement" by involving persons and groups with a view of identifying potential conflict areas. It also promotes joint determination of decision by allowing people and individuals to air their respective views. It promotes power sharing

[4] R. Ramlogan "The Environment and International Law: Rethinking the Traditional Approach" Vermont Journal of Environmental Law Vol. 3 p1, 2001-2002.

[5] B. E. Brown "What Is the New Diplomacy?' (2001) American Foreign Policy Interests" *The Journal of the National Committee on American Foreign Policy,* Vol. 23, pp 3-21.

[6] G. Palmer ''An International Regime For Environmental Protection" Journal of Urban and Contemporary Law Vol. 42, p.6, May 1992

[7] Ibid

[8] D. Browne 'Public Consultation on the Implementation of the UNECE Aarhus Convention in Ireland' < www.environ.ie/en/.../AarhusConvention/.../FileDownLoad,34158,en.pd> accessed on 30th May 2014

[9] J. Werksman and J. Foti "Discussion Paper: Improving Public Participation in International Environmental Governance" UNEP Perspective, Issue No 1 p 1 December 2011

[10] Ibid pg 2

[11] A. N. Glucker, P.P J Driessen, A. Kolhoff and H. Runhaar "Public participation in environmental impact assessment: why, who and how?" Environmental Impact Assessment Review Vol. 4, 2013, p 105

[12] J. Newig and E. Kvarda "Participation in Environmental Governance: Legitimate and Effective?" in Karl Hogi *et al* (ed)Environmental Governance, The Challenges of legitimacy of effectiveness'(*Edward Elger Publishing Limited*, 2012)

among stakeholder whereupon main actors and other participants- all channel their effort towards influencing decision making. It promotes the principles of fair representation of legitimate interests over the subject matter at the same time paving ways for better understanding and comprehensive solution to challenges at hand.[13]

III. THE RATIONALE FOR PUBLIC PARTICIPATION

Public participation being a viable approach in solving social conflicts, closes the perceived gap between conventional key actors and those who felt cut out of environmental governance.[14] For these reasons, scholars and proponents of public participation in environmental governance have followed this trend to construe some rationale behind the unrelenting advocacy for public participation. These rationales are more aptly captured as summarize in three channels: Normative Rationale; Substantive Rationale and Instrumental Rational.[15]

a. Normative Rationale: This is a mechanism that accommodates the basic norm that individuals have "the right to be informed, to be consulted and to express their opinion over issues that affect them and creating social forum of interaction for all and sundry. This form of open forum provides a window of opportunity for recognizing and emancipating marginalized individuals and groups.[16]

b. Substantive Rationale: This encourage due diligence in harnessing local information and knowledge thereby ensuring grass root participation where "non-experts see problems, issues and solutions that experts miss…it aims to increase the breadth and depth of information and thereby improve the quality of decisions; it ignores power issues [which may be] related to problem framing."[17]. It also gives opportunity to different interest groups to act as a "watch dog" for implementation of decisions.

c. Instrumental Rationale: This rationale serves as a lens through which every other motive is viewed to ascertain their legitimacy. For instance, public policy-making processes that fail to involve the public run the risk of being perceived as illegitimate pursuit. Such avenue helps to clarify potential conflict areas.[18] It is a viable mechanism that helps to "restore public credibility, diffuse conflicts, justify decisions and limit future challenges to implementation.[19]"

However, given the wider range of interests that are intended to be covered by the environmental decision making process, so many groups complain of lack of knowledge of the initial planning process. This constitutes great barrier to effective public participation in the environmental governance. This poor public knowledge of planning emanates from inadequate information dissemination to interested persons or groups. Even when and where such information reaches the stakeholders, they have little or no influential impact on the decision-making process. These factors discourage potential participating group or individuals. Hence, "a belief that their impact upon the decision-making process is limited will inevitably constrain the effectiveness of participation by the public".[20] Similarly, the status of civil society organization before international official fora such as the United Nations is another inhibiting factor. In most cases the civil society organization/NGO possess mere observer status. And even where there are allowed to make significant contribution to the deliberation, they would be required to undergo accreditation to enable them have access to the proposed program. Therefore, "setting high bars for the accreditation of observer organizations can result in unfair processes, where only the well-connected or well-resourced organizations are heard."[21]

It is the view of this treatise that these anomalies can be remedied by providing basic support to the participating groups especially those from developing countries and marginalized groups. Proper information dissemination through effective use of information technology is also suggested. Such information should be ensured to have reached, sought and acknowledge the contributions from minority groups towards environmental decision process.[22]

IV. INTERACTIONS BETWEEN HUMAN RIGHTS AND ENVIRONMENTAL PROTECTION.

Clearly, human rights and environmental protection showcase overlapping social norms and directive principle which drive towards achieving common goal, among which are; preservation of the environment and protection of its inhabitants. That is; human beings. There is therefore no gain casting doubt on the coined fundamental objective between environmental law and human rights. This mutual objective simply targets to improve the condition of

[13] Ibid pg 31
[14] A. Wesselink, J. Paavola, O. Fritsch and O. Renn " Rationales for public participation in environmental policy and governance: practitioners' perspectives" <https://www.ufz.de/export/data/2/80074_wesselink_paavola_fritsch_renn_epa_participation_rationales.pdf> p3 accessed on 10th May, 2019
[15] Ibid no 15 pg 105
[16] Ibid
[17] Ibid no 22 pg 4
[18] Ibid no 23 pg
[19] Ibid no 22 pg 4
[20] Ibid no 12 pg 335
[21] Ibid pg 4
[22] Ibid

life on planet earth. In any case, "preservation, conservation, and restoration of the environment are a necessary and integral part of enjoyment of the right to health, to food and to life including a decent quality life."[23] Interestingly, Malcolm Shaw, an engaging, authoritative and one of the world's leading international lawyers, even though have argued that human right to a clean environment may sound ambiguous, he went further to recognize that "There are, of course, a range of general human rights provisions that may have a relevance in the field of environmental protection, such as the right to life, right to an adequate standard of living, right to health, right to food and so forth."[24] Numerous legal and policy frameworks which aimed at achieving safe environment for mankind illustrate that the pursuit for clean environment is human rights oriented.[25]

1. The United Nations General Assembly Resolution 45/94 1990, which is a re-emphasis on the Stockholm Declaration states that "all individuals are entitled to live in an environment adequate for their health and well-being" and calls for enhanced efforts towards ensuring a "better and healthier environment.[26]"
2. The 1989 Basel Convention on The Control of Trans-boundary movement of Hazardous Wastes and their disposal.[27]
3. The 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere in Outer Space and Under Water.[28]
4. The 1977 Convention on the Prohibition of Military or Any Other Hostile use of Environmental Modification Techniques.[29]
5. The Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights (Protocol of San Salvador), 1988 under Article 11 stated that 'everyone shall have the right to live in a healthy environment' and that 'the states parties shall promote the protection, preservation and improvement of the environment.[30]'
6. The Convention on the Rights of the Child, 1989 clearly and expressly mentioned the need for the education of the child to be directed, among other factors, 'the development of respect for the natural environment.[31]
7. African Charter on Human and Peoples' Rights, 1981 under Article 24 provides that "all people shall have the right to a general satisfactory environment favorable to their development."[32]

Similarly, in the Gabcikovo-Nagy-Maros' case,[33] which was a case between Hungary and Czechoslovakia in 1977, one of the issues before the International Court of Justice (ICJ) was whether watercourse states should participate in the use, development and protection of an international watercourse environment in an equitable and decent manner. The ICJ however, recognized the right to a safe environment when Judge Christopher Weeranmantry observed the emerging human rights link to safe environment when he postulated that "the ethical and human rights related aspects of environmental law brings it within the category of law so essential to human welfare…"[34] By implication however, the weight of the pendulum continue to swing heavily towards establishing the apparent tie-up between human rights, public participation and environmental protection which are more evidently observed in substantive and procedural rights jurisprudence.

V. SUBSTANTIVE AND PROCEDURAL RIGHTS PERSPECTIVE.

International environmental law retools the recognition of the emerging dimension of environmental rights rooted in the trajectory of "substantive' right (which implies the rights to a clean environment) and 'procedural' rights which accommodates the rights to act in protection of the environment, the right to information and finally access to justice)".[35]

A somewhat preservation of substantive rights to the environmental through procedural environmental rights as recognized in international environmental law principles are apparently emerging tools at the disposal of international community in pursuit of safe environment for mankind.[36] Even though its recognition exists among binding and non-binding international legal instruments, procedural rights are accepted as parts and parcels of various international

[23] Ibid
[24] Ibid no 3 pg 847
[25] A. Ibrahim "A Human Rights Approach To Environmental Protection: The Case Of Ethiopia"
(St. Thomas University, School Of Law Miami,Florida) pg 64 <Https://Ideas.Repec.Org/A/Rau/Clieui/V1y2009i1p62-74.Htm> accessed on 4th May, 2019.
[26] Ibid
[27] Ibid
[28] Ibid
[29] Ibid
[30] Ibid no 3 pg 847
[31] Article 29(1)(e)
[32] See Art. 24 African Charter on Human and Peoples' Rights(1981)
[33] [33]Gabcikovo-Nagymaros Project (Hungary/Slovakia) https://www.casebriefs.com/blog/law/international-law/international-law-keyed-to-damrosche/chapter-8/gabcikovo-nagymaros-project-hungaryslovakia/ Accessed on 13th May, 2019
[34] S. Stec "Do Two Wrongs Make a Right? Adjudicating Sustainable Development in the Danube Dam
Case" Golden Gate University Law Review Vol. 29. p 367 March 1999
[35] R. T. Ako "The Judicial Recognition and Enforcement of the Right to Environment: Differing Perspectives from Nigeria and India" NUJS Law Review, Vol.3, p423 2010
[36] J. Jankuv "Indirect Protection of Substantive Right to Environment Under International Public Law" International Journal of Arts and Commerce Vol. 8 pg 18 Feb 2019

legal norms in the past years especially in relation to international environmental law.[37]

Notably, procedural environmental rights was observed to have featured for the first in a non-binding international legal instrument, known as World Nature Charter (1982), which was adopted as UN General Assembly Declaration number 37/7 (1982). It modeled the right to take active part in decision-making process towards environmental issues. Point 23 of the Charter, stipulates thus:

"All persons, in accordance with their national legislation, shall have the opportunity to participate, individually or with others, in the formulation of decisions of direct concern to their environment, and shall have access to means of redress when their environment has suffered damage or degradation. According to this point, all persons will, in accordance with their national legislation, be given the opportunity to participate individually or with others in the formulation of decisions directly related to their environment and to have access to remedies in the event of damage to or degradation of their environment.".[38]

On the other hand, the seemingly first recorded binding pact which embraced environmental procedural rights is the Convention on Environmental Impact Assessment in a Transboundary Context (1991), adopted by the United Nations Economic Commission for Europe. This framework designed the aspects of rights of the public to actively participate in discussions concerning the environment which participation encompasses the right to public participation in necessary environmental impact assessment procedure on slated environmental agenda and the right to be provided with environmental information as captured in 2(6) and 3(8) respectively.[39] The Aarhus Convention, which can be regarded as a re-emphasis on the Principle of Rio Declaration, took to its Article 1, and stated that; *"in order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention"*[40]

The above re-echoes the basic ideology pioneered by the Aarhus Convention which aim to protect substantive right to the environment vide three procedural environmental rights –(1) the right of access to environmental information; (2) the right to participate in environmental decision-making; and (3) the right of access to legal protection in environmental matters, in accordance with the relevant laws. [41] Therefore, to tackle global environmental challenges, the rights-based approach and public participation becomes siamese twins that cannot be easily separated.

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[37] Ibid
[38] Ibid
[39] Ibid
[40] Ibid
[41] Ibid