

Realizing the Right to a Clean, Healthy and Sustainable Environment

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Realizing the Right to a Clean, Healthy and Sustainable Environment

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Abstract

The paper critically discusses realization of the right to a clean, healthy and sustainable environment. It conceptualizes this right and examines competing views on whether it should be considered a human right. The paper further explores attempts to recognize the right to a clean, healthy and sustainable environment as a human right at the global, regional and national levels. It also investigates concerns hindering attainment of this right and proposes interventions geared towards realizing the right to a clean, healthy and sustainable environment as a fundamental human right.

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1.0 Introduction

Environment has been defined as all the physical, chemical and biological factors external to a person, and all the related behaviour¹. It has also been defined as the whole complex of climatic, adaptic and biotic factors that act upon an organism or an ecological community and ultimately determine its form or survival; the aggregate of social and cultural conditions that influence the life on an individual or a community². In Kenya, the environment has been defined to include the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment³. The environment is crucial for the survival of human beings since it contains all the ingredients that sustain life including air, water, soil, food among others. As a result, the relationship between human beings and the environment is worth considering.

Since it contains virtually all the ingredients necessary for human survival, the natural environment is often susceptible to human action such the use and exploitation of natural resources including water, minerals and energy⁴. Some of these activities result in concerns such as pollution, environmental degradation, destruction of ecosystems and loss of biodiversity which threaten environmental sustainability which threaten the attainment of human rights⁵. It has been pointed that that the destruction of life-sustaining ecosystems, the pollution of the world's water, land, and air, the inability to control the world's wastes, and other related environmental problems prevent people from securing the minimum requisites for health and survival, thereby impeding and even prohibiting the effective exercise and enjoyment of human rights for much of the

¹ World Health Organization., 'Preventing Disease through Healthy Environments.' (World Health Organization, Geneva, 2006)

² Webster's *New World Dictionary*, 3rd ed (Cleveland College, Cleveland, 1998)

³ Environmental Management and Co-Ordination Act, No. 8 of 1999, Laws of Kenya

⁴ Muigua. K., 'Utilising Science and Technology for Environmental Management in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2020/04/Utilising-Science-and-Technology-for-Environmental-Management-in-Kenya.pdf> (Accessed on 22/06/2023)

⁵ Ibid

world's population⁶. As such, environmental protection and human rights are believed to be interrelated, interconnected, and mutually responsive as both of them are directed towards securing the well-being of humanity, with safe and healthy environment being the pre-condition for the enjoyment of fundamental human rights⁷. In order to realize this ideal, the concept of Sustainable Development was born.

Sustainable Development has been defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs⁸. It combines elements such as environmental protection, economic development and social concerns⁹. The right to a clean, healthy and sustainable environment is a fundamental human right within the Sustainable Development agenda. Indeed, it has been observed that human beings are at the centre of concerns for sustainable development and are entitled to a healthy and productive life in harmony with nature¹⁰. The 2030 Agenda for Sustainable Development which was adopted by member states of the United Nations in 2015 represents a shared blue print for peace and prosperity for people and the planet in the quest towards the ideal of Sustainable Development¹¹. At the heart of the Sustainable Development Agenda are 17 Sustainable Development Goals which seek to strike a balance between social, economic and environmental sustainability¹².

⁶ Muigua. K., 'Reconceptualising the Right to Clean and Healthy Environment in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/08/RIGHT-TO-CLEAN-AND-HEALTHY-ENVIRONMENT-IN-KENYA.docx-7th-september-2015.pdf> (Accessed on 22/06/2023)

⁷ Pathak P, 'Human Rights Approach to Environmental Protection' (Social Science Research Network 2014) SSRN Scholarly Paper ID 2397197 <https://papers.ssrn.com/abstract=2397197> (Accessed on 22/06/2023)

⁸ World Commission on Environment and Development., 'Our Common Future.' Oxford, (Oxford University Press, 1987)

⁹ Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' International Sustainable Development Law., Vol 1.

¹⁰ Report of the United Nations Conference on Environment and Development., 'Rio Declaration on Environment and Development.' A/CONF.151/26 (Vol. I)

¹¹ United Nations., 'Transforming Our World: The 2030 Agenda for Sustainable Development.' Available at <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Accessed on 22/06/2023)

¹² Ibid

This paper critically discusses realization of the right to a clean, healthy and sustainable environment as an essential component of the Sustainable Development agenda. It examines the right to a clean, healthy and sustainable environment and explores its essential elements. The paper further analyzes the legal framework governing this right at the global, regional and national levels. It then explores the challenges facing realization of this right and proposes interventions towards realizing the right to a clean, healthy and sustainable environment.

2.0 Defining the Right to a Clean, Healthy and Sustainable Environment

The right to a clean, healthy and sustainable environment encompasses various elements including clean and balanced ecosystems, rich biodiversity and a stable climate¹³. This right recognises that nature is a keystone of a dignified human existence¹⁴. A safe, clean, healthy and sustainable environment is considered to be integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation¹⁵. It has been observed that thriving ecosystems are important for provision of clean water and air, yield seafood and pollinators, and soaking up greenhouse gases¹⁶. The right to a clean, healthy and sustainable environment is an essential human rights that has been equated to the right to life¹⁷. Since the environment contains virtually all ingredients required to sustain human beings, a threat to the right to a clean, healthy and sustainable environment could potentially hinder attainment of other rights such as the right to food, water, health and sanitation among others¹⁸.

¹³ Zimmer K, 'The Human Right That Benefits Nature' <https://www.bbc.com/future/article/20210316-how-the-human-right-to-a-healthy-environment-helps-nature> (Accessed on 22/06/2023)

¹⁴ Ibid

¹⁵ Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment.' Available at <http://kmco.co.ke/wp-content/uploads/2021/04/Recognising-a-Human-Right-to-Safe-Healthy-and-Sustainable-Environment-Kariuki-Muigua-1st-April-2021.pdf> (Accessed on 22/06/2023)

¹⁶ Ibid

¹⁷ Peter K. Waweru v Republic, Misc. Civil Application No. 118 of 2004, (2006) eKLR

¹⁸ Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment.' Op Cit

However, despite the importance of the right to a clean, healthy and sustainable environment, debate has been going on whether, it should be classified as a human right. Critics of the human approach towards this right have argued that it centralises human concerns in the environmental governance agenda to the detriment of non-human elements of nature¹⁹. Further, it has been pointed out that classifying the right as a human right denotes an 'economically charged' idea of the environment as no more than resources that are meant to be exploited, managed and conserved for their instrumental value to humans²⁰. In addition, it has been pointed out that nature and human beings are radically separate entities and there is need to acknowledge this difference in order to promote sound environmental management and conservation through wildlife conservation, pollution control, waste management and climate change mitigation among other measures²¹. Consequently, this approach advocates for an ecological approach towards the right to a clean, healthy and sustainable environment.

On the other hand, it has been argued that there is need to view the environment as an interconnectedness of nature and an integrated whole, with humans being only part thereof in order to embrace the right to a clean, healthy and sustainable environment as a human right²². Consequently, the right to a clean, healthy and sustainable environment has been classified under the 'third generation rights' or 'solidarity rights²³.' Thus, just like all other 'third-generation' rights- the right to clean, healthy and sustainable environment calls for collective action and cooperation from all persons in taking care of the environment²⁴. It has been pointed out that the right to a clean, healthy and

¹⁹ C. Gearty, 'Do Human Rights Help or Hinder Environmental Protection?' *Journal of Human Rights and the Environment*, No. 7 of 2010

²⁰ K. Bosselmann, 'Losing the Forest for the Trees: Environmental Reductionism in the Law' *Sustainability*, No. 2 of 2010

²¹ Mwanza. R., 'The Relationship between the Principle of Sustainable Development and the Human Right to a Clean and Healthy Environment in Kenya's legal context: An appraisal.' *Environmental Law Review* 2020, Vol. 22(3)

²² Ibid

²³ McClymonds JT, 'Human Right to a Healthy Environment: An International Legal Perspective, The' (1992) 37 *New York Law School Law Review* 583.

²⁴ Ibid

sustainable environment encapsulates both procedural and substantive elements²⁵. The procedural elements of the right to clean, healthy and sustainable environment are access to information, public participation, and access to justice or effective remedies²⁶. The substantive elements include clean air, a safe climate, access to safe water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems²⁷. The importance of this right became more recently pronounced when United Nations General Assembly recognized the right to a clean, healthy and sustainable environment as a human right²⁸.

It is thus evident that there is need to embrace the right to a clean, healthy and sustainable environment as a fundamental right and a prerequisite for full enjoyment of all the other rights²⁹. It is a right, crucial for the realisation of the first and second generation rights³⁰. Realizing the right to a clean, healthy and sustainable environment is integral in achieving Sustainable Development.

²⁵ Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment.' Op Cit

²⁶ Knox JH, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Biodiversity Report' [2017] United Nations Human Rights Council, A/HRC/34/49.

²⁷ Ibid

²⁸ United Nations General Assembly (UNGA)., 'The Human Right to a Clean, Healthy and Sustainable Environment.' UNGA Resolution 'A/76/L.75.'

²⁹ Muigua. K., 'Reconceptualising the Right to Clean and Healthy Environment in Kenya.' Op Cit

³⁰ Ibid

3.0 Legal Framework on the Right to a Clean, Healthy and Sustainable Environment

The right to a clean, healthy and sustainable environment has been captured in various legal instruments at the global, regional and national level. The *International Covenant on Economic, Social and Cultural Rights*³¹ was the first legal instrument to consider the environment as human right issue. The Covenant requires states parties to improve all aspects of environmental and industrial hygiene³². However, the right to a healthy environment was explicitly recognized for the first time vide the *Stockholm Declaration* which declared that declared *man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations*³³. The Stockholm Declaration does not just recognise the right to a good quality environment but also places a responsibility on human beings to protect and improve the environment for present and future generations³⁴.

In addition, the 1992 United Nations Conference on Environment and Development recognizes environmental protection and development as complementary objectives³⁵. The *Rio Declaration* stipulates that human beings are at the centre of concerns for sustainable development and are entitled to a healthy and productive life in harmony with nature³⁶. The Declaration further stipulates that in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it³⁷. The Rio Declaration

³¹ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993

³² Ibid, Article 12 (2) (b)

³³ Declaration of the United Nations Conference on the Human Environment Stockholm, 16 June 1972, UN Doc.A/CONF.48/14/Rev.1., Principle 1

³⁴ Muigua. K., 'Reconceptualising the Right to Clean and Healthy Environment in Kenya.' Op Cit

³⁵ United Nations General Assembly: Report of the United Nations Conference on Environment and Development., 'Rio Declaration on Environment and Development.' Available at

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf (Accessed on 23/06/2023)

³⁶ Ibid, Principle 1

³⁷ Ibid, Principle 4

thus envisages the right to a clean, healthy and sustainable environment as important in fostering Sustainable Development.

The right to a clean, healthy and sustainable environment became more recently pronounced when the United Nations General Assembly recognized it as a human right³⁸. The resolution by the United Nations General Assembly further affirms the importance of the right to a clean, healthy and sustainable environment for the enjoyment of all human rights³⁹. The declaration by the United Nations General Assembly demonstrates global acceptance of the right to a clean, healthy and sustainable environment as a human right and could stimulate global efforts towards attaining this right.

The *2030 Agenda for Sustainable Development* also recognizes the fundamental importance of the right to a clean, healthy and sustainable environment in promoting Sustainable Development⁴⁰. It seeks to attain this right by protecting the planet from degradation, including through sustainable consumption and production, sustainably managing its natural resources and taking urgent action on climate change, so that it can support the needs of the present and future generations⁴¹. At its core are 17 Sustainable Development Goals which seek to strike a balance between development and environmental conservation through measures such as promoting food security; ensuring good health and well-being for all human beings; fostering the right to clean water and sanitation; promoting access to affordable and clean energy and combating climate change⁴². The Sustainable Development goals thus encapsulate anthropocentric and ecocentric elements of the right to a clean, healthy and sustainable environment by seeking to strike a balance between human development and environmental protection and conservation.

³⁸ United Nations General Assembly (UNGA), 'The Human Right to a Clean, Healthy and Sustainable Environment.' Op Cit

³⁹ Ibid

⁴⁰ United Nations., 'Transforming Our World: The 2030 Agenda for Sustainable Development.' Op Cit

⁴¹ Ibid

⁴² Ibid

Regionally, the *African Charter on Human and Peoples' Rights* provides that all people shall have the right to a general satisfactory environment favourable to their development⁴³. In Kenya, the right has been enshrined under the Constitution which stipulates that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures⁴⁴. The Constitution further sets out several obligations in respect of the environment aimed at fostering the right to a clean, healthy and sustainable environment⁴⁵. These include ensuring sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and the equitable sharing of the accruing benefits; encouraging public participation in the management, protection and conservation of the environment; protecting genetic resources and biological diversity and eliminating processes and activities that are likely to endanger the environment⁴⁶. Attaining these obligations is integral in fostering the right to a clean, healthy and sustainable environment in Kenya. The right is further set out under the *Environmental Management and Co-ordination Act* (EMCA) which provides that every person in Kenya is entitled to a clean and healthy environment in accordance with the Constitution and relevant laws and has the duty to safeguard and enhance the environment⁴⁷. The Act establishes institutions, systems and procedures towards attaining this right including establishment of the National Environment Management Authority and County Environment Committees and systems such as environmental planning, Environmental Impact Assessment, Environmental Audit and Monitoring, Environmental Quality Standards, Environmental Restoration Orders among others⁴⁸.

⁴³ Organization of African Unity (OAU), *African Charter on Human and Peoples' Rights* ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁴⁴ Constitution of Kenya, 2010., Article 42., Government Printer, Nairobi

⁴⁵ *Ibid*, Article 69

⁴⁶ *Ibid*

⁴⁷ *Environmental Management and Co-ordination Act*, No. 8 of 1999., S 3 (1)

⁴⁸ *Ibid*

The right to a clean, healthy and sustainable environment is thus well recognized at the global, regional and national levels. However, despite this recognition, several challenges hinder attainment of this right. Some of these challenges are discussed below.

4.0 Factors Hindering Realization of the Right to a Clean, Healthy and Sustainable Environment

4.1 Climate Change

Climate change has been defined as change of climate which is attributed directly or indirectly to human activities which alter the composition of the global atmosphere and which are in addition to natural climate variability observed over comparable time periods⁴⁹. Climate change has become a global concern in the 21st century and has been a dominant subject in political, economic, legal, social, environmental and scientific discussions⁵⁰. It is majorly caused by human activities that lead to atmospheric concentration of green-house gases such as burning of fossil fuels, deforestation and increase in carbon dioxide levels⁵¹. Kenya like the rest of the world is faced with the threat of climate change. It has been observed that countries such as Kenya which have contributed the least to climate change are the ones that are the most affected by its impacts⁵². Climate change hinders the realization of the right to a clean, healthy and sustainable environment since it results food insecurity, water scarcity, depletion of natural resources, displacement of people and health hazards among other concerns⁵³.

⁴⁹ United Nations Framework Convention on Climate Change (UNFCCC), United Nations, 1992, available at <https://unfccc.int/resource/docs/convkp/conveng.pdf> (Accessed on 23/06/2023)

⁵⁰Owusu. P.A., & Asumadu-Sarkodie. S, A Review of Renewable Energy Sources, Sustainability Issues and Climate Change Mitigation, available at <https://www.tandfonline.com/doi/pdf/10.1080/23311916.2016.1167990?needAccess=true> (Accessed on 23/06/2023)

⁵¹ Ibid

⁵² Sultana. F., 'Critical Climate Justice' Available at <https://www.farhanasultana.com/wpcontent/uploads/Sultana-Critical-climate-justice.pdf> (Accessed on 23/06/2023)

⁵³ Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Glenwood Publishers Limited, 2016

Owing to the threat of climate change, the global community has come together under the *Paris Agreement* which is aimed at combating climate change and adapting to its effects by holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels⁵⁴. There is need to promote effective climate change mitigation and adaptation in order to realize the right to a clean, healthy and sustainable environment.

4.2 Unsustainable Management and Use of Natural Resources

Natural resources such as water, soil, air and forests are essential for survival and livelihood since they provide ingredients that support life⁵⁵. However, increase in human population has resulted in pressure on natural resources, sometimes resulting in their degradation and depletion⁵⁶. This is due to the fact that increase in human population puts pressure on natural resources such as food, water and energy sometimes resulting in their unsustainable use. Poor use of natural resources is a global challenge that poses a threat to sustainability of natural resources and results in serious environmental threats such deforestation and forest degradation, biodiversity loss, ecosystem degradation, reduction in soil quality and fall in available water quantity⁵⁷. This challenge is coupled with poor natural resources management laws, policies and practices in some countries which hinder effective management and use of these resources. Unsustainable management and use of natural resources hinders realization of the right to a clean, healthy and sustainable environment since it affects the Sustainable Development agenda⁵⁸. The 2030 Agenda on Sustainable Development recognizes this challenges and

⁵⁴ United Nations Framework Convention on Climate Change, Paris Agreement, 2015, available at http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf (Accessed on 23/06/2023)

⁵⁵ Muigua. K., Wamukoya. D & Kariuki. F 'Natural Resources and Environmental Justice in Kenya.' Glenwood Publishers Limited, 2015

⁵⁶ FAO., 'Natural Resources and the Human Environment for Food and Agriculture.' (FAO, 1980)

⁵⁷ Shivakoti. G et al., 'Challenges of Sustainable Natural Resources Management in Dynamic Asia.' *Sustainable Natural Resources Management in Dynamic Asia*, 2017, Pages 3-12

⁵⁸ Ibid

seeks to promote responsible consumption and production through efficient management of natural resources⁵⁹. There is need to enhance sustainable management and use of natural resources in order to achieve the right to a clean, healthy and sustainable environment.

4.3 Pollution

Pollution has been defined as any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants⁶⁰. Environmental pollution has also been defined as the contamination of the physical and biological components of the earth/atmosphere system to such an extent that normal environmental processes are adversely affected⁶¹. Pollution occurs in various forms including air, water and soil⁶². Pollution has been attributed to many factors which include waste by-products emanating from industrialization of our society, the introduction of motorized vehicles, and the explosion of the human population, leading to an exponential growth in the production of goods and services⁶³. Cases of air, water and soil pollution have been widely reported in Kenya. There have been reports of discharge of untreated industrial waste into the atmosphere polluting soil and water

⁵⁹ UNDP., 'Sustainable Goal 12: Responsible Consumption and Production.' Available at https://www.undp.org/sustainable-development-goals/responsible-consumption-and-production?gclid=EAIaIQobChMIidu71LPZ_wIV1vGyCh2q7wFJEAAAYASAAEgIObfD_BwE (Accessed on 23/06/2023)

⁶⁰ Environmental Management and Co-ordination Act., No. 8 of 1999, S 2

⁶¹ Ullah, S., "A sociological study of environmental pollution and its effects on the public health Faisalabad city," *International Journal of Education and Research*, Vol. 1 No. 6 June 2013, p.2

⁶² Muigua. K., 'Safeguarding the Environment through Effective Pollution Control in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2020/09/Safeguarding-the-Environment-through-Effective-Pollution-Control-in-Kenya-Kariuki-Muigua-28th-SEPT-2019.pdf> (Accessed on 23/06/2023)

⁶³ Coker, A.O., "Environmental Pollution: Types, Causes, Impacts and Management for the Health and SocioEconomic Well-Being of Nigeria," p.1. Available at <https://pdfs.semanticscholar.org/8e7b/a9595bab30d7ea87715533353c53f7452811.pdf> (Accessed on 23/06/2023)

resources⁶⁴. Further, there have been reports indicating that raw water in Kenya is too polluted with chemicals and heavy metals to be fit for irrigation or human and livestock consumption⁶⁵.

However, pollution is not a novel problem to Kenya since it's a global concern that affects virtually all nations and threatens environmental sustainability. Human activities through urbanization, industrialization, mining, and exploration are at the forefront of global environmental pollution⁶⁶. Environmental pollution is a threat to not only the sustainable development agenda but also to the very existence of the humankind⁶⁷. It compromises the quality of air, water and soil and could result in concerns such as health hazards and diseases thus hindering the realization of the right to a clean, healthy and sustainable environment. There is need to promote effective pollution control in order to achieve a clean, healthy and sustainable environment.

4.4 Poverty

Poverty can hinder realization of procedural aspects of the right to a clean, healthy and sustainable environment such as access to information, public participation, and access to justice or effective remedies⁶⁸. It can also hinder access to substantive aspects of the right such as access to food and clean water and sanitation⁶⁹. Poverty can also result in overexploitation of natural resources such as forests, water resources and energy sources which could potentially result in their depletion or degradation⁷⁰. This concern has been recognize at the global level by the 2030 Agenda on Sustainable Development which

⁶⁴ Muigua. K., 'Safeguarding the Environment through Effective Pollution Control in Kenya.' Op Cit

⁶⁵ Nasike, C., "Enforce measures to curb water pollution," Business Daily, Thursday, August 22, 2019. Available at <https://www.businessdailyafrica.com/analysis/letters/Enforce-measures-to-curb-water-pollution/4307714-5245596-tdpn9y/index.html> (Accessed on 23/06/2023)

⁶⁶ Ukaogo. P., 'Environmental Pollution: Causes, Effects, and the Remedies.' *Microorganisms for Sustainable Environment and Health* ., 2020, pg 419-429

⁶⁷ Muigua. K., 'Safeguarding the Environment through Effective Pollution Control in Kenya.' Op Cit

⁶⁸ Knox JH, 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment: Biodiversity Report' Op Cit

⁶⁹ Ibid

⁷⁰ FAO., 'Natural Resources and the Human Environment for Food and Agriculture.' Op Cit

acknowledges that eradicating poverty in all its forms remains one of the greatest challenges facing humanity⁷¹. There is need to combat poverty in order to actualize the right to a clean, healthy and sustainable environment.

5.0 Way Forward

The right to a safe, clean, healthy and sustainable environment is a fundamental right that facilitates full enjoyment of other human rights, including the rights to life, health, food, water and sanitation⁷². Recognition of the right to a clean, healthy and sustainable environment vide a resolution by the United Nations General Assembly represents a key milestone in making this right a reality⁷³. It is thus imperative for states to take measures towards actualizing this right. States should consider recognizing the right to a clean, healthy and sustainable environment as a fundamental human right in their Constitutions and adopt measures towards realizing it⁷⁴. Kenya has taken a step in the right direction by enshrining the right to clean and healthy environment in its Constitution⁷⁵.

There is need to address the concerns which affect the attainment of the right to a clean, healthy and sustainable environment such as climate change, unsustainable management and use of natural resources, pollution and poverty⁷⁶. Global efforts have been made towards combating climate change through measures such as the adoption of the *Paris Agreement*⁷⁷. States should promote the vision of the Paris Agreement in order to combat

⁷¹ UNDP., 'Sustainable Development Goal 1: No Poverty' Available at https://www.undp.org/sustainable-development-goals/no-poverty?gclid=EAIaIQobChMInJ6Ezb_Z_wIVvEeRBR2lwQ02EAAYAiAAEgK4TvD_BwE (Accessed on 23/06/2023)

⁷² Muigua. K., 'Recognising a Human Right to Safe, Healthy and Sustainable Environment.' Op Cit

⁷³ United Nations General Assembly (UNGA)., 'The Human Right to a Clean, Healthy and Sustainable Environment.' Op Cit

⁷⁴ IISD., 'UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment.' Available at <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/> (Accessed on 23/06/2023)

⁷⁵ Constitution of Kenya, 2010., Article 42., Government Printer, Nairobi

⁷⁶ Sultana. F., 'Critical Climate Justice'

⁷⁷ United Nations Framework Convention on Climate Change, Paris Agreement, 2015., Op Cit

climate change and promote the right to a clean, healthy and sustainable environment⁷⁸. States should also implement effective programmes and policies towards sustainable use and management of natural resources, effective pollution control and combating poverty in order to achieve full realization of the right to a clean, healthy and sustainable environment⁷⁹.

There is also need to enhance the justiciability of the right to a clean, healthy and safe environment in order to protect victims of violation of this right through malpractices such as environmental pollution, environmental degradation among others⁸⁰. It has been argued that linking human rights with the environment creates a rights-based approach to environmental protection that places the people harmed by environmental degradation at its centre and gives an opportunity to enforce the right to a clean, healthy and sustainable environment through judicial bodies such as courts and tribunals⁸¹. Courts play an important role in realizing the right to a clean, healthy and sustainable environment. In Kenya, the Constitution grants jurisdiction to courts to enforce environmental rights through measures such as orders to prevent, stop or discontinue any act or omission that is harmful to the environment; orders to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment; orders to provide compensation for any victim of a violation of the right to a clean and healthy environment among others⁸². There is need for courts to promote the realization of the right to a clean, healthy and sustainable environment by enhancing the principles of Sustainable Development and developing sound jurisprudence in environmental matters⁸³. There is also need to enhance access to courts in order to achieve

⁷⁸ Sultana. F., 'Critical Climate Justice' Op Cit

⁷⁹ Muigua.K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

⁸⁰ Pathak P, 'Human Rights Approach to Environmental Protection' (Social Science Research Network 2014) SSRN Scholarly Paper ID 2397197, 17 Available at <https://papers.ssrn.com/abstract=2397197> (Accessed on 23/06/2023)

⁸¹ Ibid

⁸² Constitution of Kenya, 2010, Article 70

⁸³ Muigua. K., 'The Role of Courts in Safeguarding Environmental Rights in Kenya: A Critical Appraisal.' Available at <http://kmco.co.ke/wp-content/uploads/2019/01/The-Role-of-Courts-in-Safeguarding>

environmental justice in Kenya⁸⁴. Other entities such as Multinational Corporations and Non-Governmental Organizations (NGOs) should also play their part in realizing the right to a clean, healthy and sustainable environment by adopting policies and practices that are environmental friendly and enhance human rights⁸⁵.

Finally, there is need to foster Sustainable Development in order to realize the right to a clean, healthy and sustainable environment. Sustainable Development combines elements such as environmental protection, economic development and social concerns⁸⁶. Sustainable Development has the ability to strike a balance between anthropocentric and ecocentric approaches towards the right to a clean, healthy and sustainable environment by promoting human rights such as the right to food, the right to clean water and sanitation, the right to affordable and clean energy while simultaneously ensuring sound environmental protection and management⁸⁷. Thus, there is need for states to achieve the ideal of Sustainable Development as set out in the 2030 Agenda on Sustainable Development.⁸⁸ Through these among other measures, the right to a clean, healthy and sustainable environment will be realized.

[Environmental-Rights-in-Kenya-A-Critical-Appraisal-Kariuki-Muigua-17th-January-2019-1.pdf](#) (Accessed on 23/06/2023)

⁸⁴ Ibid

⁸⁵ Muigua. K., 'Multinational Corporations, Investment and Natural Resource Management in Kenya.' Available at <http://kmco.co.ke/wp-content/uploads/2018/11/Multinational-Corporations-Investment-and-Natural-Resource-Management-in-Kenya-Kariuki-Muigua-November-2018.pdf> (Accessed on 23/06/2023)

⁸⁶ Fitzmaurice. M., 'The Principle of Sustainable Development in International Development Law.' Op Cit

⁸⁷ Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

⁸⁸ United Nations., 'Transforming Our World: The 2030 Agenda for Sustainable Development.' Op Cit

6.0 Conclusion

The right to a clean, healthy and sustainable environment is a fundamental human right that is integral in the attainment of other human rights⁸⁹. The importance of this right has become more pronounced after the United Nations General Assembly declared it to be a human right⁹⁰. In Kenya, the right to a clean and healthy environment has been enshrined as human right under the Constitution⁹¹. However, several concerns hinder the realization of the right to a clean, healthy and sustainable environment. These include climate change, unsustainable use and management of natural resources, pollution and poverty among others⁹². There is need to address these concerns in order to realize the right to a clean, healthy and sustainable environment⁹³. It is also necessary for entities including the state, courts, multinational corporations and Non-Governmental Organizations to play their role in promoting the right to a clean, healthy and sustainable environment⁹⁴. Finally it is imperative that we foster Sustainable Development in order to fully realize the right to a clean, healthy and sustainable environment⁹⁵. Through this among other measures, realization of the fundamental human right to a clean, healthy and sustainable environment will become an achievable endeavour.

⁸⁹ Muigua. K., 'Reconceptualising the Right to Clean and Healthy Environment in Kenya.' Op Cit

⁹⁰ United Nations General Assembly (UNGA)., 'The Human Right to a Clean, Healthy and Sustainable Environment.' Op Cit

⁹¹ Constitution of Kenya., 2010, Article 42

⁹² Muigua. K., 'Nurturing Our Environment for Sustainable Development.' Op Cit

⁹³ Ibid

⁹⁴ Muigua. K., 'Reconceptualising the Right to Clean and Healthy Environment in Kenya.' Op Cit

⁹⁵ Ibid

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