

# Children's Rights and the Pursuit of Intergenerational Climate Justice in Nigeria

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## Abstract

*Climate change is a major issue in environmental law. It is also an inherently intergenerational problem, with extremely serious implications for equity (justice) between present and future generations and among communities in the present and the future. Africa is one of the regions of the world most vulnerable to the impacts of climate change owing to its high exposure and poor adaptive capacity. The scourge of climate change in Africa is hitting the most vulnerable hardest, and contributing to food insecurity, population displacement and stress on water resources. The 2021 report of the United Nations Children's Fund (UNICEF) confirms that African children are most at risk of climate change. The report ranked Nigeria second among the countries classified as extremely high-risk countries where children are most at risk of climate change, together with Chad, and after the Central African Republic, which ranked first. Nigerian children are found to be highly exposed to air pollution and coastal floods, which adversely affect their rights to life, survival and development, health and education, thus amplifying existing inequalities. Consequently, there is a need to invest in the services that children depend on to survive. This article examines the impact of climate change on the rights of children in Nigeria and proposes measures for intergenerational climate justice. It recommends, inter alia, the adoption of a children's rights-based approach to climate change mitigation and adaptation and integrating children's rights into Nigerian climate change responses.*

## Keywords

climate change, children's rights, intergenerational climate justice, Nigeria

## 1. Introduction

Climate change is a major issue in environmental law.<sup>1</sup> Outside of climate-specific legal issues, several other aspects of environmental law, including waste, air pollution, water, deforestation and biodiversity, are relevant to climate change. Environmental law and climate change law have a largely synergistic relationship, in that actions taken to protect the environment will generally assist efforts to tackle climate change.<sup>2</sup> Thus, the

1 Centre for Climate Engagement 'Environmental Law and Climate Change' <<https://climatehughes.org/law-and-climate-atlas/environmental-law-and-climate-change>> accessed 19 June 2024.

2 *Ibid.*

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established principles of environmental law are applied in the fight against climate change, and the climate crisis has provided impetus to increase the level of legal environmental protection.<sup>3</sup>

Growing concern over deteriorating environmental conditions has increasingly prompted legal systems around the world to recognise the interests of future generations and the corresponding responsibilities of present generations to protect them.<sup>4</sup> The rights of children and future generations to a sustainable future have been internationally recognised since 1987, when the World Commission on Environment and Development, known as the Brundtland Commission of the United Nations, published the report 'Our Common Future'.<sup>5</sup> The report contained prescriptions for long-term environmental strategies to achieve sustainable development that met the essential needs of the world's poorest people while ensuring intergenerational equity.<sup>6</sup> The rights of current and future children were subsequently reaffirmed in the United Nations Convention on the Rights of the Child (CRC), as articulated in Articles 1 to 42 of the CRC.<sup>7</sup> The rights include non-discrimination (Article 2), devotion to the best interests of the child (Article 3), the right to life, survival and development (Article 6), respect for the views of the child (Article 12), rights to health (Article 24), education (Article 28), protection from abuse (Article 19) and freedom from torture (Article 37).<sup>8</sup> All these rights equate with the right to a life-sustaining biosphere.<sup>9</sup>

The African Charter on the Rights and Welfare of the Child (ACRWC)<sup>10</sup> contains similar provisions to those of the CRC enumerated above. Both instruments were ratified and domesticated into the Nigerian Child's Right Act (CRA).<sup>11</sup> Although these conventions do not specifically provide for children's right to protection from climate change, the CRC explicitly addresses environmental issues in Article 24(2)(c), which obliges States to take measures to 'combat disease and malnutrition'. Article 29(1)(e) requires States to direct the education of children to the 'development of respect for the natural environment'. Under Article 11(2)(g) of the ACRWC, States must direct the education of the child to 'the development of respect for the environment and natural resources'. Section 13(3)(c) and (d) of the CRA on children's right to health requires Nigeria to provide adequate nutrition and safe drinking water, good hygiene and environmental sanitation for children.

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3 *Ibid.*

4 Science and Environmental Health Network, International Human Rights Clinic at Harvard Law School 'Models for Protecting the Environment for Future Generations' (2008) <[https://hrp.law.harvard.edu/wp-content/uploads/2013/02/Models\\_for\\_Protecting\\_the\\_Environment\\_for\\_Future\\_Generations.pdf](https://hrp.law.harvard.edu/wp-content/uploads/2013/02/Models_for_Protecting_the_Environment_for_Future_Generations.pdf)> accessed 18 June 2024.

5 United Nations Secretary General, World Commission on Environment 'Report of the World Commission on Environment and Development-Note by the Secretary-General' A/42/427, 1987.

6 *Ibid.*

7 GA Res.44/25, 1989. Nigeria ratified the CRC on 19 April 1991.

8 *Ibid.*

9 McGillivray, A 'Tales of the Apocalypse: The Child's Right to a Secure Climate' (2017) 25 *The International Journal of Children's Rights* 553-568.

10 OAU Doc CAB/LEG/24/49 1990. Nigeria ratified the ACRWC on 23 July 2001.

11 Child's Right Act 26 of 2003.

Nigeria is a party to major international laws that regulate climate change, especially the United Nations Framework Convention for Climate Change (UNFCCC)<sup>12</sup> and the Paris Agreement,<sup>13</sup> which both acknowledge that human rights, including children's rights, are affected during climate change. Despite the international and domestic efforts of States to tackle climate change, it has posed a serious crisis described as 'the defining human and child's right challenge of this generation'.<sup>14</sup> Climate change is the biggest global human health threat of the twenty-first century, and is currently having a devastating impact on children's health globally.<sup>15</sup> As climatic conditions change, the weather and climate hazards increase the risk of deaths and other health emergencies.<sup>16</sup> Reports indicate that 3.6 billion people already live in areas highly susceptible to climate change and, between 2030 and 2050, climate change is expected to cause approximately 250,000 additional deaths per year, from under-nutrition, malaria, diarrhoea and heat stress alone.<sup>17</sup>

According to Niang, Ruppel and Abdrabo, Africa is one of the regions of the world most vulnerable to the impacts of climate change, because of its high exposure and poor adaptive capacity.<sup>18</sup> Africa is exposed to damaging climate risks including extreme droughts, flooding and storms, making it vulnerable.<sup>19</sup> Adaptation refers to a wide range of measures to reduce vulnerability to climate change impacts.<sup>20</sup> Africa's poor adaptive capacity arises from its inability to reduce vulnerability due to weak economies, weak institutions and inadequately developed governance structures.<sup>21</sup> Therefore, the scourge of climate change is having a growing impact on the African continent, hitting the most vulnerable (especially children) hardest, and contributing to food insecurity, population displacement and diminished water resources.<sup>22</sup> From 1970 onwards, climate hazards in

12 Adopted by the General Assembly Resolution A/RES/48/189 1992. Nigeria ratified the UNFCCC on 29 August 1994.

13 Adopted by decision 1/CP.21 at the twenty-first session of the Conference of the Parties in December 2015. Nigeria ratified the Paris Agreement on 16 May 2017.

14 UNICEF 'The Climate Crisis is a Child's Right Crisis: Introducing the Children's Climate Risk Index' (UNICEF, 2021) 1-24.

15 Costello, A, Abbas, M & Allen, A 'Managing the Health Effects of Climate Change' (2009) 373 *Lancet* 1693-1733.

16 World Health Organisation (WHO) 'Climate Change' <<https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health>> accessed 8 August 2024.

17 *Ibid.*

18 Niang, I, Ruppel, OC & Abdrabo, MA 'Africa' in Barros, VR, Field, CB & Dokken, DJ (eds) *Climate Change 2014: Impacts, Adaptation, and Vulnerability Part B: Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press, 2014) 1199-1265.

19 World Economic Forum 'Why Africa is particularly vulnerable to climate change' <<https://www.weforum.org/agenda/2015/05/why-africa-is-particularly-vulnerable-to-climate-change/>> accessed 14 August 2024.

20 United Nations Development Project (UNDP) 'What is climate change adaptation and why is it crucial?' <<https://climatepromise.undp.org/news-and-stories/what-climate-change-adaptation-and-why-it-crucial>> accessed 2 July 2024.

21 African Climate Policy Centre (ACPC) 'Vulnerability to Climate Change in Africa: Challenges and Recommendations for Africa' <[https://archive.uneca.org/sites/default/files/Publication\\_Files\\_policy\\_brief\\_2\\_vulnerability\\_to\\_climate\\_change\\_in\\_africa](https://archive.uneca.org/sites/default/files/Publication_Files_policy_brief_2_vulnerability_to_climate_change_in_africa)> accessed 2 July 2024.

22 United Nations 'Climate Change is an Increasing Threat to Africa' (2020) <<https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa>> accessed 17 November 2023.

Africa caused the death of over 730,000 people; by 2050 nearly 85 million people in North and sub-Saharan Africa might be forced to flee their homes due to high greenhouse gas (GHG) emissions and unequal development.<sup>23</sup>

Nigeria's climate has been changing rapidly and children are disproportionately affected.<sup>24</sup> The UNICEF report of 2021 ranked Nigeria as the second highest-risk country where children are vulnerable to the risk of climate change.<sup>25</sup> Across Nigeria, children's exposure to flooding, drought and rising temperatures threatens their rights to health and nutrition, and access to education, protection and water, sanitation and hygiene services.<sup>26</sup> Land, water and air pollution present increased risks to children's health, including gastrointestinal illnesses and damage to their cognitive functions and learning ability.<sup>27</sup> The Nigerian government, as well as different agencies, have engaged in various efforts to combat climate change and its impacts, but the results achieved to date are poor, indicating that the efforts of the government and other agencies in Nigeria are inadequate.<sup>28</sup> This is due to many factors such as a failure to fully implement the adaptation policy frameworks of Nigeria, lack of financial resources, technological needs and poverty.<sup>29</sup>

This article provides a brief analysis of the climate change situation in Nigeria. It examines the major rights of children that are negatively impacted, with a focus on children's rights to life, survival and development, non-discrimination, the best interests of the child, health and education. It proposes measures for combating climate change and achieving intergenerational climate justice, using a children's rights-based approach for adaptation and mitigation and the review of the basic climate regulatory laws of Nigeria and the CRA to include provisions that could advance intergenerational climate justice and the implementation of the laws.

## 2. Methodology

This article adopts the black letter research approach which focuses on the law found in legal texts, legal theories, statutes and court judgments. The article analyses the provisions of various international, regional and domestic laws and policies, and court cases relevant to the topic of the article (climate change, environmental law and children's rights).

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23 Sasu, DD 'Climate change in Africa – Statistics and Facts' (2024) <<https://www.statista.com/topics/9715/climate-change-in-africa/#topicOverview>> accessed 19 June 2024.

24 Haider, H 'Climate Change in Nigeria: Impacts and Responses' K4D Helpdesk Report 675, Institute of Development Studies (2019) 2.

25 UNICEF 'The Climate Crisis is a Child's Right Crisis (note 14 above).

26 United Nations Children's Fund (UNICEF) 'Climate Landscape Analysis for Children in Nigeria – Climate Action Plan for 2023–2027' (2023) <<https://www.unicef.org/nigeria/media/8311/file/Climate%20Landscape%20Analysis%20for%20Children%20in%20Nigeria%202023.pdf>> accessed 5 April 2024.

27 *Ibid.*

28 Nnadi, OI, Liwenga, ET & Lyimo, JG 'Impacts of Variability and Change in Rainfall on Gender of Farmers in Anambra, Southeast Nigeria' (2019) 5 *Heliyon* 1-14.

29 Okeke, CU, Butu, HM & Okereke, C 'Climate Action Strategies, Practices and Initiatives: Challenges and Opportunities for Locally-Led Adaptation in Nigeria' APRI Short Analysis, March 2023 <[https://afripoli.org/uploads/publications/Nigeria\\_Short\\_Analysis.pdf](https://afripoli.org/uploads/publications/Nigeria_Short_Analysis.pdf)> accessed 21 June 2024.

### 3. Understanding the concept of climate change

Notable definitions include that of the UNFCCC, which states that

climate change is a change of climate that can be attributed directly or indirectly to human activity which alters the composition of the global atmosphere and which is in addition to natural climate variability, observed over comparable time periods.<sup>30</sup>

The United Nations (UN) has defined climate change as long-term shifts in temperatures and weather patterns that may be attributed to natural or artificial (related to human activities) causes.<sup>31</sup>

According to both these definitions, the causes of climate change can be attributed to both natural and human causes. Historically, since the Industrial Revolution, human activities have released large amounts of carbon dioxide and other GHGs into the atmosphere, which have changed the earth's climate.<sup>32</sup> Natural processes, such as changes in the sun's energy and volcanic eruptions, also affect the earth's climate.<sup>33</sup> It is, however, agreed that human activities have contributed substantially to climate change through GHG emissions since the Industrial Revolution.<sup>34</sup> GHGs like carbon dioxide, methane and nitrous oxide concentrations are now found to be more abundant in the earth's atmosphere than at any time in the last 800,000 years.<sup>35</sup> These GHG emissions have increased the greenhouse effect and caused the earth's surface temperature to rise.<sup>36</sup> Due to the negative impact on human lives, the development and implementation of stronger standards for net-zero emissions by States and non-State entities are of the utmost importance.

### 4. Analysis of the impact of climate change on children globally

Climate change has been shown to have both a direct and indirect impact on a wide range of human rights, including the rights of the child.<sup>37</sup> It significantly undermines children's enjoyment of their rights, such as their rights to human dignity, health, an adequate standard of living, access to clean water, access to education, and the rights to life, survival and development, which are all fundamental.<sup>38</sup> The focus of this article is on children's rights to life, survival and development, non-discrimination, best interests of the child,

30 Article 2(1) of the UNFCCC.

31 United Nations 'What is Climate Change?' <<https://www.un.org/en/climatechange/what-is-climate-change>> accessed 16 November 2023.

32 United States Environmental Protection Agency 'Causes of Climate Change' <<https://www.epa.gov/climate-change-science/causes-climate-change#3foot>> accessed 16 November 2023.

33 *Ibid.*

34 *Ibid.*

35 National Academy of Sciences 'Climate Change: Evidence and Causes: Update 2020' (National Academies Press, 2020) B-2.

36 United States Environmental Protection Agency 'Causes of Climate Change' (note 32 above).

37 United Nations Office of the High Commissioner of Human Rights (OHCHR) 'The Impact of Climate Change on the Rights of the Child' <<https://www.ohchr.org/en/climate-change/impact-climate-change-rights-child>> accessed 22 November 2023.

38 Fambasayi, R & Addaney, M 'Cascading Impacts of Climate Change and the Rights of Children in Africa: A Reflection on the Principle of Intergenerational Equity' (2021) 21 *African Human Rights Law Journal* 29-51.

health and education. The right to life as enshrined in international law is regarded as a prerequisite for the enjoyment of all other rights.<sup>39</sup> As the Human Rights Council clearly articulates,

climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life ... implementation of the obligation to respect and ensure the right to life ... depends, *inter alia*, on measures taken by States' Parties to preserve the environment and protect it against harm, pollution and climate change.<sup>40</sup>

According to the World Health Organisation (WHO), more than one in four deaths of children below five years of age are attributable to unhealthy environments such as indoor and outdoor air pollution, unsafe water, lack of sanitation and inadequate hygiene. This means that 1.7 million children under the age of five die every year.<sup>41</sup> According to UNICEF's recent report, climate change is the greatest threat to this generation and has created a children's rights crisis.<sup>42</sup> It is estimated that, over the next decade, approximately 175 million children per year will be affected by climate-related disasters;<sup>43</sup> in the next two decades, 37.5 to 125 million additional African children will be subjected to water scarcity;<sup>44</sup> and by 2050, an estimated 25 million more children will be undernourished as a result of climate change.<sup>45</sup> Global GHG emissions need to be halved by 2030 and cut to zero by 2050 to avoid the worst impacts, but most countries are not on track to meet these targets.<sup>46</sup> It is suggested that improving the resiliency of services that children need will be necessary, no matter what the future holds.<sup>47</sup> Three basic approaches to improving resilience have been identified as risk reduction, boosting access to resources associated with positive development and survival needs, including clean water, food, medical care and shelter, and mobilising powerful adaptive systems that buffer or protect against the harmful effects of adversity and drive positive adaptation.<sup>48</sup>

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39 Article 6(1) of the International Covenant on Civil and Political Rights, adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966.

40 Human Rights Council 'General Comment 36 on Art 6 of the International Covenant on Civil and Political Rights, on the Right to Life' (30 October 2018) <[https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR\\_C\\_GC\\_36.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/CCPR/CCPR_C_GC_36.pdf)> accessed 1 December 2023.

41 World Health Organisation (WHO) 'The Cost of a Polluted Environment: 1.7 million child deaths a year, says WHO' (6 March 2017) <<https://www.who.int/news/item/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who>> accessed 10 November 2022.

42 UNICEF 'The Climate-Changed Child: A Children's Climate Risk Index Supplement' (November 2023).

43 UNICEF 'Child Rights at Risk: The Case for Joint Action on Climate Change' (2014) <<https://www.unicef-irc.org/article/928-child-rights-at-risk-the-case-for-joint-action-withclimate-change.html#...>> accessed 20 November 2023.

44 *Ibid.*

45 *Ibid.*

46 UNICEF 'The Climate Crisis is a Child's Right Crisis' (note 14 above).

47 *Ibid.*

48 Masten, AS 'Resilience of Children in Disasters: A Multisystem Perspective' (2021) 56(1) *International Journal of Psychology* 1-11.

In assessing the countries where children are very likely to be affected by climate change, UNICEF adopted the Children's Climate Risk Index (CCRI) model, which is a composite index that helps to explain and measure the likelihood of climate and environmental shocks or stresses affecting children or vulnerable households and groups.<sup>49</sup> The CCRI index seeks to: (a) identify which countries or areas are at risk of deepening child deprivations and humanitarian situations affecting children as a result of their exposure to climate and environmental shocks or stresses; and (b) understand the underlying factors that could contribute to these risks.<sup>50</sup>

The CCRI model reveals that, globally, 240 million children are highly exposed to coastal flooding, 400 million children are highly exposed to cyclones, and 600 million are highly exposed to vector-borne diseases. Also, 815 million children are highly exposed to lead and pollution, and 820 million children are highly exposed to heat waves. 920 million children are highly exposed to water scarcity and one billion children are highly exposed to exceedingly high levels of air pollution.<sup>51</sup> These findings reflect the number of children impacted as at 2021 and the figures are likely to worsen as the impacts of climate change accelerate.<sup>52</sup> For instance, it is estimated that, because of climate change, by 2030 almost 125 million children in Africa will be subjected to water scarcity, malnutrition and displacement.<sup>53</sup> According to the 2023 report of UNICEF, as at 2022, almost one billion children (953 million) are exposed to high or extremely high water stress, 739 million children are exposed to high or extremely high water scarcity, 436 million children live in areas with high or extremely high water vulnerability, while 470 million children face high or extremely high drought risk.<sup>54</sup> Mezmur posits that, based on the 2021 UNICEF report, 32 of the 45 countries identified globally in the CCRI as the worst affected by climate change are in sub-Saharan Africa.<sup>55</sup> Pandey also confirms that about 490 million children under the age of 18 in 35 African countries are at the highest risk of suffering the impact of climate change.<sup>56</sup>

WHO further predicts that the effects of climate change will be heavily concentrated in poorer populations at low latitudes, where the main climate-sensitive health outcomes (malnutrition, diarrhoea and malaria) are already common and where vulnerability to

49 UNICEF 'The Climate Crisis is a Child's Right Crisis' (note 14 above).

50 *Ibid.*

51 *Ibid.*

52 UNICEF 'Children in Nigeria at Extremely High Risk of the Impacts of the Climate Crisis – UNICEF' (2021) <<https://www.unicef.org/nigeria/press-releases/children-nigeria-extremely-high-risk-impacts-climate-crisis-unicef>> accessed 16 November 2023.

53 Mbey, A 'Nigerian Children Face High Risk of Climate Change Impacts' (2021) <<https://nln24.com.ng/2021/08/21/nigerian-children-face-high-risk-of-climate-change-impacts-unicef/>> accessed 18 October 2023.

54 UNICEF 'Child Rights at Risk' (note 43 above).

55 Mezmur, BD 'The Calm Before the Storm? Child Rights Climate Change Litigation in Africa' (2023) *De Jure Law Journal* 543-568.

56 Pandey, K, 'Climate Change: 490 million children in Africa most vulnerable' <<https://www.downtoearth.org.in/africa/climate-change-490-million-children-in-africa-most-vulnerable-76595>> accessed 28 June 2024.

climate effects is the greatest.<sup>57</sup> Hence, the total burden of diseases due to climate change appears to be borne mainly by children in developing countries.<sup>58</sup> This article focuses on the rights of children negatively impacted by climate change, as highlighted in the introduction.

## 5. The legal framework for climate change and children's rights in Nigeria

### 5.1 International instruments

This section discusses the major international instruments to which Nigeria is a party, and domestic laws that regulate climate change, environmental degradation and children's rights. The major international instruments that are relevant to Nigeria include the following:

#### 5.1.1 *United Nations Framework Convention on Climate Change (UNFCCC)*

Under Article 2, the ultimate objective of the UNFCCC is to achieve the stabilisation of GHG concentrations in the atmosphere at a level that will prevent dangerous interference with the climate system to enable economic development to proceed in a sustainable manner.

With respect to children's protection from climate change, the UNFCCC has been criticised for only raising the human impact of climate change, without mentioning children in particular. This is evident from Article 3(1), which states:

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 capacities.

Sanz-Caballero has rightly argued that Article 3(1) of the UNFCCC provides only for intergenerational justice, equity and differentiated responsibilities and capacities, although children are evidently part and parcel of the terms 'humankind' and 'present and future generations'.<sup>59</sup> The text of the UNFCCC does not pay explicit attention to children or youth. Human rights or children's rights dimensions of climate change are not raised either.<sup>60</sup> It can be stated however, that child-specific concerns and children's rights are encompassed in the foundational principle of inter- and intra-generational equity, as incorporated in Article 3(1) of the UNFCCC.<sup>61</sup>

57 McMichael, AJ, Campbell-Lendrum, D & Kovats, S 'Global Climate Change: Comparative Quantification of Health Risks' <<https://www.who.int/docs/default-source/climate-change/publication---global-climate-change-comparative-analysis.pdf>> accessed 17 November 2023.

58 *Ibid.*

59 Sanz-Caballero, S 'Children's Rights in a Changing Climate: A Perspective from the United Nations Convention on the Rights of the Child' (2013) 13 *Ethics in Science and Environmental Politics* 1-14.

60 *Ibid.*

61 Ruppel-Schlichting, K, Human, S & Ruppel, OC 'Climate Change and Children's Rights: An International Law Perspective' in Ruppel, OC, Roschmann, C & Ruppel-Schlichting, K (eds) *Climate Change: International Law and Global Governance, in Legal Responses and Global Responsibility* (Nomos Verlagsgesellschaft mbH, 2013) 349-378.



It follows from the foregoing that children, including Nigerian children, should particularly benefit from the support, such as financial and technological support, to be provided by developed countries under Article 4.3 of the UNFCCC to developing countries, if one considers that children in developing regions are particularly at risk.<sup>62</sup> Article 4.3 states that the developed countries listed in the Convention's annex II, such as Canada and Australia, shall provide 'new and additional financial resources' to meet (a) the 'agreed full costs' for the developing country obligations under article 12.1, referring to measures taken or anticipated for the implementation of the Convention, and (b) the 'agreed full incremental costs' of climate actions covered by article 4.1 on parties' commitments to the objectives, including costs of transfer of technology, needed by the developing country parties.

### 5.1.2 *Paris Agreement*

Article 2 of the Paris Agreement aims to strengthen the global response to the threat of climate change by keeping the global temperature rise this century to well below 2 degrees Celsius above pre-industrial levels, and to limit the temperature increase even further to 1.5 degrees Celsius.

The concern for children was elaborated upon in the Paris Agreement. It provides that, while addressing climate change, State Parties should respect and consider their respective obligations on human rights, including the rights of children and people in vulnerable situations.<sup>63</sup>

Although children are specifically mentioned in the Paris Agreement, this explicit commitment is found only in the Preamble and not in the body of the treaty. This only helps to identify the object and purpose of the treaty and its context, not to impose obligations on the parties.<sup>64</sup> Human rights law is not incorporated into the Paris Agreement either. Thus, the Agreement has been described as providing a rather weak follow-up to the growing recognition of the significance of the human rights dimensions of climate change and of the specific relevance of climate change action for children.<sup>65</sup>

### 5.1.3 *Other environmental laws and soft laws*

Other environmental laws and soft laws relevant to climate change control to which Nigeria is a party include the Convention on Biological Diversity (CBD).<sup>66</sup> Article 1 aims at the conservation and sustainable use of the components of biological diversity. Reference to children is implied in Article 2's definition of 'sustainable use' as the use of components of biological diversity to meet the needs and aspirations of present and future generations.

62 United Nations Inter-agency Group for Child Mortality Estimation (UN IGME) 'Levels and Trends in Child Mortality Report 2021' (United Nations Children's Fund, 2021) 5.

63 Paris Agreement Preamble 11.

64 Gardiner, R *Treaty Interpretation* (Oxford University Press, 2008) 186.

65 UNFCCC Conference of the Parties (COP) 'Report of the Conference of the Parties on its sixteenth session' held in Cancun from 29 November to 10 December 2010 (UN Doc FCCC/CP/2010/7/Add.1, 15 March 2011), especially the last preambular paragraph, paras 8 and 77, Appendix I(2)(c).

66 The Convention was first adopted on 22 May 1992 at the United Nations Conference on Environment and Development, Rio de Janeiro, United Nations.

The United Nations Convention to Combat Desertification (UNCCD) is aimed at mitigating the effects of drought, particularly in African countries in line with Agenda 21, with a view to contributing to the achievement of sustainable development.<sup>67</sup>

#### **5.1.4 Sustainable Development Goals**

The 2030 Agenda for Sustainable Development, adopted by all UN Member States in 2015, provides a blueprint for peace and prosperity for people and the planet, now and in the future.<sup>68</sup> At its heart are the 17 Sustainable Development Goals (SDGs).<sup>69</sup> Goal 13 requires countries, among others, to ‘take urgent action to combat climate change and its impacts’ by strengthening resilience and adaptive capacity to climate-related hazards and natural disasters, implementing the commitment undertaken by developed-country parties to the UNFCCC, and mobilising jointly \$100 billion annually by 2020 from all sources to address the needs of developing countries in the context of meaningful mitigation.<sup>70</sup>

Despite this ‘ambitious goal’, the 2024 UN report on the progress made so far towards achieving SDG 13 states that:

despite some reductions in greenhouse gas emissions in developed countries, greenhouse concentrations hit record highs in 2022, with real-time data in 2023 indicating a continued rise. Carbon dioxide levels have surged to 150% above pre-industrial levels. Public funding for oil, coal, and gas production and consumption more than doubled from 2021 to 2022 and tripled since 2015, hindering progress towards a net-zero transition...<sup>71</sup>

Children are particularly affected by sustainable development gaps.<sup>72</sup> Therefore, States must ensure that universal sustainable development which protect the rights of the child becomes a reality on the ground.<sup>73</sup>

#### **5.1.5 United Nations Convention on the Rights of the Child (CRC)**

From a human rights perspective, certain international laws to which Nigeria is a party protect children from climate change. The major international law is the CRC. The rights of children under the CRC were highlighted in the introduction to this article.<sup>74</sup>

67 The General Assembly adopted Resolution 47/188 in December 1992. Nigeria ratified it on 7 August 1997.

68 United Nations ‘Sustainable Development Goals’ <<https://sdgs.un.org/goals>> accessed 21 June 2024.

69 *Ibid.*

70 United Nations Environment Programme (UNEP) ‘Goal 13: Climate Action’ <<https://www.unep.org/explore-topics/sustainable-development-goals/why-do-sustainable-development-goals-matter/goal-13>> accessed June 2024,

71 United Nations General Assembly Economic and Social Council ‘Progress Towards the Sustainable Development Goals’ Report of the Secretary-General A/79/79-E/2024/54, para 4.

72 Arts, K ‘Children’s Rights and the Sustainable Development Goals’ in Kilkelly, U & Liefwaard, T (eds) *International Human Rights of Children* (Springer-Verlag, 2019) 537-561.

73 United Nations Office of the High Commissioner of Human Rights ‘Child Rights and the 2030 Agenda for Sustainable Development’ <<https://sustainabledevelopment.un.org/content/documents/...>> accessed 21 June 2024.

74 See the rights of children in Articles 2, 3, 6, 12, 19, 24, 28, 27 of the CRC (note 7 above).

Ruppel-Schlichting, Human and Ruppel rightly view the CRC as being of particular relevance by providing a sound basis for a human rights approach that acknowledges children as key role-players in policies and programmes aimed at achieving environmental protection.<sup>75</sup>

Furthermore, the assertion by UNICEF that children have the right to live in a decent environment with all that this implies is a legal commitment through the CRC.<sup>76</sup> For example, Preamble 5 to the CRC explicitly recognises the importance of the natural environment for the growth and well-being of children and requires specifically in Article 24(2)(c) and (d) that States must take account of the dangers and risks of environmental pollution and provide education on the advantages of hygiene and environmental sanitation.

## 5.2 General Comments of the United Nations Committee on the Rights of the Child (UNCRC)

General Comment No. 26 (2023) posits that the extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution, is an urgent and systemic threat to children's rights globally.<sup>77</sup> The UNCRC calls for urgent collective action by all States to, among others, mitigate GHG emissions, in line with their human rights obligations and an urgent increase in the design and implementation of child-sensitive, gender-responsive and disability-inclusive adaptation measures and associated resources to avert the adverse impacts of climate change.<sup>78</sup>

Arts notes that some other General Comments of the UNCRC contain statements that are relevant to issues of climate change.<sup>79</sup> For example, the risks of pollution and disasters are emphasised in General Comment No. 9 and General Comment No.13, respectively. The former, on children with disabilities, explains that 'hazardous environment toxins also contribute to the causes of many disabilities' and refers to the state's role in preventing environmental pollution.<sup>80</sup> In General Comment No. 7, on early childhood, the Committee issues the following reminder:<sup>81</sup>

The right to survival and development can only be implemented in a holistic manner, through the enforcement of all the other provisions of the convention, including rights to health, adequate nutrition, ... a healthy and safe environment, education and play.<sup>82</sup>

75 Ruppel-Schlichting et al. (note 61 above).

76 UNICEF 'Child Rights at Risk: The Case for Joint Action on Climate Change' <<https://www.unicef-irc.org/article/928-child-rights-at-risk-the-case-for-joint-action-with>> accessed 23 November 2023.

77 UNCRC 'General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change' UN Doc CRC/C/GC/2 para 1.

78 *Ibid* paras 95, 101 and 104.

79 Arts, K 'Children's Rights and Climate Change' in Claire Fenton-Glynn (ed) *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations* (Cambridge University Press, 2019) 216-235.

80 UNCRC 'General Comment No. 9 (2006) on the Rights of Children with Disabilities' UN Doc CRC/C/GC/9 (27 February 2007) 54.

81 Arts (note 79 above).

82 UNCRC 'General Comment No. 7 (2006) on Implementing Child Rights in Early Childhood' UN Doc CRC/C/GC/7/Rev.1 (20 September 2006)10.

This is indirectly reinforced in General Comment Nos. 11, 14 and 16. General Comment No. 11 points out that State Parties should closely consider the cultural significance of traditional land and the quality of the natural environment to uphold children's right to life, survival and development to the maximum extent possible.<sup>83</sup> General Comment No. 16, on the right to leisure, play, recreational activities, cultural life and the arts, specifies that an 'environment sufficiently free from waste, pollution, traffic and other physical hazards' is crucial for allowing children 'to circulate freely and safely within their local neighbourhood' and for allowing them opportunities 'to experience, interact with and play in natural environments and the animal world'.<sup>84</sup>

Finally, General Comment No. 1, on the right to education, emphasises the importance of Article 29(1e) on the role of education in developing respect for the natural environment. For example, education must link issues of environment and sustainable development with socioeconomic, sociocultural and demographic issues. Similarly, respect for the natural environment should be learnt by children at home, in school and in the community, actively involving children in local, regional or global environmental projects.<sup>85</sup> All these UNCRC General Comments are applicable to Nigeria.

From its inception as a party to the UNFCCC in 1994, Nigeria has made considerable progress through active participation in international climate policy negotiations, including those analysed above, so as to meet its reporting obligation under the UNFCCC. Nigeria submitted its Initial National Communication (INC) in 2003, its Second National Communication (SNC) in February 2014 and its Third National Communication (TNC) in April 2020.<sup>86</sup> In order to meet the emission reduction obligation, the Intended Nationally Determined Contributions (INDC) were submitted in 2015 to usher in the Paris Agreement, and Nigeria signed the instrument of ratification in 2016 and submitted its First Biennial Update Report (BUR1) in 2018.<sup>87</sup>

### 5.3 African regional instruments

Environmental issues in Africa are regulated within the general legal framework of the African Union (AU).<sup>88</sup> As a member of the AU, Nigeria subscribes to various laws and policies for combating climate change and protecting children from the impact of climate change. These include the following:

83 UNCRC 'General Comment No. 11 (2009) on Indigenous Children and their Rights under the Convention' UN Doc. CRC/C/GC/11(12 February 2009) 35.

84 UNCRC 'General Comment No. 17 (2013) on the Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (art. 31)' UN Doc CRC/C/GC/17(17 April 2013) 6.

85 UNCRC 'General Comment No. 1 (2001) on Article 29(1): The Aims of Education' UN Doc CRC/GC/2001/1(17 April 2001) 9.

86 Federal Republic of Nigeria 'Second Biennial Update Report (BUR2) to the United Nations Framework Convention on Climate Change, Federal Ministry of Environment, Abuja, Nigeria' <<https://unfccc.int/sites/default/files/resource/NIGERIA...>> accessed 21 June 2024.

87 *Ibid.*

88 Ruppel, OC 'Environmental Law and Policy in the African Union' (2022) <[https://www.researchgate.net/publication/359945319\\_Chapter\\_6\\_Environmental\\_Law\\_and\\_Policy\\_in\\_the\\_African\\_Union](https://www.researchgate.net/publication/359945319_Chapter_6_Environmental_Law_and_Policy_in_the_African_Union)> accessed 20 June 2024.

### 5.3.1 *African Charter on Human and Peoples' Rights (ACHPR) of 1981*

The ACHPR is the continent's primary human rights document and the first international treaty to recognise the right of people to 'a general satisfactory environment favourable to their development'.<sup>89</sup> Article 24 provides for people's right to a general satisfactory environment for their development. Article 18 mandates States to protect the rights of children as provided under international instruments. This impliedly includes children's rights to healthy environment.<sup>90</sup>

Other documents include the African Convention on the Conservation of Nature and Natural Resources, 2003, which mandates the enhancement of environmental protection, conservation and sustainable use of natural resources by States in the interests of present and future generations.<sup>91</sup> The Bamako Convention on the Ban of the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa also requires States to prohibit, among others, the importation of all hazardous waste into Africa from non-contracting Parties.<sup>92</sup>

### 5.3.2 *African Charter on the Rights and Welfare of the Child (ACRWC)*

At the African regional level, the ACRWC makes provision for the protection of children's rights while also noting the impact of climate change on them. Preamble 3 to the ACRWC notes with concern that for most African children the situation remains critical due to some unique factors, including natural disasters. Article 4 provides that the best interests of the child are the primary consideration in all actions concerning children. This implies that in undertaking climate action at all levels, the best interests of children must be duly considered and consistently applied.<sup>93</sup>

Article 5 enshrines children's right to survival and development and consequently obliges State Parties to ensure the survival, protection and development of the child, while Article 14 provides for children's right to health. Parties must pursue the full implementation of this right by reducing the infant and child mortality rate, providing adequate nutrition and safe drinking water, and combating diseases and malnutrition. Article 3 provides for non-discrimination. Articles 7, 8 and 9 cover the rights to freedom of expression, association, conscience and religion. The right to education is covered by Article 11. Article 10 addresses the right to privacy while Article 12 covers the right to leisure, recreation and cultural activities. Article 26 protects children against apartheid and discrimination. Article 11(2)(g) requires State Parties to direct the education of the child to 'the development of respect for the environment and natural resources'. These provisions confirm that the ACRWC plays a critical role in addressing the rights of children and climate change.

89 Mezmur (note 55 above).

90 OAU Doc CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).

91 Adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly, Maputo, Mozambique on 11 July 2003.

92 Adopted in Bamako, Mali on 30 January 1991. Nigeria signed the Bamako Convention on 22 December 2008.

93 UNCRC 'General Comment 14 on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration (Art 3, para 1)' UN Doc CRC/C/GC/14 (2013) para 14(a).

### 5.3.3 *Agenda 2063*

Agenda 2063 is Africa's blueprint for transforming Africa into a global powerhouse of the future to deliver on its goal for inclusive and sustainable development.<sup>94</sup> The Agenda formulates Africa's aspirations for the future and identifies key activities to be undertaken in its ten-year implementation plans.<sup>95</sup> Concerning environmental issues, Aspiration 1 envisages a prosperous Africa based on inclusive growth and sustainable development where its environment and ecosystems are protected, with climate-resilient economies and communities. Aspiration 6 recognises the need to put children first.<sup>96</sup> Aspiration 6 paragraph 53 of the Agenda explicitly provides that 'African children shall be empowered through the full implementation of the African Charter on the Rights of the Child'.

### 5.3.4 *African Union Development Agency (AUDA-NEPAD)*

The mission of AUDA-NEPAD is to provide a platform to foster the development of the continent through effective and integrated planning, coordination and the implementation of Agenda 2063 with the aim of accelerating regional integration to achieve 'The Africa We Want'.<sup>97</sup> Its priority targets for intervention include the Environmental Action Plan and Multilateral Environmental Agreements.<sup>98</sup> To achieve the goals of Agenda 2063 regarding children's rights, AUDA-NEPAD and UNICEF signed a Memorandum of Understanding in 2022 to address the education, nutrition and health care challenges facing children and young people in Africa.<sup>99</sup> With this development, it is expected that the ACRWC will be wholly applied to adequately protect African children from the adverse impacts of climate change.

Despite all the efforts of the AU to combat environmental degradation by enacting laws and policies, the challenges of addressing climate action are exacerbated by the lack of a self-standing regional legal and institutional framework on climate change.<sup>100</sup> African countries, including Nigeria, have been experiencing increasing temperatures and rising sea levels, changing precipitation patterns and more extreme weather; these all threaten human health and safety, food and water security, and socio-economic development in Africa.<sup>101</sup>

94 Africa Union 'Agenda 2063: The Africa We Want' <<https://au.int/en/agenda2063/overview>> accessed 25 June 2024.

95 *Ibid.*

96 *Ibid.*

97 African Union Development Agency-NEPAD 'Annual Report 2019' <[https://au.int/sites/default/files/documents/38048-doc-2019\\_auda-nepad\\_annual\\_report\\_en\\_final7\\_31.1.2020\\_web\\_version.pdf](https://au.int/sites/default/files/documents/38048-doc-2019_auda-nepad_annual_report_en_final7_31.1.2020_web_version.pdf)> accessed 20 June 2024.

98 *Ibid.*

99 AUDA-NEPAD 'AUDA-NEPAD and UNICEF sign MoU to promote child rights in Africa' <<https://www.nepad.org/news/auda-nepad-and-unicef-sign-mou-promote-child-rights-africa>> accessed 21 June 2024.

100 Fambasayi (note 38 above).

101 United Nations Climate Change 'Climate Change is an Increasing Threat to Africa' <<https://unfccc.int/news/climate-change-is-an-increasing-threat-to-africa>> accessed 28 June 2024.

## 5.4 Nigerian laws

The key national legislative instruments on environmental protection and climate change mitigation in Nigeria include the following:

### 5.4.1 *Constitution of the Federal Republic of Nigeria, 1999 as amended (the Constitution)*

Section 20 of the Constitution requires the Nigerian government to 'protect the environment and safeguard the water, air, land, forest, and wild life'. The aim is to ensure a healthy environment (including an environment that is less vulnerable to climate change) for Nigerian citizens,<sup>102</sup> including children. The section, however, is non-justiciable under section 6(6)(c) of the same Constitution, which ousts the jurisdiction of courts in entertaining any questions relating to the implementation of issues listed under its fundamental objectives and directive principles of state policy.

### 5.4.2 *Climate Change Act (CCA) 2021*

The cumulative effect of sections 1 and 22 to 25 of the Act is to provide a solid framework for the climate action needed to achieve Nigeria's short-, medium- and long-term goals on climate mitigation and adaptation, and the obligations imposed on both the public and private entities, to promote a low-carbon economy and sustainable livelihoods. It imposes the responsibility on the Council and its Secretariat to partner with relevant stakeholders, especially civil society organisations (CSOs) for strategic advocacy on climate education and a sound legal foundation for potential climate litigation.<sup>103</sup>

Nigeria's revised National Climate Change Policy was adopted in June 2021 with the aim of establishing a well-defined national climate change implementation framework and programmatic action plan that incorporates short-, medium- and long-term mitigation and adaptation strategies to assist with building a climate-resilient nation.<sup>104</sup> These instruments indicate Nigeria's commitment to its treaty obligations under the Paris Agreement and the constitutional obligations placed on the Nigerian state by section 20 of the Constitution.

Prior to the foregoing, Nigeria also adopted a number of policies, strategies and action plans that are related to addressing the national development challenges of climate change.<sup>105</sup> The main ones are the Economic Recovery and Growth Plan (ERGP) 2017-2020, the Transformation Agenda (2011-2020) and Vision 20:2020.<sup>106</sup>

It is important to note, however, that the Nigerian laws and policies mentioned above make no adequate or specific provision for the protection of children's rights during climate change. Other Nigerian laws for environmental protection include the following:

102 Federal Ministry of Environment, Department of Climate Change 'National Climate Change Policy for Nigeria: 2021–2030' <[https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP\\_Nigeria\\_Revised\\_2-June-2021.pdf](https://climatechange.gov.ng/wp-content/uploads/2021/08/NCCP_Nigeria_Revised_2-June-2021.pdf)> accessed 11 July 2023.

103 *Ibid.*

104 *Ibid.*

105 *Ibid.*

106 *Ibid.*

### 5.4.3 *National Environmental Standards and Regulations Enforcement Agency Act (NESREA Act) 2007*

Section 7 provides the authority to ensure compliance with environmental laws, while section 27 prohibits and penalises the discharge, without lawful authority, on the Nigerian land and into Nigeria's waters or air, such harmful quantities of any hazardous substance.<sup>107</sup> The main problem with the NESREA Act is the inadequate enforcement of its provisions.<sup>108</sup>

### 5.4.4 *Environmental Impact Assessment (EIA) Act*

Section 2(1) prohibits the public or private sector of the economy from undertaking, embarking on or authorising projects or activities without prior environmental consideration at an early stage of such projects.<sup>109</sup> However, public sector projects in Nigeria are not environmentally friendly since EIAs are not usually conducted.<sup>110</sup>

### 5.4.5 *Associated Gas Re-injection Act*

Section 2 prohibits the flaring of associated gas without the written permission of the Minister of Petroleum Resources.<sup>111</sup> Despite this, Nigeria currently contributes significantly to the total amount of GHGs produced in Africa through unabated emissions from its oil and gas industry in the Niger Delta.<sup>112</sup>

### 5.4.6 *Child's Right Act (CRA) 2003*

With respect to the protection of children's rights, the CRA 2003 is the most comprehensive Act in Nigeria. Section 277 of the CRA defines a child as 'a person under the age of 18 years'. Like the CRC and the ACRWC which it domesticates, the CRA makes no express provision for the protection of children's rights during climate change. However, the CRA makes comprehensive provision for the rights of children with the best interests of the child being of paramount importance in all circumstances.<sup>113</sup> Other rights of children under the Act include: the right to life, survival and development; the right to a name; the right to private and family life; the right to dignity; the right to leisure, recreation and cultural activities; the right to freedom of association and peaceful assembly; freedom of thought, conscience and religion; freedom from discrimination; freedom of movement; the right to health care; the right to parental care, protection and maintenance; and the right to education.<sup>114</sup>

107 This Act was officially gazetted by the Federal Republic of Nigeria on 31 July 2007. See Government Notice 61, Act No.25 Vol. 94, pages A635-655. Now Cap N164 Laws of Federation of Nigeria (LFN) 2004.

108 Olaoluwa, RO 'Assessment of Legal Frameworks on Environment and Climate Change Enforceable in Nigeria by the National Environmental Institution' (2019) 1(3) *IRL* 81-90.

109 Cap E12 LFN 2004.

110 Olaoluwa (note 108 above).

111 Associated Gas Reinjection Act Cap A26 LFN 2004.

112 Afinotan, U 'How Serious is Nigeria about Climate Change Mitigation through Gas Flaring Regulation in the Niger Delta?' (2022)24(4) *Environmental Law Review* 288-304.

113 Section 1 of the CRA.

114 Sections 1-15 of the CRA.



The major challenge, however, is that the CRA has not been adopted by all the states of the Federation for a number of reasons. These include custom and religion being contrary to the tenor of the CRA, lack of political will by the government to promote the best interests of children, and the conflict between state governments and civil society groups.<sup>115</sup> These challenges have hampered the effective implementation of the CRA in Nigeria. The states that have adopted the CRA are also not effectively implementing the CRA.

## 6. Challenges and successes of climate change action in Nigeria

Despite Nigeria's efforts towards combating climate change under the UNFCCC and other international, regional and domestic laws and policies, some of which are analysed above, Nigeria is still struggling to achieve the desired results. Like other parts of Africa and many parts of the world, Nigeria is experiencing climate change.<sup>116</sup> In particular, the country is becoming warmer; various studies have shown that annual and seasonal time scales indicate a significant positive increase in temperatures in Nigeria.<sup>117</sup> The combination of rising heat and less rain has hastened desert encroachment, with the loss of the wetlands, and a rapid reduction in the amount of surface water, flora and fauna resources on the land.<sup>118</sup>

According to the UN, Nigeria has the highest rate of deforestation in the world.<sup>119</sup> Nigeria loses 3.7 percent of its forests every year; rising sea levels threaten southern cities such as Lagos and coastal areas, increasing vulnerability to flooding and waterborne diseases; droughts and reduced rainfall, with rising air temperatures, hinder agricultural production and fishing, reducing food security and negatively impacting health and nutrition.<sup>120</sup> The energy sector, deforestation and land-use change are the greatest contributors to Nigeria's GHG emissions.<sup>121</sup>

The challenges associated with climate change are not the same across the country. Nigeria has a tropical climate with two precipitation regimes: low precipitation in the North and high precipitation in parts of the Southwest and Southeast, which leads to aridity, drought and desertification in the North, and flooding and erosion in the South.<sup>122</sup>

115 Ladan, MT 'An Overview of the Child's Right Act, 2003' Paper presented at the all Judges' Conference of the Superior Courts organised by the National Judicial Institute 15–19 November, 2021, at the National Judicial Institute, Abuja <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4015384](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4015384)> accessed 8 August 2024.

116 Federal Ministry of Environment (note 102 above).

117 *Ibid.*

118 Abdulkadir, A, Lawal AM & Muhammad, TI 'Climate Change and its Implications on Human Existence in Nigeria: A Review' (2018) 10(2) *Bayero Journal of Pure and Applied Sciences* 152-158.

119 United States Agency International Development (USAID) 'Nigeria Climate Change Country Profile' Fact Sheet 29 November 2023 <<https://www.usaid.gov/climate/country-profiles/Nigeria>> accessed 25 June 2024.

120 *Ibid.*

121 *Ibid.*

122 Akande, A, Costa, AC & Mateu, J 'Geospatial Analysis of Extreme Weather Events in Nigeria (1985–2015) Using Self-Organizing Maps' (2017) *Advances in Meteorology* 1-11.

As confirmed by the revised Climate Change Policy for Nigeria 2021–2030, the Northeast and Northwest geopolitical zones that constitute the arid and semi-arid areas of Northern Nigeria, and where most of the country's livestock are raised, are the most vulnerable to climate change.<sup>123</sup> This is because of the regions' low adaptive capacity, low sensitivity, high relative exposure and high relative vulnerability.<sup>124</sup> Within Southern Nigeria, the South-south (Niger Delta region) is the most vulnerable, due to the rising sea level, increased precipitation, coastal erosion and flooding, which have resulted in the displacement of many settlements.<sup>125</sup>

Climate vulnerability mapping of the arid and semi-arid Northern Nigeria indicates that Adamawa, Bauchi, Borno, Jigawa, Kano and Yobe States have high vulnerability to climate change, while Kebbi, Katsina, Sokoto and Zamfara States have medium vulnerability. Kaduna and Taraba States are areas of low vulnerability to climate change, relative to other parts of the arid and semi-arid Northern Nigeria.<sup>126</sup> The main cause of climate change in Nigeria is the high concentration of GHGs in the atmosphere.<sup>127</sup> The persistence of climate change is exacerbated by a lack of funding (for mitigation and adaptation); a lack of capacity-building and poor technical skills; a lack of synergy, coordination and collaboration by stakeholders; a lack of target setting, monitoring and evaluation; and poor communication.<sup>128</sup>

Despite the many challenges, a level of success has also been recorded. For instance, with the intervention of the World Bank through its Nigeria Erosion and Watershed Management Project (NEWMAP), more than 12 million people benefited from the \$900 million project, which reinforced the country's ability to fight climate-induced erosion, natural hazards and disasters; 52,000 jobs in the sectors promoting climate adaptation, direct and indirect, were created through the first Sovereign Green Bonds; while 23 states adopted innovative integrated approaches for adaptive development based on community participation.<sup>129</sup> However, a significant impact is yet to be felt.<sup>130</sup>

123 Federal Ministry of Environment (note 102 above).

124 *Ibid.*

125 Matemilola, S 'Mainstreaming Climate Change into the EIA Process in Nigeria: Perspectives from Projects in the Niger Delta Region' (2019) 7(2) *Climate* 29.

126 Federal Ministry of Environment (note 102 above).

127 Badru, L 'Climate Change in Nigeria: Causes, Effects and Legal Framework' (2020) 4(1) *UNILAG Law Review* 186-203.

128 Federal Ministry of Environment, Department of Climate Change 'Nigeria's Adaptation Communication to the United Nations Framework Convention on Climate Change' (2021) <<https://climatechange.gov.ng/wp-content/uploads/2021/12/Nigeria-Final-ADCOM-Report.pdf>> accessed 30 June 2021.

129 A Sovereign Green Bond is a financial instrument that is issued by a sovereign entity, intergovernmental group, alliance or corporation. The proceeds from the sale of these bonds are earmarked exclusively for projects classified as environmentally sustainable. See Insights 'Sovereign Green Bonds' <<https://www.printfriendly.com/p/g/vZsr4>> accessed 25 June 2024.

130 World Bank Group 'Land, soil and climate change: How Nigeria is enhancing climate resilience to save the future of its people' (2022) <<https://www.worldbank.org/en/news/feature/2022/10/18/land-soil-and-climate-change-how-nigeria-is-enhancing-climate-resilience>> accessed 30 June 2024.

## 7. The adverse impact of climate change on children's rights in Nigeria

The global UNICEF CCRI model considered earlier in this article indicates that of the 163 countries that were assessed, Nigeria and the Republic of Chad were both ranked the second highest-risk countries (after the Central African Republic) where children are susceptible to the impact of climate change.<sup>131</sup> According to the report, Nigeria's low rating was due to children's high exposure to air pollution and coastal floods.<sup>132</sup> The 33 extremely high-risk countries, including Nigeria, collectively emit just 9 per cent of global CO<sub>2</sub> emissions, yet Nigerian children are at a very high risk of being negatively impacted.<sup>133</sup> The report concluded that investment in social services, particularly child health, nutrition and education, could help to reverse the trend, safeguard children's future and provide better protection against climate change.<sup>134</sup> The affected children's rights identified for discussion in the introduction to this article are analysed here.

### 7.1 Right to life, survival and development

Nigerian children are among the most vulnerable group negatively impacted by climate change.<sup>135</sup> Records show that, due to climate change, 1.7 million children die every year as a result of avoidable environmental impacts, while millions of them are forced to leave their homes, missing school and suffering from diseases.<sup>136</sup> Respiratory diseases also increase in children from birth up to the age of 16 years.<sup>137</sup> In Nigeria, 78 per cent of air pollution-related pneumonia deaths are among children under the age of five, the highest proportion globally.<sup>138</sup> This contradicts the provisions of section 33 of the Constitution on the right to life and sections 3 and 4 of the CRA on the right to life, survival and development.

### 7.2 Right to health and health services

The right to survival and development and the right to health and health services are closely linked. Section 13 of the CRA provides for every child's right to enjoy the best attainable state of health. Section 13(3) requires Nigeria, *inter alia*, to reduce the infant and child mortality rate and provide necessary medical assistance and healthcare to

131 UNICEF 'The Climate Crisis is a Child's Right Crisis' (note 14 above).

132 *Ibid.*

133 *Ibid.*

134 *Ibid.*

135 Adat, L, Edward, A & Sani, AD 'Nigeria: The UN General Comment on Children's Rights and Environment with a Special Focus on Climate Change 2023: Implication For Nigeria' (2023) <<https://www.mondaq.com/nigeria/climate-change/1338362/the-un-general-comment-on-childrens-rights-and-environment-with-a-special-focus-on-climate-change-2023-i>> accessed 10 April 2023.

136 World Health Organization (WHO) 'The cost of a polluted environment: 1.7 million child deaths a year, says WHO' (2017) <<https://www.who.int/news/item/06-03-2017-the-cost-of-a-polluted-environment-1-7-million-child-deaths-a-year-says-who>> accessed 8 August 2024.

137 Ibraheem, RM, Aderemi, JA & Abdulkadir, MB 'Burden and Spectrum of Paediatric Respiratory Diseases at a Referral Hospital in North-Central Nigeria: A Five Year Review' (2020) 10(1) *Afr J Emerg Med* 3-7.

138 UNICEF 'Nigeria has highest number of air pollution-related child pneumonia deaths in the world' <<https://www.unicef.org/nigeria/press-releases/nigeria-has-highest-number-air-pollution-related-child-pneumonia-deaths-world>> accessed 25 June 2024.

all children. In spite of this provision, across Nigeria, children experience increased temperatures and polluted air leading to health problems such as asthma and other dangerous respiratory conditions.<sup>139</sup> Because of higher temperatures, water scarcity, flooding, drought and displacement, especially in Northern Nigeria, climate change negatively impacts agricultural production and causes a breakdown in food systems.<sup>140</sup> The consequence for children is malnutrition and exposure to diseases. According to the UNICEF Country Office Annual Report 2021,<sup>141</sup> Nigeria has the second highest burden of stunted children in the world, with a national prevalence rate of 32 percent of children under the age of five. An estimated two million children in Nigeria suffer from severe acute malnutrition.<sup>142</sup>

Children in Northern Nigeria form part of the 920 million children currently exposed to water scarcity (globally) and the situation is likely to worsen as climate change increases the severity of droughts and contamination.<sup>143</sup> This has resulted in children's constant battles with diseases like cholera, diarrhoea and bilharzia.<sup>144</sup>

### 7.3 Right to freedom from discrimination

Section 10(1) and (2) of the CRA prohibits any form of discrimination against children. The impacts of climate change on children exacerbate inequity as they often hit children the hardest.<sup>145</sup> Children are often the first and most severely impacted by climate change.<sup>146</sup> This clearly violates children's right to freedom from discrimination under section 42 of the Nigerian Constitution and section 10 of the CRA.

### 7.4 Best interests of the children

Section 1 of the CRA requires that the best interests of the child should be the primary consideration in all actions concerning a child.<sup>147</sup> This implies that, in taking climate action at all levels, the best interests of children must be duly considered and applied.<sup>148</sup> Climate change works in opposition to the actualisation of the best interests of children as it affects their rights and well-being.

139 Ewepu, G 'Children Cry Out Over Negative Impact of Climate Change' <<https://www.vanguardngr.com/2022/08/children-cry-out-over-negative-impact-of-climate-change/>> accessed 12 October 2023.

140 Nigerian Tribune 'Climate Change and Health in Nigeria' (14 September 2017) <<https://tribuneonlineng.com/climate-change-health-nigeria/>> accessed 19 November 2023.

141 UNICEF 'Country Office Annual Report 2021-Nigeria' <<https://www.unicef.org/media/116321/file/Nigeria-2021-COAR.pdf>> accessed 8 September 2023.

142 *Ibid.*

143 UNICEF 'The Climate Crisis is a Child's Right Crisis' (note 14 above).

144 Chime, V 'Inside Story: How Climate Change Affects Child Education in Nigeria' (3 November 2021) <[thecable.ng/special-report-how-climate-change-affects-child-education-in-nigeria](https://thecable.ng/special-report-how-climate-change-affects-child-education-in-nigeria)> accessed 19 November 2023.

145 UNICEF Office of Research 'The Challenges of Climate Change: Children on the Front Line' Innocenti Insight (UNICEF Office of Research, 2014).

146 UNICEF 'Climate Landscape Analysis for Children in Nigeria' (note 26 above).

147 Section 1 of the Child's Right Act.

148 UNCRC 'General Comment 14 on the Right of the Child to have His or Her Best Interests Taken as a Primary Consideration (art 3, para 1)' UN Doc CRC/C/GC/14 (2013) para 14(a).

## 7.5 Right to education

Section 15 of the CRA provides for children's right to education. Flooding and other environmental disasters cause displacement and prevent children's access to school.<sup>149</sup> In late 2022, the most devastating floods in a decade affected 4.4 million people across Nigeria, including 2.6 million children.<sup>150</sup> The flooding affected Kogi, Benue, River and Bayelsa States, leading to children's absence from school for a long period of time.<sup>151</sup>

The foregoing shows the grave effect of climate change on Nigerian children, which deserves urgent attention.

## 8. The perspective of intergenerational climate justice

Intergenerational justice is the idea that present generations have certain duties towards future generations.<sup>152</sup> This is central to the pursuit of sustainable development, and climate justice requires that we realise the human rights and development needs of present generations while safeguarding the rights of future generations.<sup>153</sup> According to Robinson,<sup>154</sup> climate justice as a moral argument has two parts. Firstly, it compels an understanding of the challenges faced by those people and communities most vulnerable to the impacts of climate change. Often the people on the frontline of climate change have contributed least to the causes of the climate crisis. This is a climate injustice that can only be rectified by swift and ambitious climate action, including reducing emissions to zero as rapidly as possible.<sup>155</sup> Secondly, climate justice informs how humans should act to combat climate change. It must be ensured that the transition to a zero-carbon economy is just and that it enables all people to realise their right to development. This requires that the global community acts in solidarity and ensures that the necessary resources are available to allow all countries and people to make the transition to clean, renewable energy on the same timescale.<sup>156</sup>

## 9. Recommendations for intergenerational climate justice for children in Nigeria

### 9.1 Addressing current challenges of climate change globally

Although the UNFCCC has served many important roles over the last three decades, from elevating the climate crisis and developing the international frameworks for action,

149 UNICEF 'Climate Landscape Analysis for Children in Nigeria' (note 26 above).

150 UNICEF 'Nigeria Flood Response Report, August 2022–June 2023' <<https://www.unicef.org/media/150391/file/Nigeria-2022-Flood-Response-Brief-Aug%202022-to-June-2023.pdf>> accessed 15 June 2024.

151 Adat (note 135 above).

152 London School of Economics and Political Science 'What is meant by intergenerational climate justice?' <<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-meant-by-intergenerational-climate-justice/>> accessed 18 June 2024.

153 Mary Robinson Foundation 'Pursuing Climate Justice within Environmental, Social and Governance Investment Frameworks' <[https://media.businesshumanrights.org/media/documents/files/documents/Pursuing\\_Climate\\_Justice\\_within\\_ESG\\_Investment\\_Frameworks\\_FINAL.pdf](https://media.businesshumanrights.org/media/documents/files/documents/Pursuing_Climate_Justice_within_ESG_Investment_Frameworks_FINAL.pdf)> accessed 5 December 2022.

154 *Ibid.*

155 Earth in Common 'Restorative Climate Justice: A Concept to Place at the Heart of Foreign Aid and International Development?' <<https://www.earth-in-common.org/restorativeclimatejustice>> accessed 19 November 2023.

156 *Ibid.*

including the Convention in 1992 and the Paris Agreement in 2015, challenges still remain. According to the World Economic Forum, three key climate risks remain top global challenges for which urgent action is needed. These are extreme weather events, critical change to Earth systems and biodiversity loss.<sup>157</sup> The UN climate process must think about how it can move with the speed and urgency required and catalyse action from national governments.<sup>158</sup> At the same time, children's participation and respect for their views must be allowed in compliance with Article 12 of the CRC so as to protect their best interests.

## 9.2 A substantive regional convention that governs climate change

At the African regional level, the continent must adopt a substantive regional convention that governs climate change. It must be capable of driving regional solutions, standard-setting and oversight in the protection of vulnerable groups (including children).<sup>159</sup> In doing this, children's participation and views should be taken into account and respected. Furthermore, African countries must invest more in climate adaptation and shift to a low-carbon growth path to support sustainable development.<sup>160</sup>

## 9.3 Further action to mitigate climate change

At the national level and as a high-risk country, the Nigerian government must urgently take further action to mitigate climate change by limiting GHG emissions to prevent their negative impact on the rights of all citizens, including children, and future generations.<sup>161</sup> The protection of children's rights requires halting the development of the most carbon-intensive fossil fuels and transitioning to clean, renewable sources of energy.<sup>162</sup> Adequate resources should be directed towards efforts to promote non-discriminatory access to basic necessities and services for children. Investment in education and related infrastructure is a rights-based, cost-effective and sustainable method of empowering children, while health, water and sanitation, housing infrastructure and related services are also critical to children's adaptation and resilience.<sup>163</sup>

157 World Economic Forum 'These are the top 3 climate risks we face and what to do about them' (2024) <<https://www.weforum.org/agenda/2024/01/climate-risks-are-finally-front-and-centre-of-the-global-consciousness/>> accessed 2 July 2024.

158 Cogswell, N & Warszawski, N '5 Challenges the UNFCCC Must Overcome to Spur Climate Action' (2022) <<https://www.wri.org/insights/5-challenges-unfccc-must-overcome-climate-action>> accessed 2 July 2024.

159 Jegede, AO 'The Climate Change Regulatory Framework and Indigenous Peoples' Lands in Africa: Human Rights Implications' (2016) *Journal of Environmental Economics* 238.

160 World Economic Forum '3 key fronts on which Africa must combat climate change' <<https://www.weforum.org/agenda/2022/10/3-key-fronts-africa-climate-change/>> accessed 24 June 2024.

161 United Nations General Assembly 'Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/35/13' (2017) 5-6.

162 *Ibid.*

163 UNCRC 'General Comment No. 15 (2013) on the Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (art. 24)' UN Doc CRC/C/GC/15 (17 April 2013) 40.

#### 9.4 Environmental litigation

At the domestic level, those experiencing climate change must be allowed to institute actions against the perpetrators of climate change. Intergenerational climate justice has been described as a powerful way to attach legal responsibility to actors who fail to play their part in mitigating climate change.<sup>164</sup> Thus, based on the existing legal frameworks, in the international community, cases are being instituted for environmental protection.

With specific reference to the protection of children and future generations from the impact of climate change, children and their representatives have engaged in environmental litigation in some foreign jurisdictions. For example, in the 1994 case of *Minors Oposa v Secretary of the Department of Environmental and Natural Resources*,<sup>165</sup> the principal plaintiffs were all minors duly represented and joined by their respective parents, in conjunction with the Philippine Ecological Network, Inc (a non-profit organisation).<sup>166</sup> The plaintiffs sought an order that the government discontinue any existing and future timber licence agreements, alleging that deforestation was causing environmental damage. The trial court dismissed the complaint. On appeal, the Supreme Court reversed the trial court's decision, ruling, *inter alia*, that the plaintiffs had standing to represent their yet unborn posterity, that they had adequately asserted a right to a balanced and healthy ecology, that the grantees of the licenses should be impleaded, and that the issues raised were justiciable.<sup>167</sup> In *B v R*<sup>168</sup> the German Constitutional Court ruled that the German Federal Climate Law (*Klimaschutzgesetz*) violates the constitutional freedoms of future generations, enshrined in the Basic Law of Germany.

For the protection of general human rights against climate change, in *State of the Netherlands v Urgenda Foundation*,<sup>169</sup> the Dutch Supreme Court in 2019 upheld the lower court's opinion that the Netherlands has a positive obligation under the 1950 European Convention on Human Rights to take reasonable and suitable measures for the prevention of climate change by reducing its GHG emissions by at least 25 per cent by the end of 2020. No cases have been instituted specifically for children in Nigeria or on their behalf. For the protection of human rights generally from climate change impacts in Nigeria, in *Jonah Gbemre v Shell Petroleum Nigeria Limited and Others*,<sup>170</sup> the Federal High Court decided the case along the lines of the principles in *State of the Netherlands*<sup>171</sup> and in the absence of a constitutionally protected right to a healthy environment. The court concluded that illegal flaring of natural gas contravenes the right to dignity under the Constitution,

164 Meyer, K 'Courts Step Up on Intergenerational Climate Justice' (2021) <<https://www.iucn.org/news/environmental-law/202108/courts-step-intergenerational-climate-justice>> accessed 2 July 2024.

165 (1994) 33 ILM 173.

166 Judgment of Republic of the Philippines Supreme Court Manila En Banc <<http://www1.umn.edu/humanrts/research/Philippines/Oposa%20v%20Factoran,%...>> accessed 24 November 2023.

167 *Ibid.*

168 (2021) B v R 2656/18 1-270.

169 ECLI:NL:RBDHA:2015:7145.

170 (2005) AHRLR 151.

171 See note 169 above.

amounting to an affront to the constitutional right to human dignity.<sup>172</sup> This decision was never enforced as gas flaring continues, largely unabated, in the Niger Delta.<sup>173</sup>

The reason borders on the issue of non-justiciability of the right to environment under the Constitution. However, justiciability can be achieved if the courts give an expansive interpretation to the right to a protected and improved environment, and safeguarded water, air and land, forest and wildlife, as provided in section 20 of the Constitution. This means using the (non-justiciable) right to a healthy environment as an aid in interpreting the legally enforceable fundamental right to life, since the fulfillment of the right to life depends on living in a healthy and protected environment. This means that, in an action for the violation of the right to a protected environment, section 20 on the right to an environment, section 33 on the right to life, section 34 on the right to dignity, and Article 24 of the African Charter on the right to a favourable environment can be used in establishing the right to a healthy environmental life. The Charter is applicable in terms of section 12 of the Constitution to the Nigerian courts by virtue of its being enacted into law by the National Assembly. This would achieve the aim of making the right to a healthy environment justiciable.

The principles in *Minors Oposa*<sup>174</sup> and *State of the Netherlands*<sup>175</sup> discussed above can be extended to cases of Nigerian children once justiciability is achieved. Children are also covered by the human rights protection in the African Charter and fundamental human rights in chapter 4 of the Nigerian Constitution.

The decisions in these cases show the potential role of the judicial system in protecting children and general human rights from harmful activities, including those that contribute to climate change.<sup>176</sup> It is hoped that the Nigerian judiciary will be more proactive in defending the rights of children and future generations against those involved in harming the planet.

### 9.5 Application in Nigeria of the core human rights obligations of States in the context of climate change as outlined by the OHCHR

These obligations require States to take a human rights-based approach to protect those who are most vulnerable to climate change from its worst impacts.<sup>177</sup> A human rights-based approach analyses obligations, inequalities and vulnerabilities and seeks to redress discriminatory practices and unjust distributions of power.<sup>178</sup> A children's rights-based approach to climate change mitigation and adaptation builds on the essential attributes of human rights-based approaches, while incorporating the specificities of children's rights,

172 *Ibid.*

173 May, JR & Tiwajopelo D 'Dignity and Environmental Justice in Nigeria: The Case of *Gbemre v. Shell*' (2019) 25 *Widener Law Review* 267-268.

174 See note 165 above.

175 See note 169 above.

176 Meyer (note 164 above).

177 *Ibid.*

178 United Nations Research Institute for Social Development (UNRISD) 'The Human Rights-Based Approach to Social Protection' <<https://socialprotection-humanrights.org/wp-content/uploads/2016/09/IB2-Human-rights-based-approach.pdf>> accessed 22 November 2022.



needs and capacities.<sup>179</sup> The UNCRC has identified the four general principles of a children's rights-based approach: non-discrimination; the best interests of the child; the child's right to life, survival and development; and the child's right to express his or her views.<sup>180</sup>

A children's rights-based approach to climate change must take the following into account:<sup>181</sup> (a) the main objective of the formulation of climate policies should be to fulfill human rights, taking into account the specific risks faced by children; (b) children's active participation (guaranteed by Article 12 of the CRC) in relevant decision-making processes, including those related to climate adaptation and mitigation policies, must be ensured;<sup>182</sup> this provision should be incorporated into the CRA to enable the participation of children in decision-making on climate change; (c) the obligations and responsibilities of duty-bearers must be clarified; and (d) principles and standards derived from international human rights law, especially the Universal Declaration of Human Rights, should guide all policies and programming.<sup>183</sup>

### 9.6 Principle of intergenerational equity

The principle of intergenerational equity underlying these frameworks places a duty on current generations to act as responsible stewards of the planet and ensure the rights of future generations to meet their developmental and environmental needs.<sup>184</sup> Nigeria as a State Party has a moral and ethical obligation to place the needs of today's children and of future generations at the core of climate change policies and actions.

### 9.7 The CRA as a national framework

The CRA must be made the national framework for action for the protection of children's rights during climate change in Nigeria, complementing the Climate Change Act 2021 and the revised Climate Policy of 2021. All States of the Nigerian Federation, especially Northern Nigeria where climate change is more prevalent, must adopt the CRA. Secondly, the provisions of Article 29(e) of the CRC, which obligates State Parties to direct child education to the development of respect for the natural environment, needs to be incorporated into the CRA.

## 10. Conclusion

The analysis in this article has shown that the protection of children's human rights and the protection of the environment are inextricably linked due to the negative impact on children when there is a failure to protect the environment. The analysis also shows that children contribute the least to climate change but bear the greatest burden due to their

179 United Nations 'Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child' (note 161 above).

180 UNCRC 'General Comment No. 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child' UN Doc CRC/GC/2003/5 (27 November 2003) 12.

181 United Nations 'Analytical Study on the Relationship between Climate Change and the Full and Effective Enjoyment of the Rights of the Child' (note 161 above) 32.

182 *Ibid.*

183 *Ibid.*

184 *Ibid.*, 35.

vulnerability. The adverse impacts of climate change on the African child, particularly the Nigerian child, are enormous and should be urgently addressed by the Nigerian government to prevent further calamities and the explosion of what Odumakin has described as a 'climate time bomb,' especially as Nigeria has been declared to be an extremely high-risk country where children are highly susceptible to the adverse impacts of climate change.<sup>185</sup> Without stable and healthy environmental conditions, there is no foundation to support progress or development.<sup>186</sup>

Tackling climate change should be a joint responsibility of Western countries and African governments, including Nigeria, while steps are taken to develop comprehensive, all-inclusive national adaptation plans, and while also respecting what governments have already agreed to contribute to adaptation and mitigation budgets.<sup>187</sup> Governments are also encouraged to use existing funds with efficacy and purpose to protect and preserve the environment for the present and future generations.<sup>188</sup>

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186 Goodman, DL 'UNFCCC and Child Rights: An Intergenerational View of Global Environmental Policy' <<http://www.earthchildinstitute.org/wp-content/uploads/2012/06/Goodman-UNFCCC-and-child-rights.final.pdf>> accessed 1 August 2023.

187 Odumakin (note 186 above).

188 *Ibid.*