

Climate change, human rights and the Nigerian child

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Abstract: Children rank among the world's most vulnerable groups due to factors such as their young age and reliance on others. The environment in which children live is a critical factor in their physical and mental development. Though there exists a plethora of national policies (for example, the National Climate Change Policy 2021-2030) alluding to climate change issues with respect to children, issues relating to children are yet to be explicitly included in climate change measures, including legal instruments in Nigeria. This article investigates some critical and current issues surrounding the climate-changed child, which include whether children have the right to a clean environment, how this right may be realised and its implications for the potential of children and youth-led climate litigation in Nigeria. The article then focuses on how the Nigerian government can explicitly mainstream the rights of children and youths into climate change interventions and how provisions on the right to a clean and healthy environment can be used to protect children from the negative impacts of climate change and promote litigation, particularly among children and the youth in Nigeria.

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1 Introduction

Climate change awareness and responses have recently gained law makers' attention in Nigeria. However, how climate factors impact children is not yet a serious concern for Nigerian policy makers. Nigeria is the most populous country in Africa, with approximately 206 million people, of whom about 110 million are children.¹ It is also one of the largest high-fertility countries in the Global South with a large population.² While a high population is serving some countries as an advantage,³ the reverse is the case in Nigeria. This is because a large percentage of the population is made up of not only children but also young people (who are untrained, less productive)⁴ and who cannot contribute meaningfully to development, partly because of climate security concerns.⁵

Nigeria has recently taken steps to develop several climate change policies, strategies and adaptation plans.⁶ Arguably, these strategies have yet to be effectively implemented.⁷ What is more disturbing, however, is that children are not yet the priority of policy makers, even though they constitute the largest

- 1 United Nations Children's Fund (UNICEF) Country Office Annual Report 2020 (Nigeria), <https://www.unicef.org/media/101076/file/Nigeria-2020-COAR.pdf>. (accessed 18 May 2025). A more recent study puts the statistics differently, in their recent study UNICEF Nigeria states that children account for 51% of the 223 million people in Nigeria. See Climate Landscape Analysis for Children in Nigeria: Climate Action Plan for 2023–2027 UNICEF Nigeria, November 2023, <https://www.unicef.org/nigeria/media/8311/file/Climate%20Landscape%20Analysis%20for%20Children%20in%20Nigeria%202023.pdf> (accessed 18 May 2025).
- 2 Nigeria has been rated as the 7th lowest human capital index in the world despite its growing population. World Bank 'World Bank in Nigeria', <https://www.worldbank.org/en/country/nigeria/overview> (accessed 18 May 2025). Broadly speaking, the term 'Global South' comprises countries primarily in Africa, parts of Asia and countries in Latin and Central America. Generally, see S Kavuri & A Ramanathan 'Climate change litigation: chronicles from the Global South. A comparative study' (2022) 28 *Comparative Law Review* 169; EO Ekhatior and others *Taxation, human rights, and sustainable development: Global South perspectives* (2025).
- 3 India and China are currently the most populous countries in the world, and they are striving hard to adapt their demographic changes to achieve sustainable development. UN DESA Policy Brief 153 'India overtakes China as the world's most populous country', <https://www.un.org/development/desa/pd/content/india-overtakes-china-world%E2%80%99s-most-populous-country#:~:text=In%20April%202023%2C%20China%20is,trends%20in%20national%20development%20planning> (accessed 18 May 2025).
- 4 VJ Pontianus & ED Oruonye 'The Nigerian population: A treasure for national development or an unsurmountable national challenge' (2021) 2 *International Journal of Science and Research Archive* 136.
- 5 JW Busby 'Beyond internal conflict: The emergent practice of climate security' (2021) 58 *Journal of Peace Research* 186.
- 6 See National Climate Change Policy for Nigeria, 2021–2030, the Nigeria Climate Change Policy Response and Strategy 2012, Climate Change Act 2021.
- 7 HM Butu and others 'Climate change adaptation in Nigeria: Strategies, initiatives, and practices' Working Paper 3, Africa Policy Research Institute, Berlin, 2022, <https://afripoli.org/uploads/publications/Climate-Change-Adaptation-in-Nigeria-Strategies-Initiatives-and-Practices.pdf> (accessed 18 May 2025); OI Eme & IE Okolie 'Climate change and Nigerian government's intervention efforts, 2000–2012' (2016) 2 *Specialty Journal of Agricultural Sciences* 59.

percentage of the statistics of those multidimensionally poor in Nigeria.⁸ This comes in the context of an emerging, youth-focused and youth-led climate justice movement in Nigeria, which led Egbe to observe:⁹

This new climate movement is majorly championed by youth and youth-led organisations, calling on leaders to enact measures to reduce the impact of climate change on vulnerable communities. Many of these activists at the frontline of climate advocacy have witnessed the climate crisis, and this experience has heightened their sense of urgency.

However, several national policies relating to climate and allied issues in Nigeria, including the National Climate Change Policy 2021-2030, allude to children in their provisions.¹⁰ Some of these national policies will be the focus of this article.¹¹ The article also aims to examine the extent of the rights of the Nigerian child to the environment and how climate change events have impaired these rights. The article argues that existing laws in Nigeria, including the Constitution, Child's Rights Act and environmental rights case law (especially the *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation*) can be used to promote and protect the rights of children and safeguard them from the negative impacts of climate change in Nigeria. This will have positive implications for the prospect of climate litigation (including children and youth-led litigation) and enhance the integration of the perspectives of children and youth in climate change governance in Nigeria.

2 Who is a child in Nigeria?

The question as to who a child is in Nigeria has been the subject of complex legal disputation and diverse academic perspectives.¹² This is because the classification varies from one legislation to another, depending on who is defining it and the purpose the definition is meant to serve.¹³ The law classifies children into different age ranges for various purposes, including voting, testifying in court, punishment, the ability to enter into a legally binding contract, and so forth. In Nigeria, the principal instrument codifying the rights of the child is the Child's

8 Nigeria Multidimensional Poverty Index 2022, <https://www.nigerianstat.gov.ng/pdfuploads/NIGERIA%20MULTIDIMENSIONAL%20POVERTY%20INDEX%20SURVEY%20RESULTS%202022.pdf> (accessed 18 May 2025).

9 J Egbe 'Climate activism and the political-economic landscape in Nigeria' in S von Mering and others (eds) *The Routledge handbook of grassroots climate activism* (2024) 484, 485.

10 Some of the relevant national policies that will be in focus in this article include the National Climate Change Policy 2021-2030; National Child Policy 2022; National Climate Change and Gender Action Plan 2020; National Child Policy 2007 (under revision); and National Gender Policy 2021-2028.

11 These include the National Child Health Policy 2022; National Child Policy 2007 (currently under revision); National Climate Change and Gender Action Plan 2020; National Gender Policy 2021-2026; and water, sanitation and hygiene (WASH) interventions.

12 NA Iguh 'An examination of the child rights protection and corporal punishment in Nigeria' (2011) 2 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 97; see generally RN Imbwashe 'Age of majority under Nigerian law: The quandary of synchronisation' (2017/2018) *Benue State University Law Journal* 213.

13 Iguh (n 12).

Rights Act (CRA).¹⁴ Nigeria signed the UN Convention on the Rights of the Child (CRC) in January 1990 and ratified it in April 1991.¹⁵ In Nigeria, several states have refused to support the domestication of CRC.¹⁶ However, it has been contended that the CRA is binding on Nigeria's states and federal government.¹⁷ Arguably, this implies for this discourse that the only valid age is the age in the CRA, which is in line with the Convention, and other ages to the contrary in state law are unconstitutional since states should not have legislated on age for the Convention in the first place.¹⁸

The CRA has been enacted as a state law in several states in Nigeria, with some modifications to suit the peculiarity of the enacting state. Before the enactment of the CRA, the most prominent legislation relating to children was penal in nature. This is the Children and Young Persons Act, which was also replicated as law by states in the southwestern part of Nigeria.¹⁹ Other legislations such as the Evidence Act (EA),²⁰ the Criminal Code Act (CCA)²¹ and the Penal Code (PC)²² contain provisions relating to some form of protection or restriction on children within a specific age bracket, but none of these statutes defines who is a child. The EA puts the age of witnesses who can give sworn evidence as 14 years and above. In addition, the child must possess sufficient intelligence and understand the obligation to speak the truth before his evidence can be received.²³ From the angle of the EA, maturity is assumed to be 14 years and above. Under the CCA and the PC, specific age brackets cannot commit certain offences.²⁴ In the same vein, children under the age of seven years have no capacity to commit a crime, no matter the act.²⁵

¹⁴ Cap C50, Laws of the Federation of Nigeria, 2004.

¹⁵ Generally, see EO Ekhaton 'Protection and promotion of women's rights in Nigeria: Constraints and prospects' in M Addaney (ed) *Women and minority rights law: African approaches and perspectives to inclusive development* (2019) 17.

¹⁶ Ekhaton (n 15); for some of the challenges militating against the success of the Child Rights Act in Nigeria, see generally IP Enemo 'Challenges still facing the domestication and implementation of key provisions of Nigeria's Child Rights Act of 2003' (2021) 39 *Nordic Journal of Human Rights* 358.

¹⁷ Generally, see M Adigun 'The implementation of the Convention on the Rights of the Child in Nigeria' (2019) 7 *Public Law* 47.

¹⁸ Adigun (n 17).

¹⁹ The statutes were originally enacted during regional governments in Nigeria and became part of each state when the southwestern region was being divided into states.

²⁰ Evidence Act 2011 as amended.

²¹ Laws of Federation of Nigeria Cap C38 LFN 2004.

²² Penal Code of Northern States (Federal Provision) Act Cap P3 LFN 2004.

²³ See sec 209 EA.

²⁴ A child under the age of 12 years cannot commit rape. See secs 30 and 50 of CCA and PC respectively which presume a child under 12 as incapable of committing the offence of rape. Children under this age bracket also do not have the capacity to commit any offence except if it is proved that the child has the ability to know that they ought not commit the offence.

²⁵ By secs 30 and 50 of the CCA and PC respectively a child below the age of seven cannot commit an offence in Nigeria.

Some other statutes touching on the legal capacity of a child on account of age in Nigeria include the Constitution,²⁶ the Electoral Act,²⁷ the Marriage Act,²⁸ the Immigration Act,²⁹ the Labour Act³⁰ and the Infants Relief Act 1874.³¹ The legal age of a child is thus scattered across legislation in Nigeria, influenced by considerations of gender, religion and culture. Therefore, the general application of law to protect children is impossible in Nigeria at the moment.³² The CRA is more comprehensive and innovative. It was drafted from CRC.³³ Several states, especially in Southern Nigeria, have enacted the Act as law, thereby repealing the Children and Young Persons Law in their states.³⁴ Arguably, this assertion may apply to Lagos, but this is not true of other states in Southwestern Nigeria. Though most states in Nigeria have retained the definition in the CRA, a few states have also adopted a definition different from that in the CRA.³⁵

It is significant to note that the CRA defines a child's age and the age of majority without categorisation. This is mainly because the CRA's primary focus is generally on children's welfare. Section 277 of the CRA states that a child is a person under 18 years, while a person is said to have attained majority as of 18 years of age. These definitions are in conformity with international standards and CRC from which the CRA was drafted.³⁶ However, it is hoped that as more states in Nigeria adopt the CRA as law and repeal the various children and young persons' laws, the age bracket of what constitutes a child might become more uniform than it is now.³⁷ If Adigun is correct, the child's age is already uniform at

26 The Constitution of the Federal Republic of Nigeria, 1999 (Constitution). Sec 77(2) of the Constitution puts voting age at 18.

27 Sec 12 of the Electoral Act 2022, in line with the Constitution, puts voting age at 18.

28 It is believed that marriage age is 21 under the Marriage Act, although the CRA puts it at 18. See sec 21 of the CRA.

29 Cap I1 LFN 2004. The Immigration Act regards a person under the age of 16 as a minor.

30 Cap L1 LFN 2004. Sec 59(2) of the Labour Act puts several age restrictions on persons who can be employed for a particular purpose. Eg, sec 59(2) forbids the employment of a child under the age of 15 years in any industrial undertaking. According to sec 59(3) a young person under the age of 14 can only be employed on a day-to-day basis. This is to enable the child return to their parents daily. Secs 59(4) and (5) state that a child under 16 shall not be employed to work underground, or on machine work, or on public holidays, and so forth.

31 This is a received English law which is now a statute of general application. It puts contractual age at 21.

32 World Organisation against Torture (OMCT) 'Rights of the child in Nigeria: Report on the implementation of the Convention on the Rights of the Child by Nigeria' 2005, https://www.omct.org/site-resources/legacy/report_children_nigeria_eng.pdf (accessed 18 May 2025).

33 UN General Assembly Convention on the Rights of the Child, United Nations, Treaty Series, vol 1577, November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815> (accessed 18 May 2025).

34 Eg, sec 263 of the Child's Rights Law of Lagos State 2007 repeals the Children and Young Persons' Law, Cap C10 Laws of Lagos State of Nigeria, 2003.

35 An example is Akwa Ibom state, where the age of a child is put at under 16 years. See Iguh (n 12) 98.

36 AF Imosem & NE Abangwu 'Welfare of a child/juvenile standing trial under the criminal law process in Nigeria: An urgent compulsion for improved conditions' (2020) 5 *African Journal of Criminal Law and Jurisprudence* 147. See generally SE Kabo 'An examination of child justice administration under the Child's Rights Act, 2003' (2017/2018) *Benue State University Law Journal* 233.

37 Given that the welfare of children falls within the residual power of state legislature in Nigeria, the likelihood of states setting varying standards cannot be ruled out.

18 in Nigeria.³⁸ Arguably, what remains is for the issue to come before the Supreme Court of Nigeria, which will (or may) declare some state laws unconstitutional.

There were fears, however, as most states in the northern part of Nigeria were reluctant to adopt the CRA into law. Their reluctance was based on specific practices such as underage marriages and segregation against the girl child and children born out of wedlock, which run contrary to the spirit and letters of the CRA.³⁹ However, after intense sensitisation from the law makers and governors in this region, it was reported that 34 states had adopted the CRA as law as of 2022, excluding Kano and Zamfara states.⁴⁰ Zamfara has since adopted the CRA as the child protection law.⁴¹ The last was Kano state, which passed its Child Protection Bill into law in June 2023.⁴² At the moment, it appears that all states in Nigeria have adopted the CRA as law, though with varying titles. Most states in the northern part adopted the Child Protection Law, but retained the age of a child under 18 years in line with the CRA.⁴³

Having examined the law on who a child is in Nigeria, it is important to investigate why the concept is relevant to climate change dialogue and the rights of children. First, it is essential to understand that children are most vulnerable to climate change because they are tender. Children are most susceptible to the effects of extreme weather variations.⁴⁴ This understanding and the idea of those in this age bracket are important to policymakers and those implementing climate change policies. Children are most vulnerable to climate change because they cannot help themselves due to their age. Second, it is essential to understand how this class of persons can benefit from climate change interventions. This second aspect recognises that children have rights to the environment and climate justice demands that these rights be protected for and on their behalf as beneficiaries of a protected and improved environment. Given that children do not have legal rights to sue directly to enforce their rights, age becomes essential for determining the capacity of a claimant who wants to maintain climate litigation. The issue of age

38 See Adigun (n 17).

39 FD Nzarga 'Impediments to the domestication of Nigeria Child Rights Act by the states' (2016) 6 *Research on Humanities and Social Sciences* 123-130; I Ogunniran, 'The Child Rights Act versus Shari'a law in Nigeria: Issues, challenges and a way forward' (2010) 30 *Children's Legal Rights Journal* 362.

40 J Ágbakwuru 'Child Rights Act now domesticated in 34 states – FG' *Vanguard* 25 November 2022, <https://www.vanguardngr.com/2022/11/child-rights-act-now-domesticated-in-34-states-fg/> (accessed 18 May 2025).

41 G Ewepu 'SCI hails Zamfara Assembly over bold initiative to pass the Child Protection Bill into law' *Vanguard* August 2022, <https://www.vanguardngr.com/2022/08/sci-hails-zamfara-assembly-over-bold-initiative-to-pass-the-child-protection-bill-into-law/> (accessed 18 May 2025).

42 UNICEF Nigeria 'UNICEF applauds Kano State for enacting Child Protection Law, calls for effective implementation', <https://reliefweb.int/report/nigeria/unicef-applauds-kano-state-enacting-child-protection-law-calls-effective-implementation> (accessed 18 May 2025).

43 It should also be noted that apart from the variations in the age grade by various legislation, there are also complexities arising from case law and customary practices in Nigeria. Generally, see A Emiola *The principles of African customary law* (2005) 38-39.

44 Generally, see M Addaney and others 'The climate change and human rights nexus in Africa' (2017) 9 *Amsterdam Law Forum* 5.

is equally necessary for ascertaining the need for the representation of children by their parents, guardians and non-governmental organisations (NGOs) in climate litigation for the benefit of children.⁴⁵

3 Climate change and children as a vulnerable group

Climate change is the most significant issue confronting the international community and humanity. It has been described as a raging global problem,⁴⁶ a catastrophe, and a potential threat to the entire global ecosystem and human civilisation.⁴⁷ The United Nations Framework Convention on Climate Change (UNFCCC) defines climate change as a change that is 'attributed directly or indirectly to human activity that alters the composition of the global atmosphere and an addition to natural climate variability observed over comparable periods'.⁴⁸ This change is caused by increased emission of carbon dioxide and other greenhouse gases (GHGs), which trap heat in the atmosphere, causing the warming of the Earth and other extreme weather patterns.⁴⁹ Climate change affects rainfall patterns and causes extreme weather conditions such as flooding, earthquakes, landslides, droughts and rising sea levels.⁵⁰ These changes have eventually led to situations such as food scarcity, displacement, illness and death.⁵¹

Children are the worst victims of climate change, and the United Nations Children's Fund (UNICEF) has identified climate change as a crisis of children's rights.⁵² The age of children makes them most vulnerable to climate change events. They are fragile and in need of protection. Thus, children are less able to fight against the scourge of extreme weather variations than adults.⁵³ Marginalised children bear an uneven burden of the consequences of the negative impacts of climate change in Africa.⁵⁴ Climate change events have impacted children in multiple ways, each making the child more vulnerable. In various parts of Nigeria,

45 A Daly 'Climate competence: Youth climate activism and its impact on international human rights law' (2022) 22 *Human Rights Law Review* 1.

46 EO Ekhatior & EO Okumagba 'Climate change and multinationals in Nigeria: A case for climate justice' in K Bouwer and others (eds) *Climate litigation and justice in Africa* (2024) 247.

47 AV Sanson & SEL Burke 'Climate change and children: An issue of Intergenerational justice' in N Balvin & DJ Christie (eds) *Children and peace: From research to action* (2020) 344.

48 Art 1(2) UNFCCC.

49 IPCC 'Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (Core Writing Team, H Lee & J Romero (eds) (2023) 184, <https://doi.org/10.59327/IPCC/AR6-9789291691647> (accessed 18 May 2025).

50 As above.

51 UNICEF 'The climate-changed child: A children's Climate Risk Index Supplement' November 2023 7, <https://www.unicef.org/media/147931/file/The%20climate-changed%20child%20-%20Report%20in%20English.pdf> (accessed 18 May 2025).

52 UNICEF 'The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index' (2021), <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (accessed 18 May 2025).

53 UNICEF (n 52).

54 African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) 'Study on climate change and children's rights in Africa: A continental overview – 2024' April 2025, <https://www.acerwc.africa/en/resources/publications/continental-study-climate-change-and-children-rights-africa> (accessed 18 May 2025).

children have no access to water, school, health care or even their families as a result of armed conflicts,⁵⁵ banditry, farmer/herder clashes and floods, which have adversely impacted both the physical environment of the children and their social and economic status.⁵⁶ The Children's Climate Risk Index of 2021 (CCRI) reveals that one billion children are at risk of being severely impacted by climate change worldwide. Meanwhile, 43,6 per cent of children are already affected by extreme weather variations.⁵⁷ Of this number, African children are the worst hit. Children in African countries such as Nigeria, the Central African Republic, Guinea, Guinea-Bissau and Chad topped the climate-change children index in Africa.⁵⁸ In these countries, children from poor and rural areas top the list of vulnerability mainly because their livelihoods are predominantly founded on rain-fed agriculture.⁵⁹ Thus, climate change has a greater impact on agriculture, leading to food insecurity, which directly exacerbates the bane of climate change.

4 Climate change and children's rights in Nigeria

In many parts of the world, the rights of children have been compromised by climate change.⁶⁰ It has been observed that climate change events affect children's rights in many ways in Nigeria. This part examines three major rights of the child: the right to food and nutrition, education and health care in Nigeria.⁶¹ The part also considers how climate change in Nigeria has adversely influenced these critical aspects of a child's life.

55 SI Odo and CF Chigozie 'Climate change and conflict in Nigeria: A theoretical and empirical examination of the worsening incidence of conflict between Fulani herdsmen and farmers in Northern Nigeria' (2012) 2 *Arabian Journal of Business and Management Review* 110.

56 World Bank Group 'Moving toward a middle-class society Nigeria on the move: A journey to inclusive growth' Nigeria Systematic Country Diagnostic (2019), <https://documents1.worldbank.org/curated/en/891271581349536392/pdf/Nigeria-on-the-Move-A-Journey-to-Inclusive-Growth-Moving-Toward-a-Middle-Class-Society.pdf> (accessed 18 May 2025).

57 UNICEF 'The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk Index (2021)', <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (accessed 18 May 2025).

58 UNICEF (n 57).

59 BE Umukoro 'On the nexus between climate change, poverty and failure of justice' (2024) 8 *Chinese Journal of Environmental Law* 44.

60 According to the United Nations Committee on the Rights of the Child, General Comment No. 26 (2023) on 'Children's Rights and the Environment, with a Special Focus on Climate Change', CRC/C/GC/26 (2023) 2 <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc26-general-comment-no-26-2023-childrens-rights#:~:text=Summary,environmental%20harm%20and%20climate%20change> (accessed 18 May 2025). 'All children's rights are connected and equally important. Some rights are particularly threatened by environmental harm and climate change. Some rights also play an important role in helping to protect children's rights such as their right to education.'

61 Other concerns are the safety and security of the child.

4.1 The right to food and nutrition

There is no explicit constitutional right to food in Nigeria,⁶² not even with the new amendment to the Constitution.⁶³ The Constitution was recently amended, making food security a Fundamental Objective and Directive Principle of State Policy (FODPSP) by altering its former section 16 and creating a new section 16A. The new section 16A saddles the state with the obligation to direct its policy towards strategies that guarantee food availability, accessibility and affordability.⁶⁴ It also provides for continuously upgrading food production, conservation and distribution systems that could protect the country from food shortages and poor food quality. The implication of section 16A is that it is a mere directive, and the state is not under an obligation to implement it at the behest of the people. FODPSPs are not ordinarily enforceable in Nigeria because of section 6(6)(c) of the same Constitution.⁶⁵

Some argue that since section 16A of the Constitution falls under chapter II, which is non-justiciable, it implies that no individual can rely on that section either for himself or on behalf of any child or group of children as conferring an enforceable human right on anyone.⁶⁶ However, it should be noted that FODPSP is non-justiciable until enacted into law.⁶⁷ It can be contended that what might be required for the right to food to be enforceable is for food security to be passed into law. Several scholars have persuasively argued that the right to food can be enforced via the human rights provisions in chapter IV of the Nigerian Constitution.⁶⁸

Also, an implied right to food exists in the African Charter on Human and Peoples' Rights (African Charter),⁶⁹ which has been domesticated as a local statute in Nigeria.⁷⁰ The African Charter has been interpreted by the African

62 P Obani 'Reflections on the right to food under the Constitution of the Federal Republic of Nigeria 1999' (2019/2020) *Nigerian Current Law Review* 18.

63 The Constitution of the Federal Republic of Nigeria, 1999 (Fifth Alteration) Act 34 2023.

64 Food insecurity has been a major challenge in Nigeria for a while and rural families with large household in climate impacted environment are the most affected. See PE Kainga, PA Ekunwe & E Ogueri 'Food availability and affordability among rural households in Ekpetaama Area of Bayelsa State, Nigeria' (2016) 7 *Journals for Applied Research* 35.

65 *Okogie v Attorney General of Lagos State* [1981] 2NCLR 350, although the Supreme Court of Nigeria has recognised some circumstances in which it may enforce FODPSP. This is where an Act of the National Assembly has enacted any of the obligations in ch II of the Constitution. See *Federal Republic of Nigeria v Anache & Others* (2004) 1SCM 36, 78.

66 See generally BE Umukoro 'Revisiting the non-justiciability issue in environmental rights dialogue in Nigeria' (2023) 25 *Environmental Law Review* 101.

67 See *Attorney-General Ondo v Attorney-General Federation* [2002] 9 NWLR (Pt 772) 222; also see M Adigun & AO Jegede 'A human rights approach to climate litigation in Nigeria: Potentialities and Agamben's state of exception theory' (2022) 16 *Carbon and Climate Law Review (CCLR)* 179.

68 Generally, see Obani (n 62); EO Ekhatior & KI Ajibo 'Legal and theoretical assessment of the right to food in Nigeria' in RT Ako & DS Olawuyi (eds) *Food and agricultural law: Readings on sustainable agriculture and the law in Nigeria* (2015) 122.

69 African Charter on Human and Peoples' Rights CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981.

70 African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria 2004.

Commission on Human and Peoples' Rights (African Commission)⁷¹ as providing an implicit right to food via the vehicle of article 4, which relates to the right to life, article 16, which includes the right to health and article 22, which entrenches the right to economic and social development.⁷² It has been argued that there is no meaningful right to life or health without an enforceable right to food.⁷³ As rightly canvassed, all rights in the African Charter are justiciable,⁷⁴ whether civil, political or socio-economic. The traditional view is that the Nigerian judiciary has always maintained that the socio-economic rights provided for in the African Charter are unenforceable in Nigeria, notwithstanding the domestication of the Charter.⁷⁵ This is because section 46(1) of the Constitution restricts enforcement to the class of rights listed in chapter IV of the Constitution. This means that those classes of rights in the African Charter that fall outside chapter IV cannot be directly enforced as fundamental rights. Thus, socio-economic rights are not enforceable because they are not explicitly provided or supported in the Nigerian Constitution *per se*.⁷⁶ Arguably, it should be noted that this traditional view is no longer tenable in light of *Attorney-General Ondo v Attorney-General Federation*,⁷⁷ *INEC v Musa*⁷⁸ and *FRN v Anache*,⁷⁹ where fundamental objectives have been read in tandem with human rights' provisions and made justiciable.

The Nigerian Supreme Court in *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation* stated that the right to the environment is now justiciable and enforceable in Nigeria.⁸⁰ In that case, the Nigerian Supreme Court relied on the provisions of article 24 of the African Charter, section 33(1) of the Constitution of Nigeria and section 17(4) of the Oil Pipelines Act to hold that the right to the environment can be justiciable or enforceable in Nigeria.

71 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001). See also FT Birhane 'Justiciability of socio-economic rights in Ethiopia: Exploring conceptual foundations and assessing the FDRE Constitution and judicial perspective' (2018) 9 *Beijing Law Review* 322; C Mbazira 'Enforcing the economic, social and cultural rights in the African Charter on Human and Peoples' Rights: Twenty years of redundancy, progression and significant strides' (2006) 6 *African Human Rights Law Journal* 358.

72 See also arts 11 (right to adequate food, clothing and housing) and 12 (right to highest attainable standard of physical and mental health) of the International Covenant on Economic, Social and Cultural Rights, United Nations, Treaty Series, vol 993 3, 16 December 1966.

73 C Mbazira 'Reading the right to food into the African Charter on Human and Peoples' Rights (2004) 5 *ESR Review* 6-7.

74 E Boshoff 'The prospects and challenges of litigating climate change before African regional human rights bodies' in Bouwer and others (n 46) 128.

75 Generally, see LA Atsegbua and others *Environmental law in Nigeria: Theory and practice* (2010).

76 EP Amechi and others 'Access to justice through environmental public interest litigation: Exploring contemporary trends in Nigeria' 54 (2021) *VRÜ Verfassung und Recht in Übersee* 398; O Enabulele & EO Ekhatior 'Improving environmental protection in Nigeria: A reassessment of the role of informal institutions' (2022) 13 *Journal of Sustainable Development Law and Policy* 162.

77 *Attorney-General Ondo v Attorney-General Federation* [2002] 9 NWLR (Pt 772) 222.

78 *INEC v Balarabe Musa* [2003] NWLR (Pt 806) 72 (Supreme Court of Nigeria), cited in Adigun & Jegede (n 67) 183.

79 *Federal Republic of Nigeria v Anache & Others* (2004) 3 Monthly Judgment of the Supreme Court of Nigeria, cited in Adigun & Jegede (n 67) 183.

80 *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR 518.

Therefore, these legal instruments or provisions recognised the rights of Nigerians to enjoy a clean and healthy environment.⁸¹

Also, women's right to food is recognised under the African human rights system. Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)⁸² provides women with the right to adequate food and nutrition. This is very significant for children, particularly babies and fetuses. More directly, article 14 of the African Charter on the Rights and Welfare of the Child (African Children's Charter)⁸³ obliges states to ensure the provision of adequate nutrition to enable them to combat malnutrition and diseases through an effective primary healthcare system. Although Nigeria is a state party beyond a mere signatory to the African Children's Charter and the African Women's Protocol, the country is yet to effectively act on most of the state's obligations arising from them.⁸⁴

The most direct provision on the duty to provide adequate food for Nigerian children is found in the CRA. Section 13(3) of the CRA states that every government in Nigeria shall ensure the provision of adequate nutrition and safe drinking water and combat malnutrition. It can be argued that when this provision is read with section 16A of the Nigerian Constitution, the conclusion would be that there is a right to food for children in Nigeria. Rather than vesting the children with the right to insist on adequate food and nutrition, the CRA places the obligation on the government. Where there is a duty, there is always a right against the obligor. Thus, it can be argued that there is an explicit right to adequate food in the CRA. This article contends that, having enacted the obligation in section 16A of the Constitution via an Act of the National Assembly, the right to food created in section 16A of the Constitution becomes enforceable.⁸⁵

Another instrument relating to the right to food in Nigeria is the National Policy on Food and Nutrition (NPFN) 2016.⁸⁶ The goal of the NPFN is to

81 Enabulele and Ekhatior (n 76). Also see PE Oamen & EO Erhagbe 'The impact of climate change on economic and social rights realisation in Nigeria: International cooperation and assistance to the rescue?' (2021) 21 *African Human Rights Law Journal* 1080.

82 African Union Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, African Union, 11 July 2003.

83 African Charter on the Rights and Welfare of the Child, CAB/LEG/24.9/49 (1990), 11 July 1990. See also the Resolution on the Right to Food and Nutrition in Africa ACHPR/Res. 431(LXV)2019, which takes cognisance of the fact that the right to food is inherent in the right to life, health and the dignity of the human person.

84 See United Nations/FAO, Right to adequate food in constitutions, <https://openknowledge.fao.org/server/api/core/bitstreams/506a8008-d734-4095-a13e-bda35ab91874/content> (accessed 18 May 2025).

85 This is by virtue of the decisions in *Federal Republic of Nigeria v Anache and Attorney General Ondo v Attorney General Federation*.

86 It should be noted that in Nigeria, national policies are ordinarily not legally binding or enforceable. Regarding the National Environmental Policy in Nigeria, EO Ekhatior 'Environmental protection in the oil and gas industry in Nigeria: The roles of governmental agencies' (2013) 5 *International Energy Law Review* 196, 198 contends that 'the policy is more advisory rather than regulatory in the context of oil and gas industry in Nigeria'. Also,

'attain optimal nutritional status for all Nigerians, with particular emphasis on the most vulnerable groups such as children, adolescents, women, the elderly, and groups with special nutritional needs.'⁸⁷ One of the targets of the NPFN is to reduce hunger in Nigeria by 50 per cent by the year 2025.⁸⁸ One of the significant impacts of climate change on children is the inadequacy of food.⁸⁹ Availability of food and good nutrition are building blocks for the health and development of any nation.⁹⁰ Children need a steady intake of good food to grow well and, as such, they are more vulnerable to food insecurity.⁹¹ Malnutrition rates in Africa remain alarmingly high.⁹² The report on Nigeria about food and nutrition is more startling. The recent Food Security Updates of the World Bank⁹³ estimates that approximately 49.5 million people will be affected by food insecurity in West Africa during the year's lean season between June and August 2024. What is more worrying is that 31.7 per cent of this figure is in Nigeria.⁹⁴ More than half of this number are children.⁹⁵ Malnutrition has more devastating effects on children. These effects include stunted growth and increased susceptibility to infection and disease. Malnutrition has been identified as contributing up to '45 per cent of deaths among children under 5 years old'.⁹⁶ Nigeria is the third country with the highest absolute number of children who are stunted. Forty-one per cent of Nigerian children under the age of five are stunted, 23 per cent underweight, and 14 per cent wasted.⁹⁷

NU Richards 'Overview of the national tax policy and its implication for tax administration in Nigeria' (2019) 10 *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 42 reaches a similar viewpoint regarding the National Taxation Policy in Nigeria. On the other hand, LC Edozien 'Healthcare Waste Management Policy in a lower-middle-income country: A case for the adoption of the RADICAL framework' (2024) 15 *Journal of Sustainable Development Law and Policy* 81, 101 argues that 'it is important that major national policies should have the force of law'.

87 Para 2.2 National Policy on Food and Nutrition in Nigeria 2016.

88 Para 2.5 National Policy on Food and Nutrition.

89 E van der Merwe and others 'Climate change and child malnutrition: A Nigerian perspective' (2022) 113 *Food Policy* 1.

90 Van der Merwe and others (n 89).

91 UNICEF (n 1).

92 FSIN and Global Network Against Food Crises, 2024 (GRFC, Rome 2024), <https://www.fsinplatform.org/grfc2024> (accessed 18 May 2025).

93 Food Security Updates World Bank, 27 June 2024 12, <https://thedocs.worldbank.org/en/doc/40ebbf38f5a6b68bfc11e5273e1405d4-0090012022/related/Food-Security-Update-CVII-June-27-2024.pdf> (accessed 18 May 2025). See also Malnutrition Key Facts WHO, 1 March 2024, https://www.who.int/news-room/fact-sheets/detail/malnutrition?gad_source=1&gclid=CjwKCAjwko21BhAPEiwAwfaQCBLhFTh53Dm7Z7dgiicMRZ62-KdBf1w2WqAYVrvXctgY8AQqB9vYZRoCGaAQAvD_BwE# (accessed 18 May 2025).

94 World Bank (n 93).

95 Children account for 51% of the 223 million people in Nigeria. See Climate Landscape Analysis for Children in Nigeria (n 1).

96 FSIN and Global Network Against Food Crises (n 79).

97 World Bank 'Nutrition at a glance: Nigeria', <https://documents1.worldbank.org/curated/en/664181468290730623/pdf/771880BRI0Box0000Nigeria0April02011.pdf> (accessed 18 May 2025). According to the World Health Organisation (WHO) 'The Global Health Observatory', <https://www.who.int/data/gho/indicator-metadata-registry/imr-details/302> (accessed 18 May 2025) 'child wasting refers to a child who is too thin for his or her height and is the result of recent rapid weight loss or the failure to gain weight. A child who is moderately or severely wasted has an increased risk of death, but treatment is possible. Child wasting is one of the World Health Assembly nutrition target indicators.'

Food security is linked to a viable system of agriculture. The growth of the agriculture sector in Nigeria has been slow because of several factors, which include urbanisation, extreme weather variation, climate insecurity and ineffective implementation of appropriate economic and agriculture policies by the government.⁹⁸ The word 'shall' is used in section 13(3) of the Child Rights Act. This makes it mandatory for the Nigerian government to ensure adequate food for children. However, this provision has not positively impacted the government's behaviour towards implementing food security policies. The Global Food Security Index 2022 (GFSI) ranked Nigeria 107th out of 113 countries.⁹⁹ Agriculture in Nigeria is rain-fed, making it more vulnerable to climate change. Agricultural production in Nigeria has been impaired because of irregular rainfall patterns, drought, desertification, and so forth.¹⁰⁰ The unavoidable outcome is food shortages, food insecurity, a hike in food prices, hunger, juvenile delinquency, an increase in crime rate and death.¹⁰¹

In response to the recent sharp upsurge in food prices, the federal government declared a state of emergency on food insecurity in the hope of boosting food production and reducing food prices.¹⁰² This is not likely to produce a meaningful outcome due to the removal of the subsidy from the importation of premium motor spirit, leading to a tremendous rise in fuel pump prices and high cost of transportation of farm produce across Nigeria. Nigeria's global food security scorecard may have worsened because of the high consumer price index. If the Nigerian government continues to pay lip service to the constitutional provisions regarding the right to adequate food and nutrition, food security is likely to remain elusive, and the index of malnourished children in Nigeria will continue to rise.¹⁰³

4.2 Right to education

Another critical effect of climate change is the impact of extreme weather variation on children's rights to quality education. Three major factors affect the right to quality education in Nigeria. First, there is the lack of enforcement of the right to

98 UNICEF's Situation analysis of children in Nigeria: Ensuring equitable and sustainable realisation of child rights in Nigeria (Federal Republic of Nigeria, 2022), <https://www.unicef.org/nigeria/media/5861/file/SituationAnalysisofChildreninNigeria.pdf> (accessed 18 May 2025).

99 Global Food Security Index 2022, https://impact.economist.com/sustainability/project/food-security-index/reports/Economist_Impact_GFSI_2022_Global_Report_Sep_2022.pdf (accessed 18 May 2025).

100 'Hunger hotspots, FAO-WFP early warnings on acute food insecurity, June to October 2024 outlook' FAO/WFP, Rome 2024, <https://doi.org/10.4060/cd0979en> (accessed 18 May 2025).

101 P Shankar, R Chung & DA Frank 'Association of Food Insecurity with children's behavioral, emotional, and academic outcomes: A systematic review' (2017) 38 *Journal of Developmental and Behavioural Pediatrics* 2.

102 A Mojeed 'Analysis: Real reasons Nigeria has a food security problem' *Premium Times* 16 July 2023, <https://www.premiumtimesng.com/agriculture/610096-analysis-real-reasons-nigeria-has-a-food-security-problem.html?tztc=1> (accessed 18 May 2025).

103 UNICEF (n 98).

education by the Nigerian government and its agencies. There is the child's right to education in Nigeria, notwithstanding the traditional view by several academics that socio-economic rights are not justiciable and enforceable in Nigeria.¹⁰⁴ Section 18(1) of the Nigerian Constitution states that the 'government shall direct its policy towards ensuring equal and adequate educational opportunities at all levels'. However, this provision is contained in chapter II of the Constitution, which is considered a fundamental objective and a directive principle of state policy. If the non-justiciability clause on right to education in section 18 of the Nigerian Constitution is read together with the decision of the Supreme Court of Nigeria in *Attorney-General Ondo v Attorney General Federation*, article 17 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, section 15 of the Child Rights Act, and the provisions of the Universal Basic Education Act, it can be safely concluded that there is the right of children to education in Nigeria.¹⁰⁵ The Economic Community of West African States (ECOWAS) Community Court of Justice held in *Registered Trustees of the Socio-Economic Rights and Accountability Project (SERAP) v the Federal Government & Another*¹⁰⁶ that there is a justiciable right to education in Nigeria under article 17 of the African Charter.¹⁰⁷

The second major factor that affects the right to quality education in Nigeria is corruption and poor implementation of government policies on education. At the same time, the third is the devastating effect of climate change on the physical environment where children learn, making it inaccessible, inconducive and unsafe for learning. In all these, the right of the child to quality education is affected. Though the first two effects, as mentioned above, are unrelated to climate change, their analysis in this article is of paramount importance. This is because all three factors are connected and revolve around the rights of children to quality education. This connectivity can be demonstrated as follows. For instance, the CRA in section 15(1) states that 'every child has the right to free, compulsory and universal basic education and it shall be the duty of the government in Nigeria to provide such education'. This suggests that there is a right to free basic education for children in Nigeria, which the government is under a duty to provide. On the other hand, climate insecurity, floods and other contemporary challenges prevent children from accessing the right to free education because of their inability to access schools. In the same vein, schools are not adequately

¹⁰⁴ Generally, see Atsegbua and others (n 75).

¹⁰⁵ See also AC Onuora-Oguno & T Silas 'The constitutional obligation to protect the right to education in Nigeria: A call for action' (2024) 24 *African Human Rights Law Journal* 369, 371; AC Onuora-Oguno 'Disorder in the order of the economic and social rights jurisprudence in Nigeria' Inaugural lecture, University of Ilorin, 29 August 2024, <https://www.unilorin.edu.ng/wp-content/uploads/2025/01/264.pdf> (accessed 18 May 2025).

¹⁰⁶ *SERAP v Federal Republic of Nigeria*, Judgment, ECW/CCJ/APP/0808 (ECOWAS 27 October 2009). For analysis of this decision, see AJ Isokpan, & E Durojaye 'The child's right to basic education in Nigeria: A commentary on the decision in *SERAP v Nigeria*' (2018) 26 *African Journal of International and Comparative Law* 639.

¹⁰⁷ The Supreme Court of Nigeria has earlier held unequivocally in *Okogie v Attorney General of Lagos State* (n 65) that there is no justiciable right to education in Nigeria declaring FODPSP as mere directive principles which are not binding.

funded because of corruption. All these connect to deprive children of their right to quality education and amount to breaches for which the government is under an obligation to account.

Several scholars suggest that the issue of the absence of an explicit and enforceable right to education in Nigeria is a significant setback to education in the twenty-first century, especially as the country has signed several international instruments placing obligations on it to respect, promote and protect the right to education.¹⁰⁸ However, it is contended that the right to education is sufficiently explicit. The fact that it is not written in the Constitution does not make it less explicit. For example, Chenwi notes that human rights can be implemented through the constitution, statutes, policy, judicial decisions or a combination thereof.¹⁰⁹ Arguably, apart from South Africa, with an explicit constitutional right to education,¹¹⁰ the right to access quality education remains a grave concern across several African countries.¹¹¹ It has been reported that 18,3 million Nigerian children are out of school.¹¹² One in every five of the world's out-of-school children is in Nigeria.¹¹³ Many Nigerian children are on the street, homeless, hawking or begging. Others are displaced from their parents because of conflict and clashes between herders and farmers, while some others are in the custody of child traffickers.¹¹⁴

The number of out-of-school children is higher in the northern part of Nigeria.¹¹⁵ This is partly because of the *Almajiri* education system in Northern Nigeria.¹¹⁶ The *Almajiri* system is not a comprehensive education system, as it

108 Art 17 African Charter; art 11 African Children's Charter. See Onuora-Oguno & Silas (n 105).

109 See L Chenwi 'International human rights law in South Africa' in E de Wet and others (eds) *The implementation of international law in Germany and South Africa* (2015) 354. See also M Adigun 'The status of the African Charter on Human and Peoples' Rights under the South African legal system' (2023) 39 *South African Journal on Human Rights* 113, 116.

110 A Maistry & C van Schalkwyk 'Litigating the right to basic education for undocumented children in South Africa: The role of the courts in advancing access to schools' (2024) 24 *African Human Rights Law Journal* 229.

111 See A Skelton and P Mutu 'Realising the right to basic education through strategic litigation in Kenya' (2024) 24 *African Human Rights Law Journal* 292; P Mutu 'Strategic litigation for educational equity: Analysing the impact of *ISER v Attorney-General* on access to quality education in Uganda' (2024) 24 *African Human Rights Law Journal* 322; MF Chitha 'Evaluating access to education for Rastafarian children and Muslim girls in Malawi' (2024) 24 *African Human Rights Law Journal* 350.

112 C Agwam 'Nigeria's out-of-school children now 18.3m – UNICEF' *Vanguard* 9 May 2024, <https://www.vanguardngr.com/2024/05/nigerias-out-of-school-children-now-18-3m-unicef/> (accessed 18 May 2025).

113 UNICEF Nigeria 'Education', <https://www.unicef.org/nigeria/education> (accessed 18 May 2025).

114 According to some reports, Nigerians constitute a large population of the 80% of women held in unlicensed brothels in Spain as victims of sex trafficking. See 2023 Trafficking in Persons Report: Nigeria, <https://www.state.gov/reports/2023-trafficking-in-persons-report/nigeria> (accessed 18 May 2025).

115 See also AM Suleiman 'Veiled child labour: A focus on the Almajiranci and Yar Aiki systems in Northern Nigeria' (2024) 45 *Children's Legal Rights Journal* 58.

116 According to MI Muhammad and others 'Almajiri health: A scoping review on disease, health literacy and space for participatory research' (2023) 3 *PLOS Global Public Health* e0001641 2. 'Almajirai' (singular: *Almajiri*) are male children who leave the care of their parents to learn the Qur'an and study Islam under the tutelage of a *mallam* at a *Tsangaya*. *Almajiranci* refers to

admits only male children and exposes the children to only religious teaching. This is against the backdrop of the Nigerian government developing several national policies and laws to tackle the scourge of the high number of out-of-school children and the *Almajiri* phenomenon. For example, the Nigerian government created the National Roadmap on Education 2024-2027 in 2023.¹¹⁷ The roadmap has several objectives, including widening prospects and ensuring that quality education is accessible to all, with particular attention to the marginalised and underserved populations, reducing disparities, and ensuring equity and inclusiveness.¹¹⁸ Also, the roadmap avers that the government should increase the number of children in education in Nigeria. If this roadmap is successfully implemented, it will help enhance the quality of education provided and widen the pool of children in schools in Nigeria. The National Commission for Almajiri and Out-of-School Children Education Act 2023 (NACAOSCA) was enacted in 2023.¹¹⁹ This law establishes 'the National Commission for Almajiri and Out of School Children to provide a multimodal education system to tackle the menace of illiteracy, develop skill acquisition and entrepreneurship programmes, prevent youth poverty, delinquency and destitution in Nigeria'.¹²⁰ According to section 7 of the NACAOSCA, some of its objectives include formulating policies and guidelines on issues relating to *Almajiri* and out-of-school children and providing funds for research and staff development to enhance out-of-school children in the country. Notwithstanding the success of NACAOSCA, Nigeria still has many *Almajiri* and out-of-school children.¹²¹

Climate change extreme events have aggravated the issue of children's education in Nigeria. Several Nigerian children are out of school mainly because of extreme climate events and insecurity. Climate change affects school facilities, displaces children, obstructs school activities, disrupts school attendance and destabilises the learning process.¹²² Exposure to drought, heavy rainfall, flooding, storms, thunder strikes and heatwaves has affected access to schools, quality education and the disposition of children to education.¹²³

the system of education based on this relationship between *almajiri* and *mallam*, and which was the dominant mode of education in precolonial Hausaland – a region encompassed in Northern Nigeria and Southern Niger, and with some of the world's worst measures of human development and population health.

117 Federal Ministry of Education Nigeria 'Education for renewed hope: The national roadmap on education (2024-2027)' 2023, <https://planipolis.iiep.unesco.org/en/2023/education-renewed-hope-roadmap-nigerian-education-sector-2024-2027> (accessed 18 May 2025).

118 National roadmap on education (n 117) 4.

119 The National Commission for Almajiri and Out-of-School Children Education Act 2023.

120 Explanatory memorandum to the National Commission for Almajiri and Out of School Children Education Act 2023, <https://www.ncaosce.gov.ng/downloads> (accessed 18 May 2025).

121 See U Abbo and others 'The Almajiri system and insurgency in the Northern Nigeria: A reconstruction of the existing narratives for policy direction' (2017) 6 *International Journal of Innovative Research and Development* 346.

122 NP Francis 'Climate change and implication for senior secondary school financial accounting curriculum development in Nigeria' (2014) 5 *Journal of Education and Practice* 155.

123 Climate landscape analysis for children in Nigeria (n 1).

4.3 Right to health

The World Health Organisation (WHO) estimated that children may suffer more than 80 per cent of injuries, illnesses and deaths arising from climate change.¹²⁴ Extreme weather variations prevent children from attending school and make them prone to diseases, sickness and death.¹²⁵ Studies have shown that climate change adversely affects children's development right from the prenatal period and continues throughout the child's development into adulthood.¹²⁶ Premature birth and low birth weight, brain disorders in children, malnutrition, infections, cardiovascular issues and respiratory diseases have been linked to changing weather patterns.¹²⁷ Storms, floods and delayed or rapid heatwaves have also been associated with childhood mortality and morbidity.¹²⁸ The happiness of children is centred around, among other things, their physical exercise.¹²⁹ For children in the Global South, such exercises are intrinsically connected to their physical environment. Many Nigerian children live in rural areas, some of which are difficult to access.

In some traditional African communities, children assemble in moonlight in the open air around their homes for storytelling, song and dance rehearsals, folk tales, riddles, and so forth.¹³⁰ These traditional tales are also a medium of interaction or communication between the children and the elders, and form an important part of their lives.¹³¹ They help to preserve the history and traditions of the people from generation to generation.¹³² These exercises also help in the behavioural moulding of the children.¹³³ Climate change has altered these natural settings in a number of places. Homes have been washed away by floods in Nigeria, forcing people, mostly women and children, into camps and foreign lands far away from their homes, while the remnants are displaced by climate

124 Sanson & Burke (n 47) 343.

125 TJ Kubra 'Impact of flood on primary school going students' performance: a qualitative study' (2024) 6 *International Journal of Management Studies and Social Science Research* 13, <https://doi.org/10.56293/IJMSSSR.2024.5002> (accessed 18 May 2025); see also U Habiba and others 'Disaster and education: Impact of flood on school going children at Keshabpur Upazilla in Bangladesh' (2021) 4 *Journal of Disaster and Emergency Research* 81.

126 E Squires and others 'Effects of climate change on the health of children and young people' (2024) *Nursing Standard*, <https://doi.org/10.7748/ns.2024.e12308> (accessed 18 May 2025); 'Climate change and early childhood: A science-based resource for storytellers', <https://www.clintonfoundation.org/wp-content/uploads/2024/05/Climate-Change-and-Early-Childhood-A-Science-Based-Resource-for-Storytellers.pdf> (accessed 18 May 2025).

127 Squires (n 126).

128 D Helldén and others 'Climate change and child health: A scoping review and an expanded conceptual framework' (2021) 5 *The Lancet Planet Health* e166.

129 T Archer 'Health benefits of physical exercise for children and adolescents' (2014) 4 *Journal of Novel Physiotherapies* 203.

130 YA Adebajo 'Revisiting moonlight storytelling for reclaiming foundational traditional Yoruba culture in Nigeria' (2022) *LASU Journal of African Studies* 60.

131 Adebajo (n 130).

132 As above.

133 MOD Ojo & AO Ayodele 'Moonlight tales as potential tools for behavioural moulding: Cases of five selected moonlight tales' (2015) 2 *International Journal of Culture and History* 57.

insecurity.¹³⁴ This is a recurring situation in Nigeria which impairs the mental health of children.

There are several national policies with implications for the protection of the health of children in Nigeria. Some of these policies include the National Child Health Policy 2022; the National Child Policy 2007 (currently under revision); the National Climate Change and Gender Action Plan 2020; the National Gender Policy 2021-2026; the National Climate Change Policy for Nigeria 2021-2030; and water, sanitation and hygiene (WASH) interventions. The National Child Health Policy (NCHP) 2022 guides the growth and development of every child in Nigeria in accordance with global and national goals and targets.¹³⁵ One of the reasons why the NCHP was revised in 2022 was to respond to contemporary issues, including climate change.¹³⁶ Even though explicit climate considerations, such as its impacts on children, are not directly enshrined in the NCHP, the tenor of the NCHP demonstrates that the Nigerian government understood the necessity of ensuring that national policies reflect contemporary challenges, including climate change.

The Nigerian National Child Policy 2007 is another policy that has implications for the health of children in Nigeria. However, the policy is currently under review because it no longer reflects the reality of the contemporary challenges faced by children and the youth in Nigeria.¹³⁷ Several national policies in Nigeria recognise women and children as some of the most vulnerable social groups bearing the brunt of the negative impacts of climate change. For example, the goal or aim of the National Climate Change and Gender Action Plan 2020 'is to ensure that national climate change efforts in Nigeria mainstream gender considerations so that women, men, youth and other vulnerable groups can have access to, participate in, contribute to and hence optimally benefit from climate change initiatives, programmes, policies and funds'.¹³⁸ This Action Plan alludes to mainstreaming children and youths in climate interventions or initiatives, but this arguably is yet to be achieved in Nigeria.

The National Climate Change Policy for Nigeria 2021-2030 recognises the nexus between climate change and gender disparity.¹³⁹ Also, one of the strategic

134 AA Maishanu 'Special report: How floods forced children out of school in Jigawa, destroyed health facilities' *Premium Times* 3 November 2022, <https://www.premiumtimesng.com/regional/nwest/563132-special-report-how-floods-forced-children-out-of-school-in-jigawa-destroyed-health-facilities.html?tztc=1> (accessed 18 May 2025).

135 The National Child Health Policy 2022 (Federal Ministry of Health Nigeria) 6, <https://indexmedicus.afro.who.int/iah/fulltext/National%20child%20health%20policy%20NCHP2022.pdf> (accessed 18 May 2025).

136 As above.

137 L Bajah 'Minister inaugurates committee to review national child policy' *Nigerian Tribune* 25 January 2025, <https://tribuneonline.ng.com/minister-inaugurates-committee-to-review-national-child-policy/> (accessed 18 May 2025).

138 The National Climate Change and Gender Action Plan 2020 (Federal Ministry of Environment Nigeria) 4, <https://faolex.fao.org/docs/pdf/NIG209958.pdf> (accessed 18 May 2025).

139 The National Climate Change Policy for Nigeria 2021-2030, <https://www.fao.org/faolex/results/details/fr/c/LEX-FAOC209876/> (accessed 18 May 2025); OA Gbadegesin 'Gendered

objectives of the National Climate Change Policy for Nigeria is mainstreaming vulnerable groups (including children and the youth) into climate change initiatives or interventions in the country.¹⁴⁰ This is integral to the success of this policy. Similarly, the National Gender Policy 2021-2026 alludes to gender and children regarding the impacts of climate change in Nigeria.¹⁴¹ Also, sections 3.3 and 3.4 of the Gender Policy allude to child health and development. This exemplifies that the government is taking action to mitigate the negative impacts of climate change on the health of Nigerian children. Whether the government is doing enough in this regard is debatable.

The water, sanitation and hygiene (WASH) sector is also an essential aspect of interventions to tackle the negative impacts of climate change in different parts of the world. For example, many households in Nigeria lack access to clean water, and improved sanitation is a Herculean task in several parts of Nigeria.¹⁴² Thus, the government has developed several policies and initiatives to enhance WASH in Nigeria. For example, in 2018 the Nigerian government declared a state of emergency. It launched the National Action Plan, a 13-year strategy to revitalise the WASH sector in Nigeria to ensure the 'universal access to sustainable and safely managed WASH services by 2030' by the Sustainable Development Goals (SDGs).¹⁴³ However, several stakeholders have argued that climate change is missing from the 13-year strategy developed by the Nigerian government to enhance the WASH services in the country.¹⁴⁴ Hence, issues relating to children and youth are not explicitly mainstreamed in governmental interventions regarding WASH in Nigeria.

4.4 Prospects of youth-led climate litigation in Nigeria

Children, especially in rural areas, are closer to their physical environment than other age groups.¹⁴⁵ Article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act is not limited to adults. It applies to all persons. The Fundamental Rights Enforcement Rules 2009 (FREP Rules) can be deployed to enforce the African Charter on Human and Peoples' Rights

implications of climate change: Empowering women in climate law and policymaking in Nigeria' (2025) 16 *Journal of Sustainable Development Law and Policy* 15.

140 See ch 3.2 of the National Climate Change Policy for Nigeria 2021-2030 15, <https://www.fao.org/faolex/results/details/fr/c/LEX-FAOC209876/> (accessed 18 May 2025).

141 The National Gender Policy 2021-2026, <https://faolex.fao.org/docs/pdf/nig228614.pdf> (accessed 18 May 2025).

142 World Bank Group 'Nigeria: Ensuring water, sanitation and hygiene for all' 26 May 2021, <https://www.worldbank.org/en/news/feature/2021/05/26/nigeria-ensuring-water-sanitation-and-hygiene-for-all> (accessed 18 May 2025).

143 As above.

144 S Biose 'Developing a climate resilient WASH policy in Nigeria come rain or drought' *Nigeria Health Watch* 18 March 2024, <https://nigeriahealthwatch.medium.com/developing-a-climate-resilient-wash-policy-in-nigeria-come-rain-or-drought-6ecaa3a412d9> (accessed 18 May 2025).

145 Generally, see EO Ekhatior and P Obani 'Women and environmental justice Issues in Nigeria: An evaluation' in JJ Dawuni (ed) *Intersectionality and women's access to justice in Africa* (2022) 259.

(Ratification and Enforcement) Act.¹⁴⁶ In addition, the FREP Rule allows NGOs to file an action on behalf of individuals.¹⁴⁷ Since individuals include children, it follows that NGOs can enforce the right to a healthy environment under the African Children's Charter. Again, the decision of the Nigerian Supreme Court in *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation*¹⁴⁸ tends to favour the right of children to a healthy environment. In *COPW* the Nigerian Supreme Court relaxed the legal standing (*locus standi*) in environmental matters. It explicitly relied on the provisions of article 24 of the African Charter, section 33(1) of the Nigerian Constitution and section 17(4) of the Oil Pipelines Act to hold that the right to the environment can be justiciable and enforceable in Nigeria.¹⁴⁹ Thus, these legal instruments recognised the rights of Nigerians to a clean and healthy environment. This will positively affect access to justice for environmental injustice victims in Nigeria, including children. Also, in the *COPW*, the Court stated that no specific individual or person owns the environment, and in Nigeria, the environment is a public good.¹⁵⁰ Thus, based on *COPW*, every Nigerian (including children) is seen as one of the relevant stakeholders in environmental rights or governance in the country.

The Nigerian Climate Change Act contains some provisions that can be interpreted as conferring certain group rights, including children's rights to the environment. Based on section 21 of the Climate Change Act, the Director-General of the National Council on Climate Change (NCCC) is required to submit a report to the National Assembly Committees on Climate Change every five years on the state of the nation regarding climate change. This report is expected to include, among other things, the identification of the differential impacts of climate change on men, women and children. This is the only provision of the Climate Change Act with direct reference to children. This provision not only saddles the Director-General with the duty to report but, by extension, it also confers indirectly on advocates of children's rights and NGOs representing the interest of children the right to engage the Director-General, the NCCC and even the National Assembly in the event of failure to report. Arguably, the Climate Change Act does not confer the right to a healthy environment on children. It is most probably limited to reporting on the part of the Director-General. On the other hand, this provision can be used as a tool by relevant stakeholders to

146 Also see M Anozie & E Wingate 'NGO standing in petroleum pollution litigation in Nigeria – *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*' (2020) 13 *The Journal of World Energy Law and Business* 490; EO Ekhatior 'Improving access to environmental justice under the African Charter on Human and Peoples' Rights: The roles of NGOs in Nigeria' (2014) 21 *African Journal of International and Comparative Law* 63.

147 See item 3(e) of the Preamble to FREP 2009. See also DT Eyongndi and others 'Public interest litigation in Nigeria and locus standi debacle in *Edun v Governor of Delta State*: Lessons from India, United Kingdom and South Africa' (2024) 11 *Lentera Hukum* 291.

148 *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* [2019] 5 NWLR 518.

149 Generally, see Ekhatior & Okumagba (n 46) 269.

150 *COPW* 590-1, 597-8. See also U Etemire 'The future of climate change litigation in Nigeria: *COPW v NNPC* in the spotlight' (2021) 2 *Carbon and Climate Law Review* 158, 166; Ekhatior & Okumagba (n 46) 270.

pressurise the NCCC to explicitly integrate issues relating to children in their activities and policies.

Also, a court of law hearing a climate change suit or environmental case in Nigeria equally has the power ‘to prevent, stop or discontinue the performance of any act that is harmful to the environment.’¹⁵¹ Thus, the Climate Change Act provides for both compensatory right and environmental right – the latter relating to the right to a protected environment by stopping activities capable of causing harm to the environment.¹⁵² Apart from these compensatory and environmental rights, which can be deduced from section 21 of the Climate Change Act, several other provisions in several existing legislation suggest the existence of a right to the environment in favour of Nigerian children.¹⁵³ These rights are implicitly entrenched in the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act 2007 (NESREA Act), the Environmental Impact Assessment Act (EIA), the Harmful Waste (Special Criminal Provisions, etc) Act, the Petroleum Industry Act 2021(PIA) and the Nigerian Constitution.¹⁵⁴

It has been canvassed that there is a right to the environment to the extent that Nigerian laws ‘provide a platform on which to call on the government, corporate bodies, and individuals to respect the life and health of people in the handling of the environment and account for the damage to the ecosystem,’¹⁵⁵ whether or not there is explicit environmental right in Nigeria. Arguably, there is indeed an explicit environmental right in Nigeria.¹⁵⁶ As correctly observed, ‘many of the highest-profile climate change litigation cases (across the world) have been based on pre-existing legal duties.’¹⁵⁷ Some duties are created under human rights

151 Sec 34(2)(a) CCA.

152 See generally BE Umukoro and O Ituru ‘Conceptual challenges to the recognition and enforcement of the right to clean, safe and healthy environment’ (2022) 2 *Journal of Environmental Law and Policy* 1; BE Umukoro ‘Petroleum host communities and their rights to the environment in Nigeria: Shifting between economic interest and the right to clean environment’ (2024) 15 *Revista Catalana De Dret Ambiental* 1. However, see P Okoli and E Abraham ‘In search of a sustainable future: A comparative assessment of climate change regimes in Nigeria and Kenya’ (2024) 33 *Review of European, Comparative and International Environmental Law (RECIEL)* 276 for some of the criticisms of the Nigerian Climate Change Act.

153 Also see G Arowolo ‘Children’s rights and the pursuit of intergenerational climate justice in Nigeria’ (2024) 4 *Turf Law Journal* 1.

154 Several environmental human rights’ advocates in Nigeria hold the view that a purposeful interpretation of the fundamental rights’ provision of the Constitution can provide a sufficient legal framework for the enforcement of environmental rights in Nigeria. See AB Abdulkadir ‘The right to a healthful environment in Nigeria: A review of alternative pathways to environmental justice in Nigeria’ (2014) 3 *Journal of Sustainable Development Law and Policy* 125.

155 BE Umukoro ‘Looking beyond the Constitution: Legislative efforts toward environmental rights in Nigeria: A review of some salient legislations’ (2022) 9 *Brawijaya Law Journal: Journal of Legal Studies* 141, 158.

156 See art 24 of the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 1983 Formerly Cap 10 Laws of the Federation of Nigeria 1990 now Cap A9, Laws of the Federation of Nigeria 2004.

157 J Setzer & C Higham ‘Global trends in climate change litigation: 2023 snapshot’ Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science 2023 13, <https://>

law,¹⁵⁸ while others are spread across other environmental legislation.¹⁵⁹ Right-based climate litigation has been described as offering ‘a fertile litigating ground precisely due to the rights’ universal acceptance’.¹⁶⁰ The fact that states are under an obligation in international law to observe the standards created in the treaties to which they are signatories, and the fact that the human rights approach is a more promising approach to the realisation of climate rights and remedies.¹⁶¹

The Nigerian National Policy on Environment (Revised 2016) (NEP) was first developed in 1991 and later updated in 1999. Its current iteration is the 2016 version, which was adopted by the Federal Executive Council of Nigeria in 2017.¹⁶² One of the goals of the policy is to ‘ensure environmental protection and the conservation of natural resources for sustainable development’.¹⁶³ One of the primary guiding principles of the policy is that every Nigerian has the right to a clean and healthy environment.¹⁶⁴ The legal basis of the NEP is premised on section 20 of the Nigerian Constitution, which provides that ‘the state shall protect and improve the environment and safeguard the water, air, land, forest and wildlife of Nigeria’.¹⁶⁵ The current Nigerian Constitution is the first to have placed a commitment on the government to protect the environment.¹⁶⁶ Notwithstanding the academic and stakeholder criticism of the lack of success of the NPE in protecting the Nigerian environment, it serves as a policy framework for safeguarding the environment in the country. Also, in *Centre for Oil Pollution Watch v NNPC*, the Supreme Court set aside the age-long principle of *locus standi* in environmental cases. The Court also stated that the right to the environment is justiciable and enforceable in Nigeria.¹⁶⁷

The African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act is not limited to adults. It applies to all persons. Since the Fundamental Rights (Enforcement Procedure) (FREP) Rules 2009 can be deployed to enforce the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act, it follows that the FREP Rules can be deployed to enforce the right to a healthy environment under the African Charter

www.lse.ac.uk/granthaminstitute/wp-content/uploads/2023/06/Global_trends_in_climate_change_litigation_2023_snapshot.pdf (accessed 18 May 2025).

158 S Balder ‘Climate change and human rights: Exploring human rights-based climate litigation’ LLM dissertation, School of Social Sciences, University of Iceland, 2024 49-50.

159 See generally Umukoro (n 155).

160 Umukoro (n 155).

161 M Adigun ‘Companies’ human rights: The implications for a human rights approach to climate change litigation in South Africa’ (2024) 42 *Nordic Journal of Human Rights* 1; Adigun & Jegede (n 67).

162 The National Policy on the Environment (Revised 2016), <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC176320/> (accessed 18 May 2025).

163 Sec 3.1 of the National Policy on the Environment (Revised 2016) 12.

164 Sec 3.3 of the National Policy on the Environment (Revised 2016) 12.

165 BE Umukoro & MO Omozue ‘Environmental protection and the role of national policies and guidelines in Nigeria’ (2024) 4 *Journal of Environmental Law and Policy* 211.

166 Umukoro & Omozue (n 165).

167 *COPW* case is explored thoroughly in this article.

for children.¹⁶⁸ The CRA adopts the human rights provisions of the Nigerian Constitution 1999. This implies that the FREP Rules 2009 can be deployed to enforce the rights of the child concerning human rights, including human rights to the environment under article 24 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. The decision of the Nigerian Supreme Court in COPW tends to favour the right of everyone in Nigeria (including children) to a healthy environment by dispensing with *locus standi*.

The CRA, the principal legislation on children's rights in Nigeria, has no direct or explicit provision addressing the rights of Nigerian children to their environment. This may be viewed as a setback to the emergence of youth climate activism in Nigeria. The reason for this apparent omission of environmental concerns from the CRA is not clear, especially as the CRA was enacted in the era of intense negotiation of climate change adaptation policies at the global level. CRC,¹⁶⁹ from which the CRA was formulated, contains substantial and relevant provisions on the right of children to a healthy environment.¹⁷⁰ The CRC Committee recognises that applying a child rights-based approach to the environment necessitates the full consideration of all children's rights under CRC.¹⁷¹ It is argued that the omission of explicit references to the right of children to a healthy environment in the CRA is somewhat deliberate and appears to have been motivated by Nigeria's weak constitutional environmental rights framework. The omission shortchanges Nigerian children and requires an urgent review in this era of the awakening of young people to their right to take their future into their own hands from the hands of climate policy makers who are unrepresentative of children.

The lack of explicit provisions on environmental protection of children in Nigeria is not a barrier to relying on the CRA in a possible children and youth-led climate litigation in the country.¹⁷² As Etemire argues, due to the health issues negatively impacting children and pregnant women, which have been traced to the adverse consequences of the activities and operations of companies in the Nigerian oil and gas sector, recourse can be made to section 17 of the CRA.¹⁷³ Section 17 of the CRA, which focuses on 'right of the unborn child to protection against harm' stipulates that '[a] child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently

168 However, see Anozie & Wingate (n 146) for some criticisms of the FREP Rules as a tool for environmental rights litigation in Nigeria.

169 UN General Assembly Convention on the Rights of the Child, United Nations, Treaty Series vol 1577 November 1989, <https://www.refworld.org/legal/agreements/unga/1989/en/18815> (accessed 18 May 2025).

170 Art 24 CRC.

171 See para 6 of General Comment 26 (2023) on children's rights and the environment, with a special focus on climate change, UN CRC/C/GC/26 dated 22 August 2023, https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/CRC_General%20Comment%2026_2023_EN.pdf (accessed 18 May 2025).

172 Generally, see U Etemire *Global perspectives on corporate climate legal tactics: Nigeria National Report* (British Institute of International and Comparative Law February 2024).

173 As above.

or through neglect before, during or after the birth of that child'. Arguably, a combined reading of sections 4 (survival and development right), 11 (dignity), 13 (health), 16 (in need of special protection) and 17 (unborn child) of the CRA, 2003, enhances the prospects for climate litigation regarding issues relating to the Nigerian child. Thus, litigation based on these provisions can underpin children and youth-focused or youth-led climate litigation in Nigeria. Hence, lawyers and relevant stakeholders must be creative and rely on these provisions in potential youth-led climate litigation in Nigeria.

Although new, children's right to litigate climate change is no longer a strange idea in several jurisdictions.¹⁷⁴ However, there is a paucity of children and youth-led climate litigation in Africa.¹⁷⁵ Recently, some developments have appeared regarding the possibility of child and youth-led climate litigation in Africa. For example, cases have been instituted in Uganda and South Africa. The children and youth-led climate case instituted in Uganda is *Mbabazi v The Attorney General and National Environmental Management Authority*. In South Africa, *Africa Climate Alliance & Others v Minister of Mineral Resources & Energy & Others*¹⁷⁶ was the first children and youth-led climate case to be filed. In December 2024, the Court reached a judgment in *Africa Climate Alliance & Others v Minister of Mineral Resources & Energy & Others*. This was the 'first time a South African court has examined a climate-related decision and the impact of coal-fired power on the constitutional rights of the nation, its children, and future generations, particularly about the right to a healthy environment and the best interests of children.'¹⁷⁷ Some have argued that the recently enacted South African Climate Change Act 2024 'marks a victory for young voices who have been engaged in campaigning for the rights of children in South Africa to a clean environment.'¹⁷⁸ Arguably, this law will have positive implications for the potential of children and youth-led climate litigation in South Africa.

174 L Gradoni & M Mantovan 'Youth-led climate change litigation: Crossing the north-south divide' (2023) 56 *VRÜ/WCL* 274-298. Also see University College Cork, Ireland 'Youth climate justice: Case law database', <https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/> (accessed 18 May 2025). This database hosts summaries of the most important and relevant youth climate cases from several parts of the world.

175 Generally, see B Nkrumah 'Courtting emissions: Climate adjudication and South Africa's youth' (2021) 11 *Energy, Sustainability and Society* 1.

176 *Africa Climate Alliance & Others v Minister of Mineral Resources & Energy & Others* (#CancelCoal case) Case 56907/21, also cited in BD Mezmur 'The calm before the storm? Child rights climate change litigation in Africa' (2023) 56 *De Jure Law Journal* 543, 557. Also see C McConnachie 'The right to a safe environment, here and now' (2024) 14 *Constitutional Court Review* 283.

177 ZM Wadiwala 'Climate litigation brief #5/2024: The High Court of South Africa *African Climate Alliance and Others v The Minister of Mineral Resources and Energy and Others* – Judgment of 4 December 2024' *Lexxion* 20 December 2024, <https://www.lexxion.eu/en/cclr-blog/climate-litigation-brief-5-2024-the-high-court-of-south-africa-african-climate-alliance-and-others-v-the-minister-of-mineral-resources-and-energy-and-others-judgment-of-4-december-2024/#:~:text=This%20marks%20the%20first%20time,the%20best%20interests%20of%20children> (accessed 18 May 2025).

178 L Bodigelo 'New Climate Change Act: What it means for children and young people – Towards achieving climate justice for all children' UNICEF Stories 27 August 2024, <https://www.unicef.org/southafrica/blog/new-climate-change-act-what-it-means-children-and-young-people> (accessed 18 May 2025).

Young people worldwide are beginning to realise the need to lead the campaign to address climate injustice.¹⁷⁹ For example, Tafon and Saunders state that ‘the involvement of youth in climate actions is increasingly recognised as critical to a more just and sustainable future’.¹⁸⁰ It was reported that numerous youth-led climate law suits were filed in the US recently, challenging state and federal policies that promote fossil fuels as a violation of young people’s rights.¹⁸¹ This is a new and growing movement. Youth-led climate activism has equally suffered several losses, particularly in the US, as US courts are battling with how a court of law, instead of congress, can be involved in enforcing broad policies such as those on climate change.¹⁸² The absence may have informed the disposition of the US courts to climate litigation of a direct constitutional environmental right. The courts in China, however, have a different attitude towards climate litigation. The judiciary in China has upheld climate change claims in the absence of an explicit and enforceable right to the environment.¹⁸³ It has been observed that since China signed the Paris Agreement, the judiciary in China has been said to have heard ‘1,12 million first instance carbon-related cases’ even though the Paris Agreement is not a binding instrument in China.¹⁸⁴ The youths in Hawaii in the US have also moved the court to compel the state of Hawaii to implement a comprehensive plan to achieve zero emissions in its transportation sector by 2045, even though that was akin to enforcing a broad policy decision.¹⁸⁵

5 Recommendations

The Nigerian child and young people are among the most vulnerable to the adverse impacts of climate change. This is against the backdrop of the fact that

179 ‘Rising up: How youth are leading the charge for climate justice’ *UNDP blog* 7 December 2023, <https://www.undp.org/blog/rising-how-youth-are-leading-charge-climate-justice> (accessed 18 May 2025). Also see E Donger ‘Children and youth in strategic climate litigation: Advancing rights through legal argument and legal mobilisation’ (2022) 11 *Transnational Environmental Law* 263.

180 R Tafon & F Saunders ‘Toward transformative youth climate justice: Why youth agency is important and six critical areas for transformative youth activism, policy, and research’ (2025) 4 *PLOS Climate* e0000472.

181 C Mindock ‘Youth-led climate lawsuit against EPA dismissed’ *Reuters* 9 May 2024, <https://www.reuters.com/legal/litigation/youth-led-climate-lawsuit-against-epa-dismissed-2024-05-09/> (accessed 18 May 2025).

182 As above.

183 M Zhu ‘Climate litigation in a “developmental state”: The case of China’ (2023) 7 *Chinese Journal of Environmental Law* 200; X He ‘Judicialisation for environmental public interest protection in China: The faces of court in different forms of environmental litigation’ (2024) 42 *Journal of Energy and Natural Resources Law* 1-24 for criticism of similar litigation in China.

184 Zhu (n 183).

185 Climate Change Justice ‘Landmark victory in Hawaii youth-led climate lawsuit’ *UCC Blog* 21 June 2024, https://www.ucc.ie/en/youthclimatejustice/blog/landmark-victory-in-hawaii-youth-led-climate-lawsuit.html?trk=feed_main-feed-card_feed-article-content (accessed 18 May 2025). Also, in December 2024, in the USA, the Montana Supreme Court upheld a lower court’s decision that had sided with 16 young activists who argued that the state violated their right to a clean environment. See M Matza ‘Montana top court upholds landmark youth climate ruling’ *BBC News* website 19 December 2024, <https://www.bbc.co.uk/news/articles/c36ek09depro> (accessed 18 May 2025).

there is no explicit climate litigation case in Nigeria.¹⁸⁶ This part focuses on various strategies that can be used to promote the rights of Nigerian children and youth against the negative impacts arising from climate change in the country. The recommendations include political will by the Nigerian government and relevant agencies to enforce laws and national policies relating to children and climate change (including environmental rights frameworks), utility of *COPW* for the prospect of climate litigation (including children and youth-focused law suits) in Nigeria and continuous climate justice activism by Nigerian youths and relevant stakeholders, thereby enhancing the explicit integration of the views of children and youths in national policies on climate change and allied issues.

5.1 Political will

This article analysed several laws, national policies, and relevant environmental rights litigation (*COPW*) related to the Nigerian child and climate change. The paucity of laws and policies is not a significant impediment to the protection and promotion of the rights of climate-impacted children in Nigeria. Still, the ineffectiveness of the government and its agencies in enforcing the legal frameworks has negative implications for climate change governance in the country. The *COPW* case should be fully implemented by the government, for it to have the required impact on the lives of the relevant stakeholders, including children and young people in Nigeria. Hence, the Nigerian government must tackle the adverse effects of climate change on children and youth and ensure that private companies (including multinational corporations) and public entities live up to their climate change obligations.¹⁸⁷

As mentioned earlier, national policies in Nigeria are not legally binding. For example, the Nigerian National Environmental Policy is said to be 'advisory rather than regulatory in the context of Nigeria's oil and gas industry'.¹⁸⁸ Arguably, on this premise, national policies or measures on climate change relating to children are not legally binding. Thus, companies and the government (and other actors) cannot be held accountable for obligations arising from the policies.¹⁸⁹ It is debatable if children and youths can rely on litigation to enforce commitments arising from national policies on climate change. Thus, the apparent lack of enforceability of national policies on climate and allied issues will have detrimental impacts on the ability of children and youths to be relevant stakeholders that are expected to play an integral role in the quest to tackle the scourge of climate change in Nigeria.

186 Ekhaton & Okumagba (n 46); TL Muinzer *Major cases in climate law: A critical introduction* (2025).

187 Generally, see GA Agbaitoro & EO Ekhaton 'Just energy transition in Africa: Towards social inclusion and environmental rights-based imperatives' (2025) 10 *Business and Human Rights Journal* 34.

188 Ekhaton (n 86) 198. See also Umukoro & Omozue (n 165).

189 See also Agbaitoro & Ekhaton (n 187).

Accordingly, for the fight against the negative impacts of climate change on children and youths to be successful in Nigeria, the Nigerian government must ensure that the interests of children and youths (and other relevant stakeholders) are enshrined in the legal frameworks, including national policies. Furthermore, national policies on climate change relating to children and allied issues should overtly mainstream the rights of children and the meaningful participation or engagement of children in their provisions.¹⁹⁰ This will enhance the ability of children and youths to play an integral role in climate change governance in Nigeria.

5.2 Learning from the *COPW* case

Several scholars have argued that the *COPW* case has positive implications for the prospect of climate litigation in Nigeria.¹⁹¹ This article argues that lessons from *COPW* can be used to enhance the prospects of children and youth-focused climate litigation in Nigeria.

In the *COPW* case, the Nigerian Supreme Court stated that '[w]here there is a dearth of precedents in Nigerian jurisprudence on a particular issue, it is permissible to look to other climes where similar issues have arisen for guidance'.¹⁹² Thus, in *COPW*, references were made by the Nigerian Supreme Court to relevant decisions of English and Indian courts. Hence, in developing the jurisprudence on climate litigation (including children and youth-focused litigation), Nigerian courts can look to the other countries where climate litigation has taken root. Relevant climate litigation case law/jurisprudence from South Africa, India, the UK, Pakistan and The Netherlands can serve as templates to be relied upon by Nigerian judges in climate-related cases in Nigeria.

Also, Nigerian lawyers in legal proceedings can cite or rely on relevant foreign case law (especially on children and youth-led climate litigation) and thus bring it to the notice of the judges. For example, in the *COPW* case, one of the *amici curiae* (friends of the court), Adegboyega Awomolo, referred to a 2008 judgment of the Supreme Court of the Philippines which focused on the clean-up, restoration and protection of the Manila Bay.¹⁹³ This evidences the view that foreign climate litigation cases can positively influence Nigerian judges if brought to their notice by lawyers or *amici curiae*. Thus, the recent South African case of *Africa Climate Alliance & Others v Minister of Mineral Resources & Energy & Others* should be brought to the attention of Nigerian judges by lawyers who intend to institute climate-related litigation in Nigeria.

190 As above.

191 Oamen & Erhagbe (n 81); CM Nwankwo & B Mukoro 'Climate change litigation and the accountability function of judge-made law in contemporary Nigeria' (2025) 13 *Rivers State University Journal of Public Law* 44.

192 *COPW* (n 80) 534.

193 *Metropolitan Manila Development Authority v Concerned Residents of Manila Bay* 171947-48, 574 SCRA 665 of 18 December 2008.

5.3 Sustained climate justice activism

Nigeria has an emergent children and youth-focused climate justice movement. This is symptomatic of the worldwide trend of social movements focusing on climate issues affecting children and young people. However, several stakeholders (including youths involved in climate change advocacy) have averred that the government must 'prioritise youth engagement by providing them with platforms to influence decision making and by working alongside them on projects and initiatives'.¹⁹⁴ Thus, the voice of the Nigerian youth must not just be heard but should be part of the initiatives or strategies the government is developing relating to climate and children and youth in the country.

Nigerian children and youths can be involved in the climate change agenda in several ways – through involvement as key participants in climate policy negotiation and decision-making process, climate litigation and the promotion of youth engagement on climate proper advocacy or by raising young voices on the climate crisis. Several countries with high vulnerability to climate change have fulfilled these criteria in principle. UNICEF reported that Nigeria has the highest percentage of child-sensitive commitments in its nationally determined contributions (NDCs).¹⁹⁵ This is commendable and welcoming. However, no meaningful programmes have been developed to move these commitments into tangible actions. Nigeria's climate policies and plans may appear highly child-sensitive in the global index, but they are still a subject of poor implementation.¹⁹⁶

In several parts of the world, it is no longer in doubt that children and youths (or their representatives) can litigate climate wrongs.¹⁹⁷ The involvement of children and youths in climate change programmes is important for Africa. Responses from jurisdictions in the Global North and a few countries in Africa (especially South Africa) have shown that youth-led climate litigation is not only possible but also essential. Thus, youths and activists in Nigeria can take inspiration from South Africa and endeavour to institute climate cases in courts in the country based on the Nigerian Constitution, the Nigerian Climate Change Act, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the FREP 2009, CRA and the *COPW* case. This article has analysed several provisions in Nigerian law that can be used to ground climate litigation in the country. For example, a combined reading of sections 4 (survival and development right), 11 (dignity), 13 (health), 16 (in need of special protection) and 17 (unborn child) of the CRA 2003 enhances the prospects for

194 'Stakeholders urge govt to prioritise youth engagement in climate governance' *Environnews Nigeria* 28 January 2023, <https://www.environnewsnigeria.com/stakeholders-urge-govt-to-prioritise-youth-engagement-in-climate-governance/> (accessed 18 May 2025).

195 K Bouwer and others 'Africa, climate justice and the role of the courts' in Bouwer and others (n 46) 2.

196 Child-sensitive climate policies for every child UNICEF, November 2022, <https://www.unicef.org/media/130081/file/Child-Sensitive%20Climate%20Policies%20For%20Every%20Child.pdf> (accessed 18 May 2025).

197 Bouwer and others (n 195).

climate litigation regarding issues relating to the Nigerian child. Thus, litigation premised on provisions can be the basis of children and youth-focused climate litigation in Nigeria.

Children and youth-focused climate justice organisations and movements in Nigeria should take a cue from Niger Delta activists who have relied on local and foreign case law as part of their campaign strategy. Thus, children and youth-focused climate justice organisations should continually undertake awareness and capacity-building initiatives. For example, the children and youth-focused climate justice organisations can engage in training exercises for Nigerian government officials and businesses on how to ensure that the impact of climate change on children and youths is mitigated, and climate change victims (including children and youth) can have improved access to justice in the country. This will also help to bring the voices of children and youths to the table in climate change governance architecture in Nigeria, thereby facilitating the promotion of the explicit integration of views of children and youths in national policies on climate change and allied issues.

6 Conclusion

Children and young people in Nigeria bear some of the most uneven impacts of climate change in the country. Climate change has debilitating impacts on children, thereby negatively impacting their quality of life and enjoyment of several rights, including the right to food and nutrition, the right to education and the right to health.

The Nigerian government has developed several national policies alluding to the impacts of climate change on children and young people in Nigeria, and to mainstream children and youth into climate change interventions or initiatives in the country. However, several stakeholders have argued that the legal frameworks on climate change do not explicitly integrate the perspectives of Nigerian children and youth into their provisions. For example, the protection and promotion of the rights of children are absent from national policies and legal frameworks on climate change in the country. This article contends that a combined reading of sections 4 (survival and development right), 11 (dignity), 13 (health), 16 (in need of special protection) and 17 (unborn child) of the CRA 2003 enhance the prospects for climate litigation regarding issues relating to the Nigerian child. The Nigerian Constitution, the Nigerian Climate Change Act, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, the FREP Rules 2009, the CRA and the *COPW* case can be used to protect and promote the rights of climate change victims in Nigeria (including children and the youth) in the country.

Therefore, to ensure the protection and promotion of the rights of children and young people in Nigeria in climate change governance and enhance the

explicit integration of their views, this article makes several recommendations. The recommendations include the requisite political will by the Nigerian government and relevant agencies to enforce laws and national policies relating to children and climate change (including environmental rights frameworks), leveraging on the lessons of the *COPW* case by lawyers and the judiciary to enhance the prospect of climate litigation (including children and youth-focused lawsuits) in Nigeria and continuous climate justice activism by Nigerian youths and relevant stakeholders. Arguably, if adopted, these recommendations will have positive impacts on promoting the explicit integration of the views of children and youths, and promotion and protection of their rights in national policies on climate change and allied issues.