



## Climate Justice, Environmental Sustainability and the Rights of the Child in Sub-Sahara Africa: Legal and Policy Perspective

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**Abstract.** Climate change is daily making a sustainable environment a mirage and no region of the world is spared. But it is also realized that certain regions and certain groups of persons especially children are more vulnerable. A clean, healthy and sustainable environment is pivotal in the enjoyment of the fundamental, social, economic and cultural rights of all, especially children. Children of the sub-Sahara are disproportionately vulnerable to environmental hazards due to their dependence on their natural environment. Environmental degradation caused by the raging climate change is adverse to children's survival and sustainable future. This paper seeks to investigate the right of children of the sub-Sahara to a clean, healthy and sustainable environment. It examines some legal and policy steps towards the protection and promotion of children to a healthy and sustainable environment. It employs the doctrinal and comparative approach to legal research through textbooks, journals and internet sources and concludes that the sub-Saharan child is not only vulnerable but a right bear in need of climate justice. It recommends, among other things, that participation and inclusion of children in climate change matters should be a priority and that good laws can only function if adequate implementation and surveillance mechanisms are put in place.

**Keywords:** climate justice, environmental sustainability, child's rights, sub-Sahara Africa, climate change

### 1. Introduction

Climate change is world's greatest challenge, which has posed a significant threat to the entire ecosystem and has altered the coastline, marine habitat, forests,

and agronomical systems of the world. (Ruhi, 2008). The vicious effects of climate change can be spotted in its short- and long-term effects, such as severe droughts, heavy flooding, too little or excessive rainfall, storms, heatwaves, cyclones, tidal waves and landslides. (Gu et al, 2018). The Intergovernmental Panel on Climate Change (IPCC) report of 2021 underlines the perceived long-term effects of climate change as a rise in global warming and emissions of greenhouse gas (GHG) (Mora & Spirandelli, 2018). The IPCC traced climate change to human activities. (IPCC Climate Change, 2013). It stressed that Africa is the most vulnerable continent; (Gemedá & Sima, 2015) and that the menace will be severe on developing nations. (UNFCCC Climate Change, 2025) African countries are developing nations already troubled by over population and many socio-economic problems, which continue to increase amidst their struggle to meet the world's uncertain targets as fixed in the Sustainable Development Goals (SDGs). (UN Sustainable Development Goals Report, 2019). While many developed countries of the world are taking significant steps to adapt and mitigate the adverse effects of climate change, such is not obviously on the agenda of many developing countries that are constrained by technological backwardness and financial bankruptcy. (Puthucherril, 2012). The impact of climate change is most felt by the vulnerable populations, especially children. (Fambassayi & M. Addaney, 2021). A child is any human being below the age of 18 years (African Charter on the Rights and Welfare of the Child, 1990); and children constitute about 30% of global population, about 2.2 billion of world's population. (United Nations Department of Economic and Social Affairs (UNDESA), 2019). Children will suffer both the short- and long-term impacts of climate change. As Guillemot and Burgess

rightly observed, almost 125 million children in Africa will suffer malnutrition, displacement and water scarcity by the year 2030 due to the ravaging effects of climate change. (Guillemot & J. Burgess, 2009).

Consequently, the causes and effects of climate change must be tackled as a matter of urgency to protect the human rights of all humans and that of children, in particular. (Fambassayi & M. Addaney, 2021). These rights include their rights to life, right to health, right to survival, right to a healthy and sustainable environment, etc. (Fambassayi & M. Addaney, 2021). A sustainable environment is one that will protect the interests of children in the present and future generations. It behooves on state parties to strive to promote principles of climate justice and sustenance. The principle of climate justice and environmental sustainability is a forward-looking approach to protecting the rights of children born and yet unborn. On this premise, this paper looks at the plight of children in sub-Sahara, Africa and the raging climate change; and some legal and policy steps to protect children's right to a healthy and sustainable environment. The national laws of three African countries drawn from the west, east and south of Africa *vis-à-vis* Nigeria, South Africa and Uganda are captured briefly to determine some national efforts towards climate justice and environmental sustainability for the sub-Saharan child. To achieve these, this paper is divided into six sections. Section one is this introduction; section two is the clarification of terms; section three studies climate change in the sub-Sahara; section four is more specific on climate justice, environmental sustainability and the sub-Saharan child; section five x-ray some legal and policy steps for the protection of children's right to a healthy and sustainable environment; and section six is the conclusion.

## 2. Clarification of Terms

### 2.1 Climate Change

Climate change is one of the greatest threats facing humanity today. The world is facing various climatic conditions and degrading ecology. This is due to fossil burning, oil spillage, gas flaring, deforestation, wastes, atmospheric ozone layer depletion, and various other unhealthy human practices, which have resulted in global warming and various negative impacts on the planet. (Weiss, 1994). Right now, the earth is already warmer by 1°C above pre-industrial levels and it is perceived that it will rise to 1.5°C by 2050. The impacts of climate change include life-threatening climatic occurrences, loss of major functioning of the ecosystem, loss of health, loss of livelihoods, water

scarcity and other biophysical changes. (Rong et al, 2019). These are already revealing themselves in the world today and will take greater dimensions in future. Climate change arises from two basic factors- natural processes and human activities. Natural processes involve biogeographical occurrences while human activities include anthropogenic aspirations of man. (Davies et al, 2016). Climate change spells misery and sorrow for mankind. (Robinson, 2008). Its consequences are horrific manifestations of extreme flooding, heavy storms, landslides, tornados, fires, cyclones and hurricanes at the short term and desertification, heat waves, habitat destruction, exhaustion of wells, intense droughts, deforestation, melting sheets and glaciers, species extinction, receding coastal lines, ocean acidification, global warming and rise in sea level at the long term. (Sanz-Caballero, 2013). All these occurrences have enormous human concerns, and children stand to suffer more due to their peculiarities as the sustainers of the human race. If left unchecked, survival will be daunting in the near future because of the adverse effects on biodiversity and human wellbeing including human health, water and food security, displacement and diseases.

### 2.2 Climate Justice

There is no universal accepted definition of climate justice. However, it is understood to be the protection of the most vulnerable from the unequal negative effects of climate change. (Umotong, 1999) It is an ideology which seeks to ensure that individuals, communities and government have substantive legal and procedural rights to the enjoyment of a safe, clean, healthy and sustainable environment and the measures to be taken at the national, regional and international scenes to mitigate climate change, while respecting human rights. (Leslie, 2016). It is a concept that acknowledges the adverse effects of climate change on individuals and communities who are less proficient in preventing, adapting or responding to its impacts. (Alex Abang Ebu, 2025). Climate justice establishes the obvious developmental inequities. (Umotong, 2020). Climate justice is rooted in grassroots measures and the alliance of groups that organize conferences on climate change. It has become a term used by stakeholders to formulate stratagems to hold government and non-state actors liable for their actions, inactions and obligations under the climate change agenda at the domestic and global scenes. (Tormos-Aponte & Garcia-Lopez, 2018). Climate justice offers full responsibility on government at the national scene on the impacts of their industrial activities. (Mastaki, 2025). Also, it encourages alliances at the international scene to bring

industrialized countries who are the major culprits of GHG emissions as a result of their industrial revolutions, to accountability. (Larrere, 2025). Developed countries have dual responsibility towards climate change. They are expected to play the causal role as well as a mitigating role against the current and future impacts of climate change. (Mastaki, 2025).

### 2.3 Environmental Sustainability

Environmental sustainability has become an overriding concern in recent times due to intense consequences of human activities on environmental wellbeing and the future of children. (Edo et al, 2024). Humanity has continued to abuse natural resources leading to deforestation, reduction of fisheries, and the reduction of fossil fuels. (Edo et al, 2024). In addition, industrialization has encouraged widespread pollution of the water, air and soil. Factories spread toxins into the atmosphere. This devalues the environment and encourages several health vulnerabilities. Also, due to anthropogenic activities, like pollution, over exploitation and destruction of habitats, extinction, distressed ecosystems, and weakening biodiversity, the earth is facing an impending global disaster. (Edo et al, 2024). Sustainability as a concept revolves around a chain of interrelated challenges, which include safeguarding basic living standards, promoting economic advancement, protecting environmental health, and efficiently supervising communal and ecological systems. Halla & Binder, 1994). This idea encouraged an international agreement, which resulted into the 2030 Agenda for Sustainable Development. (U.N. General Assembly, 2015). So far, there is no universal agreement on the most appropriate and resourceful methodology for apprehending the Sustainable Development Goals (SDGs). (Fisher, et al, 2021). Environmental sustainability stands out as a central principle of the SDGs. It stresses that meeting present needs should not compromise the quality of the environment. It highlights the need to preserve the environment for future generation; (Kaswan et al, 2019) and that organizations should incorporate the principles of environmental sustainability in their activities. (Ukko, et al, 2019).

### 2.4 Sub-Saharan Africa

Sub-Saharan Africa is the extra-terrestrial region of the African continent positioned south of the Sahara Desert, which incorporates the Central, West, East and South Africa. It is known for its enormous traditional, indigenous, and language diversities, massive natural resources, and world's youngest and fast-growing population. It has a history discernable by ancient

kingdoms, European colonization and post-colonial advancement challenges. It has assorted area with distinctive biomes and comprises of over 40 nation states and houses a billion people. It is made up of diverse terrain like savannahs, rainforests, rift valleys, and mountains. It was estimated to contain over one billion people in 2017 and projected to double by the year 2050. (Wikipedia, 2025). The Sub Sahara Africa is known for its high dependence on farming, fishing, and other natural means of livelihood. (Wikipedia, 2025). This makes the region more susceptible to climate change. (Jafino, 2020). The region has been negatively impacted by the adverse effects of climate change in recent times. (Bhusal, 2009). As Shingirai rightly observed, there is a greater likelihood of insecurity in Africa due to quests for survival; (Mugambiwa, 2021); and children are of a greater risk. The disruptive effects of climate change have varied effects on communities in the developing countries due to lack of adequate adaptive capability.

### 3. Climate Change and Environmental Sustainability in the Sub-Sahara

Sub-Sahara Africa is most vulnerable to climate change due to its climatological structure as well as the underdevelopment of many of its nation states. (Mugambiwa, 2023). Many of its countries do not have adequate resources and infrastructure crucial to mitigating the adverse effects of climate change. They mostly suffer poor governance, corruption, poverty and are the least socially ready to adapt. (Mugambiwa, 2023). Owing to the socio-economic repercussions of climate change and how it affects communities' overall survival, climate justice is vital. (Bhusal, 2009). The sub-Saharan countries are perceived to be at a greater risk of climate change due to their typical human activities and heavily dependent on climatic and geographic conditions. (Ncube et al, 2011). Also, some persons are more vulnerable due to certain underlying inequalities. For example, the impact of climate change on women, disables, aged and children are more, and children top the list due to their tender nature and distinctiveness. (Zografos & Robbins, 2020). It is now certain that human rights and climate justice are interconnected and inseparable. (Mehta et al, 2021). As Mugambiwa rightly opined, climate change reveals the intrinsic disparities that exist between developed countries and the under developed countries and between the rich and the poor within a country. (Mugambiwa, 2023). Climate justice guarantees objectivity and equity in climate dominance and recompense for damage caused by climate change. (Mugambiwa, 2023).

Scientists have established the fact that the human race is faced with an impending catastrophic situation. This has prompted series of warnings from the International Panel on Climate Change (IPCC). (IPCC, 2021). Many propositions have been raised in a bid to bring in justice and accountability in the issue of climate change. It is believed that those who initiated the problem, those who profited from the actions of those who initiated the burdens and those who are financially strong should all share in the responsibility of mitigating the climate change. (Mugambiwa, 2021). The various caveats for an imminent tragic effect of climate change has been on since the onset of the 21<sup>st</sup> century, however, it is only lately that states began to highlight on the problem. Climate change is now having injurious effects on the economy and environment of many nations of the sub-Saharan. The disparities in the effect of climate change is caused by the interchange of numerous socioeconomic factors, such as finance, ethnicity, racism, age, gender, poor health, and disabilities. Holland observed that the frequency of such negative occurrences, over times have a ripple effect on the resilient social groups. (Holland, 2017). The continuous hardship of rural areas, gradually weakens the urban economy. (Taylor, 2013).

Climate change affects the civil, economic and social rights of children. (Paul & Alice, 2013). Presently, some of the negative effects of climate change have started taking its toll on human health, which manifests as heat-related illnesses, increase water and vector-borne diseases, mental health issues, and malnutrition; and are likely to manifest in greater dimensions in future. (Perry, 2025). At the community scene, both minority and indigenous communities of the sub-Sahara have started experiencing more dangers of climate change. Some regions are presently finding it difficult to get water, food, fuel and good livelihood. (Paul & Alice, 2013). The sub-Sahara is facing high temperatures, periodic flooding, poor crop yields, and uncertain weather conditions. All of these and more will be experienced in an unimaginable magnitude in future and because of the prevailing socioeconomic differences between the sub-Sahara countries and the rest of the world, between societies, and within societies of the region, it will be hard for them to face the impending consequences of climate change. (Holland, 2017). These inequalities call for justice approach to climate change where the least liable for the causes of climate change and the most affected is given special considerations.

Mugambiwa was apt when he opined that environmental inequalities arise where people are exposed to not just one but more forms of

discrimination as a result of their race, sex, age, economic and social stands. (Mugambiwa, 2023). In this light, women, indigenous people, persons with disabilities, the elderly, low income countries and children have been identified by the United Nations Human Rights Council as vulnerable to the hazards of climate change and in need of environmental justice. (Perry, 2025). The case of children go beyond the present hardship to the future. Holland made it clear that there is a connectivity between the past, present and future generations. (Holland, 2017). Thus, the future generation will inherit a world too hard to cope with as a result of prevailing life styles characterized by high emissions of greenhouse gas and heavy reliance on fossil fuel. (Holland, 2017). The future generation should not be made to inherit the repercussions of the wrong decisions of the present generation. (Mugambiwa, 2021). Many sub-Saharan countries lack the resources and necessary infrastructure to mitigate and adapt to the magnitudes of climate change. This will put the region's economy and the occupations of millions of persons in a perilous and uncertain state due to the irregularities of climate change. (IPCC, 2021).

#### **4. Climate Change and the Rights of the Sub-Saharan Child to a Healthy and Sustainability Environment**

Human rights are universal basic assurances that all humans are entitled to (Sanz-Caballero, 2013). The consequences of climate change affect health and livelihood and frustrates directly or indirectly, the enjoyment of all other human rights, including civil and socio-economic rights. Children of the sub-Saharan countries are faced with the harsh realities of climate change as well as the already existing poverty in the region due to poor governance and massive corruption, which characterize the region. High temperature and other fluctuations in climatic condition encourage severe barriers for the survival of the child. The ravaging climate change is presently undermining the realization of the Millennium Development Goals (MDGs). The MDGs seeks to reduce poverty, maternal and infant mortality, malnutrition, fight diseases and provide universal basic education for children by 2015. (UNDP, 2008). Through the MGDs' programs, many developing countries have improved health care, water supply, sanitary services, and other basic supplies. But, due to the current environmental damages by climate change, all of these good initiatives have been slowed down. (Veneman, 2005). Both children of developed and developing countries are affected but it is worse on children of the indigenous societies, from poor peasant backgrounds who depend on the environment for

survival. (Barlett, 2009). Unpredictable weather changes and hazards are dangerous to the survival and wellbeing of the child. (Brown et al, 2007). Unhealthy environment affects children's physical and mental development. They are exposed to respiratory diseases, cancers and cardiovascular diseases caused by pollution and infections. For instance, the latest hazards of droughts, life-threatening weather and water scarcity in Ghana, Nigeria and South Africa had a devastating effect on agriculture and food production, (Hanna-Andrea, 2019), which can affect the life and wellbeing of children. (UNICEF, 2011).

Human rights apply equally to both adults and children but children are entitled to some additional rights and care by reason of their fragile nature, specific vulnerability and a whole untapped future. Their specific rights include right to be cared for by parents or guardians, right to play and leisure, right to basic education, right to be free from hard and hazardous labour, (Sanz-Caballero, 2023) right to good health, right to a healthy environment, etc. Climate change impacts on all of these rights. It affects their health, housing, food, water, education, etc., and makes parental care tiresome, encourages maternal death, loss of a parent or both parents, and abandonment. (Sanz-Caballero, 2023). As members of a family and a community, children face not just their peculiar violations but also every other violations faced by their families and communities. (Sanz-Caballero, 2023). As Mastaki, rightly opined, climate change is the foremost cause of internal displacement in many parts of Africa. (Mastaki, 2025). Statistics have shown that no fewer than one million children of the sub-Sahara were displaced within their country as a result of climate change in 2021 and another 1.85 million in 2022. (IDMC, 2023). Between 2016 and 2021, no fewer than 43 million children were displaced by climate-related cataclysms and an estimated 20,000 children are displaced daily. (UNICEF, 2023). Climate change exposes children to triple injustice. They are directly visible to the effects of climate change, such as displacement from their homes, dilapidation of natural resources; their fundamental human rights, including their right to a healthy environment; and they risk a sustainable future.

Environmental rights are human rights, which exists from the origin of humanity. This informed the court's decision in the case of *Oposa et al. v. Fulgencio S. Factoran Jr. et al.*, (1993) G.R. No. 101083) a landmark case in environmental law. A case focused on the right to a balanced and healthful ecology, which the petitioners associated with two concepts of "intergenerational responsibility" and "intergenerational justice." The case is a class action

to stop the embezzlement of Philippine tropical rain forest and to halt further violation of the country's vibrant life support systems. The supreme court of Philippines ruled that the Petitioner-minors who asserted that they represent their generation and also the unborn generations, indeed had a cause of action; that environmental rights extend to future generations; and that every generation has the duty to preserve the harmony of the environment for the enjoyment of a balanced and healthy ecology. So, the petitioners' right to a conserved environment is also the fulfilment of their responsibility to safeguard the safety of that right for the upcoming generation. The court made it clear that the continuous deforestation of the environment is a distortion of the ecological balance which could lead to other environmental disasters.

The environmental health rights of children include their right to a clean air, nontoxic water, healthy food; access to natural resources, protection from environmental risks, right to protection from the effects of climate change; right to be educated on environmental and climate change matters; and right to participate in climate and environmental decision making. (Jacob, 2012). All of these rights will guarantee children an adequate standard of living. (Bonyd David, 2022). Research have shown that about one in every five child is malnourished. (Umejiaku et al, 2025). Children's Climate Risk Index (CCRI) Report shows that 953 million children are exposed to water strains; 436 live in areas of high flooding; 470 million children are facing life-threatening droughts; 820 million children are exposed to intense heat waves; 600 million children are exposed to diseases; 33 million are exposed to yearly flooding; 40 million have their education disrupted due to extreme environmental and weather conditions.

The Stockholm Declaration on Human Environment of 1972 (Stockholm Conference, 1992) placed environmental issues at the fore front. It provided guidelines for states to make environmental protection laws to protect the environment as they exercise their sovereign rights over their natural resources. (Umejiaku et al, 2025). States are expected to strike a balance between using the natural resources and protecting their natural environment. The Conference succeeded in projecting the fact that both natural and synthetic aspects of the environment are crucial to the enjoyment of fundamental rights. (UNCHE, 1972). The Declaration did not focus on children *per se*, but that could be implied where it used the phrase 'present and future generations. In 1980, there was a coalition of three bodies- the UN Environmental Programme (UNEP); the World-Wide Fund for Nature (WWF); and the International Union for Conservation of

Nature (IUCN) who organized a Conference themed ‘World Conservation Strategy (WCS) - Living Resource Conservation for Sustainable Development.’ (IUCN, UNEP and WWF, 1980). Children were mentioned only in relation to malnutrition and preventable diseases. (IUCN, UNEP and WWF, 1980). The main focus of this document was on environmental conservation for a sustainable development while respecting human rights. (IUCN, UNEP and WWF, 1980). The Brundtland Report of 1987 was explicit in its definition of sustainable development. (Brundtland Report, 1987). The Report was not focused on human rights but from its definition, it recognizes children as sustainers of the future. The report called on decision makers to take steps that will not undermine children’s basic right to a healthy and sustainable environment. It recognizes the status of children as conveyors of rights in the sustainable development policy agenda. It links the survival of children to environmentally sustainable practices and points to the fact that children should be put into perspective in every decision-making process bearing in mind that most decision makers maybe long dead by the time the long-term effects of climate change and environmental damages occur. It was at the UNCED that world leaders fully adopted sustainable development as a progress model. And in the Rio Conference of 1992, the environment was included in the sustainable development agenda. (UN Conference on Environment and Development (UNCED), 1992). It specifically stated that ‘in order to achieve sustainable development, environmental protection shall constitute an integral part of the development process.’ ((UN Conference on Environment and Development (UNCED), 1992, principle 4). The right to development was the focus in the Rio Declaration not human rights. ((UN Conference on Environment and Development (UNCED), 1992, principle 3). It recognized the sovereign rights of state parties to exploit their resources; (UN Conference on Environment and Development (UNCED), 1992, principle 2) and recognized ‘children and youths’. (UNCED, 1992 ‘Agenda 21) It is agreed that children comprise nearly half the earth’s population, and will inherit the responsibility of taking care of the earth and the fact that their vulnerabilities to environmental damage differs from that of adults. (UN Conference on Environment and Development (UNCED), 1992, 21:12). The Rio Declaration recognized the place of children in future environmental sustainability, (UN Conference on Environment and Development (UNCED), 1992, 36:5e), but not as right holders in environmental matters. It was the UNCRC that actually recognized the inherent right of children to a sustainable environment; (UNCRC, art. 12) and places

obligation on state parties, UN agencies and non-governmental organizations to involve children in their environment and development support programs. (UNCED, art. 36.10).

The UN General Assembly presented the Millennium Declaration at the Earth Summit in 2000 as one of the eight Millennium Development Goals (MDGs) (UNGA, 2000). It recognized the link between children and environmental protection. (UNGA, Principle 21). It was in the Millennium Declaration that human rights gained importance. States are to take steps to uphold ‘human dignity, equality and equity to all persons of the world especially, the most vulnerable and children in particular, because the future belongs to them’ (UNGA, Principle 2). The UN World Summit on Sustainable Development (WSSD) in 2002 (the Johannesburg Declaration) recognized both the participation of children and the rights of children in environmental sustainability. (World Summit on Sustainable Development, 2002). Though, its focus was on economic, social and environmental development but it accords children participatory rights and for the first time saw children as right bearers and future citizens. (World Summit on Sustainable Development, 2002). The WSSD Plan of Implementation identifies the relationship between children and the environment. (World Summit on Sustainable Development, 2002). It launched the Global Initiative on Children’s Environmental Health Indicators. (World Summit on Sustainable Development, 2002). This was followed by long term plan to engage children and youths in environmental matters. (WSSD, Johannesburg Plan of Implementation). Another long-term plan was given in 2009. This was to span between 2009 and 2014 and focused on six thematic priorities, which include climate change, resource efficiency, environmental governance, disasters and conflicts, ecosystem management, and harmful substances and hazardous wastes. In 2011, the Tunza International Children and Youth Conference held in Bandung, Indonesia. Its aim was to gather feedbacks for the forthcoming UN Conference on Sustainable Development (UNCSD) of 2012. The Bandung Declaration advised states to be committed to the needs of children and youth towards a sustainable standard of living. (Bandung Declaration), 2011). The UNCSD, in its consequential document titled ‘The Future We Want,’ gave more consideration to human rights. (UNGA, ‘The Future We Want,’ 2012). It places states under obligation to respect, protect and promote human rights for all. (UNGA, ‘The Future We Want,’ 2012, Principles 8, 9).

In the UN Sustainable Development Summit held in 2015 in New York, the UN General Assembly passionately endorsed a document on ‘Transforming Our World: The 2030 Agenda for Sustainable Development’ (2030 Agenda). (UNGA, ‘Transforming the World’). This document encloses 17 SDGs and 169 targets to achieving the Millennium Development Goals. It was agreed that poverty was the foremost world challenge and must be eradicated by 2030. (UNGA, ‘Transforming the World’, principle 2). It was also on the agenda to address children’s environmental right. This necessitated the engagement of civil society and stakeholders to pay attention to the most vulnerable. (UNGA, ‘Transforming the World’, principle, 6). While the SDGs focus on states, the MDGs focus on developing countries of the world. It is believed that sustainable develop must integrate the economic, social and environmental dimensions; (UNGA, ‘Transforming the World’, principle, 2) and human rights must play a conspicuous role in the 2030 agenda. (Bratspies, 2015). Also, came into light was a group known as the ‘Major Group of Children and Youth (MGCY), who made a landmark statement that children and youths must be seen as actors and contributors, and not just as a vulnerable group. (UN MGCY, 2015). They made it clear that ‘the future of humanity lies in the hands of today’s younger generation, who will pass the torch to future generations.’ They emphasized that the human rights of children should be holistic and must include their environmental rights. (Shiva, 2015).

### **5. Legal and Policy Framework for the Protection of the Rights of the Child to a Sustainable Environment**

Climate change is a recent phenomenon in human history and not captured in main human rights treaties. (HREOC, 2018). These treaties were mainly crafted to protect individuals against state assaults but not a therapy for human damage caused by environmental degradation and climate change. (Epinay, 2023). So, it behooves on states to take steps towards remedying whatsoever will cause an abuse to human rights, which includes the menace of climate change on the human rights of children.

#### **5.1 International**

Some international legal and guiding principle connected to climate change include: the Paris Agreement, the UN Framework Convention on Climate Change (UNFCCC), Convention on Biodiversity (CBD), the Task Force on Displacement, the Sendai Framework for Disaster Risk Reduction 2015-2030, the Guiding Principles on Business and

Human Rights, the Children’s Rights and Business Principles, the World Bank Environmental and Social Framework, and the General Comment No. 26 of the CRC on Children’s rights and the environment with a special focus on climate change. Article 3(1) of UNFCCC places an obligation on state parties to ‘protect the climate system for the benefit of present and future generations.’ Many of these contain minimal provisions for children’s environmental rights. However, the Child Rights Convention (CRC) is the main treaty for children and specifically provides for children’s environmental rights.’ The CRC (CRC General Comment, 2023) states in its preambles that the natural atmosphere be protected for the growth and general well-being of children. It provides the right to non-discrimination for every child and places an obligation on state parties to effectively prevent, protect and provide remedies for both direct and indirect environmental abuses. Any form of discrimination is a hindrance to children’s full enjoyment of their fundamental human rights. Environmental damage has a discriminatory impact on children especially children of developing countries. These category of children are already stressed up by the economic status of their parents. Adding climate hazards and environmental damage makes them even more susceptible. The CRC provides that the best interest of the child should be paramount in all decisions that concerns a child. (CRC General Comment, 2023, art.3). Thus, in all environmental decision-making processes, the best interest of the child, including the unborn child, must be the center of concern. Climate change and environmental degradation, biodiversity loss, pollution, etc., threatens the right to life, survival and development of children, so, they deserves to be heard. (CRC General Comment, 2023, art.12). State parties must ensure that age-apposite, safe and available machineries are put in place for children’s opinions to be heard in environmental decision-making processes for legislation, policies, regulations, projects and activities at the national and international levels. The CRC provides for the freedom of expression, association and peaceful assembly. (CRC, art. 13 & 15). This encourages children to take action individually or collectively to safeguard the environment from all environmental vices; and to hold states accountable for environmental abuses. States must provide a harmless and supportive environment and a legal and strategic framework through which children can successfully exercise their rights. Children have the right to access of information. (CRC, art. 17). Access to information enables children, parents and caregivers to understand the possible effects of climate change and environmental damage on children’s rights. The right to information

also entails the right to precise and consistent environmental data, including the sources of climate disturbances, effects, adaptive responses, policies, strategies, and findings from climate and environmental impact assessments, and viable lifestyle choices.

Children have the right to freedom from all forms of violence. (CRC General comment No. 26 (2023) art. 19). Climate change and environmental damages are forms of physical violence against children, which can increase children's vulnerability to child labour, child marriage, conscription into criminality or violent groups, displacement, sexual exploitation, abduction, trafficking, domestic violence, gender-based violence and female genital mutilation. (Sanz-Caballero, 2013). The CRC provides right to the highest attainable standard of health for every child. (CRC General comment No. 26, art. 24). This right includes the enjoyment of a range of facilities, goods and services, and all conditions necessary for the realization of the highest attainable standard of health. (CRC General comment No. 26, art. 26 & 27). A clean, healthy and sustainable environment is a prerequisite to the realization of all rights including adequate housing, good drinking water, food security, and good sanitation. (Committee on Economic, Social, and Cultural Rights, general comment No. 15 (2002). The CRC provides the right to education for every child. (CRC, art. 28 & 29). Education is one of the foundations of a child's right to a healthy and sustainable environment. It helps protect their other rights, including their environmental awareness, preservation, mitigation and adaptation rights. Climate change and environmental degradations can occasion school disruptions, closures, dropouts and destruction of school environment. Environmental education should be inclusive, transformative, child-friendly and child-empowering. It should include the development of child personality, respect for nature, environmental ethics and values, development of talents and values, with local and international orientations. The school curriculum should be made to reflect the child's specific social, economic, cultural and environmental backgrounds. To achieve this, state parties should provide a safe, healthy, and irrepressible infrastructure for active learning. The CRC recognizes the rights of indigenous children and minority groups. (CRC, art. 30). State parties should give some exceptional considerations to indigenous children by putting into consideration their cultural identity, ancestral lands, and their traditional knowledge, on mitigation and adaptation mechanisms.

Children are entitled to rest, play, leisure and recreation. (CRC, art. 31). Play and leisure are

indispensable for a child's health and general wellbeing. It helps develop creativity, build imagination, self-confidence, as well as, physical, cognitive, social, and emotional skills. It is important to learning and holistic development of the child. (CRC, art. 31, para. 9 and 14c). Children have right to a clean, healthy and sustainable environment. (CRC, art. 24, 27, 28, & 29). State parties are to take steps to improve the quality of air, reduce pollution, and prevent child mortality; (CRC, art. 4), provide child's rights impact assessment; (CRC, art. 3(1)), protect children from abuse by a third party; (CRC, art. 28, 42 & 82) provide effective remedies for redress; (CRC, art. 2(3)) enable children take appropriate action individually and cooperatively; (CRC, art. 4) states are to take collective action to mitigate climate change while respecting their human rights obligations; and the major contributors to climate change should take the lead towards mitigation, adaptation, compensation and financing. (UNFCCC, 4(5); Paris Agreement art. 9(1)).

## 5.2 Regional

At the regional scene, there are normative standards, multilateral agreements and policy frameworks that have been developed to address different dimensions of climate crisis. These include, the *African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)*, which is Africa's foremost continental climate blueprint. It was adopted in 2022 to synchronize responses to climate change, build resilience, promote low-emission conduits and integrate climate action across the regions. It states four key objectives: to boost adaptive capability, pursue sustainable development, mobilize resources, and ensure inclusive execution. Its focus is to support the Agenda 2063 and other regional stratagems. (African Union Climate Change and Resilient Development Strategy, 2022-2032). *The African Charter on Human and People's Right (ACHPR)* provides for the rights to environmental health of every African, including children. It directs its state parties to defend all the rights and duties revered in the Charter and to take legal steps and measures to actualize them. (African Charter on Human and People's Right (ACHPR), art. 1). It provides that every human, including children shall enjoy the best attainable state of physical and mental health. (African Charter on Human and People's Right (ACHPR), art. 16). Every African shall have the right to education and to take part in the cultural life of his community. It is the duty of state parties to ensure the right to development. (African Charter on Human and People's Right (ACHPR), art. 16). *The African Charter on the Rights and Welfare of the Child*

(African Children's Charter) provides principally that for the child to enjoy all necessary rights, all stakeholders must adhere to the principles contained in the charter as well as, other instruments of the OAU. Therefore, state parties are to take necessary legislative and policy steps as may be necessary to actualize the provisions of the charter. It specifically provides for adequate health services for children and that states should protect children from environmental threats. (African Charter on the Rights of the Child, art. 14). It encourages state parties to educate children on ways to respond and adapt to environmental experiences likely to affect their health and general welfare. (African Charter on the Rights of the Child, art. 11). The charter recognizes the fact that children with disabilities, physically or mentally challenged and poor are more vulnerable and needs measures to boost their human dignity, promote their self-reliance and encouraged to participate actively in the community. To achieve this, states parties must ensure that such children must be guaranteed access to training and recreational opportunities so as to achieve social integration, personal development, and cultural and moral development. (Umejiaki et al, 2025). The charter is aware that harmful environment exposes the child to violence such as, child labour and other vices. States should therefore, protect the child from all forms of exploitations likely to interfere with the child's physical, mental, moral, social, and spiritual development. (Umejiaki et al, 2025). It provides that in all actions involving children, the best interest of the child shall be the primary consideration. (African Children's Charter, art. 10). It provides the right of the child to survival and development. (African Children's Charter, art. 5(1)). And places an obligation on states to support the survival and development of the child within their territories. (African Children's Charter, art. 5(2)).

### **5.3 National – this research looks at some national laws and policies of three sub-Saharan countries vis-à-vis Nigeria, Uganda and South Africa:**

#### **5.3.1 Nigeria**

*The Constitution of the Federal Republic of Nigeria 1999* (CFRN) - the right to a healthy environment is not stated in the Nigerian Constitution. The constitution has its 'environmental objectives' in Chapter II. (CFRN, s. 20). Chapter II of the CFRN contains the Fundamental Objectives and Directives Principles of State Policy, which are mere reflections of governance. The rights under chapter II are non-actionable rights and cannot be enforced in a court of law by reason of the provision of section 6(6)(c) of the constitution, which ousts the jurisdiction of the

judiciary to entertain any matter under chapter II. Therefore, no citizen can approach the courts for the enforcement of any right under chapter II. The implication is that there is no right to a healthy environment under the Nigeria constitution. Government in effect, uses this clause of non-actionability of chapter II to deny every citizen especially, children their human rights to a clean, healthy and sustainable environment. (Umejiaku et al, 2025). Government lacks the political will to enforce these objectives. It is trite that the right to life and other fundamental rights of the child is anchored largely on their right to a clean, safe, healthy and sustainable environment. In *Archbishop Okogie v. A.G. Lagos State*. (1981) 2 NCLR 337, the court held that chapter II of the constitution should be in harmony with the human right provisions of chapter IV because the rights under chapter IV cannot be enjoyed without the operation and justifiability of chapter II. For instance, the right to life cannot be enjoyed in an environment that is polluted, degraded or that lacks good and healthy drinking water, healthy food and clean air. Nigeria has continued to neglect the fact that the fundamental human rights of its citizens especially, the tender generation depends largely on the enjoyment and justifiability of the rights in chapter II, especially, the right to a healthy and sustainable environment. Other countries like South Africa, Kenya and India have long given recognition of the social, economic and cultural rights as justiciable rights and have constitutionalized these but Nigeria is far from doing that. In a landmark case of *Subhash Kumar v. State of Bihar* (1991, 1 SCR 5), the Supreme Court of India held that articles 32 should be read in conjunction with article 21 of the Constitution. The Constitution establishes the right to a healthy environment as a fundamental right, which must be enforceable. In the same vein, in *Francis Coralie v. Union Territory of India*, (1981 AIR 746, 1981 SCR (2) 516), the court held that the right to life must include the right to human dignity and every other thing that goes with it. This means that the right to life must include clean and healthy environment, good nutrition and clean water, secure and sustainable environment devoid of climatic hazards. A safe, healthy and sustainable environment for children in Nigeria should begin from the amendment of the constitution. All economic, social and cultural rights should be merged with chapter IV to allow children enjoy their basic rights. This is in line with the court decision in *Mazibuko v. City of Johannesburg*, (2010 (4) SA 1 (CC)) where the court held that the right to access of clean drinking water and good sanitation services is a fundamental right and should be made available for the vulnerable such as the elderly, poor, disabled and children. On this note, the court ordered

the city council to remove prepaid meters on water and sanitation services and instead provide alternative ways the people can get good and safe water supply and adequate sanitation services. The *Child Rights Act 2003* is the domestication of the Child Rights Convention (CRC). It is the foremost national statute for the protection of children in Nigeria. It is detailed on the rights of the child including the right of children to safe, clean and healthy environment. (CRA, s. 4). It provides the right to life, survival and development of the child. (CRA, s. 13). It includes the right to adequate medical care, good nutrition, clean water, air and a healthy environment. (CRA, s.13). It places government under obligation to provide good nutrition and safe drinking water, good hygiene and environmental sanitation. The CRA recognizes the fact that children are more vulnerable to environmental hazards such as global warming and excessive heat, drought, excessive rainfall, flooding, etc. This now point to the problem of implementation. As is the case with many other laws in Nigeria, the CRA is commendable and comprehensive but children are still suffering in Nigeria due to lack of adequate implementation of laws.

### 5.3.2 South Africa

South Africa's legal structure for children's right and environmental sustainability is fixed to its Constitution; (Constitution of the Federal Republic of South Africa, 1996). Climate Change Act 22 of 2024; Children's Act 38 of 2005; and the National Environmental Management Act (NEMA) 107 OF 1998. Section 24 of the Constitution guarantees sustainable environmental right to the health and wellbeing of every citizen and for the future generation. (Constitution of the Federal Republic of South Africa, s. 24). It provided specific rights for children, which includes basic nutrition, healthcare, shelter and prevention of malnutrition. (Constitution of the Federal Republic of South Africa, 28). In all, the best interests of the child is paramount in every decision making. (Constitution of the Federal Republic of South Africa, 28 (2)). The Expropriation Act, (Expropriation Act 13 of 2024 (OPEL Act of South Africa) Act 22 of 2024) which was signed into law on the 23<sup>rd</sup> of July, 2024, is the landmark legislation to lead South Africa to a climate-resilient society. The Act integrates climate change responses into national development and also recognizes the vulnerability of certain groups, such as children. The Climate Change Act gives effect to constitutional rights for children. Section 10 creates participatory rights of children in matters that affect them. (Children's Act, 38, Preamble). Lastly, the National Environmental Management Act (NEMA) provides

the all-encompassing framework for environmental governance and sustainability. It grants access to justice to all including children. The Children's Act 38 of 2005 is very detailed on children's rights as stated in its preamble. The country is committed to establish a society base on democratic values, social justice and fundamental human rights of all, to improve the quality of life of all citizens, including children. (Children's Act, 38, s. 10). It went on to reiterate that whereas every child has the rights set out in section 28 of the Constitution, and the state is under obligation to respect, protect and fulfil those rights, children's rights are not to be protected in isolation of their families and communities. Children's rights in international treaties must be respected and protected so that they can fully assume their place in the community in an atmosphere of happiness, love and understanding. (Children's Act, 38, Preamble). It states that in all things, the best interest of the child is paramount. (Children's Act, 38, s. 7 & 9). It provides for child participation; (Children's Act, 10); access to health care; (Children's Act, s. 13); access to the courts; (Children's Act, s. 14); and enforcement of rights (Children's Act, s. 15). The constitution provides for the environmental rights of all its citizens including children. (Constitution of the Federal Republic of South Africa, s 24). It forbids the exploitation of children, Constitution of the Federal Republic of South Africa, s 28) provides access to good nutrition, (Constitution of the Federal Republic of South Africa, s 28 (2)); and the child's best interests should guide the interpretation and implementation of every other right. Environmental right is not often enforced by the courts in South Africa but the courts rely on section 24 of the constitution to interpret all related statutes. In *Fuel Retailers Association of SA (Pty) Ltd v. Director-Environmental Management, Mpumalanga and Ors*, ((2007) Case CCT 67/06 ZACC 13). The court held that the constitution recognizes the interrelationship between the protection of the environment and socio-economic development for an ideal and sustainable development. In *King v. Dykes*, ((1971) (3) SA 540 (RA)). The court insisted that environmental rights are human rights. In *Vaal Environmental Alliance*, the court confirmed that air pollution raises urgent questions of intergenerational justice, which requires the protection of both the present and future generations. ((2014) ZASCA 184).

### 5.3.3 Uganda

Uganda has domesticated the Principles of Environmental Law (PEL) to help in the fight for climate justice. PEL evolved from a combination of the Stockholm Declaration, Rio Declaration, World Charter for Nature; and Agenda 21. Other laws for environmental justice include the UN Human Rights

Conventions, (National Environmental Act, 2019, s 3(1)). The Uganda Constitution, (Constitution of the Republic of Uganda, 1995, art 39). The National Environmental Act, (National Environmental Act, 2019, s 3(1)), and decisions of court on environmental disputes and climate justice. (Peter Davis Mutesasira, 2024). Through PEL, the courts can make eloquent contributions to climate justice by intensifying the climate crisis through holding the government and private actors answerable. (Peter Davis Mutesasira, 2024). While the UNFCCC provides for the common but distinguished responsibilities, PEL is used to effectively address the inequalities heightened by climate change. The National Objectives and Directive Principles of State policy (NODPSP) of Uganda, as set out in the 1995 Constitution, (Constitution of the Republic of Uganda, Part XXVII (i) and XXVII (ii)). National Environment Act (NEA), (National Environment Act (NEA), s 5(2) (b)) and the National Climate Change Act, (National Climate Change Act, 2021, s 5(3) (e)), all give effect to the sustainable development agenda of the Bundtland Commission on Environment and Development of 1987 Report- ‘Our Common Future;’ as well as the Rio Declaration in its Principle 4 that to achieve sustainable development, environmental protection shall constitute an integral part of the development process and not considered in isolation. (Rio Declaration, Principle 4). This shapes many judicial decisions in Uganda. For instance, in *Amooti Godfrey Nyakama v. National Environment Management Authority (NEMA) & Others*, the apex Court of Uganda held that the actions of the appellant is a threat to the swamps and thus inconsistent with the constitutional principles of national interest and common good enshrined in the NODPSP on sustainable development. (Supreme Court of Uganda, Constitutional Appeal No. 5 of 2011). The idea is to avoid development at the expense of the environment in order to meet the necessities of both the present and future generations. In as much as the present generation has the right to enjoy the resources of the earth, they are under obligation to consider the long-term effects of their actions. Also, in *Philippines-Oposa & Ors v. Fulgencio S. Factoran Jr. & Ors* (Minors Oposa Case), ((1993) G.R. No. 101083). The apex court stated that every generation is under obligation to preserve the earth. In *Advocates Coalition for Development (ACODE) V. Attorney-General*, (High Court of Uganda Misc. Cause No. 001 of 2004). The court held that government abused the public trust doctrine by leasing the Butamira forest reserve, which it held in trust for the people of Uganda.

## 6. Conclusion

It has been widely acknowledged that climate change undermines the realization of human rights. (Picolotti, 2008). The fast-weakening environment has tremendous impact on the children of developing countries, whose life and wellbeing depends solely on the environment. (Sanz- Caballero, 2023). It frustrates the agenda of the Millennium Development Goals and threatens the future survival of the human race. No human being or region is spared but some groups and some regions are more affected by the adverse effects of the menace. This calls for climate justice in handling climate change matters. Climate change is a moral issue, which must be tackled with comprehensive laws and policies as well as good implementation machineries, which see children beyond their vulnerability to being right holders in environmental matters. It will be a great injustice to leave a dilapidated and dangerous world for children. The three sub-Saharan countries viewed have adopted international and regional laws to help them protect and promote children’s right as well as handle climate change issues. While South Africa and Uganda have recognized the fact that the right to a clean, healthy and sustainable environment is a human right and the bedrock of the enjoyment of other rights, Nigeria is still playing dangerous politics with human rights and particularly the right to a healthy and sustainable environment. They have done well to domestic many international and regional laws on climate change and children’s rights, but effective implementation and monitoring is required for greater achievements. This paper recommends that in the interest of justice, deliberate efforts must be made by all stakeholders at the international, regional and national scenes to protect all the rights of children including their environmental rights. Structural inequalities affecting children in the fight against climate change must be intensified and tackled. Children are not just vulnerable but they are right holders and must be seen as such in all decisions concerning the environment. Perpetrators of climate change and benefactors of the actions of perpetrators must be accountable and at the fore of addressing the climate change issues. Deliberate policy changes must be made to prioritize the needs and environmental rights of the sub-Saharan child. Nigeria, in particular should amend its constitution to link its governance objectives to tally with its human rights obligations. It should also compel all the states that have not adopted the CRA to do so for the adequate protection of children in the country. There should be increase collaboration amongst governments, civil society and non-governmental societies towards a healthy and sustainable environment. Finally, good laws can only

function if adequate implementation and surveillance mechanisms are put in place.

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