

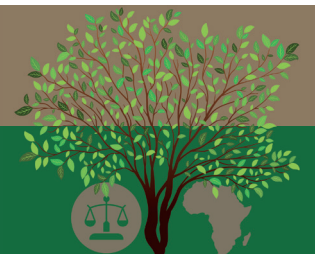
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Editorial

The year 2025 stands out in the climate change discourse for its pioneering focus on the intersection of climate change and human rights at the global level. Rarely will there be another year when international and regional bodies are approached for an advisory opinion on states' obligations and climate change in the manner it has been done in 2025, and the responses have been unprecedented. For the first time, on 23 July 2025, the International Court of Justice (ICJ) issued an advisory opinion on the obligations of states in respect of climate change. In doing so, it highlighted that the adverse effects of climate change on the enjoyment of human rights, the right to a clean, healthy and sustainable environment and the scope of human rights treaties validate international human rights law as a basis for obligations of states to address climate change. At the same time, in another landmark opinion, the Inter-American Court of Human Rights (Inter-American Court) affirmed the interface between climate change and human rights, highlighting that states have due diligence obligations to protect vulnerable populations in the face of a climate emergency.

At the African regional level, the outcome of the study on climate change impact and human rights in Africa undertaken under the auspices of the African Commission on Human and Peoples' Rights (African Commission) is still being awaited. However, the Pan African Lawyers Union (PALU), in collaboration with a number of African climate and legal organisations, have joined the trend in requesting the African Court on Human and Peoples' Rights (African Court) to provide an advisory opinion concerning the obligations of African states to address the climate crisis. As events unfold at international and regional levels, it will be a worthwhile intellectual venture in the coming years to engage issues that they raise from multiple lenses,

This special issue, the second edition of the *African Journal of Climate Law and Justice*, is released in the context of the foregoing trends. Hence, with its focus on 'Climate justice and the rights and welfare of the child in Africa: Legal and policy

aspects,³ the edition could not have come at a more auspicious time. The edition, nonetheless, is informed by rationales of its own. Climate change affects children disproportionately and poses a substantial threat to their fundamental rights in Africa. The ripple effect of unsustainable extraction and use of natural resources leads to extreme impacts on the natural environment, intensifying climate change which, in turn, interferes with the rights regime of children in Africa. Furthermore, solutions meant to address climate change may have implications for children's rights. While there is a need for legal and policy solutions that speak to the lived realities of children in the context of climate change, children are often regarded as individuals with no agency or voice to influence decisions made in various settings.

Undoubtedly, the United Nations (UN) Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (African Children's Charter) of the African Union (AU) respectively constitute the rights regime of children. The instruments recognise that children have the autonomy to make decisions and to influence decision-making processes that directly or indirectly affect their lives. Furthermore, CRC and the African Children's Charter enumerate key principles that are interdependent and interrelated to the rights, the latter also containing provisions that are of peculiar relevance to the protection of children's rights in Africa. The four principles are non-discrimination; the right to life, survival and development; the best interests of the child; and participation.

There has been further normative development at the UN level to address the interface of climate change with the human rights of the child. For instance, realising the urgent need to address the adverse effects of environmental degradation, with a special focus on climate change and the enjoyment of children's rights, the Committee on the Rights of the Child (CRC Committee) developed and adopted General Comment 26 on 28 August 2023. General Comment 26 elaborates on the rights enshrined in CRC as they relate to issues of climate change and environmental protection. It specifically clarifies the obligations of states under CRC and, further, provides authoritative guidance on legislative, administrative and other appropriate measures to address environmental harm, with a special focus on climate change. In particular, the General Comment underscores that children have the right to a clean, healthy and sustainable environment. This right is directly linked to the rights to life, survival and development, participation, information, access to remedies, the highest attainable standard of health, food, water, housing, education, among others.

The General Comment on article 6 of the African Children's Charter by the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) states that the child's rights to survival, development and protection necessitate special measures from the earliest stages of infancy. These special measures include children's health, early childhood education and

social grants, and are relevant in the climate change context. Also, the African Children's Committee Working Group on Climate Change and Children's Rights underscored the need for a child rights-based approach to climate action. Yet, issues in relation to climate justice remain: How does the policy and legal development at international, regional and national levels hinder or enhance the protection of the rights of children in different vulnerable situations in the context of climate change in Africa? To what extent are legal and policy interventions in African states safeguarding children in the context of climate change? Are there good practices or do business-as-usual approaches remain in relation to the protection of children in the context of climate change? To what extent are interventions by African states inclusive of children in the deliberations, access to justice, effective remedies and other initiatives related to climate change?

There are nine articles in this special issue covering a wide range of issues that aim to improve the understanding of the relevance and role of law and policy in various issues relating to climate justice and the African child. Altogether, the articles in this edition may be grouped into three streams: first, the contextual basis for the African child, climate justice and human rights; second, children's agency in regional and international remedial approaches; and, third, the relationship of national law and policy on climate change and children.

There are three articles on the first stream. Muhumuza and Ramakhula criticise the dominance of anthropocentrism in Western environmental philosophy, which prioritises human interests and justifies exploiting nature, a perspective that marginalises non-human entities and fails to adequately address children's particular vulnerabilities in Africa. They draw on African environmental philosophy to demonstrate that emphasising children's rights within African ethical paradigms can bridge the divide between environmental law and human rights. Mastaki analyses the complex interaction between climate change and the fundamental rights of internally displaced children in Africa, highlighting their challenges in an increasingly vulnerable context. The author recommends that adopting an integrated approach that respects children's rights may turn the challenges posed by climate change into opportunities to ensure a fair and resilient future for internally displaced children. Lastly, on this stream, Chibwe, Adeniyi and Musindo provide a descriptive figure of the girl child as the intersectionality of being female and a child, as a vulnerable person, in the context of climate change. They demonstrate how the existing legal and policy framework may expose the vulnerability of the girl child to climate injustice.

Four articles engage with the second stream of this edition, dealing with children's agency in regional and international remedial approaches. Muller's article discusses children's climate litigation as a critical avenue to seek remedies for the climate crisis, which disproportionately affects them and violates their fundamental rights. While highlighting the challenges children face in accessing justice through courts, the article argues for adopting a child-rights approach and integrating non-Western philosophies such as South Africa's ubuntu to

overcome these barriers. Damtew argues that while the current framework presents significant normative and jurisdictional gaps, the principles enshrined in children's rights norms, including the best interests of the child and the right to an effective remedy, offer opportunities for reinterpreting obligations in a manner that is responsive to the climate crisis. While focusing on the use of supranational bodies, especially the reasoning of the CRC Committee in *Chiara Sacchi & Others v Argentina & Others (Sacchi)*, Nanima highlights the challenge in extraterritoriality as a means of achieving accountability for climate change. The author engages with the way in which the normative and institutional guidance of the African Children's Charter and the African Children's Committee may offer an opportunity for relevant remedies. Gupte's article examines the nexus between ecocide and the climate migration of children and proposes actionable legal reforms to bridge existing legal and policy gaps at the African regional level.

Two articles focus on the third stream of this edition, namely, the relationship of national law and policy on climate change and children. In their article, Gbomagba and Addaney highlight a significant gap between Benin's international and regional human rights obligations and its domestic climate change adaptation framework. Hence, the authors argue for the need to develop guidance for gender-sensitive vulnerability assessment, establish robust monitoring systems with gender-responsive indicators, disaggregated data, and allocate dedicated financial resources for gender-specific actions in Benin. Focusing on the legal and policy framework on climate change in Nigeria, Ekhatior and Umukoro sketch some critical and current issues surrounding the climate-changed child. Their article argues that the Nigerian government can explicitly mainstream the rights of children and youths into climate change interventions, and demonstrates 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 by children and the youth in Nigeria.

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AO Jegede

Human rights and climate change: Conceptualising a children's rights-based approach to the climate crisis in Africa

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Abstract: This article offers a conceptual argument for a children's rights-based approach to climate change in Africa. While recent advocacy efforts have raised awareness of the impact of climate change on children and the need for child-sensitive responses, the philosophical basis of these approaches is not always clearly articulated. Furthermore, existing frameworks often overlook the influence of African environmental ethics and the specific position of children in that context. The article criticises the dominance of anthropocentrism in Western environmental philosophy, which prioritises human interests and justifies exploiting nature, a perspective that marginalises non-human entities and fails to adequately address children's particular vulnerabilities. The article draws on African environmental philosophy, especially, anthropoholism and suggests an

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integrated framework that combines children's rights, African ethics and non-anthropocentric models. It demonstrates that emphasising children's rights within African ethical paradigms can bridge the divide between environmental law and human rights. The approach may offer a foundation for climate action in Africa that is inclusive and equitable, acknowledging both the vulnerability and agency of children, the value of the environment, and the importance of culturally grounded responses to the climate crisis.

Key words: African environmental philosophy; anthropocentrism; children's rights; climate change; vulnerability

1 Introduction

This article argues that a children's rights-based approach grounded in the concept of vulnerability offers a strong ethical and legal foundation for climate action, particularly in Africa. Children's heightened exposure to global warming demands that law and policy centre them and their rights in efforts to address climate change. Children's rights-based approaches to climate change have gained currency on the African continent. Through advocacy and litigation, the impact of climate change on children has become clearer, as have governments' obligations to take child-sensitive responses to global warming. Yet, the underlying philosophical premise of these responses, including that of human rights, which is sometimes assumed to be the default ethical position, is not always clear. Existing and proposed responses to the climate crisis often fail to engage with environmental ethics emerging from Africa and how these might influence a children's rights response to global warming. The article draws from African environmental philosophy and children's exclusion from environmental law and ethics to advance a relational and holistic ethics that recognises the interconnectedness of living and non-living beings and humanity's moral obligations towards the environment. The article uses a historical analysis to argue for an integrated normative framework that synthesises children's rights, African communitarian values, and non-anthropocentric models to inform a more just and effective climate response in Africa.

The article begins by discussing key environmental philosophies that have shaped and continue to influence responses to climate change on the continent. It then examines selected African ethical concepts as a bridge between human rights and environmental law, focusing on ubuntu and anthropocentrism. The article subsequently links these ethical paradigms to children's rights through the idea of vulnerability. It proposes an integrated normative framework that centres children's rights at the centre of climate action.

2 Major concepts in environmental philosophy

The current debate about the functions and objectives of law in the context of climate change mirrors the ethical arguments about the relationship humans should have with the natural environment that are traceable to the sixteenth century.¹ Several explanations of environmental ethics emerged that still inform the direction of contemporary law and its approach to climate change. These are divided into two broad categories: anthropocentrism and non-anthropocentrism. The two main subdivisions of non-anthropocentrism are biocentrism and ecocentrism.² Other dominant schools of environmental philosophy include animal liberation/rights theory and eco-feminism.³ The philosophical foundations of environmental ethics are rooted in understanding how we value the environment. While these philosophical categories have been instrumental in shaping environmental law and the global response to climate change, they rarely feature the experiences or rights of children, despite incontrovertible evidence of the risk they face.⁴

2.1 Anthropocentrism

Anthropocentrism has been the dominant Western perspective in explaining humankind's relationship with the environment since the sixteenth century, following the scientific revolution.⁵ Anthropocentrism regards humans as the source of all value, creating a dualism and separation between humankind and nature.⁶ Anthropocentrism denotes the attitude, values and practices prioritising human interests over non-human, non-living, or even non-sentient beings or objects in the natural world.⁷ In other words, humans stand apart from nature, and nature is only valuable for its instrumental value, such as the provision of resources, including fossil fuels.⁸ Anthropocentrism is grounded in the liberal tradition of individualism and rational thinking and, therefore, has limited applicability to animals and is of little value to non-sentient objects.⁹ This largely

1 LH Leib *Human rights and the environment: Philosophical, theoretical and legal perspectives* (2011).

2 HD Rosa & JM da Silva 'From environmental ethics to nature conservation policy: Natura 2000 and the burden of proof' (2005) 18 *Journal of Agricultural and Environmental Ethics* 107.

3 PA Ojomo 'Environmental ethics: An African understanding' (2011) 5 *African Journal of Environmental Science and Technology* 527.

4 J Purdy 'The politics of nature: Climate change, environmental law, and democracy' (2010) 119 *Yale Law Journal* 1122.

5 GS Sessions 'Anthropocentrism and the environmental crisis' (1974) 2 *Humboldt Journal of Social Relations* 71.

6 N Hassoun 'The anthropocentric advantage? Environmental ethics and climate change policy' (2001) 14 *Critical Review of International Social and Political Philosophy* 235.

7 As above.

8 M Kidd 'Environment' in I Currie & J de Waal (eds) *The Bill of Rights handbook* (2016) 516-517.

9 H Kopnina and others 'Anthropocentrism: More than just a misunderstood problem' (2018) 31 *Journal of Agricultural and Environmental Ethics* 109.

explains why in the majority of countries across the world, environmental rights are framed to benefit human beings.¹⁰

2.1.1 *Anthropocentrism and climate change*

Anthropocentrism justifies wanton ecological destruction and the exploitation of nature. Commercial agriculture and animal farming are singled out as prime examples. Domestic ruminant animals account for approximately one-third of global methane emissions.¹¹ Sheltering and feeding them requires the destruction of large tracts of natural climate sinks, such as forests, interfering with the natural process of carbon capture.¹² These ecological consequences, including the suffering inflicted on domestic animals for human consumption, are justified based on the need to satisfy human interests and preferences.¹³ Anthropocentrism also explains the slow progress in addressing climate change despite the prodigious amount of knowledge and technological innovations humans possess to tackle this problem.¹⁴

Insofar as it relates to the causes of climate change, the anthropocentric view of the world is the product of one particular segment of society out of many. In other words, some humans are more blameworthy than others, and there is a difference between those who emit for necessity and those who emit for luxury.¹⁵ Thus, it is vital to be specific about exactly 'who' anthropocentrism impacts. Indigenous peoples, women, racialised groups and children do not necessarily share the same liability for the climate crisis as the world's largest polluting states and corporations.¹⁶

That said, the environmental rights provisions in the United Nations (UN) Convention on the Rights of the Child (CRC),¹⁷ the African Charter on the

10 N Hoek and others 'Implementing rights of nature: An EU natuureship to address anthropocentrism in environmental law' (2023) 19 *Utrecht Law Review* 72.

11 P Smith, D Reay & J Smith 'Agricultural methane emissions and the potential for mitigation' (2021) A374 *Philosophical Transactions of the Royal Society* 20200451; United Nations Environment Programme & Climate and Clean Air Coalition 'Global methane assessment: Benefits and costs of mitigating methane emissions' (2021) Nairobi: United Nations Environment Programme.

12 S Jones 'Tropical forests illegally destroyed for commercial agriculture' *The Guardian* (web blog) 11 September 2014, <https://www.theguardian.com/global-development/2014/sep/11/tropical-forests-illegally-destroyed-commercial-agriculture> (accessed 20 February 2025); J Lynch and others 'Agriculture's contribution to climate change and role in mitigation is distinct from predominantly fossil CO2-emitting sectors' (2021) 4 *Frontiers in Sustainable Food Systems* 1.

13 YN Harari 'Industrial farming is one of the worst crimes in history' *The Guardian* (web blog) 25 September 2015, <https://www.theguardian.com/books/2015/sep/25/industrial-farming-one-worst-crimes-history-ethical-question> (accessed 3 March 2025).

14 Kopnina and others (n 9) 109-127.

15 H Shue 'Subsistence emissions and luxury emissions' (1993) 25 *Law and Policy* 39.

16 M Taylor & J Watts 'Revealed: The 20 firms behind a third of all carbon emissions' *The Guardian* (web blog) 9 October 2019, <https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions> (accessed 15 May 2025).

17 United Nations Convention on the Rights of the Child, Treaty Series, vol 1577, 1989 3; arts 24(2)(c) & 29(1)(c).

Rights and Welfare of the Child (African Children's Charter)¹⁸ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol)¹⁹ are anthropocentric. Article 24 of CRC enjoins state parties to take appropriate measures to realise children's rights to the highest attainable standard of health, considering the dangers and risks of environmental pollution.²⁰ State parties must also ensure that children are taught the advantages of environmental sanitation. This provision is replicated almost identically in article 14 of the African Children's Charter. Both treaties also provide that states must ensure that the education of the child is directed to 'the development of respect for the environment and natural resources'. The African Women's Protocol provides that women and girls have the right to equal access to housing and acceptable living conditions in a healthy environment. It also contains the most detailed substantive binding provision on the right to the environment at the global level in article 18.

3 Ecocentrism

Ecocentrism is an environmental philosophy that unites the spiritual, scientific and metaphysical trends in environmental protection.²¹ Although formally coined by Aldo Leopold in the twentieth century in his *Land ethic*, the concept is thousands of years old and has been with humanity since we evolved.²² Many indigenous communities, including African communities, have lived 'sustainably' in harmony with nature.²³ Studies detail certain features critical to this sustainability, such as small populations in a close-knit community; binding rituals; restorative conflict resolution; foraging habits; the use of medicinal plants; organic agriculture; reliance on solar energy; taboos on overhunting; among others.²⁴ Ecocentrism views the eco-sphere – all of earth's ecosystems, atmosphere, water, and land – as the matrix that gave birth to all life and is the sole source of life's existence.²⁴

18 African Charter on the Rights and Welfare of the Child OAU Doc CAB/LEG/24.9/49 (1990), entered into force 29 November 1999; arts 11(2)(g) & 14(2)(h).

19 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) arts 16 & 18.

20 KV Kortenkamp & CF Moore 'Ecocentrism and anthropocentrism: Moral reasoning about ecological commons' (2001) 21 *Dilemmas Journal* 261.

21 A Leopold *The Land Ethic* (1949); GAM Zambrano & JEV Aréchiga 'Indigenous communities: Resisting ecocentric sustainability within rural tourism' (2018) 33 *Tóros*.

22 Ojomo (n 3).

23 JS Rowe 'Ecocentrism and traditional ecological knowledge' Environment and Ecology (web blog), 1994, http://www.ecospherics.net/pages/Ro993tek_1.html#:~:text=Ecocentrism%20puts%20a%20new%20interpretation,the%20regional%20to%20the%20local (25 July 2025); ML Jardin 'The role of local indigenous communities in the management of natural resources in and around South Africa's national parks' Master's dissertation, University of Natal, 2002 1-119; NM Dawson and others 'The role of indigenous peoples and local communities in effective and equitable conservation' (2021) 26 *Ecology and Society* 19; N Hewitt 'Beyond the anthropocene: An ecocentric and rights of nature approach to climate justice' Master's dissertation, University of Deusto, 2022 22.

24 Dawson and others (n 23).

The unifying theme in the philosophy of ecocentrism is that nature's intrinsic value is worth protecting, regardless of its utility or relevance to humanity.²⁵ Some have suggested that the former should give way when human necessities conflict with the planet's health.²⁶ At its core, ecocentrism is about removing humanity from the centre of the ecological universe and replacing it with nature.²⁷ In contrast to anthropocentrism, it extends moral understanding to encompass supra-individual wholes, including entire species and ecosystems.²⁸ Ecocentrists argue that environmental despoliation, including that brought on by climate change and global warming,²⁹ is immeasurably more significant for the harm it inflicts on nature than viewing it as a loss of goods valuable to humanity.³⁰ Remedial actions to the environmental crises that call for large-scale societal change are rooted in the philosophy of eco-centrism.³¹ On the value of ecocentrism to climate change, Rowe observes:³²

[Ecocentrism] is not an anti-human argument nor a put-down of those seeking social justice. It does not deny that myriad significant homocentric problems exist. However, it stands aside from these more minor, short-term issues to consider the ecological reality. It comprehends the Ecosphere as a Being that transcends in importance any single species, even the self-named sapient one.

3.1 Ecocentrism and climate change

There is increasing momentum towards enshrining rights of nature, as an ecocentric approach, into law as a legal response to climate change.³³ At the international level, the UN General Assembly passed a resolution led by Bolivia in 2009, declaring 22 April International Mother Earth Day.³⁴ The Resolution calls for 'harmony with nature and the planet to balance present and future generations' economic, social, and environmental needs.³⁵ Some momentum is also observable at the national level. The Ecuadorian Constitution,³⁶ Bolivian

25 Rowe (n 23).

26 J Gray, I Whyte & P Curry 'Ecocentrism: What it means and what it implies' (2018) 1 *The Ecological Citizen* 130.

27 AJ Hoffman & LE Sandelands 'Getting right with nature: Anthropocentrism, ecocentrism, and theocentrism' (2005) 18 *Organisation and Environment* 142.

28 E Gamlund 'Who has moral status in the environment? A spinosistic answer' (2007) 23 *The Trumpeter* 5.

29 RS Abate *Climate change and the voiceless: Protecting future generations, wildlife, and natural resources* (2020) 11.

30 See generally H Washington and others 'Why ecocentrism is the key pathway to sustainability' (2017) 1 *Ecological Citizen* 35.

31 Rowe (n 23).

32 As above.

33 PV Calzadilla & LJ Kotze 'Living in harmony with nature? A critical appraisal of the rights of mother earth in Bolivia' (2018) 7 *Transnational Environmental Law* 397.

34 United Nations General Assembly (UNGA) 'International Mother Earth Day' A/RES/63/278 (22 April 2009).

35 UNGA (n 34) preambular para 4.

36 Constitution of the Republic of Ecuador (2008); art 71 provides for enforceable rights of nature in art 71. The Constitution provides that '[n]ature or Pachamama (Mother Earth) where life is reproduced and occurs, has the right to integral respect for its existence and for the maintenance and regeneration of its life cycles, structure, functions and evolutionary process'.

legislation,³⁷ Indigenous Peoples in Canada and local laws in some states have provided for justiciable rights of nature.³⁸ Countries in the Global South have endorsed the right to a healthy environment for two reasons.³⁹ The first is their disproportionate exposure to environmental and human rights harm from 'extractive and polluting industries that benefit northern states, transnational corporations and national elites'.⁴⁰ The second reason is the influence of traditional and indigenous laws, ethics and world views that regard humans as an integral part of nature.⁴¹ However, rights of nature protections cannot be effective in the face of deeply entrenched corporate-driven neoliberal and political-economic interests worldwide, including in Africa.⁴² African governments' priorities remain job creation and poverty alleviation,⁴³ and their approach to climate change reflects these concerns.⁴⁴

4 Biocentrism

A biocentric approach to environmentalism, environmental protection and environmental rights asserts that humans owe moral obligations to sentient beings.⁴⁵ Humans are considered members of the Earth's community of life, holding that membership on the same terms as applied to all non-human members.⁴⁶ Biocentrism enables humans to meet their basic needs in exceptional circumstances.⁴⁷ Proponents of biocentrism view environmental protection through the prism of the richness and diversity of life as worthy of protection in themselves. They argue that human beings do not have a right to utilise natural resources other than to satiate their core needs.⁴⁸ Biocentrists, therefore, perceive the need for the aforementioned cultural diversity and the differences in social arrangements as conditions precedent for the planet's survival.⁴⁹

There are divided opinions on the usefulness of the rights framework regarding biocentrism. One assessment argues that the rights doctrine does not add value to how humans view and interact with the environment.⁵⁰ This view rejects the

37 See Law of the Rights of Mother Earth, Law 71 of 21 December 2010.

38 Calzadilla & Kotze (n 33).

39 CG Gonzalez 'The right to a healthy environment and the Global South' (2023) 117 *AJIL Unbound* 173.

40 As above.

41 As above.

42 LS Muñoz Prudencio 'Bolivia's mother earth laws: Is the ecocentric legislation misleading?' *ReVista* (web blog), 6 February 2023, <https://revista.drclas.harvard.edu/bolivias-mother-earth-laws-is-the-ecocentric-legislation-misleading/> (accessed 28 September 2024).

43 L Fonjong, F Matose & DA Sonnenfeld 'Climate change in Africa: Impacts, adaptation, and policy responses' (2024) 89 *Global Environmental Change* 102912.

44 As above.

45 L Feris 'Constitutional environmental rights: An under-utilised resource' (2008) 22 *South African Journal on Human Rights* 29.

46 MR Scheessele 'The hard limit on human non-anthropocentrism' (2021) 37 *AI & Society* 52.

47 L Samuelson 'At the centre of what? A critical note on the centrist-terminology in environmental ethics' (2013) 22 *Environmental Values* 631.

48 As above.

49 As above.

50 As above.

notions of rights and argues that if nature is a rights-holder, it loses its aesthetic quality and is not deemed part of humanity. Relatedly, proponents of this view also reject the idea that the natural world must rely on legal language to be 'seen and heard'.⁵¹ The other, less stringent view of biocentrism, as expressed in some national constitutional provisions, particularly in Latin America, regarding the protection of the environment, is one in which nature is considered a rights holder.⁵² The traditional common law approach to environmental conservation, which ties environmental protection to an individual rights holder, is considered untenable under this approach.⁵³

The utility of biocentrism to climate change lies in the moral standing of non-human organisms in the ecosphere.⁵⁴ Scholars have criticised biocentrism for its silence on whether ecosystems have value beyond that assigned to non-human organisms.⁵⁵ Non-living, non-human parts of the eco-sphere, such as salt flats, bogs or savannas, which are also threatened by climate change, are not within the environmental protection envisioned by biocentrism.⁵⁶ Nonetheless, biocentrism's influence and impact on climate change are similar to that of ecocentrism discussed above.

5 African environmental philosophy as a bridge

5.1 Between humans and the environment: An irreconcilable choice?

International law is gradually progressing towards recognition of the right to the environment.⁵⁷ An international right to the environment would go a long way towards clearing up some of the normative confusion that plagues international environmental law regarding climate change. The implementation of sustainable development is characterised as a choice between an eco-centric

51 J Livingstone 'Rightness or rights' (1984) 22 *Osgoode Hall Law Journal* 309; see generally M Guim & MA Livermore 'Where nature's rights go wrong' (2021) 107 *Virginia Law Review* 1347

52 JM Waldmüller 'Living well rather than living better: Measuring biocentric human-nature rights and human-nature development in Ecuador' (2015) 5 *International Journal of Social Quality* 7.

53 As above.

54 R Attfield 'Biocentrism, climate change, and the spatial and temporal scope of ethics' in BG Henning & Z Walsh (eds) *Climate change ethics and the non-human world* (2020) 63-74.

55 J Basl *The death of the ethic of life* (2019) 14, for the assertion that biocentrism limits its moral concerns only to living organisms; J MacClellan 'Is biocentrism dead? Two live problems for life-centred ethics' (2023) *The Journal of Value Inquiry* 1.

56 DL Rice 'Biocentrism in environmental ethics: Questions of inherent worth, etiology, and teleofunctional interests' PhD thesis, University of Arkansas, 2016 4.

57 O Quirico, J Brohmer & M Szabo 'States, climate change and tripartite human rights: The missing link' in O Quirico & M Boumghar (eds) *Climate change and human rights: An international and comparative law perspective* (2016) 7-38; United Nations General Assembly 'Resolution adopted by the General Assembly on 28 July 2022: The human right to a clean, healthy and sustainable environment' 1 August 2022 A/RES/76/300.

approach,⁵⁸ which centres nature as the core beneficiary of the paradigm, and an anthropocentric approach, which centres human beings.⁵⁹ This dichotomy portrays anthropocentrism as ethically flawed and incapable of producing sustainable outcomes.⁶⁰ In other words, the need to achieve sustainable development requires the integration of potentially conflicting demands.⁶¹ Two key variants of sustainable development models are proposed: the economic growth model and the human needs-centred model.⁶² Economic growth focuses on states and corporations, whereas the human needs-centred model addresses the fundamental requirements for human well-being and thriving.⁶³ The argument for humans to be the centre of sustainable development requires that economic growth is subordinated to social and ecological needs in cases of conflict.⁶⁴ The rationale is that economic growth is a 'desire' while ecological and social imperatives are required to survive.⁶⁵

5.2 Climate change and African environmental ethics

Academia and policy makers have long ignored or marginalised African environmental ethics.⁶⁶ The international climate change discourse has long ignored people's values, beliefs and world views, paying lip service to the importance of equity and global security.⁶⁷ The field of African environmental ethics does not neatly fit into any of the three major strands of environmental philosophy articulated above. Some scholars suggest that African environmental philosophy

58 B Taylor and others 'The need for ecocentrism in biodiversity conservation' (2020) 34 *Conservation Biology* 1089.

59 *Stanford encyclopaedia of philosophy* 'Environmental ethics', <https://plato.stanford.edu/entries/ethics-environmental/> (accessed 3 March 2025).

60 H Kopnina 'Anthropocentrism: Problem of human-centred ethics in sustainable development goals' in WL Filho and others (eds) *Life on land* (2021) 48–57.

61 The current discourse on sustainable development has taken different trajectories in the Global North and Global South. Industrialised countries are now seeking to attempt to 'nurse' the environment back to health with as little disruption to their economies as possible while developing countries want to pursue economic growth to reduce poverty and create employment opportunities. In 2002, humans extracted over 50 billion tonnes of natural resources from the planet's ecosystems. It is estimated that by the end of 2020, we will need to extract 80 billion tonnes for our development needs. T Strange & A Bayley 'Sustainable development: Linking economy, society, environment' OECD Insights (report) 2008, https://www.oecd.org/content/dam/oecd/en/publications/reports/2008/12/sustainable-development_g1gh9be9/9789264055742-en.pdf (accessed 8 June 2025).

62 T Madebwe 'A rights-based approach to environmental protection: The Zimbabwean experience' (2015) 15 *African Human Rights Law Journal* 110.

63 As above.

64 PS Omoyefa 'The conflict between environmental rights and human rights: A panacea' (2008) 3 *International Journal of Development and Management Review* 75.

65 SB Longo and others 'Sustainability and environmental sociology: Putting the economy in its place and moving toward an integrative socio-ecology' (2016) 8 *Sustainability* 454.

66 Writing in 2022, Ethiopian philosopher Workineh Kelbessa points out that printed work on environmental ethics and philosophy has only emerged 'recently'. Very limited research has been done on the subject and its implications are hardly understood by African policy makers; W Kelbessa 'African environmental philosophy, injustice, and policy' *Georgetown Journal of International Affairs* 16 February 2022, <https://gjia.georgetown.edu/2022/02/16/african-environmental-philosophy-environmental-injustice-and-policy%EFBF%BC/> (accessed 23 May 2025).

67 K O'Brien, AL St Clair & B Kristoffersen (eds) *Climate change, ethics and human security* (2010) 10.

is biocentric, ascribing inherent value to all living beings.⁶⁸ Others believe that ecocentrism best describes Africans' relationship with the environment, given that ecocentrism recognises the importance of the entire eco-community.⁶⁹ Some scholars describe African environmental values as eco-bio-communitarian, premised on the interdependence and peaceful coexistence between the earth, plants, and humans.⁷⁰ The African environmental ethics espouses a holistic rather than an atomistic approach to the environment. Human beings are in and part of a vibrant, interconnected 'whole' from which they cannot detach themselves.⁷¹ In a direct riposte to capitalist ideology, African environmental philosophy rejects the private ownership of land by a few individuals.⁷² Land belongs to gods, the community of the living dead (colloquially referred to as ancestors), the living and future generations.⁷³

Value is attributed to the ecosystem as a whole, encompassing both living and non-living, non-human entities, rather than just human beings who are merely constituent members.⁷⁴ African world views teach that natural resources and ecosystems should not be exploited beyond their sustainable limits.⁷⁵ The environment must be taken care of for the benefit of present and future human generations, as well as the well-being of non-human entities.⁷⁶ Environmental conservation benefits all living beings, including humans, non-human animals and the natural world, all of which are interconnected.⁷⁷ African environmental ethics eschew the premise of anthropocentrism as a philosophical justification for environmental conservation.⁷⁸ This is critical because it compels us to examine how we can utilise anthropocentric human or children's rights to guide societal and individual actions in mitigating the effects of climate change.⁷⁹ African environmental ethics gives value to inanimate beings of nature, beyond the instrumental role they play in human survival. This interpretation might have been regarded as unscientific a few decades ago.⁸⁰ Recently, there has been a shift towards recognising the role of Indigenous or traditional values and knowledge

68 M Chemhuru 'Introducing African environmental ethics' in M Chemhuru (ed) *African environmental ethics: A critical reader* (2019) 1-3; PA Ojomo 'An African understanding of environmental ethics' (2010) 2 *Thought and Practice: Journal of the Philosophical Association of Kenya* 249.

69 Chemhuru (n 68) 1-5.

70 GB Tangwa 'Bioethics: An African perspective' (1996) 10 *Bioethics* 183.

71 Kelbessa (n 66).

72 As above.

73 As above.

74 Chemhuru (n 68).

75 As above.

76 M Chemhuru 'The moral status of nature: an African understanding' in Chemhuru (n 68) 29-31.

77 MJ Tosam 'African environmental ethics and sustainable development' (2019) 9 *Open Journal of Philosophy* (2019) 172.

78 CS Ifeakor 'Is African environmental ethics anthropocentric?' (2017) 2 *PREORCJAH* 72.

79 See, eg, M Oksanen 'On tackling the environmental crisis through human rights' (2020) 75 *Rivista di Estetica* 104.

80 After all, the environmental crisis is partly the result of unbridled scientific development without the moral or traditional wisdom necessary for its management.

in stemming the ecological crisis.⁸¹ This shift requires articulating an African environmental philosophy that might help address climate change. Kelbessa notes that African policy makers have not paid significant attention to ethical principles related to climate change.⁸² As a result, the debate on climate change and human rights has thus far been dominated by non-African scientific, technical and economic analyses. As Owolabi observes:⁸³

Every society within the global community must dip into its value system to construct an environmental ethic that will usher in a new environmental order. Every society has its own culture of reacting to the environment and every society should approach those problems according to the way they manifest.

5.3 Climate change: Children's rights and African environmental ethics

The human needs-centred model is not necessarily inconsistent with promoting ecological preservation. The epistemological and ontological framing of human rights and the environment in Africa necessitates a deeper understanding of this relationship.⁸⁴ Under African environmental philosophy, all components of the environment, living beings and non-living beings, have moral standing, but on a sliding scale.⁸⁵ According to Behrens:⁸⁶

African thought extends moral considerability to include all beings that are a part of the interconnected web of life, that is, all individual living things, groups of living things such as families, species and ecosystems, as well as inanimate natural objects such as rivers and mountains.

This personification of the environment is oriented towards sustaining good relations with the natural environment.⁸⁷ Moral status is accorded to non-human beings and/or inanimate resources of nature beyond the role they play in the survival of human beings.⁸⁸ The degree of importance is determined, among other factors, by sentience, the ability to influence other beings, and vulnerability.⁸⁹ Sub-Saharan African ethical values prioritise relationality as the foundation for assigning value to constituents of the environment.⁹⁰ Whereas all members of the ecosystem have value, the more a being can engage with and in a certain

81 J Petzold and others 'Indigenous knowledge on climate change adaptation: A global evidence map of academic literature' (2020) 15 *Environmental Research Letters* 11300.

82 Kelbessa (n 66).

83 KA Owolabi *Because of our future: The imperative for an environmental ethic for Africa* (1996) 1-32.

84 JCN Ashukem 'Introduction: African environmentalism and sustainability – Framing the epistemic parameters of human rights and the environment in Africa' in JCN Ashukem & SM Sama (eds) *Human rights and the environment in Africa: A research companion* (2024) 1-16.

85 Tosam (n 77).

86 KG Behrens 'An African relational environmentalism' (2014) 36 *Environmental Ethics* 63.

87 M Łaszewska-Hellriegel 'Environmental personhood as a tool to protect nature' (2021) 51 *Philosophia* 1369.

88 F Mangena 'Discerning moral status in the African environment' (2013) 14 *Phronimon* 25.

89 Tosam (n 77); J van Jaarsveld 'Can African environmental ethics help in weathering Gardiner's storm' (2023) 3 *Arumayuka: Journal of Conversational Thinking* 1.

90 Tosam (n 77).

communal relationship, the greater its moral stature and, therefore, the greater the duty owed to it.⁹¹

A being has moral status as it can be part of a communal relationship. Community in the African sense refers to those living and dead, animals and the living dead or ancestors.⁹² Exhibiting solidarity with one another primarily involves engaging in mutual aid and acting in the best interest of one another.⁹³ This view contrasts with traditional Western thought, which accords moral status only to beings that reciprocate with one another.⁹⁴ Several African philosophies speak to this solidarity, compassion, justice, reciprocity, dignity and harmony, such as ubuntu, the most widely known, from the Nubian desert to the Cape of Good Hope and from Senegal to Zanzibar.⁹⁵ Similar concepts exist across the continent, such as in the Kenyang language in Manyu, Cameroon,⁹⁶ Ukama, which means relatedness in Shona,⁹⁷ or Omoluwabi in Yoruba, Nigeria,⁹⁸ and the Gadaa system among the Oromo peoples of Ethiopia.⁹⁹ Metz uses two examples to illustrate this point. A severely mentally incapacitated human being is elevated beyond an animal that may have identical internal abilities, and a new-born infant might have greater moral status than a mid-to-late-stage fetus.¹⁰⁰

5.3.1 *Ubuntu as a mediating ethic to the climate crisis*

Ubuntu is a South African philosophy derived from the Nguni languages of Southern Africa, such as Xhosa, which has the expression *umuntu ngumuntu ngabanye Bantu*, loosely translated to mean ‘a person is a person through other people.’¹⁰¹ While ubuntu appears to be only related to relations between humans, its application is much broader.¹⁰² Various interpretations and expositions of ubuntu exist, and it is neither possible nor desirable to adequately interrogate them here; suffice it to say that ubuntu connotes ideas of humanness, social justice

91 As above.

92 Tosam (n 77) 172.

93 T Metz ‘An African theory of moral status: A relational alternative to individualism and holism’ (2012) 15 *Ethic Theory Moral Practice* 387-402.

94 As above.

95 Ashukem (n 84) 8; F de Tejada ‘The future of bantu law’ (1979) 11 *Archiv für Rechts- und Sozialphilosophie*, cited in M Ramose ‘The philosophy of ubuntu and ubuntu as a philosophy’ in PH Coetzee & APJ Roux (eds) *Philosophy from Africa* (2002) 230.

96 Tosam (n 77)

97 K Horsthemke *Animals and African ethics* (2015) 93.

98 PK Tubi ‘Afroecology of traditional African societies: An anthropology of ecotheology, ecophilosophy and ecospirituality of the Yoruba’ in IKA Kanu (ed) *African eco-philosophy: Cosmology, consciousness and the environment* (2021) 311-338; OR Olaopa ‘African indigenous knowledge (AIK) for environmental management and sustainable development: The role of Yoruba epistemology’ (2025) 11 *Cogent Social Sciences* 1.

99 Ashukem (n 84).

100 Metz (n 93) 387-402.

101 Y Mokgoro ‘Ubuntu and the law in South Africa’ (1998) 4 *Buffalo Human Rights Law Review* 15.

102 DE van Norren ‘African ubuntu and Sustainable Development Goals: Seeking human mutual relations and service in development’ (2022) 43 *Third World Quarterly* 2791.

and fairness.¹⁰³ It requires balancing the interests of society, including the need to live in a healthy environment, against those of the individual.¹⁰⁴ South African courts have embraced ubuntu as a key cornerstone in interpreting the country's Constitution, ordering its society and strengthening its democracy, firmly establishing it as a critical interpretative tool.¹⁰⁵ South Africa's Constitutional Court has interpreted ubuntu as part of the country's 'rainbow heritage', describing the significance of group solidarity, compassion, respect, dignity, conformity to basic norms and collective unity.¹⁰⁶ In this regard, Le Grange advises that ubuntu is an ideal framework for all policies and practices to address the pressing environmental problems facing South Africa.¹⁰⁷

At the regional level, ubuntu and its applicability to climate action is visible in the wording of article 24 of the African Charter on Human and Peoples' Rights (African Charter) – the first regional human rights instrument with binding environmental obligations. Article 24 provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development'.¹⁰⁸ At this juncture, it is noteworthy that the provision breaks with conventional wording of the subject of human rights – the individual – to guarantee the right for 'peoples'. The African Charter does not define 'peoples', but the term may connote a whole population of a country, or a part of the population bound together by cultural, linguistic, ethnic or other factors.¹⁰⁹ This designation reflects the ubuntu principle of conserving and protecting the environment for the benefit of society, not just the individual. This formulation implies that nature and its resources cannot be utilised with unbridled abandon.¹¹⁰ The African Charter requires the rights under its article 24 to be 'exercised with due regard to the rights of others, collective security, morality and common interest'.¹¹¹

The anthropocentric-oriented exploitation of nature and the capitalist-driven commodification of natural resources contrast with the prescribed interconnectedness inherent in ubuntu. One who becomes a person through others, including our natural environment, cannot misuse natural resources to satisfy selfish needs or greed.¹¹² Ubuntu prescribes a lifestyle based on sufficiency,

103 Mokgoro (n 101).

104 Van Norren (n 102).

105 C Himonga, M Taylor & A Pope 'Reflections on judicial views of ubuntu' (2013) 16 *Potchefstroom Electronic Law Journal* 372.

106 *S v Makwanyane & Another* [1995] ZACC 3 (CCT3/94); 1995 6 BCLR 665; 1995 (3) SA 39 para 307.

107 L le Grange 'Ubuntu/botho as ecophilosophy and ecosophy' (2015) 49 *Journal of Human Ecology* 301.

108 Art 24 African Charter on Human and Peoples' Rights adopted 27 June 1981, entered into force 21 October 1986, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982).

109 L Chenwi 'The right to a satisfactory, healthy and sustainable environment in the African regional human rights system' in JH Knox & R Pejan (eds) *The human right to a healthy environment* (2018) 65.

110 M van der Linde & L Louw 'Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples' Rights in light of the *SERAC* communication' (2003) 3 *African Human Rights Law Journal* 74.

111 Art 27(2) African Charter.

112 Van Norren (n 102).

permitting the individual and the wider community to utilise natural resources to meet their basic needs. Nature is not commodified and exploited to satisfy self-interest.¹¹³ An ubuntu-driven response to climate change at the global, regional and local levels would animate solidarity with our fellow planetary inhabitants and inform a universal paradigm shift encompassing communitarianism, respect for nature, and future generations. This is only possible if ubuntu and similar approaches, such as Senghor's Negritude¹¹⁴ or *Buen Vivir* from Latin America,¹¹⁵ are harnessed and integrated with other values to address the climate crisis.¹¹⁶ Negritude evinces a revised view of the world beyond the diversity of its forms to counter the immorality of violence to nature, which it considers violence against humanity.¹¹⁷ It evokes an ethical consideration for restoring despoiled ecosystems and resistance against destructive extractivism, fuelling today's climate crisis.¹¹⁸

In Latin America, *Buen Vivir*, which translates to 'good living' or 'living well', is a concept and way of living that 'denotes, organises and constructs a system of knowledge and living based on the communion of humans and nature and on the spatial-temporal-harmonious totality of existence'.¹¹⁹ It demands an ethically different relationship with nature – community-centric, ecologically balanced and culturally sensitive.¹²⁰ As a means of societal ordering, *Buen Vivir* is based on ethical values rather than economic ones, rejecting the commodification of humans, land and nature.¹²¹ It is based on the idea that the community's well-being is inextricably linked to that of the individual. In other words, individuality prevalent in the Western conception of human rights is expressed through complementarity with other beings in the group, and tempered by the needs of broader society.¹²² *Buen Vivir* has been incorporated into the 2008 Constitution of Ecuador under Title II, Chapter Two as 'rights of the good way of living' and the 2009 Constitution of Bolivia as *vivir bien* under article 8.¹²³ The concern

113 AC Terblanché-Greeff 'Ubuntu and environmental ethics: The west can learn from Africa when faced with climate change' in Chemhuru (n 68) 93.

114 TE Fon and others 'Panaficanism, cultural resilience, and biodiversity conservation: A historical perspective in the face of climate change' (2024) 13 *International Journal of Science and Research Archive* 1269.

115 A Acosta & MM Abarca 'Buen Vivir: An alternative perspective from the peoples of the Global South to the crisis of capitalist modernity' in V Satgar (ed) *The climate crisis: South African and global democratic eco-socialist alternatives* (2018) 131-147.

116 PO Isanbor & MM Uzomah 'Embracing Senghor's negritude for African sustainable development' (2023) *Academic Journals Online* 517; MF Ordóñez, K Shannon & V d'Auria 'The materialisation of the Buen Vivir and the rights of nature: Rhetoric and realities of Guayaquil Ecológico urban regeneration project' (2022) 9 *Territory and Architecture* 1.

117 Isanbor (n 79).

118 C Terreblanche 'Ubuntu and the struggle for an African eco-socialist alternative' in Satgar (n 115) 177-178.

119 JF Salazar 'Buen vivir: South America's rethinking of the future we want' *The Conversation* (web blog), 24 July 2015, <https://theconversation.com/buen-vivir-south-americas-rethinking-of-the-future-we-want-44507> (accessed 20 January 2025).

120 As above.

121 As above.

122 L Etchart 'Buen vivir and the rights of nature in national and international law' in L Etchart (ed) *Global governance of the environment, indigenous peoples and the rights of nature, governance, development, and social inclusion in Latin America* (2022) 65.

123 Constitution of the Republic of Ecuador, 2008, Official Register 449 of 20 October 2008; Political Constitution of the State of Bolivia, 2009, promulgated 7 February 2009.

from some quarters is about the justiciability of these concepts and their ability to inform human and children's rights standards in the context of climate change.¹²⁴ The following part explores how ubuntu, *Buen Vivir* and related ethical traditions can be meaningfully integrated into normative frameworks governing children's rights and climate obligations.

6 Anthropoholism as an African environmental ethic

Chemhuru argues that environmental philosophy and ethical thinking in sub-Saharan Africa are informed by teleological and normative conceptions that grant nature, including human beings, non-human living beings such as animals and plants, and non-living beings such as air, water and soils, ethical standing.¹²⁵ In his view, the teleological and ethical basis for respecting nature is twofold: First, it is where human beings find their habitat and, second, nature itself must live and flourish and achieve its purpose for existence and well-being.¹²⁶ The purpose of nature includes supporting the well-being and survival of both human and non-human living beings and, therefore, human beings must have duties to nature to ensure its well-being and flourishing.¹²⁷ Granting moral status and legal rights to nature is not novel. It is encapsulated in the growing rights-of-nature movement.¹²⁸ Rights-of-nature proponents advocate the rights of natural communities, ecosystems and other natural entities that are alive or sustain life, such as mountains, rivers and Mother Earth.¹²⁹ The rights-of-nature movement posits that entities with value for their own sake, rather than the value they provide others, can have rights.¹³⁰ Chemhuru argues that the moral status of human and non-human animals is not similar (note that he does not use the word 'equal') to that of human beings.¹³¹ Human beings occupy a higher ontological level than animals and plants due to their varied capacities for purpose and greater ability to communicate and make informed choices.¹³²

Anthropoholism is an African environmental ethics that draws from environmental philosophy's anthropocentric and holistic strands.¹³³ Central to anthropoholism is the idea that humans are an integral part of the environment

124 Acosta & Abarca (n 115).

125 Chemhuru (n 68) 29-30.

126 Chemhuru (n 68) 32.

127 As above.

128 Calzadilla & Kotze (n 33).

129 As above.

130 Chemhuru (n 68) 32-33; G Chapron, Y Epstein & JV Lopez-Bao 'A rights revolution for nature: Introduction of legal rights for nature could protect natural systems from destruction' (2019) 363 *Science* 1392; J Darpo 'Can nature get it right: A study on rights of nature in the European context' European Parliament (report) March 2021, [https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU\(2021\)689328_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689328/IPOL_STU(2021)689328_EN.pdf) (accessed 3 February 2025).

131 Chemhuru (n 68) 38.

132 Chemhuru (n 68).

133 SA Bassey "Anthropoholism" as an authentic tool for environmental management' (2019) 2 *International Journal of Environmental Pollution & Environmental Modelling* 160.

and are not inherently above or superior to other beings.¹³⁴ Owing to their enhanced capacity for rationality, only humans can bear this duty to look after the environment sustainably, including recognising and guaranteeing the 'rights' that attend to living non-human beings, such as animal rights.¹³⁵ This duty articulates a symbiotic relationship between human beings and nature. Ifeakor and Otteh argue that this duty is obligatory.¹³⁶ Bielefeldt terms it as 'the inescapable anthropocentrism of responsibility' because humans are the only members of the environment that can recognise rights.¹³⁷

Humans are the only constituent members of the environment who can ask, think and do.¹³⁸ It is doubtful that this grants humans 'pride of place' in the ecosphere, as Ifeakor and Otteh suggest.¹³⁹ This obligation is not targeted at the satisfaction of human ends, human benefit, or economic enrichment, but towards the African concept of holism – survival of the whole ecosystem. The purpose of obligatory anthropoholism is holistic, and humans are the only agents who can fulfil this end.¹⁴⁰

The duty or obligation to look after the environment sustainably is manifested in the African Charter, albeit in anthropocentric terms. The African Charter guarantees peoples the right to dispose of their wealth and natural resources freely, and this right shall be exercised in their exclusive interest.¹⁴¹ The Charter further recognises the right of all peoples to a general satisfactory environment favourable to their development.¹⁴² The African Charter also imposes duties on family, society and other legally recognised communities. These rights and freedoms shall be exercised with due regard to the rights of others, collective security, morality and common interest.¹⁴³ As observed earlier, the African Children's Charter has similar provisions. It requires children's education to be directed towards developing respect for the environment and natural resources. The African Children's Charter also imposes a duty to preserve and strengthen African cultural values, including those relevant to environmental protection, and to contribute to the moral well-being of society.¹⁴⁴

As Chemhuru rightly contends, the communitarian ethics imbued in these two instruments imposes duties to preserve the environment for the benefit of

134 G Asuquo 'Live and let live: Making sense of Samuel Bassey's "anthropocentrism" as ethics for environmental management' (2020) 12 *Cogita Multidisciplinary Research* 34.

135 Tosam (n 77).

136 CS Ifeakor & A Otteh 'African environmental ethics: Towards a non-anthropocentric African environmentalism' in A Ikechukwu (ed) *African eco-philosophy: Cosmology, consciousness and the environment* (2021) 152.

137 H Bielefeldt 'Moving beyond anthropocentrism? Human rights and the charge of speciesism' (2021) 43 *Human Rights Quarterly* 526.

138 As above.

139 Ifeakor & Otteh (n 136) 152.

140 As above.

141 Art 21(1) African Charter.

142 Art 24 African Charter.

143 Arts 27-29 African Charter.

144 African Charter (n 111) art 23.

broader society.¹⁴⁵ However, if compromises and trade-offs are required between these two value systems, what are they, and how can they be achieved? Tladi argues that this balancing act requires us to note the following: None of the models excludes the relevance of the central values of the other models; both economic growth and human-centred needs are or can be anthropocentric; and there is a divergence of law and policy on the international plane.¹⁴⁶

Key international rights instruments primarily reflect the human-centred needs model, while the practice of 'hard' international law tends to promote economic growth. The climate change regime decisively favours the economic growth model for so-called sustainable development.¹⁴⁷ Developed countries are reluctant to make large-scale changes to their economic structures for fear of losing competitiveness with one another.¹⁴⁸ Developing countries, such as South Africa, aim to maintain momentum towards poverty eradication, job creation and the provision of housing and electricity by maintaining the *status quo*, despite warnings from scientists that this approach is detrimental to efforts to combat climate change.¹⁴⁹

Scholars have developed the so-called 'weak sustainability' and 'strong sustainability' to denote anthropocentric-centred and eco-centric initiatives towards sustainable development, respectively.¹⁵⁰ Under the weak sustainability model, the spatial, temporal and integration models of sustainable development are considered equal.¹⁵¹ However, because human interests are central to the model, the environment is protected for its instrumental value to humans.¹⁵² Ecocentrists have criticised this model for undergirding the destruction of the environment that has led to ecological disasters that are now worsened by climate change.¹⁵³ The argument goes that if sections of the environment are not helpful for human use, they are dispensable and, therefore, prone to destruction and/or eradication.¹⁵⁴ Like the anthropocentrism it underpins, this model does not protect species and ecosystems of no present or potential interest to humankind.¹⁵⁵

¹⁴⁵ M Chemhuru 'Interpreting ecofeminist environmentalism in African communitarian philosophy and ubuntu: An alternative to anthropocentrism' (2018) 48 *Philosophical Papers* 241-264.

¹⁴⁶ D Tladi 'Strong sustainable development, weak sustainable development, and the earth charter: Towards a more nuanced framework of analysis' (2004) 11 *South African Journal of Environmental Law and Policy* 20.

¹⁴⁷ As above.

¹⁴⁸ D Bodansky 'The United Nations Framework Convention on Climate Change: A commentary' (1993) 18 *Yale Journal of International Law* 505.

¹⁴⁹ Tladi (n 146).

¹⁵⁰ Tladi (n 146) 17, 19.

¹⁵¹ As above.

¹⁵² As above.

¹⁵³ See discussion on ecocentrism above.

¹⁵⁴ Tladi (n 146).

¹⁵⁵ As above.

The strong sustainability model prioritises the ecological system over all other human or economic considerations.¹⁵⁶ Social needs and justice must be seen as part of the ecological system, or are subject to the needs and survival of the ecological system.¹⁵⁷ Tladi suggests that this position is inflexible, noting that there are no compromises and trade-offs because ecology always has primacy.¹⁵⁸ In other words, ecology is central and, in case of conflict, ecological interests prevail.¹⁵⁹

This model has been championed by scholars and environmentalists alike, who are unconvinced of the value, ethics and morality of using an anthropocentric approach to dealing with ecological crises and climate change.¹⁶⁰ In this debate, the question becomes whether ecology must take precedence over human concerns to achieve sustainable development, specifically sustainable human development.¹⁶¹ It is debatable whether a human needs-centred model of sustainable development, which provides a foundation for applying a human rights framework to environmental protection, is insufficient, given that it promotes species chauvinism.¹⁶² While opinion is divided, this analysis agrees with Tladi's assessment that a human needs-centred approach does not necessarily preclude the protection of nature for its intrinsic value.¹⁶³

6.1 Anthropoholism and children's rights

The anthropoholistic environmental ethics is contended to be compatible with the human rights and children's rights framework. The human rights framework is an ethical approach drawing from widely accepted, coherent and well-developed legal norms. Part of its advantage is that it places human beings most affected by climate change,¹⁶⁴ such as children, at the centre of its analysis. It moves the imperative to act on climate change from the scientific to the moral realm, creating a duty to act out of collective self-interest. It also has strong

156 K Kortenkamp & CF Moore 'Ecocentrism and anthropocentrism: Moral reasoning about ecological commons' (2001) 21 *Dilemmas Journal* 261.

157 As above.

158 As above.

159 Kortenkamp & Moore (n 156).

160 Tladi (n 146) 22.

161 J Oloka-Onyango 'Human rights and sustainable development in contemporary Africa: A new dawn, or retreating horizons' (2000) 39 *Buffalo Human Rights Law Review* 44, where the author argues that a focus on civil and political rights, while important, excludes those segments of society for whom autonomy is meaningless without the life's necessities. In fact, the UN introduced a new metric to measure growth. The Human Development Index (HDI) was created to emphasise that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone. The HDI is a summary measure of achievement in key dimensions of human development: a long and healthy life, being knowledgeable and having a decent standard of living. United Nations Development Programme 'United Nations Development Programme 'Human Development Index', <http://hdr.undp.org/en/content/human-development-index-hdi> (accessed 23 March 2025).

162 Bielefeldt (n 137).

163 Tladi (n 146).

164 S Theil *Towards the environmental minimum: Environmental protection through human rights* (2021) 10-15.

connections to mechanisms of implementation and enforcement.¹⁶⁵ Caney argues for prioritising human rights as an ethical approach to climate because it is grounded in persons' humanity; it represents moral thresholds below which no conduct is permitted; it promotes respect for every individual and takes general priority over other values.¹⁶⁶ Scholars further argue, in classic Western liberal tradition, that human rights focus on humans as individuals, not humans in the aggregate.¹⁶⁷

The advantages of the human rights framework ought to be combined with the benefits of other ethical systems, such as ubuntu, Negritude and *Buen Vivir*, as a basis for addressing climate change. This approach combines the utility of existing indigenous/traditional knowledge on addressing climate change with obligatory conduct that human rights require. Second, it prioritises communities' experiences and how they respond to climate change with localised solutions. This integrated approach elevates the interests of the 'weakest and most vulnerable', maximising overall welfare.

6.2 Anthropoholism, children's rights and vulnerability

The children's rights framework comports with the duty to address the needs of those most vulnerable to climate change, also found in the relational ethics of African environmental philosophy. The concept of vulnerability brings real-life experiences to human rights law.¹⁶⁸ Vulnerability describes segments of the population that are or should be recipients of extra care and attention. Timmer and others argue that the rights framework is essential in revealing the various dimensions of human suffering associated with continued environmental degradation and realising justice.¹⁶⁹

The human rights framework – and how it deals with vulnerability – is critical: While everyone is vulnerable, some, such as children, are more vulnerable than others.¹⁷⁰ In tandem with the concept of anthropoholism, vulnerability can also inform 'an ontological stance away from a human-centred, neo-liberal, and impregnably Western understanding of human rights'.¹⁷¹ Vulnerability in the context of climate change requires recognising that although everyone is susceptible to climate change, some are more vulnerable than others.¹⁷² Children's vulnerability has been recognised on several grounds, including 'their status and

165 As above.

166 S Caney 'Climate change, human rights and moral thresholds' in S Humphreys (ed) *Human rights and climate change* (2009) 69-90.

167 As above.

168 A Timmer and others 'The potential and pitfalls of the vulnerability concept for human rights' (2021) 39 *Netherlands Quarterly of Human Rights* 192.

169 As above.

170 As above.

171 As above.

172 As above.

inability to secure the protection of their rights'.¹⁷³ Some statistics can bear this situation out. The right to survive and thrive, to learn and grow, is still not realised for millions of children with disabilities, indigenous children and stateless children.¹⁷⁴ The UN estimates that 570 million children are deprived of dignity and the right to an adequate standard of living.¹⁷⁵ Nearly 17 000 children under the age of five years die every day; 58 million children of primary school age are not in school, with as many as 250 million failing to learn basic literacy or numeracy as a result of the poor quality of education.¹⁷⁶ The inadequate development outcomes reflected by those numbers are created by a ripple effect associated with inequality and discrimination, and compounded by inter- and intra-generational cycles of poverty.¹⁷⁷ Identifying vulnerability mandates particular attention from states and gives rise to protection duties.¹⁷⁸ Thus, it becomes clear that children's rights, particularly as countries start drafting and/or implementing their responses to climate change, must account for their vulnerability in addition to environmental conservation.¹⁷⁹ The inequality and discrimination that confront children and compel them to live below their full potential are caused by poor policy decisions that do not prioritise the realisation of children's rights, regardless of the face of extreme poverty, marginalisation and vulnerability.¹⁸⁰

Climate change responses must be consistent with the general principles of non-discrimination, the child's best interests, the right to life, survival and development, and the right to be heard. These responses must also account for the fact that children constitute one-third of the world's population, with almost half of the child population living in poverty.¹⁸¹ The factors that affect children's right to survival, such as poverty, are multidimensional and intergenerational and are being exacerbated by the effects of climate change.¹⁸² Failure to address them in one area will have a ripple, cyclical effect. For instance, failure to provide access to quality education will lead to stagnation in social mobility,¹⁸³ which increases a child's chances of falling into or staying in poverty. In some cases, where

173 AHE Morawa 'Vulnerability as a concept of international human rights law' (2003) 6 *Journal of International Relations and Development* 139.

174 United Nations Human Rights Council 'Report of the United Nations High Commissioner for Human Rights on the protection of the rights of the child in the implementation of the 2030 Agenda for Sustainable Development' A/HRC/34/27 para 13.

175 As above.

176 United Nations High Commissioner for Human Rights 'Input from a child rights perspective to the High Level Political Forum on Sustainable Development review of eradicating poverty and promoting prosperity in a changing world' July 2017, <https://sustainabledevelopment.un.org/content/documents/16641OHCHR.pdf> (accessed 22 February 2025).

177 United Nations Human Rights Council (n 174).

178 Morawa (n 173) 139–155.

179 If unaddressed, climate change will, in the long run, seriously hamper the prospects for realising the rights guaranteed by CRC and the African Children's Charter that ensure rights to life, survival, development and health. K Arts 'A child rights perspective on climate change' in MA Mohamed Salih (ed) *Climate change and sustainable development: New challenges for poverty reduction* (2009) 79–93.

180 United Nations Human Rights Council (n 174) paras 16–35.

181 As above.

182 As above.

183 P Brown 'Education, opportunity and the prospects for social mobility' (2013) 34 *British Journal of Sociology of Education* 678.

guardians or parents prefer boys to go to school, girls will often find themselves discriminated against and kept out of opportunities that education provides.¹⁸⁴

The integrated and holistic nature of anthropoholism mirrors the indivisible, mutually reinforcing nature of the rights of the child and all human rights.¹⁸⁵ A human rights-based approach is vital to realising economic, social and cultural rights. Despite the differences in the process, states are unified in the recognition that their response to climate change will involve adjusting their economic and environmental priorities.¹⁸⁶ This problem is bound to come to the fore, especially in countries such as South Africa that have to deal with increasing unemployment levels, stubborn levels of poverty and alarming levels of inequality. Children, who are already vulnerable, are likely to suffer the consequences of a climate change response that fails to cater to their rights and needs.

CRC is the most ratified international treaty,¹⁸⁷ with all states except the United States of America bound by it.¹⁸⁸ Nearly all of its 196 state parties are also bound by the United Nations Framework Convention on Climate Change (UNFCCC).¹⁸⁹ However, in tandem with other UN human rights treaties that omit an explicit right to a healthy environment, CRC only scarcely refers to environmental issues directly and does not mention climate change. CRC should not be criticised in isolation, given that the prevailing milieu of international law is still too generic to have concrete legal implications.

CRC has adopted General Comments relevant to climate change initiatives. General Comment 26 on children's rights and the environment, focusing on climate change, is one of the most authoritative interpretations of states' duties to take climate action under CRC.¹⁹⁰ General Comment 26 asserts that 'a clean and sustainable environment is both a human right and necessary for the full enjoyment of a broad range of children's rights'.¹⁹¹ General Comment 15 addressed the need for a 'growing understanding of the impact of climate change on children's health'.¹⁹² The General Comment was drafted to interpret article

184 Plan International 'Climate change and girls' education: Barriers, gender norms and pathways to resilience' (Synthesis Report) 2013, https://plan-international.org/uploads/2023/11/Climate-Change-and-Girls-Education_Synthesis-Report_Nov2023_.pdf (accessed 2 July 2025).

185 As above.

186 Bodansky (n 148).

187 UNICEF 'Convention on the Rights of the Child: For every child, every right' (website), <https://www.unicef.org/child-rights-convention> (accessed 23 April 2024).

188 As above.

189 UNFCCC 'Parties to the United Nations Framework Convention on Climate Change' (website), <https://unfccc.int/process/parties-non-party-stakeholders/parties-convention-and-observer-states> (accessed 14 August 2025).

190 Committee on the Rights of the Child 'General Comment 26 (2023) on children's rights and the environment, with a special focus on climate change' 22 August 2023 CRC/C/GC/26.

191 General Comment 26 (n 190) para 8.

192 Committee on the Rights of the Child 'General Comment 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art 24)' 17 April 2013 CRC/C/GC/15.

24 in light of environmental issues and climate change,¹⁹³ with CRC stating that ‘given the relevance of the environment, beyond environmental pollution, to children’s health’ and that environmental interventions should, among others, address climate change, as this is one of the biggest threats to children’s health and exacerbates health disparities.¹⁹⁴ States, therefore, should put children’s health concerns at the centre of their climate change adaptation and mitigation strategies.¹⁹⁵ Other General Comments also address climate change in terms of the risks of pollution and natural disasters, the importance of a healthy and safe environment and the right to survival and development.¹⁹⁶

The African Children’s Charter omits provisions for the right to a healthy environment. However, its Preamble explicitly acknowledges the relationship between climate change and sustainable development. It notes with concern that ‘the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters’.¹⁹⁷ The main text does not reference environmental protection, climate change or sustainable development. These concepts have to be ‘read into the text’, so to speak, by analysis of some of its provisions. The African Children’s Charter mirrors CRC in setting norms that guide the interpretation of its provisions: non-discrimination, right to survival and development, best interests of the child, and participation. Realising these goals while responding to climate change requires that development be undertaken alongside children’s rights protection.

In the ‘weak anthropocentrism’ model discussed above, ‘development’ is not confined to economic growth. It also requires and includes lifting the world’s most impoverished populations out of poverty, allowing them to lead decent and dignified lives without necessarily causing irreparable environmental damage. As Tladi points out, in societies such as those in Africa, with staggering numbers of poverty, unemployment and income-inequality, the needs of children experiencing poverty are not and should not be marginalised and considered less important than the environment.¹⁹⁸ Today’s generation has no right to decide what species or ecosystems benefit or interest future generations. Intergenerational equity is integral to ecologically sustainable development, as it allows future generations to determine their own needs and interests.¹⁹⁹ Indeed, no person will be willing to save environmental resources for tomorrow if they cannot meet their basic needs today.²⁰⁰

193 General Comment 26 (n 190).

194 General Comment 26 (n 190) paras 37-44.

195 General Comment 26 (n 190) paras 5, 50.

196 Committee on the Rights of the Child ‘General Comment 7 (2006) implementing child rights in early childhood’ 20 September 2006 CRC/C/GC/7/Rev.1.

197 Preamble, para 4 African Children’s Charter.

198 Tladi (n 146) 140, 24.

199 A Kiss & D Shelton *Guide to international environmental law* (2007) 106.

200 Tladi (n 146) 25.

Anthropoholism and the children's rights framework require the integration of social, environmental and economic concerns in policy making to address climate change.²⁰¹ It also necessitates optimal resource management to maximise the net benefit of economic development, conditioned on the preservation of services and the quality of natural resources. In the social context, sustainable development often means that men, women and children are the centre of attention, and development should be woven around people. The common thread running through most of these concepts is the linkage between economic growth and environmental standards in the context of improving human social conditions.

Anthropoholism and vulnerability can mediate the relationship and ostensible tension between economic development, environmental protection and social equity for vulnerable populations.²⁰² Indeed, sustainable development is structurally conceived as a temple-like structure with three pillars: international environmental law, international human rights law and international economic law. International environmental law is said to be its central pillar.²⁰³ The phrase 'sustainable development' first appeared in a publication entitled *World Conservation Strategy: Living Resource Conservation for Sustainable Development* which stated in its foreword: 'In their quest for economic development and enjoyment of the riches of nature, human beings must come to terms with the reality of resource limitation and the carrying capacity of ecosystems. They must take account of the needs of future generations.'²⁰⁴

Therefore, there must be a conscious and conscientious effort to transform the material conditions of African children. Work to stem the environmental crisis must be accompanied by the realisation of children's socio-economic rights. The appropriate starting point for addressing climate change in Africa must integrate the protection of natural resources with the imperative to emancipate and rehabilitate the majority of the continent's children who are in want. This was recognised by the Brundtland Commission report in its observation that 'poverty pollutes the environment, creating environmental stress differently'.²⁰⁵

201 SA Bassey 'Individualism v holism: A discourse in environmental ethics' (2022) 162 *Abraka Journal of Religion and Philosophy* 235; International Law Association Committee on International Law on Sustainable Development 'Second draft report' (prepared for the International Law Association Conference, Toronto) 2006.

202 It has been suggested that given the breadth of international endorsement for the concept, few states would dispute the proposition that development should, in principle, be sustainable and that all natural resources should be managed as such. See P Birnie, A Boyle & C Redgwell *International law and the environment* (2009) 125.

203 D McGoldrick 'Sustainable development and human rights: An integrated conception' (1996) 45 *The International and Comparative Law Quarterly* 796.

204 International Union for Conservation of Nature and Natural Resources 'World conservation strategy: Living resource conservation for sustainable development' IUCN (report) 1980, <https://portals.iucn.org/library/efiles/documents/WCS-004.pdf> (accessed 3 June 2025).

205 World Commission on Environment and Development *Our common future* UN Doc. A/42/427 (1987) ch I para 8.

The UNFCCC provisions and general international climate law affirm that responses to climate change should involve a coordinated and integrated response from the fields of social and economic development.²⁰⁶ These measures must be in tandem with national development programmes. Solutions to climate change require the integration of social, environmental and economic concerns in policy decisions.²⁰⁷ Prioritising human development and environmental protection is not an irreconcilable choice. Indeed, the ‘concurrent attainment of both human development and environmental protection can only ever be at the level of rhetoric ... real-life situations almost always require trade-offs.’²⁰⁸ Disproportionate attention to one category at the expense of another would lead to a ‘truncated human reality.’²⁰⁹ The question for debate, therefore, is not so much conceptual but practical. In this scenario, human and children’s rights are the bedrock of a synthesised approach to climate action.

7 Conclusion

This article has argued that a children’s rights-based approach to climate change is informed by African environmental ethics such as ubuntu and anthropoholism. It offers a legitimate and culturally resonant framework for climate action in Africa. The article has demonstrated that limitations of the dominant paradigms lie in their inability to address the complex vulnerabilities of children in a world affected by global warming. By relying on African philosophical traditions that emphasise interdependence, communal obligation and harmony with nature, this article shows that environmental law can be enriched by ethical insights that centre on human dignity and ecological balance. These ethical systems provide a new and transformative lens through which to pursue climate justice if combined with the legal obligations enshrined in international and regional children’s rights instruments. Ultimately, this integrated approach challenges the false dichotomy between development and environmental sustainability and reorients climate action towards the simultaneous fulfilment of children’s rights, ecological conservation and intergenerational equity.

206 Bodansky (n 148) 505.

207 As above.

208 D Tladi ‘Flexible mechanisms: An analysis from a sustainable development perspective’ in VI Grover (ed) *Global warming and climate change ten years after Kyoto and still counting* (2008) 239-254.

209 Oloka-Onyango (n 161).

Climate change and displaced children in Africa: A dual challenge to a sustainable future

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Abstract: This article analyses the complex interaction between climate change and the fundamental rights of internally displaced children in Africa, highlighting their challenges in an increasingly vulnerable context. It first examines the growing impact of climate phenomena on internal displacement, which exposes children to precarious living conditions, undermining their rights to a healthy environment, health, education and security. The article argues that these challenges underscore the urgent need for a response tailored to local and regional realities. Second, the article advocates a rigorous application of the principles of climate justice, grounded in the differentiated responsibility of states and international solidarity. It proposes sustainable solutions, combining local initiatives, international partnerships and inclusive climate policies, in order to protect the rights of displaced children in the context of climate change. The article recommends that adopting an integrated approach that respects children's rights may turn the challenges posed by climate change into opportunities to ensure a fair and resilient future for internally displaced children.

Key words: climate change; climate justice; children's rights; internal displacement; sustainable development

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1 Introduction

Climate change is a major driver of internal displacement in Africa, affecting millions of people each year.¹ According to the Internal Displacement Monitoring Centre, at least 1,85 million children in sub-Saharan Africa were displaced in their countries due to climate shocks in 2022, compared to one million the previous year.² Globally, the United Nations Children's Fund (UNICEF) reports that between 2016 and 2021 more than 43 million child displacements were triggered by weather-related disasters, amounting to approximately 20 000 displacements per day.³ These alarming figures highlight the increased vulnerability of children to climate crises and their devastating impact on living conditions.

This situation exposes a double injustice for internally displaced children: on the one hand, their direct exposure to the impacts of climate change, such as the loss of their homes and the degradation of natural resources and, on the other, the violation of their fundamental rights, particularly the right to a healthy environment, as enshrined in the United Nations (UN) Convention on the Rights of the Child (CRC)⁴ and the African Charter on the Rights and Welfare of the Child (African Children's Charter),⁵ adopted by the African Union (AU) in 1990. While these children face immense challenges to their survival and development, their rights to a protected environment, essential for their well-being, are often neglected. Given its magnitude, this phenomenon falls within an international legal framework shaped by instruments such as the United Nations Framework Convention on Climate Change (UNFCCC);⁶ the Paris Agreement;⁷ and the Sustainable Development Goals (SDGs),⁸ all of which call for inclusive climate action that respects human rights, particularly those of children.⁹ The central issue addressed in this article is exploring how the principles of climate justice can be employed to protect the rights of internally displaced children and promote a healthy environment in Africa. To answer this question, the article examines the links between climate change and internal displacement, focusing on Africa, where climatic phenomena exacerbate the

1 World Bank 'Rising to the challenge: Success stories and strategies for achieving climate adaptation and resilience' (2024); World Bank 'Les migrants climatiques: visages humains d'un dérèglement planétaire' (2018); M Burzyński and others 'Climate change, inequality, and human migration (2022) 20 *Journal of the European Economic Association* 1145.

2 IDMC 'Internal displacements by conflict and disasters in 2022' (2023).

3 UNICEF 'Children displaced in a changing climate. Preparing for a future that's already underway' (2023).

4 United Nations Convention on the Rights of the Child (CRC), 20 November 1989, United Nations Treaty Series, vol 1577 3.

5 African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990).

6 United Nations Framework Convention on Climate Change, 9 May 1992, S Treaty Doc 102-38, 1771 UNTS 107.

7 Paris Agreement, 12 December 2015, 3156 UNTS 79.

8 UN Department of Economic and Social Affairs 'Global Sustainable Development Report, 2015 edition' (2015), <https://www.un.org/en/development/desa/publications/global-sustainable-development-report-2015-edition.html> (accessed 9 January 2025).

9 M Nowak 'UN Convention on the Rights of the Child: A commentary' (2021) 112; L Rajamani *International climate change law* (2017) 89.

challenges of already vulnerable populations. It also assesses the international and regional legal frameworks to ensure a healthy environment for these children, while highlighting the gaps in their implementation. Finally, the article proposes concrete solutions, drawing on local initiatives and principles of climate justice to mitigate the effects of climate change on the rights of displaced children.

The article seeks to inform policy makers, humanitarian organisations and development actors about the urgent and necessary actions required to ensure a sustainable future for internally displaced children in Africa, amidst the growing climate crisis. The 'right to a sustainable future' referred to here is the right of children to live in an environment that guarantees their physical, mental and social development in ecologically viable conditions.¹⁰ It is founded on the principles of intergenerational justice, environmental sustainability and international solidarity.

2 Climate change as a threat to displaced children

The discourse on climate migration in Africa highlights the growing impact of climate change on internal displacement,¹¹ with particularly severe consequences for children. Extreme climatic events such as droughts, floods and desertification¹² have become more frequent and intense due to global warming.¹³ These events severely affect ecologically fragile regions, notably the Sahel, where accelerated desertification and prolonged droughts reduce arable land, forcing rural populations to migrate.¹⁴ In West Africa, North Africa, the Horn of Africa and some areas of Southern Africa, recurrent floods and tropical cyclones displace hundreds of thousands of people yearly.¹⁵ These internal migrations illustrate a dynamic that is expected to intensify.¹⁶ According to the International Organisation for Migration (IOM), these displacements could double by 2050, highlighting the urgent need for tailored responses.¹⁷ This observation

10 GA Mastaki & A Nzohabonayo 'Recognition and constitutional guarantee of the right to the environment in the Democratic Republic of the Congo' (2023) *Beijing Law Review* 14.

11 J Schade 'Les migrants des politiques climatiques: nouveaux défis face aux déplacements générés par le changement climatique' (2013) 88 *Cultures & Conflits* 85.

12 Special Rapporteur on the Human Rights of Internally Displaced Persons 'Vision and thematic priorities: Addressing new challenges and strengthening achievements' UN Doc A/HRC/53/35 (2023) para 82; Special Rapporteur on the Human Rights of Migrants 'Report of the Special Rapporteur on the human rights of migrants' UN Doc A/77/189 (19 July 2022) para 14, <https://www.ohchr.org/en/documents/thematic-reports/a77189-report-special-rapporteur-human-rights-migrants> (accessed 7 August 2025).

13 World Bank 'Rising to the challenge: Success stories and strategies for achieving climate adaptation and resilience' (2024); M Burzyński and others 'Climate change, inequality, and human migration' (2022) 20 *Journal of the European Economic Association* 1145.

14 IPCC 'Climate change 2022: Impacts, Adaptation and vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (2022).

15 World Meteorological Organisation 'Africa suffers disproportionately from climate change and adaptation costs. Press Release' (2024).

16 KR Kanta and others 'Groundswell: Preparing for internal climate migration' (2018).

17 IOM & AUC 'Africa Migration Report: Connecting the threads – Linking policy, practice and the welfare of the African migrant' (2024), <https://publications.iom.int/books/africa->

is corroborated by the World Bank, which estimates that 86 million people in Africa, including a significant proportion of children, could become internal climate migrants over the next three decades.¹⁸ These projections demonstrate the scale of the challenges in mitigating the impacts of these displacements.

Among the affected populations, children are particularly vulnerable. Due to their young age and dependence on essential services, they experience disproportionate and multifaceted impacts.¹⁹ These migrations often expose them to precarious living conditions, increasing the risks of forced labour and school abandonment.²⁰ Their fundamental rights, particularly access to health care, education and adequate protection, are severely compromised.²¹ Children in displacement camps and transit areas often face overcrowded conditions and a lack of adequate resources.²² This situation exposes them to preventable diseases such as malaria, diarrhoea and respiratory infections, exacerbating their vulnerability.²³

In educational terms, access to quality education is severely disrupted, with temporary schools often underequipped and staffed insufficiently to meet demand.²⁴ Furthermore, displaced children, particularly girls, are exposed to increased risks of exploitation, early marriage and forced labour, exacerbating gender inequalities.²⁵ Long-term consequences accompany these immediate impacts. Interruptions in schooling undermine the future economic opportunities of displaced children, limiting their ability to contribute to the socio-economic development of their communities.²⁶ Trauma related to uprooting, chronic stress and climate disasters worsens their psychological fragility, increasing the risks of mental health disorders such as post-traumatic stress disorder (PTSD) and anxiety. Furthermore, the disintegration of traditional social structures, which previously provided essential support networks, heightens these vulnerabilities.²⁷

In response to these challenges, while encouraging, current efforts remain insufficient. While initiatives such as the AU Kampala Convention aim to protect internally displaced persons,²⁸ their implementation remains uneven and limited.

migration-report-second-edition (accessed 4 January 2025).

18 World Bank 'Groundswell: Preparing for internal climate migration' (2021).

19 Mastaki & Nzohabonayo (n 10) 8.

20 UNICEF 'The climate crisis is a child rights crisis: Introducing the children's climate risk index' (2021).

21 As above.

22 UNICEF 'The state of the world's children 2021: On my mind – promoting, protecting, and caring for children's mental health' (2021) 34-35.

23 As above.

24 Save the Children 'Education in emergencies: Challenges for displaced children in Africa' (2020) 15.

25 CARE International "'To protect her honour': Child marriage in emergencies' (2015), <https://data.unhcr.org/en/documents/download/59751> (accessed 7 August 2025).

26 World Bank (n 18) 67.

27 L Atwoli, J Muhia & Z Merali 'Mental health and climate change in Africa' (2022) 19 *BJPsych International* 86-89, <https://doi.org/10.1192/bji.2022.14> (accessed 25 May 2025).

28 African Union African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) (2009).

Existing humanitarian programmes primarily focus on immediate assistance but often lack the resources to address long-term needs, such as strengthening educational and healthcare infrastructures. Additionally, national and regional policies do not always integrate the impacts of climate change into their internal migration management strategies.²⁹

To effectively protect displaced children in Africa, it is imperative to strengthen climate resilience and social protection systems. This involves targeted investments in education, health care and the protection of displaced children. Enhanced cooperation between governments, non-governmental organisations (NGOs) and international agencies is also necessary to develop policies that consider children's specific needs.³⁰ Moreover, promoting sustainable solutions, such as adopting climate-resilient agricultural practices, could reduce forced displacement by improving food security for the most vulnerable communities.³¹

3 Climate change and rights of internally displaced children

Climate change, by intensifying extreme weather events, profoundly challenges the enjoyment of the fundamental rights of internally displaced children, particularly their rights to a healthy environment.³² Although recognised in various international and regional legal instruments, this right remains insufficiently implemented in the context of internal displacement.³³ The Convention on the Rights of the Child (CRC) mandates that state parties ensure that every child is provided with an environment conducive to physical, mental and social development.³⁴ Furthermore, the African Children's Charter reinforces this obligation by affirming that children have the right to living conditions that foster their growth and well-being.³⁵ However, these provisions remain largely theoretical, especially for children displaced by the effects of climate change.³⁶ Current data highlights the magnitude of the issue: 820 million

29 African Union ECOSOCC 'Cadre de politique migratoire pour l'Afrique (CPMA)' (2022), <https://ecosocc.au.int/sites/default/files/files/2022-07/policy-booklet-migration-policy-framework-africa-mpfa-fr0.pdf> (accessed 17 August 2025).

30 International Organisation for Migration *Institutional strategy on migration, environment and climate change 2021-2030* (2021) 18, <https://publications.iom.int/books/institutional-strategy-migration-environment-and-climate-change-2021-2030> (accessed 25 May 2025).

31 World Bank 'Climate-smart agriculture implementation brief: A summary of insights and upscaling opportunities through the Africa Climate Business Plan' (2020), <https://documents1.worldbank.org/curated/en/242111592504568447/pdf/Climate-Smart-Agriculture-Implementation-Brief-A-Summary-of-Insights-and-Upscaling-Opportunities-through-the-Africa-Climate-Business-Plan.pdf> (accessed 25 May 2025).

32 GA Mastaki 'L'anthropocentrisme face à l'émergence du droit à un environnement sain en République Démocratique du Congo' (2025) 2 *Parlons Terre Et Biodiversité* 1.

33 UN Committee on the Rights of the Child 'General Comment 26 (2023) on children's rights and the environment with a special focus on climate change', <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crcgc26-general-comment-no-26-2023-childrens-rights> (accessed 6 May 2025).

34 Art 24 CRC.

35 Art 14 African Children's Charter.

36 Q Kilmartin 'Climate justice, environmental justice, and sexual and reproductive health and rights' (2024) *Centre for Reproductive Rights*; Terre des hommes Foundation Lausanne

children, over one-third of the global child population, are directly affected by the consequences of climate change,³⁷ with 240 million (one in ten) being highly exposed to coastal flood risks, often leading to displacement.³⁸ This vulnerability is expected to worsen due to the continued rise in global temperatures and the increasing unpredictability of climatic patterns.³⁹ In this context, the UN General Comment 26 underscored the systemic threat posed by the climate emergency and environmental damage to children's rights, as defined by the International Convention on the Rights of the Child.⁴⁰

Environmental risks impact all aspects of children's lives: their immediate surroundings, homes, places of residence, and all the spaces that host them.⁴¹ More than 99 per cent of children globally are exposed to at least one climate or environmental risk factor,⁴² with almost half of all children residing in one of the 33 countries identified as highly vulnerable to climate change.⁴³ Among the most affected children, those under five years of age are particularly fragile, with a quarter of deaths in this age group directly attributable to environmental pollution.⁴⁴

The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has developed specific guidelines and recommendations, notably in its General Comments, highlighting the importance of protecting children from the effects of climate change.⁴⁵ These regional standards reinforce the obligation of African states to adopt child-sensitive environmental policies. Moreover, the jurisprudence of the United Nations Committee on the Rights of the Child (CRC Committee), particularly through its individual communications such as *Sacchi v Argentina*,⁴⁶ and the position of the African Children's Committee, notably in its *Continental study on the impact of climate change on children's rights in Africa*,⁴⁷ provide valuable interpretations of states' obligations to protect children from environmental risks.

³⁷ 'Climate injustice for children: How climate crisis affects access to justice and children's rights' (2023).

³⁸ UNICEF (n 20).

³⁹ As above.

⁴⁰ As above.

⁴¹ UN General Comment 26 (n 33) para 10.

⁴² Defender of Rights 'Child report: The right of children to a healthy environment' (2024), https://www.defenseurdesdroits.fr/sites/default/files/2024-11/ddd_rapport-annuel-enfants_2024_20241022.pdf (accessed 20 May 2025).

⁴³ UNICEF (n 20).

⁴⁴ Notre affaire à tous (association) 'Comprendre le lien entre changement climatique et droits fondamentaux' (2023).

⁴⁵ WHO 'Inheriting a sustainable world? Atlas on children's health and the environment' (2017), <https://www.who.int/publications/i/item/9789241511773> (accessed 6 April 2025).

⁴⁶ African Committee of Experts on the Rights and Welfare of the Child *Continental study on climate change and children's rights in Africa* (2024) 52, <https://www.acerwc.africa/sites/default/files/2025-04/Continental%20Study%20On%20Climate%20Change%20and%20Children%20Rights%20in%20Africa.pdf> (accessed 7 August 2025).

⁴⁷ *Sacchi & Others v Argentina* Communication 104/2019, CRC Committee (22 September 2021) UN Doc CRC/C/88/D/104/2019, <https://climatecasechart.com/non-us-case/sacchi-et-al-v-argentina-et-al/> (accessed 7 May 2025).

⁴⁸ African Committee Continental Study (n 45).

In *Sacchi*, the CRC Committee emphasised that environmental degradation can violate children's rights to life, health and development.⁴⁸ Similarly, the African Children's Committee has urged states to adopt child-sensitive climate policies and highlighted the need for urgent action to protect displaced children from climate-related harms.⁴⁹ Recent Concluding Observations from both bodies, including those on Israel⁵⁰ and Nigeria,⁵¹ underscore the necessity of integrating climate concerns into national child protection frameworks. These observations explicitly stress that displaced children affected by climate crises must be guaranteed effective access to a healthy environment, quality education and adequate healthcare services.

All these affected and displaced children are often forced to reside in camps or transit zones, facing unsanitary and precarious environments. These sites, often makeshift and deprived of basic infrastructure, face severe shortages of safe drinking water, adequate sanitation systems and sanitary facilities.⁵² Consequently, these children are exposed to an increased risk of preventable diseases such as cholera and respiratory infections linked to overcrowding.⁵³ According to a UNICEF report, in sub-Saharan Africa, 45 per cent of displaced children suffer from infections due to the unsanitary conditions of their environment.⁵⁴ This precarious situation constitutes a clear violation of their rights to a healthy environment and their rights to health, two interdependent pillars enshrined in international legal instruments.⁵⁵

In addition to its physical effects, an unsanitary environment also impacts the psychological and emotional well-being of displaced children. The unstable living conditions marked by insecurity, stress and prolonged exposure to degraded environments heighten their sense of marginalisation and abandonment.⁵⁶ These factors undermine their mental well-being and hinder their harmonious development,⁵⁷ contradicting the objectives of international frameworks to

48 *Sacchi* (n 46) para 10.

49 African Committee of Experts on the Rights and Welfare of the Child Resolution 18/2022 on Integrating a Child Rights-Based Approach to Climate Change Responses (2022), https://www.acerwc.africa/sites/default/files/2022-10/Resolution-No-182022-on-Integrating-a-Child-Rights-Based-Approach-to-Climate-Change-Responses_0.pdf (accessed 7 August 2025).

50 UN Committee on the Rights of the Child Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Israel 13 September 2024 UN Doc CRC/C/ISR/CO/5-6 para 22, <https://docs.un.org/en/CRC/C/ISR/CO/5-6> (accessed 7 August 2025).

51 UN Committee on the Rights of the Child Concluding Observations on the Combined Third and Fourth Periodic Reports of Nigeria (11 June 2010) UN Doc CRC/C/NGA/CO/3-4 paras 34 & 70, <https://docs.un.org/fr/CRC/C/NGA/CO/3-4> (accessed 7 August 2025).

52 WHO 'Health impacts of climate change and displacement' (2020) Technical Brief 3.

53 As above.

54 UNICEF 'Children in displacement' (2021) 7.

55 D Cubie 'Human rights, environmental displacement and migration' in R McLeman & F Gemenne (eds) *Routledge handbook of environmental displacement and migration* (2018) 341, <https://doi.org/10.4324/9781315638843> (accessed 25 May 2025).

56 As above.

57 Garcia-Moreno and others 'Psychological dimensions of forced displacement' (2020) *Child Psychology Review* 22.

protect children.⁵⁸ Despite the existence of a robust legal framework, the implementation of these standards remains largely inadequate. Humanitarian responses to internal displacement are often fragmented, and efforts to guarantee a healthy environment for displaced children face limited resources and ineffective coordination between national and international actors.⁵⁹ The slow implementation of the Kampala Convention, adopted by the AU to protect internally displaced persons, highlights this failure. Displaced camps, rarely equipped to meet the specific needs of children, lack adequate sanitation systems and waste management, further exacerbating already precarious living conditions.⁶⁰

To bridge the gap between recognised rights and the reality on the ground, urgent and appropriate measures are needed. These measures include the construction of sustainable infrastructure in displaced persons' camps, such as ecological sanitation systems and waste management programmes,⁶¹ as well as better coordination between governmental and humanitarian actors.⁶² African governments must also adopt a child rights-based approach in their internal displacement response policies, ensuring that all children benefit from dignified living conditions regardless of their migration status. Moreover, increased investments in community-based climate resilience initiatives are crucial to mitigate the impacts of forced displacement and promote healthier and more inclusive environments.⁶³

Hence, the rights of children to a healthy environment, although enshrined in international and regional legal instruments such as the CRC and the African Children's Charter, remain an unfulfilled promise for internally displaced children. The consequences of climate change exacerbate their vulnerabilities, depriving them of an environment essential to their harmonious development. It is imperative for governments and humanitarian actors to collectively assume their responsibilities and transform these rights into tangible realities.

4 Climate justice and sustainable solutions

Climate justice has emerged as a key issue in the context of internally displaced children in Africa, a group particularly vulnerable to the devastating impacts of climate change. This fundamental principle of justice, which intrinsically links the notions of responsibility and intergenerational solidarity, unfolds along two complementary axes, namely, the national and international axes. On a

⁵⁸ Save the Children 'Child rights in crisis' (2021) 14.

⁵⁹ World Bank 'Climate resilience for vulnerable populations' (2022) Policy Report 18.

⁶⁰ Plan International & Save the Children & UNICEF & Children's Environmental Rights Initiative 'Falling short: Addressing the climate finance gap for children' (2023).

⁶¹ WHO (n 44) 4.

⁶² UNICEF (n 20) 8.

⁶³ IPCC 'Climate change impacts, adaptation and vulnerability' (2022) AR6 WGII 5.

national level, climate justice gives states full recognition of their responsibilities concerning the greenhouse gas (GHG) emissions they generate.⁶⁴ These emissions, often resulting from industrialisation and polluting activities, directly contribute to the climate disruptions that disproportionately affect displaced populations, whose living conditions are exacerbated by extreme climatic events. On an international level, an evident polarisation between the Global North and South emerges, with developing countries, particularly in Africa, facing a disproportionate burden of the consequences of climate disruptions. In this context, these states call for the recognition of the climate debt of industrialised countries, which are regarded as the historical culprits of massive GHG emissions since the Industrial Revolution.⁶⁵ Therefore, a retrospective responsibility is assigned to developed countries for their causal role in climate disruption, while a prospective⁶⁶ responsibility now falls upon them to mitigate the current and future effects of these changes, especially regarding internally displaced children, who represent one of the most vulnerable segments of society.

The effects of climate change on internally displaced children in Africa are clear and continue to intensify as extreme events such as prolonged droughts and devastating floods become more frequent and severe. These children, often from already impoverished and precarious populations, are deprived of a healthy environment and access to fundamental services such as education,⁶⁷ health care⁶⁸ and protection from violence and abuse.⁶⁹ They are exposed to significant health risks while being deprived of their most basic rights.⁷⁰

In this regard, climate litigation has led to a progressive recognition of the importance of environmental rights. In a decision made on 9 April 2024, the European Court of Human Rights ruled that, while states' obligations to reduce GHG emissions primarily aim to protect present generations, future generations will bear the consequences of state inaction without having the opportunity to intervene in the decision-making process.⁷¹ This principle of intergenerational justice, an actual call to the collective conscience, implies that each generation is obligated to preserve a viable environment for future generations.⁷² This concept also resonates in domestic law, as evidenced by the French Constitutional Council's ruling in 2023,⁷³ emphasising the need to ensure, in accordance with

64 Z. Wüthrich 'La justice climatique: entre forte normativité et faible politisation: une enquête pragmatiste' PhD thesis, Université Paris-Est Créteil Val-de-Marne, 2024.

65 Larrère 'Inégalités environnementales et justice climatique' (2015) 79 *Responsabilité & Environnement* 74, <https://www.anales.org/re/2015/re79/RE-79-Article-LARRERE.pdf> (accessed 5 April 2025).

66 As above.

67 Art 28 CRC.

68 Art 24 CRC.

69 Art 19 CRC.

70 Defender of Rights (n 41) 16.

71 CEDH, 9 avril 2024, n° 53600/20, Verein KlimaSeniorinnen Schweiz et autres c/ Suisse.

72 Defender of Rights (n 41) 16.

73 French Constitutional Council Decision 2023-1066 QPC of 27 October 2023, <https://www.conseil-constitutionnel.fr/decision/2023/20231066QPC.htm> (accessed 5 April 2025).

the Preamble to the Charter for the Environment,⁷⁴ not only the capacity of future generations to meet their needs, but also the ability of other peoples to enjoy a quality environment.⁷⁵ In this context, pending the International Court of Justice's ruling on the precise obligations of states regarding climate change mitigation, it is important to note that, unless proven otherwise, African states bear the responsibility of guaranteeing the protection of their citizens' fundamental rights, especially that of internally displaced children to live in a healthy and secure environment.⁷⁶

Through their adherence to international instruments, such as the 2015 Paris Agreement, which requires states to reduce their GHG emissions and strengthen their adaptation capacity in response to climate impacts, states have committed not only to limit their contribution to the environmental crisis, but also to adopt policies to protect internally displaced children. These international commitments must now be translated into concrete and measurable actions. In particular, African states must implement effective climate adaptation strategies to enhance the environmental resilience of displaced communities and offer them a less uncertain future in the face of the devastation of climate change.

Despite international commitments, effective climate policy implementation remains largely insufficient in many regions of the African continent, particularly those that are especially vulnerable to the impacts of climate change. This inadequacy becomes even more pronounced in high-risk areas, where displaced communities are particularly exposed to climate hazards. As a result, African states are obligated to show stronger political will to adapt their climate policies to the specific needs of internally displaced children. These policies must integrate concrete strategies and tailored measures to reduce climate risks and ensure decent living conditions for displaced children, which align with their fundamental rights. In this sense, adopting climate adaptation strategies specifically designed for this vulnerable population is essential.⁷⁷

At the local level, several community initiatives are already providing tangible and sustainable solutions. Reforestation projects have restored severely degraded ecosystems, improved air and water quality, and combated soil erosion in regions such as the Sahel. These actions have contributed to the restoration of agricultural lands and created safer environments conducive to the stability of displaced communities.⁷⁸ Consequently, internally displaced children directly

⁷⁴ France *Charter for the environment* (2005) art 7, <https://www.conseil-constitutionnel.fr/en/charter-for-the-environment> (accessed 5 April 2025).

⁷⁵ Decision 2023-1066 QPC Constitutional Council France 27 October 2023.

⁷⁶ This is a positive obligation, derived from art 24 of the African Charter on Human and Peoples' Rights, which recognises the right of every African to live in a healthy and favourable environment.

⁷⁷ Paris Agreement (n 7) art 2.1(c) emphasises adaptation and enhancing the resilience of vulnerable populations (such as internally displaced children).

⁷⁸ C Benson and others 'Climate change and African development: The role of local solutions' (2016) *African Journal of Climate Change and Sustainability* 10.

benefit from these efforts, enjoying a healthier and more secure environment, conducive to their physical development and psychological well-being.⁷⁹ Additionally, access to renewable energy, such as the installation of solar panels in refugee camps, has significantly improved the living conditions of children by ensuring a reliable energy supply, while minimising the environmental impact of deforestation. Simultaneously, the rehabilitation of local ecosystems, through sustainable resource management, constitutes another resilience lever for vulnerable communities. Integrated water and land management projects have enhanced the ability of populations to cope with recurring climate disasters.⁸⁰ These local solutions not only help mitigate the effects of climate change but also provide displaced children with a more stable environment, thereby ensuring the protection of their rights to health, security and education.

However, given the scale of the climate challenge, these local initiatives must be supported by strengthened international cooperation. International actors play a crucial role in providing immediate humanitarian assistance while facilitating the establishment of sustainable solutions. Agencies such as UNICEF, the United Nations High Commissioner for Refugees (UNHCR) and local NGOs offer indispensable support in implementing national strategies, ensuring that the rights of internally displaced children are integrated into climate change response policies. Their role goes beyond emergency aid. They actively contribute to integrating long-term solutions, respecting child rights principles, particularly through climate risk management and improvements in sanitation and educational infrastructures.

From this standpoint, African states, working in partnership with international actors and NGOs, must intensify their efforts to protect the rights of internally displaced children in the face of climate change impacts.⁸¹ This involves establishing inclusive climate policies that consider the specific needs of these children, particularly in the areas of health, education and protection. Effective coordination between governments, humanitarian actors and international agencies is essential to maximise the impact of interventions and reduce the health, psychological and socio-economic risks faced by displaced children. In this regard, adequate funding and strong political will are critical to ensure the effective implementation of solutions that address the impacts of climate change, while providing a safe and healthy environment for future generations.⁸²

Climate justice should be the guiding principle of actions undertaken to protect the rights of internally displaced children in Africa. This principle rests on the notion that the countries most accountable for climate disruption have a duty to act in solidarity with the most vulnerable populations. In Africa, this means

79 UNICEF 'L'impact du changement climatique sur les enfants déplacés: Rapport' (2023) 12.

80 JR May and others *Global environmental constitutionalism* (2014) v-v.

81 UNICEF 'The state of the world's children: Children in a digital world' (2017) 60-62.

82 World Bank 'Climate change and migration in Africa: Protecting children's rights (2021).

ensuring that the rights of displaced children are fully respected and integrated into all political and humanitarian responses to climate change.⁸³ Climate policies must ensure that these children have access to a healthy environment, adequate sanitation infrastructure and facilitated access to education, while considering local and regional priorities. Ultimately, these actions must be implemented within the framework of sustainable development strategies to ensure a stable and secure future for internally displaced children.

5 Conclusion

The climate crisis and its impacts on internally displaced children in Africa reflect a dual injustice: on the one hand, historical inequalities between states, exacerbated by the north-south divide; on the other, the structural vulnerabilities affecting the most marginalised groups, particularly children. In the face of these intensifying challenges, law emerges as a vital instrument for ensuring a fair and sustainable transition. As both a legal and ethical paradigm, climate justice entails differentiated responsibilities among states, grounded in the principle of common but differentiated responsibilities. It calls for binding commitments, financial and technological solidarity mechanisms, and the explicit recognition of the rights of displaced children within national and international normative frameworks. Such recognition is not merely a legal obligation but a moral imperative, consistent with the principles of intergenerational equity. From an operational perspective, the climate crisis underscores the urgency of integrating environmental standards, human rights and sustainable development goals. This necessitates reforming global legal governance, placing the rights of future generations and vulnerable populations at the heart of public policy. Climate adaptation strategies must be proactive and tailored to the specific needs of displaced children, in line with the commitments made under the Paris Agreement.

Moreover, the interplay between local initiatives, state obligations and international assistance constitutes a decisive lever for strengthening the resilience of affected communities. Reforestation projects, access to renewable energy and sustainable resource management demonstrate that local solutions can yield global benefits, merging climate justice with social justice. Ultimately, the protection of internally displaced children must not be viewed as a temporary humanitarian measure. It should become a foundational pillar of legal and political strategies addressing climate change. The right to a sustainable future, enshrined in the highest aspirations of international law, demands a rigorous and forward-looking consideration of the needs of displaced children.

83 J Williams and others 'Africa and climate justice at COP27 and beyond: Impacts and solutions through an interdisciplinary lens' (2023) 5 *UCL Open: Environment* 09, <https://doi.org/10.14324/111.444/ucloe.000062> (accessed 7 August 2025).

The girl child and climate justice in South Africa and Zimbabwe: A comparative legal and policy perspective

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Abstract: Climate change disproportionately impacts vulnerable populations, with girls facing unique challenges that exacerbate existing inequalities. This article examines the intersection of climate justice and the rights of the girl child through a comparative legal and policy analysis of South Africa and Zimbabwe. Drawing on international human rights frameworks and national climate policies, the article investigates how the legal and policy landscapes in South Africa and

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Zimbabwe address the rights of the girl child in the context of climate change. The article uses primary and secondary sources ranging from constitutional provisions on climate-related legislation to publications, government reports, legal documents and policy papers relevant to South Africa and Zimbabwe. It provides a descriptive figure of the girl child as the intersectionality of being female and a child, as a vulnerable person, in the context of climate change. It found that key issues exist with the existing legal and policy framework that expose the vulnerability of the girl child to climate injustice. Responding to these issues will help improve gender inclusion in policy making and protect girls from climate change impacts in South Africa and Zimbabwe.

Key words: climate justice; girl child; climate law and policy; South Africa; Zimbabwe

1 Introduction

Climate change has emerged as a significant global challenge in recent times and is affecting different sectors of communities differently.¹ The impact of climate change on vulnerable populations has contributed to exacerbating existing inequalities and creating new challenges for those already marginalised.² Women, children and persons with disabilities fall into this category. The Intergovernmental Panel on Climate Change (IPCC) highlights that climate-related disasters such as droughts, floods and extreme temperatures are more likely to impact low-income communities, women and children, particularly in developing countries.³ Even among these vulnerable citizens, the intersectionality reveals the vulnerability of the girl child as intensified by socio-economic, cultural and gender-based factors.⁴ The girl child is disproportionately affected because she belongs simultaneously to both the female and child categories.

Before now, the girl child, occupying the dual status of female and child, has been disproportionately and adversely affected by societal issues – particularly socio-economic challenges – compared to others.⁵ For example, the lack of water or its scarcity, inadequate or underdeveloped infrastructures, would mean that she lags in opportunities to access health, education, and so forth, and experiences a higher incidence of poverty than any other age or gender group in society. This

1 K Abbass and others 'A review of the climate change impacts, adaptation, and sustainable mitigation measures' (2022) 29 *Environmental Science and Pollution Research* 42539.

2 K Thomas and others 'Explaining differential vulnerability to climate change: A social science review' (2019) 10 *Wiley Interdisciplinary Reviews: Climate Change* e565.

3 Intergovernmental Panel on Climate Change *Global warming of 1.5°C: IPCC Special Report* (2018), <https://www.ipcc.ch/sr15/> (accessed 17 January 2025).

4 S Shekhar & A Dwivedi 'Gendered disparities in water and sanitation through an intersectional lens: Emphasising women's perspectives' (2024) 11 *Space and Culture, India* 20.

5 A Guedes and others 'Bridging the gaps: A global review of intersections of violence against women and violence against children' (2016) 9 *Global Health Action* 31516.

is besides the cultural practices, such as early or forced marriage, to which she may be subjected.⁶

Specifically, climate change has led to increased food insecurity, water scarcity and health risks, all of which disproportionately affect women and children. Girls in most regions, and especially in Africa, often bear the brunt of these challenges, as they, like women and other females, are often tasked with the responsibility of collecting water, care giving and food preparation, roles that become increasingly difficult in the face of environmental stressors.⁷ At the same time, as children, they are also affected. In fact, in recent times, research provides that forced migration as a result of climate change impact can be linked to the surge in forced marriages for the girl child, disruption of education, rape/sexual assault and other related issues. These challenges, which had previously shown signs of decline due to various societal interventions, appear to resurface in the wake of climate-induced displacement.⁸

Climate justice refers to the ethical and political concept that addresses the social, economic and environmental impacts of climate change, focusing on fairness and equity.⁹ It underscores that those least responsible for causing climate change – often the poorest and most marginalised communities – bear a disproportionate share of its impacts. Climate justice advocates for the rights of these vulnerable populations, demanding that they receive adequate support and representation in climate policies and decision-making processes. For the girl child in Africa, particularly in South Africa and Zimbabwe, climate justice will connote addressing her immediate and long-term needs. This encompasses guaranteeing access to education and health care, safeguarding against exploitation, and promoting participation in decision-making processes. This would mean providing opportunities through legal frameworks, policies, systems, strategies and mechanisms to access these or other ways to promote a more just and equitable response to climate change that empowers girls and upholds their rights.

Elsewhere, critics argue that legal frameworks have failed the girl child by providing insufficient protection, as she appears to have consistently been an afterthought in their provisions.¹⁰ Hence, this article seeks to examine whether the girl child is included as a subject for protection in climate change or

6 Shekhar & Dwivedi (n 4).

7 N Seddon 'Ecosystem-based adaptation: A win-win formula for sustainability and resilience' (2019) 573(7775) *Nature* 36.

8 R Black and others 'Migration and climate change: Toward an integrated assessment of sensitivity' in T Faist & J Schade (eds) *Disentangling migration and climate change: Methodologies, political discourses and human rights* (2013) 29-53.

9 D Krause 'Transformative approaches to address climate change and achieve climate justice' in T Jafray (ed) *Routledge handbook of climate justice* (2018) 509-520.

10 BE Hernández-Truyol 'International organisations and gender discrimination: Supersexing gender mainstreaming' in M Ragazzi (ed) *Evolutions in the law of international organizations* (2015) 423-450.

environmental-related legal frameworks, whether systems and mechanisms are in place, and their sufficiency to promote an equitable response to climate change for the girl child. It then seeks to recommend relevant solutions. Considering that the discourse falls within an intersection of climate change, gender, children and the environment, the applicable legal framework will include specific climate change laws, environmental laws, human rights provisions, gender policies or laws relating to children.

The article focuses on South Africa and Zimbabwe. The rationale stems from the fact that the gendered impacts of climate change in South Africa and Zimbabwe are evident in the way climate-related challenges exacerbate pre-existing gender inequalities. South Africa is known for its robust provision for and recognition of gender and children's rights, and it will be interesting to check its provision about the emerging discourse of climate change, especially as it relates to the girl child. Both countries have climate-related provisions that presuppose inclusive provisions, especially in the case of South Africa, which has robust provisions and respect for the rights of children. In South Africa, for example, the National Climate Change Adaptation Strategy (NCCAS) acknowledges the differential impacts of climate change on women and girls, noting that they are more vulnerable to climate-related health issues, economic instability and social disruption.¹¹ Similarly, in Zimbabwe, the National Climate Change Response Strategy (NCCRS) highlights the gendered nature of climate change impact, how girls are more likely to be affected by droughts and food shortages.¹² Recognising that females are disproportionately affected, this highlights the unique challenges – particularly socio-economic impacts – that leave many girls in rural areas without sufficient support,¹³ one would expect the consideration of provisions for the protection of girls. The article analyses relevant laws and policies and provides a descriptive narrative of the girl child as an intersectionality of being both female and a child, as a vulnerable person, within the impact of climate change and the analysis of the existing laws and policies in both countries. It also undertakes a comparative analysis of the legal framework in the two countries on the discourse and checks the level of their protection for the girl child from the impact of climate change.

The article is structured in six parts. The first part introduces the article. The second part discusses the contextual framework, examining the ways in which and the factors by which the girl child is uniquely vulnerable to the effects of climate change compared to other community members. The third part discusses

11 Department of Environment, Forestry and Fisheries 'National Climate Change Adaptation Strategy' (2020) Government of South Africa, <https://www.environment.gov.za> (accessed 27 May 2025).

12 Government of Zimbabwe *National Climate Change Response Strategy* (2015) Ministry of Environment, Water and Climate.

13 AN Nyathi 'Exploring socio-economic challenges faced by female headed households in rural districts: The case of Manama Village, Matebeleland south province in Zimbabwe' (2018) MA Gender Studies, University of Venda, <https://univendspace.univen.ac.za/server/api/core/bitstreams/43cd0b46-3669-4736-be7c-cb9e84c17b38/content> (accessed 28 May 2025).

a gender and child-inclusive analysis of the legal and policy framework on climate change in South Africa and Zimbabwe. The fourth part details the comparative analysis of legislative frameworks for climate justice in South Africa and Zimbabwe. The fifth part provides the policy recommendation for climate justice for the girl child. The sixth part concludes the article.

2 Contextualising the girl child and vulnerability

The girl child is particularly vulnerable to the impacts of climate change due to a combination of socio-economic and cultural factors. In South Africa and Zimbabwe, girls are often tasked with household responsibilities directly impacted by environmental changes, such as water collection and food preparation. These responsibilities and limited access to education and health services increase their vulnerability to climate-related shocks.¹⁴ Moreover, climate change can exacerbate gender-based violence, as resource scarcity and displacement lead to increased tensions within communities. Girls have been proven to be at a higher risk of experiencing violence, exploitation and abuse during climate-related disasters, particularly in settings where traditional gender roles are strongly enforced.¹⁵ While performing gender ascribed roles or chores, such as fetching water in distant places, girls may be raped, kidnapped or abducted, wounded by animals or men, or even disabled.¹⁶ Girls may be compelled to leave school, placing them on a trajectory toward lifelong poverty.

The girl child in Africa, particularly in countries such as South Africa and Zimbabwe, is uniquely and disproportionately affected by climate change due to a combination of social, economic and cultural vulnerabilities.¹⁷ Unlike adult women or boys, girls are more likely to face disrupted education when climate-induced disasters (such as droughts or floods) compel families to focus on household survival or to arrange early marriages for their daughters.¹⁸ Gender norms often assign girls the roles of fetching water and firewood, tasks made more difficult by environmental degradation,¹⁹ thereby exposing them to greater physical and psychological risks, including gender-based violence.²⁰

14 M Alston 'Gender mainstreaming and climate change' (2014) 47 *Women's Studies International Forum* 287.

15 S Bradshaw & M Fordham 'Double disaster: Disaster through a gender lens' in S Fothergill & SL Peck (eds) *Women and disasters in the 21st century* (2015) 236.

16 E Boshoff & S Damtew 'The potential of litigating children's rights in the climate crisis before the African Committee of Experts on the Rights and Welfare of the Child' (2022) 22 *African Human Rights Law Journal* 1.

17 L Kahomwe & T Muzingili, 'Impact of climate change disasters on access to education and coping mechanisms for rural learners in Zimbabwe' (2025) 12 *Cogent Education* (see also UNICEF South Africa *Exploring the impact of climate change on children in South Africa* (Pretoria: UNICEF South Africa 2011)).

18 Kahomwe & Muzingili (n 17).

19 As above.

20 UN Women 'How gender inequality and climate change are interconnected' *UN Women* 21 April 2025, <https://www.unwomen.org/en/articles/explainer/how-gender-inequality-and-climate-change-are-interconnected> (accessed 28 May 2025).

Poverty and food insecurity, which are intensified by climate change, can lead to malnutrition and poor health among girls, especially in rural areas with limited access to healthcare services and clean water.²¹ These intersecting vulnerabilities, compounded by limited political voice, legal protection and access to social services, necessitate targeted, gender-sensitive policies that address not only the environment but also the structural inequalities that make girls more susceptible to the adverse effects of climate change in South Africa and Zimbabwe.²²

Research provides that addressing the vulnerabilities of the girl child in the context of climate change will require a multi-faceted approach, including policy interventions, community-based adaptation strategies, and the empowerment of girls through education and economic opportunities.²³ Such recommendations suggest that the existing legal framework, or related policies, may be non-inclusive and, therefore, insufficient for the protection of the girl child.²⁴ In South Africa, initiatives such as the National Youth Resilience Framework aim to engage young people, including girls, in climate adaptation efforts, thereby building resilience at the community level.²⁵ In Zimbabwe, community-based adaptation projects that involve women and girls in sustainable agricultural practices and water management have shown promise in reducing vulnerability and enhancing resilience.²⁶ These initiatives underscore the importance of localised, participatory approaches that involve girls in designing and implementing adaptation strategies.

2.1 Climate-related challenges

South Africa and Zimbabwe face multiple climate-related obstacles, including environmental degradation, socio-economic vulnerability and governance issues. The two countries are highly vulnerable to the effects of climate change,²⁷ with profound implications for agriculture, water resources, public health and overall economic security.²⁸

Climate change severely impacts South Africa's agricultural industry, which is critical to the country's economy and food security. The government has seen a significant increase in temperatures and a decrease in yearly rainfall, notably in the west and south. The Western Cape, for example, experienced a severe drought from 2015 to 2018, culminating in the 'Day Zero' disaster, during which

21 Kahomwe & Muzingili (n 17).

22 Kahomwe & Muzingili and UNICEF South Africa (n 17).

23 S Balabantaray 'Gendered vulnerabilities and resilience in the face of climate change: An analysis of women's experiences and adaptation strategies' (2023) 4 *International Journal of Multidisciplinary Research and Growth Evaluation* 323.

24 FN Masinga 'Women's perspectives and experiences of climate change with specific focus on drought in Kwa-Ngwanase, KwaZulu-Natal, South Africa' PhD thesis, University of KwaZulu-Natal, Howard College, 2018.

25 Department of Environment, Forestry and Fisheries 'National Youth Resilience Framework' (2020) Government of South Africa.

26 Nyathi (n 13).

27 Kahomwe & Muzingili and UNICEF South Africa (n 17).

28 As above.

water levels in the primary reservoirs declined to critically low levels.²⁹ This occurrence emphasised the sensitivity of South Africa's water supply systems to climate variability and the importance of integrated water resource management methods that consider both short and long-term climate forecasts.

Zimbabwe encounters identical issues but with additional complications owing to its socio-economic situation.³⁰ Droughts have been a recurring issue in the nation, particularly during the 2015-2016 agricultural season, aggravated by El Niño.³¹ These climate trends have resulted in lower agricultural yields, endangering food security and livelihoods, particularly in rural regions.³² Furthermore, Zimbabwe's political instability and economic issues increase the effects of climate change, making it more difficult to execute effective adaptation strategies.³³ Zimbabwe and South Africa are witnessing climate change and its impacts on public health. For example, higher temperatures relate to increased vector-borne illnesses, such as malaria, in formerly unaffected areas.³⁴ Furthermore, the shortage of water supplies has resulted in inadequate sanitation and hygiene, increasing the prevalence of waterborne diseases such as cholera.³⁵

Moreover, climate change worsens socio-economic disparities across both countries. Climate-related concerns disproportionately affect vulnerable people, especially women and children.³⁶ In rural regions where agriculture is the primary source of income, women suffer the brunt of climate impacts from their participation in food production and water collection.³⁷ The issue is intensified by limited access to resources and information, and participation in decision-making processes, which impedes these communities' ability to adapt to climate change.³⁸ South Africa and Zimbabwe face substantial climate-related problems

29 G Ziervogel and others 'Climate change impacts and adaptation in South Africa' (2014) 5 *Wiley Interdisciplinary Reviews: Climate Change* 605; see also P Wolski 'How severe is Cape Town's "Day Zero" drought? A quantitative analysis of the city's vulnerability to water scarcity' (2018) 564 *Journal of Hydrology* 455.

30 The Heritage Foundation 'Index of Economic Freedom: Zimbabwe' (2023), <https://www.heritage.org/index/pages/country-pages/zimbabwe> (accessed 24 November 2024).

31 YT Bahta and others 'Assessing the economic impacts of climate change on agriculture in Zimbabwe: A Ricardian approach' (2016) 8 *Journal of Disaster Risk Studies* 1; see also T Chagutah *Climate change vulnerability and adaptation preparedness in Southern Africa: Zimbabwe country report* (2010).

32 Kahomwe & Muzingili (n 17).

33 G Nhamo & D Chikodzi *Climate change adaptation, policy, and governance in Zimbabwe: A comprehensive analysis* (2015).

34 MP Mutowo and others 'Climate change and malaria trends in rural and urban Zimbabwe: Implications for adaptation policy and practice' (2018) 11 *Global Health Action* 1.

35 T Dube and others 'Drought-induced food insecurity in Zimbabwe: A call for resilience building' (2016) 8 *Sustainability* 1.

36 MM Khine & U Langkulen 'The implications of climate change on health among vulnerable populations in South Africa: A systematic review' (2023) 20 *International Journal of Environmental Research and Public Health* 3425.

37 B Mpofu and others 'Gender and climate change in Africa: A review of impact and gender-responsive solutions' (2020) 8 *Climate* 1.

38 UN Women 'Explainer: How gender inequality and climate change are interconnected' (2022), <https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected> (accessed 20 November 2024).

linked to their socio-economic and political situations.³⁹ Comprehensive and context-specific plans are necessary to address these strains, considering each country's particular vulnerabilities.

2.2 Gender and climate justice: Normative standards

Gender and climate justice are emerging as significant areas in the larger discussions on climate change.⁴⁰ Globally, it is becoming clear that climate change is not gender-neutral, with women and girls typically paying a disproportionate part of the price.⁴¹ This is especially true for the girl child who has additional vulnerabilities owing to her age, gender and socio-economic situation.⁴² Globally, the United Nations Framework Convention on Climate Change (UNFCCC)⁴³ has made progress in recognising the importance of gender in climate action, particularly with the 2017 adoption of the Gender Action Plan (GAP),⁴⁴ which aims to increase women's participation in climate-related decision making and ensure that climate policies are gender-responsive.⁴⁵ Despite these efforts, considerable gaps persist in the implementation of gender-sensitive climate policies, particularly in poor countries where women are frequently excluded from decision-making processes.⁴⁶

Gender and climate justice have a particularly strong nexus in Africa. African women, particularly girls, are among the most susceptible to climate change because they rely on natural resources for a living and have limited access to land, education and financial resources.⁴⁷ This vulnerability is exacerbated by discriminatory cultural practices and legislative frameworks that hinder women's capacity to own property or obtain credit.⁴⁸ Climate change has a gendered influence in many South African and Zimbabwean areas. For example, in agriculture, women are frequently responsible for subsistence farming and food production, rendering them more vulnerable to the effects of droughts

39 Kahomwe & Muzingili and UNICEF South Africa (n 17).

40 UN Women (n 20).

41 World Meteorological Organisation 'The climate crisis is not gender neutral' (2024), <https://wmo.int/media/news/climate-crisis-not-gender-neutral> (accessed 22 November 2024).

42 UN Women (n 20).

43 United Nations Framework Convention on Climate Change (UNFCCC) *Gender Action Plan under the Lima Work Programme on Gender* (2019), <https://unfccc.int/topics/gender/workstreams/the-gender-action-plan> (accessed 21 May 2025).

44 As above.

45 As above.

46 A Hernández Martínez 'Climate change on rural women in East Africa: analysis of consequences and recommendations from a gendered approach' End of degree thesis, Degree in International Relations, Law Faculty, Universidad de Alicante, 2023.

47 ISS Africa 'African women bear the brunt of climate change' (2023), <https://issafrica.org/pscreport/psc-insights/african-women-bear-the-brunt-of-climate-change> (accessed 23 May 2025).

48 EL Ampaire and others 'Institutional challenges to climate change adaptation: A case study on policy action gaps in Uganda' (2017) 75 *Environmental Science and Policy* 81; see also AM Tripp *Women and power in post-conflict Africa* (2019).

and shifting rainfall patterns.⁴⁹ Despite their critical role in food security, women face restricted access to agricultural extension services, technology and markets, limiting their capacity to adapt to climate change.⁵⁰ Legal and policy frameworks in both nations have made progress in addressing gender inequality,⁵¹ but considerable disparities persist. South Africa's National Climate Change Adaptation Strategy (2019) acknowledges the need for gender-responsive climate action but fails to discuss specific measures to protect women's and girls' rights.⁵² Zimbabwe's climate policies, such as the National Climate Policy (2016),⁵³ recognise gender problems but lack effective implementation and monitoring systems.⁵⁴

Furthermore, climate justice goes beyond the immediate effects of climate change to address questions of representation and decision making. Women, particularly those from marginalised areas, frequently have little representation in climate-related decisions, whether at the local or global level.⁵⁵ This lack of representation impedes the creation of inclusive and equitable climate policies that meet the interests of all people.⁵⁶ Attaining gender and climate justice necessitates a comprehensive strategy that addresses the systemic inequities that increase women and girls' susceptibility to climate change. This involves improving legal and regulatory frameworks, advocating gender-responsive climate action and guaranteeing women's meaningful involvement in climate decision making.

Comparative studies on climate justice in South Africa and Zimbabwe highlight essential differences in climate policy provisions, implementation and impact. South Africa's more structured approach, as described by Sowman and Rebelo,⁵⁷ contrasts with Zimbabwe's fragmented efforts.⁵⁸ Both countries face resource allocation and institutional capacity challenges, but South Africa's policies benefit from more robust frameworks and greater integration with national development strategies.⁵⁹ A significant gap in the literature is the need

49 T Gumucio and others 'Gender-responsive rural climate services: A review of the literature' (2017) 10 *Climate and Development* 1.

50 Mpofo and others (n 37).

51 L Mhuru 'Gender justice, law and religion in Zimbabwe: An evaluation of the role of sacred texts' (2023) 79 *Theological Studies/Teologiese Studies*; see also UN Women *South Africa's Report on the Progress Made on the Implementation of the Beijing Platform for Action* (2019), https://www.unwomen.org/sites/default/files/202501/south_africa_b30_report_en.pdf (accessed 23 May 2025).

52 Republic of South Africa *National Climate Change Adaptation Strategy* (2019).

53 Ministry of Environment, Water and Climate *National climate policy* (2016) Government of Zimbabwe.

54 L Nyahunda and others 'Analysis of gender responsiveness of climate change response strategies in the Southern African Development Community (SADC) region' (2020) 16 *Asian Journal of Social Sciences and Humanities* 1823-1884.

55 UN Women 'Explainer: Why women need to be at the heart of climate action' (2022), <https://www.unwomen.org/en/news-stories/explainer/2022/03/explainer-why-women-need-to-be-at-the-heart-of-climate-action> (accessed 21 May 2025).

56 As above.

57 As above.

58 Nyathi (n 13).

59 National Planning Commission 'Our future – Make it work: Executive summary' (2012), <https://www.gov.za/sites/default/files/Executive%20SummaryNDP%202030%20%20>

for more in-depth analyses of how gender-specific vulnerabilities are addressed in these frameworks. While existing studies acknowledge the impact of climate change on women and girls, there is limited research on the specific mechanisms through which policies address these vulnerabilities. There is a need for more comparative research that evaluates the effectiveness of different adaptation strategies across various contexts within these countries.

3 Child inclusivity: South Africa and Zimbabwe

International or global instruments that may be applicable include the Convention on the Elimination of All Discrimination Against Women (CEDAW);⁶⁰ the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol);⁶¹ the Convention on the Rights of the Child (CRC);⁶² the African Charter on the Rights and Welfare of the Child (African Children's Charter);⁶³ the United Nations Framework Convention on Climate Change (UNFCCC);⁶⁴ the Kyoto Protocol;⁶⁵ and the Paris Agreement.⁶⁶ Some of these are global and regional human rights instruments. In contrast, the others are climate change-specific instruments applicable in South Africa and Zimbabwe by virtue of signatory, domestication and/or inclusion in national legislation.

CEDAW and the African Women's Protocol are specific frameworks with similar provisions of non-discrimination,⁶⁷ education,⁶⁸ health care,⁶⁹ economic

Our%20future%20-%20make%20it%20work.pdf (accessed 21 May 2025).

60 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted 18 December 1979, entered into force 3 September 1981 1249 UNTS 13 (South Africa ratified in 1995; Zimbabwe ratified in 1991), <https://digitalcommons.maine.edu/mlr/vol54/iss2/4/> (accessed 9 August 2025).

61 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) OAU Doc CAB/LEG. 66.6 (2003) (South Africa ratified in 2004; Zimbabwe ratified in 2008), <https://www.maputoprotocol.up.ac.za/countries/countries-table> (accessed 7 August 2025).

62 United Nations Convention on the Rights of the Child adopted 20 November 1989, entered into force 2 September 1990 1577 UNTS 3 (South Africa ratified in 1995; Zimbabwe ratified in 1990), <https://treaties.un.org/pages/showDetails.aspx?objid=08000002800007fe&clang=en> (accessed 9 August 2025).

63 African Charter on the Rights and Welfare of the Child OAU Doc. CAB/LEG/24.9/49 (1990) (South Africa ratified in 2000; Zimbabwe ratified in 1995), <https://www.acerwc.africa/en/member-states/ratifications> (accessed 9 August 2025).

64 United Nations Framework Convention on Climate Change adopted 9 May 1992, entered into force 21 March 1994 1771 UNTS (South Africa ratified in 1997; Zimbabwe ratified in 1992), https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3 (accessed 9 August 2025).

65 Kyoto Protocol to the United Nations Framework Convention on Climate Change adopted 11 December 1997, entered into force 16 February 2005 2303 UNTS 162 (South Africa ratified in 2002; Zimbabwe ratified in 2009), https://unfccc.int/kyoto_protocol/items/3145.php (accessed 9 August 2025).

66 Paris Agreement adopted 12 December 2015, entered into force 4 November 2016 3156 UNTS 3 (South Africa ratified in 2016; Zimbabwe ratified in 2017), <https://unfccc.int/process/the-paris-agreement/status-of-ratification> (accessed 9 August 2025).

67 Arts 1, 2 & 3 CEDAW (n 60); arts 2 & 8 African Women's Protocol.

68 Art 10 CEDAW; art 12 African Women's Protocol.

69 Art 12 CEDAW; art 14 African Women's Protocol.

empowerment,⁷⁰ and the right to environmental protection⁷¹ for the rights of women and the girl child. Added to this, a general recommendation of CEDAW addresses the intersection of gender and climate change, calling on states to adopt gender-responsive strategies that safeguard the rights of women and girls in the face of environmental challenges.⁷² The recognition of the intersectionality of discrimination against women that affects the girl child is provided in the recommendation.⁷³ The instruments mention the girl child as their specific subject, but do not explicitly provide for climate change. Yet, as it can be interpreted and applied to address the intersection of gender equality, the rights of the girl child, and the listed rights can be reasoned to include protection within the context of the impact of climate change.

Although the original UNFCCC text does not mention gender, women or gender equality, it recognises the necessity of safeguarding vulnerable groups, among which women are frequently included, especially regarding the impacts of climate change. Also, the continuous evolution of climate governance under the UNFCCC umbrella has made progress in including the critical aspects of gender in the global climate action. The Kyoto Protocol did not explicitly incorporate gender or women's protection in its framework. The integration of gender considerations in international climate policy evolved significantly in later years, particularly with the development of the Paris Agreement and the UNFCCC's Gender Action Plan.

The Paris Agreement marks significant progress around gender inclusion in global climate policy by its explicit acknowledgment of the importance of gender equality and promoting gender-responsive approaches. Gender is included in adaptation, capacity building and finance in the document, which is a notable consideration. These instruments are applicable in South Africa and Zimbabwe as they serve as a basis and guideline for legislation and policies on climate change.

3.1 South African legal and policy framework

The Constitution of South Africa protects the rights of children, including the right to basic nutrition, shelter, basic healthcare services and social services, which can be easily impacted by climate change. The Constitution also guarantees the right to a healthy environment.⁷⁴ It contains a provision foundational for addressing gender disparities, including those exacerbated by climate change, by

70 Arts 11, 13 & 14(2)(g) CEDAW; arts 13 & 19 African Women's Protocol.

71 Art 14(2)(h) CEDAW; art 18 African Women's Protocol.

72 CEDAW Committee General Recommendation 37 on gender-related dimensions of disaster risk reduction in the context of climate change (2018) UN Doc CEDAW/C/GC/37.

73 CEDAW Committee General Recommendation 28 on the core obligations of state parties under article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010) UN Doc CEDAW/C/GC/28.

74 Constitution of the Republic of South Africa, 1996 (Constitution).

providing the right to equality.⁷⁵ It prohibits discrimination on various grounds, including gender, age and social status.⁷⁶ Climate change can impact human dignity. The Constitution provides for the right to dignity,⁷⁷ guarantees the right to health care, food, water and social security, which are critical for the well-being of children, especially the girl child, and are exacerbated by climate change impacts. The right to education is guaranteed.⁷⁸ However, the Constitution does not explicitly mention climate change or gender-specific vulnerabilities, although the protection of the girl child in the context of climate change may be read into the provisions.

The Children's Act emphasises the best interests of the child.⁷⁹ Climate change can exacerbate the risks of abuse, neglect and degradation, especially in the case of the girl child. The Children's Act provides for protection against these occurrences.⁸⁰ The right to education, which can be disrupted by climate change, especially for the girl child, is protected in this Act.⁸¹ The right to participation is provided and can be implied to provide that children have a right to participate in the issues and discourse of climate change, as it will affect them.⁸² The Act neither explicitly addresses climate change nor recognises the intersectional vulnerabilities of the girl child, nor does it provide specific provisions for her, focusing instead on children in general. The lack of specific reference to the 'girl child' means that her gender-specific issues and vulnerabilities are not directly addressed in the Act. The omission of climate change and the specific needs of the girl child renders the provisions inadequate.

The Climate Change Act is subject-specific legislation, unlike general legislation such as the Constitution. It mandates the development of national adaptation and mitigation strategies to enhance resilience and reduce vulnerability to climate impacts across all sectors of society. It mentions vulnerabilities and risks,⁸³ public participation and consultation,⁸⁴ education, awareness, capacity building⁸⁵ and integration of climate considerations into development plans,⁸⁶ all of which are likely to target the vulnerabilities of the girl child more directly than those of other citizens. However, it is not gender specific and does not explicitly mention the girl child. Its lack of gender sensitivity may prevent it from addressing the specific needs of girls, as it may exacerbate existing gender inequalities and leave the girl child more vulnerable to the adverse effects of climate change.

75 Sec 9 Constitution (n 74).

76 Sec 9(3) Constitution.

77 Sec 10 Constitution.

78 Sec 29(1)(a) Constitution.

79 Children's Act 38 of 2005.

80 As above.

81 Sec 7(1)(h) Children's Act.

82 Sec 10 Children's Act.

83 Climate Change Act 22 of 2024.

84 Clause 7(1)(a) Climate Change Act.

85 Clause 3(k) Climate Change Act.

86 As above.

The National Environmental Management Act (NEMA)⁸⁷ provides the framework for environmental governance and management in South Africa. It offers environmental rights and sustainable development,⁸⁸ and imposes a duty of care on all persons to prevent environmental harm and to take remedial actions should such damage occur.⁸⁹ Provision is made for public participation and access to information.⁹⁰ It provides an opportunity to assess how proposed developments might impact vulnerable groups, including the girl child.⁹¹ It promotes the principle of environmental justice, which seeks to ensure that the adverse effects of environmental degradation do not disproportionately impact marginalised and vulnerable communities.⁹² The Act is a broad provision on environmental protection, and neither explicitly mentions the girl child nor is it gender specific. In this way, it fails to account for the distinct vulnerabilities and challenges that girls encounter in the context of climate change.

South Africa's National Policy Framework for Women's Empowerment and Gender Equality is called the Gender Policy Framework.⁹³ It emphasises the importance of gender equality in local government, ensuring that women and girls are well represented and protected. While the focus primarily is on gender equality in governance, the policy addresses broader issues such as the impact of climate change. Moreover, being a gender-specific provision, the girl child is included among the vulnerable subjects in the policy. The framework broadly addresses the protection of vulnerable groups in chapter 1 and section 1.5, but there is limited specific focus on the girl child in the context of climate change.

In summary, the South African government has taken steps to promote climate justice, focusing on the protection of vulnerable groups. The key measures include legislation and policy such as the Climate Change Act, which mandates climate adaptation plans that consider children's needs.⁹⁴ The National Environmental Health Policy prioritises safe environments to reduce child health risks.⁹⁵ Gender-responsive plans include the South African Youth Gender Action Plan SA (YGAP) and the South African Youth Climate Action Plan.⁹⁶ Furthermore, a cursory look into South Africa's legal framework and policies on climate change, while progressive in many respects, falls short in providing specific protections for the girl child. The failure to explicitly recognise and address the unique

87 National Environmental Management Act 107 of 1998 (NEMA).

88 Sec 2(3)(4) NEMA.

89 Secs 2(4)(p), 28(1)(3) & 28(7) NEMA.

90 Secs 2(4)(f) & 2(4)(k) NEMA.

91 Sec 2(4)(c) NEMA.

92 Secs 2(4)(c), (d), (f) & (q) NEMA.

93 The Office on the Status of Women 'South Africa's National Policy Framework for Women's Empowerment and Gender Equality', https://www.dffe.gov.za/sites/default/files/docs/national_policy_framework.pdf (accessed 9 August 2025).

94 Secs 17 & 21 Climate Change Act.

95 Sec 4(3)(3) National Environmental Health Policy 2019-2020.

96 The South African Youth Climate Action Plan 2021 South African Institute of International Affairs (2021), <https://saiia.org.za/wp-content/uploads/2021/10/The-South-African-Youth-Climate-Action-Plan-2021.pdf> (accessed 23 May 2025).

vulnerabilities of girls in the context of climate change results in a significant protection gap.

3.2 Zimbabwean legal and policy framework

In Zimbabwe, the legal framework and policies relevant to the protection of the girl child in the context of climate change encompass laws focused on child protection, gender equality, environmental conservation and climate change adaptation. Zimbabwe does not yet have a comprehensive legislative framework on climate change adaptation,⁹⁷ although a national climate policy is in place.⁹⁸ Climate change issues are scattered in various legal instruments and sectors that cover environmental legislation, energy, water, local authorities, agriculture and the Constitution. The Constitution of Zimbabwe provides for children's rights, gender equality, environmental protection and social welfare.⁹⁹ Section 73 of the Constitution of Zimbabwe is vital in the context of climate change since it gives everyone the right to a healthy and safe environment and requires the state to avoid environmental deterioration and promote sustainable development. Sections 19 and 81 provide for the protection of children, who are particularly exposed to the consequences of climate change, such as food instability and health concerns. In line with sections 73, 19 and 81 of the Constitution, advancing climate justice for the girl child requires targeted safeguards and empowerment within climate mitigation strategies.

The Constitution of Zimbabwe¹⁰⁰ provides the right to gender equality and non-discrimination, including that based on sex and gender.¹⁰¹ It includes the rights of children,¹⁰² the right to education,¹⁰³ health care,¹⁰⁴ shelter, protection from abuse,¹⁰⁵ and the right to an environment that is not harmful to health or well-being. It mandates the state to take measures to prevent environmental harm.¹⁰⁶ The vulnerability of children is identified, and their protection is the responsibility of the government.¹⁰⁷ There is a provision for the empowerment and development of youth,¹⁰⁸ social welfare and economic rights.¹⁰⁹ However, it mentions neither the girl child nor climate change explicitly.

97 D Chidarara 'Climate change, the mining industry and the law in Zimbabwe' in M Mukhlani (ed) *Climate change law in Zimbabwe: Concepts and insights* (2019) 139.

98 MA Dzvimbo & others 'Understanding the politics of climate change in Zimbabwe' in E Moyo & B Kumwenda (eds) *Climate change strategies: Handling the challenges of adapting to a changing climate* (2023) 183-198.

99 Constitution of Zimbabwe Amendment (No 20) Act 2013 secs 19, 30, 56, 73, 75, 80-84.

100 Constitution of Zimbabwe (n 99).

101 Secs 17, 56 & 80 Constitution of Zimbabwe.

102 Sec 81 Constitution of Zimbabwe.

103 Sec 75 Constitution of Zimbabwe.

104 Sec 76 Constitution of Zimbabwe.

105 Sec 81 Constitution of Zimbabwe.

106 Sec 73 Constitution of Zimbabwe.

107 Sec 19 Constitution of Zimbabwe.

108 Sec 20 Constitution of Zimbabwe.

109 Secs 24(1), 30, 71, 75-77 Constitution of Zimbabwe.

The Children's Amendment Act, 2023,¹¹⁰ enhances the Children's Act but does not explicitly refer to the 'girl child' as a distinct group – it continues to cover all children under the age of 18 years, irrespective of gender. The amendment strengthens child protection by, for example, introducing criminal sanctions against corporal punishment at home and in schools, thereby advancing legal safeguards for children generally. However, even with this improvement, there is no specific mention of climate change or its impacts on children in the Act. Apart from these defects, the Act is designed to protect children, and, by extension, it can be argued that the girl child is encompassed within its provisions.

The National Climate Policy 2016 is argued to be comprehensive as it provides a framework for addressing the impacts of climate change through mitigation and adaptation strategies.¹¹¹ Its primary focus is on environmental and developmental issues, which have implications for protecting vulnerable groups. Children fall within this category and, by extension, the girl child. The policy also encourages the integration of gender-sensitive approaches in climate change policies and actions. It provides an understanding of the impact of climate change on women, children and the youth.¹¹² It contains specific measures for children.¹¹³ However, while it is a climate-specific legislation, which provides for vulnerable persons¹¹⁴ and mentions women and children, it does not explicitly mention the girl child. The National Climate Change Response Strategy (2014) contains gender provisions and the protection of vulnerable persons.¹¹⁵ It also mentions children.¹¹⁶ While these provisions can be interpreted to cover the girl child, the girl child is not explicitly mentioned.

The Criminal Laws Amendment (Protection of Children and Young Persons) Act 2024 enhances protections for children, including girls, by redefining a child as any individual under the age of 18 years,¹¹⁷ and criminalising certain abuses. While not exclusively focused on climate change, it strengthens the legal framework for safeguarding children in various contexts. The girl child is also not explicitly mentioned. Zimbabwe's legal framework and policies on climate change do not provide sufficient protection for the girl child. The lack of targeted measures within these frameworks leaves a significant gap in addressing the specific risks and vulnerabilities faced by girls due to climate change.

The Zimbabwean government has initiated several measures to promote climate justice, including enacting gender-responsive climate policies such as the

110 Children's Amendment Act [Chapter 5:06] of 2023.

111 Dzvimbo and others (n 98) 190.

112 Sec 2(3)(2) National Climate Policy of Zimbabwe (2016).

113 As above.

114 Sec 1(3)(3) National Climate Policy.

115 Government of Zimbabwe Ministry of Environment, Water and Climate 'Zimbabwe's National Climate Change Response Strategy' (2014), <https://faolex.fao.org/docs/pdf/Zim169511.Pdf> (accessed 9 August 2025).

116 As above.

117 Sec 4(c) Criminal Laws Amendment (Protection of Children and Young Persons) Act 2024.

Climate Change Gender Action Plan (ccGAP),¹¹⁸ which emphasises integrating gender considerations into climate strategies, recognising that women, children and the youth are disproportionately affected by climate change due to their reliance on natural resources for livelihoods.¹¹⁹ The ccGAP aligns with national policies such as the National Climate Change Response Strategy and the National Gender Policy. Both advocate integrating gender perspectives into environmental and climate change policies and strategies. The government has attempted empowerment through education in the form of collaborations with organisations such as Campaign for Female Education (CAMFED), which have supported girls' education, aiming to build resilience against climate-induced challenges. Also, initiatives such as the National Gender and Climate Change Task Force have been launched to empower young people to participate actively in climate-related decision making.¹²⁰

While these efforts signify progress, challenges remain in fully implementing and scaling these initiatives to ensure comprehensive protection and empowerment of the girl child in the face of climate change. Meanwhile, a cursory look at the primary relevant instruments applicable in both South Africa and Zimbabwe highlights the inadequate protection of the girl child due to the absence of explicit reference. Where protection is provided for vulnerable persons under the category into which she falls, the girl child is either subsumed under women or gender and youth or children without specifically being mentioned. As a result, it appears that the provision exists but is effectively invisible or obscured, requiring deliberate interpretation that may not reflect its true intent. The implementation of laws is also generally challenging in both countries.

4 Legal and policy frameworks: Commonalities and distinctions

The legislative frameworks for climate justice in South Africa and Zimbabwe have made significant strides in addressing the gendered impacts of climate change, particularly the vulnerability of girls. South Africa's National Climate Change Adaptation Strategy (NCCAS) stands out for its comprehensive integration of climate resilience into national disaster management frameworks. This strategy explicitly aims to protect vulnerable groups, including girls, from the adverse effects of climate change through coordinated efforts across various levels of government.¹²¹ The strong emphasis of NCCAS on data collection, monitoring

118 Government of Zimbabwe 'Zimbabwe Climate Change Gender Action Plan' (2023), https://www.undp.org/sites/g/files/zskgke326/files/202304/Zimbabwe%20Climate%20Change%20Gender%20Action%20Plan_0.pdf (accessed 9 August 2025).

119 As above.

120 T Tanner and others 'Youth, gender and climate resilience: Voices of adolescent and young women in Southern Africa' (2022) 14 *Sustainability* 8797.

121 M Sowman & X Rebelo 'Sustainability, disaster risk reduction and climate change adaptation: Building from the bottom up – A South African perspective from the small-scale fisheries sector' (2021) *Creating Resilient Futures* 151.

and evaluation provides a robust mechanism for informed decision making, ensuring that adaptive measures are effective and responsive to the needs of the most vulnerable populations.¹²²

In contrast, Zimbabwe's National Climate Change Response Strategy (NCCRS)¹²³ also incorporates gender considerations, targeting the reduction of vulnerability among women and girls through specific adaptation measures. However, the implementation of these measures has been inconsistent, primarily due to resource constraints and institutional challenges. Despite these difficulties, Zimbabwe has experienced success in community-based adaptation projects, which directly involve women and girls in sustainable agricultural practices and water management.¹²⁴ These initiatives have been crucial in building resilience among girls in rural areas, who are disproportionately affected by climate-related challenges such as droughts.

When comparing the effectiveness of these frameworks, South Africa's NCCAS is more comprehensive and better resourced, allowing for a coordinated and large-scale approach to reducing girls' vulnerability to climate change. Although the inclusion of gender-specific vulnerabilities in NCCAS is somewhat limited, it represents a more holistic approach than Zimbabwe's NCCRS, which has struggled with consistent implementation due to financial and structural limitations. This comparison suggests that while both countries are committed to gender-sensitive climate adaptation, South Africa's framework is more effective in practice, particularly regarding scalability and institutional support.¹²⁵

To enhance the effectiveness of Zimbabwe's climate justice framework, it is essential to improve resource allocation and strengthen institutional capacities to ensure the full implementation of gender-sensitive policies. Moreover, both countries could benefit from adopting best practices from other regions, such as the Scandinavian countries, where gender equality is a core component of climate adaptation strategies.¹²⁶ By learning from these successful models and

122 J Waslander 'Second informal dialogue on adaptation: How are countries bridging the gap between planning and implementation?' 21 November 2019 NDC Partnership, <https://countries.ndcpartnership.org/news/second-informal-dialogue-adaptation-how-are-countries-bridging-gap-between-planning-and> (accessed 23 May 2025).

123 Government of Zimbabwe Ministry of Environment, Water and Climate *Zimbabwe's National Climate Change Response Strategy* (2014), <https://faolex.fao.org/docs/pdf/zim169511.pdf> (accessed 23 May 2025).

124 UNDP 'Rural women rising: How climate-smart agriculture is empowering women farmers and bridging gender divides in Southern Zimbabwe climate change adaptation' (2024), <https://www.adaptation-undp.org/rural-women-rising-how-climate-smart-agriculture-empowering-women-farmers-and-bridging-gender> (accessed 23 May 2025).

125 Republic of South Africa 'National Climate Change Adaptation Strategy Republic of South Africa' (2019), https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf (accessed 23 May 2025).

126 C Remteng and others 'Gender in the nationally determined contributions of African countries: A way forward for effective implementation of adaptation and mitigation strategies' (2022) 3 *Ecofeminism and Climate Change* 2.

enhancing local capacity, both South Africa and Zimbabwe can further reduce the vulnerability of girls to the impacts of climate change.

5 Policy recommendations

To promote climate justice for girls in South Africa and Zimbabwe, gender issues need to be integrated into climate justice frameworks and solid recommendations for policy makers. This part presents extensive policy proposals to address the special problems girls experience due to climate change, promoting gender equality and strengthening the resilience of vulnerable groups. Climate policies must reflect a gender analysis. This includes incorporating gender-specific objectives, indicators and targets into national climate action plans and strategies. Policies should recognise the disproportionate impact of climate change on girls and women and work to solve these disparities.¹²⁷ For example, the South African National Climate Change Response White Paper should be modified to reflect gender-specific goals and measures. By doing so, policy makers may guarantee that climate change measures take into account and address the special needs of girls, resulting in fairer and effective outcomes.

It is essential to carry out gender impact assessments for all climate-related projects and programmes. These evaluations will examine how proposed changes would affect girls and women differently, ensuring that any negative consequences are addressed.¹²⁸ For example, while building a new irrigation project, it should be considered how it would affect the water gathering responsibilities traditionally carried out by girls. This approach will contribute to more inclusive and equitable climate policies by emphasising girls' special needs and vulnerabilities and ensuring that they are not disregarded throughout the planning and implementation stages.

There is a need to create and execute gender-sensitive climate education programmes that are critical for raising awareness about the impact of climate change on girls and equipping them with the information and skills required to adapt to and mitigate its consequences. Gender equality, climate science and sustainable development should all be addressed in the educational curriculum. For example, climate change education in South African and Zimbabwean school curricula may help girls understand their issues and provide them with the tools

127 UN Women 'Turning promises into action: Gender equality in the 2030 Agenda for Sustainable Development' (2018), <https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/Library/Publications/2018/SDG-report-Gender-equality-in-the-2030-Agenda-for-Sustainable-Development-2018-en.pdf> (accessed 20 May 2025).

128 United Nations Development Programme (UNDP) 'Overview of linkages between gender and climate change' (2016), <https://www.undp.org/sites/g/files/zskgke326/files/publications/UNDP%20Linkages%20Gender%20and%20CC%20Policy%20Brief%201-WEB.pdf> (accessed 21 May 2025).

they need to fight for their rights and engage in climate action.¹²⁹ Also, there is a need to invest in capacity-building efforts aimed primarily at women and girls to improve their leadership abilities, climate awareness and ability to participate in decision-making processes. Programmes should include training in sustainable farming methods, renewable energy technology and catastrophe risk mitigation. Empowering girls through education and capacity building increases resilience and encourages active engagement in climate governance, ensuring that their voices are heard and their needs are met.¹³⁰

To implement gender-responsive climate action, there is a need to ensure girls' and women's active engagement in climate-related decision-making processes at all levels. This includes representation on national and local climate councils, policy-making bodies and community-based organisations. Policies should encourage gender equity in leadership and decision-making positions, resulting in a more inclusive approach to climate governance. For example, South Africa and Zimbabwe should set quotas for female representation on climate councils to ensure that women's perspectives are considered in policy development and implementation.¹³¹ Also, the countries should implement gender-responsive budgeting in climate financing, ensuring that resources are directed towards projects that explicitly address the needs and vulnerabilities of girls and women.¹³²

Policy makers should examine and alter existing legislative frameworks to ensure gender responsiveness and alignment with international norms and include gender considerations in national climate laws, policies, and action plans to advance climate justice for girls.¹³³ This entails openly recognising their rights and needs and providing legal safeguards and support channels to help them adapt to climate change. Additionally, policy makers must set up monitoring and evaluation procedures, including independent oversight organisations, to track progress, ensure compliance, and assess the efficacy of gender-responsive climate policies. For instance, South Africa and Zimbabwe should update their climate policies and put in place strict supervision to monitor and report on their impact.¹³⁴

129 United Nations Educational, Scientific and Cultural Organisation (UNESCO) *Education for sustainable development: Partners in action* (2019), <https://unesdoc.unesco.org/ark:/48223/pf0000368829> (accessed 21 May 2025).

130 UNDP *Gender Equality Strategy 2018-2021* (2018), <https://www.undp.org/publications/undp-gender-equality-strategy-2018-2021> (accessed 25 May 2025).

131 United Nations Framework Convention on Climate Change (UNFCCC) 'Enhanced Lima work programme on gender and its gender action plan' (2019), https://unfccc.int/sites/default/files/resource/cp2019_L03E.pdf (accessed 25 May 2025).

132 Organisation for Economic Co-operation and Development (OECD) 'Gender-responsive budgeting in OECD countries' (2017), <https://www.oecd-ilibrary.org/docserver/budget-16-5jfq80dq1zbn.pdf> (accessed 24 May 2025).

133 Committee on the Elimination of Discrimination against Women (CEDAW Committee) General recommendation 37 on the gender-related dimensions of disaster risk reduction in the context of climate change (2018), <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no37-2018-gender-related> (accessed 24 May 2025).

134 OECD 'Enabling women's economic empowerment: New approaches to unpaid care work in developing countries' (2019), <https://www.oecd-ilibrary.org/social-issues-migration-health/>

Policy makers can consider developing and executing social protection programmes for disadvantaged girls and women affected by climate change as critical to increasing their resilience. These initiatives should provide financial assistance, access to healthcare services and other essential services to help people cope with the effects of climate change. Conditional cash transfer programmes, for example, can assist families in keeping their daughters in school, thereby mitigating adverse effects on their education and overall well-being.¹³⁵ South Africa has existing social security measures that provide similar reliefs, such as the Social Relief of Distress (SRD) grant, which offers broad-based and temporary assistance, including for victims of natural disasters. Still, it may be argued that these measures are generally not explicitly designed for climate resilience or the unique needs of girls and women. In contrast, climate-focused social protection programmes would be long-term, gender-responsive initiatives that integrate adaptation goals and target those disproportionately affected by climate change. These could include conditional cash transfers tied to education and health, helping girls stay in school and reducing their vulnerability. Unlike the reactive nature of current grants, these programmes would proactively build resilience and human capital. Thus, they will serve a complementary but distinct role in addressing the more profound, gendered impacts of climate change. Furthermore, providing safe places and support services for girls affected by climate-related disasters is critical to their rehabilitation and empowerment. Such places should offer psychological assistance, health care, education and protection from gender-based violence, assisting girls in recovering from trauma and developing resilience. Setting up community centres with extensive support services in disaster-prone communities can succeed.¹³⁶

Policy makers can ensure that girls and women have equitable access to resources such as land, credit and technology, which is critical for climate change adaptation. Policies should prioritise economic empowerment by providing possibilities for skills development, entrepreneurship and sustainable livelihoods. Microfinance initiatives, for example, that offer low-interest loans to female entrepreneurs can assist them in starting and growing climate-resilient firms.¹³⁷ Furthermore, training in sustainable agricultural methods can help female farmers build resilience and contribute to food security.¹³⁸ Providing targeted assistance to female farmers, frequently disproportionately affected by climate change, is critical for increasing their resilience. This includes access to climate-resilient

enabling-women-s-economic-empowerment_ec90d1b1-en (accessed 27 May 2025).

135 United Nations Children's Fund (UNICEF) 'Cash transfer programme for children with disabilities' (2019), <https://www.unicef.org/syria/reports/cash-transfer-programme-children-disabilities-2019> (accessed 24 May 2025).

136 Plan International *Adolescent girls in crisis: Voices from the Sahel* (2020), <https://plan-international.org/publications/adolescent-girls-in-crisis-voices-from-the-sahel/> (accessed 24 May 2025).

137 Food and Agriculture Organisation of the United Nations (FAO) *The state of food and agriculture 2018: Migration, agriculture and rural development* (2018), <https://www.fao.org/family-farming/detail/en/c/1189078/> (accessed 26 May 2025).

138 As above.

seeds, sustainable farming practice training and market access. Supporting female farmers increases food security and encourages economic stability and equality.¹³⁹

Policy makers in both Zimbabwe and South Africa should promote community-based approaches to climate adaptation to create context-specific policies that address the specific needs of each country. By including community members, particularly girls and women, in the design and execution of climate projects, their viewpoints are recognised, assuring long-term solutions. Participatory rural appraisal is one technique that may include community members in identifying climate risks and designing adaptation plans, strengthening community ownership and improving the efficacy and sustainability of climate action.¹⁴⁰ Furthermore, public awareness efforts are critical in emphasising the link between climate change and gender equality, encouraging societal attitudes and behaviours to change. These efforts should focus on raising awareness about girls' issues and encouraging them to participate actively in climate change activities. For example, multimedia campaigns presenting tales of girls driving climate action may inspire others and emphasise the necessity of gender-responsive climate legislation, thereby empowering their active participation in climate activities.¹⁴¹

6 Conclusion

Everyone is prone to the effects of climate change. However, the girl child is disproportionately impacted by these effects. Gender-differentiated roles and responsibilities, in addition to cultural and religious beliefs at the household and community levels, make the girl child more susceptible to the impact of climate change. Legal frameworks exist to protect all citizens, as highlighted in the provisions in the constitutions, human rights and specific climate-related frameworks. These frameworks and their provisions, along with the comparative analysis, have been examined in the relevant part of this article. However, it cannot be concluded that the provisions cover the girl child. The analysis of existing frameworks and policies in South Africa and Zimbabwe, despite their robust gender and children's provisions, reveals inadequacies in the protection of the girl child in the context of climate change impact. This occurs regardless of the fact that, through intersectionality, she is more vulnerable to such events.

Given the impact of climate change, it is recommended to incorporate inclusive specific legislation and policy frameworks to address the issue and alleviate the girl child's plight. The reason for this is that the girl child, though not explicitly mentioned, appears to be overlooked or obscured within legal

139 International Fund for Agricultural Development (IFAD) *Gender equality and women's empowerment* (2019), <https://www.ifad.org/en/publications/ifad-policy-on-gender-equality-and-women-s-empowerment> (accessed 27 May 2025).

140 As above.

141 United Nations Population Fund (UNFPA) *Gender Equality Strategy 2019* (2019), <https://www.unfpa.org/publications/unfpa-gender-equality-strategy-2019> (accessed 27 May 2025).

provisions due to the intersection of her gender and age. In addition to inclusive legal frameworks, there is a need for capacity building in development plans and climate change awareness in communities and the education sector. Adaptation activities in community processes should be mainstreamed to reduce the burden on the girl child and increase sustainability opportunities.

In essence, the analysis underscores the importance of integrating gender-sensitive approaches and being proactive in ensuring equity in climate justice by looking out for inclusive measures to cater for the most vulnerable populations. This would also include promoting education and empowerment programmes for girls and ensuring that their voices are heard in decision-making processes. A combination of cooperative measures and efforts will be critical to achieving climate justice and protecting the girl child from the impacts of climate change in South Africa and Zimbabwe.

Children at the *lekgotla*: African child-led litigation for remedies in the climate crisis

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Abstract: The article discusses children's climate litigation as a critical avenue to seek remedies for the climate crisis, which disproportionately affects children and violates their fundamental rights. It highlights the challenges children face in accessing justice through courts, particularly due to stringent preliminary procedural hurdles such as demonstrating individual harm, proving direct causation, and issues related to redressability and separation of powers. The article argues for adopting a child rights-based approach and integrating non-Western philosophies such as South Africa's ubuntu to overcome these barriers. The article proposes that the emphasis of ubuntu on interconnectedness and collective well-being offers a more suitable framework for addressing climate change's complex, multi-generational nature in legal contexts. Engaging with children's litigation presents an opportunity for courts to evolve legal frameworks, moving towards more inclusive and effective remedies for climate injustice globally.

Key words: access to justice; children's rights; climate litigation; effective remedies; philosophical approaches

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1 Introduction

Children have identified the climate crisis as one of the main issues of concern for their generation, which violates their right to a healthy environment and many other fundamental child rights.¹ Their efforts to be heard and to secure a remedy for these violations have received media attention globally since 2018, when children's climate protests reached unprecedented scale and influence.² They have managed to access every level of governance, from the United Nations (UN) General Assembly to their local municipalities, in the hope of having their concerns addressed. Reactions from these spaces include congratulations for bravery and thanks, but evidence of subsequent action or change is sparse.³

One of the ways in which children have sought remedies for environmental and climate issues is through the courts.⁴ The landmark case *Minors Oposa v Factoran*⁵ was initiated by 45 children in the early 1990s in the Philippine courts. They successfully halted the issuance of deforestation permits by asserting a fundamental right to a balanced and healthful ecology. In 2011, child plaintiffs in *Juliana v US*⁶ started their journey in the United States (US) courts, fighting for recognition of their rights and for an order directing the US to adopt a comprehensive plan to fight climate change. Since 2018, approximately 70 cases have been brought to courts by children and youth globally, internationally, regionally and domestically.⁷

Whether children have achieved access to justice and an effective remedy through climate litigation is debatable.⁸ There are several pioneering cases where children were granted the relief they sought, and the outcomes have both positively developed the law and tangibly changed children's lives.⁹ However, many cases have been dismissed at procedural stages, or are stuck there for years,¹⁰ never overcoming strict procedural hurdles, designed to keep out undeserving

1 Office of the High Commissioner for Human Rights & Child Rights Connect 'Children's vision for human rights' (2023), <https://www.ohchr.org/sites/default/files/documents/issues/children/Children-vision-HR-75.pdf> (accessed 6 June 2025).

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

3 F Buhre & J Josefsson 'The materiality of youth representation at climate summits: Navigating barriers, routes, and spaces' (2025) 22 *Globalizations* 426.

4 E Donger 'Children and youth in strategic climate litigation: Advancing rights through legal argument and legal mobilisation' (2022) 11 *Transnational Environmental Law* 263.

5 (1993) GR No 101083, 224 SCRA 792.

6 217 FSupp3d 1224, 1260 (District Court of Oregon 2016).

7 Youth Climate Justice Project University College Cork *Caselaw Database*, <https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/> (accessed 4 June 2025).

8 A Daly 'Child and youth friendly justice for the climate crisis: Relying on the UN Convention on the Rights of the Child' (2024) 32 *The International Journal of Children's Rights* 632.

9 See, eg, *Future Generations v Ministry of the Environment & Others* (2018) 11001 22 03 000 2018 00319 00 (Supreme Court of Justice of Colombia); *Neubauer & Others v Germany* (2021) 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20 (German Federal Constitutional Court); *Held v Montana* (2024) MT 312 (Supreme Court of Montana).

10 See, eg, *La Rose v His Majesty the King* (2023) A-289-20, A-308-20 (*La Rose*); and *Juliana v United States* (2025) US 24-645 (*Juliana v US*), which spent 10 years at the procedural phase.

litigants.¹¹ In fact, only a third of the cases launched by children and youths have been successful in the sense that some or all of their relief was granted. The rest of the cases have been dismissed or are pending, some for as long as 13 years at the procedural phase, without a hearing.¹² Even though some significant progress is being made, many children fail before presenting their full cases to the courts. They are barred by procedural laws designed neither for children nor the novel challenges presented by that climate change litigation. This has a bearing on their well-recognised right to be heard, to have their views taken seriously, and to gain access to justice and effective remedies, as outlined in the UN Convention on the Rights of the Child (CRC).¹³

This article theorises that two factors contribute to the courts' failure to provide remedies for children in climate litigation. First, in the failed child and youth climate cases, the legal frameworks regulating the procedural elements of access to courts and the courts' application thereof are characterised by a distinct lack of a child rights-based approach. Children face disproportionate difficulty in accessing courts and effective remedies.¹⁴ A child rights-based approach to litigation is therefore necessary.¹⁵ Procedural and substantial adjustments must be made to ensure that children access justice on an equitable basis with adults.¹⁶ Second, the interpretive frameworks applied by courts are influenced by dominant Western philosophies that centre the individual, as opposed to the community, and the natural world as interconnected entities. Climate litigants, including children, have had considerable difficulty convincing judges in the Global North to consider the merits of climate cases, which are fraught with convoluted causes and effects, related to all peoples and across generations.¹⁷ Child and youth climate litigants consistently employ approaches aligned with non-Western and indigenous approaches to climate justice.¹⁸ Contrary to Western approaches, philosophies such as South Africa's ubuntu allow for more

11 See, eg, *Sacchi & Others v Argentina*, Communication 104/2019, UNCRC Committee (22 September 2021) UN Doc CRC/C/88/D/104/2019 (2011); *Sacchi & Others v Brazil*, Communication 105/2019, UNCRC Committee (22 September 2021) UN Doc CRC/C/88/D/105/2019 (2011); *Sacchi & Others v France*, Communication 106/2019, UNCRC Committee (22 September 2021) UN Doc CRC/C/88/D/106/2019 (2011); *Sacchi & Others v Germany*, Communication 107/2019, UNCRC Committee (22 September 2021) UN Doc CRC/C/88/D/107/2019 (2011) (*Sacchi*); *Agostinho & Others v Portugal & Others* (2024) ECHR 39371/20 (*Agostinho*); *Children of Austria v Austria* (2023) VFGH 123/2023 (*Children of Austria*); *Foley & Others v Sweden* (2025) Swedish SC M2022/01018 (*Aurora*).

12 Twenty-three out of 70 cases.

13 U Kilkelly 'Children's rights to access justice at the international level: Challenge and opportunity' in M Paré and others (eds) *Children's access to justice: A critical assessment* (2022) 139.

14 T Liefwaard 'Access to justice for children: Towards a specific research and implementation agenda' (2019) 27 *International Journal of Children's Rights* 95.

15 K Arts 'Children's rights and climate change' in C Fenton-Glynn (ed) *Children's rights and sustainable development: Interpreting the UNCRC for future generations (Series: Treaty Implementation for Sustainable Development)* (2019) 216.

16 H Stalford & K Hollingsworth "'This case is about you and your future': Towards judgments for children' (2020) 83 *Modern Law Review* 1030.

17 RS Abate 'Standing' in M Wewerinke-Singh & S Mead (eds) *The Cambridge handbook on climate litigation* (2025) 105.

18 A Daly and others 'Climate action and the UNCRC: A "postpaternalist" world where children claim their own rights' (2024) 4 *Youth* 1387.

complexity in conceptions of place and time and the value of the collective good of the wider community and the environment.¹⁹

South Africa presents an interesting case study to explore best practices for child-centred, post-colonial, non-Western approaches to climate justice for children. South Africa's rich human rights-based jurisprudence, including child rights, offers insights into how the law could be developed to be more conducive to child climate litigants globally and the remedies they require.²⁰ Since the advent of democracy in 1994, South African law has been subject to transformative constitutionalism and heavily influenced by African philosophy, specifically ubuntu.²¹ How ubuntu has been used as a transformative interpretive lens to develop the law in line with human rights can be studied in South African jurisprudence. Children's presence in the courts as litigants requires them to consider children's rights in public matters, freeing child rights law from its traditional confinement to family and criminal matters.²² Children's efforts to secure their democratic rights through the courts may present alternatives to failing dominant approaches, which the courts will do well to adopt, if they are to provide effective solutions to climate injustice. Children are coming to the *lekgotla*,²³ and it is a good sign for the climate crisis discourse.

The article is presented in seven parts. Following the introductory part 1, the trend on child and youth climate litigation is the focus of the second part of the article. Part 3 sketches the key barriers to effective legal remedies globally, while part 4 unpacks what is meant by a child rights-based approach. Part 5 of the article explores best practices from the South African legal context for a child rights-based approach to access to justice for children in the climate crisis. Part 6 focuses particularly on lessons that may be learnt from the jurisprudence on ubuntu, while part 7 is the conclusion.

2 Child and youth climate litigation

It is now well established that climate change disproportionately affects children,²⁴ who are more vulnerable than adults because of their unique physical,

19 F Viljoen 'Africa's contribution to the development of international human rights and humanitarian law' (2001) 1 *African Human Rights Law Journal* 18.

20 U Kilkelly & T Liefwaard 'Legal implementation of the UNCRC: Lessons to be learned from the constitutional experience of South Africa' (2019) 52 *De Jure Law Journal* 521.

21 Y Mokgoro 'Ubuntu and the law in South Africa' (1998) 1 *Potchefstroom Electronic Law Journal* 16.

22 J Sloth-Nielsen 'Children's rights jurisprudence in South Africa – A 20 year retrospective' (2016) 49 *De Jure* 501.

23 The word *lekgotla* means 'courtyard' or 'court' in two Southern African languages, Sesotho and Setswana, meaning a meeting place for village assemblies, court cases and meetings of village leaders. It exemplifies government in some African societies. Being able to speak at the *lekgotla* means that one has an influence on governance. *Dictionary of South African English*, <https://dsae.co.za/entry/kgotla/e03762> (accessed 17 August 2025).

24 UNICEF *The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index*, <https://files.eric.ed.gov/fulltext/ED614506.pdf> (accessed 6 July 2025).

behavioural and developmental status,²⁵ which is amplified in the case of children in marginalised communities and in specific geographical contexts, most notably in Africa.²⁶ Children's dependency on adults and their societal status can hamper their resilience to climate harm. Strife and Downy refer to this phenomenon as 'youth-based environmental inequality'.²⁷ The climate crisis, and their position in it, cause children to suffer violations of their rights to equality, health, life, dignity and a clean, healthy and sustainable environment, among others. Lauding the work of young African climate activist, Vanessa Nakate, Thunberg comments that 'while we may all be in the same storm, we are not in the same boat', recognising the unequal way the climate crisis affects different sections of society.²⁸ Children, being one such category, need remedies, but have limited options to enforce their rights. They are denied voting power and are largely excluded from public decision making, including relating to the environment.²⁹ The courts are a last, and perhaps their only, resort.³⁰

A 2023 global study on children's views on their rights establishes that most children are familiar with human rights and that, despite variations in ages and geography, they identify the same group of rights as their biggest challenges. Their main concerns include the right to a clean, healthy and sustainable environment, physical and mental health, a dignified standard of living free from violence, and the right to education.³¹ These rights are all threatened by climate change.³² Other concerns relate to the right to express one's views and for those views to be given due weight, such as children's legal recognition, discrimination and exclusion, and safe and meaningful participation. A recurring theme is children's desire for their voices to be heard and their opinions to be considered in decisions that affect them, at home, in schools and in policy making. Yet, they often feel that their perspectives are overlooked or dismissed by adults, leaving their concerns unaddressed.³³

The CRC Committee's General Comment 26 on children's rights and the environment with a special focus on climate change was drafted after consultation with a child advisory team, and 16 331 contributions from children.³⁴ It confirms

25 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).

26 Office of the High Commissioner for Human Rights (OHCHR) 'Climate change and the full and effective enjoyment of the rights of the child' (2017) A/HRC/35/13.

27 S Strife & L Downey 'Childhood development and access to nature: A new direction for environmental inequality research' (2009) 22 *Organisation & Environment* 99.

28 G Thunberg 'Editorial review for V Nakate *A bigger picture: My fight to bring a new African voice to the climate crisis*' (2022), <https://www.amazon.com/Bigger-Picture-African-Climate-Crisis/dp/0063269120> (accessed 6 July 2025).

29 Strife & Downey (n 27).

30 *Mlungwana & Others v The State & Another* 2019 1 BCLR 88 (CC).

31 Office of the High Commissioner for Human Rights & Child Rights Connect (n 1).

32 Committee on the Rights of the Child 'General Comment 26: Children's Rights and the Environment with a Special Focus on Climate Change' (22 August 2023) CRC/C/GC/26.

33 Office of the High Commissioner for Human Rights & Child Rights Connect (n 1).

34 CRC Committee (n 32) para 2.

the crucial need for and importance of child participation in environmental decision making.³⁵ Considering the disappointing responses of those in power, it is not surprising that children have turned to the courts for relief.³⁶ Protest and high-level advocacy with decision makers can only take children so far. It cannot guarantee engagement, meaningful response and a positive outcome for children. Its effect depends entirely on the willingness of people in power to grant their attention and to act. The judicial process presents a unique opportunity for children to air their concerns and preferred outcome in detail, to which a defendant must reply systematically at the risk of an adverse finding or punishment by the court.³⁷ Children can be granted a straightforward, legally binding remedy against the parties if successful. While the court cannot usurp the role of the executive branch of government or direct all the actions of private actors, it can provide certainty and action in circumstances where children have been ignored and denied redress. At the very least, it can force the parties to engage meaningfully with the children's concerns, failing which the court can fashion a suitable remedy.³⁸

The CRC Committee finds that despite children being 'at the vanguard of several environmental and climate change cases', they face significant hurdles in the form of preliminary procedural barriers, such as standing.³⁹ General Comment 26 emphasises the state's duty to prioritise and promote child-friendly access to justice by removing legal barriers and creating suitable remedies for children. This is currently not the case for many children. Children's rights to access to justice and to an effective remedy are implied rather than clearly stated in CRC.⁴⁰ It has always been fraught with difficulties in implementation.⁴¹ In response, the CRC Committee published the second draft of its latest General Comment (Draft General Comment 27) on this topic in 2025.⁴² It will add to existing authoritative interpretations such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (EU child-friendly justice guidelines), which seek to set standards for a justice system that guarantees respect for and effective implementation of children's rights.⁴³ After widespread consultation with children and a first round of comments, the CRC Committee found that 'feeling and living the transformational significance of being a rights holder remains out of reach, as an abstract and remote prospect,

35 Committee on the Rights of the Child (n 32) para 26.

36 B Lewis 'Children's human rights-based climate litigation at the frontiers of environmental and children's rights' (2021) 39 *Nordic Journal of Human Rights* 185.

37 L Kotzé & H Knappe 'Youth movements, intergenerational justice, and climate litigation in the deep time context of the Anthropocene' (2023) 5 *Environmental Research Communications* 6.

38 P Rink and others 'Litigation by young people to hold governments to account for climate damage' (2024) 8 *BMJ Paediatrics Open* 1.

39 General Comment 26 (n 32) para 82.

40 Kilkelly (n 13).

41 Liefwaard (n 14).

42 CRC Committee 'Draft General Comment 27 (202x) on children's right to access to justice and an effective remedy' (1 February 2024) CRC/C/GC/27.

43 Committee of Ministers of the Council of Europe 'Guidelines of the Committee of Ministers of the Council of Europe on Child-friendly Justice' (17 November 2010) CM/Del/Del(2010)1098/10.

for many children worldwide.⁴⁴ Children have the right to a clean, healthy and sustainable environment, as well as the right to be heard, for their views to be given due weight, and to have their rights vindicated with an effective remedy.⁴⁵ They actively pursue their rights in climate justice, and their work has broad ramifications. Still, the many failed climate cases imply that they may not have sufficient access to justice and effective remedies.

Access to justice is a broad concept. It covers a wide range of mechanisms, not limited to courts. Children interviewed in the process of drafting Draft General Comment 27 defined access to justice as being able to refer a problem or something unfair to ‘someone who will listen, treat the matter impartially and provide relief, which redresses wrongs and prevents future harm.’⁴⁶ This reflects the strong connection between the right to be heard and access to justice and highlights the need for a remedy that is more than academic or symbolic.⁴⁷ Adults have their own views on what constitutes success in a climate case. Academics are interested in the effect of children’s climate litigation on the theory of child rights law.⁴⁸ Lawyers are interested in the cases considering their incremental impact on the long-term strategy of global climate justice.⁴⁹ Children’s views on whether or not cases are successful, and what level of access to climate justice they have achieved through the courts, as opposed to those of scholars and lawyers, must be determinative if they are to truly benefit.⁵⁰ However, detailed research on this topic is still forthcoming.⁵¹ In its absence, a narrow and objective approach is preferable to avoid speaking for children about what they consider a success. The trend emerging from the cases is that they are often dismissed at the preliminary procedural phase, preventing them from proceeding to a full trial or hearing where the entire case is presented to the court for consideration. Whether a case was permitted to proceed to trial can be gleaned from the court papers. The result of a dismissal at the preliminary phase, inevitably, is that the child plaintiffs are not able to present their full evidence to court – limiting their ability to present their views, and to have them given due weight – and, ultimately, ruling out the possibility of being granted the remedy they sought from the court. Therefore, this article considers a dismissal on procedural grounds, denying a trial or merits hearing, a failure to access justice and an effective remedy.

A case law database hosted by the Youth Climate Justice (YJCJ) project at the University College Cork records 70 child-led or child-involved climate-

44 Draft General Comment 27 (n 42) para 3. The Committee received 315 submissions as well as outcomes from over 141 consultations held on the General Comment, of which over 82 consultations involved the participation of at least 7 215 children.

45 Arts 3, 12 & 24 Convention on the Rights of the Child.

46 Draft General Comment 27 (n 42) para 2.

47 K Dosza *Children as climate citizens* (2024).

48 Daly and others (n 18).

49 Rink and others (n 38).

50 P Freire *Pedagogy of the oppressed* (1972).

51 See the Youth Climate Justice research project hosted by the University College Cork, <https://www.ucc.ie/en/youthclimatejustice/research/> (accessed 6 July 2025).

related cases.⁵² The database reflects the increasing trend of children and youth plaintiffs in climate litigation in recent years.⁵³ Daly affirms that on their own initiative, children and the youth are stretching the meaning and scope of children's rights through court cases brought individually, collectively, directly and through representatives.⁵⁴ Some of the most reported child-involved cases include *Sacchi v Argentina* (*Sacchi*),⁵⁵ where 16 children from countries all over the globe sought remedies against several high greenhouse gas-emitting countries on an international level at the UN Committee on the Rights of the Child, and *Agostinho v Portugal* (*Agostinho*),⁵⁶ where six Portuguese youths asked the European Court of Human Rights (European Court) to provide redress for violations of their rights against 33 countries who they say are not doing enough to address climate change. However, in both these cases, the child and youth applicants did not obtain a remedy. They were declared inadmissible because the plaintiffs had not exhausted local remedies before approaching these (quasi-) judicial bodies. These and 13 other cases have been brought at the international level, mainly at the UN level and in the European regional courts, with one in the Americas.⁵⁷ In addition to the international and regional cases, 55 cases have been launched at the domestic level, of which the majority are in the Americas (29 cases), nine in Europe, seven in Asia and four in Australasia. There is comparatively little child-involved climate litigation in Africa,⁵⁸ but the context is ripe.⁵⁹ African children are among the worst affected by climate change globally,⁶⁰ 25 out of the 33 countries that the United Nations Children's Fund (UNICEF) terms 'extremely high risk' for children being in Africa.⁶¹ Africa is warming at higher rates than the rest of the world,⁶² and African children are more vulnerable to its effects. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) is rightfully calling the climate crisis an 'African child rights crisis'.⁶³ Yet, only three cases directly represent the interests of African children, only one of which has led to the sought remedy being granted.⁶⁴

52 Youth Climate Justice (n 7).

53 Donger (n 4).

54 A Daly 'Intergenerational rights are children's rights: Upholding the right to a healthy environment through the UNCRC' (2023) 41 *Netherlands Quarterly of Human Rights* 132.

55 *Sacchi* (n 11).

56 *Agostinho* (n 11).

57 Youth Climate Justice (n 7).

58 UNEP *Global Climate Litigation Report: 2023 Status Review*; Youth Climate Justice (n 7).

59 E Boshoff & S Getaneh Damtew 'The potential of litigating children's rights in the climate crisis before the African Committee of Experts on the Rights and Welfare of the Child' (2022) 22 *African Human Rights Law Journal* 328.

60 African Children's Committee (n 25).

61 UNICEF (n 24) 120.

62 International Panel on Climate Change *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* (2023).

63 African Children's Committee (n 25) 3.

64 *Mbabazi & Others v The Attorney General & Another* (20 September 2012) High Court of Uganda 283/2012 (*Mbabazi v AG*) (never heard); *Various parties obo minors v Anglo-American South Africa Limited* (2020/32777) [2023] ZAGPJHC 1474 (14 December 2023) (*Children of Kabwe*) (dismissed at certification stage pre-trial); *African Climate Alliance & Others v Minister of Mineral Resources and Energy & Others* (56907/2021) [2024] ZAGPPHC 1271 (4 December 2024) (*Cancel Coal*) (remedy granted in 2024).

The fact that children are harmed by climate change and that they have the rights that should lead to a duty for state and private actors is undisputable, and yet many child litigants are not fully accessing the courts. In what seems to be a developing trend, children are storming the firmly shut gates of courts worldwide, coming away disappointed and jarred.⁶⁵

3 Barriers to justice and an effective remedy globally

Despite the urgent need for climate remedies and the impressive efforts of children, access to justice remains out of reach for many plaintiffs. Child-involved cases are examined in this part, using the 70 cases analysed on the Youth Climate Justice (YCJ) case law database to determine the barriers to judicial remedies. In this article, 'child-involved cases' include cases where children are the drivers of the litigation, where they participate in the litigation, and where allies represent their interests. These include cases where the applicants are either named individual children or organisations and other individuals representing their interests, where these parties are the drivers behind a case without identified complainants. These cases have in common that they bring the courts and the parties' attention to child rights in a way that seeks to enhance children's access to rights. Some climate change adjacent cases (like some pollution cases) are included if they involve violations of the right to a 'liveable climate'. The terms 'child' and 'youth' include those up to the age of 25 years. In this article, they are collectively referred to as the youth. The words applicants, complainants and plaintiffs are used interchangeably to refer to those bringing the case to the court's attention.

In 70 per cent of youth cases (49 of the 70) on the YCJ database, the litigants have not obtained a remedy. Thirty cases have been dismissed, of which only five were heard on the merits. Twenty-six cases were found to be inadmissible and never made it to a hearing on the merits, except for two cases, in which the inadmissibility finding was overturned on appeal. Eighteen cases are pending, of which 13 have had no hearing. The average delay on the pending cases is four years, with the longest being 13 years (see Table 1).

⁶⁵ Earth Justice 'UN Committee on the Rights of the Child turns its back on climate change petition from Greta Thunberg and children from around the world' 11 October 2021, <https://earthjustice.org/press/2021/un-committee-on-the-rights-of-the-child-turns-its-back-on-climate-change-petition-from-greta-thunberg-and> (accessed 6 July 2025).

Table 1: Global cases without remedy

	Total (49)	Less than 2 years	3-6 years	9-13 years
Pending (never heard) ⁶⁶	13	3 <i>CLM v Ireland</i> <i>AS v Turkey</i> <i>Lighthiser v Trump</i>	8 <i>Haiti petition</i> <i>De Conto v Italy</i> <i>Uricchio v Italy</i> <i>Engels v Germany</i> <i>EJA v Australia</i> <i>Children’s Petition</i> <i>UN SG</i> <i>Indonesian Youth</i> <i>NZ Students v BP</i>	2 <i>Mbabazi v AG</i> <i>Ali v Pakistan</i>
Pending (some preliminary hearing/ finding) ⁶⁷	5	2 <i>ICJ Advisory Opinion</i> <i>Japanese Youth</i>	3 <i>Greenpeace v Norway</i> <i>Delta del Paraná</i> <i>Alvarez v Peru</i>	
Admissible, dismissed on merits ⁶⁸	5	2 <i>North Sea Fields</i> <i>Sharma</i>	3 <i>Mathur</i> <i>Foster v Washington</i> <i>Martinez v Colorado</i>	

66 *Community Law and Mediation Centre v Ireland* (9 September 2024) High Court of Ireland (*CLM v Ireland*); *AS & Others v Presidency of Türkiye & Others* (2024) Turkey Constitutional Court (*AS v Turkey*); *Lighthiser v Trump* (29 May 2025) District Court Montana 2:25-cv-00054 (*Lighthiser v Trump*); *Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti* (4 February 2021) IAm Comm of HR (*Haiti petition*); *De Conto v Italy & 32 states* (3 March 2021) ECHR 14620/21 (*De Conto v Italy*); *Uricchio v Italy & 32 states* (3 March 2021) ECHR 14615/21 (*Uricchio v Italy*); *Engels & Others v Germany* (1 September 2022) ECHR 46906/22 (*Engels v Germany*); *Environmental Justice Australia v Australia* (25 October 2021) UN Special Rapporteurs on Environment; Indigenous Peoples; Persons with Disabilities (*EJA v Australia*); *Children’s Petition to the UN Secretary General to Declare a Climate Emergency* (10 November 2021) UN Secretary General (*Children’s Petition UN SG*); *Indonesian Youths & Others v Indonesia* (14 July 2022) National Commission on Human Rights of the Republic of Indonesia (*Indonesian Youth*); *NZ Students for Climate Solutions & UK Youth Climate Coalition v Board of BP* (8 December 2022) ICC (*NZ Students v BP*); *Mbabazi* (n 64); *Ali v Federation of Pakistan* (2016) Lahore High Court, Punjab (*Ali v Pakistan*).

67 *Request for an Advisory Opinion on the Obligations of States in Respect of Climate Change* (1 March 2023) ICJ A/77/L.58 (*ICJ Advisory Opinion*); *Youth Climate Case Japan for tomorrow* (6 August 2024) (*Japan youth*); *Greenpeace Nordic & Others v Norway* (15 June 2021) ECHR 34068/21 (*Greenpeace v Norway*); *Asociación Civil Por La Justicia Ambiental y otros c/ Entre Ríos, Provincia de y otros* (3 July 2020) Supreme Court of Argentina CSJ 468/2020 (*Delta Del Paraná*); *Alvarez & Others v Peru* (2019) Superior Court of Lima 000859-2020-0-1801 (*Alvarez v Peru*).

68 *Greenpeace Nordic and Nature & Youth v Energy Ministry* (2024) Oslo District Court 23-099330TVI-TOSL/05 (*North Sea Fields*); *Sharma & Others v Minister for the Environment* (2021) FCA 560 (*Sharma*); *Mathur et al v Her Majesty the Queen in Right of Ontario* (2020) ONSC 6918 (*Mathur*); *Foster v Washington & Others Department of Ecology* (2015) Supreme Court of Washington No 14-2-25295-1 (*Foster v Washington*); *Martinez v Colorado Oil & Gas Conservation Commission* (2019) Colorado Supreme Court 17 SC 297 (*Martinez v Colorado*).

Ruled inadmissibility, but successfully appealed, now pending hearing ⁶⁹	2		2 <i>Youth v Mexico</i> <i>La Rose</i>	
Ruled inadmissible (dismissed) ⁷⁰	24	13 <i>Carvalho</i> <i>Children of Austria</i> <i>Genesis v Washington</i> <i>Pandey v India</i> <i>Raincoast v Canada</i> <i>Sacchi</i> <i>Sagoonick v Alaska</i> <i>Salis v State</i> <i>Lemme v Bayern</i> <i>Habana v Mexico</i> <i>Lho'imggin v Canada</i> <i>Barbaugh v Montana</i> <i>Clean Air v US</i>	9 <i>Agostinho</i> <i>JEUnesse v Canada</i> <i>Aurora</i> <i>Layla v Virginia</i> <i>Natalie v Utah</i> <i>Children of Kabwe</i> <i>Aji v Washington</i> <i>Alec v McCarthy</i> <i>Kanuk v Alaska</i>	2 <i>Juliana v US</i> <i>PUSH v Sweden</i>

The data reveals a disappointing reality for young climate advocates. A child litigant launching pleadings today is unlikely to be admitted to court to present the facts of their case until about four years later. They have a 50 per cent chance of never

69 *Jóvenes v Gobierno de México* (2023) District Court in Administrative Matters RA 317/2022 (*Youth v Mexico*); *La Rose v Her Majesty the Queen* (2020) T-1750-19; *La Rose v His Majesty the King* (2023) A-289-20, A-308-20 (*La Rose*).

70 *Carvalho & Others v Parliament & Council* (2018) ECJ T-330/18 2018/C 285/51 (*Carvalho*); *Children of Austria* (n 11); *Genesis B v US Environmental Protection Agency* (2025) California CD 2:23-cv-10345 (*Genesis v Washington*); *Pandey v Union of India* (2019) National Green Tribunal 187/2017 (*Pandey v India*); *Raincoast Conservation Foundation & Others v Attorney General Canada* (2019) Canada SC 38892 (*Raincoast v Canada*); *Sacchi* (n 11); *Sagoonick v State of Alaska* (2025) Alaska SC 3AN-24-06508CI (*Sagoonick*); *Salis & Others v State of Sachsen-Anhalt* (2022) Federal CC 1 BvR 1565/21; 1 BvR 1566/21; 1 BvR 1669/21; 1 BvR 1936/21; 1 BvR 2574/21; 1 BvR 2575/21; 1 BvR 2054/21; 1 BvR 2055/21; 1 BvR 2056/21; 1 BvR 2057/21; 1 BvR 2058/21 (*Salis*); *Lemme & Others v State of Bayern* (2021) Federal CC (*Lemme v Bayern*); *Habana & Others v Mexico* (2023) DC Admin Matters 11/2022 (*Habana v Mexico*); *Lho'imggin & Others v Her Majesty the Queen* (2020) FC 1059 (*Lho'imggin v Canada*); *Barbaugh v Montana* (2011) Montana SC OP 11-0258 (*Barbaugh v Montana*); *Clean Air Council v United States* (2019) Pennsylvania DC 362 F.Supp.3d 237 (*Clean Air v US*); *Agostinho* (n 11); *ENVironnement JEUnesse v Procureur General du Canada* (2021) QCCA 1871 (*JEUnesse v Canada*); *Aurora* (n 11); *Layla H & Others v Commonwealth of Virginia & Others* (2025) Virginia SC 240684 (*Layla v Virginia*); *Natalie R & Others v State of Utah* (2022) Utah SC 20230022 (*Natalie v Utah*); *Children of Kabwe* (n 63); *Aji Pexrel Piper v State of Washington* (2021) Court of Appeals for Washington 480 P.3d 438 (*Aji v Washington*); *Alec L v McCarthy* (2014) US 14-405 (*Alec v McCarthy*); *Kanuk Kanuk v State Department Natural Resources* (2014) 335 P.3d 1088, 1095 Supreme Court of Alaska (*Kanuk v Alaska*); *Juliana v US* (n 10); *PUSH Sweden, Nature and Youth Sweden & Others v Government of Sweden* (2023) Stockholm District Court (*PUSH v Sweden*).

being admitted to court at all, even after ten years of litigation, as in the *Juliana*⁷¹ case. When the court finally dismissed their bid to enter court, no applicants were children any longer. The majority of youth climate plaintiffs in the cases have never presented their full evidence to the courts. Lengthy and burdensome court proceedings are not unique to climate litigation or to children. What is unique about climate cases is the high number of cases that fail at the preliminary stage before the merits are heard. According to Abate, standing (a preliminary issue) is a common barrier for climate litigants.⁷² Auz identifies admissibility as another significant procedural hurdle that may threaten climate litigation's success.⁷³ Other common preliminary hurdles that keep climate litigants out of court fall under justiciability, which relates mainly to the separation of powers, according to Eckes and others, and sometimes jurisdiction.⁷⁴ These authors all allude to the need for these stringent requirements to be relaxed to ensure access to courts in climate cases. This becomes even more important when child litigants are involved.

The terms standing, admissibility, justiciability and jurisdiction represent varying meanings depending on the state, making a discussion on the global issues challenging. However, they can be collectively termed preliminary judicial inquiries or procedural hurdles. Generally speaking, the elements of the preliminary inquiry into procedural elements involve deciding three questions, regardless of what they are termed: first, whether the *court* has the power to decide a case (jurisdiction); second, whether the right *person* is before the court (standing); third, whether the case can be solved with a judicial *remedy* (justiciability).⁷⁵ What preliminary inquiries have in common is that they must be decided before a full hearing of the merits is held. They are meant to filter cases, keeping out those undeserving of the court's limited resources and time. The preliminary inquiry decides whether a court may 'receive' a case for determination.⁷⁶ The courts' failure to receive youth climate cases emerges as a problematic trend. Coupled with the existing difficulties children face when accessing courts, it may highlight a potential violation of the right to access justice and an effective remedy.

71 *Juliana* (n 10).

72 Abate (n 17).

73 J Auz 'Admissibility' in Wewerinke-Singh & Mead (n 17) 131.

74 C Eckes, J Nedevska & J Setzer 'Separation of powers' in Wewerinke-Singh & Mead (n 17) 145.

75 C Loots 'Chapter 7: Standing, ripeness and mootness' in S Woolman & M Bishop (eds) *Constitutional law of South Africa* (2018).

76 A Rabie & C Eckard '*Locus standi*: The administration's shield and the environmentalist's shackle' (1976) 9 *Comparative and International Law Journal of Southern Africa* 141.

3.1 Trends in dismissals

We've faced extreme resistance from the federal government, yet we've never wavered in our resolve. All great movements have faced obstacles, but what sets them apart is the perseverance of the people behind them.

Miko Vergun, plaintiff in *Juliana v US*.⁷⁷

The *Juliana*⁷⁸ plaintiffs put on a brave face after the final judgment, which ended their 10-year fight over procedural issues, but their case is a textbook example of failed access to justice for children. It should not take children ten years, seven interlocutory applications, a team of lawyers, 43 *amicus* submissions from members of congress, public justice and lawyers associations, and the support of child rights experts across the globe to be heard in a court.⁷⁹ As the *amicus curiae* in *Various Parties obo Minors v Anglo American (Children of Kabwe)*⁸⁰ in South Africa explains: '[T]he best interests of the child require the fixing of procedures, and procedural standards that are achievable by child litigants and those acting for them, and which ensure that the court considers the best interests of the child at every stage of these procedures'.⁸¹

A child rights-based approach requires preliminary proceedings to be just that, namely, preliminary. They should be expeditious, imposing a low burden on the litigants, and granting courts the widest possible jurisdiction to admit cases to be heard. The UN Committee puts a strong emphasis on the need to adapt remedial mechanisms, including procedural requirements, to ensure that remedies are available to children.⁸² What *Juliana*⁸³ and the other delayed and inadmissible youth climate cases illustrate is a failure to adapt preliminary enquiries to the needs of children and to employ a child rights-based approach.

3.1.1 Individualised harm

Plaintiff Dani R is a 17 year-old resident of Santa Clarita, California. Dani faces increasing extreme weather events due to climate change. Dani lives in a canyon where heavy rains in 2022 caused mudslides that caused severe damage to the foundation of her home and holes in the ceiling (Complaint in *Genesis B v US Environmental Protection Agency*).⁸⁴

77 Our Children's Trust 'Press release' 24 March 2025, <https://static1.squarespace.com/static/655a2d016eb74e41dc292ed5/t/67e16f3acf84c27786e9c14e/1742827322618/2025.24.03.JulianaCertDeniedPR.FINAL.pdf?ref=climateinthecourts.com> (accessed 6 July 2025).

78 *Juliana* (n 10).

79 Our Children's Trust 'Juliana v US', <https://www.ourchildrenstrust.org/juliana-v-us> (accessed 6 July 2025).

80 *Various Parties obo Minors v Anglo American South Africa Limited* Supreme Court of Appeal (526/24) (*Kabwe appeal*) Written submission of *amicus curiae*: Centre for Child Law and others (24 February 2025).

81 *Kabwe appeal* (n 80) *amicus curiae* written submission para 3.

82 Draft General Comment 27 (n 42).

83 *Juliana* (n 10).

84 *Genesis* (n 70) Complaint para 40.

Perhaps the most common ground for refusing to receive a child climate case is a finding that the damage to the claimant is not unique to them *individually*. In the US, which has the strictest preliminary rules, the principle that ‘injury to all is injury to none’ applies.⁸⁵ Claimants in the European Union (EU) face similar problems. Before the European Court of Justice (ECJ), a claimant must prove a ‘direct and individual concern’.⁸⁶ This has been interpreted to mean that a plaintiff’s injury must be heightened and different from others in society. The rule is duplicated in some other Global North and other jurisdictions, applied to lesser or greater degrees depending on the state but, as Abate points out, with much inconsistency.⁸⁷

The youth cases include nine cases dismissed for lack of individualised harm. Confirming Abate’s analysis, there are three US cases,⁸⁸ one in the ECJ,⁸⁹ two in Sweden⁹⁰ and three more in Mexico, India and Canada.⁹¹ In the US cases, *Layla v Virginia* (*Layla*),⁹² *Clean Air v United States* (*Clean Air*)⁹³ and *Genesis v Washington* (*Genesis*),⁹⁴ the plaintiffs requested declaratory relief confirming that the state’s action or inaction, which affects climate change, caused violations of their constitutional rights. In all three cases, various courts found that the plaintiffs did not meet the requirements for injuries that must be ‘actual or imminent’ and ‘concrete and particularised’.⁹⁵ The *Layla*⁹⁶ Court, for instance, stated that the continued permitting of fossil fuel infrastructure did not result in a particularised injury but instead amounted to ‘general policy disagreements’.⁹⁷ The 12 young people between the ages of 8 and 25 each described in immense detail how climate change impacts their daily lives and well-being.⁹⁸ The *Clean Air*⁹⁹ Court would not accept that the Trump administration’s regulatory rollbacks on climate change contributions would cause the plaintiffs any specific harm, and that the harm they allege is neither imminent nor certain.¹⁰⁰ This is despite the two children (ages 7 and 11) describing personal issues relating to climate anxiety and detailed health concerns they face as a result of climate change, including being hospitalised after an extreme weather event.¹⁰¹ The *Genesis*¹⁰² Court similarly decided that

85 Abate (n 17) 107. In the USA, the injury inquiry falls within a three-pronged standing test, including attribution and redressability.

86 Abate (n 17) 113.

87 Abate (n 17).

88 *Genesis* (n 70); *Layla* (n 70); *Clean Air* (n 70).

89 *Carvalho* (n 70).

90 *Aurora* (n 11) and *PUSH Sweden* (n 70).

91 *Habana* (n 70); *Pandey* (n 70); and *La Rose* (n 10). *La Rose* was later successfully appealed and is awaiting hearing.

92 *Layla* (n 70).

93 *Clean Air* (n 70).

94 *Genesis* (n 70).

95 *Genesis* (n 70) California Federal Court Order 2:23-cv-10345 (11 February 2025) 13; *Clean Air* (n 70) Pennsylvania Federal Court Memorandum 2:17-cv-04977 (19 February 2019) 9.

96 *Layla* (n 70).

97 *Layla* (n 70) Virginia Appellate Court Opinion 1639-22-2 (25 June 2024) 14.

98 *Layla* (n 70) Complaint paras 16-73.

99 *Clean Air* (n 70).

100 *Genesis* (n 70) California Federal Court Order 2:23-cv-10345 (11 February 2025) 13.

101 *Clean Air* (n 70) Complaint paras 7-9.

102 *Genesis* (n 70).

the plaintiffs' assertion that allowing dangerous levels of climate pollution was a generalised grievance.¹⁰³ The 18 plaintiffs had each explained their particular injuries, from lung diseases caused by wildfire smoke, and disappearing cultural traditions because of the dying off of fish in the local rivers.¹⁰⁴

The plaintiffs in *PUSH Sweden*¹⁰⁵ argued that government actions regarding the sale of coal-burning assets would cause excessive emissions, exacerbating climate change and violating their rights.¹⁰⁶ The Court failed to see any injury at all. In another Swedish case, *Aurora*,¹⁰⁷ the Court found that the 600 plaintiffs did not experience direct individualised harm because of the state's alleged inadequate climate mitigation plan, which denied them access to court. Applying the victim status test established by the European Court in *Verein KlimaSeniorinnen Schweiz v Switzerland*,¹⁰⁸ the Court concludes that the case could have proceeded if the plaintiffs had sued through an organisation and not individually.

The most damning finding is from the ECJ in *Carvalho*,¹⁰⁹ a case brought by 10 families from various European countries asking for relief requiring the EU to take more serious measures to reduce greenhouse gas emissions. The Court found that climate change affects everyone somehow and specifies that a claimant's injury must distinguish them from others by being 'peculiar to them or by reason of circumstances in which they are differentiated from all other persons' (the *Plaumann* test).¹¹⁰ On appeal the plaintiffs argued that this high standard violates the right to effective judicial protection, but this argument was not accepted. To make things worse, the court ordered the plaintiffs, as the unsuccessful parties, to pay the defendants' legal costs.¹¹¹

The very nature of climate change means that every person and every part of nature are affected in collective and individualised ways. While the plaintiffs attempt to illustrate their personal harm, the case law shows that they find it difficult to prove that their injury is greater than that of the general public or exceptionally unique.¹¹² If these injury requirements are not relaxed, very few climate litigations will be allowed to proceed to the merits phase, and if cost orders follow, many will be discouraged from approaching a court.

103 *Genesis* (n 70) California Federal Court Order 2:23-cv-10345 (11 February 2025) 14.

104 *Genesis* (n 70) Complaint paras 24-97.

105 *PUSH Sweden* (n 70).

106 *PUSH Sweden* (n 70) Complaint.

107 *Aurora* (n 11).

108 *Verein KlimaSeniorinnen Schweiz & Others v Switzerland* (2024) ECHR 53600/20.

109 *Carvalho* (n 70).

110 *Carvalho* (n 70) ECJ judgment (15 May 2019) para 45.

111 *Carvalho* (n 70) ECJ appeal order (25 March 2021).

112 *Abate* (n 17).

3.1.2 Attribution

[T]here is simply no basis to the claim that the Commonwealth's policies of approving permits for certain facilities ... are responsible for the heat rash, tick bites, reduced shellfish stocks, diminished access to places of recreation, and other injuries.

Appellate Court, *Layla v Virginia*¹¹³

Standing requirements in some jurisdictions also require a plaintiff to show that their injury is fairly traceable to the action or inaction of the defendant. Four US cases (*Layla*,¹¹⁴ *Clean Air*,¹¹⁵ *Genesis*,¹¹⁶ *Natalie v Utah (Natalie)*¹¹⁷) and one Canadian case¹¹⁸ failed on this account. The claim in *Natalie*¹¹⁹ is similar to that in *Layla*¹²⁰ in that it alleges that the state's support of fossil fuel infrastructure, in this case the state's Fossil Fuel Development Policy, caused and contributed to dangerous air quality and climate change that harmed the plaintiffs. The Court dismissed the complaint because the plaintiffs did not tie the harm to government actions that were specific enough.¹²¹ The US courts in the youth cases fail to see climate harms as anything more than circumstantial.

The initial dismissal of *La Rose*¹²² in Canada included a finding that the claim that Canada contributes to excessive greenhouse gas emissions causing climate change was based on 'an overly broad and unquantifiable number of actions and inactions on behalf of the respondents'.¹²³ Climate change is caused by numerous actions and inactions, not limited to any particular, sole defendant in one clear chain of traceability. Climate damage is caused by various events at various points in time, having both short and long-term effects.¹²⁴ Climate attribution science should assist future litigants with the burden of proof in this rule. However, courts will still need to be flexible enough to accept that climate change complexities may need to be aired in more detail at the merit stage with all the evidence and personal accounts available.

113 *Layla* (n 70) VAC opinion 1639-22-2 (25 June 2024) 16.

114 *Layla* (n 70).

115 *Clean Air* (n 70).

116 *Genesis* (n 70).

117 *Natalie* (n 70).

118 *La Rose* (n 10).

119 *Natalie* (n 70).

120 *Layla* (n 70).

121 *Natalie* (n 70).

122 *La Rose* (n 10).

123 *La Rose* (n 10) Ontario Federal Court order (27 October 2020) para 40.

124 F Paz Landeira 'Temporalities in crisis: Analysing the *Sacchi v Argentina* case and children's rights in the climate emergency' (2025) 39 *Children and Society* 854.

3.1.3 Redressability and separation of powers

The defendants fight to keep children out of court – not because the children are wrong, but because they know that once young people are heard, once their stories and evidence are before the court, they win.

Kelly Matheson (Our Children's Trust)¹²⁵

The redressability requirement was the issue that finally ended the *Juliana*¹²⁶ case after 10 years of fighting over whether the court may or may not hear the case. In terms of this procedural rule, a favourable decision must be likely to redress a plaintiff's claim.¹²⁷ The relief should also be within the powers of the court to grant. It must not usurp the power of the executive branch of government, such as to draft legislation and make specific policy decisions (the doctrine of the separation of powers). It is considered at the preliminary stage and comes up again during the main hearing. Eckes and others describe the separation of powers barrier as one of the core issues in climate litigation.¹²⁸ Eight youth climate cases cite this issue as a reason for not allowing the case to proceed to a hearing on the merits – five US cases, one Canadian, one Swedish and one Austrian.¹²⁹

The *Layla*,¹³⁰ *Natalie*¹³¹ and *Clean Air*¹³² plaintiffs only requested declaratory relief. They wanted the courts to declare that certain acts violated their rights.¹³³ The *Layla*¹³⁴ plaintiffs asked for injunctive relief, if proper, but did not specify what kind. The *Natalie*¹³⁵ plaintiffs did not ask for any injunctive relief at all. Both the *Layla*¹³⁶ and *Natalie*¹³⁷ plaintiffs felt confident that a mere declaration of rights and violations would provide substantive relief, as the defendants would aim to bring their conduct in line with the Constitution. However, the courts disagreed and refused to hear their evidence in trial.¹³⁸ The courts failed to see how a purely declaratory order would provide a tangible benefit.

125 Quoted from presentations at Youth Climate Justice's online event 'Child/youth participation, climate action, and success in a climate case' 21 May 2025, <https://ucc.cloud.panopto.eu/Panopto/Pages/Viewer.aspx?id=3120b710-9b66-4f59-a39e-b2ea00e846fc> (accessed 17 August 2025).

126 *Juliana* (n 10).

127 *Diamond Alternative Energy LLC v EPA* (2025) 606 US.

128 Eckes and others (n 74).

129 *Layla* (n 70); *Natalie* (n 70); *Clean Air* (n 70); *Juliana* (n 10); *Kanuk* (n 70); *Children of Austria* (n 11), *Lbo'imggin* (n 70), *Aji* (n 70), *Aurora* (n 11).

130 *Layla* (n 70).

131 *Natalie* (n 70).

132 *Clean Air* (n 70).

133 *Layla*, *Natalie*, *Clean Air* (n 70) complaints.

134 *Layla* (n 70).

135 *Natalie* (n 70).

136 *Layla* (n 70).

137 *Natalie* (n 70).

138 *Layla* (n 70) VAC opinion 1639-22-2 (25 June 2024); *Natalie* (n 70) Utah High Court order 20230022-SC (20 March 2025).

The *Juliana*,¹³⁹ *Kanuk v Alaska (Kanuk)*,¹⁴⁰ *Aji v Washington (Aji)*¹⁴¹ (US) and *Lho'imggin v Her Majesty the Queen (Lho'imggin)*¹⁴² (Canada) plaintiffs wanted declaratory relief, clarifying their rights and the duties of their states.¹⁴³ They also wanted orders requiring their states to account for carbon emissions and to adopt comprehensive plans to address climate change. The *Juliana*¹⁴⁴ Court stated that it was beyond its judicial power 'to order, design, supervise, or implement the plaintiffs' requested remedial plan'.¹⁴⁵ The other courts had similar stances, holding that a court cannot solve the plaintiffs' global climate problems¹⁴⁶ and that they are more appropriately dealt with by the executive and legislative branches of government. They found that climate change issues were essentially political, and that principles such as sovereign immunity prevented them from even hearing the cases.¹⁴⁷

The Swedish *Aurora*¹⁴⁸ and the *Children of Austria*¹⁴⁹ Courts both refused to engage with cases on the basis that it interfered with the legislative powers of the state. The *Aurora*¹⁵⁰ Court found that the judiciary cannot order the executive to take specific actions because of the separation of powers doctrine.¹⁵¹ One judge commented that even engagement with a case that directly or indirectly requests legislative change would violate the separation of powers doctrine.¹⁵² The *Children of Austria*¹⁵³ plaintiffs challenged the Federal Climate Protection Act on the basis that it does not provide equal protection for children and future generations. The Court decided not to repeal the impugned section, because repeal would change the nature of the Act to the extent that it would give it new meaning and, as such, would amount to an act of legislation.¹⁵⁴

Eckes and others argue that climate cases are political in nature and that a consideration of the boundaries of the court's power will inevitably surface.¹⁵⁵ Such questions can be fully aired at the merits hearing, where it will resurface, making an exception to this requirement at the procedural phase not irreversible. Making a final finding on the redressability at this early stage precludes the court from applying a purposive approach later on when all the evidence has been canvassed, and full impacts on child rights can be assessed. It may be premature

139 *Juliana* (n 10).

140 *Kanuk* (n 70).

141 *Aji* (n 70).

142 *Lho'imggin* (n 70).

143 See complaints.

144 *Juliana* (n 10).

145 *Juliana* (n 10) Ninth Circuit Court of Appeals Opinion 18-36082 (17 February 2020) 25.

146 *Layla* (n 70).

147 *Kanuk* (n 70).

148 *Aurora* (n 11).

149 *Children of Austria* (n 11).

150 *Aurora* (n 11).

151 *Aurora* (n 11) Supreme Court (19 February 2025).

152 Sabin Centre for Climate Change Law 'Aurora case summary', <https://climatecasechart.com/non-us-case/anton-foley-and-others-v-sweden-aurora-case/> (accessed 17 August 2025).

153 *Children of Austria* (n 11).

154 *Children of Austria* (n 70) CC decision 123/2023-12 (27 June 2023).

155 Eckes and others (n 74).

to make a finding of this nature before considering all the elements of the case. This was the opinion of Judge Aitken,¹⁵⁶ who ruled in favour of the *Juliana*¹⁵⁷ plaintiffs at an earlier stage.¹⁵⁸ She maintained that the preliminary stage is not the proper place to air all the evidentiary and jurisdictional issues, which will be aired in more depth in the trial phase in any event.¹⁵⁹ She alludes to the principle that the preliminary elimination phases' primary purpose is to filter out frivolous litigants, not to decide finally on the issues.¹⁶⁰ The state opposed children's access to court in what some call an unprecedented way and managed to get the courts to decide the core issues without hearing all the evidence, and the courts should not have allowed it.¹⁶¹

3.1.4 Class action

Two cases deal with the certification of a class for a class action. This process may also be described as a preliminary inquiry. The *Children of Kabwe*¹⁶² case aims to seek relief for a defined group of children in Zambia who have been affected by lead poisoning caused by a mine that was run by or belonged to Anglo American. The case was brought in South Africa because of the restrictive laws applicable to claims against the government in Zambia, and because the erstwhile owner of the mine, Anglo American, has an office in South Africa. Children living in Kabwe face poverty and a legal system that excludes them from obtaining relief. The *Children of Kabwe*¹⁶³ litigants seek to declare a class to allow any affected child in Kabwe to claim from the defendants should the class action be successful.¹⁶⁴ The preliminary stage is the part where the court must certify a class. The court must decide, among other things, whether the case is triable. The Court dismissed the application on the grounds of triability, but at no point did it consider the impact of such a decision on the ability of children to access an effective remedy elsewhere.¹⁶⁵

*ENVironnement JEUnesse v Procureur General du Canada*¹⁶⁶ sought relief from a Canadian court to represent a class of young people under 35 in a class action alleging that Canada's inadequate climate mitigation measures violated

156 Our Children's Trust 'Youth v Gov', <https://www.ourchildrenstrust.org/juliana-v-us#:~:text=On%20December%2029%2C%202023%2C%20U.S.%20District%20Court%20Judge,dates%20from%20Judge%20Aiken%20on%20January%2019%2C%202024> (accessed 6 July 2025).

157 *Juliana* (n 10).

158 Our Children's Trust (n 156) Judge Aitken (19 April 2024).

159 As above.

160 As above.

161 As above.

162 *Children of Kabwe* (n 64).

163 *Children of Kabwe* (n 64).

164 *Children of Kabwe* (n 64) Application (20 October 2020), <https://www.ucc.ie/en/youthclimatejustice/caselawdatabase/various-parties-obo-minors-v-anglo-american-south-africa-limited--others.html> (accessed 6 July 2025).

165 *Children of Kabwe* (n 64) High Court order (14 December 2023).

166 *JEUnesse* (n 70).

their fundamental rights.¹⁶⁷ The Court dismissed the request based on the finding that the 35-year age cut-off for the class was arbitrary and not objective.¹⁶⁸ In both cases, the courts fail to consider the interests of children and their particular access to justice needs, which may only be addressed by special measures such as a class action. Both are being appealed. Class actions are particularly important to children as a group to ensure that the largest number of children have access to litigation.

3.1.5 *Exhaustion of local remedies*

The decision in *Sacchi*¹⁶⁹ has been criticised for not applying the exception to the rule that applicants must exhaust local remedies before approaching the CRC Committee for relief.¹⁷⁰ *Amicus curiae* submissions by the Special Rapporteurs on Human Rights and the Environment made arguments supporting an exception on the basis that domestic courts are unlikely to bring effective relief due to the multinational nature of the problem.¹⁷¹ Daly and others argue that children's unique sense of time and the disproportionate effect of climate change on children as a group may have implications for children's rights to access justice on an equitable basis with adults, affecting their non-discrimination rights under article 2 of CRC.¹⁷² The *amici* emphasised that the passage of time in climate change matters was particularly important because of the exponential escalations and irreversible damage which ensues with each passing day. General Comment 27 refers specifically to the fact that children experience time differently.¹⁷³ Unfortunately, the Committee did not distinguish between climate cases and other cases. The European Court faced similar criticisms after the youth litigants in *Agostinho*¹⁷⁴ had been denied access to court for the same reason.

4 A child rights-based approach

Firstly, it means children getting the attention and help that they NEED when their rights are violated.

Black Girls Rising (on justice)¹⁷⁵

167 *JEUnesse* (n 70) Complaint.

168 *JEUnesse* (n 70) Superior court order (11 July 2019).

169 *Sacchi* (n 11).

170 Daly (n 8) 643.

171 *Sacchi* (n 11) *amicus curiae* submissions on admissibility: D Boyd & JH Knox (Special Rapporteurs on Human Rights and the Environment).

172 A Daly, RT Stern & P Leviner 'UN Convention on the Rights of the Child, article 2 and discrimination on the basis of childhood: The CRC paradox?' (2022) 91 *Nordic Journal of International Law* 419.

173 CRC (n 41) para 25.

174 *Agostinho* (n 11).

175 Black Girls Rising (30 June 2025) 'Submission to the CRC Committee on draft General Comment 27'.

Several authors make a case for relaxing standing and admissibility requirements in climate cases.¹⁷⁶ This is already the case in some countries in relation to public interests or environmental cases to ensure better access to courts.¹⁷⁷ This argument is strengthened in the context of child rights, where the power imbalances and child-specific barriers to courts are essential considerations.

Draft General Comment 27 defines access to justice as ‘the ability for children to obtain a just and timely remedy for violations of children’s rights, through avenues adapted to children.’¹⁷⁸ It relates to both the process and the outcome. The CRC Committee confirms that states have a duty to ensure the child’s right to access justice and an effective remedy, informed by the best interests of the child, non-discrimination, survival and development, and the right to be heard.¹⁷⁹ Practically, this means that when courts decide on whether a case will proceed to court, they must actively consider the effect of their decision on the equality, development and survival of the child, as well as their right to be heard and to have their best interests considered a primary consideration. In none of the failed youth cases did a court explain how they engaged with these principles during the preliminary inquiry stage.

A child rights-based approach to access to justice means that remedies must be available, accessible and adapted to children.¹⁸⁰ Justice is not limited to children being able to launch proceedings. If children are unable to advance to the merits stage, where they can share their stories with the court, their right to be heard is compromised. If children’s unique vulnerabilities have no bearing on the court’s decision to admit them to court, their right to equality is affected. If the court does not weigh the child’s interests against the need to stave off frivolous litigants, the child’s right to have their best interests considered paramount in all matters affecting them is potentially violated. A child rights-based approach requires the court’s engagement with these matters.¹⁸¹ It does not mean that any child litigant will be allowed into court, but rather that adaptations are made to level the playing field.¹⁸²

Employing a child rights-based approach to access to justice may include adapting the law to allow courts the broadest possible discretion in relation to preliminary inquiries. General Comment 27 suggests that states grant

176 Abate (n 17); J Auz ‘Admissibility’ in Wewerinke-Singh & Mead (n 17); Eckes and others (n 74).

177 Eg India and Australia, where broader standing requirements are set out in some environmental laws. Abate (n 17) 120.

178 Draft General Comment 27 (n 42) para 9.

179 Draft General Comment 27 (n 42) para 15.

180 Draft General Comment 27 (n 42) para 5. See also the Committee of Ministers of the Council of Europe (n 43) 9.

181 L Parker and others ‘When the kids put climate change on trial: Youth-focused rights-based climate litigation around the world’ (2022) 13 *Journal of Human Rights and the Environment* 89.

182 Draft General Comment 27 (n 42) 5 ‘Due process guarantees do not preclude adequate adjustments to compensate for the power differential between children and other parties.’

courts the widest possible jurisdiction regarding subject matter, standing, class actions, territorial issues, time and representation.¹⁸³ General Comment 26 refers specifically to the complex nature of environmental cases, including transboundary effects, causation and cumulative impacts.¹⁸⁴ It stresses the importance of children's voices being heard despite these difficulties. It suggests adaptations such as broadening standing rules, shifting the burden of proof from plaintiffs, facilitating group complaints, accelerating time frames and designing creative remedies.¹⁸⁵

The EU child-friendly justice guidelines describe child-friendly justice as accessible, adapted to and focused on the needs and rights of the child.¹⁸⁶ This includes adopting a comprehensive approach that considers 'all interests at stake, including psychological and physical wellbeing and legal, social and economic interests of the child'.¹⁸⁷ The American Declaration on Rights and Duties of Man¹⁸⁸ requires 'a simple and prompt procedure by which the courts can provide protection against acts of authorities that violate, to their detriment, any of the fundamental rights enshrined in the Constitution'.¹⁸⁹ The Inter-American Court's Advisory Opinion on the duties of states in relation to climate change contains some progressive principles on adjusted court rules for children and other groups vulnerable to discrimination, including in relation to standing and collective cases.¹⁹⁰ It urges states to use principles such as the *pro actione* principle, which means that courts must avoid interpretations and applications of procedural rules that prevent or hinder in an unjustified manner the possibility of a jurisdictional body to hear and resolve in law the claims submitted to it, and the interpretation most favourable to access to jurisdiction must always prevail.¹⁹¹ According to the Court, 'judicial bodies should interpret and apply the relevant rules in such a way as to effectively guarantee access to material justice for those who require it in the context of the climate emergency'.¹⁹²

5 Best practices from South Africa

Through affidavits, young people were able to voice their opinions on coal.

Michelle Sithole, Attorney for the applicants in *Cancel Coal*¹⁹³

183 Draft General Comment 27 (n 42).

184 General Comment 26 (n 32).

185 As above.

186 Committee of Ministers of the Council of Europe (n 43) 9.

187 Committee of Ministers of the Council of Europe (n 43) 10.

188 Inter-American Commission on Human Rights American Declaration of the Rights and Duties of Man (DRDM) (2 May 1948).

189 Art XVIII DRDM (n 188).

190 *Advisory Opinion AO-32/25* Inter-American Commission on Human Rights (29 May 2025).

191 *Advisory Opinion AO-32/25* (n 190) para 543.

192 *The Obligations of States in Responding to the Climate Emergency (Advisory Opinion)* IACHR (29 May 2025) Ser A/32 OC-32/25 para 543.

193 Youth Climate Justice webinar (n 125).

Young South African climate activists recently won their first climate court case. The African Climate Alliance, an organisation made up of and led by youths between the ages of 14 and 25 years,¹⁹⁴ challenged a minister's decision to procure 1 500 megawatt additional coal-fired power, and won. They won the *Cancel Coal*¹⁹⁵ case on the very narrow grounds that the minister had failed to consider the impacts of his decision on children's rights.¹⁹⁶ This is a good start for a child rights-based approach in South African environmental law, but a few months later, when the Supreme Court of Appeal ruled on the exceptionally high levels of air pollution in the Highveld Priority Area (*Deadly Air*),¹⁹⁷ the Court was silent on children's rights. The Court received ample support from the *amicus curiae*, Centre for Child Law,¹⁹⁸ on the applicable child rights in domestic and international law, and its implications on the case, but the Court declined to grapple with the issues.¹⁹⁹

A decisive child-focused judgment by the Supreme Court in *Deadly Air*²⁰⁰ would have been helpful to children who are defending the upcoming appeal in *Cancel Coal*,²⁰¹ and those fighting to appeal the *Kabwe* judgment,²⁰² in which the High Court refused to certify a class for thousands of children who suffer ongoing lead poisoning from a mine in Zambia, which was previously run by Anglo American.²⁰³ Children need firm child rights principles in law to challenge climate and pollution-related cases, especially involving private companies.²⁰⁴ The South African cases are not perfect. As in the rest of the world, South African courts are still developing climate jurisprudence, especially concerning children. *Amici curiae*, such as the Centre for Child Law, is working alongside child applicants to ensure that child rights are centred in the cases and that they shape the development of the law.²⁰⁵ South Africa has a liberal Constitution, rich child rights and social justice jurisprudence upon which to draw, which may guide the way forward.²⁰⁶ The following part explores some of the most useful best practices from the South African context.

194 <https://www.afri|canclimatealliance.org/> (accessed 6 July 2025).

195 *Cancel Coal* (n 64).

196 As above.

197 *Minister of Environmental Affairs v Trustees for the Time Being of Groundwork Trust & Others* 2025 (4) SA 98 (SCA) (*Deadly Air*).

198 The Centre for Child Law is a children's rights strategic impact litigation organisation based at the University of Pretoria, South Africa, <https://www.centreforchildlaw.co.za/> (accessed 6 July 2025).

199 L Muller 'SCA moved environmental rights forward, but left children's rights behind' 27 May 2025, <https://www.dailymaverick.co.za/article/2025-05-27-sca-moved-environmental-rights-forward-but-left-childrens-rights-behind/> (accessed 6 July 2025).

200 *Deadly Air* (n 197).

201 *Cancel Coal* (n 64).

202 *Children of Kabwe* (n 64).

203 *Cancel Coal* (n 64).

204 M Wewerinke-Singh & Z Nay 'Climate change as a children's rights crisis: Procedural obstacles in international rights-based climate litigation' in P Czech and others (eds) *European yearbook on human rights* (2022) 647.

205 Muller (n 199).

206 Sloth-Nielsen (n 22) 505.

5.1 Liberal standing

South African law departed from stringent standing requirements in the early days of its constitutional democracy.²⁰⁷ Under the previous dispensation, similar stringent standing provisions to those employed today in many Global North countries were applicable.²⁰⁸ However, in the 1995 case, *Ferreira v Levin* (*Ferreira*),²⁰⁹ Judge President Chaskalson set the stage for a constitutional, human rights-based approach to standing.²¹⁰

Whilst it is important that this court should not be required to deal with abstract or hypothetical issues and should devote its scarce resources to issues that are properly before it, I can see no good reason for adopting a narrow approach to the question of standing in constitutional cases. On the contrary, it is my view that we should rather adopt a broad approach to standing. This would be consistent with the mandate given to this court to uphold the Constitution and would serve to ensure that constitutional rights enjoy the full measure of the protection to which they are entitled.

The South African Constitution provides the widest possible standing, giving *anyone* who alleges that a right in the Bill of Rights has been infringed or threatened the right to approach a court, even if they themselves are not affected. The persons who may approach a court include anyone (a) acting in their own interest; (b) acting on behalf of another person who cannot act in their own name; (c) acting as a member of, or in the interest of, a group or class of persons; (d) anyone acting in the public interest; and (d) an association acting in the interest of its members.²¹¹ This wide standing is duplicated in the Children's Act. It eliminates any problems children may have under a system with strict rules regarding issues such as victim status, the need to prove direct and particularised harm, and limitations on representation.²¹²

Several cases have concretised the wide standing afforded by the Constitution, relying on the principle established in *Ferreira*.²¹³ Transformative constitutionalism, a principle by which the courts are required to develop law in line with the Constitution, has allowed for the common law principles to progressively evolve in line with the constitutional principles of dignity, equality and freedom, as opposed to a strict application of the law as it has always been.²¹⁴ Ngcukaitobi notes that South African case law has applied wide standing to address inequality in South African society.²¹⁵ The Constitution has enabled

207 E Bray 'Locus standi in recent case law and its possible impact on environmental litigation' (1996) 11 *SA Public Law* 590.

208 Rabie & Eckard (n 76) 145.

209 1996 (1) SA 984 (CC) para 230.

210 *Ferreira* (n 209).

211 The Constitution of the Republic of South Africa, 1996.

212 Sec 15 Children's Act 38 of 2005; sec 38 Constitution.

213 *Ferreira* (n 209); T Ngcukaitobi 'The evolution of standing rules in South Africa and their significance in promoting social justice' (2002) 18 *South African Journal on Human Rights* 590.

214 MJ Murcott *Transformative environmental constitutionalism* (2002).

215 Ngcukaitobi (n 213).

judges to move away from an individualised approach to standing.²¹⁶ In the words of another constitutional court judge, O'Regan J: 'In particular, it is important that it is not only those with vested interests who should be afforded standing in constitutional challenges, where remedies may have a wide impact.'²¹⁷

A collective, as opposed to individualised, approach to standing is employed in *Wildlife Society of Southern Africa & Others v Minister of Environmental Affairs*,²¹⁸ where the Court reflected on the need to reconceptualise *locus standi* rules to address environmental harm. Because climate change will not spare anyone, everyone should be given the right to protect what will inevitably be in their own and all of society's interests. To counter floodgates arguments, the judge observed that the fear of numerous and frivolous litigation probably was overestimated in environmental matters, considering the massive barriers inherent to such cases, and that in some cases floodgates need to be opened to 'to irrigate the arid ground below them'.²¹⁹ The Court was satisfied that 'busybodies' could be sufficiently punished or discouraged with a punitive cost order.²²⁰ Van Reenen argues that a continued individualised approach to standing is artificial and out of touch with modern realities.²²¹ The reality is that children, like people living in poverty, are a class who, in terms of access to courts, are 'on arid ground' and for whom the floodgates need to be opened to bridge the gap between them and those better resourced (financially and otherwise) to litigate.

5.2 Special roles of the courts

In *Ferreira*²²² O'Regan J confirms that courts have a new and special role in a constitutional democracy, which requires them to develop the law to adapt to the constitutional environment.²²³ Murcott and Vinti argue that courts are mandated to apply transformative environmental constitutionalism to ensure that environmental decision making does not negate the realisation of rights and amount to a regression in achieving constitutional aims.²²⁴ Murcott argues that social justice cannot exist in a malfunctioning environment. She promotes 'transformative environmental constitutionalism', which requires that courts use what she calls 'transformative adjudication' to ensure social justice through a rights-based approach and substantive reasoning that gives effect to rights and

216 As above.

217 *Ferreira* (n 209) para 230.

218 *Wildlife Society of Southern Africa and Others v Minister of Environmental Affairs* 1996 (3) All SA 462 (Tk) 473.

219 As above.

220 As above.

221 TP van Reenen 'Locus standi in South African environmental law: A reappraisal in international and comparative perspective' (1995) 2 *South African Journal of Environmental Law and Policy* 121.

222 *Ferreira* (n 209).

223 As above.

224 MJ Murcott & C Vinti 'The judge-made "duty" to consider climate change in South Africa' (2024) 16 *Journal of Human Rights Practice* 125.

promotes social justice, dignity and equality.²²⁵ This approach to adjudication may allow courts to consider child rights and develop procedural laws in line with international legal standards.

5.3 Redressability and separation of powers

The South African Constitution makes express provision for the declaration of rights as appropriate relief.²²⁶ Where a right has been declared, the question of duty arises, and the nature and content of that duty must be determined with close consideration for the separation of powers where state defendants are involved. The Supreme Court of Appeal in *Deadly Air*²²⁷ grappled with these issues in the context of environmental litigation. Affected communities living in what has been called the most polluted section of air in the world, applied to court to declare their rights and order the government to act. The area contains 12 coal-fired power stations, a petrochemical refinery, metal smelters and hundreds of mines,²²⁸ contributing to the deaths of thousands of children annually.²²⁹ The area was declared a high-priority area, but in 10 years, the Minister of the Environment had taken no action to improve air quality.²³⁰ The applicants wanted the court to order the minister to take specific action and make regulations to implement the 'Highveld Priority Plan', which aims to bring air pollution within the legal bounds. The Court granted their relief.

If the Court had followed the *Juliana*²³¹ Court's approach, the remedy to order the executive to act in a particular manner would have been out of the question. That Court called the case 'an attack on the separation of powers'.²³² Liefwaard comments that this approach is a serious concern for realising child rights.²³³ The Supreme Court of Appeal, in *Deadly Air*,²³⁴ applied a purposive approach to the enquiry, and found (i) that the poor air quality in the Highveld Priority Area is in breach of the constitutional right to an environment that is not harmful to health and wellbeing; and (ii) that the minister has a legal duty to prescribe regulations

225 Murcott (n 214) 132.

226 Sec 38 Constitution of the Republic of South Africa.

227 *Deadly Air* (n 197).

228 Centre for Environmental Rights, groundWork & the Highveld Environmental Justice Network *Broken promises: The failure of the Highveld Priority Area* (2017), <https://groundwork.org.za/wp-content/uploads/2022/07/broken-promises.pdf> (accessed 6 July 2025).

229 UNICEF 'Air pollution accounted for some 3 365 deaths of children under five years across South Africa in 2021' 20 June 2024, <https://www.unicef.org/southafrica/press-releases/air-pollution-accounted-some-3365-deaths-children-under-five-years-across-south> (accessed 6 July 2025).

230 Centre for Environmental Rights, groundWork & the Highveld Environmental Justice Network (n 228).

231 *Juliana* (n 10).

232 Eckes and others (n 74) 146.

233 T Liefwaard (June 2025), https://www.linkedin.com/posts/ton-liefwaard-838b1912_press-release-statement-on-unicef-board-activity-7341012575729397765-MaW7?utm_source=share&utm_medium=member_desktop&rcm=ACoAAAL0c1SBq8dvZWlG4zZy8N6NwtA28TU_NNE (accessed 6 July 2025).

234 *Deadly Air* (n 197).

under the relevant legislation to implement and enforce the published Highveld Priority Area Air Quality Management Plan.

The *Deadly Air*²³⁵ Court confirms what was previously found in *Eskom Holdings SOC Ltd v Vaal River Development Association (Pty) Ltd & Others*²³⁶ that the environmental right is immediately realisable under South African law. It is neither subject to progressive realisation nor dependent on the availability of resources.²³⁷ This is an important finding for the redressability of the right. This meant that the Court could move on to the issue of whether or not it could order the minister to take specific actions. The minister argued that she had the discretion to make regulations but could not be ordered to do so, based on the separation of powers doctrine. Through a purposive, rights-informed interpretation of relevant legislation, the Court found that the minister bears a duty to the public to implement plans to reduce harm.²³⁸ In finding whether the minister has a duty to act, the Court interpreted the permissive language (the minister *may* make regulations) of the legislation to create an obligation (the minister *must* make regulations). It ruled that making regulations was mandatory, because such an interpretation affords better constitutional protection to the affected persons. The case law confirms that the mere making of legislation or a policy to protect constitutional rights is not sufficient. The Court in *Government of South Africa v Grootboom*²³⁹ found:

The state is obliged to act to achieve the intended result, and the legislative measures will invariably have to be supported by appropriate, well-directed policies and programmes implemented by the executive ... the formulation of a programme is only the first stage in meeting the state's obligations. The programme must also be reasonably implemented. An otherwise reasonable programme that is not implemented reasonably will not constitute compliance with the state's obligations.

The rights-based approach allowed the Court to order the government to act on what necessarily had to be done to provide protection, but without specifying the plan's content. This approach could have been followed in *Juliana*.²⁴⁰ The Supreme Court, however, did overturn sections of the High Court order that specified considerations to be taken into account in making the regulations, because it stated that that would violate the separation of powers principle.

²³⁵ As above.

²³⁶ 2023 (4) SA 325 (CC) (23 December 2022).

²³⁷ C. McConnachie 'The right to a safe environment, here and now (2024) 14 *Constitutional Court Review* 307.

²³⁸ McConnachie (n 237) 308.

²³⁹ 2000 11 BCLR 1169 (CC) 42.

²⁴⁰ *Juliana* (n 10) Ninth Circuit Court of Appeals Opinion 18-36082 (17 February 2020) 32. The Ninth Circuit stated that 'the other branches may have abdicated their responsibility to remediate the problem does not confer on Article III courts, no matter how well-intentioned, the ability to step into their shoes'.

5.4 Representation

Several youth climate cases have become stuck at the issue of whether individuals may represent the interests of others, whether the interests of future generations are relevant to the cases of those litigating today, and whether class actions should be allowed on behalf of affected groups.²⁴¹ On individuals representing those in similar situations, the courts have again adopted a broad approach.²⁴² In *Beukes v Krugersdorp Transitional Local Council*²⁴³ the Court applied a broad approach to the burden of proof in standing on behalf of a class of persons, stating that formalistic requirements must not stand in the way of litigants at the procedural phase. Subsequent courts have also adopted this stance, stating that it is crucial for those who live in poverty to have access to justice. The same applies to children and future generations. In the recent *Deadly Air*²⁴⁴ case, the Court went as far as to state that children have standing to bring a case before the court even if they had no personal damage but are acting solely in the interest of future generations.²⁴⁵

The South African jurisprudence provides three core lessons for youth climate justice adjudication in future, including:

- (a) Where a power imbalance affects litigants, adjustments must be made to allow them access;
- (b) To do so, the court must apply a human rights-based approach, considering whether its decision gives effect to the rights of the affected people.
- (c) Closing the gap in access to justice requires the judiciary to be flexible and broaden archaic procedural requirements in the interest of those unlikely to obtain justice in any other way.

6 Lessons from ubuntu

The main barriers in children's litigation at the procedural phase can be summed up as the insistence on the presence of individualised harm (harm that is greater and different from all others in society); and a clear path of attribution of harm, coupled with the failure to accept climate change's multiple, non-linear causes and effects; and to employ a purposive human rights-based approach to achieve benefits for the broader community as opposed to the individual.

These can be summed up further as a failure to recognise the interconnectedness of all people and the environment across space and time. African law, with its underpinnings in philosophies of relationality,²⁴⁶ can be employed to overcome

241 S Bookman & M Wewerinke-Singh 'Intergenerational equity' in Wewerinke-Singh & Mead (n 17) 344.

242 Ngcukaitobi (n 213) 605.

243 1996 (3) SA 467 (W) 474.

244 *Deadly Air* (n 197).

245 *Deadly Air* (n 197) para 82.4.

246 P Ikuenobe 'Relational autonomy, personhood, and African traditions' (2015) 65 *Philosophy East and West* 1005.

the legal and conceptual barriers that plague child climate litigants and to provide solutions that lead to more effective remedies. To do so, a decolonial approach must be employed, which questions dominant narratives in domestic and international law.

A decolonial approach to access to justice and effective remedies requires delinking from the currently applied norms. Legal arguments must disrupt the normalised impacts of inequality and domination. Children, through their climate litigation, are already doing this. Their cases propose disruption of major economic systems, hierarchies of power, and prioritisation of those who do not significantly contribute to the profit of those in power. If courts are going to follow suit, they will need to critically analyse 'the impacts of inequality and domination, aiming to disrupt them being seen as a given.'²⁴⁷ They must then replace such assumptions with new philosophies that can address climate change. This article argues that uniquely African philosophies that engender a sense of connection and duty to community in adults and children may provide fertile ground for such a child-led revolution.

African philosophies of 'oneness' or 'humanness' are found throughout the continent under various names, and in differing contexts, but the core concept universal to all African traditions is that all beings are related to one another, and that their being is dependent on one another.²⁴⁸ They derive meaning from their 'relation' to others, regardless of their position in society. In Southern Africa it is called ubuntu.²⁴⁹ We are warned against simply translating the concept of ubuntu, but many words have been ascribed to it. In its most poetic form, it has been called the 'potential of being human,'²⁵⁰ and at its most utilitarian, the instinct to facilitate survival.²⁵¹ They all point to what ultimately is a communitarian, collective approach, captured in the phrase 'I am because you are'²⁵² or, in the words of Justice Mokgoro, '[i]t is a basically humanistic orientation towards fellow beings' which highlights 'the importance of sacrifice for every advantage or benefit, which has significant implicants for reciprocity and caring within the communal entity'.²⁵³

247 AB Tuchten 'Law's happiness: A decolonial approach to well-being and human rights' LLM dissertation, University of Pretoria, 2021 12; S Tamale *Decolonisation and Afro-feminism* (2020) xiv.

248 JR Mugumbate and others 'Understanding ubuntu and its contribution to social work education in Africa and other regions of the world' (2023) 43 *Social Work Education* 1123.

249 The focus on this manifestation of African philosophy is justified because it is widely used in literature and jurisprudence, but is not meant to elevate its importance above any other form or name.

250 Mokgoro (n 21) 17.

251 L Mbigi & J Maree J 'Ubuntu: The spirit of African transformation management' (1995) *Sigma Press Johannesburg* 7.

252 J Gathogo 'John Mbiti's ubuntu theology: Was it rooted in his African heritage?' (2022) 48 *Studia Historiae Ecclesiasticae* 4.

253 Mokgoro (n 21) 17.

Several African scholars have made the connection between ubuntu and the environment. In essence, ubuntu recognises that there is no difference between humans and the environment. That being so, we cannot separate our own well-being from that of our neighbour and nature.²⁵⁴ Topidi writes that humans and the environment have no choice but to live together in harmony without exploiting one another because they are one entity.²⁵⁵ Accordingly, we are incomplete without the collective, according to Ramose.²⁵⁶ According to ubuntu, altruism toward nature and one another is also self-care. Mabele and others propose ubuntu as a tool to decolonise environmental solutions because it promotes life through 'mutual caring and sharing between and among humans and non-humans'.²⁵⁷ It is on this basis that rivers in South America are found to be holders of rights. Feria-Tinta, in her book *A barrister for the earth* reflects that the notion that a river or a forest can be the holder of rights is not so strange if one considers that modern law has, for instance, recognised the rights of companies.²⁵⁸ It is a matter of questioning what is a given in the dominant narrative. Dominant legal narratives readily accept value in recognising the property rights of unconscious financial entities. However, they question the value of protecting life itself, manifested in a river that sustains everything around and within it. Ubuntu is disruptive to Western ways of understanding the interaction between humans and the environment.²⁵⁹

Ubuntu also connects us to our ancestors and our descendants. According to Ndofirepi:²⁶⁰

The maintenance of harmony and equilibrium in the wholeness of creation is of fundamental importance in the African world view. In order to maintain harmony in creation, one must show respect for all living things (those in the visible world, as well as the living dead – the ancestors).

The interconnectedness of ubuntu invariably leads to an accepted sense of duty, a principle that infuses African law.²⁶¹ The regional rights treaties all emphasise the need for decolonial approaches and interpretation of all rights through the lens of African values and traditions.²⁶² The African Charter on Human and Peoples' Rights (African Charter)²⁶³ and the African Charter on the Rights and Welfare of

254 J McIntyre-Mills 'Recognising our hybridity and interconnectedness: Implications for social and environmental justice' (2017) 66 *Current Sociology* 886.

255 K Topidi 'Ubuntu as a normative value in the new environmental world order' in D Amirante & S Bagni (eds) *Environmental constitutionalism in the Anthropocene* (2022) 51.

256 MB Ramose 'Ecology through ubuntu' (2015) *Environmental Values* 69.

257 MB Mabele, JEB Krauss & W Kiwango 'Going back to the roots: Ubuntu and just conservation in Southern Africa' (2022) 20 *Conservation and Society* 92.

258 M Feria-Tinta *A barrister for the earth: Ten cases of hope for our future* (2025).

259 Tamale (n 247).

260 AP Ndofirepi & RN Shanyana 'Rethinking *ukama* in the context of "philosophy for children" in Africa' (2015) 31 *Research Papers in Education* 5.

261 K Horsthemke 'Ukama and African environmentalism' in K Horsthemke *Animals and African ethics* (2015) 94.

262 W Benedek 'Peoples' rights and individuals' duties as special features of the African Charter on Human and Peoples' Rights' in P Kunig, W Benedek & CRR Mahalu *Regional protection of human rights by international law: The emerging African system* (1985) 87.

263 Organisation of African Unity *African Charter on Human and Peoples' Rights* (1981).

the Child (African Children's Charter)²⁶⁴ contain rights alongside responsibilities for both adults and children.²⁶⁵ This causes disruption in the Western legal thought, which is concerned that rights will depend on duties.²⁶⁶ To African conceptions of well-being, rights and duties are different sides of the same coin, and a society that does not have duties toward one another cannot have rights. The African Children's Committee provides insight into the solidarity of ubuntu in its General Comment on article 31 of the African Children's Charter:²⁶⁷

Solidarity is built on a sense of a shared humanity by all and underscores the idea of communality and the interdependence of members of a group community. It is a notion founded on the understanding that every individual is an extension of others and is a central theme in African philosophy.

The name of the African Charter itself is unique in that it specifies both 'human' and 'peoples', acknowledging that humans are part of a collective, which in itself has rights.²⁶⁸ The African approach to human rights stands in stark contrast to Western approaches to human rights, which are premised on 'social atomisation and individualism' and for which the rationale of rights is the inherent value of the individual pitted against another.²⁶⁹ Climate change is an inherently communal problem that needs communal answers. African philosophies may be able to provide a basis for that shift. A Western approach is useful to the vindication of some human rights, such as freedom of speech, but falls short in the context of the complicated, multi-generational, international crisis, which is climate change.²⁷⁰

The Western fixation on the requirement of individualised harm can be overcome with an African lens. By the ubuntu reasoning, all individuals' interests are implicated once environmental harm is established.²⁷¹ The indivisibility of all people and nature renders a strict 'individual injury' rule senseless. Ubuntu also requires accepting sacrifice as a necessary component of any benefit. Group solidarity and, therefore, sacrifice for collective interest are core to ubuntu. Such a decolonial approach would require reconceptualising the role of the law from being a tool of personal defence to something which allows everyone to thrive within a community.

The way in which children experience climate change is unique.²⁷² Landeira argues that climate change anxiety disproportionately impacts children because

264 Organisation of African Unity *African Charter on the Rights and Welfare of the Child* (1990).

265 Benedek (n 262) 87.

266 J Sloth-Nielsen & B Mezmur 'A dutiful child: The implications of article 31 of the African Children's Charter' (2008) 52 *Journal of African Law* 174.

267 African Children's Committee 'General Comment 4 on article 31 of the ACRWCR on the Responsibilities of the Child' (2018) para 71.

268 Viljoen (n 19) 18.

269 A Claude 'The African context of human rights' (1987) 34 *Africa Today* 5.

270 J Wilkens & ARC Datchoua-Tirvaudey 'Researching climate justice: A decolonial approach to global climate governance' (2022) 98 *International Affairs* 125.

271 L le Grange 'Ubuntu, ukama and the healing of nature, self and society' (2011) 44 *Educational Philosophy and Theory* 56.

272 Paz Landeira (n 124) 855.

of the intensified way in which they experience the fastness and inevitability of the crisis and the slowness of the law/judicial systems.²⁷³ A child rights-based approach, therefore, will require flexibility in procedural rules that is able to consider immediate harm and future risks simultaneously. Tamale explains that African philosophies conceive of time as a spiral. It is multidimensional and multilayered and cannot be fixed.²⁷⁴ It is able to contain the complexities of children's experience of time and climate change. The African Children's Committee was able to accommodate children's unique experiences of time in *IHRDA & Another v Kenya (Nubian minors)*,²⁷⁵ where they granted an exception to the rule that local remedies must be exhausted.²⁷⁶ In its decision on the preliminary stages of the case, the Committee expressly considers the best interests of the child and finds that an unduly prolonged domestic remedy cannot be considered to fall within the ambit of 'available, effective, and sufficient local remedy' and warrants an exception.²⁷⁷ In the words of the African Children's Committee:²⁷⁸

A year in the life of a child is almost six per cent of his or her childhood ... States need to adopt a 'children first' approach with some sense of urgency. The implementation and realisation of children's rights in Africa is not a matter to be relegated to tomorrow, but an issue that is in need of proactive, immediate attention and action.

African philosophies have been used as an interpretive principle at the domestic level, most prominently in South Africa. South African constitutional jurisprudence is heavily influenced by what Constitutional Court Justice Mokgoro called 'indigenous values' in the very first case to be heard by the Court.²⁷⁹ Without an established jurisprudence, she relies on ubuntu as a system of values extraneous to the constitutional text, which is intrinsic to its historical context, to inform its interpretation. The South African courts went on to rely on and expand the definition of ubuntu in many subsequent cases,²⁸⁰ across both the public and private spheres, offering a unique insight into how such a 'metanorm'²⁸¹ can push the law beyond the colonially imposed boundaries, making South African constitutional jurisprudence one of the most progressive in the world. Infusing law with particularly African values has allowed South African courts to give effect to rights in a more tangible way, which speaks to the realities of affected people and addresses colonial inequalities. That being said, there are those (Ramose) who argue that South African constitutionalism has not

273 Paz Landeira (n 124) 856.

274 Tamale (n 247).

275 (2011) AHRLR 181 (ACERWC 2011).

276 E Durojaye & EA Foley 'Making a first impression: An assessment of the decision of the Committee of Experts of the African Children's Charter in the Nubian Children communication' (2012) 12 *African Human Rights Law Journal* 564.

277 *Nubian minors* (n 275) para 32.

278 *Nubian minors* (n 275) para 33.

279 *S v Makwanyane* 1995 (3) SA 391 (CC) para 300.

280 TW Bennett 'Ubuntu: An African equity' (2011) 14 *Potchefstroom Electronic Law Journal* 30.

281 Bennett (n 280).

gone far enough and that its essence as a colonial compromise limits its ability to truly embody ubuntu.²⁸²

In finding the death penalty unconstitutional, the South African Constitutional Court stated that the death penalty was the ‘antithesis of ubuntu’, a violence that poisons not only the individual but the entire society.²⁸³ The Court relied on the dignity of the individual (the accused), as well as the communal entity, making a compelling case for abolition of the death penalty, a fiercely retributive punishment, which neither benefits the victims, nor rehabilitates the criminal. A similar approach was employed by the Truth and Reconciliation Commission, in which perpetrators of apartheid could obtain acquittal in exchange for telling the whole truth of their politically motivated crimes.²⁸⁴ The benefit of bringing the horrors of apartheid into the light, and for families to know what happened to their loved ones, was considered more beneficial for the South African people as a group than the punishment of the individual. For instance, this can be contrasted with the approach employed in international law in the Nuremberg trials.²⁸⁵ It promotes a reconciliatory approach as opposed to a retributive approach and prefers a solution useful to society above one which satisfies only a few individuals. When the time comes, judges can use ubuntu, as Justice Mokgoro once did, to interpret fundamental rights through the lens of the values of ubuntu, finding that razing the earth, depleting its resources, and leaving only destruction for future generations might be the antithesis of ubuntu.²⁸⁶

7 Conclusion

Children’s climate litigation plays a significant role in their strategies for achieving climate justice, but the unreformed ways of interpreting and applying procedural rules, which gatekeep access to courts, are proving to be a key barrier to their accessing remedies. Current guidelines and standards do not adequately address barriers to access to justice for children which relate to procedural hurdles such as standing, admissibility, jurisdiction, and justiciability. There is a need to adjust laws by applying a child rights-based approach to procedural inquiries. This requires courts to decolonise legal approaches and integrate indigenous philosophies, such as Southern Africa’s ubuntu, to bridge the gaps in children’s access to climate remedies. Ubuntu, with its emphasis on relationality, interconnectedness of all beings and the collective good, offers a powerful lens to address climate change’s complex, multi-generational nature. Children’s active presence in the courts, or

282 MB Ramose ‘Ubuntu: Affirming a right and seeking remedies in South Africa’ in L Praeg & S Magadla (eds) *Ubuntu: Curating the archive* (2014) 121.

283 Makwanyane (n 279) para 225.

284 South African History Online ‘Truth and Reconciliation Commission’ 23 November 2018, <https://sahistory.org.za/article/truth-and-reconciliation-commission-trc-0> (accessed 6 July 2025).

285 R Rotberg ‘Truth commissions and the provision of truth, justice, and reconciliation’ (2000) 3 *Truth v Justice: The Morality of Truth Commissions* 12.

286 Makwanyane (n 279).

lekgotla, presents a unique opportunity for judicial systems to engage with these child-centred and decolonial approaches. By adopting such perspectives, courts can move beyond traditional limitations and provide more relevant and effective solutions to climate injustice, benefiting not only children but society as a whole.

Beyond borders and time: The adequacy of international human rights law in establishing legal responsibility for harm caused by the climate crisis on African children

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Abstract: Climate change is one of the most pressing global challenges with deeply unequal impacts. African children, despite their continent contributing negligibly to global emissions, are disproportionately affected by its impacts. This article interrogates the adequacy of international human rights law, particularly the children's rights framework, in establishing legal responsibility for climate change-related harms affecting African children. It analyses the key legal challenges posed by the transboundary, cumulative and intergenerational nature of climate harm, including issues of causality, extraterritoriality and temporality. The article argues that while the current framework presents significant normative and jurisdictional gaps, the principles enshrined in children's rights norms, including the best interests of the child and the right to an effective remedy, offer opportunities for reinterpreting obligations in a manner that is responsive to the climate crisis. It further draws on evolving international jurisprudence on causation, extraterritoriality and climate attribution science to illustrate the potential for international legal responsibility.

Key words: African children; climate change; children's rights; extraterritoriality; international legal responsibility

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1 Introduction

Several scholarly writings and reports of human rights organisations have linked children's rights and climate change. However, the link has been insufficiently examined from an international accountability perspective. Given the nature of climate change, the harms caused to children in Africa originate from different corners of the world, predominantly from developed countries and through action spanning over a long period.¹ The adequacy of the international human rights law framework in ensuring accountability, at the international level, for harms caused to children in Africa has neither been critically analysed nor has it ever been a subject of successful litigation. The only international rights-based climate litigation involving a child from Africa was the *Sacchi* case at the UN Committee on the Rights of the Child (CRC Committee). The case was brought by 16 children from Tunisia, Nigeria and South Africa. As the case was declared inadmissible due to non-exhaustion of local remedies, it did not establish legal responsibility, and there is no jurisprudence on the merits that analysed the substantive rights that were allegedly violated.²

Cognisant of this, the article analyses the link between climate change and children's rights. In doing so, it looks at the broader frameworks that cover these areas, namely, international environmental law and international human rights law, as well as the specific frameworks provided by the two regions. The analysis aims to uncover the ability (or inability) of human rights law and, more specifically, children's rights norms to ensure accountability for climate change-induced violations at an international level. Climate change is a global phenomenon predominantly caused by industrialised countries. However, the impact is felt most severely by vulnerable populations in underdeveloped countries, including many in Africa. Additionally, climate vulnerability is further exacerbated by age, as children are among the most vulnerable groups. The focus on international accountability and the rights of African children highlights several layers of vulnerabilities and multiple normative frameworks for establishing legal responsibility and accountability.

In addressing the question of accountability, the article looks into the first element, namely, the possibility of establishing legal responsibility under human rights law for the harms caused by climate change. In doing so, the article analyses the impacts of climate change and their links with human rights in general and children's rights in particular. Furthermore, various commonly cited legal barriers are discussed, such as the possibility of creating a causal link between harm and

1 United Nations Framework Convention on Climate Change (UNFCCC) 9 May 1992 S Treaty Doc. 102-38; UNICEF 'Children in 98 per cent of African countries at high or extremely high risk of the impacts of climate change' (2023), <https://www.unicef.org/press-releases/children-98-cent-african-countries-high-or-extremely-high-risk-impacts-climate> (accessed 23 May 2025).

2 *Sacchi & Others v Argentina, Brazil, France, Germany, and Turkey* UN CRC Committee (CRC Committee), Communication 104/2019 Decision on admissibility (2021).

actions that cause climate change and the ability of the relevant norms and structures of human rights law to remedy extraterritorial harms and guarantee that victims can access justice even when they are in a different jurisdiction than the perpetrators.

2 Climate change: Impacts and responses

Climate change is understood as ‘a change in the state of the climate that can be identified ... by changes in the mean and/or the variability of its properties, and that persists for an extended period.’³ The definition of the United Nations Framework Convention on Climate Change (UNFCCC) of climate change is limited to a change in climate, which is attributed directly or indirectly to human activity.⁴ However, the definition adopted by the Intergovernmental Panel on Climate Change (IPCC) refers to any change in climate over time, whether due to natural variability or human activity.⁵ This distinction in definition is becoming irrelevant as there is increasing certainty that human activity is almost entirely responsible for present-day climate change. One of the most consequential conclusions of the IPCC in recent years has been that ‘it is extremely likely that human influence has been the dominant cause of the observed warming since the mid-20th century.’⁶ The phrase ‘extremely likely’ in the IPCC reports implies 95 to 100 per cent certainty.⁷ Some scientists argue that it is 100 per cent certain that human activity is the cause of climate change, at times even more than 100 per cent, as certain natural events, such as volcanic eruptions, have a temporary cooling effect on the climate, offsetting the human impact.⁸

The latest report of the IPCC concludes that greenhouse gas (GHG) emissions have unequivocally caused global warming, with current global surface temperatures reaching 1,1°C compared to pre-industrial levels (1850 to 1900).⁹ Despite more than three decades of awareness of the catastrophic harm and concerted effort, global GHG emissions have continued to increase, with unequal contributions.¹⁰ This is already affecting many weather and climate extremes across the planet, with adverse impacts on people and disproportionately impacting vulnerable communities who have historically contributed the least to climate change.¹¹ Beyond having a disproportionate effect on marginalised

3 United Nations Framework Convention on Climate Change (UNFCCC) Fact sheet: Climate change science – The status of climate change science today (2011) 1.

4 Art 1(2) UNFCCC (n 1).

5 Intergovernmental Panel on Climate Change (IPCC) ‘Climate Change 2007: Synthesis Report’ (2007) 30.

6 IPCC ‘Climate Change 2013: The Physical Science Basis’ (2013) 17.

7 As above.

8 Carbon Brief ‘Analysis: Why scientist think 100 per cent of global warming is due to humans’, <https://www.carbonbrief.org/analysis-why-scientists-think-100-of-global-warming-is-due-to-humans/> (accessed 2 May 2025).

9 IPCC Synthesis report of the sixth assessment report: Summary for policy makers (2023) 4.

10 As above.

11 IPCC (n 9) 5.

communities, the Sixth Assessment report of the IPCC, for the first time, confirms that systems of marginalisation and subjugation have contributed to causing climate change and exacerbating its disproportionate impact.¹² It notes that 'historical and ongoing patterns of inequity such as colonialism' continue to worsen the disproportional effects of climate change. The delayed mainstream recognition of colonisation as a historical driver of climate change and the underlying cause of vulnerability of black, indigenous and people of colour further illustrates the layers of injustice that are at the heart of climate change. Although the links between colonisation and the industrial revolution that led to climate change seem straightforward, only after three decades did the IPCC officially add the term 'colonisation' to its vocabulary, partly owing to the lack of diversity in its technical experts.¹³ Moreover, this recognition further highlights the disproportional and unjust impact of climate change on different groups of people and the compounding injustice that affects their lives.¹⁴ The recognition of the link between colonisation and climate change has various implications. It would increase the historic emission levels of former colonisers as the emissions from their colonies would be attributed to them; it would invoke additional grounds of liability of polluters, such as unjust enrichment, and suggest a much more radical systemic change to the global governance structure to address the climate crisis.¹⁵

The impact of climate change on the African continent has been severe and is expected to worsen. Surface temperature increase has been more rapid in Africa as compared to the global average; frequency and intensity of heavy rain is expected to increase in all parts of the continent; both hot extremes and cold extremes are expected to exacerbate on the continent; all regions of the continent will continue to experience higher levels of rain induced and river flooding; almost all parts of the continent will experience longer and more frequent periods of drought.¹⁶ High-impact events in 2019 indicate the various impacts on the continent; the Horn of Africa has been experiencing severe droughts, which took a dramatic shift into unusually heavy rainfall, leading to floods and landslides.¹⁷ Heat waves exceeding 50°C and cold spells as low as -9°C was registered in Algeria in the same year, while temperatures exceeded 45°C in parts of Southern Africa; ocean heat content in East Africa was well above the global average; the eastern coast of the continent experiences sea level rises of two to three times above the global average; countries by the Indian ocean experienced devastating cyclones, including 'two of the strongest known cyclone landfalls on the east coast of

12 IPCC (n 9) 12.

13 'Colonialism: Why leading climate scientists have finally acknowledged its link with climate change' *The Conversation*, <https://theconversation.com/colonialism-why-leading-climate-scientists-have-finally-acknowledged-its-link-with-climate-change-181642> (accessed 10 October 2024).

14 As above.

15 S Deva 'Report of the Special Rapporteur on the Right to Development, Climate Justice: Loss and damage' A/79/168 (2024) 16.

16 IPCC Sixth Assessment Report: Regional Fact Sheet – Africa (2021).

17 World Meteorological Organisation State of the Climate in Africa (2019) 16.

Africa' with tropical cyclones Idai and Kenneth hitting mainly Mozambique but also Tanzania and Comoros, among others.¹⁸ Some of the recorded weather events in 2019 alone caused considerable loss and damage in Africa, including 1 200 deaths in Mozambique due to cyclones; 400 deaths in East Africa owing to flood and landslides; 69 000 homes destroyed in Sahel region due to floods; 28 000 people having been displaced in Central African Republic due to floods; 31 000 people in Burundi having been displaced due to torrential rain fall, high wind and other climatic events; 66 per cent of internal displacement in East and Horn of Africa during 2019 as a result of climatic events; in Ethiopia 131 000 people were displaced by drought, while 367 000 people were displaced by floods in that year.¹⁹

In addition to the disproportional impact of climate change geographically, it affects diverse people differently, owing to vulnerabilities and marginalisation. Children are one of the most vulnerable groups to climate change, if not the most vulnerable, due to their physical and cognitive stages of development. Natural disasters affect children more significantly than they do adults. For instance, heat waves affect younger children disproportionately because of their slower ability to adjust to heat; hence, they suffer severe consequences, including illnesses.²⁰ Children are less capable of adapting to water scarcity and food shortages. Malnourishment during the first years of life can result in irreversible stunting with lifelong consequences for children's cognitive capacity.²¹ Children are more vulnerable to vector-borne and waterborne diseases exacerbated by climate change.²²

The disproportionate impact of climate change on children is more pronounced where African children are concerned. African children are a diverse group, and their intersectional identity markers, such as age, gender and disability, determine how they are impacted by climate change.²³ Moreover, African children, as a distinct group, share vulnerabilities owing to their status as children, which entails a lower level of physical and cognitive maturity that increases their vulnerability to climate change.²⁴ Their status as children implies that, under normal circumstances, they will live longer to face the impacts of climate change throughout the century. At the same time, their African identity exacerbates their natural vulnerability owing to the vulnerable socio-economic conditions of the majority of the countries on the continent. It is reported that the top ten countries in the world where children are at extremely high risk for

18 As above.

19 As above.

20 Office of the United Nations High Commissioner for Human Rights (OHCHR) Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child (2017) UN Doc A/HRC/35/13 para 9.

21 OHCHR (n 20) para 13.

22 OHCHR (n 20) para 16.

23 E Boshoff 'Protecting the African child in a changing climate: Are our existing safeguards adequate?' (2017) 1 *African Human Rights Yearbook* 27.

24 As above.

environmental stress and extreme weather events are all in Africa, and of the top 33 extremely high-risk countries, 25 are African.²⁵ Diseases such as malaria, which are exacerbated by climate change, affect African children more than any other demographic group, followed by pregnant women.²⁶ In 2017 alone, 93 per cent of global malaria deaths occurred in Africa.²⁷ In addition to worsening the prevalence rate of malaria, warming in highland areas of Africa has led to malaria-carrying mosquitoes to expand to those areas, thereby endangering new groups of population that were never faced with this challenge and hence are ill-prepared to adapt.²⁸

Furthermore, climate change affects groups of children in Africa differently. It exacerbates existing gender inequalities. During droughts, girls are often responsible for fetching water over longer distances, leading to reduced school attendance and increased exposure to safety risks.²⁹ Economic hardships resulting from extreme climate events, coupled with pre-existing gender norms, lead to child marriages, as families seek to alleviate financial pressures, further disrupting girls' education and exposing them to health risks.³⁰ Climate-related disasters, such as floods and droughts, disproportionately impact children with disabilities.³¹ Droughts severely affect rural communities dependent on agriculture. Africa accounts for 44 per cent of all severe droughts recorded globally in the past century.³² Droughts significantly contribute to food insecurity and malnutrition among children in Africa, where approximately 30 per cent of children under the age of five suffer from stunted growth due to chronic malnutrition, conditions often exacerbated by climate-induced food shortages.³³ Flooding in urban slums leads to waterborne diseases due to inadequate sanitation. For instance, flooding in Nigeria in 2022 resulted in over 600 deaths, many of which were children.³⁴ Climate change threatens the traditional livelihoods of indigenous and nomadic communities, such as pastoralism and subsistence farming.³⁵ As natural resources become scarce, these communities face displacement, disrupting children's cultural practices and access to education and health care.

25 UNICEF 'The climate crisis is a child rights crisis Introducing the children's climate risk index' (2021) 79.

26 World Metrological Organisation (n 17) 24.

27 As above.

28 As above.

29 N Thèbaud-Bouillon-Njenga and others 'Study on the gendered impact of climate change on adolescent girls and young women in the Sahel: Multi-country analysis in Burkina Faso, Guinea, Mali, Niger and Nigeria' (2024) 20-42.

30 As above.

31 African Children's Committee 'Climate change and children's rights in Africa: A continental overview' (2024) 48.

32 United Nations Convention to Combat Desertification (UNCCD) 'Africa climate summit: Leaders outline common vision on drought resilience', <https://www.unccd.int/news-stories/press-releases/africa-climate-summit-leaders-outline-common-vision-drought-resilience> (accessed 1 May 2025).

33 Food and Agriculture Organisation of the United Nations (FAO) *Regional overview of food security and nutrition: Statistics and trends in Africa* (2023) 16.

34 UNICEF 'More than 1.5 million children at risk as devastating floods hit Nigeria' (2022), <https://www.unicef.org/press-releases/more-15-million-children-risk-devastating-floods-hit-nigeria> (accessed 1 May 2025).

35 African Children's Committee (n 31).

The confluence of climate change with conflict further worsens the adverse impact on children's rights. Climate change exacerbates tensions by intensifying resource scarcity, particularly water and arable land, due to prolonged droughts and erratic rainfall patterns.³⁶ This scarcity fuels community competition, often leading to conflicts over dwindling resources. It is estimated that over 6,9 million children under the age of five are acutely malnourished in the Sahel region, with 1,4 million suffering severe malnutrition, a situation intensified by both environmental degradation and armed violence.³⁷ Moreover, the displacement of populations due to conflict and climate shocks has resulted in over 3 million people being forcibly displaced, many of whom are children lacking stable access to necessities.³⁸ This intersection of climate change and conflict creates a vicious cycle that disproportionately affects children, undermining their health, security and prospects. The current level of havoc that global warming is wreaking on African children is a result of a 1,1°C increase as compared to pre-industrial levels.³⁹ A 1,5°C to 2°C warmer world will have profoundly devastating consequences for the world in general and more so for Africa.⁴⁰ The 1,5°C to 2°C goal in the Paris Agreement, which resulted from global power asymmetries, is neither grounded in science nor a fair deal for the parties to the agreement. According to the IPCC, 'warming of 1,5°C is not considered "safe" for most nations, communities, ecosystems and sectors and poses significant risks to natural and human systems compared to the current warming of 1°C'.⁴¹

Among the nations and communities for whom the 1,5°C goal is not considered 'safe', African nations stand out, particularly children in African countries.⁴² The goal of limiting warming from 1,5°C to 2°C, and most of the elements of the agreement favoured the interest of developed countries over that of developing countries. Dimitrov notes:⁴³

The agreement is least fair to the African Group and other Least Developed Countries. It does not include references to their special circumstances, is weak on international dimensions for adaptation policy, and precludes future claims for liability and compensation.

Sidelining the interest of developing countries, which are most affected by climate change despite minimal contribution to the problem, indicates a subtle continuation, disguised in diplomatic negotiation, of the global systems of

36 African Child Policy Forum (ACPF) 'The climate-conflict nexus and its impact on children in the Sahel' (2025).

37 ACPF (n 36) 12.

38 ACPF (n 36) 15.

39 IPCC (n 9) 4.

40 United Nations Africa Renewal 'Global warming: Severe consequences for Africa', <https://www.un.org/africarenewal/magazine/december-2022/global-warming-severe-consequences-africa> (accessed 2 May 2025).

41 IPCC Global Warming of 1,5°C: An IPCC Special Report (2018).

42 IPCC 'Climate change 2022: Impacts, adaptation and vulnerability' Working Group II contribution to the sixth assessment report (2022).

43 RS Dimitrov 'The Paris Agreement on Climate Change: Behind closed doors' (2016) 16 *Global Environmental Politics* 7.

marginalisation and subjugation that contributed to causing climate change in the first place. Moreover, based on the current commitment of countries, enveloped in nationally determined contributions (NDCs) under the Paris Agreement, global warming will pass 1,5 degrees within the century.⁴⁴ Even this bleak prediction assumes that countries will fully implement their commitments, but there is a considerable implementation gap given the lack of political will.⁴⁵ Besides, due to the nature of the phenomenon, irrespective of the scale of mitigation measures taken today and over the following decades, global warming will continue due to the inertia of the climate system and the long-term effects of previous greenhouse gas emissions.⁴⁶ Furthermore, irrespective of the level of adaptation measures taken, some of the impacts of climate change are beyond adaptation and will inevitably result in loss and damage.⁴⁷ The inherent weaknesses of the climate action regime enveloped in the UNFCCC include weak adaptation requirements, a lack of an effective loss and damage mechanism, voluntary determination of national mitigation goals, and a lack of a clear division of responsibility for mitigation, significantly diminishing the possibility of justice under this framework. This renders the human rights law regime appealing to fill the protection and accountability gap of the climate change law regime.

3 Climate change and children's rights

The nexus between climate change and children's rights can be understood by exploring the link between climate change and human rights more broadly, as children's rights operate by the same underlying norms and standards applicable in human rights. As climate change law is a sub-group of environmental law, the links between environmental law and human rights law are relevant in this discussion. In this regard, it can be noted that there have been various efforts to recognise the right to the environment internationally as a human right. However, very little has been achieved by the international community in recognising this right that has received wide recognition in regional and national systems. As early as 1972, the Stockholm Declaration of the United Nations (UN) noted that there is 'a fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being'.⁴⁸ Presently, the right to a healthy environment remains soft law internationally.

⁴⁴ IPCC (n 9) 10.

⁴⁵ IPCC (n 9) 11.

⁴⁶ Human Rights Council 'Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights' (2009) para 15.

⁴⁷ UNFCCC Report of the Conference of the Parties on its 19th session, held in Warsaw from 11 to 23 November 2013: Decision 2/CP.19, Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts (2013) UN Doc FCCC/CP/2013/10/Add.1 6.

⁴⁸ United Nations Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) (1972) Principle 1.

Climate change discourse and, in general, environmental protection, usually takes the approach of protecting the planet, which is a problematic and erroneous approach. Climate change is an issue of social justice characterised by extreme inequalities in responsibility and vulnerability.⁴⁹ Climate change is best described as an issue of 'global injustice' where one group of people, mainly wealthy people from rich countries, caused a problem and another group of people, primarily poor people from poor countries, suffer the consequences.⁵⁰ The confirmation by the IPCC that the history of colonisation exacerbates present-day vulnerability to the impacts of climate change further underlines the scale of the injustice of climate change that is built on another grave global injustice that was never remedied, namely, the colonisation of black, indigenous and people of colour.⁵¹ Hence, beyond anything, it is an urgent plight of the vulnerable and should be seen primarily as a human rights concern. However, the responses to climate change stray away from this approach. In the negotiation of the Paris Agreement, one of the contentious issues was the rights-based wording that was part of article 2 (purpose of the agreement) of the draft agreement. The position taken by those advocating a strong rights-based approach was the premise that addressing climate change is not just about the planet but about protecting people.⁵² Hence, the outlined purpose of the agreement should have reflected the apparent connection between people and planet by providing human rights protection as an inseparable aim of protecting the planet. However, due to resistance from a select group of developed nations, the suggested provision was moved to the Preamble to the agreement.⁵³ Climate justice is not about the planet but about people on the planet, more specifically about people whose lives are severely affected by the negative impacts of global warming despite having a negligible contribution to causing it.⁵⁴ It demands the availability of institutions to render remedies, the possibility for victims to confront perpetrators, and institutions with jurisdiction over perpetrators and standing for victims.

There is growing consensus about the adverse impact of climate change on all ranges of human rights, with the recognition of disproportional impact on vulnerable groups such as children. However, there is strong resistance to accepting a human rights-based legal obligation about climate change, emanating from seemingly political considerations, but also due to legal complications

49 J Dehm 'Carbon colonialism or climate justice?' (2016) 33 *Windsor Yearbook of Access to Justice* 140.

50 K Mickelson 'Beyond a politics of the possible? South-north relations and climate justice beyond a politics of the possible?' (2009) 10 *Melbourne Journal of International Law* 3.

51 K Sherwood-O'Regan 'The Climate change and colonisation connection' (2022), <https://climatenetwork.org/2022/03/09/what-do-activists-and-ngos-need-to-know-to-be-allies-to-communities-on-the-frontlines-of-climate-change-per-centEF-per-centBF-per-centBC-2/> (accessed 5 May 2025).

52 Human Rights Watch 'Human rights in climate pact under fire', <https://www.hrw.org/news/2015/12/07/human-rights-climate-pact-under-fire> (accessed 4 April 2025).

53 OW Pedersen 'The European Court of Human Rights and international environmental law' in JH Knox & R Pejan (eds) *The human rights to a healthy environment* (2018) 7.

54 J Williams and others 'Africa and climate justice at COP27 and beyond: Impacts and solutions through an interdisciplinary lens' (2022) 5 *UCL Open Environment* 5.

in attributing human rights responsibility to states.⁵⁵ In a vivid display of this resistance and its response to the call by the Office of the High Commissioner for Human Rights (OHCHR) for submission on the relationship between climate change and human rights, the United States of America (US) noted the following:⁵⁶

The United States does not consider that a right to a safe environment or other similarly worded or rights exists under international law. Further, the United States believes that a 'human rights approach' to addressing climate change is unlikely to be effective, and that climate change can be more appropriately addressed through traditional systems of international cooperation and international mechanisms for addressing this problem, including through the UNFCCC process.

It is also worth mentioning that major human rights organisations such as Amnesty International and Human Rights Watch downplayed the link between human rights and climate change.⁵⁷ Climate change admittedly was 'not a priority' and 'of marginal relevance' to their work on human rights until as late as 2019.⁵⁸ Despite such strong resistance by powerful nations, reluctance from major human rights organisations, and a lack of success in recognising an internationally binding right to the environment, there has been a proliferation of efforts to effectively identify the linkages between climate change and human rights.⁵⁹ Most efforts focus on international and regional human rights courts and quasi-judicial bodies. The sharp increase in climate change litigation observed after adopting the Paris Agreement is sometimes referred to as the 'rights turn' in climate action, where litigation is focused on establishing a state's obligation to address climate change as a human rights violation.⁶⁰

The Inuit Circumpolar Conference took the first concrete step of linking climate change and human rights through the petition they filed to the Inter-American Commission on Human Rights (IACHR). The petition claimed that climate change, which resulted from the failure of the US to curb its greenhouse gas emissions, violated the Inuit's human rights.⁶¹ Although the petition was unsuccessful, the process led to the complainants making testimony about the link between climate change and their affected human rights, helping establish

55 AJK Fleming 'Human rights: An alternative approach for addressing climate-induced loss and damage' Master's dissertation, University of Gothenburg, Roehampton University & University of Tromsø, 2015 48.

56 United States of America 'Observations on the relationship between climate change and human rights', <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/Submissions/USA.pdf> (accessed 5 May 2023).

57 P Alston *International human rights* (2024) 1025.

58 Alston (n 57) 1026.

59 C Carlarne 'Climate change, human rights, and the rule of Law' (2020) 25 *UCLA Journal of International Law and Foreign Affairs* 29.

60 As above.

61 Petition to the Inter-American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States, submitted by Sheila Watt-Cloutier, with the support of the Inuit Circumpolar Conference, on behalf of all Inuit of the Arctic regions of the United States and Canada (2005) 76.

the connection between the two.⁶² This was followed by various soft laws and official reports expounding on the causal relationship between climate change and human rights. The 2007 Malé Declaration urged the international community to address the issue urgently by noting that ‘climate change has clear and immediate implications for the full enjoyment of human rights’.⁶³

This was echoed by the UN Human Rights Council, which issued a resolution recognising the threats posed by climate change to a range of human rights.⁶⁴ While climate change is believed to have ‘implications for the full range of human rights’,⁶⁵ its direct impact on certain fundamental rights highlights its gravity. The right to life is among the basic rights directly affected by climate change. The right is deemed to be a supreme right that is necessary for the exercise of all other human rights.⁶⁶ Regarding children’s rights to life, states have an obligation to ensure, to the maximum extent possible, the survival and development of the child.⁶⁷ Climate change threatens the right to life through ‘an increase in death, disease and injury from heatwaves, floods, storms, fires and droughts’ and ‘an increase in hunger and malnutrition and related disorders’.⁶⁸ Other rights that are directly affected include the right to food, the right to water, the right to health, the right to housing and the right to self-determination.⁶⁹

Despite the linkage of the impact of climate change on a wide range of human rights, there is one glaring exception: the lack of recognition of climate migrants as refugees. The IPCC has highlighted the impact of climate change on causing cross-border movement.⁷⁰ Climate change is one of the root causes of child displacement in Africa, resulting in movement within a country, within the continent of Africa and beyond.⁷¹ Millions of African children are displaced from their homes each year due to slow-onset and sudden disasters such as floods and droughts, whose frequency, intensity and duration have been exacerbated by climate change.⁷² The international law definition of refugee is limited to those facing individual persecution based on race, religion, nationality, membership

62 As above.

63 Malé Declaration on the Human Dimension of Global Climate Change (2007) (Malé, 14 November 2007) 2, <https://www.ciel.org/reports/the-male-declaration-on-the-human-dimension-of-global-climate-change/> (accessed 5 May 2025).

64 Human Rights Council ‘Res 10/4, Human Rights and Climate Change’ (2009) UN Doc A/HRC/RES/10/4 1.

65 Human Rights Council ‘Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights’ (2009) para 20.

66 United Nations Human Rights Committee General Comment 6: Article 6 (Right to life) (1982) para 1.

67 Art 6 Convention on the Rights of the Child (1989).

68 Human Rights Council Report (n 65) para 20.

69 Human Rights Council Report (n 65) paras 25–41.

70 Intergovernmental Panel on Climate Change ‘Key risks across sectors and regions’ in *Climate Change 2022: Impacts, Adaptation and Vulnerability. Working Group II Contribution to the IPCC Sixth Assessment Report* (2022) 2247.

71 African Children’s Committee ‘Mapping children on the move within Africa’ (2018) 54.

72 UNICEF ‘Children displaced in a changing climate: Preparing for a future already underway’ (2023).

of a particular social group or political opinion.⁷³ This leaves a seismic legal gap in the protection of climate-displaced children who cross national borders. However, this gap can be filled by a progressive interpretation of the definition of a refugee, a possibility demonstrated by the UN Human Rights Committee in the recent *Teitiota* case.⁷⁴ The Committee, in deciding whether or not to reject the application for refugee status and the subsequent deportation to the country of origin, where an individual faces severe climate change-related harm, violated the right to life, noted that '[t]he effects of climate change in receiving states may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the *non-refoulement* obligations of sending states'.⁷⁵

While the Committee did not find a violation in this case, regrettably, it showed the possibility for interpretative expansion of refugee status determination on the grounds of climate harm. Moreover, putting aside this normative exception, climate change is interlinked with and affects a wide range of recognised human rights/children's rights. The impact of climate change on vulnerable groups such as children raises concerns regarding collective morality, making human rights law the most attractive tool to address the issue.⁷⁶ Moreover, besides being an attractive tool, the human rights framework may provide the possibilities for accountability, which international environmental law has failed to achieve.⁷⁷ The decades of painstaking, fruitless discussion on the issue of loss and damage are the best example of that possibility.⁷⁸ The lack of an effective loss and damage mechanism despite continued push for it from the Global South reflects the rejection of accountability by those most responsible and the failure of the international environmental law regime to espouse it.⁷⁹ The link between human rights law and climate change is a quest for justice, enveloping legal norms that appeal to collective morals.⁸⁰ Despite the intricate connection, it is contended by developed nations that the impacts of climate change should be addressed solely by climate change law, primarily the UNFCCC.⁸¹ Environmental law and human

73 Art 1A(2) United Nations Convention Relating to the Status of Refugees (1951).

74 *Ioane Teitiota v New Zealand* UNHCR Committee (2020) UN Doc CCPR/C/127/D/2728/2016 (2020).

75 *Teitiota* case (n 74) para 9.11.

76 OW Pedersen 'Climate change and human rights: Amicable or arrested development?' (2010) 1 *Journal of Human Rights and the Environment* 4.

77 Legal Assistance 'Human rights under the UNFCCC regime', https://legalresponse.org/legaladvice/human-rights-under-the-unfccc-regime/?utm_source=chatgpt.com (accessed 3 May 2025).

78 SciencesPo 'Assessing Cop 29: Did the "finance cop" meet its lofty goals?' <https://www.sciencespo.fr/psia/chair-sustainable-development/2025/02/14/assessing-cop29-did-the-finance-cop-meet-its-lofty-goals/> (accessed 10 May 2025).

79 R Malavika 'A TWAIL perspective on loss and damage from climate change: Reflections from Indira Gandhi's speech at Stockholm' (2022) 12 *Asian Journal of International Law* 69.

80 A Sen 'Elements of a theory of human rights' (2004) 32 *Philosophy and Public Affairs* 1.

81 Eg, in the 2024 hearings for the International Court of Justice's advisory opinion on climate change, several developed countries, including Germany, the United States, the United Kingdom and others, argued that the Paris Agreement and the UNFCCC are the primary treaties governing states' obligations concerning climate change. They argued that climate-specific treaties constitute the *lex specialis* and *lex posterior* in this domain, suggesting that obligations under general international human rights law should not override or duplicate those established under the UNFCCC framework. See IISD 'Summary of the International

rights law mostly operate in silos by design. However, this silo is losing ground given recent developments that authoritatively assert the linkage. The recent advisory opinion of the International Tribunal on the Law of the Seas (ITLOS) affirmed that climate change treaties do not constitute *lex specialis* and should be interpreted within the broad framework of international law, including human rights law.⁸²

An important factor that makes human rights regimes, specifically the children's rights regime, a preferred tool in seeking accountability for climate change is the agency it gives to individuals, specifically children. Complaint mechanisms embedded in international and regional human rights monitoring mechanisms provide a direct voice to individuals and groups to seek justice for the human rights harms suffered. This is crucial for children who are the most voiceless in societies, more so in African societies where children are 'seen but not heard'.⁸³ However, this goes beyond the cultural context of Africa and delves into the political realities on the continent where democracy is yet to prevail in many corners. Various African states are ruled by leaders and elites who may not consider the people's best interests when making decisions and taking action.⁸⁴ Furthermore, even in an ideal democracy, children do not constitute the political community of a nation, as a legally disenfranchised 'constitutionally silent' section of society.⁸⁵ The direct access the international human rights law gives children can be seen as a means to address the plight of the most voiceless in the climate crisis.

However, there is a caveat here: The direct access in seeking justice does not cover all human rights violations by any state anywhere. In the case of climate change, African children may not be able to and, so far, have not been able to receive justice for climate change-induced violations by the most responsible states. Violating a legal duty requires identification of a victim or victims, a perpetrator and an act or omission that contravenes a legal responsibility.⁸⁶ Hence, the widely accepted assertion that climate change threatens a broad range of human rights does not necessarily translate into an assertion that climate change is violating those same human rights.⁸⁷ To go from the first assertion to the second, there is a need to address the legal bottlenecks and identify who is legally responsible and

Court of Justice hearings on states' obligations in respect of climate change' Earth Negotiations Bulletin (2024).

82 International Tribunal for the Law of the Sea Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law Advisory Opinion (2024) 224.

83 Þ Björnsdóttir & J Einarsson 'Child participation in Ghana: Responsibilities and rights' in E Oinas, H Onodera & L Suurpää *What politics? Youth and political engagement in Africa* (2018) 295.

84 A Anghie & BS Chimni 'Third World approaches to international law and individual responsibility in internal conflicts' (2003) 2 *Chinese Journal of International Law* 77.

85 A Osler 'Power, politics and children's citizenship: The silencing of civil society' (2022) 30 *International Journal of Children's Rights* 440-472.

86 Pedersen (n 76) 12.

87 As above.

how that responsibility can be established. Notwithstanding that, the normative force of human rights depends critically on the existence of corresponding obligations and accessible remedies.⁸⁸ Rights are rendered meaningless without corresponding duties, especially during the climate crisis. Without such duties being assigned and upheld, the right remains aspirational rather than operational. The primary responsibility of states in implementing human rights and, more broadly, in remedying ‘internationally wrongful acts’ is interrogated below in the context of international accountability for climate harm.

4 State responsibility

States are responsible for breaches of their international obligations that can be attributed to them under international law.⁸⁹ However, when it comes to climate change, it has been challenging to create consensus on the responsibility of states, even if there is agreement on the fact that climate change interferes with the realisation of human rights.⁹⁰ The nature of state responsibility for climate change has for some time been a subject of academic, political and legal debate. The lack of consensus on state responsibility is best evidenced by the multiplicity of advisory opinions requested at regional and international tribunals. In January 2023, Chile and Colombia initiated the first advisory process before the Inter-American Court of Human Rights (Inter-American Court) to ‘clarify the scope of the state obligations for responding to the climate emergency under the framework of international human rights law’.⁹¹ In April 2023, the UN General Assembly requested an advisory opinion from the International Court of Justice (ICJ) on the obligation of states concerning climate change.⁹² The questions raised in the request are twofold: The first inquiries about the legal obligations of states under international law to protect the climate system from anthropogenic emissions; and the second pertains to the legal consequences of breach of these obligations by states, when they cause ‘significant harm’ to the climate system concerning ‘peoples and individuals of the present and future generations’.⁹³ African civil society organisations lodged the most recent request for an advisory opinion at the African Court on Human and Peoples’ Rights (African Court) in May 2025.⁹⁴ The request outlined a broad range of questions on specific human rights obligations of states to protect the rights of individuals and people from

88 Art 2(3)(a) International Covenant on Civil and Political Rights (1966).

89 Arts 1 & 2 International Law Commission ‘Responsibility of states for internationally wrongful acts’ (2001).

90 AJK Fleming ‘Human rights: An alternative approach for addressing climate-induced loss and damage’ (2015) 48.

91 <https://climatecasechart.com/non-us-case/request-for-an-advisory-opinion-on-the-scope-of-the-state-obligations-for-responding-to-the-climate-emergency/> (accessed 5 May 2023).

92 International Court of Justice Press release The General Assembly of the United Nations requests an advisory opinion from the Court on the obligations of States in respect of climate change (icj-cij.org) (accessed 5 May 2023).

93 As above.

94 Y Seudi ‘Africa’s turn: The African Court’s advisory opinion on climate change’, <https://www.cjiltalk.org/africas-turn-the-african-courts-advisory-opinion-on-climate-change> (accessed 5 May 2025).

climate change harms by the African Charter on Human and Peoples' Rights (African Charter), among others.⁹⁵ The result of these and other efforts may conclude the debate among scholars and legal practitioners on the nature of state responsibility. However, this remains to be seen in the near future. What is evident from these requests is the theoretical and political challenge climate change poses regarding the question of state responsibility and accountability.

4.1 Problem of causality

The nature of climate change challenges the possibility of establishing state responsibility for rights violations. GHG emissions do not fit the pattern of cause and effect typically associated with claims for human rights violations, as the impacts of climate change are the cumulative effect of the actions of many agents over a long period of time. The human impacts of climate change, such as food insecurity, respiratory diseases and others, may have multiple contributory causes.⁹⁶ This has been described as the challenge of diffused causality, where linking a singular metrological event that harms climate change poses challenges. Reflecting on this, the UN noted that 'it is often impossible to establish the extent to which a concrete climate change-related event with implications for human rights is attributable to global warming'.⁹⁷

In addition to the multiplicity of contributory factors, another key challenge is the temporal distance between emissions that cause climate change and the harm that occurs.⁹⁸ In conventional human rights violations, an action that violates a right is immediately connected with a breach of the right, for instance, a person is arrested without a cause and, which manifests into arbitrary detention, a form of human rights violation; the female genitalia of a girl child is subjected to mutilation. That act translates into a violation of multiple rights, including the right to health. When it comes to climate change, the act that causes it, which is GHG emission, does not immediately result in a rights violation. Various chains of events over time can lead to different environmental phenomena. For instance, prolonged drought may cause a vulnerable child to become severely malnourished, limiting cognitive development and resulting in low educational attainment, thereby violating the child's right to education. Similarly, global warming can cause unusually heavy rainfall, leading to floods in areas lacking proper drainage infrastructure. Such floods can claim lives, constituting a violation of the right to life. The negative impacts of climate change today result

95 African Court on Human and Peoples' Rights Request for Advisory Opinion by the Pan-African Lawyers Union on the obligations of states with respect to the climate change crisis (2025) 39.

96 A Venn 'Rendering international human rights law fit for purpose on climate change' (2023) 23 *Human Rights Law Review* 17.

97 OHCHR 'Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Rights' (2009) para 70.

98 Pedersen (n 76) 14.

from more than a century of GHG emissions.⁹⁹ This temporal gap between the act that causes the violation and the time the violation takes place poses a challenge. The dispersed causality, the delay between actions and effects, and the resulting harm complicate attribution. This includes, first and foremost, attribution of a particular event, such as drought, to climate change among other contributing factors and, following that, attribution of the change in climate to a specific perpetrator. Identifying the perpetrator further requires linking the conduct that resulted in the violation with a state that effectively controls it.

One way of addressing the first challenge of diffused causality is reliance on climate science's ever-evolving and improving accuracy. The science of climate change is increasingly becoming more detailed in exposing the emission levels of entities and the range of impacts, focusing on human vulnerabilities.¹⁰⁰ Scientists are continually increasing efforts to attribute sudden and slow-onset events to climate change through scientific data, now referred to as 'attribution science'.¹⁰¹ In a recent piece analysing the ongoing drought in the Horn of Africa that has affected millions of children, scientists have noted that it would not have occurred had it not been for anthropogenic climate change and that the droughts in the region were made 'at least 100 times more likely by climate change'.¹⁰² Furthermore, the reports of the IPCC provide authoritative global scientific data that is increasingly being used in rights-based climate litigation.¹⁰³ Additionally, the requirement under the UNFCCC and Paris Agreement for states to regularly update their national GHG emission inventory is another essential tool that can be used to ensure the proportional attribution of responsibility among states.¹⁰⁴

One key challenge of the need for attribution science is its underdevelopment in Africa, owing to the resource intensity of the endeavour.¹⁰⁵ A recent report that analyses the devastating 2022 floods in the KwaZulu-Natal region of South Africa¹⁰⁶ indicates the complicated methods and advanced tools required to accurately determine the extent to which anthropogenic GHG emissions contributed to the floods. According to the attribution science conducted on this weather event, the extreme rainfall that resulted in the floods has a return time

99 R Lindsey 'Climate change: Atmospheric carbon dioxide' (2023), <https://www.climate.gov/news-features/understanding-climate/climate-change-atmospheric-carbon-dioxide> (accessed 10 March 2024).

100 R Cho 'Attribution science: Linking climate change to extreme weather' State of the Planet (2021), <https://news.climate.columbia.edu/2021/10/04/attribution-science-linking-climate-change-to-extreme-weather> (accessed 2 May 2025).

101 Carbon Brief 'Mapped: How climate change affects extreme weather around the world', <https://www.carbonbrief.org> (accessed 2 May 2025).

102 Carbon Brief 'Deadly drought in Horn of Africa "would not have happened" without climate change', <https://www.carbonbrief.org> (accessed 2 May 2025).

103 Venn (n 96) 17.

104 Art 13 Paris Agreement (2015).

105 FEL Otto and others 'Attribution of extreme weather events in Africa: A preliminary exploration of the science and policy implications' (2015) 132 *Climatic Change* 617.

106 Wits University 'The 2022 Durban floods were the most catastrophic yet recorded in KwaZulu-Natal', <https://www.wits.ac.za/news/latest-news/general-news/2023/2023-04/the-2022-durban-floods-were-the-most-catastrophic-yet-recorded-in-kwazulu-natal.html> (accessed 2 May 2025).

of approximately 20 years and is expected to occur every 20 years on average.¹⁰⁷ This compares with a return time of every 40 years in a 1,2°C cooler world. It also found that the probability of such an event ‘has approximately doubled due to human-induced climate change, and the intensity of the current event has increased by 4–8 per cent.’¹⁰⁸ Such specific attributions are crucial to ensure global accountability of major GHG emitters in proportion to their contribution.

Another cause for concern in the reliance on climate science for human rights litigation is the issue of uncertainty. The reports of the IPCC make their conclusions with varying levels of certainty, which is expressed through wordings such as ‘high confidence’, ‘very high confidence’, and so forth. Generally, it should be noted that reports on climate change science fall short of guaranteeing 100 per cent certainty, as is customary in natural science. To bridge this gap in applying human rights to climate change, the principle of precaution embedded in environmental law can be an essential tool. The aim of the precautionary principle, which is rooted in international environmental law, is to ‘avoid causing adverse impacts in situations of scientific uncertainty’.¹⁰⁹ The use of the principle of extraterritorial uncertain harm is established by the jurisprudence of the Inter-American Court in its advisory opinion, where it noted the duty of states to act by the principle of precaution to protect human rights in instances of transboundary environmental harm.¹¹⁰ The court noted that ‘in protecting the rights to life and personal integrity ... states must act in keeping with the precautionary principle. Therefore, even without scientific certainty, they must take “effective” measures to prevent severe or irreversible damage.’¹¹¹ When it comes to the issue of temporal challenge, one possible avenue to address it is the allocation of responsibility based on records of past emissions, otherwise called historical emissions. However, international law does not reflect tangible responsibility for historical emissions.¹¹²

4.2 Temporality and children as future generations

The challenge of attribution of responsibility is not the only one related to the temporal element of climate change. It is said that ‘climate change is a form of slow violence that manifests over time, with the cause and effect dispersed over space and time’.¹¹³ Hence, another key contentious issue concerning the temporal element of climate change is the right of future generations. The long-term predictions of the IPCC are gloomy, to say the least. Future generations are

107 Centre for Environmental Rights ‘Polluter pays for climate change loss and damage: A report on the KZN flooding of 2022’ (2024) 12.

108 As above.

109 European Parliamentary Research Service ‘The precautionary principle: Definitions, applications and governance’ (2015) 6.

110 Inter-American Court of Human Rights Advisory Opinion on the Environment and Human Rights (2017).

111 Inter-American Court (n 110) para 180.

112 Pedersen (n 76) 14.

113 R Nixon *Slow violence and the environmentalism of the poor* (2011).

likely to inherit a planet unlike the one we live in now, should climate change continue at its current pace. However, future generations do not yet enjoy legal protection in human rights law. Only when a person comes into existence do they become the subject of rights, termed right-bearer contemporaneity.¹¹⁴ Without a right holder, a corresponding obligation would not exist, as the obligation-right contemporaneity requires.¹¹⁵ However, response to climate change takes into account its long-term consequences and thereby has the interests of future generations in mind. The concern about the long-term consequences of current climate change patterns has been the main driving force behind frameworks for addressing climate change.¹¹⁶ This is reflected in the long-term goals of frameworks such as the Paris Agreement, which aims to limit global warming to ‘well below 2 degrees’ by the second half of the twenty-first century.¹¹⁷

It is argued that one way of ensuring the protection of the rights of future generations (those not yet born today) is by way of protecting the future interests of those who are alive today and are expected to be alive for the coming decades.¹¹⁸ An action or inaction that will result in the future violation of the rights of someone alive today and expected to live many years down the line would be contrary to human rights obligations. By protecting the current generation from actions or inactions that will violate their human rights in the future, the rights of those not yet born, whose existence will eventually overlap with those who are alive and subject to rights today, will be protected.¹¹⁹

This is one of the clear added values of using a child rights-based approach to climate change. Children are the natural connections between current generations that have the full capacity to shape the world and future generations that are not yet born. In a way, children are part of the future generation; they have a limited yet evolving capacity to shape the world, and they face the daunting risk of inheriting a planet with an irreversibly devastated ecosystem. Hence, the relevant children’s rights norms can serve a double purpose of protecting the future interests of children and generations not yet born. In this regard, the most pertinent norm peculiar to children’s rights is the correct/principle of the child’s best interests. The UN Convention on the Rights of the Child (CRC) provides that ‘in all actions concerning children, whether undertaken by public or private

114 Gosseries introduces the concept of ‘right-bearer contemporaneity’, which holds that rights only vest in individuals once they come into existence: ‘when and only when a person will come into existence, she will have rights’ (456). He contrasts this with the ‘obligation-right contemporaneity’ requirement, which posits that an obligation cannot exist unless the corresponding right already exists (455). This distinction is particularly relevant in debates around future generations’ rights and the temporal structure of legal obligations in fields such as climate justice and human rights law. A Gosseries ‘On future generations’ future rights’ (2008) 16 *Journal of Political Philosophy* 446.

115 As above.

116 B Lewis ‘The rights of future generations within the post-Paris climate regime’ (2018) 7 *Transnational Environmental Law* 14.

117 Arts 2 & 4 Paris Agreement.

118 D Bell ‘Does anthropogenic climate change violate human rights?’ (2011) 14 *Critical Review of International Social and Political Philosophy* 104.

119 As above.

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.¹²⁰ The CRC Committee broadly interpreted the principal elements: a right and a procedural rule. In its General Comment, the Committee linked the best interests of the child and the principle of precaution in alluding to the long-term ramifications. The Committee noted that in applying the child's best interests in decision-making processes, the precautionary principle calls for an assessment of potential future risk, harm and other effects affecting the safety of children.¹²¹

A stronger provision of the long-term implications of the principle is found in the work of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee). The African Charter on the Rights and Welfare of the Child (African Children's Charter) itself provides for the strongest protection of the best interests of the child by making it 'the primary consideration' in 'all actions concerning the child undertaken by any person or authority'.¹²² Furthermore, the African Children's Committee, in General Comment 5 on state obligations, noted that the best interests of the child include 'short-term, medium-term and long-term best interests'. Furthermore, the General Comment interestingly references the rights of future generations. It notes that actions that affect the rights of future generations violate the best interests of the child standard.¹²³ This arguably is the most expansive interpretation of the principle of the best interests of the child. Although the General Comment does not define what is meant by future generations, from the spirit of the text it may be argued that it refers to children who are alive today and whose rights will be affected in the future. Moreover, the explicit mention of the 'rights of future generations' in the interpretation of the state's obligation relating to children's rights provides a vital opening to ensure the rights of children in the face of climate change, especially if international mechanisms take inspiration from this to expand the legal protection at the international level.

The principle of the best interests of the child makes the usage of a child rights-based approach to climate change the strongest tool to not only remedy harms taking place now, but to remedy harms that have not yet materialised. Hence, it enhances the deterrent effect of accountability and serves as a prevention mechanism. As mentioned above, even in the best-case scenario predictions, climate change will continue to have adverse impacts due to the long-term effects of accumulated emissions. It is difficult to hold perpetrators accountable for harm that has not yet materialised; however, the best interests of the child overcome this challenge. Actions that will result in future harm would be contrary to the

120 Art 3(1) Convention on the Rights of the Child.

121 CRC Committee General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (2013) para 74.

122 Art 4(1) African Charter on the Rights and Welfare of the Child (1990).

123 African Children's Committee General Comment 5: State party obligation under the African Charter on the Rights and Welfare of the Child (article 1) and systems strengthening for child protection (2018) 11.

best interests of the child and can already be considered a violation of children's rights before the harm manifests. As noted in the General Comment of the African Children's Committee, '[s]tate actions that imperil the enjoyment of the rights of future generations of children (eg, allowing environmental degradation to take place or inappropriate exploitation of natural resources) are regarded as violating the best interests of the child standard'.¹²⁴

The temporal challenge connected to climate change accountability is not only about the future impact or the impact on future generations but also pertains to responsibility for past/historical emissions. There is disagreement regarding responsibility for historical emissions. Developed states argue that they are under no obligation for emissions before establishing the UNFCCC, a stance that is contested by customary law. In the *Trail Smelter* case, for instance, it was underscored that states are prohibited from causing 'injury by fumes in or to the territory of another', without specifying the type of fumes.¹²⁵ Since the 1960s, there has been international awareness about the harm caused by GHG emissions.¹²⁶ In the *Corfu Channel* case, the ICJ noted that states are not obligated to allow their territories to be used for acts that hamper the rights of other states.¹²⁷ Moreover, as reiterated by Kenya in the recent ICJ advisory opinion proceedings, including pre-1992 emissions in the UNFCCC and the Kyoto Protocol indicates the legal responsibility attached to historical GHG emissions.¹²⁸

4.3 Extraterritoriality

Although human rights are considered universal norms, their application does not match their proclaimed universality.¹²⁹ Traditionally, states have obligations regarding individuals within their jurisdiction and jurisdiction is primarily understood to be territorial.¹³⁰ The issue of the extraterritorial obligation of states for human rights violations is an ongoing debate where consensus is lacking in both norms and jurisprudence.¹³¹ An analysis of international treaties indicates this lack of coherence of norms. The Vienna Convention on the Law of Treaties (VCLT) provides that 'unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its

¹²⁴ African Children's Committee (n 123) 12.

¹²⁵ *Trail Smelter* case (*United States v Canada*) 1941, United Nations, RIAA vol III (1965).

¹²⁶ UK Research and Innovation 'A brief history of climate change discoveries', <https://www.discover.ukri.org/a-brief-history-of-climate-change-discoveries/index.html> (accessed 23 May 2025).

¹²⁷ *Corfu Channel* (*United Kingdom v Albania*) Merits, Judgment, ICJ Reports (1949) 22; see also *Gabcikovo-Nagymaros Project* (Hungary/Slovakia) Judgment, ICJ Reports 1997, 7 para 40.

¹²⁸ International Court of Justice Public sitting held on Friday 6 December 2024, Peace Palace, President Salam presiding, on the Obligations of States in respect of Climate Change (Request for advisory opinion submitted by the General Assembly of the United Nations) Verbatim Record (2024) Kenya's submission 35.

¹²⁹ D Palombo 'Extraterritorial, universal, or transnational human rights law?' (2023) 56 *Israel Law Review* 95.

¹³⁰ Palombo (n 129) 97.

¹³¹ JH Knox 'Climate change and human rights law' (2009) 50 *Virginia Journal of International Law* 41.

entire territory.’¹³² This provision suggests two points: first, that the territorial application of obligations is assumed. The other indication is that it is possible to establish extraterritorial obligation if it is in the intention of the treaty, or extraterritoriality can be established through other types of legal reasoning. Hence, a close analysis of different human rights treaties and possible legal arguments for extraterritoriality is crucial in establishing extraterritoriality.

Both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) contain provisions that shed light on the territorial scope of their application. ICCPR requires state parties to respect and ensure to all individuals within their territory and subject to their jurisdiction the rights recognised in the present Covenant.¹³³ The provision provides room for interpretation both in support of and against extraterritoriality. It could imply a cumulative requirement where the individuals protected must be in the state’s territory and under its jurisdiction or effective control. On the other hand, the jurisprudence on this provision, as well as scholarly writings, interpret the provision to mean that the duty of states extends to those within their jurisdiction and those within effective control of the state.¹³⁴ The UN Human Rights Committee, in its General Comment that clarifies state responsibility, noted that state parties must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that state party, even if not situated within the territory of the state party.¹³⁵

Furthermore, various principles of international law can be utilised to decipher what is meant by effective control over territory. The ‘no harm’ principle of international law has been interpreted to imply state responsibility for transboundary environmental damage resulting from activities conducted within one’s geographic territory, including industrial pollution.¹³⁶ Another potentially useful interpretive principle is the doctrine of *sine qua non*, which implies that a state is responsible for a harm if it is established that the damage would not have occurred if it were not for the act of the state.¹³⁷ While this principle aids in further refining arguments for attribution, when it comes to climate change, it will run into the above-mentioned challenge of diffuse causality of harms caused by climate change. Hence, for this principle to add interpretive value, it requires the use of increasingly advancing climate science and tweaking the principle to consider the cumulative contributing factors to climate change-related harm.

¹³² Art 29 Vienna Convention on the Law of Treaties (1969).

¹³³ Art 2(1) International Covenant on Civil and Political Rights (1966).

¹³⁴ Knox (n 131) 42.

¹³⁵ Human Rights Committee General Comment 31 [80] The nature of the general legal obligation imposed on state parties to the Covenant (2004) para 10.

¹³⁶ *Trail Smelter* case (n 125).

¹³⁷ P Minnerop & FEL Otto ‘Climate change and causation: Joining law and climate science on the basis of formal logic’ (2020) 27 *Buffalo Environmental Law Journal* 56.

ICESCR does not provide a territorial scope that limits the application of the provisions of the Covenant to the territory of a state party. Furthermore, supporting argument for extraterritorial application, ICESCR requires state parties to take steps 'individually and through international assistance and cooperation, especially economic and technical, to the maximum of their available resources, to achieve progressively the full realisation of the rights recognised in the present Covenant by all appropriate means.'¹³⁸ The Committee on Economic, Social, and Cultural Rights (ESCR Committee) has repeatedly interpreted this provision to imply extraterritorial application of the provisions of the Covenant. For instance, in its General Comment on the right to water, the Committee noted:¹³⁹

To comply with their international obligations about the right to water, States parties have to respect the enjoyment of the right in other countries. International cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in different countries. Any activities undertaken within the State party's jurisdiction should not deprive another country of the ability to realise the right to water for persons in its jurisdiction.

However, contrary to the interpretation by the ESCR Committee, the ICJ has noted that the absence of territorial scope in ICESCR indicates the inherent territorial nature of the rights contained therein.¹⁴⁰ This further contradicts the jurisprudence of the ICJ itself in prior cases where it stated that the absence of territorial limitation in a treaty indicates the intention to allow extraterritorial application.¹⁴¹ Despite some contradictory interpretations, the consistent approach of the ESCR Committee in favour of extraterritoriality provides a solid basis to argue for the extraterritorial obligation of states for climate change-induced harms. The ICJ further affirmed the extraterritorial scope of ICCPR and ICESCR in the Wall Opinion, wherein it stated that 'while the jurisdiction of states is primarily territorial, it may sometimes be exercised outside the national territory' and, in such instances, states must comply with the provisions of ICCPR.¹⁴²

CRC provides an explicit limitation, providing that state parties should 'respect and ensure the rights outlined in the present Convention to each child within their jurisdiction'.¹⁴³ However, the CRC Committee has interpreted the term 'jurisdiction' broadly by taking inspiration from the jurisprudence of regional mechanisms, mainly the Inter-American Court. In its recent decision on the *Sacchi* case, the Committee adopted the broad definition of jurisdiction adopted by the Inter-American Court, where the term 'is not limited to the

¹³⁸ Art 2(1) International Covenant on Economic, Social and Cultural Rights (1966).

¹³⁹ ESCR Committee General Comment 15 The right to water (2002) para 31.

¹⁴⁰ International Court of Justice Advisory Opinions and Orders Legal: Consequences of the Construction of a Wall in the Occupied Palestinian Territory Advisory Opinion (2004) para 111.

¹⁴¹ Knox (n 131) 47.

¹⁴² International Court of Justice (n 140) para 109.

¹⁴³ Art 2(1) Convention on the Rights of the Child.

concept of national territory but covers a broader concept that includes certain ways of exercising jurisdiction beyond the territory of the state in question.¹⁴⁴ The CRC Committee further noted in the *Sacchi* decision that

when transboundary harm occurs, children are under the jurisdiction of the state on whose territory the emissions originated ... if there is a causal link between the acts or omissions of the state in question and the negative impact on the rights of children located outside its territory, when the state of origin exercises effective control over the sources of the emissions in question.¹⁴⁵

While progressive in extending extraterritorial obligation based on a broad interpretation of jurisdiction, the approach of the Committee remains cautious as it provides for the necessity of a causal link between the act or omission and the negative impact. The Committee further noted that ‘not every negative impact in cases of transboundary damage gives rise to the responsibility of the state in whose territory the activities causing transboundary harm took place.’¹⁴⁶ For a transboundary harm to attract the responsibility of the source state, it must be significant.¹⁴⁷ The significance level of the harm is to be determined on a case-by-case basis. Moreover, the Committee notes that significant harm lies somewhere between merely detectable and serious or substantial.¹⁴⁸

Although territoriality has been the rule regarding state responsibility, both norms have several exceptions, as outlined above and in interpretation. Regarding climate change, extraterritoriality should be the rule given the jurisdictional separation of the foremost perpetrators and the overwhelmingly large number of victims. The approach taken by the CRC Committee in *Sacchi* indicates the normative possibility and openness for such a shift.¹⁴⁹ However, this has yet to be translated into practical application as the decision fell short of interrogating the merits of the case.

Moreover, once extraterritorial obligation gains ground, the issue of the type or level of extraterritorial obligation becomes relevant. While the negative obligation to respect human rights is less controversial when applied extraterritorially, the positive obligations to protect and fulfil have far less acceptance. The ESCR Committee has noted that the obligation of international cooperation depends on states’ ability, based on their available resources. Regarding climate change, the implication is that developed countries should assist developing countries in combating climate change.¹⁵⁰ While this concept found its way into the Paris Agreement through the principle of Common but Differentiated Responsibilities and Respective Capabilities (CBDR-RC), it faces resistance as a binding legal

¹⁴⁴ Inter-American Court of Human Rights (n 116) para 74.

¹⁴⁵ *Sacchi & Others v Argentina* (decision on admissibility) UN CRC Committee (2021) para 10.7.

¹⁴⁶ *Sacchi* (n 145) para 10.12.

¹⁴⁷ As above.

¹⁴⁸ As above.

¹⁴⁹ Venn (n 96) 23.

¹⁵⁰ Knox (n 131) 48.

obligation under human rights law. This is owing to the positive nature of the obligation as it pertains to the duty to fulfil and the duty to protect, which enjoy far less acceptance when applied extraterritorially, compared to the negative duty to respect.¹⁵¹

There is significant resistance from developed countries to the positive obligations of an extraterritorial nature. Hence, scholars suggest a compromised approach where states are obligated to respect the rights of people outside their territories by refraining from actions infringing on their ability to enjoy their rights and the obligation to protect people outside their territory by regulating actions of third parties within their effective control. The comprised approach suggests sacrificing the duty to fulfil it to get developed nations' buy-in and at least take measures to uphold their extraterritorial duty, to respect and protect rights.¹⁵² This proposition falls short of providing comprehensive protection in the face of climate change and dismisses the holistic nature of human rights and the corresponding obligations.

Establishing international state responsibility for climate change requires a significant shift in the understanding of the cause of trans boundary harm, from being the responsibility of the state in effective control of where the harm takes place, to the state that has effective control of the territory or person that originates the harm. The traditional understanding of jurisdiction to mean effective control of the territory where the damage occurs does not address human rights concerns related to climate change.¹⁵³ It renders the possibility of an effective remedy inaccessible for victims such as affected children in Africa and elsewhere in the Global South. There is a need to reimagine the scope of application of human rights law to render it fit for purpose for the current global challenge of climate change. Greenhouse gas emissions that occur across oceans continue to deteriorate the human rights of countless communities on another continent.¹⁵⁴ Climate change clearly shows how human rights violations can be far from a local event; instead, climate change is a massive and systematic international human rights violation perpetuated by wealthy people in rich countries. Extraterritorial application of human rights is needed to remedy the rights of African children, whose rights are being chipped away by climate change. As demonstrated above, this is supported by norms, principles and jurisprudence.

5 Effective remedy as a right and an obligation

Accountability and effective remedy are two sides of the same coin. While accountability broadly looks at the wrongdoer's responsibility, answerability

151 Knox (n 131) 49.

152 Venn (n 96) 23.

153 Palombo (n 130) 116.

154 OA Badaru 'Examining the utility of Third World Approaches to International Law for international human rights law' (2008) 10 *International Community Law Review* 383.

and sanction, effective remedy aims to ensure that the sanction imposed on the wrongdoers ensures the victim is rehabilitated, compensated and guaranteed non-repetition of the harm. The aforementioned challenges of establishing state responsibility internationally, namely, causality, extraterritoriality and temporal problem, are not insurmountable. The notion of effective remedy, which is both a substantive right of victims and an obligation of duty bearers, ties the rights of children and the obligations of states in the context of climate change. As noted above, rights are meaningless if their violation cannot be remedied. Violations can only be remedied by establishing the corresponding obligation of the duty bearer. International human rights law must be interpreted in a manner that ensures its objective and purpose, which is guaranteeing the enjoyment of the rights protected therein.¹⁵⁵

The arguments against the applicability of human rights law in establishing accountability for climate change-related harms, and thereby for GHG emissions, are a manifestation of structural global power asymmetries ubiquitous in international relations. Such arguments contradict a purposive interpretation of norms, which is to remedy rights violations. The assertion that ‘a treaty’s recognition of a human right does not mean that any interference with that right by any actor, anywhere in the world, violates a legal duty’¹⁵⁶ is an inadvertent admission of this power imbalance. However, it was meant to inspect technical legal barriers. The broad levels of obligation on duty bearers under human rights law should allow for the interference of rights from anywhere by any actor to be deemed a violation. If a company based in Germany can interfere with the enjoyment of a group of children’s rights to life in Burkina Faso, it should be seen as a violation of CRC, which is a legal duty. That is, if those alleging the violation demonstrate the necessary link between the act and the harm, which is possible given the advances in attribution science and the already-existing jurisprudence on the possibility of attributing responsibility proportionally to contribution.

The right to an effective remedy further supports the purposive interpretation of human rights norms. If an adverse negative impact on human rights does not have an effective remedy, what is the purpose of rights? The right to an effective remedy has been recognised by various international instruments, including ICCPR, which provides that states have an obligation ‘to ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy’.¹⁵⁷ Moreover, the UN Human Rights Committee has interpreted the right to an effective remedy, including the duty to investigate violations, undertake prosecution and compensate victims.¹⁵⁸

155 M Wewerinke-Singh ‘State responsibility for human rights violations associated with climate change’ in S Duyck, S Jodoin & A Johl (eds) *Routledge handbook of human rights and climate governance* (2018) 78.

156 Deva (n 15).

157 Art 2(3)(a) International Covenant on Civil and Political Rights.

158 International Commission of Jurists *The right to a remedy and reparation for gross human rights violations: A practitioner’s guide* Revised Edition (2018).

While CRC does not explicitly provide this right, the Convention's requirement of effective remedies to redress violations is implicit.¹⁵⁹ The concept of access to justice for children is widely accepted in the interpretation of the Convention.¹⁶⁰ This is further supported by adopting the Optional Protocol on a communications procedure, whose aim includes encouraging effective remedies for children whose rights are violated.¹⁶¹ Additionally, the CRC Committee underscored that 'for rights to have meaning, effective remedies must be available to redress violations' and that 'where rights are found to have been breached, there should be appropriate reparation, including compensation'.¹⁶²

The right to an effective remedy and reparation for human rights violations is well established in the norms and practice of international human rights law.¹⁶³ The failure of the human rights framework to ensure accountability for climate change-induced rights violations for all, including children in Africa, violates the right to effective remedy and consequently renders children's rights meaningless in the face of climate change. Given the large scale of the impact of climate change and the 'doomsday' projections of future impact, the lack of accountability for the most affected communities would perpetuate injustice and threaten the survival of human rights law itself. The prediction that international human rights law will eventually fail, as its foundation is not universal as it claims but Eurocentric and dismissive of lived experiences of the rest of the world, may be unfolding in various ways. Climate change threatens the relevance of human rights as it keeps taking us closer to a world where justice may become meaningless in the face of extinction, where extreme scarcity leads to a survival of the fittest scenario.¹⁶⁴

6 Conclusion

Establishing international legal responsibility under a human rights framework is key to ensuring accountability for climate-related harm African children suffer. International human rights law, particularly children's rights law, offers a robust normative foundation for recognising children's specific vulnerabilities in climate change. Climate change has been described as 'the defining human and children's rights challenge of this generation'.¹⁶⁵ Hence, it would be logical to conclude that

159 Human Rights Council 'Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment' (2018) para 51.

160 T Liefwaard 'Access to justice for children: Towards a specific research and implementation agenda' (2019) 27 *International Journal of Children's Rights* 196.

161 Preamble to the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (2014).

162 CRC Committee General Comment 5 on general measures of implementation of the Convention on the Rights of the Child (2003).

163 International Commission of Jurists (n 158).

164 Open Global Rights 'Leaving the "Goldilocks zone": Will human rights survive climate change?' <https://www.openglobalrights.org/leaving-goldilocks-zone-human-rights-survive-climate-change/> (accessed 30 September 2023).

165 UNICEF 'The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index' (2021) 9.

human rights law implies an obligation on any state, especially high-emitting states, to counter climate change and remedy human rights violations caused by climate change on children in Africa. However, the applicability of human rights law to address climate change and, more so, to ensure accountability for GHG emissions, is highly contested by powerful nations that claim to be champions of human rights.¹⁶⁶ The structural and doctrinal features of international law, particularly the challenges of establishing causation, overcoming jurisdictional barriers, and addressing the long-term, cumulative nature of climate harms, have so far been at the heart of the arguments against the applicability of human rights frameworks in addressing climate harms. Furthermore, the current international legal order that underpins human rights law has not yet offered meaningful conceptual frameworks to remedy the transboundary and temporally dispersed harms inflicted by GHG emissions, mainly due to structural inequalities and jurisdictional limitations in international law.

There are arguments in support of and against international state responsibility for violating human rights through GHG emissions. Hence, developing international jurisprudence that supports the affirmative view arguably is the most effective way of settling the legal challenges, levelling power asymmetries and forging a path to accountability. International litigation that connects African children affected by climate change and significant historical and current contributing countries to GHG is needed to establish the necessary jurisprudence. The content of rights is ultimately defined when applied to a particular context.¹⁶⁷ Emerging jurisprudence suggests a growing willingness to interpret children's rights dynamically in the light of evolving threats like climate change. The principle of the best interests of the child, combined with the right to an effective remedy, can serve as an entry point for transformative legal interpretation. Fulfilling the right to remedy is not limited to an *ex post facto* application, where remedies should be availed once rights are violated. It also implies the obligation to provide functional structures through which victims can obtain redress.¹⁶⁸ Furthermore, advances in attribution science and incorporating climate justice principles into human rights discourse provide an evolving basis for challenging traditional legal limitations. International accountability mechanisms must undergo conceptual evolution to ensure that African children are not left without recourse. This includes rethinking jurisdictional norms to enable extraterritorial accountability, particularly where powerful states effectively control GHG sources that harm populations beyond their borders. In sum, if children's rights are to retain their legitimacy and moral authority in the face of the climate crisis, the international legal system must be willing to stretch beyond the confines of existing doctrine to meet the demands of international and intergenerational justice. In this context,

166 ICJ Advisory opinion proceedings: Submissions of developed countries on obligations of states in respect of climate change (2024).

167 A Lähteenmäki-Uutela and others 'Rights of the child as imperatives for transforming food systems' (2024) 29 *Ecology and Society* 29.

168 Wewerinke-Singh (n 155) 76.

recent jurisprudence by the CRC Committee and other human rights bodies indicates normative shifts. There is a need to critically interrogate the ability and willingness of bodies such as the CRC Committee to spearhead this normative shift and meet their obligation of safeguarding children's rights globally.

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Revisiting *Chiara Sacchi & Others v Argentina & Others* from the perspective of the African Committee of Experts on the Rights and Welfare of the Child: Would extraterritoriality support the climate change agenda?

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Abstract: The challenges of climate change continue to present a growing crisis. The use of supranational bodies such as the Committee on the Rights of the Child and the African Committee of Experts on the Rights and Welfare of the Child may offer an opportunity through the provision of relevant remedies. This article argues that at its core, the challenge arises where accountability has to be found based on extraterritorial jurisdiction. To demonstrate this argument, the article unpacks the concept of extraterritorial jurisdiction following the reasoning of the Committee on the Rights of the Child in *Chiara Sacchi & Others v Argentina and Others* (*Sacchi*). It looks at the normative and institutional guidance of the African Charter on the Rights and Welfare of the Child and its African Children's Committee on extraterritoriality and climate change. It then proposes a way forward for the African Children's Committee to draw insights from the *Sacchi* decision.

Key words: African Children's Committee; children's rights; climate change; extraterritorial jurisdiction; *Sacchi* decision

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1 Introduction

Approximately 3,6 billion people worldwide live in regions at high risk of severe impacts from climate change, and one-third of the population consists of children.¹ Children face new health and social threats that put their future at risk in the face of climate change. Somewhere between 2030 and 2050, an additional 250 000 children's lives will be lost due to climate change-related issues such as malnutrition, malaria, diarrhoea, and even heat stress.² According to the World Meteorological Organisation, Africa has been warming slightly faster than the global average, at about +0,3°C per decade between 1991 and 2023.³ The warming has been most rapid in North Africa, around +0,4°C per decade between 1991 and 2023, compared to +0.2°C per decade between 1961 and 1990.⁴

Extreme climate events have devastated Africa, with particularly destructive floods in several countries. In Libya, flooding caused by Mediterranean cyclone Storm Daniel in September 2023 resulted in at least 4,700 confirmed deaths, with 8,000 people still missing.⁵ Similarly, parts of Kenya, Somalia and Ethiopia experienced widespread flooding during the April-June 2024 rainy season, leading to over 350 deaths and 2,4 million displaced people, in March 2023. The record-breaking tropical cyclone Freddy hit Malawi, resulting in at least 679 deaths.⁶ It suffices to note that severe flooding also affected central Africa, particularly on the border between Rwanda and the Democratic Republic of the Congo (DRC), killing at least 483 people in parts of the DRC's South Kivu province.⁷ Several African countries experienced severe drought in 2023, including parts of Morocco, Algeria, Tunisia, Nigeria, Cameroon, Ethiopia, Madagascar, Angola, Zambia, Zimbabwe and the DRC.⁸

1 World Health Organisation 'Climate change' 12 October 2023, <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health#:~:text=Research%20shows%20that%203.6%20billion,diarrhoea%20and%20heat%20stress%20alone> (accessed 4 July 2025).

2 As above.

3 World Meteorological Organisation 'Africa faces disproportionate burden from climate change and adaptation costs' 2 September 2024, <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs#:~:text=The%20African%20continent%20has%20been,decade%20between%201961%20and%201990> (accessed 28 January 2025).

4 As above.

5 This has led to the finding that 17 out of the 20 countries most threatened by climate change are in Africa. See UNECA '17 out of the 20 countries most threatened by climate change are in Africa, but there are still solutions to this crisis', <https://www.uneca.org/stories/17-out-of-the-20-countries-most-threatened-by-climate-change-are-in-africa,-but-there-are> (accessed 28 January 2025). See also IDMCA 'Libya – Years of conflict and weakened infrastructure compound Derna flood impact' <https://www.internal-displacement.org/spotlights/Libya-Years-of-conflict-and-weakened-infrastructure-compound-Derna-flood-impact/> (accessed 6 July 2025).

6 'Africa faces disproportionate burden from climate change and adaptation costs', <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs#:~:text=The%20African%20continent%20has%20been,decade%20between%201961%20and%201990> (accessed 28 January 2025).

7 AN Mbiyozo 'Loss and damage funding vital after DRC and Rwanda floods' 5 June 2023, <https://issafrica.org/iss-today/loss-and-damage-funding-vital-after-drc-and-rwanda-floods> (accessed 28 January 2025).

8 As above.

The most pressing concern is the impact of the climate crisis on children. Recent reports from the United Nations Children's Fund (UNICEF) and Save the Children reveal alarming statistics: Over 45 million children in Eastern and Southern Africa face severe risks due to climate-related disasters, including malnutrition, displacement, poor health and lost learning opportunities.⁹ This vulnerability is further exacerbated by rising displacement in sub-Saharan Africa, where the number of internally displaced children due to climate-related disasters nearly doubled in recent years, with a staggering 1.85 million children displaced in 2022.¹⁰

Despite enhanced global awareness of the need to take action on climate change, efforts to address climate change remain inadequate.¹¹ In this regard, a recent transnational communication in *Chiara Sacchi & Others v Argentina & Others* (*Sacchi*) provides a seed of hope.¹² As subsequently shown, it suggests that the Committee on the Rights of the Child (CRC Committee) may be able to operate outside the jurisdiction of a state party to respond to issues associated with the climate crisis. While the decision in *Sacchi* sets some critical questions concerning the mandate of CRC Committee in light of the need to address the impact of climate change by state parties beyond their borders, this contribution seeks to reflect on similar issues within the purview of the African Charter on the Rights and Welfare of the Child (African Children's Charter). This contribution establishes the foundational principles of extraterritorial jurisdiction in international law and the corresponding rationale of the CRC Committee in *Sacchi*. Under the African Children's Charter, it further provides normative and institutional guidance about extraterritoriality and climate change. As part of the way forward, it provides an approach that the institution of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) may employ in a two-pronged approach. Building on this analysis, the contribution offers conclusions with key recommendations.

9 Save the Children 'Number of children displaced across sub-Saharan Africa by climate change shocks doubled to a record high in 2022' 4 September 2023, <https://www.savethechildren.net/news/number-children-displaced-across-sub-saharan-africa-climate-shocks-doubled-record-high-2022#:~:text=NAIROBI,%204%20September%20-%20The%20total,family,%20or%20other%20temporary%20arrangements> (accessed 28 January 2025).

10 UNICEF East and Southern Africa '45 million children at risk of poor health, malnutrition, displacement & learning loss in Eastern and Southern Africa due to climate crisis' 19 December 2023 <https://www.unicef.org/esa/press-releases/45-million-children-risk> (accessed 28 January 2025).

11 N van Bommel & JI Höffken 'The urgency of climate action and the aim for justice in energy transitions – Dynamics and complexity' (2023) 48 *Environmental Innovation and Societal Transitions* 100763.

12 *Chiara Sacchi & Others v Argentina, Brazil, France, Germany and Turkey* UNCRC Communications 104/2019 (Argentina), 105/2019 (Brazil), 106/2019 (France), 107/2019 (Germany), 108/2019 (Turkey) (23 September 2019) (*Sacchi*).

2 Extraterritorial jurisdiction in international law

Various principles govern extraterritorial jurisdiction in international law. While this part is not exhaustive on these principles, it offers insights before reconciling the position in *Sacchi* regarding extraterritorial jurisdiction. These include the territorial;¹³ nationality;¹⁴ protective, universal jurisdiction;¹⁵ passive personality;¹⁶ effects doctrine;¹⁷ international law;¹⁸ active personality;¹⁹ and representational principles.²⁰ By design, this contribution looks at three concepts of territorial jurisdiction, the effects doctrine and international law. The contribution now turns to these three principles.

2.1 Territorial principle

The principle of territorial sovereignty, as a cornerstone of international law, stipulates that a state cannot exercise its jurisdiction within the territorial boundaries of another state without a permissive rule granting explicit permission.²¹ Conversely, states possess considerable discretion to exercise jurisdiction within their territorial boundaries for extraterritorial acts or omissions.²² The general position is that jurisdiction is generally territorial, and states cannot exercise extraterritorial jurisdiction unless authorised by international custom, convention or permissive law.²³ Extraterritoriality is a point of departure from the general presumption in the Vienna Convention on the Law of Treaties (VCLT), which states that a treaty binds a state within its territory in whole unless a different interpretation appears from the text of the treaty or it is otherwise established.²⁴

The territorial principle asserts that a country has jurisdiction over crimes committed within its territory, regardless of the nationality of the perpetrator or victim.²⁵ This principle is based on the idea that a country has sovereignty over its

13 S Krasner 'Sovereignty: Organised hypocrisy' in H Steiner, P Alston & R Goodman (eds) *International human rights in context: Law, politics, morals* (2000) 575-577.

14 G Gilbert 'The criminal responsibility of states' (1996) 7 *European Journal of International Law* 123.

15 A Cassese *International criminal law* (2003) 563.

16 C Ryngaert *Jurisdiction in international law* (2015) 22.

17 J Ku 'The effects doctrine in international law' (2001) 4 *Journal of International Economic Law* 145.

18 MN Shaw *International Law* (2017) 456.

19 Gilbert (n 14) 126.

20 MC Bassiouni *International criminal law: Sources, subjects and contents* (2001) 262.

21 *Lotus (France v Turkey)* 1927 PCIJ (Ser. A) No 10. See also I Brownlie *Principles of public international law* (2008) 105. See also Shaw (n 18) 683.

22 M Milanovic *Extraterritorial application of human rights treaties: Law, principles, and policy* (2011) 45-70. It is important that the state has a law that allows for extraterritorial jurisdiction. See Ryngaert (n 16) 15.

23 L Leontiev 'Conceptualising extraterritoriality. Public international law and private international law considerations' (2024) 24 *Global Jurist* 119.

24 Art 29 Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331; K da Costa *The extraterritorial application of selected human rights treaties* (2013) 1.

25 Ryngaert (n 16) 15.

territory and, therefore, the authority to enforce its laws within that territory.²⁶ Concerning children's rights, it is argued that this principle is significant as it enables countries to prosecute individuals who commit crimes against children, such as child trafficking, abuse or exploitation, within their territory.²⁷ As a consequence, it is expected that countries should be able to prosecute non-citizen perpetrators who commit crimes against children within their territory as a way of safeguarding children from abuse and exploitation and ensuring accountability from perpetrators.²⁸

A primary concern that falls within the purview of climate change mitigation is the potential for conflicting laws and jurisdiction, particularly in cases where multiple countries have jurisdiction over a crime.²⁹ This is not a conflation of climate change with criminal jurisdiction, but rather a pointer to the fact that some countries criminalise some acts and omissions about climate change.³⁰ While this may lead to confusion and difficulties in determining which country has priority, it also showcases interconnectedness, as climate change cases often involve multiple countries, making it challenging to determine which country's laws apply.³¹ While the principles that govern conflict of laws help resolve these jurisdictional disputes by deciding which law applies to a particular case,³² the need to involve various (national) laws may create legal complexities regarding the jurisdiction to engage the issues in an international adjudication space such as the CRC Committee and the African Children's Committee.³³ Furthermore, the effectiveness of the territorial principle relies heavily on countries' willingness to cooperate and enforce laws protecting children's rights.³⁴ Yet, children are already a vulnerable group who may have other susceptibilities, such as being migrants or refugees.³⁵ Based on the foregoing discussion, international frameworks and guidelines are crucial in addressing challenges and ensuring the adequate protection of children's rights. It may be stated in the interim that the principle of extraterritorial jurisdiction is vital in protecting children's rights, as it enables

26 A Bodley 'Weakening the principle of sovereignty in international law: The international tribunal for the former Yugoslavia' (1993) 24 *New York University Journal of International Law and Politics* 419.

27 Eg, see the UNODC's Model Law Against Trafficking in Persons, https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf (accessed 16 February 2025).

28 See N McCormick *Questioning sovereignty: Law, state, and nation in the European Commonwealth* (1999) 127.

29 As above.

30 M Jojo 'Ecocide as an international crime' 26 October 2021, <https://una.org.uk/magazine/2021-1/ecocide-international-crime> (accessed 5 July 2025).

31 Ryngaert (n 16) 20.

32 AF Lowenfeld *International litigation and arbitration* (2015) 25.

33 TC Hartley *Conflict of laws* (2015) 35. It should be recalled that in international law, unless otherwise explicitly stated, national laws have very limited relevance before international mechanisms such as the CRC Committee and the African Children's Committee. While national law may deal with the criminal or civil footing of a matter, CRC and the African Children's Charter evaluate the existence of a human (child) rights violation by a state party may be held accountable for children's rights violations in either its own or the territory of another state.

34 McCormick (n 28) 127.

35 See Z Vaghri, Z Tessier & C Whalen 'Refugee and asylum-seeking children: Interrupted child development and unfulfilled child rights' (2019) 6 *Children* 120.

countries to prosecute crimes committed within their territory, regardless of the perpetrator's nationality.

Several landmark cases demonstrate that where laws from different states deal with a matter differently, the law of the state whose citizen is in conflict with the law may be used. For instance, in *Urgenda Foundation v State of The Netherlands*, a Dutch court applied Dutch law to hold The Netherlands government accountable for not reducing greenhouse gas (GHG) emissions.³⁶ In *Juliana v United States*, a group of young people sued the United States of America (US) government for failing to address climate change, because various federal laws present varying approaches.³⁷ In essence, the different federal laws presented a conflict of laws. It was expected that the US would take steps to correct the conflict of laws. Another notable case is *Torres Strait Islanders v Australia*, currently before the United Nations (UN) Human Rights Committee, which involves a group of Torres Strait islanders alleging that Australia's failure to address climate change violates their human rights.³⁸ The shortfall of this principle is that the crimes or actions committed by non-nationals outside the territory of a state have effects within the state's territory.

2.2 Effects doctrine

The effects doctrine holds that a country has jurisdiction over activities that have a significant impact or effect within its territory, even if the activity occurs outside its territory.³⁹ This principle is based on the idea that a country has the right to regulate activities that affect its interests, even if they occur outside its territory. This principle allows a country to exercise jurisdiction over activities that have a significant impact or effect within its territory, even if the activity occurs outside its territory.⁴⁰ According to Ku, applying the effects doctrine requires identifying three elements: substantial effect, causal link, and intentional conduct.⁴¹ To this end, the activity must have a significant and direct impact on the country's territory or interests, with a clear causal link between the activity and the effect felt within the country's territory.⁴² Bermann argues that the activity must be intentional and not merely accidental or incidental.⁴³ The most significant advantage that the effects doctrine brings on board is the protection of national interests and the prevention of harm to citizens, the environment or the economy.⁴⁴ It is thus correct to assert that the exercise of jurisdiction over

36 *Urgenda Foundation v The State of The Netherlands* ECLI:NL:RBDHA:2015:7196, Judgment (Dist Ct The Hague 24 June 2015).

37 *Juliana v United States* 339 F. Supp. 3d 1062 (D Or 2018).

38 *Torres Strait Islanders v Australia* CCPR/C/135/D/3624/2019 (decided in 2022).

39 Ku (n 17) 145.

40 Ryngaert (n 16) 15.

41 Ku (n 17) 25.

42 Hartley (n 33) 30.

43 GA Bermann 'Transnational litigation: A uniform framework for conflict of laws' (2012) 60 *American Journal of Comparative Law* 35.

44 PM Dupuy & JE Viñuales *International environmental law* (2018) 45.

activities with extraterritorial effects enables countries to prevent harm to their citizens, environment or economy and protect their national interests.⁴⁵ The jurisdiction of the CRC Committee would indeed be to declare that the conduct of a state has resulted in a violation in another state. It is argued that one may read into a decision the extent to which it is yet to be seen, where the CRC Committee adopts the effects doctrine as a means to promote and protect the rights of the child. This is based on the possible conflicts that the doctrine may bring on board concerning various countries in the light of overreach and exercise of jurisdiction over activities outside their territory.⁴⁶ Despite these challenges, the effects doctrine is recognised in multiple international frameworks, including the jurisdictional rules of the European Union (EU) and the jurisprudence of the International Court of Justice (ICJ).⁴⁷ The doctrine has been applied in various contexts, and its advantages in protecting national interests and preventing harm make it an essential principle of extraterritorial jurisdiction.⁴⁸

2.3 International law

International law provides a framework for extraterritorial jurisdiction, particularly in human rights, terrorism and organised crime.⁴⁹ International treaties, conventions and customary law establish norms and standards for countries to exercise extraterritorial jurisdiction. From the perspective of extraterritoriality, Gondek argues that human rights may be applied extraterritorially where a state's agents exercise authority over individuals outside their territory, or when a state has effective control over a territory or individuals outside its borders, known as 'effective control'.⁵⁰ In addition, extraterritoriality may present itself through 'jurisdiction by consent', where a state consents to the exercise of jurisdiction by another state over its nationals or territory.⁵¹ Gondek's analysis highlights the complexities and challenges of applying human rights treaties extraterritorially and calls for a nuanced approach that balances state sovereignty with human rights protection.⁵² Regarding the application of international law, it is suggested that human rights treaties may be applied extraterritorially in contexts of state

45 Shaw (n 18) 50.

46 Ku (n 17) 60.

47 B Zelger 'EU competition law and extraterritorial jurisdiction – A critical analysis of the ECJ's judgment in *Intel*' (2020) 16 *European Competition Journal* 613.

48 The concept of effects-based jurisdiction is recognised in European Union jurisdictional rules, specifically in Regulation (EC) 1215/2012 (Brussels I Recast), which establishes jurisdiction based on the impact of a defendant's actions within the EU. This principle is also acknowledged in international law, as seen in the International Court of Justice's ruling in *Barcelona Traction* (1970) ICJ Reports 3. See also HK Verma 'The effects doctrine in international law' (2019) 10 *Journal of International Dispute Settlement* 234.

49 Shaw (n 18) 456.

50 M Gondek *The reach of human rights in a globalising world: Extraterritorial application of human rights treaties* (2009) 75. See also *Nicaragua v United States of America* 1986 ICJ Rep 14 para 115 (1986 *Nicaragua*).

51 Gondek (n 50) 75-100.

52 S Mateus 'Investigating the extraterritorial application of the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights' (2021) *De Jure Law Journal* 70.

agent authority, effective control or global activities.⁵³ Kunnemann's analysis highlights the need for a nuanced approach to extraterritorial jurisdiction.⁵⁴

This approach should consider the complexities of globalisation and the extraterritorial effects of state actions. By considering these factors, states can ensure that human rights are protected and respected, even in situations where individuals or entities are outside their territorial boundaries. Although the complexities of extraterritorial jurisdiction necessitate a nuanced understanding of the interplay between territorial sovereignty and the universality of offences, its applicability in international human rights law is not a concluded matter. In light of this, as a point of intersection in the working methods of both the CRC Committee and the African Children's Committee, the author revisits the approach of the CRC Committee in *Sacchi*.

3 *Sacchi* decision: Reasoning of the CRC Committee

The reasoning covers the facts, the engagement of the issue of extraterritorial jurisdiction and the CRC Committee's position on the same.

3.1 The facts

In *Sacchi*, 16 children from around the world brought a communication against Argentina, Brazil, France, Germany and Turkey before the CRC Committee, seeking to hold these states accountable for their role in climate change, claiming a violation of articles 3, 6, 24 and 30 of the United Nations Convention on the Rights of the Child (CRC).⁵⁵ They argued that by ignoring scientific evidence and failing to address climate change, these states had violated their human rights, including the rights to life, health and culture.⁵⁶ In addition, every day of delay in taking necessary measures depletes the remaining 'carbon budget', bringing the climate closer to irreversible ecological and health disasters.⁵⁷ They claimed that the state party and other states created an imminent risk by failing to act, resulting in lost mitigation opportunities and an inability to ensure a sustainable future for future generations.⁵⁸ The complainants contended that the climate crisis was a children's rights crisis, obliging states to respect, protect, and fulfil children's right to life. They emphasised that mitigating climate change was a human rights imperative, with international human rights law informed by international environmental law principles.⁵⁹

53 R Kunnemann 'Extraterritorial application of the International Covenant on Economic, Social and Cultural Rights' in F Coomans & MT Kamminga (eds) *Extraterritorial application of human rights treaties* (2004) 201.

54 Kunnemann (n 53) 201.

55 *Sacchi* (n 12) para 1.1.

56 *Sacchi* para 2.

57 *Sacchi* para 3.1.

58 *Sacchi* paras 3.1, 3.6, 8.7.

59 *Sacchi* para 3.2.

Furthermore, the complainants argued that the state party failed to uphold its obligations under the Convention: preventing human rights violations resulting from climate change; cooperating internationally to address the climate emergency; applying the precautionary principle to protect life; and ensuring intergenerational justice for children and future generations.⁶⁰ They requested that the CRC Committee declare climate change a children's rights crisis and recommend actions for countries to mitigate its effects.⁶¹

3.2 Arguing extraterritorial jurisdiction

The complainants argued that the CRC Committee has the authority to examine their complaint because each state party has control over economic activities within its territory that result in GHG emissions that consequently contribute to climate change and the attendant violation of their rights.⁶² In their view, a state party's extraterritorial obligations extend beyond territorial or personal control and apply when a state party's activities cause direct and foreseeable harm beyond its borders.⁶³ It was emphasised that the state party could regulate GHG emissions within its territory, but has failed to do so effectively.⁶⁴ It was further contended that while the state party's emissions were not the sole cause of climate change, they were a contributing factor that the state party could mitigate.⁶⁵ It was argued that causation was a matter for the merits, and there was sufficient evidence of actual and imminent violations of their rights to life, health, and cultural rights due to climate change.⁶⁶ In their view, these violations were foreseeable in light of consistency in warnings from climate scientists about the effects of unchecked emissions, and the Intergovernmental Panel on Climate Change warning in 1990.⁶⁷

3.3 The respondents' arguments on extraterritorial jurisdiction

Since Argentina's environmental policy was greatly questioned, it formed the centre of attention in the complaint.⁶⁸ Four points are instructive from the objections of the respondent state.

First, the complaint was inadmissible due to a lack of jurisdiction (*ratione loci*) concerning the authors who were not its nationals.⁶⁹ While acknowledging the

60 As above.

61 *Sacchi* paras 3.1-3.2.

62 *Sacchi* para 5.3.

63 *Sacchi* para 5.3.

64 As above.

65 As above.

66 As above.

67 As above.

68 *Sacchi* para 4.1. While this is true, the development of a General Comment does not necessarily solve a problem in the territory of a state party if the latter is not willing to do so.

69 *Sacchi* para 4.3.

existence of international extraterritorial obligations and the potential for cross-border environmental harm, the state party claims that these principles do not apply in this specific case.⁷⁰ Second, the communication was largely generic and legally indeterminate as far as it contained various climatic events across the state such as an alleged windstorm in the town of Haedo, province of Buenos Aires, which allegedly devastated the neighbourhood of one of the authors, consequently increased the use of air conditioners and therefore the pressure on the electrical system, causing power outages, affecting her schoolwork and ruining food stored in the refrigerator. The respondent state argued that the communication neither provided any evidence to support these considerations, nor delimited the legal reproach against the state party.⁷¹

Third, the respondent state further submitted that the communication was inadmissible *ratione loci* regarding its authors, who were not nationals of the state party.⁷² The respondent invited the CRC Committee to note that the jurisprudence of the Human Rights Committee, the European and Inter-American human rights systems, agrees that jurisdiction is not limited to territory but to the relationship of power, authority or effective control between an individual and a state.⁷³ The state party consequently argued that to establish jurisdiction, there must be a causal link between the harm caused and the state's actions or omissions within its territory or under its jurisdiction.⁷⁴ The state party argued that the complainants had not demonstrated that children outside Argentina were subject to the power or control of Argentine agents.⁷⁵ In addition, there was no causal link between the state party's actions or omissions and specific climate-related events, such as extreme heat in France, fires in Tunisia or sea-level rise in the Marshall Islands.⁷⁶

Consequently, the respondent state argued that the CRC Committee was not competent to analyse, concerning the state party, events that allegedly occurred outside its territory, over which it does not exercise any type of jurisdiction and which, furthermore, do not have any type of causal link that could be attributable to agents of the state party. Indeed, the complainants do not provide evidence that children outside Argentina are subject to the power or control of Argentine agents. Third, the respondent state argued that communication was inadmissible *ratione temporis* as far as the event in question took place before 14 July 2015 – before the Optional Protocol entered into force in Argentina.⁷⁷ Fourth, regarding

70 As above.

71 *Sacchi* para 4.2.

72 *Sacchi* para 4.3.

73 As above. See the European Court of Human Rights *Issa & Others v Turkey* Application 31821/96, Judgment of 16 November 2004 para 71; Inter-American Court of Human Rights, Advisory Opinion OC-23/17 of 15 November 2017, requested by the Republic of Colombia, on the environment and human rights, para 81.

74 *Sacchi* para 4.3.

75 As above.

76 As above.

77 *Sacchi* para 4.4.

the third party intervention, the respondent state argued that while it shared its concerns on the phenomenon of climate change and the need for concrete and effective actions against global warming,⁷⁸ the communication does not meet the admissibility criteria regarding communications to the CRC Committee.⁷⁹

3.4 Position of the CRC Committee on extraterritorial jurisdiction

While the CRC Committee is commended for applying the principles of extraterritoriality in this communication, the substantial aspects of its application are worth revisiting, forming the crux of the contribution in this article.

The CRC Committee noted that CRC requires state parties to respect and ensure the rights of every child within their jurisdiction under article 2(1).⁸⁰ The CRC Committee emphasised the importance of interpreting extraterritorial jurisdiction restrictively, citing the lack of reference to territory in the Protocol's provisions.⁸¹ Additionally, the CRC Committee notes that the Human Rights Committee and European and Inter-American courts developed and applied jurisdiction in situations distinct from the present case.⁸² The CRC Committee was of the view that a state's jurisdiction is based on its ability to exercise effective control over activities that cause damage beyond its borders.⁸³ This is in line with the position in *Catan & Others v Moldova*, where the European Court identified three areas for extraterritorial jurisdiction, namely, where a state has effective control and responsibility over a territory beyond its territorial boundaries.⁸⁴

An evaluation of the foregoing is important for various reasons. First, the note of the requirement that state parties ought to respect and ensure the rights of every child within their jurisdiction are protected points to the use of the obligations principle which requires that the only condition precedent to ensuring the enjoyment of the rights of the child is the existence of the child and a link in international law to ensure the protection thereof. Consequently, this is in line with the territorial principle that enables countries to enforce children's rights within their territory.⁸⁵ Second, as a point of departure from this momentum was the emphasis on a restrictive interpretation of extra-territorial jurisdiction because of the lack of reference to territory in the Protocol's provisions.⁸⁶ As correctly

78 *Sacchi* para 7.

79 *As above*.

80 *Sacchi* para 10.3.

81 *As above*.

82 CRC referred to the work of the Inter-American Court of Human Rights, Advisory Opinion OC-23/17 para 81, and European Court of Human Rights *Catan & Others v Moldova and Russia* Applications 43370/04, 8252/05 and 18454/06, Judgment of 19 October 2012.

83 *Sacchi* para 10.3.

84 *Catan & Others v Moldova and Russia* Applications 43370/04, 8252/05 and 18454/06, Judgment of 19 October 2012.

85 The United Nations Office on Drugs and Crime 2009 'Model Law Against Trafficking in Persons', https://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf (accessed 16 February 2025).

86 *Sacchi* para 10.3.

observed, the CRC Committee stated that '[w]hile neither the Convention nor the Optional Protocol makes any reference to the term "territory" in its application of jurisdiction, extraterritorial jurisdiction should be interpreted restrictively'.⁸⁷

At its core, the restrictive application of extraterritoriality is in the narrow interpretation of 'effective control' as an inapplicable test on matters of climate change. It is further argued that the adoption of a flexible approach to foreseeability requirement is based on 'general acceptance' which is 'corroborated by scientific evidence' regarding the adverse effects on the enjoyment of rights within and outside a state's territory.⁸⁸ It is argued that the CRC Committee, by implication, reads into the communication the effects doctrine in light of its perspective on extraterritorial jurisdiction on climate change matters. It is argued that CRC's scope may have been even broader, as it did not necessitate intentional conduct. Instead, it required state parties to exercise effective control over actions leading to harm and to take preventative measures against foreseeable harm. An evaluation of the position under the African Children's Charter and the working methods of the African Children's Committee is worth revisiting to juxtapose points of confluence and departure about the position in *Sacchi*.

4 African Children's Charter – Extraterritoriality and climate change

4.1 Extraterritoriality

As noted earlier, extraterritoriality concerning a state's jurisdiction is based on its ability to effectively control activities causing damage beyond its borders, balanced on the contours of reasonable foreseeability and causality.⁸⁹ Critical words such as 'jurisdiction', 'territory' and 'extraterritoriality' become very instructive. Concerning the term 'jurisdiction', the African Children's Charter contains provisions related to it as far as they clarify the scope of application and the responsibilities of state parties. For instance, article 1 defines the scope of application, stating that the Charter applies to 'every child' within the jurisdiction of state parties.⁹⁰ This provision establishes that state parties have obligations to protect the rights of children within their jurisdiction. The question of what

⁸⁷ As above.

⁸⁸ *Sacchi* para 10.9.

⁸⁹ Literature indicates that extraterritoriality refers to situations where a state's actions, or lack thereof, violate the human rights of individuals beyond its borders. This can occur, first, when a state takes actions outside its territory that harm individuals in other countries and, second, when a state's actions in its own territory have a negative impact on individuals in other countries. See generally W Nicola 'Human rights, treaties, extraterritorial application and effects' in R Wolfrum (ed) *Max Planck Encyclopaedia of Public International Law* (2008).

⁹⁰ African Charter on the Rights and Welfare of the Child (African Children's Charter) CAB/LEG/24.9/49 (1990), 11 July 1990 art 1.

happens if the act or omission leads to the violation of the rights of the child beyond its borders is not clear in the wording of CRC. Furthermore, article 44(1) states that the African Children's Committee can receive communications from individuals or organisations recognised by the (now) African Union (AU), member state or the UN. It is important to note that although the article does not expressly speak to 'jurisdiction',⁹¹ the African Children's Committee's grant of remedial measures to human rights violations calls for an evaluation of extraterritoriality.

The African Children's Charter mentions neither 'territory' nor 'extraterritoriality' in its provisions. However, it emphasises the importance of state parties' obligations to protect children's rights within their jurisdictions. For instance, article 2 prohibits discrimination against children on various grounds, including national origin. Furthermore, the African Children's Charter protects children from harm and ensures their well-being.⁹² Furthermore, article 44 allows the African Children's Committee to receive communications relating to any matter covered by the African Children's Charter. These provisions collectively highlight the importance of state parties' obligations to protect children's rights within their jurisdictions. Although the Charter does not explicitly mention 'territory,' it is clear that state parties are responsible for upholding children's rights within their areas of jurisdiction.

One may argue that the African Children's Charter speaks to international cooperation, which may, in a manner, speak to extraterritorial jurisdiction. From the outset, the Preamble to the African Children's Charter recognises the importance of international cooperation, stating that the promotion and protection of the rights and welfare of the child implies the performance of duties on the part of everyone, including international and non-governmental organisations (NGOs).⁹³ This has to be measured against aspects of accountability. In addition, the African Children's Charter emphasises the obligation of state parties to recognise the rights, freedoms and duties enshrined in the Charter and to take necessary steps to adopt legislative or other measures to give effect to the Charter's provisions.⁹⁴ Following state parties' recognition of the competence of the African Children's Committee to receive communications from any person, group or NGO, or the engagement of its working methods, international cooperation may be a platform to use in remedying child rights violations.⁹⁵ For instance, following the conclusion of a communication, a follow-up hearing or visit may be used to draw emerging good practices from other state parties.⁹⁶ To

91 Art 44 African Children's Charter (n 90).

92 Art 16 African Children's Charter. This article specifically protects children from all forms of torture, inhuman or degrading treatment and punishment.

93 Preamble African Children's Charter.

94 Art 1 African Children's Charter.

95 Art 44 African Children's Charter.

96 Eg, following the conclusion of *Tanzanian Girls*, a follow-up hearing by the Committee drew on NGOs with observer status collating practices from other states such as Zambia, Sierra Leone and Uganda. This was 45th ordinary session of the African Committee of Experts on the

this point, clarity on the normative foundations of extraterritorial jurisdiction in the African Children's Charter is not explicitly provided. Turning to *Sacchi*, the CRC Committee reiterated the importance of restricting extraterritorial jurisdiction, citing the lack of reference to territory in the Protocol's provisions.⁹⁷ This presents two polarities: first, the lack of clarity on the concept of extraterritorial jurisdiction in the African Children's Charter and, second, the call for a restrictive approach to extraterritoriality. The author takes issue with the restrictive approach as it is against the trend of human rights-monitoring bodies. For instance, the European Court of Human Rights (European Court) has emphasised that international human rights treaties should be interpreted to maximise effectiveness.⁹⁸ The European Court advocates a generous interpretation of human rights treaties to ensure the broadest possible protection of individual rights.⁹⁹ The ICJ has recognised that the extraterritorial application of human rights treaties is consistent with their purpose and objectives as it prioritises the rights of individuals over those of states, promoting a more expansive scope of human rights that extends beyond national borders.¹⁰⁰

Despite the CRC Committee's finding that jurisdiction is based on the state party's effective control over emissions and the foreseeability of harm, its call for a 'restrictive' approach to extraterritorial jurisdiction arguably is misguided in light of the complex and global challenges, such as climate change. This is informed by the interpretation of article 46 of the African Children's Charter.¹⁰¹ First, article 46 allows for flexibility in seeking inspiration as far as it will enable the African Children's Committee to 'draw inspiration' from international law on human rights, African values and traditions through the application of a broad mandate to draw inspiration, where there is no local or appropriate interpretation to a legal provision.¹⁰² This encourages looking beyond a narrow or restrictive view to find the most fitting and effective interpretation.

Second, article 46 is a tool that deals with ambiguity and complexity by providing alternative approaches to interpretation.¹⁰³ The provision of alternative approaches to interpretation allows the African Children's Committee to seek inspiration from other treaties, decisions, accepted guidance and jurisdictions

Rights and Welfare of the Child (African Children's Committee) that took place in Maseru, Lesotho, from 7-11 April 2025. At a workshop by various CSOs and the United Republic of Tanzania in Arusha in April 2023, the state called for a benchmarking exercise to learn from other state parties to improve aspects of the right to education and return to school of pregnant girls and young mothers.

97 *Sacchi* para 10.3.

98 This means that the treaties should be understood in a manner that achieves their objectives rather than restricting the obligations of states. See *Wemhoff v Germany* Application 2122/64 ECHR, 27 June 1968. See also, eg, *Minister of Home Affairs v Fisher* [1980] AC 319, 328.

99 J Tobin *The UN Convention on the Rights of the Child: A commentary* (2019) 12.

100 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, ICJ Reports 883 para 109.

101 Art 46 African Children's Charter.

102 As above.

103 As above.

to clarify the contextual meaning of complex children's rights issues.¹⁰⁴ To this end, according to *Sacchi*, climate change presents novel jurisdictional issues of transboundary harm that inherently complexify the interpretation of state obligations. As the CRC Committee proposes, a restrictive approach limits avenues for interpretation instead of the complex, global issues that demand creative and expansive legal reasoning.

Third, article 46 offers an open-ended but qualified approach to the child rights-based approach.¹⁰⁵ For instance, regarding the best interests principle, article 46 invites the African Children's Committee to cast its net as wide as possible in search of the best approach to interpret a right. Using a restrictive approach to analyse the best interest under article 4(1) of the African Children's Charter would limit the scope of protection for children, primarily from violations of actions outside the geographical location but within the effective control of another state.

Fourth, the application of article 46 calls for a creative and innovative approach to child rights issues, which may not be attained from a restrictive paradigm. A good example is the *Nubian Children* case, where the African Children's Committee drew inspiration from a draft Statute of the International Criminal Court (ICC) to protect children's best interests concerning statelessness. It is argued that this willingness to incorporate evolving (though not yet ratified) international legal standards reflects a proactive and non-restrictive stance essential for addressing rapidly developing threats like climate change. Without prejudice to the foregoing, while the CRC Committee in *Sacchi* acknowledged that novel jurisdictional issues of transboundary harm related to climate change and that jurisdiction should be based on causal link, foreseeability and effective control, the call for a 'restrictive' interpretation of extraterritorial jurisdiction still signals a cautious approach. On the contrary, the spirit of article 46 embraces a more dynamic and expansive interpretation, which offers greater space for upholding children's rights in a world increasingly characterised by interconnected challenges that transcend traditional territorial boundaries.

Without prejudice to the foregoing, a critique of the normative position under the African Children's Charter reveals five key aspects. First, extraterritorial jurisdiction hinges on a state's ability to control activities causing harm beyond its borders effectively. However, the current normative framework lacks clarity on how extraterritorial jurisdiction impacts a state's responsibility for human rights abuses. Second, the provisions of the African Children's Charter, at face value, are insufficient to address extraterritorial child rights violations as far as they focus on jurisdiction within state borders. This limits applicability to cases where a state's actions or omissions have extraterritorial effects. Third, this calls

104 As above.

105 As above.

for a rather broad interpretation of the provisions of the African Children's Charter and the development of norms and standards that explicitly address extraterritorial human rights violations. It should be recalled, on the strength of *Sacchi*, that the approach should consider the principles of effective control, reasonable foreseeability and causality.

In line with the need for an expansive approach, it is argued that the employment of article 46 as a tool in the arsenal of the African Children's Charter is instructive. Article 46 allows the African Children's Charter to draw inspiration from various sources, including African cultural values, traditions, and international human rights instruments. Nanima and Fokala argue that the African Children's Charter's recognition of African cultural values and international human rights instruments reflects a commitment to promoting a holistic and inclusive approach to child rights.¹⁰⁶ Furthermore, by drawing on diverse sources of inspiration, the African Children's Charter seeks to promote the best interests of the child, while also respecting African cultural diversity and promoting regional and international cooperation.¹⁰⁷ Based on the need for an expansive approach, article 46 may be used as a tool to use sources in international law, which may point to the invocation of extraterritorial jurisdiction as far as it would offer a higher threshold of protection for the child affected by climate change.

4.2 Selected provisions on climate change

The African Children's Charter is one of the few instruments that mentions the term 'environment'. Furthermore, various articles deal with the question of climate change and provide for the promotion and protection of their children's rights. These include articles 1,¹⁰⁸ 3,¹⁰⁹ 4,¹¹⁰ 5,¹¹¹ 6¹¹² and 31 (responsibilities of the child).¹¹³ A look at selected provisions is essential in contextualising the normative aspects of climate change. By design, this contribution looks at the provisions on state party obligations, the definition of a child, the principle of non-discrimination and the right to education. These four provisions are selected because they engage with the aspects of natural disasters, the environment and the role of a concise definition of a child. Before these are examined, a look at the Preamble is instructive in establishing the context and intent of the African Children's Charter. However, it generally creates no legally binding obligations or rights.

106 RD Nanima & E Fokala 'Article 46: Sources of inspiration' in J Sloth- Nielsen, E Fokala & G Odongo (eds) *The African Charter on the Rights and Welfare of the Child: A commentary* (2024) 584.

107 Nanima & Fokala (n 106) 584-593.

108 The article deals with state party obligations.

109 The article deals with non-discrimination.

110 The article concerns the best interests of the child.

111 The article concerns the right to life, survival and development.

112 The article concerns the right to a name, nationality and birth registration.

113 The article concerns the responsibilities of the child.

4.2.1 *Preamble to the African Children's Charter*

First and foremost, it is apparent that the drafters of the African Children's Charter appreciated the impact of floods, earthquakes and wildfires on the enjoyment of children's rights. Guidance is evident in the preambular paragraph of the African Children's Charter, which provides the following:¹¹⁴

Noting with concern that the situation of most African children remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity, they need special safeguards and care ...

This text of the Preamble highlights the vulnerable situation of African children, who face numerous challenges that threaten their well-being and development. These challenges include poverty, hunger, natural disasters, armed conflicts and exploitation, often exacerbated by climate change.

The preambular paragraph further emphasises that children require special care and protection due to their physical and mental immaturity, especially in the context of climate change, due to their susceptibility to the impacts of climate change, such as increased frequency and severity of natural disasters, water scarcity and food insecurity, displacement and migration due to climate-related events. While the Preamble may not be binding *per se* or provide obligations, it is argued that it allows for essential guidance on the need to give African children targeted support and protection to help them cope with the challenges posed by climate change.

4.2.2 *State party obligations and climate change*

AU member states that have signed the African Children's Charter are obligated to uphold the rights, freedoms and duties outlined therein. This commitment requires them to recognise and respect these rights and to take concrete steps in their laws and institutions to bring them to life. In essence, these states have pledged to acknowledge and uphold the rights, freedoms and duties enshrined in the African Children's Charter, implementing measures within their constitutional processes to give effect to the Charter's provisions. About *Sacchi*, the CRC Committee noted that CRC requires state parties to respect and ensure the rights of every child within their jurisdiction.¹¹⁵ It is argued that a higher threshold is evident in the application of the obligation under the African Children's Charter.¹¹⁶ Three points inform the normative position in the African

¹¹⁴ Second preambular paragraph African Children's Charter.

¹¹⁵ *Sacchi* para 10.3.

¹¹⁶ The higher threshold is evident in various aspects. First, the African Children's Charter refers to rights, freedoms and duties, unlike CRC which refers to only rights. Second, the African Children's Charter calls for the use of necessary means to adopt legislative and other measures to give effect to the provisions of the Charter. While this may sound to be a lower threshold

Children's Charter: First, the obligation on state parties is mandatory and not discretionary for the state. Second, the extent of this compulsory requirement inculcates rights and extends to both freedoms and duties. It is interesting to note that concerning rights, there is no distinction regarding their nature as civil and political, on the one hand, and socio-economic, on the other. As such, the protection of the rights of children affected by climate change (including climate-induced conflict) embraces all rights under the African Children's Charter. Third, state parties are expected to take necessary measures to ensure the enjoyment of the Charter's rights, duties and obligations, including those of children affected by climate change.

4.2.3 *Definition of a child*

The African Children's Charter defines a child as anyone under 18 years old, establishing a clear and universal standard for protection.¹¹⁷ This definition is essential in ensuring that children receive comprehensive protection and care. A crucial issue arises: assuming national law defines a child as anyone under 18 years of age.¹¹⁸ For instance, a hypothetical situation may arise where country A provides for a child to mean a person below the age of 16. This would mean that the protection of the child between 16 and 18 years is thwarted by statute. Second, the critical implications for applying protection about the effects of climate on such children cannot be extended to the affected child because the law recognises them as adults. Consequently, it limits robust protection by fluidity in the age. Thirdly, a straight 18-year definition of the child creates consistency and clarity in protecting children's rights and averts ambiguity or a lower age threshold.¹¹⁹ Concerning *Sacchi*, the issue of age did not arise. As such, the engagement of the blurred line of definition of a child as a person below the age of 18 or, according to the national laws where the majority is attained earlier, did not arise.¹²⁰ It would follow that if the communication was brought before the African Children's Committee, issues of whether the authors were children would have to be decided. In instances where the national law provides for a child

than 'appropriate' as provided for in CRC, it points to a recognition of the lived reality in Africa with regard to resources. Third, the African Children's Charter does not make a distinction with regard to civil and political rights, on the one hand, and socio-economic rights, on the other (like CRC). This is instructive as it requires states to recognise all the rights provided for in the African Children's Charter – a show of a higher threshold.

117 Art 2 African Children's Charter.

118 This is the essence of the definition of a child in CRC that allows for a lower age as provided for in national law.

119 This position is well settled under the auspices of the African Children's Committee in *IHRDA v Malawi*. The essence of the hypothetical is to create conversation on how provisions of the African Children's Charter can be read into the extraterritoriality agenda.

120 It was on record that all the authors (Chiara Sacchi, from Argentina; Catarina Lorenzo, from Brazil; Iris Duquesne, from France; Raina Ivanova, from Germany; Ridhima Pandey, from India; David Ackley III, Ranton Anjain and Litokne Kabua, nationals of the Marshall Islands; Deborah Adegbile, from Nigeria; Carlos Manuel, from Palau; Ayakha Melithafa, from South Africa; Greta Thunberg and Ellen-Anne, from Sweden; Raslen Jbeili, from Tunisia; and Carl Smith and Alexandria Villaseñor, from the United States of America) were all below the age of 18 years. See *Sacchi* para 1.

to be below the age of 18, for example, 16, the communication would be founded on shaky ground. This would be due to the objective definition of a child under the African Children's Charter, unlike the subjective definition under CRC.

4.2.4 *Principle of non-discrimination*

The principle of non-discrimination in the African Children's Charter ensures that every child's rights are protected, regardless of their status or circumstances.¹²¹ This principle is particularly significant in the context of climate change, where children are often disproportionately affected.¹²² Climate change exacerbates existing vulnerabilities, and children in climate-affected areas, such as those displaced by rising sea levels or drought, are entitled to the same protection and rights as all other children. The principle of non-discrimination extends to all environments, including those affected by climate-related disasters, conflicts or refugee settings. Furthermore, this principle applies in conjunction with other key articles, including article 4(1) on the best interests of the child; article 5 on the right to life, survival, and development; and articles 4(2) and 7 on consideration of the views of the child and freedom of expression, respectively. By implication, these articles collectively emphasise the importance of protecting children's rights and ensuring their well-being in the face of climate change and other challenges.

4.2.5 *Right to education*

The African Children's Charter explicitly mentions the term 'environment'. Regarding environment and education, it states that '[t]he education of the child shall be directed to ... the development of respect for the environment and natural resources.'¹²³ While the provision does not explicitly state 'climate change', it is prudent to note that it is the only provision that refers to the natural environment, with other contexts referring to the family environment.¹²⁴ It is also interesting to note that respect for the environment and natural resources should be preserved by adults and extended to children with the aid of educators.¹²⁵ The African Children's Charter does not have a drafting history to explain the reasons for this provision. However, it is worth noting that a child's education on aspects of climate change should prepare them to give views that enable the protection of the same. This provision provides a solid foundation for the African Children's Committee to engage more deeply with state parties. For instance, the African Children's Committee can request that states report on their efforts to educate children about environmental health issues, such as by implementing environmental health education programmes in schools, or where the request

121 Art 3 African Children's Charter.

122 See ED Gibbons 'Climate change, children's rights, and the pursuit of intergenerational climate justice' (2014) 16 *Health and Human Rights Journal* 19.

123 Art 11(2)(g) African Children's Charter.

124 Fifth preambular paragraph, arts 23(3), 25(1) & 25(2)(a) African Children's Charter.

125 Art 11(2)(g) African Children's Charter.

from the African Children's Committee requires the state party to inculcate climate education and the sustainability of the environment under article 6 of United Nations Framework Convention on Climate Change (UNFCCC) and article 12 of the Paris Agreement.

It is also argued that as the world grapples with the challenges of climate change, it is essential to consider the impact on children's education. A child's right to education is fundamental, and a multi-faceted approach to education is necessary to address the challenges of climate change. One key aspect is to recognise education as an 'essential service' that must be maintained, even during a crisis. This means that schools and educational institutions must be prioritised, and measures taken to ensure that children can continue to learn and develop despite the challenges posed by climate change. By doing so, society, on a grand scale, protects children's rights and ensures they have the knowledge and skills needed to thrive in a rapidly changing world.

In the interim, the African Children's Charter provides a framework for protecting children's rights, including in the context of climate change. The selected provisions on state party obligations, the definition of a child, non-discrimination and the right to education are particularly relevant. First, the obligations under the African Children's Charter require commitments from states to take concrete steps to implement these provisions. Second, the unambiguous definition of a child ensures receipt of comprehensive protection and care, particularly in the context of climate change. Third, the principle of non-discrimination ensures that every child's rights are protected, regardless of their status or circumstances, and climate change is not an exception. The right to education in the African Children's Charter fuses the enjoyment of the right with the need for the education system to be directed towards the development of respect for the environment and natural resources – a solid foundation for engaging with state parties on environmental education and climate change.¹²⁶

While one would argue that the elephant in the room remains the lack of clarity on extraterritorial jurisdiction under the African Children's Charter, creating the need to latch on possible guidance from *Sacchi*, it is argued that article 46 of the African Children's Charter offers an opportunity to draw on insights from international human rights law and customs to rely on principles that aid the promotion and protection of the rights of the child in Africa. The article provides:¹²⁷

The Committee shall draw inspiration from International Law on Human Rights, particularly from the provisions of the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments

126 R Fambasayi & M Addaney 'Cascading impacts of climate change and the rights of children in Africa: A reflection on the principle of intergenerational equity' (2021) 21 *African Human Rights Law Journal* 29.

127 Art 46 African Children's Charter.

adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

Article 46 is a guiding principle for interpreting complex children's rights issues, but only when other solutions or interpretations fall short. Since there is no similar provision in the African Children's Charter, the connections to other rights are based on how other interpretative approaches and sources can provide a progressive and forward-thinking understanding of a specific right in the Charter. In essence, article 46 is a useful provision for an interpretation that embraces an expansive approach. In the interim, the African Children's Charter provisions on climate change and children's rights have implications for extraterritorial jurisdiction. States have obligations to protect children's rights, including in the context of climate change, regardless of their territorial jurisdiction. This requires states to take a more nuanced approach to extraterritorial jurisdiction, considering the impact of climate change on children's rights.

5 The way forward for the African Children's Committee

It is argued that the restrictive approach by *Sacchi* requires that the African Children's Committee take a two-pronged approach. First, it builds on the principles underscored by *Sacchi* to amplify its position on the use of extraterritoriality. There is no doubt that a reading of the provisions of the African Children's Charter provides guidance to this. Second, the African Children's Committee should search within its institutional framework to inform policy and jurisprudential direction on climate change. This finds essence in literature that suggests that the concept of extraterritoriality in African human rights law may be found in the jurisprudence of the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court) and inspiration from other global and regional human rights systems.¹²⁸

The African Children's Charter establishes the African Children's Committee through article 42. This Committee has a crucial responsibility: overseeing the protection and promotion of children's rights throughout Africa. In short, the African Children's Committee is a guardian of children's rights and welfare on the continent, working tirelessly to ensure their safety and well-being.¹²⁹ The actions of the African Children's Committee are strictly guided by the African Children's Charter, which outlines specific parameters and provisions for the Committee's work. In other words, the Committee's execution of its mandate is carefully directed by the Charter's rules and guidelines. This ensures that the African Children's Committee stays focused on its core objectives

¹²⁸ L. Chenwi & TS Bulto 'Extraterritoriality in the African regional human rights system from a comparative perspective' in C Lilian & B Takele Soboka (eds) *Extraterritorial human rights obligations from an African perspective* (2018) 13-62.

¹²⁹ Art 42 African Children's Charter.

and responsibilities, as defined by the Charter.¹³⁰ The mandate embraces the examination of reports submitted by state parties, which provides insight into their progress in implementing the charter's provisions and the issuance of Concluding Observations on the state party reports.¹³¹ The African Children's Committee reviews reports and communications from state parties and provides recommendations in response. These recommendations serve as guidance and support for states, helping them to promote better and protect the rights and well-being of children. By doing so, the Committee plays a crucial role in assisting states to fulfil their obligations under the African Children's Charter.¹³² The African Children's Committee has the authority to conduct on-site visits to countries that have signed the African Children's Charter, gather data, and work with governments, NGOs and other partners to promote and protect children's rights. Through these efforts, the African Children's Committee aims to strengthen its collaboration with key stakeholders and advance its mission to safeguard the well-being and rights of children across Africa.¹³³

The African Children's Committee has set up various internal structures to effectively carry out its responsibilities. These structures fall into three main categories, which enable the Committee to fulfil its mandate and promote the rights and welfare of children in Africa. These include the appointment of Special Rapporteurs and the establishment of working groups,¹³⁴ which play a crucial role in supporting the Committee's work in promoting and protecting children's rights.¹³⁵ The African Children's Committee is empowered to establish its own rules of procedure.¹³⁶ In this regard, the Revised Rules of Procedure empower the Committee to appoint country rapporteurs,¹³⁷ Special Rapporteurs¹³⁸ and working groups, among other mechanisms.¹³⁹ Currently, following article 38(1) of the African Children's Charter, the African Children's Committee has terms of reference that it uses to provide for the appointment of country rapporteurs, with each member of the Committee responsible for covering a portfolio of five countries.¹⁴⁰ Institutionally, the country rapporteurs ensure that concerns related to children's welfare in their assigned countries receive timely attention.¹⁴¹ When

130 As above.

131 Arts 32-45 African Children's Charter.

132 As above.

133 As above.

134 African Children's Committee 'About working groups' 8 December 2020, <https://www.acerwc.africa/en/page/about-working-groups> (accessed 22 January 2025).

135 African Children's Committee 'Country rapporteurs' July 2023, <https://www.acerwc.africa/en/page/country-rapporteurs> (accessed 22 January 2025).

136 Art 38(1) African Children's Charter.

137 African Children's Committee (n 135).

138 African Children's Committee 'About thematic rapporteurs' July 2023, <https://www.CountryRapporteurs>, <https://acerwc.africa/en/page/about-thematic-rapporteurs> (accessed 22 January 2025).

139 African Children's Committee (n 134).

140 African Children's Committee 'Terms of reference for country and thematic rapporteurs of the ACERWC' 1 November 2016, <https://www.acerwc.africa/sites/default/files/2024-05/Terms%20of%20Reference%20for%20Country%20and%20Thematic%20rapporteurs%20of%20ACERWC.pdf> (accessed 22 January 2025).

141 African Children's Committee (n 135).

climate change issues arise in a country that has signed the African Children's Charter, the country's designated rapporteur takes the lead as the main contact person. This role allows the rapporteur to focus on addressing concerns related to climate change and its impact on children's rights in their assigned country. However, a challenge arises when multiple issues emerge in one or several countries, burdening the rapporteur's responsibilities and creating complexities in their role.¹⁴² The African Children's Committee also provides for thematic areas in an evolving space that currently includes children affected by armed conflict, violence against children, birth registration, name and nationality, child marriage and other harmful practices and child participation.¹⁴³ Others include children in vulnerable situations, health, welfare and development, children on the move, children in conflict with the law, and children without parental care and education.¹⁴⁴

It is worth noting that the African Children's Committee does not have a Special Rapporteur focused explicitly on climate change. This should not be seen as an oversight or a missed opportunity to address climate change from a thematic perspective. This is solved by using other mechanisms, such as working groups.¹⁴⁵ The African Children's Committee has set up four key working groups to tackle specific challenges facing African children. These groups were established during the Committee's thirty-fifth ordinary session, which took place virtually from 31 August to 8 September 2020.¹⁴⁶ The four working groups focus on the following areas: Children's Rights and Business; Children's Rights and Climate Change; Implementation of Decisions and Recommendations on the Rights and Welfare of Children; and Children with Disabilities.¹⁴⁷ These groups were created to address the unique challenges in each area and develop sustainable solutions. The working groups are guided by the principles and norms of the African Children's Charter and the aspirations of Agenda 2040.¹⁴⁸ Notably, the Working Groups on Children's Rights and Business and Children's Rights and Climate Change include external experts and Committee members to provide specialised knowledge and insights.¹⁴⁹

142 Eg, at the 40th session of the African Children's Committee, the expert members sought to revisit the thematic areas. It is not intended that these rapporteurs operate in isolation, given the potential for intersecting issues across countries. It is argued that a more effective approach would likely involve inter-rapporteur collaboration.

143 African Children's Committee (n 138).

144 The thematic or Special Rapporteurs also get to guide conversation about studies, development of soft law, among others. Eg, the study on teenage pregnancies in Africa was guided by the Special Rapporteur on Health. See African Children's Committee 'Study – Teenage pregnancy in Africa: Status, progress and challenges' 12 January 2022, <https://www.acerwc.africa/en/resources/publications/study-teenage-pregnancy-africa-status-progress-and-challenges> (accessed 22 January 2025).

145 African Children's Committee (n 134).

146 As above.

147 As above.

148 As above.

149 As above.

The Working Group on Children's Rights and Climate Change aims to integrate a child rights-based approach into climate change initiatives across the continent. This approach prioritises the protection of children's rights and welfare, mitigating the adverse impacts of climate change. The Working Group comprises four members from the Committee and four external experts, bringing together diverse expertise to achieve its goals.¹⁵⁰ From the resolution establishing the Working Group on Climate Change, the Working Group on Climate Change and Children's Rights has a comprehensive mandate encompassing several critical roles and responsibilities.¹⁵¹ At its core, the Working Group is tasked with examining the devastating impact of climate change on the rights and welfare of children in Africa.¹⁵² This involves conducting a thorough continental study to better understand the complex relationships between climate change and children's rights.¹⁵³ Furthermore, to combat the effects of climate change, the Working Group is responsible for developing effective strategies and setting standards that prioritise the protection of children's rights and welfare. This includes creating a comprehensive strategy for preventing, mitigating and combating the impacts of climate change on children in Africa.¹⁵⁴

Raising awareness and galvanising action are also crucial aspects of the Working Group's mandate, which requires the Working Group to undertake various activities to engage AU organs, regional economic communities, national human rights institutions, civil society organisations and other relevant stakeholders. By fostering collaboration and coordination, the Working Group seeks to mobilise a collective response to the challenges posed by climate change.¹⁵⁵ Interestingly, the Working Group is still accountable to the African Children's Committee, to whom it submits regular reports on its activities and progress.¹⁵⁶ This means that it remains tagged to the working methods, strengths and weaknesses of the Working Group.

150 African Children's Committee 'Working Group on Climate Change and Children's Rights' 8 December 2020, <https://www.acerwc.africa/en/special-mechanisms/working-groups/working-group-climate-change-and-childrens-rights> (accessed 2 February 2025). The Working Group on Climate Change and Children's Rights is led by Chairperson Aver Gavar, alongside a team of dedicated experts. The members include Poloko Nugget Ntshwarang, Robert Doya Nanima and Aver Gavar, who bring valuable insights and experience to the table. The group is also supported by external experts, including Prof Ademola Oluborode Jegede, Dr Elvis Fokala, Retta Getachew and Liesl Muller, who provide specialised knowledge and expertise to inform the group's work.

151 African Children's Committee 'Resolution on Establishment of a Working Group on Children's Rights and Climate Change, sec 1 on Roles and Responsibilities' 8 September 2020, <https://www.acerwc.africa/sites/default/files/2022-10/RESOLUTION%20ON%20THE%20ESTABLISHMENT%20OF%20A%20WORKING%20GROUP%20ON%20CHILDREN%20AND%20CLIMATE%20CHANGE.pdf> (accessed 2 February 2025).

152 As above.

153 African Children's Committee (n 151) sec 1(iii).

154 African Children's Committee (n 151) sec 1(iv).

155 African Children's Committee (n 151) sec 1(v).

156 African Children's Committee (n 151) sec 1(viii).

A few points are worth noting about the Working Group. First, it has a clearly stated primary objective, providing a clear sense of direction. Additionally, it has a comprehensive mandate, outlining the Working Group's roles and responsibilities in detail. Finally, the Working Group is situated within the broader context of climate change and African children's rights, demonstrating an understanding of the complex issues at play. As such, the issue of extraterritoriality should not be engaged only in communications but through the various institutional mechanisms that enable the African Children's Committee at multiple levels. This would require a reconciliation of the working methods of the Working Groups to allow them to engage with states parties on matters concerning extraterritoriality.

6 Conclusion and recommendations

The contribution has laid down the principles of extraterritorial jurisdiction and the reasoning of the CRC Committee in *Sacchi*, a juxtaposition of the normative approach by the African Children's Charter. It is argued that a two-pronged approach is used if *Sacchi* is to be relevant in the African Children's Charter and its Committee. A few pointers are worth noting. Concerning extraterritorial jurisdiction, the territorial principle is significant in protecting children's rights, as it enables countries to prosecute individuals who commit crimes against children within their territory. The effects doctrine embraces extraterritoriality by allowing a country to have jurisdiction over activities that have a significant impact or effect within its territory, even if they take place outside its territory. The three elements of substantial impact, causal link and intentional conduct must be identified and balanced. While international law provides frameworks for contextual application of extraterritoriality, a nuanced approach that balances state sovereignty with children's rights cannot be ignored. The decision in *Sacchi* is commendable for opening up the application of extraterritorial jurisdiction on aspects of climate change. However, its contemporary narrow interpretation of 'effective control' in extraterritoriality is insufficient in addressing climate change issues. A more flexible approach is needed to recognise that the children affected by climate change go through and adopt deliberate and tailored solutions to the problem.

From a normative perspective, the African Children's Charter provides guidance on protecting children's rights in the context of climate change from various perspectives, such as communications, country and thematic rapporteurs, working groups and consideration of state party reports. As such, in light of this wide *modus operandi*, the selected provisions can be used to ensure children's rights are protected. Article 46 comes in handy in allowing for an expansive interpretation, drawing from international human rights law, African values and traditions, to address the complexities of climate change and children's rights. The African Children's Committee should tackle the restrictive approach by *Sacchi* using a two-pronged strategy that builds upon its principles to strengthen the

stance on extraterritoriality and leverage its institutional framework to inform policy and jurisprudential direction on climate change.

In light of the above, it is recommended that the African Children's Committee adopt a more expansive interpretation of extraterritorial jurisdiction to ensure the protection of children's rights, particularly in the context of climate change. Inspiration from the application of article 46 of the African Children's Charter will be instructive in aiding the climate change agenda. It is advisable that (subject to the working methods of the various mechanisms) the African Children's Committee considers the establishment of a Special Rapporteur on Climate Change and Children's Rights in this thematic area. A deliberate engagement of the African Children's Committee's working methods should create a vast arena for dealing with climate change issues and aspects of extraterritoriality. The Working Group on Children's Rights and Climate Change should continue to play a crucial role in integrating a child rights-based approach into climate change initiatives across the continent.

Finally, the African Children's Committee should prioritise the protection of children's rights and welfare in the face of climate change by developing effective strategies and setting standards that mitigate the adverse impacts of climate change on children in Africa.

Children on the move: Climate migration and ecocide in Africa

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Abstract: Historically, ecological destruction has often been an unintended byproduct of human activity. However, the accelerating impacts of climate change – driven by industrialisation, deforestation and the unchecked use of fossil fuels – have exponentially escalated harm to ecosystems. In contemporary times, the effects of climate change on the environment are increasingly severe. The term 'ecocide' has emerged to describe the systematic degradation of the natural world, with far-reaching consequences, and it is linked to migration. However, its intersection with climate migration is undeveloped. Also, in that context, while all displaced populations face severe challenges, children are uniquely vulnerable due to their developmental needs, limited capacity to adapt and dependence on stable social structures. Children face heightened health risks, educational disruption, exploitation and psychosocial stress. Yet, in the current international legal regime, there is a notable gap in the protection specifically addressing the displacement of children. This article examines the nexus between ecocide and the climate migration of children, proposing actionable legal reforms to bridge existing gaps in Africa.

Key words: child displacement; climate migration; climate mobility; ecocide; international law

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1 Introduction

Children in Africa face significant barriers to their well-being and development¹ which include, but are not limited to, malnutrition,² lack of educational facilities³ and poverty,⁴ which are exacerbated by climate change and its resulting displacement,⁵ known as climate migration. Children's dependency on adult care and the natural environment, especially during pre-pubescent years, makes them uniquely vulnerable to climate migration.⁶ One of the primary causes of climate change is the large-scale destruction of the environment, which can be attributed to various factors, including industrialisation, urbanisation and mining.⁷ This large-scale destruction, or ecocide, affects the ecology and causes displacement.⁸ Weisberg introduced the concept of ecocide in his book *Ecocide in Indochina: The ecology of war*,⁹ in which he references Galston's proposal for an international agreement to ban 'ecocide' during the Conference on War and National Responsibility.¹⁰ Ecocide, as originally conceived, is defined as the wilful destruction of the environment,¹¹ intentional acts of ecological destruction with significant ecological consequences. Since its initial conception, several scholars have framed their own definitions of ecocide.

Falk contextualised ecocide within the framework of humanitarian outrage akin to genocide, again rooted in wartime destruction.¹² Gray provided a formal

- 1 UNICEF & African Union 'Children in Africa: Key statistics on child survival and population', <https://data.unicef.org/resources/children-in-africa-child-survival-brochure/#:~:text=Key%20facts,the%20rest%20of%20the%20century> (accessed 2 October 2024).
- 2 BJ Akombi and others 'Child malnutrition in sub-Saharan Africa: A meta-analysis of demographic and health surveys (2006-2016)' (2017) 12 *PLOS ONE* 1; KY Ahmed and others 'Population-modifiable risk factors associated with childhood stunting in sub-Saharan Africa' (2023) 6 *JAMA Network Open* 1.
- 3 DK Evan & AM Acosta 'Education in Africa: What are we learning?' (2021) 30 *Journal of African Economies* 13.
- 4 M Milliano & I Plavgo 'Analysing child poverty and deprivation in sub-Saharan Africa: CC-MODA-cross country multiple overlapping deprivation analysis' Innocenti Working Paper 2014-19, UNICEF; NA Jones & A Sumner 'Child poverty, knowledge and policy in Africa' in NA Jones (ed) *Child poverty, evidence and policy: Mainstreaming children in international development* (2011) 88; R Ingutia 'Are Africa's poorest children on course to avoid being left behind in poverty by 2030?' (2023) 14 *International Journal of Child, Youth and Family Studies* 1.
- 5 F Perera 'Children suffer most from climate change and burning of fossil fuels', <https://pmc.ncbi.nlm.nih.gov/articles/PMC2516589/> (accessed 3 October 2024).
- 6 R Oakes 'Climate change, migration and the rights of children' *The Huffing Post* (web blog) 9 November 2016, https://www.huffpost.com/entry/climate-change-migration_b_12878550 (accessed 15 August 2025).
- 7 H Evans 'Human impacts on the environment: A focus on climate change' (2024), https://populationconnection.org/wp-content/uploads/2024/11/Human-Impacts-on-the-Environment_2024_update.pdf (accessed 15 August 2025).
- 8 US Committee for Refugees and Immigrants 'Ecocide as a call to urgency: The need to address climate displacement', <https://refugees.org/ecocide-as-a-call-to-urgency-the-need-to-address-climate-displacement/> (accessed 15 August 2025).
- 9 B Weisberg *Ecocide in Indochina: The ecology of war* (1970) 4.
- 10 '... and a plea to ban "ecocide"' *The New York Times* (New York) 26 February 1970 38.
- 11 G Hill 'US, at UN parley on environment, rebukes Sweden for "politicising" talks' *The New York Times* (New York) 8 June 1972 13.
- 12 R Falk 'Ecological warfare and ecocide – Facts, appraisal and proposal' (1973) 4 *Bulletin of Peace Proposals* 80.

legal structure to define ecocide as an international crime under the Rome Statute,¹³ but he too focused on scenarios of war and deliberate state-led environmental harm. The Earth jurisprudence school, led by Higgins,¹⁴ sought to broaden the concept to encompass peacetime environmental destruction, emphasising the intrinsic value of nature. Nonetheless, Higgins's approach remained philosophical and normative, without systematically integrating climate change as a distinct or central element of ecocide. Similarly, later advocacy efforts, such as those by Gaujer and others¹⁵ and Higgins and others,¹⁶ called for ecocide to be recognised as the fifth crime against peace.

The most recent development in the definitional discourse emerged in June 2021, when the Stop Ecocide Foundation convened an Independent Expert Panel (IEP) of international lawyers and scholars to propose a formal legal definition of ecocide.¹⁷ Although this marks a consensus-based attempt to draft a legally viable definition suitable for inclusion in the Rome Statute, the definition does not explicitly reference climate change. The Panel deliberately crafted a definition aimed at 'most severe ecological damage occurs during times of peace'.¹⁸ The phrase refers broadly to ecological harm caused by human activities such as industrialisation or resource exploitation, which are not necessarily linked to climate change, a significant aspect of ecological harm.¹⁹ It specifically involves long-term changes in temperature, weather patterns and atmospheric conditions resulting from factors such as greenhouse gas (GHG) emissions. This omission is particularly striking because climate change represents one of the most severe forms of ecological harm today. Large-scale ecological destruction, such as deforestation, oil exploitation and land degradation, not only destabilises local ecosystems but also contributes to global climatic shifts. For instance, the Congo Basin's deforestation undermines its capacity as a carbon sink, while oil pollution in the Niger Delta releases greenhouse gases that accelerate warming.²⁰ Kenya's Garissa county exemplifies this dynamic: extensive deforestation contributes to drought conditions, which have driven families to migrate from rural to urban

13 MA Gray 'The international crime of ecocide' (1996) 26 *California Western International Law Journal* 215.

14 P Higgins 'Seed-idea: Seeding intrinsic values: How a law of ecocide will shift our consciousness' (2012) 1 *Cadmus* 9.

15 A Gaujer and others 'Ecocide is the missing 5th crime against peace' (2012).

16 P Higgins, D Short & N South 'Protecting the planet: A proposal for a law of ecocide' (2013) 59, 251.

17 Stop Ecocide Foundation 'Independent expert panel for the legal definition of ecocide commentary and core text' (2021), <https://static1.squarespace.com/static/5ca2608ab914493c64ef1f6d/t/60d7479cf8e7e5461534dd07/1624721314430/SE+Foundation+Commentary+and+core+text+revised+%281%29.pdf> (accessed 16 October 2024).

18 Stop Ecocide Foundation (n 17) 3.

19 Stop Ecocide Foundation (n 17) 4.

20 L Rüttinger and others 'Africa Climate Security Risk Assessment' (2023) Adelphi 106, https://weatheringrisk.org/sites/default/files/document/ACRA_Central_Africa.pdf#:~:text=Congo%20Basin%20is%20deforestation%2C%20which,can%20severely%20affect%20the%20climate (accessed 12 November 2024).

areas in search of sustenance and stability.²¹ Climate change often intersects with pre-existing ecological threats, compounding vulnerabilities and amplifying the risks of migration and displacement.²² This reflects the unique chain of causation this article seeks to explore – where ecocide acts as both a primary driver of climate change and a pre-existing threat that worsens climate-induced mobility.

Children are particularly vulnerable in this displacement continuum. They are twice as likely to live in extreme monetary poverty as adults.²³ In camps or informal settlements, children often face inadequate access to water, sanitation and hygiene, heightening risks of disease.²⁴ Displacement also disrupts schooling, community networks and family care structures essential to a child's development.²⁵ Moreover, malnutrition resulting from food insecurity has far more severe long-term developmental consequences for children than for adults, impairing physical growth and cognitive capacity.²⁶ These compounded risks necessitate an urgent rethinking of ecocide not just as an environmental crime, but as a driver of climate change and child-specific human rights crises.

This article aims to analyse the unique intersection of ecocide and climate migration of children due to climate change, a critical yet underexplored area in existing literature, proposing actionable legal reforms to bridge existing gaps. Following the introduction, the second part deals with climate migration, highlighting the human cost of ecocide, focusing on its disproportionate impact on children. It examines how ecological destruction leads to climate migration, leaving children vulnerable to exploitation and malnutrition. By presenting real-world examples from Africa, this part illustrates the severity of the issue. The third part examines the international and regional legal frameworks that currently address, or fail to address, climate migration. In this article, the term 'ecological destruction' or 'ecological harm' is used to describe ecocide until it is formally introduced. Subsequently, the discussion centres on ecocide and its implications on the climate migration of children. The fourth part proposes 'the crime of ecocide' as a means of combating the climate migration of the children caused by the ecological destruction due to climate change. The last part proposes concrete policies that can be adopted by states and other stakeholders to combat the climate migration caused by ecological destruction.

21 International data alliance for children on the move (IDACM) 'Climate mobility and childhood: Examining the risks, closing the data and evidence gaps for children on the move' (2024) United Nations Children's Fund 27.

22 IDACM (n 21) 17.

23 N Rees and others 'The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index' (2021) United Nations Children's Fund 68.

24 IDACM (n 21) 19.

25 As above.

26 R Aloui and others 'No escape: On the frontlines of climate change, conflict and forced displacement' (2024) United Nations High Commission for Refugees 28.

2 Understanding climate migration and ecocide

Defining environmental migration remains inherently complex. As Dun and Gemenne observe, the main difficulty lies in isolating environmental factors from other migration drivers, particularly where slow-onset degradation such as desertification undermines livelihoods over time.²⁷ This complexity of causality makes it challenging to categorically label certain movements as environmental migration, especially when ecological degradation is a contributing but not exclusive cause. For this article, however, the definition formulated by the International Organisation for Migration (IOM) is adopted, as it offers a clear and encompassing framework for understanding migration induced by both sudden and gradual environmental changes. In terms of that definition, ecological migration refers to the movement of individuals or groups compelled by sudden or gradual ecological changes that adversely impact their lives or living conditions.²⁸

This migration may be temporary or permanent, occurring either within a country or across international borders. A subset of this phenomenon is climate migration, which specifically arises from ecological changes caused by climate change. Climate migrants move predominantly due to climate change, either by necessity or by choice, and may similarly relocate within their country or internationally.²⁹ This definition, while providing a starting point, fails to address the mechanisms by which displacement occurs, particularly when ecological destruction occurs. Scholarly analyses have emphasised the multi-causal nature of environmental migration. For instance, the Foresight Report argues that environmental changes interact with economic, political and social pressures, rather than acting as isolated causes of migration.³⁰ Similarly, Jokisch and others underscore that migration results from complex interactions between environmental events and broader socio-economic conditions.³¹ Further, Parrish and others³² present a conceptual model where climate change operates as a multiplier of existing vulnerabilities, compounding risks for already marginalised populations. This observation is vital, as it reflects how ecological destruction through activities such as deforestation, pollution, and land degradation exacerbates climate change, indirectly fuelling displacement.

27 O Dunn & F Gemenne 'Defining 'environmental migration'' (2008) 31 *Forced Migration Review* 10.

28 International Organisation for Migration (IOM) 'Glossary on migration', https://publications.iom.int/system/files/pdf/iml_34_glossary.pdf 65 (accessed 16 October 2024).

29 IOM (n 28) 31.

30 J Morrissey 'Environmental change and forced migration: A state-of-the-art-review' Refugee Studies Centre (2009).

31 B Jokisch and others 'Migration matters: How migration is critical to contemporary human-environment geography' (2019) *Geography Compass* 13.

32 R Parrish and others 'A critical analysis of the drivers of human migration patterns in the presence of climate change: A new conceptual model' (2020) 17 *International Journal of Environment Research and Public Health* 6036.

Despite these insights, the direct linkage between ecocide, climate change and displacement remains underdeveloped in existing literature. Most studies do not trace the causal chain from intentional environmental destruction (ecocide) to climate-driven migration, nor do they address the unique vulnerabilities faced by children within this continuum. This article fills that critical gap by situating ecocide as a primary driver of climate change, whose downstream effects contribute to the forced migration of children in Africa.

2.1 Ecological destruction as a driver of climate change

Ecological destruction, encompassing deforestation, wetland degradation, soil erosion and biodiversity loss, significantly contributes to climate change. These activities disrupt natural ecosystems that regulate the Earth's climate,³³ releasing greenhouse gases into the atmosphere and diminishing the planet's capacity to sequester carbon.³⁴ Africa's contribution to global greenhouse gas emissions is the lowest,³⁵ less than 3 per cent of the global emissions face severe consequences from ecological destruction, amplifying vulnerabilities for its ecosystems and communities.³⁶

2.2 Deforestation and its role in climate change

Deforestation exacerbates climate change as forests act as carbon sinks, absorbing substantial amounts of carbon dioxide (CO₂) from the atmosphere.³⁷ When forests are cleared or burned, this stored carbon is released into the air.³⁸ The Congo Basin, often referred to as the 'lungs of Africa', absorbs an estimated 1,5 billion tons of CO₂ annually, offsetting global emissions.³⁹ However, between 2010 and 2020, Africa experienced a net loss of approximately 3,9 million hectares of forest per year, with the Congo Basin being a significant contributor to this loss.⁴⁰ This deforestation results in the release of stored carbon, contributing to global greenhouse gas emissions.⁴¹ In Kenya, the Mau Forest complex, a critical

33 Intergovernmental Panel on Climate Change (IPCC) 'Special Report on Climate Change and Land' (2019) 3.

34 <https://www.un.org/en/climatechange/science/climate-issues/land> (accessed 18 October 2024).

35 T Gunaratne and others 'Unmasking climate vulnerability in Africa: The role of CO₂ and CH₄ emissions on rising temperatures and sea levels' (2025) 12 *Humanitarian Social Sciences Community* 601.

36 K Amakrane 'African shifts report' (2023) Africa Climate Mobility Initiative, <https://environmentalmigration.iom.int/sites/g/files/tmzbd11411/files/documents/2023-03/African%20Shifts%20Report.pdf> 15 (accessed 18 October 2024).

37 Food and Agriculture Organisation (FAO) 'State of world's forest' (2001), https://www.fao.org/4/y0900e/y0900e06.htm#P0_0 (accessed 18 October 2024).

38 As above.

39 African Forestry and Wildlife Commission (AFWC) 'Climate change and Africa's forests: Building resilience and boosting the implementation of nationally determined contributions' Food and Agriculture Organisation (2020), <https://openknowledge.fao.org/server/api/core/bitstreams/0ff5c247-32ef-4cc2-849d-9b3eef88223/content> 3 (accessed 19 October 2024).

40 AFWC (n 39) 5.

41 FAO (n 37).

water catchment area, has experienced extensive deforestation due to illegal settlements and logging.⁴² This has disrupted water cycles, reduced rainfall, and threatened millions reliant on agriculture.⁴³ Similarly, in the Niger Delta, oil spills and mangrove deforestation have displaced communities and released significant greenhouse gases.⁴⁴ The World Bank's Niger Delta Report estimates that mangrove loss in this region accounts for over 15 million tons of CO₂ emissions annually.⁴⁵

2.3 Wetland degradation and greenhouse gas emissions

Wetlands store large amounts of carbon in their soils and vegetation, but their destruction releases CO₂ and methane, two potent greenhouse gases.⁴⁶ In South Africa, over 35 per cent of mangroves have been lost over the past four decades due to shrimp farming and agricultural expansion.⁴⁷ This has significantly reduced carbon sequestration capacity and exposed coastal regions to erosion and flooding. For instance, the Okavango Delta has experienced oil contamination and the loss of mangrove forests, leading to the loss of an estimated 800 000 hectares of mangroves.⁴⁸ Wetland loss also poses direct threats to livelihoods. Communities in Senegal and Nigeria face declining fish stocks and agricultural yields due to saline intrusion and habitat destruction.⁴⁹ According to Wetlands International, these changes exacerbate food insecurity and migration in affected areas.⁵⁰

The foregoing scenarios underlying climate change are a significant catalyst for displacement across Africa. While contributing minimally to global greenhouse gas emissions, the continent disproportionately experiences the adverse effects of climate change. By the end of 2018, nearly 17 million people were internally displaced in Africa, representing approximately 40 per cent of the global total.⁵¹

42 FAO Regional Office for Africa 'Impacts of climate change on the forestry sector in Africa' (2021), <https://www.uneca.org/sites/default/files/ACPC/Africa-climate-change-strategy/Impacts%20of%20Climate%20Change%20on%20the%20Forestry%20Sector%20in%20Africa%20-%20Zipora%20Otieno%2C%20FAO.pdf> (accessed 19 October 2024).

43 As above.

44 Africa Group of Negotiation Expert Support (AGNES) 'Land degradation and climate change in Africa' (2020), https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/s3fs-public/documents/Policy-brief-2_Land-Degradation_Final_09032020.pdf?VersionId=YY9IxFEMAXNuaz6U66Kr6muz_SMCle6Y (accessed 19 October 2024).

45 As above.

46 Intergovernmental Panel on Climate Change (IPCC) 'Land use, land-use change and forestry: A special report of the IPCC' (1996) 404.

47 Ramsar Convention Regional Office 'Caring for our wetlands' (2010), https://www.ramsar.org/sites/default/files/wwd2010_southafrica_factsheets.pdf (accessed 19 October 2024).

48 As above.

49 C Evans & V Gauci 'Wetlands and methane' Technical Paper (2021) Wetlands International, <https://globalpeatlands.org/sites/default/files/2023-07/Wetlands-and-Methane-FINAL-1.pdf> (accessed 19 October 2024).

50 As above.

51 Internal Displacement Monitoring Centre 'Internal displacement in Africa has reached unprecedented levels' (2019), <https://www.internal-displacement.org/news/internal-displacement-in-africa-has-reached-unprecedented-levels/> (accessed 20 October 2024).

Estimates suggest that by 2050, climate change could compel up to 86 million Africans to migrate within their own countries.⁵² By 2030, up to 118 million extremely poor people in Africa are projected to be exposed to drought, floods and extreme temperatures if adequate response measures are not implemented.⁵³ In 2022, more than 110 million people in Africa were directly affected by weather, climate and water-related hazards, resulting in over 5 000 fatalities and economic damages exceeding US \$8,5 billion.⁵⁴ From 1970 onwards, climate hazards in Africa have caused the deaths of over 730 000 people and resulted in economic losses amounting to \$38,5 billion.⁵⁵ Displaced civilians often endure overcrowded camps lacking basic amenities such as clean water and sanitation, violating their rights to adequate housing and health.⁵⁶ In Somalia, droughts have left displaced families without food or water for days, exacerbating malnutrition and disease prevalence.⁵⁷ Furthermore, gender-based violence and exploitation remain rampant in displacement camps, particularly where conflict overlaps with climate-induced migration.⁵⁸ In Uganda, desertification driven by deforestation and soil erosion has displaced over 10 million people in the past decade.⁵⁹ Desertification has rendered more than 80 per cent of arable land in the central Sahel unproductive, forcing communities to migrate and compete for dwindling resources.⁶⁰

2.4 Connecting climate migration with ecocide

Emerging evidence from recent climate and humanitarian reports confirms that ecological degradation is accelerating climate-induced disasters across Africa, displacing millions of children and exposing them to heightened risks of malnutrition, disease and violence. This part explores and substantiates this claim through case studies and recent evidence: 43,1 million internal displacements of children linked to weather-related disasters over six years – the equivalent to

52 World Bank 'Climate change could further impact Africa's recovery, pushing 86 million Africans to migrate within their own countries by 2050' (2021), <https://www.worldbank.org/en/news/press-release/2021/10/27/climate-change-could-further-impact-africa-s-recovery-pushing-86-million-africans-to-migrate-within-their-own-countries> (accessed 20 October 2024).

53 World Meteorological Organisation 'Africa faces disproportionate burden from climate change and adaptation costs' (2024), <https://wmo.int/news/media-centre/africa-faces-disproportionate-burden-from-climate-change-and-adaptation-costs> (accessed 20 October 2024).

54 World Meteorological Organisation 'Africa suffers disproportionately from climate change', <https://wmo.int/media/news/africa-suffers-disproportionately-from-climate-change> (accessed 20 October 2024).

55 D Sasu 'Climate change in Africa – Statistics and facts' (2024) Statista, <https://www.statista.com/topics/9715/climate-change-in-africa/> (accessed 20 October 2024).

56 IDACM (n 21) 19.

57 F Perera 'Children suffer most from climate change and burning of fossil fuels' in UNICEF Office of Research *The challenges of climate change: children on the front line* 17.

58 United Nations Commission for Human Rights 'Mid-year trends' (2024), <https://www.unhcr.org/mid-year-trends?s=08> (accessed 10 November 2024).

59 AGNES (n 44) 5.

60 M Redwood 'Stemming the sand – The central Sahel's battle for sustainability' Cowater International (web blog) 17 June 2023, <https://www.cowater.com/en/stemming-the-sand-the-central-sahels-battle-for-sustainability/> (accessed 11 November 2024).

approximately 20 000 child displacements per day.⁶¹ Almost all – 95 per cent – of recorded child displacements were driven by floods and storms. At least 1,85 million children in sub-Saharan Africa were displaced within their countries due to climate shocks in 2022.⁶²

In Ethiopia, widespread deforestation and land degradation have intensified drought and desertification, which in turn have led to alarming increases in child marriage and child labour.⁶³ As families lose access to agricultural livelihoods, children are displaced as they are often compelled to seek work elsewhere.⁶⁴ At least 187 000 children in Kenya were left displaced in the country by climate shocks at the end of 2022. Some of these children have been displaced multiple times and face a heightened risk of sexual violence.⁶⁵ In South Sudan, the effects of ecological destruction, particularly rampant deforestation, have intensified flooding and prolonged droughts.⁶⁶ Severe floods submerge large areas, resulting in the deaths of many children.⁶⁷ As two out of every three children in South Sudan already lack access to their basic rights, the impacts of climate change risk compounding an already fragile situation, and these climate impacts are driving widespread displacement.⁶⁸

In the Lake Chad region, agricultural expansion and unplanned settlements have accelerated ecological degradation, causing the lake's waters to recede drastically.⁶⁹ This has disrupted the livelihoods of millions who depend on the lake, resulting in widespread displacement.⁷⁰ Among the displaced are thousands

61 World Meteorological Organisation 'UNICEF reports on children displaced in a changing climate' (2024), <https://wmo.int/media/news/unicef-reports-children-displaced-changing-climate#:~:text=Displacement%20%E2%80%93%20whether%20short,malnutrition%2C%20disease%2C%20and%20inadequate%20immunization> (accessed 12 November 2024).

62 N Madeira 'Climate change: Children's rights in sub-Saharan Africa undermined, according to NGO report' *Euronews* 4 September 2023, <https://www.euronews.com/2023/09/04/climate-change-childrens-rights-in-sub-saharan-africa-undermined-according-to-ngo-report#:~:text=At%20least%201,Save%20the%20Children%27s%20latest%20report> (accessed 13 November 2024).

63 United Nations Office for Disaster Risk Reduction (UNDRR) 'Horn of Africa floods and drought, 2020-2023 – Forensic analysis' (2023) <https://www.undrr.org/resource/horn-of-africa-floods-and-drought-2020-2023-forensic-analysis#:~:text=Deforestation%20and%20land%20degradation%20have,to%20absorb%20extreme%20climate%20events> (accessed 12 November 2024).

64 As above.

65 Internal displacement monitoring centre (IDMC) 'Children and youth in internal displacement' (2022) Norwegian Refugee Council 51, http://api.internal-displacement.org/sites/default/files/publications/documents/IDMC_GRID_2022_LR.pdf (accessed 12 November 2024).

66 Sudans Post 'South Sudanese children exposed to heat waves, vector-borne disease – UN Report' Sudan's Post (Juba) 20 August 2021, <https://www.sudanspost.com/south-sudanese-children-exposed-to-heat-waves-vector-borne-disease-un-report/> (accessed 12 November 2024).

67 As above.

68 Sudans Post (n 66).

69 Acted 'In the Lake Chad basin, populations are trapped between climate change and insecurity' (2015), <https://www.acted.org/en/in-the-lake-chad-basin-populations-are-trapped-between-climate-change-and-insecurity#:~:text=receding%20of%20Lake%20Chad,suffering%20from%20severe%20acute%20malnutrition> (accessed 12 November 2024).

70 As above.

of children, many of whom are suffering severe acute malnutrition.⁷¹ Generally, across Africa, unregulated urbanisation and the unchecked expansion of agriculture continue to drive ecological destruction, which in turn intensifies climate change, creating a vicious cycle that uproots families and places children at the epicentre of a growing humanitarian crisis.⁷² Yet, despite the scale and urgency of this displacement, existing international legal frameworks remain ill-equipped to protect children affected by ecocide-induced climate migration, as the following section explores.

3 Limitations of international law

International law approaches the protection of displaced populations through a mosaic of global, regional and national frameworks, each developed in distinct historical and political contexts. At the global level, international refugee law – centred on the 1951 United Nations (UN) Refugee Convention and its 1967 Protocol – remains the primary regime for defining refugee status and prescribing state obligations, while various regional instruments have sought to adapt these protections to specific geopolitical realities. Alongside these treaty-based mechanisms, jurisprudence from international, regional and domestic courts increasingly shapes the interpretation and application of displacement-related protections, particularly in cases where environmental harm intersects with human rights. National courts, in particular, have become important arenas for advancing innovative legal arguments to fill normative and procedural gaps. As illustrated below, these layers of law illustrate both the potential and the limitations of existing legal frameworks in responding to emerging challenges such as climate and ecocide-induced displacement.

3.1 International refugee law

The UN Refugee Convention⁷³ and its Protocol,⁷⁴ are foundational treaties for international refugee protection. However, these are inadequate in addressing the plight of climate refugees due to several limitations. Article 1(A)(2) of the UN Convention defines a refugee as someone fleeing persecution based on race, religion, nationality, political opinion or membership of a particular social group, which excludes individuals displaced due to environmental factors like droughts, floods or sea-level rise. Furthermore, the Convention's protections are limited to those who cross international borders, leaving internally displaced persons

⁷¹ Acted (n 69).

⁷² V Knaus and others 'Children displaced in a changing climate: Preparing for a future already underway' (2023) UNICEF 33, [https://www.unicef.org/media/145951/file/Climate%20displacement%20report%20\(English\).pdf](https://www.unicef.org/media/145951/file/Climate%20displacement%20report%20(English).pdf) (accessed 13 November 2024).

⁷³ Convention Relating to the Status of Refugees adopted 28 July 1951, entered into force 22 April 1954.

⁷⁴ Protocol Relating to the Status of Refugees 1967 adopted 16 December 1966, entered into force 4 October 1967 United Nations General Assembly.

(IDPs) outside its scope. The requirement for persecution caused by human agency excludes displacement driven by natural phenomena, even though such phenomena are exacerbated by human-induced climate change.

While the 1967 Protocol removed the temporal and geographic limitations of the original Convention, it did not expand the substantive definition of refugees to include those affected by environmental factors. Additionally, article 33 of the Convention, which prohibits the expulsion or return of refugees to territories where their lives or freedoms are threatened, does not extend to climate migrants since they are not formally recognised under its provisions. Recent non-binding agreements such as the Global Compact on Refugees⁷⁵ acknowledge the role of climate change in displacement but lack enforceable obligations, leaving states significant discretion in addressing climate-related migration. Similarly, the Global Compact for Safe, Orderly and Regular Migration,⁷⁶ recognises environmental degradation and climate change as potential drivers of migration, urging states to develop adaptation and resilience strategies. The Nansen Initiative's Protection Agenda further proposes principles for protecting people displaced across borders in the context of disasters and climate change.⁷⁷ However, it remains a non-binding framework and addresses cross-border displacement.

The UN Human Rights Council Resolution 35/20⁷⁸ explicitly recognises that climate-induced displacement threatens the enjoyment of human rights, particularly among vulnerable populations such as children. The OHCHR's Report⁷⁹ affirms that climate change disproportionately impacts the rights to life, housing and health, all of which are intimately tied to displacement. Moreover, the UNHCR Strategic Framework for Climate Action⁸⁰ emphasises the necessity of evolving international protection frameworks to address non-traditional drivers of forced movement, including climate and environmental threats. While these instruments reflect growing global recognition of climate-induced displacement, they lack enforceability and are often politically contingent, thereby limiting their utility for protecting vulnerable groups – particularly

75 Global Compact on Refugees UN doc A/73/12 (Part II) (2018), <https://www.unhcr.org/media/global-compact-refugees-booklet> (accessed 4 December 2024).

76 'The global compact for safe, orderly and regular migration' United Nations General Assembly (2018) A/RES/73/195.

77 The Nansen Initiative Global Consultation and others 'The Nansen Initiative Global Consultation Conference Report' (2015), <https://disasterdisplacement.org/wp-content/uploads/2015/02/GLOBAL-CONSULTATION-REPORT.pdf> (accessed 15 November 2024).

78 Resolution on Human Rights and Climate Change A/HRC/RES/35/20 (2017).

79 'Addressing human rights protection gaps in the context of migration and displacement of persons across international borders resulting from the adverse effects of climate change and supporting the adaptation and mitigation plans of developing countries to bridge the protection gaps' United Nations High Commissioner for Human Rights A/HRC/38/21 (2018).

80 UN High Commissioner for Refugees (UNHCR) 'Strategic framework for climate action 2021' (2021), <https://www.unhcr.org/sites/default/files/legacy-pdf/604a26d84.pdf> (accessed 28 November 2024).

children. The Note on International Protection⁸¹ emphasises the importance of strengthening protection for internally displaced persons and specifically children, affected by environmental change, urging states to consider the evolving nature of displacement in both policy and practice.⁸²

3.2 Regional framework

3.2.1 OAU Convention

The Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa expands upon the UN Refugee Convention by contextualising refugee protection within Africa's socio-political realities. Article 1(2) notably broadens the refugee definition to include individuals compelled to leave their country due to 'external aggression, occupation, foreign domination or events seriously disturbing public order'. This inclusion marks a critical departure from the 1951 Convention's narrower focus on individualised persecution.

The Preamble to the OAU Convention emphasises Africa's historical legacy of colonialism and armed conflict, setting a collective and humanitarian tone for refugee protection. Its operative provisions place binding obligations on member states to grant asylum and ensure *non-refoulement* (article II), while also encouraging solidarity and burden-sharing among African nations. Notably, the phrase 'events seriously disturbing public order' has been interpreted expansively.⁸³ The African Commission on Human and Peoples' Rights (African Commission) has contributed to a wider interpretation of this provision. Through Resolutions 153⁸⁴ on climate change and 271⁸⁵ on extractive industries, as well as General Comment 3⁸⁶ on the right to life, the Commission has explicitly recognised the environmental dimensions of human rights vulnerabilities. Although these interpretations are not binding, they reflect a growing consensus that environmental degradation, climate-induced disasters and ecocide increasingly constitute 'events seriously disturbing public order', thereby justifying an expanded application of the OAU framework.

Despite this progress, the OAU Convention still lacks explicit recognition of environmental displacement. Enforcement remains a challenge due to limited

81 United Nations Human Rights Council (UNHRC) 'Note on international protection' A/AC.96/1232 (2023).

82 UNHRC (n 81) 10-12.

83 Eg, in *Somali Association of South Africa & Others v Refugee Appeal Board & Others* 2022 (3) SA 16 the South African Supreme Court of Appeal has recognised civil unrest and generalised violence as valid grounds for protection under this clause.

84 Resolution on Climate Change and Human Rights in Africa ACHPR/Res.342 (LVIII) 2016.

85 Resolution on Climate Change in Africa ACHPR/Res.271 (LV) 2014.

86 General Comment 3 on the African Charter on Human and Peoples' Rights: The right to life (article 4) 18.

institutional capacity and political will across several member states, weakening its potential as a tool for addressing climate-driven child displacement on the continent.

3.2.2 *Kampala Convention*

The Kampala Convention, formally known as the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa,⁸⁷ does not explicitly mention children or climate refugees as distinct categories. However, it indirectly addresses several issues relevant to their protection. Article 5 of the Convention explicitly recognises displacement caused by natural disasters, climate change and environmental degradation. It obligates state parties to take measures to prevent such displacement and to mitigate its effects, thereby acknowledging the role of ecological factors in displacement. Furthermore, article 9 emphasises the need for special protection and assistance to vulnerable groups, which can be interpreted to include children, particularly those affected by climate-related displacement.

Despite these provisions, the Convention has significant gaps. While it recognises the importance of special protections for vulnerable groups, it does not explicitly address the unique vulnerabilities of children, particularly in the context of climate-induced displacement. Additionally, the Kampala Convention is limited to internally displaced persons and does not extend its protections to individuals displaced across borders due to climate change.⁸⁸ This limitation leaves a significant gap in the legal framework, particularly for children who may face heightened risks of exploitation, neglect and abuse during cross-border displacement. As a result, while the Kampala Convention provides a foundational framework for addressing climate-related displacement within national borders, it falls short of comprehensively addressing the unique needs of children or the broader issue of cross-border climate refugees. For the latter, reliance on other international instruments, such as the 1951 Refugee Convention, is necessary, though these frameworks also lack adequate provisions for climate-induced displacement.

The Kampala Declaration on Migration, Environment and Climate Change⁸⁹ acknowledges the link between environmental degradation, climate change and displacement, recognising these factors as significant drivers of migration

⁸⁷ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (AUCPA) adopted 23 October 2009, entered into force 6 December 2012.

⁸⁸ Art 1(k) of the Kampala Convention defines internally displaced persons as 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognised state border'.

⁸⁹ Kampala Ministerial Declaration on Migration, Environment and Climate Change (KMDMECC) adopted 29 July 2022.

in Africa. While the declaration is notable for explicitly situating climate-related displacement within a regional policy context, it does not set out concrete measures or binding commitments for addressing such movement. Its contribution lies primarily in affirming the issue at a political level, leaving the development and implementation of specific responses to subsequent initiatives and national frameworks.

3.3 Jurisprudential developments

Recent jurisprudence underscores the emerging legal recognition of environmental degradation and climate change as contributors to human rights violations, particularly displacement and threats to children's rights. In *Ioane Teitiota v New Zealand*, the UN Human Rights Committee acknowledged that climate change may pose a serious threat to the right to life, implying that non-refoulement obligations may extend to those facing climate-induced harm.⁹⁰

African jurisprudence is also evolving on this front. In *SERAP v Nigeria*⁹¹ the Economic Community of West African States (ECOWAS) Court of Justice found the Nigerian government responsible for violating the rights to a healthy environment, life, and dignity due to its failure to prevent and remediate environmental damage in the Niger Delta. This case provides a critical regional precedent for linking state inaction on environmental destruction with enforceable human rights obligations. Similarly, in *Endorois*⁹² the African Commission held that the forced displacement of the Endorois people from their ancestral lands, without adequate consultation or compensation, violated their rights under the African Charter on Human and Peoples' Rights (African Charter).⁹³ The analysis of the African Commission was pivotal in framing the forced displacement of the Endorois as a violation of article 14 of the African Charter. It held that the removal of the community from their ancestral land without consultation or compensation constituted a violation of their property rights, while also affirming that the concept of property under the Charter extends to communal and ancestral land, thereby recognising the distinctive forms of indigenous ownership.⁹⁴ The Commission further underscored that any restriction of property rights must serve the public interest and be accompanied by just compensation, conditions absent in this case.⁹⁵ Concluding that the dispossession was carried out without due process, consultation or reparation, it found a direct breach of the African Charter.⁹⁶ Collectively, these findings

⁹⁰ *Ioane Teitiota v New Zealand* CCPR/C/127/D/2728/2016 para 9.11.

⁹¹ *SERAP v Nigeria* Ruling, Suit ECW/CCJ/APP/08/09 and RUL ECW/CCJ/APP/07/10 (ECOWAS, 10 December 2010) para 112.

⁹² *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).

⁹³ *Endorois* (n 92) paras 214-217.

⁹⁴ *Endorois* (n 92) para 214-215.

⁹⁵ *Endorois* (n 92) para 216.

⁹⁶ *Endorois* (n 92) para 217.

entrenched the centrality of communal land rights within African human rights jurisprudence. The decision is particularly significant for connecting environmental dispossession with broader socio-economic and cultural harms, including those suffered by children.

In *Kituo cha Sheria v Attorney General of Kenya*,⁹⁷ a climate change petition was filed by members of the Ilchamus and Tugen communities, alleging that the government had failed to act on flooding in Lake Baringo caused by climate-related factors.⁹⁸ The petition sought enforcement of public officials' obligations under the Climate Change Act⁹⁹ and the Constitution of Kenya,¹⁰⁰ including compensation, resettlement and infrastructural restoration for displaced populations. Moreover, in *Minors Oposa v Factoran*¹⁰¹ the Supreme Court of the Philippines recognised intergenerational responsibility by allowing children to sue the government for failing to protect forest resources, a judgment that has inspired similar rights-based environmental litigation globally.¹⁰² Together, these cases establish a growing jurisprudential trend that recognises how state failure to address environmental degradation and climate change contributes to displacement, undermines the rights of vulnerable groups such as children, and potentially engages international legal responsibility. These precedents reinforce the normative argument for interpreting climate-induced displacement within existing human rights and refugee protection frameworks. However, none of these instruments or cases impose criminal liability on the individuals responsible. This underscores the need for either an expanded interpretation of the Convention or a new legal framework specifically addressing the vulnerabilities of climate refugees.

3.4 International criminal law

International criminal law is a body of public international law designed to prosecute individuals for the most serious crimes of concern to the international community, such as genocide, crimes against humanity, war crimes and the crime of aggression.¹⁰³ Its primary aim is to ensure individual accountability for grave violations that threaten international peace and security,¹⁰⁴ especially when domestic jurisdictions are unable or unwilling to prosecute such crimes.¹⁰⁵ Central to the development and enforcement of international criminal law is the Rome

97 *Kituo cha Sheria & Another v The Attorney General & Others* (ELC Petition E002 of 2022).

98 <https://climatecasechart.com/non-us-case/iten-elc-petition-no-007-of-2022-legal-advice-centre-t-a-kituo-cha-sheria-anor-v-attorney-general-and-7-others/> (accessed 21 October 2024).

99 Act 11 of 2016.

100 The Constitution of Kenya, 2010.

101 *Oposa & Others v Fulgencio S Factoran, Jr & Others* 224 SCRA 792.

102 *Oposa* (n 101) paras 30–33.

103 A Cassese and others *Cassese's international criminal law* (2013) 3.

104 Cassese and others (n 103) 6.

105 <https://www.icc-cpi.int/about/how-the-court-works> (accessed 16 October 2024).

Statute of the International Criminal Court (Rome Statute) which established the International Criminal Court (ICC) in 2002.¹⁰⁶

Article 7(2)(d) of the Rome Statute defines forced transfer as forced displacement of civilians by expulsion or other coercive acts from an area in which they are lawfully present, without justification under international law. The first ‘non-material’ element for this crime is ‘forcible’ or ‘forced’. The essential element is that displacement occurs against the victim’s will, that is, the absence of a genuine choice to leave.¹⁰⁷ The term ‘forcibly’ is not limited to physical force but extends to ‘threats or coercive measures, including fear of violence, duress, detention, psychological oppression, abuse of power, or exploiting a coercive environment’.¹⁰⁸ To create such a coercive environment, the perpetrator may use fear of violence, force, or other circumstances, leaving the victim with no genuine choice but to leave.¹⁰⁹ This may be achieved through other forms of coercion,¹¹⁰ such as rape,¹¹¹ ‘the destruction of homes in residential areas, the brutality of the killings and injuries, the imminent threat of rape, and the public announcements to the effect’.¹¹² Therefore, coercion is the key driver of displacement.

This is further justified by the fact that the first material element is the requirement of ‘expulsion or other coercive acts’, which includes the

full range of coercive pressures to flee their homes including death threats, destruction of their homes, and other acts of persecution, such as depriving members of a group of employment, denying them access to schools and forcing them to wear a symbol of their religious identity.¹¹³

Environmental destruction, by contrast, typically lacks this coercive effect. Although it can create uninhabitable conditions, its effects are usually structural and indirect rather than deliberate actions aimed at forcing individuals to leave. Coercion must have a direct causal link between the perpetrator’s actions and the harm suffered by the victim. Unlike the destruction of homes, which directly targets individuals to force their displacement, environmental degradation – such as deforestation or ecosystem collapse – does not necessarily exert such a

106 Human Rights Watch ‘Summary of the key provisions of the ICC statute’ 1 December 1998, <https://www.hrw.org/news/1998/12/01/summary-key-provisions-icc-statute> (accessed 16 October 2024).

107 *The Prosecutor v Radovan Karadžić* (Trial Chamber) (2016) International Tribunal for former Yugoslavia IT-95-5/18-T para 489; *Prosecutor v Jovica Stanišić and Franko Simatović* (Trial Chamber) (2013) International Tribunal for former Yugoslavia IT-03-69 para 993.

108 ‘Elements of Crime’ (2010) 4, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf> (accessed 18 August 2025).

109 *Prosecutor v Ratko Mladić* (Appeal Judgement) (2021) International Residual Mechanism for Criminal Tribunals MICT-13-56-A para 356.

110 *Prosecutor v Stakić* (Trial Chamber) (2003) International Tribunal for former Yugoslavia IT-97-24-T para 682.

111 *Prosecutor v Furundžija* (Trial Judgement) (1998) International Tribunal for former Yugoslavia IT-95-17/1-T para 174.

112 *Prosecutor v Muthaura Kenyatta and Ali* (Pre-Trial Chamber) (2012) International Criminal Court ICC-01/09-02/11 para 244.

113 CK Hall & O Triffterer ‘Commentary on the Rome Statute of the International Criminal Court: Observers’ notes, article by article’ (2008).

direct effect. If the deliberate destruction of the environment is so severe and impactful that it compels nearby residents to abandon their homes, such acts demand criminal accountability. However, there is no scope for interpreting the destruction of the natural environment as a means of forced transfer. It becomes imperative to prosecute the forced transfer caused by environmental destruction under the framework of ecocide because the object of the attack may be to forcibly transfer the civilians, but it is subsumed under the destruction of the environment.

Beyond this definitional gap lies a deeper structural problem: the challenge of individual criminal responsibility under article 25 of the Rome Statute. While the ICC can prosecute natural persons, attributing liability for ecocide is complex when destruction is orchestrated by corporations or bureaucracies. Yet, this should not be seen as an insurmountable hurdle. Responsibility can be pinned on corporate executives – such as chief executive officers or chief operating officers – who knowingly direct or authorise actions leading to large-scale environmental destruction. Likewise, state officials who grant extractive concessions or overlook regulatory violations despite foreseeable ecological consequences can be held accountable as perpetrators or accessories. Heads of state may also incur liability where state policy is weaponised to displace populations under the guise of development.

Recognising and prosecuting these actors would mark a significant advance in international law – one that begins to bridge the gap between corporate impunity and environmental justice. Although the Rome Statute does not recognise corporate criminal liability *per se*, individuals behind these entities can and must be held responsible under existing doctrines such as command responsibility, joint criminal enterprise and contribution to group criminal activity. Ecocide prosecutions thus offer an opportunity to expand the reach of international criminal law to address complex, long-term harms and the hierarchies that enable them. By affirming individual accountability for ecological destruction, international law not only addresses the root causes of forced displacement, including child climate migration, but also lays the foundation for a jurisprudence that holds both public and private power to account.

4 Crime of ecocide as a response

Despite a growing body of international and regional instruments addressing displacement, current legal frameworks remain ill-equipped to deal with climate-induced migration, particularly in relation to children. The UN Refugee Convention and its Protocol exclude those displaced by environmental factors, limiting protection to persecution-based cross-border movement. Regional frameworks such as the OAU Convention and the Kampala Convention offer broader language – such as ‘events seriously disturbing public order’ and recognition of climate change as a driver of displacement – but still fall short

of explicitly protecting children or addressing cross-border environmental displacement. Jurisprudence from bodies such as the ECOWAS Court and the African Commission has recognised the human rights consequences of environmental degradation and called for remedies like resettlement and rehabilitation. However, none of these instruments or cases imposes criminal liability on the individuals responsible, namely, corporate executives who direct extractive activities or state officials who enable these. International criminal law, through the Rome Statute, similarly fails to capture the structural and indirect coercion characteristic of environmental destruction. These gaps underscore the urgent need to define ecocide as a distinct international crime – one that centres the individual accountability of actors whose decisions create conditions that forcibly displace vulnerable populations, particularly children.

Defining ecocide is a complex task that demands a careful consideration of its scope, thresholds and legal implications. Importantly, this article does not conceptualise ecocide merely as the destruction of the environment due to climate change. Instead, it advances a definition that centres on ecological destruction as a mechanism of forced displacement, particularly of children. The objective is to articulate ecocide as a distinct international crime that captures both the environmental harm and its human consequences – especially when displacement is deliberate or foreseeable.

4.1 Ecocide as a crime in the current framework

The primary question that must be addressed before proposing legal reforms or drafting innovative definitions is whether ecocide should be prosecuted as a distinct crime under the Rome Statute or be integrated within the framework of existing international core crimes. From a pragmatic standpoint, integrating ecocide within the existing international core crimes may prove more feasible.¹¹⁴ Ecocide must not be subsumed within genocide, as the material elements of these crimes limit their applicability. Ecological destruction can be construed as the crime of genocide only when it fulfils the *dolus specialis*, or the special intent of a crime-special intent of a crime is the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged,¹¹⁵ which is the deliberate destruction of the environment intended to destroy the protected groups.¹¹⁶ Establishing such intent is problematic because ecological harm often results from broader military strategies aimed at targeting combatants, rather than deliberate intent to destroy

114 Ambos 'Protecting the environment through international criminal law?' *EJIL: Talk!* 29 June 2021, <https://www.ejiltalk.org/protecting-the-environment-through-international-criminal-law/> (accessed 20 October 2024).

115 *Prosecutor v Akayesu* (Trial Chamber) (1998) International Criminal Tribunal for Rwanda ICTR-96-4-T paras 498, 517-522.

116 PF Doran and others 'Criminalising 'ecocide' at the International Criminal Court' (2021) *SSRN Electronic Journal* 5, <https://www.ssrn.com/abstract=3827803> (accessed 20 October 2024).

specific populations. By contrast, if ecocide is addressed within the framework of crimes against humanity, it could also facilitate expanding the scope of protection for both the environment and affected populations due to climate changes because the focus of crimes against humanity is on protecting civilians from widespread or systematic attacks. Article 7(1)(k) of the Rome Statute is the most suitable to address both ecocide and the resulting climate migration of children.

4.2 Decoding *mens rea* in ecocide

The *ratione materiae* jurisdiction of the ICC is ‘most serious crimes of concern to the international community as a whole’.¹¹⁷ If the ICC is only to prosecute the most serious crimes of utmost importance to the international community, one would expect the threshold for environmental harm to be high. International law outlines three key requirements for environmental destruction – severe, long-term and widespread – articulated in article 8(2)(b)(iv) of the Rome Statute. The judges at the International Court of Justice (ICJ) have admitted that it is beyond their expertise to assess evidence in cases involving ecological harm, even when assisted by experts.¹¹⁸ The complexity of ecological harm cases often involves intricate scientific data and methodologies that require specialised knowledge in fields such as ecology, ecological science and related disciplines. Judges, who are primarily trained in legal theory and practice, may lack the expertise to accurately interpret such technical evidence. Even when experts are brought in to provide testimony or reports, judges must still grapple with the challenge of evaluating this information within a legal framework.¹¹⁹ Experts may present data and analyses, but judges must determine the relevance and reliability of this evidence in the context of the case. This task can be complicated by differing opinions among experts, methodologies, and the need to synthesise complex information into legal standards. As a result, when judges apply legal frameworks to this type of evidence, they face significant challenges in ensuring that their judgments are informed and aligned with the scientific realities of the situation.

Thus, an essential factor to consider in drafting the definition of ecocide is that it should not require *dolus specialis* or special intent – that is, a narrow mental element demanding the perpetrator to aim for a specific result (such as deliberately intending the ecological destruction).¹²⁰ The ideal *mens rea* for ecocide should be conduct-oriented; the mental element prescribed in article 30, wilful destruction of the environment (*dolus directus*); intentionally causing an act that is likely to cause destruction (*dolus eventualis*); and doing an act whose consequence in the ordinary course of action will destroy the environment (knowledge). This approach also incorporates ‘negligence’ as a *mens rea*. With

117 Rome Statute of the International Criminal Court (1998) Preamble.

118 *Argentina v Uruguay* Judgment (2010) International Court of Justice ICJ Reports 2010 14 paras 4–8.

119 As above.

120 *Prosecutor v Akayesu* (n 115) paras 498, 517–522.

the inclusion of negligence as *mens rea*, other forms of liability, such as superior command and joint criminal liability, can also be penalised.

4.3 Analysing *actus reus*

To establish criminal liability for ecocide, it is necessary to articulate a clear *actus reus* – the physical element of the crime. For ecocide, this centres on the threshold of environmental destruction. Article 8(2)(b)(iv) of the Rome Statute of the ICC outlines three key requirements for ecological destruction – severe, long-term and widespread. The requirement to meet all three criteria simultaneously may be impractical because the ecological harm that satisfies two of the required standards may still fail to meet the third, thereby falling short of the established threshold.¹²¹ For instance, the destruction of an entire forest to displace the communities residing there may be severe and long-term due to its irreversible nature, yet it does not satisfy the ‘widespread’ criterion, rendering such acts unprosecutable under those frameworks. Thus, the threshold for ecological destruction must be disjunctive meeting each of the standard of ‘widespread, long-term or severe’. Each of these standards must be clearly defined to establish the crime for effective prosecution.

‘Widespread’ relates to the geographical scope of ecological destruction. Scholars are divided on whether the definition should have an absolute¹²² or a relative standard.¹²³ An absolute standard for ‘widespread’ would require setting a minimum threshold in units of distance measurement. A substantial number of African nations have territories smaller than 1 000 square kilometres. This implies that even the total devastation of the environment of some states would simply fall below the threshold.¹²⁴ For example, Seychelles is merely 460 square kilometres whereas Sudan measures 18 68 000 square kilometres. If a strict interpretation is applied to the term ‘widespread’, what qualifies as widespread destruction in one context, such as Seychelles, may not meet the same threshold in another, such as Sudan. However, the determination should not be left to the discretion of judges because an absolute understanding of ‘widespread’ in legal prohibitions enhances

121 MN Schmitt ‘War and environment: Fault lines in the prescriptive landscape’ in JE Austin & CE Bruch (eds) *The environmental consequences of war: Legal, economic, and scientific perspectives* (2010) 43. Also see International Criminal Tribunal for the Former Yugoslavia (ICTY) ‘Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia’ 7, <https://www.icty.org/x/file/Press/nato061300.pdf> (accessed 22 October 2024).

122 M Gillett ‘Ecological destruction and international criminal law’ in S Jodoin & MC Segger (eds) *Sustainable development, international criminal justice, and treaty implementation* (2013) 80.

123 I Peterson ‘The natural environment in times of armed conflict: A concern for international war crimes law?’ (2009) 22 *Leiden Journal of International Law* 331.

124 S Boelaert-Suominen ‘Reviewed work: Waffenwirkung und Umwelt II, Die Regelungen der neuen Verträge des humanitären Völkerrechts und des Rechts der Rüstungsbegrenzung mit direktem Umweltbezug, Institut für Friedenssicherung und Humanitäres Völkerrecht, Bochumer Schriften zur Friedenssicherung und zum Humanitären Völkerrecht 11 by Stephan Witteler’ (1995) 2 *International Law and Climate Change Commentary* 72.

their practicality by providing clear guidelines for judges and also helps decision makers to assess whether actions violate these prohibitions. The threshold for defining 'widespread' as affecting an area of several hundred kilometres is particularly effective because it encompasses both the smallest and largest African countries, such as Seychelles and Sudan. This standard ensures that any significant ecological harm, regardless of the country's size, meets a measurable threshold for prosecution, enhancing the consistency and applicability of international ecological protection in diverse geographic contexts.

'Long-term' relates to the temporal scope of the destruction, particularly the duration of the destruction. However, this raises the question of how long destruction persists to qualify as 'long-term'? 'Long-term' should be characterised as destruction persisting for a minimum of ten years. This duration also considers the plight of displaced communities striving to rebuild, ensuring that the minimum criterion reflects the extent of their hardship. The determination of whether ecological destruction lasts a decade should consider not only the immediate physical destruction caused by weapons, but also the effects of the substances they contain. The prolonged presence of these substances causes contamination over longer periods of time, especially the hazardous ones.¹²⁵ Hazardous substances remain in the environment for a significant time and cause further harm to species and people.¹²⁶ This approach of assessing ecological destruction enhances the practicality of legal standards by offering clear, scientifically grounded guidelines for judges to evaluate violations and assisting decision makers in determining whether their actions violate prohibitions on ecological destruction. By focusing on the chemical composition of substances used in weapons and their effects, this approach allows for precise, measurable assessments of whether the harm qualifies as 'long-term'. The analysis of the persistence and impact of harmful substances provides a framework for estimating the time required for displaced communities to resettle and rehabilitate.

Lastly, the 'severity' of the destruction. 'Severe' is defined as 'significant destruction of the natural environment which is critical to the health and survival of the population'. The degree of hazardousness of the substances or the amount released, the ecological destruction may be irreversible.¹²⁷ The accumulation of these pollutants within ecosystems amplifies their impact, with higher concentrations resulting in more significant harm.¹²⁸ Lastly, 'health and survival' is to be understood in a broad sense to indicate such prejudicial impact that could cause serious or chronic ailments even if the population survived.

In light of the foregoing, the proposed crime may be defined as wilful destruction of the environment, intentionally causing an act that is likely to cause

125 K Hulme *War torn environment: Interpreting the legal threshold* (2004) 95.

126 As above.

127 As above.

128 As above.

destruction, and doing an act whose consequence in the ordinary course of action will result in destruction of the environment. Severe means having a prejudicial impact on the health or survival of the civilian population residing nearby. Long-term is defined as destruction persisting for a minimum of ten years. Widespread means affecting an area of several hundred kilometres.

This definition addresses the shortcomings of existing frameworks by establishing clear thresholds for ecological destruction and linking them directly to human impacts, particularly climate migration.

4.4 Application to children on the move

Having established the framework for ecocide as a crime, it is essential to address one of its most egregious consequences and the central focus of this article: the climate-induced displacement of children. While ecocide primarily concerns destruction of ecosystems, its cascading effects – displacement, malnutrition, sexual violence and heightened vulnerability of children, as shown in previous parts – constitute serious human rights violations. These consequences warrant legal recognition under article 7(1)(k) of the Rome Statute, which addresses ‘other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health’. However, existing case law under this provision has predominantly focused on crimes that inflict direct, immediate physical harm, such as abuse,¹²⁹ torture,¹³⁰ rape and forced marriage.¹³¹ This narrow jurisprudential focus raises concerns about stretching the scope of article 7(1)(k) to include environmental harms, particularly in light of the principle of legality. Rather than proposing a novel reinterpretation that risks undermining legal certainty, this article advocates a more institutionally robust path: The ICC should issue a formal policy paper, akin to its 2016 report on environmental crimes,¹³² expressly recognising ecocide-induced displacement of children as falling within the scope of article 7(1)(k). Such a forward-looking declaration would not only uphold the principle of legality, but also lay the groundwork for future prosecutions by providing clarity and foreseeability. Moreover, the physical consequences of ecocide – such as forced transfer, sexual violence in displacement camps and psychological trauma – fall squarely within the spirit of article 7(1)(k), even if they are not its traditional subjects. Recognising this chain of causation would allow prosecutors to charge ecocide

129 *Prosecutor v Blagoje Simić & Others* (Trial Chamber) (2003) International Criminal Tribunal for former Yugoslavia IT-95-17/1-T.

130 *Prosecutor v Milorad Krnojelac* (Trial Chamber) (2002) International Criminal Tribunal for former Yugoslavia IT-97-25-T; *Prosecutor v Zejnil Delalic* (Trial Chamber) (1998) International Criminal Tribunal for former Yugoslavia IT-96-21-T.

131 *Prosecutor v Dominic Ongwen*, Decision on the confirmation of charges against Dominic Ongwen (2016) International Criminal Court.

132 The Office of the Prosecutor ‘Draft policy on environmental crimes under the Rome Statute’ (2016).

as a distinct crime; while also holding perpetrators accountable for the secondary harms it inflicts on children.

5 Policy-level interventions

Article 23 of the African Charter on the Rights and Welfare of the Child (African Children's Charter)¹³³ provides the foundational legal basis for the protection of children in situations of displacement. Sub-articles (1) to (3) outline the obligation of state parties to ensure that refugee children – accompanied or unaccompanied – receive appropriate protection and humanitarian assistance, in line with both the African Children's Charter and other international instruments. Crucially, article 23(4) expands the scope of this obligation to internally displaced children, including those displaced 'through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused'. While the provision is wide in scope, it remains vague in legal content.¹³⁴ It mandates that protections afforded to refugee children apply *mutatis mutandis* to internally displaced children, but offers no concrete articulation of appropriate measures in contexts of climate-induced displacement or environmental collapse. The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has observed that this clause offers a necessary legal foundation for addressing child rights within climate displacement,¹³⁵ yet states have rarely developed policies to operationalise this interpretation.

Similarly, General Comment 26 of the UN Committee on the Rights of the Child (CRC Committee)¹³⁶ affirms that 'adaptation frameworks should address climate change-induced migration and displacement and include provisions for ensuring a child rights-based approach to these issues'. However, the General Comment – while normatively significant – offers little guidance on the precise legal or policy instruments needed to address the displacement of children as a consequence of ecological destruction. As a result, the phenomenon of climate-induced child displacement remains legally underdefined and is routinely subsumed under the broader category of 'climate migration', erasing the specificity of the harms endured by children and the structural nature of their vulnerability.

To respond to this gap, interpretive and policy-level interventions are necessary to clarify the scope of protection owed to displaced children under regional and international instruments. The first step is to address the normative

133 African Charter on the Rights and Welfare of the Child (African Children's Charter) adopted July 1990, entered into force 29 November 1999 CAB/LEG/24.9/49.

134 R Àdeola & BD Mezmer 'The protection of internally displaced children in Africa: A doctrinal analysis of article 23(4) of the African Children's Charter' (2021) 65 *Journal of African Law* 122.

135 African Committee of Experts on the Rights and Welfare of the Child 'Study on climate change and children's rights in Africa: A continental overview – 2024' 47.

136 General Comment 26 (2023) on children's rights and the environment with a special focus on climate change CRC/C/GC/26.

vacuum surrounding the legal character of ecocide. The expansion of the Rome Statute to include ecocide as a distinct international crime would not only reflect the growing recognition of environmental destruction as a threat to global peace and security, but also create a legal basis for prosecuting actors responsible for displacing populations, including children, through the destruction of ecosystems. This legal recognition would allow international courts to situate child displacement not merely as a humanitarian outcome but as a product of criminal environmental harm.

Furthermore, children must be explicitly recognised as a vulnerable group under international criminal law. Within the framework of crimes against humanity, the displacement of children due to ecological collapse must be understood as falling within the ambit of 'other inhumane acts' under article 7(1)(k) of the Rome Statute. Acknowledging the cumulative harms that result from forced environmental migration – such as loss of education, malnutrition, exploitation and psychosocial trauma – would help bridge the gap between environmental law and child protection.

The prosecution of corporate executives also requires doctrinal expansion. While current legal tools allow for accountability in cases of direct violence, there remains no clear standard for holding corporate executives responsible for environmental destruction that results in coercive displacement. Prosecution strategies should interpret ecological harm as constituting a coercive environment under article 7, particularly where it deprives children of access to food, shelter and community life. In this context, attention must be paid not only to acts of displacement but also to the enabling conditions that heighten vulnerability – such as child recruitment, exploitation or structural poverty – which often emerge in the wake of environmental collapse.

Institutional reform within the ICC would further strengthen the ability to investigate these harms. A specialised task force on environmental crimes involving displacement, staffed by legal experts, environmental scientists and child protection specialists, would provide the technical capacity necessary to pursue complex cases. Such a task force must also be empowered to investigate the role of corporate actors who collaborate with state authorities in resource extraction and land degradation. Extending prosecutorial reach to these corporate entities would close the current accountability gap and recognise the systemic nature of ecological violence.

State complicity in ecocide likewise demands international legal scrutiny. The ICC must be equipped to hold states accountable for policies and practices that knowingly result in ecological destruction and mass child displacement. Advisory opinions from the ICJ could play a pivotal role in establishing the normative obligation of states to prevent child displacement as part of their environmental and human rights responsibilities. Where states are found responsible, reparative justice should include restitution in the form of resettlement and long-term

rehabilitation for displaced children and their communities. Priority must be given to regions where child populations are most exposed to ecological collapse, and prosecutorial resources should be directed toward mitigating the cascading intergenerational impacts of state-sanctioned environmental harm. These interpretive and institutional shifts are essential to render existing soft law commitments – such as those found in article 23(4) of the African Children's Charter and General Comment 26 – operational and enforceable. In the absence of such measures, the legal architecture of child protection will remain inadequate in the face of escalating ecological crises.

6 Conclusion

The climate-induced displacement of children caused by ecocide represents one of the most urgent, yet under-recognised, humanitarian crises of our time. This article has established a clear and compelling causal chain: Large-scale ecological destruction – whether through deforestation, wetland degradation or extractive industrial practices – not only contributes significantly to climate change but also displaces millions, disproportionately affecting children. These displacements are not incidental; they are foreseeable consequences of state and corporate decisions that knowingly destroy ecosystems vital for human habitation. Owing to their developmental needs and limited agency, children suffer the gravest consequences – from malnutrition and exploitation to psychosocial trauma and death. Despite the scale of this crisis, existing international legal frameworks – including the UN Refugee Convention, the OAU Convention, the Kampala Convention and the Rome Statute – remain ill-equipped to address this form of structural violence.

This article proposes recognising ecocide as a distinct international crime, defined by severe, long-term or widespread ecological harm, with culpability extending from intent to negligence. By centring human impacts – especially the forced displacement of children – ecocide could be prosecuted under article 7(1)(k) of the Rome Statute as an inhumane act. Policy measures such as amending the Rome Statute, recognising displaced children as a vulnerable group, and creating specialised investigative bodies are essential to operationalise this accountability. Ultimately, criminalising ecocide-induced displacement is not only a legal necessity but a moral one. It affirms the international community's obligation to protect children not only from the immediate consequences of climate change but also from the systemic decisions that render their homes uninhabitable. Without such accountability, the cycle of destruction and displacement will persist – normalised by silence and enabled by legal omission. To disrupt this cycle, the recognition and prosecution of ecocide must become a cornerstone of global climate justice for children.

Climate change adaptation law and policy in Benin: Towards gender-equitable climate action

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Abstract: This article examines the integration of gender into climate change adaptation law and policy to identify pathways for achieving gender equality and equity in adaptation action. Climate change impacts all population groups, but its adverse effects affect people differently based on their context, with vulnerable populations such as women, children, persons with disabilities and the elderly facing specific risks and greater burdens. Women are often more dependent on natural resources but have less access and disproportionately bear responsibility for securing food, water and fuel. Employing a doctrinal method involving a critical review of Benin's international commitments and key climate-related legal and policy texts, the article reveals that national adaptation plans, policies and strategies insufficiently incorporate gender considerations, leading to the implementation of gender-blind adaptation policies and practices. It highlights a significant gap between Benin's international and regional human rights obligations and its domestic climate change adaptation framework. This neglect

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stems from institutional barriers, limited awareness of gender-related climate change issues, and a lack of prioritisation of women's roles and contributions. The article argues for developing guidance for gender-sensitive vulnerability assessment, establishing robust monitoring systems with gender-responsive indicators, disaggregated data, and allocating dedicated financial resources for gender-specific actions in Benin.

Key words: adaptation; Benin; climate law and policy; gender; national adaptation plan

1 Introduction

Climate change is a major global issue with reported projections of severe impact on all sectors and across population groups.¹ Thus, climate risks and impacts affect men and women, youth, persons with disabilities, children and the aged. However, scientific evidence shows that the adverse effects of climate change affect people differently according to their cultural, economic, environmental, geographical and social context.² It is also well recognised that the impacts and risks of climate change fall most heavily on those least responsible for greenhouse gas (GHG) emissions, as they usually have limited capacity to adapt to it.³ Thus, women, children, persons with disabilities and the elderly face specific risks and greater burdens, particularly when they are already living in poverty. Across the Global South, especially in the least developed and developing countries, the majority of the poor are women, with poverty rates ranging between 5 and 20 percentage points higher than men's poverty in sub-Saharan Africa.⁴ Climate change, coupled with other crises such as the COVID-19 pandemic, has widened the poverty gap, with new forecasts showing that 83,7 per cent of the world's extremely poor women and girls would live in just two regions: sub-Saharan Africa (62,8 per cent) and Central and Southern Asia (20,9 per cent).⁵

1 World Meteorological Organisation *State of the global climate 2023* (2024) 3; Intergovernmental Panel on Climate Change (IPCC) 'Global warming of 1,5°C: An IPCC special report on the impacts of global warming of 1,5°C above pre-industrial levels and related global greenhouse gas emission pathways in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty', Geneva: Intergovernmental Panel on Climate Change, 2018 392.

2 D Chingarande and others 'Mainstreaming gender into national adaptation planning and implementation in sub-Saharan Africa' (2020) CCAFS Working Paper 323, CGIAR Research Programme on Climate Change, Agriculture and Food Security (CCAFS); M Addaney and CG Moyo 'Women's rights, gender and climate change law in Africa: Advancing an equity agenda' (2018) 5 *Journal of Law, Society and Development* 1; H Djoudi and others 'Beyond dichotomies: Gender and intersecting inequalities in climate change studies' (2016) 45 *Ambio* 248.

3 S Patel and others 'Socio-economic impacts of climate change' in P Kumar and others (eds) *Climate impacts on sustainable natural resource management* (2021) 237-267.

4 AM Munoz Boudet and others 'Gender differences in poverty and household composition through the life-cycle: A global perspective' World Bank Policy Research Working Paper 8360 (2018), <https://documents1.worldbank.org/curated/en/135731520343670750/pdf/WPS8360.pdf> (accessed 20 January 2025).

5 UN Women 'Explainer: How gender inequality and climate change are interconnected' (2022), <https://www.unwomen.org/en/news-stories/explainer/2022/02/explainer-how-gender-inequality-and-climate-change-are-interconnected> (accessed 20 January 2025).

The African continent ranks among the areas most vulnerable and profoundly impacted by climate change.⁶ Even though the magnitude of climate change remains unclear, it is widely agreed that the phenomenon is occurring and is striking the continent with significant force.⁷ Consequently, marginalised and vulnerable populations such as women, the youth, children, persons with disabilities, indigenous peoples and the aged face specific risks and greater burdens. More broadly, climate change responses fall into two categories – mitigation and adaptation. Mitigation entails policy and programmatic action of reducing the severity of climate change by reducing greenhouse gases (GHGs).⁸ Mitigation strategies and methods usually involve international cooperation, afforestation, locally sourced products, renewable energy, conserving energy, reducing wastage, and improving carbon capture. Similarly, adaptation involves assisting and supporting vulnerable populations to live with the effects of climate change.⁹ Adaptation to climate change includes reducing risk from sea level rise, changing agricultural patterns and water projects.¹⁰ For instance, climate change will impact both food production and agricultural methods.¹¹ Thus, the agricultural, food production and water sectors could adapt by adopting climate-smart agricultural technologies and practices, such as altering the species to suit the new climate conditions.¹² Climate-smart agricultural technologies and practices, such as drought-tolerant wheat, which has deep root systems to help access more water, and water harvesting technology (dams and reservoirs), are increasingly being adopted to conserve soil moisture during decreased rainfall.¹³ Thus, in managing climate change, African countries are implementing adaptation measures to enhance living conditions and the adaptive capacities of vulnerable communities.¹⁴

Owing to the continent's low adaptive capacity and insignificant carbon footprint compared to the rest of the world, enhancing adaptation efforts has been a primary focus for the African continent during negotiations.¹⁵ The Africa Climate Change Strategy emphasises that adaptation to the impacts of climate

6 C Remteng and others 'Gender in the nationally determined contributions of African countries: A way forward for effective implementation of adaptation and mitigation strategies' (2022) 3 *Ecofeminism and Climate Change* 2.

7 E Nkiaka & JC Lovett 'Mainstreaming climate adaptation into sectoral policies in Central Africa: Insights from Cameroon' (2018) 89 *Environmental Science and Policy* 49.

8 IPCC 'Climate Change 2022: Impacts, adaptation and vulnerability, contribution of Working Group II to the sixth assessment report' Intergovernmental Panel on Climate Change (2022).

9 As above.

10 As above.

11 IPCC (n 1); IPCC (n 8).

12 IPCC (n 1).

13 I Gabriel and others 'State of climate smart agriculture (CSA) practices in the North Central and Northwest zones Nigeria' (2023) 4 *CABI Agriculture and Bioscience* 1.

14 M Gbomagba, OA Afinowi & N Kumi 'Climate change adaptation governance in Africa: The legal and institutional frameworks' in M Addaney, DB Jarbandhan & W Kwadwo Dumenu (eds) *Climate change in Africa* (2023) 36.

15 African Union 'African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)' (2022), https://au.int/sites/default/files/documents/41959-doc-CC_Strategy_and_Action_Plan_2022-2032_08_02_23_Single_Print_Ready.pdf (accessed 22 May 2025).

change remains the priority action for Africa and a prerequisite for building resilience.¹⁶ This is confirmed by the nationally determined contributions (NDCs) submitted by most African countries, where adaptation is the focus.¹⁷ However, to be successful, African countries must develop innovative adaptation strategies and policies that address the particular needs of both men and women, boys and girls and the aged. Although gender should not be considered as referring specifically to relations between men and women,¹⁸ mainstreaming gender in adaptation strategies, planning and policy is a key step toward achieving gender equity in climate action. The majority of African countries are parties to the core gender-specific international instruments such as the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹⁹ the Beijing Declaration and Platform for Action (1995)²⁰ and the Vienna Declaration and Programme of Action (1993)²¹ as well as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol).²² The International Bill of Rights, comprising the Universal Declaration of Human Rights (Universal Declaration), the International Covenant on Economic, Social, and Cultural Rights (1966) (ICESCR)²³ and the International Covenant on Civil and Political Rights (1966) (ICCPR),²⁴ is also relevant for analysing gender equity in climate action in Africa.

The international climate change regime anchored by the United Nations (UN) Framework Convention on Climate Change (UNFCCC),²⁵ the Paris Agreement²⁶ and other relevant Conference of the Parties' decisions²⁷ has recently emphasised gender equality in addressing climate change.²⁸ However, the transformation process of climate adaptation law and policy to become gender sensitive at the national and local levels, taking place in Africa, is

16 As above.

17 As above.

18 SCR Dossou-Cadjia 'Hello can you hear me? On climate change: Inequalities and gender vulnerability in Benin' (2020) 3 *African Journal on Land Policy and Geospatial Sciences* 116.

19 United Nations Convention on the Elimination of All Forms of Discrimination against Women 1988 UNTS 1249 vol 13.

20 UN Women Beijing Declaration and Platform for Action, 1995 adopted by the UN General Assembly on 15 September 1995 during the Fourth World Conference on Women, United Nations, 1995, https://www.unwomen.org/sites/default/files/Headquarters/Attachments/Sections/CSW/PFA_E_Final_WEB.pdf (accessed 22 May 2025).

21 Office of the High Commissioner for Human Rights (OHCHR) Vienna Declaration and Programme of Action adopted 25 June 1993 at the World Conference on Human Rights held in Vienna, Austria, A/CONF.157/23.

22 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Women's Protocol) AHG/Res.240 (XXXI) June 1995, Addis Ababa, Ethiopia.

23 ICESCR, 16 December 1966, 993 UNTS 3.

24 ICCPR, 19 December 1966, 999 UNTS 171.

25 United Nations Framework Convention on Climate Change, 9 May 1992, 1771 UNTS 107 (UNFCCC).

26 Paris Agreement, 12 December 2015, 3100 UNTS 3.

27 Eg, Decision 1/CP.16 UN Doc FCCC/CP/2010/7/Add.1 adopted 10 December 2010 preambular para 7 and ch I, para 8.

28 Chingarande and others (n 2).

proceeding at a slow pace.²⁹ At the domestic level, climate adaptation frameworks have been evolving independently of human rights treaties and have failed to address gender equality and the realisation of the rights of women, youths, children, Indigenous Peoples, persons with disabilities and people with low incomes.³⁰ Thus, national human rights and gender policies remain separate rather than being coherently integrated into climate adaptation law, policy and strategies. Gender mainstreaming in climate adaptation action in Africa has received significant scholarly attention.³¹ However, Benin has received limited attention, even though the country is among the first few on the continent to enact a comprehensive climate law (after Kenya in 2016 and before that, Nigeria in 2021). In addition, most of the existing studies on gender-related climate issues³² fail to analyse climate adaptation action from a gender justice perspective comprehensively. Therefore, this article examines the integration of gender into Benin's climate change adaptation law and policy, focusing on the interests and rights of women to identify pathways for achieving equality and equity in adaptation action. The article aims to understand the extent to which gender has been incorporated and the challenges hindering the integration of women's rights, well-being and participation in climate action. By analysing this gap and highlighting the consequences of gender-blindness, the article provides crucial insights and recommendations for ensuring that Benin's climate laws and policies are gender equitable, thus moving towards more effective and inclusive climate change adaptation that considers the needs and capacities of all its citizens.

The article uses a doctrinal legal method underpinned by critical analysis from a gender lens. This involves a critical review and content analysis of Benin's international commitments and key climate-related legal and policy texts. The analysis uses a framework based on seven principles and minimum criteria for gender integration. The key documents analysed include Benin's international commitments; the 2018 Climate Change Law;³³ the National Adaptation Plan

29 M Addaney 'Climate change and human rights in Africa: A new factor in African Union policymaking?' In ME Addadzi-Koom, M Addaney & LA Nkansah (eds) *Democratic governance, law, and development in Africa* (2022) 582.

30 M Addaney 'The law as shelter: The interface between women and climate change adaptation responses in Africa' (2018) 5 *Journal of Comparative Law in Africa* 117.

31 See GA Apatinga, CJ Schuster-Wallace & SE Dickson-Anderson 'A conceptual framework for gender and climate mainstreaming to mitigate water inaccessibility in rural sub-Saharan Africa' (2022) 9 *WIREs Water* e1591; AA Mulema, L Cramer & S Huyer 'Stakeholder engagement in gender and climate change policy processes: Lessons from the Climate Change, Agriculture and Food Security Research Programme' (2022) *Frontiers in Sustainable Food Systems* 2; L Nyahunda 'Social work empowerment model for mainstreaming the participation of rural women in the climate change discourse' (2021) 6 *Journal of Human Rights and Social Work* 120; G Otieno and others 'Gender and social seed networks for climate change adaptation: Evidence from bean, finger millet, and sorghum seed systems in East Africa' (2021) 13 *Sustainability* 2074.

32 P Afokpe and others 'Progress in climate change adaptation and mitigation actions in sub-Saharan Africa farming systems' (2022) 31 *Cahiers Agricultures* 4; M Al-Zu'bi and others 'African perspectives on climate change research' (2022) 12 *Nature Climate Change* 1078; TW Carr and others 'Climate change impacts and adaptation strategies for crops in West Africa: A systematic review' (2022) 17 *Environmental Research Letters* 1.

33 The National Assembly, Climate Change Law of Benin (Law 2018-18) 18 June 2018.

(NAP 2022);³⁴ the Nationally Determined Contribution (NDC 2021);³⁵ and the National Climate Change Management Policy (PNGCC 2021-2030).³⁶ The critical gendered analysis approach is based on content rather than process analysis.³⁷ To inform the degree to which gender perspectives are incorporated into policies and strategies, the article uses the content analysis framework developed by Gumucio and Tafur Rueda,³⁸ as applied by Nyasimi and others,³⁹ and Ampaire and others,⁴⁰ with the inclusion of minimum principles. The seven principles and minimal criteria focused on the gendered discourses employed in policies and the degree of gender integration. These principles are the following: evidence-based, positive social and gender norms; equal benefits; participation; needs assessment and analysis; strategic planning and implementation; monitoring and evaluation (Table 1).

Table 1: Principles and criteria for a gender-responsive climate change policy

Principles	Criteria
Evidence-based	Analyse whether the climate change policies/plans/strategies did a gender analysis on climate risks, impacts, and vulnerability.
Positive social and gender norms	Analysis of whether vulnerable people are identified, defined, and targeted and their knowledge and capacity to address risk and vulnerability assessed
Equal benefits	Analyse whether the design of initiatives and activities within the climate change policies/plans/strategies aims to ensure that the resulting benefits, systems, and services benefit women and youth.
Participation	Analyse whether the climate change policies/plans/strategies promote participation, voice, and inclusion of all groups, especially women and youth. Analyse whether they recognise and strengthen the capacity and rights of vulnerable men, women, and youth to participate in adaptation decision-making continually.

34 See, generally, National Adaptation Plan of Benin (2022).
35 Government of Benin Nationally determined contributions (NDCs) (Benin’s First NDC updated submission) 12 October 2021, <https://unfccc.int/documents/497137> (accessed 20 May 2025).
36 Other relevant policies reviewed include the Government’s Action Programme (PAG 2021-2026); the National Development Plan (PND 2018-2025); the Gender Policy of the National Environment and Climate Fund (FNEC); the National Policy for Prevention and Integrated Disaster Management (PNPGIC 2016); and the Low-Carbon and Climate-Resilient Development Strategy (SDFICRCC 2016-2025).
37 EL Ampaire and others ‘Gender in climate change, agriculture, and natural resource policies: Insights from East Africa’ (2020) 158 *Climatic Change* 43.
38 T Gumucio & M Tafur Rueda ‘Influencing gender-inclusive climate change policies in Latin America’ (2015) 1 *Journal of Gender, Agriculture and Food Security* 42.
39 M Nyasimi and others ‘Inclusion of gender in Africa’s climate change policies and strategies’ in WL Filho and others (eds) *Handbook of climate change communication: 1. Theory of climate change communication* (2018) 171.
40 Ampaire and others (n 37).

Needs assessment and analysis	Analyse whether the climate change policies/plans/strategies identified adaptation and mitigation actions that respond to the needs of women, youths and other vulnerable groups.
Strategic planning and implementation	Analyse whether the technology choices identified in the policies/plans/strategies respond to risk and vulnerability and the anticipation of future climate and uncertainty at the community and national level, and consider trade-offs and synergies between different vulnerable groups. Analyse whether the technology choices identified in the climate change policies/plans/strategies build on local knowledge and consider availability, accessibility, affordability, and relevance to women, youth, and other vulnerable groups. Analyse the extent to which climate change policies/plans/strategies facilitate access to finances across gender and youth.
Monitoring and evaluation	Analyse whether the monitoring system incorporates reflection by women and youth and identifies feedback loops to inform modifications as the project evolves, so that activities are successfully adapted to new learning and do not create/lead to more inequalities.

Source: adapted from Nyasimi and others (n 26).

These principles comprise a set of minimum gender inclusion criteria for gender-responsive climate change policies and strategies. The term ‘minimum criteria’ in the context of a gender-responsive climate change law and policy refers to the key aspects or standards that must be met to ensure that the policy or strategy effectively addresses gender considerations.⁴¹ These criteria are a baseline requirement for integrating gender into climate change action. Based on the findings, the analysis found that national adaptation plans, policies and strategies in Benin insufficiently incorporate gender considerations, leading to gender-blind adaptation policies and practices. Thus, a significant gap exists between Benin’s international/regional gender and human rights obligations and its domestic climate change adaptation framework. It concludes by making a case for ensuring that all genders’ vulnerabilities, capacities and needs are fully integrated into climate law and policy in Benin, moving towards more gender-equitable and effective climate action.

2 Climate change risks and impacts from a gender-specific lens

Due to existing social and cultural gender norms, roles and expectations, the positions and conditions of women and men are different in each society.⁴²

41 Nyasimi and others (n 39).

42 UN Women (n 5).

Climate change is not gender-neutral.⁴³ It is a social, economic, political and environmental phenomenon with far-reaching implications for gender equality and social justice.⁴⁴ Its consequences vary according to gender, region, income level, age group and profession, and reinforce existing gender inequalities.⁴⁵ In addition, women and girls are not a homogeneous group defined solely by gender.⁴⁶ Socially limiting norms and values often exacerbate women and girls' vulnerability to climate change. According to Brody and others,⁴⁷ women and children are 14 times more likely than men to die during natural disasters. For instance, Neumayer and Plümper analysed disasters in 141 countries and discovered that gender disparities were directly associated with the economic and social rights of women.⁴⁸ In societies where both genders had equal rights, disasters resulted in the same fatalities for both sexes.⁴⁹ To address these risks and achieve sustainable development, it is crucial to understand the implications of climate change on women, men, boys, girls and the elderly. Around the globe, women are typically more dependent on natural resources for subsistence.⁵⁰ Yet, they have less access to these resources and paradoxically bear a disproportionate responsibility for securing food, water and fuel. For instance, evidence from East Africa shows that, even though commercialisation is a key strategy in assisting farmers to adapt to climate change, women's control of crop income is weakened in the process.⁵¹ Commercialisation is defined as growing crops and livestock on a large-scale basis for sale.⁵² In addition to unequal access to resources and decision-making processes, women and girls also contend with limited mobility and information access, as well as the threat of sexual violence.⁵³ Women and girls are rarely given the opportunity to better comprehend their risks and to prepare for, respond to and recover from climate hazards.⁵⁴

In West Africa, countries, including Benin, and especially communities where patriarchal norms are strictly enforced, women are deprived of property rights and

43 IPCC (n 8).

44 UN Women (n 5).

45 As above.

46 IPCC (n 8).

47 A Brody, J Demetriades & E Esplen 'Gender and climate change: Mapping the linkages – A scoping study on knowledge and gaps' (2008) prepared for the UK Department for International Development, BRIDGE, Institute of Development Studies (IDS), Brighton, <http://www.adequations.org/IMG/pdf/GenderAndClimateChange.pdf> (accessed 29 December 2024).

48 E Neumayer & T Plümper 'The gendered nature of natural disasters: The impact of catastrophic events on the gender gap in life expectancy 1981-2002' (2007) 97 *Annals of the Association of American Geographers* 551.

49 As above.

50 UN Women (n 5).

51 K Tavenner and others 'Intensifying inequality? Gendered trends in commercialising and diversifying smallholder farming systems in East Africa' (2019) 3 *Frontiers in Sustainable Food Systems* 10.

52 As above.

53 AHX Goh 'A literature review of the gender-differentiated impacts of climate change on women's and men's assets and well-being in developing countries' (2012) CAPRI Working Paper 106, International Food Policy Research Institute, Washington DC.

54 I Dankelman *Gender and climate change: An introduction* (2010).

participation in decision making.⁵⁵ For instance, in Benin, even though women and girls comprise 60 to 80 per cent of the agricultural labour force and produce 44 per cent of family subsistence labour,⁵⁶ a lack of access to land accounts for 50 per cent of their vulnerability and socio-economic inequalities.⁵⁷ The 'access to land' or land rights dimension is critical in understanding the climate injustice women face in the agriculture and food production sector. Notably, the land access parameter is expressed through use (the right to exploit the land for our needs), control (the right to decide on the management of the land and the fruits of its exploitation) and transfer (the right to sell, reallocate or redistribute the rights to use and control the land to another individual).⁵⁸ In rural areas, unequal land distribution and other resources (for instance, farm equipment, inputs and plant conservation) are often a problem.⁵⁹ This trend generally represents the West African sub-region (Benin as a far-reaching example), where the patriarchal system prevails.⁶⁰

The modes of access to land in Benin are inheritance, purchase, donation and rent. Once excluded from inheriting land from their husbands and/or their male parents and faced with insufficient financial means, Beninese women are disadvantaged regarding their access to land.⁶¹ For instance, an integrated modular household living conditions survey conducted in 2011 reveals that 85,1 per cent of land owners were men (compared to 14,9 per cent of women) and only 12 per cent of women gained access to land through inheritance (compared to 88 per cent of men).⁶² This factor contributes to increasing women's vulnerability to climate change. In fact, due to their lack of access to land, they are forced to take low-paying jobs or rely on subsistence farming, particularly in sectors sensitive to climate change. Moreover, women's lack of access to land hinders their ability to participate in climate change adaptation decision-making processes at the national and local levels.⁶³ For example, their opinions on what crops to sow, when, how, and where do not count. This exclusion from decision making makes it difficult for women to advocate their needs and priorities and gain access to

55 AO Awiti 'Climate change and gender in Africa: A review of impact and gender-responsive solutions' (2022) 4 *Frontiers in Climate* 895950.

56 AP Dah-gbeto & GB Villamor 'Gender-specific responses to climate variability in a semi-arid ecosystem in Northern Benin' (2016) 45 *Ambio* S297.

57 Dossou-Cadja (n 18).

58 Food and Agricultural Organisation of the United Nations (FAO) 'The state of food and agriculture. Women in Agriculture: Closing the gender gap for development' (2011), <https://www.fao.org/3/i2050e/i2050e.pdf> (accessed 30 December 2024).

59 FAO 'The future of food and agriculture – Trends and challenges' (2017), <https://www.fao.org/3/i6583e/i6583e.pdf> (accessed 30 December 2024).

60 Ministry of Living Environment and Sustainable Development, Republic of Benin 'Towards a National Adaptation Plan (NAP) process that responds to gender issues in Benin' (2019).

61 As above.

62 B Balogoun 'Women and land realities in Benin' *Medium* (web blog) 15 May 2017, <https://medium.com/@BolaBLG/la-femme-et-les-r-per-centC3-per-centA9alit-per-centC3-per-centA9s-fonci-per-centC3-per-centA8res-au-b-per-centC3-per-centA9nin-9638e4875ba8> (accessed 5 January 2025).

63 O Adejonwo 'Loss and damage fund: Towards a gender-responsive approach and climate justice for women in local communities in Africa' (2024) 1 *African Journal of Climate Law and Justice* 57.

resources and services that are crucial for building climate change resilience.⁶⁴ As Moalic notes, women's access to land rights as guaranteed by Beninese land legislation and local practices are antinomic.⁶⁵ Other parameters, such as access to the labour market, capacity and financial services, technology and education, further weaken the adaptive capacity of women farmers.⁶⁶

In the water resources and energy sectors, climate change increases the household burden for Beninese women. For instance, women and girls are generally responsible for water collection and fuel wood for domestic use (drinking, cooking meals, washing clothes and dishes, showering, watering, and so forth).⁶⁷ Their vulnerability is increasing with climate-induced forest degradation and the scarcity of fuel wood. As climate-related droughts impact the availability and quality of water supplies, women and girls are tasked with finding alternative water sources that are often farther away or of poorer quality.⁶⁸ As for men, they look for water for productive activities (water resale, brick making, livestock, car wash, and so forth).⁶⁹ The impact of climate change, leading to an upsurge in diseases such as HIV, hantavirus, hepatitis C and SARS, among others, places an additional domestic burden on women.⁷⁰ As primary care givers for their families, women often bear the responsibility of caring for sick family members affected by these diseases.⁷¹ The effects of climate change also amplify the risks associated with pregnancy and childbirth, placing women and their infants at a higher level of vulnerability.⁷² The Third National Communication of the country highlights that due to climate change, there is a decline in acquired immunity in pregnant women, a regression of growth in children and a very high rate of infant mortality. Similarly, the dominant diseases in Benin (malaria, acute respiratory infections and diarrheal diseases), exacerbated by extreme temperatures, affect women more than men.⁷³

The absence of women in the infrastructure and urban planning professions has repercussions on the decision-making process and the policies, as the

64 Addaney (n 29).

65 AC Moalic 'Les enjeux locaux de la formalisation des droits fonciers en Afrique rurale. Analyse de la diversité des appropriations et réinterprétations du dispositif PFR: cas des communes de Dassa et Savalou, département des Collines, Bénin' Master's dissertation, Istom, Cergy-Pontoise, 2014 92.

66 Dossou-Cadja (n 18).

67 See 'Plan national d'adaptation aux changements climatiques du Bénin» (National Climate Change Adaptation Plan of Benin) République du Bénin, 2022, <https://unfccc.int/documents/526006> (accessed 6 January 2025).

68 Addaney and Moyo (n 2).

69 See C Kabaseke 'Climate change adaptation and women's land rights in Uganda and Kenya: Creating legal pathways for building the resilience of women' (2020) 18 *Gender and Behaviour* 15458–15475.

70 United Nations Development Programme 'Gender-responsive climate change actions in Africa' 2023 UNDP, https://climatepromise.undp.org/sites/default/files/research_report_document/57405-per-cent20-Technical-per-cent20paper-per-cent20-per-cent20Final-per-cent20web.pdf (accessed 5 February 2025).

71 As above.

72 Goh (n 53).

73 'Plan national d'adaptation aux changements climatiques du Bénin' (n 67).

perception of the cities is biased, and it also affects the professional culture generated in part in the workplace.⁷⁴ In the Beninese administration, which is in charge of infrastructure and urban development, as well as in the private sector and politics, few women hold decision-making positions (head of institutions or political groups, director-general, treasurer-general, and others).⁷⁵ This leads to the exclusion of social considerations and gender-related effects of climate change in urban development policies, programmes, plans and initiatives. The intersection of gender and poverty is also of great importance in the context of climate change vulnerability. Poverty and gender disparities interact to provide further impediments to women's engagement in climate change adaptation. Climate change is also increasingly causing people in Benin to migrate from their communities in search of better social and economic opportunities.⁷⁶ It is a general perception that men have more mobility due to social norms that deem it acceptable for a man to migrate and material facilities such as cars, money and personal networks.⁷⁷ Men are more likely to migrate to areas unaffected by climate change in search of employment. In contrast, women have fewer opportunities to migrate and are more likely to stay in the affected area to care for their families and households.⁷⁸ The fact that men migrate often increases women's responsibilities in and out of the household since they must carry out additional activities handled by men,⁷⁹ such as providing for the family's economic needs, performing heavy physical labour and engaging in activities that require mobility outside the home. This is because these roles and responsibilities, which are traditionally considered masculine, increase workloads and stress for women in addition to their existing responsibilities, such as caring for children, cooking, cleaning and other household chores.

3 Gender-equitable climate action

Gender equality is widely recognised as a fundamental human right.⁸⁰ It is increasingly becoming a norm that climate action adheres to a gendered and human rights-based approach to enhance climate action at the local and national levels.⁸¹ As a result, human rights and gender-equitable climate action are inextricably linked. For instance, article 4(1) of the Constitutive Act of the African

⁷⁴ As above.

⁷⁵ National Gender Promotion Policy (Benin) adopted 1 January 2008, amended 2022.

⁷⁶ 'Plan national d'adaptation aux changements climatiques du Bénin' (n 67).

⁷⁷ H Lundgren 'Men, masculinity and climate change: Exploring the relation between masculinity norms and climate-related political participation' Master's dissertation, Uppsala University, 2019.

⁷⁸ As above.

⁷⁹ 'Plan national d'adaptation aux changements climatiques du Bénin' (n 67).

⁸⁰ Chingarande and others (n 1).

⁸¹ Paris Agreement, preambular para 11. See also C McKiernan and Z Loftus-Farren 'The human rights impacts of climate policy' (2011) Submission to the UNFCCC, Berkeley: International Human Rights Law Clinic, Berkeley Law, <https://unfccc.int/resource/docs/2011/smsn/ngo/262.pdf> (accessed 7 February 2025).

Union,⁸² the African Women's Protocol and the Solemn Declaration on Gender Equality in Africa emphasise the importance of gender equality and its status as a fundamental human right. Thus, effective and inclusive climate adaptation policy must incorporate gender dimensions (equity) to promote fair and equal treatment of men and women, boys and girls, the elderly, persons with disabilities and indigenous peoples in the responses to climate change.⁸³ Furthermore, most African countries, including Benin, commit to integrating gender issues into environmental decision making, including climate change adaptation.⁸⁴ Additionally, African countries, for example, through the Committee of African Heads of State and Governments on Climate Change (CAHOSCC) agreed in Malabo at the twenty-third ordinary session of the Assembly of the African Union (AU) to develop the Women and Gender Programme on Climate Change (CWGPCC) to engender the interests of women and gender considerations in climate action.⁸⁵ Similarly, all 54 African countries have signed the 2015 Paris Agreement which is the first ever universal, legally binding global climate change agreement.⁸⁶ The Paris Agreement, which focuses on cutting down GHG emissions and enhancing adaptation to climate change, emphasises the relevance of human rights and explicitly identifies gender equity as a priority within the global climate agreement.⁸⁷

Under the UN system, the key human rights treaties that recognise and promote gender equality and equity are anchored by CEDAW.⁸⁸ CEDAW explicitly addresses the rights of women and their equal participation in decision-making processes, highlighting the importance of gender equality in climate change responses. For example, article 14(1) of CEDAW guarantees women's right to actively participate in the development, implementation, and monitoring of government policies and programmes, specifically including those related to climate change. Similarly, articles 14(2) and 16(1)(e) establish the obligation for state parties to undertake necessary measures to ensure women's equal access to information, consultation and involvement in decision-making processes at all levels. These provisions highlight the importance of eliminating discrimination against women in all areas of economic and social life, which are particularly relevant in the context of climate action at the national and sub-national levels.

At the regional level in Africa, the African Women's Protocol focuses on the rights of women, including the right to a clean and healthy environment (article

82 African Union Constitutive Act of the African Union, 11 July 2000 2158 UNTS 3, UN Reg No I-37733, OAU Doc CAB/LEG/23.15, OXIO 371.

83 Addaney & Moyo (n 2).

84 See African Women's Protocol (n 22); art 18 provides the right to a healthy and sustainable environment. Among other things, it specifically provides that '(1) Women shall have the right to live in a healthy and sustainable environment; (2) States Parties shall take all appropriate measures to (a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels'.

85 Chingarande and others (n 1).

86 See Paris Agreement (n 26).

87 As above.

88 CEDAW (n 19).

14).⁸⁹ The provisions of articles 15 and 18(2) of the Women's Protocol are also relevant to climate adaptation action. For instance, article 15 guarantees women's rights to participate in the management, conservation and exploitation of natural resources, recognising their valuable insights in adapting to climate change. This inclusion is crucial for addressing women's specific needs and vulnerabilities in climate change adaptation planning and implementing gender-responsive adaptation strategies. Additionally, article 18(2) calls for greater participation of women in the planning, management and preservation of the environment and sustainable use of natural resources. This approach, when effectively translated into national climate change laws and policies, will ensure that adaptation initiatives consider the diverse needs, perspectives, and capacities of women, leading to more effective and equitable outcomes. Furthermore, international climate change law, especially the Cancun Agreement and the Paris Agreement, recognises the importance of gender equality in climate action. The UNFCCC in article 11(2)(f) requires the establishment of national climate change programmes that consider the specific needs of women, indigenous peoples and other vulnerable groups. Additionally, the Cancun Agreements⁹⁰ acknowledge the necessity of promoting gender equality and the active participation of women in climate change policies, plans, programmes and actions. These provisions collectively highlight the imperative of integrating gender considerations and addressing the specific needs of vulnerable groups such as women and girls in climate change mitigation and adaptation action. Articles 7(5) and 11(3) of the Paris Agreement go further by explicitly recognising gender equality and the empowerment of women as critical for effective climate change mitigation and adaptation. It underscores the need for gender-responsive approaches to be integrated into national climate policies and actions.⁹¹

In Africa, there are additional commitments that reinforce the importance of gender equality in climate adaptation action. More significantly, the AU's Agenda 2063 strongly emphasises gender equality, recognising it as a key driver for sustainable development.⁹² The AU also adopted the Gender Strategy for the African Union, which promotes the integration of gender perspectives into various sectors, including climate change.⁹³ These demonstrate Africa's commitment to promoting gender equality in climate adaptation and provide a regional framework for implementing gender-responsive climate policies. This commitment has manifested in significant attempts to mainstream gender into

⁸⁹ African Women's Protocol (n 22).

⁹⁰ See UNFCCC Decision 1/CP.16, The Cancun Agreements: Outcome of the work of the Ad Hoc Working Group on Long-term Cooperative Action under the Convention, Report of the Conference of the Parties on its 16th session, held in Cancun from 29 November to 10 December 2010, <https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf> (accessed 7 February 2025).

⁹¹ Paris Agreement (n 26).

⁹² AU Agenda 2063: The Africa we want, 2015 (Agenda 2063), https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (accessed 7 February 2025).

⁹³ African Union AU Strategy for Gender Equality and Women's Empowerment 2018-2028 (2018), https://au.int/sites/default/files/documents/36195-doc-52569_au_strategy_eng_high.pdf (accessed 8 February 2025).

national action plans, climate change policies and climate legislation, NDCs, national adaptation plans (NAPs) and national communications.⁹⁴

Theoretically, gender inequality may intensify climate change's impacts in developing societies such as Africa due to existing development challenges and prevailing inequalities.⁹⁵ Notwithstanding the differences in religions and cultures, unequal power relations are fundamental to the inequity involved in gender relations.⁹⁶ Therefore, mainstreaming gender in climate change policy allows going beyond the data disaggregated by sex.⁹⁷ It enables understanding the different concerns of women and men, boys and girls, persons with disabilities and the elderly by assessing and recognising the gender implications of various policy interventions.⁹⁸ However, Alston notes that one of the critical issues surrounding gender mainstreaming is how to identify the exact problem, as policies do not clearly define the issues they aim to address.⁹⁹ This implies that poorly designed gender equality policies might reproduce inequalities between men and women in the context of climate change that they intended to address.¹⁰⁰ Similarly, there are debates over the success of gender mainstreaming to achieve gender equality.¹⁰¹ Additionally, Aston observes that the scientific and technological approach employed in institutional gender mainstreaming responses has frequently resulted in disregarding overall social outcomes.¹⁰² For example, the African Working Group on Gender and Climate Change (AWGGCC) within the African Union Commission is a proponent of the broader notion of gender integration rather than gender mainstreaming.¹⁰³ Gender integration entails greater women's involvement at all levels of planning and implementation, rather than mainstreaming targeted and gender-specific needs in climate law, policy and strategies.¹⁰⁴ This dominant framing underscores the need for African countries to integrate gender considerations, especially women's needs, interests and rights in climate change law and policy.

94 Chingarande and others (n 2).

95 African Development Bank (AfDB) & United Nations Economic Commission for Africa (UNECA) 'Africa Gender Index Report 2019', https://www.afdb.org/sites/default/files/documents/publications/africa_gender_index_report_2019_-_analytical_report.pdf (accessed 10 February 2025).

96 Dankelman (n 54).

97 C Hannan 'Gender mainstreaming climate change' (2009) *Kvinder, Kon & Forskning* (3-4), <https://doi.org/10.7146/kkf.v0i3-4.27971> (accessed 10 February 2025).

98 M Alston 'Gender mainstreaming and climate change' (2014) 47 *Women's Studies International Forum* 287.

99 As above.

100 AfDB & UNECA (n 95).

101 Ampaire and others (n 37).

102 Alston (n 98).

103 AfDB & UNECA (n 95).

104 AK Larsson 'Gender and climate change: An empirical legal study of gender responsiveness in Kenyan climate change response documents' (2017) 149, https://gupea.ub.gu.se/bitstream/handle/2077/54117/gupea_2077_54117_1.pdf?sequence=1&isAllowed=y (accessed 10 February 2025).

4 Gender informed adaptation law and policy: Benin as a case study

In the context of gendered climate change adaptation law and policy, it is evident that the extent of gender integration in domesticating international commitments falls short. For instance, the 2018 Climate Change Law, which serves as the primary legal mechanism regulating climate change action in Benin, notably omits gender and associated concepts such as women, men, boys, girls, persons with disabilities, indigenous peoples, the aged, or any related terms.¹⁰⁵ This absence demonstrates a significant gap in mainstreaming gender issues into the national climate change framework and underscores the need for comprehensive gender integration into climate change laws and regulations. On the other hand, the integration of gender considerations into vulnerability assessments is emphasised by the UNFCCC Gender Action Plan. This aligns with the Paris Agreement's decision on gender, which underscores the importance of addressing the needs of women, children, and other vulnerable groups in climate change actions.¹⁰⁶ The National Adaptation Plan of Benin reflects the recognition of gender issues by emphasising the significance of gender equality and women's empowerment in effective adaptation strategies.¹⁰⁷ The plan acknowledges that women and girls often bear responsibility for areas and roles highly vulnerable to climate change, including household chores and the provision of water, food and fuel.¹⁰⁸

Moreover, women and girls, including those in indigenous and forest-dependent communities, are more likely to live in rural areas, experience poverty, and face heightened vulnerability to climate change impacts.¹⁰⁹ Their roles in ensuring food security and water collection expose them to increased risks from climate-related hazards such as droughts and floods.¹¹⁰ While the NAP commits to conducting gender-sensitive vulnerability assessments, the details of implementation remain unclear. The plan lacks specific guidance on conducting such assessments and ensuring their findings inform adaptation planning and implementation. The NAP prioritises gender-responsive adaptation through various commitments, including enhancing the adaptive capacity of vulnerable groups, improving regulatory frameworks, facilitating access to microfinance funds and affordable credit lines, raising awareness of climate change opportunities, promoting livelihood diversification, and supporting sustainable livelihoods for vulnerable populations, especially women.¹¹¹ However, the NAP does not explicitly address monitoring and evaluation for gender-responsive

105 Loi n° 2018-18 du 06 août 2018 sur les changements climatiques en République du Bénin (Law n° 2018-18 of 6 August 2018 on Climate Change in the Republic of Benin) 2018.

106 At COP29 in Baku, countries agreed to extend the Enhanced Lima Work Programme on Gender and Climate Change for another 10 years, reaffirming its critical role in advancing gender equality in climate responses.

107 'Plan national d'adaptation aux changements climatiques du Bénin' (n 67).

108 As above.

109 As above.

110 As above.

111 As above.

adaptation measures. Similarly, there is no cost allocation for implementing adaptation measures, which implies that cross-cutting issues such as gender receive the lowest financial allocation compared to prioritised sectors.

The omission of explicit gender considerations in the 2018 Climate Change Law and the National Adaptation Plan directly contradicts the principles of participation and non-discrimination outlined in CEDAW, particularly article 8, which provides that ‘States Parties shall take all appropriate measures to ensure that women, on equal terms with men and without discrimination, can represent their governments at the international level and participate in the work of international organisations’.¹¹²

Specifically, article 8 of CEDAW stresses equality of opportunity and treatment, non-discrimination, and women’s participation in all spheres, including decision making related to climate policy development and implementation at the national and sub-national levels in Benin. This translates to ensuring equitable access to information, participation in climate action planning and strategy development and the allocation of resources for women in the context of climate change.

Furthermore, the lack of gender mainstreaming clashes with the African Women’s Protocol, particularly articles 18(1) and 18(2(a)), which guarantee the following:¹¹³

- (1) Women shall have the right to live in a healthy and sustainable environment;
- (2) States Parties shall take all appropriate measures to –
 - (a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels.

Articles 18(1) and (2(a)) unambiguously guarantee women’s right to a healthy and sustainable environment and call for their participation in environmental planning and management. These provisions, therefore, underscore the importance of integrating women’s perspectives and ensuring their active involvement in developing and implementing climate change adaptation laws, policies and strategies. As highlighted by Agarwal, the absence of gender-disaggregated data obscures the disparate impacts of climate change on various demographics, hindering the design of targeted interventions.¹¹⁴ This lack of data contradicts article 19 of the African Women’s Protocol, emphasising the inclusion of a gender perspective in national development planning, which is critical for ensuring climate policies address the differentiated needs of women and support their economic empowerment.¹¹⁵ Grodin and others highlight the interconnectedness

¹¹² Art 8 CEDAW.

¹¹³ African Women’s Protocol (n 22).

¹¹⁴ B Agarwal *Gender and green governance: The political economy of women’s presence within and beyond community forestry* (2010) 333.

¹¹⁵ Art 19 of the African Women’s Protocol provides that ‘[w]omen shall have the right to fully enjoy their right to sustainable development. In this connection, the States Parties shall take

of health, human rights and environmental issues' underscoring the imperative of integrating gender perspectives into climate change policies to uphold fundamental human rights principles. By neglecting these provisions, Benin risks undermining the effectiveness of its adaptation efforts and perpetuating existing inequalities in the context of climate change.

The other key climate change policy in Benin is the Nationally Determined Contribution (NDC 2021).¹¹⁶ The updated NDC of Benin acknowledges the importance of integrating gender considerations in its implementation, recognising the critical role women play in combating climate change.¹¹⁷ Several sectors in the NDC outline specific measures, indicators and recommendations to promote gender-responsive climate action. For instance, the NDC proposes adaptation projects involving women farmers and rural communities in the agricultural sector.¹¹⁸ It underscores the participation of women farmers in sustainable land management actions and recommends tracking the percentage of women farmers considered for support and those receiving technical and financial assistance.¹¹⁹ Similarly, in the Land Use, Land-use Change and Forestry (LULUCF) sector, the NDC aims to enhance living conditions and promote sustainable development in forested areas.¹²⁰ It suggests specific gender indicators, such as the number of natural forest and plantation protection and conservation projects and programmes managed by women, the rate of women involved in natural forest protection and conservation projects, and the rate of women and men targeted for reforestation who have benefited from technical and financial support measures.¹²¹ Within the energy sector, the NDC focuses on promoting the economic utilisation of wood energy and enhancing access to small cooking equipment powered by domestic gas.¹²² It highlights the importance of gender mainstreaming during the sale and distribution of these resources. Indicators measuring the percentage of women benefiting from improved stoves and domestic gas cooking equipment are identified.¹²³ The NDC also acknowledges the significance of integrating gender considerations in line with international best practices and commitments such as the UNFCCC Gender Action Plan and the Paris Agreement Decision on Gender.¹²⁴ However, the NDC falls

all appropriate measures to 1(a) introduce the gender perspective in the national development planning procedures; (b) ensure participation of women at all levels in the conceptualisation, decision-making, implementation and evaluation of development policies and programmes.'

116 'Contribution Déterminée au Niveau National Actualisée du Bénin au Titre de l'Accord de Paris (Benin First Nationally Determined Contribution)' République du Bénin, 2022, https://unfccc.int/sites/default/files/NDC/2022-06/CDN_ACTUALISEE_BENIN2021.pdf (accessed 20 December 2024).

117 As above.

118 Benin First Nationally Determined Contribution (n 116) 33.

119 Benin First Nationally Determined Contribution (n 116) 34.

120 As above.

121 Benin First Nationally Determined Contribution (n 116) 35.

122 As above.

123 As above.

124 The Gender Action Plan (GAP) under the Lima Work Programme outlines practical steps for integrating gender-responsive measures in climate policies. COP29 decided to develop a new GAP for adoption at COP30 to strengthen implementation strategies.

short in certain areas. First, the NDC does not disaggregate data on climate risks and vulnerability by gender, impeding the assessment of the specific needs of women and girls, boys and men and the elderly. Second, it lacks clarity on ensuring the inclusion and participation of women in climate action planning and implementation. Moreover, the NDC does not explicitly recognise women as agents of change in climate adaptation efforts. It also overlooks the gendered implications of technology choices and lacks specific indicators for monitoring and evaluating the gender responsiveness of climate action.

The importance of gender-responsive approaches to climate change adaptation and mitigation has been advanced in other policy spheres.¹²⁵ Similarly, various studies have consistently highlighted the differentiated impacts of climate change on different genders and the importance of acknowledging and addressing these disparities through legislation and policy instruments. The NDC's recognition of the critical role of women in combating climate change aligns with the findings of these studies,¹²⁶ which underscores the need to involve women in decision-making processes and recognise their agency in climate action.¹²⁷ However, the NDC lacks disaggregated data on climate risks and vulnerabilities by gender, the absence of specific indicators for monitoring and evaluating gender responsiveness, and the failure to allocate dedicated resources for gender-responsive climate action.

Furthermore, the National Climate Change Management Policy (PNGCC), which encompasses overarching objectives that aim to guide Benin's actions in climate change management and contribute to global efforts in combating the adverse impacts of climate change through adaptation and mitigation, have gendered implications.¹²⁸ The PNGCC aligns with the provisions of the Beninese Constitution, particularly article 26, which guarantees equality before the law without distinction of origin, race, sex, religion, political opinion or social position. Specifically, article 26 of the Constitution of Benin provides:¹²⁹

The State shall ensure equality for all before the law without distinction as to origin, race, sex, religion, political opinion or social position. Men and women are equal in

¹²⁵ See the following: K O'Brien and others 'Mapping vulnerability to multiple stressors: Climate change and globalisation in India' (2004) 14 *Global Environmental Change* 303; S Huyer and others 'Supporting women farmers in a changing climate: Five policy lessons' CCAFS Policy Brief 10, CGIAR Research Program on Climate Change, Agriculture and Food Security (2015); J Njuki, J Parkins & A Kaler (eds) *Transforming gender and food security in the Global South* (2019) 312; I Gutierrez-Montes and others 'Contributing to the construction of a framework for improved gender integration into climate-smart agriculture projects monitoring and evaluation: MAP-Norway experience' (2020) 158 *Climatic Change* 93. Agarwal (n 114); Gumucio & Tafur Rueda (n 38).

¹²⁶ As above.

¹²⁷ 'Contribution Déterminée au Niveau National Actualisée' (n 116).

¹²⁸ 'Politique Nationale de Gestion des Changements Climatiques (PNGCC 2021-2030) (Climate Change Management Policy)' République du Bénin, 2021, <https://faolex.fao.org/docs/pdf/ben210369.pdf> (accessed 23 May 2025).

¹²⁹ Loi n° 90-32 du 11 décembre 1990 (à jour de sa révision par la loi N° 2019-40 du 07 Novembre 2019 portant révision de la loi n°90-32 du 11 décembre 1990 portant Constitution de la République du Bénin) (Law 90-32 of 11 December 1990 (as revised by Law 2019-40 of 7 November 2019 revising Law 90-32 of 11 December 1990, the Constitution of the Republic of Benin)), art 26.

law. However, the law may provide special provisions to improve the representation of women. The State shall protect the family, particularly the mother and child. It shall assist persons with disabilities and the elderly.

This provision affirms the principle of non-discrimination based on sex and the equality of men and women before the law. The provision further mandates that the state protect the family, particularly the mother and child, and provide care for disabled and aged persons. However, it does not explicitly address the specific needs and vulnerabilities of women or other vulnerable groups in the context of climate change.

This also aligns with the country's commitments under the Lima Work Programme on Gender of the UNFCCC.¹³⁰ This decision established the first framework for gender mainstreaming in climate policy under the UNFCCC and stresses the importance of gender-responsive climate policy across all areas related to climate action. Although the policy also aligns with the Paris Agreement's Preamble, which acknowledges the importance of respecting 'human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality', it lacks the actionable steps and targeted measures necessary to uphold these principles and ensure gender-responsive climate action. Nevertheless, gender issues have been addressed across various thematic areas and programmes in the PNGCC. For instance, it acknowledges the vulnerability of specific groups, such as women, the youth and people with disabilities, and advocates their participation and empowerment by ensuring their inclusion in climate change response efforts.¹³¹ However, it lacks detailed implementation plans, making it challenging to gauge its effectiveness. Additionally, the policy fails to consider the differing impacts of climate change on men and women. This omission can lead to inadequate and potentially harmful interventions. Similarly, the Low-Carbon and Climate-Resilient Development Strategy (SDFICRCC) and the National Policy for Prevention and Integrated Disaster Management (PNPGIC) lack a gender-responsive approach. These omissions contradict established international frameworks such as CEDAW and the African Women's Protocol and overlook extensive scholarship highlighting the need for gender-responsive climate action.¹³²

5 Conclusion

This article examines the integration of gender into climate change adaptation law and policy in Benin, focusing on the interests and rights of women to identify legal and policy pathways for achieving gender equality and equity in adaptation action. The analysis establishes that while Benin acknowledges the

130 UNFCCC Decision 18/CP.20.

131 'Politique Nationale de Gestion des Changements Climatiques' (n 128).

132 As above.

importance of climate change adaptation, its existing national policies, plans and strategies inadequately integrate gender considerations related to impacts, risks, vulnerabilities, and adaptation interventions. A critical review of key legal and policy texts reveals that the national climate change law and policy framework largely fails to comply with Benin's gender and human rights obligations under international and regional law. The majority of core legislation and policies, including the primary 2018 Climate Change Law, which entirely omits gender-related terms, are demonstrated to be gender-blind. Although climate change policies such as the National Adaptation Plan (NAP 2022) and the Nationally Determined Contributions recognise gender issues to some extent, they lack specific details for implementation, monitoring, data disaggregation, ensuring women's participation, and adequate resource allocation. This neglect stems from institutional barriers, limited awareness of gender-related climate change issues, and a lack of prioritisation of women's roles and contributions. Gender blindness not only contradicts Benin's international and regional commitments, such as CEDAW and the African Women's Protocol, but crucially undermines the potential effectiveness of climate change adaptation efforts by failing to address differentiated impacts and to leverage the capacities of all segments of the population. Addressing these gaps is essential for moving towards more gender-equitable and effective climate action in Benin.

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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Key words: children; climate change; human rights; climate litigation; Nigerian child

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 Lodigelo '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.