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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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Several African countries experienced severe drought in 2023, including parts of Morocco, Algeria, Tunisia, Nigeria, Cameroon, Ethiopia, Madagascar, Angola, Zambia, Zimbabwe and the DRC.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup>

Despite enhanced global awareness of the need to take action on climate change, efforts to address climate change remain inadequate.<sup>11</sup> In this regard, a recent transnational communication in *Chiara Sacchi & Others v Argentina & Others* (*Sacchi*) provides a seed of hope.<sup>12</sup> 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;<sup>13</sup> nationality;<sup>14</sup> protective, universal jurisdiction;<sup>15</sup> passive personality;<sup>16</sup> effects doctrine;<sup>17</sup> international law;<sup>18</sup> active personality;<sup>19</sup> and representational principles.<sup>20</sup> 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.<sup>21</sup> Conversely, states possess considerable discretion to exercise jurisdiction within their territorial boundaries for extraterritorial acts or omissions.<sup>22</sup> The general position is that jurisdiction is generally territorial, and states cannot exercise extraterritorial jurisdiction unless authorised by international custom, convention or permissive law.<sup>23</sup> 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.<sup>24</sup>

The territorial principle asserts that a country has jurisdiction over crimes committed within its territory, regardless of the nationality of the perpetrator or victim.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup>

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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> While the principles that govern conflict of laws help resolve these jurisdictional disputes by deciding which law applies to a particular case,<sup>32</sup> 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.<sup>33</sup> Furthermore, the effectiveness of the territorial principle relies heavily on countries' willingness to cooperate and enforce laws protecting children's rights.<sup>34</sup> Yet, children are already a vulnerable group who may have other susceptibilities, such as being migrants or refugees.<sup>35</sup> 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](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.<sup>36</sup> 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.<sup>37</sup> 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.<sup>38</sup> 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.<sup>39</sup> 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.<sup>40</sup> According to Ku, applying the effects doctrine requires identifying three elements: substantial effect, causal link, and intentional conduct.<sup>41</sup> 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.<sup>42</sup> Bermann argues that the activity must be intentional and not merely accidental or incidental.<sup>43</sup> 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.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> 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).<sup>47</sup> 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.<sup>48</sup>

### 2.3 International law

International law provides a framework for extraterritorial jurisdiction, particularly in human rights, terrorism and organised crime.<sup>49</sup> 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'.<sup>50</sup> 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.<sup>51</sup> 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.<sup>52</sup> Regarding the application of international law, it is suggested that human rights treaties may be applied extraterritorially in contexts of state

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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.<sup>53</sup> Kunnemann's analysis highlights the need for a nuanced approach to extraterritorial jurisdiction.<sup>54</sup>

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).<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> 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.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> They requested that the CRC Committee declare climate change a children's rights crisis and recommend actions for countries to mitigate its effects.<sup>61</sup>

### 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.<sup>62</sup> 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.<sup>63</sup> It was emphasised that the state party could regulate GHG emissions within its territory, but has failed to do so effectively.<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup>

### 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.<sup>68</sup> 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.<sup>69</sup> While acknowledging the

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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.<sup>70</sup> 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.<sup>71</sup>

Third, the respondent state further submitted that the communication was inadmissible *ratione loci* regarding its authors, who were not nationals of the state party.<sup>72</sup> 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.<sup>73</sup> 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.<sup>74</sup> The state party argued that the complainants had not demonstrated that children outside Argentina were subject to the power or control of Argentine agents.<sup>75</sup> 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.<sup>76</sup>

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.<sup>77</sup> Fourth, regarding

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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,<sup>78</sup> the communication does not meet the admissibility criteria regarding communications to the CRC Committee.<sup>79</sup>

### 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).<sup>80</sup> The CRC Committee emphasised the importance of interpreting extraterritorial jurisdiction restrictively, citing the lack of reference to territory in the Protocol's provisions.<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

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.<sup>85</sup> 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.<sup>86</sup> As correctly

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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](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'.<sup>87</sup>

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.<sup>88</sup> 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.<sup>89</sup> 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.<sup>90</sup> This provision establishes that state parties have obligations to protect the rights of children within their jurisdiction. The question of what

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<sup>87</sup> As above.

<sup>88</sup> *Sacchi* para 10.9.

<sup>89</sup> 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).

<sup>90</sup> 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',<sup>91</sup> 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.<sup>92</sup> 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).<sup>93</sup> 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.<sup>94</sup> 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.<sup>95</sup> 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.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> The European Court advocates a generous interpretation of human rights treaties to ensure the broadest possible protection of individual rights.<sup>99</sup> 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.<sup>100</sup>

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.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> The provision of alternative approaches to interpretation allows the African Children's Committee to seek inspiration from other treaties, decisions, accepted guidance and jurisdictions

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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.<sup>104</sup> 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.<sup>105</sup> 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

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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.<sup>106</sup> 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.<sup>107</sup> 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,<sup>108</sup> 3,<sup>109</sup> 4,<sup>110</sup> 5,<sup>111</sup> 6<sup>112</sup> and 31 (responsibilities of the child).<sup>113</sup> 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:<sup>114</sup>

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.<sup>115</sup> It is argued that a higher threshold is evident in the application of the obligation under the African Children's Charter.<sup>116</sup> Three points inform the normative position in the African

<sup>114</sup> Second preambular paragraph African Children's Charter.

<sup>115</sup> *Sacchi* para 10.3.

<sup>116</sup> 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.<sup>117</sup> 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.<sup>118</sup> 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.<sup>119</sup> 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.<sup>120</sup> 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

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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.<sup>121</sup> This principle is particularly significant in the context of climate change, where children are often disproportionately affected.<sup>122</sup> 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.'<sup>123</sup> 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.<sup>124</sup> 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.<sup>125</sup> 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.<sup>126</sup>

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:<sup>127</sup>

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.<sup>128</sup>

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.<sup>129</sup> 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.<sup>130</sup> 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.<sup>131</sup> 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.<sup>132</sup> 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.<sup>133</sup>

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,<sup>134</sup> which play a crucial role in supporting the Committee's work in promoting and protecting children's rights.<sup>135</sup> The African Children's Committee is empowered to establish its own rules of procedure.<sup>136</sup> In this regard, the Revised Rules of Procedure empower the Committee to appoint country rapporteurs,<sup>137</sup> Special Rapporteurs<sup>138</sup> and working groups, among other mechanisms.<sup>139</sup> 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.<sup>140</sup> Institutionally, the country rapporteurs ensure that concerns related to children's welfare in their assigned countries receive timely attention.<sup>141</sup> When

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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.<sup>142</sup> 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.<sup>143</sup> 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.<sup>144</sup>

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.<sup>145</sup> 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.<sup>146</sup> 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.<sup>147</sup> 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.<sup>148</sup> 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.<sup>149</sup>

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.<sup>150</sup> 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.<sup>151</sup> 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.<sup>152</sup> This involves conducting a thorough continental study to better understand the complex relationships between climate change and children's rights.<sup>153</sup> 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.<sup>154</sup>

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.<sup>155</sup> Interestingly, the Working Group is still accountable to the African Children's Committee, to whom it submits regular reports on its activities and progress.<sup>156</sup> 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.