

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 materia* 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.