



ACERWC

African Committee of Experts on
the Rights and Welfare of the Child



ACERWC STUDY ON
CLIMATE CHANGE &
CHILDREN'S RIGHTS
:IN AFRICA

A CONTINENTAL OVERVIEW

An Organ of the

African
Union





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IN AFRICA:
A CONTINENTAL OVERVIEW - 2024**

TABLE OF CONTENTS

ACRONYMS AND ABBREVIATIONS	!
1 FIRST THINGS FIRST	2
1.1 Why this study?	2
1.2 Why now?.....	4
1.3 How was the study conducted?.....	5
2 CONTEXT MATTERS	7
2.1 General	7
2.2 The Sustainable Development Goals	8
2.3 A ‘just transition’ respecting and protecting African child-rights	9
2.4 Emphasis on drought and flooding	9
2.5 Gender-sensitive approach.....	10
2.6 Intersectionality	11
3 CONCEPTUAL CLARITY	12
3.1 Preliminary remarks.....	12
3.2 Adaptation, mitigation, and nature-based solutions	12
3.3 Best available science	13
3.4 Intergenerational equity	13
3.5 Precautionary principle	14
3.6 Harm prevention.....	14
3.7 Climate justice	15
4 THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD ...	16
4.1 Looking back (and around) to look ahead	16
4.1.1 The right to a clean, healthy, and sustainable environment.....	17
4.1.2 Requests for advisory opinions	18
4.1.3 The ‘green turn’ and human rights.....	19
4.2 A continental legal framework: A snapshot	19
4.3 The African Children’s Charter and climate change	21
4.3.1 Non-discrimination	23
4.3.2 The best interests of the child	24

4.3.3 The right to life, survival, and development	25
4.3.4 Children’s right to participation	27
4.3.5 The right to access information	28
4.3.6 The right to be protected from violence	29
4.3.7 The right to social protection.....	32
4.3.8 Child care and children’s rights.....	34
4.3.9 The right to food	35
4.3.10 The right to education	37
4.3.11 The right to health.....	40
4.3.12 Climate-induced conflict and children’s rights.....	43
4.3.13 Climate-induced migration and children’s rights.....	45
4.3.14 The rights of children with disabilities	48
4.4 Mitigation and adaptation through law and policy.....	49
4.4.1 General	49
4.4.2 Mitigation measures.....	50
4.4.3 Adaptation measures	52
4.4.4 Climate action through upholding the right to a remedy.....	56
4.5 Institutions, non-state actors, and climate finance.....	60
4.5.1 National human rights institutions.....	60
4.5.2 The business sector	61
4.5.3 Financial resources, climate change, and children’s rights.....	63
5 RECOMMENDATIONS	68
ENDNOTES	73

ACRONYMS AND ABBREVIATIONS

ACERWC	African Committee of Experts on the Rights and Welfare of the Child
ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
COMESA	Common Market for Eastern and Southern Africa
COP	Conference of Parties
CRC	UN Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil society organisation
DRR	Disaster risk reduction
DRC	Democratic Republic of Congo
ECOWAS	Economic Community of West African States
GDP	Gross domestic product
GHG	Greenhouse gas
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
IDP	Internally displaced person
IGAD	Intergovernmental Authority for Development
ILO	International Labour Organization
IPCC	Intergovernmental Panel on Climate Change
MDGs	Millennium Development Goals
NAP	National adaptation plan
NDC	Nationally determined contribution
NEMA	National Environment Management Authority
NHRI	National human rights institution
NGO	Non-governmental organisation
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the High Commissioner for Human Rights
PSC	African Union Peace and Security Council
REC	Regional Economic Community
SADC	Southern African Development Community
SDGs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
WASH	Water, sanitation, and hygiene
WHO	World Health Organization

1. FIRST THINGS FIRST

1.1 WHY THIS STUDY?

The devastating impacts of the triple planetary crisis – climate change, pollution, and biodiversity loss – on children and their rights are gaining increasing attention. In particular, climate change, the focus of this study, is wreaking havoc across the world, including in Africa. It is a problem which has been described as ‘a long-term threat unlike any we have faced’.¹

Three overall conclusions may be drawn from the technical summary² of the Sixth Assessment Report (AR6) of the United Nations (UN) Intergovernmental Panel on Climate Change (IPCC):

- The first is that the IPCC observes with high confidence that climate risks are appearing faster than before and becoming more severe.
- The second is that the magnitude of the observed impacts and projected climate risks indicate that decision-making, funding, and investment are needed on a major scale over the next decade if climate-resilient development is to be achieved.
- The third is that it is crucially important for the African continent to tailor feasible, integrated mitigation and adaptation solutions to suit specific locations and monitor them for their effectiveness, while at the same time avoiding conflict with sustainable development objectives and managing risks and trade-offs.

Where global warming exceeds 1.5°C, the opportunities for adaptation to many climate risks are likely to be constrained, with efforts in this regard having reduced effectiveness. Indeed, it is acknowledged that a number of locations in the world already have a significantly limited capacity for adaptation.³ The terminology is now clear that human activity ‘definitely’ and ‘unequivocally’ causes climate change. This study thus uses the scientific findings of the IPCC (and other comparable bodies) as its basis, and does not engage with the debates surrounding the science of climate change.

To appreciate the impact of the climate crisis on children, one can let the numbers speak for themselves. According to UNICEF,

- **820 MILLION** children (over one-third of children globally) are currently highly exposed to heatwaves ...
- **330 MILLION CHILDREN** (1 in 7 children globally) are currently highly exposed to riverine flooding.
- **240 MILLION CHILDREN** (1 in 10 children globally) are currently highly exposed to coastal flooding ...

- Almost every child on earth (**>99 PER CENT**) is exposed to at least 1 of these major climate and environmental hazards, shocks and stresses. 2.2 billion children are exposed to at least 2 of these overlapping climate and environmental hazards, shocks and stresses.⁴

Besides their heightened behavioural, developmental, and physical vulnerabilities, children are among the least empowered to exercise their rights to information, to free expression and being heard, and to enjoying justice when their rights are violated. The key impacts of climate change on children include extreme weather and natural disasters, water scarcity and food insecurity, air pollution, vector-borne and infectious diseases, and adverse effects on mental health.

In addition, of all children, it is marginalised children who bear a disproportionate burden of the consequences of inaction on the environment, a situation which infringes, among others, the principle of non-discrimination. As the Office of the High Commissioner for Human Rights (OHCHR) puts it, '(c)limate change heightens existing social and economic inequalities, intensifies poverty and reverses progress towards improvement in children's well-being'.⁵ The OHCHR underscores the intersectional nature of these challenges by noting that '(c)limate change ... has a disproportionate impact on children with disabilities, children on the move, poor children, children separated from their families, and indigenous children. And girls may face heightened risks due to climate change.'⁶

It needs to be underlined as well that children in Africa in specific are especially exposed to the impacts of climate change. Of the 33 countries worldwide that UNICEF ranks as 'extremely high risk' for children, a disproportionately large number of them – 25 (or 75 per cent) – are in Africa.⁷ While it is critical, as UNICEF says, to view the 'climate crisis as a child-rights crisis', such a perspective requires further unpacking, given that children in different parts of the world are not all affected by climate change in the same way.

One notable consideration in this respect is that, while the top 50 per cent of states by income are responsible for 86 per cent of cumulative global CO₂ emissions, the children in low- and middle-income countries bear the brunt of losses and damage to health and human capital, land, cultural heritage, local and Indigenous Peoples' knowledge, and biodiversity due to climate change.⁸ As such, it would not be off the mark to argue that the climate crisis is, in particular, an *African* child-rights crisis. Moreover, this study is aware that 'demands for climate action have become increasingly associated with children and linked to broader notions of economic and social justice'.⁹

Human rights, climate change, development and disaster risk reduction, including relevant international instruments and processes, are inextricably linked. Therefore, a child-rights-based approach to climate change mitigation and adaptation is called for by the intersection of these various frameworks with human rights obligations. Such an approach entails that states are required to take affirmative measures to respect, protect, promote, and fulfil the human rights of all children and integrate their rights in all climate mitigation and adaptation policies and actions. The discriminatory effect of the climate change crisis on the basis of sex, disability, economic and social status, and other grounds is also evident.

1.2 WHY NOW?

The timing of this study is opportune for several reasons, chief of which is the fact that the climate crisis is accelerating, and, in so doing, contributing to the violation of the rights of the child in Africa in an unprecedented manner. The need to understand the nexus between climate change and child rights in Africa is thus urgent; equally urgent is the need to devise interventions, in this case through the mandate of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). Accordingly, this study seeks both to help address knowledge gaps in regard to the child-rights and climate change nexus, as well as to provide law- and policy-makers in Africa with guidance on a mounting crisis of extreme, far-reaching importance.

The study's timing is opportune for a further reason: applying a regional (that is, African-continental) lens to climate change is increasingly necessary. In general, the significance that the IPCC's reports have for climate change action cannot be overemphasised, as they serve as a basis for interventions by states individually and collectively. In particular, however, several of the reports' key findings – on equity, climate finance, food, urban areas, oceans, and climate governance – have immeasurable importance for the African continent.

In this regard, a notable improvement evident in the IPCC's most recent report is the introduction, for the first time, of regional chapters, which are accompanied in turn by regional fact sheets. This information serves to assist stakeholders – governments, regional bodies, the private sector, and others – in understanding how climate change is impacting on communities and what needs to be done to devise tailor-made and prioritised interventions.

This study is opportune, too, because it builds on recent developments both in research studies¹⁰ and in global and regional deliberation. The latter category includes, for example:

- the discussions and outcomes of COP27 in Egypt in 2022;
- the publication, on 28 June 2022, of the African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032);¹¹
- the decisions of the 41st Ordinary Session of the Executive Council as well as the 4th Mid-Year Coordination Meeting between the African Union, the Regional Economic Communities and the Regional Mechanisms (June-July 2022, Lusaka, Zambia);
- the developments around the 7th Pan-African Forum on Migration, under the theme, 'Addressing the Impact of Climate Change as a Key Driver to Migration and Displacement of Persons in Africa'; and
- the CRC Committee's General Comment No. 26 (2023) on children's rights and the environment with a special focus on climate change.

This study also took place against the backdrop of other related developments:

- The Conference of Parties (COP) negotiations are making headway. During COP27, state parties agreed for the first time to establish a fund on loss and damage, with further progress having been made in COP28 in 2023.
- In October 2021 and July 2022, resolutions on the right to a safe, healthy and sustainable environment were adopted by the UN Human Rights Council and the General Assembly, respectively.
- In March 2023, the UN General Assembly passed a resolution to ask the International Court of Justice (ICJ) to provide an Advisory Opinion on whether governments have 'legal obligations' to protect people from climate hazards and, more crucially, whether failure to meet those obligations could entrain 'legal consequences'. This is a key development in regard to the law and climate change.

1.3 HOW WAS THE STUDY CONDUCTED?

The main objective of this study is to ascertain the nature of the link between climate change and children's rights in Africa. Its specific objectives are to

- provide evidence-based analysis of the interconnectedness between climate change and key child-rights issues in Africa;
- identify legislative frameworks and policies or standards related to environmental and climate change regulation that could either hinder or foster respect, protection, and promotion of the rights and welfare of children; and
- recommend ways in which Member States, the African Union (AU), Regional Economic Communities (RECs), UN agencies, civil society organisations (CSOs), children's organisations, and other stakeholders could work more effectively in responding to the impact of climate change on children's rights.

A literature review shows that, to a significant extent, children are at the periphery of interest of climate change researchers. By contrast, as noted above, the present study aims to make children and their rights the centre of its enquiries. This aim has a number of implications for the underpinnings of the research and its outcomes.

First, the study hinges on the obligations that states have in terms of international law, in particular those emanating from the African Charter on the Rights and Welfare of the Child (ACRWC). Secondly, while the study seeks, and takes into consideration, the views of adult stakeholders, it also canvasses secondary sources on the views of children themselves.¹² Thirdly, the study questions literature on the subject that construes the climate crisis largely as an adult issue, as an issue of concern only to small island states, and as an issue mainly for developing states; it does so because its intention is to gain a clearer understanding of

the complexity of the link between climate change and children's rights in Africa.¹³

To achieve its objectives, the study collected data by employing two quantitative methods, namely a desktop literature review, as well as a questionnaire put to key informants from State Parties to the ACRWC, national human rights institutions (NHRIs), and CSOs. All the questionnaires had questions on child participation, and were provided in the four official languages of the AU.

Questions were categorised under different headings. The questions for states had seven sections, which covered the following:

- the adverse impacts of climate change on children and their rights (including multiple and intersecting forms of discrimination based on a combination of grounds, including age, disability, gender, race, colour, sex, language, religion, ethnic-minority status, nationality, and migration status);
- policy, legislation, and practice at the national level (including accountability for the implementation of commitments, as well as cross-cutting interactions between constitutions, child laws, climate change laws, and climate policies that improve the well-being and rights of children in the context of climate change, paying special attention to the increased vulnerability of children with disabilities, girls, children in poverty, and children in rural areas in mitigation and/or adaptation measures);
- adaptation and mitigation measures (including on disaster risk-reduction programmes and national action plans, early warning systems, nationally determined contributions (NDCs), the 'just transition', the right to culture, and climate-related migration and displacement);
- cooperation and collaboration;
- the role of various stakeholders (such as courts, NHRIs, local government, CSOs, the business sector, and child activists);
- international cooperation; and
- any other relevant information.

2. CONTEXT MATTERS

2.1 GENERAL

Africa's current realities, history, challenges, priorities, and opportunities should be taken into account in understanding, and finding solutions to, the climate crisis that children on the continent face. Such an undertaking is thus complex, dynamic, and, on occasion, liable to touch on contested ground; in short, context matters to it. Accordingly, this study is guided by a number of central premises and assumptions related to the African context. What follows is a non-exhaustive elucidation of some of these, which by and large are set out in no particular order of priority.

First, the starting-point of the study is that its focus is on the ACRWC. The study is anchored on the Charter, and the questionnaires conducted and the literature review undertaken place emphasis on it. Linked to the Charter is Agenda 2040, which includes Aspiration 9: 'Every child is free from the impact of armed conflicts and other disasters or emergency situations.'

Secondly, the study seeks to be representative and take cognisance of the relevant issues in all five regions of the African continent. For example, it would be wrong to assume that the climate change and child-rights challenges faced in the Sahel are the same as those in the Southern African Development Community (SADC). While similarities and shared narratives will be highlighted, differences will also be underscored, and the findings make a conscious effort to look at all five regions of the continent in their individuality as well as commonality.

Thirdly, much the same is true not only at the sub-regional level but also at the country level. The study thus aims to be mindful of the need to differentiate between African countries and their priorities. For example, South Africa depends on coal for 80 per cent of its electricity, whereas Ethiopia uses hydropower for more than 95 per cent of its grid power.

Fourth, the study takes heed of the positions of the AU in respect of climate change issues (for example, a common position for COP27 in Egypt or for COP28 in the United Arab Emirates), including the positions adopted in regard to diverse international instruments. This also inevitably entails reviewing the various positions of African countries on the topic, including positions taken on the elements and processes of the Paris Agreement.

Fifth, a key dimension of the 'African context' consists in the measures that states have taken at the domestic level, including legislative and policy measures with implications for the protection of children's rights in the context of climate change. Examples of policy measures include Sierra Leone's National Climate Change Policy 2021 of; Angola's National Strategy for Climate Change of 2017; The Gambia's 2050 Climate Vision; Benin's Climate Change Management Policy for 2030; Tanzania's National Climate Change Strategy 2021-2026; and the National Action Plan on Gender and Climate Change for Nigeria (2020).¹⁴ Apart from child-rights and human rights laws, legislative measures with a focus on climate change include Nigeria's Climate Change Act (2021); Mauritius's Climate Change Act 2020

(No. 11/2020); and Uganda’s National Climate Change Act (2021) and National Environment Act (2019).

Sixth, the top three economic growth areas in Africa in the last decade are also the main contributors to its carbon footprint. This consideration should reinforce the conversation about ‘just transitions’ for the continent and the differentiation between ‘luxury emissions’ and ‘survival emissions’.

Seventh, the importance of applying traditional knowledge to climate change mitigation and adaptation cannot be overemphasised. As such, its contribution to protecting children’s rights in the context of climate change should be given adequate attention.

Eighth, the study is cognisant of the fact that, because Africa accounts for roughly less than 4 per cent of global greenhouse gas (GHG) emissions, the rights and well-being of children on the continent are disproportionately impacted by climate change. In 2023, when the AU joined the G20 – countries whose collective GHG emissions at the time constituted 77 per cent of global emissions – the addition of its 55 Member States contributed an increase of only about 5 per cent to the group’s total emissions.¹⁵ As a result, the issue of ‘loss and damage’, as well as ‘common but differentiated responsibilities’, requires reflection.

Ninth, even though non-state actors, especially businesses, contribute to climate change, and to that extent may be responsible for the violation of the rights of the child in the context of climate change, discourse around the issue (as regards regulatory frameworks, accountability, and the like) has been limited on the continent.

Last but not least, relevant AU policy documents require scrutiny. In this regard, for example, the African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032) should receive attention.

In addition to the above, five further contextual issues have been singled out for elaboration below. These relate to synergies with the Sustainable Development Goals (SDGs); what a child-rights compliant ‘just transition’ entails; the importance of emphasising droughts and floods; the adoption of a gender lens; and intersectionality.

2.2 THE SUSTAINABLE DEVELOPMENT GOALS

The SDGs are of cardinal importance because they supplanted the Millennium Development Goals (MDGs) and, as their title indicates, are intended to achieve sustainable development.¹⁶ They refer to and use human rights language (for example in the preamble)¹⁷ in an attempt to marshal the political will of states to realise the set targets. The nexus between sustainable development and intergenerational equity is also strong,¹⁸ given that the SDGs continue with the theme of intergenerational equity first conceived more than 30 years ago.¹⁹

The SDGs are important for climate change. These 17 goals are an urgent call for action by all countries – developed and developing – in a global partnership. The SDGs recognise that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and spur economic growth, all while tackling

climate change and working to preserve the world's forests and oceans.²⁰

The 2022 SDGs report emphasises that climate-resilient development depends on societal choices and actions based on interaction between diverse stakeholders and on structures and processes characterised by knowledge diversity, inclusion, equality, justice, and ecosystem stewardship.²¹ Moreover, the SDGs pay attention to inequality and discrimination. For example, in keeping with the Convention on the Rights of Persons with Disabilities (CRPD), they acknowledge disability as a cross-cutting issue.²² At the same time, the SDGs guide climate-resilient development pathways that heighten social justice and well-being.²³ The Sendai Framework for Disaster Risk Reduction supplements efforts towards sustainable and resilient development under a changing climate.²⁴

2.3 A 'JUST TRANSITION' RESPECTING AND PROTECTING AFRICAN CHILD-RIGHTS

As stipulated in conventions such as the Paris Agreement, every country must address climate change by finding a balance between economic growth and high emissions. In this regard, a number of African countries have been vocal in maintaining that the 'just transition' to a low-carbon economy which the international community is pursuing should not work to the detriment of Africa's aspirations for a better, prosperous future for its people.²⁵ As Rwandan President Paul Kagame has said, 'We are not making a choice between environment and prosperity, but we are rather looking at how we combine both.'²⁶

Even in the developed world, there are debates about the impact of a 'just transition' to a low-carbon economy on gross domestic product (GDP). In the United States, for example, there is ongoing public discussion over whether policies like the Green New Deal would harm GDP.²⁷ However, these discussions and their outcomes would not have equal significance for the developed and developing worlds.

A 'just transition' to a low-carbon economy necessitates that investors and governments take into account the broader consequences of initiatives for the livelihoods of millions of people, especially children – for example, in respect of investments in education, health care, and social protection, among others. This approach should also pay close attention to the need to integrate climate adaptation, rather than mitigation alone, in Africa's development policy and investment goals. This argument is supported by the fact that Africa has the lowest carbon emissions per person in the world, such that, for example, an average American emits 23 times more carbon than an average Nigerian.²⁸

2.4 EMPHASIS ON DROUGHT AND FLOODING

Droughts and flooding are the two climate change-related disasters that affect the rights of the child in Africa the most.²⁹ Droughts affected more than 1.4 billion people between 2000-2019, with Africa being home to the highest number of droughts in the world, namely 134 – 70 of which occurred in East Africa.³⁰ It is estimated that a staggering 160 million children worldwide are exposed to severe and prolonged droughts.³¹ The predictions, moreover, are

that by 2040, one in four children will be living in areas with extreme water shortages, with the majority of such children in Africa.³² For example, in 2022, Niger, Sudan, and Burkina Faso were three of the top five countries in the world with high levels of exposure to drought.³³ Given the disproportionate impact of droughts on women and children (especially girls in respect of the right to food, education, health, sanitation, and safety), droughts in Africa are antithetical to children's rights.

At the Africa Climate Summit in September 2023, it was acknowledged that Africa accounts for 44 per cent of all severe droughts recorded globally in the past century. It was thus not surprising that, in recognition of this, the Summit adopted a common vision for drought resilience in the run-up to the following climate and desertification summits – the United Nations Framework Convention on Climate Change (UNFCCC) COP28 in November 2023 and the UN Convention to Combat Desertification COP16 in December 2023.

Much the same is true of flooding. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 11 countries were considered flooding hotspots in 2022, among them Chad, Côte d'Ivoire, and The Gambia.³⁴ In 2022, the Republic of the Congo, Chad, Liberia, Nigeria, and Niger were some of the countries in the world most affected by floods.³⁵

For example, a look at the impact of flooding on child displacement confirms the importance of emphasising this climate-related disaster in the African context. Out of a total of 19.7 million child displacements due to floods throughout the world between 2016 and 2021, Somalia, Ethiopia, South Sudan, Nigeria, and Sudan featured in the top 10 countries in absolute numbers. Even more tellingly, the list of top 10 countries for child displacements relative to child population includes no less than six African countries – South Sudan, Somalia, Niger, Republic of the Congo, Sudan, and Central African Republic.³⁶

Similarly, in the case of drought, a total of 1.3 million child displacements took place due to droughts between 2017 and 2021, with Somalia, Ethiopia, Angola, Burundi, Madagascar, and South Sudan listed among the top 10 countries worldwide in terms of absolute numbers affected; as for the top 10 countries relative to child population, the list included Somalia, Ethiopia, Burundi, South Sudan, Angola, and Madagascar.³⁷

Although other disasters that impact on the rights of the child in Africa (such as heatwaves, storms, and wildfires) are not outside the scope of this study, the statistics above indicate that drought and flooding should be prioritised as clear and present climate change-related threats affecting both large numbers of African countries as well as large numbers of African children. This prioritisation in turn warrants the development, in this study and beyond, of continental jurisprudence on the impact of drought and flooding on the rights of the child.

2.5 GENDER-SENSITIVE APPROACH

The gendered dimensions of climate change are prominent and cry out for attention. The impacts of climate change on women and girls in respect of safety, sanitation, health, nutrition, and educational attainment are severe. It is reported that almost 80 per cent of persons displaced as a result of climate-induced disasters are women and girls.³⁸ Where

drought leads to a shortage of locally available water, the distances that women and girls travel to fetch water increases, and with it, their exposure to the risk of violence.

Moreover, the compound effect of drought and COVID-19 on the rights of children, and girls in particular, in Africa has also been severe. For example, in Somalia, South Sudan, and Kenya, economic hardships have meant an increase in child marriage, an increase in cases of female genital mutilation, and a higher rate of girls dropping out of school.

As a result, the Committee's interpretation of the ACRWC in the context of climate change will continue to be gender-sensitive and -responsive.

2.6 INTERSECTIONALITY

As engagement with mitigation, adaptation, and other aspects of climate response increases, it becomes ever-clearer how important intersectionality is as a conceptual lens through which to understand and uphold child rights in the context of climate change.

An intersectional approach is that one examines how particular intersections of social, economic, cultural, and environmental injustices afflict particular groups of children in vulnerable situations (for example, children with disabilities; migrant, asylum-seeking, and refugee children; girls; ethnic or religious minorities; children living in poverty; and children deprived of a family environment).

Adopting an intersectional approach assists one in devising laws, policies and programmes that reveal and address the complex, individualised experience of children impacted by climate change, thereby helping to achieve more equitable outcomes.³⁹ Accordingly, climate action stakeholders – such as politicians, parliamentarians, policy-makers, practitioners, and members of the judiciary and treaty bodies – can and should apply an intersectional lens to children's rights in the context of climate change.

An essential step in this regard is to engage with children in order to draw on their deep knowledge of who and what is perpetuating or exacerbating their injustices, and to listen to their needs and solutions.⁴⁰ Another key aspect of using an intersectionality lens is collecting disaggregated data with a view to 'identify[ing] the differential effects of environment-related harm on children ... paying special attention to groups of children who are most at risk, and ... implement[ing] special measures and policies, as required'.⁴¹

3. CONCEPTUAL CLARITY

3.1 PRELIMINARY REMARKS

A number of concepts are important in this study. They are useful, for instance, for the purpose of understanding the nature of State Parties' obligations and the rights of the child in the context of climate change. As a starting-point, it is worth noting the following:

- According to Article 2 of the ACRWC, a 'child' is 'every human being below the age of 18 years'. Nevertheless, 'children', so understood, are not a homogeneous group, and often have significant differences based on age, maturity, vulnerability, and disability, among other things. It is critical to appreciate these differences when it comes to the design of laws, policies, and programmes.
- In terms of the AU's Africa Youth Charter (2006), 'youth or young people shall refer to every person between the ages of 15 and 35 years'. While the overlap of three years (15-17) between 'child' and 'youth' is notable, the significant age differences between 'child' and 'youth' should be kept in mind in the design and implementation of laws, policies, and programmes in the context of climate change.
- Any useful guidance that can be provided to states on children's rights and climate change needs to look beyond the field of international human rights law. Prime amongst these is the field of international environmental law; the field of international development is another.
- The concepts identified below are thus not intended to be exhaustive. Moreover, beyond providing workable definitions or description for the purpose of the study, the discussions are not aimed at resolving disagreement or contestation that may exist in the literature in respect of the concepts.

3.2 ADAPTATION, MITIGATION, AND NATURE-BASED SOLUTIONS

'Adaptation' has been defined as

the process of adjustment to actual or expected climate and its effects. In human systems, adaptation seeks to moderate or avoid harm or exploit beneficial opportunities. In some natural systems, human intervention may facilitate adjustment to expected climate and its effects.⁴²

'Mitigation' is 'human intervention to reduce the sources or enhance the sinks of greenhouse gases (GHGs) [or] human interventions to reduce the sources of other substances [with] an indirect effect on climate'.⁴³

‘Nature-based solutions’ are ‘[a]ctions to address societal challenges through the protection, sustainable management and restoration of ecosystems, benefitting both biodiversity and human well-being’.⁴⁴

3.3 BEST AVAILABLE SCIENCE

The science around the fact that human activity is responsible for the bulk of climate change has become clearer over the years. The recent conclusions of the IPCC affirm as much.⁴⁵ Other aspects of the science – and, to reiterate, this does not include the core fact that human activity is responsible for a changing climate – are less settled. Certain questions remain open for debate, such as ‘Is there a misplaced optimism on technology that is not yet developed, or not in use on scale, to resolve some of the problems of climate change?’ and ‘Is attribution science – on who contributed what to the problem – still a work in progress?’

In this study, we refrain from offering guidance on these and other similar science-based issues. As regards the core facts relating to the anthropogenic nature of climate change, the ACERWC accepts that the findings of some 270 leading scientists from all corners of the world, scientists who worked in a structured manner within the IPCC framework and reviewed close to thousands of studies, currently represent the best available science.

3.4 INTERGENERATIONAL EQUITY

At its core, the concept of intergenerational equity refers to the need to balance the interests of current and future generations in terms of resource use and availability, on the one hand, and the future state of the environment, on the other.

A number of UN declarations and multilateral agreements on environmental protection, sustainability, and climate change contain the concept.⁴⁶ For instance, the UN Secretary-General has described ‘[t]he sustainable development agenda [as being] deeply intertwined with issues of intragenerational equity and justice’. Likewise, the UNFCCC states that ‘[t]he Parties should protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities’.⁴⁷

The ACERWC has not yet directly addressed the relationship between intergenerational equity and the rights of the child as contained in the African Children’s Charter. Such a relationship could exist in respect of provisions such as Article 4 (best interests of the child); Article 5 (right to life, survival and development); Article 14 (right to health); and articles 9 and 12 (on the right to freedom of religion, culture, and language). The Committee has also not yet adopted a definition or description of the concept of ‘future generations’.

Still, increasingly, there are both hard law and soft law documents that make reference to ‘future generations’ – often without providing for a definition or description of the content of the concept. It may be argued, too, that equity in climate action requires, among others,

paying particular attention to the challenges faced by developing countries, children, indigenous communities, and future generations. Also, it is notable (as mentioned above) that the UNFCCC calls for state parties to protect future generations.

Furthermore, there are examples of domestic laws that make reference to future generations – South Sudan’s law on oil and gas is one such instance⁴⁸ – and the application of the concept in respect of human rights issues mostly emanates from court cases at the national level. Indeed, national courts have invoked the interests of future generations to frame and inform state obligations in cases related to climate change and environmental protection.⁴⁹

3.5 PRECAUTIONARY PRINCIPLE

In its most widely accepted form, the precautionary principle provides that ‘[w]here there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation’.⁵⁰

The precautionary principle and international human rights law (including children’s rights law) share a common foundation, on the basis of which the precautionary principle may influence the interpretation and application of human rights, while human rights law may justify (if not require in certain circumstances) the implementation of precautionary environmental measures.

The jurisprudence of the Inter-American Court of Human Rights and the European Court of Human Rights contains examples illustrating the use of the precautionary principle and its importance for the enjoyment of rights impacted as a result of environmental protection measures. However, an equivalent example is currently not present in the African human rights system.

3.6 HARM PREVENTION

The harm-prevention rule, which is commonly used in environmental law, does not lend itself comfortably to human rights discourse.⁵¹ This is so despite the fact that international law considers the rule as customary international law. The ICJ has indicated that the harm-prevention rule requires a state to ‘use all the means at its disposal in order to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State’.⁵² This has two prongs: first, introducing legislative and other measures to protect against significant transboundary environmental harm, and, secondly, ensuring ‘vigilance in ... [the] enforcement’ of these measures.

3.7 CLIMATE JUSTICE

The term 'climate justice' is used 'for framing global warming as an ethical and political issue, rather than one that is purely environmental or physical in nature'.⁵³ A focus on 'climate justice' is also often intended to acknowledge and address the disproportional effect that climate change has on communities in the Global South and those in vulnerable situations, despite the fact that they are often the least responsible for the problem. In other words, 'climate justice' is intended to 'address the root causes of climate change and in doing so, simultaneously address a broad range of social, racial, and environmental injustices'.⁵⁴

4. THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD

4.1 LOOKING BACK (AND AROUND) TO LOOK AHEAD

For more than 40 years, scientists have warned about the threat of climate change and global warming, the danger it poses to the planet's ecosystem, and the resultant impact it would have on human activity.⁵⁵ While the environmental law movement was quick to realise the threat and act proactively, the human rights law regime has been slower to respond.⁵⁶

The conversation at the global level about linkages between human rights and climate change is thus not an old one: much of it can be traced to the decade between 2000 and 2010. In 2005, the Inter-American Commission on Human Rights was approached with a request for relief for human rights violations of the Inuit community as a result of the United States's failure to adopt adequate GHG controls.⁵⁷ Two years later, the Small Island Developing States adopted the Malé Declaration on the Human Dimension of Global Climate Change, which became the first international agreement to recognise explicitly that 'climate change has clear and immediate implications for the full enjoyment of human rights'.⁵⁸

This was followed by two important developments in Geneva. First, in 2008, the UN Human Rights Council issued a resolution acknowledging that climate change 'poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights'. The same resolution requested that the OHCHR undertake a study on the topic, which was published in 2009. Even though the study found that climate change undermines the enjoyment of human rights, it reached the (subsequently criticised) conclusion that 'it is less obvious whether, and to what extent, such effects can be qualified as human rights violations in a strict legal sense'.⁵⁹ This position sat well with countries in the Global North which acknowledged that climate change interfered with the enjoyment of human rights but argued that the situation did not meet a high enough threshold to be described as a 'violation' of human rights.⁶⁰

In the last three years, as mentioned above, legal developments at the Human Rights Council as well as the General Assembly are expected to inform the work of the ACERWC. Moreover, the Advisory Opinion request made to the ICJ will inevitably inform the work of international and regional bodies, including the ACERWC. Human rights treaty bodies have also used their mandates in the so-called 'green turn' (see below). The following sub-sections articulate these three important issues in further detail.

4.1.1 THE RIGHT TO A CLEAN, HEALTHY, AND SUSTAINABLE ENVIRONMENT

Historically, it was in 1972 that the Stockholm Declaration on the Human Environment provided in its first principle that people have ‘the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being’.⁶¹

The ACRWC was not far behind in its recognition of the right, as it was adopted in 1981. In fact, the African Charter may be considered a trailblazer for many other regional instruments, such as the San Salvador Protocol to the American Convention on Human Rights (1988) and the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (also known as the Aarhus Convention) (1998).⁶²

In October 2021 and July 2022, resolutions on the right to a safe, healthy and sustainable environment were adopted by the Human Rights Council and General Assembly, respectively. The Council’s resolution was proposed by five of its member states – Costa Rica, the Maldives, Morocco, Slovenia, and Switzerland – and supported by 43 members of the same, with abstentions from China, India, Japan, and Russia. As for the General Assembly resolution, 161 states were in favour, none were against, and eight countries (one of which is African) abstained. Although the resolution was proposed by Costa Rica, the Maldives, Morocco, Slovenia, and Switzerland, it was later co-sponsored by more than a hundred countries, among them a number of African states. At the time of the recognition of the right to a healthy environment by the Human Rights Council (2021) and the General Assembly (2022), about 156 of the 193 member states of the UN had legally recognised the right. A good number of them are African countries.

There is literature arguing the case for the various advantages of the recognition of the right to a clean, healthy, and sustainable environment. Some of the advantages of the right include its comprehensive nature, as it covers both humanity and nature; its capacity to spur action in ways similar to the 2010 resolution on the right to water, which is credited for Mexico’s constitutionalisation of the right to water and for transforming water access in marginalised communities in Bangladesh, Costa Rica, Egypt, and other countries;⁶³ and its capacity to avoid the need to prove causation and in turn allow a lower threshold for victimhood. Moreover, in the words of David Boyd, the recognition ‘will act as a catalyst for those countries that have not yet recognized it’, and, in the case of those that already do, assist them in giving the right a higher priority.⁶⁴

A view shared by many is also that, since the UN resolution is not legally binding, it is difficult to envision litigation or other related action based solely on the resolution. In addition, while there are concerns that the right to a healthy environment could be in tension with the right to development, the concept of ‘sustainable development’ is expected to play a mediating role in the instances where such tensions arise.⁶⁵

The ACERWC agrees that the recognition of the right to a healthy environment holds promise in providing the Committee with an additional soft law basis on which to interpret the provisions of the ACRWC accordingly. For example, questions around a consistent approach to a state's jurisdiction in respect of climate change impacts, attribution, burden of proof, causation, victim status, vulnerability, and the nature of appropriate remedies for violations could gain in clarity. It remains to be seen, however, if the support for the two resolutions by the great majority of African countries will translate into an acceptance of the development of jurisprudence on it by the ACERWC (in the exercise of both the Committee's promotional as well as protective mandate).

4.1.2 REQUESTS FOR ADVISORY OPINIONS

Multiple international and regional organisations have been approached to pronounce on legal questions around climate change, including the International Tribunal on the Law of the Sea⁶⁶ and the Inter-American Court of Human Rights – the latter has been approached by Chile and Colombia to clarify the scope of state obligations to respond, individually and collectively, to the climate emergency.

However, the development most relevant to the ACERWC is the request made to the ICJ in March 2023 by a unanimously adopted resolution of the UN General Assembly.⁶⁷ The resolution asked the ICJ, in the relevant part:

(a) What are the obligations of States under international law to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for States and for present and future generations?

(b) What are the legal consequences under these obligations for States where they, by their acts and omissions, have caused significant harm to the climate system and other parts of the environment, with respect to:

(i) States, including, in particular, small island developing States, which due to their geographical circumstances and level of development, are injured or specially affected by or are particularly vulnerable to the adverse effects of climate change?

(ii) Peoples and individuals of the present and future generations affected by the adverse effects of climate change?⁶⁸

On 18 July 2023, the ICJ announced that it ‘has authorized the African Union, at its request, to participate in the advisory proceedings on the Obligations of States in respect of Climate Change’.⁶⁹ How the ACERWC should engage with these developments will continue to be on the Committee’s agenda. The Advisory Opinion of the ICJ, once issued, will have notable ‘legal’ weight and need to be taken into account by the ACERWC as relevant.

4.1.3 THE ‘GREEN TURN’ AND HUMAN RIGHTS

The notion of the ‘green turn’ refers to the increasing tendency for human rights treaty bodies (and others, including regional bodies) to undertake jurisprudential measures on climate change. The most notable one is the Human Rights Committee’s General Comment 36 (2019) on the right to life, which underscores the right to life with dignity and the state’s obligation to protect and prevent risk from, among other things, the harmful consequences of climate change. The Committee on the Elimination of Discrimination against Women,⁷⁰ along with the Committee on Economic, Social and Cultural Rights,⁷¹ has also adopted a General Recommendation (or Comment) linked to climate change. A more direct measure, however, has been taken by the Committee on the Rights of the Child, as it adopted General Comment 26 (2023) on children’s rights and the environment with a special focus on climate change.

Given that, of the nine core UN human rights treaties, only the Convention on the Rights of the Child (CRC) has a provision dedicated to protection against ‘the dangers and risks of environmental pollution’⁷² and the right to an education ‘directed to ... the development of respect for the natural environment’,⁷³ there is optimism that the recognition of the right to a healthy, clean, and sustainable environment could play a particularly significant role in respect of children’s rights.

Whether a similar approach could pay dividends in the context of the ACERWC needs closer consideration. Indeed, the connections between children’s rights and climate change (and the environment) have also received increased attention in continental forums in Africa. The discussion now turns to examine this in further detail below.

4.2 A CONTINENTAL LEGAL FRAMEWORK: A SNAPSHOT

An increasing number of legal frameworks are relevant to climate change in Africa. Since the focus of this study is on children’s rights, it is appropriate to prioritise the continent’s main human rights instrument for a brief discussion here.

The African Charter on Human and Peoples’ Rights (ACHPR), ratified by all African countries except Morocco, makes a number of pronouncements on climate change and human rights. In fact, it is the first binding international treaty to recognise the people’s right to ‘a general satisfactory environment favourable to their development’.⁷⁴ On this basis, the treaty body responsible for the ACHPR – the African Commission on Human and Peoples’ Rights – has undertaken a number of tasks pertaining to climate change that the ACERWC could emulate and build upon.

For example, it has exercised its mandate under Article 45(1)(b) of the ACHPR⁷⁵ and adopted resolutions on themes that address the topic of climate change and human rights.⁷⁶ It has also employed articles 22 and 24 of the Charter in calling upon the AU Assembly to pay attention to ‘special measures of protection for vulnerable groups such as children’; to guarantee the inclusion in climate change negotiations of requirements such as ‘free, prior and informed consent’; and to ensure ‘preventive measures against forced relocation, unfair dispossession of properties, loss of livelihoods and similar human rights violations’.⁷⁷

Furthermore, as is highlighted below,⁷⁸ the African Commission has entertained petitions alleging violations of the right of all peoples to an environment favourable to their development and of the right to highest attainable standard of health.⁷⁹ The Commission has also recommended that a study be carried out on climate change and human rights in Africa,⁸⁰ a first draft of which was circulated for public input in October 2023.

The legal framework applicable to climate change⁸¹ as well as the relevant institutional role-players⁸² has expanded over time. Indeed, policy frameworks such as Agenda 2040, Agenda 2063 (which envisions ‘[a] prosperous Africa based on inclusive growth and sustainable development’),⁸³ the African Union Green Recovery Action Plan 2021-2027 (which aims to ‘strengthen collaboration ... for the Continent’s sustainable and green recovery’),⁸⁴ and the AU Climate Change and Resilient Development Strategy and Action Plan (2022-2032)⁸⁵ interact with legal frameworks and have implications to which the ACERWC will attend.

For example, although the AU climate change strategy above is not binding on AU Member States, its aim to develop resource-efficient industries and make key sectors such as food systems and water resources climate-resilient would inevitably have human rights implications.⁸⁶ It seeks too, among other things, to strengthen climate literacy, which has implications for the right to education, as well as enhance early-warning systems, which has a bearing on the rights of children with disabilities. It also underscores the need to build on indigenous knowledge, which would have implications for the rights of indigenous children.

One of the reasons why climate-related policies and laws are fragmented (and perhaps not well implemented either) is that climate change – an issue which is cross-border by nature – often does not respond easily to domestic laws and policies alone. It appears, then, partly in acknowledgment of this reality, that certain RECs – in particular, SADC, the Common Market for Eastern and Southern Africa (COMESA), the Intergovernmental Authority on Development (IGAD), and the Economic Community of West African States (ECOWAS) – have adopted adaptation and mitigation frameworks.

Nevertheless, the success of these frameworks remains to be seen. For example, taking into account the significant adverse impact that climate change continues to have in West Africa, ECOWAS adopted a regional climate change strategy in 2022.⁸⁷ The strategy aims to support its Member States in their efforts to achieve the goals of the Paris Agreement. Six main objectives form its core. These are, in short, to ensure compliance with the Paris Agreement; strengthen capacity to implement climate policy; improve capacity to manage climate risks; improve cooperation among Member States; inculcate an institutional and

organisational 'paradigm shift' on climate change action; and embark on promoting new approaches to mobilising climate finance.⁸⁸

That being said, the ECOWAS strategy is devoid of any direct human rights or justice-related terminology. In fact, the absence of any focus on vulnerable groups, especially children, has been highlighted as one of its shortcomings. A few other criticisms are that it has come a little too late, as countries in the region have already developed their NDCs. It is notable, for example, that the East African Community developed its Climate Change Master Plan in 2012. The strategy also does not set a goal of net zero by 2050 for the countries in the region.

Despite some of these limitations, the strategy holds potential for child-rights engagement. The ECOWAS Secretariat plans, inter alia, to integrate mitigation and adaptation goals in regional policies and sectoral targets, which could serve as an entry-point for the ACERWC.

4.3 THE AFRICAN CHILDREN'S CHARTER AND CLIMATE CHANGE

The ACRWC has been ratified by 51 African countries, with only four exceptions (Morocco, Somalia, South Sudan, and Tunisia);⁸⁹ moreover, it has been a subject of only very minimal reservations by State Parties.⁹⁰ Against this backdrop, it is to be noted that the ACRWC is one of the few human rights instruments in the world that explicitly mentions the environment: Article 11(2)(g) on education indicates that '[t]he education of the child shall be directed to ... the development of respect for the environment and natural resources'.

However, *multiple* rights in the Charter are relevant for the purpose of addressing the impact of climate change on children's rights in Africa. These include articles 1 (obligations of State Parties), 3 (non-discrimination), 4 (best interests), 5 (right to life, survival, and development), 6 (right to a name and nationality, and birth registration), 7 and 4(2) (right to express views), 11 (right to education), 13 (children with disabilities), 14 (right to health), 20(2) (right to assistance or social protection), 23 (refugee children), 24 and 25 (family environment), 22, 27, and 29 (right to protection from exploitation), and 31 (responsibilities of the child).

In addition, the drafters of the Charter appreciated the impact of floods, earthquakes, wildfires, and the like on the enjoyment of children's rights. This can be gleaned from the Preamble of the Charter, which states:

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 he/she needs special safeguards and care ...

Disaster and hunger are mentioned explicitly here. While it is true that the preamble of a human rights treaty does not give rise to rights and obligations, it does have value for understanding and interpreting the treaty's substantive provisions. In the case of the Charter, for example, one of the areas of perpetual challenge is to make a direct and explicit link between disaster-preparedness and -reduction legislation, on the one hand, and child rights, on the other. The ACERWC will take measures to bridge this gap, including by drawing inspiration from the Preamble to the Charter.

Furthermore, Article 1(2) states that '[n]othing in this Charter shall affect any provisions that are more conducive to the realization of the rights and welfare of the child contained in the law of a State Party or in any other international Convention or agreement in force in that State'. Reliance on the 'more conducive' approach could have multiple spin-offs for the work of the ACERWC on climate change and children's rights. Notably, it would serve as a vehicle by which to invoke instruments other than the ACRWC that contain obligations on states that are more explicit in respect of climate change and the environment than those within the African Children's Charter itself.

For example, the CRC requires state parties to take into account the 'dangers and risks of environmental pollution' in their measures to implement the child's right to the highest attainable standard of health.⁹¹ Similarly, African state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR), like others, have to take appropriate measures on the 'improvement of all aspects of environmental and industrial hygiene', again in order to uphold the right to the highest attainable standard of health.⁹²

Moreover, there have been numerous instances where the principle of the best interests of the child and the prohibition on discrimination have been employed, at times successfully, to uphold the substantive as well as procedural rights of the child in the context of climate change. The best-interests principle has been used, for example, to argue that environmental impact assessments should include climate change impact assessments; to underscore the need to listen to children in the development and implementation of climate action interventions; and to challenge mitigation targets that are not ambitious enough to uphold the rights of the child. It may also be worth posing the question of whether the reference in Article 4(1) of the Charter to making children's best interests 'the primary consideration' instead of 'a primary consideration' has any significant added value in the context of climate change. Some of these issues are reflected upon in the sub-sections that follow.

An important yet often neglected right, including in the context of climate change, is contained in Article 12, dealing with leisure, recreation, and cultural activities. Climate change does affect children's right to play – for example, because playgrounds are no more as a result of flooding, or because wildfire compromises an indigenous community's cultural activities. Likewise, it is often difficult to uphold the 'right of the child to rest and leisure, to engage in play and recreational activities' if such a child has been displaced as a result of climate change.⁹³

Another strength of the ACRWC in regard to climate change is that its Article 4(2) provides for the rights of children to have their views given due consideration in decisions affecting them. Children's right to participation is critical for protecting their rights in the context of

climate change, as well as for enabling them to play an agentic role in the implementation of climate action. By the same token, it must be noted that – despite its importance, including in the context of climate change – there is no right of access to information under the ACRWC. Access to climate change-related information is critical both for climate action as well as for upholding rights in the context of climate change.

By way of illustration, in 2021 UNICEF launched a ground-breaking report on its Children’s Climate Risk Index, which ‘provides the first comprehensive view of children’s exposure and vulnerability to the impacts of climate change’.⁹⁴ In an unusual but highly commendable fashion, the report’s executive summary was made available beyond the common English and French versions to include Hausa, Swahili, and Arabic.⁹⁵ This should not be surprising, given that 25 of the 33 countries that have been ranked as ‘extremely high risk’ for children are in Africa.⁹⁶ This is a compelling report, as it is one of the first from a UN agency – in this case, an agency that specialises in realising the rights of child worldwide – to underscore the disproportionate effects of climate change on children in Africa.

The following sections highlight a select number of rights contained in the Charter that have significant traction and relevance in the context of climate change. The rights identified are by no means intended to be exhaustive.

4.3.1 NON-DISCRIMINATION

Article 3 of the Charter provides that

[e]very child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child’s or his/her parents’ or legal guardians’ race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

It is implied that discrimination against children can lead to a violation of their rights. For example, early warning systems that have not taken into account the rights of children with disabilities (which in effect is discriminatory against them) could lead to a violation of their rights in the context of climate change – similarly so in cases where children living in poverty are overlooked. This raises the question of whether climate-related laws and policies that fail to take the needs and rights of such children can be said to discriminate (as per Article 3) on the basis of ‘fortune’ or of ‘socio-economic status’.

More widely, the need for compliance with the Charter’s non-discrimination provisions is supported by the CRC Committee’s observation that the impact of climate change ‘has a discriminatory effect on certain groups of children, especially indigenous children, children belonging to minority groups, children with disabilities and children living in disaster-prone or climate-vulnerable environments’.⁹⁷ Indeed, there is plentiful evidence to show that climate change tends to harm the ‘most vulnerable children first, hardest, and longest’.⁹⁸

Nevertheless, discrimination against children in climate-related contexts may take complex

forms and thus be less than starkly evident to discern. For instance, while discrimination on the basis of race or ethnicity is prohibited by the ACRWC, the relevance of this prohibition to climate change requires close attention. For example, there is an argument that so-called 'sacrifice zones' – by definition, regions rendered dangerous, and even uninhabitable, due to environmental degradation – 'are in effect, "racial and ethnic sacrifice zones"'.⁹⁹ These arrangements often occur in settings where the primary inhabitants of such zones have been subjected to historical and contemporary racial and ethnic subordination.¹⁰⁰

One key implication of these reflections is that they underline the value of adopting an intersectional analytical approach and, in practical terms, collecting disaggregated data – the latter is critical in developing law, policy and programme options aimed at addressing the differential effects of climate change on various categories of children.

Lastly, in regard to access to information on mitigation measures and climate impacts, instances where children (or, indeed, different categories of them) have limited access to information compared to adults can be assessed through a discrimination lens. In regard to access to remedies for children who have been harmed as a result of transboundary climate change, an important consideration would be to provide for remedies without discrimination on the basis of nationality or domicile.

4.3.2 THE BEST INTERESTS OF THE CHILD

The CRC Committee has underscored that 'the best interests of the child' are a substantive right, a rule of procedure, and an interpretive tool.¹⁰¹ A similar position is taken in the ACERWC's jurisprudence. Since children's best interests are 'the primary consideration', as explicitly provided in Article 4(1) of the Charter, state parties to child-rights instruments have to take these interests into account when making decisions that result in environmental harm or, in the context of this study, climate change effects. This also means that climate change instruments, such as national adaptation plans, that do *not* make children's best interests the primary consideration will fall short of the Charter's requirements.

Given the high threshold requiring State Parties to the Charter to make the child's best interests 'the primary consideration' in all actions concerning children, it should be a requirement that the development of policies and projects that may affect children in the context of climate change has to be accompanied by a 'child-rights impact assessment'. Such an assessment would examine the impact on children of the proposed measures and make recommendations for alternatives or improvements. It could be argued too that once such measures are implemented, authorities should evaluate their actual impact on children and their rights. The application of the best-interests principle could also play a protective role in thematic issues, such as in a context where children are in a climate-induced migration but do not qualify to benefit from refugee law standards such as 'fear of persecution'.

In fact, given financial resource limitations, and with a view to minimising fragmentation and addressing concerns about parallel processes, it would be desirable to integrate child-rights, human rights, and environmental impact assessments in a single process.

The role that the best-interests principle plays as a procedural positive obligation incumbent on states is a critical one. In this respect, the principle would require children's rights to be considered when the climate and environmental obligations of different actors and environmental decision-making processes at the national and international levels are defined.¹⁰² For example, consideration of the best interests of the child in decision-making on adaptation and mitigation measures would help clarify the obligations of states under Article 4(2) of the Paris Agreement, which contains an open-ended due diligence obligation.

Outside of the African continent, there are examples of instances where authorities, including the judiciary, have explicitly indicated that they do not have an obligation to consider children's best interests in environmentally related decisions. A case in point is a decision by a full bench of the Federal Court in Australia, where '[i]n 2022, the court accepted the federal government's argument that it has no duty of care for children, and that the best interests principle is not something it ought to consider when making decisions about the environment'¹⁰³ and when exercising its authority under the **Environment Protection and Biodiversity Conservation Act of 1999**.

Article 4(1) of the ACRWC should be interpreted in such a way as to anticipate such risks and ensure that, where states' environmental policies or measures are liable to affect children's rights, the best interests of children are indeed *the* primary consideration.

4.3.3 THE RIGHT TO LIFE, SURVIVAL, AND DEVELOPMENT

The enjoyment of the right to life, recognised in Article 5 of the ACRWC, can easily be compromised as a result of climate change impacts. For example, floods can and do kill children. However, as underscored by the literature on the topic, interference with the enjoyment of a human right is not necessarily equivalent to violation of a legal obligation pertaining to that right – in this case the right to life.¹⁰⁴ A flood that kills a child deprives a child of his or her human rights to life but for it to constitute a violation of a human rights law, 'the interference with the enjoyment of human rights must be traced to action or inaction by an entity with legal obligations with respect to the human rights, whose action or inaction was inconsistent with those obligations'.¹⁰⁵

There is already a sound body of jurisprudence on the responsibility of the state in respect of pollution (for example, from the use of biochemical fertilisers) that leads to loss of life.¹⁰⁶ For example, the UN Human Rights Committee has affirmed that states are responsible for failing to protect individuals from the deadly effects caused by the environmental harm resulting from the use of biochemical fertilisers. In Brazil, in a situation where the government allowed the construction of a road and the granting of mining licences on the Yanomami's indigenous land, it was found by the Inter-American Commission on Human Rights (1988) that the state violated the Yanomami's human rights, including the right to life, because the work led to the introduction of a number of infectious diseases to which the people had previously not been exposed.¹⁰⁷ In the context of Russia, after mudslides devastated the town of Tyrnauz, the European Court of Human Rights held that Russia had violated its obligation to protect against threats to the right to life by failing to maintain observation posts and dams.¹⁰⁸

However, the same cannot be said of the violation of the right to life in the context of climate change events. After all, one of the central aims in applying a rights-based approach to climate change is to identify the rights-holders and their entitlements, as well as the corresponding duty-bearers and their obligations. Based on this, the human rights approach capacitates rights-holders to make their claims, whereas duty-bearers are expected to meet their obligations. When this approach is applied in the context of the climate change impacts that affect the right to life of children, a few complex questions need to be considered.

While it is difficult to argue that climate change impacts (floods, droughts) that result in loss of life lead to an automatic claim against the state, it is possible that where due diligence was not exercised by a state, such a violation can be established. Although accountability for the violation of the right to life in slow-onset events might be more difficult to ascertain than in sudden-onset events, in respect of adaptation measures – where a state knew or ought to have known of the risks of adverse impacts of climate change on children and did not undertake the necessary adaptation measures to the best of its ability – accountability for violating the right to life might ensue.¹⁰⁹ More practically, for example, a State Party to the African Children’s Charter that did not provide public access to environmental information that enables children to understand how environmental harm may undermine their rights, including the right to life, could be held accountable.

In regard to non-refoulement obligations, a leaf could be taken from the Human Rights Committee. In *Teitiota v New-Zealand*,¹¹⁰ an individual (with his wife and children) seeking asylum from the effects of climate change in his country of origin (Kiribati) argued that the rise in sea level and other effects of climate change had rendered Kiribati uninhabitable for all its residents. The Committee found a non-violation of the right to life, but still indicated that there may be instances where non-refoulement obligations could be violated if individuals facing the adverse effects of climate change are returned.¹¹¹

The less complicated aspects for accountability are instances where children’s right to life is violated because children (and /or their families) are involved as child human rights defenders in the context of climate change. According to a 2018 report, ‘[i]n every country and every community there are women and men, girls and boys, courageously speaking out and taking action’.¹¹² Generally, in a number of countries, environmental human rights defenders face a high risk of reprisal. In fact, since 2015, there has been an increase in the numbers of killings of individuals working to protect their natural environment from the harm inflicted by both legal and illegal operations.¹¹³ While not common, it is not unheard of for children’s right to life to be violated for speaking up for environmental or climate justice.

The obligations of State Parties under Article 5(2) of the Charter are to ensure the survival, protection and development of the child ‘to the maximum extent possible’. As in the case of other human rights treaties,¹¹⁴ State Parties to the ACRWC have a limited degree of discretion to determine appropriate levels of climate change or environmental protection relative to other social goals.

4.3.4 CHILDREN'S RIGHT TO PARTICIPATION

The ACRWC contains a somewhat limited child participation provision. Article 4(2) provides that

[i]n all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, an opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law.

A restrictive reading of this provision suggests that, as an obligation, children's views are to be heard only in 'judicial or administrative proceedings affecting the child'. However, in recognition of the fact that children's voices are a powerful force for effective implementation of the Charter, the ACERWC has adopted a broader view of their participation. This approach affirms that children's views are relevant not only in the area of custody, adoption, and child justice, but also in other areas (such as the development and implementation of child-rights policies or national climate adaptation plans), and should be sought in a proactive manner and given due weight.

In the context of climate change, the IPCC too found that governance approaches which are inclusive, equitable, and just lead to more effective and sustainable adaptation outcomes.¹¹⁵ This should be read, where appropriate, as entailing the inclusion of children's voices in the implementation of measures for addressing climate change – for example, 'by providing invaluable insights into issues such as the effectiveness of early warning systems for environmental hazards'.¹¹⁶

Human rights treaty bodies provide multiple lessons that could be learnt in improving states' engagement with children on issues of climate change. For instance, the Government of Mauritius has been requested to provide information on measures taken to

[e]nsure that the special vulnerabilities and needs and views of children, including children with disabilities, are taken into account in the development of policies and programmes concerning climate change and disaster risk management and the activities of the National Disaster Risk Reduction and Management Council.¹¹⁷

Similarly, it has been recommended that the Government of South Sudan

[i]nitiate dialogue with communities and local governments on the effects of climate change and build their resilience to those effects, ensuring that children's particular vulnerabilities, needs and views are considered in developing policies and programmes to address climate change and disaster risk management, including in operationalizing the National Environmental Policy (2015-2025).¹¹⁸

Conversely, there are also numerous examples of cases where children's views have not been given due consideration in climate change processes. For instance, organisations like Save the Children lamented the fact that although the Africa Climate Summit, held in 2023, involved the participation of children, the outcome document, entitled 'The African Leaders Nairobi Declaration on Climate Change and Call to Action',¹¹⁹ did not reflect children's participation.¹²⁰ The importance of the Declaration cannot be overemphasised, as it is intended to serve as a basis for Africa's common position at COP28.

There are at least two ways in which State Parties could be proactive in facilitating meaningful child participation in climate change issues. First, noting the important roles that CSOs and child-centred human rights institutions (as in Mauritius)¹²¹ play in enabling children's voices to be heard, State Parties could continue to explore means of creating conducive environments for child participation. Secondly, they could institutionalise mechanisms to facilitate children's representation on negotiating teams at bilateral and multilateral climate change conferences.

4.3.5 THE RIGHT TO ACCESS INFORMATION

While Article 4(2) of the Charter contains the right of the child to have his or her views given due consideration, and other provisions affirm, among other things, the right to freedom of expression¹²² and association,¹²³ there is (as noted) no right to access to information in the Charter.¹²⁴ This is so despite the fact that access to climate-related information is critical both for climate action and for upholding children's rights in the context of climate change.

Access to information¹²⁵ is essential not only for children, but also for their parents and communities. Such information, at a minimum, should raise children's awareness of the effects of climate change on their rights, inform them of mitigation and adaptation measures, and facilitate access to remedies. State Parties to the ACRWC should thus seek to disseminate accurate information on the environment, including, for example, information on measures that children and their families can take to manage risks in the context of climate change-related disasters.

The development of a right for children to access information in the context of climate change is linked to states' general access-to-information laws and policies. In this regard, it is worth reviewing the Environmental Democracy Index's assessment of African countries. The Index measures country-specific realisation of the right to access information on environmental protection.¹²⁶ It tracks progress in enacting national-level laws and regulations (though it

does not measure implementation),¹²⁷ and does so by using internationally recognised guidelines developed by the UN Environment Programme (UNEP).¹²⁸

Of the 70 countries that have been assessed by the Index, close to 15 are African countries. The classifications are 'very good', 'good', 'fair or limited', and 'poor'. Although no African country has been classified in the 'very good' category, Cameroon, South Africa, and Zimbabwe are ranked as 'good'. Benin, the Democratic Republic of Congo (DRC), Ethiopia, Gabon, Ghana, Kenya, Madagascar, Nigeria, and Tanzania are in the 'fair or limited' category, while the Republic of the Congo and Namibia are in the lowest category, namely 'poor'.¹²⁹ The improvement of these situations would go a long way in allowing children access to information on the environment, including on climate change.

Additionally, some states incorporate a citizen's right of access to information through reference to a global or regional document such as the ACHPR or the Universal Declaration of Human Rights (UDHR). The AU has developed model laws on access to information¹³⁰ which should assist states in developing their domestic laws. Countries in Africa with a constitutional right of access to information include Burkina Faso, Cabo Verde, Ghana, Madagascar, Central African Republic, DRC, Egypt, Eritrea, Guinea-Bissau, Malawi, Morocco, Republic of the Congo, Seychelles, Somalia, and Zambia. Countries with other legal provisions for access to information include Côte d'Ivoire, Liberia, Nigeria, Sierra Leone, Sudan, and Togo.

In the absence of the 'right to seek, receive, or impart information' in the Charter, the ACERWC will need to rely on interpretation (for example, via the best-interests principle). Also, it might need to invoke the 'more conducive environment' clause (Article 1(2)) of the Charter to look for the right 'contained in the law of a State Party or in any other international convention or agreement in force in that State'. As was the case with the Inter-American Court of Human Rights, there is a need in Africa for regional jurisprudence that affirms the significance of the right of access to information based on a presumption of disclosure. Failure to disclose climate change or environmental information should be in accordance with legally stipulated restrictions. In the absence of a national law providing such restrictions, the Inter-American Court of Human Rights demanded disclosure of the information.

4.3.6 THE RIGHT TO BE PROTECTED FROM VIOLENCE

Climate change is a threat-multiplier. In general, children's vulnerability to violence increases in the context of disasters, including those which are climate-induced. The Charter's entire gamut of protection provisions is implicated in this, including articles 5 (right to life, survival, and development), 6 (right to a name and nationality, and birth registration), 13 (children with disabilities), 15 (child labour), 16 (torture and cruel inhumane treatment), and 22, 27, and 29 (right to protection from exploitation).

Indeed, human rights bodies have recognised the links between violence against children and environmental conditions, and taken note of how natural disasters and chronic

emergencies affect those 'living in ... disaster-prone areas or ... toxic environments'.¹³¹

As an example of the link between climate change and violence against children, UNICEF has found that climate change can increase vulnerability to child marriage, noting that a 10 per cent change in rainfall was correlated with a 1 per cent increase in child marriage.¹³² Similarly, the Government of Malawi observed that floods in 2015 led to a high risk of child marriage and human trafficking, including child trafficking.¹³³ In the same vein, it has been reported that 'refugee outflows increase by 1.9 percent for each percentage increase in acute hunger'.¹³⁴ As the lessons of history show, wars, economic crises, and hunger often compel people to migrate en masse in search of safety and a better life, in the process of which they expose themselves to a high risk of violence.¹³⁵ By a similar logic, because women and girls are forced into prostitution, an increased HIV-prevalence exists in drought-ridden and climate change-impacted areas of rural Africa.¹³⁶

The impact that climate change has on violence against children is not gender-neutral either. A study on the effects of drought on children and women in Somalia found that no less than 25 per cent of respondents reported an increase in the prevalence of gender-based violence due to climate change.¹³⁷ Violence against girls included child marriage, female genital mutilation, sexual assault, and domestic violence. Notably, 66 per cent of respondents indicated that there were no child-protection or gender-based violence services.¹³⁸ This also highlights the effect that geographical location has on the availability of services. For example, in regard to Chad, Sudan, Eritrea, South Sudan, and Somalia, it has been observed that where drought contributes to violence against children, this typically occurs in arid areas where government presence is weak and service delivery, low.¹³⁹

However, a word of caution is needed. It is important to note that research is still in its early stages when it comes to understanding precisely how climate change and environmental degradation relate to violence against children.¹⁴⁰ The general perception that climate change impacts increase violence against children mostly holds; still, more nuance is needed in order to take into account local, cultural, and socio-economic contexts. In addition, differences in vulnerability, exposure, adaptive capacity, reporting mechanisms, and legal responses should be taken into consideration. An oft-mentioned example is the observation how while child marriage increased during sudden periods of droughts in sub-Saharan Africa, it led to a decrease in the context of India.¹⁴¹ Despite these differentiations, a literature review by Thurston et al.¹⁴² has not found a decrease in violence against women and girls in the aftermath of a natural hazard.

Some of the limitations on understanding climate change and violence against children arise from the geographical non-diversification of the studies conducted on the topic. For example, in respect of child marriage and its relationship with climate and environmental hazards, there is an overwhelming amount of literature from Bangladesh.¹⁴³ The same cannot be said of research on the topic in the context of Africa.

To turn to the question of responses to violence against children, a relevant notion is that of disaster risk reduction (DRR), which refers to 'preventing new and reducing existing disaster risk and managing residual risk'.¹⁴⁴ DRR plans often acknowledge that disasters

lead to an increased risk of violence, although the literature notes that it is difficult to find case studies 'where integrated approaches to VAC [violence against children] have been deployed as part of a country's emergency preparedness and response planning, or where the results of such planning have been assessed'.¹⁴⁵

Be that as it may, the presence of locally and culturally relevant interventions to prevent and address violence against children in the aftermath of disasters is important. The literature provides few illustrations from Africa, but good examples are afforded by other parts of the world such as Tonga, Papua New Guinea, and Indonesia. Datzberger et al. highlight that

following a cyclone, villages in Tonga created community childcare initiatives to prevent community violence, drawing on 'traditional' cultural values (OCHA, 2014). After a drought in Papua New Guinea, children were protected from sexual violence due to the role of joint family structures and groups of children going to collect water, rather than travelling alone (Save the Children, 2015). Muzenda-Mudavanhu (2016) explored children's participation in DRR efforts, providing some successful examples, such as in the Philippines, where children worked together with adults to restore degraded mangrove ecosystems, resulting in livelihood gains.¹⁴⁶

The identification and amplification of similar examples in the context of Africa can contribute to preventing and addressing violence against children.

It is also often the case that the literature on the nexus of climate change and violence against children is slanted towards a few extreme weather events. Floods and drought – two of the most critical of such events – get the majority of the coverage in the literature; conversely, it can be difficult to find evidence on other climate-related shocks, such as heatwaves and wildfires. These limitations apply as well to the profile of the perpetrators of violence. For example, while there is research to suggest that tsunamis or earthquakes contribute to a rise in violence against children, mainly via family members who have experienced loss and emotional stress,¹⁴⁷ it is not clear if the same is true of droughts and floods.

Another limitation in the literature, one with especially pertinent implications for law- and policy-making, is the tendency to reduce 'gender' to mean 'women and girls' only. This approach risks paying little to no attention to violence against boys in the context of climate change. As a result, laws, policies, and programmes (as well as research) often fail to capture the specific vulnerabilities and exposure of boys to violence.

For example, it is worth investigating whether child labour and trafficking are the main forms of violence against boys that State Parties should target for intervention (or if there are others). A further issue is whether there are any notable differences in boys' abuse and exploitation in the case of climate change impacts as opposed to other kinds of environmental degradation (pollution or biodiversity loss).

Moreover, interventions aiming to address violence against children in a rights-based manner should enquire into the root causes of violence, where the majority of perpetrators might be men or boys. In this respect, State Parties to the ACRWC should actively engage with boys (and men) to devise effective legislative, administrative, and other measures.

Still on the subject of perpetrators, multiple reports on disasters have linked the increased vulnerabilities of women and girls in these situations to the activities of non-state actors who are involved in peacekeeping or humanitarian efforts. One example is the case that arose when UN peacekeepers in the Central African Republic were accused of sexually exploiting and abusing girls, reportedly in exchange for giving them food.¹⁴⁸ Another was the so-called 'sex-for-jobs' scandal, in which staff of the World Health Organization (WHO) were alleged to have engaged in sexual exploitation and abuse during the 2018-2020 Ebola outbreak in the DRC, prompting the WHO to appoint an independent commission to investigate the matter.¹⁴⁹ Where incidents like these occur, the accountability mechanisms should be informed by the African Children's Charter.

It should be noted, too, that, as happens elsewhere in the world, not all climate actions in Africa are compliant with children's rights standards, and that there are numerous examples of children suffering unintended harm due to poorly planning or execution of these actions. For instance, concerns have been raised about the exploitation of children in the DRC in the supply chains of green technologies, such as in the mining of cobalt to produce the lithium-ion batteries that power electric vehicles.¹⁵⁰

In conclusion, preventing and addressing violence against children in the context of a climate crisis requires multiple targeted rights-based interventions, such as investing in disaggregated data systems; having a strong legal framework; implementing programming that engages with gender-based violence in emergencies; having a climate-responsive social protection system (see below); and availing remedies for violations not only by state actors but also by non-state actors and private individuals.

4.3.7 THE RIGHT TO SOCIAL PROTECTION

There is ample evidence affirming the important role that social protection programmes play in protecting persons in vulnerable situations from destitution and economic shocks such as those associated with climate impacts.¹⁵¹ Nevertheless, the implementation of the right to social protection through the adoption of 'social protection floors ... [ensuring] basic income security and access to essential services for the whole population'¹⁵² remains a work in progress despite its potential to help uphold the rights of children, especially in Africa.

The lack of social protection systems for children affected by climate-induced impacts is thus widespread. For example, the International Labour Organization (ILO) reports that a majority of children affected in the food crisis of 2022 lived in the 67 countries where there is 'no national statutory cash benefit'.¹⁵³

While the obligation to provide social protection to children depends on the resources and

the circumstances of the child, as well as national conditions and means (as per Article 27(3) of the CRC), the return on investment that it affords to children is immense. Among other things, social protection systems assist their emotional and intellectual development, as well as help address the non-irreparable impacts of climate change on them, such as stunting.¹⁵⁴

In Africa, there are few examples of social protection systems that factor in climate-related risks. One such case, though, is the Government of Ethiopia's flagship Productive Safety Net Programme. In 2021, it was revised so as to shift from targeting districts with a history of food insecurity to prioritising those experiencing 'extreme poverty through shocks', especially drought; the programme now focuses on 'adaptive social protection', and 'seeks to address non-climatic, contextual factors underpinning relational vulnerability to climate change'.¹⁵⁵

Given the continent's paucity of suitable social protections systems, it is important for State Parties to the ACRWC to undertake legislative, administrative, and other measures towards rectifying the situation before the climate crisis deepens, this so that social protection can play a role in preventing climate-induced vulnerabilities and form part of a more coordinated suite of responses to disasters. Applying a child-rights lens to the endeavour can help clarify and address a number of questions that arise, such as whether it is an appropriate course of action to adopt means-testing requiring children to produce evidence that they are 'poor enough' to qualify for support targeting children in vulnerable situations.

Overall, there is a need not only for a social protection system, but one that factors in risks associated with climate change. On the face of it, then, a limitation of the African Children's Charter is that it does not provide children with an explicit right to social protection,¹⁵⁶ which is of concern given the prevalence of poverty in Africa. However, while the Charter has no specific reference to the right to social protection, this can be addressed by interpretation, notably by way of Article 1(3) and its 'more conducive environment' provision, which enables the ACERWC to have recourse, just as notably, to relevant provisions in the CRC.

Article 26(1) of the CRC obliges states to 'recognize for every child the right to benefit from social security, including social insurance ...' and 'achieve the full realization of this right in accordance with their national law'. Furthermore, Article 27 (on an adequate standard of living) provides that

States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Social protection is also addressed in four of the 169 SDG targets,¹⁵⁷ and there is an argument that if the international community is serious about the aim to 'leave no one behind', social protection warrants closer attention. Here, experiences drawn from the more than 1,400 social protection measures that were adopted by 208 jurisdictions, including in Africa, to

cushion the impact of COVID-19 serve as a further basis for addressing climate shocks.¹⁵⁸

Moreover, the Preamble to the recently adopted Protocol to the ACHPR on the Rights of Citizens to Social Protection and Social Security (2022)¹⁵⁹ indicates that the drafters were mindful of the ACRWC's articles 5 (right to life, survival and development), 13 (children with disabilities), 16 (torture and cruel inhumane treatment), 18 (protection of the family), and 19 (parent care and protection). Article 22 of the Protocol, entitled 'Environment and Climate Change', requires States Parties, 'in accordance with their capacities and national laws', to utilise social protection schemes to support mitigation measures; invest in resilience-building initiatives; and support initiatives to grow crops that adapt to climate change.

Developments around the Protocol, especially its coming into force, are very likely to create synergies for promoting children's right to social protection in the context of climate change.

4.3.8 CHILD CARE AND CHILDREN'S RIGHTS

The impact of climate change on children's care, including in the family environment, is an underexplored yet crucial subject in the African context. As a recent UNICEF study put it,

[b]oth climate change-related disasters and an increase in the spread of deadly diseases because of climate change are likely to see more children orphaned. Those cared for by vulnerable elderly relatives in kinship care arrangements are especially vulnerable to losing caregivers to climate change.¹⁶⁰

Relevant issues include violence against women exacerbated by climate impacts; separation of children from their families; and inadequate support for children's care relative to what is needed in the context of climate change.¹⁶¹ In this regard, upholding child-rights principles before, during, and after climate emergencies is important. For example, while the provisions of the African Children's Charter leave room for temporary institutional care during climate emergencies, caution is needed to ensure that the construction of emergency residential care facilities does not leave a legacy facilitating the unnecessary institutionalisation of children.

Among other things, the guidance that can be provided on the basis of the African Children's Charter underscores the primacy of family care; the importance of family reunification; the need take a child-rights-based approach to balancing investments in preparation with those in response measures; the promotion of child participation; the integration of climate change considerations in care reform and vice versa; and the salience of the 'no-regrets approach' in which climate action is justified irrespective of whether climate shocks occur.¹⁶²

4.3.9 THE RIGHT TO FOOD

As highlighted at the outset of this study, droughts and floods are the two main climate events that affect the enjoyment of the provisions of the African Children's Charter. According to Save the Children, children born in 2020 are likely to face nearly three times the number of droughts and crop failures that their grandparents once did, with those in developing and underdeveloped countries shouldering the burden of the environmental crisis.¹⁶³ The key threat to agriculture in the foreseeable future is the combination of rising CO₂ and resultant rising temperatures.¹⁶⁴ The 27 countries identified as vulnerable to GHGs, for instance, are also hunger hotspots.¹⁶⁵ According to projections, between 2030 and 2050 climate change impacts will cause 250,000 more deaths each year,¹⁶⁶ mainly from malnutrition, malaria, diarrhoea, and heat stress.¹⁶⁷

The implications are clear: ongoing climate change stands to exacerbate children's food insecurity, particularly in climate-vulnerable regions.¹⁶⁸ In fact, even meeting the Paris Climate Agreement goal of keeping rising temperatures to 1.5°C of pre-industrial levels is not going to guarantee adequate food security – making it necessary to prepare for worsening food insecurity and extreme weather events.¹⁶⁹

Addressing hunger is both a moral and legal duty. International human rights law acknowledges the importance of the right to food. Apart from the UDHR, Article 11(1) of the ICESCR (ratified by 51 African states) recognises 'the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions'. Moreover, Article 11(2) acknowledges that more immediate and urgent steps may be needed to ensure 'the fundamental right to freedom from hunger'.

In addition to having adopted multiple resolutions on the right to food,¹⁷⁰ the ACERWC has developed jurisprudence, especially in *SERAC & CESR v Nigeria*, affirming that the right to food is inherent in the right to life, the right to health, and the right to economic, social and cultural development under the African Charter. Especially pertinent is Article 14 of the latter, which requires State Parties to ensure the provision of adequate nutrition and to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology for children.

This creates the basis for three interrelated measures. The first, flowing from the above, is that the Charter provides grounds for identifying a specific right to food for children in Africa. This in turn entails the existence of an obligation on states to take legislative, administrative, and other measures to uphold the right. To illustrate the dire need for this, of the close to 30 countries in the world to have constitutionalised the right to food, only seven are African (the DRC, Egypt, Kenya, Malawi, Niger, South Africa, and Zimbabwe).¹⁷¹ It is notable, furthermore, that, among the 38 countries worldwide that in 2022 were in the 'emergency' phase of food insecurity,¹⁷² the only ones that (apart from Honduras) recognise the right to food in their constitutions are the DRC, Kenya, and Niger.

Secondly, as regards the further development of continental jurisprudence on the nexus of

climate change and the rights of the African child, there is a need to accompany a specific right to food with a specific right to water too. Various human rights bodies acknowledge the importance of the right to water for the purpose, among other things, of preventing hunger and malnutrition, as well as of reducing violence against children. It is no surprise, then, that SDG 6 aims to achieve, inter alia, 'universal and equitable access to safe and affordable drinking water for all'. In this respect, there are practices in Africa worthy of being emulated throughout the continent, notably the fact that the DRC, Ethiopia, Kenya, Niger, South Africa, Tunisia, and the United Republic of Tanzania (among others) recognise a right to water and/or sanitation in their constitutions or other legislation.¹⁷³

Thirdly, the further jurisprudential development noted above in regard to the right to food (and water) needs to be part and parcel of guidance provided to State Parties on the legal measures required of them and other stakeholders in upholding this right. Areas ripe for such clarification include the legal obligation of a government to provide food assistance to all in need and prioritise children; the obligation of governments to take preventive measures, such as social protection, to address climate-induced famine/hunger among children; and the due-diligence obligations of non-state actors, such as humanitarian agencies, to address the gendered impacts of hunger/famine on girls during a climate change-induced crisis.

The three measures outlined above seek to promote children's right to food in the context of climate change, in furtherance of which it is important to note the potential challenges that may arise from (among other things) terminological disputes that, on the face of it, seem to be merely technical or tendentious but which, in actuality, could have critical implications for the endeavour's prospects.

In particular, the use of the term 'climate change-induced famine/hunger' (or its equivalents) may on occasion be problematic, even controversial.¹⁷⁴ In 2022, for instance, the World Food Programme characterised events in Madagascar as a climate change-induced famine, but some researchers challenged the labelling, arguing that their research showed that, '[b]ased on observations and climate modelling, the occurrence of poor rains as observed from July 2019 to June 2021 in Southern Madagascar has not significantly increased due to human-caused climate change'.¹⁷⁵

So, such labelling is not without its detractors, and certain of the criticisms raised may have significant implications for child rights and accountability. The gravity of contestation around terminology may be better appreciated by considering that developed nations have made a commitment to support, especially through climate finances, the mitigation and adaptation measures taken by developing countries; indeed, COP27 and 28 saw progress being made in having developed countries pay for loss and damage. In such a context, labelling an incidence of famine/hunger as 'climate-induced' (or not) would raise (or not) questions about the responsibility of the developed world that emitted, and continues to emit, the largest volume of GHGs on the planet.

4.3.10 THE RIGHT TO EDUCATION

The right to education, which is characterised as an enabling right, can be, and is, violated in the context of climate change.¹⁷⁶ Article 6 of the UNFCCC enjoins parties to promote, develop, and implement educational, training, and public awareness programmes on climate change, its effects, and the development and implementation of education and training programmes. Similarly, the Kyoto Protocol (2005) and the Paris Agreement (2016) highlight the role of education in promoting climate change-resilience and adaptation.

As mentioned, the ACRWC is one of the few human rights instruments that explicitly mentions the environment: Article 11(2)(g) on education declares that '[t]he education of the child shall be directed to ... the development of respect for the environment and natural resources'. This provision affords as a strong basis for detailed engagement with State Parties in the exercise of the mandate of the ACERWC. For example, states may be asked by the ACERWC to account for measures they have taken to increase children's knowledge of environmental health issues by introducing environmental health education programmes in schools.

States have come up with legislation, policies and practices that impact the right to education in the face of climate change. In this regard, the presence of a law on the right to a genuinely free and compulsory primary education as well as secondary education is a strong basis for climate change education. In addition, climate change laws and policies also contribute to climate change education.

Kenya serves as a good example in this regard. Section 9(8)(f) of its Climate Change Act of 2016 establishes a directorate the main mandate of which is to coordinate implementation of gender and intergenerational climate change education, consultation, and learning at the national and county levels. This provides an opportunity for raising climate change awareness at school level and stimulating solution-finding among learners, thereby advancing the right to education. Moreover, section 9 (2)(m) of the country's Environmental Management and Coordination Act mandates the National Environment Management Authority (NEMA) to 'undertake, in cooperation with relevant lead agencies, programmes intended to enhance environmental education, public awareness and public participation'. Accordingly, NEMA, in cooperation with the Ministry of Education, is a position to co-develop a curriculum for children's environmental education.

Beyond laws, there are policies that provide for climate change education for children:

- In 2017, Kenya adopted the Education for Sustainable Development Policy, the focus of which is on building learners' knowledge and skills on issues such as climate change, environmental conservation, and health education.
- The Gambia's National Climate Change Policy stresses the importance of climate change education, which creates understanding of the complexities and challenges of climate change and helps in risk reduction, as it prepares people for coping with disasters.¹⁷⁷

- Following the introduction of the Sustainable Development Strategy (Vision 2030) and the National Climate Change Strategy 2050, Egypt adopted an education system that focuses on various environmental topics, such as climate change, biodiversity, and environmental sustainability. In 2022, the Ministry of Education in Egypt adopted a Strategic Plan to educate 25 million children on climate change and provide training courses on climate change to 350 000 teachers and school principals.¹⁷⁸

There is no doubt that, as reconfirmed by the UN Secretary-General at the Transforming Education Summit of 2022, that education must be transformed globally to respond to a myriad climate and environmental crises. However, few of the recommendations made to state parties of international human rights instruments in the context of climate change and education are entirely adequate.

Recommendations should address, for example, the content of education, how the right to education (including access to and continuity of quality education and lifelong learning) is threatened by climate change; and the role of education in addressing climate change phenomena. In other words, recommendations should engage with greening schools, greening learning, greening capacity and readiness, and greening communities.¹⁷⁹

Conversations about climate change and education often focus on the inclusion of climate change in the school curriculum, as the following examples attest:

- Mauritius has been requested by the CRC Committee to provide information on measures taken to '[e]mpower children to prepare for climate change and natural disasters through age-appropriate school curricula'.¹⁸⁰
- It has been recommended to South Sudan that it '[i]ncrease children's awareness of climate change and environmental degradation by incorporating environmental education into the school curriculum'.¹⁸¹
- The CRC Committee recommended that Togo and São Tomé and Príncipe '[i]ncrease children's awareness and preparedness for climate change and natural disasters through awareness-raising, including in school curriculum and teacher training programmes'.¹⁸² It has also been recommended that São Tomé and Príncipe facilitate the role 'children as peer educators'.¹⁸³
- In its second periodic report review under the CRC, Lesotho was asked to '[u]ndertake measures to increase the knowledge of teachers and educators regarding environmental issues and climate change and to integrate environment and climate change issues into the national curriculum'.¹⁸⁴ However, its third periodic report does not provide much information on how the recommendation has been taken forward.

Meanwhile, there is also a need to address a deficit of skills in local markets for professional and semi-skilled labour, indicating that it is necessary to revise curricula in the education and training sectors, with the involvement of the private sector, in order to ensure that

students have the skills (in regard to the blue economy, renewable energy, and the like) which are required in the market.¹⁸⁵

What this suggests is that the content of climate-related education, and its link with climate change itself, should not be construed in a manner limited only to communicating messages relevant to adaptation and mitigation. The benefits that children and young people in Africa could reap from climate action include ‘the rise of “green jobs” which will require specialized technology-driven skills that children and young people can acquire more easily than older adults’.¹⁸⁶ States are also encouraged to incorporate environmental action in schools, such as cultivating crop gardens, instituting recycling programmes, installing solar panels, and removing litter. Such measures have an empowering effect on children.

Discussion of the right to education and climate change should also be alive to the fact that education is often impacted by climate change weather events that have consequences such as school closures (for example, in South Sudan, Malawi, and Uganda) or the destruction of school premises. As such, addressing education through a child-rights lens, including in times of climate crisis, requires multiple interventions.

For example, viewing education as an ‘essential service’ even during a crisis is important. The provision of cash incentives as well as fortified school meals (as has been shown in many jurisdictions, including Chad and Niger) can help address the barriers to schooling faced by children, in particular girls.¹⁸⁷ Tailored support can go a long way if it includes services for sexual and reproductive health and rights, services to address gender-based violence, and mentoring to empower both boys and girls.¹⁸⁸

Addressing the gendered impact of climate change in the education of girls and boys also deserves attention. Disasters are not the greatest of equalisers, as boys and girls tend to experience them with some level of differentiation. For instance, where there is drought, children are forced to stop going to school and instead work for food; these effects are worse for girls, since in most African states it is often women alone who perform household tasks.¹⁸⁹

Furthermore, the presence – and effectiveness – of warning systems is critical for upholding the rights of children in the context of climate-induced disaster. For example, the April 2022 floodings in Kwazulu-Natal benefited from the South African Weather Service and eThekweni municipality, which both issued early warnings. There are indications, though, that the warnings had limited reach and that the people who did receive them may not have known what steps they had to take.¹⁹⁰ Once again, this underlines the role that education and access to information can play in building preparedness for responding to climate impacts.

Finally, there is no doubt that climate change education is needed beyond the school setting. As a result, climate change education should be made available to children through means that are outside the formal school system. Article 11 of the ACRWC (on education) affords a strong basis to support these arguments.

4.3.11 THE RIGHT TO HEALTH

Extreme weather, natural disasters, water scarcity, food insecurity, air pollution, vector-borne and infectious diseases, and the like all share a common denominator: they have negative health effects.¹⁹¹

These effects are more pronounced in children, given their unique pathways of exposure and sensitivity to climate hazards, their immature physiology and metabolism, and their higher intake of air, food, and water relative to body weight than that of adults.¹⁹² The impacts of climate change on children's health may be direct or indirect. Direct impacts affect human biology, and include injury, morbidity and mortality; indirect impacts include malnutrition, neglected tropical diseases, diarrhoea, malaria, and meningitis.¹⁹³

There is, in short, an inextricable link climate impacts and adverse health outcomes, and the Paris Agreement explicitly recognises as much.¹⁹⁴ Likewise, for its part, the CRC Committee has described climate change as 'one of the biggest threats to children's health and [one which] exacerbates health disparities'.¹⁹⁵

Because climate change is a stressor, child health in Africa is facing new and/or increased challenges. According to one recent study, for example, as a result of climate change '[m] osquitoes that transmit malaria in sub-Saharan Africa have moved to higher elevations by about 6.5 meters (roughly 21 feet) per year and away from the Equator by 4.7 kilometres (about three miles) per year over the past century',¹⁹⁶ all of which enables them to spread malaria more widely than ever before in the past.

Moreover, as noted previously, climate change impacts on food security, which in turn has significant implications for the right to health. This occurs not only through catastrophic events, but also through slow-onset changes to precipitation and temperature, which can alter agricultural practices that communities in Africa have relied on for generations.¹⁹⁷

Many sources of air pollution contribute to climate change via GHGs, while the effects of climate change (for example, drought-affected dry land where wildfire rages) further contribute to air pollution. The link between the right to health of children and air pollution is strong. For instance, it was reported as the second leading risk factor, after malnutrition, for death among children under 5 years in 2021, with (staggeringly) more than 700 000 deaths among such children; moreover, in sub-Saharan Africa (and South Asia), air pollution is responsible for nearly 30 per cent of all deaths in the first month after birth.¹⁹⁸

As a result, climate change dramatically raises the stakes for almost all of the objectives of the right to health recognised in Article 14 of the ACRWC – namely, reducing infant and child mortality,¹⁹⁹ providing adequate nutrition and safe drinking water,²⁰⁰ and developing preventive health services or combatting disease and malnutrition.²⁰¹

The jurisprudence of the ACERWC in respect of the right to the highest attainable standard of health²⁰² is closely aligned with what is available at the UN level, especially so the work of the Committee on Economic Social and Cultural Rights.²⁰³ As such, African states are

expected to implement Article 14 progressively. This means that the differing capacities of states have to be taken into consideration in determining accountability.

Accordingly, the obligations under Article 14 do not necessarily require states to prevent any climate change-induced health harms to children. However, the minimum obligations that states do have in this regard – for example, to address any immediate threats to the health of children, including as regards food and water; to heed the principles that should inform budgetary allocations; and to take into account children’s right to health when developing and implementing environment- related agreements to address transboundary threats – need to be considered.

In this regard, section 68(2)(b) of Kenya’s Health Act 21 of 2017 obligates the national health system to come up with measures for managing environmental risk factors so as to curtail the occurrence and distribution of diseases.²⁰⁴ These measures shall target ‘the reduction of morbidity and mortality of waterborne, food-borne and vector transmitted diseases, and mitigate the health effects of climate change’. The measures recognise the right to health of children, especially those in areas affected by floods or drought due to climate change.

Similarly, South Africa’s National Climate Change White Paper recognises that ‘[i]n particular parts of the country, the coverage of vector-borne diseases like malaria, rift valley fever and schistosomiasis may spread due to climate change, requiring a concomitant expansion of public health initiatives to combat these diseases’.

In a like vein, in 2021 Nigeria’s Federal Ministry of the Environment Department of Climate Change developed the National Climate Change Policy 2021-2030. The policy recognises the effect of climate change on the right to health of children, and hence calls for measures that

[p]romote preparedness in all areas of primary healthcare delivery and response to climate-induced diseases and pandemics and training and retaining health officials of all categories, providing adequate critical health infrastructure and ensuring sustainable funding of the sector.

As regards State Party reports, it is often within the context of water, sanitation, and hygiene (WASH) that the impacts of climate change on children’s rights are addressed. For example, Lesotho has acknowledged that the water supply in its health facilities changes frequently

due to some interruptions caused by factors such as climate change, which affects the sustainability of WASH services in HFs [health facilities], e.g. during drought situation in 2018/19 33% of the HFs in 6 districts (Oacha’s nek, Mohale’s hoek, Mafeteng, Maseru, Thaba-Tseka, and Mokhotlong) reported lack or insufficient water supply, thus affecting quality of care.²⁰⁵

Mental health is also linked to climate change. There is an increasing understanding of the links

between climate change and depression, anxiety, anger, and feelings of powerlessness.²⁰⁶ . Children who have lost family members due to floods typically experience post-traumatic stress disorder.²⁰⁷ For instance, the lack or inadequacy of response by governments to the climate crisis has been found to affect the mental health of children. A recent survey of 10 000 children across 10 countries, including Nigeria, found that all child respondents were worried about climate change; that more than 50 per cent reported emotions such as sadness, anxiousness, anger, and powerlessness; and that more than 45 per cent indicated that such feelings affected their daily lives.²⁰⁸

In instances where mental health and climate change are linked, much of the literature seems to focus on 'eco-anxiety'. While this an important linkage, there is more to the dynamics between the mental health of children and climate change than this alone. Compelling evidence suggests that the child's cognitive capacity is susceptible to the negative effects of disasters, which in turn could contribute negatively to emotional well-being.²⁰⁹ A study focusing on drought in Botswana²¹⁰ has identified that loss of family livelihoods can lead to children experiencing anxiety, among others, due to fear of separation from their families.

Clarifying such connections between climate change and Article 14 of the Charter would enrich the role that the Charter, the ACERWC, and State Parties play in upholding children's rights in the face of climate impacts. Perhaps even more critically, Article 14(2)(h) provides for 'the prevention of domestic and other accidents', which entails that states should take legislative, administrative, and other measures to this end, including preventing or reducing injuries and deaths due to climate-related incidents.

In these and related endeavours, it remains essential to apply a child-rights lens to the issues at hand. While interventions of different kinds at different levels invariably target 'vulnerable groups', it is not always crystal clear if or to what extent they are indeed targeting children as the specific set of rights-holders referred to and constituted under the ACRWC.

Often, in climate change reports, including the recent one by the IPCC, the term 'vulnerable groups' is meant to explicitly include women, youths, refugees, Indigenous Peoples, and ethnic minorities. This can come at a cost to children's rights, including to their right to health. For example, a climate change impact assessment lens that lumps children with youths would risk marginalising younger children. Also, while it may be argued that a majority of climate change issues that women and girls face are common to them, the lens that lumps them together often tends to not pay adequate attention specifically to girls' right to health.

Apart, then, from the need to maintain a clear-eyed focus by means of a child-rights lens, it is also necessary for stakeholders to continue to undertake, and improve, data collection and research on climate change and child health. For example, through research, it is possible to have an improved regional modelling of climate change such that more reliable predictions of the potential impacts on child health can be made.²¹¹ Also, despite the notable impact of climate change on health in Africa, 'only less than 20% of the countries have health mentioned in their nationally determined contributions'.²¹²

Finally, it is important to reflect on the child's right to health and questions of accountability

(by states as well as other parties). For example, there is a strong argument to be made that pollution-related violations that compromise health rights are more amenable to having perpetrators held accountable than climate change-related ones. Similarly, accountability for violations of the right to health in the context of climate change would appear to stand a better chance of serving younger children (those under the age of 5 years) than older children.

Characterising climate change harms to health in legal terms is, indeed, a complex task, one that involves engaging with such issues as causal links, attribution, and extraterritoriality, let alone the question of how to link climate change to right-to-health claims for an entire group of children.²¹³ Awareness of and insight into these complexities would be a vital ingredient in mobilising the Charter as a robust instrument for upholding children's rights under conditions of continuing climatic deterioration.

4.3.12 CLIMATE-INDUCED CONFLICT AND CHILDREN'S RIGHTS

The theoretical details remain a matter of disagreement, but there is little doubt that climate-related factors play a profound role in the increasing number of conflicts on the continent, all of which affect children and their rights in multiple, ramifying ways.

Both the UN Security Council and AU Peace and Security Council (PSC) have recognised the adverse effects of climate change on peace, while the Special Representative of the Secretary General on Children and Armed Conflict has examined the links between climate change, on the one hand, and children and armed conflict, on the other. The Special Representative's focus is on the 'six grave violations' affecting children: killing and maiming; recruitment and use in combat; abduction; sexual violence; attacks on education and health-care facilities; and denial of humanitarian access.

As regards the PSC, since its 585th session of March 2016, where the decision was made to hold annual sessions on climate change, it has given the nexus of conflict and climate change increasing attention.²¹⁴ For example, in the build-up to COP27, it prepared a paper on the link between climate change and conflict in Africa.²¹⁵ At its 1114th meeting in October 2022, the PSC held a ministerial-level meeting and discussed this nexus under the title, 'Building resilience and adaptation for food security in African Island States towards COP27'.²¹⁶

Indeed, climate-induced conflict flashpoints in Africa are increasing in number, as events on the border between Burkina Faso and Mali, and in Nigeria's Middle Belt area, demonstrate. In particular, there are many examples of conflicts between farmers and herders in Africa that are induced by climate change and which affect the rights of children as recognised in the African Children's Charter.²¹⁷ The conflicts include:

- the March 2019 massacre in central Mali of more than 150 people during clashes between Dogon and Bambara farmers, Fulani herders, and Bozo fishers over access to water and land;

- the October 2018 violence in northern Kenya near Marsabit between farmers and pastoralists;
- the 2017 violence in South Kordofan in Sudan involving clashes over access to water between farmers and herdsman in which more than 40 people were killed; and
- the 2014 feud between Tiv/Agatu farmers and Fulani herdsman in Nigeria over access to grazing land and water points, which led to the deployment of military forces in Benue, Nassarawa, and Plateau in order to manage the conflict.²¹⁸

Despite all this turmoil, the precise nature of the nexus between climate change and conflict is not yet settled. There are those who view the nexus as a matter of 'causation', while others argue it is one of 'correlation'. Admittedly, the relationship between increasing temperatures, ecosystem resilience, seasonal rainfall fluctuations, changes to arable land, changing animal grazing, and violence is complicated,²¹⁹ as many studies have shown.

Typically, clashes erupt between militias, the military, and police, with pastoralists compelled to graze their animals on disputed territory. Disputes usually turn violent due to competition for water and the overutilisation of farmers' lands or crops. Extremist networks, in turn, use the violent competition between farmers and pastoralists to achieve their goals, doing so in contexts where failures in local government and traditional dispute-resolution mechanisms mean there are few hindrances preventing tensions from escalating into conflicts. Political and economic elites are also frequently implicated in worsening violent conflict.

As a case in point, in the Sahel changes in hydrology and climatology leading to increasing scarcity of water and land resources have been the main cause of frequent, intense violence between local farmers and pastoralists. The situation is compounded by the appropriation of watering holes and lands formerly used by nomadic groups, as well as the erosion of long-standing conflict-resolution mechanisms (such as mediation and payment of compensation for damages).²²⁰

Arguably, the situation in Kenya offers a somewhat clearer picture of the interaction between climate change and human conflict. Even though it is a middle-income country which is not torn apart by conflict and instability, its northern region accounts for four million of the 26 million people suffering acute hunger or famine in the Horn of Africa. Climate change, rather than conflict, is to blame for the drought and heat that pushed millions to the brink of hunger.

Additionally, refugees migrating to Kenya's northern region – home to two of the world's largest refugee camps – are pressuring resources in the villages where the camps are located, causing tension over already-strained resources. Farmers in certain areas have begun clashing with herders who are intruding on their land in search of grazing land for their livestock. As a consequence, brutal retaliatory killings of both people and cattle have become common.

At the same time, there are also promising initiatives that contribute to addressing conflicts that arise as a result of climate change. The Lake Chad Base Commission, which deals with

long-standing environmental problems that might worsen due to climate change, brings the region hope. In recent years, it has helped settle water-related tensions between Cameroon, Chad, Niger, and Nigeria, and has laid the groundwork for stabilisation strategies such as channelling humanitarian and development aid, addressing unsustainable agricultural methods, and introducing drought-resistant crops.

The work of the Commission surely affects children directly. It is nonetheless unclear if this takes into account children's rights, including the special circumstances and rights of children with disabilities, indigenous children, and girls, among others – a consideration that again highlights the need for applying an intersectional, child-rights lens (here and more generally).

The substantive provisions of the Charter, in Article 22, cater for the rights of children in the context of conflict. These provide the ACERWC with the basis for consistently recognising the nexus of climate change and conflict with a focus on children. An example of where such an approach has been applied is South Sudan, in regard to which the CRC Committee has observed that '[c]limatic shocks, including floods and droughts ... have resulted in severe food insecurity and reduced access to critical services, creating a dire humanitarian situation'.²²¹ It was recommended that the country '[e]ncourage the use of more efficient irrigation systems and planting of drought-resistant crops, also as a means of addressing conflict among communities over natural resources, including reducing competition over scarce water resources'.²²²

In the same vein, there is a need for State Parties to invest in conflict prevention and other efforts to sustain peace that help mitigate climate change impacts linked to armed conflict; to this end, they should consider the views of children in peace-making and peacebuilding. Furthermore, neither the design nor implementation of climate adaptation measures should discriminate against children in situations of armed conflict.

State Parties are encouraged to take additional measures to ensure that vulnerable children affected by climate change enjoy their rights, including by addressing the underlying causes both of vulnerability and of conflict. Also, in the course of responding to emergencies caused by extreme weather events in areas already affected by armed conflict, including through the delivery of essential life-saving aid, they should ensure that schools do not become targets for armed groups' activity and thus expose learners, teachers and school infrastructure to further risk. For its part, the ACERWC, in its ongoing collaboration with the PSC, continues to assess the extent to which the latter's deliberations and communiqués take the provisions of the Charter into account.

4.3.13 CLIMATE-INDUCED MIGRATION AND CHILDREN'S RIGHTS

Available data shows that 'climate shocks/climate change' have displaced some 38 million people. For example, climate change-induced migration and displacement are increasingly common in West Africa's Sahel region. Currently, about 25 million Sahelian herders of cattle, sheep, goats, and other livestock migrate south with their animals during the dry season and north again during the wet season.²²³ It is also to be underscored that women

and children account for 80 per cent of the population displaced due to climate change.²²⁴

Sub-Saharan Africa has, after East and South Asia and the Pacific, the world's largest number of people displaced annually as a result of extreme weather events.²²⁵ In 2021, approximately 3 per cent (265 000 people) of all internally displaced persons (IDPs) globally were in West and Central Africa and had been displaced as a result of disasters such as floods, storms, or landslides.²²⁶ Moreover, 37 per cent of the world's nomadic population is found in Africa, where rain-fed rural communities migrate to cope with environmental pressures. According to the IPCC, most climate-related displacement and migration takes place within national borders; when individuals cross international borders as climate migrants, it occurs primarily between countries with contiguous borders.²²⁷

These statistics portray a situation of desperate human movement occurring on a grand scale – real-world activity, real-world hardships – but it is critical to keep in mind that something else of a far more abstract nature is, in its way, just as consequential for the lives of migrants as their material circumstances: the very terminology used to refer to all of this activity.

Designations are seldom neutral or value-free, and this is all too true in the area of climate-induced migration, where terminology plays an important role in the provision of protection to children displaced as a result of climate change. For instance, as the Special Rapporteur on Human Rights and Climate Change has lamented, efforts to place climate change under the umbrella terms of 'natural hazards' or 'natural disasters' are misleading, as this 'blurs the boundaries between human-induced climate change and geological disasters'.²²⁸

A further terminological subtlety to be noted is that the term 'people displaced by climate change' is applied to those who have been forced to change their domicile, whereas the apparently near-synonymous term, 'climate change migrants', is applied instead to persons who changed their place of residence voluntarily. Other terms include 'climate change refugees', 'climate refugees', 'climate change-related migration', 'environmental migrant',²²⁹ and 'climate mobility', with each of these referring to one or another instance of a range of movement types (such as displacement, planned relocation, evacuation, and migration).²³⁰

In addition, describing climate-induced migration of children across international borders as 'adaptation' seems to underplay the role of the compulsion or force that necessitates such movement. In the words of the Special Rapporteur on Human Rights and Climate Change, this 'is not really adapting to climate change, it is escaping its effects'.²³¹

Intertwined with these terminological complexities is the fact that climate-induced migration also raises several difficult legal questions that are in need of clarification. For example, it is not clear if those that move as a result of climate disasters can be construed as having a 'fear of persecution'. Also, for the purpose of benefiting from the protection of Article 23 of the Charter (on refugee children), does it matter if the migration takes place as a result of slow-onset rather than sudden-onset events?

Unfortunately, neither international human rights law nor the African human rights system currently provides adequate guidance on the rights of children displaced across international borders due to climate change in respect of admission, stay, and conditions for return. Even

with the critical child-rights issue of non-refoulement obligations, it is difficult to come across national laws that address the admission or temporary stay of children that are displaced as a result of climate change. This is an area where interpretation of the provisions of the African Children's Charter could make a significant contribution, perhaps so by drawing on the limited and emerging guidance that does exist.

A few examples of such guidance are worth mentioning. On 24 February 2021, the Supreme Court of Italy delivered its ordinance No. 5022/2021 in a ruling concerning the criteria that justify the recognition of humanitarian protection in cases where there is a state of serious environmental degradation in the country of origin of the international protection seeker. In its decision, the court granted an appeal by a refugee from Nigeria, considering the serious environmental disaster in the Niger Delta.²³²

Also encouraging is the experience Austria has had in providing protective measures for persons displaced across international borders due to climate change. Austrian courts have considered a range of disasters – among them floods, droughts, and cyclones, as well as a locust plague in Somalia – in determining the risk to individuals who have applied for asylum. The courts, that is to say, have assessed the impacts of climate-related disasters on individuals and accorded these impacts strong or even decisive weight in their legal reasoning in granting subsidiary protection to such individuals.²³³

The migrations in these examples were in response to sudden-onset events, but what of those in the case of slow-onset events? Some African cities – such as Lagos in Nigeria and Alexandria in Egypt – are among the ones that could be entirely submerged by 2100.²³⁴ What is more, six of the 38 UN members that are Small Island Developing States are in Africa (Cabo Verde, Comoros, Guinea-Bissau, Mauritius, São Tomé and Príncipe, and Seychelles). This raises the question of 'planned relocations', which are a form of organized movement of people typically instigated, supervised, and carried out by the state (and, by implication, internally within the state's own territory). How child-centred are such processes? To what extent are the views of the child given due consideration?

In this regard, noting that the Kampala Convention²³⁵ defines IDPs as 'persons or groups of persons who have been forced or obliged to flee ... in particular as a result of or in order to avoid the effects of ... natural or human-made disasters, and who have not crossed an internationally recognized State border',²³⁶ there is a growing need to explore synergies between the latter convention and the ACRWC in order to cover contingencies like the ones above with a strong, child-rights compliant protection regime.

Here, it should be noted that, as compared to other international human rights instruments, the ACRWC offers added value in its protection of children who are internally displaced, including due to natural disaster. In particular, clause 4 of Article 23 states that '[t]he provisions of this Article apply mutatis mutandis to internally displaced children whether through natural disaster, internal armed conflicts, civil strife, breakdown of economic and social order or howsoever caused'. Clearly, this provision should be utilised to address the rights of children in the context of climate-induced migration.

Looking beyond internal displacement to its external variant, a further consideration is that international cooperation is pivotal in addressing cross-border displacement and migration induced by climate change. This means that the laws, policies, and programmes of State Parties to the Charter need to be fit for purpose in this respect, for example by availing child-friendly and gender-sensitive reception and admission; facilitating the provision of social services; undertaking family reunification; and upholding the prohibition of non-refoulement.

Commendably, regional and sub-regional organisations have been undertaking initiatives that recognise the linkages between migration and climate change. For instance, in 2022, Member States of IGAD, the East African Community, and the States of East and Horn of Africa signed the Kampala Declaration on Migration, Environment and Climate Change.²³⁷ However, while these initiatives are important for children, they are very light on children's rights and need attention in this regard.

4.3.14 THE RIGHTS OF CHILDREN WITH DISABILITIES

Climate change affects the rights of children with disabilities in a disproportionate manner. In spite of this, they continue to find themselves on the margins of the design and implementation of climate action. For example, a study in 2022 found that children and young people – girls, young women, and youth with disabilities – are not adequately included as stakeholders in the climate policy processes of, among others, Ethiopia, Mozambique, Uganda, and Zimbabwe.

Notably, too, unlike the case with indigenous children and children belonging to minority groups,²³⁸ the CRC's General Comment 26 ('on children's rights and the environment with a special focus on climate change') lacks a dedicated section on children with disabilities.²³⁹

Still, they do receive a few explicit mentions in the Comment. There is acknowledgement of the discriminatory effect of environmental harm on children with disabilities²⁴⁰ and of the need to provide additional support to facilitate the right to be heard of children with disabilities.²⁴¹ The Comment also indicates that the dissemination of environmental information should aim at 'overcoming obstacles' including disability,²⁴² which echoes, for instance, the CRC Committee's concluding observations to Mauritius that

the special vulnerabilities and needs and views of children, including children with disabilities, ... [should be] taken into account in the development of policies and programmes concerning climate change and disaster risk management and the activities of the National Disaster Risk Reduction and Management Council.²⁴³

4.4 MITIGATION AND ADAPTATION THROUGH LAW AND POLICY

4.4.1 GENERAL

The basic obligation of State Parties to the ACRWC is to implement its provisions by adopting legislative, administrative, and other measures. Almost all states have done so in respect of children and their rights. Constitutional provisions that make reference to climate change are still very few in number, though, and limited to countries such as Tunisia and Zambia. However, there are many examples of constitutional provisions that could facilitate children's rights in the context of climate change. Notably, of the close to 155 states in the world that recognise the right to a safe, clean, and sustainable environment in their constitutions, nearly 50 are in Africa.

- For example, Article 17(j) of the Constitution of Uganda states that 'it is the duty of every citizen of Uganda ... to create and protect a clean and healthy environment'.
- Under Article 43, the Constitution of Kenya of 2010 provides that every person has a right to be free from hunger and a right to clean and safe water in adequate quantities, while Article 60 stipulates that land shall be conserved and ecologically sensitive areas, adequately protected.

Constitutional provisions on public participation are also beneficial to climate change action for children. African countries with such provisions include Angola, Burkina Faso, Burundi, Cabo Verde, Central African Republic, Congo, DRC, Egypt, Equatorial Guinea, Eritrea, Eswatini, Ethiopia, Gabon, Ghana, Guinea-Bissau, Kenya, Lesotho, Liberia, Morocco, Mozambique, Namibia, Nigeria, Rwanda, São Tomé and Príncipe, Sierra Leone, Somalia, South Africa, South Sudan, Sudan, Tanzania, Uganda, Zambia, and Zimbabwe.²⁴⁴

Child laws and policies too contain important elements for climate action, such as the rights to life, health, children's participation, and access to remedies. However, these laws generally pay little attention to climate change. Even child laws that have been adopted in recent years,²⁴⁵ or by small island states significantly affected by climate change,²⁴⁶ lack any detailed, explicit attention to the climate crisis.²⁴⁷

Much the same is true of climate change laws. These have only recently begun to emerge in Africa, and their presence as separate, stand-alone pieces of legislation is confined to a few countries such as Mauritius, Nigeria, and Uganda.²⁴⁸ Moreover, a 2022 study by the African Child Policy Forum found that just as few laws establish a connection between climate change and child or human rights. One exception is Uganda's National Climate Change Act of 2021, which tasks the relevant government department to take 'human rights issues' forward in the development of a 'Framework Strategy on Climate Change'.²⁴⁹ Climate change policies, of which there are many,²⁵⁰ fare little better than their legislative counterparts in incorporating children and their rights,²⁵¹ as the majority of State Parties confirmed in their response to the survey conducted as part of this study.

Efforts to link climate change law and policy with child or human rights are thus still in their

infancy in Africa. A number of governments outside of the African continent (for example, China, France, Germany, Russia, the United Kingdom, and the United States) resist the linkage of human rights instruments with climate change, in part out of fear of accountability for current as well as historical emissions. It is not inconceivable that such positions might be held by some African countries too²⁵² and duly reflected in their domestic laws and policies.

Nevertheless, there are many instances at the international level where questions on climate change and human rights are being explored. One example is the effort, at the behest of the UN General Assembly, to obtain an Advisory Opinion from the ICJ on whether governments have legal obligations to protect people from climate hazards. At the regional level, while some broadly related issues (mostly on pollution) have been brought before them, at the time of writing (August 2024) neither the African Commission on Human and Peoples' Rights nor the African Court of Human and Peoples' Rights has been a forum to similar disputes; the same applies to the ACERWC. Despite this status quo, it is anticipated that climate change litigation will soon emerge before the African human rights system.²⁵³ In the light of this, the possibility exists for the African Court to be asked for an advisory opinion on the application of the ACERWC's provisions in the context of climate change. The African Court to date has received 15 requests for advisory opinions²⁵⁴ and provided four in response, one of which was in reply to questions raised by the ACERWC.²⁵⁵ Indeed, the African Committee is well suited to request such an advisory opinion, in part because, unlike non-governmental organisations (NGOs), it is not bound by the arguably restrictive requirement that such a request may be made by 'any African organisation *recognised by the OAU*'.²⁵⁶

4.4.2 MITIGATION MEASURES

Africa's carbon footprint is minimal, especially given that the continent is home to nearly 18 per cent of the world population.²⁵⁷ Yet even though developed countries bear the greater burden of responsibility for mitigation, this has not met with the necessary levels of action, leading at times to litigation seeking to compel these countries to take more vigorous steps.²⁵⁸

Opinion leaders have lamented the lacklustre way in which action is being taken. In 2023, the Africa Climate Summit bemoaned the situation, and in the same year, eight years after his encyclical on humanity's obligation to protect the environment, Pope Francis revisited this theme with renewed urgency, posing the question: 'How can we forget that Africa, home to more than half of the world's poorest people, is responsible for a minimal portion of historic emissions?'²⁵⁹ Collectively, the G20 countries, only one of which is African,²⁶⁰ are responsible for 75 per cent of global GHGs.²⁶¹

In the global climate mitigation response, net-zero pledges and NDCs are crucial components, as they represent individual countries' commitments to significantly reduce GHG emissions, aiming to achieve a balance between emissions produced and removed from the atmosphere, ultimately reaching net-zero emissions. Net-zero pledges (the ends)

are commitments to balance the amount of greenhouse gases entering the atmosphere with the amount being removed. NDCs (the means) serve as the concrete, measurable steps each country outlines to achieve its climate goals within the framework of the Paris Agreement.

Recent reports by UNEP, which plays a key role in assessing countries' net-zero pledges and NDCs, cast a troubling light on global progress in mitigating climate change, and in turn on the credibility of net-zero pledges and efficacy of NDCs. Its 2022 Emissions Gap Report (subtitled 'The closing window') found that '[c]ountries are off track to achieve even the globally highly insufficient NDCs' and that '[p]olicies currently in place with no additional action are projected to result in global warming of 2.8°C over the twenty-first century'²⁶² – an eventuality that would lead to severe, potentially catastrophic, climate change impacts.

UNEP's 2024 Emissions Gap Report (now subtitled, 'No more hot air ... please!') came with an even starker message, pointing out stagnation, or even reversals, in the effort to achieve net-zero in the foreseeable future. Not only was it the case that only one country in the world had strengthened its 2030 GHG-reduction targets, but, rather than declining, GHG emission levels globally had in fact risen since 2022, by what UNEP called 'a new record of ... 1.3 per cent'.²⁶³

Currently, some 52 countries worldwide have expressed net-zero commitments in their policy documents, among them being eight African countries – Cape Verde, Ethiopia, Liberia, Liberia, Namibia, Rwanda, The Gambia, and Tunisia.²⁶⁴ Only 29 countries in the world have embedded net-zero pledges in law, with the sole African country in the list being Nigeria (for 2060).²⁶⁵

There are, furthermore, instances where African countries have made a link between their NDC commitment and human rights. For example, Chad, Malawi, Morocco, South Sudan, and Uganda were reported in 2019 as being five of the 17 countries in the world that committed to taking a rights-based approach to climate action in the first five-year cycle of the Paris Agreement.²⁶⁶

However, the extent to which children are referenced in, participate in, and/or are aware of NDCs and their impacts on their rights is minimal. This is confirmed by the majority of the responses by states to the questionnaire of this study. It is noted, too, that in a 2019 study that analysed the NDCs of 160 countries, Zambia and Malawi were two of the three countries (the third being Venezuela) to have included an express reference to girls.

Even in instances where children are referred to, a closer look at how they are characterised tends to leave it an open question as to how far the NDCs would contribute to upholding their rights. In many cases, children, where referenced, are identified as a 'vulnerable group'; they are also identified as 'beneficiaries' (23 NDCs), and, on occasion, as 'agents of change' (12 NDCs).²⁶⁷ It was only in seven NDCs that they are identified as stakeholders, noting too that they are referenced more often in adaptation (33 NDCs) than mitigation plans (nine NDCs).²⁶⁸

An example of a reference to children as ‘vulnerable’ is found in Malawi’s NDC. It underscores that girls are a vulnerable group in the context of adaptation, stating that ‘[v]ulnerable and disadvantaged groups carry the burden of the impacts of climate change. Women and girls are particularly impacted, as they have to walk further in search of basic commodities for the family such as firewood and water ...’²⁶⁹ In Zambia, the NDC recognises girls as beneficiaries, noting that ‘[i]mproved education impacts [on them] due to longer hours of study and advanced teaching methods, safety, [and the] creation of opportunity for [the] girl child and women’s education’.²⁷⁰ In Sudan’s NDC, its reference to children recognises them as ‘agents of change’ through empowerment, referring to ‘[e]nhancing the participation of women and youth in activities related to adaptation and environmental conservation in order to empower them and enhance their adaptive capacity including through establishment [of a] rural women development programme’.²⁷¹

Moreover, an analysis by UNICEF has shown that more states are including Action for Climate Empowerment (ACE)²⁷² in their commitments on NDCs. Such measures should include efforts to empower children in a rights-based manner, including through access to information and international cooperation.

The need to grant children stronger protection, stronger presence, and a more empowered role in legislative and policy instruments relating to mitigation becomes particularly apparent when one considers that the proliferation of net-zero commitments – however unclear they may be, or lacking in measurability – is likely to lead to increased demand for the exploitation of natural resources, notably land for tree-planting, in low-income countries, in particular in Africa. The implications of the projects associated with this for children’s rights to, inter alia, food, water, housing, and sanitation are significant, especially where appropriate safeguards appropriately informed by child-rights principles are deficient or not in place at all. Concerns of this kind have arisen in, for example, Latin American countries, where the sourcing of trees from plantations for biomass electrical power generators has adversely affected the rights of children and families in indigenous communities.²⁷³

As these observations suggest, the tension between ‘climate action’ and ‘development’ is often present in mitigation conversations and highly relevant to Africa. For example, there are calls for freezing new fossil oil explorations, with financial institutions and governments being asked to stop subsidising fossil fuel activities. The East African Crude Oil Pipeline (involving Uganda and Tanzania)²⁷⁴ and the Nigeria-Morocco Gas Pipeline Project²⁷⁵ are two cases in point illustrating the paradoxes of global climate politics.

4.4.3 ADAPTATION MEASURES

Climate change has major impacts on lives, livelihoods, and the environment. The majority of fatalities due to it occur in developing countries, with children making up about 80 per cent of the dead.²⁷⁶ The economic strain that African countries face as a result of climate impacts is also enormous, leading to financial burdens which are often insurmountable.²⁷⁷ African countries thus have an urgent interest in taking adaptation measures, which are arguably a greater priority to them than mitigation measures, given the continent’s low

GHG emissions.

While mitigation is about limiting the causes of climate change and preventing it from getting worse, adaptation is essentially about adjusting to, and containing, its short- and long-term effects. Adaptation measures are strategies and actions directed to these ends, and cover numerous domains of activity, ranging from ecosystem restoration, crop diversification, and infrastructural relocation or reconstruction, to improved land management, the development of supportive institutional frameworks, and the creation and sharing of knowledge.

State Parties to the ACRWC can and should take appropriate adaptation measures to protect the rights of children, especially those in vulnerable situations such as children living in poverty.²⁷⁸ States should also take into account the manner in which discrimination, gender, disability, economic disparities, and differential access to education and information affect children's climate vulnerability.²⁷⁹ It should be a priority to allocate resources to those who need them the most and face the greatest risks, with this allocation being heedful of, and compliant with, treaty commitments to upholding and advancing children's rights.²⁸⁰ As noted earlier, climate change instruments (laws, policies, plans, and programmes) that do not make children's best interests the primary consideration fall short of the Charter's requirements.

Child-responsive adaptation measures should also follow the standards set out in the relevant international frameworks. The primary such framework for climate change adaptation is the UNFCCC, which includes the Paris Agreement and utilises the National Adaptation Plans (NAPs) process established under the Cancun Adaptation Framework²⁸¹ to enable countries to develop strategies to adapt to climate change impacts. Related to this is the Sendai Framework for Disaster Risk Reduction 2015-2030.²⁸² The latter is a global agreement adopted by the UN to reduce the impact of disasters caused by natural hazards, including those induced or aggravated by climate change, by focusing on prevention, preparedness, response, recovery efforts, and community resilience.

These frameworks provide countries with a structured way of developing and implementing adaptation policies. NAPs are central in this process. By means of these, countries create comprehensive plans outlining how they intend to adapt to climate change, including by identifying vulnerabilities, prioritising adaptation actions, and mobilising necessary resources. In the African context, key focus areas in NAPs should include accessible and effective early warning systems; the immediate dissemination of information on protective measures for children; and provision for life-saving assistance such as food, temporary shelter, and health care.²⁸³ The right to food and water should be considered a high priority in adaptation plans.

Crucially, NAPs and related adaptation measures should be informed by respect for human rights in general and children's rights in particular. This is a cardinal point that bears repeating, given that a study in 2022²⁸⁴ which reviewed 15 NAPs, including those of Burkina Faso,²⁸⁵ Ethiopia,²⁸⁶ Kenya,²⁸⁷ and Sudan,²⁸⁸ found that human rights received only minimal or cursory mention in the documents. These four states were ranked low and fared better only than Grenada, Sri Lanka, and St Lucia, among others.²⁸⁹ Sudan's NAP made reference to the rights of future generations and community rights, Ethiopia's made general reference to

rights, and Burkina Faso's referred to civil and social rights; Kenya's was the only NAP to make reference to children's rights.

Laws too can and should underscore the prioritisation of children's rights. The Climate Change Bill of South Africa under Clause 3(f) provides that the interpretation and application of this Act must be guided by

the need for decision-making to consider the special needs and circumstance of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, especially poor ... children, especially infants and child headed families ...

A number of countries have integrated gender in their plans and programmes. In Benin, where Article 27 of the Constitution grants everyone the right to a healthy, satisfactory, and sustainable environment, the government has developed multiple national policy documents, including the National Climate Change Management Policy (PNGCC 2021-2030)²⁹⁰ and Gender and Climate Change Action Plan (PAGCCB),²⁹¹ with the latter also addressing adaptation. The effectiveness of such plans should be scrutinised closely, however, noting, first, that the gender lens tends to focus on women to the exclusion of girls, and, secondly, that, in view of their differences in age and power relations, among others, the manner in which climate change affects women and girls cannot be presumed to be the same.

In general, the different hazard types of highest concern in Africa should also serve to guide identification of the legislative, administrative, and other measures that would be required to uphold the rights of the child in the context of adaptation. The hazards of highest concern in Africa, as highlighted in the 53 African NDCs for the period 2016-2022, are, in order of priority:

- drought,
- floods,
- temperature increase,
- change in precipitation patterns,
- sea-level rise,
- rainstorms,
- wildfires,
- landslides, and
- dust storms.²⁹²

NAPs may also take guidance, as appropriate, from this priority list.

Early warning systems are critical for children's rights in the context of disasters in particular and climate change in general. Such systems are a means to reduce the risk of disasters and adapt to climate change, and serve to help save lives, livelihoods, and ecosystems. Among other things, they entail assessing and mapping vulnerabilities, monitoring and forecasting hazards, communicating warnings, and ensuring that people and institutions have the skills and knowledge to act on these warnings.

Unfortunately, only about 40 per cent of the continent's population is covered by early warning systems to cope with extreme weather and climate change.²⁹³ In Africa, 'the rate of Multi-hazard Early Warning System (MHEWS) implementation overall is lower than the rate in other regions, and the last mile delivery of early warning systems needs attention ...'.²⁹⁴ As a result, there is a critical need to '[i]nvest in end-to-end drought and flood early warning systems in at-risk LDCs [least-developed countries], especially for drought warnings in Africa'.²⁹⁵ For instance, eSwatini's National Disaster Management Agency uses early warning systems to forecast and safeguard against disasters, but it requires strengthening in terms of effective early preparedness and response as well as investing in resilience-building at household and community levels.²⁹⁶

In recognition of the importance of early warning systems, the UN has embarked on an initiative, Early Warnings for All, to have sufficient early warning services in place to cover the global population by 2027. An ambitious Early Warnings for All Action Plan for Africa was duly unveiled at the Africa Climate Summit in 2023.²⁹⁷ This is an encouraging development, as it is imperative for the continent to accelerate efforts to establish robust regional and national early warning systems and climate services for climate-sensitive sectors in order to strengthen climate resilience and adaptation capacities. It is also important to underscore that early warning systems are not only about response but prevention as well. For example, the semi-arid region of southern Madagascar is affected by severe droughts, but is currently benefiting from a groundwater early warning system to predict droughts.²⁹⁸

Engagements with State Parties on their adaptation-related plans will in future require close examination of the extent to which climate-related risks to children are assessed, the extent to which children's rights are considered in such plans, and the extent to which children benefit from a process that empowers them and recognises their capacity for agency.²⁹⁹

In this regard, it is noted that there have been instances of vague and inadequate engagement with the intersection of children's rights and adaptation to climate change. For example, after a review of Togo's State Party report on compliance with the ACRWC, the African Commission observed the '[e]xistence of a Project for the Promotion of Sustainable Development and Resilience to Climate Change and a Programme to Combat Climate Change in Togo (AMCC+)'.³⁰⁰ This was a good start; however, it did offer any further meaningful engagement. For instance, to what extent are human rights embedded in the Project and Programme? How are the views of children taken into account? Are there any examples of adaptation measures under the Project and the Programme that are not compliant with human rights standards?

4.4.4 CLIMATE ACTION THROUGH UPHOLDING THE RIGHT TO A REMEDY

4.4.4.1 GENERAL REMARKS

Access to justice is critical for upholding the rights of the child, including in the context of climate change. While there is no general and explicit access-to-justice provision in the ACRWC, several provisions, such as on the child's best interests, non-discrimination, and child participation, can and have been interpreted to infer the existence of access-to-justice-related rights for children and, in turn, of correlative obligations for State Parties. Notably, work by human rights treaty bodies has brought to light some of the challenges that children face in respect of access to justice in the context of environmental as well as climate change cases. Among them are restrictive standing criteria; periods of limitation; lack of access to information; and costs.³⁰¹

Access to justice is achieved through administrative and judicial processes; the focus of this section is on the latter. At the global level, the majority of cases that make it to court are about climate mitigation rather than adaptation. There are a number of possible reasons for this, one of which is that most of the cases that relate instead to adaptation as well as loss and damage arise in the Global South, where access to justice is generally more limited than it is in the Global North; in addition, where these cases are indeed brought, they might not necessarily be framed in terms of climate change.

According to UNEP's Global Climate Litigation Report, while rights-based and constitutional claims represent a minority of cases (about 100 of nearly 1 600 cases),³⁰² there are multiple reasons why these claims are nevertheless on the rise. The main reported reason is that they 'have an outsized impact on overall climate governance because they typically seek bold, conspicuous remedies'.³⁰³

Apart from the increase in rights-based claims, some of the key global trends include a rise in cases seeking to rectify non-enforcement of climate change-related laws and/or lack of policy implementation; to limit or ban the extraction of new fossil fuels from the ground;³⁰⁴ to obtain accountability for failure to adapt or maladaptation; to hold the business sector accountable, including for greenwashing (that is, making misleading claims about environmental impact); and to increase disclosures, especially in regard to GHG emissions.³⁰⁵

Many of these trends have emerged on the African continent as well in recent years, as the discussion below of examples of regional case law demonstrates.

4.4.4.2 EXAMPLES OF REGIONAL CASE LAW

In 2022, the reported number of climate change-related cases in Africa stood at 14. These include domestic and regional cases in South Africa,³⁰⁶ Kenya,³⁰⁷ Nigeria,³⁰⁸ Uganda,³⁰⁹ and

the East African Court of Justice³¹⁰ (against the governments of Uganda and Tanzania).³¹¹ South Africa is responsible for the majority of these existing cases (namely, nine of the 14). This is, of course, a small number, especially compared to the volume of such cases in other continents. Apart from the challenges posed by a limited regional legal framework and domestic systems that have generally prioritised economic development over environmental protection, there are other factors that contribute to this relative paucity of climate cases.

In Nigeria, for example, the main barriers to access to justice have been identified as the strict application of rule of legal standing rules, issues concerning the justiciability of certain rights, weak rules and policies around climate change, and a reputedly narrow, unaccommodating judicial attitude, which, according to one author, Etemere, 'has privileged the economy over the environment'.³¹² Fortunately, rules of standing have begun to be relaxed, and the attitude of the judiciary seems to be changing. Etemere substantiates this observation by referring to *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation (NNPC)*,³¹³ albeit an environmental pollution rather than climate change case.

In this matter, it was alleged that the Nigerian National Petroleum Corporation had failed to maintain its oil pipelines properly, which resulted in an oil spillage in two streams and a river, the main sources of water for the Acha community of Abia State of Nigeria. Both the trial court and Appeal Court dismissed the application on the basis that the complainant organisation lacked standing, as it did not suffer 'any injury at all, let alone any injury above every other member of the Acha community resulting from the alleged oil spillage'.³¹⁴

The Supreme Court, however, subsequently disagreed, and granted the appeal in favour of the appellant. Among other things, it found that the complainant organisation indeed had legal standing; it recognised the possibility of public interest litigation addressing the barriers that poor communities might face; it acknowledged the increasing concern around climate change and the environment; and it specifically reaffirmed that Article 24 of the ACHPR (on the right to a generally satisfactory environment favourable to development) is justiciable before the courts in Nigeria.³¹⁵

There are no notable exceptions to this evolution in respect of cases brought in Africa.³¹⁶ For example, in South Africa, what was in contention in *EarthLife Africa Johannesburg v Minister of Environmental Affairs and Others* was the validity of the Chief-Director's issuance of environmental authorisation for the construction of a 1 200 MW coal-fired power plant in Limpopo Province without a climate change impact assessment. The applicants asserted that the Chief-Director was 'under an obligation to consider the climate change impacts of the proposed power station before granting authorisation'.³¹⁷

The Minister, in her administrative appeal decision, conceded that the climate change impacts of the project had not been 'comprehensively assessed and/or considered'.³¹⁸ She upheld the authorisation, however, adding a condition that the 'holder of this authorisation must undertake a climate change impact assessment prior to the commencement of the project ...'.³¹⁹ This did not satisfy the applicants, who contended that a climate change impact assessment is one of the relevant factors the Chief-Director should take into account before making a decision.³²⁰ Apart from citing domestic law, they invoked 'South Africa's obligations

under international climate change conventions', including the Paris Agreement.³²¹

This judgment underscores the importance of the link between the point of contention – the need for a climate change impact assessment as a relevant consideration – and its implications for 'rights in the Bill of Rights, including the fundamental justiciable environmental right in section 24 of the Constitution'.³²² A second High Court application followed this initial judgment, in which the applicants challenged the Minister's subsequent administrative appeal decision that still authorised the coal-fired power station, despite a climate change impact assessment finding that the plant would generate significant GHG emissions. On 19 November 2020, the High Court, pursuant to an agreement between the applicants and respondents, issued an order setting aside the environmental authorisation of the coal-fired power plant and remitting it to the Chief-Director for reconsideration.³²³

In Kenya, the main point of contention in *Save Lamu et al. v National Environmental Management Authority and Amu Power Co. Ltd* was whether the National Environmental Management Authority violated the Environmental Impact Assessment and Audit Regulations (EIA Regulations), when it granted an environmental impact assessment licence for the construction of the Lamu Coal-fired Power Plant. It was alleged that permission was granted without proper and meaningful public participation by interested and affected parties. The National Environmental Tribunal of Kenya agreed with the complainants and revoked the issuance of the license. It reasoned that the environmental and social impact assessment conducted by the company was insufficient, and that, since it was a requirement of the new EIA Regulations, a new impact assessment had to include a 'consideration of the Climate Change Act 2016, among other laws'.³²⁴

A notable shift of special relevance for this study is the emergence of rights-based claims that allege violations of human rights by both governments and non-state actors. In *Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Others FHC/B/CS/53/05*, the applicant, Gbemre, a representative of the Niger Delta's Iwherekan community, filed a suit against, first, the Nigerian government, for its decades-long failure to stop Shell Petroleum's gas-flaring activities, and, secondly, Shell, for engaging in unlawful or harmful gas-flaring in the community in the course of its exploration and production activities.

The applicant argued that Shell failed to consider the environmental impact of its activities on the community's livelihood and survival, as well as the contribution of these activities to the adverse, potentially life-threatening, effects of climate change. The applicant claimed that the activities violated the community's rights to life and human dignity guaranteed by sections 33 and 34 of the 1999 Nigerian Constitution and reinforced by Articles 4, 16, and 24 of the ACHPR (ratified and domesticated by Nigeria as Cap. A9, Laws of the Federation of Nigeria, 2004).

The Federal High Court of Nigeria ruled that the actions of the respondents in allowing and continuing to flare gas in the applicant's community was a violation of the latter's basic rights to a clean, healthy, environment; moreover, the Court held that Shell's failure to conduct an environmental impact assessment was a clear violation of the EIA Act and a violation of the said rights. It made no award of damages, costs, or compensation.³²⁵

To date, two child-and-youth-led climate change suits have been filed on the continent, albeit that they are yet to be decided. These are *Africa Climate Alliance & Others v Minister of Mineral Resources & Energy & Others (#CancelCoal case) Case No. 56907/21*, in South Africa, and *Mbabazi and Others v The Attorney General and National Environmental Management Authority Civil Suit No. 283 of 2012*, in Uganda.

In the South African case, the youth-led African Climate Alliance, together with two other environmental NGOs, has sued the Department of Mineral Resources and Energy and the National Energy Regulator of South Africa in an application that places children's rights directly at issue. The case challenges the constitutionality of the government's decision to generate some 1 500 MW of electricity from new coal-fired power stations between 2023 and 2027. Specifically, the applicants argue that the decision to procure more coal-fired electricity violates the best-interests principle – section 28(2) of the Constitution – given that children are particularly vulnerable to the impacts of climate change.

They argue that electricity from new coal-fired power stations cannot be justified as a measure which is beneficial to present and future generations, and make the case that there is no indication that children's voices and opinions were solicited before this decision was taken. By attacking the substantive and procedural impropriety of the decision, the applicants appear to rely on both constitutional and administrative law principles that would seem to make for an easier case to argue,³²⁶ notwithstanding that they invoke the substantive principle of children's rights. The applicants will rely on testimonial affidavits from a number of children and young adults.³²⁷ The case is yet to be determined.

In the *Mbabazi* case in Uganda, the plaintiffs seek declaratory and injunctive relief on behalf of four Ugandan minors. They argue that Article 237 of the Ugandan Constitution makes the Government of Uganda a public trustee of the nation's natural resources – including its atmosphere – and that articles 39 and 237 require the government to preserve those resources from degradation for both present and future generations. Citing examples of damage and loss of life resulting from extreme weather events, the plaintiffs allege that the government has breached its constitutional duty. In addition to asking the court to declare that the government is violating its public-trust duty by not addressing climate change and thereby failing to prevent present and future harms, the plaintiffs request several forms of injunctive relief, such as orders compelling the government to account accurately for nationwide GHG emissions and to develop a plan to mitigate emissions.

After a preliminary hearing, the High Court ordered the parties to undertake a 90-day mediation process, but as of October 2017 it had taken no further action.³²⁸ It is quite possible that the minor plaintiffs have all reached majority age today due to the inordinate delay in setting the case down for hearing.

While there are only a few cases at the international level to date, it is worth singling out the potential impact of the decision of the CRC Committee in the *Saachi* case.³²⁹ This case is brought by 16 children, including from Nigeria and South Africa, against five state parties to the CRC – Argentina, Brazil, France, Germany, and Turkey. The complainant's contention is that the five states have not achieved adequate GHG emission reductions and that this has led to a violation of rights in the CRC.³³⁰ These include the rights to life and health, and the

rights of indigenous children.³³¹ The Committee was asked to find the states responsible for the violations of the rights, uphold children's rights in mitigation- and adaptation-related measures, and strengthen states' international cooperation in climate action.³³² Although the case was dismissed for non-exhaustion of local remedies,³³³ the decision came with significant pronouncements on jurisdiction and causation which will inevitably inform future claims.

These include the fact that 'given its ability to regulate activities that are the source of these emissions and to enforce such regulations, the State party has effective control over the emissions';³³⁴ that even though the causes of climate change are collective, such a situation 'does not absolve the State party of its individual responsibility';³³⁵ that a foreseeable and 'sufficient causal link had been established between the harm alleged by the 16 children and the acts or omissions of the five States for the purposes of establishing jurisdiction'; and that the children had sufficiently justified that the harm that they suffered personally was significant.³³⁶ It should come as no surprise if these elements are relied upon not only by national jurisdictions in Africa, but also by the ACERWC, which has the explicit mandate 'to draw inspiration from ... the Convention on the Rights of the Child ...'.³³⁷

To conclude, these cases offer insight to some of the legal questions that might arise before the ACERWC in time to come. In this respect, questions around periods of limitation, legal standing, extraterritorial jurisdiction, and access to legal aid or assistance in the context of the African Children's Charter will be especially pertinent to consider.

4.5 INSTITUTIONS, NON-STATE ACTORS, AND CLIMATE FINANCE

4.5.1 NATIONAL HUMAN RIGHTS INSTITUTIONS

The contributions of NHRIs³³⁸ to the implementation of the provisions of the Charter cannot be overemphasised. It is in recognition of this fact that the African human rights system, including within it the ACERWC, accord a special status to NHRIs.

NHRIs have also recognised the importance of their role in human rights and climate change. At the 2020 conference of the Global Alliance of National Human Rights Institutions, a number of them adopted an outcome statement that '**serves as a reference point and guide for NHRIs' individual and collective actions on climate change**'.³³⁹ Among other things, the statement recognises the role of NHRIs in facilitating action for vulnerable groups, including children. The main ways in which NHRIs promote climate justice are by assisting victims, providing education, monitoring and reporting on climate change and human rights, and engaging with businesses and CSOs on their human rights roles and responsibilities.³⁴⁰

Worldwide, there are many examples to cite of where NHRIs have played an invaluable role in the area of climate change and human rights. In Argentina, for instance, the NHRI has

been credited for undertaking a comprehensive SDG monitoring and evaluation programme ‘to identify the main concerns and obstacles linked to climate change and its impacts, by developing rapid responses in order to prevent further human rights violations’.³⁴¹ This same NHRI devised a project to facilitate regulation of the mining sector including by applying the UN Guiding Principles to ward against the violation of human rights by businesses.³⁴²

In Norway, where the main driver of the economy is associated with fossil fuel, the Supreme Court heard a case in 2020 brought by environmental groups challenging the issuance of new licenses for oil explorations in the Arctic.³⁴³ The NHRI submitted an amicus brief in regard to the case on ‘the question of whether the Norwegian State has violated human rights under Articles 112, 93 and 102 of the Constitution of Norway and Articles 2 and 8 of the ECHR [European Court of Human Rights] by awarding production licences for oil and gas in the 23rd licensing round’.³⁴⁴

In Africa, too, there are some promising cases. Kenya’s National Human Rights Commission has monitored and documented violations of the rights of indigenous communities in the course of the government’s forest conservation efforts, bringing these cases before the African Commission on Human and Peoples’ Rights and the African Court for adjudication.³⁴⁵ Its role has even extended to supporting implementation of the decision.³⁴⁶ Indeed, as this example highlights, some NHRIs, like Kenya’s, have the mandate to file lawsuits against the government on behalf of communities whose rights are being violated.³⁴⁷

In the same vein, the Ugandan Human Rights Commission was involved in assessing the impacts of the La Niña-El Niño cycle in 2017, an initiative in which it made the link between a policy promoting cash crops and subsequent deforestation and climate change.³⁴⁸ Similarly, the Madagascar National Human Rights Commission has contributed to the prevention of environmental degradation induced by conflict and climate change.³⁴⁹

It is not only NHRIs that can contribute to this endeavour. The Government of Namibia has underscored that its Ombudsman, established under Article 91 of the Constitution, has not only the mandate but the ‘duty’ to investigate ‘complaints concerning the over-utilization of living natural resources, the irrational exploitation of non-renewable resources, [and] the degradation and destruction of ecosystems’, and to contribute to the protection of the rights of the child in the context of climate change.³⁵⁰

As these examples attest, the continent’s NHRIs hold significant potential to support, deepen, and enrich the implementation of the African Children’s Charter in the ever-evolving context of ongoing global climate change.

4.5.2 THE BUSINESS SECTOR

In its Sixth Assessment Report (2022), the IPCC, apart from describing the causes and impacts of climate change, emphasised that ‘there is a rapidly narrowing window of opportunity to enable climate-resilient development ... pathways are still possible by which ... the private sector [and] governments ... can pursue climate-resilient development’.³⁵¹ There

is, as these remarks indicate, increasing acknowledgement that sustainable development requires that businesses respect human rights.³⁵²

The conversation on climate change and the business sector is often focused on the fossil fuel industry and, to some degree, financial institutions. However, at least in the case of Africa, it would be remiss not to recognise the risks that could be posed by measures aimed at facilitating the 'green transition'.

In this respect, a good example is the urgent efforts being made to mine and process the raw materials needed for renewable energy. It is well known that a significant number of minerals needed for electric batteries, such as cobalt and lithium, are predominantly found in Africa, and that this has contributed to environmental pollution as well as to driving children into the worst forms of child labour. As this implies, the business sector is indeed a critical stakeholder and one that can contribute to addressing climate and child-rights vulnerabilities holistically.

Regulating and holding businesses accountable for child-rights violations in the context of climate change is an endeavour with multiple dimensions:

- First, states should emphasise the importance of effective disclosure mechanisms under environmental, social and governance measures that address child-rights concerns and issues of GHG emissions throughout the supply chain.
- Secondly, states should scrutinise the extent to which climate change risks and corporate accountability are considered by corporations with investments in the fossil fuel industry or other GHG-intensive industries.
- Thirdly, in view of the emerging limited accountability and greenwashing around net-zero pledges, states should adopt regulations or standards for the purpose of net-zero accounting as well as have institutions to oversee such claims.
- Fourth, states should examine the extent to which the financial sector is underwriting the fossil fuel industry, including through subsidies, and assess the implications of such subsidies.

Finally, states should enquire into the extent to which the UN Guiding Principles on Business and Human Rights/Child Rights and Business Principles (developed by UNICEF, the UN Global Compact and Save the Children) are being applied with respect to climate change.³⁵³ Such an application of the Principles would lead to the comprehensive and ongoing implementation of child-rights due diligence and accountability and facilitate access to remedy, the results of which process would in turn serve as a strong proxy indicator of whether businesses are actually being held to account for the adverse impacts of their actions.³⁵⁴

The unprecedented global climate change crisis that the world, and in particular Africa, faces warrants moving away from the voluntaristic approaches previously used to nudge business enterprises towards social and environmental responsibility. A more coherent, binding regulatory framework is needed. Even though a growing body of mandatory Human

Rights and Environmental Due Diligence (mHREDD) legislation is being adopted in Europe and elsewhere, progress in Africa is relatively slow. Such laws should prevent, mitigate, and remedy child rights and environmental harms.³⁵⁵ In their design and implementation, they should be rights-holder-centric, inclusive, and gender-responsive.³⁵⁶

The involvement of the business sector in Africa in deforestation, fossil fuel exploitation, and other large-scale extractive activities is significant. Its engagement on human rights, however, is limited.

The extent to which the business sector and governments have engaged on children's rights remains limited, in addition to which these engagements have not yet ventured into the contribution of business activities to the state of children's rights in the context of climate change. For instance, the Government of Ethiopia has engaged with the Ethiopian Chamber of Commerce 'to advocate for and sensitize businesses to adopt child-friendly standards', as well as conducted awareness-raising training on child-rights and business principles,³⁵⁷ but it is not clear if any of these activities cover climate change.

It is well recognised that the economic system and growth of the past few decades have delivered gains for children, a development to which the business sector has contributed. However, the same economic system is 'now threatening their survival, health and well-being as it drives climate change and causes pollution that is poisoning the places where children live, play and go to school'.³⁵⁸ Effective regulation of the business sector is urgently needed if the rights recognised in the African Children's Charter are to be realised.

4.5.3 FINANCIAL RESOURCES, CLIMATE CHANGE, AND CHILDREN'S RIGHTS

4.5.3.1 THE 'VICIOUS CYCLE'

Understanding, interpreting, and implementing the African Children's Charter in the context of climate change should be informed by an underlying awareness of what has been called 'the vicious cycle' that characterises the relationship between the debt crisis and the climate crisis. In its elaborate form, the 'vicious cycle' is a recognition that

[t]he countries that are most vulnerable to the climate crisis are also facing a debt crisis – and the need to service external debt in foreign currency has become a major accelerator of the climate crisis. There is a vicious cycle between the debt and climate crises, each reinforcing the other. *It is thus profoundly contradictory that more than two-thirds of climate finance arrives in the form of loans that serve to exacerbate this debt crisis, forcing countries into actions that entrench the climate crisis.* The real value of these loans is often over-stated and yet, alarmingly, many of the proposals presently being considered for expanding climate finance seem to be focused on even more loans – rather than exploring fairer and more sustainable alternatives.³⁵⁹

The International Monetary Fund's assessment of the level of debt risk countries face has six levels of ranking: Debt Crisis, Debt Distress, High Risk of Debt Distress, Moderate Risk of Debt Distress, Low Risk of Debt Distress, and Data Not Available. On the basis of this ranking, out of the 63 countries that Action Aid identified, all nine countries that are either in Debt Crisis or in Debt Distress are African countries.³⁶⁰

The link between spending on social services – referring, in the context of this study, to incurring economic costs on child-centred climate change mitigation and adaptation – and servicing debt is a direct one. At present, most African countries are obliged to service their external debts before spending on anything else – and research has shown that when governments are spending more than 12 per cent of their revenue on servicing debt, they end up cutting public spending on crucial public services.³⁶¹

Indeed, it has been found that '38 out of 63 most climate-vulnerable countries are already spending so much on debt servicing that they are likely to be cutting spending on public services, making it impossible to invest in a feminist just transition'.³⁶² Twenty of these 38 countries are African, namely Benin, Cameroon, Chad, Congo, Côte d'Ivoire, Djibouti, Ethiopia, Ghana, Kenya, Mauritania, Mozambique, Namibia, Niger, Rwanda, Senegal, Sierra Leone, Tanzania, The Gambia, Uganda, and Zambia.

The 'vicious cycle' has at least three implications. First, the African countries that are in debt are often forced to accelerate, or venture into, the pursuit of extractive economic policies, which in turn exacerbates the climate crisis.³⁶³ Secondly, climate-related loss and damage tends to force African countries to borrow externally with a view to rebuilding, and since such access to finance is usually provided on commercial terms, the countries are encumbered with further burdens.³⁶⁴ Thirdly, since the assessment of climate risks has become a routine part of debt sustainability analysis, the majority of African countries that are vulnerable to the climate crisis are actually made even more prone to a debt crisis.³⁶⁵

4.5.3.2 CLIMATE FINANCE AND CHILD RIGHTS

The importance of climate finance is gaining increasing attention, especially so among African countries, both individually and collectively. The availability, accessibility, and distribution of such finance, as well as its governance, has serious implications for the realisation of the full range of children's rights, including the rights to life, health, food, water, housing, and culture.

Many of the responses by states to the questionnaire in this study underscore the financial limitations they face in taking mitigation and adaptation measures. This is not surprising in view of the 'vicious cycle' discussed above.

Despite the commitment under the Paris Agreement to make 'financial flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development',³⁶⁶ developing countries remain to see funds that are able to meet their needs. In addition, given the significant slant in funding towards mitigation at the cost of adaptation, the child-rights impacts of climate change in Africa remain largely unaddressed.

According to one report, the adaptation costs for developing countries are estimated to be in the range of USD 140 billion to USD 300 billion per year by 2030.³⁶⁷ It is reported too that, based on the Africa NDC Hub, the total adaptation costs for 2020-2030 will be as much as USD 407 billion for adaptation and USD 715 billion for mitigation.³⁶⁸ The Climate Policy Initiative in turn points out that it is likely that, based on 51 of 53 African countries to have highlighted the costs of implementing their NDCs, the costs represent some 93 per cent of Africa's GDP.³⁶⁹

The need to rectify failures by developed countries to fulfil their outstanding commitments to support developing countries with USD 100 billion per year by 2020 is urgent. It is rightly argued that this must inform the ongoing discussions, which should be based on finance needs on the ground and include a specific sub-goal for new and additional, grant-based finance for loss and damage as a third finance pillar aside from mitigation and adaptation.³⁷⁰ When not provided as direct grants, climate finance may add to the fiscal stress of countries rather than support those most affected. This fails to meet basic human rights standards.³⁷¹

Inadequate climate finance, coupled with low global investment in Africa, makes climate action difficult on the continent. For example, at the Africa Climate Summit in 2023 it was underscored that the African continent has received only 2 per cent of global investment in renewable energy in the last two decades and that the lack of access to capital is perhaps the biggest obstacle for countries that wish to cut down on fossil fuels. Because the global financial system, composed of governments and the private sector, generally views investing in Africa as risky, the little renewable energy investment there is goes only to a few countries such as Morocco, Egypt, and South Africa. The significant capital mobilisation in sub-Saharan Africa (which reportedly only receives only 9 per cent of total mitigation investments to emerging markets and developing economies outside of China) needs to be addressed.³⁷²

The advantage of a child-rights based approach in climate finance is not limited to ensuring that countries avoid or minimise the human rights impacts of mitigation and adaptation measures; it also helps them to promote sustainable, equitable low-carbon development.³⁷³ Moreover, where mismanagement of funds undermines the realisation of children's rights in the context of climate change, the ACERWC can engage with States Parties to address these concerns. Still, a failure to apply a child-rights lens to climate finance remains a pervasive shortcoming. The main finding of a 2023 study that assessed 591 project proposals covering the 17-year period from 2006 to 2023 against a set of 17 indicators designed to test for child-responsiveness was that 'efforts to respond to the distinct and heightened needs and perspectives of children in international climate finance flows remain nascent'.³⁷⁴

Finally, the ACERWC can assist in improving access to remedies for children whose rights are violated as a result of activities that are supported by climate finance. It can do so, inter alia, by availing access to information, strengthening the participation of beneficiary communities, in particular children, and subjecting the execution of climate finance to a child-rights impact assessment.³⁷⁵

4.5.3.3 LOSS AND DAMAGE

'Loss and damage' generally refers to climate change impacts due to slow-onset events and/or extreme weather events that exceed the ability of households and communities to adapt.³⁷⁶ Funding for loss and damage is intended to cover the costs of lives, materials, or livelihoods that are lost or are in a position to be repaired.

The arguments by some developed countries that support provided via humanitarian aid is able to meet the needs of communities that have suffered loss and damage are not accurate. Most humanitarian aid is provided for life-saving measures such as food, medicines, and shelter; it is unlikely to be of benefit to, say, a community of fishermen in The Gambia whose livelihood has disappeared as a result of climate change, or families living on a coastline who have to relocate due to continued riverine flooding. Loss and damage funding, by contrast, is intended to cover all adverse effects of climate change that people cannot simply adapt to.

For many years, the European Union and United States have objected to the establishment of a loss and damage fund, evidently out of concern that this would constitute an admission of guilt for historical emissions.³⁷⁷ Such a fund, however, is of great importance to developing countries, whereas developed countries often have mechanisms in place (such as insurance) to compensate their communities, or are readily able to mobilise the resources to do so. For example, in the United States, 54 per cent of disaster-related losses in one year were insured,³⁷⁸ compared to just 3 per cent on average in the world's 77 poorest countries. During floods in Germany in 2021 that killed more than 160 people, the government mobilised millions of euros to compensate families for losses and rebuild damaged infrastructure.³⁷⁹

The same cannot be said of the capacity of the great majority of African countries, for whom direct and indirect loss and damage alike can be highly consequential. Direct loss and damage is incurred through the impacts of extreme weather events and/or slow-onset crises such as drought or sea-level rise; indirect loss and damage is incurred when states are forced to re-allocate resources from education, health care, and other essential services to carry the costs of responding to the climate crisis. As mentioned, climate-related loss and damage often compels African countries to borrow externally, imposing further burdens on them.³⁸⁰

A notable development critical to the African continent took place in 2022. During COP27 in Egypt, an agreement was made to establish a fund on loss and damage. A new fund to hold parties responsible could change the lives of billions of people on the frontlines of climate change, offering a path to recovery where none exists today. A joint statement by five UN human rights treaty bodies declared that 'states must cooperate in good faith in the establishment of global responses addressing loss and damage suffered by vulnerable countries.'³⁸¹ African states are encouraged to actively support a human rights/child rights approach in such a fund that calls direct attention to the rights of the individual or child.³⁸² The fund should also emphasise the disproportionate impacts of climate change on children

and the capacity of these impacts to exacerbate structural inequality.

It is also important to acknowledge the limitations of loss and damage finance – for example, it might not cover non-economic loss and damage. In this regard, policies, laws, and finances should pay particular attention to the rights of Indigenous children to ancestral land and cultural heritage that do not benefit from loss and damage coverage.³⁸³

Lastly, a few overall enjoinders:

- Loss and damage finance mechanisms should be subjected to child-rights impact assessments.
- The design and implementation of the UNFCCC Loss and Damage Fund should benefit from the views of children.
- Disaggregated data should inform the entirety of the loss-and-damage response.
- Financial support provided should be comprehensive and address both sudden-onset events (for example, life-saving relief) as well as slow-onset events.
- Effective remedies to hold financial contributors and implementers within the Loss and Damage Fund accountable should be made available for children.³⁸⁴

5. CONCLUSION AND RECOMMENDATIONS

Climate change threatens the effective enjoyment of a range of child rights as recognised in the African Children's Charter and other relevant instruments. States have a human rights obligation to prevent the foreseeable adverse effects of climate change and ensure that children affected by it, particularly those in vulnerable situations, have access to means of adaptation and effective remedies to enjoy lives of human dignity.

Climate action proposals and measures at the international level are often fraught with power imbalances and risk imposing unrealistically burdensome expectations on countries in the Global South, especially African countries. In particular, mitigation measures should reflect each State Party's fair share of the global effort to mitigate climate change. In this respect, the ACERWC underscores the need to take into account the legitimate aspirations and needs of African countries to grow sustainably while promoting and protecting the rights of their children.

As this study has noted, the current understanding of international human rights law is not necessarily adequate for interpreting the Charter's provisions. The ACERWC notes the need for more engagement with international environmental law and international development law, as well as a sound understanding of regional and international climate change negotiations. As such, the Committee acknowledges the need to 'green' various provisions in the Charter in order to clarify specific rights of children in relation to climate change; the obligations of states to protecting children from the adverse impacts of climate change and clarification of concepts that are either missing or not directly addressed in the ACRWC. This includes clarification of the concept of inter-generational equity and future generations, the role of disaster risk reduction, the right of children to access to information and social protection. Furthermore, it is important to expound on the implications of the recognition of the right to a clean, healthy and sustainable environment, to the provisions of the Charter. The Committee further acknowledges the need to provide of guidance to state parties, children, CSOs and other stakeholders on systematic engagement with the ACERWC through its various mandates such as the state party reporting procedure.

On the other hand, the African Children's Charter offers added value in the protection it provides to children who are internally displaced, including as a result of natural disasters, as well as children in the context of armed conflict. Given the strong intersection between climate change and displacement, as well as climate change and conflict, these salient features of the Charter offer added value to child protection in the context of the climate crisis. Hence, stakeholders should capitalize on the obligations of states to protect children from internal displacement and armed conflict, to further strengthen climate action.

GENERAL RECOMMENDATIONS

- Stakeholders should anchor climate action on a child-rights based approach, taking in to consideration all the rights recognized under the ACRWC and guided by the principles of best interest of the child, survival and development, participation and non-discrimination.
- Taking in to account the specific context of Africa, all relevant stakeholders should ensure the prioritization and strengthening of child-rights based adaptation measures and the establishment of an effective rights-based loss and damage mechanism. Additionally, it is crucial to provide for a child-rights based climate finance.
- Stakeholders should Prioritises the type of weather events to focus on and address . The hazards of highest concern in Africa, as discussed above, are, in order of priority, drought, floods, temperature increase, changes in precipitation patterns, sea-level rise, rainstorms, wildfire, landslides, and dust storms. This would entail that drought and floods are prioritised.
- Climate governance should balance scientific evidence with indigenous knowledge, applying the precautionary principle and harm prevention.
- Climate change impacts are shaped by intersecting vulnerabilities and differences in, among others, sex, race, ethnicity, disability, geographical location, and socio-economic status. Response to climate change should reflect intersectionality of the diverse identities of African children.

RECOMMENDATIONS TO MEMBER STATES

- African countries that are categorized to be at extremely high risk and high risk by UNICEF's Children's Climate Risk Index should consider declaring a climate emergency and adopt urgent action to address the grave impacts of climate change to children in their jurisdictions.

INTEGRATION OF CHILD RIGHTS IN CLIMATE GOVERNANCE

- States should anchor climate policies and laws on children's rights; these include NDCs, NAPs and DRR policies among others. Furthermore, given the context of the continent, states should prioritize adaptation efforts and adopt child rights based NAPs.
- States should enhance institutional collaboration, ensuring child-rights actors are engaged in climate governance.
- Local governments should play a stronger role in child-centered climate action, with improved documentation and sharing of best practices.

- Taking into account the nexus between sustainable development and intergenerational equity, states should align SDG implementation with the African Children’s Charter in the context of climate change.
- Disaster preparedness laws must explicitly link child rights and climate resilience to ensure comprehensive protection measures.
- States should put in place protection frameworks to prevent unintended harm to children resulting from climate action, with a focus on Disaster Risk Reduction (DRR) strategies.
- States should adopt and enforce laws regulating businesses engaged in fossil fuel extraction and other climate-impacting activities to protect child rights.
- Access to Justice and non-discrimination
- The ACRWC underscores the obligation of State Parties to guarantee effective remedies for child-rights violations related to climate change. This requires reviewing laws on legal standing, limitation periods, access to information, and extraterritorial violations.
- Access to justice for climate-affected children should be strengthened by addressing legal standing, causation, and legal aid provisions.
- States must ensure that climate mitigation and adaptation measures respect and uphold the rights of children with disabilities through early warning systems, social protection, and tailored interventions.
- States should recognize Indigenous Peoples’ land rights to enhance rights-based, sustainable climate mitigation and adaptation measures that safeguard children’s well-being.

PARTICIPATION, PROTECTION AND PROVISION

- States must enhance the voices of children and ensure that climate policies are designed with meaningful child participation.
- State authorities must consistently consider children’s short-term and long-term best interests in environmental decisions and actions.
- States should incorporate climate change education into school curriculums, with a focus on country-specific climate impacts and necessary climate action. Furthermore, States should promote environmentally sustainable practices in educational facilities by implementing green schools, enhancing institutional readiness for climate challenges, and fostering eco-friendly communities.

- States should facilitate peer-led climate education, recognizing that learning about climate change should extend beyond formal education settings.
- States should recognize and address the link between climate change and violence against children, including armed conflict, ensuring that interventions target the root causes.
- States should address the impact of air pollution on children by adopting air quality regulations, improving data collection, and reducing exposure risks.
- States should enhance the provision of resilient essential services, such as health care, water and sanitation in areas affected by slow on set and extreme weather events.
- States should provide essential life saving services to victims of draughts, floods, cyclones and other extreme weather events, prioritizing services for children in the most vulnerable situations.

DATA COLLECTION

- States should gather disaggregated data on the specific impacts of climate change on the lives of children, with a focus on the most concerning impacts in country contexts.
- States should develop a database on children displaced within and beyond national borders due to climate change impacts to monitor their rights and ensure access to essential services.

RECOMMENDATIONS TO OTHER STAKEHOLDERS

- The African Union Commission should take in to consideration the evidentiary need to prioritize African children's rights in continental initiatives and global negotiations to address climate change. Furthermore, the Commission should coordinate the various organs of the Union tasked with human rights protection and governance, to collaborate on climate change related norm and standard setting as well as monitoring implementation.
- Regional Economic Communities should enhance collaboration of their members to address common areas of concern in the climate crisis spanning across national boundaries such as wide-ranging droughts, floods and cyclones.
- Development partners should utilize a human-rights based approach in engaging in bilateral and multilateral cooperation with African states to address climate change, with a focus on priorities of African states such as adaptation, finance and response to loss and damage.

- Civil Society Organizations working on children's rights and welfare in various sectors should integrate the impact of climate change on children's rights with the aim of strengthening knowledge and evidence for informed interventions.
- National Human Rights Institutions should build evidence on the nexus between climate change and human rights/child rights and support the implementation of the African Children's Charter in climate governance.
- Civil Society Organizations and National Human Rights Institutions should systematically engage with the mandate of the ACERWC to address the multifaceted impact of climate change on the rights and welfare of children in the continent.

END NOTES

1. S Godfrey & FA Tunhuma The climate crisis: Climate change impacts, trends and vulnerabilities of children in Sub Saharan Africa (UNICEF Eastern and Southern Africa Regional Office, Nairobi September 2022).
2. PA Arias et al. 'Technical summary' in V Masson-Delmotte et al. (eds) Climate change 2021: The physical science basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (2021) 33, <https://doi.org/10.1017/9781009157896.002> (accessed 31 August 2024).
3. Special Rapporteur on climate change (July 2022) Promotion and protection of human rights in the context of mitigation, adaptation, and financial actions to address climate change, with particular emphasis on loss and damage, <https://www.ohchr.org/en/calls-for-input/2022/call-input-promotion-and-protection-human-rights-context-mitigation-adaptation> (accessed 31 August 2024).
4. UNICEF The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index (2021), <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (accessed 31 August 2024).
5. Office of the High Commissioner for Human Rights (OHCHR) (2017) Climate change and the full and effective enjoyment of the rights of the child (A/HRC/35/13).
6. As above.
7. The countries are Angola, Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of Congo, Equatorial Guinea, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Liberia, Madagascar, Malia, Mozambique, Niger, Nigeria, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, and Togo. See UNICEF (n 4) 120. The foreword to the study, by Fridays for Future, highlights the injustice this number represents. It underscores that 'these countries are among those least responsible for creating the problem, with the 33 extremely high-risk countries collectively emitting just 9 per cent of global CO2 emissions. In contrast, the 10 highest emitting countries collectively account for nearly 70 per cent of global emissions. Only one of these countries is ranked as extremely high-risk in the index' 4-5.
8. Children's Environmental Rights Initiative (CERI) Position Paper for COP27: Incorporating child rights into climate action, <https://ceri-coalition.org/wp-content/uploads/2022/11/COP27-Position-Paper-Incorporating-Child-Rights-into-Climate-Action.pdf> (2022) 9.
9. UNICEF Prospects for children in 2022: A global outlook (2022), <https://www.unicef.org/innocenti/reports/prospects-children-2022-global-outlook> (accessed 31 August 2024) 38.
10. The following are examples of the studies on which this research builds: African Child Policy Forum Climate change and children's rights in Africa: Impact and accountability (September 2022), <https://demo1.africanchildforum.org/wp-content/uploads/2023/08/NinthIPC-DiscussionPaper-English-Sep6-22.pdf> (accessed 31 August 2024); MO Ibrahim Foundation Study 'The Road to COP 27: Making Africa's case in the global climate debate' (July 2022), https://mo.ibrahim.foundation/sites/default/files/2022-07/en_forum_r_press_release-1.pdf (accessed 31 August 2024); Office of the Special Representative of the Secretary-General on Violence against Children The climate crisis and violence against children (October 2022), <https://violenceagainstchildren.un.org/sites/violenceagainstchildren.un.org/files/the-climate-crisis-and-violence-against-children.pdf> (accessed 31 August 2024); Save the Children Child 'Generation Hope: 2.4 billion reasons to end the global climate and inequality crisis' (October 2022), <https://resource-centre.savethechildren.net/document/generation-hope-2-4-billion-reasons-to-end-the-global-climate-and-inequality-crisis/> (accessed 31 August 2024); UNICEF The coldest year of the rest of their lives:

Protecting children from the escalating impacts of heatwaves, <https://www.unicef.org/media/129506/file/UNICEF-coldest-year-heatwaves-and-children-EN.pdf> (October 2022); UNICEF 'The climate crisis is a child right's crisis: Introducing the Children's Climate Risk Index' (19 August 2021), <https://data.unicef.org/resources/childrens-climate-risk-index-report/> (accessed 31 August 2024).

11. African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032). (2023), <https://au.int/en/documents/20220628/african-union-climate-change-and-resilient-development-strategy-and-action-plan> (accessed 31 August 2024).
12. See, for example, the Children's Environmental Rights Initiative (CERI), which displays the results of consultations with children and youth in various sub-Saharan countries on climate change and the environment: <https://ceri-coalition.org/> (accessed 31 August 2024).
13. A child-centred approach begins from a position of respect for children, both as persons and as workers with rights, for the contribution they make to their families and communities, and for their capacity to shape their own lives as well as those around them. Work with children should explicitly reflect the commitment of states under the ACRWC and CRC to act in the best interests of the child.
14. Others include the National Climate Change Learning Strategy of Zambia; National Climate Change Policy of Somalia (2020); National Strategy and Plan for Adaptation to Climate Change in Agricultural Sector of Niger (SPN2A 2020-2035); Policy, Strategy and Action Plan in the fight against Climate Change (PSPA-CC) of the Democratic Republic of Congo; Seychelles Climate Change Policy (2020); National Plan Against Climate Change of Morocco (updated 2019); National Strategy on Climate Change of Guinea (2019); Climate Change Policy of Morocco (2019); and Zambia's Climate Change Gender Action Plan.
15. United Nations Environment Programme (UNEP) Emissions Gap Report: No more hot air... please! (2024) 12, <https://www.unep.org/resources/emissions-gap-report-2024> (accessed 31 August 2024).
16. JD Sachs 'From Millennium Developments Goals to Sustainable Development Goals' (2012) 379 *Lancet* 2206-2211; KW Robert, TM Parris & AA Leiserowitz 'What is Sustainable Development? Goals, indicators, values, and practice' (2005) *Environment: Science and Policy for Sustainable Development* 47 8-21; T Pogge & M Sengupta 'Assessing the Sustainable Development Goals from a human rights perspective' (2016) *Journal of International and Comparative Social Policy* 83-97.
17. See United Nations 'Transforming our world: the 2030 Agenda for Sustainable Development', <https://sustainabledevelopment.un.org/post2015/transformingourworld> (accessed 31 August 2024).
18. See United Nations 'Sustainable Development Goals', <https://sdgs.un.org/goals> (accessed 31 August 2024).
19. 'The 2030 Agenda for Sustainable Development, adopted by all United Nations Member States in 2015, provides a shared blueprint for peace and prosperity for people and the planet, now and into the future.' See United Nations 'Sustainable Development Goals', <https://sdgs.un.org/goals>.
20. As above.
21. United Nations Department of Economic and Social Affairs The Sustainable Development Goals Report 2022 (2022), <https://doi.org/10.18356/9789210018098> (accessed 31 August 2024).
22. United Nations Transforming our world: The 2030 Agenda for Sustainable Development (2015).
23. Among other things, the CRC Committee has committed to consistently link its Concluding Observations on state parties' reports on environmental issues to the SDGs and state commitments under the UNFCCC. See Center for International Environmental Law & The Global Initiative for Economic, Social and Cultural Rights 'States' obligations under the Convention on the Rights of the Child, in the context of climate change' 2, <http://www.ciel.org/wp-content/uploads/2018/01/HRTBs-synthesis-report-CRC.pdf> (accessed 31 August 2024). The CRC Committee has also undertaken to 'clarify the extent of States' ob-

ligations relating to climate change and children's rights, including with regard to mitigation, adaptation, and the rights of children ... taking into account the explicit reference to children's rights and intergenerational equity ...' See OHCHR Committee on the Rights of the Child Day of General Discussion 'Children's rights and the environment' (23 September 2016) para 2, <https://www.ohchr.org/EN/HRBodies/CRC/Pages/Discussion2016.aspx> (accessed 31 August 2024).

24. United Nations Sendai Framework for Disaster Risk Reduction (adopted at the Third UN World Conference in Sendai, Japan, on 18 March 2015), <https://www.undrr.org/media/16176/download?startDownload=20241227> (accessed 31 August 2024).
25. A good example of support for 'just transition' in Africa is the deal struck at COP26 between South Africa and a number of developed countries to assist the former in its efforts to wean itself off the use of coal. According to the deal, in the next five years, South Africa's Just Energy Transition Partnership will offer \$8.5 billion in grants and low-interest loans. The programme aims to achieve the lowest attainable level of South Africa's emissions targets compatible with keeping global temperature rise to 1.5°C. This is highly ambitious by most nations' standards, let alone those of underdeveloped ones. The funding will aid in the development of cleaner energy sources, the early retirement of coal facilities, and support for coal-dependent areas. The latter two goals, however, pose a political problem. The shift away from coal jeopardises 120 000 jobs in strongly unionised mines and power stations in a country with the world's worst unemployment rate, according to some estimates, and where one job typically feeds a large family. Nevertheless, since the energy shift will necessitate the development of new energy sources, new employment opportunities will become available. There are three reasons why this partnership is the first of its kind. The first is that the South African government mostly created a customised programme allowing it to account for local circumstances on its own terms. The second is that the partnership symbolises a well-funded collaboration among a few parties, which creates stronger responsibility than an unclear global or regional accord. The third reason is that, in addition to contributing to the early retirement of coal facilities, the partnership includes financing for local 'just transitions', which reduces the impact of local deindustrialisation on a growing economy. All of the reasons suggest that it is more likely to succeed than previous climate accords. See N Kumleben 'South Africa's coal deal is a new model for climate progress' *New York Times* (New York) 12 November 2021.
26. Cited in Republic of Rwanda 'Remarks by UN Resident Coordinator Dr Fode Ndiaye at launch of National Environment Week' (29 May 2018), <https://shorturl.at/ayiZ7> (accessed 31 August 2024).
27. The current emphasis on climate change and international cooperation by the Biden administration is crucial for Africa. The United States has much to offer if it uses its financing and skills in industries where it is most competitive, such as technology, financial services, renewables, energy efficiency, and energy storage.
28. T Gbadegesin 'A green Africa is the key to a greener world' *Foreign Policy* (Washington DC) 29 March 2021.
29. 'Flood' is a general term for the overflow of water from a stream channel onto normally dry land on a floodplain (riverine flooding); higher-than-normal water levels along the coast, in lakes or in reservoirs (coastal flooding); or the ponding of water at or near the point where the rain fell (flash floods).
30. Special Rapporteur on climate change (n 3) para 42, citing UN Convention to Combat Desertification Drought in numbers 2022: Restoration for readiness and resilience (2022), <http://www.unccd.int/sites/default/files/2022-06/Drought%20in%20Numbers%20%28English%29.pdf> (accessed 31 August 2024).
31. As above.
32. As above.
33. UNICEF The climate-changed child: A children's climate risk index supplement (2023) 34, <https://www.>

unicef.org/media/147931/file/The%20climate-changed%20child%20-%20Report%20in%20English.pdf (accessed 31 August 2024) .

34. United Nations International Organization for Migration (IOM) 'In the face of climate change, migration offers an adaptation strategy in Africa' (Geneva) 5 September 2022, <https://www.iom.int/news/face-climate-change-migration-offers-adaptation-strategy-africa> (accessed 31 August 2024).
35. As above.
36. UNICEF (2023) Children displaced in a changing climate: Preparing for a future already underway 19, [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 31 August 2024).
37. As above.
38. Special Rapporteur on climate change (n 3) para 44.
39. Jackson S & Humphrey C 'Yale experts explain intersectionality and climate change' Yale Sustainability 28 July 2022, <https://sustainability.yale.edu/explainers/yale-experts-explain-intersectionality-and-climate-change> (accessed 31 August 2024).
40. As above.
41. CRC Committee 'General Comment No. 26 on children's rights and the environment, with a special focus on climate change' (2023) para 15.
42. European Parliament 'The African Union's first climate strategy: And EU-Africa climate cooperation' (2022) 3, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738201/EPRS_BRI\(2022\)738201_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/738201/EPRS_BRI(2022)738201_EN.pdf) (accessed 31 August 2024).
43. As above.
44. As above.
45. See eg. Arias et al. (n 2).
46. The 1972 Stockholm Declaration states that humankind 'bears a solemn responsibility to protect and improve the environment for present and future generations'. See the Stockholm Declaration on the Human Environment, in Report of the United Nations Conference on the Human Environment (Stockholm Declaration), A/CONF.48/14/Rev.1, 5-16 June 1972, Principle 1, <https://digitallibrary.un.org/record/523249?v=pdf> (accessed 31 August 2024).
47. United Nations Framework Convention on Climate Change, Art 3, Principle 1.
48. See Petroleum Act of 2012, Art 7(5).
49. A 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons by the International Court of Justice (ICJ) notes that 'the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control is now part of the corpus of international law relating to the environment'. See Legality of the Threat or Use of Nuclear weapons (Advisory Opinion) [8 July 1996] ICJ Rep 226 29, <https://www.icj-cij.org/case/95> (accessed 31 August 2024).
50. Rio Declaration on Environment and Development, Principle 15, UN Doc. A/CONF. 151/26 Vol 1 (1992).
51. In the Saachi case, the CRC Committee endorsed the position of the Inter-American Court of Human Rights that 'the appropriate test for jurisdiction [...] is] that when transboundary [environmental] harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated ... if there is a causal link between the acts or omissions of the State in question and the negative impact on

the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question'. See *Sacchi v Argentina*, Decision Adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in Respect of Communication No. 104/2019 (*Sacchi v Argentina*, Decision) 22 September 2021 CRC/C/88/D/104/2019 10.7.

52. *Pulp Mills on the River Uruguay (Argentina v Uruguay)*, Judgment, 20 April 2010, ICJ, 101 (*Pulp Mills case*), quoting *Corfu Channel (United Kingdom of Great Britain and Northern Ireland v Albania)*, Judgment, 25 March 1948.
53. United Nations Environment Programme 'Climate justice' (n.d), <https://leap.unep.org/en/knowledge/glossary/climate-justice> (accessed 31 August 2024).
54. University of California Center for Climate Justice 'What is climate justice' (n.d), <https://centerclimate-justice.universityofcalifornia.edu/what-is-climate-justice/> (accessed 31 August 2024).
55. National Academy of Sciences Engineering Medicine 'Carbon dioxide and climate: A scientific assessment' Report of an ad hoc study group on carbon dioxide and climate 1979; N Nicholls '40 years, scientists predicted climate change. And hey, they were right' *The Conversation* 23 July 2019, <http://theconversation.com/40-years-ago-scientists-predicted-climate-change-and-they-were-right-120502> (accessed 31 August 2024).
56. See J Knox 'Climate ethics and human rights' (2014) 5 *Journal of Human Rights and the Environment* 22.
57. S Watt-Cloutier Petition to the Inter-American Commission on Human Rights seeking relief from violations resulting from global warming caused by acts and omissions of the United States (7 December 2005).
58. Malé Declaration on the Human Dimension of Global Climate Change (14 November 2007).
59. Office of the High Commissioner for Human Rights (OHCHR) Report on the relationship between climate change and human rights A/HRC/10/61 (2009).
60. United Nations Environment Programme (UNEP) Climate change and human rights <https://shorturl.at/Cxx77> (2015) 13 (accessed 31 August 2024). More recent developments include the following: in October 2021, the Human Rights Council adopted a resolution recognising the right to a safe, clean, and healthy environment – it also adopted a resolution focusing on children's rights and climate change; the Special Rapporteur on toxics and human rights issued a report on the effect of toxic substances on children's rights; and the OHCHR has produced a paper on climate change with a focus on the rights of the child. The Paris Agreement, the first global environmental instrument to refer to human rights, has explicitly recognised the importance of the rights of children when taking climate-related actions.
61. Declaration of the United Nations Conference on the Human Environment. UN Doc. A/Conf.48/14/Rev1 (1973); 11 I.L.M 1416 (1972), <http://hrlibrary.umn.edu/instree/humanenvironment.html> (accessed 31 August 2024).
62. Other regional instruments include the Arab Charter on Human Rights (2004), the ASEAN Declaration on Human Rights (2012), and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin American and the Caribbean (also known as Escazu Agreement) (2018).
63. World Economic Forum 'The UN just declared a new human right' (9 August 2022), <https://www.weforum.org/agenda/2022/08/the-un-just-declared-a-universal-human-right-to-a-healthy-sustainable-environment-here-s-where-resolutions-like-this-can-lead/> (accessed 31 August 2024).
64. DR Boyd 'Emergency measure: Making a healthy environment a human rights' (June 2022) *The Possible*, https://www.the-possible.com/human-right-healthy-environment/?utm_source=rss&utm_medium=rss&utm_campaign=human-right-healthy-environment (accessed 31 August 2024).

65. As above.
66. In terms of preventing, reducing, and controlling pollution of the marine environment and protecting and preserving the marine environment in relation to climate change impacts.
67. Adopted at the 64th meeting of its 77th Session on 29 March 2023, UN General Assembly Resolution 77/276.
68. ICJ 'Obligations of states in respect of climate change' (Order of 4 August 2023, ICJ Reports 2023) 564, <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230804-ord-01-00-en.pdf> (accessed 31 August 2024).
69. ICJ 'Obligations of states in respect of climate change' (No. 2023/42 18 July 2023), <https://www.icj-cij.org/sites/default/files/case-related/187/187-20230718-pre-01-00-en.pdf> (accessed 31 August 2024).
70. Committee on the Elimination of Discrimination Against Women 'General Recommendation No. 37: Gender-related dimensions of disaster-risk reduction in the context of climate change' (2018).
71. CESCR 'General Comment No. 26 on land and economic, social, and cultural rights' (2022).
72. CRC, Art 24(2)(c).
73. CRC, Art 24(2)(c).
74. ACHPR, Art 24.
75. The Commission's mandate is to 'formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African governments may base their legislation'. See African Child Policy Forum (ACPF) Climate change and child rights in Africa: Impact and accountability (2022), <https://demo1.africanchildforum.org/wp-content/uploads/2023/08/NinthIPC-DiscussionPaper-English-Sep6-22.pdf> (accessed 31 August 2024).
76. Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa, ACHPR/Res.153, 25 November 2009; Resolution on Climate Change in Africa, ACHPR/Res.271, 12 May 2014.
77. As above. See also ACPF (n 76).
78. Section on access to justice and remedies.
79. Social & Economic Rights Action Centre v Nigeria (Ogoniland case) (2001).
80. Resolution on Climate Change in Africa, ACHPR/Res.271, 12 May 2014; ACPF (n 76).
81. Some regional legal instruments also have significant relevance to climate change issues. These include the Maputo Protocol; AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention); African Convention on the Conservation of Nature and Natural Resources (revised version); and the Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa (Bamako Convention).
82. As stated in a discussion paper by the African Child Policy Forum, 'Institutional role players with similar relevance include the Committee of African Heads of State and Government on Climate Change (CA-HOSCC); the African Ministerial Conference on the Environment; and the African Group of Negotiators on Climate Change. The Department of Agriculture, Rural Development, Blue Economy and Sustainable Environment of the African Union Commission is the lead body for providing technical assistance to Member States on the implementation of the Paris Agreement, including by supporting efforts to access climate finance' (2022).
83. African Union Agenda 2063: The Vision for 2063 (2015) para 1, https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (accessed 31 August 2024).

84. African Union African Union Green Recovery Action Plan 2021-2027 (2021), https://au.int/sites/default/files/documents/40790-doc-AU_Green_Recovery_Action_Plan_ENGLISH1.pdf (accessed 31 August 2024).
85. African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032) (2023), <https://au.int/en/documents/20220628/african-union-climate-change-and-resilient-development-strategy-and-action-plan> (accessed 31 August 2024).
86. European Parliament (2022) 1.
87. K Jeffang 'West Africa's climate strategy breaks new ground but is vague' Dialogue Earth (1 November 2022), <https://bit.ly/42fYZeb> (accessed 31 August 2024).
88. As above.
89. African Committee of Experts on the Rights and Welfare of the Child 'Ratifications Table' (n.d), <https://www.acerwc.africa/en/member-states/ratifications> (accessed 31 August 2024).
90. Only four states – Botswana, Egypt, Mauritania, and Sudan – entered reservations. Botswana subsequently withdrew its reservation.
91. CRC, Art 24(2)(c).
92. ICESCR, Art 12(2)(b).
93. Climate mitigation methodologies in many nations impose cultural, economic, and ecological problems on marginalised communities. Research has shown that environmental solutions such as net zero targets sometimes rely on evicting people from their houses, thereby exacerbating inequalities based on class, gender, or ethnicity. The locations chosen for climate mitigation technologies are commonly called wastelands, emphasising their low agricultural productivity in order to dispossess populations whose livelihood plans rely precisely on such lands.
94. UNICEF 'The climate crisis is a child rights crisis: Introducing the Children's Climate Risk Index' 19 August 2021, <https://data.unicef.org/resources/childrens-climate-risk-index-report/> (accessed 31 August 2024).
95. UNICEF (n 7).
96. See n 7.
97. CRC Committee, GC 26 para 14.
98. xx.
99. Office of the High Commissioner on Human Rights (OHCHR) 'The global climate crisis is a racial justice crisis: UN expert' (31 October 2022), <https://www.ohchr.org/en/press-releases/2022/11/global-climate-crisis-racial-justice-crisis-un-expert> (accessed 31 August 2024).
100. As above.
101. CRC Committee 'General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)' (2013).
102. F Ippolito 'The best interests of the child: Another string to the environmental and climate protection bow?' (28 February 2022) Questions of International Law, <https://www.qil-qdi.org/the-best-interests-of-the-child-another-string-to-the-environmental-and-climate-protection-bow/> (accessed 31 August 2024).
103. N Peleg 'Climate change threatens the rights of children. The UN just outlined the obligations states have to protect them' The Conversation (28 August 2023), <https://theconversation.com/climate-change-threatens-the-rights-of-children-the-un-just-outlined-the-obligations-states-have-to-protect-them-209587> (accessed 31 August 2024).

104. J Knox 'Human rights principles and climate change' in KR Gray, R Tarasofsky & CP Carlarne (eds) *The Oxford handbook of international climate change law* (2016) 213-236. The Human Rights Committee in General Comment No. 36 on the right to life affirmed states' obligation to protect and prevent risk from, among others, the harmful consequences of climate change. With this approach, the Committee broadened states' positive obligations under the right to life, including outside of their territory. See H Tigroudja (2023) 'From the "green turn" to the recognition of an autonomous right to a healthy environment: Achievements and challenges in the practice of UN Treaty Bodies' (2023) 117 *American Journal of International Law Unbound* 179-183.
105. Knox (n 101) 5.
106. See, for example, *Social & Economic Rights Action Centre v Nigeria (Ogoniland case)* (2001) para 58. In addition, in a case involving the dangers of using sodium cyanide for gold mining in Romania, the European Court concluded that the state's failure to take positive steps to prevent an environmental disaster violated the rights to life, private and family life and, more generally, to the enjoyment of a healthy and life.
107. 1985; Doelle 2004: 200.
108. *Budayeva v Russia* (2008) 9.
109. Hall & Weiss (2012).
110. CCPR/C/127/D/2728/2016 (2019).
111. As above.
112. Office of the High Commissioner for Human Rights (OHCHR) (2018) Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (A/73/188).
113. As above.
114. See, for example, European Court of Human Rights, *Hatton and others v United Kingdom* (Application No. 36022/97) (judgment of 8 July 2003) para 98. See also Rio Declaration on Environment and Development, Principle 11.
115. Intergovernmental Panel on Climate Change (IPCC) *Climate change 2022: Impacts, adaptation and vulnerability - Summary for policymakers* (2022), <https://www.ipcc.ch/report/ar6/wg2/chapter/summary-for-policymakers/> (accessed 31 August 2024).
116. CRC Committee, GC 26 para 26.
117. CRC Committee, List of Issues Prior to Reporting, Mauritius, para 24(a).
118. CRC Committee, Concluding Observations (27 October 2022) (CRC/C/SSD/CO/1) para 51(a).
119. Africa Union 'The African Leaders Nairobi Declaration on Climate Change and Call to Action' (September 2023), <https://shorturl.at/L448T> (accessed 31 August 2024).
120. Save the Children 'Africa Climate Summit: Leaders leave 650 million children in limbo' (8 September 2023), <https://shorturl.at/ZYdnu> (accessed 31 August 2024).
121. Chile and Ireland also have similar institutions.
122. ACRWC, Art 7.
123. ACRWC, Art 8.
124. There are indications in the Charter – for example, Article 15(2)(d), which promotes 'the dissemination of information on the hazardous of child labour to all sectors of the community' – that the drafters appreciated the importance of access to information as a right.

125. Access to information can be divided into two types: active, where the government makes available information on its own initiative or pursuant to legal mandates, and passive, where the government responds to requests for information from the public or other stakeholders.
126. World Resources Institute 'Environmental Democracy Index' (n.d), <https://www.wri.org/initiatives/environmental-democracy-index> (accessed 31 August 2024).
127. As above.
128. See United Nations Environment Programme (UNEP) Guidelines for the development of national legislation on access to information, public participation and access to justice in environmental matters (2010) (Bali Guidelines), <https://shorturl.at/PYQun> (accessed 31 August 2024).
129. As above.
130. African Commission on Human and Peoples' Rights 2012.
131. CRC Committee 'General Comment No. 13 on the right of the child to freedom from all forms of violence' (2011) para 72(g).
132. UNICEF Is an end to child marriage within reach? Latest trends and future prospects: 2023 update (5 May 2023), <https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/> (accessed 31 August 2024).
133. Malawi Government 'Malawi 2015 floods post disaster needs assessment report' (18 June 2015), <https://reliefweb.int/report/malawi/malawi-2015-floods-post-disaster-needs-assessment-report> (accessed 31 August 2024). For context on the 2019 floods, see Malawi Government 'Malawi 2019 floods post disaster needs assessment report' (2 July 2019), <https://reliefweb.int/report/malawi/malawi-2019-floods-post-disaster-needs-assessment-report> (accessed 31 August 2024).
134. Arif Husain 'After the pandemic, a global hunger crisis' The New York Times (New York) 12 June 2020, <https://www.nytimes.com/2020/06/12/opinion/coronavirus-global-hunger.html?searchResultPosition=1>
135. As above.
136. UNAIDS 'Building resilience to drought and disease: How UNAIDS is supporting Eastern and Southern Africa in the face of El Niño' (2016), <https://open.unaids.org/sites/default/files/documents/EI%20Nino%20Case%20Study.pdf> (accessed 31 August 2024).
137. Plan International 'Response to call for inputs on women, girls, and the right to a clean, healthy and sustainable environment'. Submission to the Special Rapporteur on climate change (October 2022).
138. As above.
139. MW Cooper, ME Brown, S Hochrainer-Stigler et al. 'Mapping the effects of drought on child stunting' (2019) 116 Proceedings of the National Academy of Sciences 17219-17224, <https://doi.org/10.1073/pnas.1905228116> (accessed 31 August 2024).
140. S Datzberger, J Parks, L Howard-Merrill et al. 'Climate change contributes to violence against children - here's how' The Conversation 1 August 2023, <https://bit.ly/41RbiNH> (accessed 31 August 2024); S Datzberger, L Howard-Merrill, SK Iorfa et al. How do climate change and environmental degradation contribute to violence against children? (University College London 2023).
141. L Corno, N Hildebrandt & A Voena 'Age of marriage, weather shocks, and the direction of marriage payments' (2020) 88(3) Econometrica 879-915, <https://doi.org/10.3982/ECTA15505> (accessed 31 August 2024).
142. AM Thurston, H Stöckl & M Ranganathan 'Natural hazards, disasters and violence against women and girls: A global mixed-methods systematic review' (2020) 6 BMJ Global Health, <https://doi.org/10.1136/>

bmjgh-2020-004377 (accessed 31 August 2024).

143. MN Asadullah, KMM Islam & Z Wahha 'Child marriage, climate vulnerability and natural disasters in coastal Bangladesh' (2021) 53 *Journal of Biosocial Science* 948-967, <https://doi.org/10.1017/S0021932020000644>, as cited in Datzberger, Howard-Merrill, Iorfa et al. (2023) 27.
144. United Nations Office for Disaster Risk Reduction (UNDRR) 'Definition: Disaster risk reduction', <https://www.undrr.org/terminology/disaster-risk-reduction> (accessed 31 August 2024).
145. Perezniето et al. (2020) as cited in Datzberger, Howard-Merrill, Iorfa et al. (2023) 21.
146. Datzberger, Howard-Merrill, Iorfa et al. (2023) 22.
147. C Catani, N Jacob, E Schauer et al. 'Family violence, war, and natural disasters: A study of the effect of extreme stress on children's mental health in Sri Lanka' (2008) 8 *BMC Psychiatry* 33.
148. UN News 'Fresh allegations of sexual abuse made against UN peacekeepers in Central African Republic' (n.d), <https://www.un.org/africarenewal/news/fresh-allegations-sexual-abuse-made-against-un-peacekeepers-central-african-republic> (accessed 31 August 2024).
149. World Health Organization (WHO) Final Report of the Independent Commission on the review of sexual abuse and exploitation during the response to the 10th Ebola virus disease epidemic in DRC (28 September 2021), <https://www.who.int/publications/m/item/final-report-of-the-independent-commission-on-the-review-of-sexual-abuse-and-exploitation-ebola-drc> (accessed 31 August 2024).
150. CERI (n 8) 10 citing Amnesty International (2017) 'Democratic Republic of Congo: "This is what we die for": Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt'.
151. M Cruz, J Foster, B Quillin et al. Ending extreme poverty and sharing prosperity: Progress and policies World Bank Group Policy Research Note 2015/03, 1, 66.
152. See the Report of the Special Rapporteur on extreme poverty and human rights to the UN General Assembly of 11 August 2014, A/69/297 para 2.
153. International Labour Organization (ILO) World Social Protection Report 2020-2022: Social protection at the crossroads- in pursuit of a better future (2021) 89, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_817572.pdf (accessed 31 August 2024).
154. For more detail, see M Kaltenborn 'Overcoming extreme poverty by social protection floors: Approaches to closing the right to social security gap' (2017) 10 *Law and Development Review* 237-274.
155. JD Tenzing & D Conway Does the geographical footprint of Ethiopia's flagship social protection programme align with climatic and conflict risks? Centre for Climate Change Economics and Policy Working Paper 423/Grantham Research Institute on Climate Change and the Environment Working Paper 399. (7 August 2023), <https://www.lse.ac.uk/granthaminstitute/publication/does-the-geographical-footprint-of-ethiopia-s-flagship-social-protection-programme-align-with-climatic-and-conflict-risks/> (accessed 31 August 2024).
156. The African Charter on Human and Peoples' Rights has been interpreted to provide for the right to social protection.
157. SDGs 1.3, 3.8, 5.4 & 10.4.
158. Special Rapporteur on extreme poverty and human rights 'Looking back to look ahead: A rights-based approach to social protection in the post-COVID-19 economic recovery' (11 September 2020) 2.
159. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Citizens to Social Protection and Social Security (African Union, 6 February 2022), <https://au.int/en/treaties/protocol-african-charter-human-and-peoples-rights-rights-citizens-social-protection-and> (accessed 31 August 2024).

160. UNICEF Eastern and Southern African Regional Office (ESARO) Building climate change into care reform in eastern and southern Africa (2023) 13.
161. As above 8.
162. As above 8-9.
163. Save the Children (2021).
164. Mekonnen et al. (2021).
165. UNICEF (n 4).
166. World Health Organization (WHO) 'Climate change and health: Key facts' (30 October 2021), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> (accessed 31 August 2024).
167. As above.
168. Mekonnen (n 165).
169. Action against Hunger 'Climate change: A hunger crisis in the making' (1 October 2021) 4.
170. See, for example, Resolution ACHPR/Res. 374 (LX) 2017 on the Right to Food and Food Insecurity in Africa and Resolution on the Right to Food and Nutrition in Africa – ACHPR/Res. 431(LXV) 2019.
171. Food and Agriculture Organization of the United Nations (FAO) The state of agriculture: Moving forward on food loss and waste reduction (2019) 222. The legal motivations to constitutionalise are multifold, including giving the highest level of protection. It also helps avoid the need to undertake a derivative rights analysis, for example based on the right to life or the right to adequate standard of living.
172. World Food Programme (WFP) & FAO Hunger Hotspots: FAO-WFP early warnings on acute food insecurity February to May 2022 Outlook (2022), https://docs.wfp.org/api/documents/WFP-0000136243/download/?_ga=2.99353438.1109800921.1658282985-1005435185.1658282985 (accessed 31 August 2024).
173. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment: Right to a healthy environment: good practices (30 December 2019) (Human Rights Council, Forty-third session, 24 February-20 March 2020) 7.
174. G Gustin 'In Africa, conflict and climate super-charge the forces behind famine and food insecurity' Inside Climate News 12 June 2022, <https://insideclimatenews.org/news/12062022/in-africa-conflict-and-climate-super-charge-the-forces-behind-famine-and-food-insecurity/> (accessed 31 August 2024).
175. As above.
176. See, for example, E Boshoff & SG Damtew 'The potential of litigating children's rights in the climate crisis before the African Committee of Experts on the Rights and Welfare of the Child' (2022) 22 African Human Rights Law Journal 328-361, <http://dx.doi.org/10.17159/1996-2096/2022/v22n2a1> (accessed 31 August 2024).
177. UNICEF 'Making climate and environment policies for and with children and young people' Climate & Environment Discussion Paper November 2021, <https://arnec.net/sites/default/files/2022-09/Making-Climate-Policies-for-and-with-Children-and-Young-People.pdf> (accessed 31 August 2024).
178. See Ministry of Education and Technical Education 'The Ministers of Education and Environment discuss a number of common issues and prepare for the COP 27 climate conference' (8 June 2022), <https://moe.gov.eg/en/what-s-on/news/education-and-environment/> (accessed 31 August 2024).
179. The UNESCO Greening Education Partnership is an open community of member states, organisations, and institutions for promoting, implementing and enabling every learner to be climate-ready. See <https://www.unesco.org/en/sustainable-development/education/greening-future> (accessed 31 August 2024).

180. CRC Committee, List of Issues, Mauritius para 24(b)
181. CRC Committee, Concluding Observations: South Sudan, (2022) para 51(c).
182. CRC Committee, Concluding Observations: Togo (25 September 2023) (CRC/C/TGO/CO/5-6) para 40(d).
183. CRC Committee, Concluding Observations: Sao Tome and Principe (23 June 2023) para 41 (d).
184. xxx.
185. Mauritius Statement on the State of the Budget 2020-2021 23.
186. UNICEF (n 9) 39.
187. WFP (n 173) 2.
188. As above.
189. C Kwauk & L Steer 'Four ways that climate change impacts girls' education in Africa' Global Center on Adaptation (24 January 2023), <https://gca.org/4-ways-that-climate-change-impacts-girls-education-in-africa/#:~:text=The%20Malala%20Fund%20estimates%20that,Gender%20inequality> (accessed 31 August 2024).
190. World Weather Attribution 'Climate change – exacerbated rainfall causing devastating flooding in Eastern South Africa' 13 May 2022, <https://www.worldweatherattribution.org/climate-change-exacerbated-rainfall-causing-devastating-flooding-in-eastern-south-africa/> (accessed 31 August 2024).
191. World Health Organization Integrated African Health Observatory Analytical factsheet 2023: Climate change is an increasing threat in Africa (February 2023), https://files.who.int/afahobckpcontainer/production/files/_Climate_change_Regional_Factsheet.pdf (accessed 31 August 2024).
192. AH Coovadia et al. 'Climate change and the health of children in Southern Africa: The time to act is now' (2022) 4 Wits Journal of Clinical Medicine 157-162.
193. ClimDev-Africa 'Policy brief 12: Climate change and health in Africa: Issues and options' (2013), https://archive.uneca.org/sites/default/files/PublicationFiles/policy_brief_12_climate_change_and_health_in_africa_issues_and_options.pdf (accessed 31 August 2024).
194. The Preamble states that, '[because] climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights [and] the right to health ...'
195. CRC Committee 'General Comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health' (2013) para 5.
196. A Mandavilli 'How Climate Change is Spreading Malaria in Africa New York Times (New York) 14 February 2023, <https://www.nytimes.com/2023/02/14/health/malaria-mosquitoes-climate-change.html> (accessed 31 August 2024).
197. UNICEF (n 4) 110.
198. Children's Environmental Health Collaborative State of Global Air Initiative 'The state of global air 2024 report' (June 2024), <https://bit.ly/3VXTn4b> (accessed 31 August 2024).
199. ACRWC, Art 14(2)(a).
200. ACRWC, Art 14(2)(c).
201. ACRWC, Art 14(2)(f) & (d).
202. See 'children of Nubian descent' case.
203. ICESCR, Art 2.

204. In the bill of rights chapter of the Constitution of South Africa, it is stated that everyone has the right: (a) to an environment that is not harmful to their health or well-being. See, for example, UN General Assembly Human Rights Council (6 May 2016) Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health: Report of the Office of the United Nations High Commissioner for Human Rights (thirty second session) A/HRC/32/23 paras 53-64, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/092/02/PDF/G1609202.pdf?OpenElement> (accessed 31 August 2024).
205. Kingdom of Lesotho, Third Periodic Report under the Convention on the Rights of the Child, (20xx) para 130.
206. See in general C Hickman et al. 'Climate anxiety in children and young people and their beliefs about government responses to climate change: A global survey' (December 2021) 5 Lancet Planet Health 863-873.
207. Report of the Office of the United Nations High Commissioner for Human Rights A/HRC/35/13. See, too, in general, Agnes A Babugara 'Vulnerability of children and youth in drought disasters: A case study of Botswana' (2008) 18 Children, Youth and Environments.
208. Hickman & Marks (n 208) 863-873.
209. Human Rights Council 'Analytical study on the relationship between climate change and the full and effective enjoyment of the rights of the child' (04 May 2017) (A/HRC/35/13) para 18.
210. AA Babugara 'Vulnerability of children and youth in drought disasters: A case study of Botswana' (2008) 18 Children, Youth and Environments.
211. ClimDev-Africa (n 195).
212. World Health Organization (WHO) 'Regional initiative to tackle health impacts of climate change in Africa launched' (24 May 2023), <https://www.afro.who.int/news/regional-initiative-tackle-health-impacts-climate-change-africa-launched> (accessed 31 August 2024).
213. Chuan-Feng Wu 'Challenges to protecting the right to health under the climate change regime' (December 2021) 23 Health and Human Rights 131.
214. Amani Africa 'Insights on the Peace and Security Council (PSC)' (Addis Ababa) 30 August 2023, <https://amaniafrica-et.org/update-on-the-impact-of-climate-change-on-peace-and-security/> (accessed 31 August 2024).
215. Efforts to access the document have not succeeded.
216. Amani Africa (n 213).
217. Conflicts in far-flung places also affect children in Africa. For example, the withdrawal of Russia from the Black Sea Grain Initiative deal with Ukraine (July 2023), which allowed the transfer of cereals from Ukraine to feed millions in Africa and beyond, posed serious risks to lives in countries such as Ethiopia, Kenya and Somalia. When the initiative was in place, half of the 725 000 tons that the World Food Programme bought went to these East African countries.
218. P Gleick, C Iceland & A Trivedi Ending conflicts over water: Solutions to water and security challenges (2020) 83, <https://files.wri.org/d8/s3fs-public/ending-conflicts-over-water.pdf> (accessed 31 August 2024).
219. R Muggah 'In West Africa, climate change equals conflict: The region is the poster child for insecurities already brought on by global warming' Foreign Policy Magazine (Washington, DC) 18 February 2021, <https://foreignpolicy.com/2021/02/18/west-africa-sahel-climate-change-global-warming-conflict-food-agriculture-fish-livestock/> (accessed 31 August 2024).
220. As above 9.

221. South Sudan 27 October 2022 CRC/C/SSD/CO/1 para 4.
222. As above para 51(b).
223. Muggah (n 217).
224. Office of the High Commissioner for Human Rights (OHCHR) 'Climate change exacerbates violence against women and girls' (12 July 2022), <https://www.ohchr.org/en/stories/2022/07/climate-change-exacerbates-violence-against-women-and-girls> (accessed 31 August 2024).
225. See data provided by the Internal Displacement Monitoring Centre (IDMC) in its annual reports at <https://www.internal-displacement.org/> (accessed 22 May 2023).
226. International Organization for Migration (IOM) 'In the face of climate change, migration offers an adaptation strategy in Africa' (Geneva) 5 September 2022, <https://www.iom.int/news/face-climate-change-migration-offers-adaptation-strategy-africa> (accessed 31 August 2024).
227. IPCC (n 116) 52.
228. Report of the Special Rapporteur on the promotion and protection of human rights in the context of climate change, Ian Fry 'Providing legal options to protect the human rights of persons displaced across international borders due to climate change' (18 April 2023) (A/HRC/53/34) 17.
229. For example, it is used by the IOM.
230. Special Rapporteur on climate change (n 226).
231. As above.
232. Italian Supreme Court of Cassation, Ordinance No. 5022/2021 of 12 November, 2020.
233. See in general M Mayrhofer & M Ammer M Climate mobility to Europe: The case of disaster displacement in Austrian asylum procedures (2022) 4:990558 *Frontiers in Climate*, <https://www.frontiersin.org/journals/climate/articles/10.3389/fclim.2022.990558/full> (accessed 31 August 2024).
234. World Economic Forum (WEF) 'These 11 sinking cities could disappear by 2100' (10 September 2019), <https://www.weforum.org/agenda/2019/09/11-sinking-cities-that-could-soon-be-underwater> (accessed 31 August 2024).
235. Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 23 October 2009 (entered into force 6 December 2012) (Kampala Convention).
236. Kampala Convention, Art 1(k).
237. This is intended to support affected communities, who are among the world's most vulnerable, to adapt to climate change realities. See International Organization for Migration (IOM) 'African heads of state and governments meet in Uganda to call for concerted efforts to tackle climate change' (Geneva) 25 July 2022, <https://www.iom.int/news/african-heads-state-and-governments-meet-uganda-call-concerted-efforts-tackle-climate-change> (accessed 31 August 2024).
238. See section K, entitled 'Rights of Indigenous children and children belonging to minority groups (art. 30)' of the General Comment.
239. The same can be said of groups such as children in the context of migration; children deprived of their family environment; and children affected by armed conflict.
240. Para 14.
241. Para 26.
242. Para 34.

243. Concluding Observations: Mauritius CRC/C/MUS/CO/6-7 (23 February 2023) para 24(a).
244. United Nations Environment Programme (UNEP) Annual report 2019 (18 May 2020) 12, <https://www.unep.org/resources/unep-annual-report-2019> (accessed 31 August 2024).
245. For example, Kenya's Children's Act of 2022.
246. For example, Comoros and São Tomé and Príncipe.
247. ACPF (n 76).
248. Mauritius's Climate Change Act of 2020 (No. 11/2020); Nigeria's Climate Change Act of 2021; Uganda's National Climate Change Act of 2021; and Tunisia's Government Decree No. 2018-263 to Operationalise the Implementation of the Paris Agreement (2018).
- 249.
250. National Strategy for Climate Change of 2017 of Angola; Benin's Climate Change Management Policy for 2030; National Strategy on Climate Change of Guinea (2019); National Policy and Response Strategy on Climate Change of Liberia (2018); National Climate Change Policy of Somalia (2020); and Policy, Strategy and Action Plan in the fight against Climate Change (PSPA-CC) of the DRC. For more detail, see ACPF (n 76).
251. With a few exceptions, such as the National Climate Change Strategy 2021-2026 of Tanzania and the National Climate Change Policy of Seychelles (2020).
252. Some of which can be deciphered from their voting records at the international level on the issue.
253. Y Suedi & M Fall 'Climate change litigation before the African human rights system. Prospects and pitfalls practice note: GNHRE climate litigation in Global South project' (2023) XX *Journal of Human Rights Practice* 1-14, <https://eprints.lse.ac.uk/119698/1/huad024.pdf> (accessed 31 August 2024).
254. It is to be recalled that 'Advisory Opinion 002/2016 Requested by L'Association Africaine de Défense des Droits de l'Homme 2017' dealt with the protection of fundamental environment-related rights affected by mining activities.
255. Advisory Opinion 002/2013 Requested by the African Committee of Experts on the Rights and Welfare of the Child 2014.
256. Suedi & Fall (n 254) 7. Emphasis added.
257. Close to 18 per cent.
258. See section 4.4.4 below on rights-based climate change litigation.
259. Pope Francis 'Laudate Deum [Apostolic Exhortation on the climate crisis]' Holy See (Vatican City) 4 October 2023, <https://shorturl.at/DedCa> (accessed 31 August 2024).
260. South Africa.
261. United Nations Environment Programme (UNEP) Emissions Gap Report 2022: The closing window - Climate crisis calls for rapid transformation of societies – Executive summary (2022), https://wedocs.unep.org/bitstream/handle/20.500.11822/40932/EGR2022_ESEN.pdf?sequence=8 (accessed 31 August 2024).
262. As above xvi.
263. UNEP (n 15) xii.
264. Energy & Climate Intelligence Unit 'Net-zero scorecard' (2024) <https://eci.net/netzerotracker> (accessed 31 August 2024).
265. As above.

266. Report of the Special Rapporteur (n 174) 10-11.
267. C Kwauk, J Cooke, E Hara et al. 'Girls' education in climate strategies: Opportunities for improved policy and enhanced action in Nationally Determined Contributions' (December 2019) *Global Economy & Development: Working Paper 133* December 2019, <https://www.brookings.edu/wp-content/uploads/2019/12/Girls-ed-in-climate-strategies-working-paper-FINAL.pdf> (accessed 31 August 2024).
268. As above.
269. Malawi (2017) 11. As cited in Kwauk & Steer (n 268) 12.
270. Zambia (2016) 4. As cited in Kwauk & Steer (n 268) 13.
271. Sudan (2017) 13. As cited in Kwauk & Steer (n 268).
272. See UNFCCC, Art 6 & Paris Agreement, Art 12. See also UNICEF (n 265) 8.
273. Global Forest Coalition Annual report 2021, <https://bit.ly/41WkvnJ> (accessed 31 August 2024).
274. A Mugenyi 'Europe's opposition to controversial oil pipeline angers Uganda's government' *Mail & Guardian* (Johannesburg) 19 November 2022, <https://mg.co.za/africa/2022-11-19-europes-opposition-to-controversial-oil-pipeline-angers-ugandas-government/> (accessed 31 August 2024).
275. Africa News 'Nigeria-Morocco gas pipeline project takes off' 16 September 2022, <https://www.africanews.com/2022/09/16/nigeria-morocco-gas-pipeline-project-takes-off/> (accessed 31 August 2024).
276. UNICEF Office of Research (2014) *The challenges of climate change: Children on the front line* (2014).
277. As above.
278. Office of the High Commissioner for Human Rights (OHCHR) 'Understanding human rights and climate change' Submission of the OHCHR to the 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (2015), <https://www.ohchr.org/sites/default/files/Documents/Issues/ClimateChange/COP21.pdf> (accessed 31 August 2024).
279. As above.
280. As above.
281. The Cancun Adaptation Framework, adopted at the 16th Conference of the Parties to the UNFCCC (COP16), Cancun, Mexico, 2010.
282. CRC Committee, GC 26 para 108.
283. As above.
284. N Anschell, A Salamanca, V Bernard et al. Human rights in the process of National Adaptation Planning: Insights from a review of submitted NAPs (April 2022) 10-11, <https://www.sei.org/wp-content/uploads/2022/04/human-rights-in-the-process-of-national-adaptation-planning-insights-from-a-review-of-submitted-naps.pdf> (accessed 31 August 2024).
285. Ministry of Environment and Fishery Resources (2015) *Burkina Faso National Climate Change Adaptation Plan (NAP)*.
286. Federal Democratic Republic of Ethiopia (2019) *Ethiopia's Climate Resilient Green Economy National Adaptation Plan*. Environment, Forest and Climate Change Commission.
287. Government of Kenya, Ministry of Environment and Natural Resources (2016) *Kenya National Adaptation Plan 2015-2030: Enhanced climate resilience towards the attainment of Vision 2030 and beyond*.
288. Republic of the Sudan, Minister of Environment, Forestry and Physical Development, Khartoum (2016) *National Adaptation Plan*.

- 289.
290. The vision of the PNGCC is: 'By 2030, Benin is a climate-resilient country with sufficient adaptive capacity and appropriate mechanisms for anticipating and responding to climate risks, low-carbon growth, and whose institutions, organizations, businesses and citizens adopt climate-sensitive practices, attitudes and behaviours.'
291. The aim of Benin's Gender and Climate Change Action Plan is to promote the effective integration of gender in the implementation of climate change mitigation and adaptation measures in a way which is equitable for men and women.
292. World Meteorological Organization (WMO) State of the Climate in Africa WMO-No. 1330 (2023) 36, https://reliefweb.int/attachments/f0a05565-ffe1-4661-8066-b65e8c737f5b/1330_State%20of%20the%20Climate%20in%20Africa%202022_en.pdf (accessed 31 August 2024).
293. As above 4.
294. As above 38.
295. As above 38.
296. See also Kingdom of Eswatini Annual vulnerability assessment and analysis report 2018 (July 2018), http://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/Eswatini_VAC_Annual_Assessment_Report2018.pdf (accessed 31 August 2024).
297. WMO 'Early Warnings For All Action Plan for Africa is launched' (4 September 2023), <https://public.wmo.int/media/news/early-warnings-all-action-plan-africa-launched> (accessed 31 August 2024).
298. UNICEF 'The climate-changed child: A children's climate risk index supplement' (2023) 38.
299. Plan International 'Child-centred adaptation: Realising children's rights in a changing climate' (2016), https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/Discussions/2016/Plan_International_-_3.pdf (accessed 31 August 2024).
300. Concluding observations: Togo, African Commission on Human and Peoples' Rights, 31st Extraordinary Session, 13-25 February 2021.
301. Office of the High Commissioner for Human Rights (OHCHR) Report of the 2016 Day of General Discussion on Children's Rights and the Environment (DGD/2016/Report).
302. UNEP Global Climate Litigation Report: 2020 status review (2020), <https://wedocs.unep.org/bitstream/handle/20.500.11822/34818/GCLR.pdf?sequence=1&isAllowed=y> (accessed 31 August 2024).
303. As above 41-42. One of the added values of the human rights framework can be demonstrated by considering gas flaring in Nigeria. Since 1979, the Associated Gas Reinjection Act (paras 3-5) has made it illegal to flare gas without a permit, with violators liable to a fine. As at 2022, a number of companies reportedly continue the practice and prefer to pay the fine, if and when issued. A human rights framework would make a strong case not only for accountability, but also for ensuring that the penalties imposed are commensurate with the gravity of the offence. See PK Oniemola 'A proposal for transnational litigation against climate change violations in Africa' (2021) 38 *Wisconsin International Law Journal* 307.
304. A Nelsen 'Health groups call for global fossil fuel non-proliferation treaty' *The Guardian* (London) 14 September 2022, <https://www.theguardian.com/environment/2022/sep/14/fossil-fuel-non-proliferation-treaty-who-environmental-vandalism> (accessed 31 August 2024).
305. UNEP (n 303) 4
306. *EarthLife Africa Johannesburg v Minister of Environmental Affairs and Others* Case (2016) Case no. 65662/16; *Africa Climate Alliance et al. v Minister of Mineral Resources & Energy et al.* (#CancelCoal

case) Case No. 56907/21; Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others (2021, pending) Case No. 3491/2021; The City of Cape Town v National Energy Regulator of South Africa and Minister of Energy (2017, pending) Case No. 51765/17; South Durban Community Environmental Alliance v Minister of Environment and Others (2021, pending); SDCEA & Groundwork v Minister of Forestry, Fisheries, and the Environment (2021, pending); Trustees for the Time Being of the GroundWork Trust v Minister of Environmental Affairs, KiPower (Pty) Ltd, and Others (2017, pending) Case no. 54087/17; Trustees for the Time Being of GroundWork v Minister of Environmental Affairs, ACWA Power Khanyisa Thermal Power Station RF (Pty) Ltd, and Others (2017, pending) Case no. 61561/17; Philippi Horticultural Area Food & Farming Campaign, et al. v MEC for Local Government, Environmental Affairs and Development Planning: Western Cape, et al. (2019) Case no 16779/17.

307. Save Lamu et al. v National Environmental Management Authority and Amu Power Co. Ltd (2016) Tribunal Appeal No. Net 196 of 2016.
308. Gbemre v Shell Petroleum Development Company of Nigeria Ltd and Others FHC/B/CS/53/05.
309. Mbabazi and Others v The Attorney General and National Environmental Management Authority Civil Suit No. 283 of 2012.
310. Center for Food and Adequate Living Rights et al. v Tanzania and Uganda (2020, pending).
311. Climate Case Chart 'Jurisdiction' (n.d) <http://climatecasechart.com/non-us-jurisdiction/> (accessed 31 August 2024).
312. U Etemire 'The future of climate change litigation in Nigeria: COPW v NNPC in the spotlight" (2021) 2 Climate Change Litigation Review 160.
313. For details of the case, including a summary, see <http://climatecasechart.com/non-us-case/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria/> (accessed 31 August 2024).
314. See summary of the case (n 314).
315. COPW v NNPC 587 & 597-598.
316. The publicly available decisions on the interpretation of some of the legal provisions in domestic and international law fall within two categories: those that are brought on the basis of alleged procedural impropriety by the government that negatively affects the right to a clean and healthy environment (and contributes to climate change), and those that go directly to the substance of the right to an adequate environment.
317. Para 7 of judgment.
318. Para 7 of judgment.
319. Para 8 of judgment.
320. Based on section 240 of the National Environmental Management Act 107 of 1998. The complainants asserted that '[a] climate change impact assessment in relation to the construction of a coal fire power station ordinarily would comprise an assessment of (i) the extent to which a proposed coal-fired power station will contribute to climate change over its lifetime, by quantifying its GHG emissions during construction, operation and decommissioning; (ii) the resilience of the coal-fired power station to climate change, taking into account how climate change will impact on its operation, through factors such as rising temperatures, diminishing water supply, and extreme weather patterns; and (iii) how these impacts may be avoided, mitigated, or remedied'. Para 6 of judgment.
321. See, for example, para 35 of the judgment.
322. As above.

323. See the summary of *EarthLife Africa Johannesburg v Minister of Environmental Affairs and Others* 2015 65662/16 at <http://climatecasechart.com/non-us-case/4463/> (accessed 31 August 2024). See also the 19 November 2020 order at <https://cer.org.za/wp-content/uploads/2020/11/21559-2018-19-November-2020.pdf> (accessed 31 August 2024).
324. Summary obtained from <http://climatecasechart.com/non-us-case/save-lamu-et-al-v-national-environmental-management-authority-and-amu-power-co-ltd/> (accessed 31 August 2024).
325. Summary obtained from <http://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/> (accessed 31 August 2024).
326. The application is brought on two legal grounds: (i) A constitutional challenge on the basis that the impugned decisions unjustifiably limit several rights in the Bill of Rights, entailing a section 36 limitations clause analysis; (ii) a review challenge based on the Promotion of Administrative Justice Act, alternatively, the principle of legality provide = the legal test for a judicial review application.
327. Paragraphs 208-217 of the founding affidavit are particularly interesting: see <https://cer.org.za/wp-content/uploads/2021/11/2.-Founding-Affidavit-and-Annexures.pdf> (accessed 31 August 2024); note the argument regarding the unique relationship between the public trust doctrine and groups, such as children, that are vulnerable to climate change harms. Note too the similarity with the Mbabazi case below.
328. Summary obtained from <http://climatecasechart.com/non-us-case/mbabazi-et-al-v-attorney-general-et-al/> (accessed 31 August 2024).
329. *Saachi v Argentina et al.* (CRC/C/88/D/104/2019) (11 November 2021), Decision of the UN Committee on the Rights of the Child. For commentaries on the case, see M Wewerinke-Singh 'Between cross-border obligations and domestic remedies: The UN Committee on the Rights of the Child's decision on *Sacchi v Argentina*', <https://www.childrensrightsobservatory.nl/case-notes/casenote2021-10> (accessed 31 August 2024); A Nolan 'Children's rights and climate change at the UN Committee on the Rights of the Child: Pragmatism and principle in *Sacchi v Argentina*', <https://www.ejiltalk.org/childrens-rights-and-climate-change-at-the-un-committee-on-the-rights-of-the-child-pragmatism-and-principle-in-sacchi-v-argentina/> (accessed 31 August 2024).
330. Para 3.8 of the decision.
331. Paras 3.4-3.6 of the decision.
332. Para 3.8 of the decision.
333. Some commentators have suggested that the Committee's suggestion that it would have exceeded the 'limits of its legal powers' by agreeing to hear the complaints is questionable, especially for complainants whose home states, like the Marshall Islands, have had a negligible contribution to greenhouse gas emissions', <https://www.childrensrightsobservatory.nl/case-notes/casenote2021-10> (accessed 31 August 2024). While there might be some sympathy for this argument, it does not appear to stand on principle. As Nolan puts it, '[T]here was simply no way of admitting these complaints without effectively gutting the OPIC.'
334. Para 10.9 of the decision. The general rule is that human rights obligations are territorial in nature, that is, they do not operate extraterritorially. Atappatu argues that environmental law has explicit extra territorial application. See S Atappatu *Human rights approaches to climate change: Challenges & opportunities* (2018) 89.
335. Para 10.10 of the decision.
336. See UN Treaty Bodies News release 'UN Child Rights Committee rules that countries bear cross-border responsibility for harmful impact of climate change' (07 October 2021), as well as para 10.14 of the decision.

337. ACRWC, Art 46.
338. For the purpose of this study, NHRIs include child-focused units or observatories that are independent and discharge similar roles to NHRIs.
339. Global Alliance of National Human Rights Institutions (GANHRI) 'Outcome statement NHRIs and climate change' <https://ganhri.org/outcome-statement-nhris-and-climate-change/> (accessed 31 August 2024). See GANHRI 'GANHRI Statement adopted at the GANHRI annual conference on climate change: The role of national human rights institutions held on 4 December 2020', https://ganhri.org/wp-content/uploads/2021/02/EN_AC_Statement_for_consultation.pdf (accessed 31 August 2024) for the full statement.
340. GANHRI 'Climate change and human rights' (2020), <https://ganhri.org/climate-change-and-hr/> (accessed 31 August 2024).
341. GANHRI 'Argentina: Using the SGDs to monitor human rights and climate change' (n.d), <https://ganhri.org/argentina-climate-change/> (accessed 31 August 2024).
342. As above.
343. Case No. 20- 051052SIV-HRET.
344. Norwegian National Human Rights Institution 'Written submission from the Norwegian National Human Rights Institution to shed light on public interests in Case No. 20-051052SIV-HRET', <https://www.nhri.no/wp-content/uploads/2020/10/Amicus-Curiae-from-the-Norwegian-National-Human-Rights-Institution.pdf> (accessed 31 August 2024).
345. GANHRI 'Kenya: How partnering with the government helped conserve forests and protect the rights of indigenous people' (n.d), <https://ganhri.org/kenya-climate-change/> (accessed 31 August 2024).
346. As above.
347. Special Rapporteur (environment) (n 174).
348. German Institute for Human Rights & Center for International Environmental Law Climate change and human rights: The contributions of national human rights institutions. A handbook (2020) 33, https://www.ciel.org/wp-content/uploads/2020/12/Climate-Change-and-Human-Rights_final.pdf (accessed 31 August 2024).
349. Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, on his visit to Madagascar (2017) para 61, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/100/61/PDF/G1710061.pdf?OpenElement> (accessed 31 August 2024).
350. CRC Committee, 4th-6th Report of Namibia (2020).
351. See IPCC (n 116) 29.
352. A Mawson, H Cantú Rivera & S Jayasekaran Charting the course: Embedding children's rights in responsible business conduct (2022) 9, <https://www.unicef.org/media/129596/file/Charting%20The%20Course.pdf> (accessed 31 August 2024).
353. Under the UNGPs, 'human rights due diligence' is already meant to cover impacts on child rights. Using the term 'child-rights due diligence' may risk suggesting that human rights due diligence does not cover child-rights issues. However, under the UNGPs, businesses are expected to carry out ongoing human rights due diligence, and in doing so, should pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation, in particular children. As such, 'child-rights due diligence' refers to those aspects of human rights due diligence that focus on identifying and addressing impacts on child rights.

354. Mawson, Cantú Rivera & Jayasekaran (n 353) 49.
355. DR Boyd & S Keene Essential elements of effective and equitable human rights and environmental due diligence legislation United Nations Human Rights Special Procedures Policy Brief No. 3 (June 2022), <https://www.ohchr.org/sites/default/files/documents/issues/environment/srenvironment/activities/2022-07-01/20220701-sr-environment-policybriefing3.pdf> (accessed 31 August 2024).
356. As above.
357. Combined sixth and seventh reports submitted by Ethiopia under Article 44 of the Convention, due in 2020 (21 June 2022) (CRC/C/ETH/6-7) para 41.
358. UNICEF 'Healthy environments for healthy children: Global programme framework' (19 January 2021) iii, <https://bit.ly/3W1Cq8Y> (accessed 31 August 2024).
359. ActionAid International 'The vicious cycle: Connections between the debt crisis and climate crisis' 10 April 2023 2, https://actionaid.org/sites/default/files/publications/The_vicious_cycle.pdf (accessed 31 August 2024). Emphasis added.
360. Somalia, Chad, Sudan, Eritrea, Zimbabwe, Malawi, São Tomé and Príncipe, Congo and Mozambique.
361. ActionAid (n 360) 2.
362. As above.
363. Action Aid (n 360) 3.
364. As above.
365. As above.
366. Paris Agreement, Art 2(c).
367. Office of the High Commissioner for Human Rights (OHCHR) 'Promoting rights-based climate finance for people and planet (October 2017), <https://us.boell.org/en/2017/11/01/promoting-rights-based-climate-finance-people-and-planet-0> (accessed 31 August 2024).
368. WMO (n 293) 35.
369. Climate Policy Initiative The state of climate finance in Africa: Climate finance needs of African countries (June 2022), <https://www.climatepolicyinitiative.org/wp-content/uploads/2022/06/Climate-Finance-Needs-of-African-Countries-1.pdf> (accessed 19 December 2019).
370. Loss & Damage Collaboration 'What does a human rights-based approach to addressing loss and damage look like? Key demands for the outcomes of COP27 at the intersection of loss and damage and human rights', <https://bit.ly/4gXCILp> (accessed 19 December 2014).
371. As above.
372. UNEP (n 15) 60.
373. Human Rights & Climate Challenge Working Group 'Finance' (n.d), <https://climaterights.org/our-work/finance/> (accessed 31 August 2024).
374. Children's Environmental Rights Initiative 'Falling short: Addressing the climate finance gap for children' (June 2023) 4.
375. CRC Committee, GC 26 (2023) para 114.
376. Institute for Human Rights and Business 'What is "loss and damage" from climate change?', <https://www.ihrb.org/explainers/what-is-loss-and-damage-from-climate-change> (accessed 31 August 2024).
377. J Chowdhury & White 'COP27 must treat loss and damage as the human rights crisis it is' (2022) Center

- for International Environmental Law (2022), <https://www.ciel.org/cop27-must-treat-loss-and-damage-as-the-human-rights-crisis-it-is%E2%99%A2/> (accessed 31 August 2024).
378. AON 2021 Weather, climate and catastrophe insight (2021), <https://www.aon.com/getmedia/1b516e4d-c5fa-4086-9393-5e6afb0eeded/20220125-2021-weather-climate-catastrophe-insight.pdf.aspx> (accessed 31 August 2024).
379. 'German government unveils financial aid for flood victims' Deutsche Welle 21 July 2021, <https://bit.ly/3DP7AtN> (accessed 31 August 2024).
380. ActionAid (n 360) 3.
381. Office of the High Commissioner for Human Rights (OHCHR) '5 UN treaty bodies issue a joint statement on human rights and climate change' 16 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998> (accessed 31 August 2024).
382. As Burger, Wentz & Horton point out, 'it is in the area of loss and damage where attribution science could potentially play the biggest role'. States have to determine (i) which countries have already suffered harmful impacts as a result of climate change and are most likely to do so in future, and (ii) to what extent other countries are responsible for those impacts. This determination is complicated by the fact that there often are multiple drivers of harmful impacts linked to climate change. See M Burger, J Wentz & R Horton 'The law and science of climate change attribution' (2020) 45 Columbia Journal of Environmental Law 144.
383. Plan International et al. 'Climate justice: Loss and damage finance for children' (December 2023) 5, https://plan-international.org/uploads/2023/12/Climate-Justice_-_Loss-and-Damage-Finance-for-Children.pdf (accessed 31 August 2024)
384. As above 6-10.

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