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Cascading impacts of climate change and the rights of children in Africa: A reflection on the principle of intergenerational equity

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Summary: *This article explores the manner in which climate action at the African regional level protects and promotes children's rights with considerations being had to the principle of intergenerational equity. It establishes that while the concept of intergenerational equity is entrenched in the international and African regional climate change framework for the protection of children, neither the Convention on*

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the Rights of the Child nor the African Children's Charter mentions the concept. However, CRC and the African Children's Charter oblige states to take into consideration the views of children and protect their best interests in climate action (to ensure intergenerational equity) and in achieving a sustainable future. Using a doctrinal research method, the article examines the regional legal and institutional responses to the cascading impacts of climate change and how they safeguard children's rights to a sustainable future. It proceeds to critically analyse child rights-responsive provisions in the African Children's Charter that could potentially enhance the utility of the principle of intergenerational equity in the context of climate action in Africa. The article argues that the principle of intergenerational equity could, in theory, be used as a useful tool for the protection and promotion of the rights and interests of children from climate change impacts.

Key words: *children's rights; climate change; climate justice; future generations; intergenerational equity*

1 Introduction

Climate change is predicted to pose significant harm to the integrity of a wide array of ecosystems as it alters hydrological, coastal, marine, forest and agricultural systems, replacing these with 'new assemblies'.¹ A complicated series of impacts will trigger a cascade of direct and indirect, primary and secondary stresses on ecosystems on an unprecedented scale.² However, it is understood that these changes would be more intense in developing countries.³ Already, many of these developing countries are fraught with several socio-economic problems and huge populations that continue to grow as they struggle to comply with the modest targets set out in the Sustainable Development Goals (SDGs).⁴ While there is universal agreement that states must invest in and promote climate change adaptation and mitigation actions, this is not explicitly on the agenda of many of these developing nations that are hamstrung by the lack

1 JB Ruhl 'Climate change and the Endangered Species Act: Building bridges to the no-analog future' (2008) 88 *Boston University Law Review* 11.

2 UNFCCC *Climate change: Impacts, vulnerabilities and adaptation in developing countries* (2007) 5, <http://unfccc.int/resource/docs/publications/impacts.pdf> (accessed 15 July 2020).

3 As above.

4 *Transforming our World: The 2030 Agenda for Sustainable Development* A/RES/70/1 (2015). While definite progress is being achieved on many fronts in reducing poverty, close to a billion people will still be living on an income that is less than US \$1,25 per day. See, generally, UN *The Sustainable Development Goals report 2019* (United Nations 2019).

of appropriate technology, capacity and, more importantly, financial resources.⁵ More significantly, the existing development plans and policies will be rendered redundant unless states reconfigure them taking into account the need for sustainable and climate-smart development, which incorporates both mitigation and adaptation needs. A failure to address the cascading impacts of climate change will effectively irrefutably undermine the rights of vulnerable populations, especially children in developing regions such as Africa.

An estimated 30 per cent of the world's population are below the age of 18 years,⁶ representing some 2,2 billion children, who will take over a threatened planet facing rising ecological ruin with climate change being a major concern.⁷ The adverse impacts of climate change disproportionately affect vulnerable groups, in particular children, causing a short and long-term and, potentially, irreparable impact. With a 95 per cent confidence rate, the Intergovernmental Panel on Climate Change (IPCC) attributes climate change to human activity.⁸ The children of the present generation inherited an environment strikingly different from that of the previous generations. For instance, it is estimated that, because of climate change, by 2030 almost 125 million children in Africa will be subjected to water scarcity, malnutrition, and displacement.⁹

Thus, there is an urgent need to address the causes and impacts of climate change to safeguard human rights, in particular the rights of children, such as the right to life, the right to health and the right to survival and development. In turn, this will ensure the protection of the rights and interests of children in the current and future generations, and the promotion of the principle of intergenerational equity. The principle of intergenerational equity under international and African regional law stipulates the obligations of states towards future generations in the utilisation and exploitation of the environment

5 TG Puthucherril 'International law on climate change adaptation: Has the time come for a new protocol?' (2012) 8 *Macquarie Journal of International and Comparative Environmental Law* 44.

6 A child is defined as any person under the age of 18 years. See article 2 of the African Charter on the Rights and Welfare of the Child, 1990 (African Children's Charter).

7 United Nations Department of Economic and Social Affairs (UNDESA), Population Division (2019) World Population Prospects 2019, <https://population.un.org/wpp/DataQuery/> (accessed 21 November 2020).

8 IPCC *Climate change 2013: The physical science basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (2013).

9 J Guillemot & J Burgess 'Children's rights at risk' in UNICEF *The challenges of climate change: Children on the front-line* (2014) 47; GC Nelson et al *Climate change: Impact on agriculture and costs of adaptation* (2009) 16; IPCC *Climate change 2014: Impacts, adaptation and vulnerability: Regional aspects* 1203.

and natural resources.¹⁰ The principle is premised on the concept of sustainable development which dictates that 'we hold the natural environment of our planet in common with other species, other people, and with past, present and future generations'.¹¹ Despite the lack of an explicit mention of the principle in the 1990 African Charter on the Rights and Welfare of the Child (African Children's Charter), in general, the adoption of Africa's Agenda for Children 2040 (Agenda 2040) shows a forward-thinking approach on how the Charter must be interpreted and implemented going forward.

From a doctrinal standpoint, this article analyses relevant provisions of the African Children's Charter to assemble substantive child rights norms and principles that could potentially enhance the utility of the principle of intergenerational equity in the context of regional action on climate change. The article argues that the principle of intergenerational equity, in theory, can act as a tool for the protection and promotion of children's rights and interests in the present and future generations from climate change impacts. This contribution is divided into four parts, of which the introduction is the first. The second part discusses, giving context, in general, to climate change, children and the intergenerational right to a sustainable future under regional and international law in Africa. Part 3 explores climate action, children's rights and the applicable African regional law, with a view to establishing how the rights and interests of children could be mainstreamed into responses to climate change at the African Union (AU) level. The last part concludes the article.

2 Climate change, children and the intergenerational right to a sustainable future in Africa

Climate change unquestionably is the most serious challenge facing the world today, with its effects expected to impact present and future generations.¹² The earth has already warmed by 1°C above pre-industrial levels, and current scientific evidence suggests that, at the business-as-usual rate of emission, warming will reach 1,5°C by 2050. The impacts of this warming include new extreme climatic events, loss of health and functioning of major ecosystems, and other biophysical changes that have adverse effects on human

¹⁰ See the discussion in part 2 below.

¹¹ EB Weiss 'In fairness to our children: International law and intergenerational equity' (1994) 1-2 *Childhood* 22.

¹² K Davies, GM Tabucanon & P Box 'Children, climate change, and the intergenerational right to a viable future' in N Ansell et al (eds) *Geographies of global issues: Change and threat, geographies of children and young people* (2016) 401-402.

health, livelihoods, food security, water supply, human security and economic growth; with some of these impacts already manifesting.¹³ Davies and others anticipate that without any drastic mitigatory action, children with their whole lives ahead of them, and unborn generations, will bear the burden of the long-term consequences of climate change.¹⁴ This part focuses on children as they naturally link the present and future generations and, thus, are the contiguous link to the unborn generations.¹⁵ It is argued that the incorporation of children's rights, preferences, and interests in climate law and policy partly addresses the criticisms raised against the concept of intergenerational equity in climate action. More importantly, it argues for a better elucidation of the duty of care and a broader legal acceptance by states of the necessity to protect the global climate for children in the present and future generations' rights to a sustainable future.

While the causes of climate change are global, the impacts are felt by vulnerable communities and groups, including children.¹⁶ The Committee on the Rights of the Child (CRC Committee) proclaims that climate change is one of the biggest threats to the operationalisation and enjoyment of children's rights,¹⁷ and the interests of future generations. Climate change significantly undermines the enjoyment of children's rights, such as the rights to life, human dignity, health, an adequate standard of living, access to clean water, and access to education. For instance, climate change severely compromises the fulfilment of the rights to life, and survival and development,¹⁸ which are fundamental norms of children's rights.¹⁹ The right to life

13 LF Schipper 'Maladaptation: When adaptation to climate change goes very wrong' (2020) *One Earth* 409; CV Rong, D Song & A Scheidel 'Maladaptation and development as usual? Investigating climate change mitigation and adaptation projects in Cambodia' (2019) 19 *Climate Policy* 47.

14 Davies et al (n 12).

15 As above.

16 K Arts 'Children's rights and climate change' in C Fenton-Glynn *Children's rights and sustainable development: Interpreting the UNCRC for future generations* (2019) 216-220. See also C Bakker 'Children's rights challenged by climate change: Is a reconceptualisation required?' in F Lenzerini & AF Vrdoljak *International law for common goods: Normative perspective on human rights, culture and nature* (2014) 361; E Boshoff 'The best interests of the child and climate change adaptation in sub-Saharan Africa' in M Addaney, MG Nyarko & E Boshoff *Governance, human rights, and political transformation in Africa* (2019) 359-361.

17 See CRC Committee General Comment 15 on the right of the child to the enjoyment of the highest attainable standard of health (art 24) CRC/C/GC/15 (2013) paras 5 & 50.

18 Art 5 African Children's Charter; art 6(1) CRC.

19 See Human Rights Council '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' A/HRC/32/23 (2016) para 8. See, in general, the Report of the Special Rapporteur on Human Rights and the Environment on Safe Climate A/74/161 (2019) paras 28-29.

as enshrined in international law²⁰ is regarded as a prerequisite for the enjoyment of all other rights.²¹ As the Human Rights Council clearly articulates,

climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life ... implementation of the obligation to respect and ensure the right to life ... depends, *inter alia*, on measures taken by states parties to preserve the environment and protect it against harm, pollution and climate change.²²

Children are disproportionately affected as they are among the most vulnerable groups negatively impacted by climate change as a result of their age, fewer economic resources, less mobility, extra care needs and a dependence largely on adults.²³ Furthermore, child-related health conditions caused by atmospheric pollution, such as asthma and other respiratory tract infections, and extreme climatic events are projected to be intensified as a result of rising global temperatures and heat waves, consequently threatening children's rights to health.²⁴ Children are susceptible to extremely high temperatures and heat waves, which may result in increased child mortality and consequently undermining the right to life, survival and development.²⁵ Scientifically, when the body's ability to self-regulate its own temperatures is diminished, and if ambient temperatures are too high, it leads to child deaths.²⁶

Climate change also disrupts children's rights to enjoy the highest standard of health²⁷ – an essential right to the exercise

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- 20 See art 6(1) of the 1966 International Covenant on Civil and Political Rights; art 4 of the 1981 African Charter on Human and Peoples' Rights (African Charter).
- 21 See Human Rights Council General Comment 36 on art 6 of the International Covenant on Civil and Political Rights, on the right to life CCPR/C/GC/36 (2018) para 2.
- 22 General Comment 36 (n 21) para 62.
- 23 P Mitchell & C Borchard 'Mainstreaming children's vulnerabilities and capacities into community-based adaptation to enhance impact' (2014) 6 *Climate and Development* 372–381. See also S Cutter 'Social science perspectives on hazards and vulnerability science' in T Beer (ed) *Geophysical hazards: Minimizing risk, maximizing awareness* (2010); N Watts et al 'Health and climate change: Policy responses to protect public health' (2015) 386 *The Lancet* 1861.
- 24 M Franchini & PM Mannucci 'Impact on human health of climate changes' (2015) 26 *European Journal of Internal Medicine* 1–5.
- 25 AS Larr & M Neidell 'Pollution and climate change' (2016) 26 *The Future of Children* 93–95.
- 26 J Graff Zivin & J Shrader 'Temperature extremes, health, and human capital' (2016) 26 *The Future of Children* 31–34. Similarly, the developmental interests of the unborn foetus are interfered with when pregnant women are affected by heat waves, air pollution and climate change. See Larr & Neidell (n 25) 95.
- 27 Art 14(1) African Children's Charter; art 24(1) CRC. See J Tobin 'Children's rights to health' in U Kilkelly & T Liefwaard (eds) *International human rights of children* (2019) 277.

of other rights.²⁸ Watts and others classify climate change as one of the principal health-related global threats in the twenty-first century.²⁹ This means that climate change is one of the leading contemporary threats to the enjoyment of the right to health, both directly and indirectly. In developing countries and regions such as Africa, for instance, climate change is projected to exacerbate the top five causes of death for children under five (acute respiratory illness, diarrhoea, malaria, malnutrition and neonatal deaths).³⁰ Furthermore, there is a prediction of an estimated 8 per cent increase in diarrhoeal disease for every 1°C temperature rise, and up to a 28 per cent increase in malaria exposure in Africa this century.³¹ The World Health Organisation (WHO) observes that a ‘third of the global burden of disease is caused by environmental factors with children under five years of age bearing more than 40 per cent of that burden, even though they represent only 10 per cent of the world’s population’.³² In the developing countries, the burden of climate-related diseases already falls predominately on children, thereby severely undermining their rights to life, survival and development.³³ Indirectly, climate-related disasters may destroy health infrastructure and decrease the capacity of health systems to cope,³⁴ thereby diminishing the capacity of governments to achieve and sustain optimal development for all children.

In addition, climate change will potentially intensify pressure on education systems and interrupt access to education for children across Africa.³⁵ For instance, the United Nations Children’s Fund (UNICEF) notes that approximately 13,5 million children across Africa are uprooted as a result of climate change, among other things, and

28 ESCR Committee General Comment 14 on the right to the highest attainable standard of health (art 12) E/C.12/2000/4 (2000) paras 1-2.

29 Watts et al (n 23) 1861-1867; N Watts et al ‘Health and climate change: Shaping the health of nations for centuries to come’ (2018) 392 *Lancet* 2479-2482.

30 K Kiang, S Graham & B Farrant ‘Climate change, child health and the role of the paediatric profession in under-resourced settings’ (2013) 18 *Tropical Medicine and International Health* 1053.

31 As above.

32 F Perera ‘Children suffer most from climate change and burning of fossil fuels’ in UNICEF (n 12) 16.

33 A McMichael et al ‘Global climate change’ in M Ezzati et al (eds) *Comparative quantification of health risks: Global and regional burden of disease attribution to selected major risk factors* (2004) 1606; AV Sanson & SEL Burke ‘Climate change and children: An issue of intergenerational justice’ in N Balvin & DJ Christie (eds) *Children and peace* (2020) 343.

34 WHO ‘Climate change and human health – Information and public health advice: Heat and health’ (2018) 2; WHO ‘Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s’ (2014) 2; R Hanna & P Olivia ‘Implications of climate change for children in developing countries’ (2016) 26 *The Future of Children* 115-117.

35 See Save the Children *Legacy of disasters: The impact of climate change on children* (2007) 2. See also J Lawler *Children’s vulnerability to climate change and disaster impacts in East Asia and the Pacific* (2011) 1.

they lack access to educational opportunities.³⁶ The proportion and aggregate of children impacted at regional, national and local levels vary, depending on the availability of data. Kenya, for example, recorded that in 2018 climate-related disasters affected over 145 000 children and more than 700 schools were closed.³⁷ Approaches to protect, support and assist children are undermined by, among other things, a lack of adequate climate financing, corruption in, and poor governance by, national governments and institutions.³⁸ It can be gleaned from the discussion that climate change potentially undermines the best interests of the child, the rights to life, survival and development, health, and the right of access to education, sanitation and other basic services. These establish a legitimate need to integrate the best interests and welfare of children, inclusive of developmental interests, and protect their rights in the context of climate action.

The recent climate-induced droughts, extreme weather and water scarcity in South Africa, locust invasion in Eastern Africa and climate-induced floods in Ghana and Nigeria have negative effects on agriculture and food security, thereby impacting the life, growth and well-being of children.³⁹ UNICEF explains that due to the impacts of climate change on water security, agriculture and migration, among other factors, there is a likelihood of increased poverty, inadequate access to nutrition and health services, and an economic crisis that will affect children's rights and access to basic services.⁴⁰ The impacts of high temperatures and disrupted rain patterns are projected to disrupt sustainable development and have long-term impacts that will severely affect children, and also impact on future generations.⁴¹

Climate change effects such as droughts can adversely impact on agricultural production and food quality and thus exacerbate the likelihood of hunger, particularly in the poorest and most vulnerable

36 UNICEF '13,5 million children now uprooted in Africa – including those displaced by conflict, poverty and climate change' (UNICEF, 2019), <https://www.unicef.org.uk/press-releases/13-5-million-children-now-uprooted-in-africa-including-those-displaced-by-conflict-poverty-and-climate-change/> (accessed 15 July 2020).

37 Kenya National Climate Change Action Plan: 2018-2022 (2018) 2. See also Kenya National Adaptation Plan: 2015-2030 (Government of Kenya 2016) 29.

38 KL Ebi 'Childhood health risks of climate change' in UNICEF (n 9) 23.

39 R Hanna-Andrea, S Wijesekera & F Ward 'The impact of the environment on South Africa's child and adolescent health: An overlooked health risk' in M Shung-King et al *Child and adolescent health: Leave no one behind* (2019) 171. See also UNICEF *Mitigating the effects of climate change on water access and quality in Nigeria* (2020), <https://www.unicef.org/nigeria/stories/mitigating-effects-climate-change-water-access-and-quality-nigeria> (accessed 16 July 2020).

40 UNICEF 'Exploring the impact of climate change on children in South Africa' (2011) 21-34.

41 UNICEF (n 40) 24.

regions across the African continent.⁴² For instance, the United Nations Development Programme (UNDP) estimates that approximately 122 million additional people could potentially become extremely poor as a result of higher food prices caused by the adverse consequences of climate change.⁴³ According to the International Labour Organisation (ILO), children born during droughts in Ethiopia, Kenya and Niger are more prone to malnutrition due to the negative impacts of climate change.⁴⁴ In relation to the rights to health, and the survival and development of children, climate change is projected to cause an additional 250 000 deaths annually through heat stress, malnutrition, malaria and diarrhoea between 2030 and 2050.⁴⁵ Several millions of people, including children, could be exposed to deadly heat by 2050 as well as a shift and possible expansion of the geographic range for disease vectors such as mosquito species that transmit malaria or dengue fever.⁴⁶ According to the United Nations Development Programme (UNDP) malaria vectorial capacity has increased by 27,6 per cent in the highlands of sub-Saharan Africa since the 1950 baseline as a result of climate change.⁴⁷ All these climate-induced events undermine children's enjoyment of the right to life, survival and development. For instance, the suffering and devastation inflicted by cyclone Idai and Kenneth in 2019 in Malawi, Mozambique and Zimbabwe, killing some 1 303⁴⁸ people, including children, are evidence of the negative impacts of climate change on the rights to health, life, survival and development of children as they are one of the most vulnerable groups to natural disasters and humanitarian emergencies. It is safe to assume that climate change-related threats to children's rights must be alleviated through the effective integration of children's needs and welfare in climate action.

Assessing the impacts of climate change on children's rights and intergenerational equity, broadly, and children's rights to a viable future, in particular, depends on how the violation of human rights norms are conceptualised. The 1987 Brundtland Report, 'Our

42 OHCHR Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights (A/HRC/10/61) (15 January 2009).

43 United Nations Development Programme (UNDP) (2019) Human Development Report 2019: Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century (2019) 195, <http://hdr.undp.org/sites/default/files/hdr2019.pdf> (accessed 16 July 2020).

44 International Labour Organisation (ILO) (2018) Digital labour platforms and the future of work: Towards decent work in the online world' International Labour Office, Geneva.

45 UNDP (n 43) 181.

46 As above.

47 UNDP (n 43) 182.

48 UN Office for the Coordination of Humanitarian Affairs, Cyclones Idai and Kenneth, <https://www.unocha.org/southern-and-eastern-africa-rosea/cyclones-idai-and-kenneth> (accessed 16 July 2020).

Common Future' was the first to conceptualise intergenerational equity in the definition of sustainable development as development which 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.⁴⁹ The Report proclaims that the present generation was loaned environmental wealth from future generations with no intention of repayment – thus the present generation 'acts as we do because we can get away with it'.⁵⁰ At a theoretical level, sustainable development emphasises the necessity to integrate environmental matters into current development planning and economic policy making while observing that the fundamentally disconnected models of environmental sustainability and economic growth complement and are not opposed to one another in order to provide for the needs of present and future generations.⁵¹ Conceptually, the right to a healthy environment, particularly for present children, and the right of future generations to a viable future is linked to sustainable development.

More notable references to the principle of intergenerational equity were enunciated at the 1992 UN Earth Summit.⁵² For instance, all three documents produced during the Earth Summit referred to the right to intergenerational equity.⁵³ Although they constitute soft law, the documents nonetheless set forth important principles of international climate action. As underscored earlier, the negative impacts of a changing climate undermine children's rights to life, health, survival and development and without effective climate action by states, their developmental needs will not be met. While children's intergenerational rights to a viable future and intergeneration equity are mentioned in various international instruments, these references are generally incantatory rather than a binding rule. Notable exceptions are the United Nations Framework Convention on Climate Change (UNFCCC) and the Convention on Biodiversity (CBD) produced during the 1992 Earth Summit. For instance, article 3(1) of the UNFCCC provides that 'the Parties should protect the climate system for the benefit of present and future generations of humankind'.

Without contestation, both present and future generations include children and that current climate action will impact future

49 See generally World Commission on Environment and Development *Our common future* (1987) 43.

50 As above.

51 D French 'Sustainable development and the instinctive imperative of justice in the global order' in D French (ed) *Global justice and sustainable development* (2010) 5.

52 For more information on the 1992 UN Conference on Environment and Development (Earth Summit), see F Taib *Malaysia and UNCED* (1997).

53 See generally Rio Declaration, Agenda 21 and Forest Principles.

generations, including those under 18 years, either negatively or positively. Simply, climate change has consequences now and in the future. For instance, there is consensus that at the current rate of carbon emissions, warming will hit 1,5°C degrees some time in the next 30 years with dangerous consequences on human health and livelihoods, including food security and water supply.⁵⁴ This will indicatively affect children in that generation disproportionately due to their increased vulnerability to extreme climate and weather events. At the very least, these fundamental references signal a potential of breaking innovative ground in recognition of children's rights to a viable future beyond preambular mentions. The incorporation of intergenerational equity and children's rights to a viable future in climate action, therefore, enhances the attainment of sustainable and inclusive socio-economic growth, builds resilience, and promotes the rights and welfare of children in the present and future generations.⁵⁵

Consequently, there is general recognition that enhanced climate action should consider the fundamental rights and the best interests of children in the present life, and the interests of future generations. This implies that the protection of the global environment and natural resources – 'our common patrimony' – should predictably factor in the welfare and developmental needs of children and that of future generations.⁵⁶ The principle sums up the notion that the choices of today will have a profound impact on future generations, representing the inter-temporal aspect of sustainable development.⁵⁷ It is also rooted in a compact between the present and future generations under which the present generation is obliged through a 'fiduciary duty' founded on 'planetary trust', to pass on the environment and natural resources that they received from previous generations in a way that is not of poorer quality than what they inherited.⁵⁸ This arguably implies that the actions and decisions of the current population (adults and children included) should consider the rights and best interests of children and that the present generation also as a whole should consider the collective impact of their actions on future generations.

Consequently, the environment and natural resources to be bequeathed to children by adults of the present generation and this

54 Schipper (n 13) 409.

55 As above.

56 EB Weiss *In fairness to future generations: International law, common patrimony, and intergenerational equity* (1989) 23.

57 As above.

58 EB Weiss 'The planetary trust: Conservation and intergenerational equity' (1983) 11 *Ecology Law Quarterly* 495 499.

generation as a collective (adults and children) to future generations should not be compromised in nature and/or quality to the extent that limits the ability of these generations to benefit from such resources for their own development including the enjoyment of their rights, including the rights to life, a healthy environment, food, water and recreation; constituting a viable future.⁵⁹ Conceptually, the principle of inter-generational equity requires 'conservation of options', 'conservation of quality' and 'conservation of access' in demanding the development and implementation of specific duties concerning the needs of present and future generations.⁶⁰ The implication is that states must redesign development paths to undertake obligatory mitigation and adaptation measures in ensuring that development comports to climatic changes over longer time scales. The current generation thus has the legal obligation to design and adopt the legal and institutional mechanisms for the protection of the environmental rights and interests of children and through them as the extension of the needs of children in future generations.⁶¹

Despite the relevance of and emerging consensus on the concept of intergenerational equity and the right to a viable future in climate action, one of the common criticisms is that the rights for future generations should not be recognised since it is impossible to ascertain what their preferences will be.⁶² Proponents argue that mechanisms such as voting and protests exist for the current generation to manifest their human rights. Nonetheless, there are no avenues for articulating the needs and interests of future generations.⁶³ This contention, conversely, disregards the elementary natural and physiological needs of humans. Based on the above discussion, it is safe to rightly predict that future generations will not want forest fires, water scarcity, inundation, food insecurity and pandemics.⁶⁴ Despite children not being a static group that consume, for example, energy, they generally consume less and do not contribute to climate change decision making that have implications on addressing carbon emissions, as already argued. At its core, climate change is an issue of equity, both within and across generations.⁶⁵ It can therefore be argued that children within and across generations are and will be the least responsible for climate change, but will be left

59 Weiss (n 58) 505.

60 As above.

61 As above.

62 J Gaba 'Environmental ethics and our moral relationship to future generations: Future rights and present virtue' (1999) 24 *Columbia Journal of Environmental Law* 260.

63 As above.

64 Sanson & Burke (n 33) 343.

65 R Garthwaite & P Mitchell 'Inequality, climate change and children's development' in UNICEF (n 9) 101-104.

to bear the brunt of its impacts as a future with increasingly extreme climate change effects poses challenges to sustainable development and the human rights of children, including their rights to life, health (a healthy environment), survival and human development (physiological needs).

3 Regional climate action and children's rights in Africa from an intergenerational perspective

The ability of states to develop and implement human rights-based approaches to drive responses to climate action is reliant on the normative content of the relevant children's rights obligations that are binding on the state in question.⁶⁶ However, states' children's rights obligations in the context of climate action are not yet well understood, and thus an analysis of substantive and procedural human rights norms, as expressed in relevant treaties and spelt out in human rights jurisprudence, is useful in generating a conceptual legal link with children's rights and climate action. In particular, the adoption of the African Children's Charter and its ensuing level of recognition conclusively transformed the foundation on, and the manner in which, AU organs and member states view and deal with children.⁶⁷ In its Preamble, the African Children's Charter notes with concern that 'the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, and natural disasters'.⁶⁸ It further recognises that 'the child, due to the needs of his/her physical and mental development requires particular care with regard to health, physical, mental, moral and social development and requires legal protection in conditions of freedom, dignity and security'.⁶⁹ As argued earlier, the negative impacts of climate change, such as intense and frequent floods, drought, heat waves, famine, the outbreak of diseases, cyclones and forced displacement, undermine the enjoyment of children's rights to health, survival and development, and nutrition. This underscores the significance of this recognition and notice as the recitals are useful interpretative tools for understanding the substantive provisions applicable to children's

66 See M Addaney 'Climate change adaptation, African Union law and the realisation of human rights' in WL Filho et al (eds) *African handbook on climate change adaptation* (2021) (forthcoming).

67 See BD Mezmur 'No second chance for first impressions: The first amicable settlement under the African Children's Charter' (2019) 19 *African Human Rights Law Journal* 62.

68 Preamble to the African Children's Charter para 3.

69 Preamble to the African Children's Charter para 5.

rights and welfare in the context of regional and national climate action.

The African Children's Charter substantively provides in article 4 that 'in all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration'.⁷⁰ This implies that in undertaking climate action at all levels across space and time, the best interests of children must be duly considered, appropriately integrated and consistently applied.⁷¹ The best interests of the child principle is unanimously acknowledged as a core foundational principle, without adherence to which the implementation of the rights of children will be severely compromised.⁷² Importantly, the best interests principle occupies a revered status in international and regional children's rights law,⁷³ comprising a substantive right, a fundamental interpretative legal principle and a rule of procedure.⁷⁴ In essence, the best interests stand as a substantive right to be considered in all climate decisions and actions, and an indispensable interpretative legal principle in how decision makers construe and implement climate responses and strategies.

Furthermore, article 5 of the African Children's Charter enshrines the right to survival and development of children, articulating that 'every child has an inherent right to life',⁷⁵ and consequently obliges state parties to 'ensure to the maximum extent possible, the survival, protection and development of the child'.⁷⁶ Concerning the right to health, article 14 provides that:

⁷⁰ Art 4 African Children's Charter.

⁷¹ See 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) CRC/C/GC/14 (2013) para 14(a).

⁷² N Cantwell 'The concept of the best interests of the child: What does it add to children's rights?' in M Sormunen (ed) *The best interests of the child: A dialogue between theory and practice* (2016) 18 20.

⁷³ L Lundy & B Bryne 'The four general principles of the United Nations Convention on the Rights of the Child: The potential value of the approach in other areas of human rights law' in E Brems, E Desmet & W Vandenhole (eds) *Children's rights law in the global human rights landscape: Isolation, inspiration, integration?* (2017) 52 57. See also Cantwell (n 72) 21.

⁷⁴ See CRC General Comment 14 para 6, which underscores best interests as a three-tiered concept, namely, 'a substantive right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child ... a fundamental interpretative legal principle ensuring that the interpretation which most effectively serves the child's best interests should be chosen whenever a legal provision is open to more than one interpretation ... and a rule of procedure in that the decision process in any matter concerning a child must include an evaluation of the possibility of any negative or positive impact of the decision on the child'.

⁷⁵ Art 5(1) African Children's Charter.

⁷⁶ Art 5(2) African Children's Charter.

- (1) Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health.
- (2) State parties to the Charter shall pursue the full implementation of this right and in particular shall take measures
 - (a) to reduce infant and child mortality rate;
 - ...
 - (c) to ensure the provision of adequate nutrition and safe drinking water;
 - (d) to combat disease and malnutrition within the framework of primary health care through the application of appropriate technology.

These provisions are fundamental in the context of the regional action on climate change as extreme climatic and weather events have severe consequences on the physical, mental and spiritual health of children. At the policy level, Agenda 2040 also includes aspirations that are essential for child-responsive climate action, including aspiration 4 (that every child survives and has a healthy childhood); aspiration 5 (that every child grows up well-nourished and with access to the basic necessities of life); aspiration 9 (that every child is free from the impact of disasters or emergency situations); and aspiration 10 (that African children's views matter).⁷⁷ The overarching nature of the consequences of climate change on children makes the above binding and non-binding mechanisms pivotal in enhancing climate action to safeguard the rights and welfare of children, including the right to a viable future.

Cognisant of the impacts of climate change and the fact that the continent is more vulnerable and bears the brunt of climate change as compared to other geographic localisms,⁷⁸ the AU has placed climate change high on the continental policy agenda. Thus, this part also explores whether the efforts made towards an integrated continental approach to climate action in Africa consider the rights and interests of children and the interests of future generations. It does this by discussing the regional framework governing climate change action and evaluates its adequacy in protecting the rights and interests of children. The AU conceptualises climate [change] governance as

⁷⁷ See Africa's Agenda for Children 2040 Fostering an Africa Fit for Children (Agenda 2040), https://au.int/sites/default/files/newsevents/agendas/africas_agenda_for_children-english.pdf (accessed 16 July 2020).

⁷⁸ *Agenda 2063: The Africa We Want* (African Union 2015) aspiration 1, para 16. See also IPCC *Climate Change 2014: Impacts, adaptation and vulnerability – Regional aspects* (2014) 1205; P Collier, G Conway & T Venables 'Climate change and Africa' (2008) 24 *Oxford Review of Economic Policy* 337; W Scholtz & D Pallangyo 'Climate change and the African Union' in T-L Humbly et al *Climate change law and governance in South Africa* (2016) 5.1-5.3.

the exercise of power and authority by formal institutions of governments with a view to minimise the impacts of climate change on communities, ecosystems, and the wider environment in general. It entails development of legislation, policies, institutional and management frameworks, at continental, regional and national levels. Further, it is to deal with the governance of sectoral, cross-sectoral and regional issues; and the harmonisation across sectors and levels of governance. Climate [change] governance ... should also deal with matters of compliance and mutual accountability on global, regional and national levels.⁷⁹

Simply put, climate governance is the synergistic interaction between state institutions and non-state actors on how to manage climate change adaptation, mitigation, resilience and financing. Climate governance, thus, constitutes, among other things, the adoption of robust legal and policy frameworks; strong, accountable institutions; the availability of financial resources and incentives; and commitment from (political) leadership.⁸⁰ The AU urges African states to strategically improve their climate governance capabilities within their 'supreme, broad and overarching mandates' towards the realisation of continental development.⁸¹ As a result, African governments have committed to participating in global, regional and sub-regional efforts for governing climate action, and to 'speak with one voice and unity of purpose in advancing its position and interests on climate change'.⁸²

The regional cooperation on climate change has resulted in sparse arrangements and regulations, especially when the challenges in the governance of climate action at the AU level are considered.⁸³ In Africa, the challenges of governing climate action are exacerbated by the lack of a regional self-standing legal and institutional framework on climate change.⁸⁴ Consequently, there is no continental climate governance framework established in terms of law; only a fragmented set-up at institutional and policy levels. A regional climate change regulatory framework, as Jegede

79 See African Ministerial Conference on the Environment (2014) Draft African Union Strategy on Climate Change, AMCEN-15-REF-11 27, http://www.un.org/en/africa/osaa/pdf/au/cap_draft_aclimatestrategy_2015.pdf (accessed 27 July 2020).

80 J Bellali et al *Multi-level climate governance in Kenya: Activating mechanisms for climate action* (2018) 21.

81 AMCEN (n 79) 27.

82 Agenda 2063 (n 71) aspiration 1, para 17.

83 See AU Climate Strategy 5. At the UN level, climate legal and policy framework constitute the UNFCCC; the Kyoto Protocol; the Cancun Agreements, 2010; and the Paris Agreement, 2015.

84 Scholtz & Pallangyo (n 78) 5.1-5.21. See AO Jegede *The climate change regulatory framework and indigenous peoples' lands in Africa: Human rights implications* (2016) 238. See also the Draft Strategy; the AU Resolution on Climate Change and Human Rights in Africa (2016).

notes, has the potential to drive regional solutions, standard setting and oversight in the protection of vulnerable groups,⁸⁵ including children. Over the past three decades, the AU has adopted several policy documents and established institutions and initiatives to build and strengthen regional cooperation, and to ensure the protection of human rights through robust and comprehensive environmental governance, for the benefit of present and future generations.⁸⁶ Some of the key policy documents are the Nairobi Declaration on the African Process for Combating Climate Change and the Draft AU Strategy on Climate Change (Draft Strategy). While these policies do not directly focus on children, they could be broadly interpreted in a way that respects, promotes and protects the rights and interests of children from the negative impacts of climate change. For instance, the Draft Strategy offers strategic direction to member states and provides a framework for integrated and coordinated mechanisms to address the challenges and capitalise on the opportunities associated with climate change in Africa. Importantly, it aims to improve 'the livelihoods of the African people',⁸⁷ including children, and also to particularly improve the environment wherein children live. The Draft Strategy also prioritises the implementation of climate action to achieve sustainable development, for the benefit of the most vulnerable groups, including children.⁸⁸

At the institutional level, some of the regional bodies mandated to undertake climate action and/or promote and protect the rights of African peoples against imminent and future threats, such as climate change, includes the Committee of African Heads of State and Government on Climate Change (CAHOSCC),⁸⁹ and the African Ministerial Conference on the Environment (AMCEN), and also initiatives such as the Climate for Development in Africa (ClimDev-Africa) Programme.⁹⁰ The CAHOSCC and the AMCEN are high-level political organs established by the AU to adopt a common position in climate negotiations at the global level, especially in the Conference of Parties (COPs) under the Paris Agreement.⁹¹ The mandate of these bodies is broad, which includes the protection of the interests of all African peoples, in general. It is crucial to note

85 Jegede (n 84) 215-217.

86 AU Resolution on Climate Change and Human Rights in Africa (2016).

87 AMCEN (n 79) 16.

88 As above.

89 Decision on the African Common Position on Climate Change including the Modalities of the Representation of Africa to the World Summit on Climate Change (Assembly/AU/Dec 257(XIII) Rev 1).

90 For a detailed discussion, see Jegede (n 76) 239-250.

91 See W Scholtz 'The promotion of regional environmental security and Africa's common position on climate change' (2010) 10 *African Human Rights Law Journal* 10-13.

that the mandate takes account of the interests of vulnerable groups, including children, although there is no evidence that the rights and interests of children are adequately considered and protected. While it may be argued that the recognition of and sensitivity to vulnerable groups create the impression that the interests and rights of children are also protected; this is not the case in all circumstances as children's special interests are often overlooked in the governance processes, including in climate action. As Van Bueren notes, the mere fact that international law and policy are capable of being applied to children does not guarantee that it incorporates a coherent child-centred approach to ensure the respect and protection of the basic dignity of children.⁹²

An indispensable aspect of regional climate action more broadly is the participation of all concerned citizens. While the rights of children to participate in matters concerning them is a fundamental right and core principle of children's rights,⁹³ children have few opportunities to express their views on climate change and environmental decision making at the regional and national level in Africa.⁹⁴ In many instances, decisions on issues such as responding to regional environmental and climate change threats are made by politicians, governments, and subject experts who are usually adults, without consulting children.⁹⁵ The lack of meaningful opportunities for child participation in climate action may be attributed to, among other things, societal attitudes that devalue children's voices; social and cultural norms that view children as incapable of contributing sound views; a lack of access to environmental information and knowledge; a lack of sufficient financial resources and budgetary support for travel to attend AU meetings; and, in some instances, practical and legal barriers that recognise the participation of adults only.⁹⁶ Children can be heard directly through peaceful protests, strikes,⁹⁷ and formally participating in proceedings, or indirectly through a representative.⁹⁸ Recently, there has been emerging

92 G van Bueren *International law on the rights of the child* (1998) 19.

93 Arts 4(2) & 7 African Children's Charter. See art 12 of CRC.

94 E Boshoff 'Protecting the African child in a changing climate: Are our existing safeguards adequate?' (2017) 1 *African Human Rights Yearbook* 23 30.

95 H Clark et al 'A future for the world's children?' A WHO-UNICEF-Lancet Commission (2020) 607.

96 L Forde et al *The right of children to participate in public decision-making processes* (2020) 8-9.

97 See BBC 'Climate change: COP25 recognises that children are leading climate change activism' BBC Newsroom 2019, <https://www.bbc.co.uk/newsround/50714878> (accessed 30 June 2020); Global Climate Strike 'Global climate strike: 20-27 September 2019', <https://globalclimatestrike.net/> (accessed 30 June 2020); School Strike4Climate 'Students striking from school for a safe climate future' (2019), <https://www.schoolstrike4climate.com/> (accessed 30 June 2020).

98 See art 12 of CRC.

platforms for children to participate in global climate action. For instance, initiatives such as the Intergovernmental Declaration on Children, Youth and Climate Action,⁹⁹ and the UN Joint Framework Initiative on Children, Youth and Climate Change enable children and the youth to informally take part in Conference of Parties (COP) meetings, and intergovernmental negotiations.¹⁰⁰ However, given the politics, high-level technical procedures of participating in COPs, and the high costs associated with attending the negotiations,¹⁰¹ the formal participation of children may be challenging.¹⁰² Without evidence of how the views of children are taken into account by the AU mechanisms, child participation in high-level panels remains a facade and rhetoric at best.¹⁰³

Furthermore, judicial and administrative bodies could be used as governance organs to ensure that the best interests and the views of children are incorporated in climate action at the regional and national levels. Also, judicial and administrative processes can be used to advance the rights and interests of children to hold governments accountable. An example is the case of *Mbabazi & Others v The Attorney General and National Environmental Management Authority (Mbabazi)*,¹⁰⁴ where four children filed a suit in the High Court of Uganda against their government. The children indicated that they were acting on their behalf and on behalf of (born and unborn) children of Uganda.¹⁰⁵ They alleged that since 1994 the government of Uganda had taken no robust climate governance measures and processes,¹⁰⁶ resulting in the deaths and injury of children and the destruction of schools due to climate-induced disasters.¹⁰⁷ In their prayer to the Court, they sought, among other things, an order directing the government to 'implement measures that will reduce the impact of climate change; conduct an updated carbon footprint and develop a climate change mitigation plan [following] the best available science; and undertake measures to protect the plaintiffs

99 UNICEF 'COP 25: Young climate activists call for urgent action on the climate crisis at UNICEF-OHCHR event' (UNICEF 2019), <https://www.unicef.org/press-releases/cop-25-young-climate-activists-call-urgent-action-climate-crisis-unicef-ohchr-event> (accessed 30 June 2020); E Nelson 'Launch of the Intergovernmental Declaration on Children, Youth, and Climate Action' (*Texas Impact*, 2019) <https://texasimpact.org/2019/12/launch-of-the-intergovernmental-declaration-on-children-youth-and-climate-action/> (accessed 30 June 2020).

100 ED Gibbons 'Climate change, children's rights, and the pursuit of intergenerational climate justice' (2014) 16 *Health and Human Rights Journal* 19, 23.

101 Gibbons (n 100) 24.

102 See also Arts (n 16) 232-233.

103 Gibbons (n 100) 23-24.

104 *Mbabazi & Others v The Attorney-General and National Environmental Management Authority* Civil Suit 283 of 2012 (High Court of Uganda, Kampala).

105 *Mbabazi* (n 104) para 5.

106 *Mbabazi* paras 6(a)-(i).

107 *Mbabazi* paras 11(a)-(e).

(children) and the children of Uganda from the effects of climate change'.¹⁰⁸

Although the pleadings were criticised as shallow, abstract and lacking compelling scientific evidence,¹⁰⁹ the case is a reflection of the state of climate action in Africa because there is lack of momentum and collaboration, in general.¹¹⁰ Kotzé and Du Plessis attribute the vagueness of the pleadings and prayer to 'a lack of information on or knowledge of climate change law, policy and science on the part of the plaintiffs [children], as well as insufficient legal support in assisting to frame the issues, the claims and remedies, and to base these on sound legal argument'.¹¹¹ That said, the observation affirms an urgent need on the continent to ensure access to (adequate) climate change information and to remedy when their rights are undermined by the impacts of climate change or violated by responses to same by states. Access to information is a prerequisite for meaningful participation. While the matter remains *sub judice*, the case is a strong example of how children can, and must, participate in climate governance to hold states to account. Also, child rights experts in African states could use this case as an example to take up and file environmental and climate-related challenges for the benefit of present children and future generations.

In addition, the rights of children and their interests in climate action could potentially be advanced through the work of human rights-monitoring bodies such as the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) and the CRC Committee. For the first time, the CRC Committee received a climate-related communication filed by children in *Sacchi & Others v Argentina, Brazil, France, Germany and Turkey (Sacchi)*.¹¹² The communication remains *sub judice* until a decision on admissibility and the merits has been made. In this complaint, 16 children from different parts of the world allege that their governments have failed

¹⁰⁸ As above.

¹⁰⁹ LJ Kotzé & AA du Plessis 'Putting Africa on the stand: A bird's eye view of climate change litigation on the continent' (2020) *Journal of Environmental Law and Litigation* 28.

¹¹⁰ See the examples of climate litigation involving children in *Urgenda Foundation v Kingdom of the Netherlands* [2015] HAZA C/09/, http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf (accessed 20 July 2020); and *Juliana v United States* 217 F Supp 3d 1224 (D Or 2016), http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2020/20200324_docket-18-36082_opposition.pdf (accessed 20 July 2020).

¹¹¹ Kotzé & Du Plessis (n 109) 30.

¹¹² *Sacchi & 15 Others v Argentina, Brazil, France, Germany and Turkey* (CRC Committee) filed 23 September 2019.

to take action against climate change.¹¹³ Three of the claimants are from African states, namely, South Africa, Nigeria and Tunisia. It is not clear why the three children opted instead to use the CRC Committee and not the African Children's Committee. Given the global momentum on the active participation of children within global governance structures and the complementarities existing between international and regional regimes, the use of the CRC Committee is strategic in that the decision will have a global rather than a regional impact.

With the support of scientific data, the 16 children claim that climate change is substantially undermining the enjoyment of their rights,¹¹⁴ and it will also cause intergenerational harm.¹¹⁵ The complainants consequently argue that by the failure of states to reduce emissions in line with their international obligations, they are deliberately promoting excessive emissions, and neglecting to use available means of international cooperation to mitigate climate change. They further contend that acts and omissions by states are directly and foreseeably causing harm to children and violating their fundamental rights such as the rights to life, health, survival and development. More importantly, the complainants allege that states are creating and perpetuating systemic intergenerational discrimination by a clear disregard of the best interests of children in climate action.¹¹⁶ Brazil, France and Germany filed objections to the admissibility of the complaint, claiming that the CRC Committee has no jurisdiction; the petitioners have not exhausted domestic (internal) remedies; and the communication is manifestly unsubstantiated.¹¹⁷

Despite the apparent weaknesses in the claims, the communication is ground-breaking in two respects. First, it escalates the climate change debate to a global forum where children take up the stand – an exercise of their participation rights. Second, it presents the CRC Committee with an opportunity to articulate how climate change intersects with children's rights. The decision and recommendations of the CRC Committee will potentially influence legal and institutional responses in relation to climate change obligations and children's rights in climate action at the regional and national levels. Thus, the direct involvement of children in challenging states' climate change

113 *Sacchi* (n 112) paras 34-49.

114 *Sacchi* paras 23-29, 87-95.

115 *Sacchi* paras 193-195, 303-308.

116 The best interests of the child entrenched in terms of art 4(1) African Children's Charter and art 3(1) CRC.

117 See Petitioners' Reply to the Admissibility Objections of Brazil, France, and Germany para 11, http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2020/20200504_Not-available_reply.pdf (accessed 20 July 2020).

responses at the international, regional and national levels presents a unique opportunity for the treaty-monitoring bodies and judicial bodies to shape the trajectory of children's rights in climate action in the next three decades.

While the African Children's Committee has not dealt with a climate change-specific communication or devoted a General Comment to climate change and environmental protection; it has the potential to contribute to strengthening the protection of children from the negative impacts of climate change. Every year, the African Children's Committee organises the Day of the African Child, an event that has generated significant interest from states, non-governmental organisations (NGOs), children's rights practitioners and children themselves.¹¹⁸ Devoting a Day of the African Child to a focus on climate change and environmental protection could effectively generate momentum on issues around climate action and children's rights. Thus, from the discussion it is clear that climate change and children's rights, especially to a viable future, are conceptually and legally linked and, thus, in the next decades, without the adoption of effective regional legal and institutional frameworks, the negative impacts of climate change will undermine the rights and welfare of children in Africa.

4 Conclusion

This article attempts to make a case for the incorporation of children's rights and the principle of intergenerational equity into regional climate action in Africa. It begins by demonstrating how the negative impacts of climate change undermine children's rights, and explored the concept of intergenerational equity in the context of climate action. The discussion reveals that although there are emerging standards and notions on the concept, its integration into existing climate action in Africa is weak. It consequently becomes obvious that the ethical argument behind an intergenerational approach to climate action may be persuasive, but this is not reflected in terms of legal and institutional development in the AU. In order to remedy this deficit, legislative development and policy making at the regional and national levels should fully reflect the need to invest in long-term solutions that ensure and take into account the full interests and rights of children in present and future generations. Furthermore, strict adherence to the African Children's Charter could require that national governments and regional human rights bodies in Africa

¹¹⁸ J Sloth-Nielsen 'The African Charter on the Rights and Welfare of the Child' in T Boezaart (eds) *Child law in South Africa* (2017) 441.

should ensure the fair representation of children and that child-specific rights and interests are given due consideration in climate action.

In addition, the African Children's Committee could also increase its attention to climate change and environmental protection in its Concluding Observations and resolutions, thereby shaping the future of children's rights for the next 30 years, in the face of the climate crisis.¹¹⁹ Similarly, a thematic area or Special Rapporteur on issues explicitly relating to climate change and environmental rights could add momentum and weight to mainstreaming children's rights and welfare in climate action. At the moment, through both their action and inaction on climate change, state parties to the African Children's Charter have failed to meet their obligation to make decisions in the best interests of the child.¹²⁰ States' reporting on climate change and children's rights could, therefore, be included under existing reporting commitments by governments that have ratified the African Children's Charter.

119 Eg, in its Concluding Observations to Angola, the African Committee mentioned climate change without indicating how the country should improve the protection of children from climate change. See Concluding Observations and Recommendations of the African Committee on the Initial Report of the Republic of Angola on the Status of the Implementation of the African Charter on the Rights and Welfare of the Child para 17, https://acerwc.africa/wp-content/uploads/2019/07/Angola_CO_Initial_Report.pdf (accessed 20 July 2020).

120 Art 3.1 UNFCCC.