

AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

Working Group on Climate Change and Children's Rights

Legal memorandum on the most crucial aspects of the rights and welfare of the child which shape the obligations of states in respect of climate change under international law

In re: The International Court of Justice's Advisory Opinion on the Obligations of States in respect of Climate Change

INTRODUCTION

1. The African Committee of Experts on the Rights and Welfare of the Child ('ACERWC' / 'the Committee') is an African Union Organ mandated to monitor the implementation of the African Charter on the Rights and Welfare of the Child ('ACRWC' / 'the African Children's Charter') as well as promote and protect children's rights in Africa.
2. The Committee established a Working Group on Children's Rights and Climate Change in 2020 during its 35th Ordinary Session.¹ The primary aim of the Working Group is to promote a child rights-based approach to climate change action on the continent, thereby ensuring that children's rights and welfare is protected from the impacts of climate change.
3. The Working Group, cognisant that the forthcoming Advisory Opinion of the International Court of Justice ('ICJ' / 'the Court')² will have a significant and permanent impact on children in Africa provides this concise legal memorandum to inform a child rights approach to oral submissions to the Court, as well any other interaction with the Court and the Advisory Opinion process.
4. The Advisory Opinion will influence the interpretation of children's right to a healthy environment at domestic and regional level and the standard set by the Court will limit the level of accountability of states under international law. African children will be among those most affected by this decision. Their rights are therefore crucial and should be at the forefront of the debate.

¹ African Committee on the Rights and Welfare of the Child 'Working group on Climate Change and Children's Rights' <https://www.acerwc.africa/en/special-mechanisms/working-groups/working-group-climate-change-and-childrens-rights>.

² International Court of Justice 'Advisory Opinion on the Obligations of states in respect of climate change' <https://www.icj-cij.org/case/187>.

5. The UN Convention on the Rights of the Child (CRC) provides the principles which the Court must consider in order to give effect to children's rights under international law. The African Children's Charter echoes these rights and frames rights in the African context. This short memorandum sets out the salient legal obligations to which States are bound under international law. The Committee urges all involved to give due weight to the rights of children in this momentous process.

THE CLIMATE CRISIS IS AN AFRICAN CHILD CRISIS

6. The Committee is deeply concerned by the overarching negative impact of climate change on the global eco-system with the rise of sea level, reduction in freshwater availability, increase in global warming, desertification and loss of biodiversity and further concerned by its disproportionate impact on **least developed and developing countries**.³
7. The Committee is concerned by the **disproportionate impact of climate change on Africa** due to relatively limited capacity to respond to climate change and high reliance on land and water resources for survival; and is mindful that various African countries already face a problem of water scarcity with millions of children living in areas of high or extremely high-water scarcity.⁴
8. The Committee is deeply concerned by the **special vulnerability of children** to the risks of climate change due to their growing bodies and developing minds; and cognizant of the fact that according to WHO children under 5 years of age bear the highest burden of disease as a result of climate change and that undernutrition, malaria and certain types of cancer that affect children the most are exacerbated by climate change and are expected to increase considerably due to global warming.⁵
9. Children are **least likely to be able to exercise their rights** to information, free expression and be heard as well as justice when their rights have been violated. Marginalized groups of **children bear a disproportionate burden of inaction on the environment**, implicating, among others, the principle of non-discrimination. Key impacts of climate change on children include loss of lives, homes and family environment due to extreme weather, morbidity and mortality owing to water scarcity and food insecurity, air pollution, vector-borne and

³ African Committee on the Rights and Welfare of the Child 'Resolution on the establishment of a Working Group on children's rights and climate change' (September 2020) <https://www.acerwc.africa/sites/default/files/2022-10/RESOLUTION%20ON%20THE%20ESTABLISHMENT%20OF%20A%20WORKING%20GROUP%20ON%20CHILDREN%E2%80%99S%20RIGHTS%20AND%20CLIMATE%20CHANGE.pdf>.

⁴ African Committee on the Rights and Welfare of the Child 'Statement of the Working group on climate change and children's rights on the Africa Day for food and nutrition security' (October 2024) available at <https://www.acerwc.africa/en/article/activity/statement-acerwc-working-group-climate-change-and-childrens-rights-africa-day-food>.

⁵ World Health Organisation 'Children's environmental health' (September 2024) <https://www.who.int/news-room/facts-in-pictures/detail/childrens-environmental-health>.

infectious diseases, Impacts on mental health, and others with disproportionate impacts on children in vulnerable situations.⁶

10. According to the Office of the High Commissioner for Human Rights **“(c)limate change heightens existing social and economic inequalities**, intensifies poverty and reverses progress towards improvement in children’s well-being”. Highlighting intersectionality, **“(c)limate change also 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.”**⁷
11. Children in Africa are particularly exposed to the impacts of climate change. A disproportionately large number - 25 of the 33 countries that have been ranked by UNICEF as “extremely high risk” for children - are in Africa. **The climate crisis is an African child crisis.**⁸
12. The reports of the Intergovernmental Panel on Climate Change (“IPCC”) and other scientific studies find that **even 1.5°C of warming would be devastating** and would result in overwhelming rights violations, particularly for children, in Africa and small island developing states.⁹
13. The Committee acknowledges the **important role of children as leaders** in global climate action. The fact that they are the most vulnerable groups to climate change and, alongside future generations are inheritors of the global eco-system, calls for their **meaningful participation** in any decision or action taken in relation to climate change.
14. The Committee recognises **the impact of climate change on various rights** recognized in the African Charter on the Rights and Welfare of the Child; including the best interest of the child, the right to survival and development, the right to health and welfare and its consequential impact on the right to education, protection from harmful practices, non-discrimination and protection from violence and abuse and protection of children on the move.¹⁰
15. **Climate change is first and foremost a child rights issue.** The Committee aligns itself with the UN Committee on the Rights of the Child in its position that *‘the extent and magnitude of the triple planetary crisis, comprising the climate emergency, the collapse of biodiversity and pervasive pollution, is an urgent and systemic threat to children’s rights globally’*, and with the

⁶ African Committee on the Rights and Welfare of the Child ‘*Climate Change and children’s rights in Africa: A continental overview*’ (forthcoming).

⁷ OHCHR, Climate change and the full and effective enjoyment of the rights of the child (A/ HRC/35/13)

⁸ African Committee on the Rights and Welfare of the Child ‘*Climate Change and children’s rights in Africa: A continental overview*’ (forthcoming).

⁹ African Committee on the Rights and Welfare of the Child ‘Factsheet on the impact of climate change on seas and oceans in relation to children’s rights’ (July 2024) [https://www.acerwc.africa/sites/default/files/2024-07/FACTSHEET on the impact of climate change on seas and oceans in relation to childrens rights.](https://www.acerwc.africa/sites/default/files/2024-07/FACTSHEET%20on%20the%20impact%20of%20climate%20change%20on%20seas%20and%20oceans%20in%20relation%20to%20childrens%20rights.pdf)

¹⁰ Resolution No 18/2022 of the ACERWC Working Group on Children’s Rights and Climate Change to Integrate a Child Rights Based Approach to Climate Change Responses (2022).

principles set out in the **UN Committee on the Rights of the Child’s General Comment no 26** (2023) on children’s rights and the environment, with a special focus on climate change.¹¹

STATES’ OBLIGATIONS IN RESPECT OF CLIMATE CHANGE ARE INEXTRICABLY LINKED TO CHILDREN’S RIGHTS

16. The African Children’s Charter and the CRC both recognise the right to a healthy environment and a liveable climate.¹² The African Commission on Human and Peoples’ Rights had already recognised this right in 1996, in the *SERAC* case, which also recognised states obligation to protect people from environmental harm caused by non-state actors.¹³
17. The UN Convention on the Rights and Welfare of the Child is the most widely ratified convention in the world, and many of its provisions are considered international customary law. The four principles of children’s rights are binding on every state globally. Each of these are echoed in the African Children’s Charter to which all, but four, African States are party. The principles are:
 - a. Non-discrimination (CRC article 2; ACRWC article 3)
 - b. The best interests of the child standard (CRC article 4; ACRWC article 4)
 - c. Survival and development (CRC article 6; ACRWC article 5)
 - d. Child participation (CRC article 12; ACRWC article 4(2) and 7)
18. The four principles do not capture all the rights of children affected by climate change, but for the purpose of this succinct memorandum, it is useful to focus on them.

Non-discrimination

19. Climate change impacts disproportionately fall on vulnerable communities and often hit children hardest, further exacerbating inequity. According to article 3 of the ACRWC and article 2 of the CRC ‘States Parties shall **respect and ensure** the rights set forth in the present Convention to each child within their jurisdiction **without discrimination** of any kind’ and ‘Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.’
20. State actions / decisions which lead to aggravated climate change impacts will **disproportionately affect** a) children, as compared to adults; and b) children in divergent circumstances, such as those living in developing countries and countries in Africa including small island developing states, and children with disabilities among others.
21. States’ failure to provide equal protection to children as a group, and to children who are most affected by climate change, amounts to **discrimination** on the basis of age, origin and disability, amongst other factors.

¹¹ UN Committee on the Rights of the Child ‘*General Comment no 26 on children’s rights and the environment with a special focus on climate change*’ (August 2023) (‘General Comment 26’).

¹² CRC Article 24, read with General Comment no. 26. ACRWC arts 5, 11, 14.

¹³ *SERAC v. Nigeria*, Decision, Comm. 155/96 (ACmHPR, Oct. 27, 2001).

22. The UN Children’s Committee in their General Comment no. 26 confirms that ‘*States have an **obligation to effectively prevent, protect against and provide remedies** for both direct and indirect environmental discrimination*’.¹⁴
23. General comment 26 further confirms that ‘Beyond their immediate obligations under the Convention with regard to the environment, **States bear the responsibility for foreseeable environment-related threats** arising as a result of their acts or omissions now, the full implications of which may not manifest for years or even decades.’¹⁵

The best interests of the child

24. The multitude adverse impacts of climate change are contrary to the short term and long term best interest of children. The African Children’s Charter in article 4 requires States to consider the best interests of children to be more important than other considerations, as ‘**the primary consideration**’ ‘**in all actions concerning the child undertaken by any person or authority**’. The ACERWC states the following in its General Comment No 5 on State Party Obligations

‘The child’s best interests include **short term, medium term and long-term best interests**. For this reason, State actions which imperil the enjoyment of the rights of future generations of children (**eg allowing environmental degradation to take place, or inappropriate exploitation of natural resources**) are regarded as violating the best interests of the child standard.’

25. Article 3 of the CRC reaffirms the same principle and states that ‘*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child shall be a primary consideration***’.
26. According to CRC’s General Comment 26 ‘The adoption of all measures of implementation should also follow a procedure that ensures that the best interests of the child are a primary consideration. A **child rights impact assessment** should be used to evaluate the environmental impact of all implementation measures, such as any proposed policy, legislation, regulation, budget or other administrative decision concerning children, and should complement **ongoing monitoring and evaluation of the impact** of measures on children’s rights.’¹⁶
27. The best interests principle is a **substantive right, a procedural right and an interpretive principle**. Any decision-making process which affects children is procedurally flawed if it does not actively consider the best interests of children, and all rights must be interpreted through its lens.

Survival and development

¹⁴ General comment no. at 14.

¹⁵ General comment no. at 11.

¹⁶ UN CRC General comment no. 26 at 18.

28. A child's right to life, survival and development is severely undermined due to the impacts of climate on a child's health, nutrition, education and so on. Article 5 of the ACRWC CRC recognises every child's **'inherent right to life'**, and states obligation to **'ensure to the maximum extent possible the survival and development of the child'**. Climate change fundamentally threatens children's survival and development. The CRC recognises the same right in article 6 and requires it to be protected by law.
29. General comment 26 of the CRC confirms that 'The obligations of States under article 6 of the Convention also apply to structural and long-term challenges arising from environmental conditions that may lead to direct threats to the right to life and require taking appropriate measures to tackle those conditions, for example, the sustainable use of resources needed for covering basic needs and the protection of healthy ecosystems and biodiversity. **Special measures of protection are needed to prevent and reduce child mortality from environmental conditions and for groups in vulnerable situations.**'¹⁷

Child participation

30. The African Children's Charter's article 4 (2) states: 'In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and **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.
31. The CRC requires that 'States Parties shall assure to the child who is capable of forming his or her own views **the right to express those views freely in all matters affecting the child**, the views of the child being **given due weight** in accordance with the age and maturity of the child.
32. General comment 26 says '**Children's views should be proactively sought** and given due weight in the **design and implementation of measures** aimed at addressing the significant and long-term environmental challenges that are fundamentally shaping their lives'.¹⁸
33. The Committee further states that 'At the international level, States, intergovernmental organizations and international non-governmental organizations should **facilitate the involvement of children's associations and child-led organizations or groups in environmental decision-making processes**. States should ensure that their obligations concerning children's right to be heard are incorporated into international environmental decision-making processes, including in negotiations and the implementation of instruments of international environmental law.'¹⁹

¹⁷ UN CRC General comment no. 26 at par 21.

¹⁸ UN CRC General comment no. 26 at par 26.

¹⁹ UN CRC General comment no. 26 at 84.

OBLIGATIONS OF STATES UNDER INTERNATIONAL LAW IN RELATION TO CHILDREN IN THE CONTEXT OF CLIMATE CHANGE

34. The African Children's Charter and the CRC require all States Parties to **undertake all appropriate legislative, administrative, and other measures** for the implementation of international children's rights.²⁰ In the context of climate change the CRC Committee, has interpreted the duties of States under the CRC to extend to children outside of its territory where a causal link can be established.²¹
35. States have a **duty to consider children's best interests a primary consideration** in all their climate related decisions, and must **indicate how** they have given consideration, and **provide feedback to children**.
36. States have the duty to **prevent discrimination** and **implement the principle of intergenerational justice** by making decisions which ensure fair burden sharing in climate change impacts and responsibilities, between older / adult generations, youth / child generation, and future generations.
37. States have a duty to **consider the effects** of their actions / decisions on the interests of **future generations**. The interest of future generations is not excluded from the ACRWC and it is visible in a number of the provisions of international instruments.²² These include Article 3(1) of the UNFCCC, Guideline 6 of the International Law Commission's 2021 Draft Guidelines on the Protection,²³ the Paris Agreement reference to intergenerational equity and sustainable development,²⁴ and The 2023 Maastricht Principles on the Human Rights of Future Generations that reiterates the binding obligations of States and other actors as prescribed under international and human rights law towards the future generations.²⁵
38. States have the duty to **ensure mechanisms are in place to actively seek out, consider and give due weight to children's views** in relation to all climate related decisions.
39. States have an obligation to **ensure the child's right to access to information** by making environmental information available in child appropriate dissemination methods taking into account children's ages and capacities and aimed at overcoming obstacles, such as

²⁰ Article 4 UN Convention on the Rights of the Child.

²¹ *Chiara Sacchi et al Argentina; Chiara Sacchi et. al., v. Brazil; Chiara Sacchi et al v France; Chiara Sacchi et. al., v. Turkey. 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 (Argentina), Communication No. 105/2019 (Brazil), Communication No. 106/2019 (France), Communication No. 107/2019 (Germany), Communication No. 108/2019 (Turkey)*, UN Doc CRC/C/88/D/104/2019 (8 October 2021).

²² See generally, AO Jegede 'Climate Change and the Future Generation under the African Human Rights System: Fostering Pathways and Partnerships' Global Campus on Human Rights Policy Briefs (2021).

²³ ILC 'Draft Guidelines on the Protection of the Atmosphere, with Commentaries Thereto' (2021), Guideline 6 on the equitable and reasonable utilization of the atmosphere.

²⁴ Paris Agreement, preambular paragraph 11.

²⁵ 'Maastricht Principles on the Human Rights of Future Generations', 27 November 2024, <https://www.ohchr.org/sites/default/files/documents/new-york/events/hr75-future-generations/Maastricht-Principles-on-The-Human-Rights-of-Future-Generations.pdf>.

illiteracy, disability, language barriers, distance and limited access to information and communications technology.²⁶

40. States have an obligation to **protect children against environmental damage from other sources and third parties**, including by regulating business enterprises. The African Commission has emphasized the state's responsibility to protect its citizens from harmful practices by third parties, including corporations in *SERAC v Nigeria*.
41. States have obligations to **put the rights of children at the centre** of their policies and decision makings on climate change.
42. In relation to indigenous children both the CRC Committee and the UN Human Rights Committee have recognised **the rights of children to enjoy culture in the context of climate change**.²⁷²⁸ According to the CRC chair: 'We therefore need to **pay particular attention to the obligation of States Parties to ensure children's right to express their views**, and have them **given due weight**, particularly in relation to **decisions pertaining to the environment and the preservation of the environment for future generations**'.²⁹
43. In relation to access to justice, 'States should **provide access to justice pathways for children**, including complaint mechanisms that are child-friendly, gender-responsive and disability-inclusive, to ensure their engagement with effective judicial, quasi-judicial and non-judicial mechanisms, including child-centred national human rights institutions, for violations of their rights relating to environmental harm. This includes removing barriers for children to initiate proceedings themselves, adjusting the rules of standing and empowering national human rights institutions with mandates to receive complaints from children.'³⁰ 'And from a human rights perspective, loss and damage are closely related to the right to remedy and the principle of reparations, including restitution, compensation and rehabilitation.'³¹

²⁶ General comment no. at 34

²⁷ *Daniel Billy et. al., v. Australia*. United Nations Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3624/2019, UN Doc CCPR/C/135/D/3624/2019 (23 September 2022).

²⁸ *M. E. V., S. E. V. and B. I. V. (represented by Martin Scheinin) v Finland*. Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 172/2022.

²⁹ Ibid n 23. Finland decision 'Children, who often make up a large percentage of indigenous populations, should be included in these processes in a meaningful way. In General Comment 11 (2009) on Indigenous children and their rights the Committee envisaged both individual and collective participation of children, and observed that State parties 'should design special strategies to guarantee that their participation is effective'. In General Comment No. 26 (2023) on children's rights and the environment, with a special focus on climate change, the Committee noted that considering the disproportionate effect of environmental harm on indigenous children's rights, States must undertake measures to meaningfully engage with Indigenous children and their families in responding to such harm. Their views should be proactively sought, and may be received through creative means.'

³⁰ General comment no. 26 at 83.

³¹ General comment no. 26 at 106.

44. Mitigation objectives and measures should be based on the best available science and be regularly reviewed to ensure a pathway to net zero carbon emissions at the latest by 2050 in a manner that prevents harm to children.³²

³² General comment no. 26 at 97.