

# The Fundamental Right of Children to Participate in Climate Change Decision-Making Processes: A South African Perspective

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## Abstract

Climate change poses severe threats to the enjoyment of a wide array of human rights, such as the right to health, survival and development including, in extreme cases, the enjoyment of life itself. Due to their specific physiology, children are highly vulnerable to the impacts of climate change; even more so than adults. Though climate change affects children more than adults, their inclusion in climate action policy and decision-making at local, national and international levels has been limited. Notwithstanding, children have a right to be heard on actions that affect them. States are the primary duty bearers of children's rights and are obliged not only to protect children from current and foreseeable adverse effects due to climate change, but also to ensure that children can exercise their participatory rights meaningfully. Considering this important duty and the global trend by children, including South African children, towards claiming their environmental participation rights, this contribution sets out to explore whether the South African legislative framework provides for children to participate meaningfully and effectively in climate change action. The South African legislative framework is assessed against the backdrop of international documents affording children participatory rights to determine South Africa's compliance with international and regional standards.

## Keywords

Climate change; environmental impact on children; children's right to be heard; Article 12 of the *Convention on the Right of the Child*; Article 4.2 of the *African Charter on the Rights and the Welfare of the Child*; *Sacchi v Argentina*; section 10 of the *Children's Act*.

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## 1 Introduction

It has become widely recognised that climate change poses severe threats to the enjoyment of a wide array of human rights such as the rights to health, to survival and to development, including in extreme cases even the right to life itself.<sup>1</sup> Following a year of extreme weather events<sup>2</sup> in which many climate records have been broken, countries from across the globe gathered in Dubai, the United Arab Emirates, in November 2023 at the 28th annual United Nations (UN) Conference of the Parties (COP28) climate meeting, where governments discussed how to limit and prepare for future climate change.<sup>3</sup> The effect of climate change on children also featured as a topic at the recent COP meeting.<sup>4</sup>

Due to their specific physiology, children are highly vulnerable to the impacts of climate change, even more so than adults.<sup>5</sup> From conception to adolescence, their bodies go through a number of complex biological development phases, making them extremely susceptible to environmental hazards.<sup>6</sup> In this regard climate change not only impacts on their current rights, such as their right to mental and physical health, but may induce long-term damage affecting their future rights.<sup>7</sup>

In this regard, it is estimated that one billion children live in one of the 33 countries classified by the United Nations Children's Fund (UNICEF) as being "extremely high risk to [climate] change"<sup>8</sup> with the "brunt of the impact of [such] climate change borne by [these] children."<sup>9</sup> The catastrophic floods in Pakistan in 2022, for example, killed 500 children and destroyed 18 590

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<sup>1</sup> Atapattu *UN Human Rights Institutions* 297.

<sup>2</sup> These include wildfires, tornados, cyclones, hurricanes, heatwaves, droughts, floods and landslides. See McGillivray 2017 *Int'l J Children's Rts* 554.

<sup>3</sup> Poynting 2023 <https://www.bbc.com/news/science-environment-67143989>.

<sup>4</sup> Poynting 2023 <https://www.bbc.com/news/science-environment-67143989>.

<sup>5</sup> UNICEF 2022 <https://www.unicef.org/mena/reports/impact-climate-change-children-mena>; UNICEF 2021 <https://www.unicef.org/reports/climate-crisis-child-rights-crisis>.

<sup>6</sup> UNICEF 2023 <https://www.unicef.org/southafrica/reports/climate-energy-and-environment-landscape-analysis-children-south-africa> 8.

<sup>7</sup> Arts "Children's Rights and Climate Change" 217.

<sup>8</sup> Save the Children 2022 <https://resourcecentre.savethechildren.net/document/cop-fit-children-how-support-childrens-participation>.

<sup>9</sup> UNICEF 2015 <https://www.unicef.org/reports/unless-we-act-now-impact-climate-change-children> vii, 1; Agarwal 2023 <https://oecd-development-matters.org/2023/11/27/cop28-prioritising-children-in-the-fight-against-climate-change/>.

schools.<sup>10</sup> A historical disregard for climate change is clearly manifesting in present day climate change catastrophic events. If there were thus ever a time when the sins of the fathers were visited on their children, it is now.<sup>11</sup> Climate change accordingly has the potential to significantly undermine the enjoyment of children's human rights, such as the right to life, survival and development, health, an adequate standard of living, and access to education. Climate change is not in the best interests of the child.<sup>12</sup>

Though climate change poses significant harm to the integrity of a wide range of ecosystems, these adversities are more intense in developing countries.<sup>13</sup> Africa is particularly susceptible to climate change while being the least able to adapt to its impact.<sup>14</sup> Children in Africa, including those in South Africa, are being and stand to be severely affected by climate change.<sup>15</sup>

In South Africa the impact of climate change needs to be considered in relation to the broader economic and development pressures affecting the country. This includes international economic shocks and stressors such as COVID-19, high levels of poverty and inequity, high levels of unemployment, rapid urbanisation, the effects of HIV and AIDS, the mismanagement of scarce natural resources such as water, and the lack of sufficient provision of electricity.<sup>16</sup> Consequently, South African children experience high rates of poverty and inequality, including a lack of access to adequate sanitation and water, and also of housing, food, education and health care services, making them particularly vulnerable to the impacts of climate change.<sup>17</sup>

Even though climate change affects children more than adults and will affect children as the future generation more than anyone else, their inclusion in climate action policy and decision making at local, national and international level has been limited.<sup>18</sup> While children are critically exposed to the impacts of climate change, their views are in general ignored and/or acted on by adult decision-makers. This may be because of their marginalised position or simply because they express themselves differently from those in

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<sup>10</sup> Agarwal 2023 <https://oecd-development-matters.org/2023/11/27/cop28-prioritising-children-in-the-fight-against-climate-change/>.

<sup>11</sup> McGillivray 2017 *Int'l J Children's Rts* 555.

<sup>12</sup> See 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* UN Doc CRC/C/GC/26 (2023), which was adopted on 22 August 2023.

<sup>13</sup> Fambasayi and Addaney 2021 *AHRLJ* 31.

<sup>14</sup> Kotzé and Du Plessis 2020 *Environmental Law* 616.

<sup>15</sup> IPCC 2022 <https://www.ipcc.ch/report/ar6/wg2/>.

<sup>16</sup> UNICEF 2011 <https://www.unicef.org/southafrica/reports/exploring-impact-climate-change-children-south-africa> 5.

<sup>17</sup> UNICEF 2011 <https://www.unicef.org/southafrica/reports/exploring-impact-climate-change-children-south-africa> 5.

<sup>18</sup> UNICEF 2023 <https://www.unicef.org/press-releases/media-advisory-unicef-cop28>.

power.<sup>19</sup> Furthermore, children share the paradox of the subaltern – their ability to express their views is in part dependent on others listening.<sup>20</sup> This results in children being faced with various barriers restricting the opportunity for their voices to be heard.<sup>21</sup> These barriers include power imbalances, social and cultural views that regard children as incapable of contributing sound perspectives, a lack of access to environmental information and knowledge, and insufficient financial resources and budgetary support to travel to climate change events.<sup>22</sup>

In contrast with these barriers, children have a right to be heard on topics that affect them.<sup>23</sup> International and regional child human rights instruments such as the *United Nations Convention on the Rights of the Child* (CRC) and the *African Charter on the Rights and the Welfare of the Child* (ACRWC) not only confer on children the right to protection but also protect their participation rights.<sup>24</sup> These instruments recognise that children's participation is central to the realisation and protection of their rights.<sup>25</sup> Because of the interconnected and interrelated nature of rights, the realisation of one right often depends, wholly or in part upon the realisation of other rights.<sup>26</sup> As a result, the violation of the right to be heard may violate children's other rights. Limiting their opportunity to be heard on the impact of climate change and preventing them from contributing to possible climate action may accordingly impede their other rights, such as the right to life, survival and health.

Generally states are the primary duty bearers of children's rights and are obliged to take action and protect children from current and foreseeable adverse effects due to climate change.<sup>27</sup> Such states must comply with national and international legal obligations to which they are signatories and ensure that all decisions taken by their agents are made with the best interests of the child in mind and are informed by factual assessments of the impact of climate change on the rights of the children in their countries.<sup>28</sup> In addition to their obligations under international human rights law, states are also bound by national human rights law and other mutual agreements,

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<sup>19</sup> James and Jørgensen 2022 *NORRAG* 104.

<sup>20</sup> James and Jørgensen 2022 *NORRAG* 104.

<sup>21</sup> Fambasayi and Addaney 2021 *AHRLJ* 31; Forde *et al* *Right of Children to Participate in Public Decision-Making Processes* 8-9.

<sup>22</sup> Kapell *A COP Fit for Children* 3.

<sup>23</sup> Boshoff and Damtew 2022 *AHRLJ* 334.

<sup>24</sup> See Art 12 of the *UN Convention on the Rights of the Child* (1989) (the CRC) and Arts 10 and 7 of the *African Charter on the Rights and Welfare of the Child* (1990) (the ACRWC); Mezmur "UN Convention on the Rights of the Child" 410, 418. South Africa ratified the CRC on 16 June 1995 and the ACRWC on 7 January 2000.

<sup>25</sup> Mezmur "UN Convention on the Rights of the Child" 418.

<sup>26</sup> UNICEF 2021 <https://www.unicef.org/reports/climate-crisis-child-rights-crisis> 11; Sloth-Nielsen 1995 *SAJHR* 404.

<sup>27</sup> UNICEF 2021 <https://www.unicef.org/reports/climate-crisis-child-rights-crisis> 11.

<sup>28</sup> Boshoff 2017 *African Human Rights Yearbook* 38-40.

such as the *Paris Agreement*, to protect and promote children's rights.<sup>29</sup> In terms hereof, states bear the duty to ensure that children can exercise their participatory rights meaningfully.<sup>30</sup> In some instances, this may require the adoption of new legal and policy frameworks.

The young have become more vocal in demanding their participatory and other human rights on climate change. This has been characterised by a global movement of children demanding climate action in various ways such as online activism, sit-ins, and street protests such as "Fridays For Future", which was started by the climate activist Gretha Thunberg, following the 24th COP meeting in December 2018.<sup>31</sup> This has resulted in the emergence of platforms for children to participate in global climate action such as the United Nations Joint Framework Initiative on Children, Youth and Climate as well as the official Children and Youth Constituency of the United Nations Framework Convention on Climate Change, namely the Youth Non-Governmental Organisations (YOUNGO), that enable children to informally take part at COP meetings and intergovernmental meetings.<sup>32</sup> However, given factors such as the political barriers to participation, the highly technical procedures enabling participation at COP meetings and the high costs of attending the meetings, the formal participation of children at climate change events remains limited and challenging.<sup>33</sup> This is especially true for children from the Global South.<sup>34</sup>

In recognition of these limitations, COP 28 recently saw an increase in child participation in that a large youth delegation, including YOUNGO, attended the Pre-COP, the critical final ministerial meeting before COP, for the first time. During this meeting youth attendees formed part of a high-level roundtable where they presented their Global Youth Statement (GYS), a centrepiece youth advocacy document, representing the consensual demands of youth and children worldwide.<sup>35</sup> The GYS statement was presented during the pre-COP stage rather than mid-COP as in previous years to enhance the effectiveness of incorporating youth requests into the

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<sup>29</sup> *Paris Agreement* (2016).

<sup>30</sup> Article 12 of the CRC.

<sup>31</sup> Fridays for Future date unknown <https://fridaysforfuture.org/>.

<sup>32</sup> UNICEF 2019 <https://www.unicef.org/pressreleases/cop-25-young-climate-activists-call-urgent-action-climate-crisis-unicefohchr-event>; Nelson 2019 <https://texasimpact.org/2019/12/launch-of-the-intergovernmental-declaration-on-children-youth-and-climate-action/>; YOUNGO date unknown <https://express.adobe.com/page/CwEnVEVJ26Yaz/>.

<sup>33</sup> Fambasayi and Addaney 2021 *AHRLJ* 34; Agarwal 2023 <https://oecd-development-matters.org/2023/11/27/cop28-prioritising-children-in-the-fight-against-climate-change/>.

<sup>34</sup> James and Jørgensen 2022 *NORRAG* 105; SAIIA 2023 <https://saiia.org.za/research/cop28-south-african-youth-statement/> para 7, own emphasis.

<sup>35</sup> YOUNGO 2023 <https://www.cop28.com/en/news/2023/12/COP28-Youth-Climate-Champion-welcomes-Global-Youth-Statement>.

negotiation process conducted by the parties to COP.<sup>36</sup> Though this development seems to have enhanced youth participation and provided some form of formal participation, YOUNGO commented that for "the engagement to be meaningful they [the young] need to be integrated in the COP final outcomes."<sup>37</sup> The question thus remains whether the increase in youth participation may be regarded as fully compliant with the participatory rights of children contained in international child law such as the CRC. This question is also posed regarding the participation of South African children.

South Africa is a constitutional democracy and boasts an advanced constitutional legal regime that has been hailed internationally as an example of a constitution providing for the protection and advancements of children's rights.<sup>38</sup> South Africa is also a signatory to international and regional human rights child law and agreements such as the CRC and the ACRWC. In relation to climate change action, South Africa is a signatory to the *United Nations Framework Convention on Climate Change* (UNFCCC)<sup>39</sup> and the *Paris Agreement*,<sup>40</sup> amongst other instruments.

A preliminary appraisal of South Africa's legal framework signifies a commitment towards advancing children's rights in relation to climate change action. In line with the global movement of children demanding climate action, South African youth have also moved towards actively claiming their environmental and participatory rights. Organisations such as South African Youth Climate Change Coalition (SAYCC)<sup>41</sup> and the Youth Programmes at the South African Institute of International Affairs (SAIIA)<sup>42</sup> have recently been established and are calling for intersectional and inclusive climate action that specifically integrates children and "strengthens the voice of the youth from the Global South."<sup>43</sup> Despite the emergence of such organisations a question may be posed as to whether South Africa's legislative framework sufficiently provides for the participatory rights of children in relation to climate change. This question is posed against the background of African children not generally being perceived as autonomous. In some communities, for example, decisions concerning children are made by the male elders. At best children are heard only indirectly through aunts, uncles or grandparents.<sup>44</sup> Where South African

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<sup>36</sup> YOUNGO 2023 <https://www.cop28.com/en/news/2023/12/COP28-Youth-Climate-Champion-welcomes-Global-Youth-Statement>.

<sup>37</sup> YOUNGO 2023 <https://www.cop28.com/en/news/2023/12/COP28-Youth-Climate-Champion-welcomes-Global-Youth-Statement>.

<sup>38</sup> Skelton "Constitutional Protection of Children's Rights" 327.

<sup>39</sup> South Africa signed the *United Nations Framework Convention on Climate Change* (1992) (UNFCCC) on 22 April 2016.

<sup>40</sup> *Paris Agreement* (2016).

<sup>41</sup> SAYCCC date unknown <https://sayccc.org.za/>.

<sup>42</sup> SAIIA date unknown <https://saiia.org.za/youth/>.

<sup>43</sup> SAIIA 2023 <https://saiia.org.za/research/cop28-south-african-youth-statement/> para 7.

<sup>44</sup> Chirwa 2002 *Int'l J Children's Rts* 160.

children are thus advancing to actively participate in climate change action it is imperative that their right to do so is not only guaranteed but also properly enforced. It is in this context that this contribution sets out to explore whether the South African legislative framework adequately provides for children to effectively participate in climate change action.<sup>45</sup> The international documents affording children participatory rights will be evaluated first. Thereafter the South African legislative framework will be assessed to determine South Africa's compliance with international and regional standards.

## 2 International and regional law

### 2.1 *Child participation on the international and regional levels*

In terms of section 39(1)(b) and (c) of the South African *Bill of Rights*, a court, tribunal or forum must consider international law and may consider foreign law.<sup>46</sup> Recognising the importance of international law and the guiding significance of foreign law are not only constitutional prerequisites but has proven to be of much value in the interpretation of the provisions of the *Bill of Rights* with relation to children's rights.<sup>47</sup>

Although several International Instruments contain provisions that are of general importance to children, such as the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, the scope of this discussion is limited to two child law treaties, namely the CRC and the ACRWC, due to their importance for the topic under discussion.

#### 2.1.1 *United Nations Convention on the Rights of the Child (CRC)*

The CRC is regarded as a landmark instrument in the advancement of children's rights and one of the most fully ratified international documents.<sup>48</sup> The CRC acknowledges children as independent human rights bearers entitled to rights emanating from their separate personhood as individuals. In this regard the CRC has identified four general principles, which are fundamental to the implementation of the CRC as a whole, namely the right to protection against non-discrimination, the right to have their best interests

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<sup>45</sup> Note that it is acknowledged that the right of children to participation has been guaranteed in South Africa's normative framework and practice through cases provided (see paras 3.1 and 3.2 of this discussion) but that the focus and ambit of this discussion is on the right of children to participate in climate change action specifically.

<sup>46</sup> Section 39(1) of the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*).

<sup>47</sup> See, for example, *S v Makwanyane* 1995 3 SA 391 (CC); *Government of the Republic of South Africa v Grootboom* 2001 1 SA 46 (CC); *S v M* 2007 2 SACR 539 (CC); and *DPP v Minister of Justice and Constitutional Development* 2009 2 SACR 130 (CC).

<sup>48</sup> Sloth-Nielson 1995 SAJHR 402; Freeman 2000 *Children and Society* 277.

made a primary consideration, the inherent right to life and respect for the views of the child, as reflected in Articles 2, 3, 6 and 12.

The CRC does not confer on children any stand-alone environmental rights, but does so indirectly, deriving them from other rights such as the right to life, survival and development,<sup>49</sup> the rights to health<sup>50</sup> and education,<sup>51</sup> and the right to rest, leisure and play.<sup>52</sup> Apart from bestowing special protection on children, the CRC confers on children the right to assert themselves in matters that affect them through the protection of participation rights.<sup>53</sup> Interestingly, however, the CRC was established in the absence of any input from or consultation with children during its development. In direct contravention of the spirit of the Convention, especially Article 12, children were not given any opportunity to express their views, even though the development of the CRC was clearly a matter affecting them.<sup>54</sup> Henaghan notes that the non-participation of children in the development of the CRC was not an oversight by the drafters, but part of the children's right movement's philosophical perspective on childhood at the time.<sup>55</sup>

In contrast herewith, Article 12 of the CRC states 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.

Although Article 12 itself does not use the term "child participation", the Committee on the Rights of the Child in its *General Comment 12* indicates that the objective of the article is to advance child participation.<sup>56</sup>

The right of a child to be heard constitutes one of the fundamental core values of the CRC. Not only is the right established in Article 12 as a right in itself, but it should also be considered in the interpretation and implementation of other rights, thereby enhancing its importance.<sup>57</sup> Article 12 must also be viewed alongside Article 3, namely the child's best interests principle, which is a primary consideration in all actions concerning a child, as it seems inconceivable to determine what is in a child's best interests without the inclusion of that child's own views on the matter.<sup>58</sup>

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<sup>49</sup> Article 6 of the CRC.

<sup>50</sup> Article 24 of the CRC.

<sup>51</sup> Articles 28 and 29 of the CRC.

<sup>52</sup> Article 31 of the CRC.

<sup>53</sup> Article 12 of the CRC.

<sup>54</sup> Henaghan 2017 *Int'l J Children's Rts* 537.

<sup>55</sup> Henaghan 2017 *Int'l J Children's Rts* 539.

<sup>56</sup> Mahery "UN Convention on the Rights of the Child" 309.

<sup>57</sup> *UN Committee on the Rights of the Child General Comment No 12 on the Rights of the Child to be Heard* UN Doc CRC/C/GC/12 (2009) (GC12) paras 1-3.

<sup>58</sup> Kloosterboer "To be Heard and Seen" 739; Sloth-Nielsen 1995 *SAJHR* 402.



Article 12 places an obligation on state parties to assure that a child is afforded the opportunity to form and express his or her views freely in all matters affecting the child. Children can express their views in matters that affect them through participation or representation. Either way, these views must be given due weight in accordance with the age and maturity of the child.<sup>59</sup>

Article 12 has two key elements, namely the right to express a view and the right to have the view given due weight. The fact that Article 12 requires states to "assure" children of the right to express their views indicates a positive obligation on the state to take proactive steps in encouraging children to express their views.<sup>60</sup> The fact that the views of children must be given "due weight" means that their views must be taken seriously.<sup>61</sup> One of the most common criticisms levelled against Article 12 is that it is easy for adults to outwardly appear to comply whilst ultimately ignoring children's views, thus engaging in a form of "tokenism". One safeguard against this practice is informing children of how their views were considered.<sup>62</sup>

The fact that the views of the child must be given due weight in accordance with the age and maturity of the child means that two criteria must be considered. Notably, the CRC rejects the erection of specific age barriers, as age *per se* is not a criterion. Also, the right to express a view is not dependent on the age and maturity of the child, but applies only to the second part of Article 12, namely, the obligation to give the view due weight. State parties should accordingly presume that a child is capable of expressing his or her views and has the right to express them.<sup>63</sup> Children's right to express a view is also not dependent on their capacity to express a mature view, but on their ability to form a view, mature or not.<sup>64</sup>

Children's views must be regarded as valid in their own right. The practice of actively involving children in decision-making "should not be portrayed as an option which is in the gift of adults but [as] a legal imperative which is the right of a child."<sup>65</sup> To fulfil children's participatory rights is thus not a question of whether or not children participate but to what extent and how.<sup>66</sup>

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<sup>59</sup> Henaghan 2017 *Int'l J Children's Rts* 537.

<sup>60</sup> Lundy 2007 *British Educational Research Journal* 933; Boezaart "General Principles" 2-18; GC12 para 19.

<sup>61</sup> GC12 paras 28-31.

<sup>62</sup> Lundy 2007 *British Educational Research Journal* 938.

<sup>63</sup> GC12 para 20.

<sup>64</sup> Lundy 2007 *British Educational Research Journal* 931.

<sup>65</sup> Lundy 2007 *British Educational Research Journal* 931.

<sup>66</sup> Anderson and Dolva 2015 *Physical and Occupational Therapy in Pediatrics* 219.

### 2.1.2 *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)*

Three optional protocols were added after the initial adoption of the CRC, namely to address the involvement of children in armed conflict,<sup>67</sup> the use of children for sale, prostitution and pornography<sup>68</sup> and to allow children to submit complaints, appeals and petitions in the event of their rights being violated.<sup>69</sup> The third optional protocol is most relevant in the context of the protection of children from environmental degradation. In terms of Article 5 of OPIC, communications may be submitted by or on behalf of an individual or group of individuals in the jurisdiction of a state party, claiming to be victims of a violation by that state party of any of the rights set forth in the CRC or its optional protocols to which that state is a party. It thus enables children to formally complain about child rights violations due to environmental degradation.

Article 5 of OPIC formed the basis for a recent climate-related communication filed by sixteen children from different parts of the world, namely, *Sacchi v Argentina, Brazil, France, Germany and Turkey*.<sup>70</sup> Three of the claimants were from African states, namely Nigeria, Tunisia and South Africa.<sup>71</sup> The children brought a communication before the Committee alleging that five states, namely Argentina, Brazil, France, Germany and Turkey had failed to take the necessary precautionary and preventative measures against climate change. In so doing the states are substantially undermining children's rights and will cause intergenerational harm.<sup>72</sup> The claimants further contended that a state could be held accountable for the negative effects of climate change on the rights of children who lived within or outside the state's geographical boundaries. This aspect represented one of the key issues before the Committee.<sup>73</sup>

In line with the rules outlined in OPIC, the Committee had to determine whether the complainant/s fell within the "jurisdiction of the state party" and

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<sup>67</sup> *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children* UN Doc A/RES/54/263 (2001).

<sup>68</sup> *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* UN Doc A/RES/54/263 (2001).

<sup>69</sup> *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* UN Doc A/RES/66/138 (2011) (OPIC).

<sup>70</sup> The Petitioners 2019 <https://childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-2.pdf> (the Petition).

<sup>71</sup> The Petition paras 42, 47 and 44. The claimant from South Africa is Ayakha Melithafa. Ayakha is a seventeen-year-old living in Eerste River on the outskirts of Cape Town in the Western Cape province of South Africa. She is a dedicated climate activist, taking part in Project 90 by the 2030 YouLead initiative and acts as a recruitment official for the African Climate Alliance.

<sup>72</sup> The Petition paras 20-28.

<sup>73</sup> The Petition paras 29-33.

whether the claimants had exhausted their domestic remedies.<sup>74</sup> The jurisdiction posed a problem as most of the complainants fell outside the geographical boundaries of the five states.<sup>75</sup> In its admissibility decision, the Committee followed the *Inter-American Court of Human Rights Opinion OC-23/17* that confirmed that the CRC gave rise to extraterritorial obligations and that states have extraterritorial responsibility for the harmful effects of emissions originating in their territories.<sup>76</sup> The complainants thus satisfied the jurisdictional requirement.<sup>77</sup> However, the Committee declared the communication inadmissible due to the complainants' failure to exhaust local remedies as there had been no attempt to bring a case in any of the five states.<sup>78</sup>

Despite the communications being declared inadmissible due to the complainants' failure to exhaust local remedies, it has been recognised as groundbreaking for various reasons.<sup>79</sup> First, for recognising that climate change poses a significant risk to the enjoyment of children's human rights protected under the CRC and that the failure to take measures to prevent foreseeable harm could constitute a violation of such human rights obligations.<sup>80</sup> Secondly, for acknowledging the extraterritorial obligations on states regarding the harmful effects of emissions originating in their territories.<sup>81</sup> Thirdly, for stating that the collective nature of climate change does not absolve a state party of its individual responsibility to limit emissions.<sup>82</sup> Fourthly, and of particular relevance to the topic under discussion, for escalating the climate change debate to a global forum where child complainants were able to exercise their participation rights in decision-making processes at closed-door hearings by directly explaining their arguments to the Committee.<sup>83</sup> Fifthly, for providing an open letter from the Committee to the complainants, which included a simplified child-friendly explanation of the case, thus providing the children with information about the outcome of the environment-related consultations and feedback on how their views were considered.<sup>84</sup> Finally, for using the case as a

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<sup>74</sup> *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* UN Doc CRC/C/88/D/104/2019 (8 October 2021) (*Sacchi v Argentina*) paras 4.1, 10.2-10.6.

<sup>75</sup> *Sacchi v Argentina* para 10.2.

<sup>76</sup> *Sacchi v Argentina* paras 10.5, 10.7.

<sup>77</sup> *Sacchi v Argentina* para 10.4.

<sup>78</sup> *Sacchi v Argentina* paras 10.5-10.18.

<sup>79</sup> Fambasayi and Addaney 2021 *AHRLJ* 31; Skelton 2023 *De Jure* 621.

<sup>80</sup> Atapattu *UN Human Rights Institutions* 252.

<sup>81</sup> Atapattu *UN Human Rights Institutions* 252.

<sup>82</sup> Atapattu *UN Human Rights Institutions* 252.

<sup>83</sup> Atapattu *UN Human Rights Institutions* 297.

<sup>84</sup> Atapattu *UN Human Rights Institutions* 252.

springboard towards writing a general comment on children's environmental rights and their intersection with climate change.<sup>85</sup>

### 2.1.3 *General Comment No 26 on Children's Rights and the Environment with a Special Focus on Climate Change (GC26)*

Following the events of *Sacchi v Argentina*, the Committee issued *General Comment No 26 on Children's Rights and the Environment with a Special Focus on Climate Change (2023)* (hereafter GC26), which was adopted on 22 August 2023.<sup>86</sup> Through GC26 the Committee emphasised the urgent need to address the adverse effects of climate change on children, to promote a holistic understanding of children's rights as they apply to environmental protection and to clarify the obligations of state parties.<sup>87</sup> The right of children to be heard on climate change issues not only features in the comment,<sup>88</sup> but children and young people around the world were consulted and comments were issued on the concept note.<sup>89</sup>

Notably, the Centre for Child Law (CCL) at the University of Pretoria in South Africa, a child rights organisation registered as a law clinic, also commented on the *Draft General Comment No 26*, lending its support to the objectives of the GC26.<sup>90</sup> The CCL *inter alia* called for the inclusion of the right to a clean, healthy and sustainable environment as a stand-alone right in the CRC.<sup>91</sup> In relation to child participation the CCL expressed its concern that states tend to ignore their obligation to facilitate child participation in climate change decision-making processes, relying rather on civil organisations to fulfil this obligation on their behalf. As such donor-funded initiatives do not have the benefit of long-term security, the CCL recommended that states should be obliged to facilitate the direct involvement of children in climate-related decision-making processes. This could be established through state-funded children's parliaments, for example.<sup>92</sup>

In issuing its GC the Committee highlighted the importance of children's voices, underscoring the fact that age is not a restriction. Children from an early age can enhance the quality of environmental solutions, for example, by providing invaluable insights into issues such as the effectiveness of

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<sup>85</sup> Tigre and Lichet 2021 *American Society of International Law Insight* 5.

<sup>86</sup> See 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* UN Doc CRC/C/GC/26 (2023) (hereafter GC26) which was adopted on 22 August 2023.

<sup>87</sup> GC26 para 12.

<sup>88</sup> GC26 para 26.

<sup>89</sup> GC26 para 2.

<sup>90</sup> CCL 2023 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26\\_2023.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26_2023.pdf) 2.

<sup>91</sup> CCL 2023 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26\\_2023.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26_2023.pdf) 3.

<sup>92</sup> CCL 2023 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26\\_2023.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26_2023.pdf) 8.

early warning systems for environmental hazards.<sup>93</sup> In expressing their views children should not be restricted to conventional methods. The use of creative means of expression such as art and music should be allowed. Special recognition is also given to children in disadvantaged situations, such as children with disabilities, children belonging to minority groups and children living in vulnerable areas. Additional support and special strategies, where necessary, should be provided to enable them to exercise their right to be heard.<sup>94</sup> The use of the digital environment and tools is advocated to enhance consultations with children and to expand their capacity and opportunities to be effectively engaged in environmental matters. These should, however, be utilised with due consideration for the challenges regarding digital inclusion.<sup>95</sup>

The role of state parties is set out in ensuring that age-appropriate, safe and accessible mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making processes for legislation, policies, regulations, projects and activities that may affect them. This should transpire at the local, national and international levels.<sup>96</sup>

To ensure that children's participation is not merely tokenism, the Committee indicates that children should receive information about the outcomes of environment-related consultations and feedback on how their views were considered.<sup>97</sup> They should also have access to child-sensitive complaint procedures and remedies when their right to be heard in the environmental context is disregarded.<sup>98</sup> The Committee moreover highlights the importance of involving children's associations and child-led organisations or groups in international environmental decision-making processes.<sup>99</sup> This includes their participation in negotiations and the implementation of instruments of international environmental law.<sup>100</sup>

The GC26 issued by the Committee is commendable as it offers significant guidance to state parties to the CRC to ensure that meaningful, child-friendly and appropriate youth participation in environmental decision-making processes – at both a national and an international level – is achieved. State parties to the CRC should accordingly take the necessary steps to comply with the comments internationally, regionally and domestically.

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<sup>93</sup> GC26 para 26.

<sup>94</sup> GC26 para 26.

<sup>95</sup> GC26 para 26.

<sup>96</sup> GC26 para 27.

<sup>97</sup> GC26 para 27.

<sup>98</sup> GC26 para 27.

<sup>99</sup> GC26 para 28.

<sup>100</sup> GC26 para 28.

#### 2.1.4 *The African Charter on the Rights and the Welfare of the Child (ACRWC)*

From a regional perspective the ACRWC represents the "African" concepts of children's rights and strives to promote and protect the rights and welfare of the African child. It should be noted that the ACWRC is not opposed to the CRC. Rather, the two documents are complementary, and together they provide a framework for the enhanced protection of African children.<sup>101</sup>

Like the CRC the ACRWC contains four foundational principles that are essential in ensuring a child rights-based approach in relation to government action, namely the best interests of the child, the principle of non-discrimination, the right to life, survival and development, and the principle of participation.<sup>102</sup> Like the CRC, it also does not afford children any direct environmental rights but does so indirectly through other rights.<sup>103</sup>

One of the most important features of the ACRWC is that the child's best interests are made the paramount consideration. While the CRC states that a child's best interests shall be "a" primary consideration, the ACWRC goes a step further by declaring these interests "the" primary consideration in all actions concerning the child.<sup>104</sup> The ACWRC accordingly elevates the best interests principle to a central position and thereby offers better protection to children.<sup>105</sup> This implies that the best interests of the child must be duly considered, appropriately integrated and consistently applied by governments in all actions or decisions; thus including climate change-related actions and decisions.<sup>106</sup>

Article 4.2 of the ACWCR addresses the right of a child to be heard. It provides as follows:

In 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 laws.

Like the CRC, the ACRWC recognises children as autonomous beings and guarantees them several participatory rights.<sup>107</sup> This is significant considering that children in Africa are not generally perceived as

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<sup>101</sup> Kaime *Convention on the Rights of the Child* 25.

<sup>102</sup> Sloth-Nielsen "African Charter on the Rights and Welfare of the Child" 431.

<sup>103</sup> See Arts 4, 5, 11, 12 and 14 of the ACRWC.

<sup>104</sup> Article 4 of the ACRWC; Sloth-Nielsen "African Charter on the Rights and Welfare of the Child" 431.

<sup>105</sup> Lloyd 2002 *Int'l J Children's Rts* 183.

<sup>106</sup> Fambasayi and Addaney 2021 *AHRLJ* 36.

<sup>107</sup> Articles 7, 8 and 9 of the ACRWC.

autonomous. The specific guarantee of participatory rights for children in the ACRWC is, therefore, commendable.<sup>108</sup>

Although Article 4.2 guarantees children the right to be given an opportunity to express their views, these views are limited to judicial and administrative proceedings affecting them. This right is further qualified in that the child must be capable of communicating his or her views.<sup>109</sup> In this regard, the similar provision in the CRC is preferable as it requires only that the child should be able to form a view. The right is even further qualified in that the child has to be "a party to the proceedings".<sup>110</sup> This implies that if the child is not a party to the proceedings, but for instance only a victim of events, the right is not guaranteed. The provisions of the CRC are preferable here as well, as they contain no such limitation. Furthermore, in terms of the ACRWC the views of the child must be taken into consideration by the relevant authority in "accordance with the provisions of appropriate laws",<sup>111</sup> whereas the CRC requires only that the "view of the child [be] given due weight in accordance with the age and maturity of the child".<sup>112</sup> Here again the CRC is less restrictive. The ACRWC is, however, more advanced than the CRC in relation to the fact that it specifies how children should be heard, namely "directly or through an impartial representative as a party to the proceedings."<sup>113</sup> Nonetheless, despite its limitations it is opined that the ACRWC as a regional document contributes to the evolving body of international human rights instruments on the rights of children to participation.

#### *2.1.5 The role of the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) in realising children's right to be heard in climate change actions*

The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) is an African Union body established by the ACRWC with the purpose to promote and protect children's rights as enshrined in the ACRWC.<sup>114</sup> The African Children's Committee has been one of the most proactive African human rights bodies in expressing concern about the human rights implications of climate change on children through both its general comments and certain action plans.<sup>115</sup>

In its *General Comment 5 on State Party Obligations under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems*

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<sup>108</sup> Chirwa 2002 *Int'l J Children's Rts* 160.

<sup>109</sup> Article 7 of the ACRWC.

<sup>110</sup> Article 4.2 of the ACRWC.

<sup>111</sup> Article 4.2 of the ACRWC.

<sup>112</sup> Article 12 of the CRC.

<sup>113</sup> Article 4.2 of the ACRWC.

<sup>114</sup> Articles 32, 33 and 34 of the ACRWC.

<sup>115</sup> Boshoff and Damtew 2022 *AHRLJ* 337.

*Strengthening for Child Protection* (GC5), the African Children's Committee comments that:

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 (e.g., allowing *environmental degradation* to take place, or inappropriate exploitation of natural resources) are regarded as violating the best interests of the child standard.<sup>116</sup>

Though not mentioning climate change by name, it may be included under environmental degradation, which imperils the enjoyment of the rights of future generations. Through the linkage of the best interest principle to children's enjoyment of environmental welfare, the obligation placed on participatory states to further these interests in any climate action decision undertaken by the states is once again endorsed.<sup>117</sup>

The GC5 confirms the relevance of child participation as a core principle underpinning the ACRWC. The Committee acknowledges that the practice of consulting with children and taking their views into account is still a very recent trend amongst state parties, and efforts to include children are still mostly new and uncoordinated. Nonetheless, state parties are required to consult children in the formulation of plans, policies and laws that have a bearing on their interests, and to ensure that child participation in governance is devolved to the regional and district levels.<sup>118</sup>

Some countries have introduced so-called children's parliaments to enhance child participation in government activities. The African Children's Committee commended states for introducing a children's parliament, whilst calling on states who have not done so to follow the example. State parties should also ensure that children's voices are reflected in reporting to treaty bodies, including the ACRWC.<sup>119</sup>

In 2014 the African Children's Committee adopted guidelines similar to those of OPIC to provide for procedures around communication.<sup>120</sup> These Guidelines for the Consideration of Communications set out six conditions<sup>121</sup> that must be met for communications to be considered on their merits, as well as the requirements pertaining to form and content.<sup>122</sup> This

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<sup>116</sup> *UN Committee on the Rights of the Child General Comment 5 on State Party Obligations Under the African Charter on the Rights and Welfare of the Child (Article 1) and Systems Strengthening for Child Protection* (2018) (GC5) para 4.2; own emphasis.

<sup>117</sup> Boshoff and Damtew 2022 *AHRLJ* 336.

<sup>118</sup> GC5 para 6.8.

<sup>119</sup> GC5 para 6.8.

<sup>120</sup> African Children's Committee 2014 <https://caselaw.ihrda.org/entity/4pzk8bedzi?file=154936181273170yyp83us7b.pdf>.

<sup>121</sup> African Children's Committee 2014 <https://caselaw.ihrda.org/entity/4pzk8bedzi?file=154936181273170yyp83us7b.pdf> ss II and IX.

<sup>122</sup> African Children's Committee 2014 <https://caselaw.ihrda.org/entity/4pzk8bedzi?file=154936181273170yyp83us7b.pdf> s II(1).



accordingly enables African children to formally submit any complaints to the African Children's Committee about rights violations, including those due to environmental degradation.

As indicated above, in *Sacchi v Argentina* the CRC Committee received a climate-related communication. Three of the claimants were from African states, namely South Africa, Nigeria and Tunisia. It is not clear why the three children did not opt to communicate with the African Children's Committee but instead opted to use the CRC Committee. This may perhaps be attributed to the fact that the cited countries were viewed as being responsible or more responsible for climate change, perhaps, than the claimants' countries of origin. However, given the global momentum on the active participation of children in global governance structures and the complementarities between the CRC and the ACRWC, the use of the CRC by a collective group of sixteen children could have been a strategic move on the part of the three African children. A decision by the CRC, moreover, has a global rather than a regional impact.<sup>123</sup>

While the African Children's Committee also has a requirement for the exhaustion of domestic remedies, exceptions exist where this requirement does not have to be met, which could also find application in climate action cases.<sup>124</sup> This could mean that domestic remedies would not have to be exhausted where applicants in climate change cases brought before the African Children's Committee are able to show that the violation resulting from the lack of action by a state on climate change amounts to a "serious or massive violation", or there is a large number of victims (which is usually the case with climate change), or that domestic procedures are unduly prolonged.<sup>125</sup> Mezmur likewise notes that while the Children's Committee has not yet dealt with a communication on climate change, the generous standing rules, as well as a willingness to draw from the experiences of other similar bodies such as the African Commission and the CRC Committee, are good indications of its potential to contribute to rights-based climate change litigation.<sup>126</sup> He predicts that it will not be long before the Children's Committee is faced with a climate change case.<sup>127</sup>

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<sup>123</sup> Fambasayi and Addaney 2021 *AHRLJ* 38.

<sup>124</sup> See *Project Expedite Justice v Republic of Sudan* (Communication No.0011/Com/001/2018) [2018] ACERWC 1 (26 August 2018) Decision on Admissibility No:001/2019 para 44 as followed by the ACRWC stating that: the requirement of the exhaustion of local remedies is applicable only if the remedies are available, effective, accessible and not unduly prolonged.

<sup>125</sup> See *Project Expedite Justice v Republic of Sudan* (Communication No.0011/Com/001/2018) [2018] ACERWC 1 (26 August 2018) Decision on Admissibility No:001/2019 paras 45 and 46. See Boshoff and Damtew 2022 *AHRLJ* 328-361 for a detailed discussion on the requirements for successful litigation before the African Children's Committee.

<sup>126</sup> Mezmur 2023 *De Jure* 568.

<sup>127</sup> Mezmur 2023 *De Jure* 568.

Despite its regional application, the African Children's Committee fulfils an important role in furthering the protection of African children from the negative impacts of climate change. In this regard it should be noted that in 2020 the African Children's Committee established a Working Group on Children's Rights and Climate Change,<sup>128</sup> its primary aim being the promotion of a child rights-based approach to climate change action on the continent. Several activities to address the impact of climate change on the rights and welfare of African children will be undertaken to accelerate reaching this goal. In its resolution the Working Group acknowledges the importance of affording children, and African children in particular, the opportunity to participate meaningfully in any decision or action taken in relation to climate change.<sup>129</sup>

### 3 South African legislative framework

#### 3.1 *The Constitution of the Republic of South Africa*

As indicated above,<sup>130</sup> the *Constitution* has been hailed internationally as an example of a constitution providing for the protection and advancement of children's rights. It is the supreme law of the Republic of South Africa and forms the basis for the entire legal system of the country.<sup>131</sup> Apart from its general provisions the *Constitution* contains a comprehensive *Bill of Rights* that guarantees everyone, and thus also children,<sup>132</sup> the right to equality,<sup>133</sup> dignity,<sup>134</sup> life,<sup>135</sup> freedom and security of the person,<sup>136</sup> housing<sup>137</sup> and freedom of expression,<sup>138</sup> as well as health care, food, water and social security.<sup>139</sup> Apart from these rights, section 24 of the *Bill of Rights* broadly enshrines the right of all people to "an environment which is not harmful to their health or well-being." Section 24(b) also requires the environment to

<sup>128</sup> African Children's Committee 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>.

<sup>129</sup> African Children's Committee 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> 2.

<sup>130</sup> Refer to para 1 hereof.

<sup>131</sup> Section 2 of the *Constitution*.

<sup>132</sup> Except for those rights that are expressly restricted to adults such as the right to vote and to seek public office. See s 19(3)(a) and (b) of the *Constitution*.

<sup>133</sup> Section 9 of the *Constitution*.

<sup>134</sup> Section 10 of the *Constitution*.

<sup>135</sup> Section 11 of the *Constitution*.

<sup>136</sup> Section 12 of the *Constitution*.

<sup>137</sup> Section 26 of the *Constitution*.

<sup>138</sup> Section 16 of the *Constitution*.

<sup>139</sup> Section 27 of the *Constitution*.

be protected for the benefit of "present and future generations",<sup>140</sup> thus clearly affecting children's rights.

In addition, the *Bill of Rights* contains specific provisions pertaining to children's rights. These are set out in section 28 and provide a strong framework for safeguarding the rights and well-being of children, granting children the right to a name and a nationality from birth;<sup>141</sup> to family care or parental care or appropriate alternative care when removed from the family environment;<sup>142</sup> to basic nutrition, shelter, basic health care services and social services;<sup>143</sup> to be protected from maltreatment, neglect, abuse or degradation;<sup>144</sup> as well as the right to the fact that a child's best interests are of paramount importance in every matter concerning the child.<sup>145</sup> Section 28 embodies a dedicated commitment to the realisation of children's rights.<sup>146</sup> Section 24 thus needs to be read in conjunction with section 28(2) of the *Constitution*, which determines that the best interests of a child are of paramount importance in every matter that concerns the child.

A perusal of the *Bill of Rights* in general and section 28 specifically reveals that it does not afford the child a specific right to child participation, save for the right to the appointment of a legal practitioner, as set out in section 35(3)(g) and section 28(1)(h). Section 28(1)(h) states that:

Every child has the right to have a legal practitioner assigned to the child by the State and at State expense, in civil proceedings affecting the child, if substantial injustice would otherwise result.

Section 28 (1)(h) refers only to the appointment of a legal practitioner. Although it reflects the underlying principle of Article 12 of the CRC, it does not refer to any broader right of participation attaching to children.<sup>147</sup> It is further restrictive in that participation is required in judicial proceedings only where "substantial injustice" would otherwise prevail.<sup>148</sup> Conversely, the South African courts have tended to take a wide view of what constitutes a matter "affecting" the child. In this regard, children's right to participate in proceedings that affect them as well as the provisions of the CRC and the ACRWC have been recognised in a variety of Constitutional Court

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<sup>140</sup> Section 24 of the *Constitution*. Own emphasis.

<sup>141</sup> Section 28(1)(a) of the *Constitution*.

<sup>142</sup> Section 28(1)(b) of the *Constitution*.

<sup>143</sup> Section 28(1)(c) of the *Constitution*.

<sup>144</sup> Section 28(1)(d) of the *Constitution*.

<sup>145</sup> Section 28(2) of the *Constitution*.

<sup>146</sup> Skelton "Constitutional Protection of Children's Rights" 327.

<sup>147</sup> Du Toit "Legal Representation of Children" 109.

<sup>148</sup> Schäfer *Child Law* 46. *Soller v G* 2003 5 SA 430 (W) 434-435; *Legal Aid Board v R* 2009 2 SA 262 (D); *Centre for Child Law v the Governing Body of Hoërskool Fochville* 2016 2 SA 121 (SCA) These cases deal specifically with a child's right to have separate legal representative rather than the child's overarching right to participation.

judgments.<sup>149</sup> In one of the cases, namely, *MEC for Education, KwaZulu-Natal v Pillay*,<sup>150</sup> Langa J made the following remark:

Legal matters involving children often exclude the children and the matter is left to adults to argue and decide on their behalf. In *Christian Education South Africa v Minister of Education* this Court held, in the context of a case concerning children, that their 'actual experiences and opinions would not necessarily have been decisive, but they would have enriched the dialogue, and the factual and experiential foundations for the balancing exercise in this difficult matter would have been more secure.'

This also rings true for children's right to participate in general but obviously includes matters regarding climate action decisions. Though children's experiences and opinions would not necessarily play a decisive role in climate action decision-making, they would enrich the dialogue. Despite the child's right to participation not being in the *Constitution*, it has been incorporated into domestic legislation in the *Children's Act*.<sup>151</sup>

### 3.2 *The Children's Act 38 of 2005*

In building on the important provisions in the *Constitution*, the South African parliament has enacted specific national legislation directed at further enhancing and protecting the rights and interest of children. In this regard and of special importance to this discussion was the enactment of the *Children's Act* in 2005. The *Children's Act* specifically provides for the child's right to participation in section 10 thereof, that determines that:

Every child that is of such an age, maturity and stage of development as to be able to participate in any matter concerning that child has the right to participate in an appropriate way and views expressed by the child must be given due consideration.

Apart from being a stand-alone right, section 10 is also a general principle of the *Children's Act*. In terms of section 6(2)(a) the general principles of the *Children's Act* must be respected, protected, promoted and fulfilled in all proceedings, actions or decisions in matters concerning children. This includes the best interests standard set out in section 7 of the *Children's Act* as well as all other rights and principles set out in the Act. Notably, the child's right to participate occupies a central theme throughout the *Children's Act*.<sup>152</sup> Section 6(1) further states that the general principles guide the implementation of "all legislation applicable to children", broadening its application extensively.

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<sup>149</sup> *Soller v G* 2003 5 SA 430 (W) 434-435; *Legal Aid Board v R* 2009 2 SA 262 (D); *Bhe v Magistrate, Khayelitsha* 2005 1 SA 580 (CC) para 55; *Banyantane v Banyantane* 2003 3 SA 363 (CC) 375 H-J; *Christian Education South Africa v Minister of Education* 2000 4 SA 757 (CC) 787; *S v M (Centre for Child Law as Amicus Curiae)* 2008 3 SA 232 (CC).

<sup>150</sup> *MEC for Education, KwaZulu-Natal v Pillay* 2007 2 SA 106 (CC) para 56.

<sup>151</sup> Section 10 of the *Children's Act 38 of 2005* (the *Children's Act*).

<sup>152</sup> Du Toit "Legal Representation of Children" 114.

Section 10 of the *Children's Act* closely resembles Article 12 of the CRC and Article 7 of the ACRWC. It defines a child's right to express his or her views in relation to a factual assessment of the child's capacity by reference to the age, maturity and stage of development of the child in question.<sup>153</sup> This is consistent with the CRC's stance that age alone is not a factor and that even at the youngest age, a child may be able to form and express a view.<sup>154</sup> Where a child has the capacity to participate, the child must be given an opportunity to do so "in any appropriate way".<sup>155</sup> The participation may take a variety of forms.<sup>156</sup> As indicated above, one such way is through legal presentation as set out in section 28(1)(h) of the *Constitution*. However, this form of participation is required in judicial proceedings only where substantial injustice would otherwise prevail. For all other forms of decision-making, no prerequisite is set and almost any forms of participation may be regarded as appropriate.<sup>157</sup> Children participating in climate change decision-making would, for example, be able to partake with the use of a legal representative, or through the representation of a youth organisation or climate action NGO. Care must, however, be taken that the views expressed are in fact those of the child.<sup>158</sup>

The decision-maker must give "due consideration" to the views expressed. A decision-maker cannot assume what a child's views are; the child's view must be ascertained and considered.<sup>159</sup> This does not, however, mean that a child's wishes will always prevail. A decision-maker may reach a different decision to what the child may have wanted, believing it to be in the child's best interests.<sup>160</sup>

Traditionally, some South African courts have not been inclined to give much weight to children's views. In *Greenshields v Wyllie*,<sup>161</sup> *Matthews v Matthews*,<sup>162</sup> *Germani v Herf*<sup>163</sup> and even *De Groot v De Groot*,<sup>164</sup> a judgment as recent as 2010, the respective presiding officers were not willing to give much weight to the views of the children at issue but held that, being teenagers, their views were immaturely formed.<sup>165</sup> Serious regard to the views of the children would be given only when the child was on the

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<sup>153</sup> Schäfer *Child Law* 164.

<sup>154</sup> GC12 para 21

<sup>155</sup> Section 10 of the *Children's Act*.

<sup>156</sup> *B v B* (602/11) [2012] ZASCA 151 (28 September 2012) para 18.

<sup>157</sup> Schäfer *Child Law* 164.

<sup>158</sup> GC12 para 37.

<sup>159</sup> Schäfer *Child Law* 166.

<sup>160</sup> Schäfer *Child Law* 166.

<sup>161</sup> *Greenshields v Wyllie* 1983 4 SA 898 (W).

<sup>162</sup> *Matthews v Matthews* 1983 4 SA 136 (SE).

<sup>163</sup> *Germani v Herf* 1975 4 SA 887 (A).

<sup>164</sup> *De Groot v De Groot* (ECP) (unreported) case number 3690/09 of 2010 para 15.

<sup>165</sup> *Greenshields v Wyllie* 1989 4 SA 898 (W); *Matthews v Matthews* 1983 4 SA 136 (SE); *Germani v Herf* 1975 4 SA 887 (A).

"verge of adulthood"<sup>166</sup> or "nearly adult".<sup>167</sup> This approach is not consistent with section 10, nor the broader approach suggested by the CRC Committee. Fortunately, a different approach was followed in other cases, such as *Lubbe v Du Plessis*.<sup>168</sup> In this case Van Heerden J, with reference to Article 12 of the CRC, paid specific attention to the children's preferences, stating that children have a right to participate in proceedings that affect their lives.<sup>169</sup>

In *B v B*,<sup>170</sup> a maintenance dispute, the Supreme Court of Appeal affirmed that a child is entitled to have a legal representative appointed even though such a right is not provided for in the *Maintenance Act* itself.<sup>171</sup> With reference to the CRC, the ACRWC and section 10 of the *Children's Act* the court affirmed that children's rights to express their views in all matters affecting them has been entrenched in domestic law through the *Children's Act*.<sup>172</sup> The court pointed out that although the form that such participation will take will depend on a variety of factors, such as the age and ability of the child to express his or her own views, the child's participation is primarily a question of recognising the child as an autonomous individual.<sup>173</sup>

Three of the leading cases on legal representation, namely *Centre for Child Law v The Governing Body of Hoërskool Fochville*,<sup>174</sup> *Soller v G*<sup>175</sup> and *Legal Aid Board v R*<sup>176</sup> reiterated the importance of enforcing children's right to participate in all matters that affect them. In *Soller v G*,<sup>177</sup> for example, the court stated that:

The significance of section 28(1)(h) [legal representation] lies in the recognition also found in the Convention on the Rights of the Child, that the child's rights and the adult's interest may not always intersect and that a need exists for separate legal presentation of the child's views.

The fact that children's rights may differ from those of adults as well as the best interests of the child sanctions the right of children to be afforded separate legal representation. In *Centre for Child Law v The Governing Body of Hoërskool Fochville* the court underlined the importance of observing the child's best interests, stating that children's right to participate

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<sup>166</sup> *Matthews v Matthews* 1983 4 SA 136 (SE) 141.

<sup>167</sup> *Germani v Herf* 1975 4 SA 887 (A) 899.

<sup>168</sup> *Lubbe v Du Plessis* 2001 4 SA 57 (C) 73; also see *HG v CG* 2010 3 SA 352 (ECP).

<sup>169</sup> *Lubbe v Du Plessis* 2001 4 SA 57 (C) 73E-74B.

<sup>170</sup> *B v B* (602/11) [2012] ZASCA 151 (28 September 2012) para 18.

<sup>171</sup> *Maintenance Act* 99 of 1998.

<sup>172</sup> *B v B* (602/11) [2012] ZASCA 151 (28 September 2012) para 18.

<sup>173</sup> *B v B* (602/11) [2012] ZASCA 151 (28 September 2012) para 20.

<sup>174</sup> *Centre for Child Law v the Governing Body of Hoërskool Fochville* 2016 2 SA 121 (SCA).

<sup>175</sup> *Soller v G* 2003 5 SA 430 (W).

<sup>176</sup> *Legal Aid Board v R* 2009 2 SA 262 (D).

<sup>177</sup> *Soller v G* 2003 5 SA 430 (W) paras 7-8.

and to litigate separately from their parents must be informed by the best interests principle.<sup>178</sup>

### 3.3 National environmental laws and policies

On the issue of national environmental matters, the South African state has adopted a broad range of national law, policies and strategies that address climate change, disaster management, environmental and energy issues. These include the *National Climate Change Response Whitepaper*,<sup>179</sup> the *National Determined Contribution*<sup>180</sup> (NDC) and the *National Development Plan* (NDP).<sup>181</sup> While some of these documents address youth and children, they do not specifically refer to children's rights. Where they do refer to children, children are generally subsumed under the category of vulnerable persons or groups.<sup>182</sup> Others make no specific mention of children, for example, the *National Environmental Management Act* (NEMA),<sup>183</sup> the *National Water Act*,<sup>184</sup> the *Environmental Implementation and Management Plan*<sup>185</sup> and the *Renewable Energy Independent Power Producer Programme*.<sup>186</sup>

The failure of the South African state is disheartening. Where legislation, declarations and frameworks for implementation do not include explicit statements on children's rights, children are often forgotten and left behind.<sup>187</sup> It is, therefore, imperative that their needs and rights are explicitly encapsulated in the documents. However, the institutional environment for climate change was strengthened in 2018 with the introduction of a *Climate Change Bill*<sup>188</sup> and further in 2020 with the establishment of a Presidential

<sup>178</sup> *Centre for Child Law v the Governing Body of Hoërskool Fochville* 2016 2 SA 121 (SCA) para 23.

<sup>179</sup> Department of Environmental Affairs 2012 [https://www.dffe.gov.za/sites/default/files/legislations/national\\_climatechange\\_response\\_whitepaper.pdf](https://www.dffe.gov.za/sites/default/files/legislations/national_climatechange_response_whitepaper.pdf).

<sup>180</sup> Republic of South Africa 2021 [https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions\\_2021updated.pdf](https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions_2021updated.pdf).

<sup>181</sup> NPC 2012 <https://www.nationalplanningcommission.org.za/assets/Documents/ndp-2030-our-future-make-it-work.pdf>.

<sup>182</sup> See for example the Department of Environmental Affairs 2012 [https://www.dffe.gov.za/sites/default/files/legislations/national\\_climatechange\\_response\\_whitepaper.pdf](https://www.dffe.gov.za/sites/default/files/legislations/national_climatechange_response_whitepaper.pdf), Republic of South Africa 2021 [https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions\\_2021updated.pdf](https://www.dffe.gov.za/sites/default/files/reports/draftnationallydeterminedcontributions_2021updated.pdf); and Department of Environment, Forestry and Fisheries 2019 [https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange\\_adaptationstrategy\\_ue10november2019.pdf](https://www.dffe.gov.za/sites/default/files/docs/nationalclimatechange_adaptationstrategy_ue10november2019.pdf).

<sup>183</sup> *National Environmental Management Act* 107 of 1998.

<sup>184</sup> *National Water Act* 36 of 1998.

<sup>185</sup> GN 747 in GG 45014 of 20 August 2021 (Consolidated Environmental Implementation and Management Plan 2020/2024).

<sup>186</sup> IPP Renewables date unknown <https://www.ipp-renewables.co.za/>.

<sup>187</sup> UNICEF 2023 <https://www.unicef.org/southafrica/reports/climate-energy-and-environment-landscape-analysis-children-south-africa> 47.

<sup>188</sup> GN 1026 in GG 45299 of 11 October 2021 (Notice of Introduction of National Climate Change Bill in National Assembly and Publication of Explanatory Summary).

Climate Commission (PCC).<sup>189</sup> This Bill was assented to on 18 July 2024 as the *Climate Change Act*.<sup>190</sup> The *Climate Change Act* aims to enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa.<sup>191</sup> Regarding the topic of child participation, the *Climate Change Act* acknowledges the need for decision-making to consider the special needs and circumstances 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 and rural women, children, infants and child-headed families, the aged, the poor, the sick and the physically challenged.<sup>192</sup>

Public consultations and comments on the *Bill* were called for and the CCL submitted comments on the *First Draft Bill* and the *Second Draft Bill*.<sup>193</sup> In its comments on the *First Draft Bill*, the CCL called for clarity on children's environmental rights; that the *Bill* should be clear on how children can participate in decision-making processes and how they can hold duty-bearers accountable; that effect be given to the principle of intergenerational equity in the *Bill* and that the *Bill* must allow access to information for children.<sup>194</sup> Of particular importance to the topic of child participation, the CCL proposed that the *Bill* should include reference to the meaningful participation of children not only on a national level but also on a local government level, namely at municipal forums.<sup>195</sup>

As the latter proposal was not incorporated into the *Second Draft Bill*, in a second submission the CCL reiterated its concern over the exclusion of child participation at the local government level. The CCL once again petitioned for the Bill in its final form to encompass provisions that would ensure the right to access information, foster participation in decision-making processes, and acknowledge the unique correlation between children's rights and environmental justice.<sup>196</sup> Regrettably the legislature

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<sup>189</sup> PCC date unknown <https://www.climatecommission.org.za>.

<sup>190</sup> *Climate Change Act* 22 of 2024.

<sup>191</sup> Section 2 of the *Climate Change Act* 22 of 2024.

<sup>192</sup> Section 3(f) of the *Climate Change Act* 22 of 2024.

<sup>193</sup> CCL 2024 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill\\_2024-2.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill_2024-2.pdf).

<sup>194</sup> CCL 2024 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill\\_2024-2.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill_2024-2.pdf) 2.

<sup>195</sup> CCL 2024 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill\\_2024-2.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill_2024-2.pdf) 4.

<sup>196</sup> CCL 2024 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill\\_2024-2.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2024/02/310124-Centre-for-Child-Law-Submissions-on-the-Climate-Change-Bill_2024-2.pdf) 5.



has chosen to ignore these pleas, as the *Climate Change Act* does not include such provisions.

The PCC was established to advise and facilitate South Africa's Just Energy Transition. In this regard, a Just Transition Framework (JTF) has been set out as a planning tool to achieve a just transition in South Africa, listing the actions that government and its social partners need to take to transform the economy to one which is low-carbon, climate resilient and sustainable. The JTF emphasises the importance of consultation and participation, stating that it puts "people at the centre of decision making, especially those most impacted, the poor the women and youth."<sup>197</sup> This includes children's participation in policy-making that drives the just transition.<sup>198</sup>

The JTF, however, gives no indication of whether any strategies or child-centred approaches for engaging and consulting with children have been developed. In its comments on the JTF the CCL, in conjunction with groundWork and the Centre for Environmental Rights, proposes that ways to integrate representation by or on behalf of children should be considered.<sup>199</sup> These may include youth- or child-led advisory groups at national and provincial level.<sup>200</sup> It is accordingly essential that a strategy be devised by the PCC to increase the participation of children and their representatives in the JTF. This would ensure that they comply with the requirements set out in international instruments, the *Constitution* and the *Children's Act* in relation to children's participatory rights.

#### 4 Child and youth organisations

As alluded to above,<sup>201</sup> organisations such as the South African Youth Climate Change Coalition (SAYCC)<sup>202</sup> as well as the Youth Programmes at the South African Institute of International Affairs (SAIIA)<sup>203</sup> have been created. As part of SAIIA, a road map document, the South African Youth Climate Action Plan (SAYCAP), was developed, demonstrating a committed focus by the youth on combatting the negative effects of climate change as well as their desire to be included in the broader policy development space. Young people between the ages of thirteen and thirty from all over South

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<sup>197</sup> PCC 2022 [https://pccommissionflo.imgix.net/uploads/images/22\\_PAPER\\_Framework-for-a-Just-Transition\\_revised\\_242.pdf](https://pccommissionflo.imgix.net/uploads/images/22_PAPER_Framework-for-a-Just-Transition_revised_242.pdf) 2.

<sup>198</sup> PCC 2022 [https://pccommissionflo.imgix.net/uploads/images/22\\_PAPER\\_Framework-for-a-Just-Transition\\_revised\\_242.pdf](https://pccommissionflo.imgix.net/uploads/images/22_PAPER_Framework-for-a-Just-Transition_revised_242.pdf) 2.

<sup>199</sup> CLL, groundWork and Centre for Environmental Rights 2022 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2022/07/Joint-PCC-Submission\\_-JustTransitionChildrenRights\\_5-April-2022.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2022/07/Joint-PCC-Submission_-JustTransitionChildrenRights_5-April-2022.pdf) 3.

<sup>200</sup> CLL, groundWork and Centre for Environmental Rights 2022 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2022/07/Joint-PCC-Submission\\_-JustTransitionChildrenRights\\_5-April-2022.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2022/07/Joint-PCC-Submission_-JustTransitionChildrenRights_5-April-2022.pdf) 3.

<sup>201</sup> Refer to para 1 hereof.

<sup>202</sup> SAYCCC date unknown <https://sayccc.org.za/>.

<sup>203</sup> SAIIA date unknown <https://saiia.org.za/youth/>.

Africa, representing various organisations, schools, university groups and communities, developed this first SAYCAP, serving as a youth-led climate change framework. Five core pillars inform this action plan, namely intersectionality, advocacy and activism for climate action, good governance, systemic change and environmental sustainability.<sup>204</sup> These five pillars, encompassing an inclusive and intersectional approach to climate action, clearly illustrates that children not only need to participate in climate change decision-making but can play a valuable role as agents of change.

An interesting development relating to children's participation and role in climate decision-making is the matter of *African Climate Alliance v Minister of Mineral Resources and Energy* (#CancelCoal case).<sup>205</sup> African Climate Alliance, a civil society organisation, together with two other environmental NGOs, Vukani Environmental Justice Movement in Action and groundWorks, sued the Department of Energy and Mineral Resources, NERSA, the Minister of Forestry, Fisheries and the Environment, and the President of the Republic of South Africa, in a youth-led constitutional challenge directly placing children's rights at issue.<sup>206</sup> The case concerns a constitutional challenge to the government's decision to procure 1 500 MW of new coal-fired power in the 2019 Integrated Resource Plan for Electricity (IRP), highlighting the adverse climate impacts of new coal-fired power on children and future generations and its implications for constitutional rights. The applicants accordingly seek a declaratory order to set the government's decision aside.<sup>207</sup> The case, yet to be determined, presents a significant opportunity for the South African courts to set a precedent for the manifestation of South African children's participatory rights in climate change actions. Hopefully this opportunity will not be missed.<sup>208</sup>

## 5 Conclusion

In almost every crisis that occurs, children are the most vulnerable and most affected persons. Climate change is no exception. The last decade bears witness to the catastrophic harm caused to the intersecting rights and

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<sup>204</sup> SAIIA 2021 <https://saiia.org.za/youth-blogs/the-south-african-youth-climate-action-plan/>.

<sup>205</sup> *African Climate Alliance v Minister of Mineral Resources and Energy* (56907/21) [2022] ZAGPPHC 946 (9 December 2022).

<sup>206</sup> *African Climate Alliance v Minister of Mineral Resources and Energy* (56907/21) [2022] ZAGPPHC 946 (9 December 2022).

<sup>207</sup> *African Climate Alliance v Minister of Mineral Resources and Energy* (56907/21) [2022] ZAGPPHC 946 (9 December 2022).

<sup>208</sup> Though the case is of significance, the scope of the article does not allow an in-detail discussion of it.

interests of the current generation.<sup>209</sup> Moreover, its effects will carry over exponentially into future generations.<sup>210</sup>

Rather than viewing children just as passive victims of climate change, they should be recognised as innovators, agents of change and the co-creators of solutions.<sup>211</sup> Children not only have an interest in being among those who take decisions that affect their future, but need to be acknowledged as the holders of rights that qualify them to partner with adults to mitigate climate change and contribute to adaptation. Moreover, global evidence of the positive role children can play in relation to climate change exists.<sup>212</sup> They can transfer knowledge to their households and communities, promote positive change and inform planners at a national and local level on how to mitigate the risks of climate change by addressing the root causes of the problem.<sup>213</sup> However, this will have a material impact only if children become part of the formal or "real" decision-making process.<sup>214</sup>

Nevertheless, children's inclusion in climate change decision-making has generally been limited.<sup>215</sup> The last several years have been characterised by children demanding inclusion in climate change decision-making, which recently resulted in child participation at the COP 28 Pre-COP roundtable discussions.<sup>216</sup> Regrettably, scholars agree that formal participation by children is still lacking.<sup>217</sup> Political space must be created for children to voice their views, opinions and concerns. The mere fact that international law and policy afford children the right to participate does not guarantee that opportunities for children to express their views will materialise.<sup>218</sup> When an opportunity does materialise, this should not be a once-off event such as at COP meetings. Instead, institutional mechanisms for participation at all levels – local, national, regional and international – must be ensured.

Domestically children's right to participation in climate change decision-making has also seen some improvement. South Africa is not only a signatory to the CRC and ACRWC but also to instruments such as the UNFCCC and the Paris Agreement. The right of children to an environment that is not harmful to their health and welfare as well as their right to ensuring

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<sup>209</sup> Agarwal 2023 <https://oecd-development-matters.org/2023/11/27/cop28-prioritising-children-in-the-fight-against-climate-change/>.

<sup>210</sup> Colombian Supreme Court 2018 <https://climatecasechart.com/non-us-case/future-generation-v-ministry-environment-others/>.

<sup>211</sup> Godfrey and Tunhum *The Climate Crisis* 67.

<sup>212</sup> Arts "Children's Rights and Climate Change" 234.

<sup>213</sup> UNICEF Office of Research 2014 <https://www.unicef.or.jp/osirase/back2014/pdf/140730.pdf> 62-63.

<sup>214</sup> Arts "Children's Rights and Climate Change" 234.

<sup>215</sup> Arts "Children's Rights and Climate Change" 234.

<sup>216</sup> YOUNGO 2023 <https://www.cop28.com/en/news/2023/12/COP28-Youth-Climate-Champion-welcomes-Global-Youth-Statement>.

<sup>217</sup> Boshoff 2017 *African Human Rights Yearbook* 30.

<sup>218</sup> Boshoff 2017 *African Human Rights Yearbook* 30.

their best interests are guaranteed in every matter concerning them are constitutionally entrenched. The right of children to participate in matters that affect them is further guaranteed in the CRC, the ACRWC and the *Children's Act*.<sup>219</sup>

While South Africa has adopted a broad range of national laws, policies and strategies that address climate change, the framework woefully lacks regarding child participation.<sup>220</sup> Although the *Climate Change Act* acknowledges the need to consider the special needs and circumstances of children in decision-making, no provision is made for child participation at either the provincial or municipal level. Through its JTF, the PCC likewise places people at the centre of its decision-making but lacks strategies or approaches for engaging and consulting with children.<sup>221</sup> It is hence necessary to move from passive referencing to children towards active integration and mainstreaming in the relevant decision-making processes.

Children accordingly still need to rely on child rights bodies such as the CCL, civil society or themselves through child and youth organisations such as the SAYCC for their voices to be heard on climate change decision-making. However, donor-funded initiatives such as SAYCC do not have the benefit of long-term security. More can and needs to be done by government to facilitate the formal and direct involvement of children in climate-related decision-making processes. Such involvement could be formalised, for example, through establishing state-funded children's parliaments.<sup>222</sup>

It is perhaps fitting to conclude this paper with South Africa's children's authentic voices on how they see their participatory role in South Africa's future. Post-COVID-19, UNICEF and its partners asked South African children and youth to express how they "reimagine" the country beyond COVID-19. In the "Reimagine our Future Declaration", the children spoke as follows:

We, the children and youth of South Africa, see ourselves as the generation that will spark a wildfire resulting in young people actively taking up space in all spheres of our country. We envision a future that is conducive and favourable for young people to grow and prosper, freely and with dignity. We envision a future where young people *are active participants in policy and decision-making spaces* from local to national level and hold our leaders accountable. We envision a future where our voices are acknowledged and our participation is not tokenistic.<sup>223</sup>

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<sup>219</sup> Refer to paras 2.1 and 3.2.

<sup>220</sup> Refer to para 3.3.

<sup>221</sup> Refer to para 3.3.

<sup>222</sup> CCL 2023 [https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26\\_2023.pdf](https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/04/Submission-on-CRC-Draft-General-Comment-No.26_2023.pdf) 8.

<sup>223</sup> UNICEF date unknown <https://www.unicef.org/southafrica/documents/reimagine-our-future-declaration>. Own emphasis.

In closing, it is the responsibility of the adult generation to ensure that our children's voices are heard in the realisation of their future and that this legal entitlement is not merely a form of tokenism, but results in the attainment of true and meaningful participation for the current generation and generations to come.

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## List of Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AHRLJ	African Human Rights Law Journal
CCL	Centre for Child Law
COP	Conference of the Parties
CRC	United Nations Convention on the Rights of the Child
GC	General Comment
GYS	Global Youth Statement
Int'l J Children's Rts	International Journal of Children's Rights
IPCC	Intergovernmental Panel on Climate Change
JTF	Just Transition Framework

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OPIC	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
NGOs	non-governmental organisations
NPC	National Planning Commission
PCC	Presidential Climate Commission
SAIIA	South African Institute of Internal Affairs
SAJHR	South African Journal on Human Rights
SAYCAP	South African Youth Climate Action Plan
SAYCC	South African Youth Climate Change Coalition
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNICEF	United Nations Children's Fund
YOUNGO	Youth Non-Governmental Organisations