

5

THE ADEQUACY OF THE AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD IN THE RISKY TRINITY OF CLIMATE CHANGE, FOOD SECURITY AND CHILDREN

Robert Doya Nanima and Ebenezer Durojaye

Abstract

The African child is very vulnerable to the impacts of climate change and food insecurity. Following an introduction to the working concepts of climate change and food security, this chapter sets the tone by evaluating the normative context of the African Charter on the Rights and Welfare of the Child regarding climate change and food security. This is followed by an evaluation of the jurisprudence of the African Committee of Experts on the Rights and Welfare of the Child. At its core, this chapter evaluates the possible use of principles and activities emanating from the work of the African Children's Committee. The contribution then proposes a model that the Children's Committee can utilise to increase its traction in executing its mandate towards the protection of children affected by climate change and food security.

Key words: *climate change; children rights; food security; African Children's Committee*

1 Introduction

This chapter evaluates the vulnerability of the child in the context of climate change and food security. It hints at these two concepts and how the child fits into this conundrum. The African Union (AU) has three main human rights organs, namely, the African Commission on Human and Peoples' Rights (African Commission) established by the African Charter on Human and Peoples' Rights (African Charter)¹ with a mandate to promote and protect human rights;² and the African Court on Human and Peoples' Rights (African Court),³ established by the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court

1 African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc CAB/LEG/67/3 rev 5, art 30.

2 Art 30 African Charter on Human and Peoples' Rights.

3 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, 9 June 1998, OAU Doc AU/LEG/EXP/AFCHPR/ PROT (III) art 1 (African Court Protocol).

on Human and Peoples' Rights (African Court Protocol).⁴ The African Court complements the African Commission in the protection of human rights in Africa.⁵ The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) is established by the African Charter on the Rights and Welfare of the Child (African Children's Charter).⁶ As will be illustrated shortly, this chapter directs the conversation to the child who is affected by climate change, food security or both.⁷ From this point forward, an evaluation of the argument and the sub-claims as hinted on in the abstract follows.

An evaluation of the normative contexts under African Children's Charter requires one to look at its general and specific mandate. The approach creates a connection between the various provisions that the African Children's Charter presents and how these may be interpreted to inculcate issues of climate change and food security. The subsequent evaluation of the jurisprudence of the African Children's Committee investigates how it may inform the possible interpretation of the various provisions to include matters of climate change and food security. This raises the question of whether the existing jurisprudence is instructive to deal with matters arising. In light of the practical solutions that are evident in the work of the African Children's Committee, this contribution proposes a model that may be adopted to increase the traction towards a deliberate agenda for climate change and food security that does justice to the situation of the African child. This also questions the extent to which the African Children's Committee may improve its execution mandate towards the protection of children affected by climate change and food security.

2 Climate change and food security

For purposes of this contribution, it is important to create an understanding of the concepts of climate change and food security and how these concepts are intrinsically linked to the promotion and protection of the

4 E Badawi 'Draft Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights: Introductory note' (1997) 9 *African Journal of International and Comparative Law* 953.

5 African Court Protocol (n 3) art 2. In the last paragraph of the Preamble to the Protocol, African member states declared their firm conviction that the attainment of the objectives of the African Charter requires the establishment of an African Court on Human and Peoples' Rights to complement and reinforce the functions of the African Commission.

6 African Charter on the Rights and Welfare of the Child CAB/LEG/24.9/49 (1990) art 42.

7 The qualification of the child is made in sec 2.

rights of the child. The conversation under this part contextualises the two aspects (climate change and food security) and how these affect children. It is argued that this is instructive in the creation of a footing to harness the best approach to use in engaging the two concepts.⁸

Climate change continues to affect the enjoyment of human rights in Africa. The most affected are vulnerable populations such as women, children, the elderly, indigenous groups and minorities. While the chapter does not engage indigenous peoples or minorities in the discussion, there are potential aspects that cut across which may be used to learn a few pointers going forward. This is especially because indigenous peoples have not obtained adequate protection from national normative frameworks.⁹ The challenges that children in these communities face include a lack of access to education, and health care.¹⁰ For instance, in Cameroon, only 1,31 per cent of the indigenous Baka children in Salapoumbé district attended primary school in 2006, and the children suffer other challenges such as poor access to health care.¹¹ This has informed the call to use a top-down approach from regional human rights bodies such as the African Commission.¹² In juxtaposition, this reiterates the need to question the extent to which a regional body such as the African Children's Committee is adequately suited (normatively and jurisprudentially) to offer regional direction on critical aspects such as the rights of the child in the context of climate change and the right to food.¹³

It has been documented that climate change is 'an urgent and potentially irreversible threat to human societies and the planet'.¹⁴ It is

8 This evaluation does not investigate the normative frameworks as this is best handled under the discussion on the normative concepts in Section 2 which draws on various human rights instruments.

9 AO Jegede 'The impact of climate change on indigenous peoples' land tenure and use: The case for a regional policy in Africa' (2014) 21 *International Journal on Minority and Group Rights* 256.

10 Indigenous Peoples in the African Region, 12th session of the UN Permanent Forum on indigenous Issues, <https://www.un.org/development/desa/indigenouspeoples/unpfii-sessions-2/unpfii-twelfth-session.html> (accessed 16 November 2021).

11 United Nations *State of the world's indigenous peoples* (2010) 133; also see United Nations *State of the world's indigenous peoples* (2021).

12 See AO Jegede 'Rights away from home: Climate-induced displacement of indigenous peoples and the extraterritorial application of the Kampala Convention' (2016) 16 *African Human Rights Law Journal* 58.

13 Other illustrative literature that may be looked at includes M Addaney 'Strengthening Africa's adaptive capacity to climate change: African Union law and implications of China's Belt and Road Policy' in WL Filho et al (eds) *Climate change, hazards and adaptation options* (2020) 481.

14 AV Sanson, J van Hoorn & SE Burke 'Responding to the impacts of the climate crisis

viewed as the largest global health threat of the twenty-first century.¹⁵ Simply put, climate change refers to the warming of the planet caused by the build-up of greenhouse gases in the atmosphere with increased concentrations of carbon dioxide, methane and nitrous oxide, leading to a rise in global temperatures.¹⁶ The effects on children are quite substantial and include the disruption of the necessities of life, such as shelter, food and water.¹⁷ To this end, the issue of food insecurity becomes but a factor of the effects of climate change in the grand scheme of things.¹⁸ This affects all four dimensions of food security, namely, food availability, food accessibility, food utilisation and food systems stability.¹⁹ As a result, this exacerbates the already-existing challenges in the socio-economic and ecological sphere that lead to global illness and premature deaths.²⁰ The most affected persons are those who suffer from the 80 per cent of the illnesses, injuries and deaths.²¹

According to the United Nations Children's Fund (UNICEF), the consequences of climate change are evident in the form of hurricanes, droughts, floods and wildfires.²² The cumulative effect on children is regarded as threats to their health, education, protection and very survival.²³ It is argued that the best interests of children in terms of their

on children and youth' (2019) 13 *Child Development Perspectives* 201-207.

- 15 A Costello et al 'Managing the health effects of climate change' (2009) 373 *The Lancet* 1693.
- 16 RA Betts et al 'A successful prediction of the record CO₂ rise associated with the 2015/2016 El Nino' (2018) 373 *Philosophical Transactions of the Royal Society B: Biological Sciences* 20170301.
- 17 Costello et al (n 15) 1693.
- 18 It goes without saying that other reasons may be armed conflict – a critical factor in Africa. See A Ujunwa, C Okoyezu & EU Kalu 'Armed conflict and food security in West Africa: Socio-economic perspective' (2019) 46 *International Journal of Social Economics* 182-198. See also S van Weezel 'Food security and armed conflict: A cross-country analysis' (2018) FAO Agricultural Development Economics Working Paper 18-03 (2018).
- 19 A discussion of the four concepts is beyond the scope of this chapter. To read more about this, see WAI & GR Orking 'Climate change and food security: A framework document' 2008, <https://www.fao.org/3/k2595e/k2595e00.pdf> (accessed 16 November 2021).
- 20 As above
- 21 AJ McMichael 'Climate change and children: Health risks of abatement inaction, health gains from action' (2014) 1 *Children* 99.
- 22 UNICEF 'The climate crisis is a child rights crisis', <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (accessed 16 November 2021).
- 23 As above.

holistic survival and development are affected.²⁴ It is based on this reality that the participation of children, the non-discrimination against children, and the engagement of their right to life, survival and development and the use of the best interests of the child are imperative. Statistics indicate the glaring effects of climate change on children. Approximately 503 million children live in areas that are highly susceptible to floods due to extreme weather conditions such as cyclones, hurricanes and storms, as well as rising sea levels. It is reported that between 2009 and 2013, more than 175 000 children were internally displaced, while between 2014 to 2018 another 761 000 children were affected.²⁵ Besides, over 160 million children live in areas where food insecurity in the context of drought is experienced.²⁶ It is argued that children require more food and water per unit of body weight than adults, making them vulnerable to food and water scarcity.²⁷

Other dangers are evident in climate-related displacements and migration that lead to increased vulnerability, separation from family members, violence, exploitation and abuse.²⁸ The girl child is then affected by the increased risk of violence and exploitation, and trafficking during and after extreme weather events.²⁹ A study by UNICEF indicates that these dangers are heightened when collecting food, water and firewood or when staying in temporary shelters or refugee camps.³⁰

Various regions in Africa have recorded the dangers of climate change in different regards. East Africa has suffered acute food shortages due to prolonged droughts and insufficient rainfall.³¹ In West Africa, the

24 MA Akudugu, S Dittoh & ES Mahama 'The implications of climate change on food security and rural livelihoods: Experiences from Northern Ghana' (2012) 2 *Journal of Environment and Earth Science* 21.

25 UNICEF (n 22).

26 As above.

27 UNICEF 'Thirsting for a future', 2017, https://www.unicef.org/media/49621/file/UNICEF_Thirsting_for_a_Future_ENG.pdf (accessed 16 November 2021).

28 UNICEF 'Unless we act now: The impact of climate change on children' (2015), https://www.unicef.org/publications/index_86337.html (accessed 13 February 2021).

29 African Children's Committee 'Continental study on the impact of conflict and crises on children in Africa' (2016), www.acewrc.africa (accessed 1 February 2020) (ACERWC Continental study).

30 UNICEF (n 28); see also Plan International 'Effects of climate change on girls' rights' (2019), <https://plan-international.org/emergencies/effects-of-climate-change-girls-rights#:~:text=Violence,when%20staying%20in%20temporary%20shelters> (accessed 16 November 2021).

31 BS Ngcamu & F Chari 'Drought influences on food insecurity in Africa: A systematic literature review' (2020) 17 *International Journal of Environmental Research and Public*

Sahel region has reported degraded farmland with longer and frequent droughts and floods.³² Southern Africa shows severe food insecurity that has affected approximately 12 million people.³³ The reliance on natural weather patterns has led to the loss of crops, a reliance on markets with escalating food prices, and loss of livestock.³⁴ Humanitarian catastrophes such as cyclones Idai and Kenneth have led to deaths, the destruction of homes, health complications and an increase in gender-based violence.³⁵

The key introspection is the place of the child in the climate change-food security nexus. First, regarding climate change food security, it is argued that climate change often compounds poverty as persons cannot engage in food production. At its core are various factors connected to climate change such as precipitation and evaporation. By 2080 agricultural productivity will decline from 21 to 9 per cent due to climate change in sub-Saharan Africa.³⁶ Most areas where there have been climate change issues in Africa reminisce a lack of food.³⁷ For instance, in the Sahel region the impacts of climate change have translated into acute famine across the various countries. In Mauritania and Chad, droughts and floods have affected populations that rely on agriculture and livestock.³⁸ Second, as far as children are concerned, over 5,9 million children below five years of age suffered from acute malnutrition in 2016 and approximately 550 000 children died due to problems of malnutrition.³⁹ According to

Health 5897.

- 32 R Muggah 'The Sahel is engulfed by violence, climate change, food insecurity and extremists are largely to blame' (2019), <https://www.weforum.org/agenda/2019/01/all-the-warning-signs-are-showing-in-the-sahel-we-must-act-now/> (accessed 16 November 2021).
- 33 United Nations Office for Coordination of Humanitarian Affairs 'Southern Africa: 12 million people are food insecure' (2019), <https://www.aa.com.tr/en/africa/12m-people-face-food-insecurity-in-south-africa/2171514> (accessed 16 November 2021).
- 34 As above.
- 35 Reliefweb 'Mozambique humanitarian response plan revised following cyclones Idai and Kenneth' (November 2018-June 2019), <https://reliefweb.int/report/mozambique/2018-2019-mozambique-humanitarian-response-plan-revised-following-cyclones-idai> (accessed 16 November 2021).
- 36 Food and Agricultural Organisation 'Climate change and food security: Is the link strong enough?', <https://reliefweb.int/report/world/climate-change-and-food-security-link-strong-enough> (accessed 16 November 2021).
- 37 HL Wlokas 'The impacts of climate change on food security and health in Southern Africa', www.scielo.org.za/pdf/jesa/v19n4/04.pdf (accessed 13 February 2021).
- 38 J Mayans 'The Sahel in the midst of climate change' (2020), <https://reliefweb.int/report/chad/sahel-midst-climate-change> (accessed 16 November 2021).
- 39 European Commission: Humanitarian Aid and Civil Protection 'Sahel: Food and nutrition crisis' (2020), https://reliefweb.int/sites/reliefweb.int/files/resources/sahel_en_4.pdf (accessed 16 November 2021).

the European Union (EU), these emergency needs in the Sahel will persist unless the root causes of food insecurity and under nutrition are addressed, and the resilience of the poorest people is strengthened.⁴⁰ These examples illustrate the link between climate change, on the one hand, and food and nutrition, on the other. It leads to the irresistible conclusion that all crises affect a child both directly and indirectly, yet they require protection by caregivers, the community, the state and other domestic and international stakeholders. In the context of the climate change-food security nexus, some children are forced to engage in extreme coping mechanisms such as child labour and trafficking, recruitment as soldiers, early marriage and the attendant dangers to the sexual and reproductive health of the girl child.⁴¹ This contribution takes on a conceptual desktop analysis and evaluates the argument on the effectiveness of the African Children's Committee in protecting the child affected by climate change and food insecurity.

3 African Children's Committee on climate change and food security

Every human rights system requires a developed normative, institutional and jurisprudential framework to remain relevant to its mandate.⁴² Without delving into this detailed explanation, it is widely observed that while the normative framework speaks to the legal principles and the law that the human rights system or organisation uses, the institutional framework is tilted towards the expertise of the human resources such as experts, commissioners or judges. Consequently, the application of the normative frameworks by human resources leads to the development of jurisprudence. The mandate of the African Children's Committee includes the promotional, protective and the interpretative mandate concerning the rights of children.⁴³ In the context of climate change, the provisions of the African Children's Charter must be interpreted by its Committee of

40 The European Union has championed the creation of AGIR, a global alliance to strengthen resilience in West Africa which has set itself a 'Zero hunger' goal by 2032.

41 African Children's Committee 'Continental study on the impact of conflict and crises on children in Africa' (2016), www.acewrc.africa (accessed 1 February 2020).

42 B Thomas 'The normative and institutional evolution of the international human rights' (1997) 19 *Human Rights Quarterly* 703 723.

43 African Children's Charter (n 6).

Experts to ensure a critical balance that underscores the protection of the child in the contours of climate change and food insecurity.

3.1 Climate change and food security in the general mandate of the African Children's Committee

The African Children's Charter does not contain a provision on climate change or food security. However, it contains instructive articles that speak to the need to place climate change on the agenda of the protection of children. The normative framework of the African Children's Committee is based on its specific and general mandate.

In this regard, the general mandate of the African Children's Committee is to promote and protect the rights and welfare of the child.⁴⁴ The relevant provisions on the mandate of the Children's Committee require it to –

- (a) promote and protect the rights enshrined in this Charter and in particular to –
 - (i) collect and document information, commission inter-disciplinary assessments of situations on African problems in the fields of the rights and welfare of the child, organise meetings, encourage national and local institutions concerned with the rights and welfare of the child, and where necessary give its views and make recommendations to governments;
 - (ii) formulate and lay down principles and rules aimed at protecting the rights and welfare of children in Africa;
 - (iii) cooperate with other African, international and regional institutions and organisations concerned with the promotion and protection of the rights and welfare of the child;
- (b) monitor the implementation and ensure protection of the rights enshrined in this Charter.
- (c) interpret the provisions of the present Charter at the request of a state party, an institution of the Organisation of African Unity or any other person or institution recognised by the Organisation of African Unity, or any state party;
- (d) perform such other task as may be entrusted to it by the Assembly of Heads of State and Government, Secretary-General of the OAU and any other organs of the OAU or the United Nations.⁴⁵

44 As above.

45 Art 42(a)(ii) African Children's Charter.

Arguably, the general mandate of the African Children's Committee is to promote and protect the rights of the child. In so doing, two principles come to the fore: first, to formulate and lay down principles that promote and protect human rights; second, to monitor, implement and ensure the protection of rights as well as to interpret the provisions of the Children's Charter. The mandate is informed by the clear provision of the article. The authors are not aware of an existing record of the drafting history of the African Children's Charter. The failure of the UN Charter on the Rights of the Child to speak to the lived realities of children informed the adoption of the African Children's Committee. As such, the added value that the African Children's Charter brings to the fore, the lived realities of children in Africa, informs the specific mandates. The question is whether the specific mandates speak to climate change and food security. Second, the general mandate is evident in the approach that the African Children's Committee adopts in promoting and protecting children's rights. The Children's Committee uses four principles that underscore its engagement with children's rights. These include the best interests principle;⁴⁶ the right to life, survival and development;⁴⁷ the right to participation;⁴⁸ and the principle of non-discrimination.⁴⁹ In passing, the best interests principle requires that the best interests of the child are of paramount consideration in all matters concerning a child.⁵⁰ The best interests principle requires that all decisions taken concerning the child are in his or her best interests. As such a country's position on climate change and food security should be in the child's best interests. It follows that the right to life, survival and development has to be interpreted in a manner that allows that the child not only enjoys the right to life, but that states adopt principles that speak to the holistic survival and development of a child in all situations.⁵¹ In addition to this, situations, laws and policies that affect this may be interpreted in the context of non-discrimination and the participation of children as critical yardsticks.⁵² Third, the general mandate is discerned in article 46 of the African Children's Charter, which states:

46 Art 4 African Children's Charter.

47 Art 5 African Children's Charter.

48 Arts 12 & 13 African Children's Charter.

49 Art 3 African Children's Charter.

50 Art 4(1) African Children's Charter.

51 Instructive jurisprudence from states interprets the right to life to include the right to a livelihood. See *Salvatori Abuki v the Attorney General Uganda* (2001) 1 LRC 63. This is understood in the context of the child's right to survival and development based on the livelihood of a parent or caregiver.

52 For more on the principle of non-discrimination, see S Besson 'The principle of non-discrimination in the Convention on the Rights of the Child' (2005) 13 *International Journal of Children's Rights* 433; ED Gibbons, F Huebler & E Loaiza 'Child labour, education and the principle of non-discrimination' (2005) 10 *Capitulo* 214; B Abramson

The Committee shall draw inspiration from international law on human rights, particularly from the provisions of the African Charter on Human and Peoples' Rights, the Charter of the Organisation of African Unity, the Universal Declaration on Human Rights, the International Convention on the Rights of the Child, and other instruments adopted by the United Nations and by African countries in the field of human rights, and from African values and traditions.

As such, the general mandate of the African Children's Committee extends to matters that, although not provided for in the African Children's Charter, are important in the execution of its mandate. To ensure that the rights of a child are promoted and protected, the African Children's Charter allows the application of other sources of international and regional human rights instruments.⁵³ In the context of climate change, the African Children's Charter allows the application of the United Nations Framework Convention on Climate Change (UNFCCC) where the four underlying principles may be utilised to protect and promote the rights of the child. For instance, the UNFCCC provides that

[t]he parties should protect the climate system for the benefit of present and future generations of humankind, based on equity and in accordance with their common but differentiated responsibilities and respective capabilities. Accordingly, the developed country parties should take the lead in combating climate change and the adverse effects thereof.⁵⁴

The context of future generations would require that the steps, policies and initiatives that include children are adopted by state parties to ensure that the effects of climate change are mitigated.⁵⁵

As far as food security is concerned, provisions in international human rights law that point to the right to food can be harnessed by the African Children's Committee to ensure that a child-centred approach informs the interpretation of this right. For instance, the International Covenant on

A commentary on the United Nations Convention on the Rights of the Child, Article 2: The Right of Non-Discrimination (2008).

53 Art 46 African Children's Charter.

54 Art 3(1) UNFCCC.

55 Further insights on the need to mitigate the effects of climate change for future generations are evident in the 11th preambular paragraph of the UNFCCC; see General Assembly Resolution 44/228 of 22 December 1989 on the United Nations Conference on Environment and Development, and Resolutions 43/53 of 6 December 1988, 44/207 of 22 December 1989, 45/212 of 21 December 1990 and 46/169 of 19 December 1991 on the protection of global climate for present and future generations of mankind.

Economic, Social and Cultural Rights (ICESCR) adopts a socio-economic rights approach and requires states to recognise ‘the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions’.⁵⁶

This provision and the developed jurisprudence may be utilised to ensure that the best interests of the child and the participation of the child are upheld. In addition, the general mandate of the African Children’s Committee under article 46 of the African Children’s Charter may be used to enable the application of ICESCR as far as it speaks to the improvement of the rights of the child. The same applies to the interpretation by the Children’s Committee of these principles towards the betterment of the right to life, survival and development as well as the right to non-discrimination. This is concretised by the call by the Committee on Economic, Social and Cultural Rights (ESCR Committee) to states to recognise that drastic immediate and urgent steps are necessary to ensure that the fundamental right to freedom from hunger and malnutrition is realised. The ESCR Committee has developed jurisprudence to aid the state’s understanding of the right to food. In its General Comment 12 on the Right to Adequate Food, the ESCR Committee interprets various aspects. First, it lays down the normative context of the right to food. Its realisation lies in the ability of every individual, alone or in community with others, to have physical and economic access to adequate food or a means for its procurement.⁵⁷ Second, it extends the right from a simple food intake which entails a minimum package of calories, proteins and other specific nutrients to a more purposive interpretation.⁵⁸ The purposive interpretation calls for the availability, acceptability and accessibility of adequate food.⁵⁹ The lack of specific provisions on climate change and food security in the African Children’s Charter does not detract from the need to take steps to mitigate the effects of climate change or to avert food insecurity regarding children. Article 46 ensures that legal principles in other international instruments are used. The extent to which the African Children’s Committee allows

56 Art 11(1) ICESCR.

57 General Comment 12 on the Right to Adequate Food, para 6, <https://www.refworld.org/pdfid/4538838c11.pdf> (accessed 13 September 2021).

58 As above.

59 As above.

the application of these principles will determine how they aid in the protection and promotion of the rights of the child.

3.2 Climate change and food security in the specific mandate of the African Children's Committee

The specific mandate of the African Children's Committee elucidates the added value of the African Children's Charter regarding the protection and promotion of the rights of children. The Children's Charter defines a child as a person under the age of 18 with no other qualifications. In contrast, the UN Convention on the Rights of the Child (CRC) defines a child as every human being below the age of 18 years unless, under the law applicable to the child, a majority is attained earlier.⁶⁰ In juxtaposition, the African Children's Charter provides added value by embracing the straight 18-year position of children.⁶¹ This offers a wider platform for the protection of the child even in situations of climate change and food security.

More added value is found in the protection of children from armed conflict to tension and strife. To this end, article 22 of the African Children's Charter deals with the protection of children in situations of armed conflict, tension and strife. It states:

- 1 State Parties to this Charter shall undertake to respect and ensure respect for rules of international humanitarian law applicable in armed conflicts which affect the child.
- 2 State Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child.
- 3 State Parties to the present Charter shall, in accordance with their obligations under international humanitarian law, protect the civilian population in armed conflicts and shall take all feasible measures to ensure the protection and care of children who are affected by armed conflicts. Such rules shall also apply to children in situations of internal armed conflicts, tension and strife.

It is evident from this provision that the protection of children affected by armed conflict engages both international human rights law and

60 Art 1 CRC; see PE Veerman 'An African and international perspective on children's rights: Interview with Dr Benyam Dawit Mezmur, Chairperson of the African Children's Rights Committee (ACERWC) and for two years (2015–2017) the Chair of the UN CR Committee' (2017) 25 *International Journal of Children's Rights* 672.

61 BD Mezmur 'The African Children's Charter @ 30: A distinction without a difference?' (2020) 28 *International Journal of Children's Rights* 693.

international humanitarian law.⁶² States should ensure that children are not recruited into armed forces. The child is also protected in the context of conflict, tension and strife. While the article does not directly provide for climate change, it offers protection for the child in these three instances.

The question is where climate change and food insecurity fit into the narrative. It is argued that where climate change leads to conflict, tension and strife, the occurrence of these instances leads to the protection of the child. A look at the detailed interpretation of article 22 is instructive. The promotion and protection of the child take on a human rights-based approach, which draws on the children's rights-based principles discussed above under the general mandate. The application of international humanitarian law cannot be used in instances where there is no conflict. Hence, the effects of climate change as a reason for the violation of the rights of a child cannot be invoked for protective measures under humanitarian law. However, this does not stop the use of humanitarian aid from international, regional and national communities to mitigate the impacts of climate change.⁶³ Such humanitarian relief, although not provided for under article 22, can be used to cushion the effects of climate change and food security on children.

The African Children's Charter makes special provision for the protection of refugees and asylum seekers. The requisite article states:⁶⁴

State Parties to the present Charter shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law shall, whether unaccompanied or accompanied by parents, legal guardians or close relatives, receive appropriate protection and humanitarian assistance in the enjoyment of the rights set out in this Charter and other international human rights and humanitarian instruments to which the states are parties.

Article 23 of the African Children's Charter provides for the protection of the refugee child and internally-displaced persons. State parties are called upon to adopt appropriate measures to protect children, both

62 There is no similar provision in CRC. This was solved by the adoption of the Optional Protocol to the CRC on the Recruitment of Child Soldiers. The Optional Protocol, however, places the emphasis on child recruitment into the armed forces.

63 Various organisations have decried the dangers of climate change leading to requiring humanitarian relief; see D Shepard 'Global warming: Severe consequences for Africa', <https://www.un.org/africarenewal/magazine/december-2018-march-2019/global-warming-severe-consequences-africa> (accessed 16 November 2021).

64 Arts 23(1) & (4) African Children's Charter.

unaccompanied and accompanied, seeking refugee status.⁶⁵ States are expected to cooperate with existing international organisations that protect and assist refugees.⁶⁶ This elucidates the possible use of provisions of the Refugee Convention in addition to the African Children's Charter to protect these rights.⁶⁷ It may use its promotional and protective mandate to remind state parties to ensure that girl child refugees enjoy their rights. An examination of the normative framework without a corresponding engagement with other activities of the African Children's Committee presents an incomplete picture. To this end, the authors turn to the jurisprudence of the African Children's Committee.

4 The jurisprudence of the African Children's Committee on climate change and food security

The jurisprudence of the African Children's Committee oscillates in four major aspects. It monitors the implementation of the African Children's Charter through the consideration of communications, state party reporting, investigative visits and the use of recommendations in Concluding Observations.⁶⁸

In the context of communications, the African Children's Committee has handled very few complaints, with no decision on food security and climate change. A look at the website of the Children's Committee indicates the receipt of 16 communications and the conclusion of 10 thereof.⁶⁹ This illustrates the limited use of the communications procedure of the African Children's Committee. However, there are training activities on the communications procedure by the African Children's Committee and civil society organisations, a development that seeks to enhance the use of the communications procedure.⁷⁰ The conclusion of only 10 decisions, in contrast to the African Commission's over 300 decisions, presents a trend

65 Art 23(1) African Children's Charter.

66 Art 23(2) African Children's Charter.

67 Art 23 of the African Children's Charter requires a state party to take all appropriate measures to ensure that a child seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law, whether unaccompanied or accompanied by parents, legal guardians or close relatives, is accorded appropriate protection and humanitarian assistance in the enjoyment of the rights set out therein.

68 Arts 43, 44 & 45 African Children's Charter.

69 African Children's Committee 'Table of communications' (2021), <https://www.acerwc.africa/table-of-communications/> (accessed 13 February 2021).

70 At the time of concluding the contribution, the African Children's Committee and the Dullah Omar Institute for Constitutional Law, Governance and Human Rights were carrying out a virtual training session on the use of the communications procedure.

that requires introspection.⁷¹ Some of the decisions illuminate a thorough engagement and interpretation of the principles concerning the rights of the child. This is evident in the use of the due diligence principle by state parties in the practical protection of the rights of the child.⁷² Due diligence requires a state to account for the promotion and protection of the rights of the child through the result it shows towards the protection of the rights of the child.⁷³ In the two cases of *Institute for Human Rights and Development in Africa and Finders Groups Initiative on behalf of TFA v Cameroon* and *MRGI & Another v Mauritania* this principle is highlighted.⁷⁴ The African Children's Committee is of the view that in the protection of the rights of the child, the state has to show how it has taken practical steps to solve actual violations. This points to the use of due diligence as a result-oriented approach by the state instead of abstract notions often hidden in the existence of laws, policies, legislative, administrative and other initiatives.

In the context of state party reporting, states should report to the African Children's Committee on the various steps taken to promote and protect the rights of children under the African Children's Charter. Some states have submitted reports and have reported on the aspects under study.⁷⁵ Furthermore, the African Children's Committee offers Concluding Observations that speak more to food security than climate change.⁷⁶ For instance, in its Concluding Observations to Benin, the Children's Committee advanced matters of food security. It called on the state to undertake measures to ensure that children are properly nourished from food products that are available at household level through sensitisation of communities about the minimum necessary diet children should

71 HRDA 'Case law analyser', <http://caselaw.ihrda.org/> (accessed 19 December 2020). Such introspection, however, is beyond the scope of this study.

72 See *Institute for Human Rights and Development in Africa and Finders Groups Initiative on behalf of TFA v Cameroon* Communication 006/Com/002/2015; and *MRGI & Another v Mauritania* Communication 007/Com/003/2015 on the use of due diligence and the best interests principle.

73 *Mauritania* (n 72) paras 47-58; *Cameroon* (n 72) paras 46-57.

74 As above.

75 Initial Report of the Republic of Guinea to the ACERWC 2011, https://acerwc.africa/wp-content/uploads/2018/04/Guinea_Initial_Report_under_the_ACRWC.pdf (accessed 16 November 2021). See also First State Party Report of Kenya to the African Union on the implementation of the ACRWC, <https://acerwc.africa/wp-content/uploads/2018/04/Kenya-periodic-Report.pdf> (accessed 16 November 2021) 15, 17, 21.

76 See the two footnotes below.

receive.⁷⁷ In its Concluding Observations on the first state report of Burundi, the African Children's Committee mentioned the existence of challenges concerning food security, through severe malnutrition, cholera outbreaks and the lack of access to clean water.⁷⁸ It is instructive to note that where the Children's Committee has raised issues of the lack of food security and climate change, it has related these to the four principles that underscore its engagement with state parties. For instance, in the previous illustrations of the Concluding Observations to Benin and Burundi, the African Children's Committee referred to the violation of the principles of the right to life, survival and development of children in these states.⁷⁹

Despite the lack of a direct provision on climate change and food security, the wording of the African Children's Charter is sufficient to ensure the protection of the children from the impacts of climate change and food insecurity. Also, arguably, despite the lack of adequate jurisprudence, principles such as due diligence in the communications procedure indicate their applicability to practical challenges in the enjoyment of children's rights. The African Children's Committee has engaged in other activities that have led to the continued and improved protection of the African child. These include continental studies and investigative missions by the African Children's Committee.⁸⁰ For instance, the continental study on the mapping of children on the move indicates that climate change is a strong socio-economic driver of the migration of children.⁸¹ The African Children's Committee has researched the movement of children in Africa. It is established that the drivers of the movement among children in Africa were classified in three categories. These include, first, conflict and insecurity; second, illegal activity; and, third, economic and social conditions. The third driver includes climate as one of the drivers of migration among children.⁸² Africa is more affected by climate change

77 Concluding Observations on the initial report of Benin para 16, https://reporting.acerwc.africa/uploads/4a315297f8a7fb1e729e8db050435953432f4477/statereport/CO_Initial_Report_Benin_Sep_2019_English.pdf (accessed 16 November 2021).

78 Concluding Observations on Burundi's first report to the ACERWC para 16, <https://reporting.acerwc.africa/uploads/d7713aeb5974b7bfd34766c382b48a76d81bdee/statereport/Draft-CO-Burundi-1.pdf> (accessed 16 November 2021).

79 Concluding Observations (n 77); Concluding Observations (n 78).

80 African Children's Committee Continental Study (n 29); see also African Children's Committee Study 'Mapping children on the move within Africa', https://www.acerwc.africa/wp-content/uploads/2019/03/ACERWC_Study-Mapping-Children-on-the-Move-within-Africa-Nov2018-_A4_Website-version.pdf (accessed 16 November 2021).

81 African Children's Committee 'Mapping children' (n 80).

82 As above.

as a large sector of the population wallows in poverty.⁸³ Statistics used in this study indicated that between 2008 and 2016 persons in low and middle-income countries were five times more affected than those in high-income countries. Thus, the more affected persons were women, children, indigenous people and other vulnerable groups.⁸⁴

The effect of these movements continues to exacerbate the problem of food insecurity. For instance, desertification and deforestation when combined with droughts and famine lead to the continued existence of food insecurity.⁸⁵ In respect of some countries such as Angola, the African Children's Committee noted that malnutrition of children in the southern region is traceable to climate change.⁸⁶ Other challenges included the lack of access to safe drinking water due to the non-operation of water points, leading to an increase in water-borne diseases.

A similar study by the African Children's Committee on the impact of armed conflict and crises on children in Africa substantiates the various initiatives that have been undertaken.⁸⁷ One of the objectives of this study was to assess the impact of armed conflict on children in the areas of education, health, nutrition/food security and child protection.⁸⁸ This is an indication of the use of other forms of engagement by the African Children's Committee, such as conducting research under article 45. The specificities in this provision are the actions of the Children's Committee by carrying out these functions concerning the child. For instance, the collection and documentation of information are evident in the recent studies about children in areas of armed conflict and the mapping of children on the move. Other acts about the interpretation of the African Children's Charter include the handing down of decisions on communications, and recommendations to state parties by way of Concluding Observations on

83 As above; see also Oxfam 'Uprooted by climate change: Responding to the growing risk of displacement' (2017) 5, https://www-cdn.oxfam.org/s3fs-public/file_attachments/bp-uprooted-climate-change-displacement-021117-en.pdf (accessed 16 November 2021).

84 As above.

85 UNICEF 'Protecting children on the move from violence, abuse and exploitation' (2017) 2.

86 Concluding Observations and Recommendations of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the initial report of the Republic of Angola on the status of the implementation of the African Charter on the Rights and Welfare of the Child, para 17, https://acerwc.africa/wp-content/uploads/2019/07/Angola_CO_Initial_Report.pdf (accessed 12 December 2021).

87 African Children's Committee 'Stocktake of the African Union responses to child protection in conflict situations', <https://www.acerwc.africa/studies-research/> (accessed 16 November 2021).

88 African Children's Committee Continental Study (n 29).

state party reports. A case in point is the current traction that the African Children's Committee has gained regarding the preparation of a General Comment on the interpretation of article 22 which deals with children affected by armed conflict.⁸⁹ As such, the development of jurisprudence is significantly informed by the children's rights-based approach under the African Children's Charter.

5 A model to increase the traction of the African Children's Committee

The African Children's Committee should increase the traction of the steps it has taken to popularise issues of climate change and food security. All the steps taken should work in tandem with a deliberate attempt to ensure that issues of climate change take centre stage in matters regarding children.

In principle, it is argued that any initiative that seeks to improve the human rights situation in Africa should ask the right African question. For instance, Durojaye and Oluduro argue that when dealing with problems that women face in Africa, one should ask the right African woman question other than merely a woman question.⁹⁰ In the context of the African child in the climate change and food security nexus, one should ask the right question to the right African child who is affected by food insecurity and climate change. This is instructive as it accentuates the lived realities of the African child in situations of climate change and food insecurity. To this end, this investigation leads to asking the right child question to the African child in their space or position of habitation. To engage these questions, at its core, the African Children's Committee should relentlessly utilise the four principles that underscore the child rights-based approach. For instance, regarding climate change and food security, first, how do the conversations embrace the best interests of the child and his or her participation? Second, how do the conversations extend to the practical application of the principle of non-discrimination and their right to life, survival and development? Third, how does the African Children's Committee use other distinct principles such as due diligence to ensure that there is an obligation of result on the part of state parties? These questions would then feed into a child rights-based approach/model that directly deals with these issues.

89 The preparation of the General Comment started with the presentation of the zero draft at the 32 sessions of the Committee in Addis Ababa, Ethiopia, in November 2018. There was a recent validation exercise of the General Comment on 29 and 30 July, 2019 at the University of the Western Cape, South Africa.

90 E Durojaye & O Oluduro 'The African Commission on Human and Peoples' Rights and the woman question' (2016) 24 *Feminist Legal Studies* 315.

The successes that the African Children's Charter has registered in dealing with other thematic aspects, such as children affected by armed conflict (CAAC), should be used as a litmus test to guide the engagement in these erstwhile disenchanted waters. The CAAC component has foreseen the use of specific appointments, such as (i) a Special Rapporteur on CAAC; (ii) senior child protection officers on CAAC; (iii) consultants to draft the recently-adopted General Comment on article 22 on children in conflict situations. Furthermore, the advanced discussions on a model law on CAAC speak to initiatives that lead to traction on any issue on which the African Children's Charter deliberately focuses. As such, regarding climate change and food security, it is proposed that this approach be considered. This would mean the appointment of special mechanisms such as a Special Rapporteur or working groups, drawing on expertise from within the Committee and from Africa, to tackle the challenges of climate change and food insecurity from a pan-African perspective.

6 Conclusion

An evaluation of the normative contexts under the African Charter involving the general and the specific mandate of the African Children's Committee has shown that despite the lack of a provision therein, a purposive interpretation should be engaged. As such, the use of article 46 provides solutions to the use of other human rights principles in other instruments. Regarding the development of jurisprudence, there has been the basic use of the state reporting procedure and Concluding Observations on matters of climate change and food security. It is proposed that the African Children's Committee uses more advocacy to disseminate issues of climate change and food security. This will ensure that protection is not informed by another violation, such as armed conflict. Considering the practical solutions, the successes of the African Children's Committee on the CAAC component should be emulated in the deliberate use of practical steps to deal with issues affecting children in the context of climate change and food security.