

To cite: N Muhumuza 'Children's rights and climate action: Assessing the suitability of South Africa's domestic normative framework' (2026) 26  
*African Human Rights Law Journal* 1-33  
<http://dx.doi.org/10.29053/1996-2096/2026/v26n1a1>

## Children's rights and climate action: Assessing the suitability of South Africa's domestic normative framework

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**Summary:** *South Africa boasts one of the most progressive, elaborate and consultative climate governance frameworks in the Global South. However, children, who are among the groups most acutely affected by climate change, remain largely invisible to the country's climate law, policy and decision-making architecture. This article examines South Africa's normative framework to determine whether it adequately protects and promotes children's rights in the context of climate action. The article argues that, despite robust constitutional guarantees and binding international and regional obligations, such as those under the UN Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child, the existing framework does not systematically integrate children's rights into the country's climate response. The article draws on these normative standards and the guiding principles of non-discrimination, the best interests of the child, child participation, access to information, impact assessment and the right to life, survival and development to assess South Africa's domestic law and policy. The article concludes that significant normative and*

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*practical gaps persist and proposes targeted reforms to embed children's rights at the centre of climate governance, thereby advancing equitable, effective and intergenerationally just climate action in South Africa.*

**Key words:** *climate change; climate governance; children; rights; South Africa*

## 1 Introduction

Climate change is the defining crisis of the twenty-first century, threatening the enjoyment of a broad range of human rights and posing profound risks to children, who are uniquely vulnerable to its impacts.<sup>1</sup> Despite their disproportionate exposure to climate-related harms and their recognised agency as rights holders, children remain peripheral to most states' climate responses, including those of South Africa.<sup>2</sup> While the country has enacted a sophisticated corpus of environmental law and policy and enshrined extensive children's rights protections in its 1996 Constitution, its climate change governance continues to exclude them and to neglect their specific rights and needs. This article addresses this gap by examining whether South Africa's normative framework adequately protects children's rights in the context of climate change. The article argues that, although South Africa's constitutional and statutory landscape provides a strong foundation, its implementation fails to fully operationalise a children's rights-based approach (CRBA).<sup>3</sup> The CRBA is drawn from the United Nations Convention on the Rights

1 The impact of environmental protection on children's rights is widely known with the focus often being on malnutrition and undernourishment due to floods or drought; the absence of safe drinking water; and exposure to polluted air and dangerous toxins. Unfortunately, beyond marquee events such as the Rio Conference of 1992, and the Committee of the Rights of the Child's Day, it is quite symbolic that the current movement to link children's rights to climate change has been spurred and led by children themselves. See also art 24 of CRC.

2 C Dlamini and others 'Legislating the Paris Agreement in Africa: Approaches to climate legislation in Eswatini, Kenya, Nigeria and Uganda' (2021), [https://ecbi.org/sites/default/files/National%20Climate%20Legislation\\_0.pdf](https://ecbi.org/sites/default/files/National%20Climate%20Legislation_0.pdf) (accessed 9 October 2025); C Higham, A Sridhar & E Bradeen 'Innovations in climate change acts: Kenya, Uganda and Nigeria' (2023), <https://www.cpahq.org/knowledge-centre/blogs/climate-change-acts-in-kenya-uganda-and-nigeria/> (accessed 9 October 2025).

3 M Bekink 'The fundamental right of children to participate in climate change decision-making processes: A South African perspective' (2024) 27 *Potchefstroom Electronic Law Journal* 1; M Lethoko 'Children and youth as agents of climate change impact in South Africa' (2016) 12 *Commonwealth Youth and Development* 75; Centre for Child Law 'Children's environmental rights and climate justice in South Africa: Impacts of coal-related air pollution' (2023) 3, <https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/12/2023.-Children-Enviro-Rights-Advocacy-Brief.pdf> (accessed 9 October 2025); R Fambasayi 'African cities can do more to protect children from climate change' *The Conversation* (web blog) 21 April 2022, <https://theconversation.com/>

of the Child (CRC), the African Charter on the Rights and Welfare of the Child (African Children's Charter) and South Africa's 1996 Constitution. A children's rights approach requires climate action to be designed, implemented and evaluated in light of children's specific rights, duties and vulnerabilities.<sup>4</sup> It requires states to 'take affirmative measures to respect, protect, promote, and fulfil' children's rights and integrate their rights in all climate mitigation and adaptation.<sup>5</sup>

Climate change intersects with South Africa's entrenched socio-economic inequalities, historical legacies of colonialism and apartheid, and structural poverty, all of which exacerbate children's exposure to environmental and climate harm.<sup>6</sup> These intersecting crises undermine not only children's rights to life, health, development and education, but also broader principles of intergenerational justice and equity.<sup>7</sup> A CRBA offers a normative and analytical framework through which the adequacy of state responses can be assessed and improved.<sup>8</sup>

The article proceeds as follows: First, it outlines the country's current climate profile before turning to the applicable normative standards on children's rights. It subsequently situates South Africa's climate governance within its historical and socio-political context to demonstrate how historical and structural inequality shapes children's vulnerability to climate harm. The article illustrates how this legacy contributes to children's absence from the country's climate governance architecture. It then evaluates the normative foundation for a CRBA by examining the legal and policy framework drawn from CRC, the African Children's Charter and the country's domestic legislation, identifying points of alignment as well as gaps in practice and drawing on judicial developments to illustrate both. This framework is undergirded by the principles of non-discrimination, the best interests of the child, child participation, access to information, impact assessment and the right to life, survival

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african-cities-can-do-more-to-protect-children-from-climate-change-180423 (accessed 26 September 2025).

- 4 African Committee of Experts on the Rights and Welfare of the Child 'ACERWC study on climate change and children's rights in Africa: A continental overview – 2024' (2025) 3, <https://www.acerwc.africa/sites/default/files/2025-04/Continental%20Study%20On%20Climate%20Change%20and%20Children%20Rights%20in%20Africa.pdf> (accessed 9 October 2025).
- 5 African Children's Committee (n 4) 3.
- 6 Human Rights Council 'Climate change and poverty report of the Special Rapporteur on Extreme Poverty and Human Rights' A HRC/41/39 (2019) para 66; Lethoko (n 3).
- 7 African Children's Committee (n 4) 13.
- 8 K Arts 'Children's rights and climate change' in C Fenton-Lynn (ed) *Children's rights and sustainable development: Interpreting the UNCRC for future generations* (2019) 216.

and development. The article concludes by reflecting on how these insights can inform a more deliberate integration of children's rights into South Africa's climate governance architecture. It then provides brief recommendations for reforms needed to embed a children's rights-based approach in South Africa's climate governance.

## 2 South Africa's current climate change profile

South Africa's children are at high risk of and vulnerable to the impact of the climate crisis. A United Nations Children's Fund (UNICEF) study of 163 countries ranks the country at seventy-second in terms of risk, with water scarcity, soil and water pollution having a particular impact on children affected by poverty and poor nutrition.<sup>9</sup> The South African government acknowledges that a failure to limit the temperature increase to below 2°C will be significant and catastrophic (although projections now indicate that this is a conservative estimate and that the planet will warm up by between 3 and 4°C).<sup>10</sup> On the current trajectory, the South African coast and interior will warm by 1 to 2°C and 2 to 3°C, respectively. The government projects that by 2100, warming will reach around 3 to 4°C along the coast and 6 to 7°C in the interior.<sup>11</sup> The government admits that on these trends, 'life as we know it will change completely'. Parts of the country will become much drier, and increased evaporation will ensure an overall decrease in water availability.<sup>12</sup>

9 UNICEF 'The climate crisis is a child rights crisis: Introducing the children's climate risk index' (2021), <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf> (accessed 1 September 2021).

10 Department of Environmental Affairs National Climate Change Response White Paper 9, [https://www.dffe.gov.za/sites/default/files/legislations/national\\_climate\\_change\\_response\\_whitepaper.pdf](https://www.dffe.gov.za/sites/default/files/legislations/national_climate_change_response_whitepaper.pdf) (accessed 4 January 2023); UNEP 'Emissions gap report 2019' (2019) XIX, 27; J Tollefson 'How hot will Earth get by 2100' *Nature* (web blog) 22 April 2020, <https://www.nature.com/articles/d41586-020-01125-x> (accessed 2 May 2021).

11 Department of Environmental Affairs (n 10). A warmer South Africa risks the failure of crop yields, mainly maize, a staple, and the collapse of the cattle industry. Climatologists also predict infrequent category five cyclones as a result of climate change. South Africa's eastern coastline is currently protected from tropical cyclones in the South Indian Ocean by Madagascar, which currently bears the brunt of these destructive phenomena. The government admits that on these trends, 'life as we know it will change completely'. See J Fitchett 'Recent emergence of CAT5 tropical cyclones in the South Indian Ocean' (2018) 114 *South African Journal of Science* 1 6.

12 South Africans in Cape Town have already had a taste of this dystopian future (raising the spectre of 'Mad Max-style wars'). For two years, from 2016 to 2018, the city of Cape Town sounded the alarm that its dams would not be able to supply water to its residents due to a multi-year drought. 'Day Zero' was coined as residents counted down to the day when taps would run completely dry, leading to enforced rationing. The rains eventually came, and the crisis was averted, but only just. Gauteng Province is projected to have its own 'Day Zero' in the next 10-20 years. Cape Town's experience garnered world-wide attention owing to its size and global visibility. N Millington & S Scheba 'Day Zero and the infrastructures of climate change: Water governance, inequality, and infrastructural politics in Cape Town's water crisis' (2020) 45 *International*

This will significantly affect child health and hamper South Africa's water-intensive economic sectors, such as mining and electricity generation. The country is home to the biggest single-point emitter of carbon dioxide in the world.<sup>13</sup> SASOL's Secunda plant, located in Mpumalanga, emits an estimated 56,5 million tons of greenhouse gases (GHG) annually – exceeding the individual totals of more than 100 nations. Secunda is indicative of South Africa's complex, yet often troubled, relationship with coal. SASOL is also the world's largest producer of coal-to-chemicals and fuels.<sup>14</sup>

Residents living near the plant are acutely aware of the short-term effects of the poor air quality it causes. However, they also appreciate the economic opportunity the plant brings to a country where official figures put unemployment at 35 per cent, the highest globally.<sup>15</sup> Mpumalanga is one of the world's largest air pollution hotspots, with sources including emissions from coal-fired power stations, petrochemical plants, metal smelters and mines.<sup>16</sup> An estimated 10 000 premature deaths occur each year, which are directly attributable to air pollution in the region.<sup>17</sup> The government commissioned two studies in 2016 and 2019, which demonstrated that the emission limits imposed on companies are insufficient, particularly for children. The government inexplicably chose not to disseminate those findings widely.<sup>18</sup> The SASOL study highlighted the limited research on the potential relationship between air quality

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*Journal of Urban and Regional Research* 116; N Shepherd 'Cape Town's "Day Zero" drought: Notes on a future history of urban dwelling' (2021) 24 *Space and Culture* 359.

- 13 M van der Bank & J Karsten 'Climate change and South Africa: A critical analysis of the *Earthlife Africa Johannesburg and Another v Minister of Energy and Others* 65662/16 (2017) case and the drive for concrete climate practices' (2020) 13 *Air, Soil and Water Research* 1; A Pant, M Mostafa & R Bridle 'Understanding the role of subsidies in South Africa's coal-based liquid fuel sector' (2020) *International Institute for Sustainable Development* 1.
- 14 Department of Mineral Resources and Energy 'Coal resources: Overview', [http://www.energy.gov.za/files/coal\\_frame.html](http://www.energy.gov.za/files/coal_frame.html) (accessed 27 October 2024).
- 15 A Squazzin 'The world's biggest emitter of the greenhouse gases' *Bloomberg* (web blog) 17 March 2020, <https://www.bloomberg.com/news/features/2020-03-17/south-africa-living-near-the-world-s-biggest-emitting-plant> (accessed 3 February 2021).
- 16 Children and adolescents in this area are particularly vulnerable to environmental risks such as air pollution exposure, even at low levels, due to their developing organs, such as the lungs and the brain, immune system and metabolic functions, and time spent outdoors, such as walking to school or playing sport. DA Millar and others 'Respiratory health among adolescents living in the Highveld Air Pollution Priority Area in South Africa' (2022) 22 *BMC Public Health* 2136.
- 17 *The Trustees for the Time Being of the Groundwork Trust & Vukani Environmental Justice Alliance Movement in Action v The Minister of Environmental Affairs & Others* (GP) unreported case 39724/2019 (18 February 2021) para 155 (*Deadly Air*).
- 18 This was acknowledged in *Deadly Air* (n 17) para 74; A Squazzin 'Eskom, Sasol pollution harms children, government studies find' *Bloomberg* (web blog) 6 December 2023, <https://www.bloomberg.com/news/articles/2023-12-06/eskom-sasol-pollution-harms-children-government-studies-find> (accessed 7 July 2024).

and related respiratory health outcomes among adolescents in South Africa.<sup>19</sup>

### 3 Historical and contemporary context and the children-climate nexus in South Africa

South Africa's response to the climate crisis must be understood against the background of complex historical and socio-political dynamics that continue to shape contemporary environmental governance.<sup>20</sup> Colonialism and apartheid profoundly disrupted people's relationship with land and nature, dispossessed indigenous communities, and entrenched spatial and socio-economic inequalities that persist today.<sup>21</sup> These historical injustices created patterns of environmental harm and exclusion that disproportionately affect vulnerable populations, including children, and continue to shape how the state and civil society conceptualise and implement climate policy.<sup>22</sup>

Since 1994, successive democratic governments have undertaken substantial legal and institutional reforms aimed at redressing these inequities and promoting environmental justice.<sup>23</sup> Section 24 of the Constitution of the Republic of South Africa, 1996 (Constitution) guarantees everyone the right to an environment that is not harmful to their health or well-being, while section 28 affirms the paramountcy of children's best interests and their rights to basic nutrition, health care and social services. These constitutional guarantees are complemented by an elaborate body of environmental legislation and policy frameworks, including the National Environmental Management Act, the National Climate Change Adaptation Strategy and the Climate Change Act.

Yet, despite these advances, South Africa's climate response has struggled to embed children's rights as a key organising principle of

19 Millar and others (n 16).

20 M Murcott & C Vinti 'The judge-made "duty" to consider climate change in South Africa' (2014) 16 *Journal of Human Rights Practice* 127; M Toxopeus & LJ Kotzé 'Promoting environmental justice through civil-based instruments in South Africa' (2017) 13 *Law, Environment and Development Journal* 49.

21 P Steyn 'The lingering environmental impact of repressive governance: The environmental legacy of the apartheid era for the new South Africa' (2005) 2 *Globalisations* 392.

22 DA McDonald 'Introduction: What is environmental justice' in DA McDonald (ed) *Environmental justice in South Africa* (2002) 1-2; see also I Rawoot 'Decolonising the South African climate movement' *Africa is a Country* (web blog) 16 October 2023, <https://africasacountry.com/2023/10/decolonizing-the-south-african-climate-movement> (accessed 15 August 2025) on situating the climate justice movement within South Africa's class and race politics.

23 Murcott & Vinti (n 20) 126.

its climate response.<sup>24</sup> Climate governance remains dominated by macro-economic and energy policy considerations, particularly the imperative of balancing decarbonisation with economic growth and development.<sup>25</sup> Powerful interests, particularly those tied to coal-based energy production and the Minerals-Energy Complex (MEC), continue to shape national policy, slowing the transition to low-carbon pathways and constraining the integration of rights-based approaches.<sup>26</sup> The MEC has also been described as a 'barrier to the society's balanced development and also a threat of great magnitude to the local and global environment'.<sup>27</sup> Political contestation, capacity constraints and uneven policy implementation further undermine efforts to address the structural vulnerabilities that amplify climate impacts on children.<sup>28</sup>

This context helps explain why children remain largely invisible in South Africa's climate change discourse. Historical patterns of exclusion intersect with contemporary political economy dynamics to marginalise children's voices and interests in environmental governance. As a result, key policy documents rarely mention children explicitly, and mechanisms such as child rights impact assessments or formal participation processes are absent. Understanding this historical and structural background is essential to situating the normative and institutional gaps that this article interrogates and to charting a path towards a climate governance framework that is both rights-based and child-centred.

To properly assess South Africa's domestic legislation and its (in)ability to address children's rights, it must be understood in the context of its overall purpose: to be a liberatory framework addressing the country's centuries-long history of colonialism and apartheid, anchored on environmental justice.<sup>29</sup> Environmental

24 Lethoko (n 3).

25 M Kidd & E Couzens 'Climate change responses in South Africa' in EJ Hollo, K Kulovesi & M Mehling (eds) *Climate change and the law* (2013) 619.

26 B Fine & Z Rustomjee *The political economy of South Africa: From minerals energy-complex to industrialisation* (1996) 71-91; K Sharife & P Bond 'Above and beyond South Africa's mineral's-energy complex' in J Daniel and others (eds) *New South African review 2: New paths, old compromises* (2011) 279-299.

27 Sharife & Bond (n 26) 279.

28 L Baker, P Newell & J Phillips 'The political economy of energy transitions: The case of South Africa' (2014) 19 *New Political Economy* 791.

29 The phrase 'pre-colonial' connotes the period before the 19th and 20th century European colonialism of the area comprising present-day South Africa. The colonial era formally began in 1912 with the annexation of South Africa as part of the British Empire. In 1948, apartheid officially became the policy of the ruling National Party until 1994, when the African National Congress (ANC) won the country's first democratic elections. This historical examination must delineate the pre-colonial, colonial, apartheid and democratic eras. There are valid arguments against the periodisation of South Africa's or Africa's history into epochs related to colonialism. Toxopeus & Kotzé (n 20); O Taiwo 'The idea of

justice denotes the fair and equal access to, use of, and benefit from environmental resources and the natural environment by all people, as well as the equal distribution of environmental pollution.<sup>30</sup> The history of environmental conservation and the dynamics shaping South Africa's climate action today are inextricably linked to its people's relationship to the land which, in turn, was shaped by the authority, perceived or actual, they possessed over it. This exercise is essential because some scholars and well-meaning technocrats in the field tend to misrepresent and obscure Africa's experience and contribution to ecological preservation.<sup>31</sup>

### 3.1 Pre-colonial environmental conservation and its relevance to children's rights and climate action in South Africa

Children are not prominently featured in the literature on environmental histories in South Africa.<sup>32</sup> Their participation in ecological practices is primarily derived from their involvement in community-wide activities aimed at preserving the environment and ensuring group continuity.<sup>33</sup> In pre-colonial African societies, the definition of childhood went beyond the Eurocentric delineation of chronological age underpinning the present framework for children. African societies used appellation or nomenclature, membership of a social group such as an age set or age grade, various initiation and scarification rituals, and outward signs of puberty or sexual maturity to delineate childhood.<sup>34</sup>

The Nguni age-grade system originated partly due to the environmental consequences and natural disasters resulting from a series of migrations.<sup>35</sup> Young men were enlisted into military

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"pre-colonial Africa" is vacuous and wrong' *Aeon* (web blog) 13 January 2023, <https://aeon.co/essays/the-idea-of-precolonial-africa-is-vacuous-and-wrong> (accessed 9 October 2025); O Oni 'In defence of pre-colonial Africa' *Africa is a Country* (web blog) 4 June 2023, <https://africasacountry.com/2023/04/in-defense-of-precolonial-africa> (accessed 9 October 2025).

- 30 C Glinski 'Environmental justice in South African law and policy' (2003) 36 *Law and Politics in Africa, Asia and Latin America* 49.
- 31 VC Kwashirai 'Environmental history of Africa' (2013) *World Environmental History*, <https://www.yumpu.com/en/document/view/27538707/environmental-history-of-africa-eolss> (accessed 10 October 2025).
- 32 McDonald's volume on environmental justice in South Africa does not acknowledge pre-colonial environmental practice or the role of children in ecological conservation. See McDonald (n 22); AA Dipee & MA Klein 'African childhoods and the colonial project' (2010) 35 *Journal of Family History* 4.
- 33 T Alanamu, B Carton & BN Lawrance 'Colonialism and African childhood' in MS Shanguhya & T Falola (eds) *The Palgrave handbook of African colonial and post-colonial history* (2018) 390.
- 34 Alanamu and others (n 33) 391.
- 35 MI Tongwane, TS Ramotubei & ME Moeletsi 'Influence of climate on conflicts and migrations in Southern Africa in the 19th and early 20th centuries' (2022) 10 *Climate* 119.

regiments based on age sets to perform civic and military tasks aimed at containing political and environmental crises, including prolonged droughts and deforestation.<sup>36</sup> Greaves argues that by keeping groups of individuals of a certain age away from their homesteads, the Zulu King, Shaka, could effectively balance reproduction through birth control against the deteriorating environmental conditions caused by overpopulation.<sup>37</sup>

Environmental factors significantly impacted childhood experiences in pre-colonial South African societies. For instance, despite the duty to respect elders, when disasters such as drought diminished young people's birthright, this hierarchical respect could be frayed or breached.<sup>38</sup> Zulu youths rose against the community authorities, protesting the imposition of a poll tax when, in the late nineteenth century, the rinderpest epizootic killed over 90 per cent of the region's cattle.<sup>39</sup> Beinart and Coates observe that among the San people of Southern Africa, women and children were engaged in agrarian practices of guarding crops and scaring animals away.<sup>40</sup>

### 3.2 Apartheid, environmental conservation and children's rights in South Africa

The apartheid period, during which the South African minority white-led government imposed legislated discrimination, has had far-reaching and enduring impacts on how today's society and government approach children's involvement and participation in climate governance. As Steyn observes, in response to the apartheid policy, South Africa was isolated and excluded by the rest of the international community from participating in global environmental initiatives, including the United Nations (UN) Conference on the Human Environment in Stockholm in 1972.<sup>41</sup> This, according to Steyn, was responsible for the apartheid government's inability to keep up-to-date with critical normative changes that occurred in the environmental rights arena in the international arena.<sup>42</sup> However, it is doubtful that South Africa's participation would have had a meaningful impact on the relationship between the environment

36 A Greaves 'The origin and development of Zulu age-sets', [https://www.anglozuluwar.com/images/Journal\\_12/The\\_origin\\_and\\_development\\_of\\_Zulu\\_age\\_sets\\_1\\_.pdf](https://www.anglozuluwar.com/images/Journal_12/The_origin_and_development_of_Zulu_age_sets_1_.pdf) (accessed 10 October 2025).

37 As above.

38 T Alanamu, B Carton & BN Lawrance 'Colonialism and African childhood' in Shanguhya & Falola (n 33) 393.

39 As above.

40 W Beinart & P Coates *Environment and history the taming of nature in the USA and South Africa* (1995) 19.

41 As above.

42 As above.

and its non-white population.<sup>43</sup> Conservation came to be seen by black South Africans as the preserve of 'particular races, specifically whites, and persons belonging to the "upper class" such as the elite and those in positions of power or authority'.<sup>44</sup> During this period, children were relegated from an active to a passive interaction with their environment.<sup>45</sup> The avenues for children's participation in environmental utilisation and conservation, such as the age-grade/set system, were closed.<sup>46</sup> The introduction of a cash economy required young people to make their labour available to their parents or their parents' employers for subsistence, radically altering children's relationship with society and the land.<sup>47</sup> Children who could previously literally live off the land had to fend for themselves on township streets or in the hostile rural areas to which colonial and apartheid governments had forcibly relocated them.<sup>48</sup> Further, Khan observes that the inhibiting effect of 'Bantu education' on the development of African children also had consequences for the environmental sector since the resultant widespread illiteracy and semi-literacy presented a major obstacle to the development of an aware, informed public, able and willing to participate in environmental decision making.<sup>49</sup> This historical marginalisation of children's agency in relation to land and environment under colonialism and apartheid continues to shape their present-day invisibility in South Africa's climate governance frameworks.

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- 43 F Khan 'The roots of environmental racism and the rise of environmental justice in the 1990s' in McDonald (n 22) 15-48.
- 44 As above.
- 45 See ME Patterson 'Constructions of childhood in apartheid's last decades' PhD thesis, University of Michigan, 2009 28-29 for the assertion that 'prevailing social order among Africans in pre-apartheid South Africa was rooted in the possession of land. Previously, the authority of the older generations had derived from the body of survival skills and knowledge they possessed and were able to hand on to the succeeding generations. With the change in environment from essentially subsistence farming to that of the resettlement area, many of these skills became relatively unimportant or obsolete.'
- 46 S Moses 'Child participation in South Africa: An overview' (2008) 16 *International Journal of Children's Rights* 327.
- 47 Harare Working Group 'Children, apartheid and repression in South Africa' (1987) 24, <https://www.aamarchives.org/archive/who-was-involved/professional-groups/pro22-children-apartheid-and-repression/download.html> (accessed 2 September 2025).
- 48 E Atmore 'Apartheid and South Africa's children' (1992) 6, <https://files.eric.ed.gov/fulltext/ED365441.pdf> (accessed 9 October 2025). As recently as 1987, there was considerable evidence of the widespread practice of child labour, particularly, but not exclusively, in agriculture, in return for some form of payment, either in cash or in kind. According to the Department of Employment and Labour, 70% of all children engaged in child labour were in agriculture, and this is the only sector in recent years that has seen an increase in child labour. See Department of Employment and Labour 'Acting together to eliminate child labour in agriculture', <https://www.labour.gov.za/acting-together-to-eliminate-child-labour-in-agriculture#:~:text=Acting%20together%20to%20eliminate%20child%20labour%20in%20agriculture&text=A%20total%20of%2070%20percent,the%20Elimination%20of%20Child%20Labour> (accessed 9 October 2025).
- 49 Khan (n 43) 21.

### 3.3 Democratic South Africa, children and the environment

South Africans would, through felling apartheid, create the enabling political space for civil society to expand their advocacy to include environmental justice as part of democratic South Africa's cornerstones.<sup>50</sup> According to Khan, 'the traditional notion that equated "conservation" with the protection of wildlife and the preservation of the natural environment began to give way to a more holistic approach embracing economic and political aspects as well as ecological concerns'.<sup>51</sup>

Civil society demanded that environmental issues be considered in relation to the basic needs of human beings and that human beings' rights to a clean, safe and healthy environment be recognised as a legitimate environmental goal.<sup>52</sup> Democratic South Africa saw the beginning of the application of a CRBA to children's issues, with a shift from the violence of apartheid to the strong protections of the Constitution and state organs. However, children's rights and the environment remain underexplored by both civil society and the state.<sup>53</sup>

Despite the numerous health risks associated with climate change for South Africa's children and adolescents, the Department of Environmental Affairs' National Climate Change Adaptation Strategy does not mention children at all.<sup>54</sup> Although the National Department of Health's draft National Climate Change and Health Adaptation

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- 50 Khan (n 43) 28; Z Patel 'Environmental justice in South Africa: Tools and trade-offs, social dynamics' (2009) 35 *Journal of African Studies* 94-95.
- 51 Khan (n 43) 28; AA du Plessis 'The "brown" environmental agenda and the constitutional duties of local government in South Africa: A conceptual introduction' (2015) 18 *Potchefstroom Electronic Law Journal* 1846.
- 52 The democratic government regarded poverty and the environment as closely entwined and sought to deliver on pressing environmental basic needs; T Lieman 'Environmental policy and the state in post-apartheid South Africa' in H Bhorat and others (eds) *The Oxford companion to the economics of South Africa* (2014) 401. See also Khan (n 43) 28.
- 53 TL Mosikatsana 'Children's rights and family autonomy in the South African context: A comment on children's rights under the final Constitution' (1998) 3 *Michigan Journal of Race and Law* 341. The environmental agenda of community-based organisations and environmental NGOs targeting the poor revolves mainly around basic needs or 'brown' issues rather than the 'green' issues traditionally associated with the environmental movement. Democratic South Africa's environmental legislation, in theory, is directed at meeting basic human needs and realising environmental rights. This integration is a central idea in the grassroots movement fuelled by the growing contradiction between the discourse of rights and the experience of unmet needs. Khan (n 43); Du Plessis (n 51).
- 54 HA Rother, S Wijesekera & F Ward 'The impact of the environment on South Africa's child and adolescent health: An overlooked health risk' (2019) 171, [https://ci.uct.ac.za/sites/default/files/content\\_migration/health\\_uct\\_ac\\_za/533/files/CG2019%2520-%2520%25289%2529%2520The%2520impact%2520of%2520the%2520environment%2520on%2520SA%2520child%2520and%2520adolescent%2520health.pdf](https://ci.uct.ac.za/sites/default/files/content_migration/health_uct_ac_za/533/files/CG2019%2520-%2520%25289%2529%2520The%2520impact%2520of%2520the%2520environment%2520on%2520SA%2520child%2520and%2520adolescent%2520health.pdf) (accessed 30 July 2025).

Plan (2020-2024) mentions children, it does not recognise that children's vulnerability and exposure to risk factors require targeted interventions and strategies. As this article argues, climate action for children in South Africa must be based on a sound understanding of the country's history and an analysis of the conditions of those previously institutionally and structurally alienated from the environment.<sup>55</sup> With that background, this study assesses South Africa's domestic framework on children's rights in the context of climate change.

#### 4 Normative framework for children's rights in South Africa

South Africa's tumultuous political history of colonialism and apartheid, with the attendant gross human and children's rights violations, provided the foundation for enacting what scholars and activists considered one of the most progressive constitutions in Africa.<sup>56</sup> For children, especially, the 1996 Constitution was a watershed moment, marking the first time that children's rights were robustly and comprehensively recognised by what has been described as 'a powerful children's rights clause',<sup>57</sup> in the express language of the country's Constitution.<sup>58</sup> Section 28 partly provides as follows:

Every child has the right –

- (a) to a name and a nationality from birth;
- (b) to family care or parental care, or to appropriate alternative care when removed from the family environment;

<sup>55</sup> Patel (n 50) 98.

<sup>56</sup> Mosikatsana (n 53).

<sup>57</sup> A Skelton 'South Africa' in T Liefwaard & JE Doek (eds) *Litigating the rights of the child* (2015) 13. One of the more remarkable features of South Africa's journey to constitutionalise children's rights is the role of children in laying the foundation for what became sec 28. South Africa's children have a long tradition of holding government accountable, demanding that their rights be recognised even during the perilous period of apartheid, as in the Soweto uprising and during the transition to democracy. This informs the recognition of children's rights in the country, which has established itself as a leader in developing children's rights jurisprudence on the continent. African Children's Committee 'About Day of the African Child', <https://www.acerwc.africa/en/page/about-day-african-child> (accessed 10 October 2025).

<sup>58</sup> What followed was a feat of legal innovation (from both the bar and the bench) as South African courts have given effect to these constitutional provisions on various issues. Before this new dispensation, children's rights in South Africa were primarily guaranteed through statutes, case law and international treaties but without the formal, express recognition of specific rights as is the case today. See W Binford 'The constitutionalisation of children's rights in South Africa' (2016) 60 *NYLS Review* 333.

- (c) to basic nutrition, shelter, basic health care services and social services;
- (d) to be protected from maltreatment, neglect, abuse or degradation;
- (e) to be protected from exploitative labour practices;
- ...
- (i) not to be used directly in armed conflict, and to be protected in times of armed conflict.

The provision does not contain explicit environmental or climate change protections. Nevertheless, the requirement to provide *socio-economic* and political services to children leads to the inevitable conclusion that the environment, including the climate system, must be protected. A study on South Africa found that for poorer segments of the population, productivity and wages decline as temperatures increase.<sup>59</sup> In comparison, the impact on richer segments is less significant due to their greater adaptive capacity.<sup>60</sup>

Thus, climate action cannot be 'a marginal concern' or one on a 'long laundry list' of issues on the government's agenda for children.<sup>61</sup> The South African Constitutional Court has acknowledged the inextricable link between economic, social and human development and the environment, albeit through an anthropocentric lens.<sup>62</sup>

In other words:<sup>63</sup>

Economics and ecology must be completely integrated in decision-making and law-making processes not just to protect the environment, but also to protect and promote development. Economy is not just about the production of wealth, and ecology is not just about the protection of nature; they are both equally relevant for improving the lot of humankind.

Given their importance as pillars of the children's rights framework and as interpretative tools, the guiding principles of non-discrimination, the best interests of the child, child participation, access to information, impact assessment, and the right to life, survival and

59 S Dasgupta, J Emmerling & S Shayegh 'Inequality and growth impacts of climate change – Insights from South Africa' (2023) 18 *Environmental Research Letters* 124005.

60 As above.

61 Human Rights Council (n 6) para 16.

62 *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province & Others* (CCT67/06) [2007] ZACC 13; 2007 (6) SA 4 (CC); 2007 (10) BCLR 1059 (CC) para 44.

63 As above.

maximum development will provide the framework through which South Africa's climate change legislation is analysed. These principles are drawn from CRC, the African Children's Charter, to which South Africa is a signatory, and the country's domestic framework. They represent the foundational obligations that states must integrate into all actions affecting children, thereby providing the normative yardstick against which South Africa's climate framework is assessed.<sup>64</sup>

#### 4.1 Non-discrimination

The principle of non-discrimination is prominently enshrined in South Africa's legal system as one of the pillars of the country's democratic dispensation. South Africa's 1996 Constitution prohibits discrimination on a comprehensive list of grounds, including age.<sup>65</sup> It decrees that everyone is equal before the law.<sup>66</sup> Some protections against discrimination are also included in the Children's Act, albeit less comprehensively.<sup>67</sup>

In the context of climate change in South Africa, this principle has substantive and procedural relevance. It is vital to ensure climate change-related decisions are reached as fairly and justly as possible. Having been systematically excluded from any decision-making process, including those concerning the environment, procedural fairness is crucial to ensure that children's voices are included in implementing South Africa's climate action.<sup>68</sup> In this regard, the anti-discriminatory provisions and legislation must be read in conjunction with the Promotion of Administrative Justice Act 3 of 2000 (PAJA), which is designed to give effect to the right to administrative action

64 Recent analyses have tended to discuss these general principles as part of rights that will be affected by climate change. Nonetheless, the principles retain their status as cross-cutting interpretative tools of CRC. Eg, see African Children's Committee (n 4). For the overarching status of the principles, see L Lundy & B Byrne 'The four general principles of the United Nations Convention on the Rights of the Child: The potential value of the approach in other areas of human rights law' in E Brems, E Desmet & W Vandenhole (eds) *Children's rights law in the global human rights landscape: Isolation, inspiration, integration?* (2017) 52-70. For a discussion of the interpretative potential of the four pillars, see, eg, African Children's Committee General Comment 5 on state party obligations under the African Charter on the Rights and Welfare of the Child (art 1) and systems strengthening for child protection' ACERWC/GC/05 (2022); GM Quan 'Understanding the right to education under the African Charter on the Rights and Welfare of the Child, within the four pillars of interpretation' (2024) 24 *African Human Rights Law Journal* 502.

65 The Constitution of the Republic of South Africa, 1996 sec 9(3).

66 As above.

67 Beyond a reference to the protection from discrimination as one of the Act's objects and a prohibition of discrimination 'on any ground, including on the grounds of health status, or disability of the child or a family member of the child', the Act offers little guidance regarding the state's obligations to children in this regard.

68 Moses (n 46).

that is lawful, reasonable and procedurally fair.<sup>69</sup> Climate action decisions must be made in a procedurally fair manner, giving those affected an opportunity to provide their input.<sup>70</sup>

The South African government must provide a platform for children to participate and be heard in the formulation of climate governance architecture if it is to meet the procedural test for non-discrimination.<sup>71</sup> In a case determining the procedural fairness of a decision with the potential to impact the climate system, the South African High Court has held that the climate change impacts of a proposed coal-fired power station are 'a relevant factor' that the relevant minister should consider in a decision to approve or deny a permit in terms of the National Environmental Management Act 107 of 1998 (NEMA). As procedural fairness is fundamental to non-discrimination, the judgment reinforces the obligation to include vulnerable groups, including children, in climate governance decisions.<sup>72</sup>

Substantively, the South African government must ensure that its climate response is non-discriminatory in its outcome.<sup>73</sup> The South African High Court has recognised that children, especially those with pre-existing conditions such as asthma, are particularly vulnerable to high air pollution concentrations.<sup>74</sup> The air pollution in some parts of the country is responsible for premature deaths, decreased lung function, deterioration of the lungs and heart, and the development of diseases such as asthma, emphysema, bronchitis, tuberculosis and cancer.<sup>75</sup>

The non-discriminatory impact or outcome of the government's climate change policies must be measured through a child rights impact assessment.<sup>76</sup> It requires the consistent collation and collection of disaggregated data regarding children. The fact that children in rural areas in Mpumalanga suffer more from pollution despite air quality regulations than their urban counterparts speaks

69 See Long Title of the Promotion of Administrative Justice Act 3 of 2000.

70 JCN Ashukem 'Setting the scene for climate change litigation in South Africa: *EarthLife Africa Johannesburg v Minister of Environmental Affairs and Others* [2017] ZAGPPHC 58 (2017) 65662/16' (2017) 13 *Law Environment and Development Journal* 35.

71 Moses (n 46); RLK Ozah & RD Nanima 'Article 3, non-discrimination' in J Sloth-Nielsen, E Fokala & G Odongo (eds) *The African Charter on the Rights and Welfare of the Child: A commentary* (2024) 37-55.

72 *EarthLife Africa Johannesburg v Minister of Environmental Affairs & Others* 2013 (4) SA 463 (GP).

73 Ozah & Nanima (n 71).

74 *Deadly Air* (n 17) para 35.

75 As above.

76 African Children's Committee (n 4).

to the government's failure to meet its obligations. The fact that the government attempted to limit the dissemination of reports on this exact issue in the Vaal and Mpumalanga is also concerning.<sup>77</sup> It illustrates the weakness of South Africa's climate change laws and the absence of the government's political will to address the discriminatory impact on children of its acts and omissions in the context of climate change.<sup>78</sup>

#### 4.2 The best interests of the child

South Africa's Constitution is unique in constitutionalising the best interests principle, and the text of section 28 mirrors that of CRC. Section 28(2) provides that the child's best interests 'are of paramount importance'. The use of 'paramount' in section 28(2) denotes a higher protection standard.<sup>79</sup> The principle is considered a 'right' and an interpretative tool.<sup>80</sup> The principle has been used to measure the adequacy of children's rights protections, especially in the absence of set standards (or where standards are evolving) as they are with the climate change regime. However, interpretation should be within the limits of legislative and judicial prudence.<sup>81</sup>

This principle affords children two layers of protection. First, a child's best interests must be prioritised in every matter affecting the child.<sup>82</sup> Second, the principle guides the interpretation of any other constitutional rights, including the right to the environment. Kaime argues that the principle is relevant for environmental rights in two fields: the design of government policy making, which applies to all children as a group, and decisions made about children individually.<sup>83</sup>

77 Squazzin (n 18).

78 H Papaconstantis 'South Africa's journey to climate change regulation: *EarthLife Africa Johannesburg v Minister of Environmental Affairs* 2017 2 All SA 519 (GP) (2021) 24 *Potchefstroom Electronic Law Review* 1.

79 A Skelton 'Too much of a good thing? Best interest of the child in South African jurisprudence' (2019) *De Jure* 557.

80 As above.

81 In *S v M* the Constitutional Court observed that the best interests principle is not an 'overbearing and unrealistic trump of other and cannot be interpreted to mean that the direct or indirect impact of a measure or action on children must in all cases oust or override all other considerations'. *S v M* (CCT 53/06) [2007] ZACC 18; 2008 (3) SA 232 (CC) paras 25-26. See also Skelton (n 79) 565. In a decision determining the horizontal application of constitutional obligations, the Court has also held that the best interests principle is not without its limitations and should not be taken without qualification. Appropriate weight must be given in each case to a consideration to which the law attributes the highest value, namely, the interests of children concerned. The South African Constitutional Court has stated that there should be no pre-determined formula when adjudicating children's best interests and that applying the principle should be done 'on an individual basis'.

82 T Kaime 'Children's rights and the environment' in U Kilkelly & T Liefwaard (eds) *International human rights of children* (2018) 563.

83 As above.

The South African Constitutional Court has used this principle to plug a normative constitutional gap, such as when the Constitution did not specifically address whether minors aged 16 to 17 are subject to minimum sentence legislation.<sup>84</sup> The best interests standard was then applied to decide that minimum sentence legislation for minors was unconstitutional.<sup>85</sup> In this sense, it is argued that the principle can and should be applied by courts to address children's exclusion from the normative framework of climate governance in South Africa.

Boshoff rightly argues that, as a rule of interpretation, the best interests principle requires that all the rights affected by climate change – and it is difficult to imagine which rights will not be – must be construed in such a manner that serves children's best interests.<sup>86</sup> CRC, the African Children's Charter and the South African Constitutional Court have all highlighted the interdependence of children's rights.<sup>87</sup> Because climate change will, directly and indirectly, affect all the rights guaranteed to South Africa's children under the Constitution, any response to this phenomenon should, as a matter of law, consider the best interests principle.<sup>88</sup> South Africa's government is duty-bound to address climate change with the urgency and thoroughness it requires, as it is in the best interests of its children to do so: It guarantees their survival, protection, and development.<sup>89</sup>

Children's best interests are not served by unbridled greenhouse gas emissions, which the government has admitted will be catastrophic for their health and their ability to live on a habitable planet.<sup>90</sup> Furthermore, any decision-making process that fails to consider how children alive today will be affected by the South African government's inaction or inadequate response to climate change that does not account for the best interests of children. In other words, state actions and omissions that threaten children's rights, such as failing to mitigate climate change-induced children's rights violations or actively pursuing measures that contribute to environmental spoliation or the inappropriate exploitation of natural

84 *Centre for Child Law v Minister of Justice and Constitutional Development & Others* (CCT98/08) [2009] ZACC 18; 2009 (2) SACR 477 (CC); 2009 (6) SA 632 (CC); 2009(11) BCLR 1105 (CC).

85 Skelton (n 79).

86 E Boshoff 'The best interest of the child and climate change adaptation in sub-Saharan Africa' in M Addaney, MG Nyarko & E Boshoff (eds) *Governance, human rights, and political transformation in Africa* (2020) 359-386.

87 *De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) & Others* 2004 (1) SA 406 (CC); 2003 (12) BCLR 1333 (CC) para 55.

88 African Children's Committee (n 64) 11-12.

89 Boshoff (n 86).

90 As above.

resources, or failing to take adequate action to adapt to climate change, violate the best interests of the child standard.<sup>91</sup>

The applicants raised this principle, albeit superficially, in *The Trustees for the Time Being of the Groundwork Trust & Vukani Environmental Justice Alliance Movement in Action v The Minister of Environmental Affairs & Others (Deadly Air case)*.<sup>92</sup> The applicants contended that the enduring and unsafe levels of air pollution in the Highveld Priority Area violated section 24(a) and the right to have children's best interests considered paramount in every matter concerning the child.<sup>93</sup> Unfortunately, the Court did not address the application of the best interests principle in its final analysis of this case.

### 4.3 Child participation

South African children have never needed an invitation to participate in addressing the pressing needs of their society, whether political or ecological.<sup>94</sup> Their participation in the climate response processes should be viewed from the perspective of this long tradition of active citizen engagement. It speaks to fulfilling their duties to society and their communities as recognised under the African Children's Charter.<sup>95</sup> While these duties are not explicitly outlined in the Constitution, they are reflected in the ubuntu ethic that permeates the country's normative framework, mediating the relationships between children and other living and non-living members of South African society.<sup>96</sup> Nkrumah observes that, in general, the South African state and society have offered children and young people

91 Kaime (n 82).

92 *Deadly Air* (n 17).

93 See para 76. The decision is considered in detail in the section discussing the National Environmental Management: Air Quality Act.

94 On 16 June 1976, during the Soweto student uprising, over 20 000 children and students marched, protesting the poor-quality education they received and demanding to be taught in their home languages. During the protest, hundreds of schoolchildren were killed. That day is commemorated annually as the Day of the African Child. See H Tin 'Children in violent spaces: Reinterpretation of the 1976 Soweto uprising', <http://www.ninaoghjalte.dk/downloads/forskning/10.pdf> (accessed 10 October 2025); for detailed discussions, see MW Ndlovu *#FeesMustFall and youth mobilisation in South Africa: Reform or revolution?* (2017); A Heffernan *Limpopo's legacy: Student politics and democracy in South Africa* (2019); E Bridger *Young women against apartheid: Gender, youth and South Africa's liberation struggle* (2021).

95 See African Charter on the Rights and Welfare of the Child, OAU Doc CAB/LEG/24.9/49 (1990) art 31. See also J Sloth-Nielsen & BD Mezmur 'A dutiful child: The implications of article 31 of the African Children's Charter' (2008) 52 *Journal of African Law* 159-189; see also African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3 rev 5, 21 ILM 58 (1982) arts 28 & 29.

96 Ndlovu (n 94) 38 observes that that young people in South Africa today are still interested in the country's political public sphere and opposes their portrayal as politically ignorant, cynical and apathetic.

limited opportunities to participate or have 'a say in the decisions that affect their lives', especially in the context of climate change.<sup>97</sup> The South African Constitution understandably does not contain a provision on child participation as matters of this nature are often left for subsidiary legislation, in this case, the Children's Act. The Children's Act provides for the right of a child to participate in all matters that affect them in accordance with their age, maturity and stage of development. It requires the child's views to be given due consideration.<sup>98</sup> The phrase 'in all matters' calls for a mechanism that ensures that children are neither passive victims of climate change nor uninterested spectators to climate action.

The African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has elaborated on the criteria to be met to ensure children's meaningful participation.<sup>99</sup> The participation mechanisms should be transparent, voluntary, respectful, relevant, child-friendly, inclusive, supported by adult training, safe and sensitive to risk, and accountable.<sup>100</sup> Children's views must be part and parcel of any decision-making process in the personal and public sphere as a matter of right. It is a core principle of South Africa's NEMA that participation of *all interested and affected parties*, particularly those that are vulnerable and disadvantaged in environmental governance, must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation.<sup>101</sup>

NEMA also notes that the vital role of 'women and the youth', an inelegant classification often interpreted to include children, in environmental management and development must be recognised and their full participation promoted.<sup>102</sup> Some studies indicate that in South Africa, many children understand some of the basic principles of climate change. According to a UNICEF survey, some children can accurately describe the direct causes of climate change, such as the burning of fossil fuels and the release of greenhouse gases.<sup>103</sup> Efforts to include children in policy and legislative-making

97 B Nkrumah 'Beyond tokenism: The "born frees" and climate change in South Africa' (2021) 1 *International Journal of Ecology* 1.

98 Children's Act 35 of 2008 sec 10 provides that '[e]very child that is of such an age, maturity and stage of development as to be able to participate in an appropriate way and views expressed by the child must be given due consideration'.

99 African Children's Committee 'Guidelines on child participation' (2022), [https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation\\_English.pdf](https://www.acerwc.africa/sites/default/files/2022-10/ACERWC%20Guidelines%20on%20Child%20Participation_English.pdf) (accessed 18 June 2025).

100 African Children's Committee (n 64).

101 National Environmental Management Act 107 of 1988 sec 2(4)(f).

102 As above.

103 UNICEF 'Climate change through the eyes of a child: South African children speak about climate change' (2011) 6-8.

processes, not just on climate action but on all other fronts, however, are still uncoordinated.<sup>104</sup> The CRC Committee has recommended that implementing this principle may be achieved through children's hearings, children's parliaments, child-led organisations, children's unions or other representative bodies, as well as discussions at school, among other means.<sup>105</sup>

The PAJA enhances the requirement for child participation.<sup>106</sup> The PAJA can be used to enhance the implementation of children's rights in the context of climate change by requiring procedural fairness and providing written reasons for decisions with climate change impacts.<sup>107</sup> Its relevance might be undermined by a vague understanding and awareness of the law prevailing within government and civil society.<sup>108</sup> One government study found that the implementation of the PAJA is not being prioritised or adequately addressed by government departments.<sup>109</sup> So far, the PAJA has been used in a manner that demonstrates its potential primarily as a shield against actions by both private and public officials related to corporal punishment in schools and immigration.<sup>110</sup> The PAJA has so far been used in litigation by campaigners and advocates to overturn the authorisation of coal-powered projects that could have potentially increased greenhouse gases.<sup>111</sup> The petitioners argued that the authorities had not taken into account all relevant factors, including the climate impacts of these projects before they were approved.<sup>112</sup>

104 Nkrumah (n 97).

105 Committee on the Rights of the Child General Comment 12 (2009) The right of the child to be heard CRC/C/GC/12 (2009) para 134; Human Rights Council 'Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment' A/HRC/37/58 (2008) para 49.

106 The PAJA seeks to create a culture of accountability, openness and transparency in public administration in the exercise of public power or in the performance of a public function.

107 Promotion of Administrative Justice Act 3 of 2000 secs 3(2)(b)(v), 4(2)(b)(iii) & 5.

108 Public Service Commission 'Compliance with the Promotion of the Administrative Justice Act, 2000 [Act No 3 of 2000]' (2017), [https://www.psc.gov.za/documents/2007/K-5337\\_PSC\\_Admin%20Justice\\_DevV15.pdf](https://www.psc.gov.za/documents/2007/K-5337_PSC_Admin%20Justice_DevV15.pdf) (accessed 10 October 2025).

109 As above.

110 *Centre for Child Law & Others v South African Council for Educators & Others* (1289/2022) [2024] ZASCA 45 para 27; *ZH & Others v Minister of Home Affairs & Another* (15279/2021) [2022] ZAWCHC 150; *Centre for Child Law & Others v South African Council for Educators (GP)* unreported case 61630/2020 (17 December 2021); *Wycliffe Simiyu & Others v Minister of Home Affairs* 2010 (2) SA 555 (CC); *PPM & Others v Minister of Home Affairs & Others* (14238/21) [2024] ZAGPPHC 2.

111 *Murcott & Vinti* (n 20).

112 As above.

#### 4.4 Access to information

Children's participation in climate action/response processes follows their ability to access and process the requisite information or data.<sup>113</sup> Climate literacy is related to children's right to freedom of expression and the ability to seek, receive and impart information and ideas.<sup>114</sup> Access to and assessment of information allow individuals to understand the effect of climate change on their rights.<sup>115</sup> South Africa's climate action will undoubtedly depend on how well its people, particularly its children, understand the nature, scale and scope of the problem.

In a 2022 study of children from 14 public schools in low-income areas of the resource-rich Western Cape province, 72 per cent of them correctly linked climate change to higher temperatures.<sup>116</sup> However, only 60 per cent identified climate change's anthropogenic origins. According to the study, 'a few learners' indicated that they were affected by the impact of climate change, even though 72,9 per cent of them reported difficulties concentrating during hot weather.<sup>117</sup> Twenty per cent of the learners believed that climate change was not a serious issue and that mitigation measures were not required.<sup>118</sup>

The African Children's Committee has urged states to provide necessary information in a friendly format to children, facilitating their participation, including in the context of climate change.<sup>119</sup> Currently, the South African government and civil society are implementing several environmental education programmes, mostly focused on persistent droughts and flooding.<sup>120</sup> One of these programmes is the eco-schools programme, aimed at promoting environmental literacy in schools and their surrounding communities, and supporting the incorporation of Education for Sustainable Development (ESD) into the national school curriculum.<sup>121</sup> Over 1 100 schools in South Africa are participating in the programme, whose themes include water,

113 African Children's Committee (n 64) 14.

114 A Kutywayo and others 'Climate change knowledge, concerns and experiences in secondary school learners in South Africa' (2022) 14 *Jamba* 1162.

115 As above.

116 As above.

117 As above.

118 As above.

119 African Children's Committee (n 99) 11.

120 EM Nkoana 'Exploring the effects of an environmental education course on the awareness and perceptions of climate change risks among seventh and eighth-grade learners in South Africa' (2020) 1 *International Research in Geographical and Environmental Education* 1.

121 C Dzerefos 'Reviewing education for sustainable development practices in South African eco-schools' (2020) 26 *Environmental Education Research* 1621.

waste, energy, nature and biodiversity, lifestyle and healthy living, transportation and climate change.<sup>122</sup>

As it stands, South Africa will likely miss the Sustainable Development Goals (SDGs) on climate change education and education commitments made in the Lima Declaration on Education and Awareness on Climate Change and the Paris Agreement.<sup>123</sup> This is not necessarily a deficiency of the normative framework, but of its implementation. South African formal schooling curricula should feature more environmental education content that allows time for teachers and learners to conduct outdoor experiential learning on environmental issues.<sup>124</sup>

In South Africa, the media and schools remain the primary sources of information on climate change.<sup>125</sup> However, given its focus on short-term news cycles, it is doubtful if this can sustainably engage children over the issues affecting them. Therefore, the South African government must regularly update and disseminate climate-related information, providing affordable, effective and timely access to this information held by public authorities. Regarding the failure to publicise its findings on the Highveld Priority Area, the High Court observed:<sup>126</sup>

The Minister's initial failure to disclose her own department's findings and recommendations is contrary to the special duties of transparency that are imposed on organs of state in constitutional litigation. Organs of state are duty-bound to assist the courts by providing a full and frank account of the material facts where constitutional rights are at risk.

The South African Constitution guarantees freedom of expression, including the freedom of the press and other media, as well as the freedom to receive or impart information or ideas to everyone, including children.<sup>127</sup> The absence of regularly updated official

<sup>122</sup> Nkoana (n 120).

<sup>123</sup> Kutywayo and others (n 114).

<sup>124</sup> Nkoana (n 120) 13.

<sup>125</sup> BBC World Service Trust 'South Africa talks climate: The public understanding of climate change' (2010), <https://assets.publishing.service.gov.uk/media/57a08b02ed915d622c000a43/08-South-Africa-Talks-Climate.pdf> (accessed 15 September 2021).

<sup>126</sup> *Deadly Air* (n 17) para 182. This is a call that the CRC Committee has repeatedly made to South Africa in its Concluding Observations. In 2000 the Committee found that the country's current data collection mechanism does not provide sufficient data to monitor progress on the impact of policies adopted concerning children. It made the same observation in 2016, lamenting the absence of disaggregated data. See Concluding Observations: South Africa, Committee on the Rights of the Child (22 February 2000) UN Doc CRC/C/15/Add122 (2000) para 14; Concluding Observations on the second periodic report of South Africa, UNCRC (7 October 2016) UN Doc CRC/C/ZAF/CO/2 paras 10 & 13.

<sup>127</sup> Case 39724/2019 (n 126) paras 182-183.

disaggregated data on the impact of climate change and climate action on South Africa's children is a glaring omission on the government's part and a failure to meet its obligations.

The South African government's failure to provide official updated disaggregated data on children, their rights and climate change is a breach of international law.<sup>128</sup> Such data enable stakeholders, primarily the state, to compare population groups and understand the specific situations of these groups. This information is indispensable to holding the government of South Africa accountable for its climate action priorities.<sup>129</sup> This obligation has its premise in article 29 of CRC, but lacks a corresponding provision in South African law. Climate change will radically alter the planet and our way of life. Children, especially, need to be equipped for what lies ahead through the provision of the necessary and appropriate information.<sup>130</sup>

The UN recommends that environmental education be introduced early in the child's educational process.<sup>131</sup> The same applies to climate-related education. Education should link environmental and sustainable development issues with socio-economic, socio-cultural and demographic issues.<sup>132</sup>

#### 4.5 Impact assessment

Access to information is closely related to the need to conduct an environmental impact assessment (EIA) and a climate impact assessment. An EIA is a procedure used to guide decision making, provide decision makers with information on the environmental consequences of proposed activities, and require decisions to be influenced by that interpretation.<sup>133</sup> EIA is a principle and obligation of international and national environmental law.<sup>134</sup> In South Africa, EIAs are required by law before any project that may harm the environment

<sup>128</sup> As part of the 2030 Agenda, states have explicitly reaffirmed their commitment to international law and emphasised that the Agenda is to be implemented in a manner that is consistent with their rights and obligations under international law. To achieve these goals, states pledged to avail more systematic data disaggregation. See OHCHR 'A human rights-based approach to data: Leaving no one behind in the 2030 for sustainable development' (2018), <https://www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf> (accessed 10 October 2025).

<sup>129</sup> African Children's Committee (n 99) 11.

<sup>130</sup> As above.

<sup>131</sup> Human Rights Council (n 105) para 15.

<sup>132</sup> Children's Environmental Rights Initiative 'Children's rights and the environment: guidance on reporting to the Committee on the Rights of the Child' (2020), <https://resourcecentre.savethechildren.net/pdf/cre.pdf/> (accessed 10 October 2025).

<sup>133</sup> P Sands & J Peel *Principles of international environmental law* (2012) 602.

<sup>134</sup> As above.

is conducted under the Environmental Conservation Act and the NEMA. For children's rights, this law requires that environmental impact assessments be conducted before activities that significantly affect the environment are undertaken. The authorities must account for 'all relevant considerations'. A purposive reading of the law, such as that adopted by the High Court in *Thabametsi*, in conjunction with the provisions of the Climate Change Act, leads to the conclusion that children's rights must be included in those assessments.<sup>135</sup> Two other tools are emerging as crucial mechanisms to measure the impact of climate change, specifically on children's rights: climate impact assessments and child rights impact assessments. The African Children's Committee Working Group on Children's Rights and Climate Change Action has urged state parties to 'conduct climate impact assessments on children's rights and develop data collection methods that are accurate, standardised, and disaggregated, as well as data collection techniques that accurately identify children's climate risks so that policy can respond adequately to such risks'.<sup>136</sup> A climate change impact assessment is a systematic process designed to identify, analyse and evaluate the climate effects of proposed projects, ensuring that these impacts and considerations are factored into project decision making.<sup>137</sup> A child rights impact assessment (CRIA) predicts the impact of any proposed law, policy or budgetary allocation that affects children.<sup>138</sup>

The CRIA should be used to *complement* ongoing monitoring and evaluation of the impact of measures on children's rights. It needs to be built into government processes at all levels and as early as possible in developing policy and other general measures to ensure good governance for children's rights as a measure to realise the child's best interests. Because they are not required by South African legislation, CRIAs are not mandatory and, as a result, children are often overlooked in the preparation of government policy and legislation.

South African legislation, particularly the Climate Change Act, requires a climate impact assessment (CIA) to be done.<sup>139</sup> The Climate

<sup>135</sup> National Environmental Management Act 107 of 1998 sec 23(2)(b).

<sup>136</sup> African Children's Committee Resolution No 18/2022 of the ACERWC Working Group on Children's Rights and Climate Change to Integrate a Child Rights-Based Approach Into Climate Change Action' (2022) IV & V.

<sup>137</sup> S Agrawala and others 'Incorporating climate change impacts and adaptation in environmental impact assessments: Opportunities and challenges' (2010) 24 *OECD Environmental Working Paper* 1.

<sup>138</sup> S Mukherjee, K Pothong & S Livingstone 'Child Rights Impact Assessment: A tool to realise child rights in the digital environment' (2021).

<sup>139</sup> See Climate Change Act 7 of 2024 sec 17 on climate impact assessments for provinces and municipalities.

Change Act integrates the CIAs into existing planning processes. The Act requires that organs of state, including provincial and local governments, incorporate climate risk considerations and response plans into their existing policy and planning instruments.<sup>140</sup> CRIAs have a spotty record of use in the Global South.<sup>141</sup> In South Africa, their adoption and use are driven by civil society organisations, such as UNICEF, and its partnerships with national governments.<sup>142</sup>

The leading decision on CIAs in South Africa is *EarthLife Africa NPC & The Trustees for the Time Being of Groundwork Trust v The Minister of Environmental Affairs & Others*, also known as the *Thabametsi* case.<sup>143</sup> The applicant challenged the Minister of Environmental Affairs (MEA) decision to grant environmental authorisation for the construction of a 1 200mw coal-fired power station near Lephalale in Limpopo Province. The fifth respondent, Thabametsi Power Company (Pty) Ltd, was to build the power station, which was intended to operate until at least 2061. When complete, the power station would have been among the world's most carbon-intensive coal power stations and a drain on meagre water resources in the arid Limpopo province.<sup>144</sup>

The applicant argued that the MEA and its officials were obliged to consider the proposed power station's climate change impacts before granting authorisation and had failed to do so. The applicant contended that without the CIA, the government's authorisation was unlawful, irrational, unreasonable, and liable to be set aside under the PAJA. The department argued that no provision in international or domestic law binding on South Africa expressly stipulates that a climate change assessment must be conducted before granting an environmental authorisation for the project.

The South African High Court found that the country's legislative and policy scheme and framework 'overwhelmingly support the conclusion that an assessment of climate change impacts and mitigating measures will be relevant factors in the environmental authorisation process, and that consideration of such will best be

140 Climate Change Act 7 of 2024 sec 17.

141 Mukherjee and others (n 138).

142 Department of Social Development, South African Social Security Agency & UNICEF 'The South African Child Support Grant Impact Assessment: Evidence from a survey of children, adolescents and their households' (2021), <https://www.unicef.org/southafrica/media/1121/file/ZAF-South-African-child-support-grant-impact-assessment-2012-summary.pdf> (accessed 5 September 2021).

143 *EarthLife Africa* (n 72).

144 M Toyana 'Consortium pulls plug on SAfrica's Thabametsi coal plant' *Reuters* (web blog) 18 November 2020, <https://www.reuters.com/article/us-climate-change-safrica-coal-exclusive/exclusive-consortium-pulls-plug-on-south-africas-thabametsi-coal-plant-idUKKBN27X2LC/> (accessed 10 October 2025).

accomplished by means of a professionally researched climate change impact report'.<sup>145</sup>

The Court relied on an expansive and teleological interpretation of the NEMA, particularly section 24, which requires the DEA and MEA to consider *all relevant factors* enumerated in the law when assessing an application for environmental authorisation. Under section 24, the EIA report must contain all information necessary to provide the authorities with a complete picture of the situation. Part of the 'relevant factors' is the irrefutable evidence of climate change's extant and future danger to South African children and broader society, even though these were not explicitly considered in the Court's judgment.<sup>146</sup> The Court also took into account international law, as required by the Constitution, particularly article 4(1)(f) of the United Nations Framework Convention on Climate Change (UNFCCC), which mandates that climate considerations be incorporated into environmental assessments and that state take precautionary measures to anticipate, prevent or minimise causes of climate change.<sup>147</sup>

While the project's impact on children was not featured at all in the Court's reasoning or decision, its teleological approach to statutory interpretation leaves the door open to such considerations being included in feature EIAs. This is especially in light of the growing evidence of the effect of pollution on children in places such as Limpopo itself and Mpumalanga Province.<sup>148</sup> It is incumbent upon children and their advocates to bring these factors to the fore in cases such as *Thabametsi*.<sup>149</sup>

The limitation of impact assessments is that they impose obligations of process, rather than of result.<sup>150</sup> The *Thabametsi* decision underscores a judiciary willing to interpret environmental statutes teleologically but also highlights the limits of judicial intervention in the absence of explicit legislative mandates on children's rights. Without statutory requirements for child-specific impact assessments, the courts are left to infer obligations rather than enforce them.

<sup>145</sup> *EarthLife Africa* (n 72) para 91.

<sup>146</sup> *EarthLife Africa* (n 72).

<sup>147</sup> *EarthLife Africa* (n 72) paras 83-89.

<sup>148</sup> *EarthLife Africa* (n 72).

<sup>149</sup> Child Rights International Network 'Children's access to justice for environmental rights: South Africa' (2022), <https://static1.squarespace.com/static/5afadb22e17ba3eddf90c02f/t/63bd783a77c50d1ba638b1f0/1673361472109/Childrens-Access-to-Justice-for-Environmental-Rights-Report-South-Africa.pdf> (accessed 10 October 2025).

<sup>150</sup> Y Song 'The obligation of EIA in the international jurisprudence and its impact on the BBNJ negotiations' (2022) 15 *Sustainability* b487.

Where proof exists that climate and child impact assessments were considered, a coal-fired power station with its impacts on climate change can still be approved. That is not what transpired in this case, as the multinational consortium behind the Thabametsi project withdrew its financial backing, leading to its termination.<sup>151</sup>

#### 4.6 The right to life, survival and development

Of all the children's rights or principles that climate change will probably affect, none will be more directly affected than life, survival and development. South Africa has the highest air pollution exposure, driven by greenhouse gas emissions, in sub-Saharan Africa, accounting for over 14 000 confirmed cases annually.<sup>152</sup> The majority of those cases are children.<sup>153</sup> Coal-powered energy generation is the largest contributor to air pollution in South Africa.<sup>154</sup> The World Health Organisation (WHO) has estimated that, in South Africa, 124 out of every 100 000 deaths of children under five are linked to the environment, and congenital environmental disorders (caused by environmental exposures before birth) are increasing.<sup>155</sup> South Africa's Constitution does not provide for a 'right to life, survival and development' but does contain a right to life.<sup>156</sup> The right to life, survival and development appears in various iterations in the Bill of Rights, such as through the right to health, basic nutrition, and protection from harm, abuse and exploitation.<sup>157</sup>

The entire Bill of Rights aims to ensure this set of rights. Life, survival and development are mutually reinforcing principles that cannot be realised without one another. They encompass all interventions necessary for a child's healthy development. The Constitution provides for an unqualified right to life, therefore, the South African government has an obligation to mitigate and ensure children adapt to the effects of climate change. It is the only way to guarantee children's right to life.<sup>158</sup> In *Deadly Air*, the High Court found that 10 000 premature deaths occur in the Highveld Priority

151 Toyana (n 144).

152 BS Madonsela and others 'Assessment of air pollution in the informal settlements of the Western Cape, South Africa' (2022) 7 *Journal of Air Pollution and Health* 1.

153 Madonsela (n 152).

154 Centre for Child Law 'Children's environmental rights and climate justice in South Africa: Impacts of coal-related air pollution' (2023), <https://centreforchildlaw.co.za/wordpress21/wp-content/uploads/2023/12/2023.-Children-Enviro-Rights-Advocacy-Brief.pdf> (accessed 10 October 2025).

155 Rother and others (n 54).

156 Constitution of the Republic of South Africa, 1996 sec 11.

157 Constitution of the Republic of South Africa, 1996 secs 28(c), (d) & (e).

158 R Fambasayi 'The protection of the environmental rights and interests of children: A South African perspective' (2021) 3 *Stellenbosch Law Review* 386 395.

Area, leading to the inescapable conclusion that the levels of air pollution are inconsistent with section 24(a) of the Constitution.<sup>159</sup>

The South African Constitutional Court has stated that the right to life is the 'most important' of all human rights and the source of all other personal rights.<sup>160</sup> It urges that the state reflect the primacy of these rights in everything it does because they are the essential content of all rights under the Constitution.<sup>161</sup> The right to survival is a flexible and broad concept that encapsulates all the steps a state party must undertake to ensure the healthy development of children.<sup>162</sup> It requires the state to take those measures that, at a minimum, ensure a child's survival. The realisation of socio-economic rights is crucial. These include providing adequate nutrition, safe drinking water, basic health care, and protection from abuse, harm and customs and practices that are prejudicial to the child's life or health.<sup>163</sup>

In the context of climate change, this right requires the government to take steps to mitigate the harm it causes to children. Foreign jurisprudence is not binding on South Africa's judiciary. However, the South African Constitution provides that when interpreting the Bill of Rights, courts 'may consider foreign law'. Since its establishment in 1994 until the end of 2011, the Court has handed down 437 judgments. More than half of these judgments (223 in total) have cited more than 3 047 foreign cases. Therefore, foreign law, including jurisprudence, is persuasive on South Africa's courts. This is significant given the 'environmental blind spot' and silence exhibited, particularly by the Constitutional Court, regarding the ecological implications of its decisions.<sup>164</sup>

South Africa's domestic normative framework provides a progressive constitutional base, supported by teleological

159 *Deadly Air* (n 17) para 155.

160 *S v Makwanyane & Another* (CCT3/94) [1995] ZACC 3.

161 *Makwanyane* (n 160) para 219.

162 Mekonen and Getachew observe that given the breadth of the implications of art 5, the right to survival and development is considered one of the four cardinal principles of children's rights under the African Children's Charter. See Y Mekonen & R Getachew 'Chapter 6 – article 5 survival and development' in Sloth-Nielsen and others (n 71) 75-91.

163 Constitution of the Republic of South Africa, 1996 secs 28(c), (d) & (e).

164 Constitution of the Republic of South Africa, 1996 sec 39(c); C Rautenbach 'The South African Constitutional Court's use of foreign precedent in matters of religion: Without fear or favour?' (2015) 18 *Potchefstroom Electronic Law Journal* 1546. Therefore, foreign law, including jurisprudence, is persuasive on South African courts. This is significant given the 'environmental blind spot' and silence exhibited, particularly by the Constitutional Court, regarding the ecological implications of its decisions. R Krüger 'The silent right: Environmental rights in the Constitutional Court of South Africa' (2019) 9 *Constitutional Court Review* 473 484.

jurisprudence and a set of guiding principles rooted in international and regional children's rights obligations. These features firmly position the country well to integrate a children's rights-based approach into its climate governance structure. However, the analysis also reveals significant normative and institutional gaps. Children remain largely absent from climate-specific legislation and policy instruments. Mechanisms such as child rights impact assessments are not mandatory. Participation rights, while recognised in principle, are seldom operationalised in climate decision-making processes. Additionally, there is a persistent lack of disaggregated data capable of informing targeted child-centred climate interventions. Without deliberate and structural integration of children's rights into climate governance, these constitutional promises risk being continually undermined by climate change, and the institutional response to it.

## 5 Children's rights, air pollution and climate change: The *Deadly Air* case

The *Deadly Air* case illustrates the South African government's legal obligation to address climate change impacts specifically as they affect vulnerable populations, including children, whose health and well-being are disproportionately impacted by toxic air pollution. The case, eponymously named, challenged the South African government's acts and omissions that contributed to and led to poisonous levels of air pollution in the Highveld Priority Area.<sup>165</sup> The Highveld Priority Area is a 31 000 square kilometre swathe of territory covering the Gauteng and Mpumalanga Provinces. The area comprises some of South Africa's most polluted towns, including eMalahleni, Middelburg, Secunda, Standerton, Edenvale, Boksburg and Benoni.<sup>166</sup> The area is home to 12 of Eskom's coal-fired power stations, and SASOL's coal-to-liquid fuels refinery, situated in Secunda, all supplied by numerous coal mining operations. Due to its concentration of industrial pollution sources, residents, including children, experience particularly poor and dangerous air quality. All the parties to the case agreed that the pollution in the area is harmful to human health and well-being – exceeding the National Ambient Air Quality Standards.

At the heart of the dispute were two questions, namely, (i) whether the high level of pollution is a violation of the constitutional right

<sup>165</sup> M Kidd 'Deadly air and the misinterpretation of the section 24 environmental right: The *Groundwork Trust* case' (2023) 26 *Potchefstroom Electronic Law Journal* 1.

<sup>166</sup> Millar and others (n 16).

to environment under article 24; and (ii) whether the government/minister was in breach of their duty by failing to promulgate and enforce regulations necessary to bring the pollution levels back within habitable conditions. Part of the uncontroverted evidence before the Court were the government's reports of 10 000 annual premature deaths, including those of children, which are directly attributable to air pollution in the Highveld Priority Area.<sup>167</sup> Reports about the ambient pollution of the area stretched as far back as the 1950s.<sup>168</sup> In 2007, the area was declared a 'priority area' in terms of the National Environmental Management: Air Quality Act. The designation was required because, according to the government, 'people living and working in these areas do not enjoy air quality that is not harmful to their health and well-being'.<sup>169</sup> It was a recognition that ambient air quality standards are being, or may be, exceeded. Further, the area requires specific air quality management action to rectify the situation.<sup>170</sup> These measures had been implemented, but their effectiveness, by the government's own admission, was inadequate.

The Court found that the right to environment under section 24(a) of the Constitution was immediately realisable because the textual structure of the provision was neither qualified nor subject to progressive realisation based on availability of resources. On the available evidence of the harm in the Highveld Priority Area, and the constitutional provision requiring immediate realisation of the right to environment, the Court found that the levels of air pollution violated section 24(a) of the 1996 Constitution.<sup>171</sup>

Regarding issue (ii), the Court took a holistic interpretation to section 20 of the Air Quality Act which provides that the responsible minister 'may' promulgate regulations necessary for implementing and enforcing approved priority area air quality management plans. The decision on this issue was dependant on whether 'may' was a discretionary or mandatory injunction. Court found that in the appropriate circumstances, 'may' imposes mandatory obligations on the relevant authority in order to protect and promote constitutional rights and values.<sup>172</sup> This was one such case. Having found that the ambient pollution levels violated section 24(a) of the Constitution, it was incumbent upon the minister to take the necessary measures to

167 *Deadly Air* (n 17) para 155.

168 Centre for Environmental Rights 'Broken promises: The future of the highveld priority area' (2017) 5, [https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report\\_final.pdf](https://cer.org.za/wp-content/uploads/2017/09/Broken-Promises-full-report_final.pdf) (accessed 10 October 2025).

169 First respondent's answering affidavit in *Deadly Air* (n 17) vol 5 para 104 1298.

170 National Environmental Management Act 107 of 1998 sec 18(1)(b).

171 *Deadly Air* (n 17) paras 156 & 178.

172 *Deadly Air* (n 17) para 180.

safeguard the rights of the residents in the area. A failure or refusal to do so was a violation of section 24 of the 1996 Constitution. The matter is now before the Supreme Court of Appeal pending determination.<sup>173</sup>

Several pertinent issues arise from this ruling on children's rights in the context of climate change. First, the Court found that based on evidence of harm to vulnerable persons, including children, caused by ambient air pollution in the Highveld Priority Area, there was *prima facie* evidence of a violation of the right to environment in terms of section 24.<sup>174</sup> At the domestic level, in the context of climate change, the causation and attribution barriers to establishing liability for the detrimental effects of climate change do not hold as much sway as they do on the international plane in terms of holding states accountable for acts and omissions within their jurisdictions. In this case, the government was held liable for its acts and omissions in delaying the promulgation of regulations to curb pollution in the area.

The second is the finding that the right to environment is an immediately realisable right not subject to the limitation or qualifier of progressive realisation. The Court rejected the minister's contention that this right would be realisable with time. It is common cause that the environment requires some time to recover from spoliation. Given the stock-and-flow problem of climate change, even if the emission of greenhouse gases immediately ceased today, the released carbon dioxide will remain in the atmosphere for thousands of years.<sup>175</sup> The earth's surface temperature would require thousands of years to cool and return to the level in the pre-industrial era.<sup>176</sup>

On a timescale relevant to humans, once released, the carbon dioxide is in our environment essentially forever.<sup>177</sup> No court decision will change that. Mitigating emissions today to the levels envisaged under the UNFCCC and the Paris Agreement, which aims for 1,5°C above pre-industrial levels, might offer a window of opportunity to allow for adaptation, but the warming will continue nonetheless.<sup>178</sup>

173 Centre for Environmental Rights 'Battle for clean air returns to court: The deadly air case heads to the Supreme Court of Appeal' *CER* (Bloemfontein) 26 August 2024.

174 *Deadly Air* (n 17) para 178.

175 RB Rood 'If we stopped emitting greenhouse gases right now, would we stop climate change' *The Conversation* (web blog) 5 July 2017, <https://theconversation.com/if-we-stopped-emitting-greenhouse-gases-right-now-would-we-stop-climate-change-78882> (accessed 10 October 2025).

176 As above.

177 As above.

178 As above.

On the Court's rationale, this state of affairs violates and will continue to violate the right to environment under section 24 and related children's rights discussed in this analysis. Immediately realising the right, such as through getting rid of the pollution responsible for climate change, is nearly impossible.<sup>179</sup> In the *Deadly Air* case, the Court does not address these constraints in its decision. If immediately realising the right is impossible, what could be done, immediately?

The Court's decision on the minister's failure to enact the necessary enabling regulations is instructive. The Court found that the minister had a legal duty to enact regulations under section 20 of NEMA and to enforce the Highveld Priority Area Air Quality Management Plan.<sup>180</sup> To that end, the Court directed the government, through the minister, to prepare, initiate and prescribe the necessary regulations to implement and enforce the Air Quality Management Plan.<sup>181</sup> The law and judicial compulsion can require governments to take the necessary steps to mitigate the impact of global warming in the short, medium and long term.<sup>182</sup> In the context of climate change, the government's efforts to take appropriate mitigation, adaptation and remedial action can and should be scrutinised to determine whether they meet South Africa's children's rights obligations. The decision demonstrates the judiciary's potential as a catalyst for rights-based climate action. However, its effectiveness is contingent upon sustained civil society mobilisation and robust enforcement mechanisms, both of which remain underdeveloped.

## 6 Conclusion

This article has examined whether South Africa's legal and policy framework adequately protects and promotes children's rights in the context of the climate crisis. It has shown that, despite the country's progressive constitutional guarantees and statutory obligations, children remain largely invisible in climate governance. Assessing South Africa's framework against the guiding principles of children's rights, namely, non-discrimination, the best interests of the child, participation, survival and development and access to information, reveals significant normative and practical gaps. Laws and policies

179 Kidd argues that it 'would not be reasonable and justifiable to shut down South Africa's electricity generation capacity immediately because the alternatives will take time to come on board. So, the Court's conclusion that it "cannot but conclude that the respondents have failed to justify any limitation to the section 24(a) right by placing reliance on section 36 of the Constitution" is misguided.' See Kidd (n 165).

180 *Deadly Air* (n 17) paras 241(2) & 241(3).

181 *Deadly Air* (n 17) para 241(4).

182 Murcott & Vinti (n 20).

seldom explicitly address children, and mechanisms to ensure their participation in decision making are underutilised or underdeveloped. Additionally, tools such as child rights impact assessments are often absent. The failure to collect disaggregated data on climate impacts further obscures children's experiences and undermines evidence-based policy making.

Recent judgments, notably *EarthLife Africa* and *Deadly Air*, unequivocally demonstrate the importance of children's rights in framing climate action. These judgments unequivocally determine that it is unlawful for officials to authorise certain developments without assessing climate risks and impacts, even on children, despite how marginally they are included in these processes. The 1996 Constitution's liberal rules on *locus standi*, for instance, and its guarantees of a right to the environment, are critical in this regard. For now, it appears that direct climate-related action will take the form of market adjustments, such as carbon taxes and air quality regulations, which are primarily geared towards the automotive and industrial sectors. It is contended, from a discussion of the international and the national children's rights framework, that the government is obligated to establish mechanisms and standards to which it can be held to account.

Bridging these gaps requires embedding a children's rights-based approach at the centre of climate governance. Legislative reform should mandate child rights and climate impact assessments for all major projects and policies. National climate strategies must explicitly integrate children's rights and establish mechanisms for their meaningful participation in decision making. Strengthening data collection and dissemination, including disaggregated, child-specific information, is essential for monitoring progress and designing targeted interventions. Ultimately, institutional capacity must be strengthened to ensure the effective implementation and enforcement of rights-based climate measures.

This call for reform must be understood in light of the historical trajectory outlined earlier in this article. The colonial and apartheid era exclusion of children from environmental decision making has created enduring patterns of invisibility that continue to influence contemporary climate governance. Furthermore, the deep-rooted influence of the MEC illustrates the persistence of structural political economy constraints that hinder transformative, rights-based climate action. Addressing these legacies is crucial to fulfilling the Constitution's promise and ensuring that children's rights are substantively and practically realised.