



South Africa’s Just Transition and Children’s Rights

Joint submission to the Presidential Climate Commission - Centre for Child Law, (University of Pretoria), groundWORK, and the Centre for Environmental Rights

5 April 2022

The climate crisis is creating a child’s rights crisis. It is creating a water crisis, a health crisis, an education crisis, a protection crisis and a participation crisis. It is threatening children’s very survival.

UNICEF, “The Climate Crisis is a Children’s Rights Crisis”, August 2021.

Centrality of Children’s Rights to Achieve a Just Transition

Children¹ and youth² are among the most significant stakeholders in South Africa’s Just Transition, which “*aims to achieve a good life for all South Africans, in the context of climate resilient and zero-emissions development*”.³ Despite having contributed the least to causing global warming, children are among the most vulnerable to its impacts.

The United Nations Children’s Fund (UNICEF) in August 2021 described the climate crisis as, “*the defining human and child’s rights challenge of this generation,*” noting that, for children “*any deprivation as a result of climate and environmental degradation at a young age can result in a*

¹ The United Nation’s Convention on the Rights of the Child, 1989, to which South Africa is a Member State, defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” United Nation’s Convention on the Rights of the Child, Article 1. See also African Charter on the Rights and Welfare of the Child, Article 2.

² The United Nations Department of Economic and Social Affairs defines ‘youth’ as “*those persons between the ages of 15 and 24 years*”. United Nations Department of Economic and Social Affairs, “Frequently asked questions,” <https://www.un.org/development/desa/youth/what-we-do/faq.html#:~:text=The%20United%20Nations%2C%20for%20statistical,other%20definitions%20by%20Member%20States>.

³ Presidential Climate Commission, “Framework for a Just Transition in South Africa - Draft for Discussion,” February 2022, p. 7, https://pccommissionflow.imgix.net/uploads/images/South-Africas-Just-Transition-Framework-for-Stakeholder-Consultation-Feb-2022_2022-02-23-092221_xtvt.pdf.



*lifetime of lost opportunity.*⁴ In addition, a 2020 report by the United Nations High Commissioner for Human Rights warns that “*environmental damage, climate change and childhood exposure to pollution and toxic wastes present an urgent challenge affecting all children’s rights*”...as “*children are uniquely susceptible to health-related harm from an unhealthy environment due to the physical and mental developmental differences from adults*”.⁵

Today’s children are also tomorrow’s leaders and contributors to the development of a better society. South Africa’s children and its youth already face the triple threat of unemployment, poverty, and inequality. The climate crisis, and the Just Transition it requires, means they must now be prepared to face the challenges – and to seize the opportunities – created by an economy transformed by the clean energy transition and the need to adapt to the impacts of climate change on South African agriculture and industry.

South Africa’s constitution already recognizes the importance of children’s rights to a healthy environment. Section 24(a) guarantees the right to an environment that is not harmful to their health or wellbeing; this right is capable of immediate realisation. Section 24(b) requires the environment to be preserved for the benefit of *present and future generations* through reasonable legislative or other measures (own emphasis). These provisions need to be read in conjunction with section 28(2) of the Constitution which states that the best interests of a child are of *paramount* importance in every matter concerning the child (own emphasis). In addition to the constitutional obligation to protect children from an environment that is harmful to their health and wellbeing, the state, and to an extent, organisations and individuals, have a heightened obligation to do so in the best interests of children.

Facilitating Children’s Participation in Just Transition Policy-making

The threat that climate change poses to children’s rights means that children’s participation in policy-making that drives the just transition is of utmost importance. Under the UN Convention on the Rights of the Child, children have the human right to have their voices heard on issues that affect them.⁶ This right goes beyond children just airing their views and requires the views of children to actually be considered in decision-making. Section 10 of South Africa’s Children’s Act 38 of 2005, by incorporating the UN Convention of the Rights of the Child into national law,

⁴ UNICEF, “The Climate Crisis is a Children’s Rights Crisis,” August 2021, p. 9-10, <https://www.unicef.org/media/105376/file/UNICEF-climate-crisis-child-rights-crisis.pdf>. See also the Centre for Environmental Rights, “Climate Change Implications for SA’s Youth,” Expert Report by Nicholas King, August 26, 2021, <https://cer.org.za/wp-content/uploads/2021/09/Nick-King-Report-Final.pdf>. See also “Dr. Garret Barnwell, report prepared for the Centre for Environmental Rights,” The Psychological and Mental Health Consequences of Climate Change in South Africa, August 31, 2021, p. 10, <https://cer.org.za/wp-content/uploads/2021/09/CER-Expert-Report-Garret-Barnwell-31-August-2021-Public-1.pdf>.

⁵ Report of the United Nations High Commissioner for Human Rights, “*Realizing the rights of the child through a healthy environment*”, January 2020, p. 2.

⁶ UN Convention of the Rights of the Child, Article 12.

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

Children are, however, often excluded from policy-making in relation to climate change mitigation and adaptation. UNICEF, in its August 2021 report, warned that, “*despite the many ways climate change impacts them, children are consistently overlooked in the design and content of climate policies and related processes.*”⁷ UNICEF’s report calls for the perspectives of children, and especially girls, children and youth with disabilities, and people of colour, to be elevated and addressed during climate related policy-making.⁸

The PCC’s Just Transition Framework emphasises the importance of consultation and participation, stating that, a Just Transition, “*puts people at the centre of decision making, especially those most impacted, the poor, women, and youth — empowering and equipping them for new opportunities of the future.*”⁹ The PCC’s December 2021 summary report also emphasises the need for “*genuine consultation and engagements with communities and stakeholders*” affected by the transition, with a focus on women, coal mining-affected communities and unemployed youth.¹⁰ This emphasis is welcomed.

It is so far not clear, however, from the PCC’s documentation or consultation processes, whether the PCC has developed an appropriate strategy or a child-centered approach for engaging and consulting children, and/or reputable children’s rights focused organisations, in its information-gathering and decision-making processes. We respectfully submit that the PCC should consider ways to integrate representation by, or on behalf of, children into its consultation processes, for example by establishing a youth or child-led advisory group at national and/or provincial levels, setting aside dedicated time during community consultations to solicit views from children or their guardians, and ensuring staff have the necessary guidance in approaching children during consultation processes.

Particular care should be taken to ensure participation from children in affected communities in Mpumalanga and other areas on the frontline of South Africa’s coal industry. Many children in the Highveld, especially in informal settlements and fence-line communities, already suffer from inadequate access to water, health and education. A Just Transition must both address these historic inequalities while also putting in place measures to mitigate the future risk posed by climate change. Increased participation from children, their representatives, and/or child rights

⁷ UNICEF, “The Climate Crisis is a Children’s Rights Crisis,” August 2021, p. 94.

⁸ UNICEF, “The Climate Crisis is a Children’s Rights Crisis,” August 2021, p. 20, 94.

⁹ Presidential Climate Commission, “Framework for a Just Transition in South Africa - Draft for Discussion” February 2022, p. 8, https://pccommissionflow.imgix.net/uploads/images/South-Africas-Just-Transition-Framework-for-Stakeholder-Consultation-Feb-2022_2022-02-23-092221_xtvt.pdf.

¹⁰ Presidential Climate Commission, “Laying the Foundation for a Just Transition Framework for South Africa” December 2021, p. 27, <https://pccommissionflow.imgix.net/uploads/images/SPIPA-PCC-Report-Design-v8-1.pdf>.



organisations in the PCC’s consultation processes is essential to ensure that South Africa’s Just Transition Framework adequately meets the needs of children, in accordance with the Constitution and applicable international instruments

Addressing the Impact of the Coal Industry on Children

South Africa’s reliance on coal has had, and continues to have, significant negative impacts on the health, education, and wellbeing of children, due to toxic air pollution and harmful Greenhouse Gases produced from coal mining and coal powered stations. In 2017, a report by Dr. Mike Holland, an international air quality and health expert, found that 2,239 human deaths per year could be attributable to coal-related air pollution from Eskom power plants and 12,314 cases of bronchitis and related respiratory diseases, **including 9,533 cases involving children aged 6 to 12.**¹¹ Dr. Holland also found that Eskom’s coal-related air pollution annually causes 94,680 days in which **children aged 5 to 19 suffer asthmatic symptoms** (own emphasis).¹²

In a judgment on 18 March 2022, the Pretoria High Court found that the poor air quality in the Highveld Priority Area (HPA) is a breach of residents’ constitutional right to a healthy environment and that this violation “*necessarily violates other constitutional rights, including the rights to dignity, life, bodily integrity and the right to have children’s interests considered paramount in every matter concerning the child.*”¹³ Setting the tone for her decision, in the opening paragraph of the judgment, Collis J quoted from a government assessment of the socio-economic and environmental impacts of air pollution in the HPA, which stated:

*“air pollution knows no boundary and has potential to affect everyone, but it can affect us differently...children [the] elderly and those with respiratory diseases such as asthma, are the most vulnerable to air pollution.... The most vulnerable groups...[tend] to lose if air pollution levels are not properly managed.”*¹⁴

The judgment also highlighted that the rights in section 24 of the Constitution are underpinned by a set of common principles, including that of ‘sustainable development’ which includes an understanding that economic development cannot occur without environmental protection.¹⁵ The High Court affirmed that sustainable development is integrally linked with the principle of

¹¹Dr. Mike Holland, “Health Impacts of Coal-Fired Power Plants in South Africa,” March 2017, p. 15, <https://cer.org.za/wp-content/uploads/2019/11/Expert-Affidavit-Michael-Holland.pdf>.

¹² Ibid.

¹³ *Trustees for the time-being of groundWork Trust & Another vs Minister of Environmental Affairs & Others*. Case No. 39724/2019, at paras [76], [241.1]. Available at <https://cer.org.za/wp-content/uploads/2022/03/TRUSTEES-JUDGMENT-DATED-18-MARCH-2022-1.pdf>.

¹⁴ Fn above. Introduction, p. 2.

¹⁵ Fn above. At para [40].

“*intergenerational justice*,” which requires the state to consider the long-term impact of pollution on future generations.¹⁶

The PCC’s Just Transition Framework identifies ‘restorative justice’ as a key principle for a Just Transition, defined as, “*the redress of historical damages against individuals, communities, and the environment, with the goal of rectifying or ameliorating the situations of harmed or disenfranchised communities.*”¹⁷ There is, however, limited discussion in the Framework, or in the policy interventions it proposes, about how a Just Transition should address the legacy of impacts of coal-related pollution and other impacts on children’s health, education and wellbeing. The devastating impact of the coal industry means that the PCC must include action on children’s health.

We understand that Just Transition policies are intended to be forward looking, focused on addressing the risks and opportunities linked to what **must be** a transformative just transition. At the same time, the PCC’s Framework should more clearly address the obligation of South Africa’s government, Eskom, and coal mining companies to remediate the lasting adverse impact of coal-related air pollution and other coal-industry-related harm on children. Appropriate remediation should be designed through consultation with affected children and communities, but could include government and/or private sector funds for access to healthcare and educational development interventions for children impacted by air pollution or other harms. A Just Transition Framework that only looks forward and does not address the past and ongoing impacts of the coal industry on children would fail in its effort to address historical damages against individuals and communities.

Integrating Child-Focused Policies into the Just Transition Framework

Beyond the need to address the past and ongoing impacts of the coal industry on children’s rights, the PCC Just Transition Framework would also benefit from an effort to integrate child-focused policies across the policy interventions it proposes, or at least where relevant to do so. This could be done in consultation and collaboration with any mechanism to facilitate children’s participation in Just Transition policy-making. Areas that could merit additional child-focused policies and consultation include, but are not limited to:

- Active labour markets and human resource development, including to discuss how best to address obstacles to skills development and education and both prepare children to participate in a just and climate-resilient economy that addresses long-standing inequality.
- Social protection measures, including to ensure that social protection measures such as social grants and education stipends are targeted at and reach vulnerable children.

¹⁶ Fn above. At para [41].

¹⁷ Presidential Climate Commission, “Framework for a Just Transition in South Africa - Draft for Discussion” February 2022, p. 8.



- Governance, including the consideration of ways to better integrate children and youth into policy-making for the Just Transition at national, provincial, and local levels.

The PCC’s Just Transition Framework concludes by underscoring that, “*Key constituencies must be equipped with the capacity and power to manage — and even benefit from — the impacts of the transition and the climate crisis*”, requiring affected communities “*to participate meaningfully in planning, co-design, implementing, and monitoring strategies*”.¹⁸ The status of children as key – perhaps **the** key – stakeholders in South Africa’s Just Transition makes it essential for the PCC to expand its strategy for engaging with children and to ensure that children’s voices are elevated, integrated, and reflected in, the PCC’s advisory reports and recommendations.

Conclusion

Based on the above submission, it is our respectful recommendation that the PCC integrates the needs, interests, and rights, of children into its processes and outcomes through engaging and consulting children, their guardians, and/or reputable children’s rights focused organisations. The organisations behind this joint submission would welcome further opportunities for engagement to elaborate on the abovementioned research analysis, legal principles, and methods for the integration of child-focused policies into the Just Transition Framework.

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¹⁸ Presidential Climate Commission, “Framework for a Just Transition in South Africa - Draft for Discussion” February 2022, p. 33.