

CENTRE FOR CHILD LAW SUBMISSIONS

ON

THE CLIMATE CHANGE BILL

[B 9B - 2022]

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CENTRE FOR
CHILD LAW

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31 January 2024



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YUNIBESITHI YA PRETORIA

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ABOUT THE CENTRE FOR CHILD LAW

1. The Centre for Child Law (“CCL/the Centre”) is a child rights strategic litigation organisation with the vision to establish child law and uphold the rights of children in South Africa, within an international and regional context, particularly insofar as these interests pertain to children’s legal position. The CCL’s mission is to work towards the development of child law and the realisation of children’s rights in South Africa, within a regional and international context. CCL utilises strategic litigation, extensive empirical research, and advocacy to advance children’s rights in accordance with this vision and mission.

BACKGROUND

2. CCL welcomes and supports the measures put in place by the Portfolio Committee on Forestry, Fisheries and the Environment (“Portfolio Committee/ Committee”) to enable the development of an effective climate change response and a long-term just transition by the introduction of the Climate Change Bill (“the Bill/ First Draft Bill”).¹
3. In May 2022, CCL submitted its comments² on the First Draft Bill which covered several aspects including:
 - i. Clarity on Children’s Environmental Rights;
 - ii. Paris Agreement commitments should be expressly set out as legally binding in the Bill;
 - iii. The Bill should be clear on how children can participate in decision-making processes and how they can hold duty-bearers accountable;
 - iv. Giving effect to the principle of intergenerational equity in the Bill;
 - v. The Bill must allow access to information for children;

¹ Climate Change Bill [B 9 – 2022].

² Centre for Child Law, 2022 ‘*Submissions on the Climate Change Bill [b 9b – 2022]*’.



- vi. Application of the Bill and the inclusion of strong penalties, compliance and enforcement mechanisms as an effective deterrence against the contravention of provisions in the Bill.
- 3.1. In August 2023 the Portfolio Committee sat to consider the public submissions on the First Draft Bill.³ It appears from the summary minutes that:
- i. Committee members did not at all consider children or any other vulnerable groups that are acutely affected by climate change and, therefore, the content of the Bill;
 - ii. In considering South Africa's commitments concerning climate change, the Committee noted that all the instruments in the Bill are aligned with the international commitment that the country has made.
 - iii. Regarding regulations, the Committee noted that the regulations are currently in development.
- 3.2. Subsequently, in September 2023, the Department conducted public consultations, allowing various stakeholders to present oral comments on the initial draft. While CCL did not participate, we maintain that the revised iteration of the Bill (B 9B – 2022/ Second Draft)⁴ remains of paramount significance to children, impacting not only their right to a healthy environment but also intersecting with their other fundamental constitutional rights. The effective mitigation and adaptation to climate change directly influence children's rights, including the right to development, access to information, participation in decision-making and protection from all forms of harm.

POSITION AND COMMENTS ON THE CLIMATE CHANGE BILL [B 9B – 2022]

4. While CCL supports the Second Draft Bill, we are concerned that in its current form, it falls short of adequately incorporating meaningful participation of children at the local

³ Parliamentary Monitoring Group, 2023 'Climate Change Bill: consideration of public submissions' <<https://pmg.org.za/committee-meeting/37331/>> Accessed on 31 January 2023.

⁴ Climate Change Bill [B 9B – 2022].



government level as proposed in our first submission of comments on the First Draft Bill.⁵ This concern is noticeable due to the increased vulnerability of children to the negative effects of climate change, as highlighted in the National Climate Change Response White Paper (“White Paper”).⁶

5. While we value the progress of the current draft, we emphasise the need for the Portfolio Committee to carefully consider specific elements related to the environmental rights of children and future generations. These aspects are pivotal for a detailed interpretation and evaluation of the provisions in the Bill.

5.1. Specific issues highlighted in this submission:

- i. We express our apprehension regarding the exclusion of child and youth participation in the proposed Municipal Forums on Climate Change, a noteworthy and concerning gap in the current provisions;
- ii. We draw attention to the United Nations General Assembly’s (UNGA) resolution⁷ passed in July 2022, affirming the right to a clean environment as a universal human right—a development that necessitates alignment with the Bill;
- iii. We emphasise insights in UNCRC General Comment No.26 on Children’s Rights and the Environment with a Special Focus on Climate Change (General Comment No.26/ General Comment),⁸ published in September 2023. This General Comment places children at the forefront of environmental justice, stressing the paramountcy of meaningful child participation, access to information, and protection from environmental and climate change disinformation;
- iv. We acknowledge the significance of the World Council of Churches (WCC) submission to the Assembly of State Parties to the International Criminal Court

⁵ Centre for Child Law (n2) 7.

⁶ Government Gazette Notice 757, 2011 ‘White Paper of the National Climate Change Response White Paper’.

⁷ UN General Assembly, Resolution A/76/L.75.

⁸ UN Committee on the Rights of Child, 2023 ‘General Comment No.26 on Children’s Rights and the Environment with a Special Focus on Climate Change’.

in December 2023.⁹ The submission calls for the creation of a legal framework to address climate change disinformation, warranting careful consideration within the Bill;

- v. We take note of the African Leaders Nairobi Declaration on Climate Change and Call to Action¹⁰ adopted in 2023 during the first annual African Climate Summit, at which South Africa was represented, underscoring the importance of aligning the Bill with continental initiatives and perspectives. Member states committed to accelerating the implementation of the African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032);¹¹
 - vi. We highlight the ongoing child and youth-led domestic, foreign and international litigation and climate action as a dynamic element that should inform the Bill's provisions, considering the evolving landscape of global climate action; and
 - vii. We underscore the relevance of domestic legal and grassroots developments in climate action since the publication of the First Draft Bill in 2022, indicating the need for alignment with contemporary practices and advancements.
6. We hope that this submission will contribute to the comprehensive development of children's environmental rights through this Bill. This encompasses ensuring the right to access information, fostering participation in decision-making processes, and acknowledging the unique correlation between children's rights and environmental justice.

⁹ World Council of Churches, 2023 'Letter to the International Criminal Court - Climate Change Disinformation: The Need for Legal Development' < <https://www.oikoumene.org/resources/documents/letter-to-the-international-criminal-court-climate-change-disinformation-the-need-for-legal-development>> Accessed on 24 January 2023.

¹⁰ African Climate Summit, 2023 'African Leaders Nairobi Declaration on Climate Change and Call to Action'.

¹¹ African Union, 2022 'African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)'.

SUBMITTED COMMENTS ON THE BILL

7. *Express recognition of children and youth as a vulnerable group requiring special consideration*

- 7.1. Noting that the Portfolio Committee has included the definition of *vulnerability* to mean “*the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes*”, as the universal definition concerning the environment.
- 7.2. However, refer to our submission¹² to the First Draft Bill proposing the insertion of *Vulnerable Groups* in clause 1 of the First Draft Bill and that the Portfolio Committee can draw direction from the definition provided in the White Paper.
- 7.3. We further refer the Portfolio Committee to various policy references to *Vulnerable Groups* with respect to the environment and climate change and emphasize that this inclusive approach has been generally adopted, including:
- i. The National Environmental Management Act (NEMA)¹³ principles emphasise that the participation of all interested and affected parties 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, and participation by *vulnerable and disadvantaged persons* must be ensured,¹⁴
 - ii. The National Climate Change Adaptation Strategy of the Republic of South Africa¹⁵ identifies *vulnerable groups* including the elderly, sick, children, and people with disabilities, that will be affected the most by climate change.¹⁶
 - iii. The African Union Climate Change and Resilient Development Strategy and Action Plan deliberately highlight the importance of supporting the most

¹² Centre for Child Law (n6), 5.

¹³ National Environmental Management Act No.107 of 1998, sec 2.

¹⁴ NEMA (n11), sec 2(4)(f).

¹⁵ NDFFE, 2019 ‘National Climate Change Adaptation Strategy of the Republic of South Africa’.

¹⁶ NDFFE (n13), 9.



vulnerable communities and groups. It recognises that *women and youth* face particular challenges in responding to climate impacts. It further acknowledges and seeks to support the critical role that they play as change agents driving climate responses at local, national, sub-regional and continental levels.¹⁷

7.4. Several other legal and policy references identify *vulnerable groups* as key stakeholders in climate change policy development and climate response.

7.5. We propose the inclusion of the following definition:

“Vulnerable groups” means vulnerable workers and groups such as women, especially poor and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and the physically challenged.

Recommendations in respect of Clause 27: Regulations

8. Noting the finding in the *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others*¹⁸ judgement (“Deadly Air”) that the Minister has a legal duty to prescribe regulations under section 20 of NEM: Air Quality Act¹⁹ and to implement and enforce the Highveld Plan. The following submissions are in respect of ensuing Regulations in terms of Clause 27 of the Bill.

9. *Child Rights Impact Assessments*

9.1. General Comment No.26 emphasises the need for an inclusive approach to climate change response that places children’s best interests as a vulnerable group, at the centre. Clause 27 (1)(c) provides for the Minister to make regulations that will “promote effective monitoring, evaluation and the assessment of national progress in relation to climate change...”.²⁰

¹⁷ African Union (n10).

¹⁸ *Trustees for the time being of Groundwork Trust and Another v Minister of Environmental Affairs and Others* (39724/2019) [2022] ZAGPPHC 208 (18 March 2022).

¹⁹ National Environment Management: Air Quality Act 39 of 2004.

²⁰ Climate Change Bill (n3) 27.

9.2. In this respect, the General Comment further requires that:

All proposed environment-related legislation, policies, projects, regulations, budgets and decisions, and those already in force, require vigorous children's rights impact assessments, in accordance with article 3 (1) of the Convention. States should require the assessment, both before and after implementation, of the possible direct and indirect impact on the environment and climate, including the transboundary, cumulative, and both production and consumption effects, on the enjoyment of children's rights.²¹

9.3. We therefore recommend that the Minister, in terms of their obligation to prescribe regulations, should specifically provide for Child Rights Impact Assessments (CRIA). These may be placed at, and be regulated as part of the functions and duties of the established Forums on Climate Change.

9.4. Worth further noting is that CRIA's should be:

[U]ndertaken as early as possible in the decision-making process, at crucial stages of decision-making and in follow-up to the measures taken. Such assessments should be conducted with the participation of children and due weight should be given to their views and those of thematic experts. The findings should be published in child-friendly language and in the languages that children use.²²

10. Access to information and protection from disinformation

10.1. General Comment No.26 emphasises that access to information is essential for enabling children and their caregivers to comprehend the potential effects of environmental harm on children's rights²³ and further reiterates that:

Children have the right to access accurate and reliable environmental information, including about the causes, effects and actual and potential sources of climate and environmental harm, adaptive responses, relevant climate and environmental legislation, regulations, findings from climate and environmental impact assessments, policies and plans and sustainable lifestyle choices.²⁴

²¹ UNCRC (n7), para 75.

²² n7, para 77.

²³ n7, paras 32 – 34.

²⁴ UNCRC (n6) para 33.

- 10.2. In its submission to the International Criminal Court Assembly of State Parties (ASP), the WCC stresses the current impunity with which the fossil fuel industry continues to engage in deliberate campaigns of disinformation about climate change.²⁵ The WCC notes the susceptibility of vulnerable communities, including children to climate change disinformation and the ICC’s role in holding those responsible accountable for deliberate disinformation to account.²⁶
- 10.3. Disinformation campaigns about climate change have had, and continue to affect children acutely given their development and access to suitable information platforms on climate change. We therefore recommend that the Portfolio Committee sets out, as a punishable offence, the deliberate production, and distribution of targeted disinformation on climate change to children.

11. *Child and youth participation and the right to be heard.*

“Considering the importance of having meaningful youth engagement in discussions and procedures relating to climate change and its policies, we seek a larger engagement that includes children and the community at large”.²⁷

- 11.1. We acknowledge that participatory democracy requires regular engagement between the State and its people and further requires consideration of and consultation with vulnerable groups, minority communities and other non-state actors in policy-making processes.
- 11.2. However, we note that children do not always have a voice in the polity. Nevertheless, children have, in terms of section 10 of the Children’s Act, and as highlighted in General Comment²⁸ the right to be heard and to participate in any matter concerning them as well as to have their views given due consideration.

²⁵ World Council of Churches (n8).

²⁶ n8, para 9.

²⁷ Youth Policy Committee Global Change Working Group, .2023 ‘COP28 South African Youth Statement’, 12.

²⁸ n7 para 26 – 28.

11.3. Further, the General Comment requires states, in terms of their obligations under the Convention to:

[E]nsure that age-appropriate, safe and accessible mechanisms are in place for children's views to be heard regularly and at all stages of environmental decision-making processes for legislation, policies, regulations, projects and activities that may affect them, at the local, national and international levels.²⁹

11.4. The Bill does not prescribe, within the framework it constructs, mechanisms to facilitate child participation. We, therefore, propose the placement of child participation mechanisms and platforms at the Municipal Forums on the Climate Change level in terms of Clause 27 (1)(c). The envisioned regulations may prescribe detailed provisions for these mechanisms and platforms.

11.5. We further draw the Portfolio Committee to a 2021 decision by the UN Portfolio Committee on the Rights of the Child, where a group of children lodged a complaint with the United Nations against their governments and successfully established that they experienced real and significant harm as a result of the impact of climate change.³⁰

Decision adopted by the UN Portfolio Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019.³¹

The Portfolio Committee considers that children [...] are particularly impacted by the effects of climate change, both in terms of how they experience such effects as well as the potential of climate change to affect them throughout their lifetime, in particular, if immediate action is not taken. Due to the particular impact on children, and the recognition by States parties to the Convention that children are entitled to special safeguards, including appropriate legal protection states have heightened obligations to protect children from foreseeable harm.

²⁹ UNCRC (n7) para 27.

³⁰ UNCRC (n7), para 10.

³¹ United Nations (2019) '*Decision adopted by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure in respect of Communication No. 104/2019*' CRC/C/88/D/104/2019 para 10.13. <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-communications>. Accessed on 26 May 2022.

11.6. We therefore submit, that children’s participation is pivotal as a particularly affected demographic, and their views regarding all matters concerning them, such as climate change legislation and policy, should be given due consideration.³² This is further supported by the Special Rapporteur’s report³³ which recommends that States should facilitate the participation of children in environmental decision-making processes.³⁴

Recommendations in respect of Penalties

12. Application of the Bill and the inclusion of strong penalties, compliance and enforcement mechanisms as an effective deterrence against the contravention of provisions in the Bill.

12.1. We note Clause 32 provisions on offences and penalties and emphasise our submission for this legislation to reflect the WCC's ambition as discussed above.

12.2. Clause 4 (2) of the Bill binds all organs of state. We recommend that the Portfolio Committee considers expanding this provision given that the Bill also places obligations on non-state actors.

12.3. We further submit that the ‘persons’ as contemplated in terms of Clause 32 of the Bill should also be mandated to protect children’s rights from environmental harm due to their activities.

³² Children’s Act 38 of 2008, sec 10.

³³ United Nations (2018) ‘*Report of the Special Rapporteur on the issue of human rights obligations to the enjoyment of a safe clean healthy and sustainable environment*’ A/HRC/37/58; para 71. [file:///D:/Climate%20Change%20Bill/Report%20of%20the%20Special%20Rapporteur%20on%20HR%20to%20enjoy%20safe clean healthy and%20sustainable%20environment.pdf](file:///D:/Climate%20Change%20Bill/Report%20of%20the%20Special%20Rapporteur%20on%20HR%20to%20enjoy%20safe%20clean%20healthy%20and%20sustainable%20environment.pdf). Accessed on 18 May 2022.

³⁴ United Nations (n31), para 71 (d).



Rights-based approach: International Developments

13. The environmental clause of the Constitution³⁵ grants everyone the right to have the environment protected, for the benefit of present and future generations and section 24 (b) reads:

Everyone has the right to – (a) an environment that is not harmful to their health or well-being; and (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that -prevent pollution and ecological degradation [to] promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”³⁶

13.1. The right of future generations to inherit a healthy environment is constitutionally protected. This means that the government, in exercising its duties to mitigate climate change, should take sustainable development into account. Sustainable development “meets the needs of the present without compromising the ability of future generations to meet their own needs”.³⁷ The Special Rapporteur³⁸ further highlights this important consideration, that discussions about future generations should consider the rights of children who are already living and who will experience the environment in the future. Therefore, the yardstick between future generations and children living today shifts every time a child is born.³⁹

13.2. Defending the environment for present and future generations has become an imperative goal for governments.⁴⁰ We, therefore, remind the Portfolio Committee of the emerging international jurisprudence on climate change, where children are

³⁵ Constitution of the Republic of South Africa, sec 24.

³⁶ Constitution (n33), sec 24 (b).

³⁷ United Nations (2018) ‘*Report of the Special Rapporteur on The Issue of Human Rights Obligations to The Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*’ A/HRC/37/58 para 67. <https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session37/list-reports>. Accessed on 26 May 2022.

³⁸ n35.

³⁹ n35, para 68.

⁴⁰ United Nations,1972 ‘Declaration of the United Nations Conference on the Human Environment’ para 6. <https://legal.un.org/avl/ha/dunche/dunche.html> Accessed on 30 January 2024.

litigating against their States based on the right to be protected against current and future environmental harm in terms of domestic law and international instruments.

- 13.3. We therefore recommend that the effects of the proposed measures are assessed according to the extent to which they will affect children's rights, including the rights of future generations before they are taken as aggravating factors.⁴¹

CONCLUSION

14. We note with appreciation the measures to enable the development of an effective climate change response and a long-term just transition and encourage further development of this Draft Bill based on the recommendations proposed. Although there are several gaps in the Bill as far as the expression of children's right to environmental justice, access to information and participation is concerned, we note that the Bill is heavily administrative but still recommend the inclusion of mechanisms to allow children to play their part, however small that part may be.
15. We urge the Portfolio Committee to ensure that measures are put in place to allow for meaningful child participation further in the process, and to allow children to share their concerns and questions about the Bill. To do this, we call for the Portfolio Committee to invest in reaching out to children and creating platforms through which children and the general public can continue to engage with the Portfolio Committee once the Bill has been adopted.
16. We welcome any further engagements on our submission and look forward to an invitation to make oral submissions before the Portfolio Committee, and where necessary, to produce further written submissions.

- **End**

⁴¹ This recommendation is based on recommendations by the Special Rapporteur concerning children's educational and procedural rights: A/HRC/37/58 para 71 (b).



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