

# **PROTECTING CHILDREN'S RIGHTS IN A CHANGING CLIMATE: STATE'S OBLIGATIONS, THE LAW AND THE WAY FORWARD.**

© **A.Boyzie Kamara, Esq.**

## **CONTEXT**

1. This contribution, which coincides with the 75th anniversary of the Universal Declaration of Human Rights (10/12/2023) and the ongoing COP 28, aims to turn a spotlight on the link between the rights of children and a changing climate. At the time of writing, delegates from over 200 countries, business leaders and Civil Society are gathered in Dubai, UAE for the COP 28, otherwise called Conference of the Parties. The assumed goal is to 'hold the increase in the global temperature to well below 2 degrees C above pre-industrial levels' and to: "pursue efforts to limit temperature increases to 1.5 degrees above pre-industrial levels'.

COP has thus become a regular fixture in the realm of climate change for discussing and monitoring the Nationally Determined Contributions of States.

2. A very concerning issue in this arrangement has been the consideration given to the most vulnerable groups like women and children in climate change discourses. The overwhelming perception among experts is that children and their welfare have been largely ignored in Climate Change discussions.

3. Not surprisingly, ahead of COP 28, the Executive Director of UNICEF, the UN Childrens Agency has noted that: "The global failure to confront the climate crisis—the greatest threat of this generation—has created a child rights crisis. It is jeopardizing every child's fundamental right to health and well-being. COP28 cannot be business as usual. We cannot keep going down the same path. Let's ensure that COP28 becomes a turning point in finally putting children at the center in our shared fight against climate change"

4. Owing to their very vulnerable state, children suffer the greatest risk of being affected by climate change. From the day of conception through to adulthood, their mental health, continuous growth and development into adults are under constant threat. Children in Third World nations like Sierra Leone are the hardest hit.

5. For instance, the 2023 Notre Dame Global Action Index ranks Sierra Leone 163 out of 182 countries in terms of vulnerability to climate change with low preparedness to confront the ever-increasing threat. Up to 13% of the area of Sierra Leone and 35 % of its population are at risk. The prevalence of extreme heat, rising sea levels, recurrent storms, mudslides and other climate disruptions pose a threat to the country's food security efforts, biodiversity and livelihoods (African Development Bank Report 2022).

6. And according to Afrobarometer (November 2023) while climate change awareness is increasing in Sierra Leone, the awareness is still limited to half of the population, the majority of those who have heard about it say it has worsened their quality of life. The Survey (Afrobarometer Dispatch No. 725 of 3rd November, 2023) goes further to say that only 49% of Sierra Leoneans say they have heard about climate change. 85% of the citizenry believe that citizens can help curb

climate change and 81% say the government should take immediate climate change action even at great economic expense. It says 59% of Sierra Leoneans assign primary responsibility for limiting climate change to the government while 30% ascribe responsibility to the ordinary citizens.

7. A World Bank report (Sustainable cities: Urban Areas and Climate Change in Sierra Leone, June 2023) reveals that among the most vulnerable to the effects of climate change are the urban Poor. And according to UNICEF (The Climate-Changed Child: A Children's Climate Risk Index Supplement-November 2023), as of 2022, 739 million children were exposed to high or extremely high-water scarcity, 436 million children live in areas of high or extremely high-water vulnerability. Children face multiple vulnerabilities especially in Sierra Leone where most parents are poor.

8. Sierra Leone dispatched a delegation to the COP 28 in Dubai but it is unclear whether the delegation includes a children's regiment.

This piece contends that since Children represent one third of the population of the world and owing to their legally peculiar character as a vulnerable group, States have fundamental obligations under international and domestic laws to ensure that children grow up and develop in a safe environment where their rights are protected and respected. It concludes that so far, states are failing to uphold these obligations and climate change continues posing the greatest risk to the actualization and enjoyment of children's rights.

The next paragraph looks at the strides made so far by Sierra Leone in this regard.

### **Efforts made by Sierra Leone in protecting Children's Rights and the Environment**

9. Despite being a third world country, it is worthy to acknowledge that Sierra Leone continues to take sturdy strides to tackle the deteriorating climate and its effects on the citizens.

10. In 2022, a revamped Environmental Protection Agency Act was enacted to provide for a more effective and efficient protection and management of the environment. A Ministry of Environment has been functional with specific focus on the environment. There is also the National Protected Area Authority Act of 2012 which was enacted to establish a National Protected Area Authority; to promote bio diversity conservations, wildlife management and for the sale of ecosystems services in the National Protected Areas.

The Human Rights Commission of Sierra Leone has been enabling discussions around climate change and human rights. In their latest Newsletter, a whole portion was devoted to highlighting the link between climate change and human rights and what citizens can do to adapt.

11. In the area of children's rights, the Child Rights Act 2007 established, inter alia, a regime for the protection and promotion of Children's rights. A Family Court was established with speciality in handling children's rights issues.

12. A National Children's Commission is fully functional with the mandate to seek children's welfare. In 2022, the National Commission for Children launched the #protectthechild campaign

and the Children's Right Governance campaign, both of which were designed to generate discussion around children and their plight. The Commission has been active in elevating the discourse on Children's Rights.

However, despite these strides, there is a noticeable gap when it comes to the protection of children's rights within the context of climate change. The next paragraphs look at the specific children's rights which are jeopardised by the changing Climate.

### **Specific Children's Rights Affected by A Changing Climate under International Law\***

13. As already stated, Children as members of the human family are entitled to the general Human Rights as contained in the United Nations Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples Rights (ACHPR).

14. As members of a special/ vulnerable group, Children are entitled to protection. The States can simply achieve this by upholding the obligations as enshrined in the United Nations Convention on the Rights of the Child (UN-CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC).

15. Additionally, states have obligations to children under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. But what specific rights have been violated and how? The next paragraphs will throw light.

### **The Right of Children to be heard, to have their views considered and to Participate in Proceedings concerning them.**

17. Article 12 of the UN Convention on the Rights of the Child upholds the right of the child to be heard and express his or her views. This right is closely linked with the right to freedom of expression (article 13), the right to freedom of assembly (article 15), and the right to access information (article 17). This right is also guaranteed in article 19 of the UDHR. The Child Rights Act 2007 also mirrors these rights in Sierra Leone.

18. The right to be heard is further guaranteed in articles 7, 8 and 9 of the African Charter on the Rights and Welfare of the Child (ACRWC). It's also enshrined in articles 9 & 10 of the African Charter on Human and Peoples Rights (ACHPR)

20. It is contended that despite these guarantees, little attention has been accorded to the views of children in climate change discussions. In fact the first recognition of children as a vulnerable group deserving of protection in climate change discussions came in the preamble of the Paris Agreement.

21. In UNCRC General Comment No.14 para. 77, it was stated that: "Children when in situations where their health and well-being are impacted should be provided with adequate and appropriate information to understand the situation and all the relevant aspects concerning their interests and be allowed where possible to give their consent in an informed manner"

22. In article 4(I) of the UNFCCC, the State has an obligation to: “Promote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations.”

There is no age restriction on this right to be heard and the state is discouraged from attempting to impose age limits on this right as per Committee on the Right of the Child, general comment No.12 (2009) para. 21

23. The state must not only use the rights of children to be heard as a way of fulfilling a formality requirement, but they must be taken seriously. In *K.S. and M.S v Switzerland*, No. 74/2019/ UN Committee on the Right of the Child (CRC), 10th February 2022, the UN Committee on the Right of the Child held that the failure by the state to hold a direct hearing with the child violated Articles 3 & 12 of the Convention.

In *Re: Jamie*(2015) FamCA 455(16 June 2015), the family Court of Australia found that 15 years old ‘Jamie’ was competent to consent to the stage two treatment for gender dysphoria and authorised her to make her own decision in relation to the treatment.

25. Presently, Sierra Leone does not have a specialised forum where children are taught about their rights and obligations in relation to climate change. There ought to be such fora where they are also encouraged to air out their understanding of climate change, how it affects their daily lives and what they think should be done to mitigate the impacts.

26. The state has an obligation to ensure that children’s views are inculcated in Climate Change discussions. Children must be informed of the effects of Climate Change to their lives and what role they could play in the mitigation efforts. They ought to be consulted and their views must be considered, not as a matter of formality but as a matter of urgency. Failure to do so is a violation of their rights for which the state must be held accountable.

### **The State's Obligation to Prioritise the Best Interest of the Child.**

27. Article 3 of the UN-CRC mandates states to ensure that in all proceedings concerning children, whether private or public, judicial or administrative, the best interest of the child must be the primary consideration. This provision is also mirrored in Article 3 of the ACRWC. It's also contained in section 3 of the Child Rights Act 2007

In General Comment No 16 (2013), the UNCRC stated that: “states are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning children... operations that directly or indirectly impact on children...the consideration becomes crucial when states are engaged in weighing competing priorities”

28. The State should be able to explain how the right to have the best interest of the child considered has been respected in its decision making and policy considerations. The best interest of the Child requires that the situation be assessed independently of any other factors.

29. The African Committee of Experts on Children's Rights has noted in *The African Centre for Human Rights and Rencontre Africaine pour la Defence de Droits De L’homme v Senegal* ACERWC no 003/com/001/2012, 2015 para. 35 that: "the duty to put the best interest of the child

is not only applicable to actions and omissions of the state, but also extends to the actions of non-state actors.

30. In the decision in *Mazou v Cameroun* (2001)(AHLR)8(HCR 2001) para. 8.4 it was stated that: a prolonged decision even in favour of a Child cannot serve the best interest of the Child since the prolongation may lead to the infringement of other substantive rights.

31. Furthermore, in *R.H.M. (on behalf of Y.A.M.) v Denmark*, communication No. 83/2019, CRC/C/86/D/83/2019, UN Committee on the Rights of the Child (CRC), 5 March 2021, p. 10 the Committee concluded "that there was a failure to consider the best interest of the Child by the state of Denmark when assessing the alleged risk of the Child being subjected to female genital mutilation if deported to Somalia and such a return to Somalia would amount to a violation of articles 3 and 19 of the Convention".

32. Ensuring the best interest of the Child necessitates that procedural safeguards must be established including prioritizing Children's issues and completing decisions in the shortest possible time. This was so held in *Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania* No. 007/Com/003/2015, 15.12.2015

33. Within the context of the obligations of the State regarding the effects on Climate Change on Children's rights, the UNFCCC is very clear on the level of obligation owed. Using the precautionary principle, the State has an obligation to anticipate, prevent or minimize the effects of Climate Change as enshrined in article 3(3) of the UNFCCC. The State has an obligation to take Climate Change considerations into account in all its endeavours. There is also an obligation to adopt Climate Change mitigation strategies in the national policies (articles 4(1) (f) and 4(2) (a) of the UNFCCC.

34. The failure of a state to uphold these rights can spell doom for the well-being of children and would amount to a violation of their Rights.

35. Extreme weather conditions, droughts, floods which are brought about by the change in Climate usually result in displacement of children, separation from parents, loss of homes and leisure, lack of safe drinking water and malnutrition. These effects go against the best interest of the child and result in violation of their rights, like the right to survival and development.

### **The Right to Life, Survival and Development**

36. The Child's rights to life, Survival and Development are inherent and inalienable in all International Treaties. They are guaranteed in article 5 of the African Charter on the Rights and Welfare of the Child, at Article 6(1)(2) of the UN Convention on the Rights of the Child; at article 3 of the Universal Declaration of Human Rights and at article 4 of the African Convention on Human and Peoples Rights. Natural disasters and air pollution which are brought on by Climate change result in child morbidity. In 2012 alone approximately 700,000 children under the age of 5 died of causes related to air pollution (UNHR/A/HRC/35/13). Climate change can exacerbate air pollution by intensifying the toxicity of the air pollutants.

36. The right to life demands that the state has an obligation to take actions and stop events that may lead to the loss of lives of Children. Humans rights are inviolable and states should ensure that no child is arbitrarily deprived of his or her life.

In Communication No. 84/1981, *Dermit Barbato v. Uruguay*, Views adopted on 21 October 1982, para. 10, it was observed that State parties have a primary duty to take appropriate measures to protect the life of a person. These appropriate measures within the context of climate change and the UNFCCC include the duty to take precautionary measures which will mitigate the adverse effects of Climate Change on Children and the enjoyment of their rights.

Since Climate Change leads to ocean warming, ocean acidification, floods, droughts, wild fires, these phenomena in turn cause mortality in Children. Children die and suffer severe sicknesses that affect their growth and development. Climate change can contribute to the spread of diseases such as malaria, hepatitis etc.

The UN estimates that by 2030, climate change will result in the death of an additional 48,000 children less than 15 years of age from diarrhoea disease.

If the State upholds its obligations under the various treaties, these deaths of Children which result from Climate Change could be at the very least, mitigated.

### **The Right to Education, Health and Healthy, Clean and Sustainable Environment.**

37. The Child's right to Education has been recognized in article 11 of the ACRWC, article 17 of the ACHPR; articles 28 and 29 of the UN-CRC and article 26 of the UDHR.

And the right to Health is enshrined in article 14 of the ACRWC, article 16 of the ACHPR; article 24 of the UNCRC and article 25(1) of the UDHR.

By Resolution 48/13, the UN General Assembly recognized the right to Clean, Healthy and Sustainable Environment.

The rights of a child to Health and Education should not be affected and the state must take measures to protect them. In the decision in: *The Centre for Human Rights (University of Pretoria) and La Rencontre Africaine pour la Defense Des Droits de l'homme (Senegal) V. The Government of Senegal No 003/Com/001/2012*, the Committee held that: "in realizing the right to education the state must ensure, inter alia, the availability, accessibility and acceptability of the education provided to the children...a state party is not only obliged to provide education, but to also ensure that the education so provided is of acceptable quality"

Similarly, in UNCRC, General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24), para 112 the Committee stated that the criteria for assessing the performance and implementation of healthcare obligations are availability, accessibility, acceptability and quality.

In the decision in ACHPR, Communication 379/09: Monim Elgak, Osman Hummeida, and Amir Suliman (represented by FIDH and OMCT) v Sudan (2015) para 134 it was held that the right to health includes the right to control one's health and the right to be free from interferences. The actualization of the right to health also includes the facilitation of access and information. The effectiveness of the right can only be assessed based on the result produced.

And in ACERWC Communication No. 007/Com/003/2015, Minority Rights Group International and SOS-Esclaves on behalf of Said Ould Salem and Yarg Ould Salem V. The Republic of Mauritania, para 54., the African Committee of Experts pointed out that:” obligations on State Parties are \_‘obligations of result’ and a commitment to the fulfilment of any right must be concretely demonstrated through action and subsequent impact

Climate change and the impacts of traumatic stress connected to climate change such as war, insecurity, sexual and physical violence and witnessing deaths and injuries related to extreme weather disasters increase the susceptibility of children to post traumatic stress disorder, anxiety and depression.

38. States have thus far failed in their obligations under Article 4 of the UNFCCC, the resultant effects being a plethora of violations of Children's Rights. Children who are displaced as a result of floods cannot access educational services. They don't enjoy family life and they don't have access to recreation and leisure. They don't enjoy a clean and sustainable environment. They are prone to diseases and they resort to living in very unhealthy environments.

It is submitted that that the State cannot be excused from taking action on the basis of unavailability of funds/resources. For one, Children's rights must be made a priority even within the meagre resources at the disposal of the non-Annex 1 Countries like Sierra Leone- in the UNFCCC.

The State can also benefit from cooperating with the highest polluters and ensure that resources are available for them.

### **Present State Actions and Omissions that Affect the Climate System.**

It is argued that though the state has acceded to these Climate and Human Rights Treaties, it continues to fall short of taking the concrete actions or the omissions that would ensure that the climate is safe for current and future generations of children. Sierra Leone and other states have failed to take the science-based actions needed to stabilize the climate system. They continue to support industries that accelerate climate change. Licenses are granted to mining companies which end up disfiguring the environment and exploration rights are granted to companies without expressed regard to the effect of their activities on children.

States continue to support the fossil fuel industry and thereby increasing the emission of greenhouse gases. The inaction to take adequate measures is bound to harm the Planet for the Children.

The rich countries which contribute more to the changing of the Climate System have failed to make good their financial pledges to poor nations like Sierra Leone which are at the receiving end of the most adverse effects of climate change.

The submission here is that the continuation of inactions by States result in the violation of almost all the rights guaranteed for Children under International Treaties.

And unless these are arrested or mitigated, present and future generations of Children will face a bleak future from the Changing Climate.

The future of Children's Rights if present trends continue and if Obligations are not Respected.

As already established, States have obligations to take ambitious measures aimed at minimizing the present and future negative effects of climate change on Children's Rights. This involves limiting global warming to no more than 1.5 degrees Celsius above pre-industrial levels and to also focus adaptation measures for those children living in the most vulnerable areas of the world. Anything less will portend a dire future for Children's rights.

Experts have predicted that if the present collective failure by States to take science-based action to halt the emissions of greenhouse gases is not arrested, Children will be among the worst affected lot.

For instance, it is estimated that if the present trend continues, by 2050, approximately 1.45 billion Children will be living in zones where the global average surface temperature will have increased by greater than 2 degrees Celsius, an increase which expert have described as 'catastrophic'. (UNICEF UK)

An estimated 30 million more malnourished children will result by 2050. Experts predict that extreme weather conditions can lead to morbidity and mortality among children. Globally, it is estimated that 160 million children inhabit areas at risk of drought, 500 children live in flood zones and 115 million are exposed to cyclone risk. And about 600 million children living in the most vulnerable countries are facing imminent danger. (UNICEF)

Water scarcity and food insecurity brought about by Climate Change will have disproportionate impact on Children, especially the poor. Experts estimate that by 2030 Climate Change will result in an additional 7.5 million Children under the age of 5 years who are moderately stunted. As stated earlier, in 2012 alone, for instance, about 700 thousand Children under the age of 5 years died from the effects of air pollution. It is estimated that by 2030, Climate Change will result in the death of an additional 48,000 Children less than 15 years of age from diarrhea.

Further, it is estimated that more than 88% of the existing global burden of diseases due to Climate Change occurs in Children under the age of 5 years. The stresses from witnessing the horrors brought about by Climate Change are also predicated to negatively influence Children's mental health.



A study by UNICEF concluded that One Billion children around the world are at ‘extremely high risk’ of the impact of the Climate Crisis. Dwindling resources as a result of Climate Change can destabilize entire regions, thereby increasing the risk of confrontation which will involve children.

#### Recommendations/ the way forward

The global community of States, civil societies and private sector must unite to make Children’s rights a priority in Climate Change discussions, actions and policy considerations.

States must be made to inculcate ‘the Best Interest of the Child’ Principle and make Children’s right a permanent fixture in all things Climate. Children should be empowered to express their views and be allowed to share their unique experiences on how climate change affects the enjoyment of their rights, what role they could play in mitigation efforts and what remedial measures are available to them.

The State, Civil Society and the private sector should dedicate more effort to highlight the link between climate change and Children’s rights and the effects of failure to take action on Climate Change.

The consequences of failure to act should also be made clear. It is suggested that some form of nudge must be visited upon States which continuously renege on their obligations.

In Sierra Leone, there is need to amend the Child Rights Act 2007 to inculcate a specific section on children's rights in a Changing Climate. The Ministry of Environment and the Environmental Protection Agency should as a matter of urgency establish a Climate Change and Children’s rights section to handle issues of climate change and children. The Human Rights Commission of Sierra is already doing well raising the discourse on human rights and climate change. There is need to specifically create discussion around children’s rights and the climate system.

Climate change clubs should be established in schools to highlight issues of climate change to the children. It’s essential to also consider creating climate change and children’s rights as a subject in schools.

These measures should be taken with the same urgency as the threat presented by Climate Change. The child climate activist Greta Thunberg puts it in perspective when she stated in 2019 at the World Economic Forum: "Our house is on Fire. I am here to say our house is on Fire"

#### ABOUT THE AUTHOR

A.Boyzie Kamara is a Barrister and Solicitor of the High Court of Sierra Leone. He is the Head, Gbanthkedi Chambers, a Law Firm located at 5 Howe Street Freetown