

Climate change and human rights in the African Union (AU)

by

Anoeschka du Plessis

LLB

Submitted in accordance with the requirements for the degree Magister Legum in
Environmental Law at the North-West University (Potchefstroom Campus), South
Africa

LLM Environmental Law modules passed

LLMO 881

LLMO 883

LLMO 886

LLMO 887

Study Supervisor: Prof W Scholtz (NWU)

Co – supervisor: Mr WD Lubbe (NWU)

2012

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AKNOWLEDGEMENTS

To my heavenly father for his grace and the strength he gave me to enable me to undertake this project.

To my supervisors and promoters Professor W Scholtz and Mr N Lubbe for their encouragement, and invaluable assistance in completing this dissertation. They made sure I stayed on track and completed each section properly. Without their guidance and help I would not have been able to complete this project in the time I had available. Thank you so much.

To my dad for his unfailing love and support in all my endeavours and for encouraging me to attempt this project.

To the personnel of the University of Potchefstroom who made this journey possible.

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LIST OF ABBREVIATIONS

AAP	Africa Adaptation Programme
ACHPR	African Commission on Human and Peoples Rights
ACRWC	African Charter on the Rights and Welfare of the Child
AMCEN	African Ministerial Conference on the Environment
AR4	Fourth Assessment Report
AU	African Union
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
COP	Conference of Parties
CRC	Committee on the Rights of a Child
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedom
GHG	Greenhouse gas
IACHR	Inter-American Convention on Human Rights (San Salvador Protocol)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHRP	International Council on Human Rights Policy
ICJ	International Court of Justice
IPCC	Intergovernmental Panel on Climate Change
LDCF	Least Developed Countries Fund
MDGs	Millennium Development Goals
MEA	Multilateral Environmental Agreement
NAPA	National Adaptation Plans of Action
NCCRS	National Climate Change Response Strategies
NEPAD	New Partnership for Africa's Development
OHCHR	Office of the High Commissioner for Human Rights
OECD	Organization of Economic Co-operation and Development

SCCF	Special Climate Change Fund
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNHRC	UN Human Rights Commission
UNDP	United Nations Development Programme
UNCROC	United Nations Convention on the Rights of the Child
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNFCCC	United Nation Framework Convention on Climate Change
UNGA	United Nations General Assembly
UNICEF	United Nations Children’s Fund
WHO	World Health Organisation

1 Introduction

Climate change has been identified as a leading human and environmental crisis of the 21st century. Hurricanes, environmental degradation, water stress, diseases, malnutrition and flooding are just some of the environmental results of climate change.¹ All countries are vulnerable to one extent or another to climate change.

The African continent is the most vulnerable of all regions to the consequences of climate change.² Despite the fact that Africa is the least responsible for greenhouse gas (GHG) emissions, it will require the most efforts to adapt. Climate change poses a serious threat to peace and security on the continent since it may result in competition and conflict about scarce resources in the region, for example land, oil and especially water.³ Climate change may have various other negative consequences like more frequent droughts, floods, heat waves, crop losses, increased health challenges like malnutrition and unliveable cities.⁴ The influences of climate change are likely to be aggravated by the interaction of other stressors common within the region. These include: extreme poverty, limited access to capital, environmental degradation and conflicts.⁵ These stressors all influence a regions ability to cope or adapt to the potential negative effects of climate change.

From the above it should be clear that the consequences of climate change will affect the interdependent relationship between humans and the environment. The Intergovernmental Panel on Climate Change (IPCC) has predicted that the extreme weather events will become more frequent, more intense and more widespread during the 21st century.⁶ These weather events will increase the tropical cyclone activity and heat waves which will amplify the risk of mortality injuries and infections.⁷

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- 1 IPCC Fourth Assessment Report (AR4) *Climate Change 2007: Impacts, Adaptation and Vulnerability* 82-83.
 - 2 Scholtz 2010 *African Human Rights Law Journal* 2.
 - 3 Brown, Hammill & Mc Leman *Climate Change as the "New" Security Threat: Implications for Africa* 1143.
 - 4 Scholtz 2010 *African Human Rights Law Journal* 2.
 - 5 Mwebaza *The impact of climate change in East Africa* 10.
 - 6 IPCC AR4 *Climate Change 2007: Impacts, Adaptation and Vulnerability* 18.
 - 7 IPCC AR4 *Climate Change 2007: Impacts, Adaptation and Vulnerability* 18.

A reliable and effective system of environmental protection would help ensure the well-being of future generations, as well as the survival of indigenous or economically marginalised groups which depend on natural resources for their livelihoods.⁸ Human rights and the environment are endangered by anthropogenic changes in the climate. Climate change will affect the human rights to water, food, life and health, as well as other rights. Furthermore, the question arises whether the human rights framework can be followed to approach adaptation in the African Union (AU).

Resolution 10/4 of the United Nations Human Rights Commission (UNHRC) mentions the effect of climate change on the enjoyment of human rights and emphasises that parties should, in all climate change related actions, fully respect human rights. Human rights cannot be taken for granted; it must be nurtured and strongly protected. It seems that limited steps are taken towards resolving climate change which, in turn, has consequences for the enjoyment of human rights, for example rights to life, food, water and health.⁹ The effects of climate change on the full enjoyment of human rights must be addressed without delay.¹⁰ Environmental degradation caused by climate change will further hamper the enjoyment of these fundamental human rights.¹¹ Thus, environmental matters deserve to be debated through a statement or assertion of existing human rights as mentioned above.¹² The principles, norms and processes of international and regional law as they relate to human rights and climate change will be examined. Some main international law documents will be introduced in order to display their status and find out whether they can justify environmental protection for humans.

At regional level, the AU plays a significant role in ensuring that the goals of sustainable development are attained to achieve a better life for the people of

8 Anderson *Human Rights Approaches to Environmental Protection: An Overview* 3.

9 McInerney-Lankford, Darrow & Rajamani *Human Rights and Climate Change: A Review of the International Legal Dimension* 1.

10 UNHRC *Urgent call for a Special Rapporteur on Climate Change and Human Rights* 2.

11 See para 3.1.

12 McInerney-Lankford, Darrow & Rajamani *Human Rights and Climate Change: A Review of the International Legal Dimension* 9.

Africa.¹³ The State has obligations to protect human rights.¹⁴ In this context the duty to protect may include a duty to undertake adaptation measures to limit the harms caused by climate change. This follows the fact that climate change negotiations currently aim at the improvement of adaptive capacity and financial resources that may constitute a reasonable measure to secure sustainable development. It seems therefore as if a curious inter-relationship exists between climate adaptation and the interests of people that are protected by means of certain human rights. Further, this dissertation will assess the AU's response to climate change by providing an overview of the AU's environmental and climate change regimes.

Climate change poses new and radically different challenges and opportunities for the overall human rights situation on the African continent. It will be examined whether a human right to an environment exists and whether the AU really can make a difference for human rights on the African continent. Against the background of the above, this study questions the link between human rights protection and adaptation to climate change from an AU perspective. The question that needs to be answered is how climate change should be approached through a human rights perspective, and how does the AU address the relationship between human rights protection and climate change adaptation measures?

2 The effect of climate change on human rights

Climate change will affect the basic elements of life for millions of people around the world.¹⁵ Climate change is already affecting a wide range of protected human rights, such as the right to health, the right to water, the right to food, and even the right to life.¹⁶ It is therefore clear that there is a nexus between climate change and human rights. The climate change and human rights linkage has been recognised in

13 Dersso *Promotion of Human Security in Africa* 4.

14 Article 26 of the African Charter establishes that State parties to the present Charter shall have the duty to guarantee the independence of the courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

15 Office of the High Commissioner for Human Rights (OHCHR) 2012 <http://www.ohchr.org>.

16 Glazebrook 2009 *Victoria University of Wellington Law Review* 334; See paras 5.2, 5.3, 5.4 & 5.5.

different contexts and further steps have been taken to further clarify the relationship.¹⁷ The negative impacts of climate change on these fundamental human rights will not occur everywhere or have the same impact in all countries.¹⁸ The extent of any negative impact depends on the exposure to climate change effects and the capacity to adapt.¹⁹ Exposure to these effects is partly determined by environmental factors, such as location in low lying areas, but also depends on population density and infrastructure.²⁰ The high exposure to climate change and low adaptive capacity of Africa makes them very vulnerable to the negative results of climate change.²¹ Some segments in Africa will even be more vulnerable to the effects of climate change due to their geography, gender, age, indigenous or minority status and disability.²² There are already new and radically different challenges and opportunities for the overall human rights situation on the African continent.²³ It goes without saying that Africa's human development situation is in dire need of attention.²⁴

The UNHRC resolutions highlights some of the basic human rights that will be negatively influenced (and already is negatively affected) by climate change in Africa.²⁵ Resolution 7/23 on Human Rights and Climate Change expressed concern over the fact that climate change poses far reaching threats to people and communities around the world.²⁶

17 The Male Declaration express concern that climate change has clear and immediate implications for the full enjoyment of human rights; UNHRC, Resolution 7/23 on Human Rights and Climate Change also recognises that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.

18 Glazebrook 2009 *Victoria University of Wellington Law Review* 334.

19 Glazebrook 2009 *Victoria University of Wellington Law Review* 334.

20 Glazebrook 2009 *Victoria University of Wellington Law Review* 334.

21 Glazebrook 2009 *Victoria University of Wellington Law Review* 334.

22 UNHRC, Resolution 10/4: Human Rights and Climate Change; Draft Report of the Human Rights Council on its Tenth Session U.N. Doc. A/HRC/10/L.11 para 8.

23 Oloka-Onyango *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?* 39.

24 Oloka-Onyango *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?* 40.

25 See para 5.1.

26 UNHRC, Resolution 7/23 Human Rights and Climate Change U.N. Doc. A/HRC/RES/7/23 para 4.

The environment plays an important part in the human rights regime because it is essential for the enjoyment of basic human rights.²⁷ But the question is how the human right treaties provide protection for the environment, if they provide any at all. Furthermore, how does the environmental consideration have been integrated into the human rights discourse?

3 Establishing a link between human rights and the environment

3.1 *International perspectives*

There is no treaty that is specifically designed to create a universal substantive environmental right. The link between environmental protection and human rights was first explicitly recognised in the 1972 Stockholm Conference on the Human Environment.²⁸ Principle 1 of this declaration underlined that:²⁹

Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.

Although there was no mention of a specific environmental right it still reflects a general recognition of the interdependence and interrelatedness of human rights and the environment.³⁰ Kiss and Shelton claim that this complex sentence stops short of proclaiming a right to environment, but it clearly links human rights and environmental protection.³¹ The Stockholm Declaration affirms that environmental conditions are essential for peoples' wellbeing and for the enjoyment of basic human rights - even the right to life itself.

After Stockholm States began to consider human rights in a more instrumental fashion, identifying those rights whose enjoyment could be considered a prerequisite to effective environmental protection. They focused in particular on the procedural

27 See para 3.

28 Declaration of the United Nations Conference on the Human Environment 1972 U.N.Doc. A/Conf.48/14/Rev.1. Hereafter Stockholm Declaration.

29 Principle 1 of the Stockholm Declaration.

30 Shelton 1991 *Stanford Journal of International Law* 112.

31 Kiss & Shelton *Guide to International Environmental Law* 42.

rights of access to environmental information, public participation in decision making, and access to justice and remedies in the event of environmental harm.³²

The human rights organs of the United Nations (UN) have developed other significant work regarding the relationship between human rights and the environment. Thus has resulted in numerous resolutions which have acknowledged the links between human rights and the environment.³³

In 1986, the report from the World Commission on Environment and Development, *Our Common Future*,³⁴ set out as its first principle, that:³⁵

All human beings have the fundamental right to an environment adequate for their health and well-being.

This principle has been recognised by the UNHRC,³⁶ as well as three regional agreements namely the African Charter on Human and Peoples' Rights (African Charter or Banjul Charter),³⁷ the 1988 San Salvador Protocol to the American Convention on Human Rights,³⁸ and the 1998 Aarhus Convention on Access to

32 United Nations Environmental Program (UNEP) *Human Rights and the Environment: Rio+20: Joint Report OHCHR and UNEP* 11.

33 Resolution 2005/60 focused on increasing consideration of the impact on the environment within other areas; Resolution 10/4 has served to underline the close linkages between human rights and environment and the need to clarify these linkages at the international level; see Shelton, "Human Rights and Environment: Past, Present and Future Linkages and the Value of a Declaration", paper presented at *High Level Experts Meeting on the New Future of Human Rights and the Environment: Moving the Global Agenda Forward*, Nairobi, 30 Nov-1 Dec 2009.

34 Report of the World Commission on the Environment and Development: *Our common future* (1987). Also known as the Brundlandt Report.

35 Principle 1 of the Brundlandt Report in Annexe 1: Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development Adopted by the WCED Experts Group on Environmental Law available at <http://www.un-documents.net/ocf-a1.htm>.

36 UNGA, Resolution 45/94: The Need to Ensure a Healthy Environment for the Well-being of Individuals U.N.Doc A/Res/45/94 (1990) recognises that all individuals are entitled to live in an environment adequate for their health and well-being; UNHRC, Resolution 1991/44: Human Rights and the Environment E/CN.4/RES/1991/44 includes identical language by recognising that all individuals are entitled to live in an environment adequate for their health and well-being.

37 Article 24 of the African Charter states that all peoples shall have the right to a general satisfactory environment favourable to their development.

38 Article 11 of the San Salvador states that everyone shall have the right to live in a healthy environment.

Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.³⁹

In 1990, the United Nations General Assembly (UNGA) observed that environmental protection is indivisible from the achievement of full enjoyment of human rights by all.⁴⁰ This comment heralded the recognition of the right of all individuals to live in an environment adequate for their health and well-being and called for enhanced efforts to ensure a better and healthier environment.⁴¹ Further, in 1994 the Special Rapporteur to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities proposed a set of Draft Principles providing for a stand-alone environmental right, described as the right to a secure healthy and ecologically sound environment.⁴² The Final Report, submitted to the Sub-Commission,⁴³ concluded that environmental damage directly affects the enjoyment of a series of human rights.⁴⁴ It further states that the notion of the indivisibility and interdependence of all human rights underpins the links between the right to development and the right to a healthy and safe environment.⁴⁵

It is clear that the link between human rights and the environment is recognised in the international regimes. These Principles mentioned above recognises the

39 The Aarhus Convention recognises in its preamble that every person has the right to live in an environment adequate to his or her health and well-being.

40 UNGA, Resolution 45/94: The Need to Ensure a Healthy Environment for the Well-being of Individuals U.N.Doc A/Res/45/94 (1990) recognises that all individuals are entitled to live in an environment adequate for their health and well-being para 1; UNHRC, Resolution 1991/44: Human Rights and the Environment E/CN.4/RES/1991/44 includes identical language by recognising that all individuals are entitled to live in an environment adequate for their health and well-being.

41 UNGA, Resolution 45/94: The Need to Ensure a Healthy Environment for the Well-being of Individuals U.N.Doc A/Res/45/94 (1990) para 1.

42 Sub-Commission on Prevention of Discrimination and Protection of Minorities Resolution 1990/7 entrusted Mrs Fatma Zohra Ksentini with the task of undertaking a study on human rights and the environment. In UNCHR, Resolution 1991/44 the Council approved the endorsement of Mrs Ksentini as Special Rapporteur to prepare a study on human rights and the environment.

43 Draft Principles on Human Rights and the Environment, final report prepared by Mrs Fatma Zohra Ksentini, Special Rapporteur, UN Doc. E/CN.4/Sub.2/1994/9. Hereafter Ksentini Report.

44 UNHRC, Sub-Commission on Prevention of Discrimination and Protection of Minorities para 11.

45 UNHRC, Sub-Commission on Prevention of Discrimination and Protection of Minorities para 11.

interlinking of human rights, an ecologically sound environment and sustainable development.⁴⁶

In the International Court of Justice (ICJ) case *Gabcíkovo-Nagymaros Project*, judge Weeramantry noted that the enjoyment of internationally recognised human rights also depends upon environmental protection:⁴⁷

Protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a sine qua non for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this, as damage to the environment can impair and undermine all the human rights spoken of in the Universal Declaration and other human rights instruments.

This illustrates that environmental degradation can interfere with many specific human rights, including rights to life and health. Furthermore, it is clear that the protection of the environment is essential for human well-being and for the full enjoyment of human rights by all. This means that environmental damages can have potentially negative effects on the enjoyment of some fundamental human rights.⁴⁸

These rights include:

- The right to life,
- the right to health and a healthy environment,
- the right to food and
- the right to water.

46 Boyle *The Role of International Human Rights Law in the Protection of the Environment* 44; Anderson *Human Rights Approaches to Environmental Protection: An overview 2*; the Draft Principles on Human Rights and the Environment described the right to a healthy environment as the right to a secure, healthy and ecologically sound environment and that all persons have a right to an environment adequate to meet equitably the needs of present generation and that does not impair the rights of future generations to meet their needs.

47 The opinion of the vice president of the ICJ, Christopher Weeramantry in the *Gabcíkovo-Nagymaros Project (Hungary vs Slovakia)*, 25.09.1997 ICJ paras 91 & 92; Resolution 2003/71: Human Rights and the Environment as Part of Sustainable Development E/CN.4/RES/2003/71 stated that environmental damage can have potentially negative effects on the enjoyment of some fundamental human rights.

48 Resolution 2003/71: Human Rights and the Environment as Part of Sustainable Development E/CN.4/RES/2003/71 para 12

These are fundamental human rights that will be discussed. Examples of human right instruments that acknowledge the link between the environment and human rights are given in the following section.

3.2 Human rights treaties that can provide protection for the environment

Some of the major human right treaties do not deal with the environment directly; however, many instruments recognise the human rights mentioned above.⁴⁹ Judges have stated that the right to life includes the right to live in a healthy environment, a pollution free environment and an environment in which ecological balance is protected by the State.⁵⁰ General Comment No. 14 gives effect to environmental conditions when stating that:⁵¹

The right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions and a healthy environment.

Ramacharan more directly argues that a right to environment is implicit in the right to life and that States therefore have an obligation to take effective measures to prevent and to safeguard against the occurrence of environmental hazards which threaten the lives of human beings.⁵² The UNHRC affirmed that the human right to safe drinking water and sanitation is derived from the right to an adequate standard

49 For example the right to life is contained in Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), United Nations Convention on the Rights of the Child (UNCROC), the African Charter and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

50 Anderson *Human Rights Approaches to Environmental Protection: An overview* 7.

51 Committee on Economic, Social and Cultural Rights (CESCR) General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) 2000 E/C.12/2000/4 para 4.

52 Ramcharan *The Concept and Dimensions of the Right to Life* 13; K Toepfler, Executive Director of UNEP, suggests that the fundamental right to life is threatened by soil degradation and deforestation and by exposures to toxic chemicals, hazardous wastes and contaminated drinking water. Environmental conditions clearly help to determine the extent to which people enjoy their basic rights to life, health, adequate food and traditional livelihood and culture; UNEP 2001 <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=197&ArticleID=2819&l=n>.

of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.⁵³

Article 24 of the UNCROC integrates environmental concerns into the provision of primary health care aimed at combating disease and malnutrition. It highlights the dangers and risks that environmental pollution poses in relation to adequate nutritious foods and clean drinking water.⁵⁴ The UNCROC does not mention a right to an environment but it does make reference to environmental quality. The International Covenant on Economic, Social and Cultural Rights (ICESCR) contains provisions for the right to food (Article 11) and the right to health (Article 12), which have been used as a basis for the interpretation of the responsibilities of States relating to environmental conditions.⁵⁵

Thus it is necessary to have a right to a clean and healthy environment for the protection of human rights because these rights, mentioned above, are directly threatened by environmental degradation.⁵⁶ International human rights tribunals have come to view environmental protection as essential for the enjoyment of these internationally guaranteed human rights, especially the rights to life and health.

4 Establishing a link between the environment and human rights at a regional level

There are currently two regional legal instruments for the protection of human rights which contain a reference to the right to a healthy environment.

53 UNGA, Resolution 64/292: The Human Right to Water and Sanitation A/HRC/15/L.14 2010 para 4.

54 Article 24 of the UNCROC; Glazebrook 2009 *Victoria University of Wellington Law Review* 295.

55 Turner *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers towards the Environment* 40.

56 Shelton *Human Rights and the Environment: Substantive Rights* 265.

The African Charter gives recognition to environmental rights in article 24 by stating that all peoples⁵⁷ shall have the right to a general satisfactory environment favourable to their development.⁵⁸ Moreover, this right is formulated in rather ambiguous terms, which could be interpreted, consistently with the precepts of sustainable development, as implying that a satisfactory environment is a prerequisite of development, but might just as well be read as subordinating environmental quality to the imperatives of development.⁵⁹ A more detailed formulation of the right was included in the Additional Protocol to the Inter-American Convention on Human Rights (IACHR),⁶⁰ by guaranteeing the right to a healthy environment and requires of States to promote the protection, preservation and improvement of the environment.⁶¹

Article 24 of the African Charter has led to important jurisprudence on the content of environmental rights. The African Commission on Human and Peoples Rights (African Commission) has concluded that the right to environment is a justifiable right that must be integrated into and balanced with the right to development.⁶² In the *SERAC* case the African Commission held that they violated the right to a general satisfactory environment favourable to their development and the communities' right to health was also violated. The African Commission try to direct governments to act more responsible in relation to the environment, but it has often turned to well

57 The term is undefined in the African Charter but the collective nature of the term is an interesting precedent for any regional mechanism, given the strong community values in the region. It is interesting, however, that the environmental right in the African Charter is confined to 'peoples' and not to communities or individuals. Other rights in the African Charter are not so confined. All individual rights covered in ICCPR and ICESCR are also covered in the African Charter.

58 Article 24 of the African Charter.

59 Déjeant-Pons & Pallemarts *Human Rights and the Environment* 15.

60 Additional Protocol to the Inter-American Convention on Human Rights 1994.

61 Article 11 of the IACHR - Right to a healthy environment provides that everyone shall have the right to live in a healthy environment and to have access to basic public services. Further that the States parties shall promote the protection, preservation and improvement of the environment. The obligation to "improve" the environment links the environment right to improvement of the human quality of life, including presumably through the repair of man-made environmental degradation but also through improvements in sanitation. While this can be seen as human-centred, it must be an essential component of any human right to the environment as long as it is, as in this case, coupled with the obligation to protect and preserve the environment.

62 *Social and Economic Rights Action Centre (SERAC) v Nigeria* (2001) AHRLR 60 (ACHPR 2001). Hereafter *SERAC* case.

established rights, such as the right to health protected by article 16 of the African Charter.⁶³

In the *SERAC* case the African Commission ruled that the Ogoni community had suffered violations of their rights to health (Article 16) and to a general satisfactory environment favourable to development (Article 24) due to the Nigerian government's failure to fulfil the minimum duties required by these rights.⁶⁴ By recognising that the right to health can be violated, means that the African Commission realises the importance of a clean and healthy environment closely linked to economic and social rights in so far as the environment affects the quality of life and the safety of an individual.⁶⁵ Article 24 seems to qualify for the protection of the environment with development; it is nonetheless an affirmation of a right to a healthy environment in Africa.⁶⁶

Environmental issues belong within the human rights category, because the goal of environmental protection is to enhance the quality of human life. Many documents have been adopted to strengthen the notion of a right to the environment and underscore its interdependence with other human rights. It is clear that there is a well established human right to a healthy environment and the interpretation of this right is anthropocentric because it places human beings at the centre of development, which indicates that human rights is important when it comes to the environment. Climate change will continue to affect these human rights negatively.

The international law should be considered as it is designed to promote and protect human rights at the international, regional and domestic levels. International human rights regime's are in several cases "nested" within more comprehensive and overlapping regional agreements. These regional regimes can be seen as relatively

63 In most cases, the African Commission has generally invoked the right to health, protected by article 16 of the African Charter, rather than the right to an environment contained in the African Charter. In Communications 25/89, 47/90, 56/91 and 100/93 against Zaire the African Commission held that the failure to provide services such as safe drinking water constituted a violation of article 16; See *SERAC* case; Van der Linde & Louw 2003 *African Human Rights Law Journal* 174-176.

64 Van der Linde & Louw 2003 *African Human Rights Law Journal* 174.

65 *SERAC* case para 15.

66 Churchill *Environmental Rights in Existing Human Rights Treaties* 93.

independently coherent human rights sub-regimes. African countries have also adopted the core international human right treaties for example the UDHR, ICCPR and the ICESCR. These international treaties places a duty on the African countries to respect,⁶⁷ protect⁶⁸ and fulfil⁶⁹ those rights that will be adversely affected by climate change.⁷⁰ Still, the African Charter doesn't provide protection for all the human rights mentioned in the international human rights treaties, but most of the human rights in Africa can be recognised implicitly from the right to life and the right to a healthy environment. Policy makers of the AU should consider international customary law when developing their own treaties because this will lead to more effective protection of the human rights in Africa.

5 Climate change and the environment

The environment is vulnerable to effects of climate change. Irregular weather patterns, influenced by heavy rainfall in some regions and strong sunshine in others, leads to environmental degradation by lowering the environmental conditions necessary for human survival. Climate change does play a direct role in the shrinkage of key natural resources for example, land and water. African economies are critically dependent on the environment and natural resources.

The Male Declaration on Human Dimension of Global Climate Change invoked the fundamental right to an environment capable of supporting human society and the full enjoyment of human rights.⁷¹ This Declaration stated that:⁷²

67 Respect in this regard requires the State to refrain from interfering, directly or indirectly, with the enjoyment of human rights.

68 The obligation to protect means enacting laws that create mechanisms to prevent the violation of human rights by State authorities or by non-state actors. This protection is to be granted equally to all.

69 The obligation to fulfil requires the States to adopt the necessary measures to achieve the full realisation of human rights.

70 The duty of States to respect, protect, promote and fulfil human rights is the foundation of the human rights framework. That duty includes ensuring that national laws, regulations and policies are consistent with international human rights laws and standards. The primary sources for these principles are the ICCPR and the ICESCR, both of which derive from the UDHR. Many African countries have ratified these instruments.

71 Holmes 2010 <http://www.iisd.ca/mea-l/guestarticle87.html>; Male Declaration on the Human Dimension of Global Climate Change, adopted 14 November 2007, available at http://ciel.org/Publications/Male_Declaration_Nov07.pdf.

Climate change has clear and immediate implications for the full enjoyment of human rights including *inter alia* the right to life, the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health.

Since the adoption of this Declaration, the UNHRC has realised that climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights.⁷³ Environmental damage will further hamper the enjoyment of these human rights. The resolutions of the UN and AU which emphasise the consequences of climate change on these fundamental human rights will be discussed next.

5.1 Resolutions of the UN and the AU

The OHCHR noted that climate change threatened the enjoyment of human rights and that the human rights law nevertheless places duties on States concerning climate change. The UNHRC said that:⁷⁴

Any strategy to deal with climate change, whether in terms of adaptation or mitigation, must incorporate the consequences for humans, as individuals and communities, and the human rights framework is the most effective way to do so.

The UNHRC has adopted a number of resolutions which realise the effects that climate change has on human rights. The first resolution on human rights and climate change was adopted in 2008.⁷⁵ This resolution recognised, for the first time, that climate change posed an immediate threat to people and communities around the world and had implications for the full enjoyment of human rights.⁷⁶ This was the

72 Male Declaration on the Human Dimension of Global Climate Change para 13.

73 Caney *Climate Change, Human Rights, and Moral Thresholds* 164.

74 Kyung-wha Kang, Deputy High Commissioner for Human Rights 2007 http://www.maldivesmission.ch/fileadmin/Pdf/Environment/DHC_Statement_Bali_Final.pdf.

75 UNHRC, Resolution 7/23 Human Rights and Climate Change U.N. Doc. A/HRC/RES/7/23.

76 UNHRC, Resolution 7/23 Human Rights and Climate Change U.N. Doc. A/HRC/RES/7/23 para 6; Two other resolutions that were adopted during the sixth and seventh sessions of the UNHRC, also made explicit reference to the effects of climate change on human rights namely UNGA, Resolution 6/27: The Right to Adequate Housing: note by the Secretary-General A/64/255; UNHRC, Resolution 7/14: Right to Food A/HRC/7/L.6/Rev.1

first step taken to advance a human rights agenda as part of broader efforts to address climate change.⁷⁷ The fact that the UNHRC adopted Resolution 7/23 by consensus, taken together with explicit climate change references in other resolutions such as Resolution S-7/1 on the right to food, demonstrates a growing awareness among human rights practitioners that climate change must be taken into account when addressing a wide-range of human rights issues – especially economic, social and cultural rights. These developments also demonstrate an evolving interest in and concern about the complex interrelationship between human rights, environmental protection and sustainable development including, *inter alia*, the concept of a universal right to a clean and healthy environment.

At the tenth session of the UNHRC Resolution 10/4 on human rights and climate change was adopted. Resolution 10/4 mentions that the effects of climate change will hamper the full enjoyment of human rights and emphasises that parties should, in all climate change related actions, fully respect human rights.⁷⁸ It emphasised that the adverse effects of climate change will have a range of direct⁷⁹ and indirect⁸⁰ implications for the effective enjoyment of human rights.⁸¹ It reaffirmed the potential of human rights obligations and commitments to inform and strengthen international and national policy making.⁸² This is important to support national efforts for the realisation of human rights implicated by climate change-related effects and affirms that human rights obligations and commitments have the potential to strengthen international and national policy-making in the area of climate change.⁸³

77 ICHRP *Advancing the Human Rights and Climate Change Agenda at the United Nations* 1.

78 UNHRC, Resolution 10/4: Human Rights and Climate Change; Draft Report of the Human Rights Council on its Tenth Session U.N. Doc. A/HRC/10/L.11 para 8.

79 Heat waves were directly responsible for tens of thousands of deaths from cardiovascular and respiratory diseases.

80 Global warming is expected to result in more intense storms, increased drought, water shortages and flooding of coastal areas, which in turn may result in malnutrition due to heat and drought-related crop losses and diseases due to the change in climate, lack of access to clean drinking water, loss of homes and means of subsistence due to flooding and extreme weather events.

81 UNHRC, Resolution 10/4: Human Rights and Climate Change; Draft Report of the Human Rights Council on its Tenth Session U.N. Doc. A/HRC/10/L.11 para 7.

82 UNHRC, Resolution 10/4: Human Rights and Climate Change; Draft Report of the Human Rights Council on its Tenth Session U.N. Doc. A/HRC/10/L.11 para 9.

83 OHCHR 2012 www.ohchr.org.

The UNHRC adopted its third resolution on human rights and climate change in 2011.⁸⁴ This resolution also affirmed that human rights obligations, standards and principles had the potential to strengthen international and national policy making in the area of climate change, promoting policy coherence, legitimacy and sustainable outcomes.⁸⁵ The main objectives were to further awareness and enhance understanding of the relationship between climate change and human rights, suggest actions and identify best practices that address the adverse effects of climate change on human rights and enhance co-operation between human rights and climate change awareness advocates.⁸⁶

The effects of climate change on human rights have been explicitly recognised by the African Commission in its Resolutions.⁸⁷ Two resolutions dealt with the current issues and the consequences of climate change on the enjoyment of human rights on the African continent namely, the Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa⁸⁸ and the Resolution on the Impact of the Ongoing Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa.⁸⁹

In the resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa, the African Commission decided to carry out a study on the effects of climate change on human rights in Africa. In this resolution, the African Commission called on the Assembly of Heads of State and Government to take all necessary measures to ensure that the African Commission is included in the AU's negotiating team on climate change.⁹⁰ The African Commission urges the Assembly

84 UNHRC, Resolution 18/22: Human Rights and Climate Change A/HRC/RES/18/22.

85 UNHRC Resolution 18/22: Human Rights and Climate Change A/HRC/RES/18/22 para 8.

86 OHCHR 2012 www.ohchr.org.

87 ACHPR, Resolution 153: Climate Change and Human Rights and the Need to Study its Impacts in Africa ACHPR/Res153(XLVI)09 & ACHPR, Resolution 159: On the Impact of the Ongoing Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa, ACHPR/Res159(XLVI)09 adopted at the 46th ordinary session November 25, 2009.

88 ACHPR, Resolution 153: Climate Change and Human Rights and the Need to Study its Impacts in Africa ACHPR/Res153(XLVI)09.

89 ACHPR, Resolution 159: On the Impact of the Ongoing Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa, ACHPR/Res159(XLVI)09.

90 ACHPR, Resolution 153: Climate Change and Human Rights and the Need to Study its Impacts in Africa ACHPR/Res153(XLVI)09 para 9.

of Heads of State and Government to ensure that human rights standards safeguards should be included into any adopted legal text on climate change as preventive measures against forced relocation, unfair dispossession of properties, loss of livelihoods and similar human rights violations.⁹¹ It further urges them to ensure that special measure of protection for vulnerable groups such as children, women, the elderly, indigenous communities and victims of natural disasters and conflicts, are included in any international agreement or instruments on climate change. The Resolution on the Impact of the Global Financial Crisis, urged African States to, *inter alia*, continuously monitor the effects of the global financial crisis on vulnerable groups.⁹²

These resolutions are important because the African Commission uses it to execute its mandates for example to elaborate on the rights contained in the African Charter by protecting and promoting human rights.⁹³ The main purpose of all of these resolutions should be to encourage people to address climate change and to enhance co-ordination in the area of climate change. The following sections examine the impacts of climate change on some specific key human rights in Africa.

5.2 The right to health and the right to a healthy environment

The right to health is one of the most commonly acknowledged rights that will be influenced by climate change in Africa.⁹⁴ The rights to health and the right to a healthy environment are interrelated and interdependent.⁹⁵ The respect, protection and fulfilment of one directly impacts positively on the other.

91 ACHPR, Resolution 153: Climate Change and Human Rights and the Need to Study its Impacts in Africa ACHPR/Res153(XLVI)09 para 10.

92 ACHPR, Resolution 159: On the Impact of the Ongoing Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa, ACHPR/ Res159(XLVI)09 para 14.

93 The Commission holds its “ordinary sessions” twice a year, in March or April and in October or November. The sessions usually last 15 days and are held in Banjul. The Chairman may also decide to hold additional extraordinary sessions. These sessions will also be held at the request of the majority of the members of the Commission or at the request of the AU Chairman. Resolutions have been adopted during the African Commission sessions held each year; Biegon & Killander 2010 *African Human Rights Law Journal* 218.

94 Mwebaza *Climate change and the international human rights framework in Africa* 240.

95 Nwobike 2005 *African Journal of Legal Studies* 137.

Good health will depend on the access to safe drinking water, sufficient food, secure shelter and favourable social conditions.⁹⁶ All these aspect will be affected by the change in climate. The effects of climate change will not be restricted to its influence on the human right to life, but it is predicted to lead to adverse human health consequences.⁹⁷ Exposure to extreme weather events will have an effect on human health in a variety of ways, for example through malnutrition, heat strokes, injury due to extreme weather events and the spread of infectious diseases.⁹⁸

The right to health, and the right to a healthy environment, are well established in international law, in particular under the African Charter. Both rights recognise the importance of a clean and healthy environment for a person's well-being. As declared in the Stockholm Conference, people have a right to equality and adequate conditions of life in a quality environment that permits a life of dignity and well-being.⁹⁹

5.2.1 International instruments protecting the right to health and the right to a healthy environment

Everyone has the right to the highest attainable standard of health, as recognised by the UDHR and the ICESCR.¹⁰⁰ The UNCROC also recognises the right to health by stating that a child has a right to the enjoyment of the highest attainable standard of health.¹⁰¹

The UNFCCC in its definition of 'adverse effects of climate change' includes significant deleterious influences on human health and welfare,¹⁰² and it requires

96 Hunt & Khosla *Climate Change and the Right to the Highest Attainable Standard of Health* 242.

97 Caney *Climate Change, Human Rights, and Moral Thresholds* 167.

98 Cameron *Development, Climate Change and Human Rights* 9.

99 Resolution 45/94 Need to Ensure a Healthy Environment for the Well-being of Individuals also recognises that all individuals are entitled to live in an environment adequate for their health and well-being; See para 3

100 Article 25 of the UDHR states that everyone has the right to a standard of living adequate for the health and well-being of him/herself and his/her family; Article 12(a) of the ICESCR recognises the right to health by stating that everyone has the right to the enjoyment of the highest attainable standard of physical and mental health

101 Article 24.1 of the UNCROC.

102 Article 1(1) of the UNFCCC.

parties to take, *inter alia*, health effects into account in relevant social, economic and environmental policies.¹⁰³ The OHCHR emphasise that the overall health burden of climate change will primarily be borne by children in Africa.¹⁰⁴

The UNCROC provides that parties shall take appropriate measures to combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution.¹⁰⁵ Article 12 of the ICESCR requires that States should cooperate and that they should take on joint and separate action in order to achieve the full realisation of the right to health. The Committee on the Elimination of Discrimination against Women (CEDAW) linked environment to the right to health by expressing its concern about the situation of the environment, including industrial accidents, and their effects on women's health.¹⁰⁶

The CESCR has found that the right to health imposes a duty to formulate and implement policies to promote health.¹⁰⁷ In the context of climate change the duty to protect could include a duty to undertake adaptation measures to limit the harms caused by global warming.¹⁰⁸ The ICESCR requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right to health, including national policies aimed at reducing and eliminating pollution of air, water and soil.¹⁰⁹ The CESCR member States have a duty to ensure the satisfaction of minimum essential levels of economic, social, and cultural rights.¹¹⁰

103 Article 4(1)(f) of the UNFCCC.

104 UNEP *Human Rights and the Environment: Rio+20: Joint Report OHCHR and UNEP* 23.

105 Article 14 of the UNCROC.

106 UN CEDAW, Concluding Observations on Romania, U.N. Doc. CEDAW/C/2000/II/Add.7 (2000) para 38.

107 CESCR, General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) 2000 U.N. Doc E/C.12/2000/4 para 9; Bodansky 2010 *Georgia Journal of International and Comparative Law* 520.

108 Bodansky 2010 *Georgia Journal of International and Comparative Law* 520.

109 CESCR, General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) 2000 U.N. Doc E/C.12/2000/4 para 9; Bodansky 2010 *Georgia Journal of International and Comparative Law* 521.

110 Bodansky 2010 *Georgia Journal of International and Comparative Law* 521.

Given the massive health challenges posed by climate change, especially in the African continent, there is an urgent need for a global partnership aimed at establishing an effective regime which will ensure a healthy environment for all. The right to health requires the State to take steps to protect its citizens from a degraded environment and to provide environmental goods conducive to physical and mental well-being.¹¹¹

5.2.2 Regional instruments protecting the right to health and the right to a healthy environment

The right to health is one of the key human rights that the AU is struggling to deal with.¹¹² The right to health in the African Charter is enshrined in article 16 and states that every individual shall have the right to enjoy the best attainable state of physical and mental health.¹¹³ It further suggests that parties to the African Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.¹¹⁴ The effects of climate change are only bound to make it harder for the AU members to meet their obligation of promoting and protecting the health of their citizens.

The African Charter further provides that all peoples shall have a right to a general satisfactory environment favourable to their development.¹¹⁵ The African Commission emphasised that the right to a clean and healthy environment is critical for the enjoyment of other human rights. This right to a satisfactory environment was further established in the *SERAC* case. The *SERAC* case was the only case that was brought before the African Commission in which they interpreted the span of the

111 Anderson *Human Rights Approaches to Environmental Protection: An overview* 7.

112 Malaria is one of the greatest health challenges facing sub-Saharan Africa, along with HIV/AIDS. The 2008 World Health Organisation (WHO) Malaria Report states that there were 247 million malaria cases recorded over the world; 86 per cent of which were in Africa. It reports further that there were 881 000 deaths reported worldwide as a result of malaria, 90 per cent of which were in Africa. An estimated 85 per cent of the deaths in Africa occur among children under the age of five. See WHO 2008 <http://www.who.int/malaria/wmr2008/MAL2008.chap3-EN.pdf>.

113 Article 16(1) of the African Charter.

114 Article 16(2) of the African Charter.

115 Article 24 of the African Charter.

right to a satisfactory environment in article 24 of the African Charter.¹¹⁶ The African Commission determined that the Nigerian government has violated the right to a satisfactory environment and the right to health. The African Commission concluded, *inter alia*, that article 24 of the African Charter imposed an obligation on the State to take reasonable measures to prevent pollution and environmental degradation, to promote conservation, and to secure sustainable development and use of natural resources.¹¹⁷ The *SERAC* case is considered to be a landmark decision with regard to the effective protection of economic, social and cultural rights in Africa, particularly the protection of the right of peoples to a satisfactory environment. More specifically, the African Commission ruled that article 24 obliges States to facilitate and publicise environmental and social impact studies prior to any major industrial development.¹¹⁸

The right to a satisfactory environment can also be track back to the African Convention on the Conservation of Nature and Natural Resources¹¹⁹ which provides for socially acceptable development policies and programmes guided by human rights principles, including the right to development and the right of all peoples to a satisfactory environment favourable to their development.¹²⁰

These provisions (the right to health and the right to a satisfactory environment) of the African Charter impose a duty on State parties to take steps to respect, promote and fulfil the rights in order to ensure the best attainable standard of physical and mental health, as well as a general satisfactory environment favourable to development. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health.¹²¹ The obligation to protect requires States to take measures that prevent third parties from interfering with these rights. Finally the obligation to fulfil requires States to adopt appropriate

116 Van der Linde & Louw 2003 *African Human Rights Law Journal* 177.

117 *SERAC* case.

118 *SERAC* case para 12.

119 African Convention on Conservation of Nature and Natural Resources, adopted 15 September 1968, entered into force 16 June 1969. Hereafter Algiers Convention.

120 Article II Algiers Convention.

121 Nwobike 2005 *African Journal Of Legal Studies* 137.

legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right to health.¹²²

The recognition of a right to a satisfactory environment by the African Charter, and the progressive jurisprudence by the African Commission, take up the issue of environmental protection from a human rights perspective and underline the linkage between climate change and human rights in a modern, holistic approach to one of the most burning issues in our society.¹²³ These rights are also linked to the right to water and food.¹²⁴ The right to health cannot be achieved without basic rights to a safe and healthy environment, including water, air and land.

5.3 The right to food

The right to adequate food¹²⁵ implies the availability of food in quantity and quality which is sufficient to satisfy the dietary needs of individuals. The African peoples' right to food is likely to be undermined through more frequent droughts, land salinisation, soil erosion, nutrient depletion and water scarcity.¹²⁶ Human rights are interdependent, indivisible and interrelated. This means that violating the right to food may impair the enjoyment of other human rights, such as the right to health or life.¹²⁷ Climate change will further damage the core factors that provide a basis for

122 CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) 2000 E/C.12/2000/4 para 33.

123 Ruppel *Regional Economic Communities and Human Rights in East and Southern Africa* 289.

124 CESCR issued a general comment on the right to health in November 2000 in which it asserts that the underlying conditions of health include food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

125 CESCR, General Comment No 12 states that the right to adequate food is realised when every man, women and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.

126 Cameron *Development, Climate Change and Human Rights* 12.

127 Cameron *Development, Climate Change and Human Rights* 12; The right to health: Nutrition is a component of both the right to health and the right to food. When a pregnant or breastfeeding woman is denied access to nutritious food, she and her baby can be malnourished even if she receives pre- and post-natal care. When a child is suffering from diarrhoeal disease but denied access to medical treatment, it cannot enjoy an adequate nutritional status even if he or she has access to food; The right to life: When people are not able to feed themselves and face the risk of death by starvation, malnutrition or resulting illnesses, their right to life would also be at stake; The right to water: The right to food cannot be realised if people lack access to safe drinking water for personal and domestic uses, defined as water for drinking, washing clothes, food preparation and personal and household hygiene.

food production, namely productive soil and fresh water.¹²⁸ This will decrease food productivity and increase the risk of hunger in Africa. Furthermore, it can contribute to widespread malnutrition and force many farmers to migrate to cities to find employment.¹²⁹ In East Africa over 23 million people are currently living on the brink of starvation in the wake of a number of extremely dry years.¹³⁰

5.3.1 *International instruments protecting the right to food*

The right to food is a human right recognised by international human rights law. The right to food is commonly linked with the right to water, which is also closely associated with the environmental quality. The UDHR recognises the right to food by stating that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.¹³¹

The right to food is also mentioned in the ICESCR and the UNCROC. The UNCROC provides that States should take appropriate measures to combat diseases and malnutrition through the provision of adequate nutritious food.¹³² The UNCROC reinforces this right by obliging States to provide all children with adequate nutritious foods and clean drinking-water. The right to food enjoys a privileged status among economic, social and cultural rights and is the only right labelled "fundamental" under the ICESCR. The ICESCR recognises the right to adequate food as an essential part of the right to an adequate standard of living.¹³³ It also explicitly recognises the fundamental right of everyone to be free from hunger.¹³⁴ The ICESCR has argued that the right to food is fundamental to the inherent dignity of the people and crucial for the fulfilment of other human rights enshrined in the International Bill of Rights.¹³⁵

128 Cameron *Development, Climate Change and Human Rights* 12.

129 Cameron *Development, Climate Change and Human Rights* 12.

130 Cameron *Development, Climate Change and Human Rights* 8.

131 Article 25 of the UDHR.

132 Article 24(c) of the UNCROC.

133 Article 11(1) of the ICESCR.

134 Article 11(2) of the ICESCR.

135 CESCR, General Comment No 12: The Right to Adequate Food (Article 11 of the Covenant) E/C.12/1999/5 Preamble.

The Universal Declaration on the Eradication of Hunger and Malnutrition, adopted by the UNGA, holds that every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties.¹³⁶ It is undeniable that food is central to the enjoyment of such other rights as health, education, work and political participation.

Article 2 of the UNFCCC underscores the importance of ensuring availability of food. It requires the stabilisation of GHG in the atmosphere to be achieved within a timeframe sufficient to ensure that food production is not threatened.¹³⁷ Climate change effects may threaten both availability and accessibility to food. The UN Special Rapporteur on the Right to Food has most recently called attention to the world food crisis and concluded that it imposes on all States an obligation to act without delay, specifically to adopt measures which will better shield the most vulnerable segments of the population from climate effects.¹³⁸

The obligations of States are expressed differently from instrument to instrument. However, they still have the obligation to respect, protect and fulfil the right to adequate food. Measures are necessary to respond to climate change impacts with respect to both aspects of the right to food for example to ensure immediate freedom from hunger and progressive access to adequate food. States should also regularly review their national policies and programmes related to food to ensure that they effectively respect the equal right of everyone to food.¹³⁹

5.3.2 *Regional instruments protecting the right to food*

The right to food is not specifically enumerated in the African Charter; but it is implicitly recognised through other rights. The African Commission has interpreted the right to food as being implicitly protected under the African Charter through the right to life (Article 4), the right to health (Article 16) and the right to economic, social

136 Universal Declaration on the Eradication of Hunger and Malnutrition General Assembly, RES 3348 XXIX, Dec. 17, 1974 para 1.

137 Article 2 of the UNFCCC.

138 De Schutter *Background Note: Analysis of the World Food Crisis* 1.

139 OHCHR *The right to Adequate Food: Fact Sheet No 34* 18.

and cultural development (article 22).¹⁴⁰ The African Commission play an important role in protecting the right to food.¹⁴¹

The right to food is also recognised in other regional instruments, such as the Protocol of San Salvador,¹⁴² the African Charter on the Rights and Welfare of the Child (ACRWC)¹⁴³ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.¹⁴⁴

The right to food will definitely be affected by climate change. The realisation of the right to food has a direct impact on the right to an adequate standard of living and the right to health, and presupposes the existence of a clean and healthy environment conducive to the sustainable development of food resources. The fact that the right to food can be implicitly recognised from other human rights in the African Charter illustrates that it is an important right for the African community that needs protection.

5.4 The right to water

Water is a limited natural resource and fundamental for food production and processing, life and health. Weather events, such as drought and flooding will have an effect on water supplies. No access to safe drinking water is a major cause of diseases in Africa.¹⁴⁵ Currently two-thirds of all people in rural Africa, and a quarter of urban dwellers, lack access to clean and safe drinking water.¹⁴⁶ Climate change

140 *SERAC* case para 64.

141 In the *SERAC* case the African Commission concluded that Nigeria had failed to meet its obligation to respect and protect the right to food of the Ogoni people by not preventing the destruction and contamination of food sources by oil companies as well as by the military and security forces. The Commission stated that the African Charter and international law bound Nigeria to protect and improve existing food sources and to ensure access to adequate food for all citizens.

142 The Protocol of San Salvador recognises the right to food in article 12. It also addresses it in article 17 in the context of the protection of the elderly.

143 The African Charter on the Rights and Welfare of the Child recognises the right of children to nutrition in article 14(2)(c), (d) and (h) in the context of the right to health and health services.

144 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa recognises the right to food in article 15. It also addresses the right of pregnant and breastfeeding women to nutrition in article 14 (2)(b).

145 OHCHR *Report on the Relationship between Climate Change and Human Rights* 11.

146 UN *Millennium Development Goals Report 2011* 5.

will further worsen existing demands on water resources and compound the problem of access to clean and safe drinking water.

5.4.1 *International instruments protecting the right to water*

The CESCR defined the right to water in General Comment No. 15 as:¹⁴⁷

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration, reduce the risk of water-related disease and provide for consumption, cooking, personal and domestic hygienic requirements.

This clearly illustrates that the right to water is essential for an adequate standard of living as it is one of the most fundamental conditions for survival. In 2010 the UNGA endorsed the human right to safe and clean drinking water and sanitation.¹⁴⁸ Resolution 64/292 emphasises the importance of equitable, safe and clean drinking water and sanitation as an integral component of the realisation of all human rights and links the right to water to achievement of the Millennium Development Goals (MDG). In September 2010, the UNHRC adopted a similar resolution in which it affirmed that the human right to safe drinking water and sanitation was derived from the right to an adequate standard of living and inextricably related to the right to the highest attainable standard of physical and mental health, as well as the right to life and human dignity.¹⁴⁹

On the other hand, to ensure hygiene and adequate sanitation, each person should have access to a minimal amount of water on a regular basis. Sanitation and water supply are integrally linked and therefore an integral part of the human right to water.¹⁵⁰ The CESCR's states that parties have an obligation to progressively extend

147 CESCR, General Comment No 15: The Right to Water (Articles 11 and 12 of the Covenant) E/C.12/2002/11 para 2.

148 UNGA, Resolution 64/292: The Right to Water and Sanitation A/RES/64/292, declares the right to safe and clean drinking water and sanitation as a human right that is essential for the full enjoyment of life and all human rights.

149 UNHRC, Human Rights and Access to Safe Drinking Water and Sanitation A/HRC/15/L.14, 24 September 2010.

150 World Water Council 2010 <http://www.worldwatercouncil.org>.

safe sanitation services, particularly to rural and deprived urban areas, taking into account the needs of women and children.¹⁵¹

The duties to respect, protect and fulfil apply to all. States also have a general obligation under the ICCPR to co-operate with others to achieve full realisation of the right to water.¹⁵² The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) imposes a duty on States' parties to ensure that women enjoy adequate living conditions, particularly regarding water supply.¹⁵³ Subsequently, in the UNCROC, State parties agreed to combat disease and malnutrition by providing clean drinking water.¹⁵⁴ The resolution itself affirms the right to drinking water supply and sanitation for every woman, man and child.¹⁵⁵

All States should co-operate in preparing for adaptation to the effects of climate change, and they should also develop appropriate integrated plans for water resources and agriculture.¹⁵⁶ It is necessary that States plan and implement legislative and other measures to respect, protect and realise the right to water and sanitation.¹⁵⁷ The right to water places an obligation on all State parties to ensure that the minimum essential level of the right is realised. This minimum level includes that people's access to sufficient water is ensured to prevent dehydration and disease.¹⁵⁸

151 CESCR, General Comment No 15: The Right to Water (Articles 11 and 12 of the Covenant) E/C.12/2002/11.

152 Article 3 of the UNFCCC strengthens the duty to co-operate by stating that the specific needs of developing countries should be given full consideration.

153 Article 14(2) of the CEDAW.

154 Article 24(2) of the UNCROC.

155 UNHRC, Resolution 2001/2: Promotion of the Realisation of the Right to Drinking Water and Sanitation, E/CN.4/SUB.2/RES/2001/2 of 2001 The Sub-Commission on Human Rights also has pressed the issue of the right to drinking water and sanitation, recommending that the Human Rights Commission authorise it to conduct a detailed study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realisation of the right to drinking water supply and sanitation.

156 Article 4 of the UNFCCC.

157 Each State that has ratified the ICESCR, ICCPR and the African Charter has a duty to respect, protect and fulfil the rights laid down in that treaty for those coming within their jurisdiction. These obligations are binding on every State party and must be given effect to in good faith.

158 Mwebaza *Climate change and the international human rights framework in Africa* 237.

5.4.2 Regional instruments protecting the right to water

There is no explicit right to water in the African Charter which is alarming given the degree of water scarcity on the continent. But the right to water is linked with other human rights such as the right to an adequate standard of living, the right to the highest attainable standard of health and the right to adequate food.¹⁵⁹

There are additional legal bases upon which the African Commission can rely to discover the human right to water. There is room for interpreting the African Charter provisions in a way that allows the reading in for an independent human right to water.¹⁶⁰ There is also the potential of using other African treaties that are not specifically human rights instruments but have relevance thereto, to give legal protection to this right.¹⁶¹ Article 45 of the African Charter empowers regional bodies, e.g. the African Commission, to set standards and formulate principles and rules aimed at solving legal problems relating to human and peoples' rights.¹⁶² This enables the African Commission to read aspects of the right to water into other guaranteed rights of the African Charter. The African Commission read the right to water into, or from, other rights that have been clearly provided for in the regional instruments, for example, they have interpreted the right to water as a sub-set of the right to dignity (article 5), the right to health (article 16) and the right to a healthy environment (article 24).¹⁶³ In the *Free Legal Assistance Group and Others v Zaire*¹⁶⁴ the African Commission held that the failure of the government to provide basic services such as safe drinking water, violates article 16 of the African Charter, namely the right to health.¹⁶⁵ Similarly, in the *SERAC* case, the Commission decided that the contamination of the sources of drinking water is a violation of article 16 (right to health) and article 24 (the right to a satisfactory environment).¹⁶⁶

159 ICESCR does not explicitly include the right to water, but it is decided that it falls within the category of the right to an adequate standard of living, the right to the highest attainable standard of health and the rights to adequate housing and adequate food.

160 Bulto 2011 *African Human Rights Law Journal* 345.

161 Bulto 2011 *African Human Rights Law Journal* 345.

162 Bulto 2011 *African Human Rights Law Journal* 345.

163 Bulto 2011 *African Human Rights Law Journal* 345.

164 *Free Legal Assistance Group v Zaire* 2000 AHRLR 74 ACHPR.

165 *Free Legal Assistance Group v Zaire* 2000 AHRLR 74 ACHPR para 47.

166 *SERAC* Case paras 49, 50-54, 57 and 66.

Regional treaties further provide protection of the right to safe drinking water. The ACRWC provides that State parties are required to take measures to ensure the provisions of adequate nutrition and safe drinking water.¹⁶⁷ It further confirms that every child has the right to enjoy the highest attainable state of physical, mental and spiritual health.¹⁶⁸ This provision is so limited that it merely regulates the quality of available water and supplies to children and there is no mention of the amount of water that the State has to provide to children.¹⁶⁹ The Protocol to the African Charter on the Rights of Women in Africa provides that State parties should take appropriate measures to provide women with the access to safe drinking water.¹⁷⁰ Similar to the ACRWC, this protocol doesn't say anything about the amount of water that is to be provided by States to the beneficiaries of these rights.

The potential of explicating the human right to water from the regional treaties depends heavily upon how the African Commission approaches claims and complaints related to the human right to water. Their approach to a human right to water has been treated as an auxiliary right that attracts protection as a component of other more explicit rights;¹⁷¹ also in the Pretoria Statement on socio-economic rights of the African Charter, where the right to health (article 16) was taken to entail access to basic sanitation and adequate supply of safe and potable water.¹⁷² The Commission further stated that the right to water is necessary and an inherent element, *inter alia*, of the rights to health, life and dignity.¹⁷³ Because the more explicit rights cannot be realised without access to adequate quality and quantity of water, the human right to water will be treated as part and parcel of such rights.¹⁷⁴ Thus the right to water emanates from the necessity for the realisation of other explicitly guaranteed rights. Access to safe drinking water is also a prerequisite for the fulfilment of the right to life.

167 Article 14 of the ACRWC.

168 Article 14 of the ACRWC.

169 Bulto 2011 *African Human Rights Law Journal* 344.

170 Article 15(a) of the Protocol to the African Charter on the Rights of Woman in Africa.

171 Bulto 2011 *African Human Rights Law Journal* 345.

172 Statement from the seminar on Social, Economic and Cultural Rights in the African Charter adopted in Pretoria 2005 *African Human Rights Law Journal* 182 & 186.

173 Statement from the seminar on Social, Economic and Cultural Rights in the African Charter adopted in Pretoria 2005 *African Human Rights Law Journal* 187.

174 Cahill 2005 *International Journal of Human Rights* 294 & 389.

5.5 *The right to life*

The right to life is the most fundamental of all human rights.¹⁷⁵ It has been recognised as a supreme right from which no derogation is permitted, even in the case of a public emergency.¹⁷⁶ Weather events, such as hurricanes, cyclones, floods, heat waves and death resulting from malnutrition and water borne diseases will have a direct effect on the right to life.¹⁷⁷ Climate change will also threaten the lives of children.¹⁷⁸ The lack of safe and clean drinking water already are main causes of malnutrition and child death and illness. Increased water stress, increased incidences of malaria, increased food shortages and famines are bound to affect the right to life.

5.5.1 *International instruments protecting the right to life*

The right to life is protected in both the UDHR and the ICCPR.¹⁷⁹ The UDHR provides that everyone has the right to life, liberty and security of person.¹⁸⁰ Article 6 of the ICCPR provides that every human being has the inherent right to life.¹⁸¹ In its General Comment on the scope and content of the right to life under article 6 of the ICCPR, the UNHRC emphasised that the inherent right to life cannot be interpreted in a restrictive manner, and that the protection of this right requires States to take positive measures.¹⁸² This means that the States should take positive measures for the protection of the right to life, including lowering of infant mortality, malnutrition and epidemics. The right to life further imposes strict duties on the States to prevent and safeguard against the occurrence of environmental hazards that threaten the lives of human beings, meaning that State responsibility arises regardless of whether an act or omission is deliberate, reckless or merely negligent.¹⁸³

175 UNHRC, General Comment No. 6: Right to Life (Article 6) U.N. Doc. HRI/GEN/1/Rev.1 para 1.

176 UNHRC, General Comment No. 6: Right to Life (Article 6) U.N. Doc. HRI/GEN/1/Rev.1 para 1.

177 Cameron *Development, Climate Change and Human Rights* 12.

178 UNICEF 2008 http://www.unicef-irc.org/publications/pdf/climate_change.pdf; See para 5.5.1.

179 Cameron *Development, Climate Change and Human Rights* 11.

180 Article 3 of the UDHR.

181 Article 6(1) of the ICCPR.

182 UNHRC, General Comment No 6: Right to Life (Article 6) UN Doc. HRI/GEN/1/Rev.1 para 5.

183 F.Z. Ksentini, Final Report of the Special Rapporteur, Human Rights and the Environment, 1994.

Children are likely to be especially vulnerable to the effects of climate change on the right to life. The UNICEF identifies a wide range of circumstances that will make climate change threatening to children for example through destroying clinics, homes and schools, disturbing the natural resource base and nutrition, disrupting the water security, provoking population displacements and damaging support structures that protect children from harm.¹⁸⁴ Young children are more liable to injury and drowning during violent sea surges. Children are also at greater risk of death as a result of diseases such as malaria, dengue and diarrhoea, while the development of the child is threatened by malnutrition and lack of safe drinking water and sanitation. Climate change will only aggravate these stresses.

Before the adoption of the African Children Charter the only instrument protecting childrens' rights was the UNCROC. The UNCROC creates the international foundation for the protection and promotion of human rights and fundamental freedoms of all persons under the age of 18.¹⁸⁵ The right to life is further protected under the UNCROC,¹⁸⁶ where it explicitly links the right to life to the obligation of States to ensure the maximum extent possible for the survival and development of a child.¹⁸⁷ The right to survival and development must be implemented in a holistic manner through the enforcement of all the other provisions of the UNCROC, including rights to health, adequate nutrition, social security, an adequate standard of living and a healthy and safe environment.¹⁸⁸ Under the UNCROC the AU must take all appropriate measures to the maximum of its resources available to protect the survival and development of the child from these threats.¹⁸⁹

The UDHR provides in its article 25 that childhood is entitled to special care and assistance. Furthermore, the ICCPR, a legally binding document, contains provisions specifically referring to children in articles 14(1), 23(4) and 24. Also, the ICESCR contains several children-specific provisions with a focus on the right to education

184 UNICEF 2008 http://www.unicef-irc.org/publications/pdf/climate_change.pdf.

185 Article 1 of the UNCROC.

186 Article 6 of the UNCROC.

187 Article 6 of the UNCROC.

188 Committee on the Rights of the Child (CRC), General Comment No 7: Implementing Rights in Early Childhood CRC/C/GC/7/Rev.1 para 10.

189 Article 4 of the UNCROC.

and protection from economic and social exploitation.¹⁹⁰ Moreover, the Convention on the Elimination of All Forms of Discrimination against Women contains children-protective provisions, emphasising that the interests of children are paramount.¹⁹¹

5.5.2 *Regional instruments protecting the right to life*

The first substantive right guaranteed in the African Charter is the right life. Article 4 of the African Charter states that:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.¹⁹²

It follows that any act which amounts to disrespect for the life and integrity of a person or group of persons, or an arbitrary denial of that right, will result in a violation of article 4. There is little doubt, therefore, that the right to life is in peril in Africa because of the effects of climate change.¹⁹³

The right to life, as recognised and articulated under international human rights law and the African Charter, as indicated above, is threatened due to the effects of climate change. Climate change aggravates weather related disasters which already have devastating effects on people and their enjoyment of the right to life, particularly in Africa.¹⁹⁴ These weather events also affect food resources, water sources and have health implications which will, in turn, threaten the right to life. Studies have found that 315,000 people die due to climate change every year and this would rise to half a million by the year 2030.¹⁹⁵

190 Articles 10(3) and 13 of the ICESCR.

191 Articles 5(b) and 16(1)(g) of the Convention on the Elimination of All Forms of Discrimination against Women.

192 Article 4 of the African Charter.

193 See para 2.

194 McInerney-Lankford, Darrow & Rajamani *Human Rights and Climate Change: A Review of the International Legal Dimension* 13.

195 Global Humanitarian Forum (GHF) 2009 <http://www.ghf-ge.org/human-impact-report.pdf>.

5.6 Other rights

Climate change will also affect the rights of certain vulnerable groups disproportionately with factors such as poverty, gender, age, indigenous or minority status, and disability reinforcing the disparate effects. It will most likely also hamper the full enjoyment of the rights to private and family life,¹⁹⁶ property,¹⁹⁷ means of subsistence,¹⁹⁸ freedom of residence and movement.¹⁹⁹ Another vulnerable group, which will also be affected, is women.

The vulnerability of women to climate change and natural disasters is increased for a number of reasons. Women are usually at higher risk of being placed in unsafe, overcrowded shelters due to lack of assets, such as savings, property or land.²⁰⁰ In the context of droughts, floods and other disasters that require mobility, cultural constraints on women's movements may hinder their timely escape, access to shelter or access to health care.²⁰¹ It is thus important to identify gender sensitive strategies for responding to human security needs and environmental and humanitarian crises caused by climate change.

The AU should focus on reducing women's vulnerability, promoting gender sensitive emergency responses and enlisting women, alongside men, as key environmental actors in natural disaster management decision-making processes, tapping on women's skills, resourcefulness and leadership in adaptation efforts. Article 3 of the ICESCR encourages States to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights as set forth by the ICESCR.²⁰² The CEDAW was the first legally binding instrument relating specifically to women's rights. States are obliged to take all appropriate measures, including legislation and

196 Article 12 of the UDHR, Article 17 of the ICCPR, Article 16 of the UNCROC & Article 8 of the ECHR.

197 Article 17 of the UDHR.

198 Article 1(2) of the ICCPR.

199 Article 13 of the UDHR.

200 AMCEN *Addressing Climate Change Challenges in Africa: A Practical Guide Towards Sustainable Development* 189.

201 AMCEN *Addressing Climate Change Challenges in Africa: A Practical Guide Towards Sustainable Development* 189.

202 See also UNHRC, General Comment No 28: Article 3 (The Equality of Rights Between Men and Women) 2000, CCPR/C/21/Rev.1/Add.10.

temporary special measures, to ensure that women enjoy all their human rights and fundamental freedoms.²⁰³

The effect on women will become even more severe unless action is taken to reduce the causes (emissions) and help communities adapt to the consequences, by using economic and social policy, cultural values and legislative frameworks. The AU should thus be encouraged to incorporate gender perspectives into their national policies, action plans and other measures on sustainable development and climate change.²⁰⁴

As discussed, climate change will have serious consequences for the progressive realisation of human rights. Climate change presents a serious obstacle to the realisation of the rights to water, food, health and life. One way how the African community could address these effects is by adapting to climate change.²⁰⁵

5.7 Adaptation in Africa

Climate change requires action that would reduce the effects of extreme events before, during and after they occur and violate humans rights. Adaptation measures are those policies and actions that seek to adjust to new environmental conditions and reduce the harmful results of climate change.²⁰⁶ Adapting to climate change entails taking the right measures to reduce the negative effects of climate change (or exploit the positive ones) by making the appropriate adjustments and changes.²⁰⁷ For Africa, adaptation is a much more important and an immediate concern than mitigation.²⁰⁸ As we have seen, Africa has a low adaptive capacity thus the effects of climate change will become more severe. In spite of the low adaptive capacity of

203 Articles 2-4 spell out the broad State obligation, while articles 5-16 provide substance and context in which the principles of State obligation have to be applied.

204 AMCEN *Addressing Climate Change Challenges in Africa: A Practical Guide Towards Sustainable Development* 190.

205 Mitigation is another way how the impacts of climate change can be addressed. Mitigation refers to limiting global climate change through reducing GHG. While much attention initially was paid to mitigation the international focus has now shifted towards adaptation.

206 Adaptation refers to changes in processes, practices and structures to moderate the effect that climate change has on human rights; Lubbe & Barnard 2012 *SADC Law Journal* 38.

207 UNFCCC *Climate Change; Impacts, vulnerabilities and adaptation in developing countries* 10.

208 Lubbe & Barnard 2012 *SADC Law Journal* 38.

Africa, people have already begun to undertake adaptation strategies to face the extreme events of climate change.

These strategies will help reduce the effects on human rights and it will provide opportunities to accelerate sustainable development in Africa. For example, National Adaptation Plans of Action (NAPA)²⁰⁹ and National Climate Change Response Strategies (NCCRS) were prepared under the guidance of the UNFCCC.²¹⁰ A number of African countries have developed or are in the process of developing NAPAs and NCCRS to attend to climate challenges. These NAPAs and NCCRS are intended to develop a framework to bring adaptation into the mainstream of national planning.²¹¹

In 2008, the UNDP introduced a programme - Supporting Integrated and Comprehensive Approaches to Climate Change Adaptation in Africa - which would help to enhance the adaptive capacity of Africa to climate change risks. The Africa Adaptation Programme (AAP) is assisting 21 countries across the African continent to incorporate climate change risks and opportunities into national development processes. The programme helps countries to establish an enabling environment and develop the capacity required at local and national levels to enable them to design, finance, implement, monitor and adjust long-term, integrated and cost-effective adaptation policies and robust plans in a wide range of possible changes in climate conditions.²¹² New policies have been developed on key areas for example food security, disaster risk management, agricultural productivity, water resource management, livelihoods and income growth.²¹³

209 Habtezion *Adaptation Policies in Africa: Challenges and Opportunities in the Application of Tools and Methods on Climate Change* 75; NAPAs have helped raise awareness and create the groundwork for future consideration of adaptation in development planning.

210 Madzwamuse *Climate Governance in Africa: Adaptation Strategies and Institutions* 26; Habtezion *Adaptation Policies in Africa: Challenges and Opportunities in the Application of Tools and Methods on Climate Change* 75; Countries such as Zimbabwe and Nigeria lack such plans and strategies.

211 Madzwamuse *Climate Governance in Africa: Adaptation Strategies and Institutions* 26.

212 Madzwamuse *Climate Governance in Africa: Adaptation Strategies and Institutions* 26.

213 Madzwamuse *Climate Governance in Africa: Adaptation Strategies and Institutions* 27.

Originally, within the UNFCCC negotiations, developed countries acknowledged their greater contribution to climate change as well as their responsibility and greater capacity to deal with climate effects. The UNFCCC speaks of common but differentiated responsibilities and respective capacities.²¹⁴ This means that developed countries are under an obligation to provide financial resources to assist African countries to implement the UNFCCC.²¹⁵ To attain this, a financial mechanism has been established to provide funds to developing countries.

The best way to address climate change consequences in Africa is by integrating adaptation responses into development planning. This is fundamental to achieve the MDGs and to reduce the negative effects of climate change on human rights.²¹⁶ Adaptation will help to toughen the capacity of Africa to adapt to climate change repercussions. The capacity to adapt may also reduce potential conflict over resources such as water and food. Capacity building pursuant to adaptation may, for example, contribute to the prevention of further insecurity on the African continent.²¹⁷

In Africa, the implementation of adaptation measures has indeed been made possible with the support from the international community. Without technical assistance and financial support from bilateral, regional and multilateral donors, Africa would not have had the capacity to put in place most of the more costly and technically complex adaptation measures. Yet the existing measures are insufficient to fully protect and ensure human rights from the threat of climate change.

214 Article 3.1 of the UNFCCC states that climate change protection must have an equitable basis in accordance with the parties' common but differentiated responsibilities and respective capacities.

215 Available funding for adaptation activities include: The GEF Trust Fund, The Special Climate Change Fund (SCCF), The Least Developed Countries Fund (LDCF), The Kyoto Protocol Adaptation Fund & Funds under other MEAs all managed by the GEF, which works through implementing agencies (the World Bank, the UNDP and the UNEP) to channel multilateral funding for projects related to the principal multilateral environmental treaties; See for a good overview, Stern *Stern Review of the Economics of Climate Change*, Part VI 557.

216 UNDP & UNEP *Poverty and Climate Change Reducing the Vulnerability of the Poor through Adaptation* 1.

217 Scholtz 2010 *African Human Rights Law Journal* 3.

6 Conclusion and recommendations

Climate change will affect basic elements of life for people around the world and could possibly hinder growth and development.²¹⁸ It further notes that global warming could result in hundreds of millions of people suffering from hunger, malnutrition, water shortages, floods, droughts, heat stress, diseases triggered by extreme weather events, loss of livelihood and permanent displacement.²¹⁹ As illustrated, climate change therefore poses a real threat to a wide range of universally recognised fundamental human rights, such as the rights to life, food, health and water.²²⁰ The resolutions adopted by the UN and AU also realises the impact that climate change will have on the human rights.²²¹ All of these fundamental rights are protected under the African Charter, implicitly or explicitly, and in various regional instruments and international instruments.²²² This further illustrates the importance of the protection of the environment for human rights and a human right to the environment.

The environment is an important and pressing issue in Africa, particularly in view of the likely effects of climate change.²²³ Environmental damage caused by climate change will also have potentially negative effects on human rights. Therefore, the protection of the environment is a vital part of contemporary human rights doctrine for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself.²²⁴ The enthusiasm for human rights in the environmental field has been most clearly reflected in a growing trend in national and international law toward the creation and protection of new environmental rights.²²⁵ It was shown that international human rights laws could be theoretically reinterpreted in favour for a human right to a healthy environment. Regional law does offer a basis for a human right to a healthy environment as indicated in the African Charter.²²⁶ The right to a

218 See para 2.

219 See paras 1, 5.3 & 5.5.

220 See paras 5.2, 5.3, 5.4 & 5.5.

221 See para 5.1.

222 See paras 5.2, 5.3, 5.4 & 5.5.

223 See para 5.2.

224 See paras 5.2 & 5.5.

225 See para 3.

226 See para 4.

quality environment can be seen as a quintessentially African right. It is of course important to require everybody, including States, to promote and protect the environment. A right to a clean and healthy environment is important for promoting human health and life and other basic human rights.

As Africa struggles to deal with the effects of climate change, it must put human beings at the centre of any policies and strategies for responding to these challenges and achieve a better life for the peoples of Africa. Under the regional and international instruments mentioned above, the State has the primary duty not only to respect human rights, but to protect and fulfil these rights through positive action.²²⁷ This means that Africa is obligated to take measures to prevent the violation of rights affected by climate change. These measures include adaptation. Most of the policies and interventions relating to climate change have so far focused on development and implementation of adaptation strategies.

The AU is trying to attend to their obligations to protect and promote the Banjul Charter by adopting adaptation measures but, on its own, is incapable of preventing the violations of fundamental human rights that are already taking place as a result of climate change.²²⁸ The efforts to adapt to climate change undertaken within the African human rights framework will also help cushion the effects of climate change on the most vulnerable individuals and groups in Africa. Climate change undermines and results in the widespread violation of human rights in Africa and the related fact that the global character of the problem makes it impossible for Africa to promote and protect threatened rights on their own. The international community (developed countries) has the duty to provide funding for adaptation. In Africa the implementation of adaptation measures has indeed been made possible with the

227 The duty of States to respect, protect, promote and fulfil human rights is the foundation of the human rights framework. The primary sources for these principles are the ICCPR, the African Charter and the ICESCR. The ICCPR and the ICESCR are derived from the UDHR. These international treaties places a duty on the African countries to respect, protect and fulfil those rights that will be adversely affected by climate change; Each State that has ratified the ICESCR, ICCPR and the African Charter has a duty to respect, protect and fulfil the rights laid down in that treaty for those coming within their jurisdiction. These duties include ensuring that national laws, regulations and policies are consistent with international human rights laws and standards. These obligations are binding on every State party and must be given effect to in good faith; see paras 5.2.2, 5.3.1 & 5.4.1

228 See para 5.6.

support of the developed countries. However, such measures will only realistically cover a tiny fraction of the needs of Africa. Ultimately, therefore, only international co-operation to stabilise GHG emissions at scientifically agreed-upon safe levels as well as to provide funding for adaptation can prevent the most catastrophic climate change consequences. Integrating human rights when addressing climate change challenges will bring human beings back to the centre of the discussion and enrich efforts in addressing climate change in Africa.

Moreover, because climate change and related environmental degradation do not respect national borders, Africa alone cannot take the necessary remedial measures in order to promote and protect those rights of its citizens threatened by climate change. Adaptation is thus a measure to cater for the challenges brought on by climate change. The integration of human rights into the climate change adaptation policies and strategies are being implemented in various African countries. However, existing adaptation measures, while important, are grossly inadequate to safeguard the rights of people in Africa. A key challenge therefore lies in building a bridge between current climate change repercussions and the effect it has on human rights by promoting climate change adaptation. In this respect developed nations must provide assistance, both financial and technical, to African countries that need such assistance.²²⁹ This will help the African countries to adapt to the consequences of climate change and most probably will contribute to the protection of human rights in Africa.

229 See para 5.7.

Bibliography

Literature

A

Anderson *Human Rights Approaches to Environmental Protection: An overview*
Anderson M 'Human Rights Approaches to Environmental Protection: An overview' in Boyle A & Anderson M (eds) *Human Rights Approaches to Environmental Protection* (Oxford University 1998) 1-23

AMCEN *Addressing Climate Change Challenges in Africa; A Practical Guide Towards Sustainable Development*

AMCEN *Addressing Climate Change Challenges in Africa; A Practical Guide Towards Sustainable Development* (2011) 1-255

B

Bulto 2011 *African Human Rights Law Journal*

Bulto TS 'The human right to water in the corpus and jurisprudence of the African human rights system' 2011 *African Human Rights Law Journal* 341-367

Biegon & Killander 2010 *African Human Rights Law Journal*

Biegon J & Killander M Human Rights Developments in the African Union during 2009 2010 *African Human Rights Law Journal* 212-233

Bodansky 2010 *Georgia Journal of International and Comparative Law*

Bodansky D 'International Human Rights and Climate Change Introduction: Climate Change and Human Rights: Unpacking the Issues' 2010 *Georgia Journal of International and Comparative Law* 511-524

Brown, Hammill & Mc Leman *Climate change as the “new” security threat:*

Implications for Africa

Brown O, Hammill A & Mc Leman R ‘Climate change as the “new” security threat: Implications for Africa’ (2007) *The Royal Institute of International Affairs* 1141-1154

Boyle *The Role of International Human Rights Law in the Protection of the Environment*

Boyle A The Role of International Human Rights Law in the Protection of the Environment in Boyle A & Anderson M (eds) *Human Rights Approaches to Environmental Protection* (1998 Oxford University) 43-70

C

Cahill 2005 *International Journal of Human Rights*

Cahill A The Human Right to Water – A Right of Unique Status and Normative content of the Right to Water 2005 *International Journal of Human Rights* 389-410

Churchill *Environmental Rights in Existing Human Rights Treaties*

Churchill R Environmental Rights in Existing Human Rights Treaties in Boyle A & Anderson M (eds) *Human Rights Approaches to Environmental Protection* (1998 Oxford University) 89 -108

Cameron *Development, Climate Change and Human Rights*

Cameron E *Development, Climate Change and Human Rights* (2011) 1-35

Caney *Climate Change, Human Rights, and Moral Thresholds*

Caney S ‘Climate Change, Human Rights, and Moral Thresholds’ in Gardner *et al* (eds) *Climate Ethics* (Oxford University Press 2010) 163-177

D

Dersso *Promotion of Human Security in Africa: The Role of African Human Rights Institutions*

Dersso AS *Promotion of Human Security in Africa: The Role of African Human Rights Institutions* 2008 1-71

De Schutter *Background Note: Analysis of the World Food Crisis*

De Schutter O *Background Note: Analysis of the World Food Crisis by the UN Special Rapporteur on the Right to Food* (New York and Geneva 2008) 1-14

Déjeant-Pons & Pallemmaerts *Human Rights and the Environment*

Déjeant-Pons M & Pallemmaerts M *Human Rights and the Environment* (Council of Europe, Strasbourg 2002)

G

Glazebrook 2009 *Victoria University of Wellington Law Review*

Glazebrook S 'Human Rights and the Environment' 2009 *Victoria University of Wellington Law Review* (VUWLR) 293-350

H

Hunt & Khosla '*Climate Change and the Right to the Highest Attainable Standard of Health*'

Hunt P & Khosla R 'Climate Change and the Right to the Highest Attainable Standard of Health' in Humphreys S (eds) *Human Rights and Climate Change* (Cambridge University Press 2010) 238-256

Habtezion *Adaptation Policies in Africa: Challenges and Opportunities in the Application of Tools and Methods on Climate Change*

Habtezion Z *Adaptation Policies in Africa: Challenges and Opportunities in the Application of Tools and Methods on Climate Change* in Mwebaza R and Kotzé LJ *Environmental Governance and Climate Change in Africa: Legal perspectives* (2009) 71-91

I

IPCC Fourth Assessment Report (AR4) *Climate Change 2007: Impacts, Adaptation and Vulnerability*

IPCC *Climate Change 2007: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change* Parry ML, Canziani OF, Palutikof JP, van der Linden PJ and Hanson CE (eds) (2007 Cambridge University Press, Cambridge UK) 1-976

ICHRP *Advancing the Human Rights and Climate Change Agenda at the United Nations*

ICHRP *Advancing the Human Rights and Climate Change Agenda at the United Nations* (Report of the Panel on Human Dignity 2011) 1-14.

K

Kiss & Shelton *Guide to International Environmental Law*

Kiss A & Shelton D *Guide to International Environmental Law* (Martinus Nijhoff Publishers Leiden/Boston 2007) 1-303.

L

Lubbe & Barnard 2012 *SADC Law Journal*

Lubbe WD & Barnard M 'Climate Change as Common Concern: Challenges and Opportunities for Law making in SADC 2012 *SADC Law Journal* 36-54

M

McInerney-Lankford, Darrow & Rajamani *Human Rights and Climate Change: A Review of the International Legal Dimension*

McInerney-Lankford S, Darrow M & Rajamani L *Human Rights and Climate Change: A Review of the International Legal Dimension* (World Bank Study 2011) 1-162

Mwebaza *The impact of climate change in East Africa*

Mwebaza R The impact of climate change in East Africa in Mwebaza R and Kotzé LJ (eds) *Environmental governance and climate change in Africa: Legal perspectives* (2009) 3-14

Mwebaza *Climate change and the international human rights framework in Africa*

Mwebaza R 'Climate change and the international human rights framework in Africa' in Mwebaza R and Kotzé LJ (eds) *Environmental governance and climate change in Africa: Legal perspectives* 227-261

Madzwamuse *Climate Governance in Africa: Adaptation Strategies and Institutions*

Madzwamuse M *Climate Governance in Africa: Adaptation Strategies and Institutions* (2010 Unity Press Cape Town) 1-110

N

Nwobike 2005 *African Journal of Legal Studies*

Nwobike JC The African Commission on Human and Peoples' Rights and the Demystification of Second and Third Generation Rights under the African Charter: Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeri 2005 *African Journal of Legal Studies* 129-146.

O

OHCHR *The right to Adequate Food: Fact Sheet No 34*

OHCHR *The right to Adequate Food: Fact Sheet No 34* (Printed at United Nations, Geneva 2010) 1-57

OHCHR *Report on the Relationship Between Climate Change and Human Rights*

OHCHR *Report on the Relationship Between Climate Change and Human Rights* (2009) 1-32

Oloka-Onyango *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?*

Oloka-Onyango J 2000 *Human Rights and Sustainable Development in Contemporary Africa: A New Dawn, or Retreating Horizons?* (2004 Cambridge) 39-75

R

Ramcharan *The Concept and Dimensions of the Right to Life*

Ramcharan BG 'The Concept and Dimensions of the Right to Life' in. Ramcharan BG (ed.) *The Right to Life in International Law* (Martinus Nijhoff Publishers, The Netherlands 1985)

Ruppel *Regional economic communities and human rights in East and southern Africa*

Ruppel C 'Regional economic communities and human rights in East and southern Africa' in Bösl A & Joseph D (eds) *Human Rights in Africa Legal Perspectives on their Protection and Promotion* (Konrad-Adenauer-Stiftung and the Authors 2009) 275 – 317

S

Stern *Stern review of the economics of climate change*

Stern N *Stern review of the economics of climate change* (HM Treasury Office of Climate Change 2006)

Scholtz 2010 *African Human Rights Law Journal*

Scholtz W 'The promotion of regional environmental security and Africa's common position on climate change' 2010 *African Human Rights Law Journal* 1-25

Shelton *Human Rights and the Environment: Substantive Rights*

Shelton D 'Human Rights and the Environment: Substantive Rights' in Fitzmaurice M, David M & Merkouris P (eds) *Research Handbook on International Environmental Law* (Edward Elgar Publishing 2010) 265-283

Shelton 1991 *Stanford Journal of International Law*

Shelton D 'Human Rights, Environmental Rights, and the Right to Environment' 1991 *Stanford Journal of International Law* 103-138

T

Turner *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers towards the Environment*

Turner SJ *A Substantive Environmental Right: An Examination of the Legal Obligations of Decision-Makers towards the Environment* (2009 Wolters Kluwer)

U

UN *Millennium Development Goals Report 2011*

UN *Millennium Development Goals Report 2011* (Published in New York at the office of the UN, 2011) 1-72 Visit the UN Millennium Development Goals website at www.un.org/millenniumgoals

UNDP & UNEP *Poverty and Climate Change Reducing the Vulnerability of the Poor through Adaptation*

UNDP & UNEP *Poverty and Climate Change Reducing the Vulnerability of the Poor through Adaptation* (2003) 1-14

UNEP *Human Rights and the Environment: Rio+20: Joint Report OHCHR and UNEP*

UNEP *Human Rights and the Environment Rio+20: Joint Report OHCHR and UNEP* (UNON Publishing Services Section, Nairobi 2012) 1-49

V

Van der Linde & Louw 2003 *African Human Rights Law Journal*

Van der Linde M & Louw L 'Considering the interpretation and implementation of article 24 of the African Charter on Human and Peoples Rights in light of the SERAC communication' 2003 *African Human Rights Law Journal* 167 – 187.

Internet sources

GHF *Human Impact Report - Climate Change: The Anatomy of A Silent Crisis* 2009
<http://www.ghf-ge.org/human-impact-report.pdf> [used on the 1 November 2012]

Holmes C, Division of Environmental Law and Conventions, UNEP *The New Future of Human Rights and Environment: Moving the Global Agenda Forward – High Level Experts Meeting* 2010 <http://www.iisd.ca/mea-l/guestarticle87.html> [used on the 31 July 2012]

Kyung-wha Kang, Deputy High Commissioner for Human Rights 2007 Conference of the Parties to the UNFCCC and its Kyoto Protocol http://www.maldivesmission.ch/fileadmin/Pdf/Environment/DHC_Statement_Bali_Final.pdf [used on the 16 July 2012]

World Water Council 2010 *The Right to Water* <http://www.worldwatercouncil.org> [used on the 8 July 2012]

UNICEF 2008 *Climate Change and Children: A Human Security Challenge*.
http://www.unicef-irc.org/publications/pdf/climate_change.pdf [used on the 11 July 2012]

OHCHR 2012 *Human rights and climate change* <http://www.ohchr.org> [used on the 30 June 2012]

International treaties, conventions and legislation

Aarhus Convention (1998)

African Convention on Conservation of Nature and Natural Resources (1968)

African Charter on the Rights and Welfare of the Child (1990)

Constitutive Act of the AU (2000)

Charter of the United Nations (1945)

Convention on the Elimination of all Forms of Discrimination against Women (1979)

Charter on Environmental Rights and Obligations (1990)

Convention on the Rights of the Child (1989)

Declaration of the United Nations Conference on the Human Environment (1972)

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)

International Covenant on Economic, Social and Cultural Rights (1966)

International Covenant on Civil and Political Rights (1966)

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003)

Protocol to the Inter-American Convention on Human Rights (1994)

Universal Declaration of Human Rights (1948)

Universal Declaration on the Eradication of Hunger and Malnutrition (1974)

United Nations Declaration on the Human Environment (1972)

United Nations Framework Convention on Climate Change (1992)

Court Cases

Free Legal Assistance Group and Others v Zaire 2000 AHRLR 74 ACHPR.

The Social and Economic Rights Action Center and the Center for Economic and Social Rights v Nigeria, ACHPR, Communication 155/96 (2002)

International instruments

Resolution 153: Climate Change and Human Rights and the Need to Study its Impact in Africa 2009 available at <http://www.achpr.org/sessions/46th/resolutions/153/> [used on the 8 July 2012]

Resolution 159: On the Impact of the Ongoing Global Financial Crisis on the Enjoyment of Social and Economic Rights in Africa, 2009 available at <http://www.achpr.org/sessions/46th/resolutions/159/> [used on the 8 July 2012]

Resolution 2001/65: Promotion of the Right to a Democratic and Equitable International Order 2001 U.N. Doc. E/CN.4/RES/2001/65. Available at http://ap.ohchr.org/documents/alldocs.aspx?doc_id=4840 [used on the 30 October 2012]

Male' Declaration on the Human Dimension of Global Climate Change 2007 available at http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf [Used on the 30 June 2012]

Resolution 16/11: Human Rights and the Environment 2012 U.N. Doc. A/HRC/RES/16/11 available at <http://www.unhcr.org/refworld/docid/4dc1189b2.html> [used on the 11 July 2012]

Resolution 7/23: Human Rights and Climate Change 2008 U.N. Doc. A/HRC/RES/7/23 available at http://www2.ohchr.org/english/issues/climatechange/docs/Resolution_7_23.pdf [used on the 11 July 2012]

Resolution 10/4: Human Rights and Climate Change 2009 U.N. Doc. A/HRC/RES/10/4 available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_10_4.pdf [used on the 11 July 2012]

Resolution 18/22: Human Rights and Climate Change U.N. Doc. A/HRC/18/L.26/Rev.1 2011 available at <http://www.ohchr.org/Documents/Issues/ClimateChange/A.HRC.RES.18.22.pdf> [used on the 11 July 2012]

Resolution 7/14: Right to Food 2008 U.N. Doc. A/HRC/7/L.6/Rev.1 available at http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_7_14.pdf [used on the 31 August 2012]

Resolution 6/27: The Right to Adequate Housing 2009 U.N. Doc. A/64/255 available at <http://www.unhcr.org/refworld/docid/4aa762e10.html> [used on the 31 July 2012]

Resolution 64/292: The Right to Water and Sanitation U.N. Doc. A/RES/64/292, 2010 available at <http://www.unhcr.org/refworld/docid/4cc926b02.html> [accessed 26 September 2012]

Resolution 45/94: Need to Ensure a Healthy Environment for the Well-being of Individuals 1990 U.N. Doc. A/45/40 available at <http://www1.umn.edu/humanrts/instree/healthyenvironment.html> [used on the 31 July 2012]

Resolution 2001/2: Promotion of the Realisation of the Right to Drinking Water and Sanitation 2001 U.N. Doc. E/CN.4/SUB.2/RES/2001/2 available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/d0d5a8e0ca2a7469c1256970004d8213?Opendocument> [used on the 30 October 2012]

General comment No 6: Right to life (Article 6) U.N. Doc. HRI/GEN/1/Rev.1 available at <http://www.unhcr.org/refworld/docid/45388400a.html> [used on the 31 August 2012]

General Comment No 7: Implementing Rights in Early Childhood 2005 U.N. Doc. CRC/C/GC/7/Rev.1 available at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/GeneralComment7Rev1.pdf> [used on the 31 July 2012]

General Comment No 12: The Right to Adequate Food (Art. 11 of the Covenant) 1999 U.N. Doc E/C.12/1999/5 available at <http://www.unhcr.org/refworld/docid/4538838c11.html> [used on the 26 September 2012]

General Comment No 14: The Right to the Highest Attainable Standard of Health (Article 12 of the Covenant) 2000 U.N. Doc E/C.12/2000/4 available at <http://www.unhcr.org/refworld/docid/4538838d0.html> [used on the 26 September 2012]

General Comment No 15: Right to Water (Articles 11 and 12 of the Covenant) 2002 U.N. Doc. E/C.12/2002/11 available at <http://www.unhcr.org/refworld/docid/4538838d11.html> [used on the 31 July 2012]

General Comment No 28: Article 3 (The Equality of Rights Between Men and Women) 2000 CCPR/C/21/Rev.1/Add.10 available at <http://www.unhcr.org/refworld/docid/45139c9b4.html>