



The Journal of Sustainable Development Law and Policy

Journal homepage: <https://www.ajol.info/index.php/jsdlp>

ISSN: 2467-8406
Online ISSN: 2467-8392
Volume: 16, Issue 2
Amid, 2025

Mainstreaming the Gender Dimension of Climate Change under the African Commission on Human and Peoples' Rights Mandates: Appraising State Reporting Guidelines and State Reports

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Article Information:

Article Type:

Research Article

Manuscript Received:

30 August 2024

Final Revision Received:

8 October 2024

Accepted:

16 December 2024

Published Online:

15 February 2025

Keywords

African Commission; African Charter; Maputo Protocol; state report; climate change; rights of women.

The African Commission on Human and Peoples' Rights (African Commission) is one of the African Union's (AU) main human rights organs, charged for promoting, protecting, and interpreting the rights guaranteed under the African Charter on Human and Peoples' Rights. The African Commission has also been tasked with reviewing state reports on the implementation status of the African Charter and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol). This article examines the extent to which African Commission state reporting guidelines and state reports submitted to the African Commission depict the impacts of climate change on women's rights. The study used the doctrinal and qualitative research approach. Although African women suffer differently and disproportionately as a result of climate change, the African Charter and Maputo Protocol do not specifically acknowledge the impact of climate change on women's rights. The African Commission is empowered to close such disparities through soft power methods such as issuing resolutions and guidelines, reviewing state reports, and entertaining cases. The article analyses state reporting guidelines, state reports, and the African Commission's concluding observations and recommendations demonstrates that both states and the Commission do not appropriately account for the adverse impacts of climate change on women's rights. The study also reveals potential ways for integrating climate change and women's rights into state reporting guidelines and state reports.

Cite this article: Muluken K. Amid (2025). Mainstreaming the Gender Dimension of Climate Change under the African Commission on Human and Peoples' Rights Mandates: Appraising State Reporting Guidelines and State Reports. *The Journal of Sustainable Development, Law and Policy*. Vol. 16:2.131-153. DOI: 10.4314/jsdlp.v16i2.7



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Publisher: Institute for Oil, Energy, Environment and Sustainable Development (OGES Institute), Afe Babalola University, Ado Ekiti, Nigeria.

1. INTRODUCTION

Climate change jeopardizes the universal realization of sustainable development by causing disruption to the existing environmental systems and human livelihoods. The climate change crisis disproportionately affects the African continent due to multiple factors increasing disaster risk, depletion of natural resources, and inadequate capacity for mitigation and adaptation. African women are exposed to the adverse effects of climate change on several levels,¹ including the exacerbation of pre-existing socioeconomic inequities and women's marginalization. Hence the response to climate change must address women's vulnerability and particular needs.

Unlike the United Nations, the African Union (AU) does not have a distinct treaty on climate change at the regional level. Instead, numerous policy and strategic frameworks concentrating on climate change incorporate, to varying degrees, gender concerns. The AU Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction (2015-2030)², the AU Strategy for Gender Equality and Women's Empowerment (2018-2028)³, and the AU Climate Change and Resilient Development Strategy and Action Plan (2022-2032)⁴ are all examples. Furthermore, the Nairobi Declaration on the African Process for Combating Climate Change emphasizes women's vulnerability and the significance of their involvement in formulating and implementing climate change actions.⁵

More so, in Africa, no human rights treaty explicitly recognizes women's rights in respect of climate change.⁶ Gender mainstreaming in climate change actions is typically associated with the right to a clean and healthy environment, the right to food security, and the right to sustainable development, all of which are

¹ Oluwatoyin Adejonwo, 'Promoting Reproductive Rights as a Pathway to Climate Compatible Development in Africa' in Ademola O Jegede and Oluwatoyin Adejonwo (eds), *Climate change justice and human rights: An African perspective* (Pretoria University Law Press 2022); Mary Halton, 'Climate Change "Impacts Women More than Men"' BBC (8 March 2018) <<https://www.bbc.com/news/science-environment-43294221>> accessed 28 February 2024.

² Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 in Africa in line with the Africa Regional Strategy for Disaster Risk Reduction [2016] Guiding Principle 2.

³ AU Strategy for Gender Equality and Women's Empowerment (2018-2028) [2018] 26.

⁴ AU Climate Change and Resilient Development Strategy and Action Plan (2022-2032) [2022] Strategic Intervention Axis 3.

⁵ Nairobi Declaration on the African Process for Combating Climate Change, African Ministerial Conference on the Environment [2009] para7.

⁶ Ademola O Jegede, 'Climate Change in the Work of the African Commission on Human and Peoples' Rights' (2017) 31 *Speculum Juris* 135.

recognized by the African Charter on Human and Peoples' Rights (African Charter) and the Maputo Protocol to the African Charter on the Rights of Women in Africa.⁷ The AU Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa (Kampala Convention) includes the rights of IDPs (particularly women's rights) who have been displaced as a result of either natural or man-made disasters, including climate change.⁸ The Kampala Convention also requires states to take action against environmental degradation and offers reparations to IDPs if the state fails to protect and assist them during natural disasters.⁹

In this regard, climate change has an impact on women's access to energy because collecting fuel wood and cooking are gendered activities. In Africa, for example, women spend an average of 2.1 hours per day collecting wood for fuel and close to three hours per day using open biomass stoves.¹⁰ The Maputo Protocol recognizes women's access to energy as part of the right to food security (Article 15) and the right to a healthy and sustainable environment (Article 18). Both provisions impose a positive obligation on member states to take appropriate measures to ensure women's access to a variety sustainable modern energy source.

Member states bear primary responsibility for observing and implementing the rights recognized under each treaty. In general, human rights treaties establish mechanisms to monitor the implementation of human rights obligations at the national level. The African Commission on Human and Peoples' Rights (African Commission), for example, was founded under the African Charter with the goal of promoting, protecting, and interpreting Charter-guaranteed rights.¹¹ The Commission is authorized to review states' reports on the African Charter¹², the Maputo Protocol¹³, and the Kampala Convention.¹⁴ The Commission's acts have

⁷ See Article 24 of the African Charter and Articles 18 and 19 of the Maputo Protocol.

⁸ African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) [2009] Arts 5(4) & 9(d).

⁹ Kampala Convention, Arts XII (3) & IX (2(j)).

¹⁰ Ademola O Jegede and Pfanelo L Mamphiswana, 'Article 18- Right to a Healthy and Sustainable Environment' in Annika Rudman, Celestine N Musembi and Trésor M Makunya (eds), *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary* (Pretoria University Law Press 2023); African Commission Call for Comments, 'Call for Comments to the "Study on the Impact of Climate Change on Human and Peoples' Rights in Africa"' (28 October 2023) <<https://achpr.au.int/en/news/press-releases/2023-10-28/call-comments-study-impact-climate-change-human-and-peo>> accessed 1 July 2024.

¹¹ African Charter on Human and Peoples' Rights (African Charter) [1981] Art 30 cum Art 45.

¹² African Charter, Art 62.

¹³ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 2003 Art 26.

no binding effect and are therefore enforced through soft power mechanisms such as issuing resolutions, reviewing state reports, and entertaining cases.¹⁵

The African Commission's promotion and protection duties also apply to gender and climate change questions, particularly those addressed under the African Charter and the Maputo Protocol. This article evaluates the extent to which state reporting guidelines and state reports submitted to the African Commission have included the gender dimension of climate change and its implication on energy transition. This paper employs a qualitative and doctrinal legal research approach to examine relevant African Commission state reporting guidelines, state reports, and concluding observations.

There are six sections to this article. Following this introduction, the next section looks at the notion of gender dimension of climate change. Section three explores the extent to which African Commission state reporting guidelines incorporate gender facets of climate change. Section four analyzes how states mainstream gender concerns in their periodic state reports to the African Commission, including the Commission's concluding observations. Section five explores ways to better accommodate climate change and women's rights within the African human rights system. Section six of the article contains the conclusion.

2. CONCEPTUALIZATION OF GENDER DIMENSION OF CLIMATE CHANGE

The gender dimension of climate change examines the intersectional relationship between climate change and patriarchy, taking into account socioeconomic status, gender, age, and other forms of human difference that define inequalities, discrimination, unequal power relations, and marginalization of women's rights.¹⁶ Gender and environmental rights were initially introduced in 1985 at the United Nations Women's Summit in Nairobi.¹⁷ The gender dimension of climate change issues includes women's contribution to the problem of climate

¹⁴ Kampala Convention, Art 14(4).

¹⁵ Jegede (n 6) 137.

¹⁶ Olivia Johnson, 'A Woman's Place is in the Resistance: An Ecofeminist Response to Climate Change' [2022] Student Theses 2015-Present 128; Mohammad Danish and Rima J Isaifan, 'Strategic Plans to Support Action against Climate Change in the Arab Countries in the Middle East Region' (2024) 15 *Journal of Sustainable Development Law and Policy* (The) 304.

¹⁷ Greta Gaard, 'Ecofeminism and Climate Change' (2015) 49 *Women's Studies International Forum* 20.

change; vulnerability to the effects of climate change, as well as their participation and benefit from climate actions.¹⁸

Various feminist movements call for gender mainstreaming in addressing climate change. Ecofeminists, for example, argue for the intersection of gender and the natural environment. The ecofeminist approach to climate change tries to demonstrate the scale of women's and girls' intersectional vulnerability during climate change, while also striving to promote equal participation and empowerment of women in addressing climate change.¹⁹ They contend that, while women make little contribution to climate change problems they are disproportionately harmed by its effects.²⁰ According to Wilkinson, “the climate crisis is not gender-equal or gender-neutral”.²¹

According to the UN Human Rights Council report, “women and girls are more severely affected throughout all phases of weather-related disasters: risk preparation, warning notification and the aftermath, social and economic repercussions, recovery and reconstruction”²² The United Nations Framework Convention on Climate Change (UNFCCC) report also states that the “differentiated impacts of climate change on women attributed to historical and existing inequalities, discriminations, and other multidimensional social factors rather than biological sex”²³ The consequences of climate change not only aggravate women's inequality and subordination, but also lead to the feminization of poverty and intergenerational dependency.²⁴

¹⁸ UNFCCC, ‘Differentiated Impacts of Climate Change on Women and Men; the Integration of Gender Considerations in Climate Policies, Plans and Actions; and Progress in Enhancing Gender Balance in National Climate Delegations’ (UNFCCC 2019) Synthesis Report FCCC/SBI/2019/INF.8 <https://unfccc.int/sites/default/files/resource/sbi2019_inf8.pdf> accessed 24 March 2024.

¹⁹ Inter-Council Network, ‘A Feminist Approach to Climate Justice’ (31 May 2019) <https://ocic.on.ca/wp-content/uploads/2019/06/WD_A-Feminist-Approach-to-Climate-Justice_Final_2019-05-31.pdf> accessed 28 May 2024.

²⁰ Gaard (n 17) 25.

²¹ Katharine Wilkinson, ‘The Climate Crisis Is Worse for Women. Here’s Why’ *New York Times* (24 August 2021) <<https://www.nytimes.com/2021/08/24/us/climate-crisis-women-katharine-wilkinson.html>> accessed 12 July 2024.

²² UN Human Rights Council, ‘Report of the Office of the United Nations High Commissioner for Human Rights on the Relationship between Climate Change and Human Right’ (UN Human Rights Council 2009) Annual Report A/HRC/10/61 <<https://documents.un.org/doc/undoc/gen/g09/103/44/pdf/g0910344.pdf>> accessed 12 July 2024.

²³ UNFCCC (n 18) para 8.

²⁴ UN Climate Change, ‘Five Reasons Why Climate Action Needs Women’ (8 March 2023) <<https://unfccc.int/news/five-reasons-why-climate-action-needs-women#:~:text=>

Gender mainstreaming in climate change initiatives is also focused on addressing the unequal participation of women in climate change responses and benefits from actions.²⁵ Despite being more vulnerable to the effects of climate change, women's voices are underrepresented in climate change actions. Women's representation in UNFCCC meetings has been extremely low on a global scale. As an instance, women made up only 35% of party delegates at the Conference of Parties (COP) 27.²⁶ According to Wilkinson, the global response to the climate disaster is facing a leadership crisis²⁷, in which women's equitable leadership and active participation in climate change mitigation efforts are overlooked.

MacGregor concludes that, "climate change is cast as a human crisis in which gender has no relevance and man is supposed to mean 'everyone'".²⁸ Women's unequal representation and participation in climate change responses may result in the marginalization of their differentiated needs.²⁹ Climate change exacerbates the disproportionate suffering of women. This includes exposure to climate-related deaths and displacements, gender-based violence, food insecurity and hygiene issues, shortage of access to energy, long journeys to collect water and fuel wood, and girls dropping out of school.³⁰ In regards to this, the 2019 UNFCCC report on gender and climate change emphasizes that gender responsive energy access should address women's time poverty, energy poverty, and their health and well-being.³¹

Overall, scientists claim that women are disproportionately affected by the effects of climate change as a result of men's overconsumption habits.³² The problem is more aggravated during actions/ responses against climate change. Men, the primary perpetrators of climate change, are leading the response to it.³³ Women's voices and representation in climate change efforts are dominated and marginalized.³⁴ As a result, gender sensitive climate action ought to recognize women's distinct susceptibility and active participation in order to achieve

=The%20Gender%20Action%20Plan%20agreed,making%20and%20in%20climate%20action>.

²⁵ *ibid.*

²⁶ WEDO, 'Who Decides: Women's Participation in the UN Climate Change Convention' (June 2023) <https://wedo.org/wp-content/uploads/2023/06/WEDO_WomensParticipation_2023_EN.pdf> accessed 9 May 2024.

²⁷ Nicole Greenfield, 'What is Climate Feminism?' (18 March 2021) <<https://www.nrdc.org/stories/what-climate-feminism>> accessed 23 May 2024.

²⁸ Gaard (n 17) 24.

²⁹ UN Climate Change (n 24).

³⁰ African Commission Call for Comments (n 10).

³¹ UNFCCC (n 18), para 64.

³² Gaard (n 17) 20.

³³ *ibid.*

³⁴ *id.*, 28.

successful interventions. Without the full and active engagement of women, no climate response action will be effective.³⁵ Wilkinson states “women’s leadership and equal participation result in better outcomes for climate policy, reducing emissions, and protecting land”.³⁶

3. MAINSTREAMING GENDER IN CLIMATE CHANGE ACTIONS UNDER AFRICAN COMMISSION’S STATE REPORTING GUIDELINES

The African Commission is a quasi-judicial supervisory body established under the African Charter with the aim of promoting, protecting, and interpreting human rights safeguarded by the Charter. The African Charter does not clearly acknowledge the impact of climate change on human rights. However, climate change threatens a wide spectrum of Charter-protected rights. According to Buys and Lewis, the African Charter is inspired by a “collectivist approach” to environmental concerns.³⁷ In response to human development challenges, the Charter incorporates first, second, and third-generation rights, in contrast to the European Convention on Human Rights, which exclusively establishes an individualistic approach to human rights.³⁸

Concerning climate change and women's rights, Article 18(3) of the Charter states that the "state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions." As a result, state members to the African Charter, for example, should ensure women's rights as recognized by the UNFCCC Conference of the parties and other UN instruments.³⁹ Furthermore, Articles 60 and 61 of the African Charter bolsters the rights given by Article 18 (3) of the Charter by authorizing the African Commission to draw inspiration from applicable international treaties and legal principles.⁴⁰ In this context, the Commission should ensure that the protection of

³⁵ *id.*, 29.

³⁶ Greenfield (n 27).

³⁷ Elinor Buys and Bridget Lewis, ‘Environmental Protection through European and African Human Rights Frameworks’ (2022) 26 *The International Journal of Human Rights* 949.

³⁸ *ibid.*

³⁹ However, enforcing a treaty that relies on another treaty's legal commitment to protect is difficult due to uncertainty in applicable law and inadequate monitoring methods. To be applicable in the domestic setting, it must be ratified by a member state or interpreted too broadly.

⁴⁰ Annika Rudman, ‘Preamble’ in Annika Rudman, Celestine N Musembi and Trésor M Makunya (eds), *The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa: a commentary* (Pretoria University Law Press 2023).

women's rights is consistent with applicable international climate change instruments.

Above all, the Maputo Protocol explicitly affirms women's rights. Although the Protocol does not expressly use the phrase "climate change" in particular, the adverse effects of climate change have an influence on a wide variety of women's rights guaranteed by the Protocol. These rights include: the right to life (Article 4), the right to health (Article 14), the right to food security (Article 15), the right to adequate housing (Article 16), the right to health and a sustainable environment (Article 18), and the right to sustainable development (Article 19).

Nonetheless, neither the Maputo Protocol nor the African Charter recognize the right to access energy as a self-standing right. Instead, the Maputo Protocol mandates states to ensure the provision of energy sources as part of the right to food security, and the right to health and a sustainable environment. The African Charter's right to energy is also inferred from the general right to freely dispose of their wealth and natural resources (Article 21) and the right to a satisfactory environment (Article 24). Both provisions acknowledge each right as the collective rights of people.

The African Charter authorizes the African Commission to issue soft law instruments that assist in the interpretation and enforcement of the Charter's and its Protocols' rights.⁴¹ Among the soft law instruments, the Commission issued guidelines for state periodic reports as well as shadow report guidelines for non-state entities. State reports are one of the African Commission's promotional tasks to oversee the implementation of Charter rights.⁴²

Guidelines for state periodic reports include reporting Guidelines for national periodic reports of the African Charter, state reporting guidelines for the Maputo Protocol, state reporting guidelines and principles on Articles 21 and 24 of the African Charter relating to extractive industries, human rights, and the environment, and state reporting guidelines for economic, social, and cultural rights recognized by the African Charter (Tunis Reporting Guidelines). The state reporting guidelines outlined above do not expressly require states to give particular information on the detrimental impacts of climate change on women's rights.

⁴¹ Manisuli Ssenyonjo, 'Responding to Human Rights Violations in Africa - Assessing the Role of the African Commission and Court on Human and Peoples' Rights (1987-2018)' (2018) 7 International Human Rights Law Review 1.

⁴² African Charter, Art 45 (1b); The Rules of Procedure of the African Commission on Human and Peoples' Rights [2020] Rules 78-83.

Each guideline, however, requires that actions be made to address air, water, and land pollution, as well as the degradation of natural resources and environmental risks.⁴³ Additionally, the guidelines include several rights that are under threat from the severe effects of climate change, including the right to health⁴⁴, the right to a decent environment⁴⁵, the right to food⁴⁶, the right to an adequate standard of life⁴⁷, and the right to sustainable development.⁴⁸ Concerning energy sources, the State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to extractive industries, human rights, and environment stipulate that state and non-state actors (such as extractive companies) must refrain from abusing human rights when extracting energy sources such as oil and gas.⁴⁹

Further, each State's reporting guidelines incorporate the gender dimensions of human rights. For example, the guidelines on Articles 21 and 24 of the African Charter require states to disclose information on women's access to land use and ownership, as well as legislative measures to assure their representation in decision-making.⁵⁰ The Tunis Reporting Guidelines also require states to report on steps taken to ensure gender equality, as well as to offer disaggregated statistics data on the extent to which socioeconomic rights are enjoyed by women and other disadvantaged groups.⁵¹ These guidelines aim to guarantee that women's needs are taken into account when taking action on climate change. In contrast, no state reporting guidelines explicitly compel states to consider the gender aspect of energy transition in their periodic state reports.

Incorporating the gender dimension of climate change into state reporting guidelines contributes to connecting the human rights dimension of climate

⁴³ African Commission on Human and Peoples' Rights National Periodic Report Guidelines (African Commission Reporting Guidelines) [1989] para 9; State Party Reporting Guidelines for Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Tunis Reporting Guidelines) [2010] 4; State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment [2021] para 28.

⁴⁴ African Commission Reporting Guidelines, para 35; Tunis Reporting Guidelines, p 33.

⁴⁵ African Commission Reporting Guidelines, para 35; Guidelines for state reporting under the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol Reporting Guidelines [2010] 5.

⁴⁶ Maputo Protocol Reporting Guidelines, 5; African Commission Reporting Guidelines, para 32; Tunis Reporting Guidelines, 7.

⁴⁷ African Commission Reporting Guidelines (n 43), para 32.

⁴⁸ Maputo Protocol Reporting Guidelines (n 45), 8; Tunis Reporting Guidelines (n 43), 4.

⁴⁹ State Reporting Guidelines and Principles on Articles 21 And 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment (n 43).

⁵⁰ Maputo Protocol Reporting Guidelines (n 45), 8; Tunis Reporting Guidelines (n 43), 4.

⁵¹ Tunis Reporting Guidelines (n 43), 3 & 6.

change repercussions.⁵² However, the lack of a distinct and explicit guide on the gender dimension of climate change in state reporting guidelines has a negative impact on future state report submissions and concluding observations. This is because there is a considerable risk of states omitting to address the gendered dimensions of climate change and the right to a safe environment in state reports, more so its implications for access to energy.⁵³

4. GENDER MAINSTREAMING IN AFRICAN UNION MEMBER STATE REPORTS AND AFRICAN COMMISSION CONCLUDING OBSERVATIONS

According to the African Commission's website, as of mid-February 2024, 48 African Charter member states had submitted 137 state reports to the Commission.⁵⁴ The Commission's website now displays 80 state reports submitted by 35 member states.⁵⁵ The African Commission Secretary is required to make state reports publicly available unless the document is confidential.⁵⁶ For this study, 69 state reports with English language versions were analyzed.⁵⁷ This study examines submitted state reports from 1986 to February 2024.

4.1 State Reports on African Charter

More than 60 state reports are available on the African Commission's website, detailing the status of African Charter implementation in member states. However, the majority of them did not adequately address the impact of climate

⁵² Maputo Protocol Reporting Guidelines (n 45), 8.

⁵³ Ssenyonjo (n 41) 26 & 30.

⁵⁴ According to the African Commission website, six state parties to the African Charter have not yet submitted any state reports. These include “the Comoros, Equatorial Guinea, Guinea Bissau, Sao Tome & Principe, Somalia, and South Sudan”. Morocco is not a member of the African Charter. States Reporting Status (African Commission on Human and Peoples’ Rights) <<https://achpr.au.int/en/states-reporting-status>> accessed 18 April 2024.

⁵⁵ Although 48 member states submitted state reports, there is not a single state report from 13 member states that was not uploaded to the Commission's website. These are Gabon, Gambia, Guinea, Lesotho, Liberia, Libya, Malawi, Mauritius, Niger, Republic of Congo, Rwanda, Seychelles, and Sierra Leone. The Commission's website simply introduces each country's submitted state reports; it does not upload them. (ibid).

⁵⁶ The Rules of Procedure of the African Commission on Human and Peoples’ Rights, (n 42), Rule 21 (f(i)).

⁵⁷ Eleven of the 80 state reports do not have an English version. The author eliminates them from the analysis due to author's linguistic barrier. Algeria's 2nd State Report (1996-2000), Angola's 7th State Report (2016-2023), Benin's Initial Report (1986-1992) and 1st State Report (1993-1998), Burundi's 1st State Report (1991-2000), Cape Verde's 1st State Report (1987-1991), Chad's 1st State Report (1986-1996), Egypt's 2nd State Report (1994-2000), Togo's initial state report (1982-1992), Tunisia's initial report (1983-1989) and 1st State Report (1990-1994). States Reporting Status (n 54).

change on the charter's human rights provisions. Several state reports link climate change concerns and ramifications with the right to a safe environment guaranteed by Article 24 of the African Charter. For instance, Angola⁵⁸, Senegal⁵⁹, and Burkina Faso's⁶⁰ periodic reports on the implementation of the African Charter identify climate change as the primary cause of low agricultural productivity in their respective countries.

Other state reports include state actions to prevent and mitigate the effects of climate change on human rights. This involves raising citizen awareness⁶¹, carrying out reforestation and rehabilitation systems⁶², planning and implementing drought resilience programmes⁶³, desertification combating strategies⁶⁴, and renewable energy projects.⁶⁵ Similarly, Nigerian⁶⁶ and Kenyan⁶⁷ state reports highlight that individuals have the rights to submit a claim and seek redress for violations of the right to the environment before judicial bodies. However, the above-mentioned state reports generated under the African Charter are marred by a failure to incorporate gender concerns and vulnerability to environmental threats.

Several state reports address the impact of climate change on women's access to energy sources. Eritrea's first state report demonstrates that the collection and widespread usage of biomass fuel in the country endangers the health and safety of women and girls, limits their productivity and access to various opportunities, and hinders them from participating in social activities.⁶⁸ Burkina Faso's report shows the country's sustainable development policy includes implementing women's access to modern energy.⁶⁹ Similarly, Nigeria is implementing the "Sustainable for All Action Agenda (2015-2030)" to improve energy accessibility and efficiency for all.⁷⁰ The country is also carrying out "The Rural Women Energy Security Project" and the "National Clean Cooking Scheme" to ensure

⁵⁸ Angola: Periodic Reports 2nd, 3rd, 4th and 5th, 1999-2010 (African Commission 2011), para 257.

⁵⁹ Senegal: Combined Periodic Report, 2004-2013 (African Commission 2015), para 329.

⁶⁰ Burkina Faso: 3rd and 4th Periodic Report (2011-2013) (African Commission 2015), para 177.

⁶¹ Uganda: 3rd Periodic Report, 2006-2008 (African Commission 2009), para 21.

⁶² Burkina Faso: 2nd Periodic Report, 2003-2009 (African Commission 2011), para 181.

⁶³ Eritrea: 1st Periodic Report, 1999-2016 (African Commission 2018), para 368.

⁶⁴ Senegal: Combined Periodic Report, 2004-2013 (n 59), para 332.

⁶⁵ Federal Republic of Nigeria: 6th Periodic Report, 2015-2016 (African Commission 2018), para 43.

⁶⁶ id, para 100.

⁶⁷ Kenya: Combined 8th -11th Periodic Report, 2008 - 2014 (African Commission 2015), paras 297-300.

⁶⁸ Eritrea: 1st Periodic Report, 1999-2016 (n 63), para. 374.

⁶⁹ Burkina Faso: 3rd and 4th Periodic Report (2011-2013) (n 60), para. 352.

⁷⁰ Federal Republic of Nigeria: 6th Periodic Report, 2015-2016 (n 65), 119.

women's access to the transformation of energy.⁷¹ Initiatives to improve women's access to modern energy sources contribute to mitigating the effects of climate change on traditional energy sources.

4.2 Combined State Reports of African Charter and Maputo Protocol

As of December 2023, the Maputo Protocol has been ratified by 46 AU member states.⁷² State parties that have ratified both the African Charter and the Maputo Protocol are required to submit a combined report: Part A on the African Charter and Part B on the Maputo Protocol.⁷³ Since 2010, the member states of both the African Charter and the Maputo Protocol have submitted over 40 combined state reports.⁷⁴ However, just a few state reports integrate the African Charter and the Maputo Protocol.⁷⁵ The remaining state reports do not mention of the Maputo Protocol's status of enforcement.

At least 10 combined state reports are looking to link climate change to women's rights, particularly the right to a healthy and sustainable environment (Article 18 of the Maputo Protocol).⁷⁶ For example, South Africa's second state report acknowledged rural women's disproportionate vulnerability to the adverse consequences of climate change.⁷⁷ Moreover, the report confirmed that full participation of women in environmental management and preservation has been

⁷¹ Id, 138.

⁷² As of December 2023, nine member states have yet to ratify: “Burundi, Chad, Egypt, Eritrea, Madagascar, Morocco, Niger, Somalia, and Sudan”. With the exception of Sudan and Somalia, all other nations have already ratified the CEDAW Convention. The convention has been ratified by the Central African Republic but has not been submitted with the African Union.

⁷³ Maputo Protocol Reporting Guidelines (n 45), 1.

⁷⁴ Since the Maputo state reporting guidelines were adopted in 2010, eight states that are parties to both the African Charter and the Maputo Protocol have yet to submit any periodic reports. These are Cape Verde, Central African Republic, Ghana, Guinea, Libya, the Republic of Congo, Tanzania, and Tunisia.

⁷⁵ The state reports of Angola (2011-2016), Burkina Faso (2011-2013), Cameroon (2015-2019), Democratic Republic of Congo (2005-2015), Eswatini (2001-2020), Ethiopia (2015-2023), Namibia (2015-2019), Senegal (2004-2013 & 2015-2022), South Africa (2003-2014), Togo (2005-2016), and Zambia (2005-2019) incorporate the combined reports of the African Charter and the Maputo Protocol. Although the titles and table of contents of Mauritania's (2018-2021) and Benin's (2009-2018) state reports mention the existence of combined reports on the African Charter and the Maputo Protocol, the body of each report solely includes reports on the African Charter.

⁷⁶ These are the combined periodic state reports of South Africa, Togo, Zambia, Namibia, Eswatini, Angola, Cameroon, Burkina Faso, Democratic Republic of the Congo, and Senegal. In relation to the issue, Senegal's two combined periodic reports are insufficiently comprehensive, including the absence of reports on the right to a healthy environment under the Maputo Protocol.

⁷⁷ South Africa's Combined 2nd Periodic Report on the African Charter and Maputo Protocol (2004-2013) (African Commission 2016), para 505.

recognised under the 1998 Environmental Management Act.⁷⁸ In 2005, South Africa adopted “the Mogale City Declaration on Women and the Environment” to strengthen the role of women in environmental management.⁷⁹ Since then, the government has undertaken a number of programs to strengthen women's roles and capacities, including encouraging women to participate in the green economy and other initiatives to strengthen women's capacity to adapt and recover from the adverse impacts of climate change.⁸⁰

According to the Togo state report, environmental deterioration is negatively impacting women.⁸¹ The government is “empowering women to address environmental concerns by adapting agriculture to climate change, boosting awareness, and enhancing their capacity in environmental and natural resource management”.⁸² The report also provides the promotion of women's access to energy (electrical and solar) serves as one instrument for narrowing the gender gap in accessing opportunities.⁸³ Namibia's state report notes that the country includes gender concerns in environmental impact assessments because women and other vulnerable groups of society are disproportionately affected by pollution and environmental harm caused by developmental initiatives.⁸⁴

Additionally, Zambia's state report mentions that the country has adopted the “National Policy on the Environment and the National Climate Change Policy”.⁸⁵ According to the report, women are consulted during the development of environmental laws and policies to ensure that gender considerations are integrated.⁸⁶ However, the strategy does not provide legal and policy frameworks that explicitly recognize the gender dimension of the right to the environment and climate change. According to Eswatini's state report, climate change is the main cause of the country's severe drought.⁸⁷ The report acknowledges the significant role of women in managing natural resources such as water and forests.⁸⁸

⁷⁸ id, para 500.

⁷⁹ id, para 501.

⁸⁰ id, paras 501 & 505.

⁸¹ Republic of Togo: Periodic Report 6th, 7th & 8th, 2011 - 2016 (African Commission 2018), para 631.

⁸² id, para 632.

⁸³ id, para 657.

⁸⁴ Namibia: 7th Periodic Report, 2015-2019 (African Commission 2021), para 30.

⁸⁵ Zambia: Combined 1st to 7th, Periodic Report, 2005-2019 (African Commission 2023), paras 383-384.

⁸⁶ id, para 641.

⁸⁷ Kingdom of Eswatini Combined 1st to 9th Periodic Report, 2001 - 2020 (African Commission 2022), para 549.

⁸⁸ id, 601.

Angola's state report also addresses how Angola is upholding the Maputo Protocol, including the right to a healthy environment.⁸⁹ The report states that one of the objectives of the National Development Plan is to undertake national climate change programmes.⁹⁰ Nevertheless, the report does not specify to what extent the State explicitly included the gender dimension of climate change in these measures. Burkina Faso's state report also shows that the country has implemented a policy to ensure women's access to modern energy as a means of safeguarding their right to a healthy environment.⁹¹

Moreover, Cameroon's State report indicates that the government has adopted and implemented the "Gender Climate Change and Agriculture Support Programme".⁹² Women were also involved in design the "Women and Sustainable Energy Programme", a project aimed at increasing women's resilience to the harmful consequences of climate change.⁹³ Last but not least, the Democratic Republic of Congo state report points out that the country's armed conflicts restrict women's right to live in a healthy and sustainable environment.⁹⁴ To protect women's right to a healthy environment, the government is encouraging them to participate in "renewable energy research and investment".⁹⁵

The evidence presented above shows that many state reports based solely on the African Charter did not effectively address gender aspects of climate change and the right to the environment. However, a state's failure to report does not automatically imply a lack of commitment to integrating the gender dimension of climate change. States commitments further inferred from domestic laws and policies as well as other international obligations to mainstream gender aspects of climate change. Notwithstanding this, incorporating the gender dimension of climate change in state reports helps to ensure transparency and monitor implementation progress.⁹⁶

In this respect, several countries combined periodic reports on the African Charter and the Maputo Protocol, as described above, serve as a model for

⁸⁹ Angola 6th and 7th Periodic Report on the African Charter and Maputo Protocol (2011-2016) (African Commission 2018), paras 111-112.

⁹⁰ *ibid.*

⁹¹ Burkina Faso: 3rd and 4th Periodic Report (2011-2013) (n 60), para 352.

⁹² Cameroon: 4th - 6th Combined Periodic Report, 2015 - 2019 (African Commission 2020), paras 706 & 886.

⁹³ *id.*, paras 893 & 900.

⁹⁴ Democratic Republic of Congo: Periodic Report, 11, 12, 13, 2005 - 2015 (African Commission 2017), para 295.

⁹⁵ *id.*, para 301.

⁹⁶ Frans Viljoen, 'An Introduction to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' (2009) 16 *Washington and Lee Journal of Civil Rights and Social Justice* 11.

mainstreaming gender issues in climate change actions by recognizing their vulnerability and carrying out climate change action measures.⁹⁷ Several states are also developing and implementing gender responsive modern energy transition initiatives as an instrument to reduce the safety and health concerns that women experience when gathering and using biofuels, as well as to save them time and effort.⁹⁸

4.3 African Commission's Concluding Observations and Recommendations

After reviewing a state report, the African Commission gives a concluding observation in the form of feedback to the concerned state party.⁹⁹ The concluding observation outlines the report's strengths and drawbacks/gaps that impede full enjoyment of the rights recognized in the African Charter and the Maputo Protocol. Although concluding observations have no binding force, they assist governments in reconsidering the application of Charter provisions at the domestic level.¹⁰⁰ As of February 2024, the African Commission's website displays approximately 70 concluding observations.¹⁰¹

Concerning climate change and gender concerns, it is difficult to uncover concluding observations that directly address the subject at hand. Even though several state reports addressed the gender dimension of climate change and environmental degradation¹⁰², the African Commission frequently failed to provide comments and recommendations on a specific provision of the Protocol (Article 18) dealing with the right to a healthy environment.¹⁰³ This may indicate that the Commission considers gender is not yet mainstreamed in the Commission's evaluation of the right to the environment and climate change matters.

Despite the aforementioned shortcomings, several concluding observations addressed gender mainstreaming in connection to extractive industries, the environment, and human rights. For example, the Commission's concluding observation on Togo's periodic report acknowledges the "presence of an association of women working in the mining sector and gender mainstreaming

⁹⁷ See Footnote 76.

⁹⁸ See Footnotes 68-71, 83, 91 & 93.

⁹⁹ The Rules of Procedure of the African Commission on Human and Peoples' Rights (n 42), Rules 82-83.

¹⁰⁰ Ssenyonjo (n 41) 29.

¹⁰¹ States Reporting Status (n 54).

¹⁰² Refer Footnotes 76-95.

¹⁰³ For instance, See Concluding Observations and Recommendations - Togo: Periodic Report 6th, 7th & 8th, 2011 - 2016 (African Commission 2021) and Concluding Observations and Recommendations - South Africa: 2nd Periodic Report, 2003-2014 (African Commission 2016).

in decision making processes”.¹⁰⁴ In South Africa's second periodic report, the Commission raised concerns about “inadequate environmental monitoring and inspection of mining companies, as well as a lack of reference to measures addressing gendered impacts of mining”.¹⁰⁵

Other concluding observations addressed concerns about climate change without mentioning gender issues. For example, in the concluding observation to Zimbabwe's combined state report, the Commission states that the country's severe droughts affect the right to an adequate standard of living and development, while also urging the government to take measures in areas and communities adversely affected by climate change.¹⁰⁶ The Commission also states that “the construction of dam projects helps to adapt the effects of climate change in the country.”¹⁰⁷

Under Niger's combined state report, the Commission recognizes the existence of the “National Plan of Action for Combating Desertification and Management of Natural Resources, the National Strategy and Plan of Action on Climate Change,” and other plans and strategies designed to ensure the right to a healthy environment.¹⁰⁸ The Commission also commends Malawi for its tree-planting initiative and the establishment of “Malawi's Climate Change Learning”.¹⁰⁹

Besides, various concluding observations express appreciation, concern, and recommendation to state parties by alluding to the general right to a safe environment and natural resources. As an instance, the African Commission's concluding observation on Kenya, Nigeria, and Uganda state reports commends the adoption of energy-related laws, policies, and program initiatives as one mechanism for ensuring the right to a healthy and clean environment, as well as effective natural resource management. These concluding observations, however, overlook the critical importance of gender considerations in tackling problems related to the environment and climate change. The silence on the gender dimension of climate change may ignore the susceptibility and participation of women and girls in climate change initiatives.

¹⁰⁴ Concluding Observations and Recommendations - Togo: Periodic Report 6th, 7th & 8th, 2011 - 2016 (ibid).

¹⁰⁵ Concluding Observations and Recommendations - South Africa: 2nd Periodic Report, 2003-2014 (African Commission 2016) (n 103).

¹⁰⁶ Concluding Observations and Recommendations - Zimbabwe: 11th, 12th, 13th, 14th and 15th Combined Periodic Report, 2007-2019 (African Commission 2021).

¹⁰⁷ ibid.

¹⁰⁸ Concluding Observations and Recommendations - Niger: 2nd and Combined Periodic Reports, 2003-2014 (African Commission 2015).

¹⁰⁹ Concluding Observations and Recommendations on the 2nd and 3rd Combined Periodic Report of the Republic of Malawi, 2015-2019 (African Commission 2022).

4.4 Compliance with African Commission State Reporting Guidelines and Concluding Observations on State Reports

As described in the preceding subsections, the African Commission has issued several state reporting guidelines as well as concluding observations on state reports in order to carry out its mandate of promoting and protecting human rights. Unlike treaties, the above-mentioned African Commission soft law instruments are not legally binding. Their execution is contingent on the Commission's commitment and capacity, as well as that of state parties. The African Commission has not devised comprehensive methods for enforcement of its findings, but leverages state reporting, activity reports, communication strategies, implementation hearings, and promotional visits as instruments to monitor the implementation of its decision.¹¹⁰

In practice, the effectiveness of the aforementioned enforcement tools is at an infant stage, particularly in terms of mainstreaming gender dimensions of climate change actions. Despite this, several state parties' periodic reports (including combined state reports) have begun to incorporate gender into the right to environment and climate change.¹¹¹ Other state reports include updates on how the Commission's earlier concluding observations and recommendations are being implemented.¹¹² However, none of these state reports show progress in implementing the Commission's concluding observations and recommendations on the gender dimensions of climate change.¹¹³

5. WAYS FOR BETTER INTEGRATION OF GENDER AND CLIMATE CHANGE

As discussed in Section 4, the African Commission's state reporting guidelines, state reports, and concluding observations did not adequately address the gender dimensions of climate change. The state reporting guidelines pointed out above do not explicitly compel states to give particular details about the detrimental impacts

¹¹⁰ Rachel Murray and Debra Long, 'Monitoring the Implementation of Its Own Decisions: What Role for the African Commission on Human and Peoples' Rights?' (2021) 21 *African Human Rights Law Journal* 1.

¹¹¹ See Footnotes 76-95.

¹¹² In this regard, the Maputo Protocol State Reporting Guidelines require governments to include measures taken to implement recommendations in the Commission's concluding observations resulting from its review of the preceding report. Several state reports adhere to this standard. For example, see the State Reports for Côte d'Ivoire (2016-2019), Kenya (2008-2014), Namibia (2015-2019), Nigeria (2015-2016), and Togo (2011-2017).

¹¹³ In this respect, it is difficult to assess whether state reports that are not published on the African Commission's or other websites addressed gender dimensions of climate change. Some state reports are not made public due to confidentiality concerns.

of climate change on women's rights. The majority of state reports fail to address gender concerns and vulnerability to environmental threats.

Many concluding observations also disregard the importance of gender considerations in addressing environmental and climate change issues.¹¹⁴ The African Commission and member states' silence on the gender dimension of climate change may expose women to increased vulnerability by overlooking their differentiated needs and the participation of women and girls in climate change initiatives. This section offers reforms to the structural, soft law instruments, and operational actions to address existing shortcomings.

5.1 Reforms under the Mandate of African Union

Despite Africa's greater vulnerability to the negative effects of climate change than the rest of the world¹¹⁵, African human rights treaties do not expressly address the gender dimension of climate change. Climate change issues inferred from the general right to a satisfactory and healthy environment, specifically Article 24 of the African Charter and Article 18 of the Maputo Protocol. Without explicit recognition, addressing the differential vulnerability and needs of women and girls in the context of climate change response may receive insufficient attention. The African Commission¹¹⁶ and the AU have adopted soft law instruments to address climate change and women's concerns.¹¹⁷ However, soft instruments have no binding effect.

To address these issues, it is urged that the AU develop a separate and comprehensive treaty on climate change that takes into account the African context of climate change difficulties and their impact on women's rights and lives. Women and girls account for more than 80% of those impacted by climate change, indicating a disproportionate and differentiated vulnerability that must be addressed separately in order to respond effectively to climate change repercussions.¹¹⁸

The UNFCCC has been ratified by all African states except Saharawi.¹¹⁹ However, gender issues regarding climate change have been handled by

¹¹⁴ See Footnote 103.

¹¹⁵ Halton (n 1).

¹¹⁶ Resolution on Climate Change and Human Rights and the Need to Study its Impact in Africa (African Commission 2009 [ACHPR/Res.153(XLVI)09]; Resolution on Climate Change and Human Rights in Africa (African Commission) 2016 [ACHPR/Res.342(LVIII)2016].

¹¹⁷ See Footnotes 1-4.

¹¹⁸ Halton (n 1).

¹¹⁹ United Nations Treaty Collection <https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=_en> accessed 17 March 2024.

UNFCCC Conferences of Parties (COP) ¹²⁰ soft laws rather than the covenant itself. ¹²¹ In this connection, the 2015 Paris Agreement on Climate Change emphasizes the importance of considering into account vulnerable groups' situations, gender equality, women's empowerment, and gender responsive climate change responses, including adaptation efforts and capacity building initiatives. ¹²² Additionally, the Paris Agreement underlines the importance of taking "specific needs and special circumstances of developing countries" into account. ¹²³ The statement, in general terms, emphasizes African women's distinct and disparate vulnerability to the effects of climate change.

In this context, Africa must adopt an alternative regional treaty that specifies the particular needs and special conditions of African women on the one hand, while imposing uniform obligations on African Union member states parties on the other. Although a number of African states have domestic climate change legislation and/or policies that highlight women's rights, it is up to the state to enforce such laws and policies. Adoption of a separate climate change treaty has the potential to mainstream gendered aspects of climate change while also providing a uniform legal underpinning and monitoring tools for gender-inclusive climate change initiatives at the continental level.

Unlike the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Maputo Protocol lacks a separate treaty monitoring mechanism to ensure its implementation. ¹²⁴ The African Commission is responsible for admitting member state submissions and making concluding observations and recommendations on the Maputo Protocol. ¹²⁵ The formation of a Women's Rights Committee will help to address the unique circumstances and challenges facing African women, including the gender dimension of climate change. ¹²⁶

¹²⁰ Conference of the Parties is a supreme body of the UNFCCC responsible to review and monitor the implementation of the covenant.

¹²¹ Conference of the Parties (COP) <<https://unfccc.int/process/bodies/supreme-bodies/conference-of-the-parties-cop>> accessed 08 March 2024.

¹²² See Paris Agreement (2015) Preamble (para.11 Article 7 (5) and Article 11(2).

¹²³ Id, Preamble para 5.

¹²⁴ Annika Rudman, 'Women's Access to Regional Justice as a Fundamental Element of the Rule of Law: The Effect of the Absence of a Women's Rights Committee on the Enforcement of the African Women's Protocol' (2018) 18 African Human Rights Law Journal 319.

¹²⁵ Maputo Protocol, Art 26.

¹²⁶ Ashwanee Budoo, 'Analysing the Monitoring Mechanisms of the African Women's Protocol at the Level of the African Union' (2018) 18 African Human Rights Law Journal 58; Ebenezer Durojaye and Olubayo Oluduro, 'The African Commission on

To establish the Women's Rights Committee, the AU must amend the Maputo Protocol in accordance with Article 30 of the Protocol, which is dependent on member states' commitment. For this, the African Commission should encourage state parties to make amendment proposals through its promotional and advisory functions as outlined in the African Charter.¹²⁷

5.2 Reforms under the Mandate of African Commission

As previously discussed, state reporting standards, state reports, and the African Commission's concluding observations and recommendations all insufficiently address the subject of climate change from the standpoint of women's rights. Therefore, the African Commission should first modify and alter the state reporting guidelines so that governments and other actors are explicitly required to consider the implications of climate change and environmental worries on women's rights, including energy transition issues.¹²⁸ State parties' commitments are also vital in ensuring that the implications of the negative effects of climate change on women's rights are adequately addressed in state reports. The report's silence may indicate that states do not prioritize the importance of mainstreaming women's rights in the context of climate change impacts.

In addition, while making concluding observations and recommendations, the African Commission should valorize the gender impacts of climate change and energy access. Sometimes concluding observations fail to provide comments and remarks on state reports that include gender dimensions of the right to the environment and climate change. The information in the concluding observations helps states develop existing projects and address shortcomings towards integrating gender concerns.¹²⁹

5.3 Special Mechanisms

The African Commission has designated five Special Rapporteurs and seven Working Groups to address severe human rights situations across the continent.¹³⁰ They support the Commission's promotion and protection role. For example, in

Human and People? Rights and the Woman Question' (2016) 24 *Feminist Legal Studies* 315.

¹²⁷ Rudman (n 124) 345.

¹²⁸ As an illustration, state reporting guidelines and principles on Articles 21 and 24 of the African Charter relating to extractive industries, human rights, and the environment, as well as a state reporting guideline for economic, social, and cultural rights recognized by the African Charter, specifically outline elements of rights to be included in state reports. The same rule can be adopted to expressly govern the substance of state reporting guidelines for the gender component of climate change.

¹²⁹ Concluding Observations <<https://www.maputoprotocol.up.ac.za/concluding-observations>> accessed 25 November 2023.

¹³⁰ Special Mechanisms (African Commission on Human and Peoples' Rights) <<https://achpr.au.int/en/special-mechanisms>> accessed 20 December 2023.

her intercession report, the Special Rapporteur on the Rights of Women addressed women's involvement in climate change mitigation through access to information and communication technologies.¹³¹ Besides, the Commission's other special mechanisms have begun to address gender dimensions of climate change, but they are inadequate.

To strengthen the worth of special mechanisms, more gender-sensitive reforms should be implemented.¹³² Among other things, the African Commission may revise or update the scope of mandates of affiliated special mechanisms to include gender and climate change issues in their activities.¹³³ Plus, it is preferable that the Commission monitor the actions of the special mechanisms to figure out whether or not they consider the gender dimensions of climate change when carrying out their missions.

Moreover, it is proposed that the Commission establish a Working Group on the Rights of Women and Climate Change to effectively address African women's disproportionate and differentiated suffering as a result of climate change.¹³⁴ Alternatively, the Commission can appoint a Special Rapporteur on Climate Change and Human Rights, tasked with investigating the effects of climate change on women, including gender dimension of energy transition.

5.4 The Role of Non-Governmental Organisations (NGOs)

Article 55 of the African Charter recognizes the importance of non-governmental organizations (NGOs). NGOs complement the African Commission's mandate by supporting with promotional, protective, and interpretive responsibilities.¹³⁵ In the same line, NGOs support and shape the Commission's duties in incorporating the impacts of climate change on women's rights through a variety of techniques. NGOs, for example, can submit shadow/alternative reports to state reports addressing the effects of climate change on women's rights.¹³⁶ They also provide

¹³¹ Special Rapporteur on Rights of Women in Africa - 710S (African Commission 2022) <<https://achpr.au.int/en/intercession-activity-reports/special-rapporteur-rights-women-africa>> accessed 11 May 2024.

¹³² Murray and Long (n 110) 223.

¹³³ These consist of the Special Rapporteur on Women's Rights, the Special Rapporteur on Refugees, Asylum Seekers, and Internally Displaced Persons, the Special Rapporteur on Human Rights Defenders, the Working Group on Economic and Social Rights, the Working Group on Extractive Industries, Environment, and Human Rights Violations, and the Working Group on Indigenous Populations and Minorities in Africa, who can incorporate gender and climate change issues into their respective mandates.

¹³⁴ Budoo (n 126) 73.

¹³⁵ Amnesty International, 'A Guide to the African Commission Guide on Human and Peoples' Rights' (2007) <<https://www.amnesty.org/en/wp-content/uploads/2021/07/ior630052007en.pdf>>. accessed 11 September 2024

¹³⁶ Ademola O Jegede, 'Connecting Climate Change and Human Rights in Africa: The Potential Role of Non-Governmental Organisations in the African Human Rights

follow-up and monitoring for the Commission's concluding observations and recommendations.

Besides, NGOs can lobby the Commission to conduct investigations in individual member states on the impact of climate change on human rights, especially women's rights.¹³⁷ They can also file lawsuits or individual correspondence with the African Commission or the African Court alleging human rights abuses related to climate change. For example, in *SERAC v Nigeria* case, an NGO filed the complaint with the Commission.¹³⁸ They also call for the appointment of a new Special Rapporteur or Working Group to investigate the causes of climate change and human rights, particularly women's rights.¹³⁹

NGOs can continue to push and support the Commission in developing soft law instruments such as distinct state reporting standards on gender dimensions of climate change or general comments on the right to a healthy environment.¹⁴⁰ NGOs can also provide expert advice on climate change and human rights issues, such as women's differential and disproportionate vulnerability to climate change.¹⁴¹ Finally, NGOs can collaborate with the African Commission to organize workshops, conduct studies, and raise awareness.¹⁴² In general, NGOs can serve as a catalyst and change agent in support of the Commission's mandate to properly address women's rights in the face of climate change

6. CONCLUSION

Gender mainstreaming in climate action is an integral part of the environmental aspects of sustainable development. This paper examined the extent to which the African Commission's state reporting jurisprudence is gender sensitive in addressing women's varied and disproportionate vulnerability to the effects of climate change. Neither the African Charter nor the Maputo Protocol specifically acknowledge the relationship between climate change and human rights, including its implications for women's rights. Both instruments also fail to recognize the right to access to energy as self-standing rights. The African Commission is empowered to fill gaps in the African Charter and Protocol through promotional, protection, and interpretation mandates.

System' in Ademola O Jegede and Oluwatoyin Adejonwo (eds), *Climate change justice and human rights: An African perspective* (Pretoria University Law Press 2022).

¹³⁷ *ibid.*

¹³⁸ *SERAC and CESR v Nigeria* [2001] African Commission Communication 155/96.

¹³⁹ Amnesty International (n 135).

¹⁴⁰ Jegede (n 136) 115.

¹⁴¹ *id.*, 120.

¹⁴² Amnesty International (n 135).

Under its promotional mandate, the African Commission adopted state reporting guidelines that recognize women's contributions and participation in the prevention and control of environmental dangers. However, these guidelines did not adequately address the differential needs and susceptibility of women to the effects of climate change and access to clean energy. Most state reports and concluding observations fail to appropriately integrate gender concerns about climate change into the Commission's protection and interpretation responsibilities. It is also worth noting that several states have begun to adopt a gender-inclusive approach to climate change and access to clean energy in state periodic reports on the African Charter and the Maputo Protocol.

To address the issue of mainstreaming women's rights under the African human rights system climate change and energy transition initiatives, this paper proposes the adoption of a separate AU treaty and soft instruments on climate change that incorporate gender considerations. State reporting standards, state reports, and concluding observations should be modified to link climate change to women's rights. Institutionally, the establishment of a separate monitoring body for the Maputo Protocol, such as the Committee for the Rights of Women, is critical to closing the existing gaps in addressing African women's climate change concerns. The Commission should also collaborate with other stakeholders operating in the same field, such as state parties and non-governmental organizations (NGOs).