

Towards a transformative child rights discourse in Africa: A reflexive study

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Summary: *It has been 30 years since the adoption of the African Charter on the Rights and Welfare of the Child. This article takes the opportunity to reflect on where the child rights discourse is going to allow for proactivity in addressing emerging challenges and changing child rights context on the African continent. Using positional reflexivity as the methodology, I identify what I call six transformative promptings which are engendering a shift to the child rights discourse. I argue that for the discourse to be more erudite in ensuring the protection as well as well-being for children on the African continent, these six issues must be seriously considered. The first issue is a shift from child rights alterity to trans-disciplinarity. The second issue involves the evolution of the child rights promotional obligation. The third issue is on the nexus between exponential urbanisation on the African continent and fulfilment of children's rights. The fourth issue is on the rise of the nebulous information communication technology. The fifth issue is on addressing cross border child rights violations and lastly the small matter of financing child rights using domestic resource mobilisation.*

Key words: *positional reflexivity; children's rights; African Children's Charter*

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1 Introduction

This article provides a prognostic perspective of the child rights discourse in Africa, in the context of reflecting on 30 years since the adoption of the African Charter on the Rights and Welfare of the Child (African Children's Charter).¹ I argue that the celebration of 30 years since the adoption of the African Children's Charter should present an opportunity to reflect on where the child rights discourse is going, to allow for proactivity in addressing the emerging challenges and changing context on the African continent. Using positional reflexivity as the methodology, I identify six issues that have to be considered going forward so that the child rights discourse can be more efficacious and more erudite in providing protection as well as well-being for children on the continent of Africa to realise their fullest potential. From a theoretical point of view, the article can be characterised as a realist social ontology, providing a dialectical view of the relationship between the African child rights discourse and emerging trends on the continent of Africa and globally. I use the axiomatic deductive approach in selecting the six issues, which I argue have a potentially transformative effect on the child rights discourse. Are these six issues exhaustive? By no means; there could be more. It is, however, my axiological perspective based on my experience that these six are in the article. The first issue I identify is on shifting the child rights discourse from alterity to being transdisciplinary. I argue that one of the major lessons from the last 30 years is the symbiotic connections that exist between the realisation of children's rights and other aspects which previously seemed not to concern children's rights. Some of these include the nature of governance within a jurisdiction, corruption and climate change.

The second issue relates to the evolving nature of the child rights promotional discourse. I submit that in the last 30 years, the promotion of children's rights has been a key issue for both state parties as well as civil societies. This promotional course has yielded phenomenal results where we are nearing the universal ratification of the African Children's Charter on the African continent. In some countries children's rights have been embedded within national constitutions and some have even gone further to include children's rights in the education curriculum. Beyond the success achieved

¹ CRC was adopted in 1989 while the African Children's Charter was adopted in 1990. The African Children's Charter, however, became effective in 1999 when it had received 15 ratifications. As at October 2019, CRC had been ratified by 193 countries, except the United States of America. The African Charter has 50 ratifications, with Somalia, Democratic Republic of the Congo, Tunisia, Morocco and the Saharawi Arab Democratic Republic still to ratify the instrument.

in the last 30 years, the question is, so what? Where does the promotional obligation of children's rights go from there? The third aspect which I interrogate is the growing urbanisation on the African continent. I raise some concerns that urbanisation may be missing some fundamental aspects of children's rights, such as the right to play. I also note that municipal authorities have become more important to the child rights discourse than before.

The issue of information communication technology (ICT) is a double-edged sword in the child rights discourse. On the one hand, ICT is a huge opportunity for less expensive high impact programming for children. On the other hand, there is still limited ICT governance on the continent which is creating many grey areas on which perpetrators of violations of children's rights are capitalising. Going forward, this issue must be at the centre of the child rights discourse to ensure that as Africa embraces technology, risks associated with it are mitigated. Another transformative prompting in the child rights discourse is the more pronounced phenomenon of free movement of people, inspired by the spirit of integration of Agenda 2063 of the African Union (AU). I raise a trepidation that whilst the promotion of free movement of people is a welcome initiative towards a cohesive Africa, it also comes with opportunities for increased cross-border child rights violations. This brings regional economic communities and other regional mechanisms into the child rights discourse equation. The last issue I raise concerns funding for children's rights on the continent. I observe that with the rise of populism in most of the 'donor countries', some of the state parties on the African continent that have been heavily relying on international aid for their social services programmes have to seriously consider domestic resource mobilisation. In attending to these issues, I use positional reflexivity methodology, which is enunciated in the next part.

2 Reflexivity

Reflexivity has been embraced in social science as a methodology that appreciates the power relations existing in the value chain of knowledge generation.² I considered the probity of using positional reflexivity in this article primarily because of my experience within the child rights sector working with national, regional and global organisations, as well as governments on different child rights issues. Macbeth terms this 'positional reflexivity', which involves 'a disciplined view and articulation of one's analytically situated self,

2 SN Mauthner & A Doucet 'Reflexive accounts and accounts of reflexivity in qualitative data analysis' (2003) 37 *Sociology* 413.

or how the subjectivity of the researcher enters into the process of knowledge production.³ Positional reflexivity entails also the use of experiential accounts. Though these are considered as anecdotal evidence in the positivist epistemology,⁴ they present an important source of knowledge for reflecting on existing theories and facts which need to correspond to the lived realities of marginalised people's accounts.⁵ In view of this, I was alive to the caution by Code when he noted:

Experience must therefore be reflexively positioned within the broader social contexts in which they occur, so as to avoid the dilemma of experiential knowledge standing in for a claim to authority. That is, we must be careful not to replace 'the old tyranny of authoritarian expertise', one that discounts people's lived experiences, with 'a new tyranny of "experientialism" that claims for first-person experiential utterances an immunity from challenge, interpretation, or debate'.⁶

In putting my arguments together for this article, I was conscious of the fact that 'experiential accounts must be understood as particular interpretations; to accept experiential accounts as exempt from critical analysis runs the risk of romanticising "knowledge on the margins"'.⁷ This means that there has to be at least some corroboration of the observations I will be making, something I considered seriously. My consideration of this methodology is an acknowledgment that as a social researcher, I am integrated into the child rights world which I am studying and writing about. As Denzin points out, 'representation ... is always self-presentation ... the Other's presence is directly connected to the writer's self-presence in the text'.⁸ I am coming from the viewpoint that there is increased awareness that 'how knowledge is acquired, organised, and interpreted is relevant to what the claims are'.⁹ Further, I recognise that the production of knowledge is a social activity, which is culturally, socially and historically embedded, thus resulting in 'situated knowledges'.¹⁰ Whilst most methods continue to be presented as a series of neutral,

3 D Macbeth 'On reflexivity in qualitative research: Two readings, and a third' (2001) 7 *Qualitative Inquiry* 35.

4 LB Code 'How do we know? Questions of method in feminist practice' 13-44 in S Burt & LB Code (eds) *Changing methods: Feminists transforming practice* (1995) 13.

5 PH Collins *Black feminist thought: Knowledge, consciousness, and the politics of empowerment* (1990).

6 Code (n 4).

7 D Haraway 'Situated knowledges: The science question in feminism and the privilege of partial perspective' (1988) 14 *Feminist Studies* 575.

8 NK Denzin & YS Lincoln 'Introduction: The discipline and practice of qualitative research' in NK Denzin (ed) *Handbook of qualitative research* (2000) 1.

9 DL Altheide & JM Johnson 'Criteria for assessing interpretive validity in qualitative research' in NK Denzin & YS Lincoln (eds) *Handbook of qualitative research* (1994).

10 Haraway (n 7).

mechanical and decontextualised procedures that are applied to the data and that take place in a social vacuum, reflexivity helps in situating me as a subjective researcher carrying out a child rights analysis as a visible variable in the knowledge generation, appreciating the interpersonal, social and institutional contexts.¹¹ This article therefore carries my epistemological, ontological and theoretical assumptions around the transformative promptings that I perceive to be occurring in the child rights discourse.

Using reflexive methodology offers me a means of critically exploring the various social forces and discursive practices that have shaped my own involvement in the child rights discourse.¹² Using my own experience and observations for research purposes provides me with a unique opportunity to reflect on the evolution of the child rights discourse in the last 30 years of the existence of the African Children's Charter. As such, the article is a consolidation of my reflections, experiences and observations over the 15 years I have been working in the child rights sector as they pertain to the future of the child rights discourse.

3 Unpacking 'child rights discourse'

'Discourse' has been described as 'social practice which constitutes situations, objects of knowledge, and the social identities of and relationships between people and groups of people'.¹³ In consonance with the foregoing definition, Lemke defines 'discourse' as the concrete realisation of abstract forms of knowledge.¹⁴ This definition shares similarities with one provided by Van Dijk in his socio-cognitive theory where he defined 'discourse' as a form of knowledge.¹⁵ In view of these definitions, I define a child rights discourse as a form of knowledge premised on codified rights of children enshrined in the African Children's Charter. This instrument has a dual role of first providing a normative underpinning of children's rights and, second, informing the efficacy of social practice that find their expression through programmes and intervention for and with children. The idea of 'transformative promptings' presupposes that there is a tacit

11 M Alvesson & K Sköldbeg *Reflexive methodology: New vistas for qualitative research* (2000).

12 E Ellis et al 'Autoethnography: An overview' (2011) *Historical Social Research/Historische Sozialforschung* 273.

13 N Fairclough & R Wodak 'Critical discourse analysis' (1997) 2 *Discourse Studies: A Multidisciplinary Introduction* 357.

14 J.L. Lemke 'Intertextuality and text semantics' (1995) 50 *Advances in Discourse Processes* 85.

15 T.A. van Dijk *Prejudice in discourse: An analysis of ethnic prejudice in cognition and conversation* (1984).

metamorphosis happening globally, and on the continent of Africa, which will take dialectical analysis to realise. The subsequent parts suggest six 'transformative promptings' (they are not in any order of importance) that are imposing themselves as challenges in shaping current thinking, policy and planning in the child rights discourse.

3.1 Transformative prompting 1: From alterity to transdisciplinarity

It has become more apparent that addressing child rights issues from the grassroots up to the global levels has to take a transdisciplinary approach. Previously, there were tendencies of focusing on children's issues in isolation, without providing strong linkages to other sectors. I have seen programme designs shifting from child support to family strengthening. Cash transfer programmes have moved from giving a child grant to a particular child, to addressing household economy. It is the realisation that beyond specific symptomatic vulnerabilities easily quantifiable at surface level, there are a plethora of issues that make the child vulnerable. For example, in the Lake Chad basin the effects of climate change have disrupted communities' livelihoods making these communities easy targets for recruitment into terrorism by groups such as Boko Haram.¹⁶ The susceptibility of communities in the Lake Chad basin is intricately linked to flourishing terrorism in the same region.¹⁷ This example is a microcosm of the nature in which the child rights discourse has transformed. One cannot attend to the vulnerabilities of children in the Lake Chad basin without addressing the root of why terrorism is flourishing in the region. Some of these reasons include climate change, inequality and bad governance that leaves a vacuum for terrorist groups to flourish. It is easy to respond to symptomatic vulnerabilities without reflecting on the underlying issues. Addressing underlying issues requires transdisciplinary lenses.

Child rights alterity makes children's issues as outside issues that have to get onto the agenda. This is incorrect. Children's issues are at the centre of any development initiative, including inter alia building a dam, constructing a stadium and mineral exploration. Being able to include children's issues in any feasibility study should be the natural thing to do. The child rights discourse should therefore be articulated in such a way that other stakeholders who may not necessarily be working on child rights *per se* will be able to see the

16 S Oyewole 'Boko Haram: Insurgency and the war against terrorism in the Lake Chad region' (2015) 39 *Strategic Analysis* 428.

17 AL Enobi *Terrorism financing: The socio-economic and political implications of Boko Haram insurgency in Lake Chad basin* (2016).

connections between what they are doing and the impact that intervention will have on a child in a village somewhere. The issue of taxation is another example. When a government is not able to broaden its fiscal space by coming up with innovative ways of taxing the informal sector, for example, this directly affects the quality of service that child will get in education, health and other basic social services which the state is supposed to provide for the child. Going forward, it is imperative to be able to locate child rights in the broader development discourse, instead of pushing it as a specific interest group issue. This approach will make people in the national treasury, in trade, in information and technology to be alive to the connections that exist with child rights.

If there is a distinction of children as an interested group pushing for policies and programmes to be child friendly, that approach does not become transformational since it will be located in alterity. Countries that are the most child friendly using different indices, did not start with the pursuit of a specific interest group. Instead, they sought the transformation that was inclusive. As such, the minimalist child-friendly budget discourse naturally neglects some pertinent aspects such as investment in productivity. A critical analysis of increase of investment in productivity has sustainable benefits for children. Meanwhile, the minimalist child-friendly budget initiatives focus mainly on allocations to education, health and social protection. These indeed are important elements for development in any society. They are, however, incomplete if questions are not asked about where the resources for those sectors come from.

Polanyi's seminal work gives guidance that the economic should not be autonomous but, rather, be subordinated to the social and the politics.¹⁸ This thinking should anchor child rights work. Polanyi's argument further enunciates that the subordination of the economy to social relations makes it possible to have sustainable economies that serve, at the centre, the interests of humanity broadly and children. Chang corroborates this argument by Polanyi when he notes that the 'economic is inseparably linked to the social'.¹⁹ This means that instead of articulating a corpus of 'child friendliness', the discourse should aim to be transformational by emphasising the human capital opportunity that lies in children. Child friendliness is not transformational by itself. It does not challenge the structural aspects that make children vulnerable. Instead, friendliness provides caution

18 K Polanyi & RM Maclver *The great transformation* (1944) 2.

19 HJ Chang 'The role of social policy in economic development: Some theoretical reflections and lessons from East Asia' (2004) *Social Policy in a Development Context* 246.

to ensure that children are not negatively affected, disregarding the inequalities and inequities that could be entrenched against children within societies.

The transformational discourse for child rights should further challenge the neo-liberal thinking that for a long time has been predominant, arguing that 'economic growth is a precursor to social development'.²⁰ This school of thought argues that economic growth leads to social development. This ideological thinking, however, is contrary to documented experiences where significant growth did not really translate to a reduction in poverty, inequality and unemployment.²¹ The argument results in child rights residualism which finds expression in social assistance programmes that are not transformational and not embedding child rights into the mainstream political and economic priorities. The child rights sector needs to fight residualism and peripherism by demonstrating the inextricable link between social and economic policies, further arguing that there should be an emphasis on human development, as a conduit for economic development.

The discourse should further tackle inequality and wealth distribution. It is true that what the normative frameworks provide can give dignity to a child. However, it is a fact that access does not guarantee quality. Countries such as Namibia and South Africa have been the most unequal in the world.²² What this means is that indeed all children will be accessing basic social services but there will be a huge gulf on the quality of the services for children in the same country. For one child, access will be getting an education under a tree, while for another child the classroom will be air-conditioned, with electricity, running clean water and with an iPad.²³ This is the reality of inequality on the continent at present. The child rights discourse should go beyond lobbying for access to basic social services to addressing inequality that persists in the process.

20 B Udegbe 'Social policy and the challenge of development in Nigeria and Ghana: The cases of education and labour market policies' (2007) *Social Policy in Sub-Saharan African Context* 148.

21 See R Titmuss *Social policy* (1974); G Myrdal 'International inequality and foreign aid in retrospect' in G Meier & D Seers (eds) *Pioneers in development* (1984); A Sen *Development as freedom* (1999); JO Adesina 'Beyond the social protection paradigm: Social policy in Africa's development' (2011) 32 *Canadian Journal of Development Studies/Revue canadienne d'études du développement* 454; T Mkandawire 'Globalisation, equity and social development' (2002) 6 *African Sociological Review* 115.

22 A Shimeles & T Nabassaga 'Why is inequality high in Africa?' (2018) 27 *Journal of African Economies* 108.

23 N Spaul 'Poverty and privilege: Primary school inequality in South Africa' (2013) 33 *International Journal of Educational Development* 436.

3.2 Transformative prompting 2: The evolving promotional discourse

Significant efforts in the last 30 years of the African Children's Charter have been expended on promoting the ratification and domestication of this instrument. The scope of promotional obligation includes 'information and education functions, a quasi-legislative function, an institutional co-operation function, and a function in the examination of state reports'.²⁴ The examination of state party reports and the quasi-legislative functions take the bulk of the promotional mandate of human rights treaty bodies. The former aspect is outside the scope of the article.

In the last 30 years, one of the staggering successes in the child rights sector is recognition of both the Convention on the Rights of the Child (CRC) and the African Children's Charter as key human rights instruments. For both instruments, there is near universal ratification on the continent. As far as the African Children's Charter is concerned, at the time of the writing of this article only five countries had not ratified it. After universal ratification, the discussions of stakeholders and member states alike should move from ratification.²⁵ The next frontier is ensuring that member states domesticate the provisions of these instruments into their national laws. Already, some of the countries have developed Children's Acts that are anchored on the African Children's Charter. Table 1 shows that several countries in Southern Africa came up with wholesale Children's Acts after the African Children's Charter came into effect. Although some of the laws still need to be reviewed on some of the provisions, it can be unequivocally said that the situation was not the same before the existence of the African Children's Charter.

Table 1: Selected countries' Children's Acts and year of promulgation

| Country | Law | Year |
|----------|----------------|------|
| Angola | Children's Act | 2012 |
| Botswana | Children's Act | 2009 |

24 SA Yeshanew 'Utilising the promotional mandate of the African Commission on Human and Peoples' Rights to promote human rights education in Africa' (2007) 7 *African Human Rights Law Journal* 191.

25 Five countries are yet to ratify the African Children's Charter. These countries are Tunisia, South Sudan, Morocco and Saharawi Arab Democratic Republic.

| | | |
|--------------|--|--------------------------|
| Lesotho | Children's Protection and Welfare Act | 2011 |
| Malawi | Child Care, Protection and Justice Act | 2010 |
| Mozambique | Children's Act | 2008 |
| Namibia | Child Care and Protection Act | 2015 |
| South Africa | Children's Act | 2005 |
| Swaziland | Children's Protection and Welfare Act | 2012 |
| Tanzania | Child Act in Tanzania & Children's Act in Zanzibar | 2009 & 2011 respectively |
| Zambia | Child Care and Protection Act | 2005 |
| Zimbabwe | Children's Act | 2002 & 2013 constitution |

Source: Compiled by author

For countries with monist legal regimes such as Namibia, Côte d'Ivoire, Kenya and Mozambique, the conversation will start from a different point. There are some countries on the continent that are yet to develop specific wholesale laws on children. The promotional conversation in these countries would need to place urgency on the issue, especially for countries with dualist legal regimes. There will be a need also to lobby countries that entered reservations on certain provisions of the African Children's Charter to revoke these reservations. On the African Children's Charter, four countries entered reservations. Botswana entered a reservation on article 2, on the definition of a child. Egypt entered four reservations: first on article 24 on adoption; second on article 30 on children of imprisoned mothers; third on article 44 on communication; and, lastly, on article 45(1) on investigation. Mauritania entered a reservation on article 9 on religion. Sudan entered reservations on article 10 on privacy; article 11(6) on education of pregnant girls; and article 21(2) on child marriages. The drive to make state parties revoke their reservations remains frontier to be conquered.

However, for the countries that have wholly domesticated the provisions of the African Children's Charter, the promotional conversation needs to graduate to discussing costing of the laws. Lesotho is a good example of a country which, soon after coming up with the Children's Protection and Welfare Act of 2011, went ahead to cost the implementation of the law. Costing the law helps in answering the question of how much is enough. This conversation is important because in the previous 30 years of programming on

the continent, in terms of budgeting for children, the focus was on ensuring that children's issues get allocations. The conversation mostly ended at comparing the allocation of sectors that directly impact children, such as education, health and social protection with other sectors such as defence. This conversation has been indigent of depth. The question always would arise as to enquire about how much is enough. There was no scientific way of getting to that. The usable benchmarks that helped this approach were the Dakar Declaration on Education²⁶ and the Abuja Declaration on Health.²⁷ The lifespan of these benchmarks expired, though their spirit thrives on. Beyond universal benchmarking, however, there should be an erudite way that is context specific, to decide on how much is enough. Certainly, the answers will be different for each country depending on several factors such as inequality and general conditions prevailing in the country. Therefore, costing a child rights law will make the advocacy initiative more nuanced in a way that can be understood by some colleagues who may not be child rights inclined. It means that the child rights discourse needs to engage in actuarial processes of costing laws to be empirical in advocacy.

The promotional discourse also needs to broaden its scope to focus on institutions that deliver for children's rights, the resourcing of these institutions as well as their decentralisation for ease of accessibility to *all* children. It is not good enough to have a good constitution that provides for the rights of children. It is also not good enough to have a child rights law on paper with no concrete plan of action or strategy to have the rights enshrined therein to see the light of day for all children within the country. Having national action plans that operationalise provisions of constitutions and laws that are financed by the country's public funds is a *sine qua non* to the implementation of the provisions in the laws. Operationalisation of given provisions would extend to ensuring that institutions that are meant to deliver on children's rights, first, move from the paper to actual existence. Second, they should be manned by competent personnel who are adequately trained and paid to meet the needs of children. Third, they should be decentralised to be accessible to all children of the country. The CRC General Comment 5 on General Measures of Implementation as well as the African Children's Charter General Comment on Child Protection and Systems Strengthening provide clear guidance on what the state parties need to prioritise in

26 The Dakar Framework for Action: Education for All of 2000 prescribed that 20% of the national budget be allocated to basic education.

27 The Abuja Declaration of 2001. Member states of the African Union pledged to increase their health budget by at least 15% of the state's annual budget.

this institutionalisation dispensation of the promotional discourse of child rights.

Linked to ensuring that there are strong institutions that deliver for children is the aspect of addressing inequality. Africa had a growth rate of 3,5 per cent in 2018 and 4,1 per cent in 2019.²⁸ To a greater extent, the growth is not translating to development outcomes as mentioned earlier. One way of addressing inequality is for the child rights sector to invest in informatics. The sector should influence national censuses to ensure that these capture child rights data that shows distribution of inequality. In Zimbabwe, the child rights sector was able to influence the census of 2012 to collect data on birth registration. Having reliable and valid data to back the promotional initiatives strengthens the case for child rights work.

3.3 Transformational prompting 3: Nexus between urbanising Africa and children's rights

Africa is the least urbanised continent in the world. In 2010 it was estimated that only about 36 per cent of the continent was 'urban'.²⁹ The continent, however, is in overdrive to urbanise at the rate of 3,5 per cent per year over the last two decades, which is expected to continue up to 2050.³⁰ Table 2 provides the trajectory of population growth on the African continent since 1950. By 2015, 40,4 per cent of the population was living in urban areas.³¹ It is projected that by 2050, 55,9 per cent of the population will be living in urban areas. In 2015, Southern Africa had the largest population in urban areas with 61,6 per cent.³²

Table 2: Urbanisation rate in various regions of Africa

| REGIONS | 1950 | 1980 | 2000 | 2015 | 2050 |
|----------------|------|------|------|------|------|
| Africa | 14.0 | 26.7 | 34.5 | 40.4 | 55.9 |
| Eastern Africa | 5.6 | 14.5 | 20.6 | 25.6 | 43.6 |
| Middle Africa | 14.0 | 27.5 | 36.8 | 44 | 60.8 |

28 African Development Bank 'African Economic Outlook 2019: Macro-economic performance and prospects' (2019).

29 R Jha & S Udas-Mankikar *India's urban challenges: Recommendations for the new government (2019-2024)* (2019).

30 As above.

31 M Awumbila et al 'Social networks, migration trajectories and livelihood strategies of migrant domestic and construction workers in Accra, Ghana' (2017) 52 *Journal of Asian and African Studies* 982.

32 As above.

| | | | | | |
|-----------------|------|------|------|------|------|
| Northern Africa | 26.0 | 41.3 | 48.4 | 51.6 | 63.3 |
| Southern Africa | 37.7 | 44.7 | 53.8 | 61.6 | 74.3 |
| Western Africa | 8.4 | 23.6 | 34.7 | 45.1 | 62.7 |

Source: Awumbila and Teye (2014)

The challenge coming with accelerated urbanisation is that African countries have not developed mechanisms of harnessing on the internal migration trends. As a result, there is an emerging trend on the African continent of poor basic social services resulting in slums, pollution, more traffic congestion and poor living conditions broadly. It means that the cities are indeed growing but the quality of life in these cities is poor. These conditions are not ideal for any child to have a quality childhood. One conspicuous anomaly is the absence of recreational facilities for children. Article 31 of CRC and article 12(1) and (2) of the African Children's Charter provide:

States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

As African cities are expanding, there seems to be oblivion to the aforementioned obligation for children. There are hardly recreational facilities that are in areas where the cities are expanding. Priority is given to residential and economic ventures. Left with no conducive space to play, you find children playing their games along the tarmac roads which comes with safety risks of different kinds. The Child Friendly Cities Initiative by the United Nations Education Fund (UNICEF) is a commendable programme that was hatched out of the need to give guidance to city planners. The purpose of the UNICEF initiative is to ensure that city governments consistently make decisions in the best interests of children, and that cities are places where children's rights to a healthy, caring, protective, educative, stimulating, non-discriminating, inclusive, culturally-rich environment are addressed.³³ I concur with Riggio's assertions:

A child friendly city can no longer run sectoral programmes, services and interventions independently. As the Convention addresses the child as a whole, with an indivisible body of legal provisions, a child friendly city has to deal with the child holistically, ensuring that all

33 E Riggio 'Child friendly cities: Good governance in the best interests of the child' (2002) 14 *Environment and Urbanisation* 45.

sectors converge to provide an integrated response to the indivisible demands of children. A child friendly city is not achieved through adopting one more ad hoc project or multiplying interventions haphazardly. On the contrary, foundations are laid by assessing needs and existing responses in order to gear up systems to respond to children from all perspectives. Once such mechanisms are in place, the whole system gives consideration to children in all city actions, overcoming a tendency to create a 'ghetto' for children, as for the elderly, the disabled, women and other 'minorities'.

The growing populations in African cities result in municipal authorities managing hefty financial resources in rates and taxes. It means that beyond dealing with national governments, the child rights discourse should prioritise working with municipal authorities. Some of the municipal authorities manage schools and health facilities. It means that if they embed child rights within their work, they will be able to ensure quality services for children. It is relatively easier to influence municipal authorities to prioritise certain projects such as internet connectivity in the cities, than to do it at national level.

3.4 Transformational prompting 4: The rise of the nebulous ICT on the continent

Mobile phone penetration is increasing at an exponential rate on the African continent. By the end of 2018 there were 456 million mobile subscribers in sub-Saharan Africa.³⁴ This was an increase of 20 million subscribers in one year, representing a subscriber penetration rate of 44 per cent. For internet connectivity, there are around 239 million people who have access, representing some 23 per cent of the population.³⁵ The number of smartphone connections in the region reached 302 million in 2018; this is projected to rise to nearly 700 million by 2025, an adoption rate of 66 per cent.³⁶ With this exponential increase in phone penetration and internet connectivity on the continent, the virtual world has become, and even increasingly so, an opportunity for individuals to share information and knowledge as well as to interact with other people.³⁷ Children are not being left behind in this development. Going into the future, they will increasingly constitute most of the

34 GSM Association 'The mobile economy sub-Saharan Africa-2019', <https://www.gsmainelligence.com/research/?file=36b5ca079193fa82332d09063d3595b5&download> (accessed 18 March 2020).

35 As above.

36 As above.

37 G Sartor & CM Viola de Azevedo 'The Italian Google-case: Privacy, freedom of speech and responsibility of providers for user-generated contents' (2010) 18 *International Journal of Law and Information Technology* 356.

internet users on the African continent. This exposure will come with certain benefits, as well as hazards for children.

The major benefits that are coming with access to the internet on the African continent include ready access to information which may enhance the learning experience for children. Cellphone penetration will also make child protection programmes, such as child helplines, to be robust in their coverage and less expensive for collection of child protection data in real time. With mobile money on the continent, cellphone penetration will increase accessibility for children to programmes such as cash transfers and remittances, which will reduce administration costs for the senders. Also, improved cell phone penetration enhances information dissemination on pertinent issues such as cholera prevention, immunisation and participation in key processes. As a result, instead of printing flyers and billboards to advertise, a simple text message or whatsapp message can do rounds to educate the public on identified issues.

One remarkable example of harnessing technology for a cause in recent history is the story of Greta Thunberg, a Swedish climate change activist. Driven by a record heat wave in Northern Europe and forest fires that ravaged swathes of Swedish land up to the Arctic, the 16 year-old started a strike where she was skipping school every Friday to protest climate change under the Twitter hashtag #FridaysforFuture demonstrations.³⁸ Due to online mobilisation, on 20 September 2019 over 150 countries in more than 4 000 locations took to the streets demonstrating against climate change.³⁹ Tens of thousands of students participated in these demonstrations because of the reach of social media. The availability of new and easy-to-use technological tools therefore opens new opportunities for children, their development and how they can express themselves and engage in civic debates.⁴⁰

With increased online presence in Africa come risks for children as well. These risks include radicalisation by terrorist groups such as Boko Haram and Al Shabaab. It explains why most terrorist activities on the African continent have been carried out by young people. Due to the underlying challenges that children and young people face, they have become targets of terrorist groups. To reach out to

38 T Tahir 'Eco WARRIOR Who is Greta Thunberg? Teenage climate change activist who's inspired worldwidestrikes' *The Sun Newspaper* (2019), <https://www.thesun.co.uk/news/8918369/who-is-greta-thunberg-meet-the-teenage-climate-activist-from-sweden/> (accessed 8 April 2020).

39 As above.

40 SZ Omar et al 'Children internet usage: Opportunities for self-development' (2014) 155 *Procedia-Social and Behavioral Sciences* 75.

young people for recruitment, terrorist groups primarily use social media. Groups such as Boko Haram, the Lord's Resistance Army, Al-Qaeda branches, and the Islamic State use Twitter in a similar fashion.⁴¹ The other risks to which children are susceptible include sexual exploitation, cyber-bullying, online stalking, identity theft, and exposure to unwanted or inappropriate advertising content.⁴² What exacerbates these risks is the ease of accessibility of platforms for individuals to participate virtually through expression of views on issues, posting news, disseminating scientific and literary works, sharing photos and videos, or even developing open-access computer systems.⁴³

Despite all these emerging risks to child protection, existing child rights instruments do not provide sufficient safeguards for children online.⁴⁴ Also, member states on the African continent are relatively slow in addressing these issues. The AU is yet to develop a mechanism for protecting children from the risks that come from virtual presence. Meanwhile, the European Union came up with the General Data Protection Regulation (GDPR) which obliges companies handling the personal data of EU citizens, regardless of where the company is located, to obtain clear and unequivocal consent for the processing of data. It also includes hefty fines for non-observance.⁴⁵ This is the next frontier on child protection in Africa.

What exacerbates the situation is the fact that parental control on the issue is limited on the African continent. This is primarily due to the fact that the parents and guardians are generally not acquainted with the new technologies that children easily comprehend and utilise. As a result, they are not able to provide general safeguards that the children may need. In consonance with this finding, a 2016 World Health Organisation (WHO) report on online food advertisements aimed at children concluded that parents were unaware of both the profiling techniques used to target children and the related risks.⁴⁶

41 N Jones et al 'The Islamist cyberpropaganda threat and its counter-terrorism policy implications' (2015) *Cybersecurity Policies and Strategies for Cyberwarfare Prevention* 341.

42 W Shin & H Kang 'Adolescents' privacy concerns and information disclosure online: The role of parents and the internet' (2016) 54 *Computers in Human Behaviour* 114.

43 Sartor & Viola de Azevedo (n 37).

44 Organisation for Economic Co-operation and Development, Recommendation of the Council on the Protection of Children Online (2011) 155, OECD (accessed 9 April 2020).

45 The Digital Watch Observatory 'Cambridge Analytica explained: The facts, implications, and open questions', <https://dig.watch/trends/cambridge-analytica> (accessed 9 April 2020).

46 World Health Organisation 'Tackling food marketing to children in a digital world: Trans-disciplinary perspectives' (2016) WHO Regional Office for Europe, Copenhagen, www.euro.who.int/__data/assets/pdf_file/0017/322226/

This is contrary to article 20(1)(a) of the African Children's Charter on parental responsibilities, which states:⁴⁷

Parents or other persons responsible for the child shall have the primary responsibility of the upbringing and development the child and *shall have the duty to ensure that the best interests of the child are their basic concern at all times.*

Due to the parents' limited exposure, they are not able to ensure the best interests of the child as it relates to internet access and the risks that accompany it. The child rights discourse therefore needs to be proactive in ensuring that internet service providers, as duty bearers to the realisation of child rights, provide safeguards for children. Also, the protection of children from online risks needs to include the other persons that are responsible for the child. Interventions should not isolate the child. Instead, there should be an inclusion of the entire ecosystem which has a role in ensuring comprehensive protection of children from risks associated with their online presence. This includes deliberate engagement with policy makers, law enforcement agencies, social workers, teachers, parents and the private sector to systematically protect children.⁴⁸

3.5 Transformational prompting 5: Addressing cross-border child rights violations

As Africa pursues integration, inspired by the AU's Agenda 2063, epitomised by the African Continental Free Trade Agreement (AfCFTA), the integration brings with it emerging trends in the child rights discourse that may not be adequately covered in existing normative frameworks. Regional integration means that the borders become more open, thereby increasing the movement of people from one country to the other. It is anticipated that AfCFTA will bring together all 55 member states of the AU covering a market of more than 1,2 billion people, including a growing middle class, and a combined gross domestic product (GDP) of more than US \$3,4 trillion.⁴⁹ In terms of numbers of participating countries, the AfCFTA will be the world's largest free trade area since the formation of the World Trade Organisation (WTO). Estimates from the Economic Commission for Africa (UNECA) suggest that the AfCFTA

Tackling-food-marketingchildren-digital-world-trans-disciplinary-perspectives-en.pdf?ua=1 (accessed 9 October 2019).

47 My emphasis.

48 United Nations Children's Fund 'Child safety online: Global challenges and strategies' (2011) UNICEF Innocenti Research Centre.

49 Tralac *African Continental Free Trade Area (AfCFTA) legal texts and policy documents* (2019), <https://www.tralac.org/resources/by-region/cfta.html> (accessed 11 April 2020).

has the potential both to boost intra-African trade by 52,3 per cent by eliminating import duties, and to double this trade if non-tariff barriers are also reduced.⁵⁰

This brilliant opportunity on the continent will bring with it new transnational dynamics for child rights. It means that the risk of child trafficking, for example, will be increased. If laws among the countries do not speak to each other, child rights violations may go unpunished due to the legislative loopholes in the countries. To combat this, member states at regional level would need closer collaboration in dealing with such cross-border child rights violations. Addressing cross-border child rights violations would require deliberate, systematic and focused actions. This development naturally means that regional economic communities and other regional mechanisms must play a key role in protecting children's rights. It means that they must come up with either protocols or policies that would ensure harmony among the member states in addressing cross-border child rights violations. The Economic Community of West African States (ECOWAS) came up with a Strategic Response and Mobilisation Framework for Child Protection Systems and ECOWAS Child Policy of 2009 which compliments CRC as well as the African Children's Charter.⁵¹ In 2016 the East African Community (EAC) promulgated a child rights policy, of which the purpose, *inter alia*, is to 'establish and strengthen existing inter-country partnerships on the promotion of child rights, child protection and child well-being'. With leadership from the Child Rights Network for Southern Africa (CRNSA), child rights civil society in Southern Africa are lobbying the Southern African Development Community (SADC) to develop a SADC Protocol for Children.⁵² The regional economic communities are realising their role as duty bearers for the protection and fulfillment of rights. It is imperative for the child rights sector to deliberately engage with these duty bearers for the protection of rights in the various regions.

3.6 Transformational prompting 6: Alternative funding for child rights on the continent

In recent history, Overseas Development Assistance to Africa has been gradually decreasing. One of the key reasons for this trend is

50 As above.

51 L. Amusan 'Child rights in ECOWAS: A continuation of the United Nations and African Union's positions on child rights?' (2018) 1 *Journal of African Union Studies* 49.

52 M. Chibwana 'Sustainability of transnational African child rights civil society' (forthcoming).

that there has been an emergence of populism politics in Europe.⁵³ Since the dawn of the twenty-first century, parties led by far-right leaders have grown in popularity, gaining legislative seats, reaching ministerial office, and holding the balance of power. In Switzerland there have been notable gains for the Swiss People's Party, the Austrian Freedom Party in Austria, Greece's Golden Dawn, and the Danish People's Party.⁵⁴ Sweden, one of the countries considered to have a stable political order, saw the gaining ground of the Sweden Democrats, a political party considered by some scholars as neo-fascist.⁵⁵ The party had 5,7 per cent of the national vote in 2010. Its tally increased to 12,9 per cent in 2014 and in 2018, it scooped 17,7 per cent of the national vote.⁵⁶ In France, Marine Le Pen's Front Nationale has been gaining traction, taking seats from both the centre left and centre right. In Italy, Matteo Salvini's Northern League has been gaining traction.⁵⁷ Eastern Europe has not been spared by this wave of populism. The success of the neo-fascist Jobbik Party in Hungary pushed the ruling Fidesz Party even further to the right; leading them to build a wall against the wave of migrants flooding across.⁵⁸

The rise of far-right movements can best be epitomised by the British electorate's vote to exit the European Union (EU).⁵⁹ These nationalistic ideologies promote isolationism from the world. As a result, the amount of funding that has been coming to Africa has significantly been reduced since these countries under far-right leadership would want to focus internally.

53 The most important common denominator is their exclusionist, ethno-nationalist notion of citizenship, reflected in the slogan 'own people first'. This nativist stance means that states should be inhabited exclusively by members of the native group (the nation) and that non-native elements (persons and ideas) threaten homogeneous nation-states.

54 RF Inglehart & P Norris *Trump, Brexit, and the rise of populism: Economic have-nots and cultural backlash* (2016).

55 As above.

56 As above.

57 P Wilkin 'The rise of 'illiberal' democracy: The Orbánization of Hungarian political culture' (2018) 1 *Journal of World-Systems Research* 5.

58 As above.

59 On 24 June 2016 Britain undertook a vote on whether to stay or leave the EU; 51,9% of British voters cast their ballot in favour of leaving the EU. On 23 June 2016 United Kingdom citizens who were not residing abroad for more than 15 years, as well as Commonwealth residents in the UK, were called to express their stance in a referendum about the future of the UK in the EU. The question of the ballot was stated as follows: 'Should the United Kingdom remain a member of the European Union or leave the European Union?' Voters could choose between two options: 'Remain a member of the European Union' or 'Leave the European Union'. The referendum, albeit 'consultative', was considered politically binding for Parliament and the cabinet. The referendum had a pretty high turnout, 72,2%, and the leave option prevailed by almost 4 percentage points (51,9% versus 48,1%).

In view of the foregoing, the African countries that were depending on donor funding for their developmental projects must seriously explore domestic resource mobilisation (DRM). DRM has been defined as comprising of fiscal revenue mobilisation (that is, tax and non-tax revenue mobilisation), but also strengthening the domestic financial sector in developing countries by encouraging the orderly development of capital markets, sound banking systems and increasing financial inclusion.⁶⁰ This definition is in consonance to the one given by Culpeper who notes that domestic resource mobilisation is the generation of savings from domestic resources and their allocation to socially-productive investments. The idea of strengthening capacity to mobilise resources domestically is gaining currency. This is coming in the wake of some governments having leakages within their systems resulting in them not benefiting as much, compared to the potential they have in increasing their fiscal spaces.

The major aspect on DRM is strengthening of the countries' tax systems so that the citizenry and corporates may contribute to the development of their countries.⁶¹ There have been leakages in countries on the African continent of which multinational corporations have taken advantage. Such leakages come in the form of tax holidays, where countries do not benefit from multinational corporations in the spirit of promoting investment. Meanwhile, the companies maximise production during these tax holidays at the expense of the respective countries. There is another leakage in the collection of taxes primarily because some of the economies in Africa are driven by the informal sector. Consequently, there have not been robust mechanisms to collect tax from the informal sector into the treasury. Another leakage that compromises governments' fiscal space is corruption. Due to the corruption levels and weak institutions to combat same, most governments on the African continent do not rank favourably on the Ibrahim Index of African Governance⁶² and the Corruption Perceptions Index of Transparency International.⁶³

60 A Bhushan et al *Financing the post-2015 development agenda: Domestic revenue mobilisation in Africa* (2013).

61 E Aryeetey 'The global financial crisis and domestic resource mobilisation in Africa' (2009) *Organization for Economic Co-operation and Development*.

62 The Ibrahim Index of African Governance (IIAG) is a tool that measures and monitors governance performance in African countries. The Mo Ibrahim Foundation defines governance as the provision of the political, social and economic public goods and services that every citizen has the right to expect from their state, and that a state has the responsibility to deliver to its citizens.

63 The Corruption Perceptions Index (CPI) is an index published annually by Transparency International since 1995 which ranks countries 'by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys'.

Limited fiscal space for any government means that few resources will be available to address child rights concerns.

As overseas development assistance dwindles, there is an opportunity for African philanthropy to assume the role of supplementing governments' efforts in providing public goods for its citizens. This is coming in the wake of Africa having the fastest-growing number of High-Net-Worth Individuals (HNWI) in the world. The number of African HNWI has increased by 145 per cent over the past 14 years, compared with a worldwide HNWI growth of 73 per cent over the same period.⁶⁴ The wealth of African HNWI has increased by even higher proportions. Africans with assets of more than US \$30 million will double by 2025.⁶⁵ While philanthropy provided some US \$30 million in the implementation of the Millennium Development Goals, the Foundation Centre forecasts that philanthropy is likely to contribute US \$364 billion of the US \$3,5 trillion that is needed for the realisation of the Sustainable Development Goals.⁶⁶ As such, many governments on the continent of Africa are recognising the role that philanthropy plays, as can be epitomised by Liberia's establishment of a Liberia Philanthropy Secretariat in 2009. The AU launched the African Union Foundation in 2015 to mobilise voluntary contributions in support of Agenda 2063. As can be deciphered from these examples, philanthropy is increasingly becoming a viable option that can contribute significantly to financing children's rights.

4 Conclusion

Since the African Children's Charter came into force some 30 years ago, there is no doubt that much progress has been made to protect the rights of children. The child rights discourse has gradually transformed. Therefore, there needs to be proactiveness in addressing the emerging issues arising from the new normal. I have contended that going forward, the discourse needs to be more erudite so that transformation can be achieved. I have argued against child rights alterity which expresses itself in the creation of a sector of this particular interest group, with the exclusion of other pertinent sectors either by omission or by commission. The child rights discourse must be located within the broader developmental agenda, not as an appendage. As such, efforts should be made to

64 B Moyo 'How to make societies thrive: The role of African philanthropy' (2016) *Claiming Agency* 17.

65 As above.

66 As above.

clearly demonstrate the centrality of fulfilling children's rights in the pursuit of a country's development goals.

I have noted that the discourse must be transformational, addressing inequality in the universal access to quality basic social services. To address this aspect, the child rights discourse should invest in valid and reliable informatics that expose the inequalities. Further, the discourse should be institutionally oriented, interrogating the various institutions that are meant to provide for children's rights. How resourced are they to provide quality services? How decentralised are they to be reachable for all the children who need them? How robust and conceptually grounded are their agendas in addressing child rights issues?

I have observed that information and communication technology access is improving on the African continent. This comes with it some positives and well as some risks for children. The child rights discourse, therefore, must be strategically placed to be able to harness the positives while finding proactive ways of mitigating the risks that come with ICT. Overall, the continent has not been responsive to the accelerated dynamism existing in the ICT world. Most countries on the African continent have not developed internet governance protocols that protect the citizenry. Wheels are turning slowly in that regard, something which the child rights discourse must take up and infuse some urgency into.

As regional integration gains momentum, inspired by the AU's Agenda 2063, I raise caution that what will come with this noble initiative is a sequel of cross-border child rights violations. This will need regional economic communities to establish systematic mechanisms for responding to these child rights violations. Some of the regional economic communities have taken initiative in this regard, with ECOWAS leading the way. The child rights discourse, therefore, needs to place a premium on the role of regional economic communities in the realisation of children's rights on the continent of Africa.

The last issue I raise to conjure a paradigm shift is the rise of far-right politics in Europe. This dynamic has resulted in governments having politics that focus on internal issues, with less interest on financing overseas development assistance. The dwindling donor funding from Western countries presents an opportunity for African countries to explore domestic resource mobilisation to fully finance their own development initiatives. At present, some of the social development projects in African member states are heavily reliant on Western funding, which is not sustainable. As such, the child

rights discourse should be at the forefront of lobbying member states to explore innovative ways of mobilising domestic resources. This will increase the fiscal space for adequate provision of quality basic social services. It also means that the focus must be placed on available resource governance and accountability to deal with leakages through, *inter alia*, corruption and illicit financial flows that subsequently handicap member states' capacities to provide for their people.