

Editorial: Continuation of the Special Focus to mark 30 years since the adoption of the African Children's Charter

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1 Background to the Special Focus

This special focus on the rights of children under the African Charter on the Rights and Welfare of the Child (African Children's Charter) is the second instalment of dedicated articles to mark 30 years since the adoption of the African Children's Charter in 1990. Along with articles published in the first edition of the Special Focus in the second issue of the *African Human Rights Law Journal* in 2020, the articles in this issue highlight the pertinent contributions of the Charter to key child rights developments and shaping of the child rights discourse in the African region.

The contribution of this Special Focus ought to be viewed in a wider context. The African continent has changed significantly over the course of the past three decades. These changes include significant political, economic, legal-normative and developmental milestones. These developments have implications for the context within which children's rights are implemented in the region. There certainly is a wider acceptance of human rights and democratic norms and standards, a growing demand for accountability of duty bearers for the respect and fulfilment of rights at both the regional and national levels, and an acceptance of the shared fate and responsibility of African countries to ensure mutual progress in the protection of rights

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in light of deeply integrated interests. These developments provide a backdrop for the assessment of the evolution of the protection of children's rights and welfare in the African region.

At the time of its adoption, and following hot on the heels of the adoption of the United Nations Convention on the Rights of the Child (CRC), the African Children's Charter was part of a bold shift in the child rights discourse at the global and regional levels. As the first regional treaty of its kind, the Children's Charter became the foundation stone for the evolution of a continental child rights discourse. It is difficult to attribute the significant developments related to child rights and welfare on the continent purely to the adoption of the Charter. Nevertheless, with a purposive review of the measures evoked by the African Children's Charter through a range of direct means and processes, such as normative articulation, direct engagements with key stakeholders and jurisprudence, it is possible to decipher the impact of the African Children's Charter on the status of child rights in the region.

During the course of 2020 a number of activities were undertaken, and initiatives launched across the continent to mark the 30-year milestone of the adoption of the African Children's Charter. The nature of these initiatives included research outputs and dialogue forums convened by or targeting a range of stakeholders, including the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), state parties to the African Children's Charter, civil society organisations, and children. The majority of these forums adopted a stock-taking approach on progress made in achieving the commitments under the Charter, with an emphasis on the gaps between the promise of the Charter and the lived realities of children in Africa. These reflections were relevant and timely. They also pointed to the need to anticipate new frontiers for the protection of children's rights, and the potential of the Charter as the principal normative source on these rights in the region, to adequately respond to emerging issues.

There is no doubt that the African Children's Charter has fostered the growth of a vibrant community of practice on children's rights and welfare in Africa, the hallmarks of which can be seen in, among others, the wide acceptance of normative instruments and standards on a number of child rights issues; a fledging jurisprudence from regional, sub-regional and national judicial and quasi-judicial forums; and the proliferation of organisations working to promote and protect children's rights at different levels. The African Children's Charter has also inspired a diverse and growing body of research on various aspects of children's rights across the continent; and the

increasing academic and literary engagement with the contents of the Charter. The articles in this Special Focus add to this burgeoning academic discourse on the rights of children in Africa.

As with the first edition, the articles in the current Special Focus emanate from a call for papers titled 'Symposium on the 30th anniversary of the adoption of the African Children's Charter: Visualising the African child in 2050', which was planned for July 2020. Although the symposium was ultimately called off because of COVID-19-related restrictions on movement and gatherings, research contributions were nevertheless received, resulting in a total of ten articles published in two batches.

2 Contents of the Special Focus

The current edition of the Special Focus contains six articles, covering a range of pertinent issues in the African Children's Charter. These include the right to education; protection from violence and abuse in the form of corporal punishment; addressing children's rights in the context of health emergencies such as the ongoing COVID-19 pandemic; climate change and children's rights; the protection of children's rights to privacy in a digital context; and an interrogation of the potential and impact of the Children's Charter in shaping and transforming the overall child rights discourse in the region. These issues span the spectrum of traditional child rights domains, as in the case of the rights to education and the elimination of corporal punishment, to the more contemporary and emerging issues affecting children, such as the evolving digital context of rights and its impact on the privacy rights of children, the growing recognition of the nexus between climate change and children's rights, particularly through the prism of intergenerational justice, as well as concerns emanating from the ongoing COVID-19 pandemic. While the first five articles are largely focused on a specific right or theme, the sixth article engages the overall context within which children's rights are implemented, beyond the direct normative stipulations of the African Children's Charter.

Khoza recalls the importance of the right to education as a 'gateway right' to the realisation of other rights of the child. She notes the linkages that have been made between education and development, albeit often from an economic as opposed to a rights point of view. She argues that the realisation of the right to education has been shown to play a positive role in the realisation of developmental goals, both for children, as individuals, and for communities as a whole. The article relies on the theories advanced by Sen and Nussbaum on

the concept of development, in terms of which development ought to be understood as consisting of far more than the measure of the gross national product (GNP). The article reviews the realisation of the right to education in Africa, as guaranteed in article 11(3) of the African Children's Charter, noting the opportunities that have been missed to ensure optimum education outcomes for children in the implementation of the article. The article, therefore, proposes the use of the freedoms and capabilities approaches proposed by the Sen and Nussbaum theories of development as a guide to the implementation of the right to education, so as to ensure better outcomes for children.

Fambasayi and Addaney explore the manner in which climate governance at the African regional level protects and promotes children's rights, taking into account the principle of intergenerational equity. They note that, while the concept of intergenerational equity is entrenched in the global and African regional framework on climate change, CRC and the African Children's Charter do not explicitly mention the concept. However, CRC and the African Children's Charter oblige states to take into consideration the views of children and protect their best interests in climate governance (to ensure intergenerational equity) and in achieving a sustainable future. Using doctrinal research methods, the article examines the regional legal and institutional responses to the cascading impacts of climate change and how they impact on children's rights to a sustainable future. They analyse the provisions of the African Children's Charter that have the potential to enhance the utility of the principle of intergenerational equity in the context of climate governance in Africa, and conclude that the principle of intergenerational equity, in theory, could be used as a tool for the protection and promotion of the rights and interests of children from the impact of climate change.

Nanima evaluates the role of the African Children's Committee in the protection of children's rights in the context of the COVID-19 pandemic. He argues that Africa has gained traction in recognising the rights of the child with an emphasis on his or her holistic environments. He notes that the Children's Committee can harness this traction gained in the response to the pandemic to improve the position of the child and achieve long-term aspirations under the Charter. The article evaluates the role of the Committee against the backdrop of three general environments that affect a child: a peaceful environment informed by adequately functional institutions that aid the implementation of all laws that improve the position of the child; an environment punctuated by emergencies such as armed

conflict, public health emergencies or humanitarian situations; and an environment where a child who has moved from humanitarian situations seeks solace, including internally-displaced persons, refugees and asylum seekers. Following the evaluation of the effects of the pandemic on the child, the article proposes a model that the African Children's Committee may in future adopt to respond to emergency situations affecting children.

Vohito traces the progress made towards the prohibition and elimination of corporal punishment of children in all settings in Africa, as influenced by the African Children's Charter. She notes that corporal punishment is the most common form of violence against children worldwide, including in Africa, and that it violates children's rights to respect for their human dignity and physical integrity. This is despite the recognition of every child's right to be protected from violence and ill-treatment as articulated in the African Children's Charter, and the fact that the African Children's Committee and other human rights bodies consistently examine states on their progress towards prohibiting and eliminating the practice. The article highlights some of the challenges experienced in the efforts to achieve the total elimination of corporal punishment in Africa in terms of the legal and social barriers to the success of the campaign, and the role of the African Children's Committee in this regard.

Singh and Power address the growing phenomenon of children's interaction with digital technology in Africa and its implications for the protection of their rights. They note that Africa is increasingly welcoming and participating in the technological revolution that is occurring the world over through a rise in access to the internet and other digital technologies. This reality means that children can engage, communicate, share, learn and develop in previously unimaginable ways, with fundamental changes to the way in which children exercise and realise their rights as a result of technology. The article argues that the safety and empowerment of children in their interaction with technology, whether on or off-line, and the respect, promotion, and protection of their privacy depends on the engagement of a variety of stakeholders. Drawing on recent international developments around children's rights in a digital environment, the article reflects on the roles of such key stakeholders in advancing the privacy rights of children. The article underscores the need for collaborative commitments from public and private decision makers, and parents, care givers and guardians and, importantly, that children are part of the solution to guarantee the protection of children's privacy in a digital context.

Chibwana reflects on key imperatives required for the child rights discourse to proactively address emerging challenges and changing child rights contexts on the African continent. Using positional reflexivity as the methodology, the article identifies six transformative promptings that engender a shift in the child rights discourse, and which ought to be considered seriously for the discourse to be more responsive to the protection as well as well-being of children on the African continent. These issues are a shift from child rights alterity to trans-disciplinarily; the strengthening of the promotional aspects of child rights; attention to the nexus between exponential urbanisation on the African continent and the fulfilment of children's rights; the rise of the information communication technology and implications on child rights; responsiveness to cross-border violations of children's rights, and the financing of children's rights using domestic resource mobilisation. Attention to these issues, he argues, would enhance the prospect of the attainment of the commitments under the African Children's Charter, and the longer term vision of children's rights in Africa.

3 Conclusion

Collectively, the articles featured in both issues of the *Journal* underscore the valuable contribution that the African Children's Charter has made towards the transformation of the child rights discourse in the African region, paving new paths for the development of child rights, challenging dominant narratives on the continent's progress towards an Africa fit for children, and propositioning new frontiers for the development of the child rights discourse into the future. As the last of the Special Focus editions marking the 30 years of the adoption of the African Children's Charter, this Special Focus strikes a balance between celebrating progress achieved so far, and highlighting the challenges for the protection of children's rights in the region over the next 30 years of the implementation of the Children's Charter.