

# Editorial

We are pleased to present the seventh volume of the *Kabarak Law Journal of Law and Ethics* (KJLE), which focuses on the Kenyan Children Act of 2022.

In the lead up to this publication, Kabarak University in collaboration with Save the Children (Kenya and Madagascar) successfully organised a hybrid half-day conference to commemorate the Day of the African Child on 16 June 2023. The conference brought together child law scholars and practitioners to reflect on the theme 'The rights of the child in the digital environment'. Professor Robert Nanima, Expert Member of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and Justice Heston Nyaga, Judge of High Court of Kenya, were among the chief guests. We are proud to publish Professor Nanima's keynote address in this volume.

It is a singular privilege to have Justice Teresia Matheka's Foreword that revitalises the success of the conference and ushers the conversations in this volume.

Achach Jamaranda opens the discussion with a social commentary packaged in a poem, *In the Matter of TT minor*. The poem satirically depicts the contradictions that manifest in litigating the best interest of the child principle. Personifying a child who muses over the absurdities that make up court proceedings, the poem ultimately concludes that parents' interests tend to trump the child's best interests.

Four full-length articles expound the conversation. Cedric Kadima's piece titled *Raising the minimum age of criminal responsibility in Kenya* interrogates how Kenya arrived at the ages of 12 and 14 as the minimum age of criminal responsibility in the Children Act of 2022.

Through a critical examination of the domestic and international legal instruments and scientific foundations of the minimum age of criminal responsibility, Kadima finds that the Children Act of 2022 adopts a position on the minimum age that the Committee on the Rights of the Child abandoned. The various stakeholders, in Kadima's view, missed the opportunity to resolve this during the drafting stages.

In the second piece, *The nexus between the best interest of the child and detention of children in conflict with the law*, Terry Moraa and George Gor contend that the Children Act of 2022 reaffirms the best interest of the child principle. For children in conflict with the law, this principle urges custodial sentencing as a measure of last resort. The authors advocate rights-based and diversionary measures to child justice especially family group conferencing as the two maximise the potential for rehabilitation and reintegration of children in conflict with the law.

The third article by Julie Lugulu, *The child's right to a nationality in Kenya under the Children Act of 2022*, examines the adherence of the Act's provisions on nationality to the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. Lugulu narrows her analysis to the silence of the 2022 Children Act on illegal deprivation of nationality. She puts forward that the lack of safeguards against revocation of a child's nationality places the child at risk of statelessness. This does not align with the Convention on the Rights of the Child, which obliges the Government of Kenya to assist children whose nationality has been arbitrarily and unlawfully deprived.

Finally, Christine Njane and Vianney Seyabiga write about *Enhancing child participation in family disputes through child inclusive mediation in Kenya*. Recognising the enactment of the Children Act of 2022 as a new dawn for amplifying children's voices generally, the authors criticise the functions of the Office of the Secretary of Child Services within the Act as vague and insufficient to protect the best interests of children in family mediations. This leads to child-focused as opposed to child-inclusive mediation, which has been mainstreamed by South Africa's Office of the Family Advocate. Njane and Seyabiga, therefore, propose measures that could prioritise child-inclusive mediation including mass

media awareness campaigns about the benefits of involving children's self-expression in family mediation.

The volume concludes with two speeches. The first as mentioned earlier features Professor Robert Nanima's keynote address on the commemoration of the Day of the African Child. The speech first congratulates Kabarak University School of Law and Save the Children for inaugurating the First Model ACERWC Moot Competition centred on the tool of state reporting in empowering child rights in the digital space. Secondly, the speech urges State Parties of the African Charter on the Rights and Welfare of the Child to broaden their protection of children through a multi-environmental approach, signalling that the digital age proves that children in Africa do not occupy a homogenous space.

Lastly, Justice Grace Ngenye's keynote address titled 'Reflections on the status of protection of the rights of persons with intellectual and psychosocial disabilities in Kenya', closes the volume. The speech was delivered during the launch of three publications on mental health rights on 8 June 2023 at Kabarak University, co-sponsored by the Kenya National Commission on Human Rights (KNCHR) and Validity Foundation. First the keynote address lauds the efforts of Kabarak University School of Law for its scholarly contributions in its book *Mental health and the criminal justice system*. Likewise, the speech congratulates the KNCHR for publishing two reports namely: *Mapping of organisations of and for persons with psychosocial and intellectual disabilities*; and *Still silenced: A quality rights assessment of selected mental health facilities in Kenya assesses*. Justice Ngenye then outlines select initiatives of the National Committee on Criminal Justice Reforms, which she chairs. In doing so, the speech describes the Committee's efforts in transforming the criminal justice system into a fair, inclusive and effective guarantor of the rights of persons with intellectual and psychosocial disabilities.

We would like to express our heartfelt gratitude to all those who participated in the editing and reviewing of this volume, led by Sam Ngunire who served as Editor-in-Chief of this volume, and Sandra Musoga, Dr Sam Mburu, Melissa Mungai and Hilda Chebet.