

Keynote address by Hon Professor Robert Doya Nanima

Expert Member, ACERWC,
on the commemoration of the Day of the African Child
and inauguration of the First Model ACERWC Moot Competition
on 16 June 2023

The Right Honourable Judge of the High Court of Kenya, Honourable Judges of the First Model African Committee of Experts on the Rights and Welfare of the Child (First Model Committee), representatives from the state(s), civil society organisations, academia, students, participants, ladies and gentlemen. Good afternoon.

I thank you for extending the invitation to me. I bring you warm regards from the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). The Chairperson and the Bureau are away in Zambia celebrating the Day of the African Child. I thank you all for adding value to this First Model Moot Competition premised on the auspices of the ACERWC. It shows that you believe in the work of the ACERWC and that you have taken a dissemination strategy that informs both the students in the competition and the participants here today.

Specially, I thank Save the Children Kenya and Madagascar, and the Kabarak University School of Law for taking this bold step to start the First Model ACERWC Moot Competition. It speaks volumes to your organisational and individual passion for advocacy, research and academic engagements on various child rights issues. In equal measure, I thank Kabarak University School of Law for starting this noble cause.

It reminds us of the adage *if you do not engage your dream, you might be duly engaged or employed by another to do the same.*

To all the universities that have taken part in the Competition, you have added the required spices to the moot barbeque in the spaces of children's rights. I reiterate that you are all winners and you should not drop the plough but continue running with it. You are sowing the seeds of the need for a mainstreaming of the child's agenda and the child rights-based approach in all matters concerning the African child. I do not doubt that history will judge you favourably because you are not simply counting your days but making your days count.

In my remarks:

1. I will set the tone by speaking about the spiral effect that starts with the normative foundations of the African Charter on the Rights and Welfare of the Child (ACRWC), the institutional spaces of the ACERWC and its jurisprudential effects.
2. I will then add value to the sense we have made here today concerning 16 June 2023 as a day which either culminates or starts a process for commemoration.
3. I will reiterate a call to action going forward.

Concerning the ACRWC, institutional spaces and jurisprudential effects

Allow me to speak a little about ACERWC. It is established to monitor the implementation of the African Charter on the Rights and Welfare of the Child (ACRWC) in Africa. The African Union (AU) has created a robust normative framework which if fully implemented, can foster the protection and fulfilment of the rights of children (including those affected by armed conflict) on the continent.

First, the normative guidance by the AU has acted as a critical pillar in the creation of a regional approach to the promotion and protection

of rights. Second, and consequently, this has led to the initiatives and responses of the ACERWC to offer institutional responses. Third, this continues to translate into jurisprudential approaches to the prevention of grave violations and violations of the rights of children affected by armed conflict. While the ACRWC provides that the ACERWC only promotes and protects the rights of the child, the Committee also infuses a preventive role in its promotional and protective mandate.

From a normative perspective, the ACRWC provides a spiral forward-looking effect that translates into the adoption of engagements to prevent child rights violations and offer protection and promotion of the rights of the child. The unambiguous definition of a child as a person below the age of 18 offers added value through guidance on various aspects such as the need for protection and provision of deliberate services to all persons below the age of 18.

The ACRWC recognises the lived realities of the child in Africa such as the harmful practices that place children in vulnerable positions where their rights may be violated. For instance, *ACERWC General Comment No 7 on Article 27 of the ACRWC on Sexual Exploitation* reiterates that these practices are often rooted in harmful gender stereotypical beliefs and practices, patriarchy and the subordinate position of women and girls, gender masculinities that affect socialisation, and restrict the emotional expression of the child. This often heightens the potential for boys and men to engage in general acts of violence both online and offline.

From an institutional perspective, the ACRWC extends this spiral effect in the establishment of the ACERWC to protect and promote the rights of the child. Through its working methods, the Committee has been resolute in the use of research to create a dent in the positive promotion and protection of the child and engage States Parties through state reporting and the use of missions. Examples of such instructive research include the 2018 study on *Mapping Children on the Move within Africa*. They are all testament to the need to deal with child rights violations.

The Committee's appointment of the special rapporteurs on various thematic areas posits a focal thematic mandate to engage issues affecting children. Additionally, the appointment of country rapporteurs creates traction towards children affected by local crises, including armed conflicts. We also religiously use the child rights-based approach that embraces the four principles of the best interest of the child, right to life, survival and development, participation and non-discrimination.

We also embrace the operational and tactical principles that may work in other spaces like the do no harm principle, the presumption of childhood, detention as a matter of last resort and for the shortest time, and the treatment of children as victims first. I will latch on to two principles. First, the do no harm principle requires that stakeholders and duty bearers strive to minimise the harm they may cause by providing several services to children affected in the digital environment that may be in line with the prevention and protection of children's rights violations. The presumption of childhood calls for the need to provide special treatment, care and support for young people whose rights may be violated in the digital environment while they are still children. In this regard, such young people are entitled to be considered victims first.

The second is the development of instructive jurisprudence and the use of General Comment No 7, which calls on stakeholders to take steps to raise awareness and reduce child violations and other pertinent issues, especially in the digital space. The General Comment reiterates that the rights of children can be violated both in the online and offline environment, with the former as the first platform of violations and subsequently leading to violations offline.

Contextualising 16 June

Ladies and gentlemen, this First Model ACERWC Moot Competition comes at a very important time in the history of children in Africa. First, we commemorate the events that happened to the children of Soweto in

1976. Second, it reiterates the critical role that the ACERWC performs in monitoring the implementation of the ACRWC, and the execution of its protection, and promotional mandate. Third, it offers introspection on inward and outward accountability by all stakeholders in the child rights discourse.

Fourth, it builds on a wealth of knowledge on the benefits, impediments and dangers of the online digital environment to the child. Studies by United Nations Children's Fund (UNICEF), Save the Children, and ECPAT International are instructive. Further, it reiterates the Committee's engagement in the use of the digital space to ensure that States Parties amplify the promotion and protection of the rights of the child using digital means. For instance, in its concluding observations on Kenya's First Periodic Report on the Status of Implementation of the ACRWC, the Committee recommended the intensification of the campaign on birth registration, including creating awareness that registration is free, making registration easily accessible in all areas of the country and expediting the process of making registration of vital events digitally.

The question is: how do we continue to attach the right purpose and paint the correct picture concerning the child? Statistics show that out of 1.4 billion people in Africa, 590 million people have access to the internet at home. This accounts for a 43% growth rate, according to 2022 statistics. This is without regard to the school or neighbourhood setting. The 43% growth in Africa is projected against the 68% growth globally.

Africa is home to over 400 million children. A closer look indicates a worrying picture as far as 13% of children have access to the internet in southern and eastern Africa, and 1% in western and central Africa. These statistics do not account for the Saleh Region and North Africa. Another set of statistics show that 5% of people below 25 years in Africa have access to the internet. If one takes the median of 5% and 13%, it gives about 9%- which accounts for 36,000,000 children with access to the internet. This is about the population of Morocco; or the combined population of 18 countries across Africa which include Eswatini, Lesotho, Namibia, Cape Verde, Botswana, Liberia and Sierra Leone, to mention but a few. It is projected that the population of Africa will

have doubled by 2050, and the continent will be home to the world's youngest population.

Ladies and gentlemen, with these figures, the question of the digital age, its benefits, impediments and disadvantages need to be looked at critically to inform policy, legislation and administrative engagements by the state. This is in line with the mandate on States to take all means including administrative, legislative, and other means to ensure the enjoyment of the rights of the child both online and offline, without regard to the nature of the rights.

Call to action

It is important to assign meaning to something. We do this by asking why it is relevant. To attach purpose or meaning to a thought, for it to be remembered, to be engaged to yield fruits. I would like to thank the organisers of this First Model ACERWC Moot Competition for attaching new purpose to moots in Africa and beyond, by adding the child rights agenda. The culmination of the event today started as a thought, which propelled a dialogue and with purpose, the First Model ACERWC Moot Competition was born.

This purpose in my view presents a new way of learning about the working methods of the ACERWC, a new dissemination strategy that employs a bottom-top approach in appreciating the use of missions by the ACERWC and the critical role it plays in engaging with the State. It is important to note that the Competition has reminded us of the need to protect the child, who is the common denominator in these conversations.

A picture paints a thousand words. Often, the narrative is to imagine a beautiful picture of this child in a peaceful environment. The student of literature will accord their explanation with prose and poetry; with the unwavering use of the plot, themes, techniques and style. To the artist, the use of the paintbrush, the nature of the brush and the texture that is accorded speak to the tone of the picture. The law

student will use great words that go beyond conventional English to legalise the heart of the matter. Without prejudice to the foregoing, the opposite side of such a coin may also paint a picture of pain - of a child not receiving his inoculation, or suffering from hunger in a peaceful environment, a child in humanitarian situations, or spaces of armed conflict, tension and strife.

Ladies and gentlemen, it is important to note that apart from the content that a picture presents, the architectural foundations remind us of the common denominator - the child. An emphasis on the common denominator is critical, first, to the picture we see, and secondly, to the picture, we paint or repaint in our spaces of influence. This may be our lecture rooms, our courtrooms, our action plans, our offices, or our mandate. The way we paint will speak to the extent to which we disrupt the normal narrative by attaching a new purpose to the end that the child rights agenda continues to take centre stage in all our engagements.

Conclusion

The key takeaway should be how you, as an organisation or individual, can leverage the use of the digital environment to respect, promote and fulfil the rights of the child, both in the offline and online environment. The advent of the digital age presents both pros and cons without which a critical balance may lead to a tilting of scales to the detriment of the child in various spaces. It should be recalled that just like children are not a homogenous group, they are also not positioned homogeneously in peaceful or desirable environments. Some children are in areas affected by armed conflict, tension and strife, areas of solace as refugees and internally displaced children. As such, we must adopt an approach that recognises the non-homogeneity and multi-environmental spaces of occupation of children in Africa.

Secondly, we must strive to have data to use to inform our initiatives as State Parties and stakeholders. To do so, we must deliberately use a child rights' approach that leverages the four principles of the best

interest of the child - rights to life, survival and development, non-discrimination, and participation of the child.

We should embrace the operational and tactical principles that may work in other spaces like the do no harm principle, the presumption of childhood, detention as a matter of last resort and for the shortest time, and the treatment of children as victims first.

We should deliberately de-institutionalise silos in our spaces of work such that we embrace our energies and get higher returns on the resources we invest in. Finally, we should always place the specific child at the centre of the interventions such that we are alive to their lived realities as we couch interventions. With those few words, I thank you for listening to me.