Chapter 7  
Children’s Rights in Africa  
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1 Introduction

In quite a few academic quarters, and possibly in many important donor aid scenarios, the legal basis for children’s rights in African context is exclusively driven by the United Nations Convention on the Rights of the Child (UNCRC)\(^1\) agenda. From time to time, and depending on the area of concern, the Geneva-based International Labour Organisation (ILO), the Netherlands-based Hague Conference on International Private Law, and other international non-governmental organizations (INGOs) or inter-governmental bodies or fora are credited with supplementing the ‘agenda setting’ domain of the children’s rights arena: the World Forum against Sexual Exploitation (commencing with the first one in Sweden in 1995), the Global Initiative to End Corporal Punishment, the UN Special Rapporteur on Violence against Children (formerly lead by Prof Sergio Pinheiro, now by the redoubtable Martha Santos Pais) and so forth. It is not the intention of this chapter to take issue with or critique any of these contributions to the overall legal and socio-political landscape of children’s rights – far from it.

Even amongst several commentators on the issue, a dose of scepticism and dismay complement their treatment of children’s right in Africa. So, comments such as ‘the African children’s charter is not well known, even in Africa’,\(^2\) and allusions

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to the ‘infancy’ of the African children’s rights system\(^3\) tend to be rather frequent. More disturbing, it has become a mantra to refer to the evident lackadaisical approach of African governments to their own regional treaty, the African Charter on the Rights and Welfare of the Child (ACRWC or African Children’s Charter), and to conclude that the promise that this development holds has not really born fruit.\(^4\)

It is the thesis of this chapter that this ‘afrosceptism’ is possibly unwarranted and that is rests on only two propositions: (1) the slow state of ratification of the ACRWC resulting in its entry into force only 9 years after its adoption in 1990; and (2) the worrying lack of concrete output from the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), nine years into its formation and the commencement of work. The latter proposition, true though it may be, is beyond the scope of this work and falls properly to be considered in chapter 12 in this volume. The former, as will be shown, rests on a limited and arguably jaundiced interpretation of events. Further, as the body of this chapter will show, children’s rights have assumed an increasingly significant role in Africa, and for reasons other than refutation of the two concerns cited; this lies in the groundswell of non-governmental organization (NGO) support, which is gaining ground apace, for an African child rights focus. A substantial focus of this chapter will be to highlight and describe this alternative reading of the status of children’s rights in the African human rights system.

To this end, the central argument proffered here is that the African children’s rights environment has both depth and breadth from a socio-legal point of view, and that there are characteristics which render this system, properly construed and understood as it is functioning at present, far in advance of the international children’s rights environment.

Consequently, defending and explaining the above proposition rests on three inter-related discussions, which form the body of this chapter. The first, generally, considers children’s rights generally in the African human rights system, taking the African Charter on Human and Peoples’ Rights (African Charter or ACHPR) and some developments particular to the African Commission as the starting point. This section concludes with an update which reflects on the children’s rights contribution of the African Youth Charter and the African Women’s Protocol, these two treaties lying at the margins of children’s rights proper, as it were.

The second thematic section considers children’s rights in the African human rights framework *eo nomine*; it proceeds from the 1979 Declaration on the Rights

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