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Untangling intractable human rights problems: Extracts from panel discussions

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Abstract

This chapter serves as a report of the project event conducted under the Intractable Problems of Human Rights Project. This is a 48-month project (2021–2025), implemented by the Chair of African Legal Studies at the University of Bayreuth, in partnership with the University of the Western Cape and the Centre for Human Rights at the University of Pretoria. The project investigates why certain human rights violations, such as child labour, human trafficking, and the persecution of LGBTIQ+ persons, persist across Africa despite the existence of extensive legal and institutional frameworks. The project examines the limits of law and policy in addressing deeply rooted social, cultural, and political challenges that continue to undermine human rights protection. Drawing on comparative case studies from across different countries in Africa, in this chapter, I have synthesised findings from a 2023 panel series hosted at the University of Pretoria. During the panel discussions held at this event, scholars and practitioners examined the legal, institutional, and non-legal dimensions of these intractable problems. The discussions were structured around three thematic questions, where a panel of experts shared their insights on the legal characteristics and current status of the violations, the

institutional and policy barriers hindering enforcement, and the non-legal factors that perpetuate intractable human rights problems. From this synthesis, I have argued that the persistent human rights violations necessitate approaches that extend beyond legal reforms to address the structural and societal conditions that perpetuate them.

Keywords: *Child labour, Human trafficking, LGBTIQ+, intractable problems, human rights, beyond laws*

1 Introduction

The Intractable Problems of Human Rights Project is a 48-month (2021-2025) project implemented by the Chair of African Legal Studies at the University of Bayreuth alongside partners at the University of the Western Cape and the Centre for Human Rights, University of Pretoria. The project focuses on intractable problems of human rights, including child labour, human trafficking and the protection of *lesbian, gay, bisexual, transgender, intersex, and queer (or questioning) and other* (LGBTIQ+) rights, because of the seeming impossibility of resolving these problems.¹ This project interrogates why some human rights violations persist with little or no change despite the establishment of extensive legal frameworks across Africa.

Tremendous strides in the legal and institutional protection of human rights in Africa have seen the African Union (AU) champion an ever-growing framework of treaties and institutions dedicated to human rights protection.² Over the past 30 years, these developments in legal protection have been complemented by the adoption of progressive constitutions with dedicated bills of rights by many African countries, such as those of the Republics of Kenya, South Africa, Malawi, Uganda and Zimbabwe.³

1 T Kaime 'Intractable human rights issues', <https://www.africanlegalstudies.uni-bayreuth.de/en/research/IntractableProblems/index.html> (accessed 22 November 2023).

2 F Viljoen *International human rights law in Africa* (2012) 169.

3 E Kibet & C Fombad 'Transformative constitutionalism and the adjudication of constitutional rights in Africa' (2017) 17 *African Human Rights Law Journal* 340; Constitution of the Republic of Malawi, 1994 ch IV; Constitution of the Republic of South Africa, 1996 ch II; Constitution of the Republic of Kenya, 2010 ch IV.

However, despite these steps, many African citizens still suffer the yoke of human rights abuses and, in some cases, their situations worsen. For example, child labour continues to rob many African children of their future.⁴ In 2020, the International Labour Organisation (ILO) reported that over the four years, the absolute number of children in child labour increased by over 8 million.⁵ In countries across Africa, colonial era laws continue to deny many citizens the right to choose whom to love.⁶ Right across the continent, from Algeria to Zimbabwe, non-heterosexual relationships are subject to heavy penalties,⁷ while more restrictive provisions, including the death penalty, are proposed in Uganda.⁸ Furthermore, challenges remain in aligning and clearing contradictions between domestic and international human rights law, where fundamental rights, including LGBTIQ+ rights, continue to be endangered in Malawi.⁹ The basic premise of this project is that several challenging human rights issues have remained unresolved despite years of meticulous legal efforts.

The project examines three comparative case studies: child labour, human trafficking and LGBTIQ rights, in six selected countries: Ethiopia, South Africa, Malawi, Ghana, Nigeria and Zimbabwe. These countries were chosen based on the prevalence of the human rights issues under discussion.¹⁰ The programme of work and the project's key structures and activities are built around the three case studies.

The project convened several panel discussions during a project event at the Centre for Human Rights (CHR) at the University of Pretoria in August 2023. These discussions featured a diverse group of experts from various fields of study. This was premised on the fact that intractable

4 RB Frempong & D Stadelmann 'The effect of food price changes on child labour: Evidence from Uganda' (2019) 55 *Journal of Development Studies* 1492.

5 International Labour Office and United Nations Children's Fund 9 Child labour: Global estimates 2020: Trends and the road forward' (ILO & UNICEF New York 2021) 8.

6 E Han & J O'Mahoney *British colonialism and the criminalisation of homosexuality: Queens, crime and empire* (2018) 33.

7 SB Debele 'Of taming carnal desire: The imperial roots of legal provisions regulating sexual practices in Ethiopia' (2020) 1 *History of the Present* 84.

8 K Kaoma 'The interaction of human rights and religion in Africa's sexuality politics' (2023) 21 *International Journal of Constitutional Law* 339.

9 L Kojoue 'Dark day' in Malawi for rights of LGBT people' *Human Rights Watch* 11 June 2024, <https://www.hrw.org/news/2024/07/11/dark-day-malawi-rights-lgbt-people> (accessed 22 July 2024).

10 Kaime (n 1).

problems are interdisciplinary and require a diverse and in-depth analysis and exploration. This chapter, therefore, explores excerpts from these discussions, categorised into sections and themes extracted from the main panel discussion question during the event. These views and opinions have been substantiated with insights from existing literature and the personal reflections of the panellists, which emanate from their ongoing fieldwork and experiences on the subject. The following key questions guided each of the panel discussions.¹¹

- Panel 1: What are the key legal characteristics of the intractable human rights problems? What is the *status quo* of these human rights violations in specific countries?¹²
- Panel 2: Which key legal and institutional barriers are impeding the protection of people affected by these human rights problems? What constraints are preventing responsible institutions from implementing the concerned rights?¹³
- Panel 3: What are the non-legal determinants for persisting violations of such human rights? What are the existing barriers that prevent the legal framework of human rights from spreading its impact?¹⁴

2 Panel 1: Navigating LGBTIQ+ rights in Africa

2.1 Key characteristics of LGBTIQ+ rights as intractable problems

In the opening sessions of this panel, Chanel van der Linde alluded to the fact that key legal characteristics of the LGBTIQ+ rights struggle in

¹¹ It should be noted that while the panels in this Pretoria event were tasked to discuss these questions, their contributions were not limited to the specific questions in their specific panel. There are moments, therefore, where ideas overwrap. Furthermore, there are instances where no conclusions on particular questions were reached or might have been missed. This does not mean in any way that the panellists did not articulate their responses well, but rather, they are flaws borne out of the author's limitations in capturing the real thoughts and opinions of the panellists as discussed during this event.

¹² The panel was moderated by Isabelle Zundel and Chanel van der Linde, Centre for Human Rights; Milka Wahu Kuria, Jomo Kenyatta University; and Prof Bonolo Dinokopila, University of Botswana as panellists.

¹³ Moderated by Gift Mauluka with Felisah Mitambo, University of the Western Cape; Dr Alan Msosa-Governance Adviser, FCDO Malawi; and Dr Nkatha Murungi, Centre for Human Rights as panellists.

¹⁴ Moderated by Felisah Mitambo with Gift Mauluka, University of Bayreuth; Dr Richard Obinna Iroanya, University of Namibia; and Prof Simphiwe Sesanti, University of the Western Cape as panellists.

Africa boil down to two things – the criminalisation of identities and the closure of civic space. Other than criminalising the act where persons of the same sex engage in sexual activities or ‘having carnal knowledge of a person of the same sex’, there has been a narrative shift to criminalise the identities.

Speaking from her South African experience, Van der Linde noted that before the apartheid era in South Africa, having carnal knowledge of another person was criminalised, just as is the case in most parts of Africa.¹⁵ She contended that this no longer is the case. Currently, in South Africa, people who identify and support the work of LGBTIQ+ rights and their organisations are punished. She suggests that this has been described as aiding and abetting, just meant to silence the activism and advocacy work being done in the promotion of minority rights, more specifically LGBTIQ+ rights. To emphasise her point, she contended that the Anti-Homosexuality Act of Uganda is a typical example of instances where the identification rather than the act seems to be criminalised. She observed that the Act mentions people who identify as homosexual, bisexual or transgender but, interestingly, exempts intersex people out of pity. She argued that such selective differentiation does not provide a tangent for judging whether or not something should be criminalised, which is exactly what characterises a wicked problem.

She submitted that intractable problems of human rights are also characterised by shrinking spaces for civil society engagement. Van der Linde submitted that this is evident in the denial of registration to international non-governmental organisations using draconian domestic laws. Furthermore, she noted that the withdrawal of the Coalition of African Lesbians’ observer status by the African Commission on Human and Peoples’ Rights (African Commission) illustrates the shrinking space for advocacy work on LGBTIQ+ rights.¹⁶

Additionally, Dinokopila argued that one of the critical features of these intractable problems is that they are characterised by more prominent legal instruments that are sometimes contradictory or unclear. In other words, he reiterated earlier observations that these problems are

15 T Meer & T Lunau *Lesbian, gay, bisexual, transgender and intersex human rights in Southern Africa: A contemporary literature review 2012-2016* (2017).

16 International Justice Resource Centre ‘African Commission bows to political pressure, withdraws NGO’s observer status’ 28 August 2018.

not deficient in legal frameworks; instead, such legal frameworks do not accurately reflect what the affected communities experience in their everyday lives, as the true nature of the problems is either misunderstood or misrepresented. For instance, he expressed that in the framing or discussion of sexual orientation, just as is the case with gender identity or persons living with disabilities, there frequently is limited attention paid to the terminology employed. He argued that the terminologies are either intricately twisted, mixed or grouped into one domain that does not mean the same thing. With such a confused state in the framing comes the risk of non-representational or irrelevant laws, policies, plans and actions that are devoid of realistic solutions. He, therefore, proposed that if a human rights problem is caught in such a confused state of naming and definition, it qualifies as an intractable problem of human rights.

2.2 Push factors in the struggle for LGBTIQ+ rights

Van der Linde argued that there is limited action meant to open up spaces for engagement to find solutions in addressing problems faced by the LGBTIQ+ community. Here, she drew comparisons on how spaces for engagement for addressing racial segregation and women's empowerment remain closed now, much as they were during the apartheid era in South Africa. On the one hand, she asserted that there often is limited involvement of organisations in LGBTIQ+ rights issues because these organisations feel as if the fight for LGBTIQ+ rights does not involve them. Similarly, there is limited involvement of men in women's empowerment issues, as most men feel that women's empowerment, let alone gender equality issues, has nothing to do with them. On the other hand, she asserted that in the majority of instances, civic space engagement in addressing racism issues is often closed for people of colour, as whites perceive this as less essential for them, at least in the South African context, where inequality between people of colour and the white minority is rampant.

Van der Linde expressed the view that two key factors are centrally implicated in the protection of minority rights: the strength of anti-rights movements and the influence of the church. She said that anti-rights groups possess significant financial resources, which they use to support campaigns, conferences, and private members' bills that attempt to prevent the passage of laws promoting minority rights by African

parliaments. She further contended that these anti-rights movements give governments money, limiting the government's willpower to pass bills supporting minority rights.

In addition, she argued that there is a significant degree of power and politics within the Christian church, which can influence the beliefs of its followers. This influence can extend to politicians who seek counsel and votes from church authorities and rely on the church to guide its followers' beliefs and doctrines. For their inaction, governments intricately and calculatedly hide behind the church's beliefs and teachings for its unwillingness to protect minority rights. She contended that, for instance, one of the critical teachings of the church is the belief that lineage will not continue if people of the same sex are allowed to marry, which goes against the church's teachings on the family as a sacred union between a man and a woman. This belief instils fear in people about the future of humanity, causing some to resist accepting minority rights rather than face the unknown of what happens if minority rights are respected and protected. In the long run, the governments ride on such church teachings to resist bills promoting minority rights.

Wahu joined the discussion in arguing that LGBTQ+ rights issues are not understood to the core and the use of the law is seen as one of the strategies deployed to clarify this misunderstanding. She observed that while using the law to clarify LGBTQ+ and other related issues, certain crucial elements in the definition and conceptualisation are often overlooked, and these translations are frequently divorced from reality. Drawing reference to the work that she is doing through Amka Africa,¹⁷ Wahu argued that this is why the law has failed to resolve these issues.

Wahu further argued that one of the reasons for the struggle to accept LGBTQ+ rights is that the laws do not provide explicit answers to some of the fundamental questions surrounding gender identity and sexual orientation. For instance, regarding gender identity and sexual orientation, communities wonder who these people are going to marry, whether they will be able to have children, who they are going to have sex with, and what is in store for the future and the existence of the human race. In the absence of information and due to a lack of clarity, people are becoming defensive and reluctant to embrace minority rights.

¹⁷ AMKA Africa Justice Initiative, <https://amkafrica.org/> (accessed 22 June 2024).

She, therefore, proposed that for LGBTIQ+ rights to be embraced, it is essential to address the underlying issues and concerns of all parties involved rather than simply imposing laws that do not consider the unique cultural context of African societies.

It was further contended by Dinokopila that there is always a challenge of cultural relativism when talking about issues of LGBTIQ+ rights. Often, these matters are discussed without taking into account the realities of an African society into the equation. While trying to bring the realities of people into the discussion of LGBTIQ+ rights concerning cultural relativism, Dinokopila cautioned that consideration needs to be given to whether LGBTIQ+ rights matters need to be addressed through constitutional responses, courts or public opinion. He extended the caution in emphasising that in issues related to LGBTIQ+ rights, public opinion matters a lot, and when it conflicts with the legislation, finding a solution to address the issues becomes a battleground between legislation, public opinion and the courts' interpretation, which needs to be circumvented with utmost care.

Consistent with Dinokopila's assertion, Wahu argued that in many African countries, laws are adopted from other jurisdictions, and the existing cultural, social and economic context is usually given less weight for consideration. Despite these differences, governments still sign treaties that do not align properly with their people's cultural values but are signed out of obligation and appeasement to the international community. It was further argued that currently, there is a growing belief that the way of life and cultural identity of African communities are under attack, particularly when it comes to issues related to LGBTIQ+ rights. This perception has created a defensive mindset, where people feel the need to protect their cultural values and history against laws that governments have enacted. As a result, implementing statutes to address these issues often results in conflict rather than resolution.

Dinokopila asserted that LGBTIQ+ rights are human rights and, like all human rights, the state is obligated to respect, protect and fulfil them. He pointed out that, given this obligation, it is often noted that the state either does nothing or promises to implement a law that provides safeguards for the rights of minorities. However, in a majority of African states, this promise seems rhetorical as such laws are often not actually enacted; if it is done, it is without the real authoritative views of the LGBTIQ+ community.

On the other hand, Dinokopila contended that political mileage is gained by those who appear to be fighting for these rights. Frequently, these are politicians who start talking about the state's positive obligation towards protecting minority rights when they know that elections are near or they want to make a point that puts the ruling parties in a bad light. This is usually not done in good faith because the same energy spent discussing minority rights is not reflected when addressing issues such as access to education, electricity and healthcare services. In other words, LGBTIQ+ rights are used as a tool to advance a particular agenda only within a specific timeframe. When that timeframe elapses, the matter becomes irrelevant to such politicians.

Relatedly, it was contended that there is a lack of understanding of minority rights, and such a misunderstanding lead to misconceptions that are exploited for political gain by both opposition and incumbent governments. This is primarily the case when public opinion, which holds the electoral powers, seems uninformed and fearful of what a law that advances the rights of the LGBTIQ+ community will bring. This claim aligns with an earlier assertion where it was found that politicians usually dismiss these uninformed opinions, knowing that they are prying on the people's votes.¹⁸

2.3 Way forward for redress

Dinokopila contended that the law's effectiveness in addressing intractable human rights problems is caught in the debate surrounding the law and morality. He alluded that when a law is enacted to protect or restrict the people's liberties, it is prone to fail. In this case, there might be prominent legal instruments meant to address or suppress LGBTIQ+ rights, child labour or human trafficking. Still, a closer examination reveals that they are inhibiting people from their liberties. He therefore argued that a balance between people's liberties and non-repressive laws can be achieved by incorporating voices from the people affected by the problem at hand during law formulation or review.

In addressing the struggles and the challenges above, Wahu proposed that apart from understanding LGBTIQ+ rights from the legal

¹⁸ E Akinwotu 'Ghana: Anti-gay Bill proposing 10-year prison sentences sparks outrage' *The Guardian* 23 July 2021.

perspective, there is also a need to understand grounded questions and perspectives pertaining to non-legal issues surrounding LGBTIQ+ rights. She suggested seeking answers to questions such as the following: What are people afraid of? Why are people saying what they are saying regarding LGBTIQ+ rights? Where are non-governmental organisations (NGOs) working on LGBTIQ+ rights registered, and who is supporting them?

While not responding to her questions directly, she contended that candid discussions of the contents of the bills presented to parliament will likely clear up misunderstandings within the public domain. It is also likely that contentious issues surrounding LGBTIQ+ rights can be addressed through public discussions, so that peoples' ideas inform the tone of the bills to be passed. For instance, it was shared that in Kenya, there are fears related to parenting in same-sex relationships, which are compounded by the belief that people are taking on Western cultures incompatible with their societies. Wahu further explained that underlying root issues, mainly from the grassroots, are absent from discussions on LGBTIQ+ rights between communities and the duty bearers tasked with formulating laws. Therefore, she believed that it is only when these issues are unveiled and frankly discussed that communities can start addressing the problem and provide workable solutions that are culturally acceptable.

It has been contended that there is a systematic exclusion of people based on their sexual orientation that leads to a denial of social services and access to economic opportunities.¹⁹ Similarly, this panel argued that discussions of minority rights often focus solely on individual problems without considering the broader context, which is a mistake. It was suggested that different stakeholders fail to explore the broader implications of their exclusionary tendencies and practices within this narrow discourse. For example, when communities discriminate against certain groups, including the LGBTIQ+ community, they exclude such people from the workforce and access to valuable resources. This, in turn, affects the economies and social fabric of such societies. Furthermore, discrimination causes families to be separated, leading to social and economic problems. It was subsequently proposed that there is a need

¹⁹ C Izugbara and others 'Regional legal and policy instruments for addressing LGBT exclusion in Africa' (2020) 28 *Sexual and Reproductive Health Matters* 99.

to understand the far-reaching consequences of these actions and ensure that discrimination is not perpetuated and that discussions and solutions associated with LGBTIQ+ rights are inclusive to inform policies, laws and programmes.

However, with regard to culture and African understanding of minority rights, the panel recognised that culture is sometimes used as a tool to oppress the rights of minorities, especially the LGBTIQ+ community. This is usually linked to religious beliefs, which sometimes contradict human rights principles. Consistent with this assertion, it has been argued that religion has been used as a tool for contestation of sociocultural values in the majority of African countries. This is where African leaders have opposed the inclusion of LGBTIQ+ rights in human rights law based on predisposed ideas framed as contradictions to socio-cultural, political, religious and cultural values.²⁰

3 Panel 2: Redefining approaches to intractable problems

3.1 Stakeholders' involvement

Msosa opened the discussion in this panel by asserting that there are complexities in the set-up, procedures and mandates of institutions tasked with addressing child labour. He stressed that parliament and civil society organisations (CSOs) are essential stakeholders in this complexity. He highlighted that local law-making processes are insufficient to address this problem. At the same time, parliament might lack the capacity to provide evidence-based legislation to overcome the problem. It is, therefore, the duty of civil society to provide parliament with evidence-based research so that the legislature can formulate effective laws. On the other hand, parliament ensures that its oversight role is achieved through the work of civil society on the ground. For example, the CSO can advocate legislative change through mass and public awareness, while building the capacity of citizens to hold duty bearers accountable. Through such work, interest groups, companies and community members represent the grounded will of the people involved. Msosa emphasised that when this is adequately done and presented to parliament, the likelihood that

20 Kaoma (n 8) 355.

the laws will be representational increases. This can potentially reduce the complexity surrounding intractable human rights problems, making it easier for laws to be used to resolve these intractable human rights issues, including child labour.

Murungi contended that child labour issues are only used by politicians to advance their political traction, but with limited political investment to adequately address the problem. Through this, the investment is primarily focused on welfare strategies aimed at addressing the problems, rather than an issue that attracts state commitment and priorities. Similarly, she questioned the prioritisation of issues by the regional or international community by alluding that the establishment of legal frameworks at global and regional human rights bodies, such as the United Nations (UN) or the AU, does not align with the valid will or intention of their societies but rather the politics of the moment. She asserted that this prioritisation of issues is driven by players who have the resources to set their politically oriented agenda within these institutions, often alienated from the realities on the ground.

3.2 Caution in addressing and understanding child labour

Murungi cautioned and cast doubt on child labour statistics and their meaning, specifically in an African context. She expressed her scepticism because, in African culture, finding a child not involved in some household work is difficult. Such involvement is often misunderstood as exploitation without considering the complexities that influence it. Premised on this intricate situation, therefore, she argued that the number of children involved in child labour in Africa, as reported and estimated by the international community, is questionable and most likely does not represent the reality on the ground. Subsequently, she argued that more detailed, context-specific data needs to be collected and analysed to inform institutions' actions to address the problem.

Furthermore, Murungi maintained that the conceptualisation of child labour and all other intractable problems, without proper and meaningful representation of key stakeholders, also impedes the problem's redress. She stated that the current conceptualisation and definitions do not reflect the actual situation. In her reflection, she added that the absence of children as key stakeholders in formulating the international children's rights frameworks compounds the problem. She alluded that this absence validates the doubt and most likely leads one to

conclude that the formulation of these definitions and concepts was not made in the child's best interests but rather in the interests of the adults.

Murungi's observation above is consistent with earlier opinions, which have suggested that since meaningful representation in decision making entails gradually letting go of some parental powers and privileges, relinquishing such a position is always painful for most parents.²¹ Thus, they would instead make decisions about and for their children, even though it is not in their best interests and implies less meaningful participation for the children.

Furthermore, the doubts on child labour statistics expressed by Murungi have also been expressed by Hepburn and Jackson, who argue that the couching of ILO conventions on the minimum age for children in 1931 and its racialised arguments protected the interests of the colonisers.²² It is reported that these arguments were revised and reworked to feed the coloniser's interests in children's engagement. For instance, it was argued that working in plantations, in the fresh air, was suitable for children; furthermore, that children in the tropics mature earlier than their counterparts in the west.²³ Such racialised discussion on childhood and child labour influenced and promoted the ideology of colonialism as a civilising mission and found its way into the ILO's official documentation on children's employment.²⁴ Therefore, as Murungi reiterated in this panel discussion, this provides grounds for scepticism regarding the overall meaning of child labour and the statistics provided by international bodies.

Additionally, other scholars have suggested that the global estimates on child labour are speculative in nature, representing only a fraction of the working children, without providing the nature, conditions and context in which this work is done.²⁵ Besides, it is argued that the numbers focus on painting a picture meant to show that the legal programmes are working and as a prime indicator of the progress in eliminating all

21 E Fokala 'Calibrating children's rights to participate in a family setting 30 years after the adoption of the Convention on the Rights of the Child and the African Children's Charter' (2020) 34 *Speculum Juris* 127.

22 S Hepburn & A Jackson 'Colonial exceptions: The International Labour Organisation and child labour in British Africa, c 1919–1940' (2021) 57 *Journal of Contemporary History* 218.

23 Hepburn & Jackson (n 22) 226.

24 As above.

25 E van Daalen & M Al-Rozzi (eds) *A better approach to child work* (2022).

forms of child labour. However, it is proposed that the focus should be on country-specific programmes that examine the contextual factors that drive children into child labour, as well as the generation of data specific to countries and contexts, to better address the needs of working children.²⁶

Despite doubts about the prevalence of child labour emanating from the statistics available, the politics around these numbers, as well as the thin line between child labour and light work, it remains a fact that children working beyond certain conditions fail to live their everyday lives. They are involved in work that deprives them from school, play and enjoying their other rights.

3.3 Implicated factors

Mitambo reiterated earlier observations on the origins and the formulation of legislation in Africa. She re-emphasised that many African countries tend to replicate international laws without considering the context of African society. She argued that through this replication these laws place more emphasis on punitive measures rather than addressing the root causes of the problem. Consequently, there is a mindset that the law is there to punish, rather than to reform, which ultimately leads to the ineffectiveness of the law in addressing intractable problems.

Mitambo acknowledged that economic and social hardships characterised by poverty, climate change and other household vulnerabilities are most likely to perpetuate child labour. However, she argued that these issues should not be used as excuses for the law's inefficiency. Instead, she proposed that the law should also be used to address some of the root causes of child labour. For instance, she asserted that if laws are used effectively to address corruption, which often exacerbates poverty, child labour will likely be addressed in one way or another. She further suggested that instead of punishing parents for involving their children in child labour, the law should strengthen procedures for employing domestic workers and improving working conditions in these domestic settings. Similarly, she argued that the law and the resources used for its implementation should focus on dealing

26 As above.

with conditions that enable trafficking rather than being invested in punitive measures of dealing with traffickers.

Mitambo's opinion on borrowed laws aligns with the calls of the pan-African founding fathers, including Nyerere, Nasser, Nkrumah, Haile Selassie and Lumumba, who repeatedly expressed their support for Africa's freedom and independence from colonialism.²⁷ These calls resonated with the note that many African countries borrowed laws and policies from colonisers with little regard for the context of African traditions, cultures and values.²⁸ They advocate the need to abandon these colonial-borrowed frameworks and instead establish systems that are more attuned to African realities. In his article, Arewa argues that African elites at independence inherited a fabric of colonial laws governing everyday activities that was inflexible and not customised for local contexts or the benefit of the vast majority of the population,²⁹ which needs to be reassessed, removed or tailored to suit the African reality. From such a reconstruction, it is most likely that the laws and approaches formed to tackle these intractable problems will be homegrown and fit for children living in Africa.

Besides, the panel's reflection emphasises the urgency of understanding the complexity of intractable problems and calls for a more nuanced discussion to address the coordination problems of institutions. It also emphasised that complex underlying factors, such as corruption, poverty and uncoordinated policy frameworks and their implementation, contribute to or perpetuate these problems, highlighting the need to address these as key influencing factors.

Additionally, the panellists stressed that surface-level approaches in addressing intractable problems not only shift the struggle behind the veil but also deny the chance to discuss these problems in non-traditional ways of addressing legal problems through the use of story-telling, technology, adequate financing of institutions mandated to combat the problem, and engagement with the media.

27 N Negm 'Diverse perspectives on the impact of colonialism in international law: The case of the Chagos Archipelago' (2019) 113 *Proceedings of the ASIL Annual Meeting* 68.

28 OB Arewa 'Colonialism, legal borrowing, and disruption in Africa' (2019) 113 *Proceedings of the ASIL Annual Meeting* 67.

29 As above.

In other words, it was argued that when dealing with child labour or any other similar intractable human rights problem, there is a need for a thorough and frank analysis of the views and opinions of those mostly affected by the problem. By being candid and open to the causes, the influencing factors, the players involved and the policy and legal frameworks, stakeholders are most likely to find workable solutions. These solutions will not be superficial but will address the root cause of the problems. In the same light, alternative solutions to address the immediate needs of families and children involved in child labour could be found in anticipation and preparation of more sustainable long-term solutions.

Therefore, it will be prudent that, as different stakeholders examine mitigation factors for addressing these problems, communities and the people directly affected by these problems are at the centre stage of these approaches. In the case of children, it is appropriate for them to be involved, as this ensures that not only the right questions are asked but inclusive and child-friendly solutions are sought and considered.³⁰

4 Panel 3: Contextual challenges and systematic solutions

4.1 Influencing factors

This panel contended that there are various factors, including political, social and economic conditions, contributing to human trafficking and erosion of human rights. They emphasised the need for system change as part of the solution to address the intractable problems of human rights, including human trafficking.

A recurring theme throughout these panel discussions was that the issues are complex and may not be addressed by single solution. It was alluded that the problems are intertwined and caused by many factors. Nonetheless, Iroanya identified weak political and human rights institutions, unrest and armed conflict, limited resources and the culture of impunity as some of the key factors influencing human trafficking across Africa.

³⁰ RD Nanimi 'Evaluating the role of the African Committee of Experts on the Rights and Welfare of the Child in the COVID-19 era: Visualising the African child in 2050' (2021) 21 *African Human Rights Law Journal* 72.

First, Iroanya argued, when governments are run through dictatorial tendencies, there is usually dissatisfaction with governance issues among the people. Through such dissatisfaction, students and opposition parties attempt to seek redress for these governance problems through demonstrations and other civil disobedience strategies. As the pressure mounts on dictatorial governments, they find ways to silence dissenting views through abductions, arbitrary arrests and even human trafficking. He mentioned that these tendencies are common in Nigeria, where politicians use gangs to abduct people who seem to be problematic to the government.

He further held that the abductions and the volatile political landscape create tensions leading to armed conflicts and the escalation of gang violence. Such tension makes it difficult for people to be governed and for the rule of law to function effectively. This creates a conducive environment for people to be trafficked, children and other vulnerable groups to be exploited for sex and drug trafficking, and all sorts of human rights abuses.

Iroanya argued that the volatile political landscape makes it difficult for political institutions and human rights bodies, such as the Ombudsman and the Human Rights Commission, in many African states to execute their oversight duties in holding governments accountable. It was contended that these institutions face specific challenges in their operations and holding the government accountable in particular, as they are often under-resourced. He contended that underfunding is strategic as those in positions of authority, especially politicians, who benefit from such volatile situations. Thus, it is convenient for them to create a systematic weakness in these human rights institutions for their benefit.

Iroanya further argued that armed conflict and instability provide a fertile ground for human trafficking, creating a state of lawlessness where the ultimate protection of the citizens is ineffective. Additionally, he alluded that armed conflicts and instability worsen the socio-economic stability of the people who are eventually prone to abuse, including human trafficking. In one way or another, this leads to ingrained corruption that impacts the entire fabric of society. This is where those in power even become more silent to condemn or are complicit in dealing with human trafficking because they are benefiting from it, or they fear retaliation from more powerful gangs if they attempt to fight the vice. Eventually, a culture of impunity towards the law develops, which also

leads to higher cases of human trafficking. Thus, even when the states have laws and institutions that are meant to prevent and protect people from human trafficking, prevalent disregard for such laws erodes the trust that the people have in their justice systems. As a result, most people find themselves victims of human trafficking practices.

Sesanti brought a completely different perspective to the discussion. He delved into the ideas surrounding the perception of time, respect for life and the loss of cultural identity as crucial elements in understanding the dehumanisation of African people, connected to human rights violations. Through his poetic and dramatised expedition, which was characterised by chants and an appeal to his ancestors to guide him through these discussions, Sesanti argued that during colonialism, Africans were pushed to forget their humanity, resulting from poor treatment, dehumanising maltreatment and exploitation. This led to a loss of value for humanity, empathy and a sense of belonging to one's society. He stressed that eventually, people began to view their fellow humans as commodities, which gave rise to the idea that people could be bought and sold. As a result, he argued that enslaved Africans subconsciously learned these ideas that are manifesting in the current time through human trafficking activities in post-colonial Africa.

In the discussion, Mauluka contended that when communities' environmental challenges, such as droughts and floods, are not addressed, communities are forced to find other alternatives, which might be detrimental to the children and the community. For instance, during floods and droughts, children are pushed into child labour practices to cope with the challenges that they face, such as a lack of food and income. Furthermore, when droughts and floods affect communities, men often migrate to urban areas or areas less affected by floods and droughts in search of employment. This migration leaves the families in a destitute and vulnerable state, which provides room for even worse forms of child labour as well as human trafficking.

Furthermore, Mauluka argued that internal migration in search of employment or food due to failed crops also influence human trafficking and child labour. This type of human trafficking and child labour is more prominent among women and girls. He purported that a lot of women and children are enticed into migrating to urban areas to work in domestic settings, but end up working either in bars as prostitutes or as domestic workers in working conditions that are either not conducive

or in work that is beyond the children's age and maturity. He further reported that traffickers take advantage of women and girls because of their already-existing vulnerabilities in their communities. He continued to assert that the cases are somehow limited regarding men and boys as victims. This resonates with earlier studies where it is argued that even though all people in society feel the results of these intertwined and intricate problems, women and girls are reported to experience a diverse form of dire consequences, which have lifelong impacts on their everyday lives.³¹

4.2 Approaches for addressing child labour and human trafficking

The panel shared the view that human trafficking, child labour and all other matters that can be classified as intractable problems of human rights can possibly be resolved through the existing laws. Nevertheless, it was argued that even in the presence of legal institutions meant to protect people from human rights abuses, access to justice is costly for ordinary citizens. It was noted that access to remedies through legal procedures require proper legal representation, which is often associated with exorbitant legal costs and transportation expenses, as well as a prevailing perception that legal matters involve prohibitive bureaucratic procedures. Thus, the entire purpose of having a legal framework is defeated, and human rights violations continue to rise. This opinion reflects the findings of a study that reported the factors limiting access to justice for minority groups include the lack of accessible structures, legal information and communication, as well as trained personnel, all of which contribute to denying justice to citizens.³²

Besides, the panel further contended that when alternative mitigating strategies against intractable problems are implemented, there has to be an engagement of the existing structures to fully understand the laws or these structures lest they feel that the laws are disruptive and alienated from their ways of doing things, which will lead to resistance and ineffectiveness of the laws.

31 FH Hando 'Internationalisation of post-1991 political reform-induced ethnic conflicts, cross-border contraband trade and human trafficking in Eastern Ethiopia' (2023) 14 *International Journal of Peace and Development Studies* 54.

32 B Malunga and others 'Access to justice of children with disabilities in defilement cases in Malawi' (2017) *African Disability Rights Year Book* 25.

Additionally, this panel emphasised that addressing the underlying issues affecting communities, such as a lack of meaningful education, environmental challenges and the engagement of existing cultural and societal structures, would be an alternative mitigation strategy for addressing child labour as an intractable human rights problem. It was shared that when communities do not see the need to send their children to schools that offer only soft skills that would not solve their immediate economic and social needs, they are prone to send their children into child labour practices, let alone be propelled to trafficking them. This reflection aligns with the ILO's recommendation to encourage programmes that promote skills development for youth as a strategy for preventing children from engaging in child labour practices.³³ Additionally, it is also in agreement with findings from the Food and Agriculture Organisation (FAO), where it was found that children living in areas experiencing economic instability due to environmental volatility are more likely to spend their time working for an income and being out of school than children whose communities have more robust environmental degradation resilience initiatives. It was therefore recommended that these root causes be addressed as a strategy for tackling child labour problems.³⁴

Furthermore, the panel discussed the role of language and its influence on change. This was in connection with the loss of cultural values and philosophies, which are argued to have been promoted by the colonisers. Thus, Sesanti advocates reinstating cultural values and recognising the symbolic meaning of the teachings and associated values of African society. These meanings acknowledge the respect and the role of women, their bodies and the respect of humankind. He, therefore, suggested that, apart from examining the legal implications and other determinants influencing intractable problems, a revisit and reclaim of ancestral teachings, aiming to challenge the misinterpretation and

³³ ILO 'About the International Programme on the Elimination of Child Labour (IPEC)', <https://www.ilo.org/ipec/programme/lang--en/index.htm> (accessed 24 October 2023).

³⁴ Food and Agriculture Organisation, *The relations between climate change and child labour in agriculture – Evidence on children's work trends after climate-related events in Côte d'Ivoire, Ethiopia, Nepal and Peru* (2023) 140, <https://doi.org/10.4060/cc6244en.4060/cc6244en> (accessed 5 September 2023).

misrepresentation of African culture perpetuated by colonial influence, needs to be given profound consideration.

It was further contended that in some instances, issues of child trafficking and child labour may border and threaten the people's way of life. Therefore, it becomes difficult to appreciate why some things are being questioned or denied. For instance, Wahu shared that in Kenyan societies, children have long been taken from rural areas to live with relatives in urban areas, where they work in these homes. Questioning this practice now as evil or incompatible based on some legal definition contrary to this way of life would raise questions that might be considered inharmonious in these societies' way of life. In this case, a consideration aimed at repackaging the meaning of these terms for the purpose of reaching a unifying, consensual understanding of them, so that they are compatible with the way of life of the people, needs to be taken. In this way, the communities will not feel that they are under attack and their way of life is being questioned.

Lastly, the panel asserts that numerous factors are making the law ineffective in addressing these problems. These include a lack of understanding of the laws and its enforcement, how laws are drafted, and their poor representation. In the same vein, there is a plurality of laws and norms that can either be used to promote or suppress the advancement of the rights of minorities, including issues of child labour and human trafficking. Whatever the case, a strategic reimagination of contextual and culturally compatible methods must be significantly considered in relation to African culture. However, this must be in line with the laws.

From the litany of implicated factors of child labour that this panel discussed, it seems to suggest that multiple players are implicated as influencers, enablers and gatekeepers in the fight against child labour. One would, therefore, conclude that if the challenge is to be contained, these stakeholders need to be involved in their own right as agents of change. Furthermore, it also displays that the contexts in which child labour happens are diverse. Thus, if the problem of child labour is to be resolved, these contexts have to be considered not as a one-size-fits-all approach, which would probably not work or might even exacerbate the plight of children involved in work.³⁵

35 MD Hoque 'Reviewing child labour and its worst forms: Contemporary theoretical and policy agenda' (2021) 6 *Journal of Modern Slavery* 34.

5 Conclusion and other key intractable human rights issues in Africa

In plenary after the panels, it was contended that several complex and persistent issues require attention, action and are worthy of being considered intractable problems, just as those in this project – LGBTIQ+ rights, child labour and human trafficking. Additionally, other problems share similar characteristics, such as racial discrimination and its relation to ethnicity, particularly in an African context. The treatment of indigenous communities, who may face pressure to conform to other societies and lose their identity, dignity and humanity in the process, is another pressing issue.

Furthermore, corruption was highlighted as a deeply entrenched problem that requires attention, since it affects many aspects of society. Despite efforts to combat corruption, including the appointment of religious leaders to head anti-corruption institutions, the problem persists and worsens. Corruption is not just a problem for politicians hiding their wealth in tax havens but also for healthcare workers who steal and redirect medicines to their private hospitals, leaving the poor and sick without access to necessary care. Unfortunately, it has been argued that corruption has been normalised in many areas of society, leading people to believe that accepting small tokens or favours is simply part of looking out for their loved ones. These issues are closely tied to problems of nepotism and require sustained attention and efforts to overcome.

Additionally, participants in the event contended that political literacy is a crucial issue that needs to be addressed, as it is linked to other intractable problems. Despite education and exposure in some African countries, politicians are still elected based on ethnicity rather than their policies, resulting in negative consequences. The participants, therefore, expressed that to address these issues, academia needs to provide empirical evidence of tried and tested methods of redress. Additionally, it was suggested that the power of positive media reporting should be considered, as people tend to be more attracted to negative stories than to positive developments that are changing people's lives. Thus, the media can create positive awareness through creative media channels to avoid retaliation and threats from reporting these issues.

Ultimately, there appears to be consensus that intractable problems are those that are challenging to solve and often elicit counterarguments from communities as efforts to address them gain momentum. Frequently, these counterarguments are compelling and appeal to a society's faith and shared beliefs. These problems are characterised by numerous legislations, institutions and guidelines aimed at curbing them, yet identifying and implementing practical solutions remains elusive. Furthermore, they require consensus and coordination as key elements for resolution, but this is often difficult to achieve. These characteristics are prominent in all human rights problems that can be considered intractable and include, apart from the three being tackled in this project, climate change, environmental degradation, sex work and the inherent rights involved in this industry, nepotism, and the death penalty.