

## Preface

*Frans Viljoen*

---

In 2023, the Pretoria University Law Press (PULP) launched the first in a series of PULP commentaries on African human rights law, with the publication of *The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa: a commentary (Maputo Protocol Commentary)*. Comprising more than 600 pages, the *Maputo Protocol Commentary* stands as a landmark shedding scholarly light on a trail-blazing treaty.

This, the second in the series, is devoted to the African Charter on the Rights and Welfare of the Child (African Children's Charter). It brings together 36 leading scholars from across Africa, and beyond, who share their insights and assessments on the provisions of the African Children's Charter.

The primary aim of the series of commentaries on African human rights law is to chart and critically consider normative developments within the African regional human rights system. Its format of open access article-by-article discussion holds the promise of providing an accessible source of updated information, and of wide dissemination to a variety of stakeholders. As an African-based and focused publisher, PULP strives to fill a gap by shining a light on African human rights instruments. Established publishers have only brought out one commentary of this nature that is focused on an African treaty (Rachel Murray *The African Charter on human and peoples' rights: A commentary* (Oxford University Press, 2019)).

These commentaries are also celebrations. It is therefore fortuitous that they are launched as part of broader celebratory events. In 2023, the publication of the Maputo Protocol commentary coincided with marking 20 years since the adoption of the Maputo Protocol. In 2024, the *African Children's Charter Commentary* is published to coincide with the landmark moment noting 25-years since the entry into force of the African Children's Charter (on 29 November 1999).

Admiration for their commitment and commendation for their tireless labour go to the co-editors of this commentary: Professor Julia-Sloth Nielsen, University of the Western Cape, Professor Elvis Fokala, Centre for Human Rights, University of Pretoria, and Dr Godfrey Odongo, Advisory Board, LLM in Children's Rights, Leiden University. All three of them are leading scholars on children's rights in Africa. They have brought their considerable expertise and experience to bear on this work.

PULP anticipates that this *Commentary* will be a pivot for the future evolution of the series. Further commentaries are already foreseen and planned on the African Union Convention for the Protection and Assistance of Internally Displaced Persons (Kampala Convention), the African Charter on Democracy, Elections and Governance, and the Protocol to the African Charter on the Rights of Persons with Disabilities in Africa, which entered into force on 4 May 2024, 30 days after the deposit by Congo of the fifteenth instrument of ratification on 3 April 2024.

Lizette Hermann manages PULP. Her contribution to this publication ‘goes without saying’, but cannot be left unmentioned. Isabeau de Meyer provided invaluable editorial assistance. Thanks and appreciation also to the 36 different authors, as well as the reviewers.

The top part of the front cover of this *Commentary* depicts the inscriptions on the wooden door of the South African Constitutional Court, Egyptian hieroglyphs, the University of Timbuktu, and the modern Library of Alexandria. These images represent the ambition of the *PULP Commentaries on African human rights law*, and this *Commentary*, to consolidate and stimulate inclusive and transformative knowledge-generation in and on Africa.

Frans Viljoen

Series Editor: *PULP Commentaries on African human rights law*

29 November 2024

## Contributors

---

**Julia Sloth-Nielsen** is an Emeritus Professor at the University of the Western Cape, South Africa. A former member of the African Committee of Experts on the Rights and Welfare of the Child (2011-2016), she has been involved on children's rights for more than 30 years. She has an extensive publication record of chapters, articles and books. She has convened various modules and courses on children's rights, and undertaken numerous studies. She has been involved in child law reform in more than 10 countries. Some of the authors of chapters in this volume are former students who graduated under her supervision. She is regarded as leading scholar on children's rights in Africa.

Email: [jsloth-nielsen@uwc.ac.za](mailto:jsloth-nielsen@uwc.ac.za)

<https://orcid.org/0000-0002-8315-1255>

**Elvis Fokala** is an Associate Professor and Programme Manager of the Children's Rights Unit at the Centre for Human Rights, University of Pretoria. He holds a PhD in Public International Law from Åbo Akademi University in Finland; an LLM in Multidisciplinary Human Rights Law from the Centre for Human Rights, University of Pretoria; and LLB (Hons) from the University of Buea in Cameroon. He has extensive and specialised knowledge of child law in Africa.

Email: [elvis.fokala@up.ac.za](mailto:elvis.fokala@up.ac.za)

<https://orcid.org/0000-0003-3631-0628>

**Godfrey Odongo** is a Senior Programme Officer at Wellspring Philanthropic Fund, a New York-based private grant-making foundation. He is an advisory board member of the Advanced LLM in Children Rights at Leiden University and author of several peer-reviewed articles and book chapters on children's and social and economic rights. He holds a doctorate in international human rights law from the University of the Western Cape, an LLM from the University of Pretoria and an LLB from Moi University.

Email: [godongo22@yahoo.com](mailto:godongo22@yahoo.com)

<https://orcid.org/0000-0001-8489-7502>

**Danwood M Chirwa** is Dean and Professor of Law at the University of Cape Town. He is a member of the South African Legal Practice Council, and between 2017 and 2022 served on the Board of Trustees for the UN Trust Fund on Contemporary Forms of Slavery.

<https://orcid.org/0000-0002-4199-9530>

**Seraphina Bakta** is a Senior Lecturer at the Faculty of Law, Mzumbe University in Tanzania. She holds a PhD in Child Justice from the University of Cape Town; an LLM in International Law from the University of Cape Town and an LLM from Mzumbe University. Her areas of research interest include child rights, criminal justice, restorative justice and climate change.

Email: [smbakta@mzumbe.ac.tz](mailto:smbakta@mzumbe.ac.tz)

<https://orcid.org/0000-0002-1011-4330>

**Karabo Ozah** is the Director of the Centre for Child Law and a Lecturer in the Department of Private Law of the University of Pretoria, South Africa. Karabo holds an LLB, a Certificate in Advanced Labour Law; LLM in Child Law (cum laude) and LLM (Constitutional and Administrative Law) from the University of Pretoria. She serves on the Advisory Committee of the South African Law Reform Commission's Project 100D on Care of and Contact with Children (incorporating Family Dispute Resolution). Karabo is also a member

of the Hague Working Group on International Parentage and Surrogacy that is tasked with researching the possibility of a Hague treaty to regulate international parentage and surrogacy.

E-mail: karabo.ozah@up.ac.za

<https://orcid.org/0000-0001-7715-3791>

**Robert Namina** is an Associate Professor at the Faculty of Law at the University of the Western Cape, and Head of Department, Criminal Justice and Procedure in Cape Town, South Africa. He lectures on Law of Evidence, International Anti-Corruption Law, and Anti-Corruption Law in the South African context. He is also a member of the African Committee of Experts on the Rights and Welfare of the Child, a Special Rapporteur on Children Affected by Armed Conflict and Chairperson of the Working Group on the Implementation of Decisions. He remains attached as research fellow with the Dullah Omar Institute, at the same university.

E-mail: rnanima@uwc.ac.za

<https://orcid.org/0000-0001-8825-3376>

**Admark Moyo** is a Senior Lecturer in the Faculty of Law at Stellenbosch University where he teaches Children's Rights and Advanced Family Law. He is an External Expert in the Working Group on Children with Disabilities, on the working groups of the African Committee of Experts on the Rights and Welfare of the Child. He serves on many boards of child rights organisations.

Email: admarkm@sun.ac.za

<https://orcid.org/0000-0003-2039-5612>

**Yehualashet Mekonen** is currently serving as the Director of the African Child Observatory Programme at the African Child Policy Forum (ACPF). He has worked for more than 28 years in policy research and development of methodologies and research tools. Mr Mekonen is the lead author of the African Report on Child Wellbeing series, a flagship biennial publication of ACPF that monitors the performance of African governments in fulfilling their obligations to child rights. He developed the Child-Friendliness Index (CFI), a quantitative framework for measuring government's performance in realising children's rights, and authored numerous papers, articles and reports focusing on children.

Email: mekonen@africanchildforum.org

<https://orcid.org/0000-0002-0501-5223>

**Retta Getachew** is the Manager of Child Development and Protection Programme at the African Child Policy Forum (ACPF). He has several years' experience working in the academia, development and human rights sectors in various capacities, including in senior leadership roles. At ACPF, Retta works on evidence-based policy advocacy and capacity building to advance child well-being in Africa. Retta also serves as an External Expert for the Working Group on Climate Change and Children's Rights at the African Committee of Experts on the Rights and Welfare of the Child. Retta holds the MSW in Social Work and MA in Disability Studies.

Email: getachew@africanchildforum.org

<https://orcid.org/0000-0001-6784-3203>

**Rachel Sloth-Nielsen** holds an LLB degree from the University of Stellenbosch and an LLM from the University of Cape Town. She is currently reading for a DPhil in law at the University of Oxford, where her thesis examines the child's right to cultural identity in the CRC. Her previous publications focused on children's rights and LGBTIQ+ rights.

Email: rachel.sloth-nielsen@st-annes.ox.ac.uk

<https://orcid.org/0000-0003-2036-5907>

**Thoko Kaime** is Professor and Chairperson of African Legal Studies at the University of Bayreuth. His work is an ongoing socio-legal critique of international legal arrangements, expressed through consideration of numerous critical issues in human rights and sustainability governance.

Email: [thoko.kaime@uni-bayreuth.de](mailto:thoko.kaime@uni-bayreuth.de)

<https://orcid.org/0000-0003-0710-1835>

**Shyreen Chirwa** is a doctoral candidate at the Centre for Human Rights, University of Pretoria, and serves as a Project Officer in the Children's Rights Unit. Professionally, her career spans over nine years of experience as a professional magistrate and assistant registrar for the High Court (Civil Division) in the Malawi judiciary. Her research interests are diverse, covering children's rights, criminal law and justice and climate justice, all aimed at advancing legal protections and equitable access to justice.

Email: [shyreen.chirwa@up.ac.za](mailto:shyreen.chirwa@up.ac.za)

<https://orcid.org/0009-0003-8375-3330>

**Opal Masocha Sibanda** is a legal researcher at the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child. She is currently pursuing an LLD degree at Stellenbosch University, having previously earned an LLM in Human Rights and Democratisation in Africa from the Centre for Human Rights, University of Pretoria, and an LLB (Hons) from the University of Zimbabwe. Her research is deeply focused on advancing children's rights, with particular interest in the digital environment, juvenile justice, and the intersection of children's rights with business practices, among other critical issues.

Email: [sibandaopal@gmail.com](mailto:sibandaopal@gmail.com)

<https://orcid.org/0000-0001-7523-8636>

**Ann Skelton** is the Chairperson of the UN Committee on the Rights of the Child. She is also a Professor of Law and holds the Chair on Children's Rights in a Sustainable World at the University of Leiden, and the UNESCO Chair in Education Law at the University of Pretoria. She established the strategic litigation work at the Centre for Child Law, and appeared as counsel in numerous landmark cases in the South African Constitutional Court.

Email: [ann.skelton@up.ac.za](mailto:ann.skelton@up.ac.za)

[a.m.skelton@law.leidenuniv.nl](mailto:a.m.skelton@law.leidenuniv.nl)

<http://orcid.org/0000-0003-4320-8904>

**Perekeme Mutu** is a post-doctoral fellow with the UNESCO Chair in Education Law in Africa, in the Department of Private Law, University of Pretoria, South Africa. He holds a PhD in Law from the University of Pretoria (UP); MPhil (UP); LLB (UNISA); BA (Honors) (UNISA); BA (UP). Dr Mutu has worked with the Southern African Development Agency; Child Rights Connect, a Switzerland-based child rights organisation as a consultant; and at the Centre for Child Law, University of Pretoria, as a legal research assistant. His research interest includes education law, international human rights law and children's rights.

Email: [perekeme.mutu@gmail.com](mailto:perekeme.mutu@gmail.com)

<http://orcid.org/0000-0003-1175-218X>

**Rongedzayi Fambasayi** is an independent consultant and extraordinary research fellow at the Faculty of Law, North-West University, South Africa. He has over a decade of experience as a children's rights lawyer, researcher and development/humanitarian expert, and has worked with various international organisations such as UNICEF, UN-Habitat, and the African Child Policy Forum, among others. Previously, Rongedzayi served as the Managing Director of Play Africa Group NPC – a pioneering children's museum in Southern Africa unleashing the power of play and creativity through contemporary and educational exhibits and arts. He is serving as a board member of the Association of Children's Museums (based in the United States of America). He holds a PhD in Law and Development from North-West University.

Email: [rongedzayi@gmail.com](mailto:rongedzayi@gmail.com)

<https://orcid.org/0000-0002-5154-0977>

**Shimelis Tsegaye Tesemma** is currently working as Director of Programmes at the African Child Policy Forum (ACPF). Shimelis has a Doctoral Degree in Education from the University of South Africa with a thesis focusing on critical policy analysis on education of children with disabilities. Shimelis has authored various books and journal articles on disability and has made technical presentations in global, pan-African and national forums on disability rights. Shimelis is the architect of ACPF's pan-African programme on children with disabilities. He currently is an external expert in the ACERWC Working Group on the Rights of Children with Disabilities.

E-mail: [stsegaye@africanchildforum.org](mailto:stsegaye@africanchildforum.org)

<https://orcid.org/0000-0002-3938-4107>

**Ebenezer Durojaye** is a Professor of Law at the Centre for Human Rights, University of Pretoria, South Africa. His areas of research include human rights, socio-economic rights, sexual and reproductive health and rights, gender and constitutionalism. He has written extensively in these areas. Between 2010-2020 he served as one of the independent experts to the African Commission on Human and Peoples' Rights HIV Committee. He has been involved in the drafting of important norms and standards in relation to socio-economic rights and sexual and reproductive health and rights in Africa. He is the editor/co-editor of a number of books in his area of interest.

<https://orcid.org/0000-0002-7182-4096>

**Nkatha Murungi** is the Acting Director of the Centre for Human Rights at the University of Pretoria, and a researcher in human rights with a keen interest in the rights of vulnerable groups, such as children, women and persons with disabilities.

Email: [nkatha.murungi@up.ac.za](mailto:nkatha.murungi@up.ac.za)

<https://orcid.org/0000-0001-8789-2811>

**Nqobani Nyathi** is a lawyer and doctoral candidate/project officer at the Centre for Human Rights, Faculty of Law, University of Pretoria.

Email: [nqobanin@gmail.com](mailto:nqobanin@gmail.com)

<https://orcid.org/0000-0002-0250-243X>

**Afua Twum-Danso Imoh** is Associate Professor in Global Childhoods and Welfare at the University of Bristol. Much of her work, which focuses on Ghana, explores constructions of childhoods; children's rights and social and cultural norms; parent-child relations; the impact of historical developments on constructions of childhood and child-rearing practices; and problematising the binary between the Global North and the Global South as it relates to childhood studies. She currently is an editor for the Palgrave Macmillan Study of Childhood and Youth Series, and editorial board member for Third World Quarterly, *Childhood: A Journal of Global Child Research and Children and Society*.

Email: [afua.twum-danso@bristol.ac.uk](mailto:afua.twum-danso@bristol.ac.uk)

<https://orcid.org/0000-0001-7158-9332>

**Jamil Mujuzi** is a Professor of Law, Faculty of Law, University of the Western Cape.

Email: [jdmujuzi@uwc.ac.za](mailto:jdmujuzi@uwc.ac.za)

<https://orcid.org/0000-0003-1370-6718>

**Conrad Nyamutata** is Senior Lecturer in International Law at De Montfort University Law School, Leicester (United Kingdom). He has previously worked as a senior journalist in Zimbabwe before studying law. He holds a doctorate in public international law, with a specialisation in international child law. His work examines the intersection between childhood, cultures and international law. His research focuses primarily on critical geographies of children's rights. He has published widely on international child law.

Email: [conrad.nyamutata@dmu.ac.uk](mailto:conrad.nyamutata@dmu.ac.uk)

<https://orcid.org/0000-0002-1177-8657>



**Lize Mills** joined De Montfort University Law School in 2022, after establishing her career in Family and Child Law at Stellenbosch University, South Africa, where she also obtained her doctoral degree. This research analysed the concept of the best interests of the child in the food marketing environment, while her current research focuses on the rights of victims of rape, parental responsibilities and rights, and issues of gender and sex in these contexts.

E-mail: lize.mills@dmu.ac.uk

<https://orcid.org/0000-0002-2810-0412>

**Usang Maria Assim** is an Associate Professor of International Human Rights Law, and currently serves in the Children's Rights Project of the Dullah Omar Institute, Law Faculty, University of the Western Cape where she undertakes research and teaching responsibilities at both undergraduate and postgraduate levels. She works in close collaboration with the African Committee of Experts on the Rights and Welfare of the Child, the Committee's partners, and other civil society organisations involved with children's rights in Africa and globally, contributing towards the fulfilment of the Committee's mandate. Among others, she is a member of the Advisory Council of the Independent Expert for the United Nations Global Study on Children Deprived of Liberty, and is a council member of the Global Campus of Human Rights – a network of over 100-member universities playing a leading role in human rights and democratisation education, research and advocacy. Thanks to Ms Favour Akanbi for her research and editing assistance in concluding this chapter.

Email: uassim@uwc.ac.za

<https://orcid.org/0009-0006-9919-6593>

**Precious Eriamiatoe** is an international lawyer and development professional with a background in international human rights law and international humanitarian law. Her professional expertise cuts across working with government, civil society, multinationals, extractive host communities and people affected by armed conflict and violence. She has worked on a range of issues such as sexual and gender-based violence; business and human rights; missing persons and their families; internal displacement; accountability to affected populations; and children's rights; in different contexts including Nigeria, South Sudan, Israel and the Occupied Territories, and Iraq.

<https://orcid.org/0009-0001-0725-9096>

**Meseret Ande** is a postdoctoral researcher at the Dullah Omar Institute for Constitutional Law, Governance and Human Rights, at the University of the Western Cape, South Africa. She holds an LLD in International Human Rights Protection from the University of the Western Cape. Her doctoral thesis examined the right to alternative care of children with disabilities in selected jurisdictions in Africa. Previously, she served as a technical expert at the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child.

Email: mesikifle@gmail.com

<https://orcid.org/0000-0002-8585-5715>

**Thandeka Khoza** is a researcher at the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC). She is an Advocate of the High Court of South Africa and is currently reading for her LLD at the University of the Western Cape. She also holds an LLM (Human Rights and Democratisation in Africa), LLB and BA (Law) from the University of Pretoria. Thandeka's research areas include international human rights law, constitutional law, the rights of the child and education law.

Email: thandekanokwandakhoza@gmail.com

<https://orcid.org/0000-0001-6107-5290>

**Charissa E Fawole** is a Lecturer in the Department of Public Law at the University of Johannesburg. She holds a BA (Honours) in International Relations and Development Studies and a JD from the University of Windsor in Canada. She obtained the LLM and LLD degrees from Stellenbosch University. Her research focuses on

international children's rights law and forced migration with a focus on Africa. She is a member of the Global Network on Internal Displacement in Africa (GENIDA).

Email: [charissaf@uj.ac.za](mailto:charissaf@uj.ac.za)

<https://orcid.org/0000-0001-7721-5788>

**Lukas Muntingh** was appointed as Director of DOI with effect from 1 January 2023. He is also the co-founder and Project Coordinator of Africa Criminal Justice Reform (ACJR). He holds a PhD (Law) from University of the Western Cape and an MA (Sociology) from Stellenbosch University. He has been involved in criminal justice reform since 1992. He has worked in Southern and East Africa on child justice, prisoners' rights, the prevention of corruption in the prison system, the prevention and combating of torture, and monitoring legislative compliance. He has published extensively and presented at several conferences. His current focus is on accountability and the prevention and combating of torture and ill-treatment of people deprived of their liberty.

<https://orcid.org/0000-0003-4447-9538>

**Ayalew Getachew Assefa** is a Principal Child Protection Officer at the African Union – African Committee of Experts on the Rights and Welfare of the Child (ACERWC). He holds a Doctor of Laws degree in Human Rights from the University of the Western Cape, and a Master's degree in Human Rights from the University of Pretoria. He has also worked as a lecturer of law at Mekelle University College of Law and Governance, Ethiopia, where he held teaching, research and project management positions.

**Adiam Zemenfes Tsighe** is a senior legal researcher at the Secretariat of the African Committee of Experts on the Rights and Welfare of the Child (ACERWC). She is LL.D candidate at the University of the Western Cape and holds an LL.B on Human Rights and Democratisation in Africa from the Centre for Human Rights, University of Pretoria.

Email: [AdiamZ@africa-union.org](mailto:AdiamZ@africa-union.org)

**Rachel Murray** is Professor of International Human Rights Law at the University of Bristol and Director of its Human Rights Implementation Centre. Rachel undertakes regular work on the African human rights system, implementation of human rights law, OPCAT and torture prevention, among other areas. She was formally the Vice-Chairperson of the board of the Institute for Human Rights and Development in Africa; is a Fellow of the Human Rights Centre at the University of Essex; Global Distinguished Professor of Law at the University of Notre Dame London Law School; Visiting Professor at the University of Oxford; and Deputy Leader of Doughty Street Chambers' International team. She is also a magistrate sitting in Bristol.

Email: [rachel.murray@bristol.ac.uk](mailto:rachel.murray@bristol.ac.uk)

<https://orcid.org/0000-0003-4077-9381>

**Frans Viljoen** was Director of the Centre for Human Rights, Faculty of Law, University of Pretoria (2007-2023). He currently is a professor of human rights law at the Centre for Human Rights and is the interim NRF SARChI Chair in International Constitutional Law. His area of research is regional human rights protection, with particular attention to the African Union human rights standards, institutions and processes. He is the author of a leading text on the African human rights system, and is the founding editor of the African Human Rights Law Journal and the African Human Rights Yearbook. He is a member of the Advisory Committee of the UN Human Rights Council. The comments by Elsabe Boshoff and Ayalew Getachew and the research assistance of Joshua Nduku are acknowledged with appreciation.

Email: [frans.viljoen@up.ac.za](mailto:frans.viljoen@up.ac.za)

<https://orcid.org/0000-0003-0551-0109>

**Amy Tuchten** currently is a candidate attorney at Richard Spoor Inc Attorneys, a human rights and public interest litigation firm based in Johannesburg, South Africa. She holds an LL.M in Human Rights and Democratisation in Africa from the Centre for Human Rights, University of Pretoria and a BA and LL.B from



the University of Cape Town. She has previously worked at the African Children's Committee, the Centre for Child Law, University of Pretoria and at South Africa's Constitutional Court.

Email: [amytuchten@gmail.com](mailto:amytuchten@gmail.com)

<https://orcid.org/0009-0001-1638-2192>