



## AFRICA RIGHTS TALK - SEASON 2 EPISODE 3

### The UNCRC and its practical implications in the African context *In conversation with Advocate Karabo Ozah*

*Africa Rights Talk is a [Centre for Human Rights podcast series](#) exploring human rights through conversations with academics, practitioners and activists. The Africa Rights Talk series is hosted by [Tatenda Musinahama](#). Each episode offers insight into the African human rights system and the state of human rights in Africa, and globally.*

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Tatenda: So today we are just going to be talking about the UNCRC. And this discussion is going to be based on commemorating the UNCRC at 30 years. So can you just tell us and the audience what the UNCRC is?

Karabo: Okay, so the [United Nations Convention on the Rights of the Child](#), that's the full name of it. It's actually the first treaty that recognised children as individual rights holders, so it provides for children's rights, and it turns rights that are enforceable against the state against the parents. It was the first time that countries in the world agreed that children's protection and promotion of their well-being necessitated a treaty that recognised the specific rights of children.

Tatenda: What effect does the UNCRC have? What does it speak to in terms of regarding children as individuals with certain rights?

Karabo: When you read about the history of the UNCRC itself, you can trace how there where those debates about what we need to move from a welfarist approach only in relation to children but actually recognising them as individual rights holders. So that's why with the UNCRC basically people always talk about four principles which includes best interest, life and development. But most importantly, one of them is child participation. It actually is very important to ensure that whatever these rights are, children are recognised as the rights

bearers. And the only way to try and to ensure that they are participating or they're represented in discussions about their lives [and] about things that affect them. That is one of the important aspects of it, that is ensuring that we are not having a treaty that says we recognise children's rights while the only way to enforce it is through other people. We actually think that it's very important to have children speak for themselves, about their own lives and whether the rights we say they have are being realised or not.

Tatenda: It's very important that you mentioned the issue of child participation. How exactly are children participating in ensuring that their rights are realised?

Karabo: Well I think generally child participation means that even in the house, when you're going to make a decision about whether you're moving or not, or whether you are buying a certain product or not, and it affects the children, you should have discussions with them. But from a legal perspective as well as administrative perspective, it means that if you are going to take steps; let's say you have a school and you want to build a bridge, you need to include children in discussions about how that bridge will enable them to get to school or what kind of impact it will have in their lives. We know also through this right to participate includes being able to be legally represented in matters that affect children. So those are two different ways.

But I think what we must emphasise is the fact that it's not only about being heard in legal and administrative processes. It means that every day even in school, if the school is deciding to change something they actually ideally should be asking the is, "We want to change the schools in terms of such and such. How will this affect you? Do you agree or not? And if not, why?" So it requires a lot of mindset shift in relation to how people engage with children and reminding them that just because they are children, it doesn't mean that you can take decisions without even asking for their opinion, even if in the end the children's opinion doesn't carry the day. This is something very important that we emphasise, that it doesn't guarantee what suits them but it means they would have been heard, and you considered whatever they said in whatever decision you make.

Tatenda: That's a very important point that you raised because the issue wasn't necessarily children's rights. It was more for discussion of whether children have rights to begin with. So most children's rights organisations have done a lot of work in making sure that these rights are recognised. So can you explain to the audience what the Centre for Child Law's work is?

Karabo: So we do advocacy, research, and importantly, litigation on children's rights. That means that we take either individual cases for children or we represent a group of children when children's rights organisations are doing work that needs

to be taken to court on behalf of children. So that's how we engage with children's rights. The [Centre for Child Law](#) has been there for 20 years and the first case the Centre did actually was representing a child who was caught up in a divorce matter and did not want to see one of the parents. And from the legal representation she got from the Centre, she got what she wanted, but it was actually more about making the one parent recognise that the child is an individual and you can't say you (the child) will come to my house on this and this day even when it interfered with the child's schooling and the extramural activities. It is funny because the child and the parent end up reconciling, but once you realise that actually, maybe I should have listened to what she was saying because you can't say because the court order said I must come see you on Monday, Wednesday and Friday now on Wednesday I must miss my choir practice.

So it requires pragmatic thinking. And I think that's what we try to do with our work. We don't just focus on a win in the court. But it's actually that shifting of mindsets that sometimes also requires that after we get a successful court order, we do a lot of work on the ground, trying and make people understand why we did a certain case.

Tatenda: That's interesting, because most parents today, regard children as objects, to be honest, as much as we have made efforts to ensure that children's rights are recognised children are not consulted as far as issues that really affect them are concerned. And I think what you mentioned there, the work of the Centre for Child Law is really doing so well in making sure that children are heard and then even as parents change their approach to handling children, they do consider the opinions of children as well. So I just want to find out how relevant is the UNCRC? How many countries have ratified it?

Karabo: Well, I think then CRC has proven itself to be one of the most important treaties in the world, because the only country that has not ratified it is the United States. So all the countries of the world have ratified it. And that means that they have to now try and align their laws and the policies and their processes with the obligations that come with being a treaty member. So already, a lot of countries have actually started trying to align. And I must mention that, you know, in South Africa, the UNCRC was the first treaty that after the end of apartheid was ratified. Nelson Mandela signed it as the first treaty and it influence the rights that we have in the constitution. So it has had an impact, and it has on a lot of countries.

Tatenda: So most of the criticism and debate that has come with the UNCRC, particularly in the African context is that it's not Afrocentric. So my question relates to the approach of the UNCRC to cultural relativism.

Karabo: I think some of the criticism might be relevant but I think also in the African continent, we have the [African Charter on the Rights and Welfare of the Child](#). And the funny thing is that on most of the issues, the Charter and the Convention are not dissimilar, they actually have a similar approach. The thing that's strong in the African Charter is that it does focus on what we can term you know, African problems that were not included in the UNCRC. And that that is very important, because there are very important aspects that were not included in the UNCRC that African Charter is strong on. I do think, though, that to say that maybe the Convention is not Afrocentric in issues that relates to how you discipline children is not entirely correct, because the Charter itself has provisions in relation to how we must correct children in a humane way, and how we must not treat children in a degrading way. And those things link with issues of whether you use corporal punishment or not. So if you read the Charter properly, and you read the Convention on these issues, they're more aligned, because all its saying is that there are other ways of disciplining children and also you've undertaken to not treat your child in a way that is dehumanising, in a way that's degrading, in a way that is harmful to the physical, mental well-being.

I mean, generally, there are some issues that the CRC is weak on. So on the issue of children's responsibilities, there's no provision in this CRC about responsibilities of children. It's a very controversial aspect but it has been unpacked in a general comment in relation to that from the African Charter to try and emphasise the fact that we recognise that this does not give leeway for children to be overburdened. They still are children, but we have this provision that says that we must be teaching them to be responsible. And I think that the most important thing that we must start with- that all these provisions at the end of the day are tools for parents to actually make sure that they enhance what they put into the child's development. So if you look at it from that way, whatever you're going to end up getting out in the end is what you put in.

So on harmful practices, obviously, the Charter is very strong. And it's clear on for instance, saying that the age of consent to marriage is 18 without exceptions, which is not something that is in the CRC. You have a very important provision that the CRC and the Committee learned a lot from- which is the article that says that before you imprison a mother of young children, you must consider the impact on the children and all that. In South Africa, it led to a very seminal judgement that has been used worldwide. So the African Charter has quite a lot of strong provisions that if you read it together with the CRC they actually enhance the protection. And actually I think we benefit from having both on the continent.

Tatenda: That's fantastic. So, okay, I hear that part. But then now, it's easy for us to make laws and certain treaties that look good on paper but in practice, it's very

difficult to apply. As much as parents would like to engage and put these laws into practice, somehow there seems to be a distinction and friction between now children being aware of their rights and taking away the responsibility of parents to ensure that these children are made responsible, these children are disciplined in inhumane ways. So my question comes down to this- how best can we make sure that these laws are translated to mean something that's practical in the home?

Karabo: I think the first thing we must do is dispel the notion that saying that children have rights means that parents are disempowered. For me, like in South Africa, I always say to people tell me which right in the constitution, with Section 28 in particular, is making it a problem for you to actually raise your child way you want to? And I think people don't reflect that it is always easy to get off the cuff kind of response. I agree with you, that we still have to be practical. So what we need to do is that apart from having the provision in the law, we must start having ways that will guide society. It's a very difficult thing but it means that you have to have- some organisations that are doing this kind of work, they will do a manual on positive parenting they and they will have free workshops for people to be taught how to deal with conflict in relation to their children.

And I do think that we also need to, as we do already remind children that, yes, we have your rights, but rights come with responsibility. You have to be responsible for yourself, to be responsible and respect yourself and respect others and respect your parents. So you have to always be doing that dual work. And I think maybe one of the shortcomings that was there is that as the movements, were promoting children's rights, we forgot to engage in depth with the parents, and their fear of children's rights is more about the fact that they don't understand them rather than actually, on paper, there's a problem with the rights [themselves]. There isn't. I think we need to engage with parents and give them tools, and empower them to not have this fear, and also to empower them to know where to get help if they're struggling. So that is where the work needs to come in relation to children's rights- it's to engage and invite people because in the end you want you to be the best parent for your child, [it's] not to penalise you for your shortcomings or anything. You'll have that holistic approach.

Tatenda: When you're looking at the South African context, learners have been attacking their teachers. How do these treaties and laws bridge the gap now to replace certain forms of discipline that children used to understand and implement the ones that are recommended as humane in the Charters?

Karabo: Well, I think the idea that, children understand corporal punishment as discipline, for me, I would not agree with that. And just to give you a quick example, I went to a meeting about corporal punishment where we had

somebody who was one of the young people who were protesting against apartheid government in 1976, and he told us the story of how teachers were instructed to beat them in schools, and they'd say to the teachers, well, if you start beating us, we're going to have to beat you back. So I think we must also remember the difference [in] generations and to say that the one generation understood corporal punishment as the way of discipline, and now they want to continue that in the current generation is one of the reasons why we might be having issues.

But again, in the South African context, Tatenda, the big problem is studies are showing the relatedness of violence in the home [and] in the school. I think your point that you said early on about the practical tools is the problem. So you had 1996- we had the schools act adopted which outlawed corporal punishment in the school. But I don't think enough was done to equip teachers on alternatives. I don't think enough was done to say, "Well, this is how keep the discipline. And also when you have children who have parents who are not there to help- we know we have high rates of divorce, we have families led by grandparents, or single parents. Those societal issues also play into that. And I think a lot of investment needs to go there. But in the schools, I think there has been some projects to try and promote positive discipline. I still believe that not enough has been done there. Something urgent needs to be done in relation to that. We must also not divorce it from the fact that our society in South Africa is quite a serious problem with violence.

Tatenda: What other forms or alternatives can you give, as far as I'm discipline is concerned?

Karabo: Well, I mean, I think there has to be context bound. So I mean, in schools with the big issues are getting demerit systems and training teachers-apart from punishing the learners- to handle conflict in classes. We must also not forget we have a lot of children who have problems in class and may misbehave because they have a learning disability or learning challenge. And if we're not equipped and teachers are not equipped to understand that and to get intervention that's necessary for that, things have a tendency of escalating. So I think there's a need to come up with training. When teachers are in teachers colleges, they need to start being taught about how to handle conflict between students, I think there's a lot of work that can be done with psychologists and in empowering teachers as they are in training.

Also, there's a need for continuous training. You have to have continuous training. Teachers must have spaces also to debrief about the challenges because you have to be adaptable. If you start seeing that in a specific township or specific area, the learners are acting in a certain way, maybe there's a problem in a small community that you're missing. And by trying to just

use corporal punishment you won't get to that (the root of the problem). Maybe all of them are coming from homes where they don't have enough food. And we don't end up getting them help.

I'm not saying that teachers are always wrong but I'm saying that I think we need to invest a lot in helping everybody who works with children and giving them resources, because it takes a lot to actually make sure that children are understood and given the help. And you also help the children by helping those who work with them.

Tatenda: Absolutely, and I do agree with you, and you did raise a very important point, as far as resources are concerned. So has the South African government been engaging as far as providing these resources?

Karabo: That's a crucial question because also, sometimes you find that countries have resources, but they are just misusing them. In South Africa, we have a mixed bag. We have shortages of classrooms in the Eastern Cape province where children are learning. And then you read that that very province sends money back to treasury, and that they underspent. The problem in South Africa, I think is the issue of accountability rather than resources. I really think that in South Africa the resources are there [but] people are not accountable. People think you can take 20 years to sort out children's rights issues that actually need an immediate solution. I always say that, for instance, with the sanitation issue, in the schools where children falling into pit toilets- to say that you will sort it out in 20 years is saying that all the children currently [learning in these circumstances] don't matter, right?

It's very important for all of us to start engaging with the budgets and to question how budgeting happens. In our governments most of the time, that is, the budget does not align with what is needed. But we can do a lot more in relation to how we hold government accountable. When people send money back and underspending when children are still learning under trees there needs to be repercussions. We can't just say it's okay then next year, they get more money don't sort it out.

What I've seen from reading work on other countries is that sometimes you find the countries that you think are the poorest on the continent actually do far better on children's rights implementation because with their small budgets they prioritise and they are able to do and they focus. So my issue there is that it doesn't necessarily mean because you are smaller, and maybe considered slightly poorer as a country, you can't achieve what you need to for children. It's about focus. As I say, in South Africa, our accountability and the use of resources is really very appalling. We shouldn't be having some of the challenges we're having in relation to implementation of children's rights.

Tatenda: That's a very good point. Because after all, children are the future of tomorrow. So if we invest in children, we're definitely investing in a better and brighter future for our country. South Africa is facing- I'd like to say it's a crisis, as far as dealing with migration is concerned. How is the welfare of migrant children in South Africa.

Karabo: So the starting point is that actually migrant children, particularly if they are unaccompanied are supposed to be treated children in need of care and protection, we are supposed to be take them into our care and protection system, provide them with education, see if you can reunify them with their families or not, and where you can't you have to keep them in the country and provide them with documentation. Obviously, as you say, there are a lot of challenges with implementing that. We know also that when children are migrant and irregular migrants with their parents, they're being denied access to education, they're being denied access to health[care].

Recently, we did a case in relation to access to education, which funny enough, did not only affect migrant children, but also South African Children who don't have birth certificates. We were saying that it shouldn't matter whether children have documents or not, you should allow them to be in schools. And if they are migrant children, well, if the parents and the children get deported, that's when your obligation to educate them stops. But as long as they're here, you should be allowing them to be in school. In some quarters it's not a popular argument. But the point is that if we don't do that, we are saying that there are children who must just be left to be idle. And how are we developing them, how we actually upholding all these commitments to the UNCRC in relation to those children? And if they are not going to leave our country we are saying actually we are fine with having members of our society in this day and age who are not educated, cannot read and cannot write and we're fine with it. And I think that's why we are challenging this notion of using documentation or whether people are regularised or not using it as a way to keep children out of services.

Tatenda: So how can we measure the impact of the UNCRC?

Karabo: That's a very important question. Because after all, it's all about implementation. So I think one of the important things to remember is that the UNCRC itself has a reporting mechanism. So there's duties on countries to report on how they're advancing the rights. And that requires governments to actually write reports and say we've this and that. So that's how they are monitored. And that's also how also civil society monitors government. We are using it in advocacy as well. It's another important way of making sure that as legislation is being drafted, countries are thinking about the obligations. We



mentioned corporal punishment, I think that's one of the areas where the CRC and is being used for advocacy and to try and convince countries to promote positive discipline and other alternative discipline methods. So I think looking at that, particularly in South Africa, we've made some traction and making sure that it's visible, it means something and is having that impact of shifting things.

Tatenda: You mentioned a reporting structure as far as the UNCRC is concerned. Is it not susceptible to politics?

Karabo: Well politics play in to it. You know, they have a committee of experts that are nominated by the countries, but when the committee they don't represent a country, they are independent experts. But obviously, these are political issues. And I think countries go and present the report, civil society report and the committee makes concluding observations, which are not necessarily binding. Politics maybe does play into it, but from what I've seen, and the reports that come out, the Committee also looks at, you know, they are aware of how far they can go or not. So in the end, it's recommendations.

Tatenda: What challenges have you faced in your work as far as dealing with and implementing the UNCRC?

Karabo: Yeah, I think it's exactly what you're saying about the fact that countries go and narrate and they say, well, we'll do 1234 and then concluding observations come and we as organisations on the ground, very important, because once they concluding observations are out the Committee is sort of done for them. So as the people on the ground have to hold government accountable. And that's what we try to do. So the challenges we face is that after that process, you do find that maybe there is lack of commitment from the country to actually you know, account or even consider implementing those, those concluding observations, and you find that sometimes it's a bit tricky. And you know, once in a while you get the old line that you "We have our own sovereignty" but you ratified so it is a challenge on the ground.

Tatenda: Thank you so much Karabo. This was a very informative discussion and it did give a picture of what the UNCRC is. You did explain to us its purpose and its value in society. Thank you so much.

Karabo: It's a pleasure. Thank you for having me.