

Chapter 25

Article 24

Adoption

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States parties which recognise the system of adoption shall ensure that the best interest of the child shall be the paramount consideration and they shall:

- (a) establish competent authorities to determine matters of adoption and ensure that the adoption is carried out in conformity with applicable laws and procedures and on the basis of all relevant and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and guardians and that, if necessary, the appropriate persons concerned have given their informed consent to the adoption on the basis of appropriate counselling;
- (b) recognise that inter-country adoption in those states who have ratified or adhered to the International Convention on the Rights of the Child or this Charter, may, as the last resort, be considered as an alternative means of a child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

- (c) ensure that the child affected by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that in inter-country adoption, the placement does not result in trafficking or improper financial gain for those who try to adopt a child;
- (e) promote, where appropriate, the objectives of this article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework to ensure that the placement of the child in another country is carried out by competent authorities or organs;
- (f) establish a machinery to monitor the well-being of the adopted child.

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1 Introduction

This chapter covers adoption as provided for above. It deals with both domestic adoption and inter-country adoption. After explaining the context within which adoption falls in Africa, including links to diverse child care patterns and to alternative care reform, it explains links to other Charter articles, whereafter links to other human rights treaties are highlighted. Then a legal analysis of the text of article 24 is undertaken, followed by a selective analysis of the African Children's Committee's jurisprudence on the topic at hand. A conclusion wraps up the discussion.

2 Context

In any discussion on adoption, it is important to appreciate the historical elements that inform child care patterns, and especially alternative child care, in the African context. This first part of this chapter aims to illuminate the various social, cultural, political, religious and economic factors underpinning the development of adoption practices in Africa, and how these have variously influenced the jurisprudence on adoption, as well as the text of the African Charter on the Rights and Welfare of the Child (African Children's Charter). The role of the private sector (non-governmental organisations (NGOs), religious organisations and charities) in adoption in the African context is also contextualised, and the position in relation to inter-country adoption, as mandated by articles 24(b), (c) and (d), is examined.

There is no uniform approach to child care in Africa. Child care is influenced by culture, religion, social and traditional norms, and various other factors. Adoption remains a cultural import from colonial times, and African practice favours customary adoption¹ and other informal forms of kinship care in preference to severance of legal ties to biological parents, which is the usually-defining characteristic of adoption. Furthermore, despite attempts by African governments to reign in inter-country adoption through the imposition of moratoria and ratification of the Hague Convention on Inter-country Adoption (1993), unscrupulous agents and individuals are in a constant battle to evade these apparent controls.

African childcare practices are premised on the idea that children are a source of wealth for the African family and, as such, adoption generally is not in alignment with African beliefs or African practices. Moreover, it is perhaps inaccurate to centre adoption as an African mechanism for alternative care at all. Doing so detracts from cultural practices that privilege the importance of kinship care, and the central role of the extended family, which serves to preserve the 'wealth of the family' that children embody. Since children represent this wealth in African culture, it should be self-evident that child care in Africa revolves around the preservation of the child's ties with the family.²

In cultural terms, adoption (as conventionally understood) also severs important ancestral ties, as it removes the child from the clan or tribe of origin. Maintaining the links with ancestors is a fundamental value in traditional African culture.

1 Customary adoption is widely practised in Africa. In countries such as Ethiopia, Burkina Faso, Liberia, Kenya, Botswana and Malawi, among others, the practice of customary adoption is routinely observed. The practice has occasionally drawn the attention of the CRC Committee, such as in regard to The Gambia. The African Children's Committee has on one occasion commented on customary adoption: '[T]he issue of traditional child fostering arrangements and exploitation of children as a consequence of informal adoption is not regulated. Thus, Liberia should set a mechanism to ensure that all adoption set ups warrant the best interest of the child and expedite the enactment of adoption law that has sufficient provisions to discourage or regulate informal type of adoptions or traditional fostering arrangements.' Concluding Observations Liberia (2014), https://www.acerwc.africa/sites/default/files/2022-06/CO_Liberia_Eng.pdf (accessed 27 January 2022). See in general UM Assim *Understanding kinship care of children in Africa* (2015).

2 B Mezmur 'Inter-country adoption in an African context: a legal perspective' unpublished LLD thesis, University of the Western Cape, 2009 46.

Although it is not directly mentioned in the African Children's Charter, kinship care alludes to the role of the extended family in African communities and it is the form of alternative care that predominates in African societies.³ The extended family is comprised of a larger concept than the nuclear family, which is commonly accepted as the dominant family form in Western societies. In kinship care, a relative other than the biological parent becomes the primary care giver of a child.

The recognition of the role and importance of kinship care has significant implications on questions relating to adoptability, on consent to adoption and on the preservation of cultural heritage. Domestic adoption, as understood in the conventional legal definition, has been received into African legal systems over many years, chiefly through adoption legislation enacted under colonial rule.⁴

Poverty of parents is a widespread driver of abandonment of children and their placement in alternative care settings, such as charitable institutions and orphanages. The links between orphanages and adoption are referred to below.

Adoption in Africa must also be considered with reference to the Islamic laws, as such shari'a law, which governs alternative child care in Muslim communities. Full adoption, as understood in the Western context, is prohibited under Islamic law and as such is not permitted under the domestic law of some Islamic countries, such as Mauritania and Zanzibar.⁵ However, article 24 applies only to states that recognise the system of adoption.

Traditionally, many welfare services in Africa have been provided by private sector institutions, such as religious organisations and charitable or benevolent societies. This applies equally to services related to adoption, such as caring for orphaned or abandoned children and availing them for adoption. Examples in point are Malawi, Ghana, Nigeria, Kenya, South Africa, Zimbabwe and Ethiopia. The link between 'orphanage tourism'⁶ and adoption, especially inter-country adoption, has been well documented, and the mushrooming number of such institutions is widely attributed to this lucrative market.⁷ Malpractice and unethical behaviour in adoptions is magnified when authorities do not have the capacity to regulate and enforce laws and other standards.⁸

Many countries in Africa have embarked on alternative care reform, focusing on deinstitutionalisation of children in residential care, and better regulation of the alternative care sector. This is part and parcel of implementing the United Nations (UN) Guidelines on the Alternative Care of Children

3 See chs 19, 20 & 21 in this *Commentary*.

4 Mezmur (n 2) referring (among others) to the 1952 Act of Swaziland, the Adoption of Children Act 25 of 1923 of South Africa, and the Adoption of Children Act 1926 of Zambia, followed by the Adoption Act Cap 54 of 1956, which was modelled on the 1950 British Adoption Act, as examples. Tajudeen notes that the first adoption legislation in Nigeria was enacted in the then Eastern Nigeria in 1965, and was known as the Eastern Nigeria Adoption Law, 1965 which came into force on 20 May 1965. This law applied in Anambra, Imo, Ebonyi, Abia, Rivers and Bayelsa states. In 1968 an adoption law was promulgated for Lagos state. Subsequent to this, other states followed with their own laws. There are many similarities in these laws, just as there are some striking similarities between the Nigerian laws generally and the English Statutes on the topic. O Tajudeen 'Adoption practice in Nigeria: An overview' (2013) 19 *Journal of Law, Policy and Globalisation* 7.

5 In the Children's Act of Zanzibar, 2011 only non-Muslim children are eligible for adoption (sec 76(1)).

6 K Cheney & S Ucembe *The Orphan Industrial Complex: The charitable commodification of children and its consequences for child protection in disadvantaged childhoods and humanitarian intervention* (2019).

7 See eg KS Rotabi, JL Roby & KM Bunkers 'Altruistic exploitation: Orphan tourism and global social work' (2017) 47 *British Journal of Social Work* 648.

8 ISS/IRC *Responding to illegal adoptions: A professional handbook* (2016), https://www.iss-ssi.org/images/advocacy/Illegal_Adoption_ISS_Professional_Handbook.pdf (accessed 27 January 2022). Most recently, in May 2024, a US couple operating in Malawi were accused of raking in millions of dollars in a scheme designed to convince donors to support orphaned children in Malawi, <https://allafrica.com/stories/202405300060.html> (accessed 2 July 2024).

(2009),⁹ which have been widely accepted in African states.¹⁰ Adoption is an element – albeit a small one – of the overall care reform initiative,¹¹ as adoption can provide a permanent family for a child without parental care.

Inter-country adoption started as a North American philanthropic response to the devastation of Europe in World War II that resulted in thousands of orphaned children. By the 1980s, however, inter-country adoption had begun to be driven as a solution to the problem of childless couples. When some sending countries tightened their inter-country adoption practices, the focus turned to Africa. In 2012, such was the increase in inter-country adoption from African countries that it was designated ‘the new frontier’ for inter-country adoption¹² – it was (and is?) highly doubtful that the continent is adequately equipped to provide its children with the necessary safeguards and to protect children’s best interests in respect of the practice.

3 Links to other Charter articles

The Preamble to the African Children’s Charter purports to take into consideration ‘the virtues of their [African member states’] cultural heritage, historical background and the values of the African civilisation which should inspire and characterise their reflection on the concept of the rights and welfare of the child’.¹³

Although the above statement is applicable across a wide variety of contexts, in the sphere of inter-country adoption, it might be seen to underpin the concern that this practice deprives adopted children of their cultural links when they are removed from Africa, particularly to the Global North.

Article 19(1) (discussed in chapter 20 of this volume) gives every child the right to the enjoyment of parental care and the right to reside with their parents wherever possible. Since adoption ordinarily severs the legal tie between birth parents and the adopted child, adoption must be understood as an exception to article 19(1), save that the child acquires the right to enjoy parental care with the ‘new’ parents.

Ongoing debates remain in the international arena around the child’s right to identity, encapsulated in article 8 of the Convention on the Rights of the Child (CRC) (preservation of identity, including name, nationality and family relations). This article does not have an equivalent in the African

9 UN General Assembly A/RES/64/142 (23 February 2010).

10 See, eg, the 2022 Ethiopian Alternative Care Directive and the 2023 Nigerian Alternative Care Guidelines (copies on file with the author). See also UNGA Resolution A/RES/74/133 on children without parental care, https://bettercarenetwork.org/sites/default/files/2020-01/A_RES_74_133_E.pdf (accessed 2 July 2024).

11 Data from Rwanda shows that while 66 children were adopted as result of the care reform programme, 1 440 children were placed in kinship care, 628 were reunited with biological parents and 522 were placed in long-term foster care. Care Reform in Rwanda 2012-2018: Processes and lessons learnt (National Commission for Children, USAID and UNICEF (2019).

12 Guidelines on inter-country adoption in Africa. The Guidelines were developed and published by the African Child Policy Forum in 2012, <https://africanchildforum.org/index.php/en/sobipro?sid=226> (accessed 23 April 2024). They have been alluded to by the African Children’s Committee as a framework for advising states in Concluding Observations.

13 Culture, and cultural identity, occupy an elevated place in the majority of African societies. Therefore, taking culture into account in inter-country adoption is inevitable in order to protect the identity rights of African children. However, it has been argued that culture cannot, and should not, be used as a smokescreen to deny children their right to grow up in a family environment, when that family can only be found abroad. Eg, it has been argued that using the concepts of ‘continuity’ and ‘background’ under art 20(3) of CRC and art 25(3) of the African Children’s Charter to support the case for the primacy of cultural identity, and serve as a ground for prohibiting or undermining inter-country adoptions as an alternative means of care, is not valid (Mezmur (n 2) 480).

Children's Charter, although it may possibly be derived by implication from article 6.¹⁴ The relevance of the child's identity rights in the context of adoption relates to access to, and preservation of, birth information for later retrieval by the child.¹⁵

The absence of birth registration and a supporting birth certificate may facilitate the production of false papers for illegal domestic and inter-country adoption. It is common practice that, once an adoption order is made, a copy of the amended birth registration with the adoptee's name and other relevant information is prepared. As a result, original birth certificates can also become crucial at a later stage when an adoptee attempts to establish their identity in relation to their family of origin. Therefore, the provisions of article 6 of the Children's Charter on birth registration may be implicated.

Crucially, adoption is linked to the provision relating to alternative care, namely, article 25 (discussed in chapter 26 of this volume).¹⁶ Unlike article 20(3) of CRC on alternative care, however, article 25 of the African Children's Charter does not expressly mention adoption as a potential form of alternative care. Nonetheless, as shown in part 5 below, the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee) has frequently linked adoption to other forms of alternative care. Article 20 of the Children's Charter (discussed in chapter 21 of this volume) privileges parental responsibility for the care and upbringing of children, and places a duty on states to support parents in this function. Insofar as adoption may be driven by parental poverty, and consequent inability to provide care to children, article 20 is relevant to underscore that the provision of material support to assist parents should be the primary reaction to material deprivation, rather than the removal of children and their placement in adoption.¹⁷ Article 19, which provides that no child shall be separated from their parents against their will unless a judicial authority determines that such separation is in the best interests of the child, is clearly implicated by article 24.

The link to the best interests of the child principle, as a general principle of the African Children's Charter, but also its specific role in regard to adoption, is discussed in more detail in part 5 below. Finally, the prohibition on discrimination (article 3) and the right of the child to express their views (article 7) could find relevance in the adoption context and, indeed, many African states spell out in their legislation the age at which a child must be allowed to furnish independent consent to adoption.¹⁸

There is a conceivable link between article 24 and article 29, which relates to the potential overlap that sometimes occurs when there is evidence of adoption and trafficking.

14 This article, discussed in ch 7 of this volume, relates to the child's right to a name and birth registration. However, it does not refer to identity as does art 8 of CRC.

15 The countervailing concern is respect for the privacy of adoptive parents. The Hague Convention on Inter-country Adoption specifically provides for a right of children to access information about their origin and the identity of their parents (art 30(2)) and for a corresponding duty on the state's competent authorities to preserve and allow access to such information (art 30(1)).

16 Similarly, art 21 of CRC must be understood in the context of art 20 on alternative care; P Alston, N Cantwell & J Tobin 'Article 21: Adoption' in J Tobin (ed) *The UN Convention on the Rights of the Child: A commentary* (2019) 762.

17 This is expressly recognised in the recent *Zambian Children's Code Act 2022*, as sec 197(d) provides that poverty shall not in itself justify the adoption of the child.

18 Eg, the *Children's Act of Ghana 560 of 1998* provides that it is required that before making an adoption order, the wishes of the child have been considered if the child is capable of forming an opinion; and if the child is at least 14 years of age, their consent to the adoption must have been obtained unless it is impossible for the child to express an opinion (secs 70(1) (b) and (c)). The *Child Care and Protection Act 3 of 2015 of Namibia* in sec 172(1)(c) provides that the child must consent if aged 10 years or older.

4 Links to other human rights treaties

Article 24 is closely related to article 21 of CRC,¹⁹ although there are some differences in their content. This is because provisions of the African Children's Charter, including the phrase 'last resort' in article 24(b), the explicit mention of 'trafficking' in article 24(d), and the requirement to establish a post-adoption follow-up system, are progressive provisions that are tailored to address African realities. These are not, however, mirrored in CRC.

The Optional Protocol to CRC on the Sale of Children, Child Prostitution and Child Pornography (2000) (OPSC) added a new dimension to the criminal side of inter-country adoption, insofar as article 3 requires state parties to criminalise the act of improperly inducing consent for the adoption of a child as an intermediary, in violation of applicable international legal instruments. Although the provision refers to intermediaries, it has been argued that the fifth paragraph of article 3 of OPSC obliges state parties to ensure that all parties involved in the adoption of a child act in conformity with applicable international legal instruments.²⁰ Further, these provisions apply to both domestic and international adoptions.

The UN Guidelines for the Appropriate Use and Conditions of Alternative Care for Children (2009),²¹ although not binding, deal with the alternative care of children, as the title suggests. They contain important principles regarding alternative care system requirements, which can impact adoption (such as the principle that children under the age of three years are better placed in family-like environments, and should not be placed in institutions). The Guidelines explicitly do not cover care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order since, as of that moment, for the purposes of the Guidelines, the child is considered to be in parental care.²² The Guidelines are, however, applicable to pre-adoption or probationary placement of a child with the prospective adoptive parents, as far as they are compatible with requirements governing such placements as stipulated in other relevant international instruments.²³ The Guidelines also provide guidance on the types of measures that states must adopt when considering the placement of a child in any form of alternative care, including adoption.²⁴

The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (1993) (Hague Convention) and its two Guides to Good Practice (titled 'The Implementation and Operation of the 1993 Inter-country Adoption Convention: Guide to Good Practice No 1 (2008)' and 'Accreditation and Adoption Accredited Bodies: General Principles and Guide to Good Practice No 2 (2012)' are of signal importance as this treaty and the accompanying guidance set in place the practical mechanisms for the implementation of inter-country adoption.²⁵ Further, recommendations by the special commissions held every five years to review the implementation of the treaty are relevant.²⁶

19 Which in turn was based on the UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with special reference to foster placement and adoption, nationally and internationally (1986).

20 N Sahovic, J Doek & J Zermatten *The rights of the child in international law* (2012) 183.

21 A/RES/64/142.

22 Guideline 30(b).

23 As above.

24 See eg Guidelines 57-71.

25 See in general www.hcch.net. A full discussion of the Hague Inter-Country Adoption Convention is beyond the scope of this chapter.

26 Available at www.hcch.net.

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000) deals with trafficking, and is relevant to the possibility of inter-country adoption being used as a means of trafficking children.²⁷

5 Legal interpretation

5.1 ‘State parties which recognise the system of adoption shall ensure that ...’

The introductory phrase clarifies that adoption need not be undertaken unless it is permitted under the national legal system. This is in recognition of the reality that adoption is prohibited under Islam,²⁸ and this of course implicates Islamic countries in Africa as well. However, if a state permits adoption, the minimum standards set out in article 24 must be complied with.

It is worthy of interest that, unlike CRC, the African Children's Charter does not refer to *kafalah* (which CRC does in article 20, dealing with the child in need of alternative care). However, Ande (in chapter 26 of this volume) contends that it is implicit in the non-exhaustive list of alternative family care options in article 25 that *kafalah* is recognised. Moreover, the African Children's Committee has referred to *kafalah* in Concluding Observations.²⁹

The term ‘adoption’ is not defined in any international legal instrument, but it is accepted that it refers to a legal mechanism by which a permanent parent-child relationship is created, usually accompanied by a change of the child's legal identity³⁰ to reflect the affiliation to the identity of the adoptive family.³¹

The words ‘shall ensure’ imply that the safeguards enumerated further in article 24 are mandatory, and constitute minimum standards to be complied with. Although not required by article 24 itself, article 25 does provide that the desirability of continuity in a child's upbringing and due regard to the child's ethnic, religious or linguistic shall be paid when alternative family care of the child is

27 The Ethiopian Revised Family Code (2000) provides in art 195(2) that where the adopter, instead of looking after the adopted child as his own child, handles him as a slave, or in conditions resembling slavery, or makes him engage in immoral acts for his gain, or handles him in any other manner that is detrimental to his future, the court may revoke the adoption.

28 S Vite & H Boechat ‘Article 21: Adoption’ in A Alen and others (eds) *A commentary on the United Nations Convention on the Rights of the Child* (2008) 19. *Kafalah* is the provision in Islam's Shari'a law that governs the care of children without care. *Kafalah*, which literally means ‘to nourish’ or ‘take charge of’, is an Islamic practice derived from religious and moral obligations voluntarily undertaken by an individual or guardian family to care for a child. *Kafalah* involves an individual making a permanent commitment to the protection, care and education of a child, but it does not permit changing a child's family name or giving inheritance rights to the child. The aim is to provide for a child's protection, and *kafalah* is generally undertaken by relatives of those children in need of care. See in general J Sloth-Nielsen ‘Adoption in Africa’ in N Lowe & C Fenton Glynn (eds) *Research handbook on adoption* (2023) 301 and sources cited there. Several African countries have legislation regulating *kafalah*, including Algeria and Morocco.

29 See, eg, African Children's Committee Concluding Observations and recommendations on the People's Democratic Republic of Algeria report on the status of implementation of the African Charter on the Rights and Welfare of the Child (2011) para 27; Concluding Observations and recommendations by the African Children's Committee on the initial report of the Islamic Republic of Mauritania on the status of the implementation of the African Charter on the Rights and Welfare of the Child (2019) para 35.

30 The Ethiopian Revised Family Code (2000) is a little unusual in its art 183. This provides: ‘(1) The adopted child shall retain his bonds with the family of origin. (2) The same shall apply to the spouse and the descendants of the adopted child. (3) Wherever a choice has to be made between the family of adoption and the family of origin, the family of adoption shall prevail.’ Sec 198 of the 2022 Zambian Children's Code Act is in a similar vein, insofar as it provides for both open adoptions and closed adoptions. In open adoptions, the adoptive parent may, in consultation with the parent or guardian of a child, change the name of the adopted child; and the link between a child and the child's family of origin shall be maintained.

31 Alston and others (n 16) 765.

considered. Presumably this would apply also to placements in adoptive families, although strict racial matching policies could be regarded as discriminatory and not consistent with the best interests of the child principle.

5.2 Child's best interests to be the paramount consideration

In both domestic and inter-country adoption, the requirement that the child's best interests be the paramount consideration is well established; in other words, it is the most important consideration to the exclusion of all other considerations, such as the needs of families. This is the strongest usage of the best interests principle in any area of children's rights.³² It reinforces the fact that adoption involves finding a suitable family for the child, and does not concern the interests of prospective parents. In the words of the CRC Committee, best interests are *the* determining principle in adoption.³³

Determining the child's best interests in relation to adoption requires a contextualised, case-by-case examination of the real life situation of the child.³⁴

5.3 Establish competent authorities

This provision recognises that adoption must occur within the exclusive competence of appropriate state authorities (which does not mean that private agencies cannot be involved in adoption processes and procedures, as indeed they often are on the continent).³⁵ The competent authorities have a twofold task: They must ensure that adoption is permissible in view of the child's status (in other words, verify that the child is adoptable), and that the persons concerned, that is, parents, relatives³⁶ and legal guardians, have given their informed consent to the adoption (unless consent has been dispensed with, or is impossible to procure, such as in the case of foundlings whose parents cannot be located). Mostly on the continent where adoption is permitted, it seems to require the involvement of a court of law. The author is not aware of any country in Africa where adoptions are finalised by, for instance, an administrative body alone. Typically, legislation will provide a mechanism for trying to locate the parent(s) or relative(s) of a foundling, with a view to re-establishing familial ties before an adoption is pursued.³⁷

No specific blueprint for the establishment of competent authorities exists. However, it seems that this must be a state entity (or entities) of some sort, whether a government agency or department, or a separate institutional structure. In Africa, it seems that the trend is towards identifying a specific authority within a government department, such as a Department of Social Services.³⁸

32 This is particularly evident in art 21 of CRC, where the child's best interests are stated to be paramount, while the phrasing of the overall best interests standard in art 3 of CRC is that these be a primary (but overriding) concern.

33 General Comment 14 on the Right of the child to have his or her best interests taken as a primary consideration; CRC/C/GC 14 (2013) para 38.

34 Alston and others (n 16) 769.

35 See the discussion in Sloth-Nielsen (n 28) 291.

36 'Relative' appears in the text of the equivalent provision of CRC as well; no commentary could be found on who this all comprises.

37 Eg, see sec 172(12) of Namibia's Child Care and Protection Act 2015 and Regulation 61 of the Regulations promulgated in terms of that Act. Also see sec 199 of the Zambian Children's Code Act 12 of 2022.

38 See, eg, South Africa, Zambia (sec 202 of the Children's Code Act 2022), Ghana (Ministry of Gender, Children and Social Protection), and The Nigerian Childs Rights Act 2003 simply mandates '[e]very state government for the purpose of adoption, to establish and maintain within the state and, in the case of the federal government, within the federal capital territory, Abuja a service designed to meet the needs of those involved in adoption' (sec 125(1)). The Ugandan legislation does not seem to specify a competent authority, nor is one for inter-country adoption evident from the website of the Hague Conference (www.hcch.net).

5.4 Ensure that adoption is carried out in conformity with applicable laws and procedures

The provision ensures that adoption takes place in some manner regulated by law.³⁹ In Africa, this is typically found in a child law statute or a family code. The legal provisions vary quite widely, including with reference to the age of the adoptive parent(s);⁴⁰ whether a child that is merely conceived but not yet born can be adopted;⁴¹ whether a period of fostering is required before the adoption is finalised; whether closed and open adoptions are envisaged;⁴² and the marital status requirements pertaining to would-be adopters.⁴³ Many countries have a provision that prohibits the adoption of a female child by a single male applicant and, conversely, the adoption of a male child by a single female applicant.⁴⁴ Only South Africa permits same-sex couples to adopt.⁴⁵

A major difficulty across the continent is that alternative care institutions frequently operate ‘under the radar’, unregistered by governments under their applicable laws. Examples include Malawi, Uganda and Ghana. The link between ‘orphanage tourism’ and adoption, especially inter-country adoption, has been well documented, and the mushrooming number of such institutions is widely attributed to this lucrative market. Malpractice and unethical behaviour in adoptions is magnified when authorities do not have the capacity to regulate and enforce laws and other standards.⁴⁶

5.5 Adoptability

Legislation in all African countries that permit adoption that was consulted by the author requires an assessment of adoptability of the child, and of the suitability of the prospective adoptive parents.⁴⁷ However, in many places there is weak governmental oversight over these processes, which are frequently undertaken by charitable institutions themselves, or by religious organisations involved in adoption processes.⁴⁸

39 Alston and others (n 16) 765.

40 Eg, The Gambia's Children Act requires that an applicant for adoption should be aged over the age of 21 years, and be no older than 60 years (Children Act (The Gambia), sec 110(1)(a)). They should be more than 15 years older than the child in respect of whom an adoption is being sought.

41 Sloth-Nielsen (n 28) 294.

42 In an open adoption, the adoptive parent may, in consultation with a parent or guardian of a child, change the name of the adopted child; the link between a child and the child's family of origin shall be maintained; and the adopted child shall receive an inheritance from both the adoptive parent and the child's family of origin (Zambia Children's Code Act 12 of 2022 sec 198(2)). According to sec 216, an open adoption may be converted to a closed adoption upon application to the Children's Court. In the Law of the Child Act of Tanzania, the term ‘open adoption’ means adoption of the child by a relative (secs 54(1)(a) and (b), sec 54(3)).

43 Several countries in Southern Africa have decriminalised same-sex relations, including Mozambique, Angola, Lesotho and Botswana. However, it is not clear that this more liberal approach to same-sex relations extends to same-sex adoption, and there is at least one example (South Sudan) of the law expressly forbidding adoption (even as a single person) where the applicant is homosexual or a lesbian (Children's Act (South Sudan), sec 83(6)(c)).

44 See, eg, art 132 of the Nigerian Child's Rights Act 2003 and sec 56(2) of the Tanzania Law of the Child Act 21 of 2009.

45 *Du Toit & Another v Minister for Welfare and Population Development* CCT40/01 [2002] ZACC 20.

46 Sloth-Nielsen (n 28) 293.

47 Sloth-Nielsen (n 28) 300.

48 See, eg, Cheney arguing that ‘Uganda has some 900 orphanages – more than any country per capita – and yet only 35 of them are currently licensed by the Ministry of Gender, Labour and Social Development, which is responsible for child protection, despite its limited resources and capacity ... In 2018, the Ugandan government tried to close about 500 illegal orphanages, but new ones funded by foreign, private donors keep popping up’ (K Cheney ‘Why the Hague Convention is not enough: Addressing enabling environments for criminality in inter-country adoption’ in H Nelen & D Siegel (eds) *Organised crime in the 21st century* (2023) 191).

Private, independent and individually-arranged adoptions still occur in many places in Africa and these pose greatly-enhanced risks for the integrity of the adoption process, as well as for the child to be adopted. Sometimes couples are allowed to choose their own prospective child to be adopted, whereas matching of children to adoptive parents should be carried out by qualified professionals.⁴⁹

Although the Hague Convention leaves open the position on independent adoptions (which was a compromise position), ultimately these must still be authorised by a designated central authority.⁵⁰

5.6 Inter-country adoption as a last resort

The wording of the provision makes it obvious that inter-country adoption is subsidiary to domestic adoption and, indeed, other care options such as foster care. This is phrased – as a ‘last resort’ – even more directly than in CRC, which speaks only to inter-country adoption being offered ‘where a child cannot be placed in alternative care in the country of origin’. There has been some debate about the meaning of ‘last resort’ and, in particular, whether institutional care within the country of origin ranks before out-of-country adoption. This has been the subject matter of some judicial decisions, notably, *Re CJA Female Infant* in the Malawi Supreme Court of Appeal,⁵¹ and *AD v DW*⁵² in the Constitutional Court of South Africa. For the African Children’s Committee, the last resort principle does not pose a bar to inter-country adoption where a suitable domestic placement cannot be found, either a family-based placement or an institutional placement.⁵³ Thus, the phrase ‘last resort’ does not mean, literally, that unsuitable domestic placements always trump inter-country adoption. Indeed, the African Children’s Committee routinely advises member states to ratify the Hague Convention on Inter-country Adoption in its Concluding Observations, also illustrating that the practice is not outlawed altogether in the view of the Committee, but rather is to be adequately regulated.

According to Masson,⁵⁴ the subsidiarity principle is key to ensuring that inter-country adoption is a service for children rather than for prospective adopters. For the Permanent Bureau of the Hague Conference on Private International Law, subsidiarity “means that

states party to the Convention recognise that a child should be raised by his or her birth family or extended family whenever possible. If that is not possible or practicable, other forms of permanent family care in the country of origin should be considered. Only after due consideration has been given to national solutions should inter-country adoption be considered, and then only if it is in the child’s best interests.⁵⁵

Mezmur argues that while the African Children’s Charter and CRC give primacy to national-based solutions, the Hague Convention is more favourable to family based solutions, even if such family is found outside of the child’s country of origin.

49 Alston and others (n 16) 778.

50 Para 626: ‘It has been stated in this Guide that purely private inter-country adoptions (adoptions arranged between the adoptive parents and the biological parents) are not consistent with the Convention (ch 8.6.6). Similarly, independent adoptions (where prospective adoptive parents are approved by their central authority or accredited body and then travel to a country of origin to find a child) which are not regulated or supervised by central authorities in the two countries concerned, are not consistent with the procedures of the Convention.’ Para 627: ‘Contracting states should take steps to eliminate these forms of adoption which undermine the safeguards established by the Convention’ (Hague Convention Guide to Good Practice No 1 (2008)). See also Alston and others (n 16) 785.

51 MSCA Adoption Appeal 28 of 2009 [2009] MWSC 1 (12 June 2009) 24-25.

52 2008 (3) SA 183 (CC) 204.

53 B Mezmur ‘Inter-country adoption as a measure of last resort in Africa: Advancing the rights of a child rather than a right to a child’ (2009) 6 *Sur – International Journal on Human Rights* 83.

54 Cited in Mezmur (n 2) 301.

55 Permanent Bureau *Guide to good practice* (2008) 29.

Vandenhoe and others⁵⁶ are of the view that article 25 of the Children's Charter, which deals with alternative care for children deprived of their family environment, does not prioritise different forms of alternative care, and mentions foster placement as well as institutional care. Hence, he concludes that the Children's Charter clearly prioritises all alternative care options in the country of origin over inter-country adoption. However, this conclusion is not necessarily warranted. Mezmur does not agree that absolute priority be given to national solutions, in view of the 'growing trend in support of making institutionalisation generally a last resort', which Vandenhoe acknowledges.⁵⁷ Mezmur's position, being less rigid, is preferable.

5.7 Equivalent safeguards for domestic adoption⁵⁸

One of the notable provisions of article 24 of the African Children's Charter is the obligation imposed on state parties that adoption laws should grant a child who is the subject of inter-country adoption the same level of safeguards as are available for domestic adoptions. This provision draws its inspiration from the 1986 UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and Adoption Nationally and Internationally. Inter-country adoption should benefit from similar safeguards and be authorised when in the best interests of the child. Safeguards often necessary in inter-country adoption, but not recognised in the case of domestic adoption, include respecting the subsidiarity principle and upholding the 'no initial contact' rule – that prospective adoptive parents do not have contact with the child until after the matching process and the agreement of competent authorities has been secured.

An important safeguard in inter-country adoption is the assurance that these adoptions will be legally recognised in the countries involved, including the country of destination.⁵⁹ This also raises the question of the nationality of the adopted child, and to this end the Hague Conference Special Commission has recommended that the child automatically acquire the nationality of the adoptive parent(s).⁶⁰

5.8 Trafficking or improper financial gain

Mezmur cites examples of illicit practice in inter-country adoption throughout his work. Notably, illicit activities in Chad, Egypt, Ethiopia, Kenya, Rwanda and Mauritius are discussed.⁶¹

The capacity of the Hague Convention⁶² to address illicit activities and, in particular, child laundering, is limited. This limitation emanates mainly from the fact that the Hague Convention predominantly is a procedural treaty and does not entrench a great number of substantive rights. However, the Convention does provide that bodies – including private bodies – carrying out adoption must pursue 'only non-profit objectives'.⁶³ Moreover, article 32(2) specifies that 'costs and expenses

56 W Vandenhoe, G Turkelli & S Lembrechts *Children's rights: A commentary on the Convention on the Rights of the Child and its Protocols* (2019) 231.

57 Vandenhoe and others (n 56) 232.

58 Stuckenbruck and Roby confirm that, although there is growing practice of domestic adoptions in Kenya, the reality is that its public acceptance is hampered by deeply-rooted cultural and social taboos and stigma, as adoption is accompanied by serious social stigma in that country, with adoptive children at risk of being subjected to severe discrimination and exposed to a wide range of rights violations; D Stuckenbruck & JL Roby 'Uncharted terrain: Domestic adoptions in Kenya' (2017) *Child and Family Social Work* 1.

59 Alston and others (n 16) 803.

60 Alston and others (n 16), referring to the Special Commission of September 2005.

61 Mezmur (n 2).

62 Now ratified by 23 countries in Africa.

63 Hague Convention art 11(a).

including reasonable professional fees of persons involved in adoption, may be charged or paid'. Remuneration of directors, administrators and employees of bodies involved in adoption may not be unreasonably high in relation to services rendered.⁶⁴ The question of what 'reasonable expenses' are remains contentious.⁶⁵ Specifically, consents to adoption are not to be induced by payment or compensation of any kind.⁶⁶

As a result, it has been noted generally⁶⁷ that in order to prevent and address illicit activities in inter-country adoption, the Hague Convention needs to be complemented, among other treaties, by the ratification and implementation of OPSC and the Palermo Protocol.⁶⁸

The 'illicit activities' in respect of inter-country adoption envisaged in this chapter include child trafficking; child abduction and child stealing; buying and selling; improper financial gain and corruption; private adoption; falsification of documents; and circumventing adoption procedures, for instance, through guardianship orders.⁶⁹ Smolin, who has written extensively on the subject, uses the phrase 'child laundering' to collectively describe child trafficking, child abduction, and child buying, selling and stealing.⁷⁰

5.9 Bilateral agreements

The provisions of article 24(e) allow for countries to enter into bilateral or multilateral co-operation agreements. Article 21(e) of CRC is to similar effect. According to Mezmur,⁷¹ the need for bilateral or multilateral agreements flows from the fact that article 21 of CRC and article 24 of the African Children's Charter address inter-country adoption in a rudimentary manner. As a result, the drafters agreed to leave most of the important work in this field to future negotiations.⁷²

Article 39(2) of the 1993 Hague Convention also provides for agreements to be concluded between contracting states. Although article 39(2) refers only to 'agreements', states also report the conclusion of other understandings or arrangements relating to inter-country adoption. Article 39(2) agreements, or less formal arrangements, can serve various functions, for instance, establishing procedures for the transmission of files between the two states concerned; specifying the responsibilities of particular organisations or bodies in each state; or specifying the types of documents that must accompany an

64 Hague Convention art 32(3).

65 Alston and others (n 16) 809.

66 Hague Convention arts 4(c), (3) & 4(d).

67 See, eg, N Cantwell *The sale of children and illegal adoption* (2017).

68 Hague Conference on Private International Law 'Toolkit for preventing and addressing illicit practices in inter-country adoption' (2023) 32 & 36, <https://www.hcch.net/en/publications-and-studies/details4/?pid=8530&dtid=3> (accessed 8 October 2024). See also 'Report of the Special Rapporteur on the Sale and Sexual Exploitation of Children, Including Child Prostitution, Child Pornography and Other Child Sexual Abuse Material' (2020) A/HRC/43/40 para 114.

69 See in general Hague Conference on Private International Law Experts Group on the Financial Aspects of Inter-country Adoption 'Note on the financial aspects of inter-country adoption', https://assets.hcch.net/upload/wop/note33fa2015_en.pdf (accessed 8 October 2024). See also Report of the Working Group on Preventing and Addressing Illicit Practices in Inter-country Adoption (meetings of 28-30 September and 8 November 2021), <https://assets.hcch.net/docs/35d8530a-b5bd-4330-b2fc-abda099e7f6b.pdf> (accessed 8 October 2024) and 'Toolkit for preventing and addressing illicit practices in inter-country adoption' (2023), <https://www.hcch.net/en/publications-and-studies/details4/?pid=8530&dtid=3> (accessed 8 October 2024). See further ISS-SSI 'Responding to illegal adoptions: A professional handbook' (2016), https://www.iss-ssi.org/storage/2023/04/Illegal_Adoption_ISS_Professional_Handbook_EN.pdf (accessed 8 October 2024).

70 DM Smolin 'Child laundering and the Hague Convention on Inter-country Adoption: The future and past of inter-country adoption' (2010) 48 *University of Louisville Law Review* 441-498.

71 Mezmur (n 2) 180.

72 HCCH 'Factsheet on bilateral agreements', <https://assets.hcch.net/docs/4101e654-7143-4fd5-8e93-34033494ecec.pdf> (accessed 8 October 2024).

application to adopt.⁷³ However, there are also potential negative dimensions. They could have the negative effect of reducing the incentive for the non-contracting state to join the Convention; they might be tailored to fit non-Hague systems without appropriate safeguards; and/or might not be comprehensive or detailed enough to cover the necessary requirements.⁷⁴

Quite a few African countries have entered into bilateral agreements of one or the other nature. Burkino Faso reported that it had agreements with France, Italy, Denmark, Spain, Luxembourg, Germany, Canada, the USA, Belgium, The Netherlands and Switzerland.⁷⁵ Cabo Verde reports partnering with Portugal, Spain and Italy.⁷⁶ Madagascar provides information on relationships with Germany, Belgium, Canada, Denmark, the USA, Spain, France, Italy, Norway and Sweden.⁷⁷ Togo reports bilateral agreements with Germany, Belgium, Canada, Denmark, France, Iceland, Italy, The Netherlands, Sweden, Switzerland and the USA.⁷⁸

5.10 Post-adoption follow up (article 24(f))

This requirement is absent in art 21 of CRC. Post-adoption follow up, uniquely a feature of the African Children's Charter, can contribute to upholding the best interests of adopted children.⁷⁹ Post-adoption services consist of providing for a period of time for follow-up reports on the situation of adopted children. The Children's Charter requires that 'state parties shall establish a machinery to monitor the well-being of the adopted child'.

Examples of laws regulating post-adoption follow up include Rwanda,⁸⁰ where annual reports are required until the child becomes 18 years old. In Ethiopia, the Alternative Care Directive of 2022 requires follow up on the adoptive child for three years. Zambia's Children's Code Act (12 of 2022) provides that '[a] child welfare inspector shall, where an adoption order is granted, report to the Director of Social Welfare on the child's welfare twice within the first year of the adoption'.⁸¹ Kenya's Children's Act⁸² does not provide for post-adoption follow up.⁸³

6 African Children's Committee jurisprudence on article 24

The African Children's Committee's Reporting Guidelines for periodic reports require that the state party should provide information on the legislative, judicial and administrative measures taken to ensure both national and inter-country adoption are in the best interests of the child.⁸⁴ The state party should also provide information on –

73 As above.

74 As above.

75 <https://assets.hcch.net/docs/b540059d-d6b1-4927-adb4-52dfa108b399.pdf> (29).

76 <https://assets.hcch.net/docs/93a9fcd2-dbafe447b-af81-a99449e5349c.pdf> (27).

77 <https://assets.hcch.net/docs/65a483bb-ef33-47a7-a29a-07e73c82b1f4.pdf> (30).

78 <https://assets.hcch.net/docs/fbc90aff-04dc-40bc-a46a-a02098d60ddb.pdf> (33).

79 Mezmur (n 2) 179.

80 Law 32/2016 of 28 August 2016.

81 Sec 242(1). For an inter-country adoption, the report shall be received through the central authority.

82 Cap 141 (2022).

83 Reportedly in inter-country adoption, post-adoption follow up would mean acquiring reports from the central authority of the receiving country.

84 See Guidelines 27(f), <https://www.acerwc.africa/sites/default/files/2022-06/ACERWC-Periodic-State-Party-Reporting-guideline-english.pdf> (accessed 8 October 2024).

- measures taken to encourage national or in-country adoption;
- bilateral or multilateral arrangements or agreements it has concluded in respect to adoption matters, and particularly whether it has adopted the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption;
- institutional machinery established to monitor the well-being of children in adoption, foster care and other systems of alternative care; and
- achievements and challenges of local and indigenous alternative care systems (such as *kafalah* and kinship care) and the measures taken to ensure that such systems are in the best interest of the child and in compliance with the Charter.

The African Children's Committee has from time to time commented on adoption practice. For instance, in its Concluding Observations to South Africa in 2016, the Committee noted that it commended the state party for the various measures undertaken to improve domestic adoption.⁸⁵ In September 2023, in relation to Botswana, the Committee stated that it

appreciates that the state party is undertaking measures to encourage formal domestic adoptions through the review of the Adoption of Children Act (1952) and the registration of customary adoptions. The Committee recommends the state party to expedite the review of the Adoption of Children Act (1952); develop special and appropriate measures designed to protect children in formal and informal adoption from abuse, neglect, child labour and all other forms of exploitation, with particular attention to formal and informal adoption provided by non-relatives, or by relatives previously unknown to the children or living far from the children's habitual place of residence; and, consider the views of children and their best interests in all adoption processes.⁸⁶

It also welcomed the commencement of the accession process to the Hague Convention.

Regarding Cameroon, the African Children's Committee noted with satisfaction that the state party had adopted a manual on procedures for child adoption. However, the Committee was concerned that the state party was yet to ratify the Hague Adoption Convention.⁸⁷

In relation to Eswatini, the Committee noted with appreciation the establishment of an Adoption Committee under the Child Protection and Welfare Act 2012, and a mechanism to ensure the safe placement of children, taking into account their best interests. However, the Committee was concerned that this had not yet become operational due to the country awaiting the adoption of a regulation.⁸⁸

In response to the first periodic report of Ethiopia, the Committee also noted that since 2018 the state party had banned international adoption. While such efforts are commendable, the Committee also pointed out that there was no significant increase in domestic adoption during the reporting period and that, according to the state party report, the number of domestic adoptions dropped in 2018/2019 compared to the number of domestic adoptions between 2016 and 2018.⁸⁹

Ghana was chastised due to insufficient levels of transparency and control in the child protection system. The Ghanaian government in May 2013 introduced a moratorium banning all adoptions of children until the situation could be examined further. Although the moratorium was still in place at

85 Para 43. The Committee further recommended to the state party to use the Guidelines for Action on Inter-Country Adoption in Africa in further strengthening its measures in relation to inter-country adoption. Adoption is not mentioned in the Concluding Observations issued in September 2023.

86 Concluding Observations Botswana (2023) para 34.

87 Concluding Observations Cameroon (2017) para 18(d).

88 Concluding Observations Eswatini (2019) para 30. The Committee also noted with concern that inter-country adoption had been put on hold pending approval of the draft regulations and guidelines.

89 Concluding Observations Ethiopia (2022) para 22.

the time of the report, it was noted that despite this moratorium, adoptions continued to be carried out without the supervision of the head office.⁹⁰

Regarding Kenya, the Committee noted from the constructive dialogue that the state party had issued a moratorium on intercountry adoption to protect children from abduction, trafficking or other forms of exploitation. The Committee recommended to the state party to promote domestic adoptions and other local alternative care systems such as kinship care and foster care. Moreover, the Committee strongly encouraged the state party to achieve the aim of the moratorium on intercountry adoption by developing legislative, policy and administrative measures that can enable the state party to devise a functioning adoption system whereby the state party is able to monitor intercountry adoption and ensure the protection of children from any form of abuse and neglect postadoption.⁹¹ Kenya has since passed the Children's Act of 2022, which comprehensively regulates adoption.

Mozambique was commended for introducing domestic adoption under Decree 5/89. However, it was noted that this law was ambiguous in relation to intercountry adoption, and ratification of the Hague Convention was advised.⁹²

Rwanda was advised to comply with international standards of inter-country adoption through establishing safeguarding rules on identification of adoptive parents; accreditation and regulation of adoptive bodies; probationary periods of care for prospective adopted children; ensuring the right to participation for children below the age of 12, based on their evolving capacity; and identifying the costs for adoption procedures to prevent the sale of children. The Committee was also concerned about the lack of centralised data on domestic adoption and, therefore, recommended that the state party establishes a centralised data collection and monitoring mechanisms for domestic adoption.⁹³

Sierra Leone was requested to establish effective monitoring and oversight mechanisms for formal and informal (menpikin) alternative care arrangements and inter-country adoptions; to accelerate the amendment of the Adoption Act based on the African Children's Charter and international standards and to consider accession to the Hague Convention on Inter-Country Adoptions.⁹⁴

Nigeria's adoption situation attracted the following comment:⁹⁵

The Committee notes with concern that an informal adoption is widely practiced in the State Party and this form of adoption is not adequately regulated. The Committee recommends to the State Party to promote a formal adoption in order to eliminate the challenges faced by children adopted through an informal adoption. Moreover, the Committee also recommends to review the Adoption legislation both at the national and state level in a way it complies with the international principles and standards. As to the inter-country adoption, the Committee recommends to the State Party to ratify the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (or Hague Adoption Convention).

In 2022 Uganda was criticised because, with regard to alternative care, the Committee notes that there is low rate of adoption of children, and that many children are supported through institutional

90 Concluding Observations Ghana (2016) para 19.

91 Concluding Observations Kenya (2020) para 42.

92 Concluding Observations Mozambique (2014) para 21.

93 Concluding Observations Rwanda (2019) para 32.

94 Concluding Observations Sierra Leone (2017) para 23.

95 <https://www.acerwc.africa/sites/default/files/2022-09/Nigeria%202-3rd-periodic%20Concluding%20observation.pdf> (2019) para 25.

care.⁹⁶ The state party was advised to, among others, increase awareness about domestic adoption and undertake community-based campaigns to encourage families to foster and adopt children.

Zambia was advised to revise its laws and ensure that inter-country adoption is carried out in conformity with the Hague Convention,⁹⁷ and to establish a case management system to monitor the situation of children outside the state party. The government was also recommended to promote domestic adoption, and to couple this to government support for domestic adoptive parents.

In 2015 Zimbabwe was urged to supervise the practice of inter-country adoption, to ratify the Hague Convention and to consult the Guideline for Action on Inter-Country Adoption in Africa.⁹⁸ Zambia has now ratified the Hague Convention (in 2015) and enacted legislation to set in place the machinery necessary to give effect to it.

From the above, it can be discerned that the jurisprudence of the African Children's Committee on adoption focuses on four main themes: first, ensuring an adequate legal and regulatory framework for adoption; second, ensuring that domestic adoption is promoted within the array of alternative care options; third, ratification of the Hague Convention and setting up the machinery for its implementation; and, finally, putting in place measures for post-adoption follow up in the best interests of the adopted child. That recommendations to ratify the Hague Convention have borne fruit is evident in the increasing number of African states that have ratified this treaty, including, most recently, the Democratic Republic of the Congo (2020), Niger (2021), Botswana (2023) and Angola (2024). To date, 23 African countries have acceded to this Convention.⁹⁹

7 Conclusion

Although adoption has been an implant of colonial times, it is now firmly entrenched in African legal systems, and in practice. There is no doubt that adoption can serve a valuable role in providing access to a family for children otherwise deprived of a family environment, especially when considered alongside other alternative care options (notably, family-like care options). Adoption is a potential tool to consider in attempts to deinstitutionalise children in Africa, provided that it gains increased community acceptance, and is supported by social welfare authorities. However, inter-country adoption remains a focal point of concern, given that continental attempts to root out malpractice and illicit practice remain ongoing.¹⁰⁰

96 Concluding Observations Uganda (2022) para 27.

97 Concluding Observations Zambia (2019) para 36. Zambia has since passed the Children's Code Law (in 2022).

98 Concluding Observations Zimbabwe (2015) para 33. The Guidelines were developed and published by the African Child Policy Forum in 2012; see <https://africanchildforum.org/index.php/en/sobipro?sid=226> (accessed 23 April 2024).

99 See <https://www.hcch.net/es/instruments/conventions/status-table/?cid=69> (accessed 23 April 2024).

100 See, eg, 'On Wednesday (in January 2023), the Parliamentary Committee on the Family and Youth presented proposals to improve the law on inter-country adoptions, including a ban on adoptions from countries that are not signatories to the Hague Convention and for an expert body to monitor adoptions. The Committee held a thematic session in light of the trial of eight Croatian citizens who went to Africa to adopt four children from the Democratic Republic of the Congo. They were arrested in neighbouring Zambia on charges of attempted child trafficking', <https://www.sabor.hr/en/press/news/committee-family-ban-adoption-congo-and-establish-expert-body> (accessed 23 April 2024).