



THE BEST INTEREST OF A KENYAN CHILD IN INTER-COUNTRY ADOPTION

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Declaration

I, ZEINAB HUSSEIN AHMED do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed:

Date:

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed:.....

Dr. Jennifer Gitahi

Abstract

International adoption is the most widely form of adoption practiced in most developed countries. Although many people consider this form of adoption as a “chance to save the day and become a hero”, it also opens the door for many activities that end up affecting the adopted child negatively. It also causes psychological trauma and identity crisis in the adoptee. Therefore, it raises the question as to whether such adoptions are done in the best interest of the child. Furthermore, it raises the question as to what constitutes the best interest of a child and what criteria is followed when determining the best interest of a child.

List of Abbreviations

CRC – Convention on the Rights of a Child

LON- League of Nations

WWI – World War 1

ACRWC – African Charter on the Rights and Welfare of a Child.

CWSK - Child Welfare Society of Kenya

List of Cases

Republic v Attorney General & 11 others Ex-Parte Child in Family Focus (2014) eKLR.

Re of P M (Baby) (2017) eKLR.

NMM v JOW (2016) eKLR.

MA v ROO (2013) eKLR.

Re of Baby KR (2015) eKLR.

Re IWN (2007) eKLR.

CLK v AMK (2015) eKLR.

Re Baby HJTH (2015) eKLR.

List of Legal Instruments

The Constitution of Kenya 2010

The Children Act (No. 8 of 2001)

Geneva Declaration on the Rights of a Child (1924)

African Charter on the Rights and Welfare of a Child (1990)

Convention on the Rights of a Child (1989)

United Nations Declaration on the Rights of a Child (1959)

CHAPTER ONE: INTRODUCTION

1.1 Introduction to the Study

1.1.1 Introduction

There are children being born every day around the world. Some parents of these children do not desire to keep their children or are forced to abandon or give them away due to reasons such as extreme poverty or the one child policies in countries like China. Whereas in some cases children end up being orphaned.

Through inter-country adoption, also known as international adoption, third world countries have allowed potential adoptive parents, who are mostly couples from first world countries, to adopt children and make them citizens of the adoptive parent's country.¹ Inter-country adoption is of two types: an open adoption and a closed adoption.

Closed adoption, also known as secret or confidential adoption is where a child is put up with a family which is legally recognised as the child's family.² The biological parents, relatives and next of kin have no legal rights over the child. The biological parents receive no information on the placement and whereabouts of the child and the child receives no information on the biological parents.³

An open adoption is where the adoptee is allowed to have contact with the birth parents, relatives and next of kin.⁴ The adoptive parents still retain legal rights over the child.

International adoption involves uprooting a child from its birth country (motherland). This has therefore become a contentious issue which has stirred up a debate as to whether such a practice of moving a child from his motherland to another country is what is best for the child or not.⁵

Those who do not favour the practice of inter-country (international) adoption argue that it entails not only uprooting a minor from its motherland but also uprooting him from that country's culture and traditions which are of utmost importance in his/her development. They further argue that such is extremely harmful to the child and that it should be avoided at all

¹ Muranyi F, 'The Controversy Surrounding the Inter-country Adoption' Published LLB Thesis, Eötvös Loránd University (ELTE) Faculty of Law, 2015, 89.

² Cahn N & Singer J, 'Adoption, Identity and the Constitution: The Case for Opening Closed Records' 2 *Journal of Constitutional Law* 1, 1999, 154.

³ Cahn N & Singer J, 'Adoption, Identity and the Constitution: The Case for Opening Closed Records' 2 *Journal of Constitutional Law* 1, 1999, 155.

⁴ Berry M, 'Risks and Benefits of Open Adoption' 3 *The Future of Children* 1, 1993, 126.

⁵ Muranyi F, 'The Controversy Surrounding the Inter-country Adoption' Published LLB Thesis, Eötvös Loránd University (ELTE) Faculty of Law, 2015, 90.

costs if at all possible or used as the last resort.⁶ Furthermore, they argue that most cases of international adoption end up into cases of child trafficking. To add on, some of the children face an identity crisis as they grow up. Due to physical and cultural differences some adoptive parents might end up disliking the adopted child or many or some of his/her characteristics and behaviour and vice versa.⁷

On the other hand, proponents of the practice contest and claim that such adoptions are often in the children's best interest.⁸ They base their claims on the fact that the adoptees end up receiving better facilities such as education, healthcare as well as a home and family which they would have otherwise not got were they left in their countries of birth.⁹ Furthermore, they claim that the adoptees have the advantage of learning a new language and appreciating a different culture. As a result, they end up having a much better living standard and lifestyle than a majority of the children in their countries of birth.¹⁰

1.1.2 Background to the Study

Every child needs a home and a family for his proper upbringing. The Constitution of Kenya, 2010 states that it is the law that should ensure that each child enjoys protection and parental care.¹¹ With this in mind, Government of Kenya put up guidelines, rules and regulations through the Adoption Act Cap 143, now been repealed by the Children Act of Kenya Cap 141, for the process of adoption such that the abandoned and orphaned children can have a family as well as parental care and love. Section 6 of the Children Act affirms the stipulation under Article 53 of the Constitution that parental care should be accorded to each child.¹² In order to cater for this provision, Part XI of the Children Act outlines provisions for foster care placement and adoption of children¹³ and Part XII caters for adoptions.¹⁴

⁶ Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2. Thesis, University of Tennessee, Knoxville, 2005, 2.

⁷ Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2. Thesis, University of Tennessee, Knoxville, 2005, 2.

⁸ Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2.

⁹ Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2.

¹⁰ Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2.

¹¹ Article 53(e), *Constitution of Kenya* (2010).

¹² Section 6, *The Children Act* (Act No 8 of 2001).

¹³ Part XI, *The Children Act* (Act No 8 of 2001).

¹⁴ Part XII, *The Children Act* (Act No 8 of 2001).

According to the Children Act, inter-country (international) adoption is well-defined as a process of adopting a child where the prospective adoptive parents are neither citizens nor residents of Kenya.¹⁵ Therefore, the Kenyan laws under the Children Act provide for inter-country adoption. Kenya further became a party to the Hague Convention on Inter-country Adoption.

In the case of *Republic v Attorney General & 11 others Ex-Parte Child in Family Focus*,¹⁶ the Cabinet Secretary had issued a Legal Notice No. 206 in the Kenya Gazette on 25th October 2013. This legal notice also known as the Children Exemption Order of 2013 exempted the Child Welfare Society of Kenya from Section 177 of the Children Act. This exemption exempted CWSK from criminal liability as well as enabled it perform its functions without supervision by or accountability to the Adoption Committee. The issue was that CWSK was recognised as an adoption society and therefore to be subjected to all the rules and regulations put up and to be followed by all the adoption societies. Another issue brought before the Court was that in 2013, the CWSK applied for the renewal of its license. The Adoption Committee considered the application and deferred it on the grounds that the audited accounts and balance sheet were missing; a registration instrument as a non-profit making organization had not been availed; and that there were gaps in the submitted annual report. The CWSK did not respond to the issues raised in the Adoption Committee's letter. As a result the Adoption Committee was disbanded by the Cabinet Secretary. It was argued that the exemption from Section 177 would shield CWSK from criminal liability and therefore contrary to a child's best interest as it would most likely result in child abuse as well as trafficking. The court held that the purpose of the Adoption Committee was to supervise and regulate adoption societies through registration and renewal of registration. Therefore, the Children Exemption Order of 2013 goes against this and distorts the purpose of Section 177. If this decision was allowed to remain in force, it would therefore mean that the CWSK would operate outside the radar of the law and of the Adoption Committee. This would defeat the purpose of the Act's intention to regulate adoptions and adoption societies. According to the Court, the issuance of the Children Exemption Order and disbanding of the Adoption Committee was an abuse of power and therefore issued an order of Certiorari to quash the Children Exemption Order.

As a result, the Kenyan Cabinet in 2014 during its 10th Cabinet meeting approved an indefinite moratorium on inter-country adoption. An indefinite moratorium is a period recognised by the

¹⁵ Section 162, *The Children Act* (Act No 8 of 2001).

¹⁶ *Republic v Attorney General & 11 others Ex-Parte Child in Family Focus* (2014) eKLR.

law where there is a legal and sanctioned delay in the performance of certain legal duties for an unstated amount of time.¹⁷ According to the indefinite moratorium, moving Kenyan children from their land of birth was prohibited.¹⁸ Furthermore, the Cabinet revoked the licences of the five existing Adoption Societies. This was conveyed to all five of them via a letter on the 22nd of December 2014 by the Cabinet Secretary-Honourable Kazungu Kambi.¹⁹

The five adoption societies that were registered in Kenya before the ban are: Child Welfare Society of Kenya, Little Angels Network, Little Gems, Kenya Children's Homes and Kenya to Kenya Peace Initiative.²⁰ After 2014 a few more adoption societies have started coming up and have been registered for example, Change Trust.

The moratorium has been considered by many legal practitioners as unconstitutional and therefore inapplicable based on Section 156 (4) of the Act.²¹ This is because the Cabinet Secretary can only issue a moratorium if there is proof of the adoptions or the adoption process going against the rules set out in the Constitution. For some, there is uncertainty about its application time-frame as it is an indefinite moratorium. Therefore, most courts tend to disregard it in cases of inter-country adoption. Most claim that it goes against the child's best interest.

Despite of the moratorium, Kenyan courts still permit inter-country adoption and claim that they do so to promote Section 4(2) of the Act,²² as well as for the well-being and interest of the child. This particular section in question affirms that the best interest of a child should be considered primarily by all institutions when undertaking actions concerning a child.²³

Furthermore, the Courts claim to be acting in accordance with the same subsection (3) of Section 4 of the Act, which requires them to take into consideration the child's interest before making a decision that involves and affects a child.²⁴

¹⁷ Merriam Webster Dictionary, 4 ed.

¹⁸ Press Statement: Kenya – 10th Cabinet meeting held on 27th November 2014, State House, Nairobi.

¹⁹ Letter from Ministry of Labour Office of the Cabinet Secretary, addressed to all the adoption societies in Kenya on 22 December 2014 on <https://www.bj.admin.ch/dam/data/bj/gesellschaft/adoption/herkunftslaender/ld-kenia-moratorium-e.pdf> accessed on 28 February 2019.

²⁰ Adoption in Kenya- Child Adoption Process and Agencies <https://informationcradle.com/kenya/adoption-in-kenya/> on 10 October 2019.

²¹ Section 156 (4), *The Children Act* (Act No 8 of 2001).

²² Section 4 (2), *The Children Act* (Act No 8 of 2001).

²³ Section 4, *The Children Act* (Act No 8 of 2001).

²⁴ Section 4, *The Children Act* (Act No 8 of 2001).

In the case of *Re Baby K.R.*²⁵ Muchelule J, correctly observed that the cabinet moratorium is inferior to the Children Act and the Constitution which provides that a child's well-being and best interest is of utmost prominence in any issue regarding a child.

Moreover, in *Re of P M (Baby)*, the court stated that in as much as the applicants (prospective adoptive parents) in question were foreign nationals, it was in the minor's best interest to be adopted by the prospective adoptive parents as they would provide the child with a good home as well as a loving and caring family.²⁶ Therefore, the judge (Farah Amin) granted for the adoption orders in this case despite of the indefinite moratorium as in her opinion it was in the minor's best interest.

1.1.3 Statement of Problem

The Best Interest of the Child Principle is one that is not defined in the Children Act of Kenya. It is therefore upon the Kenyan Courts to decide what amounts to the child's paramount interest.

This interest in cases of inter-country adoption is always looked at in terms of better healthcare facilities, better education, shelter, food and clothing. The Kenyan Courts and people in general tend to disregard the holistic aspects like the cultural, spiritual, emotional and psychological aspects when it comes to determining the best interest in inter-country/international adoption.

Therefore, there is need for the determination of what constitutes the best interest of a child especially in cases of such adoptions.

1.1.4 Aims and Objectives

The purpose of the study is to identify the rationale and elements that are used by the Kenyan courts in determining as well as deciding the child's best interest and the role of the principle in inter-country adoptions.

In this study, the specific objectives are to:

- a) To understand the best interest principle and determine the elements of the principle that are frequently applied in matters of inter-country adoption by Kenyan courts.
- b) To determine whether 'the best interest principle' as applied in matters of inter-country adoption by the Courts actually serves the best interest of a child.

²⁵ Re of KR (2015) eKLR.

²⁶ Re of P M (Baby) (2017) eKLR.

- c) To determine whether the principle is one that is subjective and if so, what are the effects.
- d) To look into alternative measures, institutions and systems that will provide abandoned and orphaned Kenyan children with homes, families and other physical and psychological needs within Kenya.

1.1.5 Hypothesis

Kenyan Courts when presiding over adoptions that are inter-country usually use the Best Interest Principle found in the Children Act to grant or reject adoption applications. They mostly consider aspects of physical well-being (proper healthcare, education, shelter and clothing) to decide on the best interest of a child.

This dissertation will mainly focus on the aspects or elements used by Kenyan courts in deciding on the pre-eminent interest of a child in inter-country adoption and the result as well as effects of such adoptions on the child.

1.1.6 Research Questions

The research paper therefore pursues to answer three key queries:

First of all, whether the best interest of a child is a notion which is not clearly defined by the Kenyan laws and therefore results in what was considered to be the best interest (inter-country adoption) acting in the contrary?

Second, what according to the Kenyan courts, according to previously decided cases, is the best interest of a child in cases of inter-country adoptions?

Third, is the right to cultural identity a vital right that needs to be taken into consideration in determining and defining the best interest of a child in inter-country adoption?

1.1.7 Significance of the Study

This paper is of utmost importance as it will clarify important issues regarding the best interest of a child when it comes to inter-country adoptions. Therefore, it will attempt to look into the constituents of the definition of the child's best interest and what elements ought to be considered by the law in inter-country adoptions.

This research paper will also seek to look into alternative measures, institutions and systems that will provide abandoned and orphaned Kenyan children with homes, families and other physical and psychological needs within Kenya.

1.2 Theoretical Framework

The Attachment Theory brought into light by John Bowlby draws its concepts mainly from developmental psychology.²⁷ The theory elaborates the importance of the emotional tie between a child and its mother and how the disruption of the tie can affect the child's emotional and psychological wellbeing.²⁸

James Robertson and John Bowlby further made observations and concluded that when children were separated from their mothers they experienced extreme misery and distress, even in cases or instances where or when such children were fed and properly taken care of by other caregivers.²⁹

Growing works of literature have started looking into John Bowlby's attachment theory among adoptive families and adoptees in the years after the adoption has taken place.³⁰

Looking into the reported 2009 meta-analysis,³¹ those children who were taken up for adoption before turning one, were as emotionally attached to their adoptive parents as their non-adopted peers. On the other hand, those taken up for adoption after they turned one were less attached to their adoptive parents than the children who had not been adopted. Furthermore, the adoptees displayed much more characteristics of disorganised attachment compared to their peers who were not adopted.³²

²⁷ Bretherton I, 'The Origins of the Attachment Theory' *Developmental Psychology*, 1992, 64.

²⁸ Bretherton I, 'The Origins of the Attachment Theory' *Developmental Psychology*, 1992, 64.

²⁹ McLeod S, 'Attachment Theory' *Simply Psychology*, 2017, 2.

³⁰ Pace C, Di Folco S, Guerriero V, Santona A, and Terrone G, 'Adoptive parenting and attachment: association of the internal working models between adoptive mothers and their late-adopted children during adolescence' *Frontiers in Psychology*, 2015, 6- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585065/> on 12 February 2019.

³¹ Pace C, Di Folco S, Guerriero V, Santona A, and Terrone G, 'Adoptive parenting and attachment: association of the internal working models between adoptive mothers and their late-adopted children during adolescence' *Frontiers in Psychology*, 2015, 6 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585065/> on 12 February 2019.

³² Pace C, Di Folco S, Guerriero V, Santona A, and Terrone G, 'Adoptive parenting and attachment: association of the internal working models between adoptive mothers and their late-adopted children during adolescence' *Frontiers in Psychology*, 2015, 6 - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585065/> on 12 February 2019.

This elucidates the point that adoptees are more likely to have problems getting emotionally attached to their adoptive parents. This can however be avoided if the child is given up for adoption within a year of its birth. An adoption process, especially in Kenya is not that simple and would definitely take more than a year. In the case of an inter-country adoption probably longer. Then moving a child who is more than twelve months old not only to a different family with different caregivers but also into a different country with different culture as well as different climatic conditions will definitely take a toll on the child's emotional wellbeing. The child might not be able to form an attachment with his/her caregiver/adoptive parents and might suffer from stranger and separation anxiety and therefore going against the child's best interest.

John Bowlby's Attachment Theory proves that mental wellbeing of a child is of equal importance as good education, better healthcare and housing facilities. Drawing from the Attachment Theory, the ability of a child to emotionally attach himself to the adoptive parents should be well-thought-out when deliberating on the best interest of a child in matters of international adoption.

1.3 Literature Review

Fanni Muranyi in his dissertation entitled *The Controversy Surrounding Inter-country Adoption*, was of the view that inter-country adoption is unique. This is because such an adoption occurs when the adoptive parents reside in and are citizens of a country other than the child's birth country. Therefore, the child is forced to move from his country of birth to that of the adoptive parents. The child then finds himself/herself in a different social and cultural environment and this in turn might end up having undesirable and negative effects on the child thus doing more harm than good. Therefore, such an adoption is not taken to be in the best interest of the child.³³

According to Nigel Cantwell, in his article the *Sale of Children and Illegal Adoption*, in as much as decisions on the welfare of a child are to be made in accord with the best interest principle and within the limits set by all other rights in the CRC, there is still cause for serious concern over the manner in which this notion is used. In his view, the problem with the principle in cases of inter-country adoption lies in placing an essentially undefined principle,

³³ Muranyi F, 'The Controversy Surrounding the Inter-country Adoption' published LLB Thesis, Eötvös Loránd University (ELTE) Faculty of Law, 2015, 90.

with no established criteria or procedure for determining those “best interests”, as the prime condition to be satisfied for an adoption to take place.³⁴

According to Jean Zermatten in her report titled *The Best Interest of the Child from the Literal Analysis to the Philosophical Scope*, no one with a hundred percent certainty knows in reality what a particular child’s best interest is and therefore it needs to be thoroughly evaluated by the decision-makers (in most cases the legal authorities) who should take into consideration all perspectives of child’s life (emotive and physical welfare) to determine the best interest.³⁵

According to Yvonne Dausab in her journal article titled *The Best Interest of a Child*, the consistency when applying the principle appropriately every time there is an issue that necessitates the determination of the welfare of a child, requires some form of uniform guidelines to be formulated for use by the courts.³⁶

In the view of Stephen Parker in his journal article titled *The Best Interest of the Child- Principles and Problems*, those given power by the law to make choices on a child’s behalf have an obligation under the law to make such a decision in the child’s best interest. However, the best interest’s standard is indeterminate or worse off.³⁷

According to Philip Alston in his journal article titled *The Best Interest Principle: Towards a Reconciliation of Culture and Human Rights, Reconciling Culture and Human Rights*, the particular principle is not only recognised under the National laws of countries but also International laws. Despite of the principle having it still stands to be one of the greatest challenges. Just as social norms and values are different everywhere, so is the understanding, interpretation and implementation of this principle.³⁸

In this regard James Himes in his journal article titled *Child Labour and Basic Education in Latin America and the Caribbean* was of the view that, the best interest principle is one which is intrinsically subjective.³⁹

³⁴ Cantwell N, ‘The Sale of Children and Illegal Adoption’, *Terre des Hommes*, 2017, 16.

³⁵ Zermatten J, ‘The Best Interests of the Child from the Literal Analysis to the Philosophical Scope’ 17 *International Journal of Children’s Rights* 1, 2010, 21.

³⁶ Dausab Y, ‘The Best Interest of a Child’ *Children’s Rights in Namibia*, 2009, 145.

³⁷ Parker S, ‘The Best Interest of a child – Principle and Problems’ 8 *International Journal of Law, Policy and the Family* 1, 1994, 27.

³⁸ Alston P, ‘The best interest principle: towards a reconciliation of culture and Human Rights, reconciling culture and Human Rights’ 8 *International Journal of Law, Policy and the Family* 1, 1994, 4.

³⁹ Himes J, ‘Child Labour and Basic Education in Latin America and the Caribbean’ 1 *Innocenti Essay* 6, 1994, 14.

In Robert Mnoonkin's view in his journal article titled *In the Interest of the Child: Advocacy, Law Reform and Public Policy*, states that there is no consensus on what values or elements ought to be used when making a decision on behalf of a child.⁴⁰

According to Aron Degol and Shimelis Dinku in their journal article titled *Notes on the Principle "Best Interest of the Child": Meaning, History and its Place under Ethiopian Law*, a universal problem with the principle circulates round the struggle of recognising the standards that ought to be implemented to assess the potential options of acting in the child's best interests.⁴¹

From the discussions above, it is clear that the best interest principle is one that has not been well defined and therefore the root of contention.

1.4 Research Design

1.4.1 Research Methodology

There are two types of research sources that will mainly be used in this research study namely: primary sources and secondary sources.

The primary sources are various statutes, the Constitution of Kenya, 2010 and case law.

The secondary sources to be used include: Books, Journals, Research Papers, Conference Papers, Self-Published Articles, Newspapers, Reports, Dissertations and Theses and qualitative desktop research.

This study will also look at the measures that other developing countries have taken to promote the best interests of a child in matters of inter-country adoption, and whether these measures can be effectively applied in Kenya.

1.4.2 Assumptions

Children who are locally adopted are more likely to feel like they fit in and belong in the community compared to those who are adopted by a couple living in another country.

Internationally adopted children are most likely to have an identity crisis while growing up.

⁴⁰Mnoonkin R 'In the Interest of the Child: Advocacy, Law Reform and Public Policy', 1985, 17.

⁴¹ Degol A and Dinku S, 'Notes on the Principle "Best Interest of the Child": Meaning, History and its Place under Ethiopian Law', 5 *Mizan Law Review* 2, 2011, 324.

1.4.3 Limitations

This paper heavily relies on a qualitative research style as it is impossible due to time and geographical constraints to conduct interviews.

1.4.4 Chapter Breakdown

This paper comprises of five chapters.

Chapter One introduces the topic of study, gives a basic background of the research question and discusses the problem statement, hypotheses, literature review and methodology of the research study. The main sources of research for this chapter will include legal journals and articles, books, dissertations and internet sources.

Chapter Two talks about what constitutes the best interest of a child and legal threshold that is to be met and used for deciding the best interest of a child in matters concerning the child.

Chapter Three will be about what the Kenyan courts consider when deciding the best interest of a child in cases of international adoption. This chapter will mostly use Kenyan case law.

Chapter Four will look into whether the right to cultural identity is a right that ought to be considered when determining the best interest of a child in inter-country adoption.

Chapter Five summarizes the research findings and offers a conclusion by answering the research questions. It will also attempt to give solutions and recommendations from the problem which has been recognized in the problem statement.

1.4.5 Timeline

The entire research will be carried out between March 2019 and 30th November 2019.

The research proposal, which will form chapter 1 of the dissertation will be submitted on the 1st of March 2019.

The first draft of chapter 2 will be submitted on 13th June.

The first draft of chapter 3 will be submitted on 5th of August.

The first draft of chapter 4 will be submitted on 18th of October.

Finally, the first draft of chapter 5 will be submitted on 13th November.

CHAPTER TWO: AMBIGUITY OF THE BEST INTEREST PRINCIPLE

2.1 Introduction

The “*best interest of the child*” principle is of chief prominence when it goes down to all issues, matters and decisions concerning a child.⁴² This principle is used as a determinate factor of the welfare of a child. This principle is often applied in areas like guardianship, maintenance, visiting rights, custody and adoption of the child.⁴³ This is because it is in such matters that a child or children are usually involved.

2.2 Vague Laws

It is beyond doubt that ambiguity in law demands for an interpretation.⁴⁴ This vagueness is what brings about gaps in the law and it is the role of legal interpretation to fill in such gaps. However, not everyone is capable of filling in such gaps especially the lay man. This is why Lon Fuller in his story of the King Rex outlines a set of success conditions known as the eight “Principles of Legality”.⁴⁵ These eight conditions must be fulfilled by a law for ease in its applicability. One of the eight conditions include clarity of the law. This simply means that a law should be clearly explained and not left to the interpretation of different minds which may lead to confusion and chaos.

2.2.1 Effects of Having Vague Laws

Ambiguous laws give the courts full discretion to interpret them. This means that each court may decide differently based on its interpretation of the law. This in turn leads to unfair decisions⁴⁶

⁴² Degol A and Dinku S, ‘Degol A and Dinku S, ‘Notes on the Principle “Best Interest of the Child”: Meaning, History and Its Place under Ethiopian Law’ 5 *Mizani Law Review* 2, 2011, 320.

⁴³ Degol A and Dinku S, ‘Degol A and Dinku S, ‘Notes on the Principle “Best Interest of the Child”: Meaning, History and Its Place under Ethiopian Law’, 322.

⁴⁴ Jónsson Ó, ‘Vagueness, interpretation, and the law’ LexisNexis, 1 September 2009
https://www.lexisnexiscom.ezproxy.library.strathmore.edu/uk/legal/results/enhdocview.do?docLinkInd=true&erKey=23_T29015503152&format=GNEFULL&startDocNo=0&resultsUriKey=0_T29015503154&backKey=20_T29015503155&csi=372245&docNo=9 on 6 September 2019.

⁴⁵ Fuller L, *The Morality of Law*, revised edition, Yale University Press, New Haven, 1969, 20.

⁴⁶ Sandefur T, Get Rid of Vague Laws, Forbes, 2010, 2.
<https://www.forbes.com/2010/03/30/vague-laws-economy-government-opinions-contributors-timothy-sandefur.html#33f5ec80d6ce> on 6September 2019.

Vague laws may also be used by some people to carry out unlawful activities and get away with it because according to their interpretation of the law, what they were doing was not unlawful.⁴⁷

2.3 Origin and Advancement of the Best Interest Principle

Initially, the principle had a very restricted area of use. It was mostly used to ensure that the wellbeing of every child or children involved would be considered when it came to cases of divorce and child custody.⁴⁸

The Best Interest Principle was first of all consolidated within the Geneva Declaration of 1924. The Declaration stated that humanity is obligated to provide to a child the best that it has to offer.⁴⁹ This ‘best interest principle’ was found in its preamble.⁵⁰ This Declaration was adopted on 26th September 1924 by the League of Nations (LON) after seeing the terrible horrors of World War I and its effects on children.⁵¹ This Declaration therefore expressively reflected the concerns that arose due to gross violations of fundamental rights of children during the WWI.

The 1959 United Nations Declaration of the Rights of the Child acknowledged the norm that humanity is mandated to offer to a child the finest of what it can offer. In the 1959 Declaration, the interests of the child were given priority and every act involving a child was to be done in favour of the child.⁵² All these measures were put in place to make the world a better place for children by giving their well-being, safety, security and happiness priority.

This principle formed the foundation of the 1989 UN Convention of the Rights of the Child (UNCRC).⁵³ The UNCRC under Article 3 (1) states that in all acts carried out by any institution, the child’s best interest is meant to be primarily considered.⁵⁴ This means that all institutions, courts of law, welfare organisations as well as private individuals ought to look out for a child’s best interest in all issues.

⁴⁷ Christie G, ‘Vagueness and Legal Language’ 48 *Minnesota Law Review* 885, 1964, 887.

⁴⁸ Alston P, ‘The best interest principle: towards a reconciliation of culture and Human Rights, reconciling culture and Human Rights’ 8 *International Journal of Law, Policy and the Family* 1, 1994, 4.

⁴⁹ Preamble, *Geneva Declaration on the Rights of a Child, 26 September 1924 on the Rights of a Child*, 26 September 1924.

⁵⁰ Preamble, *Geneva Declaration on the Rights of a Child*, 26 September 1924.

⁵¹ Degol A and Dinku S, ‘Notes on the Principle “Best Interest of the Child”’: Meaning, History and Its Place under Ethiopian Law’, 324.

⁵² UNGA, *United Nations Declaration of the Rights of the Child*, UN A/Res/1386 (XIV) 10 December 1959.

⁵³ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> on 4th June 2019.

⁵⁴ UNGA, *United Nations Convention of the Rights of the Child*, UN A/Res/44/25 (20 October 1989).

The Principle is also found in the African Charter on the Rights and Welfare of the Child 1990 (ACRWC). It states that in all issues which concern a child, the interest of the child in concern will be taken into account.⁵⁵

The Principle is given recognition in the Kenyan legal field and constitutional system. Article 53(2) of the CoK states that in each and every case that involves a child, that child's interest is vital.

Furthermore, the Children Act of Kenya under Article 4(2) outlines that in each matter concerning or involving a child/children, all institutions and societies ought to place the child's best interest first.⁵⁶

Therefore, international as well as the Kenyan legislations provide that in all matters that concern a juvenile, the best interest principle ought to be applied.

2.4 The Connotation of the Best Interest Principle

2.4.1 Complexity in Defining the Concept

As previously discussed, the principle is given recognition in the national as well as numerous international legal platforms. In spite of having such a universal recognition, defining the concept still stands as a major issue.

Touching on the same issue, James R. Himes in his book concluded that interpreting the best interest of a child principle is very challenging. This is because the world has many major powers in play: the underprivileged and conflict-torn societies of Africa and the societies that are well off.⁵⁷

The interpretation of the principle is intrinsically subjective and therefore its connotation is inexorably left to the decision making body. Along the same line of thought, Robert H. Mnookin in his book states that our society generally lacks a clear-cut consensus when it comes to defining the child's interests and to the values that ought to be adopted.⁵⁸

The common issue in regards to the Principle circles around the problem of ascertaining the criteria that ought to be utilised to determine the possibility of acting in line with the child's

⁵⁵ Article 4, *African Charter on the Rights and Welfare of the Child*, 1990, OAU Doc. CAB/LEG/24.9/49.

⁵⁶ Section 4 (2), *Children Act* (Act No 8 of 2001).

⁵⁷ Himes J, *Implementing the Convention on the Rights of the Child, Resource Mobilization in Low-Income Countries*, Brill – Nijhoff Publishers, Leiden, 1995, 20.

⁵⁸ Mnookin R, *In the Interest of the Child: Advocacy, Law Reform and Public Policy*, W.H. Freeman & Co, New York, 1985, 17.

interest. In his book, Mnookin is of the view that, when it comes to identifying the criteria to be utilised in deciding a child's best interest, all too often no consensus is reached as on what criteria should be used as a determinant. Moreover, in most of such circumstances the children cannot speak for themselves.⁵⁹

In Kenya, neither the 2010 Constitution of Kenya nor the Children Act define what entails the best interest. This therefore then gives the courts the discretion to decide whether something is what is best for a child or not. Consequently, different courts can decide differently in the same case.

In the Kenyan case of *N M M v J O W*,⁶⁰ the court's opinion was that the particular principle (the best interest principle) is one that is extremely hard to define.

Furthermore, in *MA v ROO*,⁶¹ the court's opinion was:

“ ... What the 'best interest' of the child principle exactly entails has not yet been clearly defined by the law...”

The lack of a proper definition or outline in Kenyan laws on the constituents of the best interest of a child brings about serious contention on various issues relating to and involving children.

Therefore, in spite of its incorporation in domestic, African and numerous International legislation, the subject of the child's best interest and the discerning of its definition and constituting elements remains problematic.

2.5 Subjectivity of the Principle

In matters involving the child's best interests, most decisions of the court are based on the judge's individual opinion as to the child's best interest instead of a rational argument forming the basis of the decision.⁶²

Since the principle offers minimal guidelines and advice to the decision makers, it therefore gives them a leeway in exercising their discretion.⁶³ This then raises the question as to what

⁵⁹ Mnookin R, *In the Interest of the Child: Advocacy, Law Reform and Public Policy*, W.H. Freeman & Co, New York, 1985, 23.

⁶⁰ *N M M v J O W* (2016) eKLR.

⁶¹ *MA v ROO* (2013) eKLR.

⁶² Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 *Acta Sociologica* 4, 2010, 339.

⁶³ Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 *Acta Sociologica* 4, 2010, 339.

conditions are considered important when deciding the best interest, also are these conditions based on logical and rational reasoning or a subjective presumption.

For example in the adoption cases brought before the Norwegian Supreme court. The issue in these cases was whether adoption was in the best interest of these children. It is imperative to note that each of these children is a unique individual with different wants, needs, aspirations and goals. For the brothers Karl and Eirik the court in 1997 decided that they should not be adopted even though they had for the past eight years been residing with their foster parents. The court arrived at the decision of not granting the adoption because of the fear of the psychological reaction of the birth mother towards the adoption of her sons.⁶⁴ The court therefore decided that it was best for the children to not be adopted. Clearly, the basis of the court's decision in this case was the effects the adoption would have on the birth mother. Not once did it consider what would emotionally, spiritually, psychologically and materially be the best for each individual child. Yet, the decision was thought to be what was best for the child.

The second case was a 2001 case which involved Berit. Berit was put into foster care at sixteen months due to neglect that threatened her life by her birth mother.⁶⁵ The birth mother did not want Berit to be adopted. The Norwegian Supreme Court was of the opinion that Berit should not be adopted. The court stated that if the adoption were to be granted, the birth mother would suffer psychologically.⁶⁶ This argument by the court was held to be in the best interest of Berit.

Finally, was a 2007 case involving nine year old Benjamin. Benjamin was put into foster care at the tender age of one year and eight months after being discharged from the hospital for brain haemorrhage that was caused by physical abuse inflicted on him by his biological parents. The Norwegian Supreme Court decided that Benjamin should be adopted because he needed a safe environment to grow and Benjamin himself had declared that he wanted to be adopted.⁶⁷ Therefore, it was in Benjamin's best interest that he be adopted.

From an analysis of the Court's arguments and decisions, I conclude that the basis of the 1997 and 2001 Court's decisions were not rational and logical reasoning whereas the one in 2007

⁶⁴ Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 Acta Sociologica 4, 2010, 345.

⁶⁵ Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 Acta Sociologica 4, 2010, 346.

⁶⁶ Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 Acta Sociologica 4, 2010, 346.

⁶⁷ Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 Acta Sociologica 4, 2010, 346.

was a very rational and well thought decision. This portrays the deficits in the Norwegian Supreme Court's decision-making process when it comes to the implementation of the Principle. This deficit reflects in almost all countries of the world that do not have a proper definition of the Principle.

2.5.1 Problems arising from the Subjectivity of the Principle

Most of the times, the facts on which a court may decide to place a child with a particular family may change. For instance, death, divorce, illness, or financial disaster can change the entire equation and turn the "perfect" adoptive family into the least desirable one.

In the perspective of an inter-country adoption, on one hand, it provides a safe, nurturing and permanent household for a child while on the other hand, adoptees are most likely to face risks of behavioural, emotional and cultural problem. These problems may as a result affect the child psychologically and thus his education may suffer as well.⁶⁸ Such problems are most of the times caused by them experiencing a difference in culture, religion and in some cases enduring loss of their birth families or people they are used to seeing and having around.⁶⁹

There are cases where those who get adopted as new-borns go through a loss of the primary bond with their birth mothers. This loss might in most cases only become obvious as the child grows older and understands his or her environment with no sort of contact or information on their birth families.⁷⁰

In cases where there are cultural disparities between the adoptee and the adoptive parents, there appears to be recurrent instances of racism, racial hostility and discrimination for the adoptees whose physical appearance and skin colour is different from the adoptive family and community.⁷¹

Therefore, in as much as inter-country adoption is said to be done in a child's best interest, a few years down the line, in majority of the cases the contrary is proved.⁷²

⁶⁸ Brodzinsky M, *Being Adopted-The Lifelong Search for Self*, Doubleday, New York, 1992, 26.

⁶⁹ Brodzinsky, *Being Adopted-The Lifelong Search for Self*, 28.

⁷⁰ Mary M, 'Inter-country Adoption' 92 *Archives of Disease in Childhood* 6, 2007, 5.

⁷¹ Gair S, 'Literature review providing an in-depth overview of existing research on the effects of inter-country adoption on adoptees' James Cooks University, November 2015, https://www.dss.gov.au/sites/default/files/documents/09_2017/final_report_-_james_cook_uni_-_word_version.pdf on 12 June 2019.

⁷² Mary M, 'Inter-country Adoption' 92 *Archives of Disease in Childhood* 6, 2007, 8.

CHAPTER THREE: THE BEST INTEREST PRINCIPLE AS USED BY THE KENYAN COURTS

3.1 Introduction

This chapter seeks to uncover the rationale behind the Kenyan Courts' decisions in matters of inter-country adoption. Furthermore, it also attempts to highlight the elements used by the courts in determining a child's best interest.

As discussed in Chapter One of this dissertation the Cabinet Secretary of the Ministry of Labour in accordance with the Children Act,⁷³ in the year 2014 passed an indefinite moratorium banning international adoptions in Kenya and as a result issued a notice in the Kenya Gazette.⁷⁴ This ban was put into effect by revoking licenses of the five registered adoption agencies present at that time. This ban was however not applicable to the agencies that were registered after the ban as their licenses were not revoked.

Thereafter, Kenyan Courts have had different opinions and have ruled differently in matters of inter-country adoption. This chapter will look into and analyse the rationale behind the courts' decisions.

3.2 Kenyan Courts on the 'best interest principle' in inter-country adoption

As discussed in Chapter Two, the Principle is one that has no clear definition. As a result, most courts consider the material benefits but fail to take into account the holistic aspects in matters concerning children.

In the case of *Re of baby KR*,⁷⁵ the applicants were a married couple who were Swedish citizens. They had applied to adopt baby KR. Counsel for the applicants, extracted the court order and tried to serve the Director of Children's Services who refused to receive it due to the moratorium. The Court allowed the application and ordered that the report by the Director of Children's Services be dispensed. The reason behind this decision was that the baby KR had formed a bond with the applicants for the past five months, therefore it was in KR's best interest to be taken up for adoption by the applicants.

The court in this case granted the adoption application, as maintaining the bond formed between the KR and the adoptive parents was in KR's best interest. According to the learned

⁷³ Section 182 (b), *Children's Act* (Act No 8 of 2001).

⁷⁴ Notice No.1092, The Kenya Gazette.

⁷⁵ *Re of baby K R* (2015) eKLR.

judge in this matter, the strongest criteria used in deciding the best interest of the child was the bond. Other material elements also influenced this decision. The learned Judge however failed to consider other holistic aspects which might affect the child in the future rendering this decision contrary to KR's best interest.

The CRC draws special attention to decisions involving children. It does that by stating that when making decisions concerning a child, for instance when deciding the permanent care solution for a child, it ought to be in "the best interest of the child".⁷⁶ This decision ought to consider the child's wellbeing (emotional social and material), wishes and individual circumstances including the community, racial, cultural as well as religious context with which the child affiliated with. Particular attention may be required to ensure that children can maintain their cultural identity.⁷⁷

The court in the case of *Re IWN*,⁷⁸ was of the view that it was in the child's best interest for her to be taken up for adoption by the Australian couple (the applicants). This was because she was abandoned at birth and they were capable financially of looking after the child in question as well as their biological son and that they would provide her with a steady home.

In the matter above, the court failed to look at the effect of handing over a child to a family who was ethnically different from the adoptee. In as much as Article 21 of the CRC states that particular attention must be paid to the continuity in a child's upbringing especially to the adoptee's cultural, religious, ethnic and linguistic background,⁷⁹ in reality to do the same is very difficult. Especially when the difference is quite visible due to the adoptee's physical appearance. The provisions of Article 21 are easily met in a local adoption but placing the child in a different continent with a culturally foreign environment does not fall into the child's interest.⁸⁰ According to Rios- Kohn, opponents of international adoption often raise the moral predicament of dispossessing adopted children off their national identity, heritage and cultural background and environment.⁸¹ Hermann and Kasper assert that an adoptee's identity and social adjustment ought to be deliberated in the context of adjusting him/her in a possibly racist

⁷⁶ Article 21, *Convention on the Rights of a Child*, 20 November 1989, 44/25.

⁷⁷ <https://resourcecentre.savethechildren.net/sites/default/files/documents/6250.pdf> on 23 July 2019.

⁷⁸ *Re IWN* (2017) eKLR.

⁷⁹ Article 21, *Convention on the Rights of a Child*, 20 November 1989, 44/25.

⁸⁰ Ogol O, 'International Adoption: An examination of Kenya's Implementation of International Standards since 1990' Published Master of Arts in International Studies Thesis, University of Nairobi, Nairobi, 2008, 30.

⁸¹ Rios-Kohn R, 'Inter-country Adoption: An International Perspective on the Practice and Standards' 1 *Adoption Quarterly* 4, 1998, 3-32.

environment. Furthermore, question whether or not the good of the child being internationally adopted is achieved at the expense of his/her cultural identity.⁸²

In the case of *C L K v A A M K*,⁸³ the court allowed for the adoption to take place because the applicants (Canadians) had fulfilled the three pre-requisites set out for inter-country adoption under Section 162 of the Children Act. First of all, the consent of the parents or relatives has to be sought. In this case the child had been abandoned and efforts to trace the biological parents and relatives proved futile. When it comes to the second pre-requisite, the applicants were assessed by the adoption agency Mission of Tears Canada which approved them to be favourable parents to adopt a foreign child. Finally, the third condition was satisfied according to the reports made by the Director Child and Family Services (Manitoba), the adoption agency Mission of tears (Canada) and guardian ad litem (District Children's Services). The court therefore concluded that it granting the adoption application was what was best for the child in issue as the adoptive parents had satisfied all the three pre-requisites.

In *Re baby H J T H*,⁸⁴ the applicants were American citizens residing in Kenya for the past three years on a missionary permit. On 10th April 2015, they made an application to the Court to be permitted to take up for adoption "HJTH" a child. The court further gave an order directing the County Children Officer to prepare and issue a report complimenting the application for adoption. The Officer stated that his office was not in a position to prepare a report as ordered by the court following the cabinet directive suspending international adoptions via Gazette Notice No. 1092. The court held that firstly, every decision must be made in the best interest of the child. Secondly, the child in question herein was abandoned by its mother after birth and has spent a better part of his life in child orphanages. Thirdly, the child in question had for some time been living with the applicants in Kenya and therefore formed a bond. Finally, the child's best interest in this case could only be served best by allowing the process of adoption to continue as the child would get a home and family.

In this particular case, the court failed to look at the possibility of the American couple going back to their country. If the couple decided to live in Kenya for the rest of their lives, the adoptee would not find it difficult to connect with her culture and ethnic identity. Also, it would be easier for the adoptive parents to learn and promote their adopted child's culture, traditions

⁸² Hermann K and Kasper B, 'International Adoption: The Exploitation of Women and Children' 7 *Affilia* 1, 1992, 45-58.

⁸³ *C L K v A A M K* (2015) eKLR.

⁸⁴ *Re Baby H J T H* (2015) eKLR.

as well as language. The adoption would then be considered to have taken place in the child's best interest if the applicants were to reside in Kenya for the rest of their lives and become Kenyan citizens.

The visibly different physical appearance, social environments and languages make adjusting and fitting into a new environment very problematic especially for children adopted at an older age.⁸⁵ It has been probed whether putting a child in a culturally dissimilar surrounding is in its best interest. Opponents of international adoption contend that a child of colour can drastically shift from being an ordinarily common citizen of its country of origin (birth country) to becoming a visible minority in the adoptive country and most likely be plunged into a culture of racism.⁸⁶ This could then result into racial discrimination, abuse, a culture and identity catastrophe. Cultural and identity crisis is more evident in children who are older and have already identified with a particular cultural background.⁸⁷ For them having to change and conform to a new environment and culture proves difficult as they have already identified with the culture of their birth country and that forms part of their identity.⁸⁸

The identity of an individual (self-identity) is the foundation of a stable personality.⁸⁹ The acquisition of a self-identity is no doubt easy when one is in a community where everyone is of the similar if not same colour, race, religion and traditional and cultural values. The same is however, extremely difficult in an environment where one has to deal with being different than everyone else in that community or region.⁹⁰

This can severely affect the adopted child negatively and lead to psychological issues such as a low self-esteem, truancy and deviant behaviour in the adopted child. It can also result in the child facing stigmatisation and integration problems.⁹¹

⁸⁵ Edwin de H L, *Children of Immigrants to Britain: Their Health & Social Problems*, 1 ed, Hodder & Stoughton, London, 1978, 22.

⁸⁶ Edwin de H L, *Children of Immigrants to Britain: Their Health & Social Problems*, 1 ed, Hodder & Stoughton, London, 1978, 24.

⁸⁷ Ogol O, 'International Adoption: An examination of Kenya's Implementation of International Standards since 1990' Published Master of Arts in International Studies Thesis, University of Nairobi, Nairobi, 2008, 45.

⁸⁸ Edwin de H L, *Children of Immigrants to Britain: Their health & Social Problems*, 1 ed, Hodder & Stoughton, London, 1978, 30.

⁸⁹ Ressler E, Boothby, N and Steinbock D, *Unaccompanied Children: Care and Protection in Wars, Natural Disasters and Refugee Movements*, Oxford University Press, New York, 1998, 181.

⁹⁰ Hearst A, 'Review: Multiculturalism, Rights, and the Adoption Conundrum', 36 *Law & Society Review Special Issue on Non biological Parenting* 2, 2002, 489-506.

⁹¹ Hearst A, 'Review: Multiculturalism, Rights, and the Adoption Conundrum', 36 *Law & Society Review Special Issue on Non biological Parenting* 2, 2002, 489-506.

Ressler witnessed that by relocating children from their countries of birth and bringing them up in communities and families where they will constantly stand out and be classified as dissimilar may sentence them to a life time psychological status of refugees.⁹²

⁹² Ressler E, Boothby, N and Steinbock D, *Unaccompanied Children: Care and Protection in Wars, Natural Disasters and Refugee Movements*, Oxford University Press, New York, 1998, 183.

CHAPTER FOUR: THE RIGHT TO CULTURAL IDENTITY

4.1 Introduction

In issues concerning or involving children the interests of the children involved are always given due regard. Children's interests are safeguarded under various legislations as discussed in the previous chapters. Children have rights that are protected and promoted at all costs. However, when it comes to cases of inter-country adoptions, most courts tend to forget that some of these rights exist.

This chapter will look into one of the most important right that is often not well considered in matters of inter-country adoption when deciding whether such an adoption is what is best for the child.

4.2 The Rights of Children in Inter-Country Adoption

Children's right is a topic of great discussion and debate at both the international as well as domestic level. However, there are relatively minimal discussions on relating some of these very important rights of children to cases of inter-country adoption.⁹³

Most international legislations involving children have some of these rights enshrined in them. However, no effort is being made to protect and promote these rights in the course of inter-country adoption by both the conveying and receiving nations.⁹⁴

In the inter-country adoption context, some very important rights of children are over-powered and compromised due to the subjectivity and discretion of the judges brought about by the ambiguity in the best interest principle.⁹⁵

Children's rights related to adoption are based on the fundamental principle that a society has the obligation to care for the well-being of its children.⁹⁶ The societies are therefore obligated to give to the children the necessary basic as well as spiritual provisions.⁹⁷ This is further amplifies in the *Declaration of the Rights of the Child* where children are supposed to be

⁹³ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 49.

⁹⁴ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 50.

⁹⁵ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 51.

⁹⁶ *Geneva Declaration on the Rights of a Child*, 26 September 1924.

⁹⁷ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 51.

provided with opportunities to empower them to grow mentally, spiritually physically and morally in a healthy and standard manner.⁹⁸

Most of the times, when considering what is best for a child in inter-country adoption, courts use most of the rights of a child in determining whether such an adoption is what is considered to be the best possible option for the child in question or not.⁹⁹ The rights that are mostly considered by courts comprise of but are not restricted to: the right to education, right to food, shelter and clothing, the right to parental care, the right to healthcare and the right to freedom from abuse. The right that the courts rarely consider is the right to cultural identity and heritage, which is a very broad right that encompasses holistic aspects like the right of continuity of the child's ethnicity as well as linguistic, religious and cultural background which are vital in the proper development of a child especially in an inter-country adoptee. This chapter will look into the right that is rarely considered by the courts as well as look into the importance of considering this right in inter-country adoption.

4.3 The Right to Cultural Identity

Culture is the characteristics, morals, values, language, cuisine, social habits and traditions of a particular group of people.¹⁰⁰

Cultural identity is the sense of belonging, fitting in and identification with a specific group of individuals due to factors such as ethnicity, nationality, religion, skin colour, language, traditional heritage and various customs, norms as well as traditions.¹⁰¹

Cultural identity is a very significant contributor of a being's well-being and for the sake of this paper, the well-being of the child. Identification with their culture gives people a feeling of security and belonging.

In instances where a child has to be uprooted from the surroundings of his biological family either briefly or permanently, the State has the responsibility and duty to provide for alternative care measures for the child and particular attention is to be given to ensure and promote the

⁹⁸ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 52.

⁹⁹ Roby J, 'From Rhetoric to Best Practice: Children's Rights in Inter-country Adoption' 27 *Children's Legal Rights Journal* 3, 2007, 52.

¹⁰⁰ Spencer-Oatey H, 'What is culture? A compilation of quotations', 2012 https://warwick.ac.uk/fac/soc/al/globalpad/openhouse/interculturalskills/global_pad_-_what_is_culture.pdf on 10 October 2019.

¹⁰¹ Chen V, 'Cultural Identity' Centre for Intellectual Dialogue, 2014 <https://centerforinterculturaldialogue.files.wordpress.com/2014/07/key-concept-cultural-identity.pdf> on 10 October 2019.

continuity of the child's upbringing through the child's religious, ethnic, linguistic and cultural background.¹⁰² Therefore, the right to cultural identity is a very important factor to bear in mind when coming up on a decision on the pre-eminent interest of a child in any case of inter-country adoption.

4.3.1 Significance of the Right to Cultural Identity in an African Context versus a Western Context.

The comparison of the importance of this right in the Western and the African setting is important as most of the times the adopting countries are western countries and the sending countries are African countries. Therefore, it is essential to know how the sending and receiving countries acknowledge the right to cultural identity.

In the African setting, children form a very important part of the community. They are regarded as a symbol of wealth and prosperity. In the African context, a child is not just the responsibility of the birth parents but the responsibility of the entire clan or community. The rules and regulations on how to educate their children, what to educate them on, the religious teachings and traditions that are to be passed on from one generation to another as well as who has the responsibility of rearing the children are elements that are central to the African culture.¹⁰³ Therefore, a child's right to cultural identity is very crucial in matters of inter-country adoption especially when the child involved originates from an African setting.¹⁰⁴ As Woodhouse puts it "...the culture of origin, as hard as it is to define, does matter to children and therefore should be an important factor in adoption law."¹⁰⁵

Different cultures of the world use different modes or arrangements of helping and raising the minors whose biological parents have passed or those who have been abandoned. As discussed above, in the African society such children are raised by other members of the community. On the other hand, in the Western culture the State assumes the responsibility of caring for the children and ensuring that they receive their basic needs as well as a proper upbringing. The State assumes this responsibility and provides for the children through a foster care system as

¹⁰² Article 20, *United Nations Convention on the Rights of a Child*, 20 November 1989, 44/25.

¹⁰³ Zagrebelsky L, 'Adoptions across Identity Borders and the Right to Cultural Identity in Context: The Case of England, Germany and Italy' Published PhD, London School of Economics and Political Science, London, 2012, 21.

¹⁰⁴ Salim S, 'Africa: The New Frontier for Intercountry Adoption', *The African Child Policy Forum*, 20.

¹⁰⁵ Woodhouse B, "'Are You My Mother?': Conceptualizing Children's Identity Rights in Transracial Adoptions' *2 Duke Journal of Gender Law and Policy* 107, 1995, 109.

well as providing for adoptions.¹⁰⁶ In the Western setting, children are seen as vulnerable individuals in need of a family and therefore adoption is thought to be the best way of helping them.

The African culture dictates the way of life of an individual from birth to death, therefore forming an integral part of their identity. In the African mind-set the alienation of a child from his or her birth family or community and true cultural identity produces psychological suffering because a child's identity is found within its people. In the Western society, the process of loss and separation from the birth family leads to a fresh beginning with a new family i.e. the adoptive family.¹⁰⁷

4.3.2 Acknowledging the Right to Cultural Identity as an Essential Factor in Deciding a Child's the Best Interest in Inter-country Adoption

In the *Matter of the Petition of R.M.G. and E.M.G.*,¹⁰⁸ a white American couple applied to adopt a black child. In their assessment as to whether or not such an adoption would be what was in the child's best interest and well-being, the court asked a psychiatrist Dr Welsing to testify. And according to Dr Welsing, such adoptions will always be harmful to a child and so they should be discouraged at the very least. She accentuated that a non-white child would come across some problems in a white home upon reaching adolescence due to need for a cultural belonging and desire to fit in. The court furthermore asked for the opinion of Doris Kirksey, a social worker, who gave a testimony on behalf of the Department of Human Resources. According to Doris the most suitable place for a child to grow up in is with his blood relatives and people with the same if not similar cultural backgrounds.¹⁰⁹

In a study conducted by Victor Groza and Scott Ryan, they compared the developmental results of the Romanian adoptees in American households and Romanian adoptees in Romanian households.¹¹⁰ In both categories of adoption there was great attachment and bonding level of the adoptive parents to their adopted children. However, there was a substantial variance in the behaviour of the two categories of adopted children. The Romanian children adopted by

¹⁰⁶ Zagrebelsky L, 'Adoptions across Identity Borders and the Right to Cultural Identity in Context: The Case of England, Germany and Italy' Published PhD, London School of Economics and Political Science, London, 2012, 44.

¹⁰⁷ Zagrebelsky L, 'Adoptions across Identity Borders and the Right to Cultural Identity in Context: The Case of England, Germany and Italy' Published PhD, London School of Economics and Political Science, London, 2012, 53.

¹⁰⁸ *Matter of the Petition of R.M.G. and E.M.G.* (1982), District of Columbia Court of Appeals.

¹⁰⁹ *Matter of the Petition of R.M.G. and E.M.G.* (1982), District of Columbia Court of Appeals.

¹¹⁰ Ryan S and Groza V, 'Romanian Adoptees: A Cross-National Comparison' 47 *International Social Work* 53, 2004, 48.

Romanian parents manifested less problematic behaviour compared to their counterparts.¹¹¹ This was because of the drastic cultural change experienced and the difficulty in coping to the new environment.

Drawing from the study conducted by Victor and Scott, children are best catered for when they remain in their communities, clans and/or country of birth where they can comfortably appreciate their ethnic, religious as well as racial heritage as opposed to when they are placed with families from different cultural backgrounds in a different country.¹¹²

Under the CRC, every state has a responsibility to preserve, respect and safeguard the right of a child to maintain his identity, nationality, family name and his relations.¹¹³ Therefore, when it comes to inter-country adoptions, the sending state as well as the receiving state have to uphold the child's right to cultural identity and by extension uphold the best interest.

Furthermore, the CRC states that, when thinking about alternative care options for children, the continuity of the child's religion, ethnicity, linguistic and cultural background shall be given utmost importance and priority.¹¹⁴

The ACRWC provides for international adoption to be the final option when looking for a home for an African child. Inter-country adoption should be taken into consideration only when a suitable family for adopting the child is impossible to find in the child's birth country.¹¹⁵ The African Charter acknowledges the importance of children being raised in an environment that safeguards their cultural identity.

Despite of all these provisions in international legislation, the courts in Kenyan when it comes to cases of inter-country adoption fail to consider cultural identity as an element of deciding the child's best interest. This is primarily because the best interest principle as per the Children Act is a vague concept therefore giving the courts full discretion in determining the best interest.

¹¹¹ Ryan S and Groza V, 'Romanian Adoptees: A Cross-National Comparison' 47 *International Social Work* 53, 2004, 50.

¹¹² Bartholet E, 'Beyond Biology: The Politics of Adoption and Reproduction' 2 *Duke Journal on Gender Law and Policy* 5, 1995, 16.

¹¹³ Article 8, *United Nations Convention on the Rights of a Child*, 20 November 1989, 44/25.

¹¹⁴ Article 20(3), *United Nations Convention on the Rights of a Child*, 20 November 1989, 44/25.

¹¹⁵ Article 24, *African Charter on the Rights and Welfare of the Child*, 1 July 1990, CAB/LEG/153/Rev.2.

4.3.3 Effects of Ignoring the Right to Cultural Identity in Deciding the Best Interest of a Child

As has been discussed, cultural identity plays an imperative role in the life of an individual more so in that of an international adoptee. Therefore, it is an element that sought to be looked into when deciding the child's best interest in inter-country adoption. In the event that it is not, which is generally the case, it ends up negatively affecting the child.

First of all, when it comes to physical appearance, the issue is that most adoptees' looks disrupts the racially-homogenous nuclear family mod. They (the adoptees) as a result face a racial identity crisis. The adoptee might at times forget that he is from a different race, but the world reminds him that he is not like the people around him and therefore make him feel different. Sometimes, inter-country adoptees might be treated differently within their adoptive families, especially where the adoptive parents have biological children who not "different". As a result most adoptees end up having low self-esteem.¹¹⁶

Furthermore, some adoptees feel like they cannot connect to any culture. They cannot connect to their adoptive parents' culture although they are brought up in that culture because they do not feel like it is their culture. They also are unable to connect to the culture of their countries of birth because in as much as it is their culture it seems distant. This leaves them confused and sometimes distant from reality. For instance in the case of a Chinese adoptee (Scott) adopted by a white American couple. The American Chinese community in her college expected her to behave in a way that was synonymous to the Chinese culture. She on the other hand behaved like a "typical white" which the white community did not take a liking to as they expected people from the Asian community to behave in a certain way. Scott agrees that for now that she is very much confused and adrift between her Chinese and American cultures. Furthermore according to her, "I think all inter-country adoptees are inevitably going to go through a time where the shock of race is real."¹¹⁷

In conclusion, it is necessary to consider the right to cultural identity as an element in deciding a child's best interest when it comes to cases of inter-country adoption.

¹¹⁶ Reed S, 'Five Potential Side Effects of Transracial Adoption' <https://medium.com/all-beige/five-potential-side-effects-of-transracial-adoption-f0beeb4b6fb8> on 11 October 2019.

¹¹⁷ Valby K, 'The realities of Raising a Kid of a Different Race' Time for Parents <https://time.com/the-realities-of-raising-a-kid-of-a-different-race/> on 11 October 2019.

CHAPTER FIVE: FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Introduction

This chapter will seek to conclude the findings of this research paper and further give recommendations to the issues and problems brought up in the research.

5.2 Findings

From the discussions in the previous chapters, the findings are that the best interest principle is one which has not been clearly defined in the Children Act and therefore leading to the subjectivity of the principle. As a result important rights, especially the right to cultural identity is often left out or forgotten about when determining the best interest of a child in an inter-country adoption.

5.3 Recommendations

- i. Defining the Best Interest of a Child under the Children Act to include material as well as holistic aspects of well-being

Numerous attempts have been made by different courts trying to define the best interest of a child but none has been successful. Therefore, there is a need of a clear definition and listing of all the determinants of a child's well-being. These should include material as well as holistic determinants/elements of a child's well-being. This will avoid contention and ensure that any decision that is reached upon will definitely protect and promote the physical, psychological and social positive development of a child.

- ii. An elaborate legislative framework in regards to the placement and protection of abandoned, neglected and orphaned children in Kenya

An elaborate and separate legislative framework needs to be put in place to govern and regulate the placement of children in Kenya, which bears in mind the well-defined best interest of child principle which accounts for the physical, social, emotional, psychological and material well-being of a child. The legislative framework needs to put up a system which ensures that all local placement options have been weighed and sought before placing or giving up a child for an inter-country adoption.

5.3 Conclusion

The Best Interest Principle as provided for under the Children Act of Kenya is one that is ambiguous especially in relation to matters of adoption under Section 162 of the Children Act. This gives the decision makers (judges) a lot of power and discretion as well as makes it a very

subjective principle. Therefore, to them what may seem to be best for the child may in the long run prove to be of the contrary. In that regard, the Kenyan legislations need to take that into account for the benefit and well-being of the Kenyan children.

Bibliography

BOOKS

Fuller L, *The Morality of Law*, revised edition, Yale University Press, New Haven, 1969.

Himes J, *Implementing the Convention on the Rights of the Child, Resource Mobilization in Low-Income Countries*, Brill – Nijhoff Publishers, Leiden, 1995.

Mnookin R, *In the Interest of the Child: Advocacy, Law Reform and Public Policy*, W.H. Freeman & Co, New York, 1985.

Brodzinsky M, *Being Adopted-The Lifelong Search for Self*, Doubleday, New York, 1992.

Edwin de H L, *Children of Immigrants to Britain: Their health & Social Problems*, 1 ed, Hodder & Stoughton, London, 1978.

Ressler E, Boothby, N and Steinbock D, *Unaccompanied Children: Care and Protection in Wars, Natural Disasters and Refugee Movements*, Oxford University Press, New York, 1998.

JOURNALS

Cahn N & Singer J, 'Adoption, Identity and the Constitution: The Case for Opening Closed Records' 2 *Journal of Constitutional Law* 1, 1999.

Berry M, 'Risks and Benefits of Open Adoption' 3 *The Future of Children* 1, 1993.

Bretherton I, 'The Origins of the Attachment Theory' *Developmental Psychology*, 1992.

McLeod S, 'Attachment Theory' *Simply Psychology*, 2017.

Dausab Y, 'The Best Interest of a Child' *Children's Rights in Namibia*, 2009.

Parker S, 'The Best Interest of a child – Principle and Problems' 8 *International Journal of Law, Policy and the Family* 1, 1994.

Zermatten J, 'The Best Interests of the Child from the Literal Analysis to the Philosophical Scope' 17 *International Journal of Children's Rights* 1, 2010.

Alston P, 'The best interest principle: towards a reconciliation of culture and Human Rights, reconciling culture and Human Rights' 8 *International Journal of Law, Policy and the Family* 1, 1994.

Degol A and Dinku S, 'Notes on the Principle "Best Interest of the Child": Meaning, History and its Place under Ethiopian Law', 5 *Mizan Law Review* 2, 2011.

Christie G, 'Vagueness and Legal Language' 48 *Minnesota Law Review* 885, 1964.

Appell A and Boyer B, 'Parental Rights vs. Best Interests of the Child: A False Dichotomy in the Context of Adoption' 2 *Duke Journal of Gender Law and Policy* 63, 1995.

Skivenes M, 'Judging the Child's Best Interests: Rational Reasoning or Subjective Presumptions?' 53 *Acta Sociologica* 4, 2010.

Mary M, 'Inter-country Adoption' 92 *Archives of Disease in Childhood* 6, 2007.

Rios-Kohn R, 'Inter-country Adoption: An International Perspective on the Practice and Standards' 1 *Adoption Quarterly* 4, 1998.

Hermann K and Kasper B, 'International Adoption: The Exploitation of Women and Children' 7 *Affilia* 1, 1992.

Hearst A, 'Review: Multiculturalism, Rights, and the Adoption Conundrum', 36 *Law & Society Review Special Issue on Non biological Parenting* 2, 2002.

Roby J, 'From Rhetoric to Best Practice: Children's Rights in Intercountry Adoption' 27 *Children's Legal Rights Journal* 3, 2007.

Salim S, 'Africa: The New Frontier for Intercountry Adoption', *The African Child Policy Forum*, 20.

Woodhouse B, "'Are You My Mother?": Conceptualizing Children's Identity Rights in Transracial Adoptions' 2 *Duke Journal of Gender Law and Policy* 107, 1995.

REPORTS

United Nations Office On Drugs And Crime, *Global Report on Trafficking in Persons*, 2014.

Cantwell N, 'The Sale of Children and Illegal Adoption', *Terre des Hommes*, 2017.

DISSERTATION AND THESIS

Muranyi F, 'The Controversy Surrounding the Inter-country Adoption' Published LLB Thesis, Eötvös Loránd University (ELTE) Faculty of Law, 2015, 89.

Hodge J, 'The Inter-country Adoption Argument: Variation in policy & Perspective' Unpublished Honors Thesis, University of Tennessee, Knoxville, 2005, 2. Thesis, University of Tennessee, Knoxville, 2005.

Ogul D, 'International Child Adoption: An Examination of Kenya's Implementation of International Standards since 1990', Published LLB Thesis, University of Nairobi, Nairobi, 2008.

Virgiel V, 'Adoption and Child Trafficking: Structural Violence in the International Adoption System' Published University Honours Thesis, Portland State University, Portland, 2014.

Ogol O, 'International Adoption: An examination of Kenya's Implementation of International Standards since 1990' Published Master of Arts in International Studies Thesis, University of Nairobi, Nairobi, 2008.

Zagrebelsky L, 'Adoptions across Identity Borders and the Right to Cultural Identity in Context: The Case of England, Germany and Italy' Published PhD, London School of Economics and Political Science, London, 2012.

Ryan S and Groza V, 'Romanian Adoptees: A Cross-National Comparison' 47 *International Social Work* 53, 2004.

Bartholet E, 'Beyond Biology: The Politics of Adoption and Reproduction' 2 *Duke Journal on Gender Law and Policy* 5, 1995.

STATUTE

Constitution of Kenya (2010).

The Children Act (Act No 8 of 2001).

Preamble, *Geneva Declaration on the Rights of a Child, 26 September 1924. on the Rights of a Child*, 26 September 1924.

UNGA, *United Nations Declaration of the Rights of the Child*, UN A/Res/1386 (XIV) 10 December 1959.

African Charter on the Rights and Welfare of the Child, 1 July 1990, CAB/LEG/153/Rev.2.

Convention on the Rights of a Child, 20 November 1989, 44/25.

CASELAW

Re of P M (Baby)

N M M v J O W (2016) eKLR.

MA v ROO (2013) eKLR

Re of baby K R (2015) eKLR.

C L K v A A M K (2015) eKLR

Re Baby H J T H (2015) eKLR.

Matter of the Petition of R.M.G. and E.M.G (1982), District of Columbia Court of Appeals.

OTHER INTERNET SOURCES

Press Statement: Kenya – 10th Cabinet meeting held on 27th November 2014, State House, Nairobi.

Letter from Ministry of Labour, Social Security and Services Office of the Cabinet Secretary, addressed to all the adoption societies in Kenya on 22 December 2014 on <https://www.bj.admin.ch/dam/data/bj/gesellschaft/adoption/herkunftslaender/ld-kenia-moratorium-e.pdf>

Pace C, Di Folco S, Guerriero V, Santona A, and Terrone G, ‘Adoptive parenting and attachment: association of the internal working models between adoptive mothers and their late-adopted children during adolescence’ *Frontiers in Psychology*, 2015, 6- <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4585065/>

Jónsson Ó, ‘Vagueness, interpretation, and the law’ LexisNexis, 1 September 2009 https://www.lexisnexis.com.ezproxy.library.strathmore.edu/uk/legal/results/enhdocview.do?doCLinkInd=true&ersKey=23_T29015503152&format=GNBFULL&startDocNo=0&resultsUrlKey=0_T29015503154&backKey=20_T29015503155&csi=372245&docNo=9

Sandefur T, Get Rid of Vague Laws, Forbes, 2010, 2.

<https://www.forbes.com/2010/03/30/vague-laws-economy-government-opinions-contributors-timothy-sandefur.html#33f5ec80d6ce>

<https://www.humanium.org/en/declaration-rights-child-2/>

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Gair S, ‘Literature review providing an in-depth overview of existing research on the effects of inter-country adoption on adoptees’ James Cooks University, November 2015,

https://www.dss.gov.au/sites/default/files/documents/09_2017/final_report_-_james_cook_uni_-_word_version.pdf

Notice No.1092, The Kenya Gazette.

Spencer-Oatey H, 'What is culture? A compilation of quotations', 2012

https://warwick.ac.uk/fac/soc/al/globalpad/openhouse/interculturalskills/global_pad_-_what_is_culture.pdf

Chen V, 'Cultural Identity' Centre for Intellectual Dialogue, 2014

<https://centerforinterculturaldialogue.files.wordpress.com/2014/07/key-concept-cultural-identity.pdf>

Reed S, 'Five Potential Side Effects of Transracial Adoption'

<https://medium.com/all-beige/five-potential-side-effects-of-transracial-adoption-f0beeb4b6fb8>

Valby K, 'The realities of Raising a Kid of a Different Race' Time for Parents

<https://time.com/the-realities-of-raising-a-kid-of-a-different-race/>

DICTIONARY

Merriam Webster Dictionary