

**Master of Advanced Studies in
Children's Rights (2011 – 2012)**

INSTITUT UNIVERSITAIRE KURT BOSCH – UNIVERSITY OF FRIBOURG

**Advancing the rights of children
deprived of parental care:
Domestic adoption of children in Kenya**

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Thesis submitted in the framework of the
Master of Advanced Studies in Children's Rights

02 April 2013

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April 2013

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Approved by the National Council for Science and Technology of the Republic of Kenya

Research Permit number: NCST/RCD/14/012/1552

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***(...) to adopt a child is to take the child as your own,
such that you purely become a parent,
because you are the one who knows all the needs of that child
and you are ready to help them to the end.***

Informant interviewed for this study

Acknowledgements

My ideas about this study started in a beach in the south coast of Kenya, just after I had received news that led me to unexpectedly change the subject of my thesis. I could not have imagined that the difficult choices made during those sunny days would lead to such an adventure.

Following the African way, this paper could not have been conceived without the support of my 'extended family', a group of wonderful people to whom I wish to express my gratitude.

Twenty one Kenyans shared their life stories, beliefs and their personal and professional experiences with me for this research. Through their narratives I had a privileged glimpse of what it means to be a parent in Kenya. I am grateful to each and every one of them for their time and candid testimonies. If this paper has any merit, I owe it to them.

Friends from all over the world listened patiently to all my dilemmas and provided much needed emotional comfort and professional advice during this long journey: Anne Kanene, Ghazal Keshavarzian, Janet Wildish, Jonna Carlsson, Kelley Bunkers, Lola Mattos, Luz Baastrup, Maha Damaj, Mali Nilsson, Pepa Horno, Riina Pilke and Sophie Mosko never doubted I was on the right track and for their support I shall be forever grateful.

Other dear friends and colleagues worked by my side, assisting me in identifying good informants and helping me to organize my work: José Eudes opened his community to me, Catherine Kimotho shared critical information and literature, Cassandra Mwangi transcribed interviews, Rozita D'Souza was a diligent research assistant and Meri Ghorkhmazyan helped me to code almost 200 pages of interview transcripts in less than a week – they all deserve my gratitude and appreciation. Paula McDiarmid was a pleasure to work with and I thank her for the editorial work which made this text more pleasant to read.

Thanks are owed to Professor John Njoka from the Institute of Development Studies at the University of Nairobi, who sponsored my affiliation to the university and provided me with technical advice in critical moments. Professors Jini Roby from the USA and Tamsen Rochat, from South Africa generously gave me their time and ideas without ever having met me before and I thank them for that.

The two years I spent travelling to Switzerland to attend this course brought new people into my life, especially Anna, Catherine, Jim, Kim, Marianne, Paola, Pato and Tiziana, with whom I had the privilege to share classes, the anxieties of student life and much laughter. Thank you for your encouragements and friendship. I also wish to thank Vera and Olivier Lateltin, who warmly hosted me in their Fribourg home during these years, muito obrigada!

My closest colleagues at Save the Children endured my constant absences, distractions and academic digressions with enormous graciousness; special thanks are due to Clare, Dominique, Jumanah, Roberta and Sali. Above all, I owe this opportunity to my manager Lena Karlsson, who encouraged and supported my academic aspirations from the outset and never doubted my capacity to keep up with both work and studies at the same time.

Nigel Cantwell provided me with guidance and advice that were critical to my ability to produce this piece of work. I thank him most of all for his patience with my delays and disarray during the last weeks and days of writing.

I could have not gotten here without the unconditional love and support of my mother, Ione. Thanks for giving me a great example to follow, mom.

I dedicate this paper to the love of my life, my husband Sidney, who not only supported all my ambitions throughout these last 18 years, but also patiently endured my mood swings and seclusion as I struggled to get through this course and write this paper. Thank you for encouraging me to pursue my dreams and for standing beside me all the way.

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List of acronyms

AU	African Union
ACRWC	African Charter on the Rights and Welfare of the Child
ACERWC	African Committee of Experts on the Rights and Welfare of the Child
AIDS	Acquired Immune Deficiency Syndrome
BCN	Better Care Network
CCI	Charitable Children's Institution
CRC	(United Nations) Convention on the Rights of the Child
CWSK	Child Welfare Society of Kenya
DCO	District Children's Officer (of the Government of Kenya)
DCS	Department of Children's Services (of the Government of Kenya)
HIV	Human Immunodeficiency Virus
KSCL	Kenya Society of Care Leavers
NCCS	National Council for Children's Services (of the Government of Kenya)
NCPS	National Child Protection System
NCST	National Council for Science and Technology (of the Government of Kenya)
NGO	Non Governmental Organization
OAU	Organization of African Unity (predecessor of the AU)
OVC	Orphans and Vulnerable Children
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
US\$	United States Dollars

Glossary*

TERM	DEFINITION	SOURCE
Abandoned child	A child who is not with parents or guardians or in a safe place.	National Standards for Best Practices in Charitable Children's Institutions (hereafter referred to simply as 'CCI Standards')
Adopter	Any person making application to an adoption society with an intention of adopting a child.	Adoption Regulations, para. 2
Adoption	The legal transfer of parental rights and responsibilities for a child which is permanent. In Kenya, all formal adoptions are 'full', i.e., they irrevocably and completely terminate the relationship between the child and his or her birthparents, creating an analogous relationship between the child and the adoptive parents. Therefore the term 'adoption' will always be used in this sense throughout this document.	Better Care Network Toolkit Glossary (hereafter referred to simply as 'BCN Toolkit') and EveryChild (2012).
Adoption order	An order issued by the High Court authorising an applicant to adopt a child.	Children Act, para. 154 (1)
Adoption society	A body of persons registered and authorized to arrange for the adoption of a child.	Children Act, para. 177 (1)
Alternative care	A formal or informal arrangement whereby a child is looked after at least overnight outside the parental home, either by decision of a judicial or administrative authority or duly accredited body, or at the initiative of the child, his/her parent(s) or primary caregivers, or spontaneously by a care provider in the absence of parents.	BCN Toolkit
Biological parents	The birth family into which the child is born. It can mean both parents if they are together, or the mother, or the father.	BCN Toolkit
Caregiver/carer	A parent or guardian who is charged with responsibility for a child's welfare – including comfort, upbringing, guidance, provision of basic rights and realizing human rights.	National Policy on Orphans and Vulnerable Children (hereafter referred to simply as 'National OVC Policy')

*Wherever possible the terminology selected for this thesis was taken from Kenya's legal, policy and regulatory framework for child rights and alternative care. Full references are available at the end of this document.

TERM	DEFINITION	SOURCE
Care leaver	A young person, typically over 18 years old who is leaving or has left a formal alternative care placement.	CCI Standards
Care plan	A written document which outlines how, when and who will meet a child's developmental needs.	CCI Standards
Care system	The legal and policy framework, structures and resources that determine and deliver alternative care.	BCN Toolkit
Case management	The process of ensuring that an identified child has his or her needs for care, protection and support met. This is usually the responsibility of an allocated social worker that meets with the child, the family, any other caregivers, and professionals involved with the child in order to assess, plan, deliver or refer the child and/or family for services, and monitor and review progress.	BCN Toolkit
Charitable Children's Institution (CCI)	Home or institution, which has been established by a person, corporate or unincorporated, a religious organization or a non-governmental organization and has been granted approval by the NCCS to manage a programme for the care, protection, rehabilitation or control of children.	Children Act, para. 58
Child	Any human being under the age of 18 years.	Children Act, para. 2
Child protection	Measures and structures to prevent and respond to abuse, neglect, exploitation and violence affecting children.	BCN Toolkit
Child protection system	A comprehensive system of laws, policies, procedures and practices designed to ensure the protection of children and to facilitate an effective response to allegations of child abuse, neglect, exploitation and violence.	UNICEF Child Protection Strategy
Child trafficking	(a) The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; (...) (c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall	Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, para. 3

TERM	DEFINITION	SOURCE
	be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article; (d) “Child” shall mean any person under eighteen years of age.	
Children without parental care	All children not in the overnight care of at least one of their parents, for whatever reason and under whatever circumstances.	Guidelines for the Alternative Care of Children, para. 28 (a) (hereafter referred to simply as ‘Guidelines’)
Domestic (or local) adoption	An adoption that involves adoptive parents and a child in the same country of residence and usually, but not necessarily, of the same nationality.	EveryChild (2012)
Exit strategy	The strategy put in place at time of entry into alternative care to ensure that the child is either reintegrated back with his/her family or placed in permanent alternative care solution.	Kenyan Guidelines for the Alternative Care of Children (hereafter referred to simply as ‘Kenyan Guidelines’)
Extended family	The wider network of family members that might include grandparents, uncles, aunts, cousins etc.	BCN Toolkit
Facilities	Individual public or private establishments that provide residential care for children.	Guidelines, para. 28 (d)(ii)
Family-based care	The short-term or long-term placement of a child into a family environment with one consistent caregiver and a nurturing family environment where the child is part of the supportive kin and community.	CCI Standards
Foreign resident adoption	Adopters who are not Kenyan nationals but have lived in Kenya for over three years and adopt a child who is a Kenyan.	Kenyan Guidelines
Family reunitegration	Refers to the process by which a child is reunited with his/her biological parents or extended family and is able to integrate back with his/her family. During this process, activities will be undertaken to equip the child and the family with the necessary skills and resources for proper reunitegration and readjustment.	Kenyan Guidelines
Formal alternative care	All care provided in a family environment which has been ordered by a competent administrative body or judicial authority, and all care provided in a residential environment, including in private facilities, whether or not as a result of administrative or judicial measures.	Guidelines, para. 28 (b)(ii)

TERM	DEFINITION	SOURCE
Foster care	Placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child.	Children Act, para.2
Gatekeeping	The prevention of inappropriate placement of a child in formal care. Placement should be preceded by some form of assessment of the child's physical, emotional, intellectual and social needs, matched to whether the placement can meet these needs based on its functions and objectives.	BCN Toolkit
Guardian <i>ad litem</i>	A guardian appointed for the child by the courts, for the purposes of any application for an adoption order, pending the hearing and determination of the adoption application.	Children Act, para. 160 (1)
Informal alternative care	Any private arrangement provided in a family environment, whereby the child is looked after on an on-going or indefinite basis by relatives or friends (informal kinship care) or by others in their individual capacity, at the initiative of the child, his/her parents or other person without this arrangement having been ordered by an administrative or judicial authority or a duly accredited body.	Guidelines, para. 28 (b)(i)
Intercountry adoption	Following the scope of the Hague Convention, which has been ratified by Kenya: (i) The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.	Convention on the protection of children and co-operation in respect of intercountry adoption, Art. 2 (Hague Convention)
Kafala	According to Islamic law, the commitment by a person or family to voluntarily sponsor and care for an orphaned or abandoned child. The individual or family sponsors the child's basic needs to education, protection and maintenance.	Kenyan Guidelines
Kinship care (or informal care by relatives)	Family-based care within the child's extended family or with close friends of the family known to the child, whether formal or informal in nature. Since formal kinship care is not practised in Kenya, all references to kinship care made in this paper refer to informal care.	Guidelines, para. 28 (c)(i)

TERM	DEFINITION	SOURCE
Kinship (or family, relative) adoption	Relative adoption is the adoption of a child by a member of the extended family. It mainly refers to the adoption of a child by his grandparents or uncles and aunts.	International Social Service (2007)
Matching	Is the act of proposing to entrust a child in need of adoption to prospective adoptive parents who are considered appropriate.	International Social Service (2006b)
Neglect	Deliberately, or through carelessness or negligence, failing to provide for, or secure for the child, their rights to physical safety and development (e.g. abandonment, the failure to properly supervise and protect children from harm as much as is feasible, the deliberate failure to carry out important aspects of care which results or is likely to result in harm to the child, the deliberate failure to provide medical care or carelessly exposing a child to harm).	BCN Toolkit
Orphan	A child who has lost one or both parents.	National OVC Policy
Parent	The mother or father of a child, including any person who is liable by law to maintain a child or is entitled to his custody.	Children Act, para. 2
Permanency	Establishing family connections and placement options for a child in order to provide a lifetime of commitment, continuity of care, a sense of belonging and a legal and social status that goes beyond the child's temporary placement.	BCN Toolkit
Placement	A social work term for the arranged out of home accommodation provided for a child or young person on a short- or long-term basis.	BCN Toolkit
Residential care	Care provided in any non-family-based group setting, such as places of safety for emergency care, transit centres in emergency situations, and all other short and long-term residential care facilities including group homes. In this thesis, the term residential care is used interchangeably with institutional care and also describes terms such as 'children's home' or 'orphanage'.	Guidelines, para. 28 (c)(iv)
Vulnerable child	A child whose safety, wellbeing and development are, for various reasons, threatened.	National OVC Policy

Executive summary

In recent years, the international child protection community has devoted significant efforts to developing standards and guidelines to promote family-based alternative care for children deprived of their family environment. Welcomed by the United Nations General Assembly in 2009 and anchored particularly in Article 20 of the United Nations Convention on the Rights of the Child, the Guidelines for the Alternative Care of Children have already been instrumental in promoting worldwide legal and policy changes in the best interests of the child.

The Kenyan government has been taking steps to follow the global momentum on the promotion of family-based alternative care of children. It has developed a domestic version of the Guidelines for the Alternative Care of Children and is in the process of reviewing its main child rights legislation (The Children Act, 2001) in order to align it to international developments in the field of child protection. The country has a comprehensive regulatory framework for adoption, including a central authority and detailed adoption regulations.

Like most Africans, Kenyans have a long tradition of caring for their children via informal care arrangements. However, rapid economic growth, urbanisation, and the spread of HIV/AIDS have led to changes in social structures and norms. Poverty has driven internal migration and separated families that once supported each other in times of crisis. Limited human and financial resources have reduced families' ability to provide adequate care for their children. As a result, in recent years residential care facilities have mushroomed across Kenya and it is a common belief that children are better placed in these institutions than within impoverished households.

Reflecting this situation, the child protection system in Kenya is characterised by its over-reliance on residential care facilities, largely due to the dispositions of its Children Act. Recent reports express concerns about the quality of care provided by these institutions, the absence of papers for the majority of children placed in them and the frequent lack of exit strategies. Research also indicates that, although interest in domestic adoption is on the rise, the issue is still surrounded by social stigma, misinformation and fear, while tensions between several stakeholders make the harmonisation of procedures challenging. Consequently, domestic adoption has not been thoroughly explored as a potential permanent solution for some of the children living without parental care in Kenya.

This thesis aimed at exploring the current environment surrounding domestic adoption in Nairobi, the capital city of Kenya, to assess the main opportunities for, and barriers to, increasing this practice among local people. The objective of this study was to assess whether a growth in the rate of domestic adoption would be in the best interests of children deprived of their family environment and whether this increase could contribute to the further realisation of children's rights within the alternative care system in Kenya.

The main hypothesis behind this research was that the rights of children deprived of their family environment in Kenya would be better fulfilled if domestic adoption was better understood, known, promoted and accepted. With this in mind, this exploratory study set out to seek answers to four questions:

1. Would the rights of children deprived of their family environment in Kenya be better fulfilled if domestic adoption was better understood, known, promoted and accepted in the country, reducing the current, almost complete, reliance on informal alternative care settings and residential placements?
2. What are the prevalent societal perceptions and beliefs regarding formal adoption of children in Kenya?
3. What are the main elements influencing the decision of Kenyans to adopt a child?
4. What are the main barriers preventing Kenyans from formally adopting children?

This study was designed within an international child rights framework and borrowed concepts and methods from a range of social sciences to produce a snapshot of the status of domestic adoption practices in Kenya today. The literature review carried out included anthropological, sociological, legal and historical resources, which were analysed alongside documentation produced by governments, multilateral agencies and civil society organisations in an attempt to provide a comprehensive overview of current knowledge on domestic adoptions and alternative care in Africa and in Kenya.

The design of the fieldwork which informed this study was inspired by the grounded theory approach to qualitative research, which also served as the broader framework utilised for analysing data generated through 21 recorded interviews, divided between individual and stakeholder informants. The selection of individual informants was carried out utilising principles of purposeful sampling and a snowballing technique was applied to identify new informants who could shed further light on themes that progressively emerged throughout the interviews. Stakeholder

informants were selected based on their relevance to the field. Different open-ended interview questionnaires were developed for individual and stakeholder informants and were used with a reasonable degree of flexibility throughout the interviews. Once all interviews were transcribed, codes were generated through which data was sorted, categorised and analysed.

The main findings of this study revolve around three types of child care in Kenya: residential care, kinship care and domestic adoption. These findings point to several violations of the rights of children living in residential care and indicate that child care institutions must be better regulated and monitored by the Kenyan government. With regards kinship care, it was found that while it may increase children's sense of belonging and access to education and basic needs, it may also expose children to various risks, such as discrimination, abuse and exploitation, in addition to potentially violating their rights to property and inheritance. Such results point to the need to establish monitoring and support mechanisms for children and families involved in kinship care in Kenya. Therefore, this study indicates that if a more appropriate case management system was in place, many Kenyan children experiencing rights violations under informal and residential care could potentially be placed in other more suitable, long-term or permanent family-based care alternatives, including domestic adoption.

The findings of this research reiterate that the success of adoption rests on the existence of a well managed child care system, operating within a wider child protection system, run by competent professionals who place children's best interests and respect of all other rights at the heart of all their decisions. While this study confirms that there is mounting acceptance of the practice in Kenya, a considerable number of risks for children were identified in the way different forms of alternative care are practised and managed across the country. Pushing for a rapid growth in adoptions within such an environment could place already vulnerable children at further risk. This paper proposes that for adoption to be increasingly offered to Kenyan children as a suitable solution for their care, a comprehensive transformation is needed in all the processes related to why and how children are first separated from their parents, placed in alternative care and thereafter sometimes made available to adoption without the application of all gatekeeping mechanisms that ought to protect children's best interests. Furthermore, this study concludes that for children's rights to be fulfilled in domestic adoption, there must be a meaningful reduction in the stigma associated with adoption in Kenya. It confirmed that traditional beliefs and practices have often been used to shame adoptive children and their parents and that, as a result, the practice is still shrouded in secrecy, occasionally leading parents and other actors involved in adoption procedures to behave unethically and illegally.

This inquiry concludes that if these factors, which inhibit adoption and hinder its practice, are not firmly addressed by Kenyan society, adoptive children will continue at risk of being subjected to severe discrimination and exposed to a wide range of rights violations.

It is hoped that this study will contribute to the interest in further research about domestic adoption practices across Africa, and particularly in Kenya. More knowledge is needed to understand which local beliefs and practices should be supported or challenged in order to improve the quality of child protection services and increase children's wellbeing. Such knowledge should inform the design of policy and programmes that foster locally accepted family-based care alternatives for children deprived of parental care, including domestic adoption.

This paper is divided into six chapters. The introductory chapter aims at providing a general overview of the situation of alternative care and adoption of children globally and in Africa. While sharing recent trends in adoption patterns, it discusses domestic adoption within the wider context of child care and in relation to intercountry adoption.

Chapter 2 is dedicated to describing the research framework utilised in this study, including the theoretical approach and methodology utilised. It also covers the ethical considerations and limitations which defined the scope of this investigation.

Chapter 3 covers the rights of the child deprived of a family environment. It analyses the rights enshrined in the Convention on the Rights of the Child, in the African Charter on the Rights and Welfare of the Child and in the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Chapter also includes a review of the Concluding Observations recently issued by the CRC Committee regarding adoption and outlines the importance of the Guidelines for the Alternative Care of Children for domestic adoption practices.

Chapter 4 reviews the situation of children without parental care and the care system in Kenya. It explores the wider context for child protection practices, provides an overview of Kenya's international child rights commitments and describes the country's legal and policy framework with regards alternative care and adoption.

Chapter 5 carries the main findings of this study by summarising the perceptions, beliefs and experiences concerning adoption of children as shared by the informants interviewed during the

course of this research. It makes ample use of quotes and literature to substantiate the conclusions that are put forward in the following Chapter.

Finally, Chapter 6 is devoted to conclusions and recommendations stemming from the findings of this investigation.

1. Introduction

1.1. Background

In recent years, the international child protection community has devoted significant efforts to developing standards and guidelines to promote family-based alternative care for children deprived of their family environment. Welcomed by the United Nations General Assembly in 2009 and anchored particularly in Article 20 of the United Nations Convention on the Rights of the Child (hereafter referred to simply as 'CRC'), the *Guidelines for the Alternative Care of Children* (A/HRC/11/L.13; hereafter referred to as 'the Guidelines') have already been instrumental in promoting worldwide legal and policy changes in the best interests of the child.

As Chapter 3 of this paper will demonstrate, Article 20 of the CRC established the conceptual and legal framework for the development of landmark instruments to protect children without parental care, such as the 1993 Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (hereafter referred to as the 'Hague Convention'), the African Charter on the Welfare and Rights of the Child (ACRWC, or simply 'African Charter') and the Guidelines themselves. The CRC states that children deprived of their family environment "shall be entitled to special protection and assistance provided by the State" (Article 20(1)) and that this special assistance will constitute alternative care. Here it is worth quoting Article 20(3) in its entirety:

Such care could include, inter alia, foster placement, kafala of Islamic law, adoption, or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Articles 19, 24 and 25 of the African Charter also encourage the establishment of alternative care systems for children deprived of their family environment. Article 25(3) states that, "When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and the child's ethnic, religious or linguistic background", thus virtually replicating the CRC.

The "desirability of continuity in a child's upbringing" provides a strong connection to the concept of adoption. Both the CRC and the ACRWC carry specific Articles on adoption, Articles 21 and 24 respectively, giving it a special character in the range of care placements available to children. In

addition, the Hague Convention is a key international instrument when considering the conditions that must be met if children living without adequate parental care are to be adopted abroad. Due to its permanent character, formal adoption is seen as a potentially appropriate solution only for children who could never, for whatever reason, be brought up by one or both of their parents. When adoption is envisaged outside the child's habitual country of residence, it is often considered one of the 'last' options in a range of possible care arrangements for such children. According to the Hague Conference on Private International Law, the key principle of subsidiarity underpinned by the Hague Convention, and also present in the CRC and ACRWC:

(...) 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 intercountry adoption be considered, and then only if it is in the child's best interests. (Hague Conference on Private International Law, 2008, p. 29)

Much has been written about different aspects of the adoption of children, in particular about the practice of intercountry adoption and the controversies surrounding it (see, for example, Bartholet, 2010; Lammerant & Hofstetter, 2007; Mezmur, 2009; O'Halloran, 2009). An international conference held in Ethiopia in May 2012 focused on the rising number of intercountry adoption cases in Africa while numbers are falling in other parts of the world, naming the continent 'The New Frontier for Intercountry Adoption' (African Child Policy Forum (ACPF), 2012e). Despite the scarcity of reliable data, there seems to be consensus that in many African countries the rising number of children living in residential care is concomitant with the increasing number of intercountry adoptions. On the other hand, domestic adoption, which should take precedence over intercountry adoption if the subsidiarity principle is to be respected, seems to be largely unknown and feebly promoted by African governments.

The Kenyan government has been taking steps to follow the global momentum on the promotion of family-based alternative care of children, as will be thoroughly analysed in Chapter 4 of this thesis. It has developed a domestic version of the *Guidelines for the Alternative Care of Children* and is in the process of reviewing its main child rights legislation (The Children Act, 2001²) in order to, amongst other issues, align it to international developments in the field of child protection. Kenya ratified the

² Excerpts from the Children Act can be found in Appendix IV

Hague Convention in 2007, making it one of only 13 African countries to have done so to date. The country has a comprehensive regulatory framework for adoption, including a central authority (the National Adoption Committee) and detailed adoption regulations³. However, as remarked in a technical assessment produced for the government in 2008:

There are almost half a million double orphans and some of these as well as other children have been abandoned. In policy the major need is to heighten the public's awareness of the benefits of local adoption for the many abandoned or fully orphaned children. This would reduce the number spending their lives in a CCI [charitable children's institution, or residential care facility] or being adopted abroad and leaving their culture and community. (...) The system of adoption needs to be demystified for the general public and their awareness raised of the better life that living in a caring family is for young children rather than residing in an institution. (Williams & Njoka, 2008, p. x)

In 2012, UNICEF and the Department of Children's Services in Kenya carried out field research that aimed to support the design of the National Guidelines on Alternative Care for Children. Initial findings indicate that, although interest in domestic adoption is on the rise, the issue is still surrounded by social stigma, misinformation and fear, while tensions between several stakeholders make the harmonisation of procedures challenging (United Nations Children's Fund (UNICEF) Kenya, Department of Children's Services, 2012).

Like most Africans, Kenyans have a long tradition of caring for their children via informal care arrangements. Virtually every Kenyan family can share stories about taking care of relatives' children throughout their lifetimes, without ever having resorted to formal procedures. Currently, it is estimated that approximately 2 million Kenyan children live under some form of kinship care (Save the Children, June 2012), or approximately 10% of the estimated national child population of 19 million (Kenya National Bureau of Statistics, 2010). However, the impact of the HIV/AIDS pandemic and changes in the lifestyle of communities due to modernisation, urbanisation and the market economy have compromised Kenyans' abilities to protect their children (see, for example, Kilbride & Kilbride, 1990, and Ncube, 1998). In recent years, residential care facilities have mushroomed all over the country and it is a common belief that children are better placed in these institutions than within impoverished households (Williams & Njoka, 2008), as Chapter 5 of this study will confirm.

³ Excerpts from these Adoption Regulations can be found in Appendix V

Table 1.1 shows the number of children living in different types of state and non-state residential care.

Table 1.1 Number of children placed in formal alternative care in Kenya, 2012

KENYA	Girls	Boys	Total
1. Number of children living in residential care (state)	2,430	5,746	8,176
2. Number of children living in residential care (non-state)	16,150	24,080	40,230
3. Number of children living in formal foster care	541	179	720
4. Total children living in formal care (sum of 1, 2 and 3 above)	19,121	30,005	49,126
5. Number of residential care facilities including small group homes (state)			13 remand homes, 9 rehabilitation centres, and 4 rescue centres Total 26 centres
6. Number of residential care facilities including small group homes (non-state)			700 charitable children institutions. Out of these, only 591 are legally registered by government while the rest are not registered
Source: Department of Children Services in Ministry of Gender, Children and Social Development, October 2012 NB. The figures on children in non-state residential care are from the 591 registered institutions. Data for children in 109 non-state residential care is not available.			

1.2. Problem statement and objective

The child protection system in Kenya is characterised by its over-reliance on charitable children's institutions (CCIs), or residential care facilities, largely due to the dispositions of its 2001 Children Act. As noted in a recent report, "CCIs continue to be the first resort rather than last resort and the most accessible option of 'rescuing' children from abandonment, orphan hood *[sic]*, family poverty, family disintegration, disability or displacement" (Republic of Kenya, 2012b, p. 21). The same report

expresses concerns about the quality of care provided by CCIs, the absence of papers (birth registration and committal orders) for the majority of children residing in these facilities and the frequent absence of exit strategies. In addition, the report notes that local government officers express unease with the fact that some CCIs, particularly those run by foreign donors, retain children for long periods of time because of child sponsoring practices.

In this context, and following the subsidiarity principle, it is clear that domestic adoption has not been thoroughly explored as a potential permanent solution for some of the children living without parental care. Adding to the challenge, there are no formal incentives for Kenyan families wishing to adopt a child: information about the procedure is difficult to find and society often discriminates against adoptive children and their new families. Furthermore, both prospective and actual adoptive parents describe the cumbersome, and often expensive, legal procedure as one of the main deterrents to pursuing the formal adoption of children (Williams & Njoka, 2008).

This thesis aims to explore the current environment surrounding domestic adoption in Nairobi, the capital city of Kenya, to assess the main opportunities for, and barriers to, increasing this practice among local people. The objective of this study is to assess whether a growth in the rate of domestic adoption would be in the best interests of children deprived of their family environment and whether this increase could contribute to the further realisation of children's rights within the alternative care system in Kenya.

1.3. Brief history of formal adoption

The adoption of children by unrelated adults has been practised throughout human history. While in ancient times adoption seems to have taken place mainly to preserve family lineage and consolidate political alliances, it was during the Middle Ages that other forms of child care flourished. Evidence suggests that during the 19th century the practice of legal adoption declined while orphanages proliferated (United Nations, 2009). The idea of adopting a child as an act of charity only emerged in more recent times, as enshrined in the first modern adoption law, the 1851 Massachusetts Adoption of Children Act:

One of the most striking features of the act was that it gave the judge the authority to assess whether the prospective adoptive parents had “sufficient ability to bring up the child, and furnish suitable nurture and education”. This implied a “radical departure from the basic

concept of the Roman law in that the primary concern was the welfare of the child rather than concern for the continuity of the adopter's family". (United Nations, 2009, p. 13)

These developments follow Philippe Aries' seminal analysis of childhood throughout the *Ancien Régime* and the Middle Ages, which reveals that the world of children was not separate from that of adults as it is today. Children had a specific function to play in those societies, working and contributing to the productive processes. It was not until the Enlightenment that children became visible as separate family members and in need of care:

Admittedly the modern family no longer has the same material reality as under the ancien régime, when it was identified with an estate and a reputation. (...) the problem of transmission of property takes second place to that of children's welfare (...) It is not individualism which has triumphed, but the family. (Aries, 1962, p. 406)

The dramatic effects of the First World War on children prompted many countries to enact or revise adoption legislation. They also prompted the drafting of the first international declaration on children in 1924, which, in spite its conciseness, stated that "the orphan and the waif must be sheltered and succoured" (League of Nations, 1924, Principle 5). Progressively, the notion of the 'best interests of the child' appeared in Western adoption legislation; motives for adoption started to move away from being solely family-centred, that is, focused on addressing family needs, towards a child-centred approach where adoption was perceived as a child protection measure. At the same time, the international community began to outline what would evolve in the 20th century into the field of 'alternative care for children without parental care', as clearly captured in the 1959 Declaration on the Rights of the Child:

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. (...) (United Nations General Assembly, 1959, Principle 6)

The promulgation of the CRC in 1989 and the advent of a so-called 'child rights regime' (Pupavac, 2001) prompted significant changes in the way society thinks of and treats children. The international child rights framework encompassing the rights of children without parental care and

their rights to adoption will be further explored in Chapter 3 of this study. It is, however, undeniable that, “both the value of the family as the most desirable environment for a child’s upbringing as well as the fact that children living *outside* their family environment are particularly vulnerable, emerge as uncontested principles in international law” (Cantwell & Holzscheiter, 2008, p. 28) during the 20th century.

Research on the negative effects of large-scale and long-term institutionalisation carried out in the last Century (for a summary, see The Leiden Conference on the Development and Care of Children without Permanent Parents, 2012) also prompted legal and policy changes in the field of adoption, a process that is still going on today. Developments such as the Hague Convention and the *Guidelines for the Alternative Care of Children* have consolidated the view that adoption must be understood as one potential alternative – within a range of other possibilities – for providing a family-based solution for children who have been deprived of parental care. Today, it is clear that, given its permanent character, adoption should not be seen as the only, or preferred, option for all children without parental care, as:

(...) account has to be taken of each child’s individual needs and circumstances and those of their carers, including the range of available resources in terms of placements. In the same way that the same shoe cannot fit every foot, adoption is not the answer for every child who cannot return to their family. (Triseliotis, 2002, p. 31)

1.4. Child care and adoption in Africa: some perspectives

Anthropologists have long devoted themselves to the study of indigenous family life in Africa. Most recently, Korbin (1981), Kilbride and Kilbride (1990) and LeVine (1994) have written about patterns of child care and the impact of modern socioeconomic developments on traditional family support mechanisms in sub-Saharan Africa. Ncube (1998) and Rwezaura (1998) have both discussed changes in the African image of childhood since colonisation and independence introduced Western legal systems and human rights concepts that operate alongside customary law and cultural tradition across the continent.

The role of the child in agricultural societies, which are the majority in sub-Saharan Africa, has mostly been one of securing blood-line succession, land inheritance and labour to guarantee the family’s livelihood, just as it was in ancient Roman society. Children’s survival has been paramount to ensuring family lineage and reproduction. As noted by LeVine:

The desire for children in Africa has its roots in the economic, social, and spiritual goals of parents. (...) kin groups based on descent can survive only if they acquire new members in each generation, and the defense of their collective resources (usually land and cattle) requires able-bodied men. (...) Childbearing becomes the final common pathway for diverse human motives, conferring wealth, security, prestige, and immortality – virtually everything valuable – on parents. (Levine et al., 1994, pp. 31-32)

Traces of these beliefs remain present today. The *Kenya Demographic and Health Survey 2008-2009* noted that:

Kenyan women and men want about four children, on average. Ideal family size is higher among women in rural areas than urban areas (4.0 versus 3.1). Women with secondary and higher education desire considerably fewer children than women with no education (3.1 versus 6.4). Men with no education report wanting 10 children, and men in North Eastern province report wanting 16 children. (Kenya National Bureau of Statistics; ICF Macro, 2010, p. 4)

Given the importance of children in this social reproduction system, there have always been a variety of child care patterns in African communities. Families often shared children with relatives who were unable to bear them, as a gesture of solidarity and responsibility towards the clan, thus evading the inherent shame of infertility. Kilbride and Kilbride (1990) affirm that, “The collectivity: family, clan, lineage, or ethnic group, takes precedence over the individual”, and go on to say, “The parent, therefore, literally has children *for* the social group. Children are raised as social persons who will be properly oriented to the group, its ancestors, and the needs of their own parents”. Simmance (1959) documented the adoption experience among the Kikuyu of Kiambu district in Kenya, who developed their own adoption regulations through customary law. Despite this, the author noted that, “[...] the overriding principle in Kikuyu society has always been to stress the predominance of the proprietary interest of a child’s family or clan” (p. 34).

Scholars writing about recent adoption practices in Tanzania (Rwezaura & Wanitzek, 1988) and Uganda (Okumu-Wengi, 1998) note that formal adoption of unrelated children remains rare. Family ties and kinship structures are still central in African societies and children belonging to a certain community who cannot be raised by their own parents will most likely be raised within their clan. A 2011 report on alternative care of children in sub-Saharan Africa notes that, “Formal adoption is not a cultural norm in Africa. National adoptions in particular are infrequently practiced (...) In Guinea

Conakry, DRC, Niger, Senegal and Togo most parents opt for entrusting their child to an extended family member rather than a stranger” (Child Frontiers, 2011, p. 27).

The impact of modernisation on traditional African societies cannot be underestimated. Rapid economic growth within a cash economy, urbanisation, and the spread of HIV/AIDS have led to changes in social structures and norms. Poverty has driven internal migration and separated families that once supported each other in times of crisis. Limited human and financial resources reduce families’ ability to provide adequate care for their children (Harper, Marcus, & Moore, 2003). Okumu-Wengi reflects that in Uganda, “(...) traditional child adoption has been weakened because of the overwhelming number of destitute children due to wars, political conflicts and AIDS. The traditional extended family is therefore under stress so that it can no longer offer automatic care to such children” (cited in Ncube, 1998, p. 237). According to Kilbride and Kilbride (1990), the “modernization of tradition” has led to loss of power for women and children in East Africa:

Today both kinship and the capitalistic element of monetary relations are salient, but often contradictory, idioms of social interaction. Specifically, modern East Africans still care and provide for children since they are highly valued as formerly, but nowadays they are costly in terms of clothing and schooling while their labor, although important, is less significant than in the past. We argue that one of the consequences of such a contradiction (...) is child abuse and neglect. (p. 242)

1.5. Children without parental care: do we know where and how many they are?

Attempting to estimate the size of the world population of children without parental care is a next-to-impossible task, given that “even in cases where data exist, the indicators used are only rarely comparable across different national contexts, thereby reducing significantly the possibility of making inferences about the broader, ‘global’ dimension of children living outside their family environment” (Cantwell & Holzscheiter, 2008, p. 3). With these caveats in mind, the latest UNICEF estimates indicate that in 2009 there were approximately 153 million children living without one or both parents, of which over 55 million were found in sub-Saharan Africa (United Nations Children’s Fund (UNICEF), 2012, p. 103). In the same year, it was estimated that 2 million children were living in residential care institutions around the world, of which approximately 160,000 were in East and Southern Africa, although it is acknowledged that these figures are significantly underestimated (United Nations Children’s Fund (UNICEF), 2009a).

Rapid urbanisation in Africa is creating new challenges for families, who are often faced with limited support structures and services to help care for their children. Such pressures contribute to child abandonment, exploitation and abuse, with many children being pushed out of their homes in search of a better living (United Nations Children's Fund (UNICEF), 2012, p. 9, 31-33). Social interventions aimed at supporting individual children affected by HIV/AIDS carried out during the past 20 years across Africa have failed to acknowledge the importance of the family environment in supporting children's resilience, in spite of overwhelming evidence about the positive role of nurturing families (Irwin, Adams, & Winter, 2009, p. 17). The combined result of these various factors is that:

The estimated number of children under 18 years old who have lost one or both parents due to all causes increased in Eastern and Southern Africa from 21.1 million in 2001 to 24.9 million in 2007, and 8.7 million children have lost one or both parents to AIDS in this region. (...) In sub-Saharan Africa, the tradition of informal fostering of children through kinship care has become an essential coping mechanism in the face of increased adult mortality due to AIDS and other causes. Families and communities are being stretched to the limit, however, and orphanages and children's homes are spreading at an alarming rate. (United Nations Children's Fund (UNICEF) , 2012, p. 24)

In Africa, "it is documented that the unfortunate lack of developed, family-based alternative care options has lead [*sic*] to 'unnecessary over-use of residential placements'" (African Child Policy Forum (ACPF), 2012e, p. 43). A proliferation of residential care facilities has been noted recently across East and Southern Africa, where many institutions go unregistered, and therefore not monitored by governments (Williamson & Greenberg, 2010, p. 9). The likelihood that these 'children's homes' can provide appropriate care for children is dim:

Many children are placed in orphanage care because their families are too poor to provide for their material well-being. Families' unique advantages in nurturing children can operate only if families have a basic level of material resources. As AIDS mortality rates and the number of children requiring care rise in sub-Saharan Africa, more and more families find their capacity to meet children's basic needs dangerously stretched. But the answer is not to build more orphanages or create more out-of-family care alternatives. Supporting families by furnishing them with additional resources will enable extended kin to give children the personal, responsive nurturance that families are uniquely suited to provide. (Irwin, Adams, & Winter, 2009, pp. 21-22)

While acknowledging that residential care is not always bad for all children, extensive research on child development indicates that families are the best environment for children to develop and grow. In spite of the fact that much abuse and neglect within families has been documented, the chances that children will experience positive bonding and affection will always be greater in a family environment. As seen earlier, this premise is enshrined in all major international child rights instruments adopted over the past decades and must constitute the backdrop for all work aimed at ensuring that every child is cared for in a manner consistent with his or her best interests.

1.6. Trends in adoption

Most children without parental care and the majority of those living in institutions are not, and should not be, available for adoption. The lack of reliable data and variations in the use of terminology make it especially difficult to establish how many of the children labelled ‘orphans’ in national statistics are in fact double orphans, and therefore more likely to be adoptable. Although reliable data is scarce, it is believed that approximately 90% of children living in residential care have either one parent or close relative alive and traceable (Save the Children, 2009, p. 5 and Williamson & Greenberg, 2010, p. 8). As already noted by Cantwell (2003), “It is important not to confuse the concept of ‘adoptable children’ with that of ‘children currently in out-of-home care’. The situation in Romania, as just one example, clearly demonstrates that it is entirely wrong to try to equate ‘children in institutions’ with ‘adoptable children’” (p. 2).

The United Nations (UN) (United Nations, 2009) estimated that in 2005 there were approximately 260,000 adoptions globally, of which 127,000 took place in the United States alone. It also estimates that an average of 220,000 domestic adoptions are carried out annually, but that 86% of these take place in just ten countries. However, these figures collate only the data officially reported by countries to a variety of UN and other treaties’ monitoring bodies, and many countries in Africa, including Kenya, submitted limited, fragmented or no data. The report concluded that domestic adoption rates have generally been declining in the industrialised world mainly due to an increasing shortage of adoptable children while increasing in developing countries due to government campaigns and incentives to promote the practice (*Ibid.*, 2009, pp. 68-74).

Data on child adoption across Africa is very scarce. Largely due to requirements imposed by the Hague Convention, the number of intercountry adoptions across the continent is better known than

the number of domestic adoptions. African states are weak in their ability to collect and process statistical data, and where child protection systems are virtually non-existent or in their infancy, reliable national registers on child adoption are rare. According to Selman (Selman, 2012, p. 12), over 33,000 intercountry adoptions involving African sending countries took place between 2004 and 2010. However, since over 57% of those cases originated in Ethiopia, it is clear that the practice is not evenly spread.

As will be discussed later in this thesis, data for Kenya is scarce and unreliable. A government report states that the Adopted Children Register does not disaggregate data as to whether adoptions were local or intercountry and reproduces figures provided by the registrar for the period 2000 to September 2008, adding to a total of 1,395 adoptions (Williams & Njoka, 2008, p. 16). On the other hand, a recent study found that between 2003 and 2006, 387 local adoptions and 256 intercountry adoptions were completed in the country (Njoki, 2012, p. 53).

Providing what seems to be an exception in the continent, detailed data from South Africa indicates that 14,803 children were adopted between 2004 and 2009. With 13,401 adopted locally and 1,402 internationally, domestic adoptions make up 90% of South African adoptions (Mokomane, Rochat, & Directorate, 2012, p. 348). The authors explain that:

(...) South African policy encourages the uptake of permanent forms of alternative care such as adoption for children with inadequate or no parental or family care. This support is premised on the fact that unlike less permanent forms of care such as fostering and residential care, adoption *potentially* provides permanency and protection to the relationship between the adopted child and the adoptive family. Therefore, while there is increasing debate regarding the validity of this fact in cultural contexts where longer term family fostering may be more socially acceptable and provide as much permanency, security and benefit for children, the current legislative framework in South Africa supports adoption over fostering or residential care. (p. 347)

As has been noted elsewhere, "Adoption trends are shaped by a range of factors including: numbers of children without parental care; policies on alternative care and adoption; beliefs regarding adoption and parenthood; and poverty and inequality" (EveryChild, 2012, p. 4). A clear example of this is provided by recent reports from the Ethiopian government describing its experience in promoting domestic adoption in Oromia State, where prior community disposition to traditional adoption provided fertile ground for increasing the uptake of formal adoptions. After government

sensitisation, Oromia recorded 1,145 children placed in domestic adoption in 2011: 724 were legal adoptions and 421 were traditional adoptions (Bunkers K. , 2013) & (Oromia Bureau of Women, Children and Youth Affairs (BoWCYA), 2012).

1.7. Domestic adoption on the African agenda

Despite the fact that domestic adoption is not widely practised across Africa, it has certainly not been absent from the region's child rights political agenda. Recommendations to promote the practice have been frequently included in conference statements, particularly from meetings held across Africa recently to discuss the increasing phenomenon of intercountry adoption.

During a consultative meeting on intercountry adoption held in Nairobi in June 2009, the Child Welfare Society of Kenya shared the results of a national study they had recently carried out, which "confirmed that local adoptions are much higher than foreign adoptions, and there is potential for increased local adoptions" (Africawide Movement for Children, 2009, p. 13). Among the recommendations from the meeting's several sessions, there were calls to "shift attention towards local adoption, formalising kinship adoptions and foster care to reduce intercountry adoption" and to "[carry-out] sensitisation to de-mystify local adoption and other child care options" (*Ibid.*, p. 12). Three months later, Kenya also hosted the First International Conference in Africa on Family Based Care for Children, bringing together stakeholders from across the continent for the first time to discuss alternative care issues. The conference recommended "[the adoption of] laws that support and recognise informal family-based care, as well as, other progressive child care mechanisms such as adoption options that are sensitive to and compatible with the African cultures" (ANPPCAN Regional Office, 2010, p. 68).

The Permanent Bureau of the Hague Conference on Private International Law organised two regional conferences in Africa recently, one for Eastern and Southern Africa in Pretoria in February 2010 (attended by the government of Kenya) and another, for francophone countries, in Dakar in November 2012. The objectives of both meetings were to discuss implementation of the Hague Convention and to promote its further ratification across the continent. While reinforcing the importance of the principle of subsidiarity, both meetings recommended that domestic adoptions be further encouraged in States party to the Convention.

The African Child Policy Forum held the Fifth International Policy Conference on the African Child in Ethiopia in May 2012. The theme of the conference was 'Intercountry Adoption: Alternatives and Controversies', and aimed to address the worrisome trend that, "Africa has become the new frontier for intercountry adoption, which has increased by almost 300% in just eight years, when globally rates are at a 15 year low" (African Child Policy Forum (ACPF), 2012b, p. 1). Much of the debate at the conference revolved around the notion of 'last resort', particularly because the ACRWC, differently from the CRC, explicitly states "that inter-country adoption (...) 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" (Article 24 (b)). The communiqué issued at the end of the conference called on African governments to "Give absolute priority to enabling all children in Africa to remain with their families and in their communities by among other things (...) promoting non-institutional forms of alternative care for children, such as foster care, guardianship and domestic adoption" (African Child Policy Forum (ACPF), 2012a, p. 2).

As can be seen from these statements, over the past few years there has been growing public debate about alternative care for children, including domestic adoptions, across Africa. Although the discussions have largely been prompted by the abrupt rise in the number of intercountry adoptions originating from the region, these debates have also brought about more articulated proposals for national mechanisms to increase and further regulate family-based care for children. Domestic adoptions have often been cited as one amongst a range of options that should be made more easily available for children deprived of parental care in Africa. The need for further understanding of how domestic adoptions could be carried out in the child's best interests, while at the same time taking into account the particularities of African traditions, has been a recurrent theme in these discussions.

2. Research framework

As earlier mentioned, the objective of this study is to assess whether a growth in the rates of domestic adoption would be in the best interests of children deprived of their family environment and whether this increase could contribute to the further realisation of the rights of the child within the alternative care system in Kenya.

2.1. Scope

The scope of this thesis was delineated by a series of factors. The first of them relates to the geographical coverage of this research, which was limited to the capital city of Nairobi due to language, time and resource constraints. Nevertheless the findings of this investigation may contribute to an understanding of the national context; for instance, a government technical report indicates that in 2007 the Nairobi High Court processed 100 of the 123 adoption orders made in Kenya (Williams & Njoka, 2008, p. 16)⁴. The government representative interviewed for this study also noted that the majority of adoptions in Kenya are still carried out in Nairobi because all the registered adoption societies have their headquarters there and all intercountry adoptions have to be processed in the capital.

A second caveat to note is that, as will be established by the research questions outlined below, this study will not look at the outcomes of local adoptions for children or their parents. Analysing such outcomes would require resources and expertise beyond what could be accessed at this point in time. Additionally, through this experimental study it became clear that identifying adoptive families is particularly challenging in Kenya, especially amongst older generations.

Other related areas not broached by this paper are intercountry adoption and kafala, a form of family-based care of children practised in Islamic states, which do not legally recognise adoption. Intercountry adoption will be referred to a few times during the course of this document, chiefly because its practice cannot be completely dissociated from the practice of domestic adoption.

⁴ However, the study states that the exact numbers may not be reliable given discrepancies between sources. Additionally, it is unclear whether these figures refer to domestic, intercountry or resident adoptions.

Finally, as will be described below, although all attempts were made to follow ethical and rigorous research protocols and practices, given its several limitations, this qualitative study can only be considered exploratory in nature. Its findings cannot be deemed conclusive or be generalised in any way, but can offer preliminary insights into an aspect of children's rights that deserves more attention from international and local research communities.

2.2. Hypothesis and research questions

The main hypothesis of this thesis is that the rights of children deprived of their family environment in Kenya would be better fulfilled if domestic adoption was better understood, known, promoted and accepted. The assumption is that a rise in domestic adoptions would increase the number of children whose best interests would be served through their permanent placement in a family environment. An additional assumption is that discrimination, lack of appropriate information, and complex and costly procedures are hindering the expansion of domestic adoption, but that these barriers could, in principle, be curbed through public information campaigns and reformulation of existing adoption regulations and policies.

With this background in mind, this exploratory study set out to seek answers to four research questions:

- a) Would the rights of children deprived of their family environment in Kenya be better fulfilled if domestic adoption was better understood, known, promoted and accepted in the country, reducing the current, almost complete, reliance on informal alternative care settings and residential placements?
- b) What are the prevalent societal perceptions and beliefs regarding formal adoption of children in Kenya?
- c) What are the main elements influencing the decision of Kenyans to adopt a child?
- d) What are the main barriers preventing Kenyans from formally adopting children?

2.3. Theoretical and interdisciplinary approach

This paper aims to make a contribution to the study of the rights of children deprived of parental care to access local adoption services when no other family-based solution has been found. It was designed within an international child rights framework, as will be seen in the next chapter, and

borrowed concepts and methods from a range of social sciences to produce a snapshot of the status of domestic adoption practices in Kenya today.

Anthropological, sociological, legal and historical literature was analysed alongside documentation produced by governments, multilateral agencies and civil society organisations in an attempt to provide a comprehensive review of current knowledge on domestic adoptions and alternative care in Africa and in Kenya.

Principles of international human rights law were considered when analysing the evolution and impact of child rights declarations and treaties on adoption practices globally and in Kenya. A combination of historical and legal approaches was taken while discussing the advancement of Kenya's normative and policy framework on child care and adoption, while contrasting these developments with recommendations generated by human rights treaty monitoring bodies such as the CRC Committee and the African Committee of Experts on the Rights and Welfare of the Child (ACERCW), as will be seen in Chapters 3 and 4.

The design of the fieldwork which informed this thesis was inspired by the grounded theory approach to qualitative research, which also served as the broader framework utilised for analysing data generated through a series of key informant interviews, as detailed in Chapter 5. Elements of critical childhood and child rights studies provided the conceptual backdrop for drawing conclusions from this study.

2.4. Methodology

2.4.1. Literature review

Identifying relevant literature for this study posed a challenge from the outset. A first attempt to collect academic literature about child care and adoption in Africa produced a very limited body of material, most of which had its roots in anthropological studies undertaken between the 1960s and 1990s. Extending the search to grey literature did not significantly increase the number of resources available. Abundant literature was found regarding intercountry adoption in Africa, mostly covering the controversies it has generated over the past decade. Very few studies about domestic adoption in Africa were identified: one covered legal aspects of the practice in Tanzania (Rwezaura & Wanitzek, 1988); one attempted to identify child-centred approaches in local adoptions in Uganda

(Okumu-Wengi, 1998); and one from South Africa focusing on local perceptions of domestic adoptions provided critical insights for this study (Mokomane & Rochat, 2010).

Finding resources focusing on Kenya proved particularly challenging, given the glaring absence of scholarly literature on adoption and child care practices in general. A few anthropological studies about traditional 'child adoption' amongst Kenyan tribes were identified, but these did not refer to adoption in the legal sense of the term as used in this thesis; they mostly referred to what one would term kinship care (see, for instance, Simmance, 1959 and Archambault, 2010). Fruitless attempts to consult Nairobi university libraries were made, resulting in an impossibility to refer to locally produced academic knowledge.

Finally, to approach this subject from a child rights perspective, a review of the latest concluding observations from the UN Committee on the Rights of the Child to State Party periodic reports was carried-out to identify recent trends and to establish how the Republic of Kenya has been appraised over time in its implementation of CRC Articles related to alternative care and adoption. Unfortunately, it was not possible to conduct an equivalent analysis for ACERWC recommendations regarding the implementation of the African Charter due to absence of available information; nevertheless reports from Kenya to the Committee of Experts are discussed in Chapter 4.

2.4.2. Quantitative data analysis

This study intended to utilise data from the national adoption children register between 2008 and 2012 to analyse the trends in adoption figures in Kenya over the recent years, given that older figures could be located in secondary sources. A formal request was submitted to the register to receive such figures with a breakdown by gender, province of origin and other indicators, but no official response was ever received, despite constant follow-up. As official statistics were not forthcoming, attempts were made to obtain numbers from two large adoption societies in Kenya. Both indicated willingness to share data, but failed to do so in time for it to be included in this analysis, despite recurrent requests for information.

As will be seen in Chapter 4 of this paper, the figures reported in secondary sources for previous years are incomplete and only one source attempted to disaggregate data between domestic and intercountry adoptions. This situation has resulted in this study's inability to confirm any trends in rates of adoption, undermining the intention to confirm the perception of many stakeholders that there has been a steady rise in domestic adoptions in Kenya over the past decade.

2.4.3. Qualitative data analysis

This study was based on interviews carried out individually with 21 informants, categorised as shown in Table 2.1.

Table 2.1 Types and number of informants interviewed

Type of informant	Number of informants per category
Individual informants (total of 15)	6 adoptive parents , defined as Kenyan adults who had already completed a local adoption or had declared their intention to formally adopt a child
	5 kinship carers , defined as Kenyan adults who had at least one family-related child under their care without a formal care order
	4 childless adults , defined as Kenyans who did not have any children under their direct care
Stakeholder informants (total of 6)	1 Kenyan government official
	1 representative from the Law Society of Kenya
	2 representatives from two local adoption societies (one from each)
	1 representative from the Kenya Society of Care Leavers
	1 founder of a small non-governmental organisation set up to benefit children without parental care

The selection of individual informants was carried out utilising principles of purposeful sampling, “(...) selecting information-rich cases selected purposefully to fit the study” (Coyne, 1997, p. 627). A snowballing technique was applied to identify new informants who could shed further light on themes that progressively emerged throughout the interviews, and to help maintain a reasonable gender, socio-economic and educational background balance amongst informants. Personal contacts were helpful in securing access to interviewees, since the subject is generally perceived to be a secretive, private issue; this resulted in a 100% rate of positive responses amongst those who were approached as potential informants. However, a request to interview prospective adoptive parents participating in a training programme was rejected by the adoption society in charge of it. Having access to such a cohort of parents could have balanced the sample of informants across a series of variables. As a result of this limitation, five out of the six adoptive parents interviewed were mothers and the majority have a high educational background, as will be further detailed in Chapter 5. Kinship carers and childless adults were more easily identified amongst a wider spectrum. The number of interviews carried out was limited due to time and resource factors; nevertheless it was felt that a reasonable level of saturation was reached within the sample described above.

Stakeholder informants were selected based on their relevance to the field and were approached utilising personal and professional contacts in Nairobi. Two practising adoption lawyers who were targeted did not participate in the study. Two randomly selected residential care facilities in Nairobi were approached but refused to be interviewed. No large civil society organizations were included in the sample due to their relatively small participation in the sector. Since the focus of the study is on perceptions and experiences of domestic adoption, the sample of stakeholder informants was intentionally kept small.

Open-ended interview questionnaires were developed for the three categories of individual informants and were used with a reasonable degree of flexibility throughout the interviews, allowing interviewees enough openness to lead the conversation in different directions⁵. The questionnaires designed for stakeholder informants consisted of questions tailored to their specific area of intervention and were applied with an equal degree of flexibility. A constructivist approach to interviewing was employed where empathy was critical to establishing rapport with informants:

In order to tap greater depths in mutual meaning-making during interviews, the researcher needs to engage with participants through a willingness to understand a participant's response in the context of the interview as a whole. This understanding develops through the open interchange between participant and researcher (...) The approach taken, then, is one of data generation as opposed to data collection (Mills, Bonner, & Francis, 2006, p. 10).

Sixteen of the 21 interviews, including those of the six adoptive parents, were carried out by the author, while five were carried out by a local research assistant under her supervision. All interviews were recorded and thereafter transcribed by an external professional. Twenty interviews were carried out in English; one was carried out in Kiswahili and later translated into English. The average duration of adoptive parents' interviews was 62 minutes, kinship carers 35 minutes and childless adults 31 minutes. The average duration of stakeholder interviews was 59 minutes.

Informed by the principles and methods of grounded theory (Corbin & Strauss, 2008), codes were generated through which data from the interviews could be sorted, categorised and analysed. The result of this work is described in Chapter 5. The study sample was very small and scientifically rigorous data analysis was limited by a number of factors. Therefore, the findings of this exploratory

⁵ Interview guides are available in Appendix I

study not only stem from primary data generated by the interviews, but are also significantly influenced by the interpretation of the literature reviewed and by the author's personal life and professional experiences in Kenya. As highlighted by Corbin and Strauss:

Although statements of relationship or hypotheses do evolve from data (we go from the specific to general), whenever we conceptualize data or develop hypotheses, we are interpreting to some degree. To us, an interpretation is a form of deduction. We are deducing what is going on based on data but also based on our reading of that data along with our assumptions about the nature of life, the literature we carry in our heads, and the discussions that we have with colleagues. (*Ibid.*, pp. 136-137)

2.5. Ethics

The project proposal for this study was approved by the University of Nairobi Institute of Development Studies and thereafter by Kenya's National Council for Science and Technology (NCST) in November 2012 under research permit number NCST/RCD/14/012/1552.

All possible measures were taken to ensure that ethical principles were adhered to during the course of fieldwork. The main researcher was the only person with access to the identity of all informants, while one assistant had access only to information required for her participation in the study. All interviewees were informed that their voluntary input was being requested for a research project for the elaboration of a Master's thesis and no incentives were promised or provided to any informants. All those who agreed to be interviewed granted their written consent for the recording of the conversation and for the use of their ideas in this study, provided their identity was kept confidential. Consent forms explicitly stated that interviewees were allowed to interrupt or leave the conversation at any point in time, and that they were free to refuse to answer any questions.

Most interviews were carried out at a time and venue chosen by the interviewees. Care was taken to ensure that full names were not used during the conversation and that all personal references were removed from transcripts. Numerical descriptors were used to label interview transcripts and coded data, all of which have been securely stored electronically.

Many informants asked to see the outcomes of this study, so this paper will be made available to all those who expressed such interest. Five hard copies will be delivered to the NCST following their

legal requirements. An oral presentation of the research findings will be made at the Institute of Development Studies of the University of Nairobi.

2.6. Limitations

Several limitations affected the scope and outcomes of this study, many of which have been alluded to earlier. Noteworthy is the fact that the research permit to carry out the fieldwork in Kenya was only granted in mid-November 2012, three months after the process had been formally initiated, significantly delaying the start of interviews.

A non-negligible variant is the fact that the author of this study is not a Kenyan citizen. Even after having lived in the country for almost six years the researcher's ability to deeply connect with the subtleties of local beliefs and practices is inevitably limited by cultural, racial and historical factors. These tensions were made evident by the fact that some of the informants seemed very keen to speak out about their experiences, while others seemed to be excessively cautious about what they said. Particularly while conducting stakeholder interviews the author felt that she was approaching a delicate and often deeply controversial subject, both for cultural and political reasons. Such tensions will not be explored during this analysis, which shall focus primarily on the insights that contributed to answer this study's main research questions.

Furthermore, the aim of analysing a practice that has often been surrounded by secrecy and taboo through a child rights lens revealed additional strains, especially amongst informants who referred to the fact that adoption is not an 'African tradition' but a concept imported from the West. Although the Kenyan legal and policy framework has aptly complied with the international child rights regime inaugurated by the CRC, local adaptations of child rights and childhood concepts remain fragile. Adoption is an illustrative case given the individual and private nature of the practice, in stark contrast to communal approaches to child care traditionally favoured by African societies. Although this study unveiled some of these tensions it was not originally designed to address these elements in depth and will therefore not attempt to provide a conceptual framework to interpret such contradictions.

3. The rights of the child deprived of a family environment

The main focus of this thesis is the practice of domestic adoption and whether its increase can contribute to the further realisation the rights of the child within the alternative care system in Kenya. In order to establish this, it is necessary to first explore the conceptual framework governing the rights of children deprived of their family environment, as this theoretical approach will constitute the lens through which the case of Kenya will be later analysed.

3.1. The family environment

Much has been written about the fact that families are, most often, the best environments for children to grow up in. Research in different fields of knowledge has documented the damaging effects of family separation on children (for a useful summary see Tolfree, 1995, pp. 19-34), especially when it leads to young children's placement in institutions where appropriate attachment and behaviour modelling cannot develop (Browne, 2009 and Tolfree, 2003).

Such concerns have been at the heart of the development of children's rights principles. As seen in the introduction, the 1924 Geneva Declaration exhorted the world to take care of orphaned children and the 1959 Declaration of the Rights of the Child devoted Principle 6 to affirming the importance of parental care and the role of the family in protecting and nurturing a child's development.

"Concerned at the large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflicts, natural disasters, economic crises or social problems" (United Nations, 1986, Preamble), the UN General Assembly adopted the *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* (hereafter referred to simply as the '1986 Declaration')⁶ which would become a turning point in the development of this field and remains relevant for foster care and adoption practices today. Several Articles of this Declaration would later find their way into Articles related to the protection of the family environment and provision of alternative care, including adoption, in the Convention on the Rights of the Child,

⁶ The text of the 1986 Declaration can be found in Appendix II

promulgated only three years later. Of particular importance to this study are the following Articles of the 1986 Declaration:

Every State should give a high priority to family and child welfare. (Article 1)

Child welfare depends upon good family welfare. (Article 2)

The first priority for a child is to be cared for by his or her own parents. (Article 3)

When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute – foster or adoptive – family or, if necessary, by an appropriate institution should be considered. (Article 4)

In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration. (Article 5)

The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family. (Article 13)

A constant feature of all these Declarations, which would be carried forward into subsequent child rights legal frameworks, is the understanding that the family is usually the best environment for children to grow up in, and that their biological parents are, more often than not, best placed to provide the supportive and caring environment children need and to which they are entitled. Article 3 of the 1986 Declaration makes it clear that the first priority of care lies with a child's parents, making all alternative care measures subsidiary to parental care. However, this does not automatically translate into the right of the child to have a family or to live in a family environment, nor in a positive right of adults to have children, which are important distinctions to bear in mind when discussing adoption. Particularly in the field of intercountry adoption, this is a controversial and much-debated issue, where some scholars have interpreted the CRC as actually conferring on every child the right to a family (for a useful summary of the discussions, see Bunkers, 2010). This study shall not dwell on this contentious issue and will concur with Cantwell (2006), who affirms:

Whatever children's rights in relation to the family may be, it is important to emphasise that those rights concern **their** family. As such, they notably do not include "the right to **a** family" (...). The CRC sets out, *inter alia*, conditions (e.g. in Art. 9) under which children's ties with their parents may justifiably be partially or wholly suspended, or definitively annulled. In parallel, it strongly emphasises the desirability of the child's growing up in a family environment (Preamble) and implicitly suggests (Art. 20) that, where the child cannot live with the biological family, a family-based alternative solution should be considered first. Nowhere does it stipulate, however, the child's **right** to live in a family environment. (p.3)

Since the 1948 Universal Declaration of Human Rights (United Nations General Assembly, 1948) established that “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family” (Article 16.1), equivalent provisions have been replicated in ensuing Human Rights Charters (including the 1950 European Convention on Human Rights Article 12, the 1966 International Covenant on Civil and Political Rights Article 23, and the 1969 American Convention on Human Rights Article 17). However, disagreements remain about whether this automatically leads to an adult’s right to have children, given the possible interpretation that a family, to be constituted, must include a child. Without delving into this equally complex debate, this paper will take Archard’s standpoint that, “There is no general right to have children. (...) We do not think that it is a requirement of justice that children be distributed across couples such that every couple desiring to have a child has at least one” (2004, p. 137). What naturally follows is that, for adults who wish to have a family but cannot conceive their own children, the State must play a role in scrutinising these individuals’ capacities to raise a child who is not biologically their own, it being “entirely proper for the state to vet prospective adoptive parents strictly” (*Ibid.*, p. 138). This is so, moreover, because the best interests of the child who may be placed with new adoptive parents must be the paramount consideration, as will later be seen.

Before moving on to analyse the rights of the child within this context, it must be noted that none of the human rights instruments mentioned earlier or later in this paper provide a specific definition for the term ‘family’. Controversies abound in this debate and no universal definition has been agreed upon, given the multiplicity of forms families take across regions, cultures and religions. When referring to the drafting of Article 20 of the CRC, for instance, Cantwell & Holzscheiter (2008) noted that, “The final decision to accept the least prescriptive term ‘his or her family environment’ indicates both a wish to look further than simple parental care and the impossibility of trying to define more exactly the family” (p. 32).

3.2. The UN Convention on the Rights of the Child

The UN Convention on the Rights of the Child (CRC) was adopted by the United Nations General Assembly in 1989 and entered into force in 1990. By March 2013, it had been ratified by all but two of the 195 States of the world (one of the two being an African state, Somalia), making it the most widely ratified human rights treaty to date. The Preamble of the CRC sets forth the context in which it is to be interpreted:

(...) Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding (...).

Several Articles of the CRC relate to the importance of the family environment and the child's right to alternative care if he or she is ever, for whatever reason, deprived of this environment. Although this analysis will focus on Articles 20 and 21, other Articles relevant to this discussion are Articles: 2 (non-discrimination), 3 (best interests), 7 (the right to know and be cared for by parents), 8 (the right to identity and to preserve family relations), 9 (the right not to be separated from parents unless when in the child's best interest), 12 (the right to be heard), 16 (the right to non-interference with family), 18 (State's duty to support parents in their responsibility to secure children's upbringing), 22 (the right of refugee children to be reunified with their families or provided with alternative care services), 25 (the right to periodic review of care placement), 27 (adequate standards of living) and 30 (the rights of indigenous children to enjoy their culture, religion and language).

Article 20 of the CRC reads:

A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

States Parties shall in accordance with their national laws ensure alternative care for such a child.

Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

While a thorough analysis of the provisions contained in this Article can be found elsewhere (Cantwell & Holzscheiter, 2008), the first concept to highlight here is that, according to the CRC, the State must provide alternative care for any child "temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that

environment". As will be further analysed later in this Chapter, only children confirmed to be permanently deprived of their family environment should be eligible for adoption services. The handbook on the implementation of the CRC adds:

It should be noted that this provision refers to family, not parents, an important distinction. While it may be in the child's best interests to be removed from his or her parents (Article 9), the State should first seek placement in the child's wider family, as upheld in Article 5, before looking for alternatives. (...) This [referring to the Article 4 of the 1986 Declaration] suggests a hierarchy of options: first, family relatives, including older children (for example in child-headed families orphaned by the AIDS epidemic); second, substitute family through fostering or adoption; and third, an appropriate institution. (Hodgkin & Newell, 2007, p. 278)

Another feature of Article 20 is that it includes adoption among the alternative care options to be made available to children deprived of their family environment. In a natural evolution of interpretation of the CRC, the Guidelines in 2009 made clear that what constitutes alternative care is the process of care of a child leading up to his or her adoption – adoption being the outcome of the alternative care process. Given the fact that adoption is, by design, intended to be permanent, it becomes parental care from the moment it is formalised. This distinct feature of adoption was what led to it being devoted its own Article in the CRC, number 21.

The last sentence of Article 20 merits two final notes: "When considering solutions, **due regard** shall be paid to the **desirability of continuity** in a child's upbringing and to the child's **ethnic, religious, cultural and linguistic background**" [my emphasis]. Although combined in the same sentence, the provisions of due regard to the 'desirability of continuity' and to 'background' are separate, even if complementary. The CRC introduced the concept of continuity in a child's upbringing for the first time in international law, and paved the way for it to be replicated thereafter, for instance, in the African Charter. It implies the desirability of contact, to the furthest extent possible, with the child's parents ('the right to know and be cared for by his or her parents', as in Article 7, and the prevention of separation from parents, as in Article 9 of the CRC) and with his or her extended family and community, which is closely linked to respect for the child's background. The importance of continuity brings about, for example, the need to avoid the disruptions children can face as a result of multiple placements. However, it must also be read in conjunction with all other provisions of the CRC, to understand that even when, for example, residential care may provide continuity in a child's upbringing, it may not necessarily be in a child's best interests. Furthermore, continuity cannot be prioritised if it leads to the violation of other rights of the child, such as, for instance, the right to be

protected from physical or mental violence and neglect, as enshrined in Article 19. Continuity is an important aspect of what adoption may offer a child who has been permanently deprived of his or her family environment, if other options have found to be unsuitable or inexistent. Nevertheless, one must also exert caution and not to jump to the conclusion that adoption is the 'ideal' solution for every child:

The Convention on the Rights of the Child remains neutral about the desirability of adoption: Article 20 mentions it as one of the possible options for the care of children without families. It is clear that children's psychological need for permanency and individual attachments can be met without the formality of adoption; where adoption is used, it should be properly regulated by the State to safeguard children's rights. (Hodgkin & Newell, 2007, p. 294)

The final provision of Article 20 is, in addition, that due regard must be paid to the child's background, which has often been used to challenge the excessive reliance of certain care systems on intercountry adoption. The concept of 'due regard', which appears in several Articles, has not been defined in the CRC. Left to interpretation, in this case it must be read alongside other provisions of the Convention, in particular the right to non-discrimination (Article 2) and the child's best interests (Article 3). The preservation of a child's background relates closely to the right to identity (Article 8) and also to the rights of children of minority or indigenous backgrounds (Article 30) and should be taken into consideration alongside the desirability of continuity. For children who have been permanently deprived of parental care, placement with the extended family, in long-term foster care or domestic adoption may be the 'durable solutions' most likely to achieve those aims.

Article 21 of the CRC is devoted exclusively to adoption, including provisions specific to its intercountry form (sub-paragraphs 'c' through 'e'). As with Article 20, a full commentary on Article 21 can be found elsewhere (Vité & Boéchat, 2006). Given their particular relevance to domestic adoption, the focus here shall be on the introductory sentence and paragraphs (a) and (b) of Article 21:

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons

concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of 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; (...)

The first issue of note is that the Article states that adoption shall be used only in States that recognise or permit the system of adoption. This text was introduced to accommodate States that recognise Islamic law, which does not accept legal adoption in the sense described by the Convention (Hodgkin & Newell, 2007, p. 294).

The second provision of the introduction is a determining feature for all adoptions, whether domestic or intercountry. This is the only point in the entire treaty where the child's best interests are expected to be '**the** paramount consideration' and not only '**a** primary consideration' (my emphasis), as in Article 3. This is a critical distinction, related to earlier reflections surrounding the right of all individuals to found a family. By ensuring that it is the child's best interests – and not those of the prospective adoptive parents – which shall prevail in all adoption proceedings, the CRC sets clear standards that must be followed if a child is to be placed in an adoptive family. From this provision, and its combination with Article 21(a), stem some key ethical principles for adoption practice, including that the starting point for all adoptions must be the child, that adoptions should be carried out by services competent in the protection of children, and that the adoptability of the child must be determined before adoption proceedings begin (International Social Service, 1999).

Paragraph (a) of Article 21 focuses on ensuring that the practice of adoption will be carried out in the child's best interests. It covers three critical steps in the procedure: the need for the authorisation of 'competent authorities'; the permissibility of the child's adoption (or his or her 'adoptability'); and the need for informed consent to have been given by those concerned with the child. The CRC interprets adoption as a serious, irreversible episode in a child's life and aims to ensure all safeguards have been put in place before such an event takes place. Not only must well trained and skilled authorities supervise the proceedings while taking each child's individual situation into account, they must also guarantee that all possibilities for the child to safely remain in his or her family environment have been duly exhausted. This requires rigorous case management procedures, including the professional counselling of all the adults concerned with the child, be they parents,

relatives or guardians, to make sure they understand all the consequences of giving consent for the child to be formally adopted. As noted by Vité & Boéchat (2006):

As a matter of principle, adoption must only take place if the parents of origin have consented to it. However, there may be exceptional circumstances, restrictively defined by law, in which adoption without the consent of the parents may be contemplated or when the parents' right to consent to adoption may be denied, such as when the parents are dead, unknown or untraceable as well as when a forced adoption is necessary in the best interests of the child (unreasonable denial to consent to adoption, declaration of abandonment, when all efforts to work with the parents and to reintegrate the child have failed or proved ineffective, etc.). (para. 88)

The importance of paragraph (b) of Article 21 for domestic adoptions lies in the subsidiarity it creates for intercountry adoption, which was subsequently reflected as one of its main principles in the Hague Convention. Following Article 20(3), this paragraph establishes that intercountry adoption should only be considered if all possibilities for the child's placement in his or her country of origin, including with an adoptive family, have been examined but to no avail.

3.2.1. The Committee on the Rights of the Child

The Committee on the Rights of the Child is the CRC's treaty monitoring body and is an authoritative source of interpretation of the CRC. Through the issuance of General Comments and Concluding Observations to State Party periodic reports, the Committee generates a body of knowledge relevant to this analysis. The annual Days of General Discussion have also proven to be critical to understanding the Committee's evolving interpretation of the CRC.

3.2.1.1. Day of General Discussion

The 2005 Day of General Discussion on Children without Parental Care was carried out as a response to the increasing call within the international community for the development of clearer guidelines on how to design and deliver alternative care services for children. As discussed previously, the CRC establishes the primacy of the family environment in a child's life and proposes a series of measures to be taken when a child is deprived of such an environment, although it does not specify when and how each of the alternatives should be considered and implemented. Debates during the 2005 Day of General Discussion reinforced some of the key CRC principles by emphasising that "the family, as the fundamental group of society, is the natural environment for the survival, protection and

development of the child” (CRC/C/153, para. 644) and that “all necessary measures should be taken to prevent the separation of the child from her/his family of origin” (*Ibid.*, para. 649). With regards to alternative care, the Committee encouraged the “development of adoption, *kafalah* and traditional foster care systems, such as family-based alternative care (e.g. extended family, grandparents) community-based care, paying particular attention to the rights recognized in the Convention, including the principle of the best interests of the child” (para. 656). In accordance with its Concluding Observations to State Parties over the previous years, the Committee expressed concern with the fact that poverty was the underlying cause of children being institutionalised and urged State Parties, in accordance with CRC Article 27, to “ensure that poverty as such should not lead to the separation decision and to the out-of-home placement” (para. 658). It went on to clearly express its concerns with the poor quality of care provided to children in many residential care facilities and the fact that “the institutionalization of children is used systematically” (para. 665). In addition, the Committee noted that “many children lack adequate documentation and background information. (...) The lack of investigation and sufficient documentation impedes the continuous planning and the regular review of the placement” (para. 679). These particular concerns are very relevant to the current Kenyan context, where poverty is cited as one of the main factors behind the high numbers of children living in residential care, many of whom remain in such care without proper documentation or long-term care planning.

Finally, the 2005 Day of General Discussion concluded by recommending that “the international community (...) prepare a set of international standards for the protection and alternative care of children without parental care for the United Nations General Assembly to consider and adopt in 2006” (para. 688). This recommendation would lead to the acceptance of the *Guidelines for the Alternative Care of Children* in 2009.

3.2.1.2. *Guidelines for the Alternative Care of Children*

The Guidelines were not produced by the Committee on the Rights of the Child; hence their inclusion in this section may be misleading at first sight. However, as described above, the Guidelines were developed in response to a call from the international community, taken up by the Committee during its 2005 Day of General Discussion, when it issued a direct recommendation for the drawing up of such standards. In view of this, and the fact that the Committee has embraced the Guidelines as a critical instrument for the implementation of CRC Article 20 in particular, the substance and social impact of the Guidelines will be analysed in this section.

The Guidelines were welcomed by consensus by the UN General Assembly in December 2009. They are a non-binding international instrument, which therefore relies on its dissemination and use to become effective. Drawing on the foundations set forth by the Declarations mentioned in section 3.1 of this paper and on the care-related provisions of the CRC, the Guidelines have filled a glaring gap in the alternative care sector, which may explain the speed with which they have been acknowledged and supported by the Committee on the Rights of the Child, governments and civil society globally. The purpose of the Guidelines is established in its first paragraph:

The present Guidelines are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so. (A/RES/64/142)

Here an important, albeit subtle, distinction to CRC Article 20 must be made. As discussed earlier, the Convention refers to children deprived of their ‘family environment’, while the Guidelines refer to children who are deprived of ‘parental care’. The difference is not conceptual in nature, but rather one of scope. The CRC establishes that all children deprived of their family environment are entitled to “special protection and assistance provided by the State”. Therefore, this provision fundamentally refers to the obligations imposed upon States to establish a formal alternative care system to respond to the needs of children for whom it has already been duly established that family-based care, whether parental or from extended family, is not an option. The Guidelines, on the other hand, seek to provide practical orientation (hence ‘guidelines’) for States on how to design and implement their alternative care system, officially recognising, for the first time in an international instrument, the important role the extended family and community have in providing informal care for children who cannot be raised by their parents. For this reason, the scope of the Guidelines is described as applying to:

(...) the appropriate use and conditions of alternative formal care for all persons under the age of 18 years (...). Only where indicated do the Guidelines also apply to informal care settings, having due regard for both the important role played by the extended family and community and the obligations of States for all children not in the care of their parents or legal and customary caregivers, as set out in the Convention on the Rights of the Child. (*Ibid.*, para. 26).

What follows from this approach is that adoption is not included in the scope of alternative care broached by the Guidelines, since:

Care by adoptive parents from the moment the child concerned is effectively placed in their custody pursuant to a final adoption order (...) is considered to be (...) parental care. 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. (*Ibid.*, para. 29(b))

Formal care services and practices, like adoption, must be guided by considerations of the best interests of the child. While adoption may constitute a permanent solution for the lack of parental care experienced by certain children, for adoption procedures to be carried out ethically and from a child rights perspective these must be part of the same child protection system that provides temporary, or long-term, formal alternative care for children. Adoption must be seen as one option within a range of possibilities, aiming always at providing the best possible environment for a child to grow up in. Furthermore, the Guidelines clearly acknowledge that adoption, as well as kafala, may be potential outcomes of alternative care (para. 122). It is this connection between the formal care system and the adoption system (both sub-systems of a wider national child protection system), conceptually underpinned by the correlation between CRC Articles 20 and 21, that make the Guidelines especially relevant for adoption practices.

The Guidelines stand on two main principles when setting out standards for the provision of alternative care of children: the necessity principle and the suitability principle. In short, this means first, that the need for placing children in alternative care has been clearly established, and second that the option chosen must be delivered in an adequate manner corresponding to the child's needs (Cantwell, Davidson, Elsley, Milligan, & Quinn, 2012). These are fundamental principles to be respected when assessing whether adoption could be an option for any child deprived of parental care. The necessity principle will first and foremost establish whether family separation is in the child's best interests, and for how long, depending on the child's family circumstances. This assessment will determine what type of care will be suitable for the child at that point in his or her life. Following all international instruments that address the situation of children in need, or at risk of needing, alternative care, the Guidelines seek to prevent family separation and to promote family reintegration to the furthest extent possible.

The Guidelines also introduce the concept of 'permanency as a key goal' of alternative care. Permanency is an important feature of adoption, but it can also be found in other forms of care and

therefore must not be used as a 'trump card' to promote adoption as the inherently best care option for children deprived of parental care:

Without denying the child's need to retain or put down roots, the Guidelines take a flexible view, emphasising the 'stable' (and of course appropriate) nature of the placement rather than the setting itself. (...) both desirably and realistically, the Guidelines indicate that a wide range of informal and formal care options, in addition to returning to the parental home wherever possible, can constitute potential solutions for 'permanency' if they meet those conditions. (Cantwell, Davidson, Elsley, Milligan, & Quinn, 2012, p. 72)

The dissemination of the Guidelines over the past three years has promoted a significant thrust towards the establishment of family-based alternative care systems globally. As seen in the introduction to this study, several meetings on the subject have taken place in Africa during this period calling for the development of family-oriented solutions to the alternative care of children. Despite its short history, the Guidelines are already prompting significant change for children in different corners of the world, including in Kenya, where a draft version of national guidelines, largely inspired by the Guidelines, is ready for endorsement and implementation.

3.2.1.3. General Comments

Goedertier and Verheyde (2004) consider that the CRC Committee's General Comments are central to its role as they speak directly to the body's mandate to guide governments in the implementation of the Convention:

To this end, general comments attempt to enhance the understanding of the rights enshrined in the Convention and draw attention to the insufficiencies disclosed by a large number of reports; they illuminate the States parties' obligations, aim at stimulating the implementation activities of the governments and relevant international bodies as well as trying to clarify the reporting requirements. (Goedertier & Verheyde, 2004, para. 52)

While there are mentions of the family's role in supporting children in other General Comments (for example numbers 9, on the rights of children with disabilities and 11, on indigenous children and their rights), the one which more clearly refers to the issue is Comment number 7, issued in 2005, on implementing the rights of the child in early childhood (CRC/C/GC/7/Rev.1). This General Comment carries a specific section on 'Parental Responsibilities and Assistance from State Parties', which outlines the role of parents and primary caregivers, as well as the State's responsibility, in providing support to families so they can discharge their function of protecting and nurturing children's

development. Importantly, this Comment clarifies the Committee's interpretation of the term 'family' as used in the preamble of the Convention:

The Committee recognizes that 'family' here refers to a variety of arrangements that can provide for young children's care, nurturance and development, including the nuclear family, the extended family, and other traditional and modern community-based arrangements, provided these are consistent with children's rights and best interests (CRC/C/GC/7/Rev.1 para. 15).

In addition, in this General Comment, the Committee recognises that social changes have had a severe impact on the role of the family over time, echoing the concerns shared in the introduction of this thesis:

In some countries and regions, shifting social attitudes towards family, marriage and parenting are impacting on young children's experiences of early childhood, for example following family separations and reformations. (...) In other countries and regions, the illness and death of one or both parents or other kin due to HIV/AIDS is now a common feature of early childhood. These and many other factors impact on parents' capacities to fulfil their responsibilities towards children. More generally, during periods of rapid social change, traditional practices may no longer be viable or relevant to present parental circumstances and lifestyles, but without sufficient time having elapsed for new practices to be assimilated and new parental competencies understood and valued. (CRC/C/GC/7/Rev.1, para. 19)

This last sentence is of particular relevance for the study of children's care in Kenya today. It will be revisited in relation to the main findings of this research.

3.2.1.4. Concluding Observations

The Committee's Concluding Observations to State Parties after reviewing their periodic reports on implementation of the CRC constitute a critical body of information on the status of children's rights across the world. Notwithstanding the fact that they do not have a legally binding force, Concluding Observations issued by international human rights treaty bodies are known to have an authoritative advisory weight:

Despite their relatively recent emergence in treaty body practice, concluding observations have been elevated to be the primary record of the findings and recommendations regarding each State Party under review. It is clear, also, that they constitute important

interpretative tools for the respective treaties, although they are (rightly) without legal effect. (O’Flaherty, 2006, p. 51)

From an analysis of the Committee’s Concluding Observations to State Parties referring to ‘family environment and alternative care’ between 2011 and 2012, preliminary conclusions will be drawn about the latest trends in the Committee’s interpretation of Article 21. The last periodic report submitted by Kenya to the CRC Committee is dated 2005, therefore the Committee’s Concluding Observations (from 2001 and 2007) to the Republic of Kenya’s two State Party reports submitted to date will be further analysed in Chapter 4 of this study.

An analysis of Dambach’s (2013) review of the Committee’s recommendations regarding Article 20 over the past two years leads to the conclusion that the Committee has been consistent in recommending that State Parties support family preservation and reunification programmes and develop family-based alternative care mechanisms for children deprived of parental care (see, notably, Finland (CRC/C/FIN/CO/4, para. 34), Seychelles (CRC/C/SYC/CO/2-4, para. 45) and Viet Nam (CRC/C/VNM//CO/3-4, para. 48)). It has also, with few exceptions, recommended that State Parties take into consideration the *Guidelines for the Alternative Care of Children* when developing their child protection systems and care programmes. Furthermore, the Committee has been increasingly vocal in its requests for States to develop and support community-based services and care mechanisms (see, for example, Afghanistan (CRC/C/AFG/CO/1, para. 42), Czech Republic (CRC/C/CZE/CO/3-4, para. 44), and Syrian Arab Republic (CRC/C/SYR/CO/3-4, para. 56)) and to avoid institutionalisation, utilising it only as a measure of ‘last resort’ (for instance, Ukraine (CRC/C/UKR/CO/3-40, para. 45), Costa Rica (CRC/C/CRI/CO/4, para. 50) and Thailand (CRC/C/THA/CO/3-4, para. 52)).

In relation to the implementation of Article 21, the Committee has not been very consistent in its analysis of State Party reports; references to it are often absent, or very brief, within the section on family environment and alternative care. Amongst the 28 Concluding Observation reports that carried specific recommendations regarding Article 21 in 2011 and 2012, the measure most frequently called for is the need to either put in place or reform national adoption legislation. The call for governments to consider ratifying the Hague Convention is also often included in these Concluding Observations, denoting the importance given by the Committee to the establishment of a human rights-based legal framework for the practice of adoption. Comprehensive recommendations on this matter have been put forward to a wide range of countries, including

Namibia, which was called upon to, “Urgently adopt a comprehensive law on domestic and intercountry adoption and ensure that it is in full compliance with the Convention and other international standards” (CRC/C/NAM/CO/2-3, para. 50 (a)). Industrialised and decentralised countries such as Canada were also called upon to:

Adopt legislation, including at the federal, provincial and territorial levels, where necessary, to ensure compliance with the Convention and the Hague Convention (...).

Amend its legislation without delay to ensure that information about the date and place of birth of adopted children and their biological parents are preserved. (CRC/C/CAN/CO/3-4, para. 57 (a) and (b))

Australia was invited to:

(...) undertake measures to ensure that all its states and territories amend legislation on adoption, as required, in order to comply with its obligations under the Convention and the Hague Convention (...) to give full effect to the provisions on consent, access to legal representation in adoption proceedings, and to ensure that adoption proceedings are decided upon with the best interests of the child as the paramount consideration. (CRC/C/AUS/CO/4, para. 54)

The need to enforce the principle of the best interests of the child in adoption proceedings is another area which has been given significant attention by the Committee, as was the case with its recommendation to Liberia, “(...) that, in all cases of adoption, the State party ensure that the best interests of the child are of paramount consideration, and that the parents or legal guardians have given their informed consent to the adoption” (CRC/C/LBR/CO/2-4, para. 58). Belarus received exactly the same recommendation (CRC/C/BLR/CO/3-4, para. 48). Italy was invited to, “Introduce the principle of the best interests of the child as a paramount consideration in legislation (...) and procedures governing adoption” (CRC/C/ITA/CO/3-4, para. 42 (a)), while both Andorra (CRC/C/AND/CO/2, para. 38) and Namibia were equally called upon to, “Entrust the responsibility of monitoring and collecting data on domestic and intercountry adoption, including post-adoption monitoring, to a specific body, and ensure that the principle of the best interests of the child is always taken into consideration” (Op.cit., para. 50 (b)). As seen, the Committee has not been consistent in its use of the provision which guarantees that the child’s best interests be **the** paramount consideration in adoption proceedings, although it applied it to some countries, as was the case with Australia mentioned above and Togo and Azerbaijan, which will be seen below.

Several countries received recommendations aiming at improving their domestic adoption systems, often calling for the simplification of procedures to encourage nationals to adopt, as was the case with Bosnia and Herzegovina, which was enjoined to, “Facilitate adoptions, including by simplifying and streamlining procedures for adoption while ensuring safeguards required by the Convention, and establish a universal integrated database for its social protection institutions with information on potential adoptees and adopters nationwide” (CRC/C/BIH/CO/2-4, para. 51 (a)). Togo was urged to “(...) consider reducing adoption fees in order to ensure that preference is effectively given to domestic adoption over intercountry adoption, and that the best interests of the child is always the primary consideration in adoption decisions” (CRC/C/TGO/CO/3-4, para. 48). Viet Nam was recommended to, “Continue promoting domestic adoption for children who would otherwise not have a family environment” (*Op.cit.*, para. 51 (c)). Albania received five recommendations on its domestic adoption practices, including to “Define procedures to be followed by the Albanian Adoption Committee and clarify the sharing of responsibilities, between that Committee and the institutions regarding notably declarations of abandonment” (CRC/C/ALB/CO/2-4, para.57 (d)) .

Finally, the Committee’s comprehensive comments and recommendations to Azerbaijan in March 2012 regarding Article 21 are reproduced in full as they focus exclusively on domestic adoption and provide a rare insight into the Committee’s current interpretation of this Article within the context of the Convention (my emphasis)⁷:

The Committee is concerned that **domestic adoption** for children deprived of a family environment **is not promoted, developed or applied as an alternative to public care**, even in situations where it is in the best interests of the child. In this context, the Committee is specifically concerned about:

- (a) The **low rates of domestic adoption in the State party, particularly for children with disabilities and those who are above 5 years of age**;
- (b) The severe limitations in taking into account the best interests of the child during adoption procedures, with the **focus being frequently on the child being able to meet the needs and requirements of the prospective parents rather than with taking into full account the best interests of the child concerned**;

⁷ The combined third and fourth periodic reports submitted by Azerbaijan to the CRC Committee in 2009, and the two complementary reports submitted by civil society coalitions in 2011, all had extensive information on alternative care mechanisms and adoption practices, which may provide a partial explanation of why the Committee was able to produce comprehensive recommendations for the ‘family environment and alternative care section’ of their Concluding Observations (covered in paragraphs 50 to 55 of the report).

- (c) **The inadequacy of the support provided to adoptive parents** in preparation for adoptions during the process, as well as for follow-up to facilitate the adopted child's integration into his or her adoptive family;
- (d) **The absence of follow-up monitoring** to ensure the well-being of the adopted child;
- (e) **The limited capacity of professionals** working on child adoptions and the **resulting frequent delays in concluding adoption procedures**;
- (f) **The absence of measures in place to ensure that children who are adopted are consistently informed of their status** and provided with information on their biological parents.

The Committee recommends that the State party review its legislation and practices on adoption. In the light of **article 3** of the Convention, on the best interests of the child, **article 5** on the rights and duties of parents and **article 12** on the right of the child to express his or her opinion, the Committee recommends in particular that the State party:

- (a) Undertake measures to raise awareness on the **Convention-compliant practice of adoption as an alternative to State care for children deprived of a family environment**, particularly for those with disabilities or who are older than 5; it also recommends that the State party consider raising its age limit for children to be eligible for adoption;
- (b) Ensure that **the best interests of the child is the paramount consideration** during adoption, in addition to having the child's view taken into account to the greatest extent possible, having due regard to the child's age and maturity;
- (c) **Ensure the provision of adequate social support and counselling** for adoptive parents in preparation for the adoption and to help the integration of the adopted child into the adoptive family;
- (d) **Monitor and periodically review the implementation of policies and practices concerning the adoption procedure.**
- (e) Provide training, including on the Convention, for professionals working with adoptions, to enable them to address the needs of children and **apply prompt and effective procedures, taking into account the best interests of the child for selecting adoptive parents**;
- (f) Undertake **legislative and other measures to ensure the preservation of information on the origin of adopted children**, in particular information concerning the identity and medical history of the biological parents, and ensure that children are informed about the fact of their adoption and have access to such information at the appropriate age and level of development. (CRC/C/AZE/CO/3-4, para 54-55)

These Observations could be the subject of an in-depth analysis, as can be inferred from the emphasised text, but three themes are particularly noteworthy. First, the Committee reinforces the idea that domestic adoption is a more suitable alternative than 'public care' for children deprived of a family environment. Second, the Committee confirms it is not in the best interests of the child to be chosen by ("to meet the needs and requirements of") prospective parents, and goes on to imply that it is the needs of the child that should guide the selection of adoptive parents, if this is to be done in the child's best interests. Finally, the Committee reinforces the point that adoption services must be run by 'competent authorities', sharing a wide range of concerns on how the adoption process is currently carried out in Azerbaijan, and recommending that the government "Monitor and periodically review the implementation of policies and practices concerning the adoption procedure." These three issues will be central to the analysis of current domestic adoption practice in Kenya and will be revisited later in this study.

3.3. The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child was adopted by the then Organization of African Unity (now African Union, or AU) in 1990 but entered into force only in 1999. As of March 2013, it had been ratified by 46 out of the 54 African nations, including Kenya (African Committee of Experts on the Rights and Welfare of the Child, n.d.). It is widely known that the Charter evolved out of the need to bring certain aspects of the CRC into an African context. Commentators may dissent in their interpretation of whether the Charter is more progressive or regressive than the CRC and whether its implementation and monitoring are feasible, given the wider limitations posed by the AU system (Olowu, 2002), but it remains to date the only regional human rights instrument devoted solely to the rights of the child.

Similarly to the CRC, the Charter's preamble sets the background against which it should be interpreted:

(...) NOTING WITH CONCERN that the situation of most African children, remains critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safeguards and care,

RECOGNIZING that the child occupies a unique and privileged position in the African society and that for the full and harmonious development of his personality the child should grow up in a family environment in an atmosphere of happiness, love and understanding (...)

The African Charter takes the concept of the best interests of the child further than the CRC. Article 4(1) declares that, "In all actions concerning the child undertaken by any person or authority the best interests of the child shall be the primary consideration". As earlier discussed, the CRC's only equivalent provision is found in Article 21 and not in Article 3, where the best interests remain one, albeit primary, consideration among others to be taken into account.

Articles 18 (Protection of the Family), 19 (Parent Care and Protection), 20 (Parental Responsibilities) and 25 (Separation from Parents) of the Charter all deal with issues of family, parenting and child care. Amongst these, some of the provisions in Articles 19, 20 and 25 are unique to the Charter and will therefore be analysed in more detail. Adoption is dealt with in Article 24, which will be further discussed below.

The strength of Article 19 lies in its paragraph 1, when compared to its equivalent in the CRC (Article 9(1)). The provision in the Charter which regulates the separation of a child from its family is more rigorous, requiring that, "a judicial authority determines in accordance with the appropriate law, that such separation is in the best interest of the child", while the CRC leaves separation orders to be made by a competent authority, subject to judicial review. Article 20(2)(a) of the ACRWC carries a provision not found in the CRC, by stating that State Parties must "assist parents and other persons responsible for the child and in case of need provide material assistance and support programmes particularly with regard to nutrition, health, education, clothing and housing", clearly advancing "the status of socio-economic rights beyond the traditional confines of rights which are considered only attainable by 'progressive realization' " (Olowu, 2002, p. 130).

ACRWC Article 25 is entitled 'Separation from Parents' and, to a large extent, carries the provisions of CRC Article 20; it reads:

1. Any child who is permanently or temporarily deprived of his family environment for any reason shall be entitled to special protection and assistance;
2. States Parties to the present Charter:
 - (a) shall ensure that a child who is parentless, or who is temporarily or permanently deprived of his or her family environment, or who in his or her best interest cannot be

brought up or allowed to remain in that environment shall be provided with alternative family care, which could include, among others, foster placement, or placement in suitable institutions for the care of children;

(b) shall take all necessary measures to trace and re-unite children with parents or relatives where separation is caused by internal and external displacement arising from armed conflicts or natural disasters.

3. When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious or linguistic background.

Interestingly, the ACRWC provides for “alternative family care” (as opposed to only “alternative care” in the CRC), even if foster placement and placement in “suitable institutions” are the only alternatives nominally mentioned, “among others”. The recognition that children separated by internal and external displacements need to be supported with family tracing and reunification is another distinctive feature of the Charter, once again reinforcing the importance of children being able to remain under the care of parents or relatives. Furthermore, Cantwell & Holzscheiter (2008) believe that the wording of Article 25(3) makes the African Charter “more explicit than the CRC, since it applies the best interests of the child not only to the decision to take the child out of his or her family environment but also to any decision regarding the choice of an alternative placement” (p. 23). All these characteristics of the Charter indicate that with regard to alternative care, the African instrument provides additional and complementary protection for children who have the benefit of living in countries that have ratified both the CRC and the ACRWC.

Article 24 of the Charter is entitled ‘Adoption’ and is very similar to CRC Article 21:

States Parties which recognize 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) recognize 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; (...)

(f) establish a machinery to monitor the well-being of the adopted child.

The first significant difference in relation to the CRC relates to intercountry adoption, which the ACRWC explicitly considers a measure of 'last resort', while the CRC is more discreet in its prescription. This particular provision, which may have its roots in the desire to 'Africanise' children's rights, has unfortunately not contributed to a healthy debate within the care sector in Africa. It has often polarised the field and hampered governments' and other stakeholders' abilities to explore the range of alternative family care solutions which should be made available to children without parental care. One may infer that this contentious debate has contributed to render domestic adoption an almost 'invisible' practice across the continent.

Second, the Article calls for the creation of a "machinery to monitor the well-being of the adopted child". Although this provision seems to have been included in the ACRWC in relation to intercountry adoption, it does, in principle, equally increase the protection for children placed in domestic adoptions. As seen in the CRC Committee's Concluding Observations, the establishment of such a monitoring mechanism is recognised today as an important component of any child protection system. The Charter indicates that adequately processing an adoption is not enough to guarantee that the child's rights have been fulfilled; the State must do its best to ensure that the outcomes of the adoption are indeed in the child's best interests.

3.3.1. African Committee of Experts on the Rights and Welfare of the Child

Playing the equivalent role as that of the Committee on the Rights of the Child in relation to the CRC, the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is the African Charter's treaty monitoring body. According to Lloyd, the ACERWC is the "guardian of children's rights in Africa" (2008, p. 44). It has, since its inception, had a broader and more powerful mandate than that of the CRC Committee, given its ability to hear individual cases via a communications procedure. This capacity was only recently conferred on the CRC Committee by the Third Optional Protocol to the CRC, which was adopted in 2011 but has not yet entered into force. In spite of its ample powers, the ACERWC has faced many challenges since its establishment in 2002 (Lloyd, 2002). Its Secretariat has been ill-equipped from the outset and its ability to deal with the submission of reports by State Parties has been very limited. Lloyd, who has been one of the most constant

commentators of the ACERWC, considered, in 2008, that, “At present, the ACERWC can still be considered a fledgling organisation, and it is perhaps too early to examine the efficacy of the ACERWC’s provisions, along with its monitoring and enforcement procedures” (Lloyd, 2008, p. 50). Five years later the situation does not seem to have changed much.

A review of the latest recommendations issued by the ACERWC to State Parties that submitted progress reports on the implementation of the African Charter to the Committee proved impossible given the limited information available on the Committee’s website in March 2013. The database of State Party reports and Committee recommendations included reports from only 14 countries, of which only nine were accompanied by its respective recommendations. Among the latter, only six were available in English, while all seemed to be dated 2009 (reports were not filed by date and not all documents available mentioned the sessions and dates in which they were considered).

3.4. Convention on protection of children and co-operation in respect of intercountry adoption

Despite the fact that this 1993 Convention of private international law, more widely known as ‘the Hague Convention’, is devoted to regulating the practice of intercountry adoption, its impact on all adoption procedures globally cannot be underestimated. This analysis will focus on the provisions of the Convention that impact domestic adoption and on some of the changes brought about in the adoption sector since the Hague Convention became part of the repertoire of child rights instruments promoted by the international community.

Kenya is one of 13 African States to have ratified the Hague Convention. As the analysis of the CRC Committee Concluding Observations has previously shown, the Committee has systematically incorporated the principles of the Hague Convention into its analysis of State Party reports and has often called on State Parties that have not yet done so, to ratify it.

The Hague Convention came into force only five years after the CRC and was born out of the need to address the new challenges brought about by the increase in documented cases of abusive practices in intercountry adoption in the late 1970s and 1980s. To a large extent, the Hague Convention borrows its main principles from, and gives effect to, CRC Article 21 by expanding on the safeguards and procedures required for the ethical practice of intercountry adoption. Not surprisingly, the

preamble to the Hague Convention recalls the fundamental principles outlined in the Declarations and Conventions discussed earlier in this chapter:

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children (...)

The four general principles of the Hague Convention are: a) ensuring adoptions take place in the best interests of the child and with respect for his or her fundamental rights; b) establishing safeguards to prevent abduction, sale and trafficking in children for adoption; c) establishing co-operation between States; and, d) authorising competent authorities and bodies to carry out adoption-related tasks – principles that, “should be equally relevant to the principles of the national child protection system” (Hague Conference on Private International Law, 2008, para. 39).

Some of the fundamental premises of the Hague Convention are that it is in the best interests of the child to grow up in a family environment, that permanency is preferable to temporary measures, and that a placement which can offer both of these conditions in the child’s country of origin is preferable to an intercountry alternative. These are the underlying foundations of the principle of subsidiarity, a cornerstone of the Hague Convention, carried forward from the 1986 Declaration, Article 21 of the CRC and Article 24 of the ACRWC, as already seen in the Introduction of this paper.

Following this principle, the Hague Conference on Private International Law, the organisation charged with promoting the implementation of the Hague Convention, recognises the importance of developing national adoption systems, but equally acknowledges that in some cases, community-based responses to alternative child care may be more appropriate for certain children. It affirms that, “In developing a national adoption system, it is important for States to know what factors, if

any, are inhibiting national adoption in the State, and to consider how families can be encouraged to adopt children” (*ibid.*, para. 299).

While the intention behind the Hague Convention was to establish more rigorous and strict regulations for the practice of intercountry adoption, in effect it has established higher ethical and procedural standards for all types of adoption. In fact, the case today is likely to be the reverse of that envisaged by those who drafted the CRC, who wanted to ensure that, “the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption”. This is particularly critical for governments, which should not overlook existing practices and procedures regarding local adoptions when putting in place all the requirements to accede the Hague Convention:

It often happens, in fact, that the safeguards granted by domestic adoption procedures do not achieve the level of protection foreseen by intercountry adoption. While, therefore, Article 21, paragraph c of the CRC retains all of its relevance, it is also essential to recall that the States also bear responsibility for ensuring that children adopted in their own country benefit, particularly, from legal and psychosocial guarantees (intervention of qualified and supervised professionals, checking the child’s adoptability and the suitability of the prospective adoptive parents, preparing the child and the parents, professional matching, post-adoption support) equivalent to those provided in intercountry adoption. (Vité & Boéchat, 2006, para. 106)

Notwithstanding the important advances brought about by the Hague Convention, its fundamental principles are enshrined in both the CRC and the ACRWC. States that have ratified both these instruments have no excuse for allowing lower standards to prevail in domestic adoption in comparison to intercountry adoption. If anything, the Hague Convention should be used as ‘minimum standards’ to ensure that all adoption proceedings are carried out in the child’s best interests.

As has been seen throughout this chapter, children who are, for whatever reason, deprived of their family environment, are entitled to a comprehensive set of rights that have been developed and further specified by a wide range of international instruments over the past century. At the heart of these rights is the “(...) duty all societies owe children – that if parents cannot meet their children’s needs then the children have a moral claim on the rest of us” (Hodgkin & Newell, 2007, p. 279). The analysis of the situation of children deprived of parental care in Kenya will take into account the fact

that the State has an obligation to put in place a system to respond to the specific needs of these children and that such a system must be founded on the best interests of the child.

4. Situation of children without parental care and the care system in Kenya

4.1. Kenya: facts and figures

The Republic of Kenya is a multi-ethnic state which had a total population of 38.6 million in 2009, of which 19 million were children under 18 years of age. The capital city, Nairobi, is populated by approximately 3.1 million people; 67.7% of the population lives in rural areas (Kenya National Bureau of Statistics, 2010). Kenya is administratively divided into eight provinces, which are subdivided into 47 counties⁸.

Kenya's population originates from over 40 different tribes and more than 60 languages are spoken throughout the country. The 2009 census established that approximately 83% of the population is Christian; 11% is Muslim; and the remaining are Hindus, traditionalists and 'others' (Kenya National Bureau of Statistics, 2010).

Kenya has been a relatively stable democracy since it obtained independence from Great Britain in 1963. However, ethnic conflicts deriving from dissatisfaction with the December 2007 national election results claimed the lives of an estimated 1,100 people and internally displaced at least another 250,000 (Krieger & Waki reports on 2007 elections pp. 53 & 67). According to a 2008 UNICEF situation analysis (Republic of Kenya, United Nations Children's Fund (UNICEF), 2008, p. 38):

The violence led to unprecedented vulnerability of children. Many children have been separated from their parents and the number of unaccompanied minors and unaccounted for children in the affected areas has been rising. (...)

Many parents in dire circumstances have resorted to placing their children in privately-run *[sic]* homes and children *[sic]* charitable institutions which are not officially authorised to accept them, are inadequately registered, regulated or managed, and provide questionable care, support and nurture. (*Ibid.*, pp. 21-22)

An agreement leading to the establishment of a coalition government brought peace back to Kenya, paving the way for the adoption of a new Constitution in August 2010, which modernised the country's laws, replacing the 1969 Constitution. Many legislative, policy and administrative reforms are still underway as the country adjusts to its new legal framework.

⁸ A map of Kenya can be found in Appendix III

The Kenya 2009 Gross Domestic Product per capita was US\$739, while the average life expectancy was 57 years (<http://data.un.org/CountryProfile.aspx?crName=kenya#Summary>). According to the United Nations Development Programme, Kenya ranked 145 with a 0.519 Human Development Index in 2012, above the sub-Saharan average of 0.475 (United Nations Development Programme (UNDP), 2013). On the other hand, Transparency International ranked the country number 139 of 174 in its Corruption Perceptions Index of 2012 (Transparency International, 2012).

UNAIDS found that 1.6 million Kenyans were living with HIV in 2011, of whom 200,000 were under 15 years of age, the third largest affected population in sub-Saharan Africa alongside Tanzania (UNAIDS, 2012, p. A10). AIDS claimed the lives of 130,000 Kenyans in 2001 but by 2011 the estimated annual deaths caused by the disease had been brought down to 62,000 (*Ibid.*, p. A25). A similar decrease was noted in the number of new infections in children, which were estimated at 23,000 in 2001 and 13,000 in 2011 (*Ibid.*, p. A54).

In 2011, Kenya's under-5 mortality rate was 73 per 1,000, while the infant mortality rate was 48 per 1,000 live births (You, New, & Wardlaw, 2012, pp. 20-21). The following year, Save the Children ranked Kenya 72 out of the 80 less-developed countries included in their Mother's Index Rate, which analyses a combination of indicators related to maternal and newborn health (Save the Children, 2012c, p. 52). UNICEF estimates that just over 57% of Kenyan children have birth registrations, noting that, "there is significant national variation with 86.7% of children registered at birth in Nairobi, while only 21.25% registered in North Eastern region" (United Nations Children's Fund (UNICEF) Kenya, 2012b, p. 6).

4.2. The situation of children without parental care

The last Kenya Integrated Household Budget Survey, covering 2005-2006, estimated that only 64% of children aged 0-14 (at the time calculated to be almost 15 million) lived with both parents, 20.5% lived with only their mothers and 2.4% with only their fathers, while 13.1% of all children aged 0-14 lived outside of parental care (Republic of Kenya, 2007, p. 25).

According to UNICEF, 1.2 million children under 17 years of age were orphaned by AIDS amongst a population of 2.6 million orphaned by all causes in Kenya in 2009 (United Nations Children's Fund

(UNICEF), 2012, p. 101)⁹. However, the 2012 Kenya National Social Protection Sector Review estimates that over 3.6 million children are orphaned and vulnerable, defined as “(...) children who have lost one or both parents and/or are living in a household where at least one parent, caregiver, or child has been chronically ill for the last three months or more and/or who are living in a child-headed household” (Republic of Kenya, 2012a, p. 33).

A technical report commissioned by the government in 2008 carried out the most comprehensive review of Kenya’s alternative care system to date, focusing on the legal provisions and practices of guardianship, foster care and adoption (Williams & Njoka, 2008; hereafter referred to simply as ‘2008 technical report’). In general, it found that the lack of reliable data about the situation of children in need of, or already in, the alternative care system poses a major challenge for policy design and programme response. It also noted that Kenya’s child protection system relies heavily on residential care institutions (called charitable children’s institutions, or CCIs, by the 2001 Children Act) as an answer to a myriad of child protection concerns. Family-based care is not prioritised in the legal and policy frameworks; resources and capacity are scarce in both the public and private sectors; and social beliefs and attitudes equally favour institutionalisation over other forms of care. Moreover, services that target the prevention of family separation or promote family reunification have been limited in reach, often being run by civil society actors. The report collates a series of recommendations for the improvement and expansion of the alternative care system, many of which remain relevant today, as will be noted in the main findings of this thesis.

Following these recommendations, the government of Kenya commissioned in 2012 the development of national Guidelines for the Alternative Care of Children, in an effort to domesticate the provisions of the 2009 international Guidelines. The draft national Guidelines are currently awaiting approval by the Ministry of Gender, Children and Social Development. Researchers carried out a comprehensive ‘Assessment of guardianship, foster care, adoption, institutional care and tracing and reintegration practices in Kenya’ (Republic of Kenya, 2012b, hereafter called the ‘2012 assessment report’), as a basis to inform the development of the Guidelines. The report concludes that communities express a general reluctance to formalise children’s care placements since

⁹ UNICEF adopts the definition of ‘Orphans and Vulnerable Children (OVC)’ proposed by the UNAIDS Monitoring and Evaluation Reference Group, which states that: an orphan is a child below the age of 18 who has lost one or both parents. A vulnerable child is below the age of 18 and: i) has lost one or both parents, or ii) has a chronically ill parent (regardless of whether the parent lives in the same household as the child), or iii) lives in a household where in the past 12 months at least one adult died and was sick for 3 of the 12 months before he/she died, or iv) lives in a household where at least one adult was seriously ill for at least 3 months in the past 12 months (United Nations Children’s Fund (UNICEF), 2009b, p. 48).

Kenyans have always taken care of their children via informal mechanisms, especially kinship care. Interestingly, however, as outlined in the introduction of this paper, some informants noted that:

Due to a number of modern challenges and social networks breaking down, it is becoming more difficult for these children to be cared for within the extended family and community structures and an increasing number of children are being abandoned, running away from home, living on the streets, in CCIs, unnecessarily being separated from their families or going without appropriate family care. Caring for extra children is now a heavy burden for many families in light of the formal economy and cost of living. (*Ibid.*, p. 7)

A study carried out by Save the Children and UNICEF in 2012 documented the situation of children connected to the streets in the Rift Valley of Kenya. It found, for instance, that the three main factors leading children to join the streets were hunger (59%), abuse at home (23%) and the effects of the 2008 post-election violence, such as displacement or loss of the family home (21%). On the other hand, children felt pulled to the streets to earn money (65%), to join friends/peers (42%) and to access food handouts (42%) (Steffen, 2012, p. 18). The report concluded that:

The root causes of hunger, poverty, tribal tensions, unemployment, abuse and corruption among others build upon one another until a family snaps and is unable to retain one or several of its children. The child in the streets becomes a physical symptom, an effigy of the desperation families feel in the face of these problems. (*Ibid.*, p. 60)

The 2012 assessment report confirmed several of the findings of the 2008 technical report. It equally documented that foster care and guardianship placements are poorly understood and hence improperly or infrequently practised across the country. It confirmed that Kenya's care system continues to be anchored in CCIs, many of which remain unregistered and therefore unmonitored by the government. The report raises concerns regarding the fact that the documentation of children residing in these facilities, including birth certificates and case files, is often incomplete or absent. According to District Children's Officers (public servants employed by the Department of Children's Services as the frontline child rights workers across the country) the mandatory children's committal orders are rarely in place. The report documents the perception of stakeholders that:

Very few CCIs have mechanisms, or the will and commitment, to exit children from their CCIs by either reintegrating with their families or placing them in foster care, guardianship or adoption. In general, CCIs want to hold on to 'their' children. (...) The resistance is in large part due to the practice of the donors sponsoring individual children so that letting that child go would also mean loss of revenue for the CCI. This practice is particularly prevalent in CCIs

run by foreign donors, which also have a “culture and mind-set of holding onto children for long period of time”.

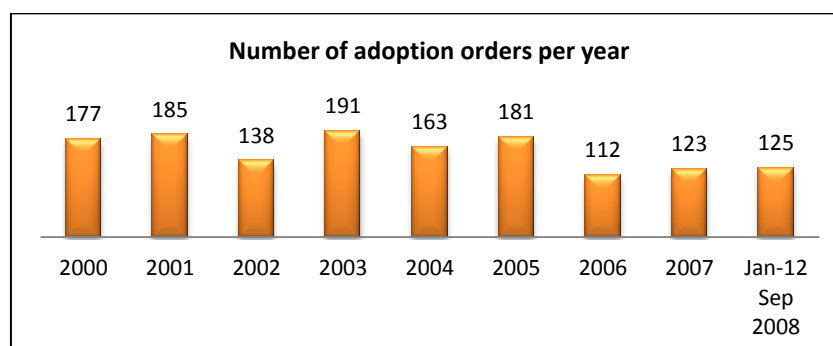
(...) When asked about the alternative care issues in Molo, the District Children’s Officer [DCO] felt that his biggest challenge were CCIs: “DCO encounters many problems because CCIs do not want to give out children for foster care and adoption placements. It is difficult to force them without clear guidelines or regulatory framework.” (Republic of Kenya, 2012b, p. 24)

These perceptions were reconfirmed by the field research carried-out for this study, as will be seen in Chapter 5. Additionally, there seems to be a shared perception amongst stakeholders that the number of domestic adoptions has been increasing significantly over the past years, but this could not be corroborated by this investigation due to lack of reliable figures. One adoption worker interviewed for this study provided the following figures for her organization:

(...) the numbers are still going up. Every year we register about 20 to 30% increment. (...) every year we have recorded a very good increase in numbers of local adoptions. We have so far at least been able to maintain an 80 to 20 ratio of local to international adoptions. (...) last year we did 192 adoptions in total, out of that 80% were local adoptions. Compared to 156 the previous year. (...) So the numbers are going up steadily every year.

The challenge in obtaining official adoption statistics was similarly raised by the 2008 technical report, which noted that the National Adopted Children Register does not distinguish between local, resident and inter-country adoption orders, and highlighted this as major flaw of the system. The report presented figures for 2000 to 2008, as shown in Table 4.1.

Table 4.1 Total adoption entries in the Adopted Children Register, 2000-2008



Source: Williams & Njoka, 2008, p. 16

Surprisingly, referencing data from the same Register, Kenya's first State Party Report on the implementation of the ACRWC to the ACERWC produced disaggregated figures as shown in Table 4.2.

Table 4.2 Numbers of domestic and intercountry adoptions for 2003-2006

TOTAL ALL ADOPTIONS		DOMESTIC ADOPTIONS						INTERCOUNTRY ADOPTIONS					
		TOTAL		SEX				TOTAL		SEX			
		#	%	#M	%	#F	%	#	%	#M	%	#F	%
2003	199	134	34.6%	35	26.1%	99	73.9%	65	25.4%	41	63.1%	24	36.9%
2004	163	94	24.3%	35	37.2%	59	62.8%	69	27.0%	34	49.3%	35	50.7%
2005	181	103	26.6%	31	30.1%	72	69.9%	78	30.5%	36	46.2%	42	53.8%
2006	100	56	14.5%	20	35.7%	36	64.3%	44	17.2%	26	59.1%	18	40.9%
TOTAL	643	387	100.0%	121	31.3%	266	68.7%	256	100.0%	137	53.5%	119	46.5%
%	100	60.2%		18.8%		41.4%		39.8%		21.3%		18.5%	

Source: Republic of Kenya, 2007, p. 43

Although there is no available official analysis of these figures, one can infer that the introduction of the 2005 Adoption Regulations in December of that year, which will be discussed later in this Chapter, led to a reduction in the number of adoptions processed from 2006 onwards. The absence of data for the whole of 2008 and beyond makes it difficult to understand whether the 2007 ratification of the Hague Convention has had any impact on adoption trends, and whether its recommended rate of 70% local and 30% intercountry adoptions is being reached.

As can be seen, there are variations between both sources in data pertaining to years 2003 and 2006, revealing once again the challenges in accessing reliable statistics regarding adoption in Kenya.

4.3. Monitoring of Kenya's international child rights commitments

4.3.1. Convention on the Rights of the Child

Kenya ratified the CRC in 1990, soon after its promulgation by the UN. It submitted its first State Party report to the Committee on the Rights of the Child in 1998. The report was not analysed by the Committee until 2001 – 11 years after ratification. The State Report made wide reference to the role of the extended family in caring for children and the impact of modernisation on their capacity to provide appropriate care. On the implementation of Article 20, the report refers to a national survey to identify "children in especially difficult circumstances", which found almost 110,000 such children across the country, half of whom were not receiving any parental care (CRC/C/3/Add.62 para. 305). The report went on to state that:

Placing children in institutions is a popular way of dealing with children without a family or effective family protection in Kenya. This raises the issue of the quality of protection. Placing children in institutions can deprive them of family protection, depending on the length of the stay, which in some cases could be up to the age of 18. These institutions are also expensive to run. They also promote dependency and deprive the child of his or her sense of individual responsibility. (*Ibid.*, para. 308)

The State Report was very brief in its analysis of the implementation of Article 21, focusing mainly in explaining existing adoption procedures. At the time, Kenya had not yet ratified the Hague Convention. The government stated that:

Because there is only one official adoption agency, it is possible to circumvent it through private adoptions which, though legal, may not cater for the best interests of the child. They are also inadequate given the increasing number of children in need of adoptive care. Adoptions are accepted up to a certain level in Kenya. Therefore, adoption can be used as an alternative means of catering for the welfare of children without families. It is preferable to institutionalising them and denying them the love and bonding only possible in a family setting.

The Adoption Act [1959] facilitates the adoption of homeless children and regulates adoption societies. Some adoptive parents prefer not to tell their children that they are adopted. They prefer to make such children believe that they are their natural children. This has caused crises in the lives of such children once they find out their true status from neighbours, school, or the adoption certificate. There are no proper follow-up mechanisms to ensure the safety of children awaiting adoption. (Para. 320-322)

The supplementary report submitted by the Kenya NGO CRC Coalition to the Committee in 2001 did not focus on the issue of children deprived of parental care, except for highlighting the situation of what it termed 'street children', exhorting the government to, in collaboration with non-governmental organisations (NGOs), establish "(...) community and family re-integration programs to divert the children from streets. The long-term target in all these efforts must be the primary causal factors of poverty, HIV/Aids, unemployment, the high cost of education and the disintegration of the family care systems" (The Kenya NGO CRC Coalition, 2001, p. 4).

The 2001 Concluding Observations from the CRC Committee to Kenya recommended the following:

In light of Article 21 of the Convention, the Committee recommends that the State party strengthen administrative procedures for formal domestic adoptions to prevent abuse of the practice of private and informal adoption and guarantee the protection of the rights of children. In the light of the increasing number of children deprived of a family environment, the Committee encourages the State party to promote and encourage formal adoptions and to establish an effective foster care programme. Additionally, the Committee encourages the State party to accede to the 1993 Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. (CRC/C/15/Add.160 para.40)

Seven years passed between the submission of Kenya's two first periodic reports to the CRC monitoring body. During this period, several developments would affect the way Kenya would report on implementation of the CRC. Most importantly, as will be analysed later in this chapter, in 2001 Kenya passed the Children Act, a comprehensive law domesticating the rights of the child enshrined in the CRC and the ACRWC. The Act repealed previous, colonial child-related legislation and created an institutional framework to promote the implementation of children's rights.

The Kenyan government submitted its second State Party report to the CRC Committee in 2005 and was appraised in 2006. The report was very limited in its analysis of the implementation of Article 20, mainly focusing on the effects of the spread of HIV/AIDS, which the government had declared a national pandemic in 1999. Regarding Article 21, the report stated that although the country was still in the process of ratifying the Hague Convention, its main provisions had been captured in the 2001 Children Act. The government report affirmed that, "The Adoption Committee has been constituted, draft regulations are in place and there is fast, efficient handling of cases at the High Court after the establishment of the Family Division in 2002" (CRC/C/KEN/2 para.311). It goes on to note the following constraints in the implementation of Article 21:

Most people within communities opt for foster care or locally *[sic]* agreements to support children left orphaned. They cite expenses and lack of clear information as hindrances to adoption. From the perspective of implementation, adoption regulations are yet to be given the force of law. The Chief Justice has not developed the rules for adoption.

Many children's organizations are ignorant of the fact that they can be registered as adoption agencies hence leading to a situation of monopoly and subjecting the adoption process to abuse. (para. 313)

The supplementary report submitted by the Kenya CRC NGO Committee regarding the State's second periodic report had more specific recommendations for the government regarding alternative care for children and adoption, emphasising the need to implement the Charitable Children Institutions Regulations and the Adoption Regulations which had both been adopted by the government in 2005.

The Concluding Observations to Kenya's Second Periodic Report regarding family environment and alternative care are more comprehensive than the previous ones. Since these are currently valid for Kenya, as the country prepares its consolidated Third, Fourth and Fifth Reports to the CRC Committee (due in 2012 but undelivered to date), it is worth exploring them in more detail.

The Committee welcomed the legal and policy developments in relation to child rights: "It also welcome[d] the efforts of the State party to regulate and register all charitable institutions for the care of children, including reviewing the registration every three years, and to improve the support for foster care." It goes on to add that, "The Committee, however, remains concerned that these measures are inadequate to meet the varied needs of orphaned and other vulnerable children in Kenya" (CRC/C/KEN/CO/2 para.38) and therefore recommended that the State party:

- (...) (c) Take the necessary measures to prevent and combat exploitation of children in foster care and ensure protection of property of orphans and their inheritance rights, provide communities with civic education in this regard and strengthen the capacity of chiefs and local leaders to deal with these matters;
- (d) Continue and complete the registration, including regular reviews and inspections, of all available institutions for alternative care (...) (*Ibid.*, para. 39)

In relation to adoption, the Committee urged the State Party to:

- (a) Ensure the compliance of the legislation regarding adoption with article 21 of the Convention;
- (b) Establish a comprehensive national policy and guidelines governing adoption in order to ensure that domestic and intercountry adoption are performed in full compliance with the best interests of the child and the appropriate legal guarantees in accordance with the Convention;
- (c) Strengthen its monitoring of intercountry adoptions, in particular by ratifying and implementing the 1993 Hague Convention No. 33 on Protection of Children and Cooperation in Respect of Intercountry Adoption (...) (*Ibid.*, para. 41)

Zilliox (2006) criticises the approach taken by the CRC Committee with regard to the development of an alternative care system in Kenya:

It is my opinion that the Committee did not go far enough to respect, with consideration and sensitivity, the cultural realities operating in Kenya. The Committee allowed for a narrow interpretation of family environment that ultimately distracted the state from finding working solutions. Yet, it remains that Kenya is accountable to uphold its international obligations. The state must recognize the cultural particulars within its boundaries in order to execute its obligations in the most dignified manner. Not only does the extended family system retain cultural signposts, but it offers children an environment based on the cultural traditions valued in Kenya and prized under the Charter [ACRWC]. (p. 384)

It is important to understand that when the Committee issued its first set of Concluding Observations to Kenya in 2001, it had not yet 'matured' the concept of family-based alternative care, which eventually emerged out of its 2005 Day of General Discussion, leading to the elaboration of the *Guidelines for the Alternative Care of Children*. Although the recommendations issued to Kenya in 2006 can equally be criticised for focusing excessively on regulating a formal care system, including standardising the quality of institutional care, the early signs of a broader understanding of the role of communities in providing appropriate care to children may be seen in the call to, "provide communities with civic education in this regard and strengthen the capacity of chiefs and local leaders to deal with these matters". As seen in Chapter 3, the Guidelines have only recently been incorporated into the Committee's repertoire of standard recommendations. The call for State support to community- and family-based alternative care mechanisms is more frequent today, as is the plea to reduce institutionalisation, utilising it only as a measure of last resort.

The tensions between the existence of a customary, traditional system of child care amongst local communities, and the urge to comply with a fairly new international child rights regime remain alive across Africa today. The dilemma of needing to formalise traditional care practices to increase children's protection in societies that have suffered from 'modernisation shocks', while still retaining the extended bonds that have protected children for generations, remains unresolved. Analysing a similar context in South Africa, Martin and Mbambo (2011) recommend that:

The communal care ethic and care by extended family members are all positive practices that should be revived and revitalized through statutory and programmatic interventions by the legislature, executive and civil society.

Legislation should recognise and regulate customary adoptions and foster care arrangements so that the practice may become more widely exercised, and so that children in these care arrangements may enjoy the same level of protection as children in statutory alternative care arrangements. (p. 94)

4.3.2. African Charter on the Rights and Welfare of the Child

Kenya ratified the ACRWC in 2000. It submitted its first report on implementation to the ACERWC in 2007, covering the period of 2003 to 2007. It largely replicated the report which the Kenyan Government had submitted to the CRC Committee in 2005, with some updates and complementary information related to Articles specific to the African Charter (such as 18, 21, 26 30 and 31). The information on Articles 19 (Parent Care and Protection) and 24 (Adoption) does not differ significantly from the CRC report. The supplementary report submitted by civil society organisations to the ACERWC in 2007 was not located and was therefore not reviewed.

The ACERWC issued its recommendations and observations on Kenya's first report in 2009. With regard to Article 25, it stated:

Noteworthy is the establishment by the Kenyan Government of structures that cater for children from broken homes who are living in the streets.

Considering the diversity of the shelters, the Committee recommends the establishment of a follow-up mechanism to verify the standards for the establishment of these structures and the collection of data which will enable the control and management of the number of children and the services provided to children admitted into these shelters. (African Committee of Experts on the Rights and Welfare of the Child, 2009, p. 5)

The analysis of these reports and recommendations indicates that some areas of concern in the provision of alternative care and adoption services for children became prevalent during the first years of implementation of the Convention and the Charter in Kenya. Concerns about the lack of structured support for families to prevent separation and support reintegration of children, the risk of abuse and exploitation within the traditional care mechanisms given the economic strains families had been subjected to, the role of and quality of care provided by residential care institutions, and the potential risk of illicit activities surrounding the practice of intercountry adoption have been at the centre of the debate about the situation of children deprived of parental care in Kenya for over 20 years.

4.3.3. *The Hague Convention*

The Hague Convention entered into force in Kenya in 2007, but seems to have guided legal developments in the field of adoption much before then:

(...) the Hague Convention, though not part of our law before June 1st, 2007, provided the inspiration in the enactment of the [Children] Act in 2001 and the subsequent making of the [Adoption] Regulations in 2005. Even though it did not seem clear to the drafters then that the newly created Adoption Committee would carry the mantle of a Central Authority within the meaning of the Hague Convention, the duties and functions imposed and given to it came closest to those of a Central Authority within the meaning of the Hague Convention. (Republic of Kenya, 2010a, p. 6)

Enactment of the Hague Convention, alongside promulgation of Kenya's new Constitution, prompted the commissioning of a comprehensive review of existing legislation and policies surrounding adoption, resulting in a proposal to replace the 2005 Adoption Regulations and amend the Children Act. The proposed changes, as will be seen later in this chapter, included further regulations regarding international adoptions. With regard to the latter, the report proposed:

(...) more stringent requirements for a child to be considered for international adoption. This is in consonance with the principle of subsidiarity under the Hague Convention. As at today, there has not been any clear guidance on this in our domestic law, except, of course, by transformation. It is suggested that for a child to be approved for international adoption, an adoption society must have determined and confirmed that the child has been abandoned or has been unconditionally given up for adoption by its legal parent or parents and that such child has subsequently remained in a charitable children's institution for more than twelve months. Moreover, it should be shown not only that no alternative internal arrangement has yet been identified for the placement of the child but also that international adoption is considered to be in the best interests of the child. (pp. 14-15)

Implicit in the above is the notion that intercountry adoption should be a last resort. The requirement for a child to remain institutionalised for over a year prior to being placed in adoption runs counter to what is known today to be in a child's best interests. The challenges in effectively implementing the subsidiarity principle are evident in Kenya's adoption system as it continues to struggle between the need to further regulate intercountry adoption and the urge to find local care alternatives for children who have been declared adoptable. Since the ratification of the Hague Convention was the central thrust behind the call to renew the Adoption Regulations, it seems that

not enough attention was paid to the role domestic adoptions can play in the system, ignoring the recommendations of the Guide to Good Practice number 1 (Hague Conference on Private International Law, 2008, in particular, Chapter 6.4). In this regard, the only aspect addressed by the report introducing the proposed new Regulations refers to the controversy surrounding kinship adoptions:

Considering that customary law is recognized as part of our system of law, it has been argued that kinship adoptions should be acknowledged and recognized or confirmed as such, especially where a person has given prolonged and sustained support to a child who has no other known and living parents. (Republic of Kenya, 2010a, p. 10)

(...) Overall, even if some further special favours were to be made in respect [of] kinship adoption, it seems that much of the discussion must await intervention by the Legislature. One of these would have to be the definition of the word “relative” as [it] appears in the [Children] Act, which seems to be too wide. Furthermore, the requirement for assessment of the applicant and the three-month bonding period can only be tackled through a review of the Act. Quite clearly, the debate on kinship adoption is not yet exhausted. Generally, for now, at least, therefore, we think that, except for the above, kinship adoptions should follow the ordinary motions. (*Ibid.*, p. 12)

Noticeably, the terms ‘continuity’ (present in CRC Article 20 and ACRWC Article 25) and ‘permanency’ (introduced by the international Guidelines as one of the ‘key goals’ of alternative care), which did not feature in the 2005 Regulations (nor in the Children’s Act itself), remain absent from the revised Adoption Regulations.

4.4. Kenya’s legal and policy framework for alternative care and adoption

4.4.1. The Children Act

After over ten years of national debate, the Kenyan Parliament adopted a new Children Act (hereafter referred to as the ‘Children’s Act’) through Act number 8 of March 2001; it entered into force one year later. The process of elaboration of the Act was followed closely by civil society organisations, who wanted to make sure that the rights enshrined in the CRC would be reflected in the new law. National discussions took place simultaneously to the drafting of the ACRWC, which was promulgated by OAU in 1999 and ratified by Kenya in 2000. The Children’s Act repealed three pieces of colonial legislation relating to children: the Children and Young Persons Act, the Adoption Act and the Guardianship of Infants Act.

In addition to securing children's individual rights, the Act created the institutional structure to develop national policies and implement its provisions across the country. It established the National Council for Children's Services (NCCS), the national coordination and policy body, and mandated the Minister (in charge of the administration of the Act) to appoint the Director of the Department of Children's Services (DCS), currently under the Ministry of Gender, Children and Social Development, which supervises a devolved structure that is meant to promote and monitor child rights nationwide.

Over the years, there have been several challenges to the provisions and structure created by the Act. In 2006, the Kenya Law Reform Commission initiated consultations seeking inputs for its amendment, generating a revised Bill in 2007. Lack of agreement on the areas for revision and new legal developments have since stalled the amendment process, which remains pending to date. Mbugua (2012) lists the following justifications for the Act to be revised: the apparent overlap of the role of NCCS and the DCS (...); the need to provide for a higher age of criminal responsibility, one that is in harmony with CRC and ACWRC; after Kenya's accession to the Hague Convention (...) a review of the Act is required to ensure that adoption (...) and foster care placements (...) protect children from child trafficking and other crimes; and the need to ensure consistency between the Act and the Constitution 2010 (Mbugua, 2012, p. 34.). UNICEF noted the need to refocus the language of the Act so as to place more emphasis on alternative family-based care as opposed to institutionalisation, among other issues (United Nations Children's Fund (UNICEF) Kenya, 2012b, p. 4).

Despite the fact that the CRC provided a strong backdrop for the development of the Act, the rights of children deprived of a family environment were not transposed to Kenyan law following CRC Articles 9 and 25 and ACWRC Article 25. The Children's Act does not prioritise alternative family-based care for children without parental care, given the prominent role and excessive responsibilities it places on charitable children's institutions. The fact that, according to the law, children must first be placed in a CCI prior to being placed in foster care or adoption has been identified by many stakeholders as one of the main deterrents for the proper development of an alternative care system in Kenya (see, for example Williams & Njoka, 2008, p. 31 and Republic of Kenya, 2012b, p. 28).

When carrying out the already mentioned 2012 assessment report, the government itself acknowledged the need to amend several aspects of the Children's Act in order to best secure the

rights of children deprived of parental care. The draft *Kenyan Guidelines for the Alternative Care of Children*, which are currently awaiting approval, will only be effective if the Act is amended in order to, amongst other issues: recognise kinship care as a part of the alternative care system; define foster care and the requirements for families willing to foster; specify the benefits of guardianship for a child, and further clarify the conditions in which guardianship should be granted; clarify the roles and responsibilities of all the actors involved in adoption proceedings; and, introduce the concept of kinship adoption. Significant adjustments are needed to the role of CCIs, which currently constitute the ‘first resort’ for all children in need of protection. Overall, the Act must be redrafted to focus on the prevention of family separation and to secure the provision of family reintegration, or community- and family-based care, for all children in need of alternative care services.

Article 53 of the new 2010 Kenyan Constitution has been termed the new ‘mini child rights bill’, as it takes the rights of the child in Kenya beyond the Children’s Act. Amongst other fundamental socio-economic, civil and political rights, the Article includes the right to “parental care and protection, which includes equal responsibility of the mother and father to provide for the child, whether they are married to each other or not” (Article 53(1)(e)), trumping the earlier Children’s Act provisions (of sections 24 and 25) that stipulated the mother’s parental responsibility in the ‘first instance’ in the case of children born out of wedlock. The Constitution further affirms that, “A child’s best interests are of paramount importance in every matter concerning the child” (Article 53(2)). Article 45(1) reinforces the importance of the family by declaring that, “The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.”

4.4.2. CCI and Adoption Regulations

As part of the process of establishing an institutional framework for the implementation of the Children’s Act, during 2005 two national regulations relating to child care were adopted by the Kenyan government: the Children (Charitable Children’s Institutions) Regulations 2005 (hereinafter referred to simply as ‘CCI Regulations’) and the Children (Adoption) Regulations 2005 (hereinafter referred to simply as ‘Adoption Regulations’). As expected, both Regulations describe in detail the roles and responsibilities of the actors involved in each practice, and determine what could be called ‘minimum legal standards’ for the administration and delivery of services.

The main challenge in relation to the CCI Regulations is that many CCIs continue to operate without registration, therefore without government oversight. The word ‘family’ does not appear once

throughout the whole document, a reflection of the fact that CCIs are not encouraged to work with families to facilitate reintegration or placement of children into kinship care. The 2012 Assessment Report also recommends that:

CA [Children's Act], CCI Regulations and guidelines should ensure that the three-year committal order [with reference to section 53(3)] is used nationwide and that every CCI is working to reintegrate the child back with his family or place in family-based care alternative or adoption, especially before the 3 years committal period is over. (Republic of Kenya, 2012b, p. 31)

The Adoption Regulations complement the detailed provisions on the adoption of children contained in the Children's Act, Part XII, sections 154 to 183. Together, the Act and the Regulations are known to have tightened and improved the practice, which was previously meekly regulated. Nevertheless, recent developments have prompted an effort to further improve the legal framework for adoption:

Since the enactment of the Children's Act and the subsequent publication of the Children (Adoption) Regulations in 2005 to govern adoptions in Kenya, social workers and legal practitioners in this field have discovered serious lacunae in these provisions that require to be attended to urgently. In particular, it has become increasingly essential that steps must be taken to review both the main legislation and regulations concerning adoptions to ensure that the country complies with and is able to fulfill its obligations under the Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption signed at The Hague on 29th May, 1993 to which Kenya is now a party by accession since 1st June, 2007. (Republic of Kenya, 2010a, p. 2)

As seen earlier in this chapter, the proposed changes, largely focused in domesticating the Hague Convention, are detailed in the legal review's report dated November 2010. In general, the changes proposed in the new Regulations revolve around six areas: a) the role and mandate of the Central Authority; b) the registration, regulation and oversight of adoption societies (which are the accredited bodies to carry out adoptions in Kenya); c) the process of placement, care and supervision of children in the adoption process; d) the further regulation of kinship adoptions; e) the adjustment of requirements for adoption by foreigners resident in Kenya (or so-called 'resident adoptions'); and, f) further regulations regarding international adoption.

The proposed new Adoption Regulations have remained in draft form since being delivered to the Department of Children's Services in the Minister of Gender, Children and Social Development in late

2010. Their finalisation seems to be delayed due to the political standstill that has prevented the amendment of the Children's Act and consequently deterred the implementation of many other policies advancing children's rights in Kenya.

4.4.3. National Plans of Action

The Kenya National Plan of Action for Orphans and Vulnerable Children 2007-2010¹⁰ placed an important emphasis on the need to strengthen family-based care. It states that, "The Government of Kenya is keen in promoting and encouraging the bringing up of children within family set ups and recommends that children should only be placed in institutional care as a last resort." The plan sets one of its intended outcomes as, "increased number of OVC taken care of within family set up and retained in these families throughout their childhood period" (Republic of Kenya, 2008b, p. 15). No assessment reports or new plans of action for this sector following the expiry of this plan were found.

Following the recommendations of the CRC Committee to Kenya's second State Party report on the implementation of the CRC, the National Council for Children's Services issued the National Plan of Action for Children 2008-2012. Its situation analysis regarding children's right to protection notes that, "adoption of children is slow, costly and generally user unfriendly with huge backlog being encountered". It goes on to state that, "many children go without protection mainly due to ignorance of the public on the existing mechanisms for providing such children with alternative care" (Republic of Kenya, 2008a, p. 28). Amongst actions planned to address such challenges, the plan makes provision for the promotion of regulations and guidelines on alternative care (including foster care, guardianship and local adoption), as well as putting in place an effective monitoring system for all children in alternative care, in particular for those residing in CCIs. The plan also calls for the amendment of the Children's Act to emphasise alternative family-based care as opposed to institutional care. Some of the activities proposed in the plan have been carried out, for example, the development of the National Standards on Best Practice in Charitable Children's Institutions in 2011 (Republic of Kenya, 2011b) and the process for developing the National Guidelines for the

¹⁰ The National Plan of Action (NPA) carries the follow definition for Orphans and Vulnerable Children (OVC): An orphan is defined as a child below 18 years whose parent or both parents have died. The definition of a vulnerable child is quite wide, as causes of children's vulnerability are many. In view of this, and for the purposes of monitoring progress, this NPA has narrowed its definition of OVC as "orphaned children and children whose vulnerability is as a result of the parents/caregivers morbidity, mortality, household poverty or other socio-economic problems that render a child unable to receive basic needs".

Alternative Care of Children carried out in 2012 (Republic of Kenya, 2012c). Further analysis of the results of the plan is limited by the absence of publicly available monitoring reports.

4.4.4. Draft Kenyan Guidelines for the Alternative Care of Children

The context for the development of the Guidelines was explored earlier in this chapter. The report to inform its drafting reconfirmed the findings of previous assessments and responded to the recommendations of several national policy and international human rights monitoring mechanisms. The main inspiration behind the Kenyan Guidelines stems from the international *Guidelines for the Alternative Care of Children*. According to the October 2012 draft, some of the objectives of the national guidelines are, amongst others: to provide guidance on how to help families care for their children by ensuring that children remain with, or return to, their families; to outline steps to appropriately administer a range of alternative care options, with priority to family- and community-based arrangements; to guarantee that institutional care is used only as a temporary measure and when appropriate and deemed in the best interests of the child; and, to ensure that all alternative care decisions are made on a case-by-case basis, grounded in the principles of the best interests and rights of the child and designed to ensure the child is in a safe, loving and stable environment that meets their basic needs for continuous attachment, with permanency as key goal.

The guidelines, for the first time in the Kenyan child rights policy framework, propose ways to support kinship care, child-headed households and independent living, in addition to detailing the processes for foster care, *kafala*, guardianship and adoption. Once endorsed, the guidelines will also introduce the concept of “permanency as a key goal of alternative care” for the first time in Kenya.

Chapter 11 of the guidelines covers the practice of adoption. It aims to provide “quick practical guidance to help those placing children in adoption” (Republic of Kenya, 2012c, p. 86) and summarises key aspects of the Children’s Act and the Adoption Regulations. Interestingly, the chapter concludes with providing an extensive list of recommendations for the improvement of adoption procedures and services, ranging from the process of declaring a child adoptable, the practice of adoption by the Children’s Department and the Courts, the quality of care and protection for adoptable and adopted children, to awareness-raising and education of the public and communities about the issue.

4.5. Adoption practice in Kenya

4.5.1. The process

According to the draft Kenyan guidelines, these should be the steps taken in the adoption process (Republic of Kenya, 2012c, p. 89):

- a) Prospective adoptive parent(s) applies to an adoption society expressing their intention to adopt a child.
- b) The adoption society looks on their database for a child who has been declared free for adoption. If there is none in their database, they liaise with a CCI for availability of a child for adoption. In such a case, the adoption society must ascertain that all efforts have been made to reunify the child with their biological parents or family if their whereabouts are known; and if not, enough efforts have been put to tracing them.
- c) After this assessment the adoption society declares the child free for adoption (section 156 of the Children's Act). The child should be at least six weeks old.
- d) Meanwhile, the adoption society undertakes an assessment of the prospective adoptive parents (section 157) to determine their suitability to adopt. In cases of international adoption, this assessment will have been carried out by an adoption society in the country of habitual residence of the prospective adoptive parent(s).
- e) An adoption society places a child with applicants.
- f) There is a 3-month mandatory bonding period, although exceptions have been made for kinship/family adoptions in cases where the child has already been living with the family for a longer period of time. For international adoption, the applicants stay with the child for the 3-month bonding period within the Republic of Kenya prior to filing the matter before court.
- g) An adoption application is filed and heard before the High Court.
- h) An Adoption Order is obtained.
- i) An adoption certificate is issued by the Registrar General, who also maintains the Adopted Children's Register (section 169).
- j) If the adoption placement fails, other forms of alternative care may be considered, including guardianship.

4.5.2. The actors

4.5.2.1. The High Court

All adoptions in Kenya must be processed by a High Court, while intercountry adoptions can only be processed in the Nairobi High Court. The expansion of the High Court network to all 47 counties (from the previous 13) as mandated by the 2010 Constitution should encourage more domestic adoptions to take place outside the capital. Although not mandatory, judges usually appoint a guardian *ad litem* and request a case report from the Department of Children's Services as additional safeguarding measures prior to issuing an adoption order.

As identified by several actors, the absence of procedural rules for adoption within the judiciary has been a challenge for many years. The Child Law Practitioner's Committee of the Law Society of Kenya submitted a full proposal for 'The Children Adoption Practice and Procedure Rules' to the judges of the family division in 2008. Some of the areas covered by the rules that could contribute to improving adoption practices include the description of the roles and duties of the guardian *ad litem*, harmonisation of required documentation by the introduction of standard forms, and minimum requirements for issuance of adoption orders. As with many other child rights regulations, this one also remains awaiting endorsement.

4.5.2.2. The Adoption Committee

As stated earlier, the adoption of children in Kenya is governed by the Children's Act (sections 154-183) and the 2005 Adoption Regulations. This legal framework established what the Hague Convention terms as the "Central Authority" by creating the Adoption Committee (section 155 of the Children's Act), which is responsible for formulating national adoption policy and monitoring all adoption procedures and services in Kenya. It meets once a month and, following what is established by the Children's Act, is comprised of 10 members drawn from several sectors of society, including the Director of Children's Services, the Attorney General and representatives from the Law Society of Kenya, Kenyatta Hospital and CCIs¹¹. Neither the Act nor the Adoption Regulations specify how these representatives should be selected, for what period of time or the role they should play within the Committee.

¹¹ For a full list of the Committee's membership, see the ninth schedule of the Children Act, reproduced in Appendix IV. The Committee's functions are outlined in the Adoption Regulations, partially reproduced in Appendix V.

The Adoption Committee annually approves the registration and reports of local and international Adoption Societies that are allowed to operate in the country, including their independent Case Committees, and is also responsible for approving all individual cases of intercountry adoption.

4.5.2.3. *The Department of Children's Services*

The Department, which is placed within the Ministry of Gender, Children and Social Development, is divided into five sections, one of which is dedicated to alternative care and adoption. This section serves as the Adoption Committee Secretariat, effectively handling all adoptions processed in the country, and has the potential to embody the “machinery to monitor the well-being of the adopted child” as prescribed by ACRWC Article 24. The many demands and limitations faced by its professionals, and the absence of an information management system on children requiring alternative care, hamper the section's ability to process adoption cases faster and more thoroughly, and to offer post-adoption services. The government representative interviewed for this research mentioned some of the challenges the section faces:

(...) for adoption, it's a very expensive exercise in that there has to be a lot [of] input. So for us, for example, to be able to give the services that we give as a section, we are very heavy on input. (...) Every day we go to the field to meet adoptive parents, because when the matter is in court we are usually called upon to make a report on both local and international. (...) And that is so intensive, so we have to get transport. (...) we have agreed, (...) with the families that we are visiting them next week or they are coming here for an interview. You cannot cancel, because when you're going to somebody's home, they are there. They are waiting for you to see the house. (...) So it's very intensive. So we find the support we get from the department, for example, is because we are able to argue, we are able to fight (...) you have to fight for allocation.

The child rights sector is largely under-funded in Kenya, but good progress has been reported recently thanks to ministerial efforts to put in place a child protection strategy aimed at increasing the capacity of the national child protection system (Republic of Kenya, 2011d). However, adoption services are very demanding and in order to ensure that such services are delivered according to internationally established ethical standards, a high level of competence is required from the professionals dedicated to the sector:

It must be recognized that adoption is a highly specialized field of practice in the child welfare profession, and that unique knowledge and skills are needed by researchers, administrators, and direct service practitioners in all disciplines that serve adopted children

and their families, as well as by the families and children who are impacted by adoption. (Rycus, Freundlich, Hughes, Keefer, & Oakes, 2006, p. 43)

Furthermore, the absence of a central data management system for adoptions hinders the government's ability to adequately monitor the practice, as also described by the government representative:

(...) we can't tell you at any one point that so many [children] are available, but I believe you can get that kind of information in individual societies. They are the ones that free the children for adoption so they can tell you how many they have free for adoption. But ideally, and at the Hague [Convention], we are expected as the central authority to know or to have a database of who adopted the children. (...) We also found that it is important for accountability, (...) what we've told the societies to be doing now is to make returns [on the number of adoptions processed] on a quarterly basis.

Despite these challenges, the 2008 technical report noted that "The DCS adoption reports to the High Court received considerable praise from the judges and the High Court registrar" (Williams & Njoka, 2008, p. 46). The adoptive parents interviewed for this study also reported satisfaction with the services provided by the Department during their adoption proceedings, as will be seen in the next Chapter.

4.5.2.4. Adoption Societies

Adoption societies (the 'accredited bodies') are central to the Kenyan adoption system. As established by the Children's Act and the Adoption Regulations, they are responsible for the case management of each child's adoption, from establishing the suitability of parents for adoption, processing the matching of children and adoptive parents, approving all documentation required, supporting the Court proceedings, to providing follow-up services to adoptive families. Societies are also required to establish an independent 'Case Committee', in which its employees are not allowed to participate, to review each child's adoption process.

According to the draft Kenyan guidelines, in October 2012 there were six adoption societies registered in Kenya, all allowed to process both domestic and intercountry adoptions (Republic of Kenya, 2012c, p. 87). All societies are headquartered in Nairobi, but at least two report having operations in other provinces.

Kenyan adoption societies charge, on average, Kshs. 12,500 (equivalent to approximately US\$140 in March 2013) to process a domestic adoption. Although this may be considered low if compared to what is charged for intercountry adoptions, the fees are high for most Kenyan families, whose total monthly earnings may be below that amount. Some adoption societies report waiving, subsidising or allowing the fees to be paid in instalments to ease the financial burden on prospective adoptive families (Williams & Njoka, 2008, p. 42).

4.5.2.5. *Charitable Children Institutions*

Although officially mandated with the task of declaring children ‘adoptable’, adoption societies often rely on CCIs to identify such children. According to the 2008 technical report, “The tight connection between adoption societies and CCIs could occasion cases of pre-selection of children for adoption, which is illegal” (*Ibid.*, p. 19). The role of CCIs in adoption is not established in any of the legal provisions earlier described. It is, however, implied that, given the mandatory CCI placement prior to a child’s adoption, the institution has the power to establish if a child should be freed for adoption. During the course of interviews with stakeholders for this study, adoption society members raised concerns regarding how CCIs establish children’s adoptability and in whose interest they do so. Confirming the unease expressed by District Children’s Officers earlier mentioned in this Chapter, an adoption society worker said that:

We have many homes in Mombasa ... Think we registered the highest numbers of homes in the country. And of course because (...) [there is] a lot of support from the tourists and all that. But all our families from Mombasa, the locals included, have to come to Nairobi, Nakuru, Nyeri to get their children. So they go through the whole process, we have an office in Mombasa, we assess them, we’ll approve them but they can’t find a child in Mombasa. And yet you go to the DCO and see clearly that all the abandoned children with no known relatives, and police have investigated and found no relatives... And the children are still in the same, same CCIs. But because of the donor support, because of (...) this pressure to maintain high numbers because you know, the financial support is very hefty (...) the CCIs have the powers to decide. (...) the government should be more proactive in (...) coordinating the CCIs... Supervising really, supervising. Because at the moment the CCIs have a lot of liberty to decide what they want to do with the children in their care, and that’s not helping much.

This situation was also mentioned in the 2012 assessment report, which stated that “(...) domestic adoption is increasing, in particular in the Coast region where both the social workers at the hospital

and staff of CWSK indicated: “we have lots of interested adoptive parents but not enough children.”” (Republic of Kenya, 2012b, p. 18).

The need to enhance oversight of CCIs has been widely discussed elsewhere (particularly in Williams & Njoka, 2008 and Republic of Kenya, 2012b). The government has taken steady measures to address this issue over the past years, chiefly by issuing CCI regulations in 2005 and national standards for best practices in CCIs in 2011. However, as already mentioned in the introduction of this paper, it seems that institutions continue to proliferate without registration, contravening the provisions of the Children’s Act. Several informants interviewed for this study spoke openly about what they perceive to be the ‘business of institutions’, which may be related to the decrease in the numbers of children declared available for adoption:

(...) you know the evil behind institutions is that at times they are like businesses, so the more the children (...) are in the institution, the more funds come trickling in. Donors want to see numbers... (...) majority of the institutions are actually maintained by donors from Western countries (...) we have situations whereby young people tell you, “I was allocated a sponsor from USA from Canada, and after being thrown out of the institution that money was still coming in into the institution, but I wasn’t getting anything.” (...) But you see, there’s also another loophole somewhere. Because for you to adopt, the child normally has to be placed in an institution, and the same thing applies to foster care, for you to foster a child, you have to go to an institution. (...) I don’t know why the child always has to go to an institution to be adopted, that’s also another thing that needs to be changed. (...) That you cannot adopt without an institution... (...) But if there was another way (...) so that those children can be adopted straight from the hospital where they have been abandoned, that can also be another aspect of it. (Kenya Society of Care Leavers’ representative)

4.5.2.6. Lawyers

Although the Children’s Act does not require parents to be represented by lawyers during adoption proceedings, most parents feel the system is too complex and cumbersome for them to waive the services of advocates. As will be seen in the main findings of this study, the relationship between prospective adoptive parents and their lawyers has often been determinant in how they experience the adoption process. Given that the Law Society of Kenya has recommended minimum fees for the provision of such legal services, but not a maximum ceiling, the fees paid to lawyers often constitute the highest expense incurred by prospective adoptive parents. In light of this situation, the Child Welfare Society of Kenya (CWSK), the oldest of all adoption societies operating in the country, has

established a training programme on self-representation for parents who cannot afford, or do not wish, to hire lawyers to represent them in the adoption process. The representative of the Law Society of Kenya who was interviewed for this study was not convinced that self-representation would always work because of the complexities of the legal system and a perceived conflict of interest that can arise from parents representing themselves. Confirming the challenge, the 2008 technical report affirms that:

Though self representation seems to offer solution for high financial implication of the process, it is a challenging task to train the prospective adoptive parents on the whole process. For instance, in 2007, CWSK trained 200 prospective adoptive parents on self representation. 24 of them (...) filed cases in court. 4 out of the 24 dropped from self representation due to various reasons such as fear of court process and their cases were taken up by lawyers. (Williams & Njoka, 2008, p. 41)

Chapter 5 will look at how adoptive parents interviewed for this study experienced the adoption procedure. It will reiterate the findings of reports earlier referenced and will bring to life some of the fundamental concerns mentioned throughout this chapter.

5. Perceptions, beliefs and experiences concerning domestic adoption of children in Kenya

This chapter will outline the main findings of the field research carried out in Nairobi between January and March 2013 with the aim of providing tentative answers to the main questions of this investigation. The scope of this piece of work, as well as its limitations, was explained in Chapter 2 of this paper. In order to better illustrate the richness of opinions and experiences shared by the informants who participated in this study, a significant number of excerpts from interview transcripts are reproduced in this chapter, following Taylor and Bogdan (1998), who suggest that, “Illustrative quotations and descriptions convey a deep understanding of what settings and people are like and provide support for your interpretations. Your account should be filled with clear examples” (p. 174). Minor language edits have been made to testimonies to facilitate reading, including the removal of informal speech expressions, such as ‘yeah’, ‘uh’, etc. However, words not used by interviewees were never introduced, ensuring that the original intent of discourse was maintained. Authorship of quotes has not been segregated by gender in order to avoid identification.

Care was taken when selecting illustrative quotes to balance their use across respondents, in particular within the same chapter sub-sections. While quotes were chosen because of their representativeness to each of the issues under analysis, many of them speak to a wider range of issues related to adoption, and therefore the reader is encouraged to keep an open mind when reading these testimonies. The final conclusions in Chapter 6 will build on the vast material reviewed for this study, much of which is summarised below.

5.1. Profile of informants

As earlier described, 21 interviews were carried out for this study, 15 of which were classified as individual informants while six were categorised as stakeholder informants (refer to table 2.1 in Chapter 2 for more details). Given that stakeholder informants were selected for their professional role and experience rather than personal insights¹², profiles of the 15 individual informants are

¹² It must be noted, however, that some stakeholder informants freely shared personal experiences, a few of which are reproduced in this chapter.

summarised in the tables below, with special attention to the six adoptive parents interviewed, as these characteristics play an important role in how they perceive or experience the adoption of children.

Table 5.1 Gender and marital status of all individual informants

Gender		Marital Status		
Female	Male	Married	Single	Widowed
10	5	8	6	1

Table 5.2 Gender and marital status of adoptive parents

Gender		Marital Status	
Female	Male	Married	Single
5	1	4	2

The majority of informants were between 36 and 45 years of age, including adoptive parents. The levels of education were widespread amongst informants; nevertheless, adoptive parents represent the majority of those with the higher educational degrees.

Figure 5.1 Age of all informants

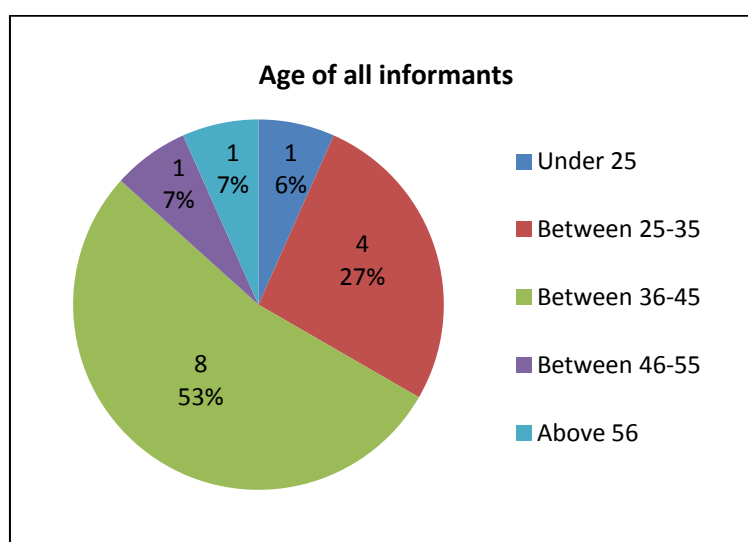


Figure 5.2 Age of adoptive parents

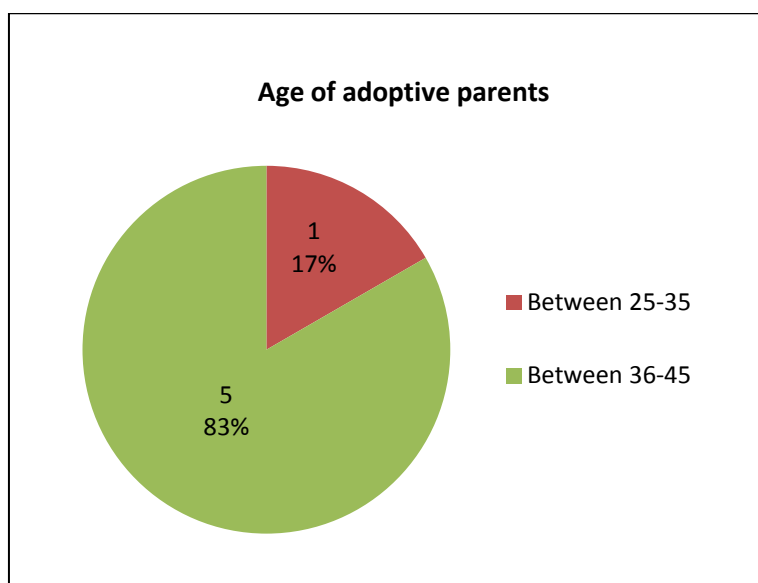


Figure 5.3: Educational levels of all informants

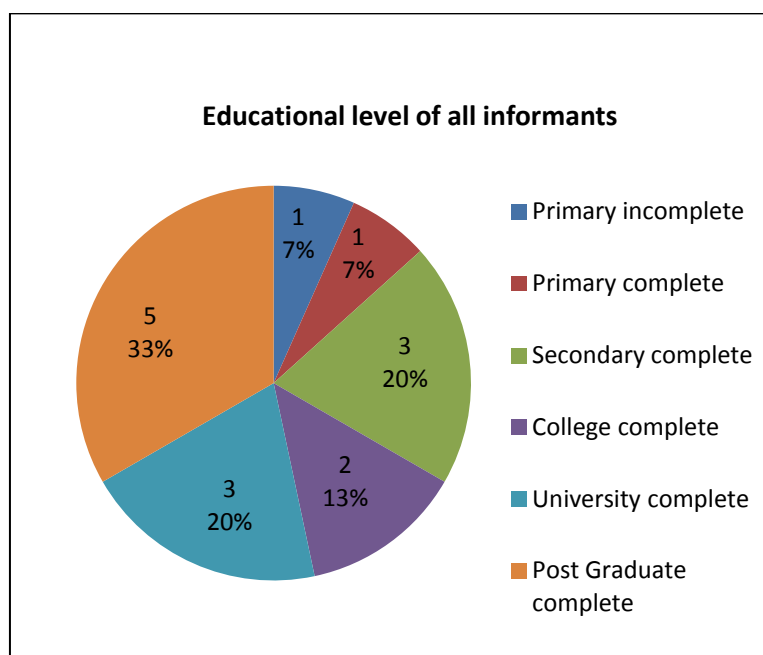


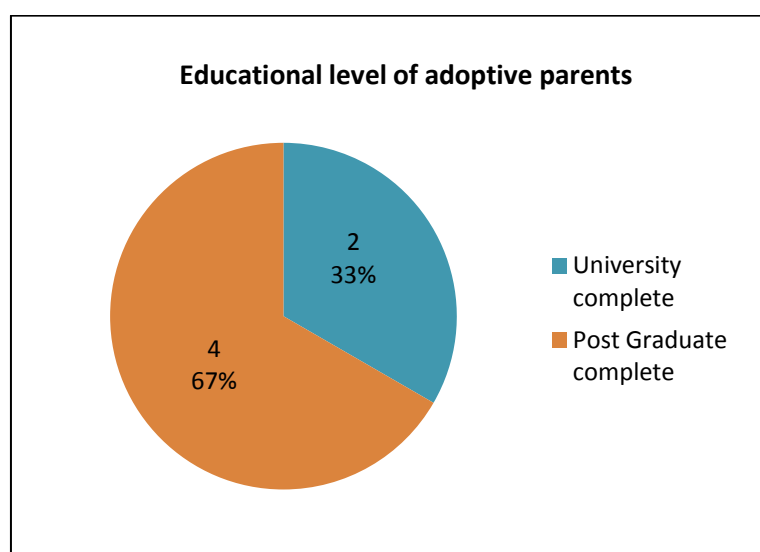
Figure 5.4: Educational levels of adoptive parents


Table 5.3 summarises the status of adoption procedures on the date the six adoptive parents were interviewed. It also shows the number of children adopted, or in the process of being adopted, divided by gender and age.

Table 5.3 Status of adoption process, number, gender and age of children adopted/to be adopted

Parent	Status of adoption procedure on day of interview and duration of proceedings	No. of children per gender		Children's current age	
		Girl	Boy	Child 1	Child 2
1	Awaiting last court hearing to complete process started 11 months earlier.	--	2 (twins)	21 months	21 months
2	Completed 5 years ago; process took 22 months.	--	1	6 years	--
3	Completed 5 years ago; duration of process unknown.	1	--	6 years	--
4	Awaiting first court hearing for son's adoption, who had been in their care for over 3 years. The daughter had been under a foster care order for over one year, as they wait for the conclusion of the first adoption to initiate the second.	1	1	33 months	3.5 years
5	Daughter had been in foster care for 11 months, following parent's choice. Adoption process due to begin one month later.	1	--	22 months	
6	Niece, who has no parents alive, had been under kinship care for 3 years. Legal circumstances are complex due to conflict with paternal family; there is no fixed date for adoption process to commence.	1	--	14 years	--

According to one of the adoption society representatives interviewed, if parents follow the procedures in a timely and appropriate manner, a domestic adoption should take, on average, between six to 12 months to complete. The 2008 technical report affirmed that local adoptions take at least six to nine months (Williams & Njoka, 2008, p. 38).

Fourteen of the 15 informants were Christian, while one adoptive parent was Muslim. Since religion did not seem to play a role in this person's attitude towards adoption, this factor is not explored as a significant variant during the analysis.

While an initial attempt was made to determine individuals' tribal and geographical origin within Kenya, questions around this made some informants uncomfortable, so these characteristics will also not be considered in this discussion. It is, however, noteworthy that certain beliefs and practices related to child care in Kenya may have cultural roots which this study could not unveil.

5.2. Perceptions and beliefs about residential and kinship care

During the first part of all interviews, informants were asked their opinion on why there are so many children living in residential care in Kenya, their thoughts on the quality of care in these institutions, and how this type of care compared to kinship care and formal adoption. The aim was to gauge people's understanding and perceptions of, and personal experiences with, these different types of care arrangements, and how children's best interests were assessed in each case.

Not surprisingly, most informants quickly understood what 'residential care institutions' were (often referred to as just 'homes', 'orphanages' or 'CCIs') and all were familiar with what we have termed 'kinship care', although this terminology was understandably not known to the majority of them. Only adoptive parents demonstrated a clear ability to differentiate a formal adoption from kinship care. Many confused the term 'adoption' with 'taking care of a child', usually a relative's child:

Adopting is the practice where a particular adult decides to take into custody an abandoned child, an orphan. (...) Takes into care giving for a period of time, to provide the basic necessities of life; tuition, shelter and all that, and just the family kind of a care. (NGO founder)

(...) [adoption] it's like someone taking you in to stay with you. (Childless adult)

I would say she adopted me, though my parents are there. (Childless adult who was raised by an aunt in kinship care)

These findings are corroborated by the outcomes of a 2011 Kenyan survey on child protection issues, which revealed that:

(...) when asked on their opinion on what adoption entails, only 30% [of 628 respondents] were aware that child adoption is the taking of someone else's child to be yours permanently under legal procedures. The rest of the respondents seem not to know that adoption entails a legal procedure and think that any form of taking care of a needy child is adoption. (Republic of Kenya, 2011c, p. 16)

Although parents who had relinquished their children to adoption were not interviewed, it is not difficult to imagine that such conceptual confusions, coupled with weaknesses in the child protection system, leave room for unethical practices. Just as impoverished parents often believe that placing their child in a residential care institution may be a way of securing their wellbeing, they may also be induced to provide consent for their children's adoption without fully understanding its consequences. Such risks are widespread globally:

It is essential to put an end to the reasoning that poverty alone is sufficient for relinquishment, abandonment and finally, for an adoption. In too many cases, relinquishment and abandonment wrongly turn into adoption, with or without the proper consent of birth parents. (Fuentes, Boechat, & Northcott, 2012, p. 21)

In Kenya, the 2008 technical report already pointed to such concerns: "Many parents do not realize that by signing the consent form they are forfeiting all their rights over their children; they appear often to see it as a temporary arrangement while their child receives education or a better life (...)" (Williams & Njoka, 2008, p. 41).

5.2.1. Residential care

Poverty was cited as the most frequent reason why children are placed in CCIs or abandoned by their parents. Other factors, such as domestic violence and early pregnancies, were also cited, but to a large extent related to the overall environment of socio-economic deprivation faced by Kenyan families, as all the indicators gathered in Chapter 4 demonstrated. In such a context, families are struggling to secure that children's basic needs are met:

(...) there are those who are abandoned and are there because they have no other place to be. But of course there are those whose parents are alive but maybe they cannot take care of them (...) Yes, they're alive but they'd rather the children are taken there because they don't think they have the means to take care of them. (Adoptive parent)

Basically, it's poverty (...) though I was taken to an institution... not just because there was nobody to look after me, but also because the people who were supposed to look after me were not financially capable to take care of me. (...) majority of the children who were inside the institution were (...) there because of poverty. And you find that when a family is actually cornered, what they tend to do is find a way to actually try and support the child... the only way they see it is a place where they can eat, a place where they can sleep... access medical care and all that. (NGO founder)

(...)one [reason] could be because their home environment itself, they don't feel it's a safe place to be. Either they have endured some sort of violence, or they are seen as truant children and instead of being rehabilitated they are sometimes thrown out, thrown to institutional care as a means of correction. (Childless adult)

My view is it's mostly from unwanted pregnancies – usually teenagers in crisis who will abandon the babies (...) Or even the parent themselves are not able to look after the child, for some reason they find it easier to walk away and leave this child to someone else's care because they don't have the means to actually look after them themselves. (Adoptive parent)

The belief that institutions provide better educational opportunities for poor children was also cited as an important reason for placement, a perception which may be related to the fact that although primary education was declared free in Kenya in 2003, associated costs such as uniforms, books and transport continue to represent a large financial burden for low-income families:

(...) from what I know and from my interaction within my community, children's institutions are seen as offering opportunity for education especially. Because education is considered to be expensive in Kenya. So majority of the children who I know are in institutions even when they have their parents, is because of poverty and the opportunities that they perceive to be in institutions. Mostly education and just better living conditions. (Adoptive parent)

Informants concurred that although institutions can attend to children's material needs, they often do not cater to their emotional development. However, there seemed to be an overall agreement

that the circumstances of these families make it acceptable that institutions be frequently resorted to, even when most people understand that the quality of nurturing and care available may not resemble that provided within a family environment. This perception was equally unearthed by a recent study about parenting practices in Kenya, which found that “(...) parents consider provision of basic needs [health, nutrition, education] as the most important aspect of good parenting. Other equally important attributes necessary for optimal child growth and character formation, such as warm and loving relations, only elicited a dismal 13% of the responses” (Parenting in Africa Network, 2013, p. vi). There were also suggestions that institutions have been publicly promoted to be a good solution for poor families to secure children’s access to a higher standard of living:

I think the cons then for the children in the orphanage is that they don’t have the emotional support, because a lot of them (...) are deprived on the emotional side, being taken care of by these quasi mums who have 15 other children to take care of (...). But at least (...) because it’s an orphanage setting, they are more guaranteed to get a plate of food on the table. Maybe not three times a day, but at least once a day they’ll have food on the table.
(Adoptive parent)

So we met in [the residential care institution] (...). We went to school. I was given a shelter. I was given education. Healthcare (...) If we got sick, we knew we were covered. Education. Whatever we needed; pens, books, shoes, schooling, everything. Transport. It was a different world. From abject poverty to abundance. It was amazing. (...) There was no shortage of anything. (NGO founder)

They’re given this type of food which is not in their homes. They’re given this kind of education. They’re given free clothes. Everything is available. So there is also the messages that are being passed by the churches, especially by workers in CCIs, that it is a better place.
(Adoptive parent)

As a result of the above, individuals did not believe that the placement of a child in an institution automatically leads to the severing of all family ties, since parents are placing children in care to protect what they believe to be their best interests:

There is love from those with whom they are related... I mean those with whom they have a blood relationship. And they would understand that they’re not neglected as such, but there are some unavoidable circumstances that made it possible for them to go and live in the homes. Not because they were chased; not because they were not loved. But they know that

even after staying in the homes for some time, when they go back they would be in a position even to inherit what their parents had. (Kinship carer)

They would pick children from... you know the criteria; the poor, the single, I don't know what else, and get them out of their family to go give them a very good life in the institution. And over the holidays they would go back to the church and tell the church people, the congregation, it is holiday time, we have our children from our children's home and we would want you to host them for the holiday. So these children would be hosted by (...) parents from Runda, Kileleshwa, Milimani [affluent Nairobi suburbs]... So they never even went back to Kibera [large Nairobi slum] to see their parents and of course, the parents were feeling that, "Oh, they are advantaged". (Adoptive parent)

Such trends ought to be further studied and addressed by the Kenyan government, as it strives to put in place national guidelines for the alternative care of children inspired by the international Guidelines, which state:

Financial and material poverty, or conditions directly and uniquely imputable to such poverty, should never be the only justification for the removal of a child from parental care, for receiving a child into alternative care, or for preventing his/her reintegration, but should be seen as a signal for the need to provide appropriate support to the family. (A/RES/64/142, para. 15)

5.2.2. Kinship care

When asked about the role of kinship care in raising children who have been, for whatever reason, deprived of parental care, informants were also able to point out the benefits and challenges of this type of informal care, which is widespread in Kenya. Many individuals expressed concerns about the quality of care children receive when raised by relatives, citing cases of abuse and exploitation as relatively common, particularly when related to access to inheritance:

(...) ideally where a child is already part of an extended family, I believe personally that it is within their interest to keep those bonds and to continue to be ... to have that identity with their extended family. (Childless adult)

We grew up with a lot of cousins coming to our home either because one parent died and they had no means to take them to school or the parents were alive but they were poor. And my mother would take them in, pay their education until they graduated then they would

leave and go back to their homes. So when it's done properly I think it's great and I think it provides them with that sort of nurturing that they need, but it's not always easy, it's not always the right care they get. A lot of them actually end up being abused by a relative or an uncle or someone who wants to take advantage of them because they have no one else to defend them. (Adoptive parent)

(...) we've also seen cases where those children are taken in and are treated as domestic workers. They're not treated equally like other children in the home. So they become maybe the domestic workers or some of them even are enslaved. You have situations where children whose parents have died, especially in places where they've died of HIV or AIDS, they let you come to take the children on the pretence that they will care for them but because they want to inherit the wealth that their parents had. And therefore what happens is, the child is not really loved in the sense that they are provided for, cared for like the children of that home, it's because they are a means to get the inheritance. So I think when it's done properly and with the best interest of the child as a priority... It's a good thing. (Adoptive parent)

(...) and for some they are only taken in because their parents had a lot of wealth. So the person says, okay, I'll just take him or her in, but the only thing I want is the wealth that my brother or sister left for that kid. (Childless adult)

Additionally, some people revealed that since relatives have often not been given a choice in raising such children, they may be treated as objects of charity and not recognised as individuals in their own right. A kinship carer, however, shared a similar concern when comparing the situation of a child living in an institution with that of a child cared for by the extended family, which suggests that there may be a perceived 'progression' in the sense of identity that can be provided by residential care, kinship care and adoption:

You see, they need to know their relatives. So if their relative gives them the kind of parental love they would have received if their parents were alive, I believe they feel they are more fulfilled than if they just lived in homes. They may be very happy there in homes, but there are some questions that keep disturbing them, "Where did we come from?, How did we get here?, How did we end up being here?" Those questions are never answered. And they always view that the society, somehow, looks at them like people who are not lucky in life. And most of the time they see themselves as people who depend on sympathy. (Kinship carer)

I think sometimes being a relative we probably fail them because we don't see them as a human being. We see them as an extension of the other person who died or who is no longer there. And therefore, sometimes they can be seen as a burden. "You're only here because your mother was my sister, it's not because I had a choice to not take you in". (Adoptive parent)

(...) in the kinship situation most times (...) that person was seen as being given a helping hand, you are being helped by relatives, you should be grateful they're being kind.. (...) You need to do your part to show your gratitude for what they've done for you. That has an impact on a child growing up, because then you're never really worthy of being there. Some families were good, where a child came and bonded and was taken care of by everybody else. That's fine but that was the exception. At least the people I knew all around us, it was always the feeling of so-and-so is your relative, my parents are helping him. (...) And of course the child will get it... so when you are done, it's like, "Thanks for helping me get by, but you are not my family as such... I'll visit you as my auntie or uncle who took me through school, but that's it." (Adoptive parent)

Some went further to conclude that family members only take care of children who are not biologically theirs because there is a blood tie, therefore this act of 'charity' would not be extended to a child unknown to them:

Those children, they have to be from the family. It's like, you have to do it because there is nobody else. So you just feel like this is my family, there's no way I'm going to throw it... take the children to the orphanage. So I have to try, however I can, to take care of these children. However (...) another child from somewhere else, I don't think they can do it. (Kinship carer)

(...) when you ask somebody whether or not they are taking care of a child, they will say yes... I have a niece, I have a nephew, and I have a cousin.... And then they are more reluctant to go into a home where they would take, outside their nuclear family, and take a child on. And that is a phenomenon that has happened and is likely to continue happening because of our cultural stereotypes. (Childless adult)

When asked what they thought was the best care alternative for children without parental care, some respondents affirmed that an adoptive family may be able to provide a better sense of belonging for the child because taking him or her was a deliberate decision on their part:

I think there is a real commitment by the unrelated [adoptive] family (...). To make sure the best happens to that child. (...) you don't have to deal with all that baggage of family; of 'what happened to your parents?', all that history. (...) with extended family, everyone is asking who is this kid, what happened to their parents, how come he's here, that type of thing. (...) (Childless adult)

You know when you adopt a child, you feel more that this is your child. As opposed to the other scenario where it could be that maybe your sister passed on. It's not that you wanted to adopt a child; it's just that you have no choice. (Adoptive parent)

(...) with adoption, it's a very conscious decision (...). I mean growing up for most Kenyans, we always had a random cousin, or niece or nephew living with us or who is living with another relative – maybe because the father died, or the mother died or someone ran away or whatever – and that person was really never part of the family. They were always being 'helped' by the family, whereas in an adoption, I'm not 'helping' my child, you know what I mean? I don't know if you got that perception when you are talking to people... "Oh you are so good, you are helping that child..." I'm like no, it's your child, your responsibility, you don't 'help' your children you take care of them. (Adoptive parent)

Concerns about children's best interests in informal kinship care were addressed by the International Guidelines, by proposing that governments provide support to caretakers and monitor such arrangements:

With a view to ensuring that appropriate conditions of care are met in informal care provided by individuals or families, States should recognize the role played by this type of care and take adequate measures to support its optimal provision on the basis of an assessment of which particular settings may require special assistance or oversight. (UN Doc. A/RES/64/142, para. 76)

Such recognition has also been captured in the Kenyan Guidelines, which devote a whole chapter to kinship care and propose a series of recommendations to regulate the practice:

While it is important not to interfere with the positive aspects of the informal nature of the placement and the community's natural care mechanisms, it is also critical that the wellbeing of all Kenyan children is protected. (...)

DCS [Department of Children's Services], in collaboration with Chiefs, community leaders and civil society partners, should carefully consider what package of support services should be available to the caregiver and the children specific to their needs as well as type of monitoring in order not to be overly intrusive, threatening or disruptive. It is recommended that DCS work closely with health, education and social protection sectors throughout the process. (Republic of Kenya, 2012b, pp. 59-60)

5.3. Perceptions and beliefs about adoption of children

This research confirmed the findings of existing literature regarding cultural taboos and stigma associated with the adoption of children in Africa. A booklet produced by a Kenyan child rights NGO lists several reasons stopping people from adopting, including: "Some people consider it un-African to adopt", "Some people find adoptions stigmatizing as it shows that one is unable to have a child of their own", or "Adoptions have been seen as child-buying and hence has a negative connotation" (Odhiambo-Mabona & Muyonga, 2007). This study reaffirmed such perceptions, but further revealed that what often lies behind such beliefs is the social prohibition of passing on inheritance, especially land, to a child who is not a blood relation, which is intimately connected to the issue of fertility. Unearthing these beliefs is critical to understanding the place formal adoption can have in Kenyan society.

As already seen, caring for children within the extended family is a widely accepted practice in Africa. However, the presumption that such care would entail passing down one's ancestral land or property to these children does not seem to be a natural part of this social agreement in Kenya. Childless couples may decide to 'take' children from other families to secure the continuation of their lineage, but this is either done within traditional, and often rigorous, rituals still cultivated by a few clans and tribes (see, for example, Archambault, 2010, on Maasai traditions) or it is done in secrecy to avoid public disclosure of their inability to conceive. Adopting an unrelated child into a family by granting this child all the rights secured to birth children and publicly acknowledging the adoption seems to be a relatively new phenomenon, which is slowly being absorbed by Kenyan society, primarily by the urban middle class, who have often been educated in a western way of life:

(...) there are certain stigmas about adoption, there is certain lack of knowledge about adoption. It's just something that's seen that foreigners do. Kenyans don't adopt children, but it's something that white people do, because why would you adopt, and you are already doing some sort of adoption in Kenyan standards. (Childless adult)

(...) in Kenya we don't believe in adopting so much. (...) People here, they prefer to have their own children. (...) if I didn't have children and I'm a married woman, and I go, I tell my husband to go and adopt a child... his family will not accept that child (...). So, let's say I adopted a child and then I have to die and leave that child, my family will just throw that child away. They will not take care of that child because they will know it's not my blood (...) we really believe in this thing. (...) So even as the child grows the child knows that "I'm not from that family"... that's why most people don't want to adopt. Because the family will make this child feel like they are not from this family. (Kinship carer)

Here, it is expected that you will have your own children. So riding on that is the fact that this (...) child from wherever... we don't know where they came from, suddenly has every right to everything that you have, like as if you gave birth to her. But to them it shouldn't be, and to some extent I think even some people [relatives] think that they have more right to, say access to your wealth, should you not be here anymore, more than somebody else. They are like, "Why are you giving up that to somebody else who you didn't know where they came from, we have more rights over them"! (Adoptive parent)

(...) of course land inheritance is the big issue. (...) And I think sometimes that is why adoption is feared.(...) Because some people would even fear to adopt when they hear that their land would be inherited by this child. (...) So they would even hesitate and go for the kinship (...) it's worse if it's not even family, a child from the family. Because, from the family you can say, "Okay, she's our blood." (...) but come to inheritance, it's a no-go zone. (Adoptive parent)

For Kenyans (...) you need to have your own biological children, like that's the thing in Africa. It's cultural (...) you adopt the kid, you don't know who the father was, and all that, you are going to get bad blood in the family. (...) The only place that's changing, it's only the urban areas like Nairobi, but not in the rural areas where people are actually very traditional. So they still think, yes, you need to have your own children (...) you don't need to adopt, because

it means you either are sterile or something? (...) and they think it's a western concept to actually adopt. (...) And you see there's also the aspect of the African society; they think the children are (...) very important. But they don't look at adopted children; they think it's only the biological children. (Representative of the Kenya Society of Care Leavers, KSCL)

The importance of fertility underlies all these perceptions and such social beliefs are not exclusive to Africa. While conceptually discussing adult's rights to rear the children they bear, Archard noted that, "Our culture tends to sanctify natural parenthood and to stigmatise the childless" (2004, p. 139), and in her study on North American attitudes towards adoption, Wegar confirmed that:

There is no evidence to suggest that disparaging attitudes toward infertility or childlessness have changed. Childless married couples continue to be regarded with scepticism or outright disapproval. Whether their childlessness is due to their own ('selfish') choice or biological necessity, "the childless couple is, in effect, damned either way". (2000, p. 364)

Several medical studies about child adoption as an alternative to infertility in Nigeria found, for example, that infertile women of certain ethnic groups portrayed high levels of aversion to adoption:

This position may be due to general cultural stance of the majority of the ethnic groups that marriage without procreation cannot be regarded as being blissful. Therefore, accepting adoption by any woman may be tantamount to childbearing failure and this may be a leeway for her partner to engage in polygamy. Consequently, such women may sometimes be excluded from the benefit of the family's inheritance. (Oladokun, et al., 2009, p. 88)

One of the adoptive parents involved in this study reported a similar practice in Kenya, saying that, "*(...) I'm a Luhya, and Luhyas believe in second wives, they don't believe in adoption. So they always ask you as a Luhya, 'Why are you adopting?'*". The taboo of infertility was constantly raised in interviews and can be said to be both a reason why Kenyans are increasingly accepting adoption as a means to build a family¹³, but also an important factor deterring more people from adopting, due to the stigmas still associated with the inability to conceive and with the idea that sterile couples resort to 'buying babies':

(...) there's a stigma from our parents' generation in their 50s, 60s? The whole adoption thing, it's like "Does that mean you can't have children, are you barren?" I mean those were their questions. I was like, no, I just chose to do this. [They think that] you have to have

¹³ One of the Nigerian studies aforementioned affirms that infertility rates among African couples are on the rise and may be as high as 30% (Omosun & Kofoworola, 2011, p. 2).

children of your own then you adopt... it's as if we had to prove our virility to society in order for this whole adoption thing to be accepted. (Adoptive parent)

In Kenya, if you tell someone you adopted (...) they wonder what's wrong with you. Are you shooting blanks or something like that? It immediately comes with a negative connotation as part of our culture. (Childless adult)

(...) we see adoption in a very – buying a baby – in a negative way. I think it's cultural, and it's not any one culture. (...) It comes from the men I think, the whole virility thing? If as a woman you can't bear children... because it's usually the man who has a problem but no one ever sees that, they look at it as if it's the woman's problem. If as a couple you can't have children traditionally it's as if that woman was cursed or something? I think my parents actually believe stuff like that? I guess that's why they see adoption as if you're trying to eradicate that karma or whatever it is! (Adoptive parent)

(...) there's a lot of pressure in African societies to have children. So if you're not getting any, it's even... You can be tempted to steal a child just to fulfil societal obligations. (Adoptive parent)

5.4. Main elements motivating Kenyans to adopt

In her critical analysis of child adoption practices across the world, Kerry O'Halloran describes the main historical motives behind adoption (O'Halloran, 2009, pp. 10-13):¹⁴

- a) the inheritance motive: the need of childless families to secure succession to land and property, a tradition brought forward by the Roman Empire and perpetuated by most agricultural societies;
- b) the kinship motive: where 'donor' and 'receiving' families exchange benefits and the family affiliation is strengthened;
- c) the allegiance motive: the practice of non-kinship adoption through which a poor family 'offers' their child to a wealthier family as a means to show their loyalty and advance the social status of the adopted;

¹⁴ This is the author's interpretation and summary of O'Halloran's list of adoption motives.

- d) the 'extra pair of hands' motive: where historically children from poor families were 'shipped' for adoption to other parts of the world where labour was scarce;
- e) the welfare motive: a relatively modern form of adoption, with philanthropic intentions;
- f) the childless couple motive: where birth parents who cannot care for their children 'offer' them to couples who cannot conceive.

The fieldwork for this study largely confirmed O'Halloran's framework, although the prevalence of motives related to inheritance, allegiance and 'extra pair of hands' could not be directly confirmed. These were mentioned anecdotally in some interviews and the author's experience indicates they are likely to be practised in Kenya, but because not enough evidence of their occurrence was found, they will not be referred to in this analysis.

The kinship motive was clearly demonstrated by one of the adoptive parents who is preparing to adopt a niece who has been under kinship care for several years:

Let me start by saying why considering adoption has been difficult. I think, for me, culturally and naturally (...) I don't expect to go through a process to take care of my sister's child. At all. So as long as she is there eating, sleeping, going to school, that's all I need. The child is growing. As we say in my culture, "There is no stone placed on her head." So I did not find any need for that. The reason why I am considering an adoption, is just for the formal reasons. Because (...) I know the advantages of adopting her. And working in the UN, she cannot be recognised until I adopt her. So she's not covered medically. I have to pay for everything. (...) There are moments that she's forced to know that she's not my daughter like my son. So because of that, and the fact that I know the importance, then I want to adopt her. And because of the benefits that she will get eventually.

(...) my feeling is that, when relatives adopt their relatives' children because they are in a better position, it doesn't mean they gain everything. It is only what is required for the paper. (...) But if I have land, it's up to me to leave it to her or not leave it to her. She can challenge, of course, legally, but culturally nobody expects me to give her anything.

The fact that kinship adoptions are usually motivated by an opportunity to extend material benefits to a child, while at the same time easing the financial burden on carers, be they parents or extended family, was confirmed by a representative from an adoption society, who stated that:

(...) most kinship adoptions are motivated by a reason. You can actually stay with your sister's child and let them grow up to 18 and feed them and clothe them and all that and you

don't have to necessarily adopt, but most kinship adoptions have a reason behind it. It's not just like a normal thing. Even if it could be there, it must be very rare. (Adoption society representative)

A kinship carer confirmed that he sees no reason for formalising the care of his niece and nephew:

As for me, these two children are mine and you only need law maybe where there are difficulties. But as for me, I believe they are mine. We eat the same kind of food and I know my brother had a piece of land which my father gave him. That piece of land belongs to them. So if they grow and become mature... The boy for instance... Goes and becomes mature, I'll give him his father's piece of land. So I feel that I don't need the court, because everything is in place. So I do everything the same way his father would.

As discussed in Chapter 4, kinship adoptions have been at the heart of the debate about adoption regulations in Kenya, with some calling for its facilitation (such as the 2008 technical report) while others believe it should be processed as all other domestic adoptions (position taken by the proposed revised 2010 adoption regulations, not yet in force). The stakeholders interviewed for this study expressed serious concerns about the facilitation of such adoptions, mostly due to factors already alluded to in this Chapter:

(...) family adoptions for example, that's a big gap in our current [legal framework] (...) It has its own pros and cons. We have seen that that it is advantageous, because we've come across situations of family adoptions where we assume it's really straightforward. (...) but in some situations, actually we've had two cases that couldn't go to court because the children didn't want to be adopted. (...) then it still confirms the assessment and the rigours are still good for a family adoption. (Adoption society representative)

For [kinship] adoption (...) undefined. Very much borrowing from the traditional, more towards foster care than adoption. But we have people who want to insist that it qualifies as an adoption. And for the reasons (...) which are not always noble, they want to have a loose... So when they talk about kinship they are hiding behind... They don't want scrutiny. And that's why I'm concerned about that (...) The question that we have always posed to people is, what in the process can we get rid of? Is it consents? If I take my sister's child and my sister's alive, are you saying that I don't get her consent? (...) She is the mother, isn't she? So she should give consent if I have to adopt that child. We have to go through that process. What is

it now? Is it the assessment for my suitability? I'm taking somebody's child... (...) Should I not be assessed for suitability? Am I capable socially, mentally, physically? What in the process can go? We would be so happy to knock it out, but does it protect the child? (...) You see, the one that usually naturally goes is the three months withholding. You have stayed with [this child] for a year or even two years. Nobody would tell you now do three months before we can start to see the bonding. They will check to see, "You have had all this time. Is there bonding?" And the process takes off from there, but we have to look at, "Are you suitable as a parent? Is this child indeed free?" (...) Is the family in agreement, because you know, again, if there is something that was left, whoever is taking the child would take the responsibilities and whatever. So is this person to be trusted that they're going to be able to take the best interest of the child at heart? (Government representative)

The welfare motive for adoption was also cited by informants, some going beyond the charitable approach to conceptualise adoption closer to an act of social responsibility:

I feel like I also want to give back in a personal way. (...) I want to have more children whom I can influence. (...) So that's a major factor for me, because it's like mentorship but a good mentorship. So giving back, being able to help these kids and being able to influence the generation to come. (NGO founder)

(...) where there is this child who has no alternative you just can't sit back and watch, and you have the capacity to do something about it. (...) It doesn't necessarily have to be related to me. If I find myself in a situation where there is a child who I'm in a position to make their lives better, or for whom I feel I can make a difference, that would be a motivator to adopt at that point. (Childless adult)

I'd like to tell you that it was this big charitable feeling that I had, no ... it was just by chance that I came across this home which was based in Mombasa. That was my first interaction with orphanages. And that's when I decided if I could do something more than just give a cheque, why don't I take more responsibility by taking on the children. So that was it, there was not much debate on my part. (Adoptive parent)

The role of religion in their decisions was explicitly mentioned by two adoptive parents:

When I met my wife I told her, "If there's anything from my Christian background, it is to adopt."

(...) I am Christian so I get the whole, "God put something in your heart" (...) because in a lot of ways we are very attuned to the needs of people around us (...) I'm not saying that we are angels (...) But, I can't see someone in need and (...) just say "aww, it will get better". (...) I guess I feel like it's one of those things which God plants a seed, he has a purpose for these things, he has a purpose for [my child's] life, he has a purpose for my life...

A study from Uganda indicates that similar motives have been found there:

Where there is no affinal or consanguinal attachment, unless it is a religious person offering philanthropic help to a helpless child, many people avoid adopting helpless children. (...) given the prevalent poverty in Uganda, such a child is seen as an additional burden left to the mercy of government or welfare organizations. (Okumu-Wengi, 1998, p. 232)

The majority of adoptive parents declared themselves practising Christians and mentioned that churches were good places to promote adoption, given that there one is likely to find a receptive community. An experience promoting domestic adoptions in Ethiopia reported positive results in that context:

Because of their faith and values, Christian churches were presented as viable partners willing to take in orphans (...) The Christian faith presents strong concepts about adoption that the project was able to exploit to prepare families for the eventuality of permanency through domestic adoption.(...) The assumption was that faith communities would pose less resistance to the idea of taking care of children with whom they were not related by blood, clanship, or tribal lines due to their profession of biblical values. (Bethany Christian Services, 2011, pp. 4-6)

The 'childless couple motive' was behind the decisions of two adoptive couples interviewed. Both couples seemed to have gone through several attempts to conceive before deciding to adopt:

(...) we tried everything to have kids and it didn't happen naturally and I think it reached a point eight years down the line I just told my husband, "Look, if we're really going to do this, we might as well think of adoption."

Well, fortunately or unfortunately, we're not able to conceive. We went for tests, and unfortunately it was ruled that we could not have children of our own. And so we decided to adopt.

One of the adoption societies interviewed declared that in their experience, on average 75% of local parents adopt because they cannot have their own children.

5.5. Barriers preventing Kenyans from adopting children

The 2012 assessment report found that “(...) adoption is perceived as an option for only rich families (...) there is need to sensitize the community in the adoption process, reduce the stigma associated with adoption and subsidize the cost of adoption” (Republic of Kenya, 2012b, p. 19). This investigation confirmed such perceptions, but went further in identifying other subtleties which seem to deter Kenyans from practising formal adoption of children more frequently. To facilitate analysis, the barriers identified by informants have been clustered into three groups, although these are intimately connected and ideally should not be dissociated from each other.

5.5.1. *The transition from informal to formal care*

Due to the strong tradition of informal, especially kinship care, in Kenya, it is not surprising that families resist the formal requirements for adoption. Whether by simply avoiding the procedures or by questioning their need when family is involved, Kenyans seem generally reluctant to accept any type of formalisation when it comes to child care. Since the workers in the child protection system naturally come from within the same communities and mindset, they may contribute to such behaviours, as in this illustrative case:

I have a cousin who tried to conceive for many years but could not, and her case was very interesting because its only eight years later that she is going through some sort of guardianship order. What happened was that she went to the Ministry of Children Services (...) here in Kenya, and there was an abandoned child, and they didn't know what to do with this child. And here was a woman who was willing to take care of a child, they called it some sort of temporary emergency order where the state knows that the child has been placed with this person, pending finding the parents of this child and if not finding them, putting them into care or having a formal process for them to be put into some sort of formal care. The system obviously doesn't work as well (...) my cousin... (...) ended up keeping the child for more than five years. (...) In Kenya you cannot access a school without a birth certificate. So it is at that juncture that my cousin sort of panicked and said, “Oh my, this is going to be a problem.” Preceding that, the National Welfare for Children had (...) been doing regular visits

with my cousin but they had never really encouraged her to go through a formal guardianship order. (...) Part of the reason the parents were not going through this formal process was because one, they had already bonded with the child, two, they felt that if they went through with the process they would get into trouble and the child would be taken away from them. Three, they thought the process was way too expensive. My cousin is not a wealthy woman (...). And there has been some sort of money-making business from lawyers, to sort of extort these sorts of families and scare them into using the legal process and therefore that keeps them away for a very long time. And for her, she thought that as long as the National Child Welfare knew that she had a child and are current with their regular visits she's ok, she's fine (...). (Childless adult)

The government representative shared concerns about the lack of formalisation:

So when it comes to formalising, this is your child, because the law actually says the child is as if they are born to you. Meaning they have the same rights, if you have your own biological children, they have the same rights to inheritance (...) There is a whole huge resistance when it comes to inheritance. (...) So they are saying, "No, why can't I just have this child and just raise them and then they go on their way?" Which means if the child becomes difficult, you stick them out. (...) People don't want to be tied down, because even when you are talking with them, "Do you know what you are doing? You are taking on this responsibility." Then they are like, "Why am I being asked all these questions? After all, I'm only helping these children. I'm only helping this child. Why am I being sent here and there?" They want to... "If this child becomes difficult, send them back to the people, to her close relatives. This child does not belong after all. Let them go back." So I think that's one of the challenges of the formalisation.

Similar behaviours and beliefs were also identified by Rwezaura and Wanitzek in their study of adoption of children in Tanzania over 20 years ago:

In contrast to formal adoption under state law (...) there are, in most African societies, a number of alternative social arrangements for the care of children and for dealing with childlessness. Perhaps the most important arrangement is the collective responsibility of the extended family for the care of its common children. (...) the survival and popularity of (...) informal arrangements among the larger section of the population has been possible mainly because of the relative absence of bureaucratic requirements and social constraints of a modern state which compel a more precise definition of social relationships. As long as one

is not emigrating, travelling abroad with the family, writing a will or seeking certain social welfare and tax relief benefits provided by the modern state, the definition of one's relationship with one's dependents *[sic]* does not become urgent. (1988, p. 159)

Informants from the government and adoption societies concurred that one of the elements preventing an increase in rates of adoption is the fact that many Kenyans do not complete the legal adoption procedure. Some associated this behaviour with the belief that adoption is an act of charity and therefore should not be so burdensome. Stakeholders noted that some applicants 'disappear' after they have obtained the 3-month fostering order (mandatory prior to adoption), some fail to produce the required documentation in time, while others go through the whole court procedure but do not take the last step, which is to register the child in the adopted children register after the court order has been granted. Furthermore, they agreed that this 'laid back' attitude to formal procedures hinders the practice and leaves room for irregularities since some families may 'keep' children for whom they do not have appropriate care orders:

(...) some just take it lightly, (...) the elite, those who understand, the literate families who understand why this is important are the same ones [who] would take it really lightly. They go home with the baby, and [feel] very comfortable... (...) And that has been the biggest challenge. (...) The child is home, you can travel with the child within Kenya so if there is no need to travel with the child out of Kenya then it's okay. In fact many of them will come when there is a need; they probably want to travel... (...) it also has a lot to do with the motivation; there are those that come for adoption because they think they are helping the child... (...) "We are helping the child, so why are you pushing me?" When you make a call or do a letter to remind them it's their legal obligation, they say, "We are just helping a child, why should we pay more?" (...) We also have an interesting group, where they start the adoption because they don't have their own child, then along the way they get their own children and it's not a priority. So we have the child, we are happy.(Adoption society representative)

The foreigners, because they are in a hurry, they want to come and finish that thing and go back to their country, but our people they just sit back (...). Because they've gone to court, once a guardian [ad litem] was appointed they are not in a hurry, they won't bother. And our people, it's not even the money. They will have paid the lawyer upfront. So it's not that they don't even have money. They have paid, then they go and sit back and wait for the lawyer to call them. (...) but you can also observe that there is that weakness where they will not be

able to follow up and then they say “oh, the court”. Or they come to court and they’re just late. And the judge has set this day for them. (...) If your name has been passed then you have to take another date. (...) And then you go to court and maybe a lawyer was not fully prepared (...) Maybe they will even send a rookie who is totally clueless. If you are not familiar with your case you would be in a lot of problems. (Government representative)

5.5.2. Complexity, weaknesses and costs of the process

A few individual interviewees expressed concern with the costs of the adoption process. Interestingly, stakeholders did not share the same point of view on how much influence these costs have on Kenyans’ motivation to adopt, mentioning that illegal practices may emerge from the common belief that adoption is expensive:

(...) if it’s a white person adopting, it’s easier for that person than the black person. (...) They see a white person and they think you have money! So if they ask such kind of an amount, you just give them and everything will be through. For black person it’s hard. (Childless adult)

(...) adoption has been seen as something for the privileged and the rich because of the expenses associated with it, while there are very many not so well-off people who have the exact amount of love, the exact amount of commitment to give a child. (Childless adult)

I think it’s basically an expensive affair and is also a complicated process. I think adoption societies charge a large amount of money – I think it’s 50,000 shillings. Which for the average Kenyan, actually for most professionals, they earn that as their monthly salary. That is why adoption in Kenya is predominantly a foreigner’s domain. You would find very few Kenyans going through the adoption process. It’s expensive. It’s complicated (...) because of the number of papers that have to be drafted (...) So it’s almost impossible to just walk into court. (Law Society of Kenya representative)

(...) misconceptions... one of the biggest ones is that it’s very expensive, and that it’s for the rich. (...) We’ve also had other people who have gone through other channels, and paid heaps of money believing that adoption is still the more expensive option. We have families coming here that have confessed to paying over [Kshs.] 100,000, 200,000 to buy a child somewhere and it probably didn’t work, or they got a child who was sick and the child died (...) they think it’s very expensive. (...) I must also point out that the legal fee is not a challenge in itself (...) because so far we look at our records and none of our families has

failed to go to court because of fees. In fact, the ones that default are the ones who can afford it. (Adoption Society representative)

Some informants expressed concerns with the high legal fees and unethical behaviour from some advocates in the sector:

(...) And let me tell you where the problem is... the lawyer gets you a file, and knows all your background (...) the first thing the lawyer looks is how much do you make and where you live. And then he can know how much to charge you (...) Let me tell you how the system works, [the lawyer] goes there and finds you are representing somebody who pays [Kshs.] 300,000 and he is representing somebody who is paying 30... You tell me? And that's how it's discouraged other lawyers. It's kind of a competition. (Adoptive parent)

Adoptive parents worry that the consent for their child's adoption may not have been ethically handled, which could lead to a confrontation with the child's biological family in the future:

So that is one of the challenges that is always at the back of my head, maybe the parent of this child actually knows exactly where they are, and you know after they turn 18 or after you've done all the hard work of schooling them then they turn up!

(...) I think this is some of the things that even make people steer away from even talking about the children being adopted. There is the inherent fear that someone will come knocking at the door and say, "This is my child and I want them back." And I can tell you from our experience, it's something that I worry about.

Deeply related to all other barriers to local adoption is the controversy surrounding the adoption certificate. In Kenya, children who are registered as adopted receive an adoption certificate which is physically different from and replaces their birth certificate¹⁵. The system does not legally allow for adopted children to carry a birth certificate. This issue has generated not only resistance to adoption – due to the discrimination it engenders – but has also prompted adoptive parents to engage in the illegal procurement of birth certificates for their adopted children. Adoption societies agree that the certificate needs to be redesigned so it resembles a birth certificate, but believe some sort of distinction between the documents is necessary. The government suggests that it would not be correct to allow adoptive parents to have their names listed as parents on an adoptee's birth

¹⁵ Reproductions of a birth certificate and an adoption certificate can be found in Appendices VI and VII, respectively.

certificate. Adoptive parents feel the practice discriminates against them and fear their children will also be stigmatised when growing up because they do not have a birth certificate. One adoptive parent described in detail how she had to produce a series of additional documents in order to procure a passport for her adoptive son, since the immigration department did not accept the adoption certificate in lieu of his birth certificate:

It makes me worry because I'm like, what will he face later on in life when he's trying to get anything done? Will it be the same? Will he be battling to prove his legitimacy and his worthiness to his rights or whatever (...). Even if I had to go to a government school with an adoption certificate, they will look at me and ask me what it is. If I went to a city council school (...) they don't know what this is and they won't accept it unless I have a letter from the chief or something. (...) And in my head I'm like, of course it must be right – I must have done the right thing because if you think I'm going to fake these papers, isn't it easier for me to fake a birth certificate which wouldn't raise any questions? Why would I fake adoption certificate when I know that will raise some alarms?

(...) from the meetings we've had with the parents, only thing that seems to trouble most is just the adoption certificate. The fact that you get an adoption certificate and not a birth certificate. (...) So if that could be changed or modified, so that parents would not feel... Or children not feel discriminated, because of getting a different document from one who is biological, that could help those parents, because they raise that as a concern a lot.
(Adoption society representative)

We also have an interesting group of families who will get an adoption order and then apply for birth certificates. (...) Two-sided coin... because on one side, it's wrong, it's illegal, it's not right... An adopted child should get an adoption certificate. Those with birth certificates we surrender to the registrars, to get an adoption certificate. That is the legal process. Yet again, there's a lot of stigma still in society that needs to be dealt with... (...) many times I've had to leave this office [to go to a] school to explain to the head teacher what this is. Many times we've had to write letters to banks, to explain what the certificate is because the parents want to open bank accounts for the children. We had to write to health care providers to say 'provide medical cover, this is a valid document'. So again, the government must play its duty and ensure that this document is recognised. (...) it is just a government document, it was designed that way and the government is not willing to change it. There is no role played by the fact that it looks different from the birth certificate. (...) But the DCS [Department of

Children's Services] is very adamant, it's an adoption so it must be an adoption (...) that's another big issue why that adoption certificate is not popular among the domestic adoptive [parents]. Because it's obvious, then you show the child and it's obvious (...) then the children start asking questions.(...) of course you tell this is illegal and you're not supposed do it. (...) so they still go through the court process (...). Then they don't get the adoption certificate, and after three months they just change address and then apply for a birth certificate. So they just circumvent the adoption process, they just apply here, get the child, three months and the next time you go for a visit you find that they've moved houses. (...) The next time you hear from them, maybe they are back for another adoption, and they have a birth certificate for the first child. (Adoption society representative)

The government representative was firm:

(...) there's also another school of thinking that seems to be feeling that they should not go to register to get an adoption certificate. That they still need a birth certificate. So we have a lot of people, local, who are stuck there after they have finalised – they have the final orders in court. (...) So they stay here after the High Court still arguing they need a birth certificate for this child. A birth certificate with their [the adoptive parents'] name. (...) We need to be able to address this issue of perception. This issue of disclosure, because one of the reasons that they don't want to be known that they have adopted is they don't want to disclose to the child that they are adopted. And the minute you have a certificate, then you are going to have to deal with that issue. (...) We've tried to liaise with the Ministry of Education (...) you bring them a piece of paper; have you seen the adoption certificate? You bring it to them and they say, "Bring the birth certificate." So what the [Adoption] Committee has done is write to the Ministry of Education and ask them to accept and recognise an adoption certificate as a valid certificate for school and exam registration. So people now have no option. If a child is going to the formal system of education, they have to go and register.

Debates about what type of 'certificate' adopted children should be entitled to and what should be their content are common all over the world. Discussions evolve around the level of confidentiality required for the adoption process by law and desired by both biological and adoptive parents and are commonly associated with adoptees' searches for their biological parents. Academic literature produced in North America and Europe indicates that in these societies the norm tends to be that adoptees' original birth certificates are legally sealed while a new birth certificate is issued with the adoptive parents' names replacing the name of biological parents (Muller & Perry, 2001 and Sullivan

& Lathrop, 2004). None of the resources consulted for this thesis made reference to how this is practised in other African countries or raised concerns about the situation in Kenya.

The issue of children's documentation was raised several times during the interviews, particularly when informants wanted to emphasise how easy it is to procure birth certificates and other important papers in Kenya. A kinship carer said very candidly that she had replaced her grandchildren's birth certificates so they would carry her name as their mother, after her daughter, their natural mother, died and she was left to care for them:

(...) now everything they are using my name, everything... they are just like my children now, because they are just using my name and everything, birth certificates. I just changed the names (...) it was a little bit difficult but I tried and they understand (...). I had to go to the government... in the office where we took those papers for the birth certificate and then I explained to them, I went to the country side, because they was born home. And I went there and then they gave it to me.

A kinship carer explained how her sister had come to take care of a child she had found living on the streets of Nairobi:

(...) she asked this child, "where are your parents"? And the child didn't tell her, so she went to report the case in the police station. So they told her, "either you can take this child to the orphanage, or you take it". Sometimes the police offer you the child. Then they'll give you the letter, and then they take your documents like your phone number and all that, so that in case somebody comes to say "my child got lost", they can look for you. So, she took this child for three months and nobody looked for her. So she went back to the police and they told her to just take the child if you can. So she took the child. (...) she went to the chief there and then she reported and then they gave her some documents to keep the child. So she still has this child. (Kinship carer)

One adoptive parent tried to explain how the desire to keep adoption a secret, combined with corruption and loopholes in the system, can lead to illegal practices:

(...) people can use every crooked way to get children. (...) Actually, people can steal children (...) this is a corrupt system, where can you not get papers? (...) If I need a birth certificate, what else in this country? I go to my village. The chief just [takes out] a rubber stamp, then it's easy, I've seen. People just come, look for the chief who is a relative... sign papers (...). They are my relatives who are giving birth certificates. You are registered!

5.5.3. Cultural beliefs and social practices leading to discrimination

The taboos and stigmas associated with adoption alluded to earlier in this chapter were frequently cited, especially by adoptive parents, as critical barriers to the adoption of children in Kenya, due to the fear of discrimination they incite:

I think there is a lot of lack of information about it. And a lot of taboos as well? Lots of taboos towards "a child I don't know, I don't know this child"; "I would be okay if I took care of my neighbour's child, that would be easier for me culturally even though they are not my blood relative, than just a child I don't know. I don't know if he'll end up being a thug..." because of taboo. I might raise her and maybe she was raised by a couple of drug addicts and maybe she might turn out to be a drug addict... Maybe she was thrown away because she was offered to the devil... so many taboos. (Adoptive parent)

(...) in the African culture adoption is not... I don't think there's even a word in my language for adoption. It's called buying children, which is not what adoption is. (Adoptive parent)

(...) For example, the people who adopted from Kiambu, all relocated to Westlands, now get this... If you move to Westlands with a kid who is black, who will know you've adopted? No one! And that's what they did... so if you are living in Buru Buru, you come to Kiambu. If you are in Kiambu, you move to Westlands. If you are in Westlands, you move to Lavington... (Adoptive parent)

I don't know if it's because of the blood issue. (...) we are so willing to accommodate other people as long as there is a family tie. (...) One of the things I have asked about, is why people prefer to adopt girls. But that one, I understand it's because (...) there are inheritance issues. Because basically when you adopt a boy he is going to inherit your wealth – or even a girl – because they're your children. But (...) people think that a boy is too much. (Adoptive parent)

[there are cultural beliefs] that you cannot really adopt a male child. He will never be yours. (...) At some stage in his life he's going to look for his father. (Childless adult)

All of these traditional beliefs remain alive in Kenya, across race, space, religion and socio-economic status. Signs of change have been noted by some of the optimistic adoptive parents, who believe they have a role to play in making adoption more widely known and accepted:

It's a cultural thing, and so as a culture evolves and changes and new practices come in (...) I feel that that's when this perception will change. (...) I think it's actually going to come over time as more and more adoptions happen and people talk about it. My feeling is that that's how perception will change, because for my generation, I know several people who have adopted and they talk about it and they are open about it.

(...) what I'm trying to point out here is that the discussion is becoming easier because more younger people are doing it. I'm not saying the older generation didn't do it, a lot of the time they didn't want to say it, they didn't want to actually talk about it and actually tell the world that this child is actually adopted. It was sort of under wraps, so to speak? But the younger generation are actually willing to talk about it.

5.6. The adoption experience

The adoptive parents interviewed had obtained information about adoption from a wide range of sources, some through friends who had adopted, some through media sources and others by visiting residential care institutions.

5.6.1. Expressing preferences

Interviews with adoptive parents and adoption societies indicate that Kenyans often demonstrate preferences when it comes to their future adopted child: they usually opt for very young, healthy girls. Racial preferences were not directly alluded to by adoptive parents, but other informants mentioned that it would be important to 'look' for a child who physically resembles the parents, so the child would fit in better within his or her new family. The expression of such preferences is also linked to the fear of disclosure, which was alluded to by several stakeholders and adoptive parents, who nevertheless agreed they would 'probably' tell their children they were adopted 'when they grow up':

(...) when you say you want to adopt, they just ask you, "give us the age"...then you are told, this is the child. They look at you the way you look. You know they always look at the way you look. (Adoptive parent)

(...) most Kenyan families prefer young children, babies. And of course the reasoning behind it is that they'd like to convince the society as much as possible that these are their own children. So of course, stigma issues (...) so many families would like to take a child as young as possible. (Adoption society representative)

You know, in their head they're thinking a two-year-old is probably a very big child. (...) so you bring a two-year-old and they would be like, "This one is a big child. I thought..." Because most parents have not had children before and so they may tell you they want the two-year-old, when in their mind they envisioned an eight-month-old. So you bring the child in they're like, "Oh, can I have a smaller one?" It's mainly because of the age, but you just talk to them about it then they are able to understand and you look for another child for them. (Adoption society representative)

As already mentioned by some informants, gender-based stereotypes influence decision-making:

If we did a spot check now you would find that we have a big percentage of boys in the homes compared to girls; it's becoming an increasing concern. We now have a waiting list here of families approved but because they want girls and we don't have girls (...) Some are single parents; some are couples, who for cultural issues or other (...) issues have decided that they would rather a girl and not a boy. What we see is about 60% of the applicants, married couples, prefer girls. (Adoption society representative)

Stakeholders alluded to parents' preferences for healthy and 'smart' children:

(...) the health condition of the child is a big, big determinant (...) most Kenyans prefer healthy children... Any small mark (...) is unfavourable, or a child with mild asthma... "No, no, no, we don't want to deal with a child with a blocked nose." So majority [of Kenyans] want perfect children. Some would even undress them (...) to make sure that there is no mark. (Adoption society representative)

(...) they [express preferences], in the application form. It has a place where you are supposed provide the sex of the child and the age that you prefer and then there is a slot there that talks about other characteristics... And that's when they say "I want a talkative child", "I want the child who is very smart", but you see, in very small babies these are things

you cannot guarantee, so they need counselling in regard to those expectations. (Adoption society representative)

(...) there are people who want designer babies. (...) There are those people who say we don't mind a child who has small deformities. There are those who say we want a perfectly healthy child. So there are all those things to consider when it comes to matching the children available to the parents. (Government representative)

In addition to the kinship adoption case, three other adoptive parents had identified the children they wished to adopt before formal proceedings started:

I sort of feel as if the stars just aligned because the child was there. (...) I think normally what happens is that depending on the agency or home that you go to, sometimes you don't have a choice to actually say I want this child. You don't get to choose, one is recommended for you. So I think I had an easier time relatively compared to other people who chose to adopt. And I think it could be one of the things that leads to many people not wanting to adopt.

I said, "Look, because this is where we went [referring to a CCI] and we met these children there and we had a connection, if they are still available we would like to consider at least one of them."

So I came home, I opened the door and I saw this kid and something just said to me... it sounds bizarre, but it said, "This is your son" (...). Anyway, so we spent the afternoon together, and at the end of it I told my husband, "There is a boy in our house, and I think we're going to adopt him." [the boy had been brought from a CCI to spend the day with her sister, who was volunteering at the institution at the time]

These testimonies indicate that Kenya's adoption system revolves around finding children who fit the aspirations of prospective adoptive parents. This, combined with weak gate-keeping mechanisms, could lead to the placement of children in adoption before all appropriate steps to ascertain their adoptability have been taken, as one adoptive parent illustrated:

The home [the CCI where the child came from] didn't have his committal papers, they didn't have the letter from the police, you know because he was an abandoned baby? (...) he wasn't free, he hadn't been cleared for adoption because they had not yet done all the paper work they needed to do. So when I got him, after I did the fostering thing for three months and I

was like, “Ok cool, can I get the declaration ‘free for adoption’?” (...) They were like “Oh, we don’t have, but it’s ok we’ll get.” And of course they didn’t get because the social worker didn’t know how to go about it, so I had to actually go and do the process (...) I mean we’d been with him almost a year, and the home still does not have its committal papers so they really shouldn’t have given him to me for fostering because they didn’t really have jurisdiction over him as such at that point in time. They hadn’t done the process, but I guess it didn’t matter because when we went to get the committal done, they called all the people who didn’t have committal papers.

5.6.2. What worked well and the challenges faced in the process

Not surprisingly, adoptive parents described very different experiences in the process leading up to the adoption of their children. Factors determining how they assessed the process were mainly related to the quality of the services provided by adoption societies and lawyers. One adoptive parent declared having received excellent support from the government:

(...) it was fairly smooth (...) They [the Children’s Department] have to visit you, and inspect you and interrogate you... we had to go (...) to be interviewed and whatever. We were apprehensive about that process, we thought “Oh my god, is this going to be ok?”, but it was fantastic (...). As a beneficiary I can say it worked.

(...) luckily my husband is a lawyer and one of the adoption agencies works closely with his law firm. So we knew that there was that relationship and then when we asked around most people had used [adoption society], so [there] we went. So we just started the process and they were very helpful and told us everything that needed to be done. (...) I had a very good lawyer. I know that for some people, if you don’t get a good lawyer that can be a big frustration.

(...) they [lawyers] know a lot about the process and they know what works and what doesn’t work, and they are well liked – they are looked at in a favourable way for adoptions by the court. (...) so why should I object to that and go to someone who doesn’t know anything?

The behaviour of lawyers and the fees charged by them were central to some frustrations:

(...) from the children’s home we don’t have problems, and from the adoption agency there are no problems, but when you go to court – you are all alone. (...) you are told, “Oh, there is

one paper missing.” Now again you find that there are fake lawyers, who hide them, one paper, to keep the case going.

(...) We hired the first lawyer who had actually been referred to us by [adoption society]. It went on and on for a year and we were not making any progress. (...) at some point, I realised it was about money. When we submitted our paperwork, you submit your bank statement, your work contracts... And at the time, my husband had a contract (...) making lots of money. I was [earning an] equally good salary. And she just kept on asking for more money. (...) Every lawyer seems to have their own take on how long it takes. (...) Everybody I speak to has had a different experience. Some not so nice, some pretty easy. (...) For me, the legal process has been really disappointing. And (...) I’m not sure it’s the Kenyan court. We haven’t even been there. Getting to court that has just been a nightmare. (...) Eventually, after a year I (...) fired her (...). The current lawyer is charging us a quarter of what this other person was saying (...) I don’t want to blame anybody except my own naivety, but I think a more competent lawyer could have helped.

The range of experiences reported by the adoptive parents who participated in this study varied greatly and do not allow for generalisation. Having a high socio-economic status, their experiences with the process certainly differ from those who may not have the resources to hire qualified lawyers. It was not possible to ascertain the exact costs of domestic adoptions given that fees charged by lawyers vary greatly (amounts cited ranged from Kshs. 30,000 to 300,0000, approximately US\$345 to US\$3,450 in March 2013). Adoption societies charge a flat fee of Kshs. 12,500 for local adoptions, while government-related costs seem to total approximately Kshs. 6,000. The two adoption societies interviewed shared concerns regarding the high legal fees charged by adoption lawyers and are both implementing alternative measures to offer low-cost legal advice to adoptive parents: one offers a self-representation training programme and the other offers the services of pro-bono lawyers for those who are interested. According to the 2008 technical report, their consultation with adoption societies and CCIs indicated that many non-affluent local applicants gave up on the adoption after the 3-month fostering period due to the cost of lawyers (Williams & Njoka, 2008, p. 41).

Some parents expressed frustration with the duration of the legal process, but this seemed to be intimately related to complications arising from the lawyers they had engaged. Stakeholders agreed that in general the court process is properly structured to ensure that children’s best interests are

protected, with minor variations noted on requirements between judges, given that no unified procedure rules exist yet. Altogether, parents were satisfied with the social work checks carried out by the government and adoption societies, although some mentioned the fact that once the adoption order is issued by the High Court, no further contacts are made, highlighting the absence of follow-up mechanisms once the legal process is concluded.

5.7. Suggestions on how to popularize adoption

All informants were asked what they would suggest in order to make child adoption better known, understood and accepted in Kenya. Their suggestions, which relate to the barriers to adoption they had identified, can be clustered in two categories as summarized below.

5.7.1. Promote public education and awareness raising

Many informants suggested that awareness raising activities should be carried out with the participation of adoptive parents, who could be enlisted to speak out about their positive experiences with adoption without fear of discrimination. The majority of adoptive parents consulted were open to this idea. A childless adult expressed this in the following terms:

(...) such people who have gone through these experiences, [should act] as ambassadors. It's important that from the very rich to the very poor, there is some sort of forum where these people who have gone through the process can show the benefits of the process (...) to bring others.

Other informants pointed out that most Kenyans are not aware of the risks for children placed in residential care, as the prevalent perception is that institutionalisation is beneficial for children. They suggested that more information about such risks and the importance of long-term family-based care should be publicised, as the personal testimony of the representative from the Kenya Society of Care Leavers illustrates:

People need to understand that it is also about providing children without families, family. About providing children with families (...) It's actually having a root. Otherwise people don't understand that there is something wrong with growing up without a family. (...) majority of people will tell you there is no issue of one growing up in an institution. But they also tell you that there is no big deal growing up as an orphan, but unless they really understand the repercussions, the consequences of growing up as an orphan (...) of you growing up without a family, it's really hard to adopt. Or to even foster. I know there is foster care, and there is

long-term foster care, but at the end of it all people need permanency, they need to feel that I have a family. That even after foster care they won't be thrown out there, to fend for themselves... You can't go back to a place you can call home, you can call a family.

Informants also suggested that religious communities can play an important role in reducing stigma and promoting adoption:

(...) If you study all adoption mechanisms, it is strongly faith-based. We have not exhausted (...) the resources available in the faith communities. (...) Most of the hospitals, schools and facilities for care giving are basically from the Church (...). Me I think solution is to use faith-based mechanisms. Faith communities. Use them so strongly to actually improve the understanding and the uptake of adoptive care. But of course supported by the policy issue in the government. (NGO founder)

Whilst some religious groups have reportedly been associated with the increase in numbers of residential care facilities in Kenya and the use of sponsorship practices which deter children's de-institutionalization, positive experiences led by faith-based organizations show that with guidance and support, religious communities have the potential to become key allies in the promotion of family-based care for children (Olson, Knight, & Foster, 2006).

One adoptive parent recommended that public officers be further educated about what adoption entails:

(...) immigration, health and education [officials] must be educated. Education officers have to be educated, headmasters in city council schools must be educated, because they are the ones that will put a roadblock to this child when he comes to do whatever he has to do.

This study confirmed that unless they have directly engaged with formal adoption, the majority of Kenyans do not fully understand its meaning. Systematic information-sharing across the country is needed to:

(...) raise an awareness, like the government, it has to (...) tell the people, "Look, this is the procedure, if anyone of you don't have children, or can't have children you can adopt." Until now people don't know. Unless really, you have that problem, that I can't have a child and I really want a child. Then you start looking for information. (Childless adult)

5.7.2. Reduce costs and simplify procedures

Responding to what they perceive to be a complex and expensive affair, informants suggested that adoption procedures need to be better clarified, including the requirements for families to adopt a child, so it ceases to be perceived as something available only for those who are wealthy:

(...) when people see adoption, it's like a business. "Why am I being asked for all this money to look after a child"? "Why is there so much bureaucracy in order to look after a child?". You have to ease the process, one, but you need to strengthen the monetary aspect of it. (...) There [are people who] cannot afford to [adopt], but they can afford to give this child the love they require, a place to sleep and all that, for these people the process needs to be eased. (...) you find that majority of the people who are adopting are actually people who were well off. And we need to show the people who are not well off, that they can also adopt. (...) don't make the process bureaucratic (...). You can protect children, because normally people emphasize on, "check the social, economic aspect of the family and how well off they are so that they can be able to adopt". How many Kenyans who earn [Kshs.] 5,000 are looking after children in a good way? (KSCL representative)

Some adoptive parents recommended that the legal procedure be facilitated by the government:

(...) I think they could do more in terms of making the process more streamlined, less bureaucratic... I think the biggest hurdle is the legal process. And whether that's to do with the lawyers or backlog at the courts, I don't know (...) It just takes too long (...). So I think government can do their bit. (...) I'm not saying really easy then we have situations where children are trafficked, but make it easier, make it possible, facilitate where there is a genuine interest in a child being adopted.

I would expect the Kenyan government, knowing that there are so many children in need, would hasten the process. But you know, I've been to court twice or thrice, on a Friday and you go with your children...(...) I think that has been a major issue, because you don't feel absolutely at ease until you have the adoption certificate. So if you can shorten the process, that would definitely make it better.

These recommendations are in line with The *Guidelines for Action on Intercountry Adoption of Children in Africa* developed in 2012, which recommend that:

States should take all necessary measures to ensure that the fees and cumbersome processes required for suitable domestic measures [such as domestic adoptions] do not

contribute to the violation of the subsidiarity principle, where they make these domestic options inaccessible to residents. (African Child Policy Forum, 2012c, para. 55)

5.8. Final reflections

This chapter has provided in-depth insights into how Kenyans perceive and experience the alternative care and adoption of children. Despite the fact that the sample of informants was very small and not representative of the national population, their candid testimonies not only corroborated but added a much-needed human dimension to the findings of the academic and grey literature referred to throughout this paper. Their stories helped to answer the central questions of this academic exercise, in particular those related to the prevalent perceptions and beliefs surrounding adoption of children in Kenya, the motivations behind it and barriers deterring local adoptions.

Recalling the CRC Committee's General Comment number 7 already cited in Chapter 3 of this paper:

(...) More generally, during periods of rapid social change, traditional practices may no longer be viable or relevant to present parental circumstances and lifestyles, but without sufficient time having elapsed for new practices to be assimilated and new parental competencies understood and valued. (CRC/C/GC/7/Rev.1, para. 19)

Kenyans seem to be going through such a transition, torn, on one side by a world of tradition, ruled by customary law and practices, which is reliant on the rural, subsistence economy and, on the other, a modern, urban society represented by Nairobi's affluent middle class, which has assimilated a statutory world, governed by the cash economy and western values. In this context, the place of children is also changing: in the traditional world children were, and still are, valued for their role within the family, including the labour they provided and the continuity they guaranteed to the clan's lineage and property; in the modern world inhabited by all the adoptive parents interviewed for this study, children are taking a new place, as individuals entitled to rights and protected by their family and the state. Informal kinship care may be the symbolic representation of a traditional, family-centred world, while adoption may be closer to embodying a child-centred world, symbolically represented by the Convention on the Rights of the Child. Exposed to these 'modern values' but unable to completely fulfil their demanding requirements when it comes to children's upbringing, poor families in Kenya have often resorted to placing their children in institutions, where they believe their children will be better prepared in order to thrive in this new order. As one of the

kinship carer informants said, “(...) *nobody would like to throw their child if they can look after them*”.

If these two imaginary worlds in fact exist, they certainly co-exist in Kenya today. The people interviewed for this study negotiate daily life across their invisible boundaries and sometimes struggle to find their own place. As their stories pointed out, adoption challenges them to rethink their relationships with their families and to reconstruct their images of childhood. Families are forced to create new mechanisms to reconcile such tensions, by, for example, arranging kinship adoptions that allow them to harmonise the demands of both worlds.

Many unanswered questions remain: will Kenya’s ambitious development agenda push the country to relinquish and negate its traditional roots? Will the modern state be able to cater to Kenyan families’ urgent need for support so they can keep their children, while their communal networks are stretched to the limit? Who effectively takes responsibility for children’s wellbeing and protection while the country finds its way between these two worlds? Is it not possible to foster both worlds and the best each of them can offer children? Will the emerging concept of a ‘national child protection system’, aptly embraced by the Kenyan government, be able to reconcile these realities and provide appropriate and suitable forms of alternative care for children who have been deprived of parental care? What will be the place of adoption in this system?

The analysis carried out for this study does not provide definitive answers to these questions. Nonetheless, bearing in mind that this research was developed within a child rights framework, the next chapter attempts to draw some conclusions from this experimental study and to offer tentative recommendations to increase the number of domestic adoptions in Kenya. There is every reason to believe that such a development would lead to the further realisation of the rights of children deprived of their family environment in the country if certain considerations are taken into account.

6. Conclusions and recommendations

The findings of this study shall not be surprising to those who are familiar with the Kenyan child protection system. Many of the issues raised throughout this analysis have been previously taken up by other actors, including UNICEF and Kenyan authorities. The existence of draft national guidelines for the alternative care of children that are awaiting endorsement by the government is a sign of progress in the right direction.

Based on the original research questions, the findings of the fieldwork and the child rights framework within which this study was developed, tentative conclusions and recommendations concerning the practice of domestic adoption in Kenya will be put forward. These should be interpreted as non-exhaustive proposals given that this was an exploratory research, limited by a number of factors as outlined in Chapter 2.

6.1. Conclusions

Chapter 5 provided preliminary responses to three of this study's four research questions by comprehensively addressing the prevalent social perceptions and beliefs regarding formal adoption and exploring the motivations and barriers influencing the practice in Kenya. Those issues, therefore, will not be directly addressed in this section, although they provide the foundations for the conclusions outlined below.

The first and central research question aimed at determining whether the rights of children deprived of their family environment in Kenya would be better fulfilled if domestic adoption was better understood, known, promoted and accepted in the country, reducing the currently almost complete reliance on informal alternative care settings and residential placements. There are two underlying assumptions behind this interrogation, the first being that the rights of children currently in informal and residential care are not being wholly fulfilled and the second, that further understanding and acceptance of domestic adoption would increase the fulfilment of the rights of all children deprived of their family environment, especially of those in informal and residential care in Kenya.

The outcomes of this study confirm the first assumption. The information gathered from literature and interviewees points to several violations of the rights of children living in residential care in

Kenya. While positive practices have been showcased elsewhere (Republic of Kenya, 2012b), it seems evident that CCIs must be better regulated and monitored to ensure particularly, but not only, respect for children's rights to identity (CRC Article 8 and ACRWC Article 6), to know and be cared for by their parents (CRC Article 7 and ACRWC Article 19), to not be separated from their family unless in their best interests (CRC Article 9 and ACRWC Articles 19 and 25) and to have their placement periodically reviewed (CRC Article 25). Furthermore, it seems that the majority of children in residential care have been placed there solely because of poverty, contravening recommendations of the CRC Committee and the principles of the international *Guidelines for the Alternative Care of Children*. While it is noteworthy that many parents place children in institutions because they believe that by securing children's access to their basic needs they are acting in children's best interests, this research has also shown that the running of these facilities is not always perceived to take children's best interests into account. Given that the quality of care provided by these CCIs is questionable and that no evidence was found indicating that, overall, children's placements are periodically reviewed against an exit strategy, it can be concluded that the vast majority of these institutions do not cater for children's best interests (CRC Article 3 and ACRWC Article 4). Finally, due to the fact that many children placed in CCIs do not seem to have adequate documentation in place, they become particularly vulnerable to the risks of exploitation (CRC Articles 19, 32 and 36 and ACRWC Articles 15 and 27), sale and trafficking (CRC Article 35 and ACRWC Article 29), not to mention unlawful adoptions (CRC Article 21 and ACRWC Article 24).

When it comes to informal care, the picture becomes slightly hazier. As discussed throughout this paper, Africans have a long tradition of positively caring for children through informal extended social networks. Interviewees spoke about the sense of identity and belonging that kinship care can bestow on a child, in addition to potentially guaranteeing children's access to education and basic needs. However, they also spoke frequently about the risks involved in such informal care, with children often exposed to discrimination (CRC Article 2 and ACRWC Article 3), abuse (CRC Article 19 and ACRWC Article 4) and exploitation (CRC Article 19 and 32 and ACRWC Article 4). Many concerns were also expressed with the association of kinship care to the violation of children's rights to property and inheritance, rights enshrined in the International Covenant on Civil and Political Rights (Article 24) and firmly addressed by the Guidelines (paragraphs 16, 36 and 37). Practices of informal, kinship care in Africa have not been the object of rigorous research, although many social protection programmes have relied on such care, especially when targeting 'orphans and vulnerable children' over the past years. While the assumption that family members are better placed to take care of children made vulnerable by the loss of parental care seems a reasonable one, more research is

needed to fully grasp if and how the rights of children are ensured under such arrangements. This study raised concerns that point to the need to establish some type of monitoring and support mechanism for children and families involved in kinship care in Kenya, in order to ensure that children's rights are not further violated by what is a potentially positive protection measure. As seen in Chapter 5, the draft Kenyan Guidelines, following what had already been prescribed by the *Guidelines for the Alternative Care of Children*, address such concerns and its implementation should lead to increased protection of children who are being cared for informally by their relatives.

The second assumption of this study is grounded in the belief that a rise in domestic adoptions would increase the number of children whose best interests would be asserted through their permanent placement in a family environment. The reflections above indicate that if a more appropriate case management system was in place, many Kenyan children experiencing a myriad of rights violations under informal and residential care could potentially be placed in other more suitable, long-term or permanent family-based care alternatives.

As largely discussed in Chapter 3, adoption is not always the best solution for all children deprived of parental care. The success of adoption rests on the existence of a well managed child care system, operating within a wider child protection system, run by competent professionals who place children's best interests and respect of all other rights at the heart of all their decisions. Due to the permanency it engenders, adoption is too serious a decision to be made hastily. While there is evidence of mounting acceptance of the practice in Kenya, a considerable number of risks for children were also identified in the way different forms of alternative care are practised and managed across the country. Pushing for a rapid growth in adoptions within such an environment could place already vulnerable children at further risk. On the other hand, this cannot mean that thousands of children should continue facing the rights violations they endure while placed in alternative care. The stories shared in this study indicate that there is much room for adoption to be better understood, known, promoted and accepted in Kenya. Undoubtedly, an increase in public knowledge and change in social perceptions could lead to more children being adopted locally. There are also strong reasons to believe that hundreds of children in informal and residential care could potentially be declared free for adoption. This study confirmed that adoption societies worry about an increase in 'demand' and shortage of 'supply' for domestic adoptions. The reasons behind this unbalance are unknown but the concerns raised by interviewees about how CCIs are being managed and the effect this may be having on the periodic revision of each child's individual case are compelling. If adoption is to be offered to certain children as an appropriate and suitable

solution for their care, it must be carried out under stricter procedures than it is today. The issue here is not the legal process that confirms a child's formal adoption - no concrete evidence was found to question the suitability of Kenya's adoption court proceedings - but that of the comprehensive transformation needed in all the processes related to why and how children are first separated from their parents, placed in alternative care and thereafter sometimes made available to adoption without the application of all gatekeeping mechanisms that ought to protect children's best interests.

Furthermore, for children's rights to be fulfilled in domestic adoption, there must be a meaningful reduction in the stigma associated with adoption in Kenya. As this study confirmed, traditional beliefs and practices have too often been used to shame adoptive children and their parents. As a result, the practice is still shrouded in secrecy, occasionally leading parents and other actors involved in adoption procedures to behave unethically and illegally. If these factors, which inhibit adoption and hinder its practice, are not firmly addressed by Kenyan society, adoptive children will continue at risk of being subjected to severe discrimination and exposed to a wide range of rights violations.

In summary, Kenya's over reliance on informal and residential care as alternatives for children deprived of their family environment is generally not in their best interests. While enhanced understanding and acceptance of adoptions could lead to better fulfillment of these children's rights, an increase in the practice of adoption without both a significant improvement in the management of child care services and a considerable reduction of the stigmatization associated with the practice could be detrimental to the realization of their rights.

6.2. Recommendations

The recommendations below are organised into two sections: the first covers the policy and regulatory framework and the second covers the changes required in social norms and behaviours towards the practice of adoption in Kenya. The reader should, nevertheless, bear in mind that the changes proposed are closely interrelated and should therefore be considered jointly.

6.2.1. Changes in the policy and regulatory framework

Many of the changes required to ensure the adoption practice in Kenya follows internationally agreed ethical standards and is effectively governed by the need to safeguard children's best

interests as the paramount consideration relate to components of the national child protection system. As mentioned in Chapter 3, the Concluding Observations issued recently by the CRC Committee to Azerbaijan and other countries regarding domestic adoption can be used as a framework for the review of adoption systems. As Kenya prepares itself to have its third, fourth and fifth combined periodic reports assessed by the Committee¹⁶, it should consider utilising the body of Concluding Observations issued by the Committee over the past years to substantiate further requests for international collaboration in the redesign of its alternative care and adoption systems.

6.2.1.1. Alternative care strategy

The planned review of the Children's Act to ensure it promotes family-based care alternatives over institutionalization must proceed without delay if all alternative care policies and regulations are to be effective. This should include a revision of the mandatory placement of children in CCIs before they are placed in foster care or adoption. More resources must be invested to increase the capacity of the alternative care and adoption section of the Department of Children's Services to ensure it can adequately fulfil its role in managing such services. The adoption of the recently drafted Kenyan guidelines for the alternative care of children must be made a priority.

The adoption of the Kenyan guidelines should inform the development of a comprehensive national strategy on alternative care, followed by an action plan for a review, based on the principles of necessity and suitability, of all the cases of children currently placed in residential care institutions.

6.2.1.2. Support to families

Given that many Kenyan children are placed in alternative care solely due to poverty, the government should expand its social protection programme to support vulnerable families who already have, or are at risk of, relinquishing their children, as already suggested by a recent evaluation of the programme (Ward, et al., 2010).

The government should increase its investment in programmes that enhance vulnerable families' abilities to care for their children and actively promote the reintegration of separated children in

¹⁶ The calendar of sessions of the CRC Committee does not currently have Kenya slotted for review in any of its sessions before end of 2015. The Kenyan government declares having recently submitted the latest reports to Geneva.

their families whenever that is in their best interests, following the provisions of section IV of the *Guidelines for the Alternative Care of Children*.

6.2.1.3. Registration and monitoring of CCIs

There is ample evidence that the majority of CCIs operating in Kenya do not adequately cater to children's best interests. Unethical practices are preventing children from being reintegrated in their families or placed in family-based care alternatives such as domestic adoption.

The government should effectively enforce CCI registration and the policies that establish that no child should be kept in CCIs without care orders issued by court, that no child remains in such care for over three years and that all children placed in CCIs have an individual care plan, including an exit strategy.

6.2.1.4. Adoption data management

As shown by this study, obtaining reliable data about adoption in Kenya is a challenging task. As part of the review and endorsement of new adoption regulations, the alternative care and adoption section of the Department of Children's Services should be mandated with keeping updated records of all open and concluded adoption cases in the country disaggregated by a variety of indicators, as part of a central adoption data management system. This system should also capture national information about adults who have been approved as prospective adoptive parents and children who have been declared free for adoption.

The Kenyan government should invest in developing a centrally managed national adoption database, as recommended by the CRC Committee to several State Parties over the past couple of years.

6.2.1.5. Declaration of children's adoptability

As seen in the cases described in Chapter 5, the process of matching children with prospective adoptive parents often does not start with children and their needs but rather with parents' wishes. While this may be challenging to manage in the absence of a central adoption database, adoption stakeholders should ensure that all adoption procedures are aimed at finding suitable parents for children who have first been adequately declared free for adoption.

The government should revise the adoption regulations to ensure that only a ‘competent authority’ with the mandate to secure children’s best interests is charged with the capacity to judge if the local adoption is permissible, as prescribed by CRC Article 21(a) and ACRWC Article 24(a).

6.2.1.6. Costs of the adoption process

The government should increase its efforts to explain the steps required for a child’s adoption to the general public, including information on why these measures are important to secure the rights of the child, and reduce the costs associated with adoption. The revised adoption regulations should include a scale of fees applicable to all stakeholders involved in adoption practice.

The government should consider waiving the public costs required for processing domestic adoptions and exploring means for subsidising additional costs incurred with local adoptions, in particular legal aid, for families who cannot afford it.

6.2.1.7. Kinship adoptions

Until the government is able to put in place a monitoring mechanism for informal care placements it is not advisable that requirements for the adoption of children who have been previously informally cared for by relatives be made less stringent than all other adoptions. Nevertheless, the mandatory three-month fostering period prior to adoption should continue to be waived in such cases, provided this is in the best interest of the child.

The adoption of children by family members who have not previously had the child under their care should follow the same procedure as all other adoptions.

6.2.1.8. The adoption certificate

While the government’s concern with whose names should appear as parents on an adopted child’s birth certificate is justifiable, it does not warrant the denial of children’s right to identity. The state is responsible for managing the ‘adoption machinery’ in a way which is conducive to children’s rights and should therefore devise other ways to keep official records which differentiate biological from adopted children. The issuance of the adoption certificate without an accompanying birth certificate leaves adoptees in a type of ‘identity limbo’ and prevents adoptive parents from managing the disclosure process as they would wish; forcing disclosure upon families through a piece of paper

does little to encourage that it ever takes place. Kenyan adoptive parents are entitled to receive appropriate counselling prior to and throughout the adoption process if they are to understand the importance of disclosure in children's right to know their origins.

This government should review the practice of issuing only adoption certificates for adopted children and should devise an appropriate way to issue birth certificates to all adopted children.

6.2.1.9. Birth registration

Since birth certificates can easily be unlawfully acquired or altered throughout Kenya, the government should ensure that improved safeguarding mechanisms are put in place to avoid such practices, while pursuing efforts to make birth registration more easily accessible in all parts of the country.

The government should devise a strategy to ensure that every adopted child and every child placed in an institution has a birth certificate.

6.2.2. Changes in social beliefs, attitudes and practices

As already explored in several parts of this study, important changes are needed in traditional Kenyan beliefs, attitudes and practices if local adoptions are to be increasingly accepted as a positive form of care for children deprived of their family environment. Drawing from suggestions given by informants, the brief recommendations below point to some ways in which these changes could be instigated.

6.2.2.1. Awareness in human rights and child rights

Many of the misunderstandings surrounding adoption derive from the lack of awareness about children's rights across Kenya. While it may be challenging to disseminate information about such rights in contexts where adults often cannot enjoy the fulfilment of their own rights, further efforts are needed to make human rights values and principles more easily understood and incorporated by all Kenyans. Such efforts should make use of existing African human rights treaties to facilitate the acceptance of and adherence to universally adopted values and principles.

The government, civil society and the international community in Kenya should work together to increase the offer of human rights education across the country, including child rights with a particular emphasis on the African Charter on the Rights and Welfare of the Child.

6.2.2.2. Understanding of child development

Kenyans have come to believe that placing children in institutions is a good way of ensuring that their basic needs are met. Lack of information about children's developmental needs, particularly in their early years, leads families to deem that children's material needs, such as food, clothing and shelter, are more important than their emotional and social needs. Parenting education should be made more available to all parents across the country by, for instance, being coupled with health and education services. Increasing parents' understanding of children's developmental needs should assist in the prevention of child relinquishment and should enhance parents' ability to provide a safe and caring family environment for their children.

The government, civil society and the international community in Kenya should work together to increase the offer of parenting education across the country, aiming at enhancing public awareness about the importance of family-based care for all children.

6.2.2.3. Availability of Information about adoption

This study confirmed that unless they have directly engaged with formal adoption, the majority of Kenyans do not fully understand its meaning. The absence of publicly available information contributes to the reproduction of discriminatory behaviours towards adoptive families in all sectors of society. Adoptive families should be encouraged to speak out about their experiences.

Systematic information-sharing and awareness-raising about adoption across the country should be carried out by all stakeholders to demystify the practice, addressing the barriers identified in this study and beyond.

6.3. Looking ahead

All the resources consulted during the course of this study concur that more knowledge is needed if “the system of adoption shall ensure that the best interests of the child shall be the paramount consideration”, as prescribed by Article 21 of the CRC. Professionals involved in the field agree that providing adoption services is a complex, demanding and effort-intensive task, faced with many obstacles all over the world:

At first glance, the scope, complexity, and apparent intractability of many of the large system barriers can be overwhelming. However, these often begin as smaller obstacles that, when not recognized and addressed, can compound over time and eventually assume proportions that defy intervention. By identifying smaller obstacles and bringing early intervention strategies to bear, the professional community can potentially prevent the development of many of the more significant barriers that undermine successful adoption outcomes. (Rycus, Freundlich, Hughes, Keefer, & Oakes, 2006, p. 3)

It is hoped that this research paper will contribute to the interest in further research about domestic adoption practices across Africa, and particularly in Kenya. The international community does little to support the development of indigenous child protection systems when it so heavily concentrates its attention on the controversies of intercountry adoption. More knowledge is needed to understand which local beliefs and practices should be supported or challenged in order to improve the quality of child protection services and increase children's wellbeing. Without such an understanding the demands for the application of the subsidiarity principle become a mere bureaucratic exercise with little impact on the lives of children deprived of their family environment.

If the international child rights community truly believes that intercountry adoption and long-term residential care should be measures of last resort for children deprived of parental care, it has a responsibility to produce more research about other, more suitable child care practices, particularly in Africa where the absence of reliable information is daunting. Such knowledge is urgently needed in order to inform the design of policy and programmes that foster locally accepted family-based care alternatives for these children, including domestic adoption.

Reference list

- African Child Policy Forum (ACPF). (2012a). *The Addis Ababa Communiqué on Intercountry Adoption*. Addis Ababa: ACPF.
- African Child Policy Forum (ACPF). (2012b). Fact Sheet Nr. 1. *Intercountry Adoption: The African context*. Addis Ababa: ACPF.
- African Child Policy Forum (ACPF). (2012c). *Guidelines for Action on Intercountry Adoption of Children in Africa*. Addis Ababa: ACPF.
- African Child Policy Forum (ACPF). (2012d). *Intercountry Adoption: An African Perspective*. Addis Ababa: ACPF.
- African Child Policy Forum (ACPF). (2012e). *Africa: The New Frontier for Intercountry Adoption*. Addis Ababa: ACPF.
- African Child Policy Forum (ACPF). (n.d.). *Harmonisation of Children's Laws in Kenya*. Addis Ababa: ACPF. Retrieved March 02, 2013, from <http://www.acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Kenya-Harmonisation-of-Laws-on-Children.pdf>
- African Committee of Experts on the Rights and Welfare of the Child. (n.d.). *List of countries which have, signed, ratified/acceded to the African Union Convention on African Charter on the Rights and Welfare of the Child [sic]*. Retrieved March 10, 2013, from <http://acerwc.org/wp-content/uploads/2011/03/French-and-English-ACERWC-Updated-Status-of-the-ACRWC.pdf>
- African Committee of Experts on the Rights and Welfare of the Child. (2009). *Recommendations and Observations. Kenya*. (AU Doc. SA2590).
- Africawide Movement for Children. (2009). Consultative Meeting on Intercountry Adoption, 22-23 June. Nairobi, Kenya. Retrieved March 01, 2013, from http://www.africawidemovement.org/documents/Report_on_Interconsultative_Meeting_on_Adoption.pdf
- Akwara, P. A., Noubary, B., Ah Ken, P. L., Johnson, K., Yates, R., Winfrey, W., . . . Luo, C. (2010). Who is the vulnerable child? *Using survey data to identify children at risk in the era of HIV and AIDS*, 22(9), 1066-1085.
- ANPPCAN Regional Office. (2010). Promoting Family Based Care for Children in Africa. *Proceedings of the First International Conference in Africa on Family Based Care for Children*. Nairobi: African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN).

- ANPPCAN Regional Office. (2011). *Literature Review on Child Protection Systems in the Eastern Africa Region*. Nairobi: African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN).
- Archambault, C. (2010). Fixing families of mobile children: Creating kinship and belonging among Maasai adoptees in Kenya. *Childhood*, 17(2), 229-242.
doi:10.1177/0907568210365672
- Archard, D. (2003). *Children, Family and The State*. Aldershot, UK: Ashgate.
- Archard, D. (2004). *Children, rights and childhood* (2nd ed.). London: Routledge.
- Aries, P. (1962). *Centuries of Childhood, a social history of family life*. London: Jonathan Cape.
- Avery, R. J. (1998). Information Disclosure and Openness in Adoption: State Policy and Empirical Evidence. *Children and Youth Services Review*, 20, 57-85.
- Baglietto, C. (2007). The Draft United Nations Guidelines on the Alternative Care of Children: An Ethical Framework on the Path to Adoption as a Permanent Protection Measure. *2nd International Conference on Adoption*. New Delhi.
- Bartholet, E. (2010). International Adoption: The Human Rights Position. *Global Policy*, 1(1), 91-100. doi:10.1111/j.1758-5899.2009.00001.x
- Bethany Christian Services. (2011). *Permanency for Children. The Development of the BCS Global Foster-to-Adopt Pilot Project in Ethiopia*. Addis Ababa, Ethiopia: Bethany Christian Services Global, LLC.
- Better Care Network. (n.d.). Better Care Network Toolkit Glossary. Retrieved March 06, 2013, from
<http://www.bettercarenetwork.org/BCN/Toolkit/Document/BetterCareNetworkToolkitGlossary.pdf>
- Bradley, C., & Weisner, T. S. (1997). Crisis in the African Family. In T. S. Weisner, C. Bradley, & P. L. Kilbride (Eds.), *African families and the crisis of social change* (pp. xix-xxxii).
- Brems, E. (2007). Children's Rights and Universality. In J. C. Willems, *Developmental and Autonomy Rights of Children* (2nd ed., pp. 11-37). Antwerp, Netherlands: Intersentia.
- Breuning, M., & Ishiyama, J. (2009). The Politics of Intercountry Adoption: Explaining Variation in the Legal Requirements of Sub-Saharan African Countries. *Perspectives on Politics*, 7(1), 89-101. doi:10.1017/S1537592709090124
- Browne, K. (2009). *The Risk of Harm to Young Children in Institutional Care*. London: Save the Children.
- Bueren, G. V. (1998). *The International Law on the Rights of the Child*. The Hague, Netherlands: Martinus Nijhoff Publishers.

- Bunkers, K. (2010, October). Thesis submitted to Institut Universitaire Kurt Bosch and University of Fribourg for the obtention of title of MAs in Child Rights (unpublished). *Informal Family-based Care Options: Protecting Children's Rights? A Case Study of Gudifecha in Ethiopia*. Sion, Switzerland.
- Bunkers, K. (2013, March). Domestic Adoption Practices in Ethiopia: The Example of Oromia Region. *International Social Service Monthly Review*(170), pp. 2-3.
- Bunkers, K. M., & Groza, V. (2012). Intercountry Adoption and Child Welfare in Guatemala: Lessons learned pre and post ratification of the 1993 Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. In J. L. Rotabi, & K. S. Gibbons (Eds.), *Intercountry Adoption: Policies, Practices, and Outcomes*. London: Ashgate Press.
- Cantwell, N. (2003). Intercountry Adoption. A Comment on the Number of "Adoptable" Children and the Number of Persons Seeking to Adopt Internationally. *International Child Protection: The Judges' Newsletter. Extract from Volume V-Spring 2003*, 5. Retrieved from <http://www.hcch.net/e/conventions/news28e.html>
- Cantwell, N. (2006, May 18-19). Children's Rights in Relation to their Family. *Presentation delivered at International Interdisciplinary Conference on Children's Rights. An appraisal of the Children's Rights Convention. Theory meets practice*. Ghent, Belgium.
- Cantwell, N., & Holzscheiter, A. (2008). Article 20: Children deprived of their family environment. In A. Alen, J. V. Lanotte, E. Verhellen, F. Ang, E. Berghmans, & M. Verheyde (Eds.), *A Commentary on the United Nations Convention on the Rights of the Child*. Leiden, Netherlands: Martinus Nijhoff.
- Cantwell, N., Davidson, J., Elsley, S., Milligan, I., & Quinn, N. (2012). *Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'*. Glasgow, UK: Centre for Excellence for Looked After Children in Scotland.
- Child Frontiers. (2011). *Mapping and assessing child protection systems, West and Central Africa*. Hong Kong.
- Chirwa, D. M. (2002). The Merits and Demerits of the African Charter on the Welfare and the Rights of the Child. *The International Journal of Children's Rights*, 10, 157-177.
- Corbin, J., & Strauss, A. (2008). *Basics of qualitative research: Grounded theory procedures and techniques*. Thousand Oaks, USA: Sage.
- Coyne, I. T. (1997, August). Sampling in qualitative research. Purposeful and theoretical sampling;. *Journal of Advanced Nursing*, 26, 623-630.
- CRC Committee. (2001). *Concluding Observations: Kenya*. (UN Doc. CRC/C/3/Add.62).

- CRC Committee. (2005). *General Comment No. 7: Implementing child rights in early childhood*. (UN Doc. CRC/C/GC/7/Rev.1).
- CRC Committee. (2005). *Day of General Discussion on Children Without Parental Care*. (UN Doc. CRC/C/153).
- CRC Committee. (2006). *General Comment No. 9: The rights of children with disabilities*. (UN Doc. CRC/C/GC/9).
- CRC Committee. (2007). *Concluding Observations: Kenya*. (UN Doc. CRC/C/KEN/CO/2).
- CRC Committee. (2009). *General Comment No. 11: Indigenous children and their rights under the Convention*. (UN Doc. CRC/C/GC/11).
- CRC Committee. (2011). *Concluding Observations: Afghanistan*. (UN Doc. CRC/C/AFG/CO/1).
- CRC Committee. (2011). *Concluding Observations: Belarus*. (UN Doc. CRC/C/BLR/CO/3-4).
- CRC Committee. (2011). *Concluding Observations: Costa Rica*. (UN Doc. CRC/C/CRI/CO/4).
- CRC Committee. (2011). *Concluding Observations: Czech Republic*. (UN Doc. CRC/C/CZE/CO/3-4).
- CRC Committee. (2011). *Concluding Observations: Finland*. (UN Doc. CRC/C/FIN/CO/4).
- CRC Committee. (2011). *Concluding Observations: Italy*. (UN Doc. CRC/C/ITA/CO/3-4).
- CRC Committee. (2011). *Concluding Observations: Seychelles*. (UN Doc. CRC/C/SYC/CO/2-4).
- CRC Committee. (2011). *Concluding Observations: Ukraine*. (UN Doc. CRC/C/UKR/CO/3-4).
- CRC Committee. (2011). *Concluding Observations: Viet Nam*. (UN Doc. CRC/C/VNM//CO/3-4).
- CRC Committee. (2012). *Concluding Observations: Albania*. (UN Doc. CRC/C/ALB/CO/2-4).
- CRC Committee. (2012). *Concluding Observations: Andorra*. (UN Doc. CRC/C/AND/CO/2).
- CRC Committee. (2012). *Concluding Observations: Australia*. (UN Doc. CRC/C/AUS/CO/4).
- CRC Committee. (2012). *Concluding Observations: Azerbaijan*. (UN Doc. CRC/C/AZE/CO/3-4).
- CRC Committee. (2012). *Concluding Observations: Bosnia and Herzegovina*. (UN Doc. CRC/C/BIH/CO/2-4).
- CRC Committee. (2012). *Concluding Observations: Canada*. (UN Doc. CRC/C/CAN/CO/3-4).
- CRC Committee. (2012). *Concluding Observations: Liberia*. (UN Doc. CRC/C/LBR/CO/2-4).
- CRC Committee. (2012). *Concluding Observations: Namibia*. (UN Doc. CRC/C/NAM/CO/2-3).
- CRC Committee. (2012). *Concluding Observations: Syrian Arab Republic*. (UN Doc. CRC/C/SYR/CO/3-4).
- CRC Committee. (2012). *Concluding Observations: Thailand*. (UN Doc. CRC/C/THA/CO/3-4).
- CRC Committee. (2012). *Concluding Observations: Togo*. (UN Doc. CRC/C/TGO/CO/3-4).

- Dambach, M. (2013). *Jurisprudence of UN Committee on the Rights of the Child. Views on family and caregiver strengthening/support (unpublished draft received from the author on March 11, 2013)*. Geneva: International Social Services.
- de Vise Lewis, E., Krueger, A., Thompostone, G., & Quigley, P. (2012). *Family Support Services and Alternative Care in Sub-Saharan Africa. Background Paper*. Hong Kong: Child Frontiers.
- Delap, E. (2011). *Scaling Down. Reducing, reshaping and improving residential care around the world*. London: EveryChild.
- Dialogue Africa Foundation. (2009). *Kriegler and Waki Reports on 2007 Elections: Summarised version*. Nairobi, Kenya: Dialogue Africa Foundation.
- Dillon, S. (2003). Making Legal Regimes for Intercountry Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague Convention on Inter-country Adoption. *Inter-country Adoption & Human Rights*, 21(179), 180-256.
- Dillon, S. A. (2009, January). The Missing Link: A Social Orphan Protocol to the United Nations. *Legal Studies Research Paper Series*(Research Paper 09-02). Retrieved March 01, 2013, from <http://ssrn.com/abstract=1136879>
- Donahue, J., Hunter, S., Sussman, L., & Williamson, J. (1999). *Children Affected by HIV/AIDS in Kenya: An Overview of Issues and Action to Strengthen Community Care and Support*. Washington DC: USAID.
- Dunn, A., Jareg, E., & Webb, D. (2003). *A Last Resort: The growing concern about children in residential care*. London: Save the Children UK.
- Einarsdottir, J., Norman, K., & Poluha, E. (2000). *Children Across Time and Space. Social and Cultural Conceptions of Children and Children's Rights*. Stockholm: Save the Children Sweden.
- EveryChild. (2009). *Every child deserves a family: EveryChild's approach to children without parental care*. London: EveryChild.
- EveryChild. (2011). *Scaling down: Reducing, reshaping and improving residential care around the world*. London: EveryChild.
- EveryChild. (2012). *Adopting Better Care: improving adoption services around the world*. London: EveryChild.
- Ezugwu, F. O., Obi, S. N., & Onah, H. E. (2002). The knowledge, attitude and practice of child adoption among infertile Nigerian women. *Journal of Obstetrics and Gynaecology*, 22(2), 211-216.
- Foster, G. (2000). The capacity of the extended family safety net for orphans in Africa. *Psychology, Health & Medicine*, 5(1), 55-62.

- Freeman, M. (2009). Children's Rights as Human Rights: reading the UNCRC. In J. Qvortrup, W. A. Corsaro, & M.-S. Honig (Eds.), *The Palgrave Handbook of Childhood Studies* (pp. 377-393). London: Palgrave Macmillan.
- Fuentes, F., Boechat, H., & Northcott, F. (2012). *Investigating the Grey Zones of Inter-country Adoption*. Geneva: International Social Service, International Reference Centre for the Rights of Children Deprived of their Family.
- Gair, S. (2010, October). Social justice, human rights, past adoption discourse. *Australian Journal of Adoption*, 2(2), 1-9.
- Goedertier, G., & Verheyde, M. (2004). The activities of the UN Committee on the Rights of the Child. In E. Verhellen (Ed.), *Understanding Children's Rights* (pp. 409-448). Ghent, Belgium: Ghent University Children's Rights Centre.
- Government of the Republic of South Africa, Hague Conference on Private International Law. (2010). Seminar on Cross-Frontier Child Protection in the Southern and Eastern African Region. The Role of the Hague Children's Conventions. *Conclusions and Recommendations*. Pretoria, South Africa.
- Grant, M. J., & Yeatman, S. (2012). The relationship between orphanhood and child fostering in sub-Saharan Africa, 1990s–2000s. *Population Studies: A Journal of Demography*. doi:10.1080/00324728.2012.681682
- Green, M. (2005). Strengthening National Responses to Children Affected by HIV/AIDS: What is the Role of the State and Social Welfare in Africa? *Background Paper for Wilton Park Conference Nov 14th-16th*. Wilton Park. Retrieved March 01, 2013, from http://www.ovcsupport.net/files/Strengthening_nationalresponses_tochildrenaffectedbyHIV_AIDS_WhatistheroleofthestateandsocialwelfareinAfrica.pdf
- Greenberg, A. (2007). *Enhanced Protection for Children Affected by HIV/AIDS. A companion paper to The Framework for the Protection, Care and Support of Orphans and Vulnerable Children Living in a World with HIV and AIDS*. New York: UNICEF.
- Hague Conference on Private International Law. (1993). *Convention on the protection of children and co-operation in respect of intercountry adoption*. The Hague, Netherlands: Hague Conference on Private International Law.
- Hague Conference on Private International Law. (2008). *The implementation and operation of the 1993 Hague Inter-country Adoption Convention: guide to good practice. Guide No. 1*. The Hague, Netherlands: Hague Conference on Private International Law.
- Hague Conference on Private International Law. (November 2012). Fancophone Workshop on the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in

- Respect of Intercountry Adoption. *Conclusions and Recommendations*. Dakar, Senegal: Hague Conference on Private International Law.
- Hansen, M. E. (2008). The Value of Adoption. *Adoption Quarterly*, 10(2), 65-87.
- Harper, C., Marcus, R., & Moore, K. (2003). Enduring Poverty and the Conditions of Childhood: Lifecourse and Intergenerational Poverty Transmissions. *World Development*, 31(3), 535-554. doi:10.1016/S0305-750X(03)00010-X
- Hodgkin, R., & Newell, P. (2007). *The implementation handbook for the Convention on the Rights of the Child* (3 ed.). New York: UNICEF.
- Hussein, A. (2012, May). Dealing with children in need of alternative care in Kenya. *Presentation delivered at the Fifth International Policy Conference on the African Child*. Addis Ababa, Ethiopia.
- ICSW; Adoption Centre; ISS. (1997). *The Child's Right To Grow Up In A Family – Guidelines for Practice on National and Intercountry Adoption and Foster Family Care*. International Social Service. Retrieved March 03, 2013, from <http://www.iss-ssi.org/2009/assets/files/ethical-document/Hong-Kong-Guidelines/Hong%20Kong%20ENG.PDF>
- International HIV/AIDS Alliance; Save the Children. (2012). *Family-centred HIV programming for children: Good Practice Guide*. London: International HIV/AIDS Alliance.
- International Social Service. (1999). *The rights of the child in domestic and intercountry adoption: ethical principles, guidelines for practice*. Geneva: International Social Service.
- International Social Service. (2006a, March). *Fact Sheet Nr. 7*. Geneva: International Reference Centre for the Rights of Children Deprived of their Family.
- International Social Service. (2006b, November). *Fact Sheet Nr. 25*. Geneva: International Reference Centre for the Rights of Children Deprived of their Family.
- International Social Service. (2007, December). *Fact Sheet Nr. 49*. Geneva: International Reference Centre for the Rights of Children Deprived of their Family.
- International Social Service. (2011, March-April). Africa: terra incognita? *Monthly Review*, 3-4.
- Irwin, A., Adams, A., & Winter, A. (2009). *Home Truths. Facing the Facts on Children, AIDS, and Poverty*. Joint Learning Initiative on Children and HIV/AIDS (JLICA).
- Kenya National Bureau of Statistics. (2010). *Kenya 2009 Population and Housing Census Highlights*.
- Kenya National Bureau of Statistics; ICF Macro. (2010). *Kenya Demographic and Health Survey 2008-2009*. Calverton, USA: ICF Macro.
- Kenya National Council for Law Reporting. (1959). *The Adoption Act: Chapter 143*.
- Kenya National Council for Law Reporting. (2010). *The Constitution of Kenya*.

- Kenya NGO CRC Committee. (2006). *NGO Complementary Report on: Implementation of the United Nations Convention on the Rights of the Child in Kenya*. Nairobi.
- Kilbride, P. L., & Kilbride, J. C. (1990). *Changing Family Life in East Africa: Women and Children at Risk*. Pennsylvania, USA: The Pennsylvania State University Press.
- Korbin, J. E. (Ed.). (1981). *Child Abuse & Neglect. Cross-cultural perspectives*. Berkeley, USA: University of California Press.
- Lammerant, I., & Hofstetter, M. (2007). *Adoption: at what cost? For an ethical responsibility of receiving countries in intercountry adoption*. Lausanne, Switzerland: Terre des Hommes.
- LaRossa, R. (2005, November). Grounded Theory Methods and Qualitative Family Research. *Journal of Marriage and Family*, 67(4), 837-857.
- Law Society of Kenya (LSK). (2008). *The Child Adoption Practice and Procedure Rules (DRAFT)*. Nairobi: (unpublished draft received personally from LSK on February 19, 2013).
- League of Nations. (1924). *Geneva Declaration of the Rights of the Child*. Adopted 26 September 1924.
- LeVine, R. A., Dixon, S., LeVine, S., Richman, A., Leiderman, P. H., Keefer, C. H., & Brazelton, T. B. (1994). *Child Care and Culture. Lessons from Africa*. Cambridge, UK: Cambridge University Press.
- Lloyd, A. (2002). Evolution of the African Charter on the Rights and Welfare of the Child and the African Committee of Experts: Raising the gauntlet. *The International Journal of Children's Rights*, 10(2), 179-198.
- Lloyd, A. (2008). The African regional system for the protection of children's rights. In J. Sloth-Nielsen (Ed.), *Children's Rights in Africa. A Legal Perspective* (pp. 33-51). Aldershot: Ashgate.
- Maestral International. (2011). *Child Protection Systems: mapping and assessing Eastern and Southern Africa*. UNICEF. Retrieved March 01, 2013, from <http://resourcecentre.savethechildren.se/node/5093>
- Mann, G., Long, S., Delap, E., & Connell, L. (2012). *Children living with and affected by HIV in residential care. Desk based research, June 2012*. EveryChild; Maestral International; UNICEF. Retrieved March 01, 2013, from <http://resourcecentre.savethechildren.se/node/6546>
- Martin, P., & Mbambo, B. (2011). *An exploratory study on the interplay between African customary law and practices and children's protection rights in South Africa*. Pretoria, South Africa: Save the Children Sweden.
- Mbugua, J. W. (2012). *Promoting Child Rights: Reflections on key processes of children sector in Kenya from 1989 onwards as recorded by some national civil society actors*. Nairobi, Kenya: Save the Children.

- Mezmur, B. D. (2009a). From Angelina (To Madonna) To Zoe's Ark. *International Journal of Law, Policy and the Family*, 23(2), 145-173. doi:10.1093/lawfam/ebn013
- Mezmur, B. D. (2009b). Intercountry adoption as a measure of last resort in Africa: advancing the rights of a child rather than a right to a child. *International Journal on Human Rights*, 83-103.
- Mezmur, B. D. (2012, May). Alternatives to intercountry adoption in Africa: Some thoughts. *Presentation delivered at the Fifth International Policy Conference on the African Child*. Addis Ababa, Ethiopia.
- Mills, J., Bonner, A., & Francis, K. (2006). Adopting a constructivist approach to grounded theory: Implications for research design. *International Journal of Nursing Practice*, 12, 8-13. doi:10.1111/j.1440-172X.2006.00543.x
- Mokomane, Z., & Rochat, T. (2010). *Study report on the perceptions, understanding and beliefs of people regarding adoption and blockages that prevent communities from adopting children in South Africa*. Human Sciences Research Council, Child, Youth Family & Social Development Programme, Pretoria, South Africa.
- Mokomane, Z., Rochat, T. J., & Directorate, T. (2012). Adoption in South Africa: trends and patterns in social work. *Child and Family Social Work*, 347-358. doi:10.1111/j.1365-2206.2011.00789.x
- Monasch, R., & Boerma, J. T. (2004). Orphanhood and childcare patterns in sub-Saharan Africa: an analysis of national surveys from 40 countries. *AIDS*, 18(2), S55-S65. doi:10.1097/01.aids.0000125989.86904.fe
- Muller, U., & Perry, B. (2001). Adopted Persons' Search for and Contact with Their Birth Parents I. *Adoption Quarterly*, 4(3), 5-37.
- Mwagiru, M. (2011). From Dualism to Monism: The Structure of Revolution in Kenya's Constitutional Treaty Practice. *Journal of Language, Technology & Entrepreneurship in Africa*, 3(1), 144-155.
- National Scientific Council on the Developing Child. (2012). *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain: Working Paper 12*. Retrieved March 01, 2013, from <http://www.developingchild.harvard.edu>
- Ncube, W. (Ed.). (1998). *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa*. Aldershot, UK: Dartmouth.
- Nieuwenhuys, O. (1998). Global childhood and the politics of contempt. *Alternatives: Social Transformation & Humane Governance*, 23(3), 267-289.

- Njoka, J. (2008). *Accelerating work with children in Kenya: towards the formulation of a National Child Protection System*. Nairobi, Kenya: UNICEF.
- Njoki, N. J. (2012, November). Thesis submitted to the Department of Sociology and Social Work of the University of Nairobi for the obtention of title of Masters in Sociology (unpublished). *What informs the choice of adoption of children among prospective adoptive parents in Nairobi?* Nairobi, Kenya.
- O'Flaherty, M. (2006). The Concluding Observations of United Nations Human Rights Treaty Bodies. *Human Rights Law Review*, 6(1), 27-52.
- Odhiambo-Mabona, M., & Muyonga, S. N. (2007). *Adoption, an information pack*. Nairobi, Kenya: The CRADLE - The Children's Foundation.
- Odongo, G. O. (2004). The domestication of international standards on the rights of the child: A critical and comparative evaluation of the Kenyan example. *The International Journal of Children's Rights*, 12, 419-430.
- O'Halloran, K. (2009). *The Politics of Adoption. International Perspectives on Law, Policy & Practice* (2nd ed.). Dordrecht: Springer Netherlands.
- Okumu-Wengi, J. (1998). Searching for a Child-Centred Adoption Process. The Law and Practice in Uganda. In W. Ncube (Ed.), *Law, Culture, Tradition and Children's Rights in Eastern and Southern Africa* (pp. 225-248). Aldershot, UK: Dartmouth.
- Oladokun, A., Arulogun, O., Oladokun, R., Morhason-Bello, I. O., Bamgboye, E. A., Adewole, I. F., & Ojengbede, O. F. (2009). Acceptability of Child Adoption as Management Option for Infertility in Nigeria: Evidence from Focus Group Discussions. *African Journal of Reproductive Health*, 13(1), 79-91.
- Olowu, D. (2002). Protecting children's rights in Africa: A critique of the African Charter on the Rights and Welfare of the Child. *The International Journal of Children's Rights*, 10(2), 127-136.
- Olson, K., Knight, Z. S., & Foster, G. (2006). *From Faith to Action: Strengthening Family and Community Care for Orphans and Vulnerable Children in Sub-Saharan Africa. A Resource for Faith-Based Groups and Donors Seeking to help Children and Families Affected by HIV/AIDS*. Santa Cruz, USA: Firelight Foundation.
- Omosun, A. O., & Kofoworola, O. (2011). Knowledge, attitude and practice towards child adoption amongst women attending infertility clinics in Lagos State, Nigeria. *African Journal of Primary Health Care & Family Medicine*, 3(1). doi:10.4102/phcfm.v3i1.259
- Onyango, P., & Lynch, M. A. (2006). Implementing the right to child protection: a challenge for developing countries. *Lancet*, 367, 693-694.

- Organization of African Unity (OAU). (1990). *African Charter on the Rights and Welfare of the Child*. (OAU Doc. CAB/LEG/24.9/49).
- Oromia Bureau of Women, Children and Youth Affairs (BoWCYA). (2012). *Summary Report on the Assessment and Verification of Domestic Adoption in Oromia Regional State*. BoWCYA (used with permission of the Oromia BoWCYA).
- Parenting in Africa Network. (2013). *Skilful Parenting and Moulding Behaviour at an Early Age: Bridging the gap between what we know and what we do*. Nairobi, Kenya: ICS Africa.
- Paylaret, G. (2013). *Children Under the Age of Three in Formal Care in Eastern Europe and Central Asia. A Rights-Based Regional Situation Analysis*. Geneva: UNICEF Regional Office for CEECIS.
- Pinheiro, P. S. (2006). *World Report on Violence against Children*. Geneva: United Nation's Secretary-General's Study on Violence against Children.
- Plummer, C. A., & Njuguna, W. (2009). Cultural protective and risk factors: professional perspectives about child sexual abuse in Kenya. *Child Abuse and Neglect*, 33, 524-532.
- Price, N. (1996). The Changing Value of Children among the Kikuyu of Central Province, Kenya. *Journal of the International African Institute*, 66(3), 411-436.
- Pupavac, V. (2001). Misanthropy Without Borders: The International Children's Rights Regime. *Disasters*, 25(2), 95-112.
- Republic of Kenya. (n.d.). *Initial Report to the African Union on the Implementation of the African Charter on the Rights and Welfare of the Child 2003 to 2007*. Retrieved March 01, 2013, from <http://acerwc.org/wp-content/uploads/2012/05/English-ACERWC-Initial-State-Report-Kenya.pdf>
- Republic of Kenya. (2001). *ACT NO. 8 of 2001 - Children Act*.
- Republic of Kenya. (2005a). *Children (Adoption) Regulations*.
- Republic of Kenya. (2005b). *Children (Charitable Children's Institutions) Regulations*.
- Republic of Kenya. (2005c). *National Policy on Orphans and Vulnerable Children*. Nairobi: Office of the Vice-President, Ministry of Home Affairs.
- Republic of Kenya. (2007). *Kenya Integrated Household Budget Survey 2005-2006*. Nairobi: Ministry for Planning and National Development. Retrieved March 02, 2013, from [http://www.knbs.or.ke/pdf/Basic%20Report%20\(Revised%20Edition\).pdf](http://www.knbs.or.ke/pdf/Basic%20Report%20(Revised%20Edition).pdf)
- Republic of Kenya. (2008a). *The National Plan of Action for Children 2008-2012*. Nairobi: National Council for Children's Services.
- Republic of Kenya. (2008b). *National Plan of Action on Orphans and Vulnerable Children (OVC)*. Nairobi: Department of Children Services.

- Republic of Kenya. (2010a, November). *Review of the Children (Adoption) Regulations, Kenya. Consultancy on harmonizing of the Children (Adoption) Regulations, 2005 with the Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption 1993*. Nairobi: Ministry of Gender, Children & Social Development. (Department of Children's Services).
- Republic of Kenya. (2010b). *Summary of the outcome of mapping and assessing Kenya's child protection system*. Nairobi: National Council for Children's Services.
- Republic of Kenya. (2011a). *The Framework for the National Child Protection System for Kenya*. Nairobi: The National Council for Children's Services.
- Republic of Kenya. (2011b). *National Standards for Best Practices in Charitable Children's Institutions*.
- Republic of Kenya. (2011c). *Report on Knowledge, Attitudes and Practices Baseline Assessment on Child Protection Issues in 7 Districts in Kenya*. Nairobi: UNICEF.
- Republic of Kenya. (2011d). *Strengthening Child Protection in Kenya. Program Strategy: 2011-2014*. Nairobi: Ministry of Gender, Children and Social Development.
- Republic of Kenya. (2012a). *Kenya Social Protection Sector Review*. Nairobi: Ministry of State for Planning.
- Republic of Kenya. (2012b, October). Report to Inform the Development of National Guidelines on Alternative Care for Children and proposed amendments to the Children Act, 2001 (unpublished DRAFT). *An Assessment of Guardianship, Foster Care, Adoption, Institutional Care and Tracing and Reintegration Practices in Kenya*. Nairobi: Department of Children's Services.
- Republic of Kenya. (2012c, October). Kenyan Guidelines for the Alternative Care of Children (unpublished DRAFT). Nairobi: Department of Children's Services.
- Republic of Kenya, UNICEF. (2008). *Situation Analysis of Children in Kenya: The Future in the Hands of Kenya's Children*. Nairobi: UNICEF.
- Roby, J. L. (2011). *Children in Informal Alternative Care. Working Paper*. New York: UNICEF.
- Roby, J. L., & Ife, J. (2009). Human rights, politics and intercountry adoption. An examination of two sending countries. *International Social Work*, 52(5), 661-671.
doi:10.1177/0020872809337680
- Roeber, E. (2011). *A Fair Chance to Life: Young Careleavers in Kenya*. Nairobi: Kenya Network of Careleavers.
- Rotabi, K. S., & Bunkers, K. M. (2011, November 25). In an Era of Reform: A Review of Social Work Literature on Intercountry Adoption. *Sage Open*, 1-16.

- Rotabi, K. S., & Gibbons, J. L. (2012). Does the Hague Convention on Intercountry Adoption Adequately Protect Orphaned and Vulnerable Children and Their Families? *Journal of Child and Family Studies*, 21, 106-119. doi:DOI 10.1007/s10826-011-9508-6
- Rotabi, K. S., Pennell, J., Roby, J. L., & Bunkers, K. M. (2012). Family group conferencing as a culturally acceptable intervention: Reforming intercountry adoption in Guatemala. *International Social Work*, 55(3), 402. doi:10.1177/0020872812437229
- Rwezaura, A., & Wanitzek, U. (1988). The Law and Practice Relating to the Adoption of Children in Tanzania. *Journal of African Law*, 32(2), 124-163.
- Rwezaura, B. (1998). Competing 'Images' of Childhood in the Social and Legal Systems of Contemporary Sub-Saharan Africa. *International Journal of Law, Policy and the Family*, 253-278.
- Rycus, J. S., Freundlich, M., Hughes, R. C., Keefer, B., & Oakes, E. J. (2006). Confronting Barriers to Adoption Success. *Family Court Review: An Interdisciplinary Journal*, 44(2).
- Save the Children. (2007a). *Kinship Care: Providing positive and safe care for children living away from home*. London: Save the Children UK.
- Save the Children. (2007b). *A Last Resort. The growing concern about children in residential care*. London: Save the Children.
- Save the Children. (2009). *Keeping Children Out of Harmful Institutions: Why we should be investing in family-based care*. London: Save the Children Fund.
- Save the Children. (2012a). *Child Protection in the Context of HIV and AIDS: Responses, Research, Recommendations*. Save the Children. Retrieved March 01, 2013, from <http://resourcecentre.savethechildren.se/node/6008>
- Save the Children. (2012b). *Intercountry Adoption, Policy Brief*. Save the Children. Retrieved March 01, 2013, from <http://resourcecentre.savethechildren.se/node/6250>
- Save the Children. (2012c). *Nutrition in the First 1000 Days: State of the World's Mothers 2012*. Save the Children. Retrieved March 01, 2013, from <http://resourcecentre.savethechildren.se/node/6006>
- Save the Children. (June 2012). *Final report of national training on Children without Appropriate Care. Save the Children country programmes in Kenya*. Nairobi: Save the Children.
- Selman, P. (2012). Global Trends in Intercountry Adoption: 2001-2010. (N. M. Callahan, & C. Johnson, Eds.) *Adoption Advocate*, 44, 1-17.
- Silk, J. B. (1987). Adoption and Fosterage in Human Societies: Adaptations or Enigmas? *American Anthropological Association*, 2(1), 39-49.

- Simmanee, A. J. (1959). The Adoption of Children among the Kikuyu of Kiambu District. *Journal of African Law*, 3(1), 33-38.
- SOS Children's Villages International, International Social Service. (2009). *Guidelines for the Alternative Care of Children. A United Nations Framework*. Innsbruck, Austria: SOS Children's Villages International.
- Steffen, B. (2012). *A Generation Out of Place: The Chronic Urban Emergency in Rift Valley Kenya. Report from Profiling Children Connected to the Streets in Rift Valley Province*. Nairobi: Save the Children, UNICEF.
- Sullivan, R., & Lathrop, E. (2004). Openness in adoption: retrospective lessons and prospective choices. *Children and Youth Services Review*, 26, 393-411.
doi:10.1016/j.childyouth.2004.01.006
- Swadener, E. B., Kabiru, M., & Njenga, A. (1997, April). A Collaborative Study of Changing Child-Rearing and Community Mobilization in Kenya. *Early Education & Development*, 8(3), 285-306.
- Taylor, S. J., & Bogdan, R. (1998). *Introduction to Qualitative Research Methods: A Guidebook and Resource* (3rd ed.). New York: John Wiley & Sons, Inc.
- Teddlie, C., & Yu, F. (2001). Mixed Methods Sampling. *Journal of Mixed Methods Research*, 1(77), 77-100. doi:10.1177/2345678906292430
- The Kenya NGO CRC Coalition. (2001). *Supplementary Report to Kenya's First Country Report on Implementation of the UN Convention on the Rights of the Child*. Nairobi, Kenya.
- The Leiden Conference on the Development and Care of Children without Permanent Parents. (2012). The Development and Care of Institutionally Reared Children. *Child Development Perspectives*, 6(2), 174-180. doi:10.1111/j.1750-8606.2011.00231.x
- Tolfree, D. (1995). *Roofs and Roots: The Care of Separated Children in the Developing World*. London: Save the Children Fund.
- Tolfree, D. K. (2003). *Community Based Care for Separated Children*. Stockholm: Save the Children.
- Transparency International. (2012). *Corruption Perceptions 2012*. Berlin, Germany: Transparency International.
- Triandis, H. C., & Suh, E. M. (2002). Cultural Influences on Personality. *Annual Review of Psychology*, 53, 133-160.
- Triseliotis, J. (2002). Long-term foster care or adoption? The evidence examined. *Child and Family Social Work*, 7, 23-33.

- UNAIDS. (2012). *Global report: UNAIDS report on the global AIDS epidemic 2012*. Geneva: UNAIDS.
- United Nations. (2009). *Child Adoption: Trends and Policies*. New York: Department of Economic and Social Affairs, Population Division.
- United Nations Children's Fund (UNICEF). (2012). *The State of the World's Children 2012: Children in an Urban World*. New York: UNICEF.
- United Nations Children's Fund (UNICEF). (1998, December). *Intercountry Adoption*. Florence, Italy: International Child Development Centre.
- United Nations Children's Fund (UNICEF). (2009a). *Progress for Children: A Report Card on Child Protection*. New York: UNICEF.
- United Nations Children's Fund (UNICEF). (2009b). *Progress Report for Children Affected by HIV and AIDS*. New York: UNICEF.
- United Nations Children's Fund (UNICEF) Kenya. (2009). *Developing a National Child Protection System for Kenya*. Nairobi: UNICEF.
- United Nations Children's Fund (UNICEF) Kenya. (2012a). *Country Office Annual Report 2011*. Nairobi: UNICEF.
- United Nations Children's Fund (UNICEF) Kenya. (2012b). *Situation Analysis: The Right to Protection (DRAFT)*. Nairobi: UNICEF.
- United Nations Children's Fund (UNICEF) Kenya, Department of Children's Services. (2012, June 06). *Kenyan Law and Policy Development. Presentation delivered at Save the Children national training on Children without Appropriate Care*. Nairobi, Kenya.
- United Nations Development Programme (UNDP). (2013). *Human Development Report 2013*. New York: UNDP.
- United Nations Economic and Social Council. (2008). *UNICEF Child Protection Strategy*. (UN Doc. E/ICEF/2008/5/Rev.1).
- United Nations General Assembly. (1948). *Universal Declaration of Human Rights*. General Assembly Resolution 217 A (III) of 10 December 1948.
- United Nations General Assembly. (1959). *Declaration on the Rights of the Child*. General Assembly resolution 1386 (XIV) of 20 November 1959.
- United Nations General Assembly. (1986). *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*. (UN Doc. A/RES/41/85).
- United Nations General Assembly. (1990). *Convention on the Rights of the Child*. General Assembly resolution 44/25 of 20 November 1989.

- United Nations General Assembly. (2000). *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*. (UN Doc. A/RES/54/263).
- United Nations General Assembly. (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*. General Assembly resolution 55/25 of 15 November 2000.
- United Nations General Assembly. (2006). *Convention on the Rights of Persons with Disabilities*. (UN Doc. A/RES/61/106).
- United Nations General Assembly. (2009). *Guidelines for the Alternative Care of Children*. (UN Doc. A/RES/64/142).
- van Bueren, G. (1998). *The International Law on the Rights of the Child*. The Hague, Netherlands: Martinus Nijhoff Publishers.
- Varnis, S. L. (2001). Regulating the Global Adoption of Children. *Social Science and Public Policy*, 39-46.
- Verhellen, E. (2000). *Convention of the Rights of the Child* (3 ed.). Leuven-Apeldoorn, Belgium-The Netherlands: Garant.
- Vité, S., & Boéchat, H. (2006, July). Article 21. Adoption. (Unpublished draft received from one of the authors on February 25, 2013).
- Ward, P., Hurrell, A., Visram, A., Riemenschneider, N., Pellerano, L., O'Brien, C., . . . Willis, J. (2010). *Cash Transfer Programme for Orphans and Vulnerable Children (CT-OVC), Kenya. Operational and Impact Evaluation: 2007–2009*. Oxford Policy Management. Retrieved March 01, 2013, from http://www.unicef.org/evaluation/files/OPM_CT-OVC_evaluation_report_july2010-final_Kenya_2010-019.pdf
- Wegar, K. (2000, October). Adoption, Family Ideology, and Social Stigma: Bias in Community Attitudes, Adoption Research, and Practice. *Family Relations*, 49(4), 363-370.
- Williams, J. P., & Njoka, J. M. (2008). *A Technical Assessment of the Legal Provisions and Practices of Guardianship, Foster Care and Adoption of Children in Kenya*. Nairobi, Kenya: Department of Children's Services.
- Williamson, J., & Greenberg, A. (2010). *Families, Not Orphanages*. New York: Better Care Network.
- Wilton Park Conference. (2009). *The Neglected Agenda: Protecting Children without Adequate Parental Care*. Wilton Park Conference. Retrieved 03 01, 2013, from http://www.crin.org/docs/Wilton%20Park%20Background%20Paper_FINAL.pdf

- Yeatman, S. E., & Grant, M. J. (2009). Presentation delivered at the 2009 Annual Meeting of the Population Association of America. *Competitive or Complementary? The Relationship between Orphanhood and Child Fostering in Sub-Saharan Africa*. Detroit. Retrieved March 07, 2013, from <http://paa2009.princeton.edu/abstracts/90792>
- You, D., New, R. J., & Wardlaw, T. (2012). *Levels & Trends in Child Mortality*. United Nations Inter-agency Group for Child Mortality Estimation. New York: UNICEF.
- Zilliox, T. E. (2006). Where is the Village Going? Maintaining and Including Cultural Strengths to Protect Children Orphaned in Kenya. *Family Court Review*, 44(3), 376-386.

Appendices

Appendix I: Individual interview guides

CHILDLESS ADULT INTERVIEW GUIDE

According to the Kenyan government estimates, there are more than 40,000 children living in children's homes across the country.

- 1) Why do you think so many children end up living in homes in Kenya?
- 2) Do you believe that children who grow up in a home receive the same love and care as those who grow up in families? Why?
- 3) What other alternatives do you think would be preferable for a child's wellbeing, instead of living in a home?
- 4) Do you believe there is any difference for children who have lost their parents if they are raised informally by their extended family or if they are adopted by an unrelated family? (explore pros and cons)
- 5) Have you any close experiences with children who are raised by relatives that are not their parents? If yes, please tell me a bit about it
- 6) What do you believe are the benefits for children that have lost their parents to be raised by their relatives? Do you see any challenges for the child in such cases? (if not covered under 5)
- 7) For you, what does it mean to adopt a child; can you explain it to me?
 - a) Where did you get this information from?
 - b) Do you think adoption is good for children? Please elaborate
 - c) If you don't have any information, would you be interested in learning more about it and what would, in your opinion, be the best way of receiving this information? Why?
- 8) Would you ever consider adopting a child yourself?
 - a) If no, why?
 - b) If yes, what factors would influence your decision to take such a step?
 - i) Would you adopt even if you had your own biological children? Or only if you couldn't have your own?
 - ii) Would you have preferences regarding race, age and gender?
 - c) If yes, what do you think would be the biggest challenges you would face?
- 9) Do you /society that you come from have cultural beliefs about adoption?
 - a) If yes, what are some of these beliefs?
- 10) If you were to adopt, where or who would you go to first? Why?
- 11) Do you believe the government can influence adoption in Kenya? Why?
- 12) Do you believe that adoption is popular in Kenya? Why?
 - a) If you don't think it's popular enough, what are your suggestions to popularize it?

KINHSIP CARER INTERVIEW GUIDE

According to the Kenyan government estimates, there are more than 40,000 children living in children's homes across the country.

- 1) Why do you think so many children end up living in homes in Kenya?
- 2) Do you believe that children who grow up in a home receive the same love and care as those who grow up in families? Why?
- 3) What other alternatives do you think would be preferable for a child's wellbeing, instead of living in a home?
- 4) Do you believe there is any difference for children who have lost their parents if they are raised informally by their extended family or if they are adopted by an unrelated family? Why?
- 5) How many children do you have under your care now? How many are yours and how many are kin? What circumstances led to these child(ren) being under your care?
- 6) Have you formalized this care arrangement(s) in any way (i.e. do you have guardianship/foster care orders)?
 - a) If yes, what motivated you to formalize this arrangement?
 - b) How did you get the information to do that? (ask if this does not come up in (a))
 - c) If not, why?
- 7) For you, what does it mean to adopt a child; can you explain it to me?
 - a) Where did you get this information from?
 - b) Do you think adoption is good for children? Please elaborate
 - c) If you don't have any information, would you be interested in learning more about it and what would, in your opinion, be the best way of receiving this information? Why?
- 8) Would you ever consider adopting a child yourself?
 - a) If no, why?
 - b) If yes, what factors would influence your decision to take such a step?
 - i) Would you adopt even if you had your own biological children? Or only if you couldn't have your own?
 - ii) Would you have preferences regarding race, age and gender?
 - c) If yes, what do you think would be the biggest challenges you would face?
- 9) Do you /society that you come from have cultural beliefs about adoption?
 - a) If yes, what are some of these beliefs?
- 10) If you were to adopt, where or who would you go to first? Why?
- 11) Do you believe the government can influence adoption in Kenya? Why?
- 12) Do you believe that adoption is popular in Kenya? Why?
 - a) If you don't think it's popular enough, what are your suggestions to popularize it?

ADOPTIVE PARENT INTERVIEW GUIDE

According to the Kenyan government estimates, there are more than 40,000 children living in children's homes (orphanages) across the country.

- 1) Why do you think so many children end up living in homes in Kenya?
- 2) Do you believe that children who grow up in a home receive the same love and care as those who grow up in families? Why?
- 3) What other alternatives do you think would be preferable for a child's wellbeing, instead of living in a home?
- 4) Do you believe there is any difference for children who have lost their parents if they are raised informally by their extended family or if they are adopted by an unrelated family? (explore pros and cons)
- 5) What motivated your decision to adopt your child?
- 6) What was your relationship to the child prior to adoption (if not already answered before)?
 - a) Were there any factors that influenced the choice of child(ren) that you adopted?
 - b) Did you have preferences regarding age and gender?
 - c) Were there any religious, cultural or racial considerations (only if it does not come up in (a))
- 7) Prior to adoption who was the child being cared by? (if not already answered under 6)
- 8) Do you have other non-biological children under your care? If yes, explore how that happened and how decision was made to take in the child and if they would consider adopting this child and why. If no, ask if they would consider taking a related child into their care (explore why yes or no)
- 9) How did you learn about adoption / did you have prior knowledge on the legal adoption process?
- 10) How did you go through the adoption process, how did you start? (through a lawyer/self-representation/ adoption society)
 - a) What were your reasons for using this process
- 11) How long did the adoption process take (from when you first submitted your papers until you received the final adoption order)? OR Where are you in the process right now (if unfinished)?
- 12) What is your overall experience with the adoption process?
 - a) What went well in the process?
 - b) What were the challenges of the process?
 - c) In regards to the challenges you have identified, how would you propose tackling them?
- 13) Do your extended family and community members know you have an adopted child? Your religious leader? Why?
- 14) Have you faced any kind of discrimination as a result of adopting? If yes, why do you think that happens?
- 15) Has/have your adopted child/ren faced any kind of discrimination as a result of being adopted? If yes, why do you think that happens?
- 16) Do you think formal adoption is widely known in the country?
 - a) Why yes or no?
 - b) What would be your recommendations to popularize adoption amongst Kenyans?
- 17) Would you be interested on receiving more information on adoption in Kenya or in participating in groups or activities related to adoption? In your opinion, which would be the best means of getting this information?

Appendix II: 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

United Nations
General Assembly
Distr. GENERAL
3 December 1986
ORIGINAL: ENGLISH

A/RES/41/85

A/RES/41/85
3 December 1986
95th plenary meeting

41/85. 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

The General Assembly,

Recalling its resolutions 36/167 of 16 December 1981, 37/115 of 16 December 1982, 38/142 of 19 December 1983 and 39/89 of 13 December 1984, and its decision 40/422 of 11 December 1985,

Taking note of the draft 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, as submitted by the Economic and Social Council by its resolution 1979/28 of 9 May 1979,

Taking note with appreciation of the work done on this question in the Third and Sixth Committees, as well as the efforts made by Member States representing different legal systems, during the consultations held at Headquarters from 16 to 27 September 1985 and early in the forty-first session, to join in the common endeavour of completing the work on the draft Declaration,

Adopts the 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, the text of which is annexed to the present resolution.

ANNEX

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

The General Assembly,

Recalling the Universal Declaration of Human Rights, the International

Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also the Declaration of the Rights of the Child, which it proclaimed by its resolution 1386 (XIV) of 20 November 1959,

Reaffirming principle 6 of that Declaration, which states that the child shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security,

Concerned at the large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflicts, natural disasters, economic crises or social problems,

Bearing in mind that in all foster placement and adoption procedures the best interests of the child should be the paramount consideration,

Recognizing that under the principal legal systems of the world, various valuable alternative institutions exist, such as the Kafala of Islamic Law, which provide substitute care to children who cannot be cared for by their own parents,

Recognizing further that only where a particular institution is recognized and regulated by the domestic law of a State would the provisions of this Declaration relating to that institution be relevant and that such provisions would in no way affect the existing alternative institutions in other legal systems,

Conscious of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally,

Bearing in mind, however, that the principles set forth hereunder do not impose on States such legal institutions as foster placement or adoption,

Proclaims the following principles:

A. GENERAL FAMILY AND CHILD WELFARE

Article 1

Every State should give a high priority to family and child welfare.

Article 2

Child welfare depends upon good family welfare.

Article 3

The first priority for a child is to be cared for by his or her own parents.

Article 4

When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute - foster or adoptive - family or, if necessary, by an appropriate institution should be considered.

Article 5

In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

Article 6

Persons responsible for foster placement or adoption procedures should have professional or other appropriate training.

Article 7

Governments should determine the adequacy of their national child welfare services and consider appropriate actions.

Article 8

The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative.

Article 9

The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care, unless this is contrary to the child's best interests.

B. FOSTER PLACEMENT

Article 10

Foster placement of children should be regulated by law.

Article 11

Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

Article 12

In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

C. ADOPTION

Article 13

The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

Article 14

In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.

Article 15

Sufficient time and adequate counselling should be given to the child's own parents, the prospective adoptive parents and, as appropriate, the child in order to reach a decision on the child's future as early as possible.

Article 16

The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to the adoption. Legislation should ensure that the child is recognized in law as a member of the adoptive family and enjoys all the rights pertinent thereto.

Article 17

If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.

Article 18

Governments should establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.

Article 19

Policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children.

Article 20

In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.

Article 21

In intercountry adoption through persons acting as agents for prospective adoptive parents, special precautions should be taken in order to protect the child's legal and social interests.

Article 22

No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality.

Article 23

In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries involved.

Article 24

Where the nationality of the child differs from that of the prospective adoptive parents, all due weight shall be given to both the law of the State of which the child is a national and the law of the State of which the prospective adoptive parents are nationals. In this connection due regard shall be given to the child's cultural and religious background and interests.

Appendix III: Map of Kenya



Source: United Nations, Department of Field Support, Cartographic Section, December 2011

Appendix IV: Selected excerpts from Kenya's Children's Act

ACT NO. 8 of 2001 - Children Act

AN ACT of Parliament to make provision for parental responsibility, fostering, adoption, custody, maintenance, guardianship, care and protection of children; to make provision for the administration of children's institutions; to give effect to the principles of the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child and for connected purposes

(...)

2. In this Act, unless the context otherwise requires –

"Adoption Committee" means the Committee established under section 155;

"adoption order" means an adoption order under section 154 vesting the parental rights and duties relating to a child in the adopter;

"adoption society" means a society approved by the Adoption Committee under section 177;

(...)

"child" means any human being under the age of eighteen years;

(...)

"Council" means the National Council for Children's Services established by section 30;

"Director" means the Director of Children's Services appointed under section 37;

(...)

"foster parent" means a parent registered under this Act to receive and retain a child for the purpose of caring for and maintaining the child apart from the child's parents, guardian or relative;

"foster care placement" means the placement of a child with a person who is not the child's parent, relative or guardian and who is willing to undertake the care and maintenance of that child;

(...)

"guardian" in relation to a child includes any person who in the opinion of the court has charge or control of the child;

"home" in relation to a child means the place where the child's parent, guardian, relative or foster parent permanently resides, or if there is no parent, guardian or relative living and the child has no foster parent, the child's parent's or guardian's or relative's last permanent residence:

Provided that –

(i) in the case of a parent, guardian or relative having, or having had more than one permanent place of residence, the parent, guardian or relative shall be presumed to be or to have been permanently resident at the place of such person's principal permanent residence; and

(ii) where the court is unable to determine the home of any such child, the child shall be deemed for the purposes of this Act to have his home in the area of jurisdiction of the local authority in whose area he is found;

(...)

"Minister" means the Minister for the time being entrusted with the administration of this Act or such other Minister as may be expressly charged with any special matter which is otherwise dealt with under this Act; "National Council of Non-Governmental Organizations" means the National Council of Non-Governmental Organizations established by section 23 of the Non-Governmental Organizations Coordination Act, 1990;

(...)

"parent" means the mother or father of a child and includes any person who is liable by law to maintain a child or is entitled to his custody;

"place of safety" means any institution, hospital or other suitable place the occupier of which is willing to accept the temporary care of a child;

(...)

"relative", in relation to a child, means any person related to the child, whether of the full blood, half blood or by affinity, and

(a) where an adoption order has been made in respect of the child or any other person under this Act, any person who would be a relative of the child within the meaning of this definition if the adopted person was the child of the adopter born inside marriage; or

(b) where the child is born outside marriage and the father has acknowledged paternity and is contributing towards the maintenance of the child, the father of the child within the meaning of this definition if the child was the child of his mother and father born inside marriage;

"spouse" in relation to a wife of a polygamous marriage, means the wife applying for an adoption order either as the sole applicant or jointly with the husband or the wife into whose care a husband applying for an adoption order proposes to give the child.

3. The Government shall take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights of the child set out in this Part.

4. (1) Every child shall have an inherent right to life and it shall be the responsibility of the Government and the family to ensure the survival and development of the child.

(2) In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

(3) All judicial and administrative institutions, and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration to the extent that this is consistent with adopting a course of action calculated to -

(a) safeguard and promote the rights and welfare of the child;

(b) conserve and promote the welfare of the child;

(c) secure for the child such guidance and correction as is necessary for the welfare of the child and in the public interest.

(4) In any matters of procedure affecting a child, the child shall be accorded an opportunity to express his opinion, and that opinion shall be taken into account as may be appropriate taking into account the child's age and the degree of maturity.

5. No child shall be subjected to discrimination on the ground of origin, sex, religion, creed, custom, language, opinion, conscience, colour, birth, social, political, economic or other status, race, disability, tribe, residence or local connection.

6. (1) A child shall have a right to live with and to be cared for by his parents.

(2) Subject to subsection (1), where the court or the Director determines in accordance with the law that it is in the best interests of the child to separate him from his parent, the best alternative care available shall be provided for the child.

(3) Where a child is separated from his family without the leave of the court, the Government shall provide assistance for reunification of the child with his family.

(...)

11. Every child shall have a right to a name and nationality and where a child is deprived of his identity the Government shall provide appropriate assistance and protection, with a view to establishing his identity.

(...)

13.(1) A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.

(2) Any child who becomes the victim of abuse, in the terms of subsection (1), shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the Minister may make.

(...)

21. In the application of the provisions of this Act, and in any matter before a court of law concerning any child, due regard shall be had to the duties and responsibilities of a child to -

- (a) work for the cohesion of the family;
- (b) respect his parents, superiors and elders at all times and assist them in case of need;
- (c) serve his national community by placing his physical and intellectual abilities at its service;
- (d) preserve and strengthen social and national solidarity; and
- (e) preserve and strengthen the positive cultural values of his community in his relations with other members of that community:

Provided that in reckoning the requisite duty and responsibility of any individual child, due regard shall also be had to the age and ability of such child and to such limitations as are contained in this Act.

(...)

23. (1) In this Act, "parental responsibility" means all the duties, rights, powers, responsibilities and authority which by law a parent of a child has in relation to the child and the child's property in a manner consistent with the evolving capacities of the child.

(2) The duties referred to in subsection (1) include in particular -

- (a) the duty to maintain the child and in particular to provide him with -
 - (i) adequate diet;
 - (ii) shelter;
 - (iii) clothing;
 - (iv) medical care including immunization; and
 - (v) education and guidance; ,
- (b) the duty to protect the child from neglect, discrimination and abuse;
- (c) the right to –
 - (i) give parental guidance in religious, moral, social, cultural and other values;
 - (ii) determine the name of the child;
 - (iii) appoint a guardian in respect of the child;
 - (iv) receive, recover, administer and otherwise deal with the property of the child for the benefit and in the best interests of the child;
 - (v) arrange or restrict the emigration of the child from Kenya;

(vi) upon the death of the child, to arrange for the burial or cremation of the child.

(3) The Minister may make regulations for the better discharge of parental responsibility by parents whose work conditions result in the separation from their children for prolonged periods.

(4) The fact that a person has or does not have parental responsibility shall not affect -

(a) any obligation which such person may have in relation to the child (such as a statutory duty to maintain the child); or

(b) any rights which in the event of the child's death, such person (or any other person) may have in relation to the child's property.

(5) A person who does not have parental responsibility for a particular child, but has care and control of the child may subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

(...)

58. In this Part a "charitable children's institution" means a home or institution which has been established by a person, corporate or unincorporate, a religious organisation or a non-governmental organisation and has been granted approval by the Council to manage a programme for the care, protection, rehabilitation or control of children.

59. A charitable children's institution shall not include -

(a) a rehabilitation school established by the Minister under section 47;

(b) a school within the meaning of the Education Act;

(c) a borstal institution;

(d) any health institution;

(e) a children's day care centre, nursery or other similar establishment.

Provided that nothing in this section shall prevent a charitable children's institution from providing medical care, education or training for children accommodated therein, if the provision of such services have been approved by the Council.

(...)

63. (1) A child shall be received in the care of a charitable children's institution if -

(a) in an emergency situation, the child is taken to the institution by an authorised officer or any person who has reasonable cause to believe that the child is in need of care and protection;

(b) he is referred to the institution by way of an interim care order or a care order;

(2) A child who is received by a charitable institution in accordance with subsection 1 (a) shall be brought before a court without delay

(a) his guardian or parent applies to the Director for his release;

(b) he is held in accordance with section 120 (2);

(c) it is not in the best interest of the child to do so.

64. A charitable children's institution in which the child is received, shall provide the child with adequate care and protection for the period of his accommodation therein as provided in the criteria set by the Council.

65. (1) The Director shall monitor the progress of a child admitted into a charitable children's institution, until the child is discharged therefrom or until the expiry of a care order made in respect of the child.

(2) The Director shall ensure that the child is periodically visited and interviewed by an officer authorized by him.

(...)

70. The Director shall, at the end of twelve months beginning with the date of approval of a child welfare programme, and thereafter annually, review the programme in order to advise the Council on whether the programme should continue being in force or be cancelled.

71. (1) The Council, upon the recommendation of the Director, may cancel a programme undertaken by a charitable children's institution on the grounds that -

- (a) the institution is unfit for the care, protection and control of children; or
- (b) the children admitted into the institution are suffering or are likely to suffer harm; or
- (c) the manager of the institution has contravened any of the regulations made under this Act:

Provided that the Council shall give fifteen days notice of the proposed cancellation.

(2) Any person aggrieved by the Council's decision made in accordance with subsection (1) may appeal to the Minister whose decision shall be final.

(3) When a cancellation under this section takes effect, the Director shall, subject to any directions of the Minister, take such remedial measures as may be necessary to protect the children accommodated in the home.

(4) The Director may, under subsection (3)

- (a) remove any child or children from the home;
- (b) procure the closure of the home;
- (c) institute disciplinary measures against the manager of the home; or
- (d) take such other action as may be necessary for the protection of the children.

(...)

119. (1) For the purposes of this Act, a child is in need of care and protection -

(a) who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or

(b) who is found begging or receiving alms; or

(c) who has no parent or the parent has been imprisoned; or

(d) whose parents or guardian find difficulty in parenting; or

(e) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or

(f) who is truant or is falling into bad associations; or

(g) who is prevented from receiving education; or

(h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or

(i) who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or

(j) who is exposed to domestic violence; or

(k) who is pregnant; or

(l) who is terminally ill, or whose parent is terminally ill; or

(m) who is disabled and is being unlawfully confined or ill treated; or

(n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or

(o) who is engaged in any work likely to harm his health, education, mental or moral development; or

(p) who is displaced as a consequence of war, civil disturbances or natural disasters; or

(g) who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
(...)

132. (1) In this Part a "care order" means an order entrusting the care, control and possession of the child to a person not being the parent, guardian or custodian of the child or to an appointed local authority or an institution appointed by the court.

(2) A court may make a care order in respect of a child only if it is satisfied that -

(a) all possible alternative methods for assisting the child have been unsuccessful and that it is in the best interests of the child to make the order; or

(b) the child concerned is suffering or is likely to suffer significant harm, and that the harm, or probability of harm is attributed to -

(i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give the child;

(ii) the child is beyond the control of his parent, guardian or other person who has parental responsibility in respect of the child.

(c) the danger to which the child is exposed is so severe as to require his immediate removal from the place where he is residing.

(3) Where a court makes a care order or an interim care order in respect of any child, the court may include in the order such conditions, restrictions and directions as it shall deem fit, as to the enforcement of the order by any person or as to the conduct of the child or any person named in the order.

(4) The court making a care order shall as far as shall be practicable entrust the care of the child to a person or institution which professes the same religion as the child.

(5) Where a child is disabled, the court shall as far as practicable entrust the care of the child to a person or institution that is suitably placed to cater for the needs of the child.

(6) Every care order shall be in writing and shall contain a declaration as to age and religion of the child concerned and may be made in his absence with the consent of the person or institution into whose care the child has been entrusted.

(7) The court making a care order shall cause to be delivered to the person or institution entrusted with the care of the child, a record in the prescribed form containing such information regarding the child concerned as the court thinks necessary.

(8) Every care order shall be made so as to commit a child to such care until he attains the age of eighteen or for such shorter period as the court thinks fit:

Provided that the court, on making a care order, shall make such further orders or directions requiring the Director or his representative to supervise the mode of compliance with such orders and to make such recommendations as the Director or his representative shall consider relevant to the court in respect of the order, including applying for the variation or discharge of the order.

(9) Upon the making of a care order under this section, it shall be the duty of the Director or his representative to supervise and monitor the care provided to the child concerned by the person or institution to whom or to which the child is committed under the order, and to periodically assess the condition and circumstances of the child.

(10) A court may on application or of its own motion, make an interim care order -

(a) if it has reasonable grounds for believing that the circumstances of the child are as mentioned in subsection (1) of this section; or

(b) upon the adjournment of an application for a care order; or upon making orders as to the assessment of a child under section 113.

(11) An interim order made under subsection (10) shall not remain in force for a period exceeding eight weeks but if at the expiry of the period the court deems it expedient so to do, it may extend the order for a further period of four weeks.

(12) A care order or interim care order may be discharged by -

(a) the making of an adoption order in respect of the child, if the care order was not made in respect of the child by reason of the child having been found to be guilty of a criminal offence under Part XII;

(b) the making of a residence order in respect of the child;

(c) the making of a supervision order in respect of the child;

Notwithstanding the foregoing provisions of this subsection, the court shall have power on the application of the child, the Director or the parents or guardian of the child, or any other person who has parental responsibility in respect of the child to vary or discharge the care order or interim order on such terms as it thinks fit and including replacing the care order with a supervision order.

(13) The court shall have power, where it considers that it would be for the benefit of a child to authorise a foster parent, or a voluntary children's institution, to whose care a child has been committed, to arrange for the child's emigration from Kenya, but the court shall not authorise such arrangements unless the child and his parents or guardian or any other person who has parental responsibility for the child, consent;

Provided that where the parents or guardians cannot be found after diligent and reasonable enquiry, the Director may give such consent.

(...)

147. (1) Where a child has, by virtue of a care order, been committed to a rehabilitation school or to a charitable children's institution, the Director in conjunction with the manager of the institution may place the child with a foster parent, for such period as the Director may from time to time authorise.

Provided that a child in relation to whom a care order has been made by reason of having been found guilty of a criminal offence, shall not be placed with a foster parent without the leave of the court.

(2) When a child has been placed in the care of a foster parent, it shall be the duty of the manager of the institution to which the child was first committed under a care order to supervise and assess the condition of the child periodically and to take such steps as shall be necessary to safeguard the welfare of the child.

(3) A foster parent in whose care a child is committed shall, while the child remains in his care, have the same responsibilities in respect of the child's maintenance as if he were the parent of the child.

(4) The provisions of this Part shall cease to have effect in relation to a child -

(a) upon the discharge of the care order;

(b) upon the expiry of the period specified by the Director for the duration of the foster placement of the child;

(c) upon the child attaining the age of eighteen years.

148. (1) Any of the following persons may apply to be appointed a foster parent or foster parents -

(a) spouses of a marriage;

- (b) a single woman not below the age of twenty-five years;
- (c) a single man not below the age of twenty-five years.
- (2) No single man may qualify to foster a female child and no single woman may qualify to foster a male child under this Part.
- (3) No person shall be appointed to be a foster parent unless the person is resident in the Republic of Kenya and has been so resident for a period of at least twelve months.
- (4) A foster parent shall not remove a child from the jurisdiction of the Republic of Kenya without the leave of the court and such leave shall only be granted upon exceptional circumstances being shown.
- (5) Where such leave is granted, the court shall impose such conditions and restrictions as it shall deem appropriate having regard to the best interests of the child.
- (...)

154. (1) Subject to this Act, the High Court may upon an application made to it in the prescribed form make an order (in this Act referred to as "adoption order") authorising an applicant to adopt a child.

(2) All proceedings under this Part shall be heard and determined in chambers and the identity of the child and the applicants shall be kept confidential.

155. (1) The Minister shall establish a committee to be known as the Adoption Committee which shall comprise the members set out in the Ninth Schedule.

(2) The functions of the Committee shall be -

- (a) formulating the governing policy in matters of adoption;
- (b) effecting liaison between adoption societies, the Government and Non-Governmental Organizations;
- (c) considering and proposing names of officers who may serve as guardians *ad litem*;
- (d) monitoring adoption activities in the country; and
- (e) such other functions as are conferred on the Committee by this Act.

(3) The conduct and regulation of the affairs of the Committee shall be as prescribed by the Minister, but subject thereto, the Committee shall regulate its own proceedings.

156. (1) No arrangement shall be commenced for the adoption of a child unless the child is at least six weeks old and has been declared free for adoption by a registered adoption society in accordance with the rules prescribed in that behalf.

(2) It shall not be lawful for any person whether being a parent or guardian of a child or otherwise, or for an adoption society by whom arrangements for adoption of a child are made, to place a child into the care and possession or control of a person who proposes to adopt him, if an adoption order in respect of the child cannot be lawfully made in favour of that person.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence and liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand shillings or to both.

157. (1) Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya:

Provided that no application for an adoption order, shall be made in respect of a child unless the child concerned has been in the continuous care and control of the applicant with in the Republic for a period of three consecutive months preceding the filing of the application and both the child and the applicant or applicants as the case may be evaluated and assessed by a registered adoption society in Kenya.

(...)

158. (1) An adoption order may be made upon the application of a sole applicant or jointly by two spouses where the applicant or at least one of the joint applicants -

- (a) has attained the age of twenty-five years and is at least twenty-one years older than the child but has not attained the age of sixty-five years; or
- (b) is a relative of the child; or
- (c) is the mother or father of the child.

(2) An adoption order shall not be made in favour of the following persons unless the court is satisfied that there are special circumstances that justify the making of an adoption order -

- (a) a sole male applicant in respect of a female child;
- (b) a sole female applicant in respect of a male child;
- (c) an applicant or joint applicants who has or both have attained the age of sixty-five years;
- (d) a sole foreign female applicant.

(3) An adoption order shall not be made if the applicant or, in the case of joint applicants, both or any of them -

- (a) is not of sound mind within the meaning of the Mental Health Act;
- (b) has been charged and convicted by a court of competent jurisdiction for or any of the offences set out in the Third Schedule to this Act or similar offences;
- (c) is a homosexual;
- (d) in the case of joint applicants, if they are, not married to each other;
- (e) is a sole foreign male applicant:

Provided that the court may refuse to make an adoption order in respect of any person or persons if it is satisfied for any reason that it would not be in the best interests of the welfare of the child to do so.

(4) Subject to section 159 an adoption application shall be accompanied by the following written consents to the making of an adoption order in respect of any child -

- (a) the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;
- (b) in the case of a child, born out of wedlock whose mother is a child with the consent of the parents or guardian of the mother of the child;
- (c) in the case of a child born out of wedlock whose father has acquired parental responsibility in respect of the child under the provisions of this Act, with the consent of the father;
- (d) on the application of one of the spouses, with the consent of the other spouse;
- (e) in the case of two spouses who are not Kenyan citizens and who are not resident in Kenya, with the consent of the court of competent jurisdiction or of a government authority situated in the country where both or one of the spouses is ordinarily resident, permitting the spouses to adopt a foreign child;
- (f) in the case of a child who has attained the age of 14 years, with the consent of the child.

159. (1) The court may dispense with any consent required under paragraph (a), (b), and (c) of subsection (4) of section 158 if it is satisfied that -

(a) in the case of the parents or guardian of the child, that he has abandoned, neglected, persistently failed to maintain or persistently ill-treated the child;

Provided that:

(i) abandonment may be presumed if the child appears to have been abandoned at birth or if the person or institution having care and possession of the child has neither seen nor heard from a parent or guardian of the child for a period of at least six months;

(ii) persistent failure to maintain may be presumed where despite demands made, no parent or guardian has contributed to the maintenance of the infant for a period of at least six consecutive months and such failure is not due to indulgence;

(b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refuses to so contribute;

(c) in any case, except in respect of the consents required under paragraphs (e) and (f) of subsection (4) of section 158 that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent has been unreasonably withheld.

(2) The court may dispense with the consent of the spouse of the applicant for an adoption order if satisfied that the person whose consent is to be dispensed with, cannot be found or is incapable of giving consent, or that the spouses have separated or divorced and are living apart and that such separation is likely to be permanent.

(3) The consent of any person, to the making of an adoption order in pursuance of an application, may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up) without knowing the identity of the applicant for the order; and where the consent so given by any person is subsequently withdrawn on the grounds only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to have been unreasonably withheld.

(4) In considering whether or not to dispense with the consent of any person to the making of an adoption order, or whether to grant leave or refuse leave under the provisions of subsection (1) and (2) of this section, the court shall regard the interests of the child as paramount and subject thereto, shall consider firstly the interests of the parents, guardians or relatives of the child and secondly the interests of the applicants.

(5) Any person's consent to the making of an adoption order, may be withdrawn prior to the filing of the application without the leave of the court and with the leave of the court any time after the filing of the application for the adoption order but prior to the making of the order.

Provided that the court may at the request of the person withdrawing the consent keep his name and identity confidential.

(6) Where any person whose consent to the making of the adoption order is required by section 158 does not attend the proceedings for the purposes of giving it, then subject to the provisions of subsection 7 of this section a document in the prescribed form and attested by a person of such class as may be prescribed signifying his consent to the making of such order shall, if the person in whose favour the order is to be made is named in the document or (where the identity of the person is not known to the consenting party) if distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

(7) Any document whether executed in or outside Kenya, shall be admissible without further proof of the signature of the person by whom it was executed, and for the purposes of this subsection a document purporting to be attested as aforesaid, shall be deemed to be so attested and executed on the date and at the place specified therein unless the contrary is proved.

(8) A document signifying the consent of the mother of the child, shall not be admissible under this section unless -

(a) the child is at least six weeks old on the date of the execution of the document;

(b) the document is attested by a person of the class prescribed for the purposes of subsection (2).

160. (1) For the purposes of any application for an adoption order, the court shall upon the application of the applicant or of its own motion, appoint a guardian *ad litem* for the child pending the hearing and determination of the adoption application.

(2) It shall be the duty of the guardian *ad litem* to -

(a) safeguard the interests of the child pending the determination of the adoption proceedings;

(b) investigate and apprise the court as to the circumstances pertinent to the adoption of the child in the prescribed manner;

(c) make recommendations as to the propriety of making any interim orders or an adoption order in respect of the child;

(d) intervene on behalf of the child and arrange for the care of the child in the event of the withdrawal of any consent prescribed by this Act;

(e) undertake such duties as the court may from time to time direct or as may be prescribed by the rules made under this Part.

(3) Where arrangements for the adoption of any child have been made by an adoption society, neither the society nor any member thereof, shall be appointed guardian *ad litem* of that child for the purposes of its adoption.

(4) The appointment of a guardian *ad litem* shall expire upon the making of a final order by the court under this Part unless the court, having regard to the interests of the child extends the period of the appointment.

(5) Without prejudice to the generality of subsection (4), where an appeal is lodged against a final order by the court under this Part, the court shall have power to extend the appointment of a guardian *ad litem* until the date of the determination of the appeal.

(...)

162. An adoption order may be made in options, respect of a child upon the joint application of two spouses who are not Kenya citizens and not resident in Kenya (in this Act referred to as an "international adoption") if they -

(a) have obtained the consents specified in paragraph (e) of subsection 4 of section 158; and

(b) have satisfied the court that the country where they ordinarily reside and where they expect to reside with the child immediately after the making of the adoption order will respect and recognise the adoption order and will grant resident status to the child; and

(c) have been authorised and recommended as persons who are suitable (including being morally fit and financially capable) to adopt a foreign child by a competent government authority or court of competent jurisdiction in the country immediately after the making of the adoption order.

163. (1) The court before making an adoption order shall be satisfied -

- (a) that every person whose consent is necessary under this Part, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which the application is made, and in particular in the case of a parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) that the order if made will be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child, and to the ability of the applicant to maintain and educate the child;
- (c) that the applicant has not received or agreed to receive, and that no person had made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption;
- (d) that any person whose consent is dispensed with on the grounds of incapacity is still incapable of giving consent at the date of making the order;
- (e) where the applicant is not a relative of the child, that reasonable steps have been taken to inform the relatives of the child of the proposed adoption and no relative able to accept the care of the child has expressed willingness to do so; and
- (f) that both the applicant and the child have been assessed and evaluated by a registered adoption society in Kenya in accordance with the regulations made by the Minister and such report has been availed to the court.

(2) The court may impose such terms and conditions as it may think fit and without prejudice to the generality of the foregoing it may -

- (a) require the adopter by bond or otherwise to make for the child such provision as in the opinion of the court just and expedient;
- (b) order that the child shall not be removed from the jurisdiction of the court without the consent of the court for such period as the court may specify;
- (c) require the adopter to accept supervision by and advice from an adoption society specified by the court for such period as the court may specify;
- (d) where the consent to the making of an adoption order is conditioned upon the child being brought up in a particular religious persuasion, require the infant to be brought up in that persuasion;
- (e) require the adopter to furnish such security by bond or otherwise as the court may think fit for the due performance of any condition that the court may impose;
- (f) where the adopter is not a resident of Kenya or a citizen of Kenya, require him to avail such periodical reports from a court or competent authority in the adopter's country of residence for such period as the court may specify.

(...)

169. (1) The Registrar-General shall maintain a register, to be called the "Adopted Children Register", in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries shall be made therein.

(2) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Registrar-General's Office, shall without any further or other proof of that entry, be received as evidence of the adoption to which it relates, and, where the entry contains a record of the date of the birth or the country of birth of the adopted person, shall also be received

as aforesaid as evidence of the date or country in all respects as if the copy was a certified copy of an entry in the Registry of Births.

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and every person shall be entitled to search that index and to have a certified copy of an entry in the Adopted Children Register upon payment of such fee as may be prescribed.

(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make, such entries therein, as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked "Adopted" and any corresponding entry in the Adopted Children Register, but such other register or books shall not be, nor shall any index thereof be, open to public inspection or search, except under the order of a court of competent jurisdiction, shall the Registrar General supply any person who requests information with respect to his own adoption, with any information contained in or with any copy or extract from any such registers or books.

170. (1) Every adoption order made by the court order shall contain a direction to the Registrar-General to make an entry in the Adopted Children Register in the prescribed form.

(2) For the purposes of compliance with the requirements of subsection (1) -

(a) where the precise date of the child's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth; and

(b) where the country of birth of the child is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in that subsection, be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon an application to the court for an adoption order in respect of a child not being a child who has previously been the subject of an adoption order made by the court under this Act or the Adoption Act (now repealed) there is proof to the satisfaction of the court of the identity of the child to whom an entry in the Register of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by the court in respect of a child who has previously been the subject of an adoption order made by such court under this Act or the Adoption Act (now repealed), the order shall contain a direction to the Registrar-General to be marked with the word "Re-adopted".

(5) Where an adoption order is made by the court, the court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communication, the Registrar-General shall cause compliance to be made with the directions contained in the order both with regard to marking an entry in the Register of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

171. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of child in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the child were a child born to the adopter inside marriage and in respect of the matters aforesaid the child shall stand to the adopter as a child inside marriage.

(2) In any case where two spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of any court to make orders as to the legal custody and maintenance of and right of contact with children, stand to each other and to the child in the same relation as they would have stood if they had been the lawful father and mother of the child and the child shall stand to them in the same relation as to a lawful father and mother respectively.

(3) For the purpose of any written law relating to marriage for the time being in force in Kenya, an adopter and the person whom he has been authorised to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and the provisions of this subject shall continue to have effect notwithstanding that some person other than the adopter is authorised by a subsequent order to adopt the same child.

(...)

174. (1) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any movable or immovable property (other than property subject to an entailed interest under a disposition made before the date of the adoption order), that property shall devolve in all respects as if the adopted person were the child of the adopter born inside marriage and were not the child of any other person.

(...)

177. (1) No body of persons shall make any arrangement for the adoption of a child under the provisions of this Act unless that body is registered as an adoption society under this Part.

(2) An application for registration of an adoption society under this Act shall be made to the Director in the manner prescribed by this Act.

(3) Where an application is made, the Director shall refer the matter to the Adoption Committee which may -

(a) accept the application for registration;

(b) refuse the application for registration on the ground that;

(i) a person taking part in the management or control of the society or a member of the society has been convicted of an offence under this Part, or of a breach of any regulations made under this Part;

(ii) it would not be in the public interest to approve the same, having regard to the number of adoption societies already approved and functioning in the particular locality.

(...)

(7) The functions of an adoption society shall be -

(a) to make such inquiries and investigations and to cause such reports as shall be prescribed or as the court may direct, to be obtained for the purpose of ensuring so far as may be possible, the suitability of a child for adoption.

(b) to examine and interview any prospective applicant for an adoption order and to make such inquiries and investigations and to cause such reports as shall be prescribed, to be obtained or as the court may direct; for the purpose of ensuring so far as may be possible, the suitability of the applicant for the making of an adoption.

(c) to ensure that the parent or guardian of the child concerned understands the effect in relation to his rights as a parent or guardian, of the making of an adoption order in respect of the child, and in this regard and whenever possible to procure any consents to the adoption from the persons specified under section 158 (4);

- (d) where the child in respect of whom arrangements for adoption are to be made appears to have been abandoned, to ensure that as far as possible all necessary steps are taken to trace the parents or relatives of the child;
 - (e) subject to its having the facilities to do so, to take care and possession of any child whose parent or guardian is desirous of causing the child to be adopted, pending arrangements for adoption;
 - (f) when appointed by the court to act as guardian *ad litem* in any adoption proceedings to nominate a member or officer of the society to so act;
 - (g) in so far as the funds at its disposal permit, to make provision for the care and supervision of children who have been placed by their parents or guardians at the disposition of the society;
 - (h) to maintain a register and records in respect of all or any children in respect of whom arrangements for adoption have been made by the society, and the names and particulars of any applicants for adoption or of the adopters; and
 - (i) to perform such other duties as may be prescribed.
- (...)

179.(1) Subject to subsection (2)

(a) any adopter or any parent or guardian of a child who receives any payment or other reward in consideration of the adoption of a child under this Act; or

(b) any person who -

(i) makes or gives or agrees to give to any adopter or any parent or guardian of the child any payment or other reward in consideration of the adoption of any child under this Act; or

(ii) makes arrangement for the adoption of a child and receives or makes or gives any payment or other reward in connection with the making of the arrangements commits an offence and is liable on conviction to imprisonment for a term not exceeding three years, or a fine not exceeding one hundred thousand shillings, or to both.

(2) Subsection (1) shall not apply -

(a) to any payment the making or receipt of which is sanctioned by the court to which an application for an adoption order in respect of a child is made; or

(b) to any payment made by or on behalf of an adoption society in respect of the maintenance of a child who has been placed at the disposition of the society; or

(c) to any payment made to an adoption society by the parent or guardian of a child or by any other person in respect of the maintenance of the child, so long as the child is not in care and possession of a person who has adopted or proposes to adopt him, whether Under an adoption order or some other order; or

(d) to any payment made to an advocate who acts for any party in or in connection with an application for an adoption order, being payments made in respect of such application; or

(e) to any voluntary contribution made by any adopter or any parent or guardian to an adoption society; or

(f) to any fee prescribed by the Minister to be payable to an adoption society in the conduct of any functions under this Act.

180. (1) It shall not be lawful for any advertisement to be published indicating -

(a) that the parent or guardian of a child desires to cause the child to be adopted; or

(b) that a person desires to adopt a child; or

(c) that any person (not being an adoption society) is willing to make arrangements for the adoption of a child.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of this section commits an offence and is liable on conviction to a fine not exceeding ten thousand shillings.

(...)

NINTH SCHEDULE MEMBERS OF THE ADOPTION COMMITTEE

(a) The Director.

(b) Four representatives from charitable children's institutions and organizations engaged in child welfare activities, appointed by the Minister.

(c) One representative from Kenyatta National Hospital.

(d) One representative from private hospitals dealing primarily with children, appointed by the Kenya Medical Association.

(e) One representative of the Law Society of Kenya knowledgeable in the rights and welfare of children.

(f) A representative of the Ministry of Foreign Affairs.

(g) The Attorney-General.

Appendix V: Selected excerpts from Kenya's Adoption Regulations

THE CHILDREN (ADOPTION) REGULATIONS, 2005

Preliminary

(...)

2. Establishment of Committee. [L.N. 16/2004]

The Adoption Committee is established under section 155(1) of the Act.

3. Membership of Committee. [L.N. 16/2004]

(1) The Adoption Committee shall comprise the members set out in the Ninth Schedule to the Act.

(2) The members appointed by the Minister under paragraph (b) of the Ninth Schedule to the Act shall be appointed by Gazette Notice.

(3) The members appointed under paragraphs (c) to (f) of the Ninth Schedule to the Act shall be appointed by letter from the organizations referred to in those paragraphs.

4. Officials of the Committee.

(1) The Adoption Committee shall appoint one of its members to serve as chairman for a period of three years, and such an appointment may be renewed for one more term.

(2) The Director shall be the secretary of the Adoption Committee.

5. Functions of the Committee.

The Adoption Committee shall, in addition to the functions provided for under section 155 of the Act, perform the following functions-

(a) regulate fees for registration of adoption societies;

(b) consider, review and either approve or reject applications for registration for both international and local adoption societies;

(c) manage and maintain a secretariat and offices provided by the Director;

(d) co-ordinate international adoptions and approve foreign agencies wishing to conduct adoption in Kenya;

(e) maintain and update from time to time a register of approved local and international adoption societies;

(f) regulate fees charged by adoption societies for the processing of applications for adoption.

6. Meetings of the Committee.

(1) The Adoption Committee shall hold at least twelve ordinary meetings in any given calendar year.

(...)

Adoption

8. Application for Registration of adoption society form.

An application under section 177 (2) of the Act, for registration of an adoption society shall be made in the form set out in the First Schedule.

(...)

10. Requirements for registration. Cap. 253

(1) The Adoption Committee shall not accept an application under section 177 (3) (a) of the Act unless the body seeking registration has satisfied the following conditions-

(a) the body must be registered as a non-profit making organization, and such registration must have subsisted for a period of not less than twelve months preceding the date of application;

(b) the body must have been involved in child-welfare activities or programmes recognised by the Director for a period of at least twelve months preceding the date of application;

(c) the body must have the capacity and adequate resources to carry out adoption arrangements, which includes the following-

- (i) an office and waiting room set in such a way that guarantees the privacy of the biological parents or guardians, child and the prospective adoptive parents;
- (ii) holding facilities where a child offered for adoption can be best taken care of;
- (iii) a fixed physical address and a fixed telephone number listed in the directory ordinarily compiled and/or issued by, or on the authority of, the telephone service provider or its agents, in the name of the body; any changes to these details shall be communicated to the Adoption Committee within thirty days from the date of change.

(2) The body seeking registration shall have a competent administrative team comprising of-

- (a) a qualified administrator with knowledge and experience in matters relating to children;
- (b) a qualified social worker with at least a bachelor's degree in social work, social sciences or a diploma in social work from a recognised institution of learning;
- (c) such support staff as may be necessary and adequate in the carrying out of the duties and functions of an adoption society.

(3) The body must have access to the services of a qualified medical practitioner duly registered as such under the Medical Practitioners and Dentists' Act.

(...)

16. Case committee.

(1) Upon registration, an adoption society shall set up a committee (called a case committee), which shall comprise of not less than three and not more than five persons, one of whom shall be a trained social worker, and a list of members proposed for appointment to the case committee shall be submitted to the Adoption Committee for prior approval.

(2) Employees of the adoption society shall not be eligible to be appointed as members of the case committee.

(3) The adoption society shall provide a secretariat for the case committee.

17. Giving up child to an adoption society.

Where the parent or guardian offers to place a child at the disposal of a registered society with a view to the child being adopted, the society -

(a) shall furnish the parent or guardian with an explanatory memorandum in the form set out in the Fifth Schedule; and

(b) shall not accept the child unless the parent or guardian has signed and delivered to the society a certificate of acknowledgement, which the society shall retain, in the form set out in the Fifth Schedule that he has read and understood the memorandum.

18. Social inquiry and medical reports.

(1) In the case of a child offered to be delivered by or on behalf of a registered adoption society into the care and possession of an adopter, the society shall-

(a) make enquiries and obtain a social worker's report on the matters set out in the Sixth Schedule; and

(b) obtain a medical report on the health of both the child and the adopter in the form set out in the Eighth Schedule.

(2) The reports obtained under this regulation shall be retained by the adoption society until the child attains the age of majority.

19. Placing a child with adopter.

No child shall be delivered into the care and possession of an adopter by or on behalf of an adoption society until-

(a) the case committee has considered the reports required under regulation 18;

(b) the adopter has been approved by the case committee;

(c) the adoptive parent has read and understood the explanatory memorandum for adopters set out in the Seventh Schedule, and has duly signed the certificate of acknowledgement attached to the memorandum;

(d) the adopters, in the case of joint applicants, have been married for at least three years prior to the date of commencement of adoption arrangements.

(...)

21. Care and supervision of children.

(1) Every adoption society shall make adequate arrangements for the care and supervision of children who have been placed by their parents or guardians in the care of the society.

(2) Every child who is available for adoption and is not living under the direct control of the society shall, unless and until such child has been adopted, or the Director otherwise directs, be visited in the first month and at least once in every three months thereafter by a representative of the society, who shall report upon the case to the case committee, who may recommend appropriate action to be taken in the event that the child is not being taken care of properly.

(...)

Miscellaneous

30. Notification of placement of child.

Every prospective adopter shall, forthwith upon a child being placed with him by any party other than an adoption society, notify the Director of such placement and of the date thereof.

31. Visits to a child delivered for adoption.

(1) Where a child has been delivered into the care and possession of a prospective adopter, visits shall be made to the child at least once in every month-

(a) in the case of a child so delivered by an adoption society, by a representative of that society; or

(b) in any other case, by the Director or his authorized representative and for that purpose the prospective adopter shall allow access by such person to the child at any reasonable time.

(2) The representative of the adoption society or the Director shall report on such visits to the guardian *ad litem*, unless he is himself the guardian *ad litem* of the child.

(3) The provisions of this regulation are additional to and not in substitution for the provisions of regulation 21.

32. Visits upon a conditional adoption order.

Where the court makes an adoption order conditional on the adopter accepting supervision and advice from an adoption society, a representative of such society shall visit the child at least once in every month during the continuance in force of the condition and for that purpose the adopter shall allow access by such person to the child at any reasonable time.

33. Stoppage of adoption arrangements general.

Without prejudice to the powers of the Adoption Committee under regulations 13 and 28, the Adoption Committee shall stop ongoing adoption arrangements at any stage where there is a breach of the provisions of the Act, regulations made thereunder or any other law pertaining to adoption, and such arrangements shall only be commenced with again only where there is full compliance with the relevant statutory provisions, and only at the discretion of the Adoption Committee.

(...)

Appendix VI: Reproduction of blank Kenyan birth certificate

C N°					
REPUBLIC OF KENYA					
CERTIFICATE OF BIRTH					
Birth in the District in the Province					
No.	/19	Where Born		Name	
Date of Birth		Sex		Name and Surname of Father	
Name and maiden Name of Mother.					
Signature, Description and Residence of Informant					
Signature of Registering Officer			Date of Registration		
Baptismal Name if added or altered after Registration of Birth					
Certified to be a true copy of a return/an entry in the Register of Births in the District above mentioned.					
Given under the seal of the the Principal Registrar on the.....day of.....19..					
This certificate is issued in pursuance of the Births and Deaths Registration Act (Cap. 149) which provides that a certified copy of any entry in any register or return purporting to be sealed or stamped with the seal of the Principal Registrar shall be received as evidence of the dates and facts therein without any or other proof of such entry.					
Typed by:(.....)					
Checked by:(.....)					
FEE PAID: Fifty Shillings					

Appendix VII: Reproduction of blank Kenyan adoption certificate

	Nº
<p>REPUBLIC OF KENYA</p> <hr style="width: 10%; margin: auto;"/> <p>CERTIFICATE OF ENTRY IN THE ADOPTED CHILDREN REGISTER</p>	
<p>NO. OF ENTRY:</p>	
<p>DATE AND COUNTRY OF BIRTH OF CHILD:</p>	
<p>NAME AND SURNAME OF CHILD:</p>	
<p>SEX OF CHILD:</p>	
<p>NAME AND SURNAME, ADDRESS AND OCCUPATION OF ADOPTER OR ADOPTERS:</p>	
<p>DATE OF ADOPTION ORDER AND COURT BY WHICH MADE:</p>	
<p>DATE OF ENTRY:</p>	
<p>SIGNATURE OF OFFICER DEPUTED BY REGISTRAR- GENERAL TO ATTEST THE ENTRY:</p>	
<hr style="border: 0.5px solid black;"/> <p><input type="checkbox"/> Certified to be a true copy of an entry in the Adopted Children Register relating to</p>	
<p style="text-align: center;">Given at Nairobi under the seal of the Registrar-General</p> <p>the...</p>	
<p>FEE PAID KSh. 100.</p>	
<p><small>GPK 6217—50 Bks.—12/2003</small></p>	