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EDITORIAL

Africa and intercountry adoption from an African point of view

In the light of the receiving countries' increasing interest in Africa, countries of origin from this region are facing the need for legislative reforms aimed at tackling the risks related to illegal activities.

At present, there can be few who would quibble with the fact that African children are attracting increasing attention from prospective adoptive parents living in other parts of the world. As the latest figures and statements from a number of South American, Asian and Eastern European countries seem to support the notion that intercountry adoption from those quarters is waning, the African continent is getting more and more attention as a sending continent. While intercountry adoption from African countries is still quite modest compared to adoptions from the top four countries of origin[1] there are concrete reasons to believe that interest in adoption from African countries will continue to increase. Thus, Africa is "the new frontier" for intercountry adoption – but it is highly questionable if the continent is yet equipped with the necessary safeguards.

The need for comprehensive child law reform

Law reform in African countries to domesticate the Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), and to modernise and codify a myriad of outdated statutes affecting children, is, in many instances, still ongoing. In addition, many African countries come with diverse backgrounds that encompass additional hurdles to ensuring that the legacies of colonial, customary, and *sharia* laws are consistent with the principles and provisions of the CRC and the ACRWC.

Law reform should provide for provisions that regulate specific issues (e.g.: adoptability, subsidiarity, and illicit activities). For instance, it is difficult to find any domestic legislation that expressly provides that poverty cannot be a sufficient ground for declaring a child adoptable. Furthermore, there is hardly any provision in African child laws that point out that unaccompanied or separated children must not be adopted in haste at the height of an emergency.

The appropriate role of culture

Culture, and cultural identity, occupies an elevated place in the majority of African societies and therefore it is important to protect the identity rights of African children in child laws. In the context of intercountry adoption, the Africanisation of child law demands the domestication of provisions that support positive cultures and practices, and that contribute to alleviating children's deprivation of their family environment. These include recognising and supporting the role of the extended family; prioritising community based care as a form of alternative care; facilitating kinship care and, providing a legal basis for supporting so-called "informal adoptions" when they are in the best interests of the child. Therefore, it is recommended that, in their efforts to harmonise child laws, African States should make a concerted effort

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to consult all stakeholders, and capitalise on positive African cultures that have a bearing on child care. An appreciation of these elated cultural realities on the African continent by receiving countries would indeed help to undertake intercountry adoptions in the best interests of the child.

However, it should also be noted that culture cannot, and should not, be used as a smokescreen to deny children their right to grow up in a family environment, when that family can only be found abroad. Therefore, if the best interests of the child mean anything at all, let alone being "the paramount consideration", preserving cultural identity should be seen as a means, and not necessarily as an end in itself, in considering alternative care for children deprived of their family environment.[2]

Illicit activities in intercountry adoption

Illicit activities in intercountry adoption in Africa are manifested in various forms and degrees, and place children's rights in great jeopardy. In recent times, countries such as, Chad, Egypt, Equatorial Guinea, Ethiopia, Ghana, Kenya, Liberia, Mauritius, and Rwanda have experienced instances of illicit activities in relation to intercountry adoption.

In this context, it should be underscored that most African countries do not even have the basic requirements in place such as trafficking legislation, which are still in draft form. Institutional frameworks to safeguard children's rights are either not present, or lack the necessary mandates and capacity to perform their tasks.

The illicit activities mentioned above should be viewed as the tip of the iceberg. However these issues are not only about the cases we know of, but also about those of which we do not know. Additional investigation by governmental and international bodies would further the knowledge of the extent to which these situations prevail, and how to eliminate them through precise targeted legal means.

Co-operation from receiving countries

Co-operation is central to make the intercountry adoption regime in Africa work for the best interests of children. It is submitted that there is a need for recognition on the part of receiving countries that it is their demand for adoptable children that drives the intercountry adoption process in the main. Therefore, receiving countries should abstain from putting the authorities and organisations of countries of origin under unnecessary pressure to provide adoptable children.

Receiving countries also have an important role to prevent and address illicit activities in adoption. For instance, the role of receiving countries in placing moratoria (restrictions) on adoption from countries where adoption irregularities have become rampant is crucial. It is also recommended that receiving countries should assist in holding foreign adoption agencies registered in their State accountable for the working methods of their representatives and partners in Africa. This should be the case especially when these representatives and/or partners were involved in illicit activities in Africa with the knowledge of the foreign adoption agency (and no preventive or curative measure is taken by the agency).

It is also recommended that receiving countries should assist, and where necessary put due pressure on, countries of origin in making their laws compliant with international standards including the Hague Convention. The role of foreign adoption agencies to ensure safeguards in the adoption processes in Africa is important, too. In practical terms, this might mean, for instance, a better preparation of the prospective adoptive parents by foreign adoption agencies about the potential risks of illicit activities and other important issues in Africa, which can contribute towards countering illegal adoptions and also promote better bonding.

(Some) concluding remarks

Outdated legislation, ongoing law reform efforts that are sometimes unduly prolonged, and inadequate institutional structures for coordinating and monitoring child law implementation are some of the characteristics of a number of African countries. Requesting and receiving technical assistance from the Permanent Bureau of the Hague Conference on Private International Law by African countries that are undertaking child law reforms needs to be accorded the importance it calls for. Awareness raising efforts to minimise the deprivation of children of their family environments, and to promote domestic permanent family based solutions also need to be undertaken.

Many African governments' attitudes to sexual orientation in Africa are generally

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negative. Apart from South Africa, there is no African country that allows for adoption by homosexuals. Thus, there is a substantial amount of concern by African countries that homosexual applicants might continue to try to evade the system by posing as heterosexual and/or single prospective adoptive parents. In this respect, receiving countries have a duty to duly inform sending countries of this situation, in order to minimise the potential of putting future adoptions from these sending countries at risk. The need for receiving countries to be sensitive towards the position of *Sharia* on adoption in African countries is also apposite.

After all, a sound and effective alternative care option, including intercountry adoption, must be grounded firmly in an African context, taking African realities into account. This fact is relevant for both countries of origin and receiving countries that are genuinely concerned to promote the best interests of children that are deprived of their family environments.

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[1] Namely China, Russia, Guatemala, and South Korea.
[2] See Art 25(3) of the ACRWC

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