



## Fact Sheet N° 36

### Intercountry adoption

#### SUPRANATIONAL AND REGIONAL ACTORS

Numerous actors become involved in each stage of intercountry adoption. This fact sheet briefly presents the supranational and regional actors, the latter playing, above all, a role of regulating, supervising and making recommendations. Subsequent numbers will take special interest in those who play a role at the national level, particularly the Central Authorities and adoption bodies, which intervene directly in the adoption process and see to it that it runs smoothly.

##### Supranational actors

- *The United Nations Committee on the Rights of the Child:* In the framework of the review of periodic reports submitted by States Parties, the Committee on the Rights of the Child attaches significant importance to children in a state of abandonment, to their placement and to the conditions governing their adoptability by foreign parents. Aware of the risks that these children may run, and thanks to the mechanisms foreseen by the Convention on the Rights of the Child (in particular articles 44 and 45, as well as the possibility of private reports submitted by NGOs), the Committee plays an important role in making States aware of these problematical issues, and in encouraging them to find solutions to these problems. The reports and the recommendations which stem from it can provide sources of reliable and often welcome information when, for example, doubts arise about respect for the rights of the child in such and such a State.

- *The Hague Conference:* no one needs to underline the crucial role the Conference has played in this field of intercountry adoption: The Hague Convention of 1993 on the protection of children and co-operation in matters of Intercountry Adoption (HC - 1993) has become in a short space of time, a basic

reference tool in this field, filling an important gap in the international legal order. Its success is particularly due to the fact of knowing how to launch preparatory work in the States of origin, including those who were not members of the Conference (and in some cases, who are still not). The Conference convenes every three to five years a Special Commission with the task of examining the practical functioning of HC - 1993 (article 42). It also provides an important discussion forum, since it makes it possible at these accompanying sessions, to define objectives and identify problems in a concerted manner, thus improving the chances of achieving concrete results. The States Members (by means of their Central Authority) have the chance to challenge the Permanent Bureau when they note serious shortcomings in partner countries. The job of "lobbying" done by the general Secretariat in countries of origin is also worth mentioning.

##### Regional actors

- *In Africa,* the Organisation for African Unity (OAU) took an interest in intercountry adoption when the African Charter on the Rights and Welfare of the child was elaborated, in which article 24 takes up globally the provisions of article 21 of the

CRC. This Charter, which came into force on 29 November 1999 and which has to date been adopted by 53 African countries, has set up within the OAU a Committee of African experts on the Rights and Welfare of the child. Its missions consist in particular of: promoting and protecting the rights guaranteed by the Charter; ensuring their application; elaborating and drafting rules and principles that aim to protect the rights and welfare of the child in Africa; interpret the provisions of the Charter (article 42). Furthermore, this Committee of experts assumes a similar task to that of the Committee on the Rights of the Child in reviewing reports that each member country must submit to it periodically concerning the measures it has taken to implement the provisions of the Charter and the progress that has been made (article 43).

- The *American continent* has neither instrument nor regional body specifically responsible for child protection. Nonetheless, in its reports and recommendations on the status of human rights in States Parties, the Inter-American Commission on Human Rights regularly refers to the Convention on the Rights of the Child of 1989. Moreover, the American Convention on Human Rights, to which the Commission belongs, stipulates that every minor has the right to benefit from protective measures required by his minor status on the part of his family, society and the State.

- In *Asia* at this time, neither instrument nor regional body deals with the protection of children, not even with the protection of human rights in general. For Asian countries, the Committee on the Rights of the Child is, therefore, a key instrument for supervising and making recommendations in matters of protection of the rights of the child.

- *Europe*, for its part, is endowed with several instruments and regional organs protecting children in the framework of adoption. It has in particular at its disposal the European Convention on the Adoption of Children, signed in April 1967, but which is currently under review. The revised "European Convention on Adoption of Children" comes as a complement to HC-1993 and aims to harmonise the basic right of the Signatory States in introducing common minimal rules in matters of adoption. The European Parliamentary Assembly has, furthermore, insisted on several occasions on the need for Member States to make genuine provisions to have the rights of the child respected in matters of inter-country adoption. The European Court of Human Rights has also been induced to take a position in numerous adoption related matters, thus specifying the legal nature of the ties between the child, the biological parents, the adoptive parents, and the State.

ISS/IRC May/June 2007

#### For more information:

The website of the United Nation Committee on the Rights of the Child:

[www.ohchr.org/english/bodies/crc/index.htm](http://www.ohchr.org/english/bodies/crc/index.htm)

The website of the Hague Conference: [http://www.hcch.net/index\\_en.php](http://www.hcch.net/index_en.php)

The website of the African Union: [www.africa-union.org/root/au/index/index.htm](http://www.africa-union.org/root/au/index/index.htm)

The website of the Organisation of American States: <http://www.oas.org/main/english/>

The website of the Council of Europe Legal Affairs:

[http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Family\\_law\\_and\\_children%27s\\_rights/](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Family_law_and_children%27s_rights/)

CLAPHAM Andrew, *Human Rights Obligations of Non-State Actors*, Oxford University Press, March 2006

**We are interested in your opinion!** To tell us your experiences, ask us your questions about the themes addressed in this file, or to send us your suggestions for changes, don't hesitate to write to us at [irc-cir@iss-ssi.org](mailto:irc-cir@iss-ssi.org). We also invite you to share this file with other interested persons in your country. Thanks in advance!

The ISS/IRC would like to thank the Canton of Geneva, Switzerland, for its financial support for this Fact Sheet project and the Committee for Inter-country Adoption of the Presidency of the Council of Italy for its funding of the Handbook "The Best Interest of the Child and Adoption", which is the basis of several Fact Sheets.