

THE DONALDSON ADOPTION INSTITUTE

May 19, 2014

The Honorable Robert Menendez
Chairman, Senate Foreign Relations Committee
528 Senate Hart Office Building
Washington, D.C. 20510

Dear Senator Menendez:

As you know, the Children in Families First Act's (CHIFF S.1530) purposes, as outlined in the bill, are to place children without families in them, to make intercountry adoption (ICA) by Americans "a viable and fully developed option," and to "protect against abuses" and ensure children's best interests in ICA. [The Donaldson Adoption Institute](#) (DAI) supports these laudable goals, but respectfully recommends – based on research and the rights of children, first/birth parents and adoptive parents – that the Foreign Relations Committee hold hearings to inform ICA and child welfare policy; assure that any legislation safeguards the best interests of children, including subsidiarity; and provide appropriate, adequate resources for ICA and child welfare policy development and implementation in the U.S. and countries of origin (COOs).

The Adoption Institute is an independent, nonpartisan policy and education nonprofit that conducts research and analysis in order to improve adoption-related laws, policies and practices for first/birth families, adoptive families and adopted people; DAI does not place children or provide adoption services. For nearly 20 years, the Adoption Institute has sought to improve ICA policy and practice. In 2001-2002, DAI offered proposals and testified before the House Committee on International Relations on Interountry Adoption Act (IAA) implementation to address ICA's most serious problems. Most recently, DAI published a [study](#) that found a growing number of children who are adopted internationally are older and have "special needs," more children are remaining institutionalized for longer periods, and domestic adoption in countries of origin (COOs) is increasing.

We understand that the decline in U.S. ICA could be perceived as a devaluation of this placement option for children in need of families. DAI and other experts' research shows, however, that COOs have successfully increased domestic adoptions and in-country programs have resulted in family preservation/reunification, as well as guardianship and kinship placements, which may in part explain the decrease in global ICA. (Most other major receiving countries have experienced ICA declines comparable to that of the U.S.) It is also important to consider that COO implementation of domestic laws to institute the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Interountry Adoption (Convention) standards can be a lengthy process, there remain continuing COO practice and oversight problems, and COOs have applied additional qualifications and limitations on international prospective adoptive parents. Moreover, U.S. public policy recognizes that enshrining ethical adoption practice outweighs temporary declines in ICA. For instance, Congress passed the Universal Accreditation Act in 2012 despite CBO's finding that "under the bill the number of adoptions from nonconvention countries would decline."

DAI is concerned and makes recommendations to address the below CHIFF provisions that could potentially be implemented in ways that weaken the best interests of the child standard in contravention of the Convention and IAA and could result in development of U.S. international

child welfare policy and technical assistance that are not fully integrated with the Children in Adversity Action Plan child development and protection objectives.

Hold Hearings on Intercountry Adoption & Child Welfare

Congress has neither held hearings on ICA nor called for Government Accountability Office or Congressional Research Service reviews since the Convention entered into force in the U.S. in 2008. In order for Congress to craft the most effective policy solutions to provide permanency for children in need of families, **the Committee should solicit expert and stakeholder testimony, as well as data and research, on often-overlooked ICA and child welfare issues** including:

- The rights and interests of first/birth parents and of adopted children and adults,
- COOs' Convention implementation and barriers to ratification,
- Children needing families, domestic permanency solutions and COO child welfare systems,
- ICA's impact on adoption from foster care in the U.S.,
- The reportedly increasing number of African American children adopted internationally,
- Intercountry Adoption Act implementation,
- Reasons for the decrease in ICA in the U.S. and globally,
- Prevalence of and reasons for intercountry adoption dissolutions,
- Promising interventions for "special needs" and older children who are internationally adopted, and
- Families' pre- and post-adoption service needs.

As part of this analysis, the Committee should seek the best available information on children in need of families to understand the problem's scope and placement solutions. The U.S. Agency for International Development (USAID) cites an estimate of 17.8 million "double orphans" (children under 17 years of age who have lost both their biological mother and father), though it finds that "A child who has lost one or both parents usually continues to live within a family – typically with a surviving parent, sibling, or with other relatives." UNICEF approximates there are eight million children in institutional care, but Save the Children notes that 80 percent "have one or both parents alive who, with support, could care for them," and USAID echoes that finding: "Most children living in institutions have been placed there due to extreme poverty or disability rather than parental death or abandonment."

Ensure Family Placements Are in the Best Interests of Children

U.S. policy to make ICA more ethical and effective must reflect the Convention objectives to safeguard children's and first/birth parents' rights, particularly because there are continuing challenges with COO Convention implementation and because one-half of children adopted internationally are from COOs that have not ratified the Convention. Such protections also would allay any COO concerns that U.S. policy does not facilitate all family placement options. Therefore, ICA legislation must be clear in implementing the best interests standard and subsidiarity principle to prioritize in-country family solutions for children – preservation, reunification, kinship, guardianship and domestic adoption – before ICA, while making careful, appropriate placements with qualified caregivers as expeditiously as possible. In light of these considerations, DAI is concerned that some CHIFF provisions, including the below, could undercut Convention and IAA cornerstones and recommends that the Committee strengthen best interests and subsidiarity language:

- The provisions 1) directing that "If an in-country placement ... is *not quickly available*, and such an international home is available, the child should be placed in that international home

without delay;” 2) defining best interests as options which provide children with fully protected legal status and parents with *full legal status as parents*; and 3) assigning the State Department policymaking responsibilities for foreign countries’ child welfare practice that will “give *preference to options that optimize* the best interests of children” could result in weakened application of subsidiarity, including the viability of domestic kinship and guardianship. The Convention, on the other hand, “notes in particular the need to avoid *unnecessary* delay in finding a permanent family for the child” and advises that “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.” **DAI recommends that any ICA legislation incorporate these Convention subsidiarity standards and require diligent efforts/searches for reasonable time periods for family preservation/reunification, domestic kinship, guardianship and adoption placements, as well as prioritize permanent intercountry placements over temporary (defined to exclude guardianship and kinship) and/or institutional domestic placements.**

- An expanded definition of “orphan,” without complementary safeguards, and coupled with U.S. Citizenship and Immigration Services’ (USCIS) lax enforcement standards, could result in the relaxation of standards for determining that a child with parents in non-Convention cases is eligible for ICA. Under current orphan visa immigrant petition regulations, “incapable of providing proper care means that a sole or surviving parent is unable to provide for the child's basic needs, consistent with the local standards of the foreign sending country.” By contrast, the Convention definition of that term provides more safeguards: “Incapable of providing proper care means that, in light of all the relevant circumstances including but not limited to economic or financial concerns, extreme poverty, medical, mental, or emotional difficulties, or long term-incarceration, the child's two living birth parents are not able to provide for the child's basic needs, consistent with the local standards of the Convention country.” Furthermore, the USCIS Adjudicator's Field Manual (that “comprehensively details USCIS policies and procedures for adjudicating applications and petitions”) states that it “has always attempted to provide expeditious processing of orphan petitions and has kept its documentary and regulatory requirements at a minimum.” CHIFF’s requirement for non-Convention adoption pre-processing when possible, while positive, seemingly will not address this oversight. **DAI recommends that the bill be amended to include Convention child definition safeguards for “orphan” cases and to require enhanced documentation and investigation requirements to confirm all children’s eligibility for ICA.**
- Allowing case-by-case exemptions from Convention standards for adoptions from Convention countries if the COO “does not consider the specific case to fall within the scope of the Hague Adoption Convention” could create the potential for abuse, rendering Convention birthparent and child protections inapplicable. Creating such a broad exception for specific and relatively rare situations could create precedents that become the basis for major loopholes. **DAI urges that the legislation be amended to tailor any exemptions to Convention standards as narrowly as possible and with explicit Central Authority oversight and approval on a case-by-case basis.**
- The lack of a requirement and funding for post-adoption services (PAS) ignores the need demonstrated by research; the prevalence of “re-homing,” which predominantly affects children who were adopted internationally; the identification of evidence-informed PAS practices; and Congressional recognition in domestic adoption law and funding of its importance as an investment in stability, prevention and avoidance of more significant human and financial costs, as well as a recruitment tool to increase placements. **DAI recommends that PAS requirements and funding be added to CHIFF.**

Provide Appropriate, Adequate Resources for ICA and Child Welfare Policy

Assigning virtually all ICA operational responsibilities to USCIS, including accreditation of providers and “processing and case-specific decision-making,” may be unnecessary to affect an appropriate division of responsibilities between the State Department and USCIS, and could disrupt intercountry adoptions, slow bilateral agreement negotiations, and/or result in a lull in ICA policy development. Moreover, transferring substantially all Central Authority functions to USCIS despite the perspective that U.S. policy treats ICA as an immigration issue seems problematic. **DAI suggests that the drafters revisit the necessity of this fundamental shift of responsibilities.**

Additionally, for all domestic permanency options to be available in COOs, CHIFF should provide adequate U.S. technical assistance and funding (without conditions such as COO alignment with U.S. ICA policy priorities) in order to build effective COO child welfare systems. Similarly, CHIFF does not provide adequate authority and funds for implementation of the 2012 National Action Plan on Children in Adversity’s comprehensive approach to addressing all of children’s inter-related needs – child development, family care and child protection – each of which cannot be effectively addressed in the absence of the others. For instance, reducing child mortality and facilitating birth registrations for children in developing countries (in 2012, 57 million infants (40% of newborns) were not registered) represent strategies that would address all three goals. **DAI recommends that any international child welfare legislation establish holistic methods and funding for meeting the needs of children in adversity.**

Please consider these recommendations, which are also supported by the Child Welfare League of America and Consortium for Children, in developing evidence-informed and effective ICA legislation. We would be happy to answer any questions or provide additional information that would be helpful. Thank you for your time and consideration on this critical issue affecting millions of children, first/birth parents and adoptive parents worldwide.

Sincerely,



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The Honorable Kay Granger
Ambassador Susan Jacobs, Special Advisor to the Secretary for Children’s Issues