



Joint Council

on international children's services

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Secretariat, Committee on the Rights of the Child
Office of the UN High Commissioner for Human Rights, UNOG-OHCHR
CH-1211 Geneva 10
Switzerland

Dear Secretariat and esteemed participants:

Thank you for the opportunity to introduce Joint Council on International Children's Services (JCICS) and to share our perspective and solutions for child welfare. We are very pleased that the UN Committee on the Rights of the Child is dedicating the Day of General Discussion on 16 September 2005 to focus on "Children without Parental Care".

As you are well aware, in 2003 there were estimated 143 million orphans ages 0 through 17 years old around the world.¹ JCICS believes that the plight of orphaned children deserves greater attention and we welcome the debate of practical solutions on how to care for their unique needs. We understand that the focus of the general discussion concentrates on the "States' Role in Preventing and Regulating Separation" and "Meeting the Challenges of Out-of-Home Care Provision". We recognize the committee's intent to keep the discussion focused by not addressing adoption related issues; however, JCICS believes that adoption is a positive option for children in need of permanent families and hope that this topic is addressed to some degree. Many practical solutions overlap various approaches – for example, if family reunification is not successful or in the child's best interest than short-term foster care or institutionalization may be necessary until a permanent family in the country of birth or abroad is found. While adoption may not be the focus of the general discussion day, we respectfully request that it be recognized as a positive option for children without parental care.

The following White Paper explores Child Welfare Legislation and puts forward best practice suggestions to countries examining and strengthening their laws. We encourage participants to read the paper and deliberate about the issues it address. We welcome conversation and collaboration with other entities.

Thank you again for the opportunity and for your time.

Sincerely,
Meghan Hendy

Meghan Hendy
Executive Director

¹ Children on the Brink 2004 Report - www.unicef.org/publications/cob_layout6-013.pdf



White Paper on International Child Welfare Legislation

Joint Council on International Children's Services (JCICS) is the one of the oldest and largest associations of licensed, non-profit international adoption agencies, child advocacy groups, parent support groups and medical clinics in the world. Pursuant to our mission, JCICS does not provide direct services to children nor provide adoption services, but rather advocates on behalf of children in need of permanency and promotes the highest of ethical standards.

In this role, JCICS often is the point-of-contact by leaders here in the United States and governments around the world seeking information and feedback on issues involving child welfare, legislation, procedures and "best practices". JCICS, through its involvement in international child welfare since 1976, has developed an appreciation of the complexity related to the processes and approaches that serve to protect children while expeditiously meeting their need of finding permanency, safety and love. Collectively our members, over 200 organizations, serve approximately 75% of all international adoptions in the United States. We take this opportunity to share with you our guiding principles and to invite you to work together with us for the benefit of the children around the world.

According to a recent report by UNICEF, in 2003 there were 143 million orphans ages 0 through 17 years old around the world.²

Pursuant to Intercountry Adoption

JCICS believes that all children – regardless of race, ethnicity, gender, medical limitations or other conditions – deserve a permanent, safe and loving home. When children cannot be safely cared for in their birth families, or in permanent adoptive homes within their country of birth, we believe that ethical intercountry adoption provides the most positive option for children.

JCICS firmly believes that it is incumbent upon all those involved in adoption, both in sending and receiving countries, to implement the necessary measures to ensure ethical procedures and to be accountable for their actions. We must all consider current processes to identify areas of success and areas where further improvements could be implemented to better protect children.

² Children on the Brink 2004 Report - www.unicef.org/publications/cob_layout6-013.pdf

Legislation Reform

JCICS supports the principles of The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption and the United Nation's Convention on the Rights of the Child regarding permanency of children, including:

- Recognizing the best interest of the child;
- 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;
- Recognizing that children should remain with their birth families whenever possible and priority given to adoptive families within the child's country of birth;
- Recognizing 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 country of origin;
- Recognizing the responsibility of each country to ensure quality adoption practices that protect children.

JCICS urges governments to consider these principles when addressing legislative reforms. In our experience and for the best interest of the child, we feel it is important for legislation regarding permanency for children to include:

- 1) A transparent process based on an ethical model;
- 2) A structure that includes checks and balances, clearly defined roles and adequate funding;
- 3) A system in which priority is given for the child to safely remain with his/her birth family, when in the child's best interest;
- 4) A structure in which national adoptions are given priority and promoted within the country of origin;
- 5) A system whereby international placement is pursued as a positive option for children to find a permanent family in instances where national adoption has not expeditiously occurred;
- 6) Clearly established criteria for children and parent(s) eligible for adoption;
- 7) A transition period with gradual implementation, if there are legislative or procedural changes, to protect the rights of children and allow efforts for permanency to continue in the interim;
- 8) A system that is opposed to corruption and financial coercion, presented in clear terms within the legislation, and punitive measures in place for those who are found in violation of these procedures;
 - (i) An ombudsman office that advocates for the rights of the child, or
 - (ii) An independent committee that reviews allegations of corruption.
- 9) A support structure and system addressing child welfare and protection for all children, especially for those children who are not placed in a permanent family due to age, special needs, medical conditions or unique circumstances.
- 10) A streamlined process which minimizes bureaucracy and complexity so as to serve the best interest of the child.

Concerns Regarding Long Term Institutionalization

It is well documented that the effects of prolonged institutionalization on children can be devastating and can lead to significant developmental, emotional and physical delays.

We support the UNICEF *Children on the Brink 2004* report which states: "In the first one to two years of life, young children need to feel emotionally close to at least one consistent and loving caregiver for their healthy development and, in fact, for their survival"³ and that "Traditional institutions usually have too few caregivers and are therefore limited in their capacity to provide children the affection, attention, personal identity, and social connections that families and communities can offer."⁴

Therefore it is important for our country as well as other countries to make a commitment to finding permanency for children either domestically or through intercountry adoption.

Concern Regarding Long Term Foster Care

JCICS is concerned that many countries are beginning to use long term foster care as a solution to child welfare issues. The 150 year history of foster care in the United States demonstrates the faults and shortcomings of a foster care system. JCICS urges all countries to use foster care only as a short-term solution for children awaiting a permanent family.

In 1997 President Bill Clinton signed the Adoption and Safe Families Act⁵ into effect in the United States. This legislation, passed by the United States Congress with overwhelming bipartisan support, represented an important landmark in our Federal child welfare law. It establishes unequivocally that our national goals for children in the child welfare system are safety, permanency, and well-being. It addresses the inadequacy of foster care to provide a permanent family for children in need, and it directs that permanency planning efforts must begin as soon as a child enters foster care and must be expedited by the provision of services to families.

The following provisions are included in this bill:

- **Foster care is a temporary setting and not a place for children to grow up.** To ensure that the system respects a child's developmental needs and sense of time, the law includes provisions shortening the timeframe for making permanency planning decisions, and establishing a timeframe for initiating proceedings to terminate parental rights. The law also strongly promotes the timely adoption of children who cannot return safely to their own homes.
- **Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.** The enactment of a legal framework requiring permanency decisions to be made more promptly heightens the importance of providing quality services as quickly as possible to enable families in crisis to address problems. It is only when timely and intensive services are provided to families that agencies and courts can make informed decisions about parents' ability to protect and care for their children.
- **The child welfare system must focus on results and accountability.** The law makes it clear that it is no longer enough to ensure that procedural safeguards are met; child welfare services must also lead to positive results.
- **Innovative approaches are needed to achieve the goals of safety, permanency and well-being.** The law recognizes that the U.S. does not yet have all of the solutions to

³ Children on the Brink 2004 Report, Page 14

⁴ Children on the Brink 2004 Report, Page 19

⁵ <http://www.acf.hhs.gov/programs/cb/laws/pi/pi9802.htm>

achieve our goals. By expanding the authority for child welfare demonstration waivers, the law provides a mechanism to allow States greater flexibility to develop innovative strategies to achieve positive results for children and families.

We encourage countries to examine the use of foster care based on our own country's history in this area. While foster care may be preferable to institutionalization since children can receive attention and nurturing from one primary care giver, it is also important that the primary care giver be adequately trained, supported and supervised. This must only be a short term solution during which a permanency plan is being actively explored both nationally and internationally for the child.

Commitment to Permanency

JCICS's mission is to advocate for children in need of permanent families. JCICS supports the commitment shown by the United States to find permanency for children, as the U.S. is both a sending and a receiving country of internationally adopted children. If a child cannot find a permanent home within the U.S. he or she is available for international adoption and many children have been adopted by families from numerous countries including Canada, Mexico, the United Kingdom and Australia. For example, from 1993 through 2002, 786 children were born in the United States and adopted by Canadian citizens according to the Canadian Immigration Bureau.⁶

We are concerned for children who do not find permanency. Their options are severely limited as they age out of institutional settings. As orphaned children age out of their orphanage or foster home without adequate education and training, their options are severely restricted and they are prone to be victims of abuse and violence and/or perpetuate violent acts against individuals or society.

Outcomes of Foster Care⁷

Between 18,000 and 20,000 children in the United States leave care each year as "emancipated youth," meaning they have reached the age of majority without being adopted or reunified with their families of origin. Studies have consistently revealed poor outcomes for these youth after they leave foster care. A study conducted by the University of Wisconsin found that 37 percent of the youth emancipated from foster care in 1995 still had not completed high school, 12 percent had been homeless at least once since their discharge from foster care, and about 18 percent had been incarcerated at some point since their discharge.⁸ Focus groups with 100 youth in Nevada found that 41 percent did not have enough money to cover basic living expenses, 24 percent had supported themselves at some time by dealing drugs, 50 percent left foster care without a high school degree, and 41 percent had been in jail.⁹ The U.S. General Accounting Office reported in 1999 that state and local administrators felt they could not provide youth who were leaving foster care with all the support they needed to make a successful transition to independent adult living.¹⁰

⁶ <http://www.adoption.ca/news/031212cicstats.htm>

⁷ Hochman, Gloria, Hochman, Anndee and Miller, Jennifer. Voices from the Inside: Commissioned by The Pew Commission on Children in Foster Care, 2004.

⁸ Courtney, Mark, Piliavan, Irving and Grogan-Kaylor, Andrew. The Wisconsin Study of Youth Aging Out of Out-of-Home Care: A Portrait of Children About to Leave Care Madison, Wisconsin: School of Social Work, University of Wisconsin, 1995.

⁹ Nevada KIDS COUNT. "Transition From Care: The Status and Outcomes of Youth Who Have Aged Out of the Child welfare system in Clark County, Nevada." *Issue Brief II*. Las Vegas: University of Nevada, 2001.

¹⁰ U.S. General Accounting Office. "Foster Care: Effectiveness of Independent Living Services Unknown." Washington, DC: General Accounting Office, GAO-HEHS-00-12, 1999.

JCICS agrees that efforts should be made for the child to remain within his or her country of birth; however, if that cannot expeditiously occur then international placement provides the best opportunity for the child.

The Role of JCICS Child Placing Agencies

JCICS adoption agencies play an important role in assisting families to be educated and prepared for the life-long commitment of adoption. Adoption agencies affiliated with JCICS assist prospective adoptive parents with pre-placement training and education and provide crucial post-placement support and counseling for as many years as is needed.

All JCICS member agencies are licensed by the State(s) they operate in and each is certified a non-profit charitable organization by the U.S. Internal Revenue Service. JCICS agencies have voluntarily joined our association because they believe in and adhere to our Standards of Practice which mandate that agencies serve the best interest of the child and operate in an honest, ethical, legal and transparent manner.

The JCICS Standards of Practice (<http://www.jcics.org/Standards.htm>) stipulate that agencies must properly educate families interested in Inter-country Adoption through the utilization of trained and qualified staff, as directed in the following paragraph.

- *As child advocates, they thoroughly assess the suitability and eligibility of prospective parents with the understanding that some clients may not be suitable candidates for an international adoption, for a particular type of international adoption, or for the challenges inherent in the adoption of children with special needs. This suitability and eligibility need to be openly stated in the Homestudy document, in accordance with US immigration law, and with trained, appropriate and licensed personnel.¹¹*

Agencies must also provide continuing post-placement support to the adoptive family, as directed below.

- *Provide ongoing post adoption services, or information about local and national services, educational opportunities and support to adoptive families. Follow up with their clients post-adoption and make reasonable efforts to ensure the finalization of the adoption according to the laws and regulations of the foreign country and the United States.*
- *Encourage families to learn and celebrate their child's cultural heritage by providing or referring resources to families in this regard.¹²*

Member agencies are also encouraged to support humanitarian aid work. Many of our members focus considerable time, energy and financial resources to bettering the lives of orphaned children around the world and those children who continue to wait for permanent families, as indicated in the below paragraphs.

- *Support overseas child welfare services that have a tangible effect on the welfare of children and families. If support comes from adopting families, this support comes after adoptions have been completed.*
- *When appropriate, assist child welfare professionals abroad in improving their international or domestic adoption programs.¹³*

¹¹ <http://www.jcics.org/Standards.htm>; Education/Preparation/Homestudy section, 2nd bullet Point

¹² <http://www.jcics.org/Standards.htm>; Post Adoption section, 1st and 3rd bullet points

¹³ <http://www.jcics.org/Standards.htm>; Humanitarian Aid section, 1st and 2nd bullet points

JCICS agencies are held accountable through our Disciplinary Policy and if found in violation of our Standards of Practice they could face disciplinary action including temporary or permanent removal from JCICS. Such action would be made publicly known via our website. At this time all of our members are in good standing. A list of our current members can be found on our website at http://www.jcics.org/Membership_Directory.htm.

Working Together on Behalf of Children around the World

JCICS is privileged to work cooperatively with the United States government and other governments to share our experiences and guiding principles on child welfare and adoption legislation. We would be honored to collaborate with you to further best practices for child welfare legislation and procedures. It is our hope that all children of the world will find permanent, safe and loving families and that together we can make this vision a reality. Thank you for your time and consideration.

To contact JCICS for further discussions please call or email the following address:

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