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Before the House Subcommittee on Africa, Global Health, Global Human Rights, and International
Organizations
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Thank you Chairman Smith, Ranking Member Engel, Subcommittee Members, and Subcommittee Staff Members for the opportunity to testify at this important hearing on the African Orphan. I am here today to talk about one important tool of protection for African orphans -- international adoption. It is an honor to be invited to appear before you and to have my testimony considered as you develop strategies to assist the millions of children living outside of family care in Africa.

I appear today on behalf of Both Ends Burning (BEB), a non-profit organization committed to protecting and promoting every child's right to a permanent loving family. We are funded strictly through private philanthropy. We have no ties, financial or otherwise, to adoption agencies, adoptive families, religious or other organizations. We work solely on behalf of children around the world who are in desperate need of permanent loving families.

Both Ends Burning believes in permanency for children. We believe there is no connection more important in this world than a child's connection to his or her parents. We believe that when threatened, that connection needs to be strengthened; when severed, it needs to be repaired; and when it is not possible or not in the best interests of the child to repair that connection, that a new parental connection needs to be made. We believe every child in this world has a basic human right to be raised in a permanent loving family, and for children who cannot be raised in their birth family; adoption is the most appropriate solution.

I come to this work as a Mom to three children, two adopted, one from Vietnam and one domestically, so I know firsthand the issues that present themselves in adoption. In fact, my personal experience being stuck in Vietnam with my daughter Ada shifted my career focus from litigation to adoption. In private practice, I have been honored to represent hundreds of families seeking to adopt from all over the world, most of whom reach me when their efforts to bring home their adopted child run into a barrier that results in their child becoming stuck in the adoption process. The overwhelming majority of the time, that barrier is the Department of State.

What I've learned over the years is that Members of Congress have become a necessary participant in international adoptions. On many occasions I have accompanied families to your offices when no other avenue was available to a child stuck in a political or regulatory quagmire. We've come to you time and time again to seek your assistance, often when the Department of State fails to help or advocate for children and their families. More and more it seems there is a step in the process of adoption that requires the intervention of a Member of Congress, or as we are seeing now in the Democratic Republic of Congo (DRC), the entire Congress, in order to get children into their permanent families. We have almost gotten to the point where adoption agencies should place contact information for Members of Congress in the orientation materials they provide to prospective adoptive parents. While we are very grateful to Members of Congress, this is not how the process of adopting a child should work.

We all agree that every child needs and deserves a family. The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption (Hague Convention), the UN Convention on the Rights of the Child, and other international instruments recognize that the family is the fundamental unit of society and that every child should be able to grow up in a family. Indeed, this

Subcommittee and the House of Representatives recently acknowledged this truth in passing House Resolution 588, making it clear that a child's right to a family is a basic human right that warrants protection.

In Africa, there is staggering need. Although calculating and defining orphans is difficult, it is estimated that there are nearly 50 million orphans in Africa. There are about 5 million orphans in Ethiopia and another 4 million in the DRC. At least 12% of all children in Sub-Saharan Africa are orphans, most due to war, AIDS/HIV, malaria, cholera, and famine. From 1990 to 2000 the number of orphans in Africa rose by 34%, a rate of increase that has not showed any signs of slowing down, much less being reversed. We must bring forward solutions that prioritize families for these vulnerable children, and adoption must be seen as such a solution.

With the implementation of The Hague Convention in 2008, the Office of Children's Issues, which previously had responsibility for issuing orphan visas for adopted children, was designated as our new Central Authority for Adoptions. It was the expectation of many Members of Congress that this would improve adoption systems and increase the number of children being adopted. However, adoptions have declined by 69% over the last nine years and the Department of State has simply continued in its primary role as gatekeeper. To be successful, international adoption must be seen as much more than an immigration issue, and there must be a true sense of urgency in our government's actions as adoptions are processed.

The Department of State, through its embassies and the Office of Children's Issues, plays a key role in international adoptions by U.S. citizens. Yet, rather than serving to aid families trying to navigate the complex process of international adoption or advocate for children in need, the Department of State stands as an impediment. Instead of engaging foreign governments in partnerships that promote ethical domestic and international adoptions and permanency for children, the Department of State institutes policies programs to slow or stop adoptions that are premised on mistrust and suspicion. In so doing, it both fails to do the positive work that we were all hoping our Central Authority would do in helping to encourage child permanency and it goes far beyond its statutory authority. The Department's demonstrated bias against adoption is damaging children and preventing children from finding permanent loving homes here in the United States. My professional experience has allowed me to witness this first hand in both Ethiopia and DRC.

Both Ethiopia and DRC had recent periods of strong growth in international adoptions, due mainly to the extraordinary need in both countries but also because so many other countries, such as Nepal and Vietnam, had closed. However, today adoptions from Ethiopia are drastically declining and adoptions from DRC are in crisis.

ETHIOPIA

Ethiopia Adoption Stats	2010	2011	2012	2013	Total
RFEs issued	unknown	19	51	53	123
NOIDs issued	unknown	16	8	18	42
Denials/Revocations	unknown	39	32	38	109
Approved Adoptions	2511	1732	1567	993	6803

No one disputes that there is enormous need in Ethiopia. As more and more Americans learned about the need of these children and the possibility to provide a family to a child from Ethiopia, they

began to do so. The adoption program grew and thousands of orphan children began finding loving homes in the United States.

However, rather than regarding the growth of adoptions in Ethiopia as a success, the Department of State chose to view the program as problematic for two main reasons: 1) it could not properly handle the caseload and did not receive additional resources; and 2) Consular Officers are trained to look upon all immigration, including orphan visas, with suspicion and doubt.

As the program grew, the US Embassy in Addis Ababa and the Department of State in Washington started issuing public warnings about the weaknesses of the Ethiopian adoption system. Such warnings are a frequently-used tactic by the Department of State when an adoption program experiences growth, and had recently been used to justify closure of adoptions in Nepal. Both Ends Burning recently issued an investigative report on Department of State's conduct in closing Nepal, entitled Paper Chains, and I have brought a summary of this report to share with you today should you be interested in learning more. By the end of 2010, when adoptions from Ethiopia were at an all-time high, the Department of State began to advocate for the closure of the Ethiopian adoption program, just as it had done in Nepal.

In response, in January 2011, a small team of investigators from USCIS and Department of State traveled to Addis Ababa to review the adoption program. The team conducted a comprehensive review of information about every adoption processed from Addis Ababa in the preceding two years-- some 4,000 cases. The team made a public report in April of that year finding that the allegations made by the Department of State simply were not true. Instead of finding rampant fraud and a broken system of adoptions, they found that the vast majority of the cases were ethical adoptions of legal orphans. In fact, not one single case had been denied based on a finding of fraud according to their review.

The review revealed that inconsistencies in the paperwork were the product of careless errors or poor record keeping, problems that should reasonably be expected in a developing nation. The investigation also identified a small subset of factors that, when present in a case, could justify further investigation by the US Embassy in Addis and recommended that the Embassy focus its investigative resources accordingly. In the end, the joint decision was made to continue the Ethiopian adoption program and the US Embassy promised that, going forward, it would immediately transfer cases with material inconsistencies or discrepancies to the USCIS Field Office in Nairobi and that it would return any I600 submissions that were incomplete or had errors to the adoption service providers.

Inexplicably, in the face of this good news, the U.S. Embassy ignored the team's findings and continued to insist on lengthy field investigations and require families to jump through additional hoops, such as submitting new translations for documents with insignificant errors. And they started putting select cases in a drawer instead of approving them, apparently because they felt there was something problematic in the cases. However, they did this quietly and without telling the adoptive parents, the adoption service providers, USCIS, Ethiopian authorities, or anyone at all.

The Department of State can legally do one of two things when reviewing an orphan petition: 1) they can approve the case; or 2) they can find the case "not clearly approvable" and send it to U.S. Citizenship and Immigration Services (USCIS) for further review. Orphan petitions are also entitled to priority treatment at U.S. Embassies, and simply setting a file in a drawer is a violation of the obligations the U.S. Embassy has to the American citizens it serves. However, in 2011, the US Embassy in Addis was not treating these cases as a priority or forwarding the cases to USCIS as not clearly approvable. Instead they were piling cases up in a drawer. Under mounting pressure, they started telling some of the families that their cases had been forwarded to USCIS even though they had not.

In September 2011, USCIS was getting irate calls from waiting families and became aware of the drawer full of cases in the US Embassy in Addis. In response, a team of four USCIS officers went to Ethiopia in November to resolve the outstanding cases. This team spent two weeks working at the U.S. Embassy processing the “65 drawer cases” in the infamous “Addis Review Room.” In the end, all but one of these cases were approved, and the one case that was denied was not denied due to a finding of fraud. However, the actions of the US Embassy caused children to remain in an orphanage for up to a year longer than was necessary.

Both Ends Burning has reviewed the cases that were stuck in the drawer in Addis Ababa and has interviewed these American families. In so doing, we discovered alarming trends in the tactics employed by U.S. Embassy staff during their investigations. Birth parents reported being intimidated, misled, and repeatedly asked confusing questions in an attempt to coerce contradictory statements. Birth parents also report instances of being deceived by US Embassy staff, including one birth father being told that his son was only being adopted so his kidneys could be harvested. In the end, no fraud was found and the US Embassy’s concerns were proven untrue. It remains a mystery who instructed the US Embassy in Addis Ababa to begin the secret segregation of these cases or why, but the effects on the families and their children were terrible. Moreover, the effect on Ethiopian adoptions was chilling. Since the drawer debacle, fewer Ethiopian orphans are finding their way into American homes each year, despite enormous and increasing need. This trend can and should be reversed.

Democratic Republic of Congo

DRC Adoption Stats	2010	2011	2012	2013	Total
RFEs issued	unknown	1	35	114	150
NOIDs issued	unknown	4	0	2	6
Denials/Revocations	unknown	3	7	12	22
Approved	41	133	240	311	725

There are over 4 million orphans in the DRC. One in seven children dies before reaching the age of five. Children, in particular orphaned and abandoned children, are at risk of being trafficked, victims of sexual abuse, or forced to become child soldiers or mine workers. Against this backdrop of devastation and destitution hundreds of American families chose to adopt children from the DRC. Over the last four years more and more American families looking to adopt were drawn to the DRC and more and more children from the DRC were being provided with a permanent, loving home. And then, as had happened before in Nepal, Ethiopia, and other countries, the U.S. Embassy in Kinshasa became concerned about the “explosive” growth (from a handful to several hundred) of adoptions in the DRC and their ability to handle the increased workload.

In response, the Embassy decided to implement mandatory field investigations for all cases. This new requirement was designed to slow the flow of adoptions. A process that had taken families a couple of weeks to complete now takes, on average, more than six months to complete. This requirement alone has more than doubled the length of the adoption process at the very time in a child’s life that expedience is essential. To be clear, an increase in field investigations or even a requirement that every case undergo a field investigation may be warranted if there is evidence of corruption or fraud that necessitates such a measure. However, in the DRC, such a radical policy does not appear to be supported by the numbers, and based on the timing of the suspension, may well have been a factor in the DRC’s decision to suspend adoption exit letters.

Today, though adoptions continue to proceed through the courts in DRC, adopted children are unable to come home to their adoptive parents due to the suspension on exit letters put in place by the Government of the Congo in September 2013. Through my work at Both Ends Burning, I have had the honor and privilege of working with hundreds of the families caught in this crisis. Both Ends Burning has undertaken an advocacy campaign to bring this issue to the attention of Congress and the general public, in hopes that your direct involvement will lead to a resolution. I am proud to report that your efforts to date have brought 21 adopted Congolese children home to the United States; however hundreds more are still waiting, including some very critically ill children that are unlikely to survive the wait. I am hopeful that this crisis can be ended with your continued support, engagement, and oversight.

According to the DRC government, this suspension arises from concerns over the integrity of their adoption process and the welfare of the children once they leave DRC for their new homes. We acknowledge that these concerns may be valid, and we believe DRC has the absolute right and obligation to ensure its children are truly orphans and will be safe and loved by their adoptive families. We also know that our government is capable of addressing and overcoming these concerns through direct dialog and engagement, and could easily share its findings of approval for 97% of the adoptions it processes. The Department of State could and should have been actively involved from the moment the suspension went into effect to find a solution. Nearly 800 American families are impacted by the suspension, and children are dying waiting to come home from avoidable maladies such as dehydration, malnutrition and malaria. This is a true crisis, as you well know, and one that I believe could have been avoided and can be ended.

The Department of State's decision to implement mandatory field investigations in 100% of the cases was an underlying reason that the DRC had concerns over the integrity of the process. However, mandatory field investigations were not implemented to test the integrity of the system, but instead to slow the growth of DRC adoptions. This policy has served to take what had been a fairly quick adoption process and double its length. The Department of State hoped a longer more complex process would discourage American families from initiating new adoptions in DRC.

With so few cases ending in denial, and no indication that the denials were the product of fraud, one must question the reason for a policy mandating that 100% of the cases be subjected to field investigations. This extraordinary use of Embassy resources, and the attendant delay suffered by children waiting to come home, runs counter to serving the orphan children of Africa. However, assuming that field investigations in 100% of the cases is necessary, more resources should be allocated by the Department of State and USCIS to process a pipeline that today represents more than 10% of international adoptions by Americans worldwide. There is simply no reason a child should remain in an orphanage while the Department of State waits for cases to pile up to justify travel to remote regions, or to make time to place a phone call to an orphanage. The Department of State and USCIS should immediately send more staff to process the pipeline in DRC.

In addition to needlessly creating new hurdles and extraordinary delays, the U.S. Embassy in Kinshasa and the Department of State have failed to adequately serve American families and their children during this crisis. The Department of State has not been transparent and responsive to the families' requests for information. Until very recently, the Department of State did not appear to be meaningfully engaged in trying to end the crisis. For example, it took the Department of State more than seven months to determine how many families were impacted by the suspension. Without knowing the demography of the American families, or the children they are seeking to adopt, the Department of State cannot reasonably be expected to have been effective in advocating on their behalf.

One of the primary justifications given by the DRC for their suspension has been their concern for fraud and trafficking. In order to understand this concern, many families have frequently asked how

many cases of fraud the US Embassy has found and the consistent answer has been that the Department of State does not know. This inability to provide accurate basic information is unfortunately not limited to questions about fraud in adoptions.

Adoptive American families have experienced unanticipated and unnecessary delays. Some have gone months without receiving answers to specific questions, whether in person, by phone, or in emails. Several families have been told that it would be months before their field investigations could possibly be completed or, in some cases, even started. Families have been told to “choose another country” or terminate their adoptions and relinquish their already adopted children. One family was even asked by an embassy Consul if they thought that Americans were beginning to see that adoption from the DRC was too difficult and hence they should look elsewhere. Both Ends Burning has collected affidavits from families who want to share their experiences with you, and a quick review of these sworn statements reveals a fundamental failure of the Department of State to appropriately respond to this crisis.

CONCLUSION

We can and must do better. Improving the situation however requires, at a minimum, a restructuring of responsibilities at the Department of State. The Office of Children’s Issues and the Bureau of Consular Affairs is not the appropriate home for child welfare and child permanency issues. Their charter is too narrow in scope and they start at “no” in adjudicating adoption cases, believing their primary job is to find fraud. They lack expertise in facilitating ethical adoptions, and child permanency is not consistent with their primary responsibilities. Adoption is much more than a simple immigration matter and we must promulgate a foreign policy that does more for orphan children in need. In the last nine years we have seen a 69% decline in international adoptions, and the policies and practices of the Department of State are, in part, responsible.

A child’s right to a family should be a central focus of the Department of State. Advocacy for child permanency must become a fundamental tenet of US foreign policy. To ensure the right of each child to a family and to further the principle of child permanency, responsibility for inter-country adoption policy and case administration should be moved from the Under Secretary for Management; with the exception of functions that need to be performed in US Embassies, such as investigations and orphan visa issuance.

We recommend the creation of an Office or Bureau reporting to the Under Secretary for Civilian Security, Democracy and Human Rights focused upon child permanency. This new organization should work closely with children’s programming within USAID and the US Government’s Action Plan for Children in Adversity. The leader of this organization should also be actively engaged with promoting the right of every child to a family as an active part of our foreign policy. In addition, we propose that the leader of the new office be subject to Senate confirmation, providing an important check-and-balance to ensure that the person in charge is both qualified in child permanency issues and focused on the needs of children globally.

Both Ends Burning supports the Children In Families First (CHIFF) Act (H.R. 4143) which incorporates provisions such as those described above. We strongly encourage the Foreign Affairs Committee to consider this legislation and the benefits that would accrue from its enactment.

There is great opportunity to provide meaningful interventions in Africa that will fulfill every child’s right to a family. Thank you for your commitment to this right. I am happy to answer any questions you may have.