Intercountry Adoption in Emergencies: The Tsunami Orphans

Policy Brief

People and organizations around the world responded with an enormous outpouring of concern and assistance after the massive tsunami that struck Southeast Asia and the eastern coast of Africa on Dec. 26, 2004 (Figure 1). It is now estimated that the tsunami, although not the largest in recorded history, has inflicted some of the greatest devastation, claiming more than 170,000 lives and displacing an estimated 1.5 million people (Table 1). As it became clear that a large portion of those most affected were children, many Americans (and would-be parents from other nations) were moved to open their hearts and homes – through adoption – to the boys and girls who seemed to have been orphaned.

In response to the enormous number of inquiries, the U.S. State Department – as well as numerous European governments, international and non-governmental organizations (NGOs), and agencies involved in intercountry adoptions – announced that they opposed adoptions from the areas hit by the tsunami. The State Department explicitly stated that no adoptions would occur until those countries were stabilized to the point where legitimate orphans could be identified and, even then, that adoptions would take place only in nations that "decide to make these orphans available for international adoption." (U.S. State, 2005 January 3).

The Evan B. Donaldson Adoption Institute shares in mourning the tragic loss of life caused by the tsunami. And, like so many others, the Institute is concerned about the fate of the thousands of boys and girls who now face uncertain futures as a result of the deaths of one or both of their parents. Because there has been widespread discussion about whether these children should be adopted, the Adoption Institute offers this Policy Brief, with the purpose of examining the role of intercountry adoption in situations such as the one caused by the tsunami – that is, during natural disasters, armed conflicts, and other complex human emergencies.

Figure 1. Areas of Southeast Asia & East Africa Affected
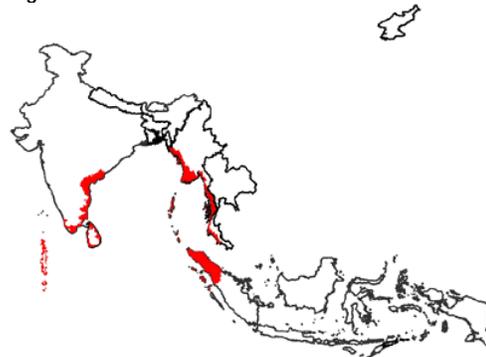
Source: World Heath Organization

Table 1. Total Deaths, Missing and Displaced Persons

Country	Dead	Missing	Displaced
Indonesia [a]	125,736	94,470	400,062
Sri Lanka [a]	30,974	4,698	553,287
India [a]	10,749	5,699	539,844***
Thailand [a]	5,395	2,940	18,700
Somalia [b]	150	-	(approx) 4,000
Maldives [b]	82	26	11,568
Malaysia [b]	68	6	8,000
Myanmar [b]	61	3	2,592
Tanzania [b*]	10	-	-
Bangladesh [b*]	2	-	-
Kenya [b **]	1	-	-
Seychelles [b]	3	-	-
TOTALS	173,231	107,842	1,538,053

[a] *Source: UNICEF key figures as of March 16, 2005. ***Total is number of people displaced and total number of people currently living in relief camps.*
[b] *Source: Compiled from World Health Organization (WHO) situation reports, except for *U.N. and **Kenya media sources by e11th-hour.org as of Feb 13, 2005.*

By outlining some of the unique threats posed to children during emergencies, and examining existing international conventions and the legal framework for intercountry adoption, it is the Institute's intent to articulate best practices that incorporate both immediate and long-term needs of children left without parental care – including protection, family reunification, community and family solutions, permanency, and respect of culture. We hope this brief will stimulate dialogue among adoption professionals, policy makers, international organizations, and NGOs involved in providing humanitarian aid during crises, and will highlight the need to establish high ethical and practice standards among all parties interested in the welfare of children during such times.

Needs of children in emergencies

It is well-known that during emergencies – in particular armed conflicts – basic infrastructure such as health, education, water and sanitation, as well as communication, may be undermined or destroyed; under-resourced governments may have little control or ability to manage the crisis; communities may be compromised or limited as a result of psychological trauma, destruction of material resources and population displacement; and societal values may break down, leading to an increase in criminal and anti-social behavior. As a result, the risk to children is greatly heightened because the protective environment of family, community, and government is compromised. Boys and girls who are unaccompanied and/or separated from primary caregivers may be more vulnerable to child trafficking, labor and sexual exploitation, or recruitment as child soldiers. In addition, traditional forms of alternative out-of-home care for children without parents may not be sufficient.

Indeed, these threats to children in the immediate aftermath of the tsunami were evident in confirmed reports by the United Nation's Children Fund (UNICEF) of a child being trafficked in the hardest hit province of Aceh, Indonesia, and of adolescent boys and girls being recruited as soldiers by the Tamil Tiger rebels in Sri Lanka. In Sri Lanka, approximately 90 percent of the people internally displaced by the tsunami had been uprooted before as a result of the ethnic conflict and civil war that has ravaged the country for 18 years (WHO, 2005 March 11). For more than a decade, there has been a rebellion of Muslim separatists in the province of Aceh, Indonesia. In response to fears that children could be exploited or abducted by human traffickers – a problem throughout the region – Sri Lanka banned the adoption of any child affected by the tsunami either for in-country or intercountry adoption, while Indonesia banned the transfer of any child under the age of 16 from the most devastated province of Aceh, and explicitly banned any intercountry adoptions.

The challenge of caring for and protecting children in an emergency can be further complicated by the sheer number of boys and girls affected. In the 1994 genocide in Rwanda, for instance, about a half million – nearly one-fifth of all children in the population – lost one or both parents, and in the 2003 earthquake in Bam, Iran, up to 1,500 children lost their parents (ISS/UNICEF, 2004). Currently, as a result of the tsunami, nearly 10,000 children have been identified as either having been separated from or having lost one or both parents (Table 2). Although these numbers are likely to increase as the situations of children are further clarified, they are not likely to reach the tens of thousands of orphans that were initially estimated, reflecting the tragic fact that the majority of children believed to have survived were, instead, swept to their deaths.

Table 2. Child Situation Estimates of Nations Most Affected by Tsunami

Country	Separated	Unaccompanied	Lost 1 Parent	Lost Both Parents
Indonesia	818	42 [a]		
Sri Lanka	1,169	28	3,729	
India			1,807 [b]	361
Thailand			1090 [c]	
TOTALS	1,987	70	6,626	361

Source: UNICEF key figures as of March 16, 2005. "Separated" children are being cared for by extended family while parents are being traced. "Unaccompanied" children are being cared for in temporary residential care while efforts to trace parents or extended family members are taking place.
[a] Data based on inter-agency registration of displaced children, as of March 12, 2005 drawn from a small part of the affected population.
[b] UNICEF data as of January 26, 2005

International framework for the protection of children and ethical adoption practice

Ethical principles for protecting the lives and rights of children, as they relate to adoption, have been set forth in a number of international declarations (which are legally non-binding) and conventions (which are binding). These include:

- 1980 Convention on International Child Abduction
- 1986 United Nations Declaration on the Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally (the UN Declaration)
- 1989 UN Convention on the Rights of the Child (CRC) and its two Optional Protocols (2000)
- 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (the Hague Convention) and its Recommendation on Displaced Children (1994).

In addition, a number of organizations have developed guidelines for ethical practice and the care of children who have been separated from parents and extended family.[1] The following is a compilation of "best practices" regarding the care of children in the immediate aftermath of emergencies, based on widely accepted ethical adoption practice and international conventions:

Protection of Children
In the immediate aftermath of a crisis or emergency, priority should be given to the safety and security of children and to keeping them alive by providing access to clean water, adequate sanitation, basic nutrition, routine medical care and shelter. Article 35 of the CRC specifically states that adequate protection from sale, trafficking and abduction of children must be ensured, and the Hague Convention sets up a mechanism for international cooperation through a system of national Central Authorities in order to prevent the abduction, sale, or trafficking of children.

Family Tracing and Reunification
Children who are unaccompanied or separated from primary caregivers as the result of an emergency may not necessarily be orphans; thus, an effort to trace family members is vital. The Hague Convention requires that eligibility for adoption be determined by competent authorities. In the aftermath of an emergency, governments may not be able to ensure that appropriate consents for relinquishments for adoption are carried out or that a child is truly orphaned. The United Nations High Commissioner for Refugees (UNHCR) stipulates two years as a "reasonable period" to trace parents or other surviving family members (UNHCR, 1995).

Family and Community Solutions
Even during emergencies, institutions should be viewed as a last resort, and should be used only when children genuinely have no one to take care of them. Residential institutions rarely provide the care necessary for normative child development or protection. Although some institutions will be necessary to care for children's immediate needs, they should be used with the clear objective of providing temporary services while reunification or alternative community and family based care is obtained.

Widespread Trauma
Particularly during an emergency, it is necessary to address the widespread trauma caused by witnessing or directly experiencing brutal events. All children who have experienced trauma are vulnerable, but for children separated from their families, there is additional critical loss. The best way to help a child mitigate the effects of trauma is to restore a sense of normalcy by providing

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[1] *The Inter-agency Guiding Principles on Unaccompanied and Separated Children* , published in January 2004, was the result of efforts by the Inter-agency Working Group on Unaccompanied and Separated Children which was set up in 1995 . The principles were developed and endorsed by UNICEF, UNHCR, and International Committee of the Red Cross (ICRC), International Rescue Committee (IRC), Save the Children UK, and World Vision International. Since early 2004 International Social Service (ISS) has been collaborating with UNICEF in developing international standards for improving the protection of children without parental care. In the immediate aftermath of the tsunami, the Joint Council on International Children's Services also articulated ethical principles for the care of children in situations of emergencies.

structured activities, care and nurturing. Children who have experienced traumatic events, at least in the short term, generally should not be further uprooted and placed in new environments.

Respect for Nation, Culture and Religion
Even though some children may be identified as parentless, there are countries that do not recognize adoption – for instance because of the Islamic Shaaria law. Moreover, the right of a child to be raised in his or her family of origin is stipulated in Article 17 of the UN Declaration, Article 21 of the Convention on the Rights of the Child (CRC), and in the preamble of the Hague Convention. Article 16 of the Hague Convention requires that due consideration be given to "the child's upbringing and his or her ethnic, religious and cultural background."

Intercountry adoption: When is it a solution?

It is clear that current international conventions and ethical adoption practice guidelines would not recommend adoption at the height of an emergency. As relief efforts shift from addressing immediate needs to reconstruction, the future and long-term care of children left orphaned after the tsunami remain in question. Although the Hague Convention legitimizes intercountry adoption as a means of providing a permanent family to a child "for whom a suitable family cannot be found in his or her State of origin," considerable debate about the role of intercountry adoption remains.

Opponents of intercountry adoption argue the practice exploits impoverished nations; robs children of the opportunity to be raised in their community of origin and identity; takes away resources that could be used to improve the lives of a larger number of children; and contributes to the problem of abduction, coercion and trafficking of children (Masson, 2001). Supporters of intercountry adoption counter that the practice benefits children by removing them from the detrimental effects of growing up in institutional settings or on the streets by providing permanent families; helps children who might otherwise be marginalized in their societies as a result of illegitimacy or racial/ethnic difference; and provides them with families in a context where there is little evidence that the elimination or restriction of intercountry adoptions would remove the problems of poverty that contribute to the abandonment of children (Bartholet, 2005).

The Hague Convention was created to address a large number of abuses that had come to light in the 1980s, by establishing a legal framework for the arrangement and formalization of intercountry adoptions (Intercountry Adoption, 1998). The Hague Convention deviates from the UN Declaration and CRC in that it sets out in the preamble a "hierarchy of options" believed to safeguard the long-terms "best interests" of the child. These include preference for: 1) family solutions (return to birth family, foster care, adoption) rather than institutional placement; 2) permanent solutions (return to birth family, adoption) rather than provisional ones (institutional placement, foster care); and 3) national solutions (return to birth family, national adoption) rather than international ones (intercountry adoption).

However, the Hague Convention only applies to countries that have ratified it and thereby are parties to it. As of 2004, only 46 countries had ratified the Hague Convention, including three of those hardest hit by the tsunami: India, Thailand and Sri Lanka. Seven countries – including the United States, Russia and China – have signed but not yet ratified the Convention (Hague, 1993). In 2000, the U.S. Congress passed the Intercountry Adoption Act of 2000 (IAA), which authorizes the ratification of the Convention once U.S. preparations for its implementation have been established. Since that time, efforts have been under way to prepare and issue federal regulations for implementation so that the Hague Convention can be ratified, with finalization estimated for 2006.

With the exception of India and Thailand – which in 2004 sent 406 and 69 children, respectively, to the United States for adoption – intercountry adoptions from the tsunami-affected countries are rare (U.S. State, Immigrant Visas). Sri Lanka and Indonesia permit the process, but are very strict about circumstances in which they allow it. Indonesia, for example, requires adoptive parents to live in the country for a minimum of two years and bars adoption of Muslim children by Christians. In addition, in accordance with Muslim practice, children who have lost both parents are expected to be raised by relatives, and if not relatives, then village residents or neighbors, and therefore would not be available for

adoption (Cameron, 2005). Despite the small number of intercountry adoptions, Indonesia and Sri Lanka responded to confirmed reports of child trafficking, recruitment of child soldiers, and Christian missionaries attempting to convert Muslim children by banning all adoptions.

Best interests of the child

Historically, the practice of intercountry adoption has been a humanitarian response to the plight of children in the aftermath of armed conflicts, political and economic crises, and social upheavals. The first intercountry adoptions occurred after the Second World War; subsequent groups of children – many born to Asian mothers and U.S. soldiers – were adopted at the end of the Korean and Vietnam Wars. Economic crises and civil wars resulted in many children from Latin America being adopted in the 1970s and, with the fall of the Iron Curtain and massive media attention to the plight of children in such former Soviet states as Romania in the late 1980s, many children from Central and Eastern Europe were adopted overseas. Most recently, overpopulation in mainland China, a cultural preference for boys, and a "one-child" policy have contributed to the availability and adoption of thousands of abandoned Chinese girls overseas since the 1990s.

Notwithstanding the fact that the number of intercountry adoptions to the United States has nearly tripled since 1990, there appears to be a growing trend toward the restriction of intercountry adoptions. Romania enacted a law in 2004 that eliminated the practice (except for adoption by children's grandparents); and in January 2005 Russia passed a law that extends, from three to six months, the time orphans must be on the federal data bank before they are eligible for international adoption. The European Union is also requiring nations to "outlaw intercountry adoption as a condition for joining" the EU (Bartholet, 2005: 10). South Korea introduced initiatives in March 2005, including a national adoption day, with the purpose of lowering the number of children sent abroad for adoption and of promoting domestic adoption (Bae, 2005). Consistent with these trends, most of the governments hardest hit by the tsunami have pledged to take care of the orphans within their own boundaries:

> Indonesia. The government established several steps to protect children affected by the disaster. If reunification with parents or extended family is not successful, then children are to be placed in an orphanage, acquire foster parents or, as a last resort, be adopted (Protection, 2005). The Organization of Islamic Conference, the world's biggest grouping of Islamic nations, pledged $145 million to take care of the orphans, including through orphanages (OIC, 2005).

> Sri Lanka. Legislation crafted with the assistance of UNICEF was introduced that would strengthen the existing system of out-of-home care by establishing provincial panels for the processing of foster care and adoption (UNICEF, 7 Mar 2005). The government has also invited a Texas-based Baptist agency, Children's Emergency Relieve International, to develop foster care programs and the country's first child protective service (Bird, 2005 March 24).

> India. The government has already pledged to provide the equivalent of $4,500 in aid for each child orphaned by the tsunami, half available immediately and the other half when the child turns 18 (Chatterjee, 2005). In addition, the government is considering new rules that would enable short-term foster care in the immediate aftermath of an emergency, thus minimizing the need for institutionalization (Adoption, 2005).

Critics of this trend toward the restriction of intercountry adoption attribute its growth to the fact that many opponents are also involved in organizations that promote children's interests, such as international children's human rights organizations and UNICEF (Bartholet, 2005). These organizations tend to view intercountry adoption as subsidiary to both adoption and foster care within a child's country of origin.[2]

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[2] Article 21 of the Convention on the Rights of the Child, states in part, "Intercountry adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin." The Hague Convention, however, explicitly recognizes the right of children to grow up in a family environment, and that intercountry adoption is one option to provide a permanent family. For an discussion on the priority of intercountry adoption as compared to in-country foster

Proponents of intercountry adoption argue that efforts to restrict intercountry adoptions tend to reflect political interests, and adversely affect children by extending the amount of time they will languish in an institution or remain on the streets. Based on research on the negative effects of early childhood deprivation, it seems clear that permanent solutions – including intercountry adoption – must take precedence over temporary solutions such as foster care or orphanages. Research in child development has shown that the quality of caregiver-infant relationships in the first years of life may be more important than the quantity of nourishment in facilitating healthy human development (Longres, 2000, Chp. 16).Children who experience deprivation of a primary caregiver as a result of institutional care, or multiple caregivers in foster care, are at a greater risk for suffering from emotional, behavioral and developmental problems that impair their ability to form relationships, learn, and work in meaningful ways.

Recommendations and future direction

There was an unprecedented rise in the number of conflicts and complex emergencies throughout the world in the 1990s. From 1978 to 1985, five complex emergencies were identified per year, and in 1995 there were 23; the number of people in need of humanitarian aid has increased threefold since the 1980s (Maynard, 1999). Many factors contributed to this rise, including the end of the Cold War, global connectivity of individuals and organizations, decentralization of governments, and the changing nature of armed violence itself. According to Maynard (1999:6):

> "Much of today's armed violence is born of intense animosity among identity groups based on ethnicity, language, culture, race, religion, regional roots, or other fundamentally differentiating factors and hence can be labeled *identity conflict*."

Because of their grassroots nature, identity conflicts tend to affect more people – especially civilians – resulting in massive casualties and social disruption, as represented in the genocide in Rwanda and the conflicts in Bosnia and Herzegovina in the 1990s. Two of the areas hardest hit by the tsunami, Sri Lanka and the province Aceh, Indonesia, have been fighting ethnic and religious wars for years. Thus, the nature of conflicts, general breadth, and complicated interaction of variables involved in these situations contribute to the challenges of responding to emergencies today.

The Evan B. Donaldson Adoption Institute urges that all nations give priority to the immediate and long-term protection and care of children separated from parents and families as a result of armed conflict, natural disasters or population displacement. Toward that tend, we offer the following recommendations:

- Efforts to trace and reunite unaccompanied and separated children must also include plans for family reintegration and ongoing support after a family has been reunited. At the same time, experience suggests that a "reunification at any cost" mentality should be viewed with caution, as it might not always be in the child's best interest or appropriate in certain contexts (ISS/UNICEF, 2005). Each child's situation should be viewed individually, with consideration of his/her history, personality and family situation. Relatives who are willing to provide care should be assessed for their ability to respond to those children's needs. Children should be able to participate, in a manner appropriate to their age and degree of maturity, in decisions about their future.

- Although the UNHCR stipulates two years as a "reasonable period" for the tracing of and reunification with parents or other surviving family members, children should not be unduly left in temporary care. Understanding the detrimental effects of prolonged institutionalization, consideration of a child's age and situation – i.e. clearly orphaned – should be factored into whether two years is "reasonable." Other plans for permanency should be made in tandem with reunification efforts. Just as with children in foster care under "normal" situations, concurrent planning and consideration of alternative solutions, should a child not be able to return home, need to occur as soon as possible to ensure that a child is not in "limbo" longer than necessary.

care and institutional care, see the June 2002 Center for Adoption Policy Memorandum, "Resolving conflicts between the UN Convention on the Rights of the Child and the Hague Convention on Intercountry Adoption" at http://www.adoptionpolicy.org/pdf/hague.pdf

- Institutions created for the temporary shelter of children in the immediate aftermath of an emergency need to scrupulously pursue efforts to reunify them with their families. In particular, foreign organizations with clearly designated funds to establish orphanages should be monitored to ensure they do not profit from humanitarian aid, and should establish a clear exit plan to prevent the establishment of permanent institutional care. Humanitarian aid money should be allocated to the strengthening or development of community-based and family-based solutions. The development of foster care programs should be viewed as a temporary answer for children without parental care, and in countries where adoption is an accepted practice, a system of permanent, family-based care such as in-country adoption should be developed.

- Child welfare professionals should be among the experts – along with physicians and mental health specialists – to help in the immediate aftermath of an emergency. In countries where a system of child welfare may be weak or nonexistent, child welfare experts can assist in assessing immediate needs and developing long-term systems of care. Governments need to be educated about the detrimental effects of institutional care on child development, and resources should be allocated to the development of family-based, permanent solutions of care.

- In countries where adoption is an accepted practice, priority should be given to adoption by relatives, wherever they live, with preference for in-country adoption when possible. However, intercountry adoption should be a viable and available option, along with other family-based permanent solutions, for children in need of permanent families. At the same time, the need for intercountry adoption may indicate internal problems such as poverty and inequality, and should be linked with efforts to improve conditions for all children within a society.

- In countries with established legal practices of intercountry adoption, there is no evidence to suggest that banning the practice halts such abuses as the trafficking of children. Furthermore, imposing blanket bans in response to reported abuses relegates children legitimately in need of homes to additional years in institutions, or worse; more thoughtful, case-by-case approaches are necessary. It also would be beneficial if more countries ratified and/or followed the provisions of the Hague Convention, which is designed to curb and prevent abuses. In addition, more accurate tracking of and targeted responses to trafficking and other abuses would help deal more effectively with the problems and assist in determining whether intercountry adoption contributes to any of them.

- International standards for the care of children in emergencies should be established and adhered to by adoption professionals and children's rights advocates. These must include an understanding of the need for permanency, and of the problems caused by temporary and institutional care. They also must address children's rights to grow up in their countries and families of origin whenever possible, but also their right to grow up in a permanent, loving family elsewhere when necessary. Both the CRC and the Hague Convention are limited because they have not been globally accepted. The United States is the only nation that has not ratified the CRC, and there have been significant delays in the U.S. ratification and implementation of the Hague Convention.

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