



International Federation
of Red Cross and Red Crescent Societies

IDRL ASIA-PACIFIC STUDY

INDONESIA

**LAWS, POLICIES, PLANNING AND PRACTICES
ON INTERNATIONAL DISASTER RESPONSE**

JULY 2005

About This Report

When disasters strike, there are times when the resources of an affected country are overwhelmed and international assistance is required. In these situations, it is essential that such assistance can be provided quickly, effectively, to the highest possible standards and for the immediate and long term benefit of affected communities.

This report is an examination of national laws and policies, as well as regional and international treaties, declarations and agreements, to determine their current and potential impact on international disaster response operations in Indonesia.

In particular it examines the current legal regime applicable to Indonesia on issues such as: offers and requests for assistance; the entry and facilitation of foreign relief organizations, personnel, relief goods and equipment; the coordination of assistance; and standards of quality and accountability.

It also seeks to draw on the practical experiences and lessons learned from past international disaster response operations, to understand how the legal regime has, or has not, been applied in practice, and to identify examples of good practice or challenges to be addressed.

The methodology for this report is attached in Annex B.

Context

This report forms part of the IDRL (International Disaster Response Laws, Rules and Principles) Asia-Pacific Study, which was conducted during 2004 and 2005 in:

- Fiji
- Indonesia
- Myanmar
- Nepal

The IDRL Asia-Pacific Study was undertaken as part of the wider IDRL Programme, led by the International Federation of Red Cross and Red Crescent Societies in Geneva. Further information can be found at the following site: www.ifrc.org/what/disasters/idrl

Acknowledgements

This report was prepared by Victoria Bannon, IDRL Coordinator, International Federation of Red Cross and Red Crescent Societies, with significant contribution from Rachmat Ahadijat and Rarasworo from Indonesian Red Cross, who undertook detailed legal research in Indonesia, and Omar Farah, Intern, Legal Affairs Unit, International Federation of Red Cross and Red Crescent Societies, Geneva.

This study was primarily funded by AusAID, through Australian Red Cross, as well as other contributors to the IDRL Programme Annual Appeal

All feedback should be addressed to:
Victoria Bannon, IDRL Coordinator, Asia-Pacific
International Federation of Red Cross and Red Crescent Societies, Bangkok Regional Delegation
Email: victoria.bannon@ifrc.org

TABLE OF CONTENTS

<u>SPECIAL NOTE: EARTHQUAKE AND TSUNAMI IN 2004.....</u>	4
<u>PART I – COUNTRY BACKGROUND.....</u>	4
SOCIAL AND POLITICAL CONTEXT.....	4
DISASTERS IN INDONESIA.....	4
GOVERNMENT AND LEGISLATIVE STRUCTURE	5
<u>PART II – OVERVIEW OF RELEVANT LAWS AND POLICIES.....</u>	6
INTERNATIONAL, REGIONAL AND BILATERAL INSTRUMENTS.....	6
MULTILATERAL AGREEMENTS.....	6
ASSOCIATION OF SOUTH EAST ASIAN NATIONS	7
LEGAL STATUS AGREEMENTS WITH INTERNATIONAL ORGANISATIONS.....	8
BILATERAL TREATIES	9
NATIONAL DISASTER MANAGEMENT PLANNING AND LEGAL INSTRUMENTS.....	10
5-YEAR NATIONAL DEVELOPMENT PLANNING	10
DISASTER MANAGEMENT LEGISLATION.....	11
DETAILED RESEARCH FINDINGS AND OTHER RELEVANT LEGISLATION	14
ENTRY, DEPARTURE AND LEGAL STATUS OF FOREIGN RELIEF PERSONNEL	14
REGISTRATION OF NON-PROFIT ORGANIZATIONS	17
CONTROL OF FOREIGN NATIONALS WITHIN THE TERRITORY.....	17
TELECOMMUNICATIONS REGULATIONS	18
COORDINATION OF INTERNATIONAL DISASTER RESPONSE.....	21
IMPORT AND CUSTOMS REGULATIONS	21
<u>PART III – PRACTICE AND EXPERIENCES</u>	23
ACCESS AND ENTRY OF ORGANIZATIONS AND PERSONNEL.....	23
REQUESTS FOR ASSISTANCE.....	24
COORDINATION.....	24
PROFESSIONAL QUALIFICATIONS	26
TELECOMMUNICATIONS.....	26
QUALITY OF ASSISTANCE.....	26
ACCOUNTABILITY.....	27
<u>PART IV - CONCLUSIONS</u>	27
<u>ANNEXES</u>	
ANNEX A – ACRONYMS	
ANNEX B – RESEARCH METHODOLOGY	
ANNEX C – BIBLIOGRAPHY	

Special Note: Earthquake and Tsunami in 2004

Much of the research for this report was conducted prior to the earthquake and tsunami which hit Indonesia and 11 other countries on 26 December 2004. It was decided that this report would be prepared in the context of the “pre-tsunami” experiences of Indonesia, and that a “post-tsunami” review would be undertaken during 2005.

PART I – COUNTRY BACKGROUND

Social and political context¹

Indonesia is an archipelago of 13,700 islands extending across a distance of some 5,000 km and plagued by poverty and ethnic, religious and political unrest. Its population of approximately 230 million people, the fourth largest in the world, is 87 per cent Muslim, predominately rural and made up of numerous ethnic groups. Of this, nearly 60 per cent (120.5 million people) live on the densely populated island of Java, where rising income disparity has led to some of the nations more complex social problems.

Four years on from the democratic elections of 1999, Indonesia’s economic outlook remains uncertain and the current growth rate of three per cent holds no prospect of reducing unemployment, which, at a reported 40 million people, is dramatically high. Meanwhile, average basic wages continue to be depressed and the country’s industrial capacity is under-utilised and shrinking as international companies are reducing promotion demands. According to the latest statistics, about 49.5 million people (almost 25 per cent of the population) are still living below the poverty line, with many more on the margin. Large numbers of people have no access to education and basic health care; malnutrition is widespread, as is exposure to diseases.

There is still social and political unrest in a number of provinces, caused by conflict over autonomy, and compounded by the economic crisis, which has continued for the past six years. The secessionist conflict in Aceh has deteriorated in 2003, with the peace agreement between the Indonesian government and GAM (Free Aceh Movement) lasting only for a brief period. Since mid-May 2003, when the province was placed under martial law, clashes have increased between the Indonesian military and the secessionists.

Disasters in Indonesia²

Indonesia is one of the most natural disaster-prone countries in the world – a virtual ‘supermarket’ of disaster. It is located at the friction points of three continental tectonic plates and is prone to seismic activities such as earthquakes and tsunamis. There were several tsunamis which hit some parts of Indonesia during the 1990s, in Flores island, East Nusa Tenggara in Bayuwangi, East Java. In 2000 a large earthquake hit Bengkulu, Sumatera and in 2004 there were earthquakes measuring more than 6.6 on the Richter scale on Alor Island in East Nusa Tenggara and Nabire in Papua. Most recently on 26 December 2004, there was a massive earthquake in northern Sumatra which caused the devastating tsunamis, killing hundreds of thousands people and leaving many more homeless.

¹ Unless otherwise indicated, this information is taken directly from the International Federation of Red Cross and Red Crescent, *Annual Appeal for Indonesia 2004*

<http://www.ifrc.org/cgi/pdf_appeals.pl?annual04/016404.pdf>.

² Unless otherwise indicated, this information was prepared by the PMI (Indonesian Red Cross).

Indonesia is also prone to landslides. As many as 800 landslides have occurred over the past decade, killing at least 735 people. They are frequently caused by monsoon rain in areas affected by deforestation. Floods also regularly hit some places in Java, Madura, Sumatera dan Kalimantan. In January 2002, severe flooding occurred in Java causing the death of an estimated 150 people and displacement of around 150,000 people. Additionally, Indonesia is also impacted by the El Niño weather pattern. The most devastating El Niño effects occurred in 1998, causing drought and forest fires and resulting in food shortages and health problems throughout Indonesia.

In addition to natural disaster, some areas of Indonesia have also experienced many years of armed conflict, particularly in Aceh province³, during which thousands people have been killed or wounded.

Table 1: Top 10 Natural Disasters in Indonesia sorted by numbers of people killed and affected

Disaster	Date	Killed	Disaster	Date	Affected
Wave / Surge	26-Dec-2004	165,708	Wild Fires	Oct-1994	3,000,000
Earthquake	21-Jan-1917	15,000	Drought	1972	1,750,000
Drought	1966	8,000	Drought	9-Apr-1973	1,750,000
Volcano	1909	5,500	Drought	1998	1,065,000
Volcano	May-1919	5,000	Flood	9-Feb-1996	556,000
Earthquake	12-Dec-1992	2,500	Wave / Surge	26-Dec-2004	532,898
Earthquake	28-Mar-2005	1,659	Flood	14-Mar-1966	524,100
Wind Storm	Jun-1973	1,650	Epidemic	1-Jan-1986	500,000
Volcano	3-Jan-1963	1,584	Earthquake	14-Jul-1976	454,755
Volcano	1930	1,369	Flood	Dec-1983	410,497

Created on: Jun-13-2005. - Data version: v05.06 Source: "EM-DAT: The OFDA/CRED International Disaster Database, www.em-dat.net - Université catholique de Louvain - Brussels - Belgium

Government and legislative structure⁴

Indonesia is a republic with 30 provinces, two special regions and one special capital city district. The president is both the head of state and head of government and is elected by direct citizens' vote. The House of Representatives (or Dewan Perwakilan Rakyat) has 550 seats and members are elected for 5-year terms. The House of Regional Representatives (or Dewan Perwakilan Daerah) provides legislative input into the House of Representatives on issues affecting regions. The role of the People's Consultative Assembly (or Majelis Permusyawaratan Rakyat) includes inaugurating and impeaching the president and making constitutional amendments, and consists of popularly elected members of the other houses.

The Constitution was adopted in 1945, was abrogated in 1949 and restored in 1959. The legal system is based on Roman-Dutch law, but has been substantially modified by indigenous concepts, new criminal procedures and new election codes. The justices of the Supreme Court are appointed by the president, after candidates are approved by the legislature. Since 2004, the Supreme Court has assumed administrative and financial responsibility for the lower court system. In 2003, the president invested a separate Constitutional Court.

³ The full title of the province is Nanggroe Aceh Darussalam.

⁴ The following information is mainly extracted from the *CIA World Factbook* <<http://www.cia.gov/cia/publications/factbook/geos/id.html>> (last updated 2 June 2005)

Based on *Decision III of 2000 of the People's Consultative Assembly*, the hierarchy of Indonesian legislation is as follows:

- The Constitution
- Decisions of the People's Consultative Assembly
- Acts⁵
- Government Regulations substitute to an Act⁶
- Government Regulations
- Presidential Decrees
- Provincial/Municipality/District Regulations

The *Decision III of 2000* also stipulates that the Supreme Court, Board of State's Financial Audit, a Minister, the Indonesian Central Bank or Government-established agencies, boards or commissions may make regulations or decisions to implement existing legislation, provided this does not contravene or contradict any of its provisions. For example, a Minister has the authority to issue a Ministerial Decision to implement an Act or a Government Regulation.

With regard to the application and implementation of international law, Indonesia has a dualist system whereby the Government must enact legislation (an Act) for each international treaty in order for it to become part of Indonesian law.

PART II – OVERVIEW OF RELEVANT LAWS AND POLICIES

International, regional and bilateral instruments

Multilateral agreements

Indonesia has acceded to both the *Convention on the Privileges and Immunities of the United Nations*⁷ and the *Convention on the Privileges and Immunities of the Specialized Agencies*⁸.

Whilst Indonesia is a member of the World Customs Organisation, it is not party to the various Conventions and Annexes relevant to international disaster response such as the *Convention on Temporary Admission (Istanbul Convention)*⁹ or the *International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention)*.¹⁰

⁵ Made by the Parliament together with the government to implement the Constitution

⁶ Made by the President in an emergency situation under the condition that it will be proposed as an Act in the following parliament session.

⁷ *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946). Indonesia acceded on 8 March 1972.

⁸ *Convention on the Privileges and Immunities of the Specialized Agencies*, 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948). Indonesia acceded on 8 March 1972.

⁹ *Convention on Temporary Admission*, 26 June 1990 (entered into force 27 November 1993) (*Istanbul Convention*), in particular Annex B.9 concerning goods imported for humanitarian purposes.

¹⁰ Indonesia has ratified neither the *International Convention on the Simplification and Harmonization of Customs Procedures*, 18 May 1973 (entered into force 25 September 1974) or its annex F.5 concerning urgent consignments, or the *International Convention on the Simplification and Harmonization of Customs Procedures as amended*, 26 June 1999 (not yet in force) or its Annex J Chapter 5 on relief consignments.

Indonesia is not a signatory to the *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*¹¹, nor has it ratified or acceded to the *Framework Convention on Civil Defence Assistance*.¹²

It has, however, ratified the *Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency*¹³ and the *Convention on Early Notification of a Nuclear Accident*.¹⁴

Association of South East Asian Nations

Indonesia was one of the original five founding members of the Association of South East Nations (ASEAN), established in 1967. Now comprising ten member countries¹⁵, ASEAN aims to:

- (i) to accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in order to strengthen the foundation for a prosperous and peaceful community of Southeast Asian nations, and (ii) to promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in the region and adherence to the principles of the United Nations Charter.¹⁶

Disaster management has always been an issue of importance to ASEAN. In 1971 it formed the ASEAN Expert Group on Disaster Management (AEGDM) which met every two years. More recently, the 12th Meeting of the AEGDM in 2002 the group was restructured into the current ASEAN Committee on Disaster Management (ACDM), which meets on an annual basis in accordance with its revised terms of reference adopted in 2003.¹⁷

The mission of the ACDM is to enhance cooperation in all aspects of disaster management prevention, mitigation, response, and recovery through mutual collaboration activities, and its main goal is to minimise the adverse consequences of natural disasters and other major calamities on the economic and social development in ASEAN Member Countries.¹⁸ The ACDM has also developed the ASEAN Regional Programme on Disaster Management which was recently adopted, which includes aspects relating to capacity building, sharing of information and resources, engaging external partnerships, and public education, awareness and advocacy in disaster management.¹⁹ Some specific activities proposed include: training

¹¹ *Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations*, opened for signature 18 June 1998, United Nations depositary notification C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005).

¹² *Framework Convention on Civil Defence Assistance*, opened for signature 22 May 2000, 2172 UNTS 231, (entered into force 23 September 2001) ('*Framework Convention*').

¹³ *Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency*, 26 September 1986, 1457 UNTS 133 (entered into force 26 February 1987).

¹⁴ *Convention on Early Notification of a Nuclear Accident*, 26 September 1986, 1439 UNTS 275 (entered into force 27 October 1986).

¹⁵ Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam.

¹⁶ ASEAN, *Overview* <<http://www.aseansec.org/64.htm>> at 20 May 2005.

¹⁷ ASEAN Committee on Disaster Management, *Historical Background*, <http://www.acdm.net/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=2&MMN_position=2:2> at 29 May 2005.

¹⁸ ASEAN Committee on Disaster Management, *Mandate* <http://www.acdm.net/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=4&MMN_position=3:3> at 29 May 2005.

¹⁹ ASEAN Committee on Disaster Management, *ASEAN Regional Programme on Disaster Management* <http://www.acdm.net/index.php?&MMN_position=1:1> at 29 May 2005.

for trainers; contingency plan development; formulation of emergency manuals; and closer cooperation between ACDM focal points, UNHCR and other UN bodies.²⁰

In addition to general cooperation tools, ASEAN has formed a number of agreements and declarations relevant to international disaster response:

- § *Agreement for the Facilitation of Search for Aircrafts in Distress and Rescue of Survivors of Aircraft Accidents*, Association of South East Asian Nations (14 April 1972)
- § *Agreement for the Facilitation of Search of Ships on Distress and Rescue of Survivors of Ship Accidents*, Association of South East Asian Nations (15 May 1975).
- § *Declaration on Mutual Assistance on Natural Disasters*, Association of South East Asian Nations (26 June 1976).

Additionally, at a recent ASEAN Ministerial Meeting on Disaster Management, the Ministers

emphasized the need to respond effectively to assist member countries during major disasters and calamities [and] ... therefore agreed to develop a regional instrument on disaster management and emergency response to enhance disaster management in the region and facilitate cross border movement of assistance.²¹

Whilst this agreement is not yet finalised, it is hoped that it will make a significant contribution towards improving systems for international disaster response within the region.

Legal Status Agreements with International Organisations

Indonesia has entered into a number of standard agreements with the United Nations and its agencies for the provision of technical assistance or to establish in-country offices²² as well as specific agreements with UNICEF²³ and the World Health Organisation.²⁴ Indonesia has also

²⁰ ASEAN Secretariat, *Social Development* <<http://www.aseansec.org/8558.htm>> at 20 May 2005.

²¹ ASEAN Committee on Disaster Management, *Announcement on the ASEAN Ministerial Meeting on Disaster Management*, Phnom Penh, 7 December 2004, <<http://www.acdm.net/>> at 12 April 2005.

²² *Standard Agreement on Operational Assistance*, United Nations, including United Nations Industrial Development Organization), the International Labour Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization, International Atomic Energy Agency, Universal Postal Union and Inter-Governmental Maritime Consultative Organization and Indonesia, 12 June 1969, 925 UNTS 82 (entered into force 12 June 1969); *Exchange of letters (with attachment) constituting an agreement by which the Agreement between the United Nations Special Fund, signed at Djakarta on 7 October 1960, and the Revised Basic Agreement for the provision of technical assistance between the Organizations members of the United Nations Technical Assistance Board and the Government of Indonesia, signed at Djakarta on 29 October 1954, are deemed revived and applicable to activities of the United Nations Development Programme in Indonesia subject, as regards to the second of those agreements, to certain amendments thereto*, 1 November 1966, 17 November 1966 and 25 January 1967, 588 UNTS 215, United Nations Development Fund (Special Fund), United Nations, International Labour Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization, International Atomic Energy Agency, Universal Postal Union and Inter-Governmental Maritime Consultative Organization and Indonesia (entered into force 17 November 1966).

²³ *Agreement between the United Nations International Children's Emergency Fund and the Government of the Republic of Indonesia Concerning the Activities of the UNICEF in Indonesia*, 6 April 1950, UNICEF-Indonesia, 68 UNTS 254 (entered retroactively into force on 27 December 1949); *Agreement Concerning Activities of UNICEF in Indonesia*, 17 November 1966, UNICEF-Indonesia, 758 UNTS 49 (entered into force 17 November 1966).

signed an agreement with the International Federation of Red Cross and Red Crescent Societies providing for the establishment of a country delegation in Indonesia to among other things, “assist the Government in the implementation of issues as stipulated in the Technical Cooperation Arrangement between the Federation and the PMI.”²⁵ The agreement also defines the legal personality the country delegation will take while operating there and outlines the various privileges and immunities the Head of Delegation will enjoy in their official capacity.²⁶

Bilateral treaties

There are also arrangements between Indonesia, and the governments of Australia and the United States of America regarding close coordination of search and rescue services in the event of a disaster or emergency, which are briefly described below.

Australia

Recognizing that effective emergency relief and disaster management may require a transnational effort, on 13 April 2004 the governments of Indonesia and Australia concluded a bilateral search and rescue arrangement to “[a]ssist each other, to the extent possible, in the conduct of SAR missions....”²⁷ Moreover, the agreement minimizes the potential for delays during an emergency response that geo-political boundaries and diplomatic protocol often entail. Accordingly, “[t]he normal Diplomatic Clearance for a Party’s aircraft or vessel to enter the airspace or Territorial Sea of the other Party will not be required for a search and rescue vessel to respond to an incident.”²⁸ As a result, the arrangement may be a valuable tool in the context of emergency relief.

United States

Indonesia has also concluded an agreement with the United States, similar to its agreement with the Australia, which facilitates bilateral cooperation in the event of an emergency or disaster. Under Article II, “[e]ither party, on receiving information of a person in distress at sea, shall take urgent measures to provide the most appropriate assistance available regardless of nationality [...] or circumstances of such person.”²⁹ While the Indonesian / US agreement does not contemplate similar reductions to the territorial and diplomatic barriers between the countries in the way that the Australian search and rescue agreement does, the essential framework under which mutual assistance is possible is codified in the agreement.

²⁴ *Basic Agreement for the Provision of Technical Advisory Assistance or other Services by the World Health Organization*, 28 March 1951, World Health Organization – Indonesia, 103 UNTS 71 (entered into force 28 March 1951); *Basic Agreement for the Provision of Technical Advisory Assistance*, World Health Organization – Indonesia, 307 UNTS 15 (entered into force 17 February 1958).

²⁵ *Arrangement Between the International Federation of Red Cross and Red Crescent Societies and the Government of Indonesia on the Establishment of the Country Delegation of the Federation and its Activities in Indonesia*, signed 22 November 2002, art 3(3).

²⁶ *Arrangement between the International Federation of Red Cross and Red Crescent Societies and the Government of Indonesia on the Establishment of the Country Delegation of the Federation and its Activities in Indonesia*, signed 22 November 2002, arts 5 and 11.

²⁷ *Arrangement between Australia and Indonesia for the Co-ordination of Search and Rescue Services, in Accordance with Paragraph 2.1.4 of the Annex to the International Convention on Maritime Search and Rescue, 1979 as Amended*, 13 April, 2004, art 2.2.

²⁸ *Arrangement between Australia and Indonesia for the Co-ordination of Search and Rescue Services, in Accordance with Paragraph 2.1.4 of the Annex to the International Convention on Maritime Search and Rescue, 1979 as Amended*, 13 April, 2004, art. 4.2.

²⁹ *Agreement between the United States and the Government of the Republic of Indonesia on Maritime Search and Rescue*, art 2, Vol. 2202, I-39057.

Malaysia

In the wake of the adverse environmental effects wrought by forest fires, in 1997 the governments of Indonesia and Malaysia signed an agreement outlining their standard operating procedures for cooperation and disaster relief. “The agreement spells out joint operations, including the deployment of personnel, equipment, search and rescue missions, training, and information exchange.”³⁰ According to the Malaysian Ministry of Foreign Affairs, the Governments have recognized the value of bypassing bureaucratic requirements with respect to border crossings where forest fires or disaster and humanitarian crises in general require an expedited relief response.³¹

National disaster management planning and legal instruments

5-year national development planning

Indonesia has periodically undertaken a 5-year national development planning process. The *Sixth National Development Plan from 1993/1994 – 1998/1999*, identified a number areas relating to disaster management, which included the following:

- § Promotion of community awareness and preparedness specifically in disaster prone areas;
- § Promotion of the capability of community members and officials in search, rescue, and the provision of prompt emergency medical services to disaster victims;
- § Improvement community protection against disaster hazards will be promoted through training and education;
- § Promotion of scientific and technological capabilities for detection of disaster hazards through the provision of sufficient equipment in accordance with human resources development;
- § Provision of sufficient equipment for search and rescue and emergency medical services;
- § Utilise Armed Forces and their equipment in emergency situations to assist the affected area including for rehabilitation;
- § Formulation of standardized operation procedures for different disaster hazards and expedite the development of respective guidelines covering all cycles of disaster;
- § Formulation of regulations on disaster prevention and management such as land use management;
- § Improvement of disaster preparedness and mitigation through research and mapping of disaster prone areas and application of appropriate science and technology;
- § Improvement of rehabilitation and reconstruction of infrastructure and develop the relevant means required for communities to return to normal functions with greater resilience; and
- § Implementation of mitigation and preparedness through a series of efforts such as: risk mapping; early warning systems; awareness and training; disaster information systems; integration of disaster information in spatial planning; local government legislation; and law enforcement.³²

³⁰ *Malaysia and Indonesia Sign Joint Disaster Management Pact*, BBC World News, December 11, 1997, <<http://news.bbc.co.uk/1/hi/world/monitoring/38781.stm>>.

³¹ *Malaysia and Indonesia Agree to do Away with Bureaucracy in Disaster Relief*, Press Release, 8 January 1998, <<http://domino.kln.gov.my/KLN/press.nsf/0/7aec2a03921142bac82569cf001f2fed?OpenDocument>>.

³² Adang Setiana, “Earthquake Disaster Preparedness in Indonesia”, *International Workshop on Comparative Study of Systems of Law of Earthquake Disaster Preparedness and Reduction*, Beijing, 26-28 June 2000, 3-4.

More recently Indonesia's *Medium Term Development Plan 2005-2009* was launched. This plan is considered to be different to the previous plans because it was formulated after the first ever direct presidential elections and reflects the specific agenda of the President. In particular it is said to promote greater focus on policy and institution-building and on social and political agendas, with an emphasis on the role of civil society.³³

The plan focuses on three broad agendas:

- § Creating an Indonesia that is safe and peaceful
- § Establishing justice and democracy for all citizens
- § Improving welfare of all citizens and addressing economic and social sector policies and programs³⁴

At the time of writing, it was not clear how disaster management had been incorporated into this planning instrument³⁵, however of some interest for this study is the acknowledgement of the need to improve public services, improve bureaucratic process and reduce corruption. This has been described as follows:

A second priority is to improve delivery of public services ranging from delivery of education and health to the issuance of business licenses and permits. As we know, numerous reports show clearly that weakness in administrative capacity, poor civil service incentives, and endemic corruption in the bureaucracy are the primary causes of poor service delivery. Thus, our medium strategy will focus on civil service reforms as the best way to address these causes of poor service delivery. These will include programs to improve transparency, openness and accountability of the civil service. To do this we intend to strengthen the internal and external audit agencies, introduce a code of public servants ethics and to increase our efforts to eradicate corruption in government.³⁶

Similarly, there were commitments on reducing poverty, the empowerment and protection of vulnerable groups and on “improving access, equity, and the quality of basic social services including education, health and family planning and community services for the poor and vulnerable.”³⁷

Disaster management legislation

National coordination for natural disasters first began in 1966, with the establishment of the Advisory Board for Natural Disaster Management, which focussed primarily on the provision of emergency relief for victims of natural disaster.³⁸ In 1979, *Presidential Decree No. 28*

³³ Sri Mulyani Indrawati, Minister of State for National Development Planning/Chairperson of National Development Planning Agency (Bappenas), “Overview of Indonesia’s Medium-Term Development Plan 2004–2009”, Speech presented at the Pre-CGI Meeting, Jakarta, 19 January 2005.

³⁴ Sri Mulyani Indrawati, Minister of State for National Development Planning/Chairperson of National Development Planning Agency (Bappenas), “Overview of Indonesia’s Medium-Term Development Plan 2004–2009”, Speech presented at the Pre-CGI Meeting, Jakarta, 19 January 2005.

³⁵ A full English version of Plan was not available at the time of writing.

³⁶ Sri Mulyani Indrawati, Minister of State for National Development Planning/Chairperson of National Development Planning Agency (Bappenas), “Overview of Indonesia’s Medium-Term Development Plan 2004–2009”, Speech presented at the Pre-CGI Meeting, Jakarta, 19 January 2005.

³⁷ Sri Mulyani Indrawati, Minister of State for National Development Planning/Chairperson of National Development Planning Agency (Bappenas), “Overview of Indonesia’s Medium-Term Development Plan 2004–2009”, Speech presented at the Pre-CGI Meeting, Jakarta, 19 January 2005.

³⁸ Adang Setiana, “Earthquake Disaster Preparedness in Indonesia”, *International Workshop on Comparative Study of Systems of Law of Earthquake Disaster Preparedness and Reduction*, Beijing, 26-28 June 2000, 2.

established the Natural Disaster Management Coordinating Board, known as Bakornas PBA.³⁹

Over the years, several additional Decrees have been adopted which have changed the name of the organisation (now Bakornas PBP) and expanded the definitions and scope of activities associated with disaster, to include man-made disasters, environmental disaster and industrial accidents. In 2001, two additional Presidential Decrees extended this further to include complex emergencies and internally displaced people.⁴⁰

Aside from the above, there is little in the way of singular, comprehensive disaster relief legislation. Rather, disaster countermeasures are incorporated into sector laws, for example:

- *Act No. 11 /1974 concerning Water Resources Management*
- *Act No. 6/1974 concerning Basic Arrangement on Social Welfare*
- *Act No. 4/1984 concerning Epidemics*
- *Act No. 5/1990 concerning Conservation of Biological Natural Resources and its Ecosystems*
- *Act No. 23/1992 concerning Health*
- *Act No. 24/1992 concerning Spatial Planning*
- *Act No. 23/1997 concerning Environmental Management*
- *Act No. 41/1999 concerning Forestry*⁴¹

Legislation governing the use of Indonesian waterways by foreign vessels have also incorporated provisions that anticipate events that would require emergency relief in ways relevant to humanitarian organizations. For example, the prohibition against ships exercising the right of archipelagic landing in Indonesian territory is waived under Article 4, Paragraph 5 of the under the *Indonesian Government Regulation Number 37 of 2002*, “in the event of a disaster.”⁴² That same Article contemplates that foreign vessels in the archipelagic waters of Indonesia will be free to stop and drop anchor “to render assistance to a person or persons or a ship or ships experiencing a disaster.”⁴³

Definitions of disaster management

Disaster management is currently described as efforts to manage disasters, either caused by nature or human acts, that cover prevention, mitigation, rescue, rehabilitation, and reconstruction activities.⁴⁴ Disaster management with respect to refugees includes provision of preventative services, emergency responsiveness, provision of shelter, relocation, and

³⁹ Asian Disaster Reduction Centre, “Legal System”, *Disaster Information on Member Countries: Indonesia* (undated) <http://www.adrc.or.jp/nationframe.php?URL=../management/IDN/Indonesia_Legal_System.html&Lang=en&NationCode=360> at 20 May 2005.

⁴⁰ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees* and *Presidential Decree of the Republic of Indonesia No. 111 Year 2001 on Amendment of Presidential Decree No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*.

⁴¹ Asian Disaster Reduction Center, *Country Report Indonesia, 2003*: <<http://www.adrc.or.jp/countryreport/IDN/2003/page.html>>

⁴² *Government Regulation No. 37 Year 2002 on the Rights and Obligations of Foreign Ships and Aircraft When Exercising the Right to Archipelagic Sea Lanes Passage Through Established Archipelagic Sea Lanes*, art 4 (5).

⁴³ *Government Regulation No. 37 Year 2002 on the Rights and Obligations of Foreign Ships and Aircraft When Exercising the Right to Archipelagic Sea Lanes Passage Through Established Archipelagic Sea Lanes*, art 4 (6).

⁴⁴ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 2.

repatriation assistance intended to ease the suffering of refugees fleeing conflicts, whether social or political, occurring in any given area.⁴⁵

Bakornas PBP

Bakornas PBP is a non-structural coordinating institution for the management of disaster and internally displaced people. It is chaired by the Coordinating Minister for People's Welfare and Poverty Alleviation, who reports directly to the President.⁴⁶ Its membership consists of ministers and various officials from the Ministries of Social Affairs, Home Affairs, Public Works and Transportation as well as the Commander of the Armed Forces. It also involves the Governors of provinces which have been struck by disaster.⁴⁷ The Bakornas PBP Chairman may also invite other Ministers or officials to attend Bakornas meetings and discussions, and involve them in efforts to manage disasters and refugees.⁴⁸

The main activities of Bakornas PBP were elaborated in a *Chairman of Bakornas PBP Decree of 1995 on Organisation, Tasks, Function and Job Description*. These include the following:

- § Formulate planning of integrated, coordinated and sustained disaster management, general policy and action programs;
- § Coordinate the planning of disaster management efforts, either before, during and after disaster covering prevention, mitigation, rescue, rehabilitation and reconstruction;
- § Prepare and formulate guidelines on the implementation of integrated and coordinated disaster management;
- § Coordinate disaster management supervision, control, monitoring, and evaluation;
- § Coordinate the cooperation among governmental as well as non-governmental organizations in the field of disaster management, either nationally or internationally;
- § Coordinate the receipt, distribution and use of assistance for disaster management;
- § Write reports on the implementation of disaster management activities for the President; and
- § Undertake other disaster management tasks as directed by the President.⁴⁹

Sub-national implementing bodies

The major implementing bodies for disaster management are present at the provincial and district levels and consist of Provincial Disaster Management Coordination Units (Satkorlak PBP) and District Disaster Management Implementing Units (Satlak PBP). The latter units are the main disaster management implementation mechanisms and are responsible for

⁴⁵ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 3.

⁴⁶ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 1(1) and Asian Disaster Reduction Centre, "Legal System", *Disaster Information on Member Countries: Indonesia* (undated) <<http://www.adrc.or.jp/nationinformation.php?NationCode=360&Lang=en&NationNum=03>> at 20 May 2005.

⁴⁷ Adang Setiana, "Earthquake Disaster Preparedness in Indonesia", *International Workshop on Comparative Study of Systems of Law of Earthquake Disaster Preparedness and Reduction*, Beijing, 26-28 June 2000, 2.

⁴⁸ *Presidential Decree of the Republic of Indonesia No. 111 Year 2001 on Amendment of Presidential Decree No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 1(2).

⁴⁹ Asian Disaster Reduction Centre, "Legal System", *Disaster Information on Member Countries: Indonesia* (undated) <<http://www.adrc.or.jp/nationinformation.php?NationCode=360&Lang=en&NationNum=03>> at 20 May 2005.

mobilising all related agencies at the district, sub-district and village level, as well as engage local community organisations.⁵⁰

Funding and distribution of relief

Any aid provided by the public for the management of disasters or refugees may be distributed directly to disaster victims or refugees through governors as chairmen of Bakornas PBP Implementing Coordination Units or Chairmen of Bakornas PBP Implementing Units.⁵¹

Aid provided for the management of disaster or of refugees must be coordinated by the Chairman of Bakornas PBP and distributed to Governors or Regents/Mayors as Chairmen of Bakornas PBP Implementing Coordination Units or Chairmen of Bakornas PBP Implementing Units, whose areas are hit by disasters or refugee situations. In critical situations, the aid may be distributed directly to the disaster victims or refugees.⁵²

Because disaster management depends on organized disbursement channels and procedures, the Indonesian Government has developed legal instruments necessary to tailor their national and regional expenditures to account for any sudden exigency. The State Revenue and Expenditure Budget (APBN) refers to Indonesia's annual financial plan as approved by the House of Representatives.⁵³ The national APBN can increase or decrease its contributions to regional APBNs as circumstances require. Article 46 of the *Law of Indonesia Number 33* stipulates that “[t]he Government shall allocate an Emergency Fund from APBN for urgent need in the case of a national disaster and/or extraordinary situation which cannot be coped with by regional APBD alone.”⁵⁴ Thus Indonesia's national resources will be disbursed internally in proportion to the demands of a national crisis. It is not clear whether the national APBN absorbs foreign financial relief donations and loans, so it is difficult to assess the potential usefulness of the revenue sharing law in the context of transnational disaster relief efforts in Indonesia.

Detailed research findings and other relevant legislation

In addition to the legal and policy regime set up specifically to respond to disaster situations, there are a number of other national legal instruments covering a range of topics which impact on international disaster response operations.

Entry, departure and legal status of foreign relief personnel

With the exception of specific agreements formed with the Indonesia government, there is no Indonesian law that specifically regulates the presence of foreign nationals in Indonesia for relief purposes. However, the Indonesian Government has provided for the conferral of diplomatic immunity for individuals and agencies operating there. In its Foreign Relations law, the Indonesian Government has said, “[i]mmunity, privileges, and exemptions from

⁵⁰ Asian Disaster Reduction Centre, “Organisation”, *Disaster Information on Member Countries: Indonesia* (undated) <http://www.adrc.or.jp/nationframe.php?URL=management/IDN/Indonesia_Org.html&Lang=en&NationCode=360> at 20 May 2005.

⁵¹ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 15(1).

⁵² *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 15(2).

⁵³ *Law No. 33 Year 2004 on Fiscal Balance between the Central Government and the Regional Governments*, Section I, art I (16).

⁵⁴ *Law of the Republic of Indonesia Number 33, Concerning Fiscal Balance Between the Central Government and the Regional Governments*, 2004, Section VII, Article 46 (1).

certain obligations shall be accorded to diplomatic and consular missions, [and] special missions ... in accordance with national legislation and international law and practice.”⁵⁵

General administrative requirements for travel to and from Indonesia are governed by the *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration* and several Implementing Regulations and Presidential Decrees, which include:

- § *Government Regulation No. 30 Year 1994 on Procedures for Implementing Departure Prevention and Entry Prohibition Policy*
- § *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*
- § *Government Regulation No. 32 Year 1994 on Visas, Admission Permits, and Immigration Permits*
- § *Presidential Decree No. 103 Year 2003 on Amendment of Presidential Decree No. 18 Year 2003 on Visa Exemption for Short Visits*
- § *Presidential Decree No. 43 Year 2003 on Regulation on Activities of Foreign Nationals, Non-Governmental Organizations and Journalists in the Province of Nanggroe Aceh Darussalam*

The details of these instruments are discussed briefly below.

Permission to enter and leave the territory of Indonesia

In general, anyone who enters or departs from the Territory of Indonesia is required to meet the following conditions:

- § Be in possession of travel documents⁵⁶
- § Undertake an inspection by immigration officers at immigration check points, as determined by the Minister⁵⁷
- § Obtain an Entry Permit before entering the territory⁵⁸
- § Possess a valid visa⁵⁹

Entry Permits

Any foreign nationals in the territory of Indonesia are required to possess an entry permit, which include: transit permits, visit permits, limited-stay permits, or permanent resident permits.⁶⁰ Visit permits are granted to foreign nationals who visit the territory of Indonesia for a short period of time for governmental duties, tourism purposes, socio-cultural activities or business activities.⁶¹

Visas

The types of visas available include diplomatic visas, service visas, transit visas, visit visas and limited-stay visas.⁶² Of most relevance for relief personnel are service visas, which are

⁵⁵ Act No. 37/1999 on Foreign Relations, art 16.

⁵⁶ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 3.

⁵⁷ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 5 (1) and (2).

⁵⁸ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 4(2). Immigration officials may refuse or not grant the permit to the foreign national if he/she fails to fulfill a number of requirements listed in the legislation under article 8.

⁵⁹ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 6.

⁶⁰ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 24(1) and (2).

⁶¹ Law of the Republic of Indonesia No. 9 Year 1992 on Immigration, art 25(2).

⁶² Government Regulation No. 32 Year 1994, art 1.

issued to foreign government officials or persons representing international organisations for non-diplomatic missions.⁶³ Persons entering Indonesia for governmental duties, tourism, socio-cultural activities and other purposes are generally granted visit visas.⁶⁴

Some foreign nationals do not require visas, if their country is the subject of a Presidential Decree granting special visa exemptions.⁶⁵ Accordingly, visa exemptions are available for short visits, on the basis of mutual benefit, reciprocity and non-interference in the security situation.⁶⁶ In an amendment to this, another Presidential Decree lists the countries which may benefit from such an arrangement, based on bilateral or multilateral cooperation with the Government of Indonesia.⁶⁷

Entry and departure restrictions

Certain persons may be temporarily banned from entering the Indonesian territory.⁶⁸ The ban can only be imposed for a maximum of one year, but can be extended for a further period as required.⁶⁹ Reasons for prohibiting the entry of foreign nationals include situations in which:

- § The foreign national is alleged or identified as being involved in transnational organized crime activities;
- § The foreign national, when he/she is in his/her own country or another country, shows a hostile attitude against the Government of Indonesia or commits act(s) that discredit the reputation of the people and the State of Indonesia;
- § The foreign national is alleged to have committed acts against national security and public order, decency, religions and customs belonged to the Indonesian public; or
- § A request has been submitted by a country against a foreign national who is attempting to avoid penalties and execution of punishments in the requesting country as a result of having committed a crime, which is also liable for penalties under the applicable law in Indonesia.⁷⁰

Entry prohibition decisions are taken by the Minister, Attorney General, or Military Commander in accordance with their respective authorities and responsibilities under the relevant legislation.⁷¹

⁶³ *Government Regulation No. 32 Year 1994*, art 2(b).

⁶⁴ *Government Regulation No. 32 Year 1994*, art 2(d).

⁶⁵ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 7(a).

⁶⁶ *Presidential Decree No. 18 Year 2003 on Visa Exemption for Short Visits*, art 2(1).

⁶⁷ *Presidential Decree No. 103 Year 2003 on the amendment of Presidential Decree No. 18 Year 2003*, art 3. The countries granted by visa exemption are: Thailand, Malaysia, Singapore, Brunei Darussalam, Philippines, Hong Kong SAR, Macao SAR, Chili, Maroco, Peru and Vietnam.

⁶⁸ See *Government Regulation No. 30 Year 1994 on Procedures for Implementing Departure Prevention and Entry Prohibition Policy*, art 1(2).

⁶⁹ *Government Regulation No. 30 Year 1994 on Procedures for Implementing Departure Prevention and Entry Prohibition Policy*, art 6(3): "Entry prohibition for immigration purposes or for security maintenance and enforcement and state defense reasons can be imposed for a maximum of one year and is extendable for as long as or less than the previous period."

⁷⁰ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 17.

⁷¹ *Government Regulation No. 30 Year 1994 on Procedures for Implementing Departure Prevention and Entry Prohibition Policy*, art 3 and *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*.

Registration of Non-Profit Organizations

The Indonesian Government requires the registration and accountability of all non-profit organizations which operate in the “social, religious, or humanitarian field.”⁷² Article 11 of *Law 16 of 2001 on Foundations*, requires the Minister of Justice and Human rights consent to the establishment of any new foundation.⁷³ To ensure financial accountability, the law requires that all foundations in receipt of foreign aid greater than 500 million Rupiahs be audited by a public accountant.⁷⁴ In 2004, *Law Number 16 of 2001 on Foundations* was amended adding clauses governing the payment of salaries to the staff and management of NGOs.⁷⁵

Control of foreign nationals within the territory

Once in the territory, the presence and activities of foreign nationals are monitored and controlled in accordance with the relevant “alien control” provision of the immigration legislation.⁷⁶ These controls are the responsibility of the relevant Minister, in coordination with other government bodies and institutions.⁷⁷ Specifically, *Government Regulation No. 31 Year 1994* provides the Minister with authorities and responsibilities to control foreign nationals who enter and depart from the territory of Indonesia, and to control their presence and activities within the territory of Indonesia.⁷⁸ The implementation of controls and coordination is carried out by the Director General of Immigration Affairs.⁷⁹ Alien control is also carried out by Coordinating Teams for Alien Control, established by the Minister at the national and provincial levels and in other areas/regions where Immigration Offices are present.⁸⁰

With the stated intention of achieving smooth and orderly control, the government organizes registration of foreign nationals in the territory of Indonesia⁸¹ and exercises alien control through the following forms and mechanisms:

- § Collecting and processing data of foreign nationals entering or leaving the territory of Indonesia;
- § Registration of foreign nationals in the territory of Indonesia;
- § Monitoring, collecting and processing reports and information on foreign activities;
- § Developing a list of foreign nationals whose entrance or departure from the territory of Indonesia is undesirable; and
- § Other activities⁸²

⁷² The U.S. International Grant Making Project, Council on Foundations, *Country Note for Indonesia*, August 2004: <http://www.usig.org/countrycodes/indonesia.asp>

⁷³ *Law on Foundation: Legalizing Military Business?*, Indonesia-House http://www.indonesia-house.org/dbindhouse/bm/Icw_bis_mil/Ch%20V%20%20Foundation%20Law%20.htm#top

⁷⁴ *Law on Foundation: Legalizing Military Business?*, Indonesia-House http://www.indonesia-house.org/dbindhouse/bm/Icw_bis_mil/Ch%20V%20%20Foundation%20Law%20.htm#top

⁷⁵ *Government Calls on NGOs to Obey Prevailing Rules*: The Jakarta Post, April 4, 2005.

⁷⁶ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, arts 38-46.

⁷⁷ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 41.

⁷⁸ *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*, art 2.

⁷⁹ *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*, art 3.

⁸⁰ *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*, arts 21(1) and (2).

⁸¹ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 38(2).

⁸² *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 40.

Foreign nationals staying in the territory of Indonesia longer than 90 days must register their presence with local immigration offices within 14 days of the 91st day.⁸³ Exemptions from this regulation process are granted to foreign nationals and their families who stay in the territory of Indonesia for diplomatic and consular missions.⁸⁴

Special actions may be taken in the event of activities undertaken by foreign nationals which are dangerous, or are reasonably suspected to be dangerous, for public security and order or which are disrespectful or non-compliant with the applicable legislation.⁸⁵ These actions include:

- § Restriction, change or revocation of entry permits;
- § Prohibition to be in one or several specific places in the territory of Indonesia;
- § Being required to reside in specific places; or
- § Expulsion or deportation from the territory of Indonesia or denial of entry into the territory of Indonesia.⁸⁶

In May 2003, the central government declared martial law (military emergency status) in the special province of Aceh. A year later, the central government lifted the declaration of martial law and area was granted ‘civil emergency’ status. However, both of these declarations grant the same level of access to the outsiders, in particular foreign nationals. As a result, there have been very limited numbers of organizations able to operate and open offices in Aceh.

The distribution of aid to Aceh, financial and otherwise, is governed by a 2003 Presidential Decree which broadly defines permissible activities for foreign nationals, non-governmental organizations, and journalists in the province. Under Article 2, all humanitarian aid from “friendly countries, world bodies and non-governmental organizations” will be administered by the State Coordinating Minister for Public Welfare in a manner consistent with the any humanitarian operation the appropriate regional authorities are carrying out.⁸⁷ For some organizations the government has given permission to base a maximum of two expatriate delegates in Aceh at any given time, and any additional delegates must arrange for a special permit from the central government.

Telecommunications regulations

The use of telecommunications in Indonesia are primarily governed by:

- § *Law No. 36 Year 1999 on Telecommunication*; and
- § *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit.*

General regulations on telecommunications

Telecommunication is described as any transmission, transfer, and/or receipt of any information in the form of signals, signs, writings, pictures, voices, and sounds through wire

⁸³ *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*, art 12(1) and (2).

⁸⁴ *Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions*, art 13.

⁸⁵ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 42(1).

⁸⁶ *Law of the Republic of Indonesia No. 9 Year 1992 on Immigration*, art 42(2).

⁸⁷ *Presidential Decree of the Republic of Indonesia in the Capacity of Central Military Emergency Administrator No. 43 Year 2003 on Control of the Activities of Foreign Citizens, Non-Governmental Organizations and Journalists in the Province of Aceh*, art 2.

systems, optical systems, radio or electromagnetic systems.⁸⁸ The use of telecommunications is based on the principles of public benefit, fairness and equality, legal certainty, security, ethical partnership, and self-confidence.⁸⁹ Its objectives are to support national unity and integrity, improve the people's welfare and prosperity in a fair and equal way, support the economic sector and governmental activities, and intensify international relationships.⁹⁰

In the operation of the telecommunications network, provision of telecommunication services and the operation of special telecommunications, the following factors are considered:

- § Protection of the state interests and security;
- § Anticipation of technology development and global demands;
- § Whether the operation is performed in a professional and accountable manner; and
- § Public participation.⁹¹

Special telecommunications outside of the regular telecommunication network and services may be operated by individuals, government institutions and other legal entities in order to pursue their own needs, national security and defence needs and additional broadcasting needs, subject to the permission of the relevant Minister in charge of administrative affairs.⁹² However, every telecommunications operator must prioritize the transfer, channeling, and delivery of important information concerning:

- § National Security;
- § Safety of human beings;
- § Natural disasters;
- § Distressing circumstances; and/or
- § Epidemics.⁹³

Permits to use telecommunications equipment using radio frequency spectrum for diplomatic purposes are granted based on the principle of reciprocity.⁹⁴

Regulation of telecommunication equipment

Telecommunication equipment that is traded, made, assembled, imported into and/or used in the territory of the Republic of Indonesia must comply with the technical requirements and licencing provisions of the applicable legislation.⁹⁵

Exemptions from these technical requirements are granted for ships bearing foreign flags, when travelling to and from Indonesian waters and/or are operated in Indonesian waters.⁹⁶ The same arrangements also apply to civil foreign aircrafts within Indonesian airspace.⁹⁷

⁸⁸ Law No. 36 Year 1999 on Telecommunication, art 1.

⁸⁹ Law No. 36 Year 1999 on Telecommunication, art 2.

⁹⁰ Law No. 36 Year 1999 on Telecommunication, art 3.

⁹¹ Law No. 36 Year 1999 on Telecommunication, art 7(1) and (2).

⁹² Law No. 36 Year 1999 on Telecommunication, arts 6, 8 and 9.

⁹³ Law No. 36 Year 1999 on Telecommunication, art 20.

⁹⁴ Law No. 36 Year 1999 on Telecommunication, art 37.

⁹⁵ Law No. 36 Year 1999 on Telecommunication, art 32(1).

⁹⁶ Law No. 36 Year 1999 on Telecommunication, art 35(1).

⁹⁷ Law No. 36 Year 1999 on Telecommunication, art 36(1).

Regulation of radio frequency spectrum and satellite orbit

The use of radio frequency spectrums and satellite orbit require permits from the government and may only be operated in accordance with their intended purpose without interfering with one another.⁹⁸ The government may monitor and control their use, and specific conditions of use are to be contained in Government Regulations.⁹⁹

Accordingly, *Government Regulation No. 53 Year 2000* provides further particulars on the use of radio frequency spectrum and satellite orbit use. Specifically, such use must prioritize the interests of national security and defense, safety, distressing circumstances, search and rescue, public welfare and public interests.¹⁰⁰

The use of radio frequencies by ships that bear foreign flags operating in Indonesian waters is prohibited except when used for communicating entry and departure reports prior to entering or leaving Indonesian waters¹⁰¹, or when it is in the interests of national security, the safety of human beings and property, natural disasters, distressing circumstances, epidemics, search and rescue, navigation and shipping traffic security.¹⁰²

Similarly, the use of radio frequency spectrum by foreign civil aircrafts to and from the territory of Indonesia is prohibited except for the purposes of communicating entry and departure reports, navigation, flight traffic safety, national security, the safety of human beings and property, natural disasters, distressing circumstances, search and rescue and epidemics.¹⁰³

There are fees applicable for the use of radio frequency spectrums in Indonesia which depend on the types and width of the frequency band used¹⁰⁴, and similarly for the use of satellite orbit.¹⁰⁵ However, the fees for the use of radio frequency spectrums may be waived if they are used under the special telecommunications of government institutions by foreign country representatives in Indonesia to communicate with their countries of origin, based on the principle of reciprocity.¹⁰⁶

⁹⁸ *Law No. 36 Year 1999 on Telecommunication*, art 33 (1) and (2); *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 17.

⁹⁹ *Law No. 36 Year 1999 on Telecommunication*, art 33 (3) and (4); *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 36(1).

¹⁰⁰ *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 4(e).

¹⁰¹ *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 7(1), (2) and (3).

¹⁰² *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, arts 8(1)(a) and 35(2).

¹⁰³ *Law No. 36 Year 1999 on Telecommunication*, art 36(2); *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, arts 9 and 10(1)(a).

¹⁰⁴ *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 34(1).

¹⁰⁵ *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 34(2).

¹⁰⁶ *Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit*, art 34(2)(c).

Coordination of international disaster response

Coordination of international disaster response in Indonesia is the responsibility of Bakornas PBP.¹⁰⁷ The details of how such coordination might be exercised remain unclear, but it would appear to involve both the coordination of on-the-ground activities as well as the receipt and distribution of donations of cash and in-kind goods.¹⁰⁸ Additional coordination could also be exercised through the mechanisms on the control of foreign nationals, as described above.

Import and customs regulations

The regulation of the importation of relief goods are determined by a number of Finance Minister Decrees and Decrees of the Head of the Food and Drugs Supervisory Body. These include the following:

- § *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*
- § *Decree of Finance Minister of the Republic of Indonesia No. 496/KMK.01/2000 on Establishment as a Body / Institution that is granted Exemption from Import Duties and Customs to Pos Keadilan Peduli Ummat Foundation*
- § *Decree of Finance Minister of the Republic of Indonesia No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*
- § *Decree of Finance Minister of No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*
- § *Decree of Finance Minister of the Republic of Indonesia No. 201/KMK.04/2003 dated May 14, 2003 on Amendment of Decree of Finance Minister No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*
- § *The Second Amendment of Decree of Finance Minister No. 422/KMK.04/1998 on the Use of Book Value on Transfer of Property for Business Merger, Fusion, or Expansion*
- § *Decree of Finance Minister of the Republic of Indonesia No. 389/KMK.04/2003 on the Second Amendment of Decree of Finance Minister No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*
- § *Decree of Head of the Food and Drugs Supervisory Body No. HK.00.05.3.00914 on Imports of Drugs through Special Channels*

Import of relief goods

By Decree of the Finance Minister, a number of goods are exempted from import duties and customs.¹⁰⁹ These include:

¹⁰⁷ Asian Disaster Reduction Centre, "Legal System", *Disaster Information on Member Countries: Indonesia* (undated) <<http://www.adrc.or.jp/nationinformation.php?NationCode=360&Lang=en&NationNum=03>> at 20 May 2005.

¹⁰⁸ *Presidential Decree of the Republic of Indonesia No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees*, art 15(2).

¹⁰⁹ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 2.

- § Goods needed for building or repairing religious buildings, hospitals, polyclinics, and schools, or goods that are part of their permanent inventories;¹¹⁰
- § Clinic cars, facilities to transport sick persons, facilities to transport general worship officers and facilities to transport health officers;¹¹¹
- § Surgical equipment, medical devices and bandage materials used by social organizations;¹¹² and
- § Food, drugs and clothing to be distributed for free for public welfare.¹¹³

The exemptions are applicable to religious, charitable, social and cultural bodies or institutions once they have obtained a permit issued by the Directorate General of Customs and Excise on behalf of Finance Minister.¹¹⁴ The bodies eligible to apply for such exemptions must be listed in *Presidential Decree No. 133 Year 1953*, which includes the Indonesian Red Cross (PMI).¹¹⁵

Import of goods for the needs of international bodies and their officials

Goods which are imported for the needs of international bodies may be exempted from import duties provided that certain conditions are met. Firstly, the international bodies must be located in Indonesia, upon appointment by their parent organizations, to provide technical assistance in social, economic and/or cultural fields.¹¹⁶ The appendix contains a list of recognised international bodies in various fields, approved by the Finance Minister.¹¹⁷ Those in the social and humanitarian fields include the following:

- § WFP
- § UNHCR
- § UNICEF
- § WHO
- § WVI
- § ICRC
- § CARE
- § CRS

¹¹⁰ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 1(a).

¹¹¹ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 1(b).

¹¹² *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 1(e).

¹¹³ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 1(f).

¹¹⁴ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 3(1) and (2).

¹¹⁵ *Decree of Finance Minister of the Republic of Indonesia No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs*, art 5.

¹¹⁶ *Decree of Finance Minister of the Republic of Indonesia No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*, art 1(1)(a).

¹¹⁷ *Decree of Finance Minister of the Republic of Indonesia No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia*, arts 1 and 4.

§ OXFAM

The Chairperson of the international body must then apply to receive the exemptions, which must be approved by recommendation from the State Secretary Minister of the Republic of Indonesia or the appointed official, and implemented by the Director General of Customs and Excise.¹¹⁸ The exemptions only apply to goods which are sent from the parent organisation to the international body based in Indonesia.¹¹⁹

In a subsequent decree, exemption provisions are made for non-project goods for technical cooperation, including motor vehicles delivered by international bodies in order to assist economic, social, and cultural improvement. Also included is emergency aid given to Indonesia, where the funding allocation and details of the goods are not included in other technical cooperation agreements between the international bodies and the Indonesian Government¹²⁰, as well as goods for project and non-project needs that are delivered through international bodies for technical cooperation purposes.¹²¹

Import of drugs through special channels

Some drugs intended for donation purposes may be imported through special channels¹²², provided they comply with the guide on donated drugs issued by the Food and Drugs Supervisory Body¹²³ and only for restricted uses.¹²⁴

PART III – PRACTICE AND EXPERIENCES

The following issues were identified during the in-country visit to Indonesia in November 2004, in particular during the IDRL workshop. Further details of the in-country visit and workshop can be found in Annex B.

Access and entry of organizations and personnel

Some participants noted there was a lack of clarity in the way in which foreign organizations and personnel could enter into Indonesian territory for the provision of relief. It was seen to be a lengthy and complex process, and finalizing the paper work to obtain the necessary legal status could take a long time.

¹¹⁸ Decree of Finance Minister of the Republic of Indonesia No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia, art 6(1).

¹¹⁹ Decree of Finance Minister of the Republic of Indonesia No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia, art 3(b).

¹²⁰ Decree of Finance Minister of No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia, art 1(1)(f).

¹²¹ Decree of Finance Minister of No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia, art 3(c).

¹²² Decree of Head of the Food and Drugs Supervisory Body No. HK.00.05.3.00914 on Imports of Drugs through Special Channels, art 2(b).

¹²³ Decree of Head of the Food and Drugs Supervisory Body No. HK.00.05.3.00914 on Imports of Drugs through Special Channels, art 4(1).

¹²⁴ Decree of Head of the Food and Drugs Supervisory Body No. HK.00.05.3.00914 on Imports of Drugs through Special Channels, art 4(2).

It was also felt that there were significant differences between local and foreign organizations in their ability to access disaster affected areas. There was deemed to be significantly more “red tape” and processes to be followed for foreign organizations, whereas local organizations appeared to have greater access. For some regions of the country experiencing conflict, special registration system significantly limited the ability of foreign relief organizations to provide disaster assistance within those areas.

Whilst it was noted that there had not been many recent disasters which required large scale emergency international relief efforts, in times of disaster the Government had been willing to reduce bureaucratic measures to enable the faster entry and movement of foreign personnel in the territory. However, the ad hoc nature of these arrangements meant that official channels would sometimes be overlooked in preference to the development of individual and less transparent arrangements between personnel and government officials. Some organizations felt they needed to have a better and more detailed understanding of the legal framework applicable to NGOs working in Indonesia.

Requests for assistance

There have been several occasions over the past few years when the Government of Indonesia has either requested international assistance¹²⁵ or has declared that it welcomes international assistance¹²⁶. In one recent situation, an appeal for international assistance was reported to have been made to OCHA by the Provincial Government of Nusa Tenggara Timur, rather than by the central government.¹²⁷

On previous occasions, NGOs including the PMI have also made appeals for international assistance¹²⁸, and government representatives have requested that in-kind assistance such as clothing, drinking water and transport facilities, be provided through local NGOs, the Red Cross or to Satkorlak PBP.¹²⁹

Coordination

In previous operations Bakornas PBP has requested that all assistance be reported and closely coordinated by it.¹³⁰ OCHA has also offered to facilitate contact with Bakornas PBP on behalf of any interested parties.¹³¹

Regular meetings involving government, international organisations and NGOs have been held both in the local area of the disaster and in the capital Jakarta for the purposes of sharing information about assessments, logistics and security, and for avoiding duplication.¹³²

¹²⁵ See for example International Federation of Red Cross and Red Crescent Societies, *Emergency Appeal: Indonesia Earthquake Appeal No. 15/00* (14 June 2000); International Federation of Red Cross and Red Crescent Societies, *Emergency Appeal: Indonesia (Alor Island) Earthquake Appeal No. 25/2004* (22 November 2004).

¹²⁶ See for example OCHA, *Indonesia – Floods Situation Report No. 1*, OCHA/GVA 2002/0028 (1 February 2002); OCHA, *Indonesia - Earthquake Situation Report No. 2*, OCHA/GVA 2004/0014 (6 February 2004).

¹²⁷ International Federation of Red Cross and Red Crescent Societies, *Emergency Appeal: Indonesia (Alor Island) Earthquake Appeal No. 25/2004* (22 November 2004).

¹²⁸ OCHA, *Indonesia – Floods Situation Report No. 1*, OCHA/GVA 2002/0028 (1 February 2002).

¹²⁹ OCHA, *Indonesia – Floods Situation Report No. 2*, OCHA/GVA 2002/0030 (1-2 February 2002).

¹³⁰ OCHA, *Indonesia – Floods Situation Report No. 1*, OCHA/GVA 2002/0028 (1 February 2002); OCHA, *Indonesia - Earthquake Situation Report No. 2*, OCHA/GVA 2004/0014 (6 February 2004).

¹³¹ OCHA, *Indonesia – Floods Situation Report No. 1*, OCHA/GVA 2002/0028 (1 February 2002); OCHA, *Indonesia - Earthquake Situation Report No. 2*, OCHA/GVA 2004/0014 (6 February 2004).

In one instance, a Memorandum of Understanding was concluded between the PMI, International Federation and the Indonesian Government¹³³ following the arrival of an Emergency Response Unit Field Hospital, which was airlifted by the Indonesian army. The MOU sought to clarify the roles and responsibilities of the various parties involved in its operation.¹³⁴

Whilst general communication and dissemination about natural disasters in Indonesia was viewed positively, a significant weakness of the current disaster management and coordination system was identified as being the lack of detailed planning for disaster management. Whilst national disaster management mechanisms were in place and favoured a more decentralized and flexible approach, it also meant that overall disaster response efforts were less effective and were not undertaken in a timely manner. It was felt that a national disaster response plan was needed to address many of the operational gaps present in existing provisions.

In particular, there needed to be much clearer divisions of responsibilities and coordination mechanisms for the different groups expected to participate in disaster response. Two levels of coordination were identified as needing clarification:

International and national coordination

Whilst it was recognized that the UN had its own coordination mechanisms in place for UN agencies, it was still unclear as to how international and foreign organizations could coordinate their activities with the national mechanisms in place. National systems did not establish clear reporting lines and responsibilities, so it has been difficult even to identify which Governmental body or individual would be the most appropriate to coordinate with.

Moreover, there were no clear national systems in place for determining when foreign assistance may be required, nor for communicating this to the relevant organizations. Thus, urgently needed assistance could be delayed from reaching affected populations. It was further noted that the central government rarely gave explicit acknowledgement when international assistance was required or was being provided, which can also contribute to a lack of coordination.

As a result, it was felt that the national disaster management body needed to provide a focal point for foreign relief organizations for coordination and cooperation purposes, seeing as the government was ultimately responsible for disaster management operations in Indonesia. This could be supported by the development of specific plans and mechanisms to encourage greater cooperation between international and national relief efforts. Stronger partnerships between organizations (both national and international) should also be developed to support this process, and the development of normative frameworks, as being examined by the International Federation, was thought to be a useful process.

¹³² See for example International Federation of Red Cross and Red Crescent Societies, *Final Report: Indonesia Floods Emergency Response Appeal 02/04* (20 August 2004); OCHA, *Indonesia – Floods Situation Report No. 3*, OCHA/GVA 2002/0035 (2-5 February 2002).

¹³³ Signed 16 June 2000.

¹³⁴ International Federation of Red Cross and Red Crescent Societies, *Final Report – Indonesia Earthquake Appeal No. 15/2000* (14 November 2001).

National and local coordination

A lack of coordination was also noted between national and local bodies and mechanisms. This often resulted in significant duplication of effort, as different levels of committees or organizations would intervene without adequate communication or cooperation with each other. This was further exacerbated by changes to national disaster management structures when different levels of government changed, resulting in confusion and a lack of transparent processes and reporting lines.

It was felt by some that Indonesia had significant national capacity to respond to disasters within its borders and that the presence of foreign organizations sometimes added further unnecessary layers of confusion. However, it was also noted that sometimes the presence of external bodies could improve accountability and transparency of response operations. It was also thought that government donors, although considered crucial, should be more aware of the situations within the local communities where the operations are taking place. It was felt that donors sometimes placed unreasonable or inappropriate expectations on operations which did not reflect the needs or capacities of local communities, and thus they should stay better informed without becoming directly involved with the on-the-ground activities.

Professional qualifications

In general, there were few problems associated with enabling foreign personnel with professional skills such as doctors, nurses, surgeons and other health professionals to work in disaster situations in Indonesia. However, this also raised an issue of concern that some medical personnel admitted into Indonesia did not have acceptable levels of training or skills. It was felt that more could be done to screen medical and health workers to ensure their qualifications were genuine and that they were fit to practice.

Telecommunications

The geographic isolation of many parts of Indonesia has meant that telecommunications is of high importance for sharing information about disasters and for coordination. Infrastructure for all types of telecommunications is not always available, thus there is a dependence on radio communication in some regions. However, security concerns have sometimes limited the availability of radio licenses, which in turn, have created security concerns for foreign organizations because they are unable to communicate with their staff working in those regions.

Quality of assistance

It was felt that more emphasis needed to be placed on ensuring appropriate standards of quality and accountability of disaster response within Indonesia for both national and international response agencies. Whilst there were a number of suitable tools available, such as the Sphere Standards¹³⁵, as well as those developed and used by individual organizations, these were not being effectively promoted and shared. There was also a lack of understanding about how international standards, such as Sphere, can or should be integrated with Government standards, such as health regulations, needs assessments and methods for distributing relief.

¹³⁵ The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (2nd ed. 2004).

The decentralization of disaster management in Indonesia was also seen as posing a challenge to ensuring good quality and accountability in disaster situations. The absence of common benchmarks has meant that acceptable standards are not being upheld in all regions.

Accountability

The issue of privileges and immunities for international organizations such as the UN was raised by some who felt that such immunities reduced the level of accountability of these organizations. Others, however, felt that accountability was not affected by privileges and immunities – that ultimately, all organizations are present at the discretion of the government and therefore had to demonstrate accountability or would not be allowed to stay. Furthermore, the privileges and immunities were only applicable to activities related to official duties and within the mandate of the organization, and thus enabled activities to be conducted with greater freedom but within reasonable limits.

Concern was also expressed about the need to have greater transparency and standards for reviewing the success and lessons learned from disaster operations. In particular, it was suggested that government auditing and reviewing standards be developed and that this work side by side with international monitoring processes, as a dual system.

It was also recommended that assessments include an examination of the longer-term impact of national and international relief efforts on local communities, and that maximizing the use of locally available resources should be promoted as a good practice. Indeed, it was noted that in general, there was little or no need for large international relief efforts in Indonesia because most disasters could be handled exclusively through local or national disaster response structures.

PART IV - CONCLUSIONS

There have been many positive developments in the area of disaster management in Indonesia. At the regional level, the work conducted by ASEAN and ACDM, in particular the planned development of a regional instrument to facilitate cross-border assistance, provides a good framework through which to address general issues concerning international disaster response for Indonesia and other ASEAN nations. Similarly, the priority accorded to disaster management in the *Sixth National Development Plan* demonstrates a commitment to further develop policies and guidelines for disaster response, which hopefully remains a priority in the *Medium Term Development Plan of 2005-2009*.

However, the laws and disaster management practices of Indonesia do not provide a great deal of clarity on issues concerning international disaster response. With respect to offers and requests for international assistance, there appear to be no formal processes for determining when and how such requests should be made and how they will be channeled. The trend towards decentralisation of disaster management has also meant that these decisions have been made inconsistently from both the central and local levels.

In the absence of specific agreements formed directly with the Government or rules relating to diplomatic status, there are limited opportunities for foreign entities to establish themselves in-country and to expeditiously to conduct relief operations. It is unclear as to which rules apply to the entry of foreign relief personnel in emergency situations and whether normal immigration rules are waived to facilitate faster entry in emergency situations. Similarly, many of the mechanisms for the coordination of relief efforts are established informally or on

an ad hoc basis, rather than forming an intrinsic part of the disaster management system. It is also unclear about the role of NGOs, both national and international, in preparedness and planning for disaster response - at present it seems that the system relates predominantly to government bodies.

Exceptionally, there have been special provisions developed for the import of relief goods by both domestic NGOs and recognised international organisations and NGOs, as well as for the import of medication. However, it remains to be determined whether these processes would be suitable for large-scale emergencies where there may be limited time and resources to receive and approve applications for exemptions. Similarly, licenses and access to telecommunications equipment would also need to be examined more thoroughly in the context of large-scale operations.

Overall, the system will benefit greatly from the efforts already underway to review existing disaster management legislation and practice, provided that attention is also given to aspects associated with the provision of international relief if/when it is needed. Thus, it is hoped that the findings from this report will also contribute to this process. It will be particularly important to take into account the experiences and lessons learned from the recent earthquake and tsunami, for which a separate study is planned for 2005. Finally, these issues should be addressed in a way which also takes into consideration the many international laws, principles and best practice in this area.

ANNEX A – Acronyms

ACDM – Association of South East Asian Nations Committee on Disaster Management

AEGDM - Association of South East Asian Nations Expert Group on Disaster Management

APBN - State Revenue and Expenditure Budget

ASEAN – Association of South East Asian Nations

CRS – Catholic Relief Services

ICRC – International Committee of the Red Cross

IDRL – International disaster response laws, rules and principles

MOU – Memorandum of Understanding

NGO – Non-governmental organisation

OCHA – United Nations Office for the Coordination of Humanitarian Affairs

PMI - Palang Merah Indonesia

SAR – Search and rescue

UN – United Nations

UNHCR – United Nations High Commissioner for Refugees

UNICEF – United Nations Children’s Fund

US – United States of America

WFP – World Food Programme

WHO – World Health Organisation

WVI – World Vision International

ANNEX B – RESEARCH METHODOLOGY

Preliminary desk research – Geneva

- Conducted July and August 2005 by Victoria Bannon, IDRL Coordinator
- Consisted of printed and electronic material and consultations with International Federation Asia Pacific Regional department staff

In-country study – Jakarta

- Conducted 5-8 November 2005 by Victoria Bannon, IDRL Coordinator
- Itinerary as follows:

Date	Meeting / Workshop	Attendees
5 November 2005	International Federation of Red Cross and Red Crescent Societies	<ul style="list-style-type: none"> ▪ Head of Delegation ▪ Disaster Management Delegate
	PMI (Indonesia Red Cross)	<ul style="list-style-type: none"> ▪ Secretary-General ▪ Head of Disaster Management ▪ Legal Adviser
	Indonesian Government	<ul style="list-style-type: none"> § Director General Immigration, Dept. of Law and Human Rights § Director General Customs, Dept. of Finance § Director General Multilateral Politic Social and Security, Dept. of Foreign Affairs § Director General Telecommunication Dept. of Communication § Secretary General, Dept of Residential and Area Infrastructure § Director General Support and Social Insurance, Dept. of Social
	ICRC	<ul style="list-style-type: none"> ▪ Head of Delegation ▪ Cooperation Delegate
8 November 2005	IDRL Workshop, Half-Day	<p>Approx 30 participants, Key organisations represented:</p> <ul style="list-style-type: none"> § Indonesian Red Cross § UNOCHA § ICRC (observer only) § USAID § UNICEF § WFP § CARE § Catholic Relief Services § Save the Children US § Save the Children UK § International Medical Corps § DIPECHO § MSF Belgium § Japanese Embassy § JICA § New Zealand Embassy § ASEAN § Danish Red Cross § Netherlands Red Cross § UNHCR § MPBI

Legal research – Jakarta, Indonesia

- Conducted December 2004 – February 2005 by Rachmat Ahadijat, Legal Adviser and Rarasworo from Indonesian Red Cross
- Consisted of collection and analysis of legal documents and interviews with government officials.

Supplementary research / consultations – Geneva

- Conducted March – July 2005 by Victoria Bannon, IDRL Coordinator and Omar Farah, Legal Intern, International Federation, Geneva.
- Consisted of additional desk top research and targeted follow up questions for legal researchers and other personnel.

ANNEX C – BIBLIOGRAPHY

International / regional treaties and conventions

Agreement Concerning Activities of UNICEF in Indonesia, 17 November 1966, UNICEF-Indonesia, 758 UNTS 49 (entered into force 17 November 1966).

Agreement for the Facilitation of Search for Aircrafts in Distress and Rescue of Survivors of Aircraft Accidents, Association of South East Asian Nations (14 April 1972)

Agreement for the Facilitation of Search of Ships on Distress and Rescue of Survivors of Ship Accidents, Association of South East Asian Nations (15 May 1975).

Agreement between the United Nations International Children's Emergency Fund and the Government of the Republic of Indonesia Concerning the Activities of the UNICEF in Indonesia, 6 April 1950, UNICEF-Indonesia, 68 UNTS 254 (entered retroactively into force on 27 December 1949)

Arrangement between Australia and Indonesia for the Co-ordination of Search and Rescue Services, in Accordance with Paragraph 2.1.4 of the Annex to the International Convention on Maritime Search and Rescue, 1979 as Amended, 13 April, 2004.

Arrangement between the International Federation of Red Cross and Red Crescent Societies and the Government of Indonesia on the Establishment of the Country Delegation of the Federation and its Activities in Indonesia, signed 22 November 2002.

Agreement between the United States and the Government of the Republic of Indonesia on Maritime Search and Rescue, art 2, Vol. 2202, I-39057.

Basic Agreement for the Provision of Technical Advisory Assistance, World Health Organization – Indonesia, 307 UNTS 15 (entered into force 17 February 1958).

Basic Agreement for the Provision of Technical Advisory Assistance or other Services by the World Health Organization, 28 March 1951, World Health Organization – Indonesia, 103 UNTS 71 (entered into force 28 March 1951)

Convention on Assistance in the Case of Nuclear Accident or Radiological Emergency, 26 September 1986, 1457 UNTS 133 (entered into force 26 February 1987)

Convention on Early Notification of a Nuclear Accident, 26 September 1986, 1439 UNTS 275 (entered into force 27 October 1986).

Convention on the Privileges and Immunities of the Specialized Agencies, 21 November 1947, 33 UNTS 261 (entered into force 2 December 1948).

Convention on the Privileges and Immunities of the United Nations, 13 February 1946, 1 UNTS 15 (entered into force 17 September 1946).

Convention on Temporary Admission, 26 June 1990 (entered into force 27 November 1993) (*Istanbul Convention*)

Declaration on Mutual Assistance on Natural Disasters, Association of South East Asian Nations (26 June 1976).

Exchange of letters (with attachment) constituting an agreement by which the Agreement between the United Nations Special Fund, signed at Djakarta on 7 October 1960, and the Revised Basic Agreement for the provision of technical assistance between the Organizations members of the United Nations Technical Assistance Board and the Government of Indonesia, signed at Djakarta on 29 October 1954, are deemed revived and applicable to activities of the United Nations Development Programme in Indonesia subject, as regards to the second of those

agreements, to certain amendments thereto, 1 November 1966, 17 November 1966 and 25 January 1967, 588 UNTS 215, United Nations Development Fund (Special Fund), United Nations, International Labour Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization, International Atomic Energy Agency, Universal Postal Union and Inter-Governmental Maritime Consultative Organization and Indonesia (entered into force 17 November 1966).

Framework Convention on Civil Defence Assistance, opened for signature 22 May 2000, 2172 UNTS 231, (entered into force 23 September 2001) (*'Framework Convention'*)

International Convention on the Simplification and Harmonization of Customs Procedures, 18 May 1973 (entered into force 25 September 1974)

International Convention on the Simplification and Harmonization of Customs Procedures as amended, 26 June 1999 (not yet in force)

Memorandum of Understanding between PMI, International Federation and the Republic of Indonesia, Signed 16 June 2000

Standard Agreement on Operational Assistance, United Nations, including United Nations Industrial Development Organization), the International Labour Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, International Civil Aviation Organization, World Health Organization, International Telecommunication Union, World Meteorological Organization, International Atomic Energy Agency, Universal Postal Union and Inter-Governmental Maritime Consultative Organization and Indonesia, 12 June 1969, 925 UNTS 82 (entered into force 12 June 1969)

Tampere Convention on the Provision of Telecommunication Resources for Disaster Mitigation and Relief Operations, opened for signature 18 June 1998, United Nations depositary notification C.N.608.1998.TREATIES-8 of 4 December 1998 (entered into force 8 January 2005)

National policy and legislation of the Republic of Indonesia

Act No. 4/1984 concerning Epidemics

Act No. 6/1974 concerning Basic Arrangement on Social Welfare

Act No. 5/1990 concerning Conservation of Biological Natural Resources and its Ecosystems

Act No. 11 /1974 concerning Water Resources Management

Act No. 23/1997 concerning Environmental Management

Act No. 23/1992 concerning Health

Act No. 24/1992 concerning Spatial Planning

Act No. 41/1999 concerning Forestry

Act No. 37/1999 on Foreign Relations

Decision III of 2000 of the People's Consultative Assembly

Decree of Chairman of Bakornas PBP of 1995 on Organisation, Tasks, Function and Job Description

Decree of Finance Minister No. 144/KMK.05/1997 on Exemption from Import Duties and Customs on Imports of Goods Donated for Public Worship, Charity, Social, and Cultural Needs

Decree of Finance Minister No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia

Decree of Finance Minister No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia

Decree of Finance Minister of the Republic of Indonesia No. 201/KMK.04/2003 dated May 14, 2003 on Amendment of Decree of Finance Minister No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia

Decree of Finance Minister of the Republic of Indonesia No. 389/KMK.04/2003 on the Second Amendment of Decree of Finance Minister No. 89/KMK.04/2002 on Procedures for Granting Exemption from Import Duties and Customs on Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia

Decree of Finance Minister No. 496/KMK.01/2000 on Establishment as a Body / Institution that is granted Exemption from Import Duties and Customs to Pos Keadilan Peduli Ummat Foundation

Decree of Finance Minister No. 569/KMK.05/1998 on Procedures for Granting Exemption from Imports of Goods for the Needs of International Bodies and their Officials Who Work in Indonesia

Decree of Head of the Food and Drugs Supervisory Body No. HK.00.05.3.00914 on Imports of Drugs through Special Channels

Government Regulation No. 30 Year 1994 on Procedures for Implementing Departure Prevention and Entry Prohibition Policy

Government Regulation No. 31 Year 1994 on Alien Control and Immigration Actions

Government Regulation No. 32 Year 1994 on Visas, Admission Permits, and Immigration Permits

Government Regulation No. 37 Year 2002 on the Rights and Obligations of Foreign Ships and Aircraft When Exercising the Right to Archipelagic Sea Lanes Passage Through Established Archipelagic Sea Lanes

Government Regulation No. 53 Year 2000 on the Use of Radio Frequency Spectrum and Satellite Orbit

Law No. 9 Year 1992 on Immigration

Law 16 of 2001 on Foundations

Law No. 33 Year 2004 on Fiscal Balance between the Central Government and the Regional Governments

Law No. 36 Year 1999 on Telecommunication

Medium Term Development Plan 2005-2009

Presidential Decree No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees

Presidential Decree No. 18 Year 2003 on Visa Exemption for Short Visits

Presidential Decree No. 28 Year 1979

Presidential Decree No. 103 Year 2003 on the amendment of Presidential Decree No. 18 Year 2003

Presidential Decree No. 111 Year 2001 on Amendment of Presidential Decree No. 3 Year 2001 on the National Coordinating Board for the Management of Disaster and Refugees

Presidential Decree No. 133 Year 1953

Presidential Decree of the Republic of Indonesia in the Capacity of Central Military Emergency Administrator No. 43 Year 2003 on Control of the Activities of Foreign Citizens, Non-Governmental Organizations and Journalists in the Province of Aceh,

Second Amendment of Decree of Finance Minister No. 422/KMK.04/1998 on the Use of Book Value on Transfer of Property for Business Merger, Fusion, or Expansion

Sixth National Development Plan from 1993/1994 – 1998/1999

Operations reports / appeals

International Federation of Red Cross and Red Crescent, *Annual Appeal for Indonesia 2004*

International Federation of Red Cross and Red Crescent Societies, *Emergency Appeal: Indonesia Earthquake Appeal No. 15/2000* (14 June 2000)

International Federation of Red Cross and Red Crescent Societies, *Emergency Appeal: Indonesia (Alor Island) Earthquake) Appeal No. 25/2004* (22 November 2004).

International Federation of Red Cross and Red Crescent Societies, *Final Report – Indonesia Earthquake Appeal No. 15/2000* (14 November 2001)

International Federation of Red Cross and Red Crescent Societies, *Final Report: Indonesia Floods Emergency Response Appeal 02/2004* (20 August 2004)

OCHA, *Indonesia - Earthquake Situation Report No. 2*, OCHA/GVA 2004/0014 (6 February 2004)

OCHA, *Indonesia – Floods Situation Report No. 1*, OCHA/GVA 2002/0028 (1 February 2002).

OCHA, *Indonesia – Floods Situation Report No. 2*, OCHA/GVA 2002/0030 (1-2 February 2002).

OCHA, *Indonesia – Floods Situation Report No. 3*, OCHA/GVA 2002/0035 (2-5 February 2002).

Reports, articles and press releases

ASEAN, *Overview* <<http://www.aseansec.org/64.htm>> at 20 May 2005.

ASEAN Committee on Disaster Management, *Announcement on the ASEAN Ministerial Meeting on Disaster Management*, Phnom Penh, 7 December 2004, <<http://www.acdm.net/>> at 12 April 2005.

ASEAN Committee on Disaster Management, *ASEAN Regional Programme on Disaster Management* <http://www.acdm.net/index.php?&MMN_position=1:1> at 29 May 2005.

ASEAN Committee on Disaster Management, *Historical Background*, <http://www.acdm.net/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=2&MMN_position=2:2> at 29 May 2005.

ASEAN Committee on Disaster Management, *Mandate* <http://www.acdm.net/index.php?module=pagemaster&PAGE_user_op=view_page&PAGE_id=4&MMN_position=3:3> at 29 May 2005.

ASEAN Secretariat, *Social Development* <<http://www.aseansec.org/8558.htm>> at 20 May 2005.

Asian Disaster Reduction Center, *Country Report Indonesia, 2003*: <<http://www.adrc.or.jp/countryreport/IDN/2003/page.html>>

Asian Disaster Reduction Centre, “Legal System”, *Disaster Information on Member Countries: Indonesia* (undated) <<http://www.adrc.or.jp/nationinformation.php?NationCode=360&Lang=en&NationNum=03>> at 20 May 2005.

Asian Disaster Reduction Centre, “Organisation”, *Disaster Information on Member Countries: Indonesia* (undated) <http://www.adrc.or.jp/nationframe.php?URL=./management/IDN/Indonesia_Org.html&Lang=en&NationCode=360> at 20 May 2005.

CIA World Factbook <<http://www.cia.gov/cia/publications/factbook/geos/id.html>> (last updated 2 June 2005)

Government Calls on NGOs to Obey Prevailing Rules: The Jakarta Post, April 4, 2005

Law on Foundation: Legalizing Military Business, Indonesia-House <http://www.indonesia-house.org/dbindhouse/bm/lcw_bis_mil/Ch%20V%20%20Foundation%20Law%20.htm#top>

Malaysia and Indonesia Sign Joint Disaster Management Pact, BBC World News, December 11, 1997, <<http://news.bbc.co.uk/1/hi/world/monitoring/38781.stm>>.

Malaysia and Indonesia Agree to do Away with Bureaucracy in Disaster Relief, 8 January 1998, Press Release <<http://domino.kln.gov.my/KLN/press.nsf/0/7aec2a03921142bac82569cf001f2fed?OpenDocument>>.

Setiana, Adang, “Earthquake Disaster Preparedness in Indonesia”, *International Workshop on Comparative Study of Systems of Law of Earthquake Disaster Preparedness and Reduction*, Beijing, 26-28 June 2000, 3-4.

The Sphere Project, *Humanitarian Charter and Minimum Standards in Disaster Response* (2nd ed. 2004).

Indrawati, Sri Mulyani, Minister of State for National Development Planning/Chairperson of National Development Planning Agency (Bappenas), “Overview of Indonesia’s Medium-Term Development Plan 2004–2009”, Speech presented at the Pre-CGI Meeting, Jakarta, 19 January 2005.

U.S. International Grant Making Project, Council on Foundations, *Country Note for Indonesia*, August 2004 <<http://www.usig.org/countrycodes/indonesia.asp>>.